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FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don. F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 1

WEDNESDAY, FEBRUARY 17, 1954
WEDNESDAY, FEBRUARY 24, 1954
TUESDAY, MARCH 2, 1954

WITNESS:

The Honourable Stuart S. Garson, Minister of Justice.

Appendix: Provisions of the present *Criminal Code* relating to Capital and Corporal Punishment and Lotteries.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

For the Senate (10)

Hon. Walter M. Aseltine
Hon. Élie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon. Salter A. Hayden (*Joint Chairman*)
Hon. Nancy Hodges
Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Mr. Maurice Boisvert
Mr. J. E. Brown
Mr. Don. F. Brown (*Joint Chairman*)
Mr. A. J. P. Cameron
Mr. Hector Dupuis
Mr. F. T. Fairey
Mr. E. D. Fulton
Hon. Stuart S. Garson
Mr. A. R. Lusby
Mr. R. W. Mitchell
Mr. G. W. Montgomery
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate of Canada, Wednesday, 10th February, 1954.

Pursuant to the Order of the Day, the Senate resumed the adjourned Debate on the motion of the Honourable Senator Macdonald, seconded by the Honourable Senator Beauregard—That the Senate do unite with the House of Commons in the appointment of a Joint Committee of both Houses of Parliament to inquire into and report upon the questions whether the criminal law of Canada relating to (a) capital punishment, (b) corporal punishment or (c) lotteries, should be amended in any respect and, if so, in what manner and to what extent:

That the following Senators be appointed on behalf of the Senate on the said Joint Committee, namely, the Honourable Senators Aseltine, Beauregard, Bouffard, Farris, Fergusson, Hayden, Hodges, McDonald, Roebuck and Veniot.

That the Committee have power to appoint, from among its members, such subcommittees as may be deemed advisable or necessary and to sit while the House is sitting.

That the Committee have power to print such papers and evidence from day to day as may be ordered by the Committee for the use of the Committee and of Parliament.

That the Committee have power to send for persons, papers and records, and to report to the Senate from time to time.

That a message be sent to the House of Commons to inform that House accordingly.

The question being put on the said motion, it was—

Resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate of Canada

Thursday, 18th February, 1954:

The Honourable Senator McDonald for the Honourable Senator Hayden from the Joint Committee of the Senate and House of Commons on Capital and Corporal Punishment and Lotteries beg leave to make their first Report, as follows:—

Your Committee recommend that their quorum be reduced to nine (9) Members.

All which is respectfully submitted.

SALTER A. HAYDEN,
Joint Chairman.

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With leave of the Senate, the said Report was adopted.

Extract from the Minutes of the Proceedings of the Senate of Canada, Tuesday, the 2nd March, 1954:

The Special Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries beg leave to make their second Report, as follows:—

Your Committee recommend that they be empowered to retain the services of Counsel.

All which is respectfully submitted.

SALTER A. HAYDEN,
Joint Chairman.

With leave of the Senate, the said Report was adopted, on division.

Attest.

L. C. MOYER,
Clerk of the Senate.

House of Commons,

TUESDAY, JANUARY 12, 1954.

Resolved,—That a Joint Committee of both Houses of Parliament be appointed to inquire into and report upon the questions whether the criminal law of Canada relating to (a) capital punishment, (b) corporal punishment or (c) lotteries should be amended in any respect and, if so, in what manner and to what extent;

That 17 Members of the House of Comomns, to be designated at a later date, be Members of the Joint Committee on the part of this House and that Standing Order 65 of the House of Commons be suspended in relation thereto;

That the Committee have power to appoint, from among its members, such subcommittees as may be deemed advisable or necessary; to call for persons, papers and records; to sit while the House is sitting and to report from time to time;

That the Committee have power to print such papers and evidence from day to day as may be ordered by the Committee for the use of the Committee and of Parliament, and that Standing Order 64 of the House of Commons be suspended in relation thereto;

And that a message be sent to the Senate requesting that House to unite with this House for the above purpose and to select, if the Senate deems advisable, some of its members to act on the proposed Joint Committee.

WEDNESDAY, February 3, 1954.

(*Superseded February 15, 1954*)

Ordered,—That the following Members be appointed to act on the Joint Committee of the Senate and the House of Commons as provided in the motion of the Minister of Justice, passed by this House on January 12, 1954, having to do with a revision of the Criminal Code: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Decore, Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Montgomery, Murphy (*Westmorland*), Shaw, Thatcher, Valois and Winch.

MONDAY, February 15, 1954.

Ordered,—That the following Members act on behalf of this House on the Joint Committee of both Houses of Parliament as provided in the motion of the Minister of Justice on January 12, 1954, and appointed to enquire into and report upon the questions whether the criminal law of Canada relating to (*a*) capital punishment, (*b*) corporal punishment or (*c*) lotteries should be amended in any respect and, if so, in what manner and to what extent: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Decore, Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Montgomery, Murphy (*Westmorland*), Shaw, Thatcher, Valois and Winch, be substituted for the Order of Reference dated February, 1954, to the said Committee.

MONDAY, February 15, 1954.

Ordered,—That the name of Mrs. Shipley be substituted for that of Mr. Decore on the said Committee.

THURSDAY, February 18, 1954.

Ordered,—That nine members constitute a quorum of the said Committee.

TUESDAY, March 2, 1954.

Ordered,—That the said Committee be empowered to retain the services of counsel.

Attest.

LEON J. RAYMOND,
Clerk of the House.

REPORTS TO THE SENATE AND THE HOUSE OF COMMONS

THE SENATE,

THURSDAY, February 18, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries beg leave to make their first Report, as follows:—

Your Committee recommend that their quorum be reduced to nine (9) Members.

All which is respectfully submitted.

THE SENATE,

TUESDAY, March 2, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries beg leave to make their second Report, as follows:—

Your Committee recommend that they be empowered to retain the services of counsel.

All which is respectfully submitted.

SALTER A. HAYDEN,
Joint Chairman.

HOUSE OF COMMONS,

THURSDAY, February 18, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries begs leave to present the following as a

FIRST REPORT

Your Committee recommends that 9 of its members constitute a quorum.

All of which is respectfully submitted.

HOUSE OF COMMONS,

TUESDAY, March 2, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries begs leave to present the following as a

SECOND REPORT

Your Committee recommends that it be empowered to retain the services of counsel.

All of which is respectfully submitted.

DON. F. BROWN,
Joint Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, FEBRUARY 17, 1954

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 5.00 p.m. for organization purposes.

Present:

The Senate: The Honourable Senators Aseltine, Beauregard, Fergusson, Hayden, Hodges, McDonald, and Veniot—(7).

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Montgomery, Murphy (*Westmorland*), Shipley (Mrs.), Thatcher, Valois, and Winch—(14).

On motion of the Honourable Senator Beauregard, seconded by the Honourable Senator Venoit, the Honourable Senator Hayden was elected Joint Chairman representing the Senate.

On motion of Mr. Boisvert, seconded by Mr. Thatcher, Mr. Brown (*Essex West*) was elected Joint Chairman representing the House of Commons.

The Joint Chairmen expressed their appreciation for the honours conferred on them and remarked on the tasks lying ahead.

Mr. Brown (*Essex West*) presided and read the Orders of Reference.

On motion of Mrs. Shipley, seconded by the Honourable Senator Hodges,

Resolved—That a recommendation be made to both Houses that 9 members of the Committee constitute a quorum.

On motion of the Honourable Senator Hodges, seconded by the Honourable Senator Fergusson,

Ordered—That, pursuant to the Orders of Reference, the Committee print, from day to day, 1000 copies in English and 300 copies in French of its Minutes of Proceedings and Evidence.

On motion of the Honourable Senator Fergusson, seconded by the Honourable Senator Hodges,

Resolved—That a Subcommittee on Agenda and Procedure be appointed, comprised of the Joint Chairmen and 5 members to be named by them.

After discussion,

Agreed—That the title of the Committee be "Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries".

The Committee adjourned to the call of the Chair.

WEDNESDAY, FEBRUARY 24, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 3.30 p.m. The Joint Chairman, the Honourable Senator Hayden, presided.

Present:

The Senate: The Honourable Senators Aseltine, Bouffard, Farris, Hayden, Hodges and McDonald—(6).

The House of Commons: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*Hyde Park*), Fairey, Fulton, Lusby, Montgomery, Shaw, Valois, and Winch—(11).

The Presiding Chairman informed the Committee that the Joint Chairmen have agreed to preside alternately insofar as practicable.

The Presiding Chairman presented the First Report of the Subcommittee on Agenda and Procedure which was read by Mr. Winch and considered by the Committee as follows:

Recommendation No. 1: Adopted without amendment.

On recommendation No. 2:

Agreed—That the words "from time to time" be inserted in the second sentence immediately following the words *a report to the Committee.*

Recommendation No. 2 was adopted as amended.

On recommendation No. 3:

Agreed—That the date *March 31st* be amended to read *"March 22nd"* and that the following words be added to the last sentence: "and to be approved by the Subcommittee."

Recommendation No. 3 was adopted as amended.

Recommendation No. 4: Adopted without amendment.

On recommendation No. 5:

On motion of Mr. Cameron (*Hyde Park*):

Resolved—That the words "and individuals" be inserted immediately after the words *interested organizations.*

Recommendation No. 5 was adopted as amended.

Recommendation No. 6: Adopted without amendment.

Recommendation No. 7: Adopted without amendment.

On motion of the Honourable Senator Farris.

Resolved—That the First Report of the Subcommittee on Agenda and Procedure, as amended, which reads as follows, be now concurred in:

Your Subcommittee on Agenda and Procedure met at 11.00 a.m., Tuesday, February 23, and has agreed to present the following as its First Report:

Your Subcommittee discussed the procedure to be followed in arranging the Committee's Agenda and has agreed to recommend as follows:

1. That the Clerk of the Committee obtain as soon as possible 50 complete sets of the Proceedings and Report of the Royal Commission of the United Kingdom on Capital Punishment, 1949-53, for the use of the Committee.
2. That all letters addressed to the Minister of Justice, the Joint Chairmen, and members of the Committee, dealing with the matters before the Committee, be referred to the Clerk of the Committee.

The Clerk of the Committee will classify such correspondence for a report to the Committee *from time to time* and he will also acknowledge to each correspondent that such letters have been referred to the Committee.

3. That the Clerk of the Committee communicate at once with the Provincial Attorneys-General inviting them or their delegated alternates to indicate by *March 22nd* whether they wish to submit written briefs (50 copies), or attend personally before the Committee, or both, on the questions of Capital and Corporal Punishment and Lotteries. Included with this letter to the Attorneys-General there shall be a questionnaire on the said questions to be prepared by the Department of Justice *and to be approved by the Subcommittee.*
4. That the Department of Justice prepare an extract of the Criminal Code containing the provisions relating to Capital and Corporal Punishment and Lotteries.
5. That the Committee release a statement to the Press Gallery following the meeting on Wednesday, February 24, for the purpose of acquainting interested organizations *and individuals* that they are invited to indicate not later than March 31 next whether they wish to make representations to the Committee.
6. That the Minister and officials of the Department of Justice be prepared to make a statement on the existing law and its operation relative to Capital and Corporal Punishment and Lotteries at the meeting of the Committee scheduled for 11.00 a.m., Tuesday, March 2, 1954.
7. That, so far as practicable, there be two sittings weekly of the Committee to be held on either Tuesday mornings, Wednesday afternoons, or Thursday afternoons.

All of which is respectfully submitted.

The committee agreed that future reports of the subcommittee be prepared in sufficient quantity to provide a copy to each member of the Committee and of the Press.

On motion of Mr. Winch,

Ordered,—That the Clerk of the Committee write to the provincial Attorneys-General, asking if they can supply the information as to the number of homicides in their respective jurisdictions over the past twenty years with information as to the ultimate disposition.

Mr. Brown (*Essex West*) presented and read the press release recommended in the First Report of the Subcommittee.

After discussion thereon, on motion of Mr. Cameron (*Hyde Park*),

Resolved,—That the phrase beginning the second sentence of paragraph 2 which reads *All interested organizations in Canada* be amended to read "All interested organizations and individuals in Canada".

On motion of the Honourable Senator Bouffard,

Resolved,—That the press release as amended be adopted.

Mr. Brown (*Essex West*) accordingly released the following statement:

During the debates in both houses of parliament and since the various bills respecting the revision of the Criminal Code were introduced in this and the previous parliament, many different viewpoints have been expressed in and outside of parliament on the questions of capital and corporal punishment and lotteries. As a result of these varying views,

parliament has decided on the government's recommendation to refer these three questions to a joint committee of the Senate and the House of Commons for inquiry and report.

The joint committee is anxious to obtain the best factual representations that can be made available relating to the questions of capital and corporal punishment and lotteries. All interested organizations *and individuals* in Canada concerned with these three questions are accordingly invited to make their views known as soon as possible before March 31 next to the Joint Committee on Capital and Corporal Punishment and Lotteries, Parliament Buildings, Ottawa. In an endeavour to give this statement the widest possible circulation throughout Canada in the shortest possible time, the committee solicits the co-operation of all news disseminating agencies.

Agreed,—That the Press Gallery be given advance notice of witnesses scheduled to appear before the committee.

At 4.10 p.m., the committee adjourned to meet again at 11.00 a.m., Tuesday, March 2, 1954.

TUESDAY, MARCH 2, 1954.

The Joint Committee of the Sente and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m.

The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The honourable Senators Aseltine, Farris, Fergusson, Hayden, Hodges, and Veniot—(6).

The House of Commons: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Shaw, Shipley (*Mrs.*), Valois, and Winch.—(14).

The Presiding Chairman informed the Committee that the Clerk of the Committee would distribute copies of an Extract of the provisions of the present Criminal Code relating to capital punishment, corporal punishment and lotteries and, also, copies of the Second Report of the Subcommittee on Agenda and Procedure.

On motion of the Honourable Senator Farris,

Agreed,—That the said Extract be printed as an Appendix to the Minutes of Proceedings and Evidence.

The Presiding Chairman presented the Second Report of the Subcommittee which was read by Mrs. Shipley and considered by the Committee as follows:

On recommendation No. 1:

Agreed,—That this recommendation be considered *in camera* prior to adjournment of this meeting.

Recommendations No. 2 to 6 inclusive; Adopted without amendment.

On recommendation No. 7:

Agreed,—That the following words be added immediately following the date *March 10*: "or such other date as may be agreed upon".

Recommendation No. 7 was adopted as amended.

On recommendation No. 8:

Agreed,—That the following words be added immediately following the date March 10: "or such other dates as may be agreed upon"; and, also ,that the word "psychiatrist" be substituted for the word *psychologist.*

Recommendation No. 8 was adopted as amended.

The Minister of Justice, the Honourable Stuart S. Garson, assisted by Mr. A. J. MacLeod, reviewed the provisions of the present Criminal Code relating to capital and corporal punishment and lotteries, and was questioned thereon section-by-section.

Agreed,—That the Minister of Justice would make a further statement after the Committee had heard the Ontario Attorney-General or his appointee.

The Committee continued its deliberations *in camera.*

The Committee resumed its deliberations in open session.

On motion of Mr. Cameron (*High Park*), it was, on division,

Resolved,—That the Second Report of the Subcommittee on Agenda and Procedure as amended, which reads as follows, be now concurred in:

Your Subcommittee on Agenda and Procedure met at 4.00 p.m., Monday, March 1, and has agreed to present the following as its Second Report:—

Your subcommittee recommends:

1. That a recommendation be made to both Houses to empower the Committee to retain the services of counsel; and, if the recommendation is approved, that the Committee's resolution of February 24, respecting the preparation of the questionnaire to be sent to the provincial Attorney-General, be amended by substituting the words "Counsel to the Committee" for the words *the Department of Justice.*
2. That in respect of breifs submitted:—
   (*a*) by witnesses scheduled to be heard by the Committee: Copies be distributed in advance of appearance of witnesses, if possible, to members of the Committee and the Press Gallery, provided no release shall be made until witnesses concerned have been heard thereon by the Committee; and that such briefs be taken as read and printed in the evidence immediately preceding the hearing of the witness thereon;
   (*b*) where no witnesses will appear before the Committee: Copies be distributed, after selection by the subcommittee, as soon as possible to members of the Committee and the Press Gallery; and that such briefs be printed, after selection by the subcommittee, as appendices to the Minutes of Proceedings and Evidence;
3. That no group, affiliated with a national organization which has made or will be making representations to the Committee, be heard unless the group states that it dissents from the views of the national organization;
4. That travelling expenses and per diem allowances be paid only to witnesses who appear at the specific request of the Committee;
5. That Counsel to the Committee, if appointed, prepare a list of organizations and individuals in Canada acquainted with the three questions before the Committee for submission to the

subcommittee at an early meeting, corresponding to the list at page 289 of the Report of the U.K. Royal Commission on Capital Punishment;

6. That the Parliamentary Library prepare a bibliography of all books dealing with Capital Punishment, Corporal Punishment and Lotteries for the use of the Committee;
7. That the Clerk of the Committee notify The Christian Social Council of Canada that the Committee is prepared to receive its brief on Lotteries and to hear its delegation on Wednesday, March 10, *or such other date as may be agreed upon;* and
8. That the Chairman and the Minister of Justice make inquiries towards inviting two of the following persons as witnesses for the meeting of the Committee on Wednesday, March 10, *or such other dates as may be agreed upon.* A Justice of the Supreme Court of Ontario, a nominee of the Attorney-General of Ontario, two lawyer members of the Panel on Capital Punishment of the Ontario Branch of the Canadian Bar Association, a psychiatrist, and a jail surgeon.

All of which is respectfully submitted."

At 12.35 p.m., the Committee adjourned to meet again at 4.00 p.m., Thursday, March 4, 1954.

A. SMALL,
Clerk of the Committee.

DISCUSSION ON ORGANIZATION

FEBRUARY 24, 1954
3:30 p.m.

The PRESIDING CHAIRMAN: Gentlemen, it is now five minutes after the time we were to meet and we have many more than a quorum here, so we will call the meeting to order. I think I should tell you first that the joint chairmen have agreed between themselves as to how they shall conduct themselves, subject always to being overruled by the members of the committee. We decided that we would alternate in presiding over the various meetings. Since I am presiding today, Mr. Brown (*Essex West*) will be presiding at the next meeting. That is the way we will carry on.

Following the last meeting, we set up a Subcommittee on Agenda and Procedure which met and discussed methods for proceeding with the business that we have before us, and we have its report with recommendations, which is presented to you as the first item of business. I would ask Mr. Winch to read that report, please.

Mr. Winch read the report (See Minutes of Proceedings).

The PRESIDING CHAIRMAN: Gentlemen, there is the report. It is open for discussion by the members of the committee.

Mr. SHAW: In discussing the dates, or the days of the week, upon which the committee might sit, why was it suggested that these meetings be held in the afternoons of two days rather than in the mornings?

The PRESIDING CHAIRMAN: Tuesday morning seemed to be a clearer morning, as Wednesday morning is usually taken up in a variety of other things, including, if I may mention it, caucuses. I understand that some party or other is always having a caucus on some Wednesday morning. Wednesday morning is always a big morning for committee meetings so far as the Senate is concerned. Wednesday afternoon is a free afternoon so far as the Minister's business in the House is concerned. We thought of Wednesday afternoon and Thursday afternoon. The committee can change those dates and undoubtedly will have to do so, as we have witnesses who indicate that they are willing to come here and make statements, and we will have to accommodate ourselves to their time. They may be available on, say, Tuesday afternoon and that may be the only time.

Mr. SHAW: My only reason for asking that question was that it seems to me that if we are able to hold these meetings in the mornings that is when they should be held, because otherwise it would make our attendance very difficult while the House is in session, particularly when we are discussing the Criminal Code, as we may be doing.

Hon. Mrs. HODGES: On Tuesday mornings the Senate Divorce Committee always meets, and two members of the committee, myself and Senator Fergusson, are on that Committee, and there is a shortage of personnel for that. You run up against difficulties everywhere, but I thought it was only right for me to point that out.

The PRESIDING CHAIRMAN: If we tried to resolve all the differences, we might end up by finding no particular date. I do not think even an evening date would be satisfactory to everybody.

Hon. Mrs. HODGES: I thought I should mention that.

The PRESIDING CHAIRMAN: Quite right. We have indicated that Tuesday, Wednesday and Thursday seemed to be the days on which we should hold the meetings. Within those limits, I think we will have to accommodate ourselves to some extent to the people who are going to submit evidence to us, and we will have to consider these, along with other activities that may be going on, in setting dates for meetings.

Hon. Mrs. HODGES: Is there any chance of doing anything on a Monday? Monday is usually fairly free.

The PRESIDING CHAIRMAN: The difficulty would be in getting a quorum before the evening.

Hon. Mrs. HODGES: I know that those who do not happen to live in the vicinity are not here.

Hon. Mr. ASELTINE: The Senate Divorce Committee sits on Monday also.

Hon. Mrs. HODGES: I was thinking of the afternoon.

Hon. Mr. ASELTINE: Saturday is about the only free day.

The PRESIDING CHAIRMAN: You would bring that up! Did you understand that the recommendation of your steering committee is simply that, as far as practicable, there will be two sittings weekly, on these days. If it is not practicable, we will have to do something else. We are not laying down any hard and fast rule. Once the committee gets going it will set the dates for subsequent meetings.

Mr. MONTGOMERY: It seems to me that those dates are as good as any to start with.

The PRESIDING CHAIRMAN: I think Tuesday and Thursday are the dates on which you would be more likely to have a full attendance.

Hon. Mr. BOUFFARD: What is the objection to Thursday morning?

The PRESIDING CHAIRMAN: Cabinet meetings. The Minister would want to be present. I think we will have to hold meetings on dates to suit people who want to make submissions, but as a courtesy to the Minister we would have to say that we have to do this, and you will have to govern yourselves so as to be available on those dates.

Hon. Mr. ASELTINE: Why not leave it open?

The PRESIDING CHAIRMAN: Some recommendation will have to be made.

Mr. WINCH: I appreciate what the hon. member has to say, but I believe, if it is advisable, that we should have some idea, because if we have not we do not know how to work in our other appointments. If we have some idea, we can tie it in with our other work.

The PRESIDING CHAIRMAN: We will be in a much better position possibly after the next meeting, when we have heard from some of the people with whom we have communicated; and then we will be able to set some program. Right now we are just dealing with something that may be of necessity changed.

Mr. BROWN: (Essex West): I think, since the question of the Minister being here has been brought into the discussion, that we should see that he is here on every occasion, because he is the one who has to pilot any legislation that may result from the deliberations of this committee through the House of Commons, and it is necessary that he should know what the opinion of this committee is.

Mr. FULTON: It seems to me that the feeling that influenced the steering committee is one that might prevail with the committee as a whole. That was that we felt we were going to have a very great volume of work, probably more than we would be able to handle, that is, in hearing the various people who might wish to be heard. Therefore, while realizing that some accommodation and flexibility had to be retained, what we do propose to do is decide ourselves

what days we will meet, and just proceed with our work on that basis as best we can; because we do not fix definite meeting dates. The feeling was that otherwise we would never get through the tremendous volume of consideration that this committee will have before it.

The PRESIDING CHAIRMAN: A motion would be in order.

Hon. Mr. FARRIS: I move that the report be accepted.

Mr. FULTON: I have one other comment to make—not respecting the days of meeting. A notice is inserted that the provincial attorneys-general should be invited to let us know not later than March 31 whether they wish to be heard.

Mr. WINCH: If I may say so, I think we are going to get a little mixed up. I will move that we take this report *seriatim* and discuss the recommendations one subject at a time.

The PRESIING CHAIRMAN: How about paragraph one of the report?

Mr. BROWN (*Essex West*): I think we should draw to the attention of the clerical staff that for purposes of the committee's work there should be a copy of this report and any report coming from the subcommittee for all members of this committee, and as well there should be a number of copies prepared for the press, who have a very definite interest in this matter and perform a very valuable service. I do not think that the present report has been laid before members of the committee, has it?

Hon. Mrs. HODGES: No.

Mr. BROWN (*Essex West*): So it may be a little difficult to take it *seriatim* as you suggest.

Hon. Mr. FARRIS: Acceptance of these clauses does not preclude subsequent acceptance of other matters.

The PRESIDING CHAIRMAN: I will read each section and you will decide whether you want to pass it in that form or not:

> 1. That the clerk of the committee obtain as soon as possible 50 complete sets of the Proceedings and Report of the Royal Commission of the United Kingdom on Capital Punishment, 1949-53, for the use of the committee.

Some Hon. MEMBERS: Agreed.

The PRESIDING CHAIRMAN: Carried.

> 2. That all letters addressed to the Minister of Justice, the joint chairmen, and members of the committee, dealing with the matters before the committee, be referred to the clerk of the committee. The clerk of the committee will classify such correspondence for a report to the committee and he will also acknowledge to each correspondent that such letters have been referred to the committee.

In that connection we have settled on a form of letter acknowledging and thanking people for their consideration in making submissions, and I think the only thing that is not in this section is that possibly we should put the clerk on a time limit for giving us the result of his study of these briefs; and I would suggest that possibly the direction we should give him is that we would like to have it by March 31, if that meets with the approval of the committee.

Mr. FULTON: And then from time to time.

The Presiding CHAIRMAN: And from time to time thereafter.

Hon. Mr. ASELTINE: Why wait so long?

The PRESIDING CHAIRMAN: I think that respecting most of the submissions that have come in, if you will get half a dozen original ideas out of the whole bulk of them you will be doing very well, although they will be written up

differently and read differently. I don't think the committee will starve for want of work while we are waiting for them, but if the committee wants to shorten the time, fine. I only suggest March 31 to give time to pore through them all.

Mr. BROWN *(Essex West)*: I would not suggest we put a time limit.

The PRESIDING CHAIRMAN: Very well, item two carries without any deadline. The clerk knows what our views are.

Mr. LUSBY: Is that intended to include all individual members of the committee?

The PRESIDING CHAIRMAN: To the extent that you wish. I think that if the letters are to be used in the committee the individual members who receive them should turn them over to the clerk, so that he will classify them in relation to the other submissions.

Carried.

3. That the clerk of the committee communicate at once with the provincial attorneys-general inviting them or their delegated alternates to indicate by March 31st whether they wish to submit written briefs (50 copies), or attend personally before the committee, or both, on the questions of capital and corporal punishment and lotteries. Included with this letter to the attorneys-general there shall be a questionnaire on the said questions to be prepared by the Department of Justice.

Mr. FULTON: Mr. Chairman, my suggestion is that I do not recall that the steering committee had set a deadline for March 31. It seems to me what you are asking the Attorneys-General to do is to let us hear from them as to whether they wish to come.

The PRESIDING CHAIRMAN: That is what it says here.

Mr. FULTON: We are not asking them to prepare their briefs and appear by March 31, but that we would like to hear from them before March 31.

The PRESIDING CHAIRMAN: We have a formal letter here which I will read. What we say is this:

> The Special Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries is prepared to consider represenations on the three questions referred to it for inquiry and report namely, whether the Criminal Law of Canada relating to (*a*) capital puishment, (*b*) corporal punishment or (c) lotteries should be amended in any respect and, if so, in what manner and to what extent.
>
> The Committee has directed me to communicate with all Provincial Attorneys-General asking them, or their delegated alternates, if they wish to submit written representations and/or to attend personally before the Committee in respect of any or all of the three questions. A sample questionnaire is enclosed for your convenience in preparing your representations to the Committee.
>
> The Committee would very much appreciate if, in your reply, you would indicate on which questions you wish to make representations and whether:
>
> 1. Only written representations will be made (if so, the Committee would appreciate 50 copies as soon as possible);
> 2. Only personal attendance will be made, without written representations, and in this case the Committee would appreciate knowing who the delegate or delegates would be with dates on which they could conveniently appear;

3. Both written and oral representations will be made. In this case the Committee would appreciate 50 copies of the written representations as soon as possible as well as being informed who the delegate or delegates would be with dates on which they could conveniently appear.

Your reply would be appreciated as soon as convenient but not later than March 31, when the Agenda and Procedure Sub-Committee will arrange suitable attendance dates.

Mr. FULTON: I would suggest not later than March 15 because we are going to be faced with some difficulty in making up our time-table, and if we are correct in anticipating there will be quite a number of organizations who wish to be heard as well as quite a number of individuals qualified in their fields whom we might want to invite, we will be faced with a heavy schedule. I would suggest we make up our time-table as soon as possible and if we suggest that they do not let us know until March 31 when they are able to come we are going to be faced with great difficulty in making up the time-table. Surely the Attorney-General's department will be able to let us know when they would like to be here. Would it be too much to ask them to let us know not later than March 15?

Mr. BROWN (*Essex West*): You were in the House and you have heard some of the difficulties they have had with some of the provinces in getting replies to certain letters. I do not think we should be too hard on them.

Mr. FULTON: I am sure that the Attorney-General in our province would not find it too difficult to make up his mind before March 31 whether he wished to come down or send someone down here. The point raised in the house was one which was political, and I do not think this has any political implication.

The PRESIDING CHAIRMAN: Why not make it March 22?

Mr. BROWN (*Essex West*): We are not going to make a deadline anyway.

Hon. Mr. FARRIS: Why not say as soon as convenient?

The PRESIDING CHAIRMAN: As soon as convenient, but not later than March 31.

Hon. Mr. FARRIS: Why put that foolish idea in their heads.

Hon. Mrs. HODGES: I do not think that "convenient" is the word. I would say "as soon as possible".

Hon. Mr. ASELTINE: I am in favour of putting a date in. "As soon as possible" does not mean very much.

The PRESIDING CHAIRMAN: I think you have to set an outside date. Otherwise these things will be set aside on their calendar.

Hon. Mrs. HODGES: I second Mr. Fulton's motion that it be March 15. If we get the majority in by the 15th maybe we will have done something.

Hon. Mr. BOUFFARD: It may take a little time in Quebec—

Hon. Mr. ASELTINE: All of the provincial legislatures are sitting now.

Hon. Mr. BOUFFARD: They are piled up with legislation and will be having meetings with council. They will probably wait to have a meeting of council on this matter—

The PRESIDING CHAIRMAN: Why not make it March 22?

Mr. LUSBY: If they are submitting written representations they should come in by that date.

Mr. BROWN (*Essex West*): Even if we do get a lot of briefs we may not want to hear them all anyway. We may just want to read their briefs and would not invite them to appear personally if we do not feel that they will have something to contribute.

Mr. LUSBY: If they wished to submit a brief did you mean that they will not be able to attend?

The PRESIDING CHAIRMAN: No.

Mr. WINCH: As an apparent middle-roader, I move in amendment that it be the 22nd.

The PRESIDING CHAIRMAN: Those in favour?

Carried.

Mr. FULTON: Then, would you make it clear that this questionnaire to be sent out which you are asking be prepared by the Department of Justice be at least approved by the steering committee.

The PRESIDING CHAIRMAN: It will be and that will be ready certainly by next Tuesday and I would say it will deal with the three headings.

The next is item 4: "That the Department of Justice prepare an extract of the Criminal Code containing the provisions relating to capital and corporal punishment and lotteries."

Carried.

That is for the convenience of the members of the committee.

The 5th is: "That the committee release a statement to the press gallery following the meeting on Wednesday, February 24, for the purpose of acquainting interested organizations that they are invited to indicate not later than March 31 next whether they wish to make representations to the committee."

Agreed.

Mr. MONTGOMERY: Do you not think that that is putting it on quite a way, the question of the date?

The PRESIDING CHAIRMAN: Some of them, who are panting with eagerness to make themselves heard before this committee, will get here very, very promptly. It is the ones who may have something useful whom we may have to invite. I am thinking of civil servants, or prison officials and prison doctors for example and people like that. We have got to make a study of those people to decide which ones we would like to have here.

Hon. Mr. ASELTINE: Ministers have already preached on the subject and I am not sure how much influence there has been. I do not know whether they are trying to influence the committee or not.

The PRESIDING CHAIRMAN: Shall item 5 carry?

Carried.

Then, we have a draft of a press release to which Mr. Brown will refer shortly.

Then, 6: "That the minister and officials of the Department of Justice be prepared to make a statement on the existing law and its operation relative to capital and corporal punishment and lotteries at the meeting of the committee scheduled for 11.00 a.m. Tuesday, March 2nd, 1954."

Carried.

7: "That, so far as practicable, there be two sittings weekly of the committee to be held on either Tuesday mornings, Wednesday afternoons, or Thursday afternoons."

Carried.

Then, with the changes we have made, is this report of the sub-committee adopted by the committee?

Carried.

Hon. Mr. FARRIS: I was asking Mr. Winch if it would not be a good thing to have information about the number of executions there have been in Canada and the sentences that have been commuted and he told me that was difficult to obtain.

The PRESIDING CHAIRMAN: We will have that. One thing that will be difficult is to get any indication of the number of homicides in Canada. I notice that they had that information in the evidence before the Royal Commission in England, but I doubt if we could get that here. But, we certainly would have the number of convictions for murder, the number executed, and the number whose sentences were cummuted.

Hon. Mr. FARRIS: And can we obtain information as to why?

The PRESIDING CHAIRMAN: We could quite probably address a question to the Minister or departmental officials when they are here.

Mr. SHAW: Why do you suggest that it might be difficult or impossble to secure the information concerning the number of homicides?

The PRESIDING CHAIRMAN: The Dominion Bureau of Statistics does not seem to have adequate information on that.

Mr. SHAW: Would not the Department of Justice or the R.C.M.P. have that?

Mr. WINCH: We were all surprised to learn that no returns are made by the provinces to any central agency on this matter at all.

The PRESIDING CHAIRMAN: You would have to go through police records probably in every city, town and village.

Hon. Mrs. HODGES: Is it not classified in the provinces by statistics?

Mr. BROWN (*Essex West*): The death is a vital statistic, but the hanging is not.

Mr. FAIREY: Would each province have that information?

The PRESIDING CHAIRMAN: There is no one source readily available where we would be able to get it, but we might get it through a number of sources.

Mr. CAMERON: Would not the provincial Attorneys General have that information?

Mr. FAIREY: Could we write to each individual Attorney General and ask if he can supply that information?

The PRESIDING CHAIRMAN: I think that is a good idea.

Hon. Mr. FARRIS: How far back do you intend to go?

The PRESIDING CHAIRMAN: I do not think we need go as far back as they did in England. They went back to I think 1900. I think we should go back about 10 years.

Hon. Mr. ASELTINE: I thought perhaps you were going back to Confederation.

The PRESIDING CHAIRMAN: If so we should advance the date of Confederation. We will get what we can.

Hon. Mr. ASELTINE: How will it help?

The PRESIDING CHAIRMAN: I think that there is some value in getting the information as to the number of homicides and the number who are brought to justice.

Mr. WINCH: There is also an angle which is important. It is important that we get all the information we can on account of the contention made by some that there are occasions when juries do not want to convict because of the existence of capital punishment, so if we can go back 10 years and can find the number of times that the jury have not convicted it might be of some use; but I would suggest that we go back farther than 10 years—I would suggest 20 years—in asking the Attorneys General to give us that information.

The PRESIDING CHAIRMAN: One possibility is the threat of a man being hanged acting as a deterrent. If the figures of the unsolved homicides are very, very great, I do not know what conclusion you might draw.

Hon. Mr. FARRIS: Then I think it is very important that we should know how many sentences have been commuted and the reason why.

The PRESIDING CHAIRMAN: We have discussed that and we will have that I am sure.

Mr. WINCH: I would like to move that the clerk write to the provincial Attorneys General and ask if they can supply the information as to the number of homicides in their respective jurisdictions over the past 20 years with information as to their disposition.

The PRESIDING CHAIRMAN: The ultimate disposition?

Mr. WINCH: Yes.

Carried.

The PRESIDING CHAIRMAN: The next item on the agenda is the presentation of the press release. Before Mr. Brown deals with that, the only observation I want to make with respect to the press release is that I think it is very important that we should get as wide coverage as possible of the fact that this committee is sitting down to work on these suggestions. It would be surprising, even with all the publicity you can get, the number of people who might say afterwards that they did not know that the committee was sitting and that they had information to lay before the committee. For myself, it seems to me that the type of material that we would favour before this committee would be that which is factual. I do not know that we are too concerned about opinions that people have because even cranks have opinions and they are not supported by any facts. That is, I think that those who have a factual basis for the submissions they are going to make to us are the people we would like to hear from, but where they are in the various parts of Canada we cannot be too sure at the moment, and that is why we have to depend on the press to bring our work to their attention.

Mr. SHAW: In the case of lotteries that might be a bit embarrassing.

The PRESIDING CHAIRMAN: There is no obligation on them to speak. You mean, the best evidence would not come forward?

Mr. SHAW: I think you are right.

Mr. BROWN (*Essex West*): Mr. Chairman, I do realize that we as a committee have a grave responsibility and, I am sure, an interesting duty to perform on this committee, because we are dealing with the very lives of some of our subjects, and not only the lives of subjects but the families concerned and the wishes of the community at large; and consequently we are most anxious that this committee be furnished, as Senator Hayden has stated, with the most factual information we can get. We have already received a number of communications and some briefs, and we have indicated to the committee, as I pointed out to the subcommittee, the serious interest by some persons—psychiatrists and others—who have factual information and who want to come before the committee. Consequently, we do need to inform the public at large that we are most anxious to hear those who can give us facts, and for that reason the committee has drafted a short press release, which is merely a form to indicate to the public that we are anxious that representations be made to us. Now, whether we would ask the person making the presentation to come to Ottawa to appear before the committee would have to be decided at a later date. This press release will at least inform the public that we have the desire to hear from them.

Hon. Mrs. HODGES: Are we going to hear the press release?

Mr. BROWN (*Essex West*): We regret that we have not as yet got going in the proper manner.

Hon. Mrs. HODGES: I beg your pardon. I thought you said you had released it to the press.

The PRESIDING CHAIRMAN: No, we have the release, which I am now going to read, if it is your pleasure. We are groping along the way trying to find out the best and simplest way of proceeding in this committee. The press release is as follows, and I will read it if it pleases you:

> During the debates in both houses of parliament and since the various bills respecting the revision of the Criminal Code were introduced in this and the previous parliament, many different viewpoints have been expressed in and outside of parliament on the questions of capital and corporal punishment and lotteries. As a result of these varying views, parliament has decided on the government's recommendation to refer these three questions to a joint committee of the Senate and the House of Commons for inquiry and report.
>
> The joint committee is anxious to obtain the best factual representations that can be made available relating to the questions of capital and corporal punishment and lotteries. All interested organizations in Canada concerned with these three questions are accordingly invited to make their views known as soon as possible before March 31 next to the Joint Committee on Capital and Corporal Punishment and Lotteries, Parliament Buildings, Ottawa.
>
> In an endeavour to give this statement the widest possible circulation throughout Canada in the shortest possible time, the committee solicits the co-operation of all news disseminating agencies.

Mr. BROWN (*Essex West*): I might add, Mr. Chairman, that while it says here "March 31", I am sure that if there is any valuable and factual presentation made after that date we would be—while we are not advertising the fact—most pleased to accept it. I think too we can express our thanks to the press in Canada at this time for the assistance they have given so far. In fact, it has been a little too anxious. I think both Senator Hayden and I were appointed Joint Chairmen of this committee in the press before we even had a meeting, and much to our surprise. But I do appreciate very much what has appeared in the press so far; and we know that the people of Canada are being adequately informed as to the proceedings. Thank you very much.

The PRESIDING CHAIRMAN: Is there any comment on the proposed press release?

Mr. CAMERON: I suggest you add the words "and individuals"—"organizations and individuals".

The PRESIDING CHAIRMAN: Yes, that is a good idea.

Mr. BROWN (*Essex West*): "All interested organizations and individuals" are accordingly invited. Is that what you mean?

Mr. CAMERON: Yes.

The PRESIDING CHAIRMAN: Yes. Is the committee satisfied with that form of release?

Carried.

On the next item, while we require a motion, we feel that in regard to the names of witnesses who will be coming from time to time—as we know of them in subsequent sittings of the committee—we should acquaint the members of the Press Gallery beforehand of the names of those witnesses. Is that the pleasure of the committee?

Some Hon. MEMBERS: Agreed.

The PRESIDING CHAIRMAN: Carried.

The chair is ready to entertain a motion to adjourn.

Carried.

The committee adjourned.

EVIDENCE

TUESDAY, March 2, 1954,
11.00 a.m.

The PRESIDING CHAIRMAN: Gentlemen, we have a quorum.

Mr. FULTON: Mr. Chairman, on a question of privilege I think I should explain the absence of one of our colleagues, Mr. Montgomery, who was unfortunately taken to the hospital last night. We do not know how long he will be in hospital, and we have not had time to make any change in our personnel. I would appreciate it if the press will give no prominence to the matter, but I think it should be on the record because he may be absent for some time.

The PRESIDING CHAIRMAN: Mr. Montgomery was a valuable member of the criminal law committee last year and has taken a keen interest in the committee this year. I am certain I express the feelings of all members of this committee when we wish him a speedy recovery and trust that his illness is not serious.

You have before you documents which are the excerpts from the present Criminal Code dealing with the three subjects of capital punishment, corporal punishment and lotteries. A motion would now be entertained to have these appended to the minutes of proceedings and evidence of today's session.

Mr. FULTON: In taking up the recommendations of the committee, Mr. Chairman, would you propose to deal with them clause by clause?

The PRESIDING CHAIRMAN: That would be part of the presentation of the Minister, I believe, today.

In order to have these on the record it is moved by the Hon. Mr. Farris, seconded by Mr. Lusby, that these excerpts be made a part of the proceedings today.

Carried.

(See Appendix)

The next item is the report of the subcommittee on agenda and procedure. Mrs. Shipley.

Mrs. SHIPLEY: Do I read this clause by clause?

The PRESIDING CHAIRMAN: Read it as is.

Mrs. SHIPLEY: Your subcommittee on agenda and procedure met at 4.00 p.m., Monday, March 1, and has agreed to present the following as its second report:—

Your subcommittee recommends:

1. That a recommendation be made to both houses to empower the committee to retain the services of counsel; and, if the recommendation is approved, that the committee's resolution of February 24, respecting the preparation of the questionnaire to be sent to the provincial Attorneys-general, be amended by substituting the words "counsel to the committee" for the words the *Department of Justice*.

2. That in respect of briefs submitted:—

(*a*) by witnesses scheduled to be heard by the committee: copies be distributed in advance of appearance of witnesses, if possible, to members of the committee and the press gallery, provided no release

shall be made until witnesses concerned have been heard thereon by the committee; and that such briefs be taken as read and printed in the evidence immediately preceding the hearing of the witness thereon;

(b) where no witnesses will appear before the committee: copies be distributed, after selection by the subcommittee, as soon as possible to members of the committee and the press gallery; and that such briefs be printed, after selection by the subcommittee, as appendices to the minutes of proceedings and evidence;

3. That no group, affiliated with a national organization which has made or will be making representations to the committee, be heard unless the group states that it dissents from the views of the national organization;

4. That travelling expenses and per diem allowances be paid only to witnesses who appear at the specific request of the committee;

5. That counsel to the committee, if appointed, prepare a list of organizations and individuals in Canada acquainted with the three questions before the committee for submission to the subcommittee at an early meeting, corresponding to the list at page 289 of the Report of the U.K. Royal Commission on Capital Punishment;

6. That the parliamentary library prepare a bibliography of all books dealing with capital punishment, corporal punishment and lotteries for the use of the committee;

7. That the clerk of the committee notify the Chritsian Social Council of Canada that the committee is prepared to receive its brief on lotteries and to hear its delegation on Wednesday, March 10; and

8. That the chairman and the Minister of Justice make inquiries towards inviting two of the following persons as witnesses for the meeting of the committee on Wednesday, March 10: a justice of the Supreme Court, a nominee of the attorney-general of Ontario, two lawyer members of the panel on capital punishment of the Ontario branch of the Canadian Bar Association, a psychologist, and a jail surgeon.

All of which is respectfully submitted.

SALTER A. HAYDEN,
DON. F. BROWN,
Joint Chairmen.

The PRESIDING CHAIRMAN: Moved by Mrs. Shipley, supported by Mr. Boisvert. Now, shall we consider it clause by clause.

Mr. FULTON: Agreed.

Hon. Mr. ASELTINE: In connection with item number 1, I would like to know why it was found necessary by the subcommittee to recommend that counsel be appointed to assist this committee which is composed of a number of lawyers from all parts of Canada who have had considerable practice in criminal matters. It seems to me that counsel would be paid probably a considerable fee per diem, a cost to the government of Canada of a great deal of money. I am personally opposed to the appointment of any counsel. I think that the lawyers present and the laymen of the committee are fully qualified to deal with this matter without going to that very considerable expense.

Mr. FULTON: Hear! Hear!

Hon. Mr. ASELTINE: I am wondering why the subcommittee found it necessary to have counsel appointed. I do not think this is a committee where counsel should be appointed at all, and I am quite opposed to the idea.

The PRESIDING CHAIRMAN: Is there any further comment?

Hon. Mr. GARSON: Mr. Chairman, perhaps I should offer a word of explanation on this point. As a matter of fact in the Criminal Law branch of the Department of Justice we are working shorthanded: at the moment we are short two men, one was the head of our Criminal Law section. He was a former deputy attorney general of the province of Manitoba who did excellent service for us for quite some time, and then he returned to Winnipeg at double the salary we were paying him to go into private law practice. It is very difficult to replace men of his experience; and up to the present time we have not been able to replace him. In addition to that another member of our staff especially versed in criminal law has undergone an operation. In this situation the government is not out of pocket. We are saving the salary of this other man who has not been replaced. If these men were here we could have taken care of this particular work, such as preparing the questionnaire, without getting outside counsel.

Hon. Mr. FARRIS: I understand that Mr. Aseltine is ready to do it for nothing.

Hon. Mr. ASELTINE: Probably they have not enough confidence in me.

Hon. Mr. GARSON: It is true I think of the members of the other place and the House of Commons: that they normally have quite a lot of work to do. I know that is certainly true in my own case. So unless there is some person who is paid to act as legal secretary to the committee between and during meeting the work of the whole committee will be slowed up. On that account I think we would make more progress if we had a capable counsel to assist us, not an older man a leader of the bar—but some person who would be able to look after such matters as this very question of adapting the questionnaire which was used by the British commission, to our needs here. Meanwhile, we are doing without a senior man in the criminal law branch of the Department of Justice because such men cannot be picked up on the street corner. But for that probably we would not have had to retain counsel.

Mr. MITCHELL: Is the minister in the position to say what the rate of remuneration will be?

The PRESIDING CHAIRMAN: That, Mr. Mitchell, will be discussed *in camera* at the close of this meeting.

Mr. CAMERON: Is what you have in mind more of the nature of a legal secretary than a counsel?

Hon. Mr. GARSON: Yes.

The PRESIDING CHAIRMAN: I do not think that the hon. senator recognizes the amount of work involved here. I do not know of any member of this committee who is prepared to put in the time required of such a counsel.

Hon. Mr. ASELTINE: I was of the opinion that this was to be done by the Department of Justice.

Hon. Mr. GARSON: The hon. senator is quite right. Mr. MacLeod who is with us here today is more than competent to do this work for the committee. But he is superintendent of bankruptcy, head of the commutations branch of the Department of Justice, and is helping me in the House of Commons on the Criminal Code. It is quite impossible for him in addition to do any more work on this matter. Because of that fact we need this other help. Otherwise we could take this work in our stride quite easily. However, when you have three experienced men and are short two of them, it is pretty difficult to take on new work. The idea is not to have some person who will come here and cross-examine witnesses on behalf of the committee; we have talent here to do that for ourselves: but we do need someone to do this work that is required to be

done after the committee disperses so that when we meet again we have that attended to. As the hon. senator says, of course the work should be done by the Department of Justice; but it so happens that we are short of staff at the moment and meanwhile the taxpayers of Canada are saving the salaries of the men we are short.

Mr. CAMERON: Would it not be better to change the name "counsel", and then when we want someone in the category of legal counsel we could have someone to advise us, rather than put this person we are talking about in the status of a counsel of the committee?

Hon. Mr. GARSON: I do not think a great deal turns on the name. We could call it secretary.

Mr. CAMERON: Today "counsel" means counsel.

Hon. Mr. GARSON: I would think that the man we would obtain should be capable of being a counsel. I think it would be better. It is pretty hard to foretell, but my own view would be that one good man would be quite sufficient for both purposes having regard to the fact that we have a number of able and experienced lawyers on the committee.

Hon. Mr. ASELTINE: The last joint committee I sat on was the one with regard to maintaining prices, and counsel for the committee sat there and asked all the questions and did all the cross-examining and that kind of thing.

Mr. FULTON: Not all of it by any means, senator.

Hon. Mr. ASELTINE: I was of the opinion that that was what you had in mind.

Hon. Mr. GARSON: No. This is to facilitate the work of the committee so that there will be no hold-up in getting this legal work done between meetings. Unless we have some person specifically assigned to do this work I am afraid that it will not be done within the time in which it should be; because if we have a meeting, say, today and are to meet a week from now it means that whoever is in charge will have to get his work under way soon after we adjourn so that it will be ready when we meet again.

Mr. FULTON: I appreciate the situation at the moment in the Department of Justice, but I wonder if it is possible for the committee clerk who is a very competent—.

The PRESIDING CHAIRMAN: Just a minute. I know that the committee clerk worked last night—

Mr. FULTON: You do not know what I am going to say yet.

The PRESIDING CHAIRMAN: Last night the committee clerk worked until one o'clock.

Mr. FULTON: I made a comment and I think I am entitled to finish it. It seems to me that the committee clerk who is an able man and has the resources of the committee branch of the House behind him—and I am sure the committee branch of the Senate would be glad to render their assistance—might, with the help of the Department of Justice, do the work which the minister has outlined here for the committee counsel. Apparently this person is not to be a full-time counsel to advise us and conduct cross-examination; he is more for the purpose of preparing the questionnaires and records, and I should think that the clerk with the assistance of the Senate and the House of Commons committee branches could go to the Department of Justice and get their assistance on the matter and do the actual work without the necessity of employing counsel.

Hon. Mr. GARSON: I am afraid I would be leaving quite a wrong impression with the committee if I suggested that the Department of Justice can provide any assistance at all in this field at the present time. We have lost the head of

the Criminal Law branch of our department because we could not come anywhere near matching the income he could make in private practice—and this is the second senior man we have lost in the same way in the last nine months—for these reasons we cannot begin to prepare all the technical material which will be required by the committee. In view of that fact we would be misleading the committee if we said we could perform the extra work that my hon. friend is suggesting. The Department of Justice is an economically managed department. We are not overstaffed. It is for that reason that we felt that if the committee is to get the services it must get to function properly it should have a legal secretary.

Hon. Mr. ASELTINE: Can the minister tell me about how long it is proposed that this committee will carry on?

The PRESIDING CHAIRMAN: That will depend pretty much on you, Senator, in part. I do not mean you personally.

Hon. Mr. ASELTINE: How much would it cost to hire counsel at so much a day?

Hon. Mr. GARSON: The hiring would be at so much per day for the days he works. One of the advantages of getting an outside man is that he will not be needed every day of the week by any means, and he can plan his time so he will be available when we need him, and that is what we will pay him for. There is no other way of meeting it. It is not as though it will cost the Department of Justice a great deal of money, because all the time this is going on those of us who are left in the Department of Justice are doing the work of the man who has been replaced.

Hon. Mr. ASELTINE: He will not be paid for 30 days a month?

Hon. Mr. GARSON: No, he will be paid for the days he works.

The PRESIDING CHAIRMAN: Just a word about the work of the clerk of the committee. I want to make it clear that so far as the clerk is concerned, in my opinion it is physically impossible for him to do any additional work. I know personally that since our last meeting he has spent a great deal of time—I know that because I have had to spend a great deal of time on the work of this committee apart from the committee meetings—and I know that last night at ten o'clock our clerk was still engaged on the work of this committee; so when you speak about putting further duties on his shoulders I think it is physically impossible.

Mr. SHAW: Is it not a fact that when the Criminal Law committee sat last spring one individual from the minister's department was kept pretty busy doing this type of work and the work of the committee was expedited? I know there is hardly an individual member here who would have time to do the type of work that such a person would do, and I think it is necessary that that work be done. I support the proposition.

Mr. FAIREY: I agree.

Hon. Mr. GARSON: We are working in the department today with only one of the three men that we had last spring. Last spring there was no question but that our man did a lot of this sort of work, and we could spare him; but that one man, Mr. MacLeod, is Superintendent of Bankruptcy and head of the Remission Service, assists me in the House of Commons work on the Criminal Code and attends here in connection with this committee. To ask him to do any more is just lunacy.

Mr. FULTON: How about paying him what we would otherwise be paying the counsel?

Hon. Mr. GARSON: It is not physically possible. One can work 16 hours a day, but one cannot work day and night.

The PRESIDING CHAIRMAN: If there is no further comment, we will postpone this matter until we go into camera. Any comment on paragraph 2?

Hon. Mr. ASELTINE: Carried.

Mr. CAMERON: What is meant by: "copies to be distributed in advance"; in advance of what?

Hon. Mr. HAYDEN: Of the appearance of witnesses.

The PRESIDING CHAIRMAN: In respect of briefs to be submitted, copies are to be distributed in advance; that is, copies of the briefs to be presented by the witnesses are to be distributed in advance.

Carried.

Recommendation 3.

Carried.

Recommendation 4.

Carried.

Recommendation 5:

> That counsel to the committee, if appointed, prepare a list of organizations and individuals in Canada acquainted with the three questions before the committee for submission to the subcommittee at an early meeting, corresponding to the list at page 289 of the Report of the U. K. Royal Commission on Capital Punishment;

Mr. FULTON: Could we leave this one stand also, Mr. Chairman, or do you think the words "if appointed" would cover it?

Hon. Mr. HAYDEN: This only says what he will do if appointed. Are we in agreement on that?

The PRESIDING CHAIRMAN: Is it agreed?

Carried.

Recommendation 6. We run into difficulty here. The clause says:

> That the parliamentary library prepare a bibliography of all books dealing with capital punishment, corporal punishment and lotteries for the use of the committee;

Now, Mr. Hardy, Parliamentary librarian, is here today. If it meets with your approval, I would like to have him come forward to explain his objection to this recommendation.

Mr. F. A. HARDY (Parliamentary Librarian): Since I have heard this recommendation I find it much more simple than I thought. I had been under the impression that we were to prepare a complete bibliography on these various subjects: capital punishment, corporal punishment and lotteries, which would mean not only books but periodicals, documents of royal commissions, etc., and Hansards of all the various countries, which would be a tremendous task. I have here, for instance, a sample bibliography. You see the size of it. Under the conditions we are working in now in the library, to do what I thought was required would be a terrific task and it would take a long while, but since I have heard the word used here, "books", it would certainly narrow it down and I do not see any reason why we should not prepare a bibliography on books. That has taken away my apprehension.

The PRESIDING CHAIRMAN: That has stolen your thunder?

Mr. HARDY: Yes. We can prepare a bibliography on books.

The PRESIDING CHAIRMAN: Is that agreeable to the committee? If so, it will be carried.

Carried.

Thank you very much, Mr. Hardy.

Recommendation 7.

Mr. FULTON: There is a conflict between 7 and 8.

The PRESIDING CHAIRMAN: "7. That the clerk of the committee notify the Christian Social Council of Canada that the committee is prepared to receive its brief on lotteries and to hear its delegation on Wednesday, March 10;" We may require some leeway on that. It may be that the Christian Social Council is not prepared. We have not contacted them yet, but if you will give us a little leeway on that we will do so at the earliest possible date.

Mr. FULTON: May I point out that there is a conflict between 7 and 8, in that you have the same date for both parties? I think that one date should be changed. Weren't we indicating March 17 for the Ontario panel?

The PRESIDING CHAIRMAN: It was suggested in the subcommittee, but we are trying to get witnesses of some type. We hope that we will have, when we come to No. 8, some suggestions to make for next Tuesday.

Mr. FULTON: Tuesday will be the 9th.

The PRESIDING CHAIRMAN: Well, shall we say "Wednesday, March 10, or such other date as is convenient"?

Mr. FULTON: In paragraph 7?

The PRESIDING CHAIRMAN: Both paragraphs 7 and 8. Is that amendment agreeable to the members of the committee, "March 10, or such other date as may be agreed upon"?

Agreed.

Recommendation 8:

> That the chairman and the Minister of Justice make inquiries towards inviting two of the following persons as witnesses for the meeting of the committee on Wednesday, March 10:—

and there again we will have "or such other dates as may be convenient"—

> a justice of the Supreme Court, a nominee of the attorney general of Ontario, two lawyer members of the panel on capital punishment of the Ontario branch of the Canadian Bar Association, a psychologist, and a jail surgeon.

Hon. Mr. FARRIS: That means a justice of the Supreme Court of Ontario?

Hon. Mr. GARSON: Yes.

Mr. DUPUIS: You indicated that you are going to invite a nominee of the attorney general of Ontario. I understand that would be a representative of the attorney general of each province, I suppose. I do not want there to be any distinction between the provinces.

The PRESIDING CHAIRMAN: What we are trying to do is to get a foundation for our study. We want to find out what the procedure is from the time in the magistrate's court right up to the appeal court, and for that reason we are asking some judge. The minister might have a word on that. I think we have contacted one of the judges.

Mr. DUPUIS: As far as a justice of the Supreme Court is concerned, it is all right with me, but I wonder if you are going to limit it to a representative of the attorney general of Ontario, one province only?

Mr. WINCH: I think there is a misunderstanding here. All the attorneys general have already been written to. This is just to get a picture of the procedure from the nearest attorney general, just on procedure alone.

The PRESIDING CHAIRMAN: It is merely to get a foundation for our work.

Mr. DUPUIS: That satisfies me.

Mr. FULTON: That should be "Supreme Court of Ontario".

The PRESIDING CHAIRMAN: Yes. Do you want to have a word on that, Mr. Minister?

Hon. Mr. GARSON: Yes, if I may. Over the years I have had considerable correspondence with interested individuals, newspaper editors and the like, with regard to what seemed to me to be a misunderstanding on their part as to what happens in these capital cases I therefore agree with the view of the subcommittee that the best way—especially for the lay members of the committee—to get a working understanding as to the manner in which our present law operates would be to have at the very beginning of our inquiry a nominee of the attorney general of Ontario come here to give an outline of the case of John Doe, who is accused of a capital offence, of what happens to begin with when he is apprehended by the police and brought up before the magistrate, of how his case comes before judge and jury, and so on. The only reason for choosing Ontario is that it is the closest and handiest province, and has a large and representative volume of criminal work. We could get a counsel from the attorney general's department of Ontario who has had experience as crown counsel both in jury trials, also in pleading cases before the courts of appeal, who could tell us step by step what happens in a typical capital case. After we have heard from him, I am sure we can get a judge from the Supreme Court of Ontario, either the trial division or the appellate division who could go over the same ground from a judge's standpoint. I think perhaps it would be better to get a judge who is now in the appellate division, but who has had long years of experience in the trial division, proceeding on trials, and who therefore could trace the course of a typical capital case through the jury trial itself and can then tell us from his appeal experience in the court of appeal when an appeal is taken against the jury's verdict. If we could get those two officials before us, I am sure we would all have—particularly the lay members—a much better idea as to just how the text of these sections of the Criminal Code we have been considering will operate in real life in the trial of an accused. After that, if you will bear with us, I thought that after the course of the trial had been traced from the laying of the information against the accused to his conviction, and his appeal had been dismissed and he was awaiting the carrying out of the penalty, we might then make a statement to the committee indicating the way in which the question of commutation of sentence is considered by the Department of Justice. In this way you would have a clear picture of the operation of the present law from the beginning until the very end, either in the form of a commutation or the carrying out of the sentence. We thought we could get, as has been suggested, a jail surgeon who could tell us how the sentence is carried out.

Hon. Mr. ASELTINE: From the cradle to the grave?

Hon. Mr. GARSON: A complete picture. My experience has been that there is quite a small percentage of laymen who really understand how the present law operates, I do not see how we can intelligently set about to change the law unless we know first of all what it is and how itworks.

Mrs. SHIPLEY: It might be as well to mention how the confusion as to the judges arose. Your steering committee would like to have that program that is published here, if possible, but the time was so short that we thought that if we could not obtain them we would get someone on lotteries. If we can get them, we will.

Mr. FULTON: Could we have a word from the minister as to whom he has in mind from the Supreme Court of Ontario?

The PRESIDING CHAIRMAN: That will be discussed by the subcommittee, if it is agreeable.

Hon. Mr. GARSON: There is this difficulty in prematurely indicating the identity of both the judge and the lawyer we were seeking—and the same difficulty arises in connection with appointments to a royal commission—that if we give any indication as to who they are and then end up with somebody else, it would make it appear that the second man was a second choice, and that would not be helpful.

Mr. SHAW: I have two questions. Is it the intention to jump from lotteries to corporal punishment to lotteries to capital punishment, to jump back and forth and all over the board? Personnally, I think that if possible that should be avoided.

The PRESIDING CHAIRMAN: I think your aim is quite desirable, but if we have a witness coming here who has knowledge of the three matters and he wants to make a presentation on all three, it would be rather useless to bring him back three times.

Mr. SHAW: That is a very special case.

The PRESIDING CHAIRMAN: We are trying to separate these as much as possible, but we cannot do it on all occasions.

Mr. SHAW: I would suggest that, as far as possible, we take one and follow it through.

Hon. Mr. HAYDEN: All the attorneys general may want to make presentations on the three subjects at one time.

Mr. SHAW: My second question, Mr. Chairman. Can I assume, referring to paragraph 8, for example, that we will not confine our hearing to March 10; that other sittings will be made available? There will not be time to crowd those three into the course of one sitting.

The PRESIDING CHAIRMAN: A great deal will depend, firstly, on the behaviour of the committee and, secondly, on the time available to the witness and, thirdly, on what other plans we may have prepared. We will try to meet the convenience of the committee on all occasions.

Mr. SHAW: All these subjects are so extremely important that there should not be any attempt to rush things; that is, on our part. If we cannot get all we want from them on March 10, certainly I would hope that we would make other sittings available.

The PRESIDING CHAIRMAN: We would try to meet the convenience of the committee, I am sure. I cannot go beyond that. We will have to meet the conditions as they arise. If there is no further comment on section 7—

Hon. Mr. GARSON: Would it not be better to use the word "psychiatrist" instead of "psychologist"?

The PRESIDING CHAIRMAN: Yes, I think so.

Recommendations 7 and 8 carried.

Mr. FULTON: As amended.

The PRESIDING CHAIRMAN: As amended. The report will not be adopted until we have gone into camera and discussed the other matter.

Now, we have with us today the Hon. Mr. Stuart Garson, Minister of Justice, and you have before you excerpts from the Criminal Code relating to the three subjects of capital punishment, corporal punishment and lotteries. If it is your pleasure, I will call upon the Minister of Justice, who has some presentation to make.

Hon. Mr. GARSON: Mr. Chairman, I do not know whether it is accurate to say that I have a presentation to make. In the Canadian Criminal Code from the very beginning there has been an attempt, which I think upon the

whole has been quite successful, to state the law in language which is perhaps more plain and clear than that in which some other laws are stated, and therefore, more easily understood even by lay readers. I therefore do not think that there is really any purpose of my taking up the time of the committee to make a full dress statement upon these sections, because I think that most of them are reasonably self explanatory. At this juncture it seems to me that the important thing is that to which I was referring a few moments ago, that is to get the people who are in charge of the administration of justice to explain to us how these laws that as I say are reasonably self explanatory really work in practice. That I think is the important thing.

Now, as far as these Criminal Code sections which appear before us in this multigraphed form are concerned I believe that the majority of the members of the committee will understand these sections quite well by reading them through. Therefore, I would agree that the suggestion made by Mr. Fulton a little while ago that we go through these clauses clause-by-clause should be adopted. If any of you have any difficulties in connection with any of the clauses we shall try to explain what they mean. Now, should we have some person read them out loud?

The PRESIDING CHAIRMAN: Would you prefer that?

Mr. SHAW: Why not do it the same as in the House. Call the section and subsection and wait a moment or so for questions?

Mr. ASELTINE: I do not think that they need as much explanation as all that. They are quite simple to me.

The PRESIDING CHAIRMAN: We are not all lawyers on the committee, senator.

Hon. Mr. GARSON: Shall we call the section and if any person has any question to ask we will clear that up and go on with the next one.

The PRESIDING CHAIRMAN: Shall we begin with section 74. Shall I read the clause?

Mr. SHAW: I think we should just call it as they do in the House.

The PRESIDING CHAIRMAN: Section 74.

The Hon. Mr. GARSON: May I offer this comment. These are clauses which we are not considering in themselves; they are merely the offences for which capital punishment is imposed and their relevancy and significance to our enquiry is as offences for which capital punishment shall be imposed. Therefore, we are not concerned with treason and these other offences as such, but just as offences the penalty for which is capital punishment.

The PRESIDING CHAIRMAN: Section 74, subsection 1?

Agreed.

Subsection 2?

Agreed.

Hon. Mr. GARSON: Mr. Chairman, there has been an oversight in the compilation of this memorandum one of the offences for which capital punishment is the penalty, has been left out. That is section 77 of the Code which I shall now read it into the record:

> 77. Every subject or citizen of any foreign state or country at peace with His Majesty, who
>
> (*a*) is or continues in arms against His Majesty within Canada; or
>
> (*b*) commits any act of hostility therein; or
>
> (*c*) enters Canada with intent to levy war against His Majesty, or to commit any dictable offence therein for which any person would, in Canada, be liable to suffer death; and

every subject of His Majesty who

(a) within Canada levies war against His Majesty in Company with any of the subjects or citizens of any foreign state or country at peace with His Majesty; or

(b) enters Canada in company with any such subjects or citizens with intent to levy war against His Majesty, or to commit any such offence therein; or

(c) with intent to aid and assist, joins himself to any person who has entered Canada with intent to levy war against His Majesty, or to commit any such offence in Canada;

is guilty of an indictable offence and liable to suffer death.

Hon. Mr. FARRIS: That is not labelled treason.

The PRESIDING CHAIRMAN: That was section 77?

Hon. Mr. GARSON: That is right.

The PRESIDING CHAIRMAN: Section 137.
Agreed.

Section 139.
Agreed.

Section 259.
Agreed.

Section 260.
Agreed.

Section 261.

Mr. WINCH: On section 261 would you explain to me who has the authority to reduce the charge from homicide to manslaughter? Is that in the hands of the jury or the judge, or who gives the direction on that?

Hon. Mr. GARSON: The first one who would have a discretion in the matter would be the Crown Attorney who on the facts of the case that came before him—

Hon. Mr. ASELTINE: —Would prepare the indictment?

Hon. Mr. GARSON: Yes. He decides what counts he will put in the indictment, and if he thinks that he cannot prove a charge of murder he may charge manslaughter. Once it goes to trial, of course, the jury are the final judges.

Mr. WINCH: If a person is charged with murder by the prosecution, does a jury have the right of saying it is not murder but is manslaughter?

Hon. Mr. GARSON: Yes. There is another section which we will come to which specifically provides for that.

The PRESIDING CHAIRMAN: Section 261.
Agreed.

Section 263.

Mr. FULTON: I would like to ask a question on that. I do not recall clearly the provisions of the law on the section. Can the minister tell us whether a judge on a charge of murder has the right to direct the jury they can find manslaughter, or can he only cover that in his charge to the jury in explaining the law? I do not recall whether the judge can say "you may not find murder. I direct you to find manslaughter."

Hon. Mr. GARSON: In view of the fact that we are going to have here a judge who has had long experience both in trial court and in the court of appeal, I think it is better to reserve that question for him, because if I agree with him it will not add anything to the authority with which he speaks and if I disagree it makes for confusion.

The PRESIDING CHAIRMAN: Section 263.

Agreed.

Section 298.

Agreed.

Section 299.

Agreed.

Section 951.

Hon. Mr. GARSON: Now, this is the point which Mr. Winch was raising a moment ago:

On a count charging murder,

> if the evidence proves manslaughter or infanticide but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter or infanticide, but shall not on that count find the accused guilty of any other offence.

The PRESIDING CHAIRMAN: Section 951.

Agreed.

Section 952.

Agreed.

Section 1008.

Agreed.

Section 1022.

Agreed.

Section 1061.

Mr. FULTON: For what purposes is this being dropped from the bill?

Hon. Mr. GARSON: It is provided for in another portion of the Code dealing with capital punishment.

The PRESIDING CHAIRMAN: Section 1061.

Agreed.

Mr. WINCH: May I ask a question on section 1022?

The PRESIDING CHAIRMAN: Yes.

Mr. WINCH: The right of leniency. Does that just apply in the Crown in the right of Canada, or does it actually mean if turned down by a body responsible for government in Canada or justice he can go to Her Majesty herself on that appeal?

Hon. Mr. GARSON: No.

Mr. WINCH: It is in the right of Canada?

Hon. Mr. GARSON: Yes. It is a constitutional prerogative of mercy. It is the Queen of Canada as represented by Her Majesty's Viceroy in Canada, who in turn is advised by Her Majesty's ministers in Canada.

Mr. WINCH: No right of personal clemency?

Hon. Mr. GARSON: Not under this legislation.

The PRESIDING CHAIRMAN: Section 1062.

Agreed.

Section 1063.

Mr. DUPUIS: On section 1063 why should there not be a specified time between the sentence and hanging? Why not specify the minimum time that can be fixed?

Hon. Mr. GARSON: One of the most important reasons for that is every accused who has been convicted has the right to appeal his conviction to the appeal court of his own province and the time within which he can make appeal would depend upon the rules of procedure of the courts of that province. It ranges from 15 days in certain provinces to 30 days in others. Then when the case goes before the court of appeal it has to be set down for the next sittings of the appeal court. This time also varies from one province to another depending upon a number of factors. In some it takes longer to get the appeal heard than in others. Again in a difficult case the appeal judge may want to reserve judgment for some time. If the appeal is rejected, but there is one member of the provincial court of appeal who dissents, then the accused can appeal to the Supreme Court of Canada. But he has to apply for leave to apeal which takes time. The appeal, if granted, has to be set down for hearing at the next sittings of the Sureme Court of Canada. So, within certain limits there is no way of prophesying when a criminal appeal is first launched, how long it is going to be before the final appeal taken by the accused to the Supreme Court of Canada will be disposed of. Meanwhile we in the Department of Justice cannot consider the commutation of sentence. For amongst the other material which we consider, are the judgments of the court of appeal in the province or the Supreme Court of Canada, and we cannot consider these judgments until they have been delivered. So we could not very well legislate for a fixed period of time between the sentence and the hanging as Mr. Dupuis suggests. The time taken to dispose of these appeals depends a great deal upon the circumstances.

Mr. DUPUIS: My intention is not to shorten the time betweeen the sentence and the time of hanging. I thought we could fix a certain time, say 3 months, that would give sufficient time to one who has been condemned to go to appeal and follow the legal procedures he may have to follow. But the fact that the time may be too short between the date of sentence and hanging may mean probably more legal costs added to the condemned person because of not giving enough time between the date of the sentence and the time of the hanging. I would say that 3 months would be a minimum.

The PRESIDING CHAIRMAN: May I suggest that you might like to speak on this matter when it comes up in the House of Commons. We have not reached that section in the discussions in the committee in the House of Commons. Probably you would like to discuss it there. I am just wondering if this is the place now to discuss it.

Mr. FULTON: May I ask if the minister, or Mr. MacLeod, could give us an explanation of the relationship between sections 1022, 1063 and 1077? I am frank to confess that I am not clear myself on the law with regard to the exercise of the prerogative of leniency as related to the crime or commutation of sentence. Those three sections are related to those two subjects and I wonder whether the minister or Mr. MacLeod could say just how that works.

Hon. Mr. GARSON: I would be glad to do that, but first may I make a comment in relation to the question asked by Mr. Dupuis. The time for execution is fixed, but if appeal proceedings are taken there is power given to the court to grant a reprieve extending the time of the carrying out of the sentence so as to enable the appeal proceedings to be completed. That is the way in which that difficulty is overcome.

Mr. FULTON: Is the authority vested in the minister, exercised through the remission branch, the same authority as exercised in recommending the use of the prerogative of mercy?

Hon. Mr. GARSON: Yes.

Mr. FULTON: Will you give us a word on these sections, 1022, 1063 and 1077?

Hon. Mr. GARSON: Do you wish comment on section 1022?

Mr. FULTON: Section 1022 deals with the prerogative of leniency and also empowers the Minister of Justice to take certain action with respect to directing new trials, etc., and it appears in that section under the prerogative of mercy. Section 1063 provides for the report by the judge before whom such prisoner has been convicted to the Secretary of State, for the information of the Governor General.

Hon. Mr. HAYDEN: That is limited to an offence carrying the punishment of death.

Mr. FULTON: I am thinking of this in relation to capital punishment only. Section 1077 gives the Crown the right to commute the sentence of death.

Hon. Mr. GARSON: Perhaps I could link those three clauses together in this way. Section 1022, subsection (1), states that:

> Nothing in the ten last preceding sections of this Act shall in any manner limit or affect His Majesty's royal prerogative of mercy.

My hon. friend is aware that the royal prerogative is a prerogative outside of the legislation altogether, and this Section 1022 (1) simply clears up beyond any peradventure the question of whether these "last ten preceding sections have" the effect of limiting the prerogative, by providing that they do not limit it. Subsection 2 of section 1022 says—and here I think I should make it clear that this section deals not only with capital cases, where the accused has been sentenced to be hanged, but it deals with all other cases as well—the following:

> Upon any application for the mercy of the Crown on behalf of any person convicted on indictment.

When the Minister of Justice is considering whether the royal prerogative of mercy should be exercised in relation to that accused, he may in that consideration be inclined to think that it is not only mercy that the accused needs but that he has not had a fair trial. Then instead of saying, "I will let the stain of the guilt remain upon you but I will let you off from the punishment for the guilt"—the Minister of Justice—"if he entertains a doubt whether such persons ought to have been convicted", may, "after such inquiry as he thinks proper"—his suspicions may be aroused that the accused has not had a fair trial, and he makes some inquiries in various directions and they tend to confirm that the accused has not had a fair trial—then he may, instead of advising Her Majesty to remit or to commute the sentence, direct by an order in writing a new trial at such time and before such court as the Minister of Justice thinks proper. In effect he says, "Try this man over again."

Mr. LUSBY: Has that ever been done?

Hon. Mr. GARSON: I did that within the last year. The man was tried over again, and again convicted, and I think the case was successfully appealed if I remember rightly. That was the case of an accused Cachia, represented by Arthur Martin, Q.C.

Hon. Mr. HAYDEN: There was another case, the Jarvis case, because I was in the court of appeal.

Hon. Mrs. HODGES: Would it not be a little clearer to the lay mind if some of these clauses were a little closer together? You have to go from one to the other in different parts of the Act to relate one to the other, and I wonder if it would be possible for these to be a little closer together.

Hon. Mr. GARSON: As a matter of fact, the grouping is based upon a relationship, and the authors of the Code, of the old Code and the new Code as well, have tried to group clauses together because of that relationship which

they thought was the most significant. Now, clauses may have different kinds of relationships to one another, and it may be that a clause that is put near some other in the Code because of one relationship also has another relationship to another clause. The draftsman cannot recognize both of these relationships. He has to choose that relationship which he thinks is the most significant and put those clauses together which are in that most significant relationship. It is a matter of relationship and the draftsman has to make a choice of what he thinks is the most significant relationship.

Hon. Mr. FARRIS: Maybe you could make a cross reference.

Hon. Mrs. HODGES: I was speaking solely from the point of view of the lay mind. It complicates it when you read something in one part and then you read something in another part which, to the lay mind, seems to conflict with the previous one.

Hon. Mr. GARSON: That is true, but I think when you go over the two or three pages and you find the other clause which appears to be related to your first clause, you will find that that second clause has an even closer relationship to those clauses which are in juxtaposition to it.

Hon. Mrs. HODGES: Cross reference would make it easier.

Hon. Mr. GARSON: Yes, that is the best solution, I think. Going back to Mr. Fulton's question again: Then the Minister of Justice, in addition to directing a new trial, may find when he examines this difficulty that there is a point of law involved that has not been disposed of to his satisfaction, and he may, under section 1022, subsection 2 (b),

> at any time, refer the whole case to the court of appeal, and the case shall then be heard and determined by that court as in the case of an appeal by a person convicted;

In other words, in sending back to be retried, he sends it to the court of appeal to have this legal point decided.

Then if he desires assistance of the court of appeal on any point arising in the case with a view to the determination of the petition for mercy, he may under section 1022 (2) (b) "refer that point to the court of appeal for its opinion thereon, and that court shall consider the point so referred and furnish the Minister of Justice its opinion thereon accordingly". That disposes of Section 1022.

Section 1063 reads:

> In the case of any prisoner sentenced to the punishment of death, the judge before whom such prisoner has been convicted shall forthwith make a report of the case to the Secretary of State, for the information of the Governor General; and the day to be appointed for carrying the sentence into execution shall be such as, in the opinion of the judge, will allow sufficient time for the signification of the Governor's pleasure before such day.

This also deals with the point Mr. Dupuis raised, that the date set for the execution shall be such date as to give the Governor General an apportunity of considering the commutation of the death sentence after all the material has been placed in his hands and considering it adequately before the date of the carrying out of that sentence.

Mr. FULTON: May I ask a question there for clarification? This is the point I am not quite clear on. Under section 1022, I gather that an appeal is made to the minister for the exercise of the royal prerogative of clemency. Under section 1063, the judge makes a report to the Secretary of State for transmission to the Governor General for the signification of His Excellency's pleasure. Does the Governor General automatically refer that back to the Minister of Justice?

Hon. Mr. GARSON: No, this is the Governor General of Canada who is the Viceroy of the Queen of Canada who is a constitutional monarch. The judge's report goes from the Secretary of State to the Queen's minister, who is in this case the Minister of Justice. So it does in actual practice—you may correct me on this, but I think that the statute requires it—go from the judge to the Secretary of State to the Minister of Justice. They usually send it to me direct.

Mr. FULTON: It may come in two ways: it may be instituted by an appeal on behalf of the convicted person, or by the report of the judge which is intended to go to His Excellency but will also find its way back to the Minister of Justice? Even if the accused does not appeal for clemency in the case of every death sentence, the matter automatically comes before the Minister of Justice because the judge makes the report which eventually finds its way into your hands?

Hon. Mr. GARSON: Yes, the judge is required by statute—and this is the statute, section 1063 of the Code—to make this report to the Secretary of State and the Minister of Justice.

Mr. FULTON: Excuse me. Just to be accurate— as I read the statute, he has only to make it to the Secretary of State for transmission to the Governor General, but I understand from you that the practice is that before it comes back to the Governor General it comes to you, that is his Minister of Justice, and it comes to the Secretary of State as well?

Hon. Mr. GARSON: The judge makes it to me because time is important in those cases.

Mr. FULTON: Perhaps we should change the wording when we come to the details of this.

Hon. Mr. GARSON: There would be no harm in that.

Mr. FAIREY: The point is that whether there is an appeal or not, the evidence is reviewed?

Hon. Mr. GARSON: There has been a long settled practice in this country that, no matter how friendless and how terrible a rogue a man may be, even if he has no other human being to speak for him at all, his case comes before the whole cabinet and is reviewed in detail just as if he has a host of friends.

Mr. FULTON: By virtue of section 1063?

Hon. Mr. GARSON: Not entirely by virtue of section 1063. It is a long settled practice. Another thing you will not find in the Code is the fact that at the cabinet meeting in which this question of commutation is considered the first item on the agenda is this capital case, no matter how urgent are the other matters on that agenda the capital case takes priority above anything else.

Mr. FULTON: Does the judge make a report to the cabinet?

Hon. Mr. GARSON: Yes. I am afraid we are covering ground we intended to cover later. Perhaps I can go over it later in a more orderly fashion. We get a report from the judge in which he reviews the whole course of the case and advises us, amongst other things, as to whether the jury has made a recommendation for mercy and gives his own comments on that recommendation, if any, or in many cases his own recommendation, his own views about mercy. We have all the depositions, the complete case, all the evidence that has been given at the trial and all the judge's charge to the jury, in many cases a case within a case, a voir dire, or anything of that sort having to do with the admission of confessions and other evidence. We have a complete report from the police and we have a report from the warden of the jail in which the man has been incarcerated pending the carrying out of the sentence. Furthermore in any case where there is any doubt as to the man's sanity we have reports of

psychiatrists whom we retain for that purpose to advise us as to whether he is insane, not when he committed the crime, which would be a defence, not when he was standing trial—and if he is not sane then he cannot instruct counsel and cannot be tried—but whether he is insane at the time that the execution is going to be carried out. If he is insane then he cannot be executed, that has been the fixed policy. With this material that we have before us, the case is first analyzed by officials in the Remission Service of the Department of Justice and a long precis is made analyzing the complete evidence in the trial from beginning to end and making a recommendation as to commutation to their minister. This precis itself is usually quite a sizeable document. Then the Minister of Justice or it is now, the Solicitor General, goes through all this material and on the basis of this material he makes his own recommendation to his colleagues in a meeting of the full cabinet and after a discussion of the relevant points a cabinet decision is made as to whether the sentence should be carried out. This section 1063, to which my hon. friend, Mr. Fulton, refers, provides for one of the most important items considered in remission cases, namely the report of the judge who presided at the trial.

Mr. FULTON: We are perfectly clear that that procedure goes on whether the accused has himself appealed for clemency or not?

Hon. Mr. GARSON: There is the odd case where the prisoner says, "I don't want any commutation. I prefer you didn't grant it to me", but we consider commutation in every case. Not only that; he gets the same consideration whether he applies or does not apply, whether he has no friends or whether he has friends.

Mr. FULTON: That is the part I wanted to know about.

Mr. SHAW: I assume that would be in all cases?

Hon. Mr. GARSON: Without exception.

Mr. SHAW: I hope the minister realizes he and his department were severally criticized because of a case involving a 17-year-old boy. If the newspapers had known of this procedure, they would not have been so critical. They expected the sentence to be commuted almost the next day because of the boy's youth.

Hon. Mr. GARSON: Certainly in that case, for example, we were able to dispose of the criticism. They criticized us in advance of any delay. The editorial was so critical that I undertook to write a letter to the editor, which was published, and he wrote an explanatory editorial in relation to my letter. I had taken the position in my letter to him that in a great majority of cases the reason why the accused had to be kept in suspense—that was the charge, that we had kept accused waiting until the very last day before they were to be hanged and that this was worse torture than the hanging itself—was because of the delays caused by the hearing of the accused's appeal.

The PRESIDING CHAIRMAN: Of course, if that delay had caused him to go crazy, he would not have been hanged.

Hon. Mr. GARSON: That is right. But in that particular case the boy was 17 years of age. Since the case against him was pretty conclusive his counsel did not appeal. Because he did not appeal we were able, not having to encounter the delays that are involved in the appeal, to promptly dispose of this case. This met the criticism very conclusively. But I remember writing to the editor at that time that in 11 out of 12 capital cases in a preceding period before my writing that letter there had been an appeal; and, of course, we could not go on with the consideration of the question of commutation until after the appeal court had disposed of the appeal before it. For if the appeal court were to quash the verdict then it would not be a question as to whether the penalty was to be commuted. His guilt itself would be wiped out or at

least he would have to be tried all over again. It would be monstrous for us, while his innocence was in the balance before the appeal court, to consider, on the assumption that he was guilty, the commutation of his death penalty.

Mr. FULTON: So that in every case you must wait until the time for appeal has expired before you take it up?

Hon. Mr. GARSON: Yes. I think I should add that in addition to the judge's report, all the evidence, the police report and the warden's report, we also have the reasons for judgment of the court of appeal or the Supreme Court of Canada in those cases in which appeal has been taken. Sometimes a point will be made in the argument on appeal by some more acute mind, a counsel or the judges themselves, that will shed quite a new light upon the question of commutation itself.

The PRESIDING CHAIRMAN: Section 1063.

Mr. FULTON: Section 1077. Do you wish to wait?

Hon. Mr. GARSON: That simply provides for the commutation.

Mr. FULTON: May I ask a couple of questions then. Are you in a position to tell us what set of principles has grown up over the years in the course of deliberations you have outlined which govern you in arriving at your decision whether to remit or commute in a capital case?

Mrs. SHIPLEY: Are not all these questions the business of the next meeting when the minister is going to carry on after we have heard from the Attorney General or his appointee?

Hon. Mr. GARSON: I think Mrs. Shipley's point is very well taken. I do not mind in response to these questions to put some of the cart before the horse, but not the whole cart. I think we will get a more orderly impression of the way in which the law operates if we start at the beginning and trace a typical case through the courts to the point where the Department of Justice is considering the question of commutation, and then we can follow up, with, as I said before, an orderly statement of these principles upon which commutation is granted. This really cannot be brought out quite as satisfactorily by the question and answer method which we have been using today.

Mr. FULTON: That is a very admirable way of dealing with it. I may have missed the discussion, but I did not see it in the steering committee's report. If that is going to be our method of proceeding, then that is alright. But, I would like to see it cleared up.

The PRESIDING CHAIRMAN: Section 1063.
Carried.

Section 1064.
Agreed.

Section 1065.
Agreed.

Section 1066.
Agreed.

Section 1067.
Agreed.

Section 1068.
Agreed.

Section 1069.
Agreed.

Section 1070.
Agreed.

Section 1071.
Agreed.

Section 1072.
Agreed.

Section 1073.
Agreed.

Section 1074.
Agreed.

Section 1075.
Agreed.

Section 1077.
Agreed.

That is all we have.

Now, we go into corporal punishment.

Section 80.
Agreed.

Section 204.
Agreed.

Section 206.
Agreed.

Section 276.
Agreed.

Section 292.

Hon. Mrs. HODGES: May I ask a question there? I have a point to bring up in connection with an indecent assault case. Is now the time to bring it up?

The question I wish to bring up is in regard to this:

> Every one is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped, who indecently assaults any female.

We had a case in Victoria in January where Magistrate H. C. Hall has drawn pointed attention to the limitations imposed on his court in passing sentence in cases of indecent assault. His words, doubtless echo the thoughts of most decent people:

> I feel the maximum I am able to impose is really too small for the offence to which you each pleaded guilty. I intend to impose the maximum—six months less six days.

Now, that seems to run counter to this particular clause and I just would like to know about that.

The PRESIDING CHAIRMAN: Is it a charge under this section?

Hon. Mrs. HODGES: That I do not know. It was a case of indecent assault on a female.

Hon. Mr. GARSON: It is rather hard to express an opinion on a matter without knowing all the facts. I would suspect that the difficulty was not that the offence did not contain a sentence of more than six months, but the fact that the trial magistrate may have had a limited jurisdiction.

Hon. Mrs. HODGES: He is a police magistrate in the city of Victoria and this was a case which aroused a great deal of public opinion, the statement that the maximum is six months less six days. The point is we are discussing the Criminal Code and it seems so contrary to what is set out in the Criminal Code.

The PRESIDING CHAIRMAN: Could you obtain the information as to the section under which the charge is laid?

Hon. Mrs. HODGES: I could, but those are the magistrate's own words.

Hon. Mr. GARSON: This section is pretty clear.

Hon. Mrs. HODGES: It does not say you must not do it here or that it is for some one else. It specifically says anyone who assaults any female. I wanted to find out about this.

Hon. Mr. GARSON: The prosecutor may have exercised discretion there to lay the charge under another section.

Hon. Mr. ASELTINE: It may have been under a summary conviction.

Hon. Mr. GARSON: Maybe that is why the person pleaded guilty.

Hon. Mrs. HODGES: To a layman it is not understood.

Hon. Mr. GARSON: Sometimes there is an advantage in pleading guilty to the right offence—

Hon. Mrs. HODGES: The man did not plead guilty as a matter of fact.

Mr. FAIREY: In such a case would the magistrate have authority to direct that the charge be laid under a more exacting section?

Hon. Mrs. HODGES: Is there another section in which indecent assault can be charged?

Mr. FULTON: The magistrate can reduce the charge, but I do not think he can increase it.

Hon. Mrs. HODGES: As I say, I am quoting the magistrate's own words. I am sorry if I am out of order.

The PRESIDING CHAIRMAN: You are not out of order, as long as the reporter can get what is said, but when there are two or three people speaking at the same time the reporter cannot get the evidence.

Hon. Mrs. HODGES: Some one had made an interjection here and I was saying that I was quoting the magistrate's own words, not any outside commentator. The magistrate was highly indignant because as he says the maximum is six months less six days which is contrary to what we have here.

Mr. FAIREY: I was just asking the question: in such a case where a magistrate expresses indignation at his inability to impose what he considers an adequate penalty could he direct that the charge be relaid under a different section of the Criminal Code?

Mr. WINCH: We are not discussing sentences of the Criminal Code. We are discussing corporal punishment. The other matter is for the Criminal Code itself.

Hon. Mrs. HODGES: We all have not had the same opportunity that the members of the other house have had of bringing these matters to the attention of the house.

Hon. Mr. HAYDEN: The bill has been through our house twice and will be back again.

Hon. Mrs. HODGES: I wanted to make sure that somewhere I got this in.

The PRESIDING CHAIRMAN: Section 276.
Carried.

Section 292.
Agreed.

Section 293.
Agreed.

Section 299.
Agreed.

Section 300.
Agreed.

Section 301.
Agreed.

Section 302.
Agreed.

Section 447.
Agreed.

Section 457.
Agreed.

Section 1060.

Mr. WINCH: I notice in this that corporal punishment has to be administered in the presence of a medical officer. Now, suppose that the medical officer says that the man is not in condition to be whipped, has the medical officer authority to say it shall not be inflicted although the judgment of the court was that there was to be corporal punishment?

Hon. Mr. GARSON: I think that he certainly would. The Act directs that it be done under his supervision and if anything happened to the accused as a result of its being done when in the opinion of the medical officer the man was not in a fit condition to receive it—

Mr. WINCH: The reason I asked that is, I see in one section it states: "It shall be carried out not later than ten days before the expiration of any term of imprisonment to which the offender is sentenced for the offence." But I cannot see any authority whereby it could not be carried out.

Hon. Mr. GARSON: I think they would not carry it out; but if they were concerned about remission, they could make an application to the remissions branch of the Department of Justice which has the power to remit.

Mr. FULTON: Could I ask, before 1060 is carried, if there is going to be any opportunity, and if so what is the best way, of getting an analysis of the number of cases in which corporal punishment has been imposed as part of the sentence and the type of cases? Is that too difficult a statistic to obtain?

Hon. Mr. GARSON: I would not think so, so far as the penitentiary system is concerned. I could not speak for the provincial jails. But I would think we would have a record of it for the penitentiaries.

Mr. FULTON: Is whipping ever part of the sentence where the sentence is less than two years? Would it not always be a penitentiary sentence?

Hon. Mr. GARSON: No. Because, for these various offences, the magistrate does not have to commit for two years.

Mr. WINCH: There is another point which interests me. In going through the sections here—and this is the next one dealing with corporal punishment—I see no reference to any authority for the corporal punishment when it is not inflicted by the judge, and yet we all know for the purposes of discipline in some of the jails they inflict corporal punishment. Where do they obtain the authority for that?

Hon. Mr. GARSON: They would get the authority under the relevant legislation which sets up the jail administration and more than likely in the regulations passed under that statutory authority.

Mr. WINCH: Then, in a study of corporal punishment which is one of our duties in this committee, we not only have to study the Criminal Code, but we also have to study some other statute.

Mr. FULTON: Just the Penitentiary Act.

Hon. Mr. GARSON: Yes, it would have to study corporal punishment when imposed as a disciplinary measure in the administration of penal institutions.

Hon. Mr. ASELTINE: Under the jurisdiction of the Dominion only.

Hon. Mr. GARSON: I presume so.

Hon. Mr. ASELTINE: We have no jurisdiction in this committee to investigate the provinces.

Hon. Mr. GARSON: No.

Mr. WINCH: It is used in penitentiaries as well as in provincial jails.

Mr. DUPUIS: I want to know if the jails fall under the Penitentiary Act?

Hon. Mr. GARSON: Yes, they come under the Prisons and Reformatories Act, and appropriate provincial legislation.

Mr. DUPUIS: In other words, then they make regulations to be put in force in the jails which would not be allowed in the penitentiaries? You can whip a person under the Penitentiary Act in the penitentiary and maybe they would not be allowed to impose the same treatment in a provincial jail under the Penitentiary Act.

Hon. Mr. GARSON: I do not think that it would work quite that way. The Prisons and Reformatories Act of the Federal Parliament is the statutory authority under which the provincial jails—not federal penitentiaries—are operating, and if you examine the Prisons and Reformatories Act, you will see it is divided into different parts. One part covers the province of Alberta, and Nova Scotia and New Brunswick, and so on. The authority would be there. I think, if we wanted,—I would have to give careful consideration to this question—we probably could build up a case of technical authority over them. But I imagine there would be little purpose in our doing so; for on the question of whether we should have corporal punishment I think we could get all of the material that we needed in our federal institutions themselves.

Hon. Mrs. FERGUSSON: May I ask the minister what cat-o'-nine tails is, as mentioned in subsection 2 of section 1060?

Hon. Mr. GARSON: I will have Mr. MacLeod answer that.

Mr. MACLEOD: The one I have seen consists of a piece of wood about the size of a broom handle and about 12 or 15 inches long to which are attached nine thongs of cord-like material about 15 to 20 inches long. That is about what it is.

Hon. Mrs. FERGUSSON: Is it not true that in different jails they are entirely different, and therefore the punishment that might be inflicted in one part of Canada when you are sentenced to whipping might be entirely different to what you suffer in another part of Canada because they used an instrument which inflicted much less pain?

Mr. MACLEOD: I think it has been noted that there are variations between the various implements used.

Hon. Mr. ASELTINE: There is nothing in the Code to fix the weapon?

Mr. MACLEOD: No. There may be minor differences in form of some of them, but it is the same principle.

Hon. Mrs. FERGUSSON: There is a difference.

Mr. FULTON: We could ask the provincial attorneys general to cover that in their evidence and also ask them to let us know in how many cases in their provinces in the last five years corporal punishment has been imposed as part of the sentence.

Hon. Mr. HAYDEN: And we might mention the question of standardizing the instrument.

The PRESIDING CHAIRMAN: I see that whipping shall not be inflected upon females. The suggestion has been brought to my attention that we substitute the whipping for spanking.

Hon. Mr. GARSON: No. Substitute spanking for whipping.

The PRESIDING CHAIRMAN: That we institute the penalty. Spanking would be defined as a form of whipping.

Mr. LUSBY: Mr. Chairman, does the reference to the committee cover corporal punishment other than as inflicted under the provisions of the Criminal Code? You are speaking of corporal punishment as a disciplinary measure in jails and penitentiaries and I was wondering if that comes within the scope of the reference to the committee?

The PRESIDING CHAIRMAN: No. We are to deal with corporal punishment, capital punishment, and make recommendations, but not, I do not think, to amend. The terms of reference are:

> That a joint committee of both houses of parliament be appointed to inquire into and report upon the questions whether the criminal law of Canada relating to (*a*) capital punishment, (*b*) corporal punishment or (*c*) lotteries should be amended in any respect and, if so, in what manner and to what extent.

Mr. LUSBY: The criminal law should be amended?

The PRESIDING CHAIRMAN: Yes.

Mr. WINCH: Does that mean we could go into the question of corporal punishment as used in jails?

The PRESIDING CHAIRMAN: We are not here to amend the law but to make recommendations "whether the criminal law of Canada should be amended in any respect . . ."

Hon. Mr. ASELTINE: It is clearly confined to the criminal law?

Hon. Mr. GARSON: Yes.

The PRESIDING CHAIRMAN: Lotteries. Section 226.

Agreed.

Section 228.

Agreed.

Section 229.

Agreed.

Section 230.

Agreed.

Section 236.

Agreed.

Section 641.

Agreed.

Section 642.

Agreed.

Now, gentlemen, it is a quarter to one.

Mr. DUPUIS: I suppose any member of this committee would have the privilege of putting in a brief himself like any stranger would on these three different matters?

The PRESIDING CHAIRMAN: I would suggest if you have a brief we would be very pleased to consider it in the sub-committee on agenda and procedure, and it will be received and dealt with in the same manner as any other.

Now, before going into camera probably we could agree on the adoption of the committee's report.

I was going to suggest that we have this agreed to, subject to the appointment of counsel, but I am told now that we can have it passed in camera, so that will not be necessary.

Mr. FULTON: Mr. Chairman, is it desirable to do that? The question I raise is: Although I am not going to object to having some part of our discussion in camera, I wonder if it is desirable that the formal decision on the report itself should be in camera. It would not take too long to come back into public session from camera and then adopt the report. I question the propriety of adopting the report *in camera.*

The PRESIDING CHAIRMAN: That was the suggestion I was making originally. I was thinking that we should come back into formal committee for the adoption of the report, but I am told it is not necessary.

Mr. FULTON: I think it would be preferable.

The PRESIDING CHAIRMAN: Whatever the committee agrees upon.

Hon. Mr. ASELTINE: We can decide that later.

The PRESIDING CHAIRMAN: The committee will now stand adjourned. We will go *in camera.*

Mr. FULTON: To keep the record straight, the committee has not adjourned The public phase of the meeting will be adjourned.

The PRESIDING CHAIRMAN: We are now going *in camera.*

The committee continued *in camera.*

The committee resumed.

The PRESIDING CHAIRMAN: It has been moved by Mrs. Shipley and seconded by Mr. Lusby that the report of the subcommittee to the committee be adopted as amended.

Carried.

Mr. FULTON: Carried on division.

The PRESIDING CHAIRMAN: Any further discussion today? There will be a subcommittee meeting on agenda proceedings tomorrow afternoon. You have not received your notices yet, but I will give you warning.

Hon. Mr. GARSON: I understand that you would prefer to have the judge at the next meeting.

The PRESIDING CHAIRMAN: Next Tuesday.

Hon. Mr. GARSON: And that would be satisfactory?

The PRESIDING CHAIRMAN: Yes, but we should have another meeting.

Hon. Mr. ASELTINE: That will be the 9th. This says "the 10th".

The PRESIDING CHAIRMAN: We have to determine that. It will be either the 9th or the 10th, whichever is convenient. I think it was amended to that extent. It is up to us to get the witnesses on whatever date is convenient. Would it be possible to have another meeting with the minister some day this week? Probably we can get some other witness for later this week. Would it be agreeable to the committee that we sit Thursday afternoon?

Hon. Mr. GARSON: What about the Christian Social Council? They are Toronto people and perhaps they could come this Wednesday or Thursday.

The PRESIDING CHAIRMAN: If you will give the chairman the authority, we will try to get a witness for you on Thursday of this week, and in the meantime I am warning the subcommittee on agenda procedure that there will be a meeting tomorrow afternoon.

Mr. FULTON: After the orders of the day?

The PRESIDING CHAIRMAN: About four o'clock. We will advise you as to the time and place whenever that has been agreed upon. The meeting is adjourned.

The committee adjourned.

APPENDIX

PROVISIONS OF THE PRESENT CRIMINAL CODE RELATING TO CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

A. CAPITAL PUNISHMENT

The following are the provisions of the present Criminal Code relating to capital punishment:

Sec. 74. (Bill clause 46)

"1. Treason is

(*a*) the act of killing His Majesty, or doing him any bodily harm tending to death or destruction, maim or wounding, and the act of imprisoning or restraining him; or

(*b*) the forming and manifesting by any overt act an intention to kill His Majesty, or to do him any bodily harm tending to death or destruction, maim or wounding, or to imprison or to restrain him; or

(*c*) the act of killing the eldest son and heir apparent of His Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or

(*d*) the forming and manifesting, by an overt act, an intention to kill the eldest son and heir apparent of His Majesty, or the Queen consort of any King of the United Kingdom of Great Britain and Ireland; or

(*e*) conspiring with any person to kill His Majesty, or to do him any bodily harm tending to death or destruction, maim or wounding, or conspiring with any person to imprison or restrain him; or

(*f*) levying war against His Majesty either

(i) with intent to depose His Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom of Great Britain and Ireland or of any other of His Majesty's dominions or countries, or

(ii) in order, by force or constraint, to compel His Majesty to change his measures or counsels, or in order to intimidate or overawe both Houses or either House of Parliament of the United Kingdom or of Canada; or

(*g*) conspiring to levy war against His Majesty with any such intent or for any such purpose as aforesaid; or

(*h*) instigating any foreigner with force to invade the said United Kingdom or Canada or any other of the dominions of His Majesty; or

(*i*) assisting, while in or out of Canada, any enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are; or

(*j*) violating, whether with her consent or not, a Queen consort, or the wife of the eldest son and heir apparent, for the time being, of the King or Queen regnant.

2. Every one who commits treason is guilty of an indictable offence and liable to suffer death."

Sec. 77. (Bill clause 46)

"Every subject or citizen of any foreign state or country at peace with His Majesty, who

(*a*) is or continues in arms against His Majesty within Canada; or

(*b*) commits any act of hostility therein; or

(*c*) enters Canada with intent to levy war against His Majesty, or to commit any indictable offence therein for which any person would, in Canada, be liable to suffer death; and

every subject of His Majesty who

(*a*) within Canada levies war against His Majesty in company with any of the subjects or citizens of any foreign state or country at peace with His Majesty; or

(*b*) enters Canada in company with any such subjects or citizens with intent to levy war against His Majesty, or to commit any such offence therein; or

(*c*) with intent to aid and assist, joins himself to any person who has entered Canada with intent to levy war against His Majesty, or to commit any such offence in Canada;

is guilty of an indictable offence and liable to suffer death."

Sec. 137. (Bill clause 75)

"Every one is guilty of an indictable offence who does any act which amounts to piracy by the law of nations, and is liable

(*a*) to the penalty of death, if in committing or attempting to commit such crime the offender murders, attempts to murder or wounds any person, or does any act by which the life of any person is likely to be endangered;

(*b*) to imprisonment for life in all other cases."

Sec. 139. (Bill clause 75)

"Every one is guilty of an indictable offence and liable to suffer death who, in committing or attempting to commit any piratical act, assaults with intent to murder, or wounds, any person, or does any act likely to endanger the life of any person."

Sec. 259. (Bill clause 201)

"Culpable homicide is murder,

(*a*) if the offender means to cause the death of the person killed;

(*b*) if the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and is reckless whether death ensues or not;

(*c*) if the offender means to cause death, or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed;

(*d*) if the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one."

Sec. 260. (Bill clause 202)

"In case of treason and the other offences against the King's authority and person mentioned in Part II, piracy and offences deemed to be piracy, escape or rescue from prison or lawful custody, resisting lawful apprehension,

murder, rape, indecent assault, forcible abduction, robbery, burglary or arson, culpable homicide is also murder, whether the offender means or not death to ensue, or knows or not that death is likely to ensue,

(*a*) if he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences in this section mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues from such injury; or

(*b*) if he administers any stupefying or overpowering thing for either of the purposes aforesaid, and death ensues from the effects thereof; or

(*c*) if he by any means wilfully stops the breath of any person for either of the purposes aforesaid, and death ensues from such stopping of the breath.

(*d*) if he uses or has upon his person any weapon during or at the time of the commission or attempted commission by him of any of the offences in this section mentioned or the flight of the offender upon the commission or attempted commission thereof, and death ensues as a consequence of its use."

Sec. 261. (Bill clause 203)

"Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.

2. Any wrongful act or insult, of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

3. Whether or not any particular wrongful act or insult amounts to provocation, and whether or not the person provoked was actually deprived of the power of self-control by the provocation which he received, shall be questions of fact: Provided that no one shall be held to give provocation to another by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person.

4. The illegality of an arrest shall not necessarily reduce an offence of culpable homicide from murder to manslaughter, but if the illegality was known to the offender it may be evidence of provocation."

Sec. 263. (Bill clause 206)

"Every one who commits murder is guilty of an indictable offence and shall, on conviction thereof, be sentenced to death."

Sec. 298. (Bill clauses 135 and 139)

"Rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or with consent which has been extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by false and fraudulent representations as to the nature and quality of the act.

2. No one under the age of fourteen years can commit this offence."

Sec. 299. (Bill clause 136)

"Every one who commits rape is guilty of an indictable offence and liable to suffer death or to imprisonment for life, and to be whipped."

Sec. 951 (2). (Bill clause 569)

"2. On a count charging murder, if the evidence proves manslaughter or infanticide but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter or infanticide, but shall not on that count find the accused guilty of any other offence."

Sec. 952. (Bill clause 569)

If any person tried for the murder of any child is acquitted thereof, the jury by whose verdict such person is acquitted may find, in case it so appears in evidence that the child had recently been born, and that such person did, by some secret disposition of such child or of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as it might have passed if such person had been convicted upon an indictment for the concealment of birth."

Sec. 1008. (Bill clause 577)

"If sentence of death is passed upon any woman she may move in arrest of execution on the ground that she is pregnant.

2. If such motion is made the court shall direct one or more registered medical practitioners to be sworn to examine the woman in some private place, either together or successively, and to inquire whether she is with child of a quick child or not.

3. If upon the report of any of them it appears to the court that she is so with child, execution shall be arrested until she is delivered of a child, or until it is no longer possible in the course of nature that she should be so delivered."

Sec. 1022. (Bill clauses 596 and 658)

"Nothing in the ten last preceding sections of this Act shall in any manner limit or affect His Majesty's royal prerogative of mercy.

2. Upon any application for the mercy of the Crown on behalf of any person convicted on indictment, the Minister of Justice,

(*a*) if he entertains a doubt whether such persons ought to have been convicted, may, after such inquiry as he thinks proper, instead of advising His Majesty to remit or to commute the sentence, direct by an order in writing a new trial at such time and before such court as the Minister of Justice thinks proper; or

(*b*) may, at any time, refer the whole case to the court of appeal, and the case shall then be heard and determined by that court as in the case of an appeal by a person convicted; and

(*c*) at any time, if the Minister of Justice desires the assistance of the court of appeal on any point arising in the case with a view to the determination of the petition, he may refer that point to the court of appeal for its opinion thereon, and that court shall consider the point so referred and furnish the Minister of Justice its opinion thereon accordingly."

Sec. 1061. (Dropped from the Bill)

"Every one who is indicted as principal or accessory for any offence made capital by any statute, shall be liable to the same punishment, whether he is convicted by verdict or on confession, and this as well in the case of accessories as of principals."

Sec. 1062. (Bill clause 642)

"In all cases where an offender is sentenced to death, the sentence or judgment to be pronounced against him shall be that he be hanged by the neck until he is dead."

Sec. 1063. (Bill clause 643)

"In the case of any prisoner sentenced to the punishment of death, the judge before whom such prisoner has been convicted shall forthwith make a report of the case to the Secretary of State for the information of the Governor General; and the day to be appointed for carrying the sentence into execution shall be such as, in the opinion of the judge, will allow sufficient time for the signification of the Governor's pleasure before such day.

2. If the judge thinks such prisoner ought to be recommended for the exercise of the royal mercy, or if, from the non-decision of any point of law reserved in the case, or from any other cause, it becomes necessary to delay the execution, he, or any other judge of the same court, or any judge who might have held or sat in such court, may, from time to time, either in term or in vacation, reprieve such offender for such period or periods beyond the time fixed for the execution of the sentence as are necessary for any of the purposes aforesaid.

3. In the Northwest Territories and in the Yukon Territory, when any person is convicted of a capital offence and is sentenced to death the judge or stipendiary magistrate who tried the case shall forthwith forward to the Secretary of State of Canada full notes of the evidence with his report upon the case, and the execution shall be stayed until such report is received and the pleasure of the Governor General therein is communicated to the Commissioner of the Northwest Territories or of the Yukon Territory, as the case may be."

Sec. 1064. (Bill clause 644)

"Every one who is sentenced to suffer death shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners; and no person except the gaoler and his servants, the medical officer or surgeon of the prison and a chaplain or a minister of religion, shall have access to any such convict, without permission, in writing, of the court or judge before whom such convict has been tried, or of the sheriff."

Sec. 1065. (Bill clause 645)

"Judgment of death to be executed on any prisoner shall be carried into effect within the walls of the prison in which the offender is confined at the time of execution."

Sec. 1066. (Bill clause 645)

"The sheriff charged with the execution, and the gaoler and medical officer or surgeon of the prison, and such other officers of the prison and such persons as the sheriff requires, shall be present at the execution."

Sec. 1067. (Bill clause 645)

"Any justice for the district, county or place to which the prison belongs, and such relatives of the prisoner or other persons as it seems to the sheriff proper to admit within the prison for the purpose, and any minister of religion who desires to attend, may also be present at the execution."

Sec. 1068. (Bill clause 646)

"As soon as may be after judgment of death has been executed on the offender, the medical officer or surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof, in form 71, and deliver the same to the sheriff.

2. The sheriff and the gaoler of the prison, and such justices and other persons present, if any, as the sheriff requires or allows, shall also sign a declaration in form 72 to the effect that judgment of death has been executed upon the offender."

Sec. 1069. (Bill clause 647)

"The duties imposed upon the sheriff, gaoler, medical officer or surgeon by the three sections last preceding may be, and, in his absence, shall be performed by his lawful deputy or assistant, or other officer or person ordinarily acting for him, or conjointly with him, or discharging the duties of any such officer."

Sec. 1070. (Bill clause 648)

"A coroner of a district, county or place to which the prison belongs wherein judgment of death is executed on any offender shall, within twenty-four hours after the execution, hold an inquest on the body of the offender.

2. The jury at the inquest shall inquire into and ascertain the identity of the body and whether judgment of death was duly executed on the offender.

3. The inquisition shall be in duplicate, and one of the originals shall be delivered to the sheriff.

4. No officer of the prison and no prisoner confined therein shall, in any case, be a juror on the inquest."

Sec. 1071. (Bill clause 650)

"The body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him, unless the Lieutenant Governor in Council orders otherwise."

Sec. 1072. (Bill clause 649)

"Every certificate and declaration, and a duplicate of the inquest required by this Part shall in every case be sent with all convenient speed by the sheriff to the Secretary of State, or to such other officer as is, from time to time, appointed for the purpose by the Governor in Council.

2. Printed copies of such several instruments shall as soon as possible, be exhibited and shall for twenty-four hours at least, be kept exhibited on or near the principal entrance of the prison within which judgment of death has been executed.

Section 1073. (Bill clause 651)

"The omission to comply with any provision of the preceding sections of this Part shall not make the execution of judgment of death illegal in any case in which such execution would otherwise have been legal."

Section 1074. (Bill clause 652)

"Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if the above provisions had not been passed."

Section 1075. (Bill clause 653)

"The Governor in Council may, from time to time, make such rules and regulations to be observed on the execution of judgment of death in every prison, as he, from time to time, deems expedient for the purpose, as well of guarding against any abuse in such execution, as of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place.

2. All such rules and regulations shall be laid upon the tables of both Houses of Parliament within six weeks after the making thereof, or, if Parliament is not then sitting, within fourteen days after the commencement of the next sitting thereof."

Section 1077. (Bill clause 656)

"The Crown may commute the sentence of death passed upon any person convicted of a capital offence to imprisonment in the penitentiary for life, or for

any term of years not less than two years, or to imprisonment in any gaol or other place of confinement for any period less than two years, with or without hard labour.

2. An instrument under the hand and seal-at-arms of the Governor General, declaring such commutation of sentence, or a letter or other instrument under the hand of the Secretary of State of Canada or of the Under Secretary of State, shall be sufficient authority to any judge or justice, having jurisdiction in such case, or to any sheriff or officer to whom such letter or instrument is addressed, to give effect to such commutation and to do all such things and to make such orders, and to give such directions, as are requisite for the change of custody of such convict, and of his conduct to and delivery at such gaol or place of confinement or penitentiary, and his detention therein according to the terms on which his sentence has been commuted."

The rules that have been made by the Governor in Council under section 1075 of the Criminal Code, and that are in force, are contained in P.C. 10354 of November 17, 1942. They are as follows:

1. That executions shall take place as soon after midnight as can conveniently be arranged.

2. That, in so far as it is practicable, executions be conducted in such a manner as to preclude any public view thereof.

B. CORPORAL PUNISHMENT

The present Criminal Code of Canada provides for punishment by whipping for the following offences:

1. *Sec. 80—Assault* on Severeign—{ (Bill clause 52) (Punishment of whipping dropped in the Bill)

"Every one is guilty of an indictable offence and liable to seven years' imprisonment, and to be whipped once, twice or thrice as the court directs, who

(*a*) wilfully produces, or has, near His Majesty, any arm or destructive or dangerous thing with intent to use the same to injure the person of, or to alarm His Majesty; or

(*b*) wilfully and with intent to alarm or to injure His Majesty or to break the public peace,

(i) points, aims or presents, or attempts to point, aim or present, at or near His Majesty, any firearm, loaded or not, or any other kind of arm,

(ii) discharges or attempts to discharge at or near His Majesty any loaded arm,

(iii) discharges or attempts to discharge any explosive material near His Majesty,

(iv) strikes, or strikes at, or attempts to strike, or strike at, His Majesty in any manner whatever,

(v) throws, or attempts to throw, anything at or upon His Majesty."

2. *Sec. 204*—Male party to incest. (Bill clause 142)

"(1) Every parent and child, every brother and sister, and every grandparent and grandchild, who cohabit or have sexual intercourse with each other, shall each of them, if aware of their consaguinity, be deemed to have committed incest, and be guilty of an indictable offence and liable to fourteen years' imprisonment, and the male person shall also be liable to be whipped: Provided that, the court or judge is of opinion that the female accused is a party to such intercourse only by reason of the restraint, fear or duress of the other party, the court or judge shall not be bound to impose any punishment on such person under this section.

(2) In this section the expressions 'brother' and 'sister' respectively include half-brother and half-sister."

3. *Sec. 206*—Gross indecency. (Bill clause 149)

"Every male person is guilty of an indictable offence and liable to five years' imprisonment and to be whipped who, in public or private, commits, or is a party to the commission by any male person of, any acts of gross indecency with another male person."

4. *Sec. 276*—Choking, drugging, etc., to overcome resistence. (Bill clause 218)

"Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped, who with intent thereby to enable himself or any other person to commit, or with intent thereby to assist any other person in committing, any indictable offence,

(*a*) by any means whatsoever, attempts to choke, suffocate or strangle any other person, or by any means calculated to choke, suffocate or strangle, attempts to render any other person insensible, unconscious or incapable of resistance; or

(*b*) unlawfully applies or administers to, or causes to be taken by, or attempts to apply or administer to, or attempts, or causes to be administered to or taken by, any person, any chloroform, laudanum or other stupefying or overpowering drug, matter or thing."

5. *Sec. 292*—Indecent assault on female and assault occasioning actual bodily harm to wife or other female. (Bill clause 141)

"Every one is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped, who

(*a*) indecently assaults any female; or

(*b*) does anything to any female by her consent which but for such consent would be an indecent assault, if such consent is obtained by false and fraudulent representations as to the nature and quality of the act; or

(c) assaults and beats his wife or any other female and thereby occasions her actual bodily harm."

6. *Sec. 293*—Indecent assault on male. (Bill clause 148)

"Every one is guilty of an indictable offence and liable to ten years' imprisonment, and to be whipped, who assaults any person with intent to commit sodomy or who, being a male, indecently assaults any other male person."

7. *Sec. 299*—Rape. (Bill clause 136)

"Every one who commits rape is guilty of an indictable offence and liable to suffer death or to imprisonment for life, and to be whipped."

8. *Sec. 300*—Attempted rape. (Bill clause 137)

"Every one is guilty of an indictable offence and liable to seven years' imprisonment and to be whipped, who attempts to commit rape."

9. Sec. 301—Carnal knowledge of girl under 14 years. (Bill clauses 138 and 131 (4))

"Every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife, whether he believes her to be of or above that age or not."

10. *Sec. 302*—Attempted carnal knowledge of girl under 14 years. (Dropped in Bill because covered by general "attempt" clause—406)

"Every one who attempts to have unlawful carnal knowledge of any girl under the age of fourteen years is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped."

11. *Sec. 447*—Robbery. (Bill clause 289)

"Every one who commits robbery is guilty of an indictable offence and liable to fourteen years' imprisonment and to be whipped."

12. *Sec. 457.* (Bill clause 292)

"(1) Every one is guilty of an indictable offence and liable to imprisonment for life who

(*a*) breaks and enters a dwelling-house with intent to commit any indictable offence therein; or

(*b*) breaks and enters any dwelling-house and commits any indictable offence therein; or

(*c*) breaks out of any dwelling-house either after committing any indictable offence therein, or after having entered such dwelling-house with intent to commit an indictable offence therein.

(2) Every one convicted of an offence under this section who when arrested, or when he committed such offence, had upon his person any offensive weapon, shall, in addition to the imprisonment above prescribed, be liable to be whipped."

13. *Sec. 1060*—Whipping. (Bill clause 641)

"Whenever whipping may be awarded for any offence, the court may sentence the offender to be once, twice or thrice whipped, within the limits of the prison, under the supervision of the medical officer of the prison, or if there be no such officer, or if the medical officer be for any reason unable to be present, then, under the supervision of a surgeon or physician to be named by the Minister of Justice, in the case of prisons under the control of the Dominion, and in the case of other prisons by the Attorney General of the province in which such prison is situated.

2. The number of strokes shall be specified in the sentence, and the instrument to be used for whipping shall be a cat-o'-nine tails unless some other instrument is specified in the sentence.

3. Every whipping shall take place, under the supervision as aforesaid, at such time as may be determined by the officer in charge of the prison: Provided that whenever practicable, every whipping shall take place not less than ten days before the expiration of any term of imprisonment to which the offender is sentenced for the offence.

4. Whipping shall not be inflicted on any female."

C. LOTTERIES

The following are the provisions of the present Criminal Code relating to lotteries.

Section 226(1), (2) (Bill clause 168(1)(d), 168(2), 168(4))

"A common gaming house is

(*a*) a house, room or place kept by any person for gain, to which persons resort to for the purpose of playing at any game of chance, or at any mixed game of chance and skill; or

(*b*) a house, room or place kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which

(i) a bank is kept by one or more of the players exclusively of the others; or

(ii) the whole or any portion of the stakes or bets or other proceeds at or from such games is either directly or indirectly paid to the person keeping such house, room or place, or any direct or indirect fee is charged to or paid by the players or any of them for the right or privilege of participating, or for the purpose of enabling them or any of them to participate, in such games or for the use of any gaming appliances, tables, chairs or other paraphernalia employed in playing such games; but the provisions of this subparagraph shall not apply to any house, room or place while occupied and used by an incorporated *bona fide* social club or branch thereof if the whole or any portion of the stakes or bets or other proceeds at or from such games is not either directly or indirectly paid to the person keeping such house, room or place, and no fee in excess of ten cents per hour or fifty cents per day is charged to the players for the right or privilege of participating in such games, nor while occasionally being used by charitable or religious organizations for playing games therein for which a direct fee is charged to the players if the proceeds are to be used for the benefit of any charitable or religious object;

(iii) any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the game is managed, or against whom the other players stake, play or bet.

2. Any such house, room, or place shall be a common gaming house, although part only of such game is played there and any other part thereof is played at some other place, either in Canada or elsewhere, and although the stake played for, or any money, valuables, or property depending on such game, is in some other place, either in Canada or elsewhere."

Sec. 228. (Bill clause 176)

"Every one who, without lawful excuse, is found in any disorderly house shall be liable on summary conviction to a penalty not exceeding one hundred dollars and costs and in default of payment to two months' imprisonment.

2. Any one who, as landlord, lessor, tenant, occupier, agent or otherwise, has charge or control of any premises and knowingly permits such premises or any part thereof to be let or used for the purposes of a disorderly house shall be liable upon summary conviction to a fine of two hundred dollars and costs, or to imprisonment not exceeding two months, or to both fine and imprisonment."

Sec. 229 (1). (Bill clause 176)

"Every one who keeps any common gaming-house, or common betting-house is guilty of an indictable offence and liable to one year's imprisonment."

Sec. 230. (Bill Clause 175)

"Every one is guilty of an offence and liable, on summary conviction before two justices, to a penalty not exceeding one hundred dollars, and to six months' imprisonment with or without hard labour who,

(*a*) wilfully prevents any constable or other officer duly authorized to enter any disorderly house, from entering the same or any part thereof; or

(*b*) obstructs or delays any such constable or officer in so entering; or

(*c*) by any bolt, chain or other contrivance secures any external or internal door of, or means of access to, any common gaming house so authorized to be entered; or

(*d*) uses any means or contrivance whatsoever for the purpose of preventing, obstructing or delaying the entry of any constable or officer, authorized as aforesaid, into any such disorderly house or any part thereof;

(*e*) being the owner or other person in control of premises occupied or used as a disorderly house, knowingly allows any contrivance whatsoever upon the said premises for the purpose of preventing, obstructing or delaying the entry of any constable or officer authorized as aforesaid into any such disorderly house, or any part thereof."

Sec. 236. (Bill clause 177)

"Every one is guilty of an indictable offence and liable to two years' imprisonment and to a fine not exceeding two thousand dollars who

(*a*) makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any property, by lots, cards, tickets, or any mode of chance whatsoever; or

(*b*) sells, barters, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property, by lots, tickets or any mode of chance whatsoever, or

(*bb*) knowingly sends, transmits, mails, ships, delivers or allows to be sent, transmitted, mailed, shipped or delivered, or knowingly accepts for carriage or transport or conveys any article which is used or intended for use in the carrying out of any device, proposal, scheme or plan for advancing, lending, giving, selling or otherwise disposing of any property by any mode of chance whatsoever; or

(*c*) conducts or manages any scheme, contrivance or operation of any kind for the purpose of determining who, or the holders of what lots, tickets, numbers or chances, are the winners of any property so proposed to be advanced, loaned, given, sold or disposed of; or conducts, manages or is a party to any scheme, contrivance or operation of any kind by which any person, upon payment of any sum of money, or the giving of any valuable security, or by obligating himself to pay any sum of money or give any valuable security, shall become entitled under such scheme, contrivance or operation to receive from the person conducting or managing such scheme, contrivance or operation, or any other person, a larger sum of money or amount of valuable security than the sum or amount paid or given, or to be paid or given, by reason of the fact that other persons have paid or given, or obligated themselves to pay or give any sum of money or valuable security under such scheme, contrivance or operation; or

(*d*) disposes of any goods, wares or merchandise by any game or mode of chance or mixed chance and skill in which the contestant or competitor pays money or other valuable consideration; or

(*e*) induces any person to stake or hazard any money or other valuable property or thing on the result of any dice game, shell game, punch board, coin table or on the operation of any wheel of fortune:

Provided that the provisions of paragraph (d) and (e) of this subsection in so far as they do not relate to any dice game, shell game, punch board or coin table, shall not apply to any agricultural fair or exhibition, or to any operator of a concession leased by any agricultural fair or exhibition board within its own grounds and operated during the period of the annual fair held on such grounds.

2. Every one is guilty of an offence and liable on summary conviction to a penalty of twenty dollars, who buys, takes or receives any such lot, ticket or other device as aforesaid.

3. Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or determined by chance or lot, is void, and all property so sold, lent, given, bartered or exchanged, shall be forfeited to His Majesty.

4. No such forfeiture shall affect any right or title to such property acquired by any *bona fide* purchaser for valuable consideration without notice.

5. This section includes the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket chance or share in any such lottery, or the advertisement for sale of such ticket, chance or share, and the conducting or managing of any such scheme, contrivance or operation for determining the winners in any such lottery.

6. This section does not apply to

(*a*) the division by lot or chance of any property by joint tenants or tenants in common, or persons having joint interests (droits indivis) in any such property;

(*b*) raffles for prizes of small value at any bazaar held for any charitable or religious object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held, and the articles raffled for thereat have first been offered for sale and none of them are of a value exceeding fifty dollars;

(*c*) the distribution by lot of premiums given as rewards to promote thrift by punctuality in making periodical deposits of weekly savings in any chartered savings bank;

(*d*) bonds, debentures, debenture stock or other securities recallable by drawing of lots and redeemable with interest and providing for payment of premiums upon redemption or otherwise;

(*e*) the Art Union of London, Great Britain, or the Art Union of Ireland."

Sec. 641. (Bill clause 171)

"(1) If a constable or other peace officer of any city, town, incorporated village, or other municipality or district, organization or unorganized, or place, reports in writing to the mayor or chief magistrate, recorder or to a judge of the Sessions of the Peace, or to the police, stipendiary or district magistrate of such city, town, incorporated village or other municipality, district, or place, or to any justice having such jurisdiction, that there are good grounds for believing, and that he does believe, that any house, room or place within the said city or town, incorporated village or other municipality, district or place is kept or used as a disorderly house, or for betting, wagering or pool selling contrary to the provisions of section two hundred and thirty-five, or for the purpose of carrying on a lottery or for the sale of lottery tickets or for the purpose of conducting or carrying on of any scheme, contrivance or operation for the purpose of determining the winners in any lottery contrary to the provisions of section two hundred and thirty-six, whether admission thereto

is limited to those possessed of entrance keys or otherwise; such mayor, chief magistrate, recorder, police, stipendiary or district magistrate or justice, may, by order in writing, authorize the constable or other peace officer to enter and search any such house, room or place with such other constables or peace officers as are deemed requisite by him, and such peace officer or peace officers may thereupon enter and search all parts of such house, room or place and if necessary may use force for the purpose of effecting such entry, whether by breaking open doors, or otherwise, and may take into custody all persons who are found therein, and may seize all tables and instruments of gaming, wagering, or betting and all moneys and securities for money and all instruments or devices for the carrying on of a lottery, or of any scheme, contrivance or operation for determining the winners in any lottery, and all lottery tickets and all intoxicating liquors and all circulars, advertisements, printed matter, stationery and things which may be found in such house or premises which appear to have been used or to be intended for use for any illegal purpose or business, and shall bring the same before the person issuing such order or any justice, to be by him dealt with according to law.

(2) If at any time a peace officer, although not having an order under subsection one of this section, finds any person in the act of keeping a gaming house or being present in a gaming house, such peace officer may seize all instruments of gaming and all other articles mentioned in subsection one of this section found in or on the premises where the above offence is taking place: Provided that as soon as possible thereafter a charge shall be laid according to law against the persons found committing an offence as above: Provided also that such objects so seized shall in due course be brought before the magistrate seized with the matter, to be dealt with in the manner provided for in subsection three of this section.

(3) The person issuing such order, or the justice before whom any person is taken by virtue of an order under this section, may direct that any money or securities for money so seized shall be forfeited, and that any other thing seized shall be destroyed or otherwise disposed of: Provided that nothing shall be destroyed or disposed of pending any appeal or any proceeding in which the right of seizure is questioned or before the time within which such appeal or other proceeding may be taken has expired.

(4) Nothing in this section contained shall be construed to authorize the seizure, forfeiture or destruction of any telephone, telegraph or communication instrument, facilities or equipment found in any such house, room or place and owned by any telephone or telegraph company, or any government telephone or telegraph system, engaged in furnishing telephone, telegraph or communication service to the public, or forming part of the service or system of any such company or government system."

Sec. 642 (1), (2). (Bill clause 174)

"The person issuing such order or the justice before whom any person who has been found in any house, room or place, entered in pursuance of any order under the last preceding section, is taken by virtue of such order may require any such person to be examined on oath and to give evidence touching any unlawful gaming in such house, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, room or place, or any part thereof, of any constable or officer authorized to make such entry; and any such person so required to be examined as a witness who refuses to make oath accordingly, or to answer any question, shall be subject to be dealt with in all respects as any person appearing as a witness before any justice or court in obedience to a summons or subpoena and refusing without lawful cause or excuse to be sworn or to give evidence, may by law, be dealt with.

2. Every person so required to be examined as a witness, who, upon such examination, makes true disclosure, to the best of his knowledge, of all things as to which he is examined shall receive from the judge, justice, magistrate, examiner or other judicial officer before whom such proceeding is had, a certificate in writing to that effect, and shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures and punishments to which he has become liable for anything done before that time in respect of any act of gaming regarding which he has been so examined, if such certificate states that such witness made a true disclosure in respect to all things as to which he was examined, and any action, indictment or proceedings pending or brought in any court against such witness in respect of any act of gaming regarding which he was so examined, shall be stayed, upon the production and proof of such certificate, and upon summary application to the court in which such action, indictment or proceeding is pending or any judge thereof, or any judge of any of the superior courts of any province."

FIRST SESSION—TWENTY-SECOND PARLIAMENT

1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

THURSDAY, MARCH 4, 1954

WITNESS:

Mr. William B. Common, Q.C., Director of Public Prosecutions, Ontario Attorney-General's Department.

Appendix: Questionnaire on Capital and Corporal Punishment and Lotteries sent to Provincial Attorneys-General.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

For the Senate (10)

Hon. Walter M. Aseltine
Hon. Élie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon Salter A. Hayden (*Joint Chairman*)
Hon. Nancy Hodges
Hon. John A. McDonald
Hon Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Miss Sybil Bennett
Mr. Maurice Boisvert
Mr. J. E. Brown
Mr. Don. F. Brown (*Joint Chairman*)
Mr. A. J. P. Cameron
Mr. Hector Dupuis
Mr. F. T. Fairey
Mr. E. D. Fulton
Hon. Stuart S. Garson
Mr. A. R. Lusby
Mr. R. W. Mitchell
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. W. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

ORDER OF REFERENCE

FRIDAY, March 5, 1954.

Ordered,—That the name of Miss Bennett be substituted for that of Mr. Montgomery on the said Committee.

Attest.

LEON J. RAYMOND,
Clerk of the House.

MINUTES OF PROCEEDINGS

THURSDAY, March 4, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Farris, Fergusson, Hodges, and McDonald.—(5).

The House of Commons: Messrs. Boisvert Brown (*Brantford*), Brown (*Essex West*), Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Shaw, Shipley (Mrs.), Valois, and Winch.—(13).

In attendance: Mr. William B. Common, Q.C., Director of Public Prosecutions, Ontario Attorney-General's Department, Toronto, Ontario; Mr. D. G. Blair, Counsel to the Committee.

On motion of the Honourable Senator McDonald, seconded by the Honourable Senator Aseltine, the Honourable Senator Nancy Hodges was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

The Presiding Chairman notified the Committee that a copy of the Report of the U.K. Royal Commission on Capital Punishment, 1949-53, has been mailed to each member.

On motion of Mr. Winch,

Ordered,—That the questionnaire prepared by Counsel to the Committee, as revised by the Subcommittee on Agenda and Procedure, for submission to the provincial Attorneys-General for the purpose of preparing their representations to the Committee, be printed as an appendix to this day's Minutes of Proceedings and Evidence.

Mr. Common was called and heard on the various phases, in sequence, of a criminal prosecution in a capital punishment case and was questioned thereon.

During the course of Mr. Common's evidence, it was agreed that he be invited to appear before the Committee in the near future in respect of corporal punishment and lotteries.

On behalf of the Committee, the Presiding Chairman thanked Mr. Common for his presentation.

The witness retired.

At 6.00 p.m., the Committee adjourned to meet again at 11.00 a.m., Tuesday, March 9, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

MARCH 4, 1954,
4.00 p.m.

The PRESIDING CHAIRMAN: Come to order, please, ladies and gentlemen. Unfortunately, Senator Hayden has to be away today and I think the Senate chair should be filled by some member of the Senate. Senator John McDonald.

Hon. Mr. MCDONALD: Mr. Chairman, ladies and gentlemen, in the absence of Senator Hayden today I would nominate Senator Hodges for today's meeting as co-chairman.

The PRESIDING CHAIRMAN: Seconded by Senator Aseltine.

Carried.

Senator Hodges, would you come up, please?

(Senator Hodges took the chair as co-chairman).

The PRESIDING CHAIRMAN: You have before you, or in your mail boxes, the report of the United Kingdom Royal Commission on Capital Punishment. If there is anyone who has not received that report please let us know and we will see that it is furnished to you at once. Now a motion would also be in order to print the questionnaire to the provincial Attorneys-General which has been prepared by counsel to the committee and checked by the subcommittee on agenda and procedure, as an appendix to the proceedings of today's meeting.

Moved by Mr. Winch, seconded by Mrs. Shipley, that the questionnaire be appended to the proceedings of today's meeting.

Carried.

(See Appendix).

We are most fortunate today in that we have with us Mr. W. B. Common, Q.C., who is Crown Counsel of the Attorney General's Department of the province of Ontario. We have asked Mr. Common to come here on very short notice—mind you, he does not need much notice—to see if he would help us in our deliberations in obtaining a groundwork as to the law and procedure on matters of capital punishment, corporal punishment and, I believe, lotteries. He has undertaken to come here to give us some of that groundwork from the point of view of a crown counsel. If it is your pleasure, I would like to call upon Mr. Common to say a few words, if he so desires, and then, at the completion of any presentation that he may care to make, the committee members will be at liberty to ask questions of Mr. Common. If that is in order, I will call upon Mr. Common.

Mr. W. B. Common, Q.C., Director of Public Prosecutions, Attorney General's Department, Province of Ontario, called:

The WITNESS: Mr. Chairman and members of the committee, I think possibly the best way to deal with what has been called the groundwork of a criminal prosecution in a capital case is to trace the various steps that are required

in a prosecution of that nature from, shall we say, the finding of the body in the first instance, tracing the various steps right through the investigation and trial to its final termination. Is that what you had in mind?

The PRESIDING CHAIRMAN: Could I ask you first if you would be prepared to comment on corporal punishment and lotteries?

The WITNESS: I had not come prepared for that.

The PRESIDING CHAIRMAN: Probably the committee will request then that you confine yourself to capital punishment, in the first instance.

The WITNESS: Very well.

The PRESIDING CHAIRMAN: And then we will proceed to corporal punishment and lotteries.

Mr. FULTON: Mr. Chairman, I am sorry. I wonder if Mr. Common could first put on the record, for the benefit of those who do not know it, the official position that he holds in the Attorney General's Department.

The WITNESS: I am director of Public Prosecutions for the province of Ontario, attached to the Attorney General's Department.

Mr. FULTON: Thank you.

The PRESIDING CHAIRMAN: Thank you very much.

The WITNESS: The first thing which forms the basis of any criminal prosecution would be the finding of a deceased's body. I am dealing now with the usual pattern that a prosecution follows. The body is sometimes discovered by a citizen, and usually the police, of course, are notified in the first instance.

The coroner of the particular county or district in Ontario is then immediately notified and he proceeds to the location where the body is found and makes a preliminary investigation. In the province of Ontario, we do not usually hold an inquest under our local Coroners Act if we intend proceeding with the charge. When I say "intend proceeding with the charge", I have in mind a named suspect. I think the procedure is somewhat different, for instance, in the province of Quebec, where an inquest invariably is held and a coroner's warrant is issued to the person named by the coroner's inquisition as being responsible for the death. We do not follow that practice in Ontario. If we have a suspect in mind, an inquest is not held, because we feel that an inquest, where the laws of evidence are rather loosely applied, something might come out which would be prejudicial to a fair trial of an accused person involved in the crime.

After the coroner has made his preliminary investigation, a post-mortem is done by a qualified pathologist. In our province we have the entire province zoned for pathological purposes and in each zone we have a responsible pathologist, usually with private practitioner experience in pathology, who is attached to our department for that purpose, and a complete post-mortem is done.

And then the police, of course, enter upon the investigation. If the homicide has taken place in an organized municipality which has its own organized police force, that force conducts the examination and the police investigation. The services of the criminal investigation department of the Ontario Provincial Police are at the disposal of any municipal force that desires to utilize them. These men have had considerable experience in the investigation of crime. For the purposes of the record I might remind the members of the committee, in Ontario we have an Ontario Provincial Police force. We are not policed by the Royal Canadian Mounted Police as in some of the other provinces, so our police force in Ontario is comprised of (a) the municipal police force, and (b) the Ontario Provincial Police force where there is no municipal police force in existence.

The C.I.B. department is available to any municipal force for the purposes of investigation, and the usual police investigation goes forward in collating the evidence and working up the case, collecting the exhibits and obtaining a statement from the accused, if such is available, collecting statements from witnesses, and then the matter is placed before the local Crown attorney.

In Ontario we have a system of Crown attorneys who are directly responsible through me to my minister. I think we have some 46 Crown attorneys in the various counties and districts, most of whom are full time men. There are very, very few who work part time. The vast majority are full time representatives of the Attorney General's department.

Now, when a murder occurs in Ontario, or a homicide which we suspect is murder, and a person is arrested and charged with that offence, one of my first duties that I follow is to communicate immediately with the local crown attorney, with a view to ascertaining whether or not a psychiatric examination is indicated. If the circumstances surrounding the homicide are such that there is even a suggestion that there is a mental condition present in the person arrested, I will then request a psychiatrist from our Department of Health and Welfare, where we have a number of full-time psychiatrists, to proceed to the local jail where the man is incarcerated and there to conduct an extensive psychiatric examination. Notwithstanding the results of that examination, I usually insist that before the trial that same doctor, and I should say, that doctor together with another doctor, because we like to have two medical men do this, have the prisoner examined at least three times before the trial, which would include one psychiatric examination on the very morning that the man is to be tried, so that we have, as far as we can go, an up-to-the-minute mental report as to the fitness or otherwise of that individual to stand his trial.

Hon. Mr. ASELTINE: Does that take place before the preliminary hearing?

The WITNESS: That may or may not. In some cases the examination does take place before the preliminary hearing, but since the question of insanity does not arise on the preliminary hearing at all, it really does not matter when those examinations take place as long as they do take place before the actual trial.

I might say this, in case there is any apprehension in the minds of some of the members that the report of the psychiatrist might contain some admissions of the accused, that this is not the case. Our psychiatrists in Ontario have been extremely careful in their reports to me, which in turn go to the local Crown attorney, to refrain completely from any discussion of the facts of the case with the accused, so that when I read a psychiatrist's report there is nothing factual in that report regarding the crime, but it deals completely and exclusively with the results of that examination, and there is no resulting prejudice to the accused from any admissions he might make to the psychiatrist during the examination. Copies of these reports are forwarded or supplied to the defence counsel if he is then available. We do not hesitate one minute at all in supplying defence counsel with a copy of the psychiatrist's report.

Mr. FAIREY: May questions be asked, Mr. Chairman.

The PRESIDING CHAIRMAN: We would prefer, Mr. Fairey, if you would wait until the witness has completed his presentation, and then you will have ample opportunity to sumbit questions. Shall the committee proceed?

The WITNESS: That report of the psychiatrist, whether it is positive or negative, is of course kept and supplied to the local Crown attorney, or any particular Crown counsel who might be appointed to conduct the prosecution, and then the usual police investigation proceeds. Briefs are prepared by the police officer in charge of the investigation and copies of these are supplied to the Crown counsel.

Now, in cases where it is decided to make a scientific examination of instruments such as knives, bludgeons, blood stains on clothing, seminal stains on fabrics, ballistics and so on, our crime detection laboratory in Ontario, with the very great assistance of the R.C.M.P. laboratory here, proceed with those scientific investigations. I might say that in the field of ballistics we rely entirely on the R.C.M.P. crime detection laboratory here, as we do also in cases of forgery where the question of handwriting or documents comes into existence. We have, Mr. Minister, the utmost co-operation, which is very greatly appreciated, from your laboratory. We do not rely on any ballistics except the ballistics experts supplied by the R.C.M.P. or on the question of forgery. If alcohol tests, blood tests and so on, are involved those reports also, in the vast majority of cases, are supplied to the defence counsel if he requests them.

The usual pattern is that to a great extent the case is fully prepared by the time the preliminary hearings comes around. We have no set rule on the date of preliminary hearing. It is usually governed by the extent of the progress of the police investigation. If it is sufficient to warrant the holding of a preliminary hearing, we do so, and that date is also governed by the date of the assizes which are to be held, because we do not want a prisoner or a person charged with a crime languishing in custody too long before he knows whether or not he is going to be committed for trial. Therefore the date of the preliminary hearing is governed somewhat by the date of the assizes which are fixed by the Chief Justice of the Trial Division at the beginning of each calendar year.

The assizes, I might say for the information of the members, with the exception of the larger centres such as Toronto, Hamilton, Ottawa, London and Windsor, there are two assizes a year. We have three assizes in the other larger centres to ensure that a man is not going to be in custody for an unreasonable length of time without his coming to trial.

At the preliminary hearing—as those members of the bar who are members of the committee will of course appreciate—the Crown evidence is only heard and if a *prima facie* case has been established by the Crown, there is a committal for trial.

At this stage possibly the question of bailing an accused charged with murder might be commented on very shortly. It is not unknown that parties charged with murder have been bailed. It is very very rare, of course, and only in those cases where the evidence is of such a flimsy character, and the outcome is in extreme doubt, that bail is granted. But, there have been cases. I think I can recall three cases only. One case as the minister knows was in the province of Manitoba, and we had one in Ontario and one in British Columbia. These were cases where bail was actually granted, but in the vast majority of cases, of course, bail is refused in a murder case. I would not say in a capital case, because at the moment rape is in the category of a capital case.

After the accused has been committed for trial there is in our province of Ontario a grand jury. We are one of those backward provinces that have not as yet disposed of the grand jury. I shall deal very briefly with that. An indictment is prepared—an indictment following the English form—and the grand jury consisting of ten members is convened by the sheriff and the indictment is consented to by the trial judge, and again, before that body, only the Crown witnesses are heard. It is almost repetition of the procedure of the preliminary enquiry; that is in the province of Ontario. The grand jury has the privilege or jurisdiction to return a no bill if it feels that the Crown has not brought forward sufficient evidence to warrant the accused man facing a petit jury. But, it is very rare—I cannot recall a case, certainly

in our province—where a grand jury has returned a no bill in a murder case, with this qualification, that it sometimes happens that the grand jury might return a bill of indictment for manslaughter rather than for murder. I might say that grand juries in that respect are somewhat of a convenience. Their proceedings are secret, and quite rightly, because in their opinion they consider what is the proper charge which this accused should face.

The grand juries sit at the same sittings of assizes as the petit jury so that there is no delay if the grand jury has returned a true bill in the province of Ontario because the accused is then to be tried at that sitting of the assizes, and in the smaller centres the trial takes place almost immediately. It not infrequently happens that commencement of the trial takes place on the same day as the grand jury returns the true bill.

There is nothing unusual in respect to the trial of an accused person tried with murder. The members of the bar who are members of this committee will, of course, know that every safeguard is given to the accused by our Criminal Code to ensure a fair trial. I might mention this in passing that an accused person has the right to challenge any juror for cause. He has twenty peremptory challenges in a capital case which indicates the safeguards which are thrown around an accused person giving him every opportunity to have what he considers a proper jury to try the issue with which he is charged.

If there is any question at this stage regarding the mental capacity of the accused man, an issue is tried, either by the judge impanelled to try him, or a special jury, as to his fitness to stand trial and instruct counsel. As I say, if there is any suggestion of it at all in the psychiatrist's report—these are, of course, Crown psychiatrists, and I am going to deal with the question of psychiatrists for the defence of indigent prisoners, later, with your permission Mr. Chairman.

The PRESIDING CHAIRMAN: Of course.

The WITNESS: If there is the slightest suggestion that this man is mentally ill, or any doubt about it, an issue is tried and the psychiatrist's evidence is put in a very impartial way by Crown counsel and answered by defence counsel through witnesses, and that jury may then try that issue as to his fitness to stand trial at that time. If he is found to be unfit to stand trial or to instruct counsel he is remanded to a place of safekeeping by the trial judge awaiting the pleasure of the Lieutenant Governor of the province, which is the Ontario hospital at Penetang used for the housing of the criminally insane. Then the trial proceeds. There is nothing particularly unusual regarding the procedure of a trial on a capital offence. If the accused is convicted he is immediately sentenced, on motion by Crown counsel, to the death penalty by the presiding judge. For the lay members of the committee, it is useful for me to remind you that a capital case can only be tried by a jury—except in the territories. In the provinces it can only be tried by a jury, and cannot be tried by a judge without a jury.

Now, after the sentence of death has been pronounced by the trial judge, the date is sufficiently fixed in the future to ensure that an adequate time interval will lapse to ensure that the accused may appeal to the provincial court of appeal, and in our province he has 30 days in which to do so—and incidentally by the Code the time for appeal cannot be extended. If the time for appeal goes by because of some mistake of the accused himself or his counsel, by the express provisions of the Criminal Code that time cannot be extended. I must confess that I do not know what the new Code says on that. I do not know whether that has been taken up or not. It is very rigid in that respect. If the time goes by for appeal, there is nothing that can be done by any judge in extending the time, or by any one; we are all powerless to assist.

Mr. FULTON: Perhaps I should wait until afterwards, but in British Columbia in a recent case, the court of appeal, notwithstanding the provisions of the Code, extended the time for appeal and allowed an appeal to be heard.

The WITNESS: That is the first case I ever heard of it being done.

That is the situation, and I do not propose that anyone would object to it very much.

The PRESIDING CHAIRMAN: Will you please defer your questions to the end of the presentation. It will save time.

The WITNESS: Then, usually the trial judge is particularly cautious in this regard, because there is not only an appeal of right to the provincial court of appeal, but there is an appeal under certain circumstances to the Supreme Court of Canada. That is, if there is a dissenting judgment in the provincial court of appeal he may come to the Supreme Court of Canada as of right. If there is an unanimous judgment dismissing his appeal in the provincial court of appeal, he may apply for leave to appeal to the Supreme Court of Canada on a point of law. So, the trial judge is alert to the fact that ample time must be given between the time of the passing of the sentence and the date of the actual execution to ensure that the condemned man has a sufficient opportunity from a time point of view, to see that his case, or cause, may be reviewed by the appropriate appellate courts.

The Criminal Code provides that immediately upon conviction of a person on a charge of murder, the trial judge must report to the Minister of Justice his views on the case. When I say "his views" I must confess that I have never seen one of those reports; but I understand it is a factual report on the case in which the judge expresses his views on the evidence, on the witnesses and so on. I would prefer if someone else would say what was contained in such a report because I have never seen one. In any event, it is not a matter affecting the prosecution level.

Now, sometimes there is no appeal. I shall deal with appeals very shortly. Suppose the accused does not appeal. I might say that it not infrequently happens that an accused person does not appeal. We had a case quite recently in Stratford where the accused did not appeal his sentence, and he relied, I presume, upon an application for executive clemency or commutation. Invariably they do appeal. But in those cases where they do not, the matter proceeds in the ordinary course.

Again, if we have any suggestion during the interval between the date of sentence and the date of execution that there is any mental condition exhibiting itself, we immediately require another mental examination. Your department, Mr. Minister, does the same thing, of course. We work very closely together in that respect. The mental examinations are carried out and then, depending upon the results, the question of commutation from the federal level comes into the picture.

I shall skip the question of appeals for a moment, but I want to deal with them although not at any great length. Let me first deal with the question of execution. The execution of a condemned person is a matter solely within the provincial jurisdiction. The official in charge of arrangements is the sheriff of the county or district in which the accused is awaiting the carrying out of the death sentence.

In the Province of Ontario we have no central place of execution. Executions take place within the walls of the jail, of the county in which the crime was committed and the accused was tried.

If the sheriff cannot get any professional executioner, he must of course carry out the execution himself. But there have been in the past few years professional executioners who are engaged to carry out the grim task of the final step in the matter.

An inquest must then be held, but before I get to that let me say that the sheriff is the individual or official who has charge and has the say as to who shall be present at the execution. Attendance is usually confined to the spiritual adviser of the condemned man, sufficient guards or police officials to ensure that order is carried out, a medical doctor, and other necessary personnel to see to the carrying out of the execution efficiently. However, the sheriff is the sole arbiter as to who shall be present.

After the sentence has been carried out, an inquest is held, usually by a jury of six, with the coroner being present. The usual verdict is that "AB came to his death as a result of the carrying out of the sentence of the court," and that is the official verdict of the jury.

If the deceased was one who had no kith, relatives, or next of kin, the body is buried within the walls of the prison where the execution took place. But if relatives desire to claim the body, representations or applications for that purpose must be made to the provincial authorities, and the Lieutenant Governor in Council may then order that the body be delivered to the relatives of the deceased.

Now, with respect to the question of appeal, I shall deal very briefly with the appeal where the accused has retained counsel and counsel has filed a notice of appeal. That does not present much difficulty from the point of view of the courts or from the point of view of the prosecution. The notice of appeal must be filed within 30 days. In the province of Ontario the appeal is heard by a full court consisting of five appeal judges. The evidence taken at the trial, of course, is transcribed with a copy provided for each judge, and there is an appeal book which contains the appropriate grounds of appeal together with a memorandum of the points of law to be argued.

The appeal is then heard and the result is announced. Reasons for judgment may or may not be given. The appeal is either allowed or dismissed and the conviction set aside or confirmed.

As I said before, if there has been a disagreement in the judgment in the court of appeal the accused, as a rule has the right to appeal to the Supreme Court of Canada on a point of law only. And if the judgment of the Court of Appeal in Ontario is unanimous, he has the right to apply for leave to appeal on the ground of a point of law only.

If it does come to the Supreme Court of Canada, the matter is dealt with by the full court in Ottawa and either the appeal is allowed and a new trial is granted, or the appeal is dismissed and the conviction is confirmed.

There is provision in the Criminal Code to allow a judge of first instance, which would be a Supreme Court judge—having regard to the time factor in these matters, because in this matter of appeal it takes a long time, unfortunately, although no time actually is lost—the power is given to reprieve a person. That simply means postponing the date of his execution from the date which was pronounced by the trial judge, in order to insure that the appeal could be properly heard by an appeal court, or by the Supreme Court of Canada if there is an appeal to that court. It is not desirable, I might say, nor is it in the best interests of proper administration of criminal justice to reprieve a person unless it is absolutely necessary because to do so is like taking him up one step of the gallows and then bringing him back again, and I do not think it is proper in all circumstances.

There have been cases unfortunately in which there has been a succession of reprieves which have had to be applied for. But it is not fair. Neither is it humane to the accused, nor is it in the best interests of the proper administration of criminal justice.

Now as to the question of Legal Aid for indigent persons in capital cases, I might say that is a very important aspect in the administration of justice. In most of the provinces of Canada systems of free legal aid have been inaugu-

rated and established by various law societies in the various provinces. I cannot speak for the other provinces. I have a working knowledge of the systems in force, but I can speak, of course, only for the province of Ontario. In the province of Ontario we have a well organized legal aid system, whereby any person charged with any crime—this extends also, incidentally, to civil matters—may apply for free legal aid. I will not bother the committee with the conditions under which free legal aid may be applied for, but they are fairly elastic. I will confine my observations here to the defence of capital cases.

Prior to the inauguration of free legal aid in the province of Ontario, the Attorney General's Department would pay an indigent person's counsel at the rate of $40 a day. That was later increased to $50 and I think, latterly, to $60, before the inauguration of free legal aid. We would pay that to counsel of his own choice. With reference to that, public funds could not be expended for preparation, for lawyers have a habit of extending preparation to a rather unreasonable extent sometimes, and we confined the expenditure of public funds to a reasonable per diem rate in those cases. However, since the inauguration of free legal aid in Ontario that system has been discontinued, because in all the counties panels have been established, and I might say that these panels are not confined to inexperienced and junior members of the bar, because we find in a great number of cases that the leaders of the bar have come forward and offered their services free for the defence of indigent prisoners charged with murder.

Now, if the person who avails himself of free legal aid is convicted, and he desires to appeal, the question then arises as to the expenses involved in an appeal. In Ontario, if that situation exists, an application is made for the payment from public funds for the transcript of the evidence and any incidental expenses that might be involved. I ask for an affidavit or statutory declaration from the prisoner himself to certify or testify to his indigency, together with a retainer to his counsel, and upon receipt of that, when I am satisfied that he is indigent and that he cannot pay for the evidence, I then recommend to my own minister that public funds be paid to transcribe the evidence for use on appeal. It is curious that in a vast number of cases of this sort, we find that persons convicted of murder are in that unfortunate indigent class, and the demand on our department for the payment for evidence in these cases is almost, you might say, 100 per cent. The Crown, therefore, pays for the transcript of the evidence and the assistance of the Crown is available at all times to defence counsel in preparing the appeal. We even prepare the appeal books, assist defence counsel in preparing the law, and do all this gratuitously. There is no obligation on the Crown to do it, but we do it to ensure that every safeguard is given to an accused person to see that his cause receives the attention that it should receive by the appropriate tribunal.

If, nothwithstanding that assistance by the Crown, the court of appeal affirms the conviction and the accused or condemned man feels—or his counsel feels—that there is a sufficient point of law involved warranting an appeal, or an application for leave to appeal to the Supreme Court of Canada, again we expend public funds in seeing that counsel's expenses are paid to Ottawa—for the purposes of the application. I might say that there is no counsel's fee provided for this, just expenses. If leave is granted, we again then lend every assistance to see that the appeal is perfected here, and then out-of-pocket expenses for counsel are paid for his sojourn here in arguing the case before the Supreme Court of Canada.

Now, I cannot overemphasize the work that the Crown has done in these cases where there have been indigent persons convicted of murder. Before the inauguration of free legal aid in the province of Ontario, vast sums of public funds were expended over a period of years to ensure not only that a person

charged with murder was represented by counsel of his own choice, but that every other aspect of his trial would be attended to. For instance, it quite frequently happens that an accused will come through his counsel to the Attorney General's Department and say, "I have a witness in British Columbia, and it is most important that this man be here or I cannot prepare my defence; I cannot answer this charge unless that witness is here." There is only one thing to do, if a man cannot afford to bring a witness from British Columbia, we authorize the expenditure to have that man brought to Ontario, and we put that witness on the Crown witness sheet to ensure that that man will have a proper defence. Incidentally, one of my conferences today is on precisely the same thing, a free legal aid case a murder in Port Arthur in connection with which we are trying to get evidence in Finland as to the mental condition of this man, and we are experiencing some procedural difficulties, but I am in the rather anomalous position as prosecution counsel of trying to arrange for evidence for the accused man. I merely mention that to show that it is really an obligation on the part of the Crown to do these things and spend public moneys to ensure that the man has a proper trial and that the due administration of criminal justice is carried out.

I might say for those members of the committee who are unfamiliar with the procedure at a trial—and I am not going into technical matters, it will suffice to say this: that in all of the cases, not only in capital cases but usually in all criminal cases, there is complete disclosure by the prosecution of its case to the defence. To use a colloquialism, there are no "fast ones" pulled by the Crown. The defence does not have to disclose its case to the Crown. We do not ask it for a complete and full disclosure of the case. If there are statements by witnesses, statements of accused, the witness is supplied with copies. They know exactly what our case is, and there is nothing hidden or kept back or suppressed so that the accused person is taken by surprise at a trial by springing a surprise witness on him. In other words, I again emphasize the fact that every safeguard is provided by the Crown to ensure that an accused person, not only in capital cases but in every case, receives and is assured of a fair and legal trial.

Now, there is this question of the psychiatrist for the defence, which presents a somewhat difficult problem. As I said before, the Crown does bring its own psychiatrist in to examine the accused person. Sometimes however, we meet the request that we should permit a psychiatrist of the choice of the accused to examine the accused. We have no objection to any defence psychiatrist examining the accused person, but it is felt that if possible that should, of course, be done at the expense of the accused; but in most cases where there is no money to pay for psychiatrists—and one cannot expect psychiatrists to travel many hundreds of miles at their own expense in these matters—some provision should be made for payment of their reasonable fees and their out-of-pocket expenses. I am happy to say that as far as Ontario is concerned, the Law Society, through its legal aid plan will, in certain circumstances—and I should not qualify that, I should say in all circumstances—pays for the psychiatrist of the accused's own choice. I might say that usually they are top-notch men and since legal aid has been in force in Ontario, first class psychiatrists have been retained by the defence. These men have been very helpful and their co-operation has been really inspiring. Their fees and expenses have been paid out of legal aid funds of the law society. I merely mention that because there has to be some restraint in these matters. If a free hand was given to the defence, they might line up 20 psychiatrists which probably under the circumstances would hardly be justified, so that we feel, and this has nothing to do with the Crown, but is a decision of the law society, that within reason law society funds will be paid out on proper application for defence psychiatrists.

I think I can state with assurance here that a person charged with murder who is indigent is put to no expense whatever. Of course, that is almost an anomalous statement, but in other words he does not have to have his friends dig up any money whatever for him if he is truly indigent. His counsel is supplied, and even the evidence taken at the preliminary inquiry is supplied out of public funds. Every assistance is given to that man to ensure a fair and proper trial, and in my experience, extending over some 27 years, I have not yet heard any complaint from the defence that there has been any lack of co-operation on the part of the prosecuting authorities in the matters which I have just related. I think I have covered the subject, Mr. Chairman, as fully as I can. If there are any questions I would be glad to answer them.

The PRESIDING CHAIRMAN: Probably you would like to say a word now about corporal punishment and lotteries. Would you care to do so?

The WITNESS: Mr. Chairman, I would prefer to do that at a later date if I could. I came prepared to speak on capital punishment today, and I would like an opportunity to collate my ideas, if that is satisfactory to you.

The PRESIDING CHAIRMAN: Would you be available on a subsequent occasion to come back before the committee?

The WITNESS: Yes I would, sir.

The PRESIDING CHAIRMAN: We would appreciate that very much. We thank you very much, Mr. Common, for your presentation.

Could I suggest, ladies and gentlemen, that you first address the chair in presenting your questions? We are anxious to adhere to procedure here. In order that the notes might be kept in order as taken by the reporter, I would appreciate if you would address the chair first, and then, when recognized, your question will be recorded by the reporter. This will permit you to have your question put on the record, and secondly, the reporter will be able to determine who is presenting the question. Mr. Dupuis has asked a question.

Mr. SHAW: Mr. Fairey had one question.

The CHAIRMAN: I recognized Mr. Dupuis. I did not see Mr. Fairey.

By Mr. Dupuis:

Q. After a psychiatrist has declared an accused person not fit for trial, would you then proceed with a preliminary hearing at that time, or would the preliminary hearing be delayed?—A. What happens is this: if that condition does exist, and a psychiatrist or psychiatrists find that man is what we call "certifiable", mentally ill and unfit to stand trial, under the provisions of the Code he can be remanded by the magistrate for observation for a certain period of time. Immediately following his being remanded by the magistrate we would put him immediately in an Ontario hospital prior to any preliminary hearing, and there would be no further proceedings until he recovered. Does that answer your question?

Mr. DUPUIS: Yes.

The PRESIDING CHAIRMAN: Mr. Fairey?

By Mr. Fairey:

Q. I was going to ask Mr. Common a question when he was talking about the examination made by the psychiatrist. If the accused were to make an admission to the psychiatrist, did I understand you to say that the psychiatrist would not include that admission in his report then or at any time? —A. That is true, with this qualification: I have seen some psychiatrists who

have been called in, who are probably a little inexperienced in such matters, who have included in their report something in the way of an admission. That psychiatrist has been requested to amend his report by deleting the admission.

The PRESIDING CHAIRMAN: Mr. Winch?

Mr. WINCH: I have three short questions. Shall I ask them all at once and then they will be out of the way? They are all very short.

The PRESIDING CHAIRMAN: All right, as long as no person has a monopoly, we are quite willing.

Mr. WINCH: The first question is: must a coroner view a body before it is removed from the place in which it was found? And the second question is: when a grand jury hands down a decision—

The CHAIRMAN: Would you like to put your questions one at a time, Mr. Winch?

The WITNESS: In 99 cases out of 100 there is a body and the coroner does view the body and gives his warrant of release of the body for burial.

By Mr. Winch:

Q. I mean before the body is moved from where it is found, does the coroner have to view it there first?—A. The coroner does not have to necessarily view it there first. In a great many cases some by-standers might move the body, or the police might do it for investigation purposes, but it is not absolutely necessary that the body be not moved before the coroner views it.

Q. And the second question, Mr. Chairman, is: when the grand jury bring down a "no bill" or a change in the charge, is that automatically accepted and carried through?—A. Oh yes, definitely. Once the grand jury—with this exception—yes, I can say, for general purposes, once the grand jury has returned a "no bill" in the matter, we accept their decision or their substituted bill of manslaughter.

Q. The third and last question is: can the Crown introduce as evidence at any time of the proceedings a confession in the case where the accused pleads not guilty?—A. Do I understand your question to be: if an accused pleads not guilty on his arraignment, can the Crown produce as evidence a statement given by an accused?

Q. Yes.—A. Yes, very definitely, and it is then for the trial judge to determine whether that statement is of a voluntary character warranting its admission as evidence.

Q. Thank you.

By Mr. Boisvert:

Q. Mr. Common, where do the legal aid in Ontario get their funds to defend an accused person?—A. The province has made an annual grant to the law society for legal aid purposes. That fund is supplemented to some extent from the civil side where costs have been recovered in legal aid cases where the legal aid lawyer has been successful in establishing claims and received costs. Those costs are put in the legal aid fund and it is built up that way.

Q. With respect to blood tests and alcoholic tests, are they taken immediately after the arrest of the suspect?—A. Yes. They are taken right away. It varies, of course, in different cases. That also applies to the deceased. Quite frequently the blood is taken from the deceased.

Q. When they are taken, not from the deceased, are they taken with the consent of the suspected person?—A. In most cases they are. I have never known in a capital case where there has been any objection registered by an

accused person. There have been in drunk driving cases, numerable ones, but in a capital case I have never known of an objection being brought out in court to it.

Mr. BOISVERT: Thank you.

By Mr. Mitchell:

Q. Mr. Chairman, just to keep the record even, is an accused person brought up for remand before the magistrate between the time of arrest and the time of the preliminary hearing?—A. Theoretically there is no limitation. They can be brought up and brought up. From the practical point of view, the way the Code stands now, you can consent to adjourn beyond the usual eight days which was in effect before. That brings no difficulty. A Crown counsel and defence counsel get together and say we will be ready to go on at "X" date, and adjourn the preliminary hearing to that date. I have never known a case—and I think I can give assurance to the committee that there will never be a series of remands, to the prejudice of the accused because an alert defence counsel would not stand for it and we would not permit it.

Q. It is possible for the defence to give evidence at the preliminary hearing? —A. Very definitely. There is a statutory warning which the magistrate must give to the accused at the conclusion of the evidence presented by the Crown which warns him that he has the right to give evidence, but that anything he says might be used against him at the trial. He also has the right to call evidence and in a great many cases that privilege is taken advantage of.

Q. Would you care to comment from your experience on the practice in Ontario of having executions in the county jails as against the practice in other provinces of setting up a central place of execution?—A. I have my own views, but I would ask that I be excused from answering that question because we have a select committee of our own legislature which is preparing a report which has not yet been delivered.

By Mrs. Shipley:

Q. I would like to ask Mr. Common a little bit about how you determine an indigent for this purpose. I am concerned about the man who might have a little bit of money but perhaps not enough to defend himself as well as an indigent under your arrangement.—A. Under our plan—I am sorry I do not have the rules here—the legal aid is administered by the Law Society of Upper Canada which is entirely separate from the government, of course, as you know, and it puts the minimum at $900. If the man is earning more than $900 he is not available for legal aid, but if he is under $900 he is qualified for legal aid.

Q. Earning! Would it not depend on what we might have, because he could not be earning at the time of his trial?—A. That is an arbitrary figure which is established. We have to establish something in the nature of a minimum character. I think I can safely say that is not rigidly adhered to. I do know of cases where a person with property and there being no income from that property sought legal aid and qualified for it. The rules are very elastic, because the whole system of legal aid would be defeated if you adhered rigidly to a policy of that kind. I might say that this rule of setting a minimum has not interfered with legal air, having regard to the elastic way they are treated personally.

By Mr. Shaw:

Q. Mr. Chairman, I have two questions. In reference to the 30 day period allowed for an appeal from a conviction and sentence you emphasized that that was extremely rigid. Do you know of any exceptions that have been made to this?—A. I am not quite clear as to what you mean.

Q. The 30 day period which is allowed for the filing of an appeal. Do you know of any exceptions that have been made to that?—A. May I answer your question first this way. Under the Code the time for appeal in the various provinces is set by the local rules of court of each province. It might be in some provinces 15 days, and in Ontario it is 30 days. The Code does prohibit the extension of time in capital cases. If I might just refer to the section, it is section 1018 subsection (2) of the existing Code:

> Except in the case of a conviction involving sentence of death,—

that is in a capital case—

> the time, within which notice of appeal or notice of an application for leave to appeal, may be given, may be extended at any time by the court of appeal or by any judge of that court.

Now, by statute in a charge of theft, for instance, a judge of the court of appeal may extend the time, but it says by statute "except in the case of a conviction involving sentence of death". I think that the reason for that was given that there has to be some finality in these matters. You might have an application made on the eve of an execution to extend the time, and I think Parliament at the time that section was drafted felt that there should be rigid finality in matters involving a sentence of death because one has experienced this sort of thing that right on the eve of the execution there is an application for a reprieve made on the ground of discovery of new evidence and things of that sort. But, if the 30 days has gone by, by statute it cannot be extended.

Q. My second question was this: in reference to bail being granted in a capital case, Mr. Common, stressed the fact that it is unusual and he said "only where the Crown's evidence", and he used the words "appeared to be flimsy". Is it customary for the Crown to reveal its hand prior to the actual case being heard, by granting bail. Would that not be admitting the flimsiness of your case?—A. Yes, but sometimes that cannot be avoided. I have in mind one case in Toronto where bail was granted. It was after preliminary hearing and the Crown's case was flimsy. I understand it, it was a very, very weak case.

Counsel moved for habeas corpus and bail was granted during the hearing of the motion on the return of the writ of habeas corpus in that case.

But when it came up, the prisoner was discharged on the ground that there was no evidence justifying the issue of a warrant of committal for trial, and he was discharged.

And to explain that one step further, I do not know of any other case, no matter how flimsy the case has been. I think I know what is in your mind. We do not necessarily disclose the nature of the Crown's evidence before the preliminary inquiry. Thus there is no way of determining the flimsiness of our evidence, and it can only come into court upon the preliminary inquiry.

Q. I was thinking of a British Columbia case where, just prior to Christmas, they let a woman accused out on bail.

Mr. WINCH: It was done for some other considerations, was it not?

Hon. Mrs. HODGES: How could it be?

Mr. WINCH: It is not always done.

The WITNESS: With a great number of cases it must not be overlooked that it is a matter of some difficulty. Certain facts are placed before Crown officials, facts which have all the aspects of murder. We have to say to ourselves: We are fully convinced that no jury will convict on this evidence, but we are not the persons to judge that. It must be left to a jury. And that is why I used the word "flimsy" qua murder.

For instance, there might be the element of intoxication or a question of extreme provocation or something of that nature. And when you have a lot of experience in these matters you will find there is a pattern followed by juries that where you have extreme provocation for instance the jury will reduce murder to manslaughter. But that is a matter for a petit jury to determine not for you or me. Perhaps some judge might grant bail in a case of that kind.

The PRESIDING CHAIRMAN: Now, Senator McDonald.

By Hon. Mr. McDonald:

Q. I was going to ask a question about executions but I find that it has already been asked. However, I wonder if the witness would care to express his view on whether or not he would favour any change in the manner of execution?—A. I would like to be excused from answering that question, if I may, Mr. Chairman.

Q. I noticed that Mr. Common indicated that the coroner performs double duties in the Province of Ontario. That is, he acts without a jury. Is that correct?—A. No. I probably did not make myself quite clear. When the coroner is called to the place where a body is found, he is merely notified by the investigators, the police officers, and he goes there to see what the sourrounding circumstances are. He may feel that there has been no foul play and the police are also satisfied, but he has already received instruction that he must not hold an inquest if we have elected to charge somebody. For instance, we have had to stop an inquest where the coroner had gone ahead. It was perfectly obvious that someone would be charged. Nevertheless the coroner overlooked his instructions and was about to hold an inquest when we requested him not to do so. It is almost elementary. It can be very prejudicial to an accused person to hold an inquest. The rules of evidence are elastic and the type of evidence which can be brought before an inquest may not always be proper evidence to be given in court. Nevertheless such evidence if presented at an inquest thereby becomes public. It may adversely affect the accused person at his trial if an inquest is held. Where the man is actually charged, or where you know he will be charged, it is not fair to him.

Hon. Mr. GARSON: On the basis of evidence which would not be admissible in court.

The WITNESS: Yes, on the basis of evidence which would not be admissible in a court of law.

By Hon. M. McDonald:

Q. A coroner and jury could clear up a number of cases expeditiously where there was an accident unless something else came up which might lead you to think that there should not be an inquest.—A. My remarks should not be taken to convey the impression that in all cases of homicide there has been no inquest. But where we feel that the circumstances are going to lead to a prosecution, let us say, or a murder charge being laid, it is in that type of case where the coroner has instructions not to proceed with an inquest.

Q. I was wondering if I might ask Mr. Common if he would care to express an opinion as to whether or not there should be a change in the Act to indicate different degrees of murder? We have pre-meditated murder or wholly unjustified murder; then we have murder under provocation and so on.—A. Again, Senator McDonald, in view of the fact that the bill is now before the House, I frankly would not care to express an opinion.

Q. Very well. Thank you.

The PRESIDING CHAIRMAN: Now, Senator Fergusson.

By Hon. Mrs. Fergusson:

Q. My first question had to do with the place of execution but I find that it has already been answered. The reason I wanted to bring it up was because in New Brunswick some of the women's organizations have felt strongly that having executions take place within the walls of small prisons or jails is really barbarous. But I understand now that the question has been answered. And my other question is merely by way of clarification. When Mr. Common answered the question about legal aid he said money had been supplied by the provincial governments. They may have done so in his province, but it is not a general thing, is it?—A. No, it is not. I was only speaking of the province of Ontario. I do not know what the situation is with respect to the other provinces. But in Ontario there are grants kept up to a certain level by the government. I think the grant is made two or three times a year.

Q. In some provinces the money is provided almost entirely by the bar itself, is it not?—A. Oh yes. But I do not want to give the impression that the money is used to pay counsel. In Ontario, in any event, counsel give their services freely, and the money is used simply to pay out-of-pocket disbursements. Under legal aid no lawyer gets any fee at all. That is the basis of legal aid.

The PRESIDING CHAIRMAN: Now, Mr. Fulton.

By Mr. Fulton:

Q. I would like to ask Mr. Common whether on the basis of his experience as director of public prosecutions, if he would care to comment with respect to a recommendation for a change in the Criminal Code. I base my question on the case of Rex versus Cunningham, a British Columbia case, in which a person was charged with murder and he came up before the trial judge and pleaded guilty. The trial judge warned him, of course, of the nature and consequences of that plea and directed that the accused man be examined by a psychiatrist immediately, and adjourned the proceedings pending the examination. After the examination was finished, the psychiatrist reported that the accused was mentally fit to understand his plea to the charge and to realize what the consequences would be.

Then His Lordship stated that he would hear Crown evidence in corroboration though he cited a case where the judicial confession of guilt had been sufficient to sustain a conviction. After corroborating evidence was heard regarding the Crown's case, the trial judge again adjourned the case.—A. You say there was some Crown evidence heard?

Q. Yes, although His Lordship said that he did not think it was absolutely necessary. He then adjourned the court and asked the doctors to see the accused man again. Upon resumption of the proceedings, Dr. Campbell took the stand and reiterated his previous opinion, and he was supported by the other doctor. Thereupon His Lordship found the accused guilty and passed sentence.

Now I was amazed, and I immediately looked up the Code, because I was firmly of the opinion that in the case of a capital charge a plea of guilty could not be accepted, but that it would be directed that a plea of not guilty be entered, but there is nothing in the Code to that effect, and this is a most experienced and humane judge, and he had to accept the plea of guilty and had no alternative but to pass sentence. Would you care to express an opinion that there should be inserted in the Code a provision that a plea of guilty will not be accepted in such cases?—A. I would think that an amendment of that nature would be desirable. We had the same situation in the Bliss case in Port Arthur some years ago. This was just a young fellow, and he was tried

before Mr. Justice Nichol Jeffrey. He was defended again by experienced counsel and insisted on pleading guilty. Justice Jeffrey—it is reported, I might say—gave all the required warnings and so on but, notwithstanding that, this man still persisted and insisted that his plea should be accepted, and it was put in and, as in your case, the judge passed a sentence of death and he was executed.

Q. So was this man.—A. I know that expressed Mr. Justice Jeffrey's views, as I discussed it with him later, that it was unfortunate, that a plea of not guilty should not have been provided for notwithstanding the persistence, and I think that, due to the terrible consequences of the plea and the finding of guilty—especially the plea—that might be considered. The opponents of that view will say, of course, "Who would better know that the accused himself whether he is guilty or not?"

Mr. WINCH: Under the Criminel Code that would be tantamount to suicide.

Mr. DUPUIS: That is what I suggest. I remember a case of a man who, after being brought into court, pleased guilty simply to get rid of the whole trouble altogether.

The WITNESS: It is a matter of procedure. You may find a man who pleads not guilty and then afterwards makes a damning statement, that then in fact it does not make much difference.

By Mr. Fulton:

Q. I am grateful for your expression of opinion that, notwithstanding that a man pleads guilty, if he is up on a charge on which, if found guilty, he will be sentenced to death, there should be a trial before that sentence is passed.—A. To express my own personal opinion, I thoroughly agree with you.

Q. Then I wanted to ask you a question in connection with the time for appeal. There was a recent case in British Columbia—I took the opportunity of interrupting you rather than waiting for the right time to question you, and I apologize for the interruption—in which I think I might say it was felt that certain aspects of the defence at the original trial had perhaps not been put before the jury as fully as they might have been. However, it was a case of an indigent person, and after he had been convicted he himself did not indicate a desire to appeal, but friends referred the matter to other counsel, and that counsel felt that there were certain things on which he should appeal. By the time this had happened the time within which notice of appeal must be given had gone by. However, they entered notice of appeal and it came before the appeal court, and I think I am right in saying that without giving reasons their lorships said, virtually, "By virtue of the inherent jurisdiction of the court, we are going to allow the appeal to be brought on, notwithstanding the statutory prohibition which you have mentioned". I think the time of appeal in our province is also 30 days. I would like to ask you whether you would think that perhaps the right of the court of appeal to extend the time for appeal should be covered by statute, or whether you think there is adequate protection now in the fact that courts of appeal will extend the time, notwithstanding the statutory prohibition. I might say that in that case there was a new trial ordered and the accused was found guilty of manslaughter; previously he had been convicted of murder.—A. Obviously it was satisfactory to everyone. My own opinion is that subsection 2 should be absolutely adhered to and should not be changed. I am fearful that if there is any interference there will be applications made that are entirely without merit, because we all know—those of us who

have anything to do with the administration of criminal law—that delays are always prejudicial to the proper administration of justice and are in favour of an accused person. I do not say this in any offensive or harsh manner, but delaying tactics do not result in the proper administration of justice, and they sometimes result to the great favour and assistance of guilty persons. If a judge could extend the time for appeal right on the eve of an execution, for instance, frankly I feel, personally, that that is very undesirable. It has a faint odor of abuse of the process of the courts sometimes.

THE PRESIDING CHAIRMAN: Senator Hodges.

Mr. FULTON: I have a few more questions to ask, but I may have an opportunity to ask them later.

Hon. Mrs. HODGES: I would like to ask a question. Mr. Common spoke about the accused being subjected to examination by a psychiatrist on behalf of the Crown and in some cases by a defence psychiatrist. I have noticed on more than one occasion, not necessarily in Canada, that the view of one psychiatrist absolutely negates the view of another. Supposing you get a situation of that kind, is there any resort to any other expert to decide the sanity of the accused?

The WITNESS: Under our existing law, the assessment of expert testimony is a matter for the jury. It is left solely to the jury to decide whom they feel they can believe, having regard to all the other circumstances.

Mr. LUSBY: Where do these professional hangmen you spoke of get their training?

The WITNESS: That is something I am sorry I cannot enlighten you on. I know nothing whatever about that.

Mr. LUSBY: They do not have any dress rehearsals?

Hon. Mrs. HODGES: Do they have any apprenticeships?

The WITNESS: I think that should come from another witness. Frankly, I do not now where they gain their experience.

The PRESIDING CHAIRMAN: Senator Farris?

Hon. Mr. FARRIS: Does not the fact of a death sentence tend to—

The PRESIDING CHAIRMAN: Please, gentlemen. We did not hear the last of your question.

Hon. Mr. FARRIS: I repeat the question. Does the fact of the death sentence tend to acquit an accused person?

The WITNESS: I would like to be excused from answering that question, if I may. At some stage we will have that matter for discussion on a Governmental level. I do not know what the attitude of my minister would be on this matter, and I would really like to be excused from answering that question.

Mr. WINCH: Anyway, you will be receiving a questionaire.

The WITNESS: There is a questionaire which has gone out, and I feel that should come out after my own minister determines what policy he will express on the matter.

Hon. Mr. MCDONALD: You mean a questionaire has gone out from your office?

The WITNESS: No.

The PRESIDING CHAIRMAN: It is on its way, shall we say.

Hon. Mr. GARSON: The practice is, is it not, that in the ordinary cases, not the capital cases but other offences, that it is the crown prosecutor who decides on the facts of the case what charges he will lay against the accused?

The WITNESS: Yes.

Hon. Mr. GARSON: And I take it from your remarks that in these capital cases even although the crown prosecutor might feel the facts do not warrant anything more than manslaughter, it would be for the jury to decide that question as to whether the charge will be that of murder?

The WITNESS: Yes.

Hon. Mr. GARSON: It would be left to the grand jury and the petit jury?

The WITNESS: Yes.

Hon. Mr. GARSON: And there is one other point: in these capital cases it is open to jury, is it not, to make a recommendation?

The WITNESS: Yes, definitely, and of course, it is also open to jury not only to acquit but to reduce the charge and find the accused guilty of manslaughter notwithstanding the fact that the indictment might have been murder.

Hon. Mr. GARSON: Or even criminal negligence?

The WITNESS: It is just manslaughter or acquittal. I am glad the minister raised that point. It is always open to a jury, as a matter of common law I take it, that a strong recommendation for mercy can be returned by a jury in returning its verdict of guilty in murder, and I take it that it is taken into consideration at the time and the appropriate place.

Mr. WINCH: That would have to be decided by the justice department, because the judge has to inflict the penalty of death if the accused is found guilty?

Hon. Mr. GARSON: Yes, but it is considered by the judge in his report, and he often expresses his opinion whether or not he concurs with the jury's recommendation for mercy. If he does concur in this recommendation, it often carries much weight.

The WITNESS: Yes.

The PRESIDING CHAIRMAN: Mr. Blair?

By Mr. Blair:

Q. With the permission of the committee, in your province does the final decision whether or not a charge of murder is laid rest on your doorstep as director of public prosecution?—A. For all practical purposes, yes. If there is any doubt in the mind of the local crown attorney, I would say "yes."

Q. This may be a leading question, in view of your answer to Senator Farris and Senator MacDonald, but would you like to comment on the problems which have been raised in this province with reference to what is called "constructive murder" and the responsibility of accomplices and accessories?—A. When you enter that field, you are covering a terrific territory, of course. Having regard to the very extensive case law on what is commonly called "constructive murder", that is where death ensues not as a result of an intention to kill, but some felonious act, the subject is such a broad one, and has so many implications, it is very difficult to answer that question in a categorical way, I am sorry, Mr. Blair. The bill is before the House, and I do not know what has taken place and whether the various degrees of murder were considered. We are getting on pretty well the way we are, with the way the law stands at the moment.

Q. Would it be fair to ask you whether you are reasonably satisfied with the present definition?—A. I am speaking for myself, but in the light of some experience in this matter, I am perfectly satisfied with the present state of the law, and I might say that I do not see any particular difficulty, or any difficult problems which have arisen as a result of the present state of the law.

Q. And one further question, sir. Would you think the administration of justice, and the due conviction of persons charged with the offence of murder, might be assisted if there were a discretion in the court to give a lesser sentence than capital punishment?—A. Again, I am expressing my own personal views, but I would not like to see that.

The CHAIRMAN: Mr. Dupuis?

Mr. DUPUIS: I would favour that in cases where there is only circumstancial proof. I do not mean cases where the murderer is caught in action, but in cases of circumstantial proof, I would favour a sentence of life imprisonment rather than the death penalty. I always have favoured that, and I am still in favour of that.

The WITNESS: I think that the best evidence of guilt have arisen out of entirely circumstantial evidence. I think the most glaring case is the Seguin case, where Mr. Seguin committed suicide minutes before he was to be hanged. I was in that case at the appellate stage. The circumstantial evidence could not have been stronger than direct evidence in that case.

Mr. WINCH: Could I ask a question supplementary to one of Mr. Blair's questions? It is strictly your own personal opinion that you would rather see the present situation where you have the reduction of a charge than have a choice of either hanging or life imprisonment?

The WITNESS: I would rather leave it to the jury to bring in manslaughter, if they felt there was an element of that in the case, rather than leave it in the discretion of the trial judge to have the verdict murder and leave a discretion to him to either impose a prison sentence or the death penalty.

The CHAIRMAN: Senator Aseltine?

Hon. Mr. ASELTINE: Doesn't the judge frequently direct that a verdict of manslaughter be brought in instead of murder?

The WITNESS: I would not say frequently, but if the indictment charge is murder what usually happens, from the practical point of view, is that the trial judge indicates that the Crown's case does not indicate murder, and then there is a directed verdict.

Hon. Mr. ASELTINE: That is the same thing?

The WITNESS: There is a directed verdict of manslaughter, providing the accused consents to that. It is rather a plea of guilty to manslaughter by the accused. There recently was a case, in fact just yesterday, in Cochrane—a murder charge—where the Crown's evidence went in, and then the Defence Counsel and the Crown got together. There was no question about it—it was really manslaughter. There was a plea of guilty to manslaughter and a directed verdict to the jury.

Mr. FULTON: Otherwise, the judge would have to cover it in his charge?

The WITNESS: Yes.

The PRESIDING CHAIRMAN: Did I understand you to say that most persons convicted of murder were in the indigent class?

The WITNESS: That has been my experience, Mr. Brown.

The PRESIDING CHAIRMAN: It would be your opinion then, that the instances of murder are very closely related to the economic condition of the individual and of society as a whole?

The WITNESS: It may be a coincidence, I do not know.

By Mr. Fulton:

Q. I would like to ask a question supplementary to one of the recent questions regarding the matter of an alternative sentence by the judge. Is it your experience that where there are elements mitigating in favour of the

accused, even although technically the charge of murder might be held to have been proven, that juries will not convict, but will find him guilty of manslaughter?—A. Yes, unquestionably.

Q. And you think that tendency on the part of juries is an adequate safe-guard under the present situation where there are mitigating circumstances in favour of the accused?—A. That is right. The human element is very prevelant in juries, in fairness to the accused and obeying the injunctions of the judge and so on, if they can find there is a possibility of a verdict of manslaughter, you will find that it is done.

Q. May I ask one more question? Would you tell us, under the strict interpretation of the Code, is the right of appeal to the court of appeal—I do not mean to the Supreme Court of Canada—is that a virtual statutory right or does there have to be an application for leave to appeal to the court of appeal which may or may not be granted?—A. Theoretically it is an application for leave to appeal, but in our province it is treated as an appeal as of right. Theoretically it is an application for leave, but our courts treat it as an appeal of right.

Q. In connection with your free legal aid in this province, now that that has been introduced, does the situation you outlined to us, where your department will recommend the voting of public money for expenses as distinguished from counsel fees still prevail or is it left to the legal aid?—A. Legal aid has supplanted that former system.

Q. I was thinking of expenses as distinguished from counsel fees.—A. At the actual trial if the accused says "I have a half dozen witnesses whom I want", the Crown counsel says: "Give me their names and we will put out public funds to bring those witnesses in and put them on the Crown witness sheet."

Defence counsel gets no counsel fee, but any expense he is put to at the trial is reimbursed. For instance, the evidence at the preliminary enquiry is paid for by us. We supply a copy. And his defence witnesses and things of that nature are paid from the local Crown attorney's own account. The out-of-pocket expenses at the trial are dispersed by local funds. Now, when it comes to psychiatrists or expert evidence, that is in a different category and we have got to supervise that very carefully. We cannot let them run wild on the question of getting every expert they might feel necessary. They would have to make application to the Provincial Director of the Legal Aid for permission.

Q. I think that the expenses of preparation, transcripts, and so on, and appeal books, are still paid by the Crown even though legal aid is in effect?—A. Yes.

Q. What about out-of-pocket expenses for counsel coming down for leave to appeal?—A. We pay that out of our own department.

Q. Notwithstanding legal aid?—A. Under legal aid in our province, it only extends to trial and not to appeal, except in very rare cases.

Q. Would you like to say whether or not the legal aid system is better from the point of view of the accused than the former system where the accused retained and paid his own counsel?—A. I think it is better. It is on a firm basis, whereas before it was rather nebulous and on a loose basis. The only one who can complain is counsel. Now he does not get a fee, whereas before he got a fee of $40 or $50.

By Mr. Winch:

Q. I find that some of the remarks have been somewhat pertinent and important. If we could have two or three minutes more I would appreciate if Mr. Common would enlarge on the statement he made based on his years' experience of criminal law on his view that he thinks it is preferable to have

the system as it is and have the jury have the right to diminish the sentence rather than the judge have any discretion as to the imposition of the penalty. Now, I completely agree with the powers of the jury, but if we have the situation where the judge thinks that as a result of the evidence that it is too severe to impose the death penalty, he has no discretion at all except of recommendation to the Department of Justire. Why do you say that in your experience you think that the judge should not have that discretionary power?—A. Again it is my own personal view, but my view is this: by allowing the judge to exercise discretion there he is usurping the functions of the jury because he says "notwithstanding what your verdict is, I am going to impose my views on this thing".

Q. Is not the Minister of Justice doing the same thing?—A. No. That is purely an executive action; it is not a judicial action which the Minister of Justice takes. It is an executive action. The theory is this: a jury has returned a verdict of murder on the proper direction of the trial judge on the proper assessment of the evidence. Now, that is the verdict of twelve men, that is their collective view and their individual view, because they have got to be unanimous. Now, if the trial judge says: "Notwithstanding that I am going to impose a jail term" he is really saying: "Notwithstanding the fact that you have returned a verdict of guilty of murder, I think he is only guilty of manslaughter and I will impose only a jail term." That, in my own personal opinion, strikes at the very root of our jury system.

The Hon. Mr. FARRIS: Would not the reverse be true if the jury reduced the sentence to a charge of manslaughter, then the judge might say "what are you doing? I think this man should be found guilty of murder."—A. It could go both ways. I think it would be violating policies which have stood the test of a great number of years.

Mr. BROWN (Brantford): Mr. Chairman, just following on this line which we have been discussing, have there not been cases where a judge has instructed a jury that they should render a verdict of murder or not, and then the jury goes ahead and renders a verdict of manslaughter?—A. Those are individual cases. It is quite true that has occasionally happened. That would be a perverse verdict where there has been no element of manslaughter in the case at all that a jury would bring in a verdict of manslaughter, and there is nothing you can do about it. It is a perverse verdict. It is a sympathetic and merciful view. That is all you can say about it.

The Hon. Mr. GARSON: Would not it be open to attack on appeal?

The WITNESS: It might be open to attack by the Crown on an appeal, but the difficulty is the judge has directed correctly, and notwithstanding that the jury have given a perverse verdict by returning a verdict of manslaughter. There is nothing that the Crown can do under those circumstances.

Mr. BLAIR: In your judgment, does this have any adverse effect in the sense of bringing the law into disrepute?

The WITNESS: No.

By Mr. Dupuis:

Q. I do not think it is the right time to bring in a suggestion of an amendment, but I want to go on record as saying that I intend to bring in an amendment to the Criminal Code giving the faculty to a judge in sentencing a man accused of murder and found guilty on circumstantial evidence only, of imposing life imprisonment or the death penalty. I say this because I do not wish to take the members of the committee by surprise and so that they may be ready to give their arguments against or for.

The PRESIDING CHAIRMAN: In the meantime we could avail ourselves of Mr. Common's opinion.

By Mr. Mitchell:

Q. There is one question arising out of the problem of legal aid. The figure of $900 has been mentioned. As I understand it a man who has a substantial income could well say "I have nothing". By substantial let us say $1500. The $900 is so ridiculously low.—A. It is low, and I think it is subject to increase. Do I understand your question to be: if a man is earning $1500 a year and cannot afford to engage a lawyer—what do you mean?

Q. The $1500, is that taken as a true test?—A. No, it is not.

Q. In other words any person in actual fact applying for legal aid, if he has any colour of right, will be given legal aid?—A. Oh yes. Cases of refusal of legal aid are not as a result of strict adherence to that $900 figure by any means.

Q. How many cases have been refused?—A. I am not in a position to say, but I think it is a very, very small number. I attended this clinic. I ran the clinic two or three times during the summer time in order to relieve the local director. We had an everage, each Monday night, of about 80 applicants for legal aid. These were not all criminal. There were a great many civil matters as well. And during the time I was there—and I went there once a week, every Monday night—not a single one of them was refused on monetary grounds.

The PRESIDING CHAIRMAN: What do you mean by "refused"?

The WITNESS: Let us suppose that a man had 8 or 10 children.

By Mr. Dupuis:

Q. If it were a criminal case, would you hold up the proceedings until you found out whether or not the fellow was able to provide legal advice for himself?—A. No.

Q. Would you carry on the proceedings without anybody defending the man in the meantime?—A. No. In a serious criminal case, such as a capital case, for instance, the accused would not be prejudiced or denied any relief on monetary grounds at all. I can say that with confidence.

By Mr. Winch:

Q. Suppose a man was indigent but had not declared himself to be indigent and had not asked for any legal aid?—A. He had not asked?

Q. Would you allow him to stand trial on a murder charge without supplying him legal aid?—A. No. I cannot recall any capital case where a man was unrepresented. It is true that he might be unrepresented at a preliminary inquiry. But when it came to his trial, I have never known of a case where the trial judge would not appoint some one to act as his counsel.

Q. You would not allow such a thing?—A. The trial judge would not allow it. He would nominate some member of the bar who happened to be in court to defend the man.

By Mr. Boisvert:

Q. Would Mr. Common permit me to ask another question with respect to legal aid?—A. Yes.

Q. Is it not a fact that in Ontario and some other provinces, legal aid has also been granted with respect to civil matters as well as criminal matters.—A. Yes, very, very much so.

Q. Is it a fact too that some part of the funds coming from a civil case in connection with costs might be used to pay an attorney acting against the Crown or against another party?—A. That is correct but the bulk of the

money which the law societies dispense on legal aid is their own funds, supplemented by grants from the provincial governments. Its also supplemented, as you say, by costs that might be recovered in some civil actions, but they are very small.

By Mr. Fulton:

Q. Just in case it should happen that we do not get representation from each province,—I realize that we can find out, if we wish and therefore I do not want to ask you to go into it in detail—but are you in a position to supply us with a list of those provinces wherein no legal aid systems are in effect?—A. I cannot do so at the moment but I will be very glad to send it to your chairman. I have that information. I may say that I am a bencher of the Ontario Law Society and I am a member of the Legal Aid Committee, and I can get that inforation very readily.

Q. I thought if you happened to have it here with you, you might give it to us at this time?—A. Unfortunately I have not got it here. Your question was to supply a list of those provinces which have systems of legal aid similar to ours?

Mr. DUPUIS: For criminal or civil or both?

Mr. FULTON: We are dealing with criminal cases now.

Mr. BOISVERT: I think there is a complete study of that question in the Canadian Bar Review.

The WITNESS: Yes. The Canadian Bar Review has a very fine article on it.

The PRESIDING CHAIRMAN: Gentlemen, it is now 6:00 o'clock. Let me express the thanks of the members of this committee to you, Mr. Common, and let me say that we are greatly indebted to you for your presentation here today. I know that we shall look forward with great interest to your returning to the committee to help us in our deliberations with respect to lotteries and corporal punishment.

The WITNESS: Yes.

The PRESIDING CHAIRMAN: Again I want to say that we thank you very, very much for your coming here from Toronto to help us with this matter.

The WITNESS: Thank you, sir. It was a pleasure, I can assure you.

Mr. WINCH: Might I have one second, Mr. Chairman, in which to move that the co-chairmen of this committee be authorized by this committee to name assistants to themselves in order to take their place when they are absent from either the committee or the sub-committee?

The PRESIDING CHAIRMAN: Perhaps we had better refer that thought to the sub-committee and let them consider it.

Mr. WINCH: I thought it might require action by the whole committee.

The PRESIDING CHAIRMAN: The committee is now adjourned.

APPENDIX

QUESTIONNAIRE FOR PROVINCIAL ATTORNEYS-GENERAL ON CAPITAL PUNISHMENT

1. *Trial.*

What provision is made by the province for legal aid to an accused charged with a capital offence for the purposes of his trial?

2. *Period between trial and date set for execution.*

What, generally, are the conditions of confinement of the condemned prisoner during the period between the imposition of sentence of death and the day set for execution?

3. *Appeal.*

(*a*) What information is supplied to the condemned man with respect to his right to appeal?

(*b*) What provision is made for legal aid?

(*c*) In what circumstances does the province pay all or any of the costs of appeal?

(*d*) What conditions of confinement apply during the period when the appeal is pending?

(*e*) To what extent is assistance rendered by the province to enable the accused to appeal?

4. *Post appeal period.*

What assistance is given to the convicted man in preparing a submission to the Minister of Justice for commutation of his sentence?

5. *Hanging.*

(*a*) What procedure is followed in the prison, in relation to the condemned man, after notification is received that there will be no interference in the execution of sentence until the time of execution?

(*b*) Having regard to section 1066 of the Criminal Code, what persons are ordinarily present at the execution of a sentence of death and in particular are any special provisions made with regard to the presence of relatives or members of the press?

(*c*) What provisions, if any, are made to conceal the execution from
(i) any other inmates of the prison; and
(ii) the general public.

(*d*) What practice is usually followed with regard to the administration of sedatives or drugs to the condemned man prior to execution? Under what circumstances are sedatives or drugs administered? What types or kinds of sedatives or drugs are administered?

(*e*) What disposition is ordinarily made of the body of the executed person in your province?

(*f*) What, in your experience, has been
(i) the longest,
(ii) the shortest
time to elapse between the time when the trap was sprung and the time when the condemned man was pronounced dead?

(*g*) What procedure is followed where more than one person is sentenced to be hanged at the same time? If the executions are carried out simultaneously, what special arrangements are made for this purpose?

(*h*) With respect to hangings which have taken place in your province, in the period 1930-1953, or any portion or sampling of these years, can you advise what medcial authorities have indicated to be the effective cause of death? If so, please tabulate, to the extent possible, the various effective causes of death and the number of deaths attributable to each cause?

(*i*) If statistical information in relation to question (*h*) above, is not available, can you offer an opinion as to the number or proportion of hangings in which death results from:

(i) a broken neck,

(ii) strangulation, or

(iii) any other cause.

6. *Place of execution.*

(*a*) Where are sentences of death ordinarily executed in your province?

(*b*) In your opinion, should any special provision be made for the execution of the sentences of death in specified institutions and, if so, what, in your view, should these special provisions be?

7. *Method of execution.*

(*a*) Have you any comments on the suitability of hanging as a method of executing the death sentence?

(*b*) In your view, should any alternative method of executing the sentence of death be considered as more appropriate and suitable and, if so, what method or methods would you suggest?

8. *The effects of the execution of the sentence of death.*

(*a*) In your experience, what observable effect does the execution of a sentence of death have on:

(i) the prison officers and employees or other persons in attendance?

(ii) the other inmates of the prison?

(iii) the community where the sentence of death is carried out?

(*b*) Have you any comments arising from the effects observed and set forth in answer to question (*a*)?

9. *Extension or limitation of capital punishment.*

(*a*) In your opinion, should capital punishment be imposed as an alternative punishment in respect of any offences which it is not now authorized in the Criminal Code and, if so, what offences?

(*b*) In your opinion, should the sentence of capital punishment be deleted from the Criminal Code?

(*c*) If you are of the opinion that the sentence of capital punishment should be retained, would you consider

(i) that it should not be authorized in respect of all offences for which it is presently authorized and, if so, in respect of which offences would you consider it should be deleted?

(ii) that, in respect of the offence of murder, provision should be made for an alternative punishment of life or any lesser term of imprisonment?

(*d*) If you consider that an alternative should be provided for the sentence of capital punishment, would you consider that the discretion as to sentence should be placed on the judge or the jury or that any other special provision should be made as to the exercise of this discretion?

10. *Definition of murder.*

(*a*) Should you consider that capital punishment should be retained as a sentence for a conviction of murder, would you favour any modification of the present definition of murder, whether by specifying degrees of murder or by redefining the responsibility of accessories and accomplices or in any other manner?

(*b*) Should you consider the redefinition of the offence of murder as desirable, have you any views as to the differentiation which might be made in the sentences provided for different degrees of murder and different participants in the offence of murder?

(c) Should any special provisions be made for the sentencing of persons charged in respect of what are called

(i) mercy killings?

(ii) suicide pacts?

(*d*) In addition to the other matters raised in this paragraph, have you any comments to make on what is sometimes called "constructive murder" and any suggestions to offer as to the redefinition of the crime of murder and the punishment therefor relating to this matter?

11. *Young persons and females.*

(*a*) In your opinion, should the death sentence be imposed upon young offenders?

(*b*) Would you consider that the Criminal Code should specify a minimum age for the application of the death sentence and, if so, what age would you consider appropriate?

(c) In your opinion, is it desirable to impose capital punishment on females?

(*d*) Have you any comments of a general nature on the question of the imposition of sentences of death on young persons and females?

12. *General.*

(*a*) Do you consider that the sentence of capital punishment operates as a deterrent in connection with

(i) the offence of murder?

(ii) other offences involving violence from which death might result?

(*b*) Would you consider that the same deterrent effect might result from the imposition of any lesser sentence in respect of the offence of murder?

(c) Do you consider that the retention of the mandatory sentence of capital puishment for murder affects the judgment of juries in murder trials to an observable extent and in any way interferes with the proper conviction of the persons charged with murder?

(*d*) Would you consider that either the abolition of capital punishment or the provision of alternative punishments where capital punishment is now prescribed would assist or hinder the administration of justice in your province?

13. *Statistical information.*

(a) Please set out on the attached Table A, for each of the years 1930-1953, the number of culpable homicides, together with the number of cases in which charges were laid, categorizing such charges under the headings of murder, manslaughter, infanticide and other charges, if any.

(b) Please set out on the attached Table B, for each of the years 1930-1953, the number of charges of murder, together with the particulars of detentions for lunacy, acquittals, convictions for lesser offences, convictions for murder, convictions quashed on appeal, commutations and executions.

(c) Please supply whatever explanatory comment or material you may think desirable in connection with the statistics to be set forth in tables A and B.

TABLE A—CAPITAL PUNISHMENT—HOMICIDES

Year	Number of culpable homicides	Number of charges laid	Number of charges of murder	Number of charges of manslaughter	Number of charges of infanticide	Number of other charges, if any
1930						
1931						
1932						
1933						
1934						
1935						
1936						
1937						
1938						
1939						
1940						
1941						
1942						
1943						
1944						
1945						
1946						
1947						
1948						
1949						
1950						
1951						
1952						
1953						

CAPITAL PUNISHMENT—TABLE B PARTICULARS OF MURDER CHARGES

Year	Charges of murder	Detained for lunacy	Acquittals on grounds other than insanity	Convictions for lesser offence of manslaughter, infanticide or concealment of birth under SS 951 (2) and 952	Convictions and sentences of death	Convictions quashed in appeal courts	Commutations	Executions
1930								
1931								
1932								
1933								
1934								
1935								
1936								
1937								
1938								
1939								
1940								
1941								
1942								
1943								
1944								
1945								
1946								
1947								
1948								
1949								
1950								
1951								
1952								
1953								

QUESTIONNAIRE FOR PROVINCIAL ATTORNEYS-GENERAL ON CORPORAL PUNISHMENT

A. *Corporal Punishment Under the Criminal Code.*

1. Statistical information.

(a) Please set out on the attached Table A, for each of the years 1930-1953, the number of persons convicted under the Criminal Code, who were sentenced to imprisonment in penal institutions other than penitentiaries and who, in addition, were sentenced to corporal punishment.

(b) Please set out on the attached Table B, for each of the years 1930-1953, particulars of sentences of corporal punishment, execution of sentences and offenders sentenced as enumerated therein;

(c) Please indicate the reasons why any sentences of corporal punishment were not executed.

2. What regulations were in force in penal institutions in your province in respect of execution of a sentence of corporal punishment.

3. What persons are ordinarily present when the punishment of whipping is executed in a provincial institution in your province and what are their functions?

4. At what stage of the term of imprisonment is a sentence of corporal punishment usually executed?

5. What is the maximum number of strokes administered at any one session?

6. What types of instruments are used in the respective provincial institutions and what is the physical description of each such instrument?

7. What is the procedure, in detail, that is followed in executing a sentence of corporal punishment in each of the provincial institutions and what explanation is there of any variation in procedure that may exist as between different institutions?

8. Is the inmate medically examined immediately before a sentence of corporal punishment is executed and what is the extent of that examination?

9. Is the inmate medically examined at any time during the course of the execution of a sentence of corporal punishment and what is the extent of that examination?

10. Is the inmate medically examined after the execution of a sentence of corporal punishment and what is the extent of that examination?

11. Is any other medical examination given to the inmate in connection with the execution of a sentence of corporal punishment and, if so, at what time or times is the examination given and what is the nature thereof?

12. To what extent are inmates examined by psychiatrists before a sentence of corporal punishment is executed upon them?

13. Where, before corporal punishment is scheduled to be inflicted, the medical opinion is to the effect that the inmate is physically incapable of enduring the punishment or the psychiatric opinion is to the effect that to inflict the punishment would serve no useful purpose, is it the practice of the Governor of the Gaol or the Attorney General of the Province to send the opinion to the Remission Service of the Department of Justice with comments on the question whether the sentence of corporal punishment should be remitted?

14. In the administration of justice within the province has the Attorney General issued any instruction to Crown prosecutors that, as a matter of policy, corporal punishment should not be sought in the case of first offenders or young offenders or any other class of offenders?

15. Has the Attorney General, as a matter of policy, instructed Crown attorneys that they should, as a matter of policy, seek the imposition of corporal punishment in respect of any of the following offences: ss. 80, 204, 206, 276, 292, 293, 299, 300, 301, 302, 446, 447? If so, under what circumstances are Crown attorneys instructed to seek the imposition of corporal punishment?

16. In your opinion, does the Criminal Code now authorize the imposition of corporal punishment for any offence, in respect of which you consider that corporal punishment should not be authorized?

17. In your opinion, are there any offences in the Criminal Code for which the imposition of corporal punishment should be authorized and, in respect of which, it is not now authorized?

18. In your opinion, is it advisable to delete corporal punishment for the offences enumerated in sections 80, 206 and 292 of the present Criminal Code, as proposed in the revision now before the House of Commons in Bill No. 7?

19. Have you any comments on the use of different methods of corporal punishment, including whipping, paddling, birching or spanking and, if so, their suitability for different classes of offences and offenders?

20. In your opinion does corporal punishment operate as a deterrent to (*a*) the young offender, (*b*) the recidivist, (c) the sexual offender?

21. Have you any information, by way of statistics or otherwise, to indicate the effect of corporal punishment in relation to the question of recidivism?

22. In your opinion does the infliction of corporal punishment upon a person who is convicted of an offence for which, under the present law, corporal punishment may be imposed, operate as a deterrent to the offender in respect of the subsequent commission of similar offences? Alternatively, have you any views on the question whether the imposition of corporal punishment in such cases operates to embitter the offender against society more than would be the case if imprisonment only had been imposed?

23. In addition to the matters raised in the above questions, have you any comments on the use of corporal punishment as an aid to administration of justice in your province?

B. *Corporal Punishment on a disciplinary Measure in Provincial Penal Institutions.*

1. What regulations are in force in penal institutions in your province with respect to the use of corporal punishment as a disciplinary measure?

2. If no general regulations are in force, can you indicate the types of disciplinary offence in respect of which corporal punishment is ordinarily imposed?

3. Please set out on the attached Table C, for each of the years 1930-1953, the number of sentences of corporal punishment imposed for prison offences, specifying, where possible, the sentences imposed in institutions for young offenders and types of offences for which corporal punishment was imposed?

4. Do the methods or procedures followed in the administration of corporal punishment for prison offences differ from those employed on sentences under the Criminal Code and, if so, what are the differences?

5. In your opinion is it desirable to limit the imposition of corporal punishment to certain classes of disciplinary offences and, if so, what classes of offence?

6. Where corporal punishment is inflicted for prison offences, is regard had to the opinion of psychiatrists, medical doctors or other qualified personnel as to the effect of the sentence on the offender?

7. Have you any comments of a general nature on the employment of corporal punishment in relation to the administration of penal institutions in your province?

March, 1954.

TABLE A—CORPORAL PUNISHMENT

Number of Sentences of Corporal Punishment
Under Sections of the Criminal Code Enumerated Below.

Year	80	204	206	276	292	293	299	300	301	302	446	447	Total
1930													
1931													
1932													
1933													
1934													
1935													
1936													
1937													
1938													
1939													
1940													
1941													
1942													
1943													
1944													
1945													
1946													
1947													
1948													
1949													
1950													
1951													
1952													
1953													

TABLE B—CORPORAL PUNISHMENT

Particulars of Sentences of Corporal Punishment, Types of Offender, Execution of Sentence.

Year	Number of sentences	Maximum number of strokes	Minimum number of strokes	Average sentence	Age of youngest offender	Number of offenders below 20	Number of first offenders	Number of sentences not executed
1930								
1931								
1932								
1933								
1934								
1935								
1936								
1937								
1938								
1939								
1940								
1941								
1942								
1943								
1944								
1945								
1946								
1947								
1948								
1949								
1950								
1951								
1952								
1953								

TABLE C—CORPORAL PUNISHMENT

Particulars of Awards of Corporal Punishment for Disciplinary Offences in Provincial Penal Institutions

Year	Number of sentences	Maximum number of strokes	Minimum number of strokes	Average punishment	Number of sentences of offenders under 20	Number of sentences of first offenders	Number of offenders sentenced more than once	Examples of principal offences (Fill in appropriate headings)
1930								
1931								
1932								
1933								
1934								
1935								
1936								
1937								
1938								
1939								
1940								
1941								
1942								
1943								
1944								
1945								
1946								
1947								
1948								
1949								
1950								
1851								
1952								
1953								

QUESTIONNAIRE FOR PROVINCIAL ATTORNEYS-GENERAL ON LOTTERIES

1. *Statistical information.*

   (*a*) Please set out on the attached Table A, for each of the years 1930-1953, the number of persons convicted under the enumerated paragraphs of section 236 of the Criminal Code;

   (*b*) If the information is available, please set out on the attached Table A, in the column provided, the number of persons convicted for keeping a common gaming house under section 229 where the conviction involved offences in the nature of lotteries described in section 236;

   (c) Please set out on the attached Table B, for each of the years 1930-1953, particulars as to the disposition of chargs laid under section 236 and, if the information is available, charges under section 229 involving offences in the nature of lotteries described in section 236;

   (*d*) Please set out on the attached Table B, if the information is available, particulars as to the number of forfeitures under section 236 (3) and the total amounts forfeited;

   (*e*) Please supply whatever explanatory comment or material you may think desirable in connection with the statistics to be set forth in Tables A and B.

2. *Present enforcement policies.*

   (*a*) Has the Attorney General issued any instructions to Crown Attorneys or the police with respect to the policy to be followed in the enforcement of section 236 and section 229, in so far as the latter section pertains to offences involving lotteries?

   (*b*) If so, what is the nature of such instructions?

   (*c*) If no specific instructions or directions have been issued, are you aware of any special practices which are followed by Crown Attorneys or the police in your province in connection with the laying of charges concerning lotteries under sections 229 and 236?

   (*d*) Are any special policies or practices followed in respect of the laying of charges for lotteries conducted by religious, charitable, benevolent organizations or social clubs?

   (*e*) Are any special policies or practices followed in respect of bingo games organized and held by religious, charitable, benevolent organizations or social clubs?

   (*f*) Are any special policies or practices followed in respect of the laying of charges in connection with the sale of sweepstake tickets and, if so, is any differentiation made between
      (i) sweepstakes organized within Canada;
      (ii) sweepstakes organized within the province;
      (iii) sweepstakes organized in a foreign country?

   (*g*) Are you in possession of any statistical information as to the number of lotteries conducted in your province in the years in question which were deemed to have fallen within the exceptions enumerated in:
      (i) the proviso in respect of agricultural fairs or exhibitions contained in section 236 (1);
      (ii) the provisions of section 236 (5);
      (iii) the proviso to section 226 (1) dealing with social clubs and the use of the premises of social clubs for lotteries and games sponsored by religious and charitable organizations.

3. *Recommendations.*

(a) In your opinion, what specific amendments should be made to the present provisions of the Criminal Code dealing with lotteries and, in particular, sections 226 (1), in so far as it relates to lotteries, and 236, in order to assist in the administration of justice in your province?

(b) In connection with any proposed amendment to the present sections of the Criminal Code, would you consider that:

(i) any special provision should be made in respect of lotteries conducted by religious, charitable or benevolent organizations and, if so, what provisions would you recommend?

(ii) any special provision should be made in respect of bingo games conducted by religious, charitable or benevolent organizations and, if so, what provision would you recommend?

(iii) any special provisions should be made in respect of the sale of sweepstake tickets by organizations organized for religious, charitable or benevolent purposes, whether in Canada or foreign countries, and, if so, what provisions would you recommend?

(iv) any additional provisions should be made in respect of lotteries conducted at or in connection with argicultural fairs and exhibitions or other types of fairs and exhibitions and, if so, what provisions would you recommend?

(v) any additional provisions should be made in connection with lotteries conducted by or on the premises of social clubs, specified in the proviso to s. 226 (1) and, if so, what provisions would you recommend?

(c) Would you consider, in particular, that any provision should be made in the Criminal Code for the exemption of lotteries conducted by religious, charitable or benevolent organizations, or at or in connection with agricultural fairs or exhibitions or other types of fairs or exhibitions or by other types of organizations, when the conduct of such lotteries has been licenced by competent provincial authority and, if so, what provisions would you recommend?

(d) Have you any views on the question whether the Criminal Code should be amended to provide for the conduct of government operated lotteries for specified purposes and, if so, what provisions would you recommend?

(e) If you are of the opinion that under specified circumstances government operated lotteries should be permitted, to what extent would you consider it advisable to permit the conduct of lotteries by other organizations?

(f) Have you any comments of a general nature relating to special problems arising from the enforcement of the present sections of the Criminal Code dealing with lotteries in addition to any of the matters mentioned above, have you any suggestions as to how these problems might be obviated?

March, 1954.

TABLE A—LOTTERIES

Convictions under S-236 and S-229 of the Criminal Code

Year	236 (1) *(a)*	236 (1) *(b)*	236(1) *(bb)*	236 (1) *(c)*	236 (1) *(d)*	236 (1) *(e)*	236 (5)	229 for offences described in 236	Total
1930									
1931									
1932									
1933									
1934									
1935									
1936									
1937									
1938									
1939									
1940									
1941									
1942									
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1946									
1947									
1948									
1949									
1950									
1951									
1952									
1953									

TABLE B—LOTTERIES

Disposition of charges involving lotteries under SS 236 and 229

Year	Total number of charges	Acquittals	Convictions	Convictions quashed on appeal	Number of forfeitures under S-236(3)	Amounts forfeited under S-236(3)
1930						
1931						
1932						
1933						
1934						
1935						
1936						
1937						
1938						
1939						
1940						
1941						
1942						
1943						
1944						
1945						
1946						
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1953						

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don. F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3.

TUESDAY, MARCH 9, 1954
WEDNESDAY, MARCH 10, 1954

WITNESSES:

The Honourable J. A. Hope, Justice of the Court of Appeal, Supreme Court of Ontario;

Mr. William B. Common, Q.C., Director of Public Prosecutions, Ontario Attorney-General's Department.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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OTTAWA, 1954.

COMMITTEE MEMBERSHIP

For the Senate (10)

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Hon. Elie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
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Hon. Nancy Hodges
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Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

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Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, March 9, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, the Honourable Senator Hayden, presided.

Present:

The Senate: The Honourable Senators Farris, Fergusson and Hayden—3.

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron (*High Park*), Dupuis, Fairey, Fulton, Carson, Lusby, Murphy (*Westmorland*), Shaw, Shipley (Mrs.), Thatcher, and Winch.—13.

In attendance: The Honourable J. A. Hope, Justice of the Court of Appeal, Supreme Court of Ontario; Mr. D. G. Blair, Counsel to the Committee.

The Presiding Chairman informed the Committee that the Questionnaire on Capital and Corporal Punishment and Lotteries has been sent to the provincial Attorneys-General and also distributed to each member of the Committee. (*Printed as an appendix to the Minutes of Proceedings and Evidence, No. 2*).

Mr. Justice Hope was called and heard on the various phases and procedures in a capital punishment trial and was questioned thereon.

On behalf of the Committee, the Presiding Chairman thanked Mr. Justice Hope for his presentation.

The witness retired.

At 1.00 p.m., the Committee adjourned to meet again at 4.00 p.m., Wednesday, March 10, 1954.

WEDNESDAY, March 10, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 4.00 p.m. Mr. Don. F. Brown, Joint Chairman, presided.

Present:

The Senate: The Honourable Senators Farris, Hayden, and Veniot—3.

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron (*High Park*), Dupuis, Fairey, Lusby, Mitchell (*London*), Murphy (*Westmorland*), Shaw, Thatcher, Valois, and Winch—12.

In attendance: Mr. William B. Common, Q.C., Director of Public Prosecutions, Ontario Attorney-General's Department; Mr. D. G. Blair, Counsel to the Committee.

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Mr. Common was recalled and, initially, placed on the record information requested by Mr. Fulton respecting legal aid in Canada and, also, an answer to Senator Farris' question respecting jury convictions in capital punishment and other cases. The witness then made his presentation to the Committee on the question of Corporal Punishment and was questioned thereon.

The Committee agreed that Mr. Common be recalled at a later date in respect of lotteries.

The witness retired.

At 5.45 p.m., the Committee adjourned to meet again at 11.00 a.m., Tuesday, March 16, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

MARCH 9, 1954.
11.00 a.m.

The PRESIDING CHAIRMAN: Ladies and gentlemen, we have a quorum, and I think I should inform you first that a questionnaire has been sent out to all the attorneys general in the various provinces.

Today, our witness is Mr. Justice Hope who is presently a judge in the court of appeal of the Supreme Court of Ontario. He was appointed to the trial division in 1933 and to the court of appeal in 1945 and therefore he has had an excellent trial experience as well as having had an excellent opportunity, during his period of service in the court of appeal, to observe the various phases and procedures in the criminal matters with which we are concerned.

I think we will follow the usual procedure. I believe it was established last time that the witness will be permitted to make his presentation and then, in an orderly fashion, we will deal with questions. Any person who has a question to ask will have one chance to ask his question, and then the others will have their opportunity before that particular person gets another opportunity.

Mr. FULTON: Fair enough.

The PRESIDING CHAIRMAN: Mr. Justice Hope.

The Honourable Mr. Justice J. A. Hope, Supreme Court of Ontario, called:

The WITNESS: Mr. Chairman, ladies and gentlemen.

I was reminded, when I was asked to be a witness and was designated by that formidable title, that it is something over 40 years ago since I was first a witness, and I think it was my only occasion of being a witness. I was a law student at the time and had served some process on a party and had to prove the service of it. It was not a happy experience. I do not anticipate with pleasure being a witness at any time. I have always had a very kindly feeling for witnesses in courts of law. It must be an ordeal through which they pass.

I have had, Mr. Chairman, the great benefit of reading the unrevised copy of *Hansard* of your meeting last week when Mr. Common of the Attorney General's department of the province of Ontario tried to assist you. I am sure he must have done so in revealing what transpires during the process from the time of the discovery of a homicide until the bitter end. I see no reason for repeating a great deal of that, even if I was competent to do so, but the minister has assured me that it may be of some interest to you to have placed before you what transpires at a trial, particularly a trial for an offence which may result in capital punishment. If I am laborious about it, or if I am repeating too much of what Mr. Common may have said and of which you are already fully seized, please check me. I have no objection to being interrupted at any time and told to get on a different rail.

The first matter to note is that all capital offences must be tried in the trial division of the Supreme Court. Although I believe some of the more enlightened provinces have abandoned grand juries, nevertheless in Ontario

we have the grand jury system. Speaking with some little experience, not only at the bar but on the bench, I am whole-heartedly in favour of the grand jury system. True, it only hears the evidence which the Crown may have available. Its task is not to determine the guilt or innocence of the accused, but to determine whether or not there be sufficient evidence to warrant the accused person being placed on his trial, and thus possibly saving him the great inconvenience and trouble of being put on trial, and also saving the country the expense of a trial. That is one of the primary objects.

The grand jury has another very valuable function in that before it—regardless of the employed or Crown officials—any individual may, with the approval of the presiding judge, prefer a bill of indictment. This is a very sound and wise safeguard, in my humble opinion, where, if government officials became careless or dictatorial, the people themselves can bring to the court of justice any individual. This is a salutary situation as I have said.

The grand juries are summoned with some little variation into which I need not enter, in the same way that members of the petit jury panel. I think Mr. Common said in his evidence that there are 10 members in a grand jury. In my experience, there have always been 13. There may have been some change in the meantime. However, the jury can function if there are only 12 members present.

By the way you may know that in Ontario—and I must confine my remarks to the tribunal of the province with which I am most familiar—the high court has two assize sittings each year in each county town, in the spring and fall. The high court also sits in the three or four, and it may now be five principal cities of the province, where there are three sittings a year. There is an interchange of judges from time to time, and even if the sittings are held in Toronto over a period of probably two or three months, various trial judges rotate in these courts.

Upon the opening of the assizes, the first task of the assize judge is to place before the grand jury the various bills of indictment which have been preferred, and to give to the grand jury instructions as to their duties. I need not go into the mechanical details such as the swearing of witnesses, the initialling of the names of the witnesses which appear on the back of the indictment, and so on. I have known a number of occasions, true they have not been frequent, when the grand jury, after investigating the evidence which was submitted to them by the Crown, has seen fit to bring in "no bill", and thereupon the accused departs the court without any charge being preferred against him whatsoever. I have also found on a few rare occasions that the grand jury has seen fit to recommend that a lesser offence should be charged rather than the one which appears in the original bill of indictment. That is roughly the function of the grand jury. Now then, if a true bill is found, then the accused person is arraigned in open court before any petit jury is impanelled. I may say this, that the presiding judge inquires most carefully as to what the situation is as to the legal assistance which the accused man has available to him. It is always customary for a trial judge to seek out an able young man—and in many cases the older practitioners at the bar are quite prepared to offer their services voluntarily at the request of the trial judge on the accused's behalf—to place his full defence, as we say, before the court. If an adjournment be necessary to permit counsel, who has suddenly been thrust into the case at the request of the trial judge, to prepare a defence, an adjournment is invariably granted. I can think of no case when that has been denied to an accused.

Mr. Common has already told you, I believe, about the arrangements now made by the Attorney General's Department in Ontario in co-operation with the Law Society of Upper Canada for providing free legal aid to any

accused who is unable to engage his own counsel, and in most of the serious offences I notice Mr. Common said that it is necessary to provide that free legal aid.

When those preliminaries have been arranged the accused is then arraigned in open court, that is, the charge is read to him and he is asked by the proper court official "How do you plead, guilty or not guilty?" If he pleads guilty then it is customary for the court to hear enough evidence to permit the trial judge to be seized of the circumstances surrounding the commission of the crime so that he may be assured, particularly in a capital charge such as murder, that the circumstances warrant a plea of guilty. If there is anything to suggest that the accused is guilty only of a lesser offence then the trial judge would intervene at that juncture and advise a change of plea to one of "not guilty".

I may say that prior to the judge's arrival in the town where he is taking the assize he has received from the Crown attorney for the county a precis of the cases which are coming before the court giving just the bare bones of the evidence which it is proposed to submit on behalf of the Crown.

If the accused pleads not guilty, or if the accused remains dumb, as it is referred to in the Code, or refuses to plead, in which event the trial judge directs the entry of a plea of "not guilty".

It is assumed as the cardinal principal of our criminal jurisdiction that an accused is innocent until he is proven guilty. That will come up repeatedly through my few remarks. At any time during the trial, even if a plea of guilty has been entered, or vice versa, if a plea of not guilty has been entered, the judge may advise and permit the accused to change his plea. If, for instance, the evidence is being unfolded in brief form to the trial judge, after a plea of guilty, and it becomes evident that the full charge cannot be substantiated, then the accused person is permitted to amend his plea and plead not guilty despite his earlier plea. There is no question as to his right to do that. It is in the discretion of the trial judge, but from what limited knowledge I have I know of no cases when the trial judge would ever think of refusing the accused the right to do so.

Once a plea of "not guilty" is entered then there comes the point in the trial proceedings when the petit jury is empanelled. First of all, I should say this, that an accused person has the right to challenge the whole array of the petit jury panel.

The accused person has the right to challenge the array of the petit jury panel. That is to say, he may say that there is something wrong with the preliminaries which lead to the calling of these men, that they are not here "according to Hoyle". If he does, there proceeds a trial of that issue immediately, and if the worst happens there has to be an arrangement made for the summoning of a new jury. However, in some 21 years on the bench, and much longer at the bar, I have never run into that situation. The accused man then has the right to challenge any juryman and any number of jurymen for cause. These causes are four: that the juror's name is not on the panel; that the juror is not indifferent between the Crown and the accused; that the juror has been convicted of any offence for which he was sentenced to death or to any term of imprisonment with hard labour or exceeding 12 months; or that the juror is an alien. If any one of those objections for cause is taken, then there are two jurymen called and sworn to determine the matter as the case may be. Aside from those challenges for cause, an accused in a capital case is entitled to twenty pre-emptory challenges. In the lesser offences, where the punishment is more than five years, he is entitled to twelve pre-emptory challenges and in more minor offences, to four. But, in a capital

offence, he is entitled to twenty. Such challenge is recorded by the accused or through his counsel as the juryman comes to the Book to be sworn, as it is said. Preliminary to the sitting the name of each juryman with his number on the panel and his occupation and address is entered on a small card like a lady's visiting card. These cards are put into a box and shaken up by the Clerk of the Court when the jury is about to be called. The trial judge will then instruct the clerk to draw cards from the box in such number from time to time as will enable the selection of twelve jurors after allowing for pre-emptory challenges and "stand-asides". The jurors whose names are so drawn come forward and are lined up along the courtroom and then each man is called again by his name and comes forward to be sworn individually as the clerk stands with the Book. I do not know if I can recall the preliminaries to the administrations of the oath, but it runs something like this: As the juror steps forward, the clerk says,— "Prisoner, look at the juror. Juror, look at the prisoner. He stands indicted by the name of "—" The Jurors of Our Sovereign Lady the Queen charged—" and then the substance of the charge contained in the indictment is read. If there is any objection, by the accused to the particular juror, the juryman is then challenged. If so challenged, the juror retires and takes his seat in the Court Room. I should say that the Crown has at this time the right to stand aside any juror. If the jury panel is wholly exhausted by the various challenges and the stands aside, then those who have been stood aside are recalled to fill up the jury panel. They cannot be again stood aside but may be pre-emptorily challenged by the accused until he exhausts his twenty challenges.

I have seen a Crown counsel stand somebody aside even to assist the defence counsel so that he would have a little greater number of challenges, and so that he would have a second chance and not be landed with that juryman having exhausted his twenty challenges, but can get rid of him.

So the Crown counsel tries to carry out that traditional attitude of the Crown of being strictly impartial and anxious to be truly a minister of justice in the courts. After the oath is so administered to twelve jurors, the jury is charged as to its duty. The indictment is read again. And then the Clerk charges the jury as follows: "To this indictment he has pleaded not guilty and for his trial has put himself on his country which country you are. Your duty is therefore to hearken to the evidence and true deliverance make between our Sovereign Lady the Queen and the prisoner at the bar according to the evidence. It is a very important formula and it is one as to which I have found that juries are conscientious and very observant. Notice the wording "true deliverance make between our Sovereign Lady, the Queen and the prisoner at the bar according to the evidence". That is something which in my experience I have been delighted to find is generally observed by jurymen.

Now, preliminary to the trial of the accused person—and this again I think is a tradition which is invariably followed—the Crown counsel furnishes to the accused a list of the names of all witnesses which the Crown proposes to call, whether they actually are called or not. All witnesses' names are furnished. Some of them of course have already been heard at the preliminary inquiry. A copy of the depositions taken there is furnished. I know from my experience with capital cases that such depositions are furnished freely and without cost to counsel for the accused, by the Attorney-General's Department. I have also known—by the way I should say that even if the names of witnesses are on the back of the indictment, and the actual witnesses are not called by the Crown for any reason, for instance because the Crown may think they are worthless or repetitious, those witnesses must be made available by the Crown. Those people must be made available in

Court for the accused to call upon, if desired. I know of no instance where a trial judge has not permitted defence counsel to treat such witnesses as adverse witnesses and to cross-examine them.

And speaking of that, I recall a case in which I had the task of presiding. It was a third trial for murder in Toronto during the war. There had been two previous trials. The first trial ended in a conviction and then there was an appeal and a new trial was ordered. On the second trial there was a disagreement of the jury and then it came to a third trial. I happened to get into it at the last moment because the late Mr. Justice Gerald Kelly was taken to the hospital the day before and I was the only judge available to fill the gap. I can recall quite well there was one witness, if not two, that the accused and his counsel wanted to call but could not afford to bring them. The Crown counsel spoke to me about it and very properly agreed to put the names of those witnesses on the list as being Crown witnesses so that their railway fares and expenses would be paid by the Crown, in order to make them available for the accused.

Another matter which I think you should bear in mind is that it is only where the accused himself puts his character in issue during the trial, either in his defence or otherwise that the Crown is permitted by the trial judge to raise the question of the character of the accused person. Of course, it is different if it comes up after conviction, but even then the type of evidence which it is permitted to call is not evidence as to some particular act or action of the accused in the past, but as to his general reputation for good or bad character.

There may be some things which I shall think of during the course of our discussion of the judge's charge to the jury and which really have to do with the question of evidence. But as they are matters which have to be touched on by the trial judge in his charge to the jury, I think I can cover them all in dealing with that charge.

At the conclusion of evidence and before the judge charges the jury, the Crown counsel has the right to address the jury and he does so. And the defence counsel also has the right to address the jury and to place the best application on interpretation the evidence that he can on behalf of the accused, explaining the full theory of the defence.

If the accused has been called to give evidence and has entered the witness box himself, then the defence counsel has the right to address the jury last; that is, he has the last word. But otherwise it is the reverse.

The trial judge must define the crime of which the accused stands charged, giving the essential elements unless of course they are so obvious that they can be inferred quite readily. But he must give the essential elements which must be proven. I need not remind you of the four categories or subsections of the section which defines murder. Then the trial judge must discuss the evidence with the jury.

In reviewing the evidence, the trial judge in his charge must place it fairly to the jury and must be insistent in his own mind that he places the full theory of the defence to the jury, however weak the evidence may be in support of it. And he must go further than that. If the defence has not developed some particular theory in adducing the evidence for the defence, or in the defence counsel's summation of the evidence to the jury, and if the trial judge thinks that there has been some evidence which has not been touched upon and which suggests a possible theory of defence not advanced by the defence counsel, then it is the duty of the trial judge, and he is compelled to bring that theory or evidence to the attention of the jury although defence counsel has not stressed it. I think that trial judges are fully conscious of that task.

Mark you, trial judges, as we all know, are human. Sometimes we are forgetful of what happens in the quick moving action of a trial. Simply because a parchment bearing the Great Seal is issued to judges, it does not make the judge either a perfect human or a perfect lawyer. We have all the frailties which go with human nature. We try to avoid them, but after all, we may err. That is why there are all these safeguards after the trial judge is finished.

Hon. Mr. FARRIS: Lawyers are there to correct them.

The WITNESS: Quite! And even they sometimes fail. If the law permits, then the trial judge must point out to the jury any lesser offence which the evidence might warrant them finding the accused guilty of, unless of course there is not a tittle of evidence which would support the finding of the lesser offence. Now, you have heard it said, and I said it earlier, that the primary presumption in criminal law is that the accused is presumed to be innocent until he is proven guilty. Of course the corollary to that is that the onus is always upon the Crown to prove the guilt of the accused. That onus never shifts. It remains on the Crown till the very last moment of the trial. I might just illustrate. It has been held, even on a charge of murder where there is no question about the slaying and no question that the accused did the slaying, that the onus is still upon the Crown to prove that the slaying was murder; otherwise, the jury are entitled to find manslaughter. Now, in reviewing the evidence, the judge must not mistake facts. If he mistakes facts to the jury, that is very good ground for a new trial, certainly grounds for objection by counsel. Thereupon, if that objection is taken, the jury is recalled and the trial judge does his utmost to remedy the error which he has made. In reviewing the facts, bear this in mind, that a trial judge is not precluded from giving his own opinion as to the facts and the sufficiency of the evidence which is before the court in support of those alleged facts, nor is he precluded from expressing his own opinion as to the credibility of witnesses, or even his own opinion as to the guilt or innocence of the accused; and while he is free to express that, he should always do it with the full and concise and clear warning to the jury that they are not bound by his views in any way, either as to credibility of witnesses or as to the facts which he may say are in his opinion established, or as to the guilt or innocence of the accused. It is their duty to come to their own conclusion as to the facts and as to the guilt or innocence, quite regardless of the judge's opinion. But the judge is nevertheless free to express his opinion, and very often this is done. I think that the jury is entitled to some help from a trial judge in assessing the evidence and determining the facts so long as he makes it clear to them that they are not bound to follow his views but that they are the sole judges of the facts. If there is uncorroborated evidence of an accomplice, or the unsworn statement of a child of tender years, there are two things which a judge must tell the jury; first, that it is within their legal province to convict on that uncorroborated evidence, but it is dangerous for them to do so. He may go further even and advise the jury not to convict on uncorroborated evidence. He must not, however, advise them that if they believe the uncorroborated evidence it is their duty to convict; that would be a misdirection and would be a ground for appeal entitling the accused perchance to a new trial or even an acquittal. Again, I mentioned the evidence of very young children: in the absence of corroboration, the jury should be warned not to accept it except with extreme care. As sometimes happens during a trial, some inadmissible evidence, for example, hearsay statements, may be given through some inadvertance or mischance. Then the trial judge should direct the jury's attention to that inadmissible evidence and inform them that it is their bounden duty to disabuse their minds of it as nearly as they can, and that they must not pay any attention to or give any weight to such inadmissible evidence.

Again, it would be grounds for an appeal and would certainly lead to a new trial if a trial judge commented upon the failure of an accused person or the wife of an accused to give evidence. If the accused person and his wife are not called upon, there must be no comment made by the trial judge to the jury as to their failure to give evidence. The jury can note that themselves, if they like, but that is quite a different matter. The trial judge must not say anything about it.

If a witness has contradicted himself, even if unsworn, that is if an unsworn witness says something that is in conflict with his evidence that is on oath, or says something outside of court and when confronted with it it is found to be contrary to what he had sworn on oath, the proper direction is that his evidence is negligible, or that part of his evidence is negligible, and the jury must find on the rest of the evidence—not on what he has contradicted himself on, but on the rest of the evidence.

Now, in a capital case, and I am speaking primarily of murder, if there is the slightest evidence or circumstances which would warrant a jury finding an accused guilty not of murder but of manslaughter, it is the bounden duty of the trial judge to so direct the jury, and direct their attention to the evidence in connection with that.

Now then, as a sequel to the burden of proof which I mentioned earlier, and the onus thereof continuing on the Crown to the end, there is also the other very wholesome principle of criminal jurisprudence, about which you have heard so often, viz that the accused person is entitled to the benefit of any reasonable doubt. If the jury are either satisfied with the accused's explanation, or upon a review of all the evidence are left in a reasonable doubt, where even if his explanation is not accepted, that the act complained of has not been proved or was unintentional or provoked, the prisoner is entitled to be acquitted. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of our common law which we inherited from England, and no attempt to whittle it down should be entertained for one moment by any court. Now, the doubt must be a reasonable doubt based on the evidence. It is not some fanciful doubt which some jurymen, individually or collectively might conjure up to ease their conscience and permit them to find an easy way out of what might otherwise be a stern duty. It must be a real doubt based upon the evidence. If at the end of their deliberations the jury is satisfied beyond that reasonable doubt based on the evidence, then they should convict, but if they have any reasonable doubt with some substance to it, then it is their bounden duty to give the accused the benefit of that doubt and acquit him, or if it is a doubt with respect to the category of the crime, then they must find him guilty of the lesser offence.

A moment ago I referred to the duty of the trial judge at all times to present the defence fairly. He should discuss with the jury any defence that may arise from the evidence whether or not it has been raised by counsel, as I said, but not defences on which there is no evidence and which cannot reasonably be supported by any view of the evidence. Even where no evidence is supplied by the defence, the trial judge has a duty to explain any exculpatory factor which may be found in the evidence tendered by the Crown. Except in rare occasions when it is needless to do so, the trial judge must review the substantial part of the evidence and give the jury the theory of the defence so that the jury may appreciate the value of the evidence and may appreciate how the law is applied to the facts as they find them.

There may be more than one theory advanced by defence counsel, and quite legitimately so, and if this is the case, even if such theories be inconsistent, the trial judge must bring those various theories to the attention of the jury.

A great deal is heard about murder trials, and that the conviction has been upon circumstantial evidence only. Murder, as one must appreciate, is a crime which is not ordinarily committed in public or with witnesses; it is one which is committed with secrecy.

Mr. MURPHY: Except in congress!

The WITNESS: And therefore, the only possible evidence that can be adduced is the evidence of circumstances which go to indicate first the killing, and second that the accused person is the person involved in that killing, viz who brought it about, and the various elements which constitute the offence charged. In some of my remarks I am speaking to you, Mr. Chairman, and to the ladies and gentlemen of this joint committee, as though you were a jury. Circumstantial evidence is always admissible, but it should be received and acted upon, especially in murder cases, with the greatest caution. Where, in a charge of murder, the death of a human being is once established, the identity of the deceased, and the fact that his death was caused by the prisoner may be established by circumstantial evidence which should, however, be cogent and convincing in its weight and value. On the other hand, it has been said that circumstantial evidence is very often the best evidence. It is the evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with mathematical accuracy, and it is sometimes more cogent and forcible than direct evidence which is not usually had in this type of crime.

Common observation shows that certain circumstances in the affairs of human life give rise to certain presumptions, and it is upon the common observation of what is natural, and what is usually happening and being done in the ordinary affairs of life, that the principal rules of evidence, and especially of presumptive evidence, are based. Certain acts are seen and known to lead to certain results, and the fact of the existence of certain circumstances leads to the conclusion that certain other circumstances, which generally accompany the former, must also exist. In contending for the certainty of circumstantial evidence, it has been argued that, in the case of crimes committed for the most part in secret, strong circumstantial evidence is often the most satisfactory of any type of evidence from which to draw the conclusion of guilt.

I would like to add for the information of the Committee a principle which has now become a rule of law and which must form part of the instructions given to the jury by the trial judge to govern their consideration of circumstantial evidence. It was stated as early as 1838 by Baron Alderson in England. It is known as the rule in Hodges' case and is as follows:—where the case is made up of circumstances entirely, then, before the jury can find the accused "guilty", they must be satisfied not only that those circumstances were consistent with his having committed the act but they must be satisfied also that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner is the guilty person.

I need not enter into the question of some of the other smaller items—not smaller in one sense because a minute detail in a capital trial may be of great importance—but I am speaking of items which might enter into this type of crime; provocation, for instance. If there is provocation, as it is defined in the Code, by act or insult, and that provocation is such that the jury—and by the way I should say provocation is a question of fact which must be determined by the jury the same as any other question of fact—but if any wrongful act or insult is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, then it is that the death is caused in the heat of passion caused by sudden provocation and then the accused is excused from the crime of murder, and is guilty only of manslaughter, provided always that the

accused has acted upon the provocation on the sudden and before there has been time for his passion to cool. If, on the other hand, he is insulted or has some insulting act directed towards him, or some insulting words, and he goes from the barn to the house and gets a shotgun, you might think, depending on the circumstances of each case, that he has had time to "cool off," and that then he is coming back with deliberation; but again the jury must be charged on that, and it must be left with the jury entirely to pass upon that. If they find there is provocation in law, then the charge must be reduced to manslaughter. There was some considerable doubt as to the effect of words until the Taylor case in 1948.

There may be other matters, Mr. Chairman, which I have not touched upon which may occur to members of the committee, or the counsel of the committee. or particularly some of the committee whom I well recognize as members of my profession, that I should have mentioned.

The matter of guilt or innocence is a matter for the jury, and when the trial concludes with a verdict of "Guilty of murder", the sentence is the sentence which is prescribed by the law. One sentence and one sentence only viz death by hanging is allowed and is pronounced by the trial judge.

I think it is improper—and I notice that the Lord Chief Justice in England has expressed the same opinion—for a trial judge in a capital case to invite the jury to express their opinion as to extenuating circumstances in the way of a recommendation for leniency. But, while a trial judge should not do so, nevertheless the jury is perfectly free to bring in any recommendation it sees fit as to extenuating circumstances which should be advanced to the proper authority for the exercise of the royal prerogative.

After the trial the trial judge is called upon to send an exhaustive report to the Minister of Justice. This very comprehensive report covers all the circumstances of the trial and its conduct; also the circumstances surrounding the commission of the crime including extenuating ones; mentioning any recommendation of the jury for mercy and the trial judge's comments thereon, also a reference to the mentality and character of the accused, which by that time has come to the attention of the trial judge.

Even if there has been no insanity plea or any ground for it, it might be suggested that there should be some further mental examination. The minister has the benefit of this report in dealing with executive clemency.

One other matter—and it is a very minor matter. If the sentence is to be carried out finally, the trial judge on the very eve of the date of the execution receives a telegram from the Minister of Justice advising him that the sentence passed by the trial judge is to be carried into effect the following day as pronounced. I remember the first time I got such a telegram I was horrified and said that I thought I had passed through enough tribulations in having the trial and sentencing of the man and that I should not be reminded on the eve of his execution. But, the reason for this procedure is clear and reasonable, and the trial judge should be only too glad to have that telegram no matter how harrowing it is. At the very last moment there may be some new evidence discovered, some factor may arise, and the person who has knowledge of it may know of no one but the trial judge whose name has been in the press in connection with the trial and he may go to the trial judge on the eve of the execution about it, and if so the trial judge would, of course, bring the matter to the attention of the proper authorities without delay. Therefore, however harrowing the receipt of that telegram is, I am heartily in favour of the judge being "harrowed" in the interest of justice and to avoid a possible gross miscarriage of justice.

That, Mr. Chairman, is a brief sketch of some of the important factors in the trial of a capital offence. There may be a number of things you may wish to ask me. I have not touched on the question of insanity as a defence because I understand your committee is not dealing with that matter. It will be under review by a Royal Commission, and I should not comment on it now.

Mr. BROWN *(Essex West)*: Have you anything to say about lotteries or corporal punishment?

The PRESIDING CHAIRMAN: Before we go into any other subject, I was wondering if you would care to say anything as to the case as it goes on from the stage of conviction and sentence to the court of appeal?

The WITNESS: Thank you very much, Mr. Chairman. I completely lost sight of the fact that I had been invited into that too.

The accused person has the right of appeal. His appeal is facilitated by the Crown officers in every way possible The transcript of the evidence, which is quite frequently a very costly matter of producing, is at the expense of the Crown. The accused is furnished with a copy of the evidence and anything else which he may require. His counsel's expenses are paid in prosecuting the appeal. It used to be in the olden days that the court would recommend that the Crown would pay the counsel fee of the defence counsel who would be requisitioned by the court.

By the way, in speaking of that, I think it is only due to the legal profession to say that it is not only the junior members of the profession seeking experience who are ready to take on that task of freely defending an accused person at his trial. I have had some of the most distinguished counsel agree to take on that task even if they were not paid anything by the Crown. Of course, I would always tell them that I would recommend payment to them, and I think probably they were paid. Regardless of whether they were or not they were ready to take the task on, and similarly in appeal. I can think at the moment of one very distinguished counsel in Toronto who is outstanding in the criminal law field who has taken on I know, without fee, a number of criminal appeals.

The record of the trial is filed—five copies— with the appellate division and memoranda of fact and law are prepared by both defence and Crown counsel and filed in advance with the appellate court. The Chief Justice of Ontario then names the five members of the court who will sit on any particular appeal. They are given the full record of the trial and the memoranda of fact and law filed by counsel in advance. I think I can say freely and frankly that the judges who are going to take part in that appeal conscientiously study the record before the appeal comes up, so that they may familiarize themselves as far as possible with the points in issue and with the evidence which has been before the trial court.

There are four grounds of appeal as set out in section 1014 of the Criminal Code. First, that the verdict of the jury is unreasonable and unsupported by the evidence. This is purely a matter of determining what are the facts. And if there is in the record evidence which would warrant a jury of reasonable men coming to the verdict under appeal. Where there is no evidence which goes to the support of the verdict as found, then the Court of Appeal is entitled to pass upon it and allowed the appeal.

The second ground of appeal which quite frequently is that of misdirection or non-direction of the jury on some essential point of law by the trial judge. Defence counsel are assiduous in watching with a microscope for any mistakes of the trial judge in his charge to the jury as to the law applicable to the case. If such misdirection or non-direction has occurred, then an appellate

court is in duty bound required in law to allow the appeal and quash the conviction and direct a new trial or direct an acquittal, unless the appellate tribunal is of the opinion that in the circumstances no substantial wrong or miscarriage of justice has actually occurred.

There is also the question of the third ground for appeal, the improper rulings of the trial judge on the question of admissibility of evidence, either as having admitted or as having rejected some evidence which should have been contrarywise. The appellate decision with respect to these matters may also result in a new trial or an acquittal. Then there are other important general grounds, irregularities at the trial; incomplete defences, failure of the opportunity to put it, or that the trial judge has even not put it. That would be the same as misdirection or non-direction.

Then there is something which occurs less frequently—although you may think it is becoming all too common—prejudicial newspaper reports in the vicinity of the place of venue which may affect the trial and may prejudice the accused on trial.

The Court of Appal also has the power to deal with the question of the sentence, other than the question of execution where the penalty is one fixed by law, such as the death penalty, and no option is given. Then there is no power in the Court of Appeal to pass upon it.

I think something was said by Senator Farris on the question of counsel objecting. Counsel at trials are always entitled to object. In fact, it is their duty to object and the trial judge welcomes objections raised by counsel, in case he may, in his customary conscientious zeal to discharge his function, have failed to mention something, or may have misquoted something. He has every right to hear objections and he tries his utmost to correct the evil which is raised.

If no objection has been raised at the trial, then on appeal the Crown may not raise the matter as a ground for appeal; but the accused can. And I stress this to you because I am sure you must have gained from my comments thus far that every consideration possible, which one could dream of, is given to the accused in these serious charges. We try our best to see that he gets fair play and the utmost fair play. Even if an objection has not been raised by defence counsel at the trial, then on the appeal, if the defence raises a question of some objection or some error, the Court of Appeal will listen to it and give effect to it, if there is substance to it. This comes under section 1016, subsection 2, and the Court of Appeal may give a substitute verdict. That is, they may, if circumstances warrant—as has been done in some cases—find that the evidence only warrants conviction on manslaughter. Then the Court of Appeal—and even the Supreme Court of Canada may and has done so.

Please check me, Mr. Chairman and members of the Committee, if you will be good enough, as to anything I may have omitted. I have dealt with a specimen trial and the procedure in a capital case. There are of course other matters with which you may wish me to deal. but unless you so wish it, I am not going into them, such as the question of punishment generally and the purpose thereof: and the question of the place of execution, whipping and so on. Those are matters which unless you wish me to do so I shall not touch upon. I could of course offer you my personal opinions and endeavour to support them by opinions to be found elsewhere after due and deliberate consideration. I hope I have not omitted anything.

The PRESIDING CHAIRMAN: Well, I think we have reached the stage for questioning. Since we must establish some order in the questioning, I shall start with Senator Farris who has already caught my eye, and I shall begin at his end of the table. Now, Senator Farris.

By Hon. Mr. Farris:

Q. In view of your wide experience, do you consider it a fact that capital punishment tends to result in the acquittal of a guilty person?—A. There may be different views on that, Mr. Chairman; but from my experience I would say no; that the fact that the sentence of hanging follows is one which does not deter the jury, generally speaking, from performing its duty according to its own conscience.

Q. Do you consider that the fact of capital punishment tends to insure greater care or consideration by a jury so as to lessen the possibility of wrongful conviction?—A. Again, Mr. Chairman, I have not had the benefit of sitting in the privacy of a jury room. But from observation I would say that I have found juries most conscientious in the discharge of their duty and in the observation of their oath, and I say that after a very considerable experience as counsel and as judge.

I have found juries to bring in verdicts which on first blush I wondered why they did it. That is, they brought in a verdict of manslaughter instead of murder in a capital case, and why? Because, had I been trying the accused without a jury, I think I might have seen some justification for a verdict of murder, and yet, as I carefully re-considered the matter and the evidence, I could see where in the light of the charge which had been given to them, and in the light of the evidence in that particular case there was ample justification for the jury finding a verdict of manslaughter. Mark you, there may be cases when sympathy runs away with the jury but I really do not think that is a very common complaint, and I would not register it.

I have abundant faith in the integrity of juries of citizens and in the way they discharge their very onerous task to their country. Every year my faith in human nature grows, no matter how often it may be shattered.

The PRESIDING CHAIRMAN: Now, Mrs. Shipley.

By Mrs. Shipley:

Q. This question may be out of order, Mr. Chairman, but I am very curious to know if there have been any cases in Ontario where a person has been executed and subsequently found to have been not guilty beyond any shadow of doubt, and if you know of such cases, would you care to make a comment as to how such a miscarriage of justice could take place with all the precautions and protections that there must be for the accused?—A. Mr. Chairman, speaking offhand, I know of no case that has been brought to my attention where it could be said that an accused who has been found guilty and executed was afterwards proven innocent. I know it has been so in other minor offences. There was one not so long ago where there were two trials and a young man was sentenced to penitentiary in one of the county courts, and he was convicted each time and by a conscientious jury, but on the evidence which was there. Further evidence was brought forward. I sat on the court of appeal when he was granted a third trial, and at that third trial he was acquitted, although he had served a part of the sentence. It was most unfortunate. I have talked to the young man since his acquittal and he does not hold any animus, I must say, but his defence was abili, and the new evidence in support might have been brought forward earlier.

Q. May I ask a supplementary (subsidiary) question? Do you know of any cases in Canada—and I am only concerned with those who were executed and then subsequently found not guilty?—A. Quite frankly, I am not in a position to express an opinion. I am not trying to hedge on it. I would be glad to give you the information if I could, but I have no statistics on it.

Hon. Mrs. FERGUSSON: I have no question, but I would like to say that I am delighted to hear Mr. Justice Hope say he has such strong belief in the integrity of juries. I have heard so many comments that they would be swayed.

The WITNESS: Incidental to that, Mr. Chairman, I recall only one case where I felt that a jury had brought in a verdict not supported by the evidence, that they brought in the lenient verdict, and that was in a case where I was presiding. After the jury had been empanelled and the evidence was started—I think the second witness was in the box, if I remember correctly—one of the jurymen got up and said, "My Lord, may I ask a question?" I said, "By all means". "What is the effect of having"—it was a manslaughter case—"an uncle of the deceased's boy as one of the jurors?" I said that there was nothing I could do about it; I assumed that he would be loyal to his oath and that all the other jurors would be also.

Mr. WINCH: I have only one question, Mr. Chairman. It is quite evident that the accused in a capital case, if he feels there has been a miscarriage of justice, has a recourse to appeal. If in a capital case the charge is reduced to manslaughter and the judge serves sentence and the Crown thinks that the reduction or the sentence is a miscarriage of justice, is there an appeal then too?

The WITNESS: No.

Mr. WINCH: There is not?

The WITNESS: May I add this? I would say this from my own experience, that I do not think that any Crown law officer would bring an appeal in such a case as that except as to the inadequacy of the sentence. I recall an appeal not so long ago in Ontario, where there were two accused, who were both convicted. Each gave a statement and each accused the other of having committed the crime, but in the court of appeal we allowed the appeal and discharged the accused in both cases. They were each in the nature of accomplices and there was nothing to corroborate the statement.

By Mr. Winch:

Q. The reason I asked that question is that I have often seen in the newspaper that the Crown was appealing against the sentence, that they did not think it was severe enough. I wondered if that applied in capital cases?—A. There are many appeals where there has been a heinous offence and somebody has taken a lenient view or has a soft heart.

Q. That is my point. Suppose there is a capital case, and the jury says that it is manslaughter—suppose we say the sentence is 10 years—and the Crown has to accept the manslaughter verdict but thinks it should be life or 15 years. Can the Crown appeal that?—A. I am sorry, Mr. Chairman, I did not appreciate Mr. Winch's question. I thought I was asked if they would appeal against the verdict of manslaughter and want to obtain a verdict of murder. Undoubtedly the Crown might want to appeal if there was a 10-year sentence given on manslaughter; that is, the Crown has the right of appeal, with leave.

By Mr. Fairey:

Q. I would like to ask a question in regard to the case of a grand jury in Ontario returning no bill. Is the accused free forever, or could he be apprehended again in the light of fresh evidence?—A. It could be so. There could be a fresh bill of indictment preferred against him, but I have not heard of such a case except for a lesser offence which is included in the greater offence originally laid. My knowledge may be limited, but I have not heard of it. However, it is possible that he could be charged again on another bill of indictment for another offence, for a lesser offence.

Q. I think you may have already answered this. Is it your opinion that a jury in a capital case is not influenced in its verdict by the fact that if they

bring in a verdict of murder, hanging is the inevitable result, and that they are inclined to sway to the lesser verdict?—A. My experience, Mr. Chairman, would be that a jury does its duty regardless of the punishment which may result, speaking generally.

By Mr. Thatcher:

Q. Mr. Chairman, if in a capital case the jury recommends mercy, what is the position of the prisoner? Does the judge still give the hanging verdict? —A. Mr. Chairman, I noticed the other day in reading in *Hansard* a discussion of these problems that some member had said that it would be well to look at what the court was "permitted" to do in a capital case. The court is not "permitted" to pass a sentence of death, the court is "compelled" to pass a sentence of death; and that is, in my humble opinion, as it should be. I have seen suggestions that the judge should be given the option in capital cases of imposing death or life imprisonment or a lesser sentence. It would be an unhappy day, I think, if that developed. The death sentence is undoubtedly a serious punishment—there is no question as to that—and it is one that in my humble opinion should be imposed by the whole people, not by any individual or committee of the people, as for example a jury. It would be unfortunate if it were as suggested, I believe, in the report of the Royal Commission in England, that the jury, after they brought in the verdict, should then pass upon the type of sentence to be imposed upon the convicted man. That would be most unfortunate and I do not think any jury should be called upon to do that. I similarly think it would be most unfortunate—and not for any squeamish reasons, but most unfortunate in the interests of justice—for any judge to be given that right. True, he was given that right in the offence of rape for years—where the Code still prescribes sentence of death or up to imprisonment for life as the punishment. I can recall hearing of only one sentence of death imposed for the charge of rape in Ontario, and that was about 1923 or 1924. It was commuted, of course. The death penalty is so serious, and the imposing of it—I am expressing my own opinion—is an expression of the public generally in reprobation of the crime of taking a life and the only body which is properly the body to pronounce the death sentence is that body which is representative of the people as a whole, namely parliament. I am not trying to "pass the buck", as the phrase goes, to parliament—far from it—but they, being the elected representatives of the people, are in my opinion the only ones who should impose the death sentence. It is so much more desirable that the death sentence should be imposed as a matter of "must", by direction of law passed by parliament, and then have any extenuating circumstances considered subsequently in remitting it and giving a more appropriate sentence. I have given considerable thought to this, and I cannot conceive of better machinery being set up than what we have now, with the very great care that is taken in screening all the circumstances when it comes to the exercise of the executive clemency or the royal prerogative.

Q. Mr. Chairman, do I take it that the recommendation of mercy which the jury makes can only be considered by royal prerogative?—A. That is correct.

Mr. DUPUIS: Mr. Chairman, without throwing any doubts on the integrity of juries, I believe, as Mr. Justice Hope said a while ago, that most of the juries are absolutely conscientious in their verdicts, but it happened in the province of Quebec—and I am going to submit this to the attention of the committee here—that people were hanged and the guilty persons found atferwards.

The PRESIDING CHAIRMAN: That would be a matter of evidence. We are dealing with questions now. Have you a question you would like to ask the witness?

By Mr. Dupuis:

Q. I would like to get a considered opinion of what Mr. Justice Hope would think of having two sentences in a case of murder; one with direct proof, and one with circumstantial proof. That is, the judge would be compelled to send a man to hang on direct proof and would be compelled to send him to life imprisonment on circumstantial proof only. I wonder if Mr. Justice Hope would give me his opinion on this point, if I am in order?—A. Mr. Chairman, I have no hesitation in expressing my personal view on it. I think it would be an unworkable scheme, because in the first place almost every murder charge is proved by circumstantial evidence, as I said earlier, and, therefore, the effect would be the abolition of the death penalty, because how few cases there are where there is direct evidence when somebody murders somebody.

Q. Mr. Justice Hope might answer an additional question. Circumstantial proof, I admit, may sometimes be just as strong as direct proof. Nevertheless, there were cases where, I repeat, people were hanged who were not guilty, and there must have been very strong circumstantial proof in those circumstances to have the jury render a verdict of murder, and their life was gone. I am not suggesting to acquit a man where there is circumstantial proof only, but I am trying to save from being hanged a person under circumstantial proof who would be guilty of the offence with which he is charged.

The PRESIDING CHAIRMAN: We have your view, and we have had Mr. Justice Hope's view. Mr. Fulton?

By Mr. Fulton:

Q. Mr. Chairman, may I ask Mr. Justice Hope whether he wishes to express a personal opinion, because I think it could only be put on that basis, as to whether he feels it might be proper to amend the law so as to provide that a plea of guilty to a capital charge, a charge of murder, will not be accepted?—A. At first blush, Mr. Chairman, it might seem a wise precaution, but let us suppose that were done—and I rather think the idea is that the accused man should not be permitted to commit "judicial suicide" by a plea of guilty—that would be the cogent reason in favour of such an idea as suggested by Mr. Fulton. If that were so, and he was bent upon his desire to die, then all he would need to do would be to enter the witness box and make the most damning admissions against himself which no jury could resist.

Mark you, even in the case of a capital offence, if there is a plea of guilty entered by the accused I think the practice is—I cannot speak from personal experience, because I never had a murder charge before me on which there was a plea of guilt, they have always been pleas of not guilty and therefore I was spared that, but Mr. Justice Nicol Jeffrey in Port Arthur a few years ago on the Bliss case was confronted with that, and he went into it very thoroughly. I have since checked on what was done so as to prepare myself for such an occurrence, should I be faced with it, and I cannot see any objection to receiving a plea of guilty, but I think the circumstances should still be adduced in evidence so as to convince the judge before the death penalty is imposed that there are all the essential elements of the crime of murder present, and if they were not present, I think some other ation should be taken suh as reocmmending to the minister.

Q. But could you not conceive the possibility that the accused might have been subjected to a long history of what almost amounts to provocation or a long history of exasperating or disastrous circumstances in his relationship with the deceased, with the person whom he killed, and having done that he felt, "Well, it's all up now and my life was so unhappy in any event I don't want to plead not guilty, and I would be just as happy to die myself."

There is an element where all the facts of the crime are present, and it might be held the elements of intent are present, and yet there is a possible defence of provocation which is almost going to be impossible to adduce unless there is a full trial. In the case of rex vs. Cunningham which came up before Mr. Justice Wood in British Columbia, where a plea of guilty was accepted with great reluctance and the accused was executed, the judge did call the corroboratory evidence, or some of it, and had the accused psychiatrically examined and statisfied himself that the elements of the offence were there and felt he had no other course but to impose a death penalty. It seems to me that there are many cases where although the elements of defence are there, without a trial it is not possible to bring out some of them because he may—as you put it—wish to take judicial suicide. He should not be kept from going through a trial where that defence might be brought out.

The PRESIDING CHAIRMAN: Who is going to advance it if he does not want to?

Mr. FULTON: The counsel.

The WITNESS: There is some merit in Mr. Fulton's suggestion, although I am doubtful if it would add very much to the administration of justice. As I said in my opening when it came to a matter of the arraignment of the accused even if there has been a plea of guilty and certain evidence is given to the judge, if the judge then sees that there is some element that brings in justification for a manslaughter verdict and not murder such as provocation or any mental derangement or something of that kind, then I think the judge should, as I said earler, direct a change in the plea and there should be then a plea of not guilty and the trial then ensues.

Mr. FAIREY: The judge can insist on that.

The WITNESS: I will say it this way. I am speaking with a little hesitancy on this. I do not think he has the right to withdraw, against the will of the accused, but he should advise the accused and the change in the plea of the accused should be brought about in that way. I do not think there is any question of the result in practice.

Mr. BROWN (*Essex West*): If that is known to the Crown counsel does not that raise the duty of the Crown counsel in the case of capital punishment?

The PRESIDING CHAIRMAN: That is getting on the other side of the question. The simple question is whether there should be a compulsory not guilty plea.

Mr. FULTON: Yes.

By Mr. Murphy:

Q. My question refers to charges of murder only. I understood you to say there are only four grounds for challenges for cause open to the accused. And you mention the case where a juror on the panel has suffered the penalty for the offence. Obviously in capital cases if the juror suffered the penalty—A. For a criminal offence. Not a capital offence—He would not be there unless he had executive clemency.

Q. That qualification would not be open in murder cases?—A. Not a capital offence or a similar offence to which the accused stands charged, but that he had been convicted of a criminal offence.

Q. I would like to ask your personal opinion as to whether this should be broadened so that the family of anyone who has suffered the death penalty should be disqualified from acting as a juror?—A. I am sorry. Would you ask your question again.

Q. The question was: do you think that the immediate family of anyone who has suffered the death penalty should be disqualified from acting as a juror?—A. I should think that a Crown counsel would be negligent if he permitted it. I should think that it would be a most extraordinary circumstance.

The PRESIDING CHAIRMAN: I think the question was, if the person had been hanged there should be a disqualification to the members of his family.

By Mr. Murphy:

Q. Or his widow or husband, as the case may be?—A. I do not think that the whole family should be tarred with that stick. Do you think so?

Q. It may seem far fetched, but things like that do happen.—A. I think of the case, one case that I mentioned a while ago, in which the young man pleaded guilty, whose family were a most reputable family some of whom I knew. I would not want to disqualify them. I think that they would still be conscientious. I do not think that the whole family should be disqualified as members of a jury because one member of the family was a blacksheep.

Hon. Mr. FARRIS: Counsel can always stand them aside.

By Mr. Lusby:

Q. You say that you favour grand juries. Do you not think that that is very largely a useless duplication of the work already done by a competent magistrate?—A. I say this with great respect. A grand jury is a committee having no obligation to anyone; they are not standing for re-election; they are not expecting to have their salaries raised or reduced; they have no axe to grind; they are going to be grand jurors this year and may not be again in their lifetime. I think they are very reputable citizens who are chosen by the selectors to be the grand jurors.

They are under no obligation to anyone save the public generally; their position and livelihood is not dependent on how they discharge their due; they need have no fear or favour. They are pre-eminently in a position of independence.

Q. I think that they also have another function?—A. They inspect public institutions.

Q. That is not very often exercised in Ontario?—A. Almost invariably. For instance, in Toronto if there has been a grand jury at the winter assizes who have made an inspection, the jury at the spring assizes may decide that it is unnecessary: or similarly, in the case where the grand jury in the county courts has been functioning just recently. It is their right to do it, but they may think it is unnecessary. In my experience I find they are only too ready to be relieved of it.

By Mr. Shaw:

Q. There are two matters which concern me, but the unfortunate part of being this far down the line is that both my questions were asked. However, I have a supplementary question. First, a stress has been laid on the need for uniformity in administration of justice. Could you indicate those provinces in which the grand jury does function?—A. Just off hand I do not think that it is functioning in any of the western provinces or the province of Quebec, but only in the province of Ontario and in the Maritimes. I think I am right. I am being very provincial in my remarks.

Q. The second matter is the matter raised by Mr. Fulton. I have had many many persons indicate to me that a plea of guilty should never be accepted in a capital case. It has been indicated by Mr. Justice Hope that certain proof has to be brought before the court after a plea of guilty is registered. Therefore, there would be good support for never accepting anything but a not guilty plea. It is my view and the view of a great many people.

The PRESIDING CHAIRMAN: Now, Mr. Boisvert.

By Mr. Boisvert:

Q. I wonder if His Lordship would be kind enough to give us his opinion as to retaining our present jury system? I mean by that: should we not in capital crimes require a unanimous verdict from the jury, while in minor crimes we should not be content with a verdict returned by nine jurors? Would it be better to change our system and require unanimous verdict to be returned by the jury, or adopt a new system permitting a verdict returned by, let us say, nine jurors?—A. Unless I have been asleep with respect what has taken place in the legal world, I know of no change. All jurors in criminal cases must be unanimous. No nine men can bring in a verdict.

Q. In criminal cases?

The PRESIDING CHAIRMAN: In all criminal cases.

The WITNESS: In any criminal case a jury must be unanimous.

Mr. BOISVERT: I brought up the matter because a few years ago I acted as Crown prosecutor and I succeeded before a jury in getting a conviction. Then the case went before the Court of Appeal in the Province of Quebec and we lost the case because the judge, in his statement to the jury, said that the accused could be convicted on a verdict returned by nine jurors instead of 12.

The WITNESS: Of course he was in error.

Mr. FULTON: I hope there was an appeal.

By Mr. Boisvert:

Q. Do you think it would be a better system to have a verdict returned by nine, if you cannot get a unanimous expression of opinion?—A. I would not depart from the present system of insisting upon a unanimous verdict of the jury in a criminal case whether capital or otherwise.

Q. I am in full agreement with you.—A. There must be no question in the jurors' minds.

The PRESIDING CHAIRMAN: Now, Mr. Cameron.

By Mr. Cameron:

Q. My question arises out of the fact that I was not here last Thursday. Mr. Justice Hope did not comment on any trial within a trial as to the admissibility of voluntary statements, or with respect to the plea of insanity or the inability of the accused properly to instruct his counsel. Those questions may have been dealt with by Mr. Common on Thursday last, but I was not here.—A. Quite frankly, I read Mr. Common's evidence and I thought he dealt with something along that line, so I did not intend to go into all the matters of evidence. But you may know of cases which may be of interest to this committee, and to those of your members who are not au fait with criminal matters. Before a confession or a written statement by way of a confession can be received—if the defence counsel takes any objection to it—of course, if he says: I am not objecting, then it can go in and there is no necessity for a voirdire. But if there is any question, even the slightest question of a confession being admissible as evidence, then there is a trial within a trial, as Mr. Cameron properly says; and during that trial within a trial the jury is excluded from the courtroom so that they do not hear any of the discussion or the evidence. And even the accused may enter the witness box and testify, even though he may not give evidence in the trial proper at all. But he may testify before the judge alone and be questioned as to whether the statement is in fact a voluntary statement.

I am speaking personally of course, and we all fall down; all the judiciary fall down sometimes, I suppose, but generally speaking the members of the

bench are most punctilious in excluding a statement if there is the slightest question of it having been induced by any means which are improper; and it is only if it is purely a voluntary statement that it will be admitted, and it is only received after proper caution and so on as to the accused having been first cautioned.

The PRESIDING CHAIRMAN: Our counsel has a question to ask.

By Mr. Blair (Counsel for the committee):

Q. Mr. Chairman, I have two questions with which I hope the witness will deal. I wonder if Mr. Justice Hope would give us an opinion on the suggestion that is sometimes heard that it would assist the administration of justice to define various degrees of murder and to have different punishments for them; and also would the witness care to comment on the problem which may arise where accomplices in other crimes, from which murder may result, sometimes are charged with the crime of murder?—A. That is: where there is a joint venture?

Q. A joint venture, yes, and the problem of constructive malice?

The PRESIDING CHAIRMAN: Constructive murder.

The WITNESS: Yes, constructive murder. I think, Mr. Chairman, that the provisions of our code are very adequate at the present time. I cannot see any benefit to be gained by classifying murder into first, second, third, or other degrees.

All the elements which we see here and in other jurisdictions where they have first and second degree murder are present in our codification and have become part of any reduction of the crime from murder which would be a capital offence to manslaughter which would be an imprisonment offence.

Now then, what is the guilt of joint offenders, or rather those who are on a joint venture of crime wherein some other offence is committed, such as bank robbery or something of that description, and in which one of them shoots somebody. I think the provision of the present law is adequate for it and is the only sensible one. Sometimes the man who does not pull the trigger is the man who is the most culpable. That could quite readily arise where he, the man who has not the gun at all, is the dominating mind in the endeavour, and has armed or has given a gun to one of his confederates and has said: "You stand here, and if anything happens, you knock him out." He would be much more to blame and much more to be censored criminally than probably a weak-minded youngster who had had the gun put in his hand and who simply did as he was told. Therefore, I think we can say that the offence is fairly adequately covered at the present time. In fact, I do not know how you could better cover it.

You will think that I am being horribly conservative in my view of the criminal law, but these are developments which have come about over a great span of years and I am always fearful of innovations being suggested unless we know, or are pretty sure of, the grievance which may be thought to exist under present conditions. Unless we are pretty sure that no worse conditions are going to arise by reason of the innovation, we might get more complications in our administration of justice than we now have. After all, there is a great deal of latitude in the courts to see that justice is done.

The PRESIDING CHAIRMAN: In the case of which I am thinking, the accused may be merely a lookout; he may be sitting in a car waiting for the getaway, while the actual crime may be that somebody is going in to rob a store, and in doing so some emergency develops and a gun is fired and somebody is killed. According to our present law, the chap who is sitting out in the car, although he has no way of knowing what is actually taking place, yet he is liable and may be charged with murder the same as the man who fired the shot, and upon conviction he may be hanged as well, under our law.

The WITNESS: Again, I would think that that would be one of the circumstances which would be covered by executive clemency.

Mr. WINCH: Apparently it does not work that way. I have seen only one man hanged, and that was a young man of 19 years of age, and he was the driver of a car and he was unarmed, and he was hanged.

The WITNESS: He may have been. I do not know all the circumstances. There was a murder in Mount Pleasant. There were none of them hanged.

The PRESIDING CHAIRMAN: The jury took the step and found them guilty of manslaughter.

The WITNESS: They were sentenced to imprisonment.

The PRESIDING CHAIRMAN: Yes.

The WITNESS: I am venturing into a field that is not my own, but I think the ministry's statistics would disclose that in cases like that, where it is not the dominant mind but only a poor weak creature going along assisting, I doubt if there is any instance of the death sentence being carried out in cases like that.

Hon. Mr. GARSON: I think it depends a great deal on all the circumstances of the crime, generally speaking. Some of the most cold-blooded, premeditated, deliberate crimes of murder that could be found are those where a group of people arm themselves with submachine guns and propose to shoot everybody down in the course of, say, a night-club holdup, and any man who, if the evidence indicates, goes deliberately into an enterprise of that sort is pretty well underwriting its consequences. Why have they taken the guns with them if they do not propose to use them? If the basis of the punishment is, as I take it from the discussion now going on, moral culpability, is that not a much greater moral crime than some murders committed in anger or through misadventure without any particular intent at all? A man who sits in a car and acts as a lookout, and so forth, can hardly be unaware in most cases—there are exceptional cases—that the gang is well armed and that they are taking the arms along so that, if necessary, they can shoot their way out, and that some person is going to die. In any individual case, if it can be established that the particular accused in question, in respect of whom commutation is being sought, absolutely did not know that they were carrying guns—he found out afterwards that one of his pals carried along a gun and he did not know anything about it at all—that is one case. The other case is where they all go to a cache somewhere and they hand the guns out and there is not a gun left over for him and he has to look after the car; that that man should be any less guilty of a joint enterprise of that sort than the people who do the shooting, is something else—

Mr. FULTON: Even in the first case the man is convicted of murder.

Hon. Mr. GARSON: Yes.

Mr. FULTON: That is the question we are directing our minds to here. Is he actually guilty of murder? You say that in those circumstances he might have the chance of a reprieve, but still he is convicted of murder, and you have asked the jury to convict him of murder, which involves an element of intent. I wonder whether we should not have the two degrees.

Hon. Mr. GARSON: The question which arose in the recent British commission and which is now before the present committee.

Mr. FULTON: I was going to ask Mr. Justice Hope to comment.

Hon. Mr. GARSON: It is as to whether what is in this context called, I believe, constructive murder should be included in the law of Great Britain or of Canada, and it is the law here now that if he goes out on an enterprise of that sort, if death results, he is guilty of murder.

Mr. FULTON: That is right.

Hon. Mr. GARSON: In the terms of the Code.

Mr. FULTON: We do not have to call it "constructive murder". It is murder under our Code.

Hon. Mr. GARSON: But to distinguish that from the actual commission by the man himself of the act of murder, it is called constructive murder.

Mr. FULTON: They put it in these words at page 36 of the royal commission report:

> There is certainly a striking contrast in moral turpitude between the man who shoots at his neighbour's fowl and the man who commits rape or robbery, but we must not allow this to obscure the crucial question, whether it is right that a man should be convicted of murder for causing a death which he neither intended to cause nor foresaw that he was likely to cause, solely because he was at the time engaged in committing a crime.

Put in that way, do you still think that there is no room for first and second degree of murder, which would be found by the jury and not by the judge?

The WITNESS: I think there is room in such circumstances, under our present law, for bringing in a verdict of manslaughter and for so charging the jury. I may be mistaken, Mr. Chairman, but my recollection is that there was a recent case in England in which there was a robbery of a wholesale—a couple of youngsters—

Mr. THATCHER: The Bentley case?

The WITNESS: Yes, that is right. I believe it was Bentley who was hanged—the one who was hanged wasn't the man who shot the revolver at all—that is my recollection—

Mr. FULTON: He was too young.

The WITNESS: That was it—I had forgotten the circumstances.

Mr. FULTON: He was under 18—16, I think.

The PRESIDING CHAIRMAN: Bentley was in custody at the moment of the shooting.

Mr. LUSBY: I do not think that is a question of responsibility; a man is reprieved because of his youth.

Mr. THATCHER: Mr. Chairman, does our law call for premeditation to prove a murder case? Doesn't there have to be premeditation?

The WITNESS: That is a bad word.

Mr. THATCHER: I am not a lawyer, you will excuse me.

The WITNESS: I would say under the provocation clause in our Code, if it is unpremeditated and is done on sudden impulse where a man, let us say, finds his wife is unfaithful to him, it does not entitle him to murder her. It might entitle him to divorce her.

The PRESIDING CHAIRMAN: Gentlemen, it is 1 o'clock.

Mr. FULTON: Will we have the opportunity of hearing Mr. Justice Hope again?

The PRESIDING CHAIRMAN: That is for the steering committee to decide. We will have to have a meeting of the steering committee shortly. Before we adjourn, I would like permission to express the thanks of the committee, coupled with my own, to you, Judge Hope, for your presentation.

Hon. MEMBERS: Hear, hear.

EVIDENCE

WEDNESDAY, March 10, 1954,

4.00 P.M.

The PRESIDING CHAIRMAN: Gentlemen, if you will come to order we will proceed with the business of the committee.

You will recall that on March 4 we were honoured in having Mr. W. B. Common, Q.C., Director of Public Prosecutions of the Attorney-General's Department with us. He made a presentation chiefly in connection with capital punishment. Mr. Common agreed at that time to come back and have another word to say to us in connection with not only capital punishment but corporal punishment and lotteries. If it is your pleasure we might hear from Mr. Common now.

Mr. W. B. Common, Q.C., Director of Public Prosecutions, Attorney General's Department, Province of Ontario, recalled:

The WITNESS: Mr. Chairman, thank you.

For the purpose of the record, the last day I was here I think Mr. Fulton asked me if I could supply some information regarding legal aid in Canada. I have a reference to the report of the legal aid committee of the Canadian Bar Association presented at the annual meeting at Quebec City last September which I think pretty well exhaustively sets out the geographic application of legal aid. It appears in Chitty's Law Journal, January issue, volume four, number one issue. There are also two articles appearing in the Canadian Bar Review dealing in a more detailed manner with this subject, and the first is legal aid in Canada, Existing Facilities, By Mr. John Nelligan, a Toronto lawyer. It appears in 1951 volume, 29 Canadian Bar Review, page 589. Another article by the same author, entitled "Legal Aid in Canada, The Need," appears in volume 31 Canadian Bar Review at page 752.

There was one other matter, Mr. Chairman. Senator Farris asked a question the last time I was here and I asked to be excused from answering it, but I really did not understand the purport of his question at that time, and I think I asked to be excused from answering it a little too hurriedly. The question I believe was "Was there any reluctance on the part of juries in capital cases to convict having regard to the inevitable sentence of death if the accused is found guilty?" My answer is I can find none. That is, if the Crown's case is proven beyond a reasonable doubt—and of course no doubt being established by the defence on any of the defences which are open to him—I do not know of any reluctance on the part of a jury if a case is clear and that inevitably they will convict. Now, there are some cases which I mentioned the other day in which perverse verdicts are sometimes returned by juries for what reason no one particularly knows. I think that is all.

Hon. Mr. HAYDEN: That is not limited to capital cases?

The WITNESS: That is not limited to capital cases by any means.

Now, with your permission I would like to deal with the question of corporal punishment first, if that meets with your approval.

The PRESIDING CHAIRMAN: Agreed.

The WITNESS: Corporal punishment at the moment is confined to or provided for in eleven sections of the Criminal Code. There is some suggestion that there are twelve, but I can only find eleven. I may be wrong. They are as follows: Section 80, assaults upon the sovereign, providing seven years imprisonment and whipping, once, twice or thrice. Section 276, strangling to commit an indictable offence, life imprisonment and whipping. Section 292, indecent assault on a female, wife beating, or beating a female; two years and whipping. There is some modification of that in the case of an indecent assault on a female in view of the summary trial provisions of part XVI, that if the magistrate tries it, he is limited in his punishment to six months determinate without corporal punishment. Section 299, rape. The extreme sentence there, of course, is death or life imprisonment with or without whipping. Section 300, attempts to commit rape, seven years and whipping.

Section 301, carnal knowledge of a girl under the age of fourteen; life imprisonment and whipping.

Hon. Mr. FARRIS: Is that alternative or consecutive?

The WITNESS: That is alternative.

Section 302, attempt to have carnal knowledge of a girl under fourteen; two years and whipping. Section 293, indecent assault on males with intent to commit sodomy or indecent assault on a male; ten years and whipping. Section 457, burglary, or housebreaking as it is commonly called, while armed with an offensive weapon; life imprisonment and whipping. Section 446, armed robbery; life imprisonment and whipping. Section 448, assault with intent to rob, three years and whipping.

The other relevant sections of the code are sections 1060 which provides that whipping shall be administered once, twice, or thrice—that is the terminology used—according to the quantum of sentence, and it is to take place under the supervision of the medical officer of the particular prison where the accused man is incarcerated. And if no regular medical officer there, then one will be nominated by the Minister of Justice where the corporal punishment takes place in a penitentiary, or by the Attorney General of the province where the punishment is administered in a provincial institution.

The cat-o-nine-tails is the instrument specified by the code unless some other instrument is specified in the sentence, and the number of strokes of course must be specified by the sentencing tribunal as forming part of the sentence.

Corporal punishment under that same section is to be administered at a time to be determined by the official in charge of the prison but must not take place less that 10 days before the expiration of the sentence imposed, that is the incarceration aspect of the sentence.

And as to the whipping of females, they are exempt from corporal punishment. Section 1060 subsection 4 prohibits the infliction of corporal punishment upon females.

I think those are the only sections in the code as presently constituted that provide for the imposition of corporal punishment.

By Mr. Farris:

Q. Is there any case where it is not discretionary?—A. No, there is not.

Q. When you say, for example, two years and whipping, does that mean both?—A. No. It is alternative. He can get imprisonment without whipping, or imprisonment with corporal punishment.

The PRESIDING CHAIRMAN: I wonder if the members of the committee would kindly reserve their questions until the witness has completed his presentation. It would be appreciated not only by the witness but also by the other members of the committee.

The WITNESS: With your permission, Mr. Chairman, I should like to confine my remarks to the question of corporal punishment as forming part of the sentence imposed by the tribunal of trial, and to omit from any remarks that I make corporal punishment as a corrective measure for infractions of penal institution rules such as penitentiary rules or jail rules or reformatory rules. I think other witnesses who are better qualified than I am from the custodial point of view should be called for that purpose because personally I have only a sketchy knowledge of it.

A great deal of controversy of course has been stirred up over the question of corporal punishment, and a great deal has been written about it. It has been the subject of inquiry by several bodies set up in the United Kingdom and elsewhere and I believe it has received in this country the attention of boards of inquiry. But notwithstanding that, as far as Canada is concerned, we still have retained corporal punishment. In the United Kingdom, however, by virtue of the Criminal Justice Act of 1948, corporal punishment was abolished. So far as England, Scotland and Wales are concerned, corporal punishment no longer exists in those jurisdictions.

I feel myself—and I am expressing my personal view—that corporal punishment under certain circumstances should be retained. I feel that as far as repeaters or recidivists are concerned, considerable care should be exercised by the trial judge in imposing corporal punishment by reason of the fact that in 1947 Parliament enacted the Habitual Criminal part, which is Part 10-A of the Criminal Code.

I mention it for this reason: that if a man appears before a tribunal of trial with an extensive criminal record and the Crown officials have not seen fit to proceed against that individual as an habitual criminal, then considerable caution should be exercised by the trial judge in the exercise of his discretion as to whether or not he should impose corporal punishment, because it is open to the prosecution having regard to this man's extensive criminal record—to institute habitual criminal proceedings and take him out of circulation for an indeterminate period as provided for by that part.

One could have this situation and it would be inhuman, of course, that notwithstanding the fact that the man was found to be guilty of, let us say, armed robbery as a substantive offence, the Crown might then proceed against him as an habitual criminal and that the sentencing trial judge could impose a substantial substantive penalty plus whipping and put the man away for an indefinite period of time. It does not add up from a humane point of view. Therefore, in so far as recidivists are concerned, I suggest to you that considerable caution should be exercised regarding the infliction of corporal punishment where it is open to the prosecution to proceed against that individual as an habitual criminal.

Now in regard to a further controversial question, that of sex offenders, again I would suggest for your consideration that the question of corporal punishment be carefully reviewed where there is any suggestion of a psychopathic condition existing in the accused. And so for that reason, again, in 1947 parliament enacted section 1054-A providing for indefinite detention of a criminal sexual psychopath. The procedure is set out therein and I will not take up the time of the committee by going through it. It is very simple. And the evidence against the accused, if he is so charged, must be testified to by two psychiatrists, one of whom is appointed by the Attorney General of the particular province wherein the prosecution takes place.

Now, if there is any suggestion at all that the accused person is a criminal sexual psychopath, there is a provision existing now to proceed against him and if he is so found, he may be committed to a penal institution for an indeterminate period subject to review by the Minister of Justice, every three years.

Later on I shall be coming to the question of the pre-sentence report, and what I have to say at this moment is in the light of what I shall have to say a short time later on the question of the pre-sentence report.

I think the members of the committee will agree with me that if there is any suggestion or any evidence of a psychopathic condition that is brought to the attention of the sentencing tribunal, the imposition of corporal punishment on particular sex offenders should be carefully considered, in view of, as I said before, the provisions in the existing law to take care of that man by a proper procedure.

Now, we hear a great deal from the public or from a great section of the public to the effect that no convicted person should be subject to corporal punishment; and there are others, of course, who are opposed to the view. As I said before, I am not opposed to the imposition of corporal punishment. It is my opinion that it is not the principle of corporal punishment that is so objectionable, but the probable misunderstanding as to the proper application of the principles of corporal punishment in proper cases. If it is refused in proper cases and is imposed in improper cases, it might result in a miscarriage of justice as far as that particular individual is concerned. My experience has led me to this conclusion, that in so far as Ontario is concerned —and I can speak only for that province—the policy of the judiciary there is, that it is opposed to the imposition of corporal punishment in addition to a long term of imprisonment. The policy of the court of appeal as demonstrated on numerous occasions has been to cut down or remit the corporal punishment if the sentence is a lengthy one. In other words, if the sentence for rape is, say, 10 years in the penitentiary plus 15 strokes of the strap, the court of appeal, other matters being equal, have consistently either remitted the strapping and let the sentence of imprisonment stand or reduced the term of imprisonment and allowed the corporal punishment to stand. I think the policy is not without merit, and it certainly has a humane aspect to recommend it.

Now, in the question of crimes of extreme brutality or vicious premeditated violence, whether it is a question of sex offenders or offences against the person or property, I feel that the retention of corporal punishment as a warning and deterrent to one who is so inclined is desirable, providing again that there is no psychopathic condition or there is no evidence of any psychosis.

There is unquestionably in the country today a strong movement toward greater probation. We are all, I think, becoming a little more probation-minded in this country. We may be rather late in arriving at that stage, but the question of probation is receiving the attention of the provincial authorities right across Canada. In Ontario at the moment we are setting up a complete and effective probation service. That probation service includes parole officers and probation officers who can make exhaustive reports as to the social, domestic and economic backgrounds of an accused person, which may give some light on the facts responsible for his misbehaviour. It is hoped—and I might say that we are doing it in a small way at the present time, and this is a gradual process—that in a great number of cases the courts are utilizing the services of the probation officers by obtaining from them what we call a "pre-sentence report". That is, the man is convicted, he is remanded for sentence, and the magistrate or judge, as the case may be, when he is in some difficulty as to the appropriate sentence that should be imposed, asks that a probation officer's report be supplied to him before he imposes the sentence. Now, my own feeling is that pre-sentence reports, especially in the case of corporal punishment, are very desirable. It not infrequently happens that in the great volume of cases that go through our courts these days—and I am not suggesting for one minute that the administration of justice suffers in any sense from that, because our judiciary is patient in seeing that every right of the accused is protected—sometimes the defence or

prosecution overlooks the request to the trial judge or magistrate in proper cases—not every case, because our courts would be completely bogged down if we required a pre-sentence report in every case—but in proper cases the defence or prosecution sometimes overlooks the request for a per-sentence report. That is in the type of case where the law as presently constituted provides for corporal punishment, and there is probably some doubt. I am strongly of the opinion that a pre-sentence report should be obtained by the convicting magistrate or judge to enable him then to assess the entire situation and to enable him to come to a conclusion, having regard to the record of the accused, his social background and his pattern of behaviour over the past few years and so on, as to whether or not is a proper case for the infliction of corporal punishment. It frequently happens that there are some aspects of the accused's behaviour, or the reasons for it, that are not disclosed during the course of the trial. Possibly the Crown does not know them, and it may well be that the defence counsel does not know them. It is only by a searching inquiry by a probation officer that certain aspects of the habits, behaviour and other conditions surrounding the accused come to light, which will be of great assistance to the sentencing judge.

The other provinces, I am informed, are coming along very well in the establishment of probation services, and great advances have been made in the last few years in this regard. The officers usually are well trained, well equipped individuals who are properly qualified to make exhaustive reports regarding that particular individual. That probation report or pre-sentence report, of course, is also available to the court of appeal if that court desires some information which is not disclosed by the record when dealing with an appeal against sentence. I might say that there is nothing in the Criminal Code, of course, as it exists at present which provides for pre-sentence reports. It might well be the view of this committee after hearing all the "pros and cons" on the question of corporal punishment that the requirement of pre-sentence reports might be provided for by law before corporal punishment is imposed. That is merely a suggestion for your consideration.

Now, the committee might well consider if it is the recommendation that corporal punishment be retained, whether or not it should be confined to the offences which are now provided for, or whether it should be extended to other offences. There have been a great number of suggestions, both in the press and elsewhere, that strapping or caning might be extended to youthful offenders under certain circumstances, and I feel—and I am speaking entirely personally when I say this—that it should be so extended in certain cases. For instance, we have a great number of thefts from the person, which are commonly called "purse snatching" from women. In a great many of the cases of this type with which I have had to deal, I have found that this is accompanied generally by violence and these offences are committed by youths who specialize in that particular form of occupation. It might well be considered that a person who is a persistent purse snatcher might be subjected to some corporal punishment.

There are cases of armed robbery, of what I term a "minor character"—I don't know how better to express it: I am not speaking now of the hardened bank robber, but the young thug who goes into the little corner cigar store and probably intimates that he is armed and snatches a handful of change out of the cash register. There is no difference in principle between this youth and the man who holds up a bank,—it is armed robbery,—but we look upon the former offence as being of a somewhat lesser degree. The committee may feel that corporal punishment may be extended to youthful offenders who persist in that type of crime of armed robbery. Armed robbery is the only way we can define it, although we usually say it is of a minor character, and not of the vicious nature with which we all too frequently have to deal.

The same applies to minor cases of housebreaking. I am impressed, from time to time, when looking at criminal records of youthful offenders who have reached the age of 21 or 22, to find it is not uncommon that their records contain some four or five instances of housebreaking. Usually these are instances wherein the boys slide in cellar windows and rifle in drawers and pick up odd bits of valuables, and so on. It seems to be a fetish with that type of individual to break into homes—not to steal anything of any partirular value—but small articles.

Assaults on citizens and peace officers. Again, we find cases where street corner hoodlums prey on citizens, and if the police come along, as they do in some cases, it often results in assaults on police officers. Again I often find, when looking over criminal records, that a great number of assaults on police officers occur among youthful offenders. And assaults with attempt to avoid arrest.

Concerning motor car thefts, again you find in the cases of youthful offenders a pattern of motor car thefts which a benevolent prosecutor proceeds with as joy-riding or taking a car without the owner's consent. The minimum penalty for the theft of a motor car, as you know, is one year. When you have youthful offenders who are stealing cars really for joy-rides, and some of them seen to have a phobia for that sort of thing, the imposition of corporal punishment might, in certain circumstances, be a deterrent to him and to others.

Disorderly conduct of a persistent character is again often found in the record of youthful offenders who I shall term "street corner hoodlums" who seem to delight in raising Cain in various places—in restaurants, and on the street. Often the youths are brought in on a disorderly conduct charge and you find again a repetitious pattern. This also might be an instance where corporal punishment might serve as a deterrent to others who are so inclined.

In all these offences I have cited, Mr. Chairman, I qualify my suggestion with this: I am not suggesting that the Criminal Code be amended to include corporal punishment for these offences—I merely suggest for your consideration that it might be done if all reasonable probation fails. If reasonable probation fails, or has failed, then I advocate, for your consideration, the question of corporal punishment, and it is suggested only for these cases where the accused person exhibits an entirely anti-social attitude and a complete and continuing disregard of the rights of others, resulting in almost, a determination to conduct himself in a criminal manner. I think that concludes what I have to say, sir, on that point.

The PRESIDING CHAIRMAN: Would you like to proceed then with your other point on lotteries, if that is agreeable to the committee.

Mr. THATCHER: Could we question in this item first, Mr. Chairman?

The PRESIDING CHAIRMAN: It is now a quarter to five: would you like to establish a definite period of time for questions on this subject?

Mr. THATCHER: Let us question on this item before we go on to lotteries. Wouldn't that be more orderly?

The PRESIDING CHAIRMAN: It might be more orderly, but the question of time is involved. The committee, of course will make its own rules and regulations—whatever the committee wants to do will be done.

Mr. THATCHER: Unless there is some objection, Mr. Chairman, I would move we question the witness now.

Mr. BOISVERT: Yes.

The PRESIDING CHAIRMAN: Is that agreeable to the committee?

Hon. MEMBERS: Yes.

The PRESIDING CHAIRMAN: Apparently it is agreeable to the committee. The practice which was instituted by Senator Hayden the other day seemed

to be quite satisfactory, whereby we went along the table and took the questions from the members, allowing a limited time for questioning in order that no one person could have a monopoly on the time. Probably we could start with Senator Veniot down there?

Hon. Mr. VENIOT: I have no question.

The PRESIDING CHAIRMAN: Mr. Shaw?

Q. I have one question. Could you, Mr. Common, give me any statistical informtaion with respect to repeaters in the province of Alberta? That is, persons subjected to corporal punishment who have become repeaters?—A. I rather doubt that I have that information. The Dominion Bureau of Statistics may have it in their judicial statistics. I will see that you get it, sir, if it is available. You are referring to repeaters who have been previously sentenced to corporal punishment, are you not?—A. Yes, and where corporal punishment has been carried out.

The PRESIDING CHAIRMAN: Mr. Dupuis?

By Mr. Dupuis:

Q. Could Mr. Common tell us if there is any other type of corporal punishment, other than whipping, which is used in other countries?—A. In England, before it was abolished, they had what they called "caning", which I suppose was the time-honoured birch rod used by school masters. This was used for youthful offenders in England. We have never done that here. We have only had the two forms of corporal punishment—the cat-o-nine-tails and the strap. It is sometimes said that the strap, in the popular conception is less vicious than the cat-o-nine-tails, but I am told that from the point of view of actual pain or hurt, the strap causes more pain than the cat-o-nine-tails. Concerning the forms of rendering corporal punishment, I think it should be confined only to the cat-o-nine-tails, the strap, and the birch rod.

Q. You do not know of any other form of corporal punishment?—A. At the moment, Mr. Dupuis, I cannot think of any other form.

The PRESIDING CHAIRMAN: Mr. Lusby?

Mr. WINCH: What about the paddle?

The WITNESS: The paddle is used, but I think it is a common name for strap. I think it is called a paddle because the strap has a handle on it, and looks like a paddle.

By Mr. Lusby:

Q. This perhaps is an assumption I have made from what you have stated, but I gather that you think, from the deterrent point of view, corporal punishment is more effective for the young offender than for the hardened criminal?—A. I really think so. I envisage this sort of thing. Unfortunately today, some young offenders who have been imprisoned look upon it as a mark of distinction, rather than something to be ashamed of, and they go back to the street corner and feel somewhat proud that they have spent a certain length of time in a reform institution. I think the same individual would not be so brash if he has been paddled by a burly policeman or prison attendant and received a certain number of straps over the buttocks. It is the humiliation and indignity which accompanies corporal punishment which I think is a most emphatic deterrent.

Q. Can you tell me if any of these forms, the cat-o-nine-tails or strap or cane, or whatever it might be, would leave any permanent marks or scars?—A. I would rather this come from another witness, as I have never witnessed one of these events, naturally. I am told, however, that the cat-o-nine-tails

will leave some marks, but that the strap leaves only a certain amount of bruising which is not of a particularly permanent nature. I would much rather that would come from some person who has had custodial experience, and has actually witnessed one of these inflictions.

The PRESIDING CHAIRMAN: It would depend on how severely it was imposed?

The WITNESS: Yes.

By Mr. Lusby:

Q. I saw last night in the paper that some committee recommended the strap?—A. That was the select committee of the legislature of Ontario. They had a select committee go into the matter of provincial penal institutions. Unfortunately time did not permit me to study the report. But, they did recommend, as I understood it, the retention of corporal punishment for infraction of institutional rules. I am not sure what they have done on this general aspect of corporal punishment.

By Mr. Boisvert:

Q. How many cases did you have of corporal punishment in Ontario last year?—A. It would only be a guess because complete statistical records are not kept in one central place in Ontario. I would think—I am merely hazardous a guess—not more than a dozen.

By Mr. Cameron:

Q. You mentioned, Mr. Common, more or less, the policy of the court of appeal. I was wondering if the Crown attorney's office had any way of passing on a sort of general policy to magistrates and judges and so on in respect to the infliction of corporal punishment, the circumstances in which they think it would be appropriate and not appropriate, other than the judge's reading the reports in the court of appeal. I have in mind that one magistrate may say: I think this boy or this prisoner should be whipped; and another one in exactly the same circumstances would think otherwise. Is there any set policy?—A. No, there is no set policy. That again is the weakness—I should not say the weakness of the law, but probably the weakness of the application of the law—because the human equation from the judicial level comes into play, and some judges are personally opposed to the infliction of corporal punishment, and others are not so inclined. That determines the result in a lot of these cases.

Q. Of course you cannot control them, but is there any reason as a matter of policy that you cannot say under the circumstances this is a case where thus and so should be the sentence?—A. In some cases I do know where the prosecuting counsel—Crown attorney—in moving for sentence has suggested that the type of case is one where corporal punishment should be inflicted. But, I might say there has been no general direction go out from the Attorney General on that. It is more for the individual Crown Attorney to use some discretion, having regard to the nature of the case before him, in making what he considers are the proper representations.

By Mr. Murphy:

Q. Sir, in regard to the extension of corporal punishment to certain other offences, I notice that the offences themselves are more or less violent offences and it would seem to me that these offences are more common in seaports, new mining areas, and new frontiers and the like, and it would appear to me to be caused by violence, and violent background rather than cured by extension of violence in the way of corporal punishment to these crimes?—A. With respect, I am not familiar with the conditions of seaport towns or the frontier

areas, but I do know these conditions do exist in the urban centres and the more settled areas of the country. I qualified my remarks, if you will recall. If reasonable protection has failed, if sentence has been suspended in a great number of cases and the person has been put on probation, and all these reformative efforts have failed, it is only then that I feel that consideration should be given to extension of corporal punishment to this type of offence. I do not advocate on a first offence that an offender be strapped, but if it is evident in the pattern of conduct that he will not desist from that sort of thing and he has had the benefit of probationary facilities, then the extension of corporal punishment to that type of offender might be considered.

Q. Just one short supplementary question arising out of the actual corporal punishment. You stated that there was a certain indignity to the punishment in applying the strap to the buttocks. Do you not think that that is one thing that a person should not be subjected to, human indignity?—A. I am all for the preservation of human dignity, but you probably misinterpreted what I said. It is this youthful offender who brags about doing three months or six months in jail who comes back to the street corner and says "I spent six months in jail, I am a big-shot," but the braggadocio attitude disappears if he has been strapped in there by a burly prison official to the knowledge of his fellow companions because of the inferiority aspects of the thing; he has been subjected to this corporal punishment by some official which is the indignity. It is a subjective matter to him. I do not know if I have made myself clear on that.

Q. Yes, you have, but if it were I it would turn me in the other way.—A. It is a matter of opinion. I again emphasize the fact that I am only suggesting this in the case where reasonable probation has failed; where this man has received reformative measures and persists in this behaviour

By Mr. Mitchell:

Q. I was interested in Mr. Common's remarks about the habitual criminal and the criminal sexual psychopath in which I gatherer he feels the use of corporal punishment in those cases is useless or less than useless, and I would like to ask him what effect the new sections to which he referred have had and whether or not the prosecuting attorneys have had success in obtaining the necessary warrant to put those people away?—A. Insofar as the habitual criminal is concerned, we have had—I do not like using the word success when it comes to prosecuting—desired results have been obtained, if I may use that expression. The habitual criminal section in Ontario—and I think the other provinces having regard to the law reports I have seen have been utilizing the section—has been utilized in proper cases and has had the desired results. There have been very very few cases of habitual offenders where they have not been so found. On the sexual phychopath's I think in Ontario—and I am speaking only of Ontario—we have had three cases where the proceedings were launched and they were so found in each case to be a criminal psychopath.

Q. How many cases would you say there have been of habitual criminals so far?—A. I think at the moment in Kingston penitentiary there are something like a dozen, in round figures. I may be mistaken in that. It is just a guess. As the other penitentiaries, I am not sure. You see, most of these habitual criminals, strange to say, are the result of drug addiction. That is the pattern usually found with one or two exceptions. I cannot really give any definite information on that. I feel quite sure that Mr. Macleod, from the Department of Justice, and perhaps someone from the penitentiaries branch, could give you accurate figures on that aspect of it.

Q. These two provisions then affect but a very small proportion?—A. Yes, a very small proportion, I must concede that. But might I qualify my answer by saying that these two parts, the habitual criminal and the criminal sexual psychopath parts of the code, are being increasingly utilized and more attention is being focused on them. There are more and more frequent prosecutions as time goes on.

The PRESIDING CHAIRMAN: Now, Mr. Thatcher.

By Mr. Thatcher:

Q. I wonder if you would mind describing to the committee exactly what the cat-o-nine-tails is, and also what the strap is?—A. I must confess I have never seen a cat-o-nine-tails, but I have seen a strap. I think the cat-o-nine-tails is a stick with thongs connected to it at one end. How many thongs there are, I do not know, but that is a general description. The strap, I believe, is an instrument about 18 inches or 24 inches long, that is the strap itself, and about 3½ inches wide, and probably one-eighth of an inch thick, to which a handle is attached at one end. In most of these institutions they have a strapping machine. The accused is strapped to the machine, more or less handcuffed to the framework; he is locked into it—and his feet in the same way—in a bending position. That is the basic position. His buttocks are exposed and the strap is applied.

Q. I wonder if it would be possible for the committee to see each one of these weapons? Could we have one brought here I do not know whether Mr. Common could get one for use?—A. I think that the penitentiaries branch could supply one very easily.

The PRESIDING CHAIRMAN: That matter will be referred to the subcommittee. I do not think we should attempt to administer a whipping before the committee.

Mr. THATCHER: I would like to see both of those weapons, and unless it is too cumbersome, I would like to see the machine Mr. Common mentioned, to which they tie the accused.

Mr. WINCH: I think we should see it as well.

The PRESIDING CHAIRMAN: It may be that the committee in its wisdom might desire to take a side trip at some time, perhaps on a Saturday, to some institution.

Mr. WINCH: If we did so, Mr. Chairman, can you guarantee that we would get out again?

The PRESIDING CHAIRMAN: I can only speak for myself. I know that I can get out. I think however the matter should be considered by the subcommittee on agenda and procedures.

Mr. BOISVERT: Why do you not go out and rob a bank?

By Mr. Thatcher:

Q. I wonder if Mr. Common could tell us how many lashes are usually given at one time?—A. It all depends on the report, I take it, of the medical officer of the insitution where the man is to receive corporal punishment, depending upon his physical condition. If he gets five lashes, he might get them all at one time; but if he is to have 15 lashes, he might get them three times, five each time.

Q. I was rather shocked when you said the cat-o-nine-tails sometimes leaves permanent marks.—A. I am not qualified to say that. When I said that I probably should not have done so. Quite frankly I do not know. I did hear

at one time that the cat-o-nine-tails usually did but that the imposition of the strap did not. I would rather that answer came from some one in the custodial branch who would know more about it than I do.

Q. Usually when a man is lashed, must he be hospitalized, or is he seriously injured?—A. Again, I have never witnessed one of these things. It is not in my line, naturally. And as far as reform institutions are concerned, if you could get as a witness Colonel Basher, the Deputy Minister of Reform Institutions, I know he is thoroughly familiar with that aspect of the matter. What I tell you now on that matter is purely hearsay evidence.

Q. Do you know, Mr. Common, of cases where there has been permanent injuries after a man has been strapped?—A. I have never heard of any.

Q. Have you ever heard of specific cases where death has come about if the kidney was hit, or something like that?—A. No sir, I have not, and I would have heard, because we would immediately have ordered an inquest.

The PRESIDING CHAIRMAN: Mr. Thatcher, do you not think that question has already been answered when the witness said that he has no personal knowledge of these matters?

By Mr. Thatcher:

Q. Very well, perhaps so, Mr. Chairman. Now, Mr. Common, are there any crimes in Canada where whipping is mandatory?—A. No.

Q. But you think, so I understand, that corporal punishment should be retained because it is a deterrent?—A. Yes, I do.

Q. That is your main reason?—A. Yes sir.

Q. I was rather shocked again when you suggested that it should be extended. Maybe I did not understand the committee's reference but I thought we were going to discuss whether whipping should be abolished?—A. I may have been transgressing the terms of reference, Mr. Thatcher, I do not know.

The PRESIDING CHAIRMAN: I think we are to (investigate) and report. It is only a report. Whether it goes up or down is a matter for this committee to decide.

By Mr. Thatcher:

Q. The extensions which you recommended, I noticed, were mostly for youths, such as for purse snatching, youngsters who steal cars, and minor cases such as house-breaking and so on. Would you not think that in lashing youngsters like that it would tend to be so brutal that it would embitter them for life?—A. I am not suggesting the cat-o-nine-tails at all. I am suggesting paddling with a strap, not the cat-o-nine-tails.

Q. You feel that the paddling is less severe?—A. Paddling over the buttocks with a strap, let us say, for five strokes, not more than that, would be a very emphatic deterrent for this type of offense. I cannot over-emphasize my remarks that I would only apply it in cases where probation has failed. Again, I do not suggest this for your consideration in a case of a first offender at all. I have in mind repeaters who are persistent in committing these types of crime.

Q. Is there anything specific which you can lay before the committee to show that corporal punishment is a deterrent in cases such as that?—A. No, I cannot because I do not know how many thousand or countless thousands of young men may or may not have been deterred from going out and committing a crime by the fact of there being corporal punishment or by the fact of there being incarceration as penalties.

Q. So you simply offer us your opinion on the matter and you have nothing specific to back it up?—A. It is my opinion having regard to the fact that it has been revealed that sometimes probation and short-term

imprisonment are not a deterrent to that type of behaviour. Therefore I would suggest for your consideration that strapping might be extended to the sort of cases where you would have this condition of a persistent type of misbehaviour in which reasonable probation has failed.

Q. But you cannot substantiate by any evidence before the committee that it is a deterrent?—A. No, I cannot.

Q. Before a judge's sentence or a magistrate's sentence of corporal punishment is carried out, do I understand that the sentence must first be reviewed by the Attorney General or by some other authority —A. You mean before it is imposed?

Q. Yes.

Q. Yes.—A. No, no. He has an absolute discretion.

Q. Once the judge convicts?—A. Once the judge convicts, it is discretionary with him, and whether he imposes a short or a long period of incarceration plus, or without corporal punishment.

Q. Can the prisoner appeal against the sentence?—A. Yes, he can appeal his sentence alone. He need not appeal his conviction but he can appeal his sentence to the Court of Appeal. The Court of Appeal has established more or less that it will not allow corporal punishment to stand where there has been a lengthy term of imprisonment, and with that principle I agree.

The PRESIDING CHAIRMAN: Now, Mr. Fairey.

By Mr. Fairey:

Q. I would like to extend the line of questioning that Mr. Thatcher was following. You say that you feel that corporal punishment is a deterrent?—A. I do, sir.

Q. Well, do you not think that the proper time for inflication of corporal punishment is when the man is a first offender and when corporal punishment will be a deterrent, rather than waiting till he is an habitual criminal?—A. I feel this, that it is a matter of guessing after all. I might say that I am somewhat probation-minded. Frankly, I would not like to see corporal punishment inflicted on a first offender, no. I feel that in the case of a youngster there should be a complete probation investigation made if it is the type of offence where corporal punishment might be inflicted.

Q. My question was prompted by the inclusion of these new categories that you mentioned. I had it in mind that, if it were known that an arrest under any one of those charges would inevitably lead to corporal punishment, that would be the time to impose a deterrent.—A. In certain instances I am quite convinced it would have the most deterring effect, but you cannot lay down a rule of thumb.

By Mr. Winch:

Q. I have a further question that has not been asked. I was interested in the opinion that was expressed that, when at any time a judge may have in mind the infliction of corporal punishment, there should first of all be a pre-sentence report based on the visit and the studies of special officers. Now, in view of that and the opinion that corporal punishment acts as a deterrent, what is you opinion of this, following upon the same lines, where a judge has in mind the infliction of corporal punishment that, additional to the pre-sentence report based on the background of the individual, there should also be a psychologist's report on the probable effect on the specific individual of the infliction of corporal punishment? Now, I ask that because, having been a member of the legislature in British Columbia for some 20 years, I have been dealing with inmates of jails for about 20 years, and it is my definite experience that there are two reactions. You do at times get the reaction

where the paddle or strap or corporal punishment is a deterrent on the individual, but I have also time after time spoken to inmates who experience corporal punishment and they have only one reaction, and that is, "Wait till I get out; I am going to take my revenge on society on account of that whipping." Then it is not a deterrent, and it may lead to a brutal crime, because psychologically that is not the person upon whom to inflict corporal punishment. May I have your opinion on that?—A. In the first place, when I am dealing with pre-sentence reports, if the probation officers feels, and other circumstances indicate, that a psychiatrist should be called in, he is called in. On this aspect of the effect on the vindictive attitude of a man who has received corporal punishment, not being a psychiatrist I cannot tell what a psychiatrist might say from an examination of that accused as to what his reaction might be subsequent to the infliction of corporal punishment. I do not know. That is within the realm of psychiatry or psychology. Now, because a man is embittered as a result of corporal punishment, you might say exactly the same thing if a man is embittered by what he considers unjust incarceration. It is just a matter of degree. Your experience of a man saying, "Wait till I get out, and I'll tear this place wide open": you will hear that same thing from men not subjected to corporal punishment at all but who think they have had a "raw deal", to use a colloquialism, firstly, qua conviction, and, secondly, qua what they considered an excessive sentence. They are vindictive; they are not amenable to their position; and whether it is a result of imprisonment or the infliction of corporal punishment, I do not think makes much difference to their attitude. It is not related one to the other. It is punishment. If they don't accept it, they will not accept corporal punishment, they will not accept imprisonment.

Q. That has not been my experience. Mine has been that there is more of a bitter attitude resulting from corporal punishment than there is from what they might think is an unwarranted and unjust sentence.—A. I think they feel the humiliation of the application of the strap. It gets back to what I said a moment ago. You hear persons say, "I can do six months standing on my head". That is the usual expression they use. But it is the humiliation of the infliction of corporal punishment that they cannot get over and they cannot live down. Some of them can, but some individuals, whether you inflict corporal punishment on them or not, or if you give them a prison sentence, they are still humiliated, vindictive and dissatisfied with their lot. Again, you cannot lay down any rule of thumb, because human emotions being as they are vary with individuals. I cannot enlighten the committee any further than I have done on that point.

By Mr. Valois:

Q. I have just one question. If this committee were to go along with the suggestion to extend corporal punishment to young repeaters, do you think we can draw a line as far as the age is concerned? What would you call "first offenders"?—A. I would call "youthful offenders", as we have them today, as being roughly in the 16 to 18-year bracket. In Ontario those under 16 come within the aegis of the juvenile court and are dealt with there and, of course, there is no corporal punishment included in the sentence in the juvenile court. There is no provision for coporal punishment; they simply find them as juvenile delinquents and then deal with them in a custodial manner or place them in a foster home or training school.

Q. In the province of Quebec you would have more than one application to look after. In the cities they are considered to be young delinquents if

they are up to 18, but in rural districts it is up to 16.—A. The Juvenile Delinquents Act provides that the age can vary from 16 to 18 according to the desire of the particular province. In British Columbia, I think, it is 18; in Ontario, 16; you have 18 in Quebec.

Q. In the case of Montreal, for instance, it goes to 18, but in a rural district like St. Jerome, which is about 35 miles from Montreal, it is 16.—A. Well, I have not looked it up, but I thought it was on a provincial basis. However, you might be right on that.

By Hon. Mr. Hayden:

Q. There was one question I wanted to ask you. You have been talking about corporal punishment as a deterrent; that is a deterrent from the point of view of the subject on whom the punishment is inflicted. There are two other aspects: the deterrent effect on others is one, but is corporal punishment not supposed to be as a matter of law punitive in its administration?—A. Quite true.

Q. You have not been dealing with that aspect in the submission you have made. As a punitive measure, as part of a sentence of punishment for the offence that has been committed, has that aspect been looked at?—A. That aspect should not be overlooked, of course, to impress upon that particular individual that, probation having failed after every opportunity had been given to him, the only way to impress upon him the error of his ways is to increase the type of punishment of that individual. I agree with that. It is punitive for the individual, deterrent as far as he is concerned, and detterrent as far as the others who may be so inclined to commit similar offences, or to follow a behaviour pattern similar to the one he has followed.

Q. I was much impressed by Mr. Fairey's position, by the question of the timing of the administration of this punishment, and I am not at all sure that the timing should not occur earlier, to have the fullest deterrent effect. If the young fellow is not susceptible to any reformative measures, probation or anything else, I think that to whip him then would be purely punitive.—A. That is true.

Q. If you are going to get any deterrent effect on the subject himself, you should possibly do it earlier.—A. People are becoming more probation-minded now than they were even five years ago, and it is in the light of that existing sentiment that I feel strapping first offenders is a matter which I would not care to advocate. Frankly, I would like to exhaust every probation facility first before inflicting corporal punishment. It is just one man's opinion.

The PRESIDING CHAIRMAN: Now, Mr. Common, might I ask a question? You have advocated the extension of corporal punishment to youthful offenders. We have arrived at a very high degree of sexual equality in our country. Of course, the Criminal Code says there will be no corporal punishment administered to females. Now, these youthful gangs always have at least one "moll" or "girl friend", and probably more, who are doubtless as much to blame for any offences as are the men. Would you say that there should be a form of spanking of these females and if so, by whom should it be administered; or have you any comment concerning the infliction of corporal punishment on females?

The WITNESS: Well, Mr. Chairman, I feel to start with that assaulting women, whether it is under the auspices of the court or not, is more or less revolting to the average man.

The PRESIDING CHAIRMAN: But, we have arrived at a state of equality.

The WITNESS: That is quite true, but I feel that the present state of the law whereby corporal punishment should not be inflicted on females should

be retained, notwithstanding the equality that has been established. The age of chivalry is still here, notwithstanding the fact that women have achieved a high degree of equality.

Mr. WINCH: That gives rise to an important question. If it is correct in principle respecting a girl of 16 or 18 who is guilty of a misdemeanour that it is wrong to apply corporal punishment, is it also in keeping with that principle that a girl who is good should not be spanked at home by her parents?

The PRESIDING CHAIRMAN: That is not within the scope of our reference.

Mr. WINCH: No, but it is the same principle.

The PRESIDING CHAIRMAN: As a matter of fact, we have a letter that has not yet come before the subcommittee, from a magistrate in Ontario who recommends spanking as a deterrent. I am sorry, I am advised that it refers to males.

Mr. WINCH: Could I ask just one more question?

The PRESIDING CHAIRMAN: You may follow Mr. Blair.

By Mr. Blair:

Q. Mr. Common, I believe that in the Code now before parliament it is proposed to remove the penalty of whipping in the present section 292 which deals with assaults on females, generally speaking?—A. Yes.

Q. Now, would you think that that will aid in the administration of justice, or would you care to comment upon that?—A. Well, from a punative point of view, and I am only expressing my own views, I think it should be retained for the offence of assaulting a female, because in my experience we have had some of the most brutal examples of assaults on women—I am only dealing now with the punitive aspect of it—Under certain conditions, a six-month sentence for a persistent wife beater might not be punitive enough, and the question of corporal punishment should then be considered as an additional punishment to that, I think. In my experience I have encountered some extremely sadistic attacks by husbands on their wives, and under the present state of the law those men can be adequately punished, in my opinion, and as I stated earlier, I am not speaking of first offenders.

By Mr. Shaw:

Q. Mr. Chairman, I do not desire to hold Mr. Common to certain specific words he has used, but I shuddered when he referred to the young lad who commits a crime of auto theft and returns to the street and boasts about it. Mr. Common suggested that when the lad has been whipped he returns and is not likely to boast because it is something he cannot live down. Now, does that not violate certain basic and fundamental principles that a man pays his debt to society and we should give him a chance to reform? Mr. Common suggested that whipping is something he cannot live down, to use Mr. Common's words.—A. I must take issue. I did not want to create the impression that he would return to the street corner with something which he could not live down. Let us take for example the chap who goes to a reform institution for successive car thefts and returns to the gang on the corner and says, "Oh, I can do that standing on my head—that's nothing!" However, if that man receives a whipping, it is not a question that he cannot live it down, but it is a question of his being humiliated in front of those other fellows. The other fellows will say, "So, you got whipped by a great big cop!" It is the humiliation of the thing which is more objective than subjective as far as he is concerned. I hope I have made myself clear on that. The youth can live down the spanking, there is no question of that. The point is, he does not become a "big shot" in the eyes of the other young men because "a big cop strapped him." That is my point.

The PRESIDING CHAIRMAN: Mr. Winch?

Mr. WINCH: I have just one more question which I feel is rather important. I was most interested in the statement made just a few moments ago when we were discussing the matter of punitive punishment of a physical nature to a female offender, and it was said, and I agree, that we still live in somewhat of an age of chivalry, and it is rather obnoxious—

The WITNESS: It is repulsive!

Mr. WINCH: Yes, it is repulsive to inflict physical assault on a female as a sentence. If that is correct, however, how do you differentiate between that type of physical assault on a female, and the act of hanging her by the neck until she is dead, in the case of homicide?

The WITNESS: Well, that poses a difficult question. May I put it this way? In the non-capital case where females are involved, and where, but for section 1060, she would become liable to corporal punishment, it would mostly be confined to armed robbery cases. I have yet to see a female who has been the leader of a gang of armed robbers. She usually comes in as the "moll" of one of the men. She is never the ring-leader or the brains of the outfit. She is super-numerary, as it were. The female seldom has an active part, but is an accessory of some description to the main actors in the drama. Now concerning capital cases, she is usually the main actor in a case of husband poisoning or something of that character where you find a premeditation, a planning, and there are other types of cases. Of course, if capital punishment is retained she stands in no different position than a male person, but the pattern you usually find in the non-capital cases—and again I use armed robbery as an illustration—is that she is not the moving spirit in the crime, but is the "moll" of one of the characters in the gang.

The PRESIDING CHAIRMAN: Corporal punishment she would remember, and capital punishment she probably would not remember.

Mr. WINCH: But I gather from what was just said that actually you feel that it is not so much a question then of physical assault on a woman under law, but it depends on her status in the offence that has been committed?

The WITNESS: I believe statistics will show that to be the case. It certainly has been my experience over some years that I have never seen a woman convicted of armed robbery where she has been the leading character in the piece. Invariably she has been an accessory after the fact, or something like that.

The PRESIDING CHAIRMAN: But she could be the leader?

The WITNESS: Oh, yes, she could be, but it is not within the attitude or temperament of women, generally speaking, to commit crime. Statistics reveal that more men commit crime than women. I have never known of a case of a female who was convicted as a principal in armed robbery. There may have been cases; but it is most rare. They are usually under the influence of their male companion and for that reason Parliament has in the past said that corporal punishment shall not be inflicted upon a female, and I think probably that was what actuated Parliament at that time.

By Mr. Mitchell:

Q. I am interested in the question of uniformity of sentence at the moment. Is there anything that the judges or magistrates do to attempt to provide some uniform basis for the infliction of corporal punishment?—A. I think I can say this, that in cases of rape or attempted rape where brutality has been in evidence, while there is no directed policy, you invariably find

that corporal punishment is added as part of the sentence, provided that the sentence of imprisonment is not too long. I think you can find a pattern of that. That is the only uniform aspect of the matter.

By Mr. Thatcher:

Q. Mr. Common, in your remarks, I think you stated that occasionally men in a penitentiary can be given the lash for some offence within the penitentiary. Did you not?—A. I am speaking more of our own institutions. There is corporal punishment I understand for infraction of penitentiary rules. There certainly is for infraction of reformatory and jail rules in our province.

Q. Does that mean that the warden of the jail or the penitentiary himself can order it—A. Yes. He can order the strap for an infraction of the rules of the institution.

Q. Without going to any official of the Attorney General's Department?—A. That is so.

Q. Do you not think that that is a power which might be a little dangerous—A. Well, you find a great number of recalcitrant prisoners. I know of several cases where prisoners will just tear their cells apart and if their infraction is overlooked you finally get to the point where something has to be done to impress upon them that they are not staying at the Chateau Laurier.

Q. If a warden does lash a man, does he report it to the department?—A. Yes. I am speaking only for Ontario. In our reform department if corporal punishment is inflicted in an institution for institutional rule infractions a monthly or weekly report—or I think an immediate report—of inflictions of corporal punishment under those conditions is made to the deputy minister who then places it before the Minister.

Q. Could you say whether that is done extensively? Do these wardens mete out such sentences?—A. I think that the matter is exercised in a very commonsense way. I mentioned before I was on the parole board in our province for over ten years and literally thousands of prisoners went through my hands, and I looked at the records and it is in very very few cases that you will find they were strapped for a breach of institutional rules. They are in the minimum. A very small number—the ratio is very very small. The reason it is small is because if you find a prisoner who is not amenable to custodian rules, certain privileges such as tobacco and visiting privileges are gradually reduced if his behaviour is bad, and it is only when he is actually defiant of the custodial officers that the superintendent may authorize the imposition of corporal punishment. In other words it is either in the extreme case of complete insubordinance, or it is imposed in the first instance where there has been a very violent violation of the institutional rules.

Q. Could you supply the committee with the actual number of cases?

The PRESIDING CHAIRMAN: That has been requested from the Attorney General. We will get that later.

Mr. THATCHER: I wanted the number of specific cases where these wardens, say in the province of Ontario—

The PRESIDING CHAIRMAN: We have asked that all the statistics that are available from the Attorney General be supplied to us.

Mr. THATCHER: That is fine.

Mr. DUPUIS: Could I be informed if it would be within the scope of our jurisdiction to go into the study of corporal punishment inflicted in penitentiaries or prisons?

The PRESIDING CHAIRMAN: I would certainly think so.

Mr. DUPUIS: In that case do you think that it would be a good suggestion to have an expert of the penitentiary here?

The PRESIDING CHAIRMAN: If you have anybody you would like to come before this committee, please let the steering committee know and we will certainly consider it.

Now, gentlemen, Mr. Common is here and has something to say with respect to lotteries. Do you think, Mr. Common, that you could do it within half an hour?

The WITNESS: I would like to do it in much less time than that on this subject.

The PRESIDING CHAIRMAN: What is the committee's pleasure?

Mr. FAIREY: Could the witness come again. It is pretty strenuous for him.

The PRESIDING CHAIRMAN: What is the committee's pleasure on this subject?

Mr. MITCHELL: I think is is important enough that we should have ample time to hear Mr. Common's opinion.

The PRESIDING CHAIRMAN: Are there other questions on capital or corporal punishment? If not, we certainly have appreciated your coming here on these two occasions, Mr. Common, and probably we could consult with you at a later date.

The WITNESS: If you could fix a time now at your convenience, it would be suitable to me.

The PRESIDING CHAIRMAN: Could we then say Wednesday the 24th March at four o'clock in the afternoon?

The WITNESS: That is quite convenient.

The PRESIDING CHAIRMAN: Before we break up, gentlemen, I know you would wish me to extend to Mr. Common our sincere appreciation for his attendance here today giving us this very enlightening presentation. It has been not only enjoyable but very informative and I know that I speak not only for myself but for all members of the committee Mr. Common when I thank you very much for your attendance.

The WITNESS: It has been a great pleasure.

The PRESIDING CHAIRMAN: Those who are on the subcommittee will please assemble tomorrow morning at eleven o'clock in room 497.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden
and
Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

TUESDAY, MARCH 16, 1954

WITNESS:

Mr. Arthur Maloney, Q.C., Chairman of Committee on Criminal Justice, Ontario Branch of the Canadian Bar Association.

APPENDIX A:

Bibliography of Books, etc., available in the Library of Parliament respecting Capital and Corporal Punishment and Lotteries.

APPENDIX B:

Brief on abolition of Capital Punishment of the Canadian Friends' Service Committee of the Religious Society of Friends (Quakers) in Canada.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

For the Senate (10)

Hon. Walter M. Aseltine
Hon. Elie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon. Salter A. Hayden (*Joint Chairman*)
Hon. Nancy Hodges
Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Miss Sybil Bennett
Mr. Maurice Boisvert
Mr. J. E. Brown
Mr. Don. F. Brown (*Joint Chairman*)
Mr. A. J. P. Cameron
Mr. Hector Dupuis
Mr. F. T. Fairey
Mr. E. D. Fulton
Hon. Stuart S. Garson
Mr. A. R. Lusby
Mr. R. W. Mitchell
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

MORNING SITTING

TUESDAY, March 16, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, the Honourable Senator Hayden, presided.

Present:

The Senate: The Honourable Senators Bouffard, Hayden, Hodges, McDonald, and Veniot—(5).

The House of Commons: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Dupuis, Fairey, Carson, Lusby, Shaw, Thatcher, Valois, and Winch—(12).

In attendance: Mr. Arthur Maloney, Q.C., Chairman of Committee on Criminal Justice, Ontario Branch of the Canadian Bar Association.

On motion of the Honourable Senator Hodges,

Ordered,—That the bibliography of books on capital and corporal punishment and lotteries provided by the Parliamentary Library be printed as an appendix to this day's Minutes of Proceedings and Evidence. (*See Appendix A*).

Mr. Maloney was called, made his presentation to the Committee on abolition of capital punishment, and was being questioned thereon.

At 1.05 p.m., the Committee interrupted its proceedings.

AFTERNOON SITTING

At 3.00 p.m., the Committee resumed and completed its questioning of Mr. Maloney in respect of his presentation on abolition of capital punishment.

The Committee expressed its appreciation to Mr. Maloney for his presentation to the Committee.

The witness retired.

During the course of Mr. Maloney's presentation, reference was made to the following material:

1. *Annals of the American Academy of Political and Social Science*, "Murder and the Death Penalty", November 1952 issue;
2. "The Shadow of the Gallows" by Viscount Templewood; and
3. "Convicting the Innocent" by Prof. Borchard of Yale University.

Agreed,—That a recommendation be made to the Parliamentary Library suggesting that any of the foregoing references not presently available be acquired.

At 4.15 p.m., the Committee adjourned to meet again at 4.00 p.m., Thursday, March 18, 1954.

A. SMALL,
Clerk of the Committee

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EVIDENCE

MARCH 16, 1954
11.00 a.m.

The PRESIDING CHAIRMAN: I think we can call it 11 o'clock, and we have a quorum. There are a few items that we would like to get out of the way. A motion is required to print the bibliography of books on capital punishment, corporal punishment and lotteries from the parliamentary library as an appendix to the Minutes of Proceedings and Evidence.

Moved by Senator McDonald.
Carried.

I direct your attention to the fact that the next meeting will be on Thursday at 4 o'clock and Mr. Leslie E. Wismer, Director of Public Relations and Research, Trades and Labor Congress of Canada, will be the witness, and I think the subject will be lotteries.

We have today Mr. Arthur Maloney, Q.C., of Toronto, Chairman of the Committee on Criminal Justice of the Ontario Branch of the Canadian Bar Association. To those of us who live in the province of Ontario, Mr. Maloney is well known, and he has had quite a broad experience in the field of criminal law.

Mr. Arthur Maloney, Q.C., Chairman of the Committee on Criminal Justice, Ontario Branch of the Canadian Bar Association, called:

The PRESIDING CHAIRMAN: The same arrangement will follow, that is that we will hear the statement from the witness first and then go into the matter of questions afterwards.

The WITNESS: Mr. Chairman and members of the committee, I must say I am grateful for the honour of the invitation to appear before you, and I approach my assignment with all humility. It is only fair that I should briefly tell you about what experience I have had with the subject so that you can determine for yourselves what value, if any, you may derive out of what I will say. In my 11 years at the bar of Ontario, I have had occasion to act as counsel, either at trial or on appeal, in 11 capital cases. I have been associated in a professional capacity with five prisoners who were under sentence of death, four of whom were in fact executed, and in the case of these four my meetings and my interviews with them included that period of their existence when all hope was lost, in that, even executive clemency had at that stage been denied. Let me say that the impression I derived from the four cases to which I have just referred was this—and it was common to them all—none of them was insusceptible to reformative influence. All of them were safe risks for ultimate release back into the society whose laws they had been convicted of violating. I was satisfied personally, on the basis of my association with them and with their cases, of the futility of what was to be done to them. I was sure it would accomplish no useful purpose for them or for society, and I had the disquieting feeling that the whole sordid performance that was about to occur in respect to their cases was incompatible with any normal conception of what a civilized society is or ought to be.

Now, with that general prefatory observation, let me tell you briefly of the plan that I propose to follow. The subject under discussion is one which can be considered in many aspects and under many headings. I have made as careful a study as I could make of the subject by reference to the many texts that are available to people who are interested in it, but these texts are equally available to you. For example, the report of the recent royal commission in England contains in a convenient way all the statistics and statistical data with which any committee of this nature could wish to be furnished, and for me to try to review statistics applicable to other jurisdictions for your benefit would simply be to repeat what you really have an opportunity of studying for yourselves from other sources. What I had, then, intended to do instead was to deal with the subject this morning in a limited way and to try to bring to bear upon my treatment of it some personal experiences which may be of assistance to you, and of more assistance than I would be were I to follow any other course.

I would commend to the attention of the committee and to all of its members, Mr. Chairman, two publications which may or may not presently be part of your bibliography. The first publication is the Annals, and the date of the edition of the Annals is November, 1952. The subject matter of that particular edition is entitled, "Murder and the Penalty of Death".

Mr. BROWN *(Essex West)*: I have a copy here.

The WITNESS: Thank you, Mr. Brown. I have a copy. The second publication which I respectfully suggest that you would derive much benefit from reading is a book entitled, "The Shadow of the Gallows", the author of which is Viscount Templewood, formerly Sir Samuel Hoare. It was edited first in 1952 in England. In reading those books, if you leave them with the same impression as I did, it will be this: that the death penalty is not the only effective deterrent, that there is no relationship between the number of homicides on the one hand and the presence or absence of the death penalty on the other, that the murder rate in any jurisdiction is related to many different factors which in their nature are cultural, geographical, racial and sociological.

You will, in the course of your deliberations, hear arguments put forward by those who favour the retention of capital punishment to the effect that, because of the many safeguards our criminal procedure in Canada involves, it is inconceivable that any but the most deserving cases are put to death. Now, it is with those alleged safeguards that I should like briefly to deal this morning. I was struck, as I read the debates in New Zealand and as I read the debates in the British House of Commons, with the frequency with which that argument was put forward, the argument that says that none but the worst will be hanged because of the safeguards our machinery provides. Now, these are the safeguards that they mention, and they are all part and parcel of our criminal procedure which has been outlined to you in previous meetings by other speakers. I speak to you about them this morning from the point of view of a defence counsel who has had a close connection with every one of them.

The first safeguard relied upon is the preliminary inquiry that takes place shortly after, or as soon after as is practicable, the arrest of a person accused of murder. What is a preliminary hearing? It is an inquiry held before a magistrate, the object of which is to determine whether there is enough evidence to warrant the accused person being sent on for trial. The test that the magistrate under our law must apply is this—"If all the evidence heard by me, uncontradicted and unexplained, were heard by a jury and accepted by them, would such a jury probably convict the accused person?" If the magistrate's answer to that question is "Yes", it is his duty to commit for trial. If it is "No", it is his duty to discharge the accused person from custody. You

will be told that at that stage Crown counsel introduces into the record of the case all of the evidence that he then has in his possession against the accused and that that thereby puts the accused person in an advantageous position in that he knows, long before the trial, the complete substance of the case that he is ultimately going to be called upon to meet. Now, that would be a convenient state of affairs, but in the experience of those who are engaged in the practice of criminal law while that may be so in theory, it is not so in practice, because the tendency among Crown officials undoubtedly is to adduce at that stage of a prosecution only so much evidence as will be sufficient to enable the magistrate to determine whether or not the accused should be committed for trial. I give you a specific example of what I mean. In the fall of 1952, I acted in the defence of an accused murderer, Leonard Jackson. At the time of his preliminary hearing he was not represented by counsel. At the preliminary hearing three or four witnesses were called by the Crown, whose evidence was sufficient to enable the magistrate to send the case on for trial. At the trial several weeks later an indictment was prepared and considered by the grand jury, which contained the names of more than 40 witnesses. I had not the remotest idea of what 90 per cent of those witnesses were going to say. I was called into the trial about five days before the trial commenced. I sought to obtain a summary of what these witnesses were to say, and of what the effect of their evidence would be; I was denied that. I made efforts to see if it were possible to interview the witnesses myself. It was impossible to do that, because I was not furnished in any way with their addresses, and the main witness whom I did seek to interview refused to speak to me about the case. Now, that to me demonstrates that a preliminary inquiry is not the safeguard that you may be told it is.

The second safeguard relied upon is the grand jury, which we still retain in the province of Ontario. What is the function of the grand jury? In effect it is to review the conclusion already arrived at by the magistrate. How does it carry on its deliberations? It is composed of 13 persons who hear the testimony of some of the witnesses who will ultimately be called to give evidence at the trial. The accused man is not present at their deliberations, nor is his counsel, and their proceedings are held in camera and are held in the presence of Crown counsel, and there is no doubt that the grand jury in our province relies almost implicitly on the guidance he chooses to give them. Now, such a step in our machinery, in my opinion, does not represent a very valuable safeguard to an accused person.

You will then be told that at the trial of an accused person before his jury is chosen he can challenge a number of jurymen. You will be told that he can challenge any number of jurymen for cause, these causes being that the juryman's name was not on the panel, that he was not indifferent as between our Lady the Queen and the accused, that he was an alien, or that he was convicted under certain circumstances of an offence himself. That sounds like a safeguard of some importance. The actual fact is that the average defence counsel knows absolutely nothing about the background of the jurymen on the panel, so while it is a right in theory, it is not much of a right in practice, and it is a right that is only very rarely exercised, due to the ignorance of counsel of the facts that he would have to establish in order to challenge a juryman for cause. You will then be told that, in addition to these challenges which can be made without limit, there are in capital cases what are known as 20 peremptory challenges. Now, Mr. Chairman and members of the committee, it is important that you should know on what basis defence counsel exercises the right to challenge peremptorily a jury. In the vast majority of cases, as I have already indicated, we have no knowledge of the background of the individual jurymen, and the only basis we have on which to determine whether or not he should be challenged is

the impression such a juryman makes upon us as he is called from the body of the courtroom and walks to the front of the courtroom. That is one basis on which we try to judge whether or not he would be a satisfactory juryman. His appearance and occupation are other factors. Otherwise with uncommon exceptions we know nothing about him. Now, for those reasons I fail to see how the right to challenge twenty jurors peremptorily furnishes any very important safeguard to an accused person.

You will then be told that Crown counsel is an instrument in the machinery of justice that represents a safeguard to an accused person. The traditional concept of counsel for the Crown in any criminal prosecution is this: that he is a minister of justice indifferent to the outcome of the case, unconcerned about what the jury's verdict will be, and charged with a duty to see to it that all of the evidence, both for and against the prisoner, is brought out for the consideration of the jury. Now, the traditional conception of the Crown counsel is a lofty one, but the actual fact is that in practice that is not so. There is a tendency in recent years on the part of prosecuting officers to view a criminal prosecution as a contest between two opposing parties. Mind you, Crown counsel depend for their information in the individual case on police officers who are connected with the investigation of the case.

You will then be told that the trial judge is a further instrument in our machinery whereby trials of an accused person are safeguarded. The role of a trial judge is to preside at a criminal trial and to conduct the course of the trial as it proceeds before him.

Now, in regard to trial judges, they are human beings. Judges differ in outlook, personality and temperament, as do other men in any other occupation of life. A judge wields tremendous weight at the trial and his views have a powerful influence over a jury. Such views vary with the outlook, temperament, and personality of the individual trial judge. This leads to an inequality in the administration of justice in cases where the death penalty has been carried out, because there can be no doubt that an offender's chances of being acquitted of murder are greater if his trial is presided over by one judge rather than by another.

Then you will be told about the role of counsel for the defence, and you may be left with the impression that no person convicted of murder has been convicted without having had his defence put forward by competent legal counsel. In practice, Mr. Chairman and members of the committee, the large majority of convicted murderers in our country are in impoverished circumstances and are more often than not defended by younger counsel lacking in experience for whom such a trial is a completely novel experiment. Persons of means who are charged with this offence can retain the services of most celebrated and highly priced counsel and their chances of avoiding the death penalty are for that reason much greater. Now, this inequality is implicit in any society and will never be removed, but its disastrous effects would be removed if the death penalty were abolished. I have in mind the case of a particular defence counsel about whose case I naturally speak with sympathy and with some reluctance. I will not divulge his name to the committee, nor will I divulge the names of the persons whom he represented at trial, except that I will give the chairman a written memorandum of these particulars if a further investigation of what I say is thought to be desirable. I know in Ontario, personally, of four cases of persons accused of murder who were defended by a counsel who was completely lacking in experience and who was seriously believed to be suffering himself from a mental disorder. Our suspicions in regard to that state of affairs were subsequently confirmed when he was placed in a mental institution where I am informed he is still detained.

In three of these cases he sought them out. Briefly, in regard to the history of the four cases I should say this: they were all convicted of murder; three of them were executed; one of them had the good fortune to have his sentence commuted to imprisonment for life. In the case of the three who were executed, one of the cases in my opinion was one in which a different result might have been produced had the accused person been defended by an experienced well-trained criminal counsel. I put it on no higher basis than that. In the other two cases of the executed offenders, it is my opinion that no counsel, no matter what his talents, could have brought about a different result.

You will then be told that a further safeguard is a right of appeal to the provincial court of appeal. Where errors in the law are shown to have occurred at the trial, a provincial appellate court is in the fortunate position where it can avert or prevent a miscarriage of justice. But, where there is evidence to support the verdict and where the jury have apparently seen fit to act on such evidence, an appellate court will not interefere. The court of appeal prevents a number of miscarriages of justice. But, consider the case of the offender who has been convicted of murder on the perjured testimony of a plausible witness; an appellate court will furnish no safeguard for him.

The next safeguard mentioned is the right of appeal to the Supreme Court of Canada. The jurisdiction of the Supreme Court of Canada is limited indeed. In the first place, a right of appeal to that court only exists if a dissenting judgment has been rendered in the provincial appellate court, and such dissenting judgment must relate to a question of law. The only right of appeal that otherwise exists is where leave to appeal has been granted by a single judge of that court, and such leave will not be granted unless a question of law is shown to be involved, and it is not any question of law which would justify the granting of leave to appeal, but a question of law of importance. Because of its limited jurisdiction it is not frequent for the Supreme Court of Canada to find itself in a position where it can rectify errors in justice.

I would be remiss in my duties at this stage if I were to fail to point out that it is the experience of defence counsel in Ontario where appeal procedure has been resorted to in capital cases to find the department of the Attorney General to be exceedingly fair and generous. Invariably the cost of the transcript of evidence that is needed for the argument of the appeal is furnished by that department, and more often than not where it is sought to make application for leave to appeal to the Supreme Court of Canada in Ottawa the expenses involved by counsel in going to Ottawa are paid for by that department.

The final safeguard that is relied upon is the safeguard involved in the prerogative of mercy, more commonly known as executive clemency. I have, in my personal experience, sought to obtain executive clemency for eight convicted murderers. I have succeeded in obtaining executive clemency for two of those convicted murderers. It has been my personal experience that executive clemency is extremely difficult to obtain, and I base that opinion on the eight cases to which I have referred. So far as I am aware this committee has not yet heard the policy that is applied by the Department of Justice in determining whether or not executive clemency should be granted. I have no doubt that such information will ultimately be given to you.

Then, coming next to the machinery of the department, some of its objectionable features in my opinion are these: the department tends too frequently to refuse clemency in cases where all appeals have been denied, seeming to assume that the jury having found as it did, the appellate courts having found as they did, it would not be right to interfere. In my submission, this ignores the duty of the department to apply totally different considerations to those that are applied by the jury and by the appellate courts. A further objection is that too much attention is paid to the opinion of the individual trial judge.

Now, such an opinion is entitled to respect. But I ask you to examine by what right is such an opinion given? A trial judge knows no more, or ought to know no more, about the background of the individual case or offender than the transcript of the evidence adduced before him discloses. He has had no opportunity to confer with the prisoner, to talk to him, except insofar as he has had an opportunity to hear the individual prisoner as he testified in his own defence before him. The opinion of a trial judge carries great weight, and in my opinion for the reasons I have stated, it is not deserving of all the weight it is given.

In respect to a jury's recommendation of leniency, my understanding is that more often than not such a recommendation is respected. It is not always respected however. What has often worried me is this: is any inference drawn by the Department of Justice in considering whether clemency should or should not be granted by the failure of a jury to make such a recommendation? I do not know. If any unfavourable inference is drawn from the failure to make such a recommendation, I think it is unfortunate because our juries in Ontario —and I believe this to be so throughout the country—are not told, and indeed may not be told, of their right to bring in such a recommendation. The reason they are not told before rendering their verdict is the fear that is entertained that it may cause them to compromise their verdict, or the verdict that they ultimately render. But there are undoubtedly juries who would recommend clemency if only aware of their right to do so.

And finally, in regard to executive clemency, it is my respectful submission, Mr. Chairman and members of the committee, that adequate use is not made of the prerogative of mercy. I have in mind two cases in which I submit clemency should have been granted but in which it was refused. I will give my opinions for saying so—you may or may not agree with my conclusions. I have in mind, first of all, the case of Harry Lee, executed in 1953 in Hamilton for murder. I submit he should have been given executive clemency because one outstanding psychiatrist who examined him at the request of the defence had expressed doubts about Harry Lee's sanity. The other psychiatrist who examined him at the expense or invitation of the Crown came to another conclusion, but the fact remains that one outstanding psychiatrist, an expert in his field, expressed the considered opinion that there was some doubt about Harry Lee's sanity. My submission is where that state of affairs exists executive clemency should be granted as a matter of course.

The second case in which executive clemency was refused, where in my submission it should have been granted, was the recent case of one Hudson, executed in North Bay. The facts in the case of Hudson are particularly shocking. They involve the brutal murder of a little child upon whom a horrible assault had been perpetrated.

Normally these facts would seem to warrant the execution of the prisoner in the present state of our law. The fact is that an outstanding psychiatrist expressed the opinion that the offender was an epileptic. On the day in question Hudson was intoxicated and the psychiatrist I have mentioned was of the opinion that at least there was good reason to doubt whether or not at the time of the attack the offender was in an epileptic condition. In my submission there was sufficient doubt in the case of this accused not only to justify but, respectfully, to demand executive clemency. Now, Mr. Chairman and members of the committee, those are the safeguards which are frequently relied upon. Those are the answers that I make to them.

I wish this morning only briefly to deal with one further aspect of this subject, namely the possibility of a miscarriage of justice. That is, are people executed who ought not to be, because they are completely innocent, or, if not completely innocent, innocent of the full offense of murder?

Miscarriages of justice occur in two fields—they occur in the field of law and they occur in the field of fact. Let me deal with errors in the field of law. By that, I simply mean that in various cases it may be that our law is not being correctly interpreted. I will illustrate that submission by two practical examples.

The first example is the celebrated case of the King versus Woolmington in 1935 in England. Woolmington had been convicted of murder. His defence to the charge of murder was accident. The trial judge had instructed the jury, conforming to a belief that had prevailed since 1762, that where an accused person charged with murder raises a defence of accident the onus in law is on him to prove such defence. The House of Lords then had occasion to hear the appeal of the accused. That tribunal held that in any criminal proceeding the onus was on the Crown throughout, and that the law which the jury had been instructed to apply was not, and never had been, the law of England. How many people were executed in England between 1762 and 1935 for failing to satisfy an onus that never existed? No one will ever know.

Coming closer to home, let us consider the celebrated case of Rex versus Hughes in 1942 in British Columbia. In that case, the Supreme Court of Canada held that in certain circumstances where death was caused accidentally, even in the course of the commission of a serious offence such as robbery, it was open to a jury to convict of manslaughter. That had not been, up until that time, regarded as the law of Canada. In the case of Hughes, there was some evidence that at the time of the robbery and at the time of the infliction of the fatal wound his gun had been fired accidentally. The jury had been instructed by the trial judge, conforming again to the belief which was common at that time and had been for years before, that since death was caused in the course of the commission of a robbery, accident was not a defence. On appeal to the Supreme Court of Canada the law was found to be otherwise. We do not know how many persons from the time of Confederation to 1942 were executed because of the fact that juries were instructed in accordance with the manner used in the case of Hughes. In the case of this offender, on the occasion of his new trial, he was acquitted of murder and convicted of manslaughter. The law in that regard was subsequently changed about 5 or 6 years later by statute, the effect of such statutory amendment being to revert back to the theory or concept of the law which was entertained before 1942.

A further practical demonstration of a case where an error in law may have produced a miscarriage of justice, is the celebrated case of Rex and Taylor in Canada. In that case at trial the accused Taylor, charged with murder, relied upon certain words as being the provocation that caused him to commit the crime and that had the effect of reducing it from murder to manslaughter. The trial judge instructed the jury to the effect that words, under our law, did not constitute provocation. On appeal to the Supreme Court of Canada it was held that our law in that respect differed from the common law of England and that words may in a proper case constitute sufficient provocation to warrant the reduction of a charge from murder to manslaughter.

Those are all the examples with which I will trouble you. That, in my submission, helps to demonstrate that miscarriages of justice may occur and have occurred in the field of law.

I am not going to try to deal in any detail with errors in fact or in the field of fact other than to recommend that you examine the very interesting book entitled "Convicting the Innocent", written by Professor Borchard of Yale University.

Mr. DUPUIS: Will you please spell the name?

The WITNESS: Borchard, B o r c h a r d.

Mr. DUPUIS: Of what?

The WITNESS: Of Yale University. And the title of the book is "Convicting the Innocent". In that book are collected 65 cases, the majority of them being American cases in which it had been established that persons innocent of such crimes had been convicted; and I recall that 25 of such cases were murder cases.

I would bore you if I tried to refer at any length to the case of Adolph Beck in England and to the case of Oscar Slater; but if you read "The Annals" and "The Shadow of the Gallows" you will see those cases fully referred to.

In regard to this part of my submission let me simply refer you to two cases not involving murder, in the city of Toronto; the case of Paul Cachia who had been tried and convicted of the crime of robbery upon two occasions. On the third trial, or rather upon the occasion of the third trial he was acquitted when a witness who had not testified at the earlier trials delivered testimony that established Cachia's innocence. The trial judge on the occasion of the third trial expressed the view that he was satisfied that Cachia was innocent. Cachia is indebted to the Minister of Justice who exercised his prerogative under Section 1022 of the Criminal Code, in ordering the second trial in the case of this accused man.

But what worries me about the case of Cachia is this: that if the victim of the robbery had been slain at the time of its commission, Cachia, an innocent person, would have been executed.

A further case of innocence that was convicted was that of Ronald Powers who after 10 months of imprisonment was released in 1952, having been convicted of robbery where his innocence was subsequently proven. It will be said that all these were not capital cases and that such an error could not occur where the death penalty was to be carried out. But, with respect, I see no merit in that argument. If errors of that nature can occur in cases where it is not a capital offence, it is equally probable that they will occur in the capital field, and I do not believe that there are statistics anywhere available in Canada to establish that any innocent person has been convicted of murder and executed.

My concluding submission to the committee is that the death penalty should be abolished in Canada and that, if not abolished, effect should be given in this country to the recommendations made to the House of Commons in England by the Royal Commission appointed to investigate the question over there. That, Mr. Chairman, concludes my submission.

The PRESIDING CHAIRMAN: Thank you. Now, gentlemen, I am sure you must have some questions and we shall start this morning in the reverse order, with Senator Veniot. Senator Veniot, have you any questions to ask the witness?

Hon. Mr. VENIOT: No, Mr. Chairman.

The PRESIDING CHAIRMAN: Now, Mr. Shaw?

Mr. SHAW: I have just arrived, Mr. Chairman.

The PRESIDING CHAIRMAN: Now, Mr. Boisvert.

By Mr. Boisvert:

Q. Mr. Chairman, I would like to ask the witness a few questions. Do you think that Crown Prosecutors today are impartial in conducting a case against someone who is accused of murder?—A. That question cannot be answered yes or no, Mr. Boisvert. All I can say is that it has been my experience in a number of cases that crown counsel did not in fact practice the traditional concept which we entertain of them. I know, and I am

personally acquainted with, many crown counsel in Ontario. They are men of exceptional honesty and integrity and often of great ability. But it is not my opinion that they conduct prosecutions in accordance with the traditional concept of their office. If that means they are not impartial, then the answer to your question would have to be accordingly.

Q. Yes.

Mr. BROWN (*Essex West*): They are only human beings like the rest of us.

The WITNESS: My view is that in many cases crown counsel feel that a verdict of guilty is a victory for the Crown, and that a verdict of not guilty means defeat for the Crown.

By Mr. Boisvert:

Q. Is it not the duty of the Crown prosecutor to permit any accused person to have a full defence at all times?—A. That clearly is his duty. He is not to do anything to prevent it, he is not to do anything which would make it difficult.

Q. Is it not the general practice in Ontario according to your gifted knowledge of criminal law that Crown prosecutors try to help the defence to the fullest extent?—A. That is not my impression in all cases.

Q. Well, an "impression" is quite different from a question of fact. We may sometimes have an impression which could be a bad impression, because we are only human beings who appear in the courts of justice.—A. That is not my experience, then, in fact. In some of the cases in which I have appeared where the individual Crown counsel is of the view that there should not be a conviction, he will facilitate the conduct of the defence in a way which he might not otherwise do. For him to confine his assistance to such cases means that, in my submission, he is usurping the function of the judge or jury.

Q. I would like to ask two more questions: you give in detail all the safeguards that the criminal should get from the practice of law and from the code of procedure and our way of practising law before the trial courts. But I would like you to comment on what safeguards there are for innocent people against conviction of murder and brutal killing.—A. I am sorry, Mr. Boisvert, but I am not sure that I understood your question.

Q. My question is this: According to the Criminal Code there are a lot of safeguards to protect an accused person, or to see that he makes a full defence. I think that our system of criminal law is a good system and I think that it has given the accused every chance to get a fair trial. Yet you finished by saying that we should abolish the death penalty in murder. Do you not think that society should be considered also? Every day we read in the newspapers of many innocent people being killed by brutal murderers. I would like you to comment on what you think would refrain these brutal criminals from committing such crimes?—A. My answer to your question is this: The retention of the death penalty can only be justified so long as it is established to be the only effective deterrent to the crime of murder. If that assumption is right, and I submit that the assumption is right, then the considerations which you would invite me to apply are irrelevant. They are considerations which ought to be taken into consideration if punishment is justifiable on some theory of retribution or of revenge.

In my submission it is fundamentally wrong to say that because an accused person has committed a brutal crime he should, for that reason, be executed. My submission is that such an accused person should only be executed if his execution, or the execution of others like him, is established to be the only effective deterrent.

I submit that the successful experiment of thirty-six other jurisdictions with abolition establishes with reasonable conclusiveness that the death penalty is not the only effective deterrent.

Q. Is it not true that the death penalty is no more considered as a deterrent? In that case the word "deterrent" is used in a different sense from the way we interpreted it before. And as I was saying, the way to prevent other criminals or persons with criminal intent from committing crimes—I am going to quote Mr. Justice Denning about it and ask you to comment. Mr. Justice Denning said:

> The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishment as being deterrent or reformative or preventive and nothing else... The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime: and from this point of view, there are some murders which, in the present state of public opinion, demand the most emphatic denunciation of all, namely the death penalty.

What do you think of that?

Mr. WINCH: On a point of order, I ask whether we are debating the subject or asking a question?

Mr. BROWN (Essex West): Could I ask that Mr. Boisvert give the citation?

Mr. BOISVERT: The citation is the report on capital punishment, 1949-1953, by the royal commission in England, page 18, at the top of the page.

The PRESIDING CHAIRMAN: Before the witness answers the question: I do not think we ought to get into the field of debate. What I wanted to point out to Mr. Boisvert is that the witness has said that if the death penalty is based on the view that it should be retribution or revenge by society on the person who commits a murder, then on that basis that is a justification for the death penalty, or if you can establish that the death penalty is in fact a deterrent, then that would be a basis for supporting the death penalty, but if it is not a deterrent in fact, then the witness suggests that there should be some reconsideration of that problem. Now, that is his view and I do not think we are going to get any further by arguing with him or telling him what Lord Justice Denning or anybody else says.

Mr. BOISVERT: I am in full agreement with you, Mr. Chairman. I think I went too far into this discussion instead of asking a question of the witness.

The PRESIDING CHAIRMAN: Have you nay other question, Mr. Boisvert?

The WITNESS: Mr. Chairman, did I understand you to say that I justified the death penalty on any other basis than that it was justified only if it was shown that it was the only effective deterrent?

The PRESIDING CHAIRMAN: You put a hypothetical question. I understood you to say that if a visiting of retribution or revenge was considered a basis for the death penalty, you support that basis.

Mr. BOISVERT: Mr. Maloney, would you make a suggestion about improving the safeguards which are provided by the Code to grant an accused person a fair trial and a full defence?

The WITNESS: Mr. Chairman, the answer to that question, in my submission, would be this: the simple certain improvement would be complete abolition. Anything short of that will not result in a complete safeguard, but, for example, to carry out some of the recommendations made in England would have the effect of adding many safeguards. For example, among their recommendations is not to execute anyone under 21. Secondly, they would

pass to the jury the responsibility of determining whether or not the individual convicted of murder should be executed. They would enlarge the sphere of mental abnormality within which convictions for manslaughter could properly be made; and there are other recommendations as well which, if given effect, would have the effect of adding safeguards. But the only complete safeguard would be abolition.

By Hon. Mr. Bouffard:

Q. It would be a complete safeguard for the accused, but not so much for society.—A. Again we go back to the original question. Do we approach this question of punishment from what I submit to be the only proper approach—that is, is it the only effective deterrent—or do we look at it from some other basis founded on some concept of revenge?

Q. Do you admit that it is a deterrent?—A. I admit that it is a deterrent.

Q. A very important one?—A. I do not agree it is important, unless you mean by that it is a drastic one.

Q. I mean "important"; I do not mean "drastic".—A. I do not think it is the only effective deterrent.

By Mr. Brown (Brantford):

Q. Mr. Maloney, you stated that at preliminary hearings in trials it has been your experience that the Crown does not in practice reveal its case to defence counsel. Did I understand that to be a statement that you made?—A. What I said, Mr. Chairman, was this, that in practice in the majority of cases in my experience Crown counsel only reveals so much of his case as is necessary to enable the magistrate to fulfil his function.

Q. I see. What is your experience in respect to the Crown revealing its case to defence counsel?—A. My experience has been in the majority of cases that the Crown's case is not revealed at that stage to a degree that eliminates surprise. Let me give you an illustration of what I mean. In the case of Leonard Jackson, to which I referred, he was charged with the murder of Detective Tong. One witness—another detective—in the company of Detective Tong identified Jackson as one of the persons who fired a gun at the scene of the crime. As it developed at the trial, although this was unknown to the defence at the time of the preliminary hearing, there were approximately five witnesses in addition to the other detective who were in the vicinity of the scene of the crime, who had evidence to offer concerning Jackson's participation in it. At the preliminary hearing the one fellow detective was called to testify in regard to what he had seen, but the Crown did not disclose the existence of or the nature of the testimony of the other eye-witnesses in the vicinity of the crime. In other words, we were completely taken by surprise as to what they would say.

Q. Mr. Maloney, the reason I asked that question is this: At a previous sitting of this committee we had before us Mr. W. B. Common, the Director of Public Prosecutions for Ontario, and he stated that it was the custom of the Crown to reveal almost fully its case to defence counsel.

Mr. WINCH: He said all of it.

Mr. BROWN (*Brantford*): I want to give you his answer to the question I am quoting from his submission to the committee, page 77. He said:

> I might say for those members of the committee who are unfamiliar with the procedure at a trial—and I am not going into technical matters, it will suffice to say this: that in all of the cases, not only in capital cases but usually in all criminal cases, there is complete disclosure by the prosecution of its case to the defence. To use a colloquialism, there are no "fast ones" pulled by the Crown.

then he went on and said:

> The defence does not have to disclose its case to the Crown. We do not ask it for a complete and full disclosure of the case.

I would like to have your comment on that?—A. In answer to that, I say that Mr. Common's understanding of the present prevailing practice is not correct.

Hon. Mr. GARSON: That is in his own department.

The WITNESS: His understanding of the present prevailing practice.

Hon. Mr. GARSON: In his department.

The WITNESS: Mr. Common's official position is director of public prosecutions for the entire province. The figures in these criminal cases when they reach the stage of appeal. He is the superior officer of all Crown counsel in the province, but he is not connected personally with the conduct of preliminary inquiries, and his understanding of what some of his junior officers always do in that capacity is not correct.

Hon. Mrs. HODGES: Do you say "not correct" or not in conformity with your understanding of the procedure?

The WITNESS: I would say that it is not correct in my personal experience, and I have given you, I think, one illustration of that in the case of Leonard Jackson.

Hon. Mr. BOUFFARD: Have you ever complained to him?

The WITNESS: I have complained in magistrate's court. I have never lodged a complaint with the department.

Hon. Mr. BOUFFARD: He says it is the policy of the department. If the junior counsel do not follow that policy, do you not think it might be a very good thing to complain to the director that his junior officers were not doing what they were told?

Mr. BROWN (*Essex West*): You might thereby invoke the wrath of the Crown attorney you have to fight against.

The PRESIDING CHAIRMAN: If you are practicing law and are well known in these fields sooner or later you get into every Crown attorney's bailiwick, and if you are a complainer, you are in trouble.

Can we follow our procedure?

By Mr. Brown (Brantford):

Q. Mr. Maloney, I think you stated in respect to the prerogative of mercy that the department tends to refuse clemency where all appeals have been denied. Are you stating that from your experience or from something else? Do you say that that is the situation in Ontario.—A. I base that on two of the cases to which I referred.

Q. From your own personal experience?—A. Cases in which I was informed to this effect by officials of the department in the course of my consultations with them: "A jury has decided against you, so has the court of appeal, so has the Supreme Court of Canada and you have not shown us any reason to interfere".

Q. Could you say that that is a general rule?—A. I limit it to the personal experience I have had. As I said, I do not know what policy the department pursues in this respect, and when ultimately that policy is disclosed to you, as I suppose it will be, that is a matter that ought to be explored.

Q. I have just one other question. I believe you stated that you felt that juries often would recommend clemency, but they are not aware that they have that right. Would you explain to me why that could not be suggested by defence counsel or brought up at the trial. Why has not a defence counsel

the right to suggest clemency? If they come to the conclusion that an accused is guilty they still have that right.—A. It is regarded as an improper reference to make to the jury for the reason I suggested that there is a danger that they might arrive at a compromise.

Q. You feel that it hurts your case?—A. No, no. Under our law it would be an improper comment to make. What I have often thought might be done—and I do not know that any change in our legal machinery would be necessary—would be that after an accused man is convicted of murder it would be open to the judge before the jury is discharged to invite them to return to the jury room to consider whether or not they would like to bring in such a recommendation. But, I know it has been held under the authorities that it is improper for a trial judge to refer to the jury's right to bring in a recommendation during the course of his charge.

By Mr. Cameron:

Q. I would like to thank Mr. Maloney for the very clear presentation he has given from the standpoint of defence counsel to the safeguards thrown around a person charged with a capital crime, and I desire to ask him two questions. There are many I would like to ask him. My first question is: there have been cases of a person having been discharged by a magistrate on a preliminary inquiry on the ground that the Crown has not made out a prima facie case justifying the magistrate sending it on for trial. That is a fact?—A. Yes.

Q. So there have been some cases where that safeguard has been effective? —A. Yes.

The PRESIDING CHAIRMAN: There have been cases too where the magistrate has found that the Crown has not made out a case on the preliminary, but subsequently an indictment has been preferred before the grand jury and a true bill has been found and the man put on his trial in any event.

The WITNESS: In fairness I must point out that that is not common. I cannot think in recent times of any cases where the Crown has done that.

The PRESIDING CHAIRMAN: I am speaking from personal experience.

By Mr. Cameron:

Q. You referred to the case of Rex vs. Hughes and a subsequent change by statute bringing the law back to the position it had been interpreted to be before 1942. In your opinion is that a retrograde step in criminal administration or not?—A. In my opinion it is, because it enlarges the number of persons liable to the death penalty who—are guilty of what is called constructive murder, that is—persons who cause death accidentally in the course of the commission of a crime.

Q. I asked that question because I am glad you offer further support for the same position I took when that particular section was before a committee of this House.—A. In general experience it is practically impossible to defend an accused person to whose case the provisions of that amendment apply unless your defence is mistaken identity.

By Mr. Lusby:

Q. Does your experience in criminal courts extend to any province other than Ontario, Mr. Maloney?—A. No sir, except that I have been consulted in an advisory capacity in regard to two or three prosecutions in the province of Quebec.

Q. Is your experience confined entirely to the defence side of the proceedings? Have you had any experience with prosecutions yourself?—A. None, sir, whatever.

Q. I do not want to take up the time of the committee with discussing the merits of Crown prosecutors, but I think I would just like to say briefly that so far as my own province is concerned, some of these practices you ascribe to Crown prosecutors are not indulged in.

Hon. Mrs. HODGES: May we ask what province that is?

Mr. LUSBY: Nova Scotia.

By Mr. Lusby:

Q. There was one thing I was interested in. You said these convicted men with whom you said you had become close, were not insusceptible to reform. Do you mean by that they showed repentence for their crime for which they were convicted?—A. I had three or four cases in mind when I said that. These were cases of men who admitted their complicity in the crime and in three cases they indicated, as strongly as could be done, a serious feeling of repentence for what they had done. The fourth person whose case I referred to persisted to the last in his innocence, so had no occasion to display any possible feeling of repentence.

Q. Did these men who admitted their complicity show signs of regret before or after the conviction?—A. That is a difficult, although a very fair question. I would say they displayed it before their conviction, but to a much greater degree afterwards.

Q. So it would be, at least in part, brought about by the circumstances in which they found themselves? In other words, they had been convicted and the mere fact that they were facing death would perhaps in itself be a considerable, shall we say, incentive to remorse?—A. That may well be so; I couldn't dispute the accuracy of that, although I would like to go on to say this: if you view their state of mind at that stage of their case as evidence from which you can infer that the death penalty is a deterrent, I do not subscribe to that view.

Q. You do not think the death penalty is more of a deterrent than life imprisonment?—A. Based on the study I have made, where the death penalty has been successfully abolished in certain jurisdictions, it has not proved itself to be the only effective deterrent.

Q. Perhaps I shouldn't ask for your own opinion, but if you were planning a cold blooded murder, wouldn't you be less likely to carry it out if the possible consequence were hanging?—A. With great respect I think that is the source of error in the thinking of many persons who approach the problem of the death penalty. We are all too prone to sit down coolly and calmly and to say, would be personally be deterred if we were in a certain set of circumstances. Now, that ignores some important facts. In the first place, we are talking about human beings who are quite different in their way of thinking, in their upbringing, in their background and in their general way of life from you and from the other members of the committee, and it would be unsafe to arrive at an answer to the question of whether or not the death penalty is a deterrent, by applying that test. It also overlooks the fact that when murders are committed, with some exceptions but only some and not many, they are committeed at a time when there is no opportunity for such reflection.

Q. Yes, but I was speaking of the deliberate planned cold-blooded murder. Don't you think it might be a deterrent in a case like that, even though they may not constitute the great majority of murders? Perhaps what I am trying to get at is this: do you say that in no case of murder the death penalty would be a more effective deterrent than any other? I realize in a great many of these what you might call hot-blooded murders, probably it wouldn't be, but do you think it never would be in any conceivable case?—A. I can think, by reference to my study, of the subject, of cases in which there is

some evidence that the offender reflected in the manner you suggested before he committed his crime. For example, you will find, if you read the debates of New Zealand, reference to a prisoner who is not identified, who several weeks or months before the commission of the crime, and evidently at a time while he was planning it, expressed the view to his associates that he did not fear his plan to commit a crime because he knew he would not be executed. Now, that is the only case in New Zealand where that state of mind before the commission of the crime was proved; and as I read the debates—although, mind you, the references to the various cases mentioned are not clear—as I read the debates I understood that that particular offender was one who was suffering from some serious mental abnormality and therefore would not have been executed anyway. Now I notice that there are cases too in the United States, but amazingly few, in which apparently there is some evidence that the offender brought the victim from a death penalty State to a non-death penalty State and there carried out the crime, and I notice they are referred to in the appendices of the royal commission report in England. But, can you determine what it is right to do in regard to the question of the death penalty by selecting the cases of two or three individuals in that manner? Are you going to prevent a law of this nature from being enacted in our country simply because all over the world you find a few isolated cases?

Q. Well, of course, that might depend on how many there were. However, I do not think I should get into an argument with you. There was one further question I wanted to ask you. You, of course, favour the abolition of the death penalty. What would you consider as a good substitute, life imprisonment?—A. Imprisonment for life, but not with the expectation that the prisoner would serve a life term, because the inducement that a prisoner would have from knowing he would some day be released would be the most reformative influence possible on him and would have a very salutary effect on his behavior in prison.

Q. Have you any idea how many persons who are in prison for life, say in Ontario, actually serve their full term?—A. No, I cannot answer that question. I think you will find the justice department will have exact statistics that will assist you there.

The PRESIDING CHAIRMAN: Senator McDonald?

By Hon. Mr. McDonald:

Q. Mr. Chairman, Mr. Maloney, I too wish to thank you for the very interesting talk which you have given us. Perhaps we, especially those of us who have been in government services, have heard rather more of the Crown prosecutor's side and not so much of the defence, and it is well for us to have this side.

I take it that you have, in your experience in capital punishment cases, always been on the defence?—A. Yes, always.

Q. I was interested in what you said about the death penalty not being a main deterrent. I understand now from what you said to Senator Boufard that you feel it is somewhat of a deterrent?—A. I consider that the death penalty is a deterrent, just as any punishment is a deterrent. But I do not agree with the suggestion that it is the only effective deterrent and, if not, my submission is it should not be retained.

Q. May I ask your opinion as to whether or not Great Britain or England and other judicial centres reimposed the death penalty after having abolished it, because they felt it was a deterrent?—A. In the case of England, the death penalty was never abolished. Legislation was enacted in the House of Commons in the early part of 1948 abolishing the death penalty for a trial period of 5 years. It was subsequently submitted to the House of Lords for consideration and the bill was rejected, but in the intervening

period of a few months those who were awaiting sentence of death had their sentences commuted to imprisonment for life. The bill never did become the law of England.—New Zealand abolished the death penalty in practice in 1935, and abolished it by law six years later in 1941, but restored it in 1950; so that there was a total of 15 years experimentation with abolition in New Zealand. I could cite to you the statistics in regard to New Zealand which are to be found in the appendix to the report of the Royal Commission, in England, at page 342 of that report.

The PRESIDING CHAIRMAN: Now, Mr. Dupuis.

By Mr. Dupuis:

Q. You have mentioned four cases of murder where the condemned was given executive clemency, and three others who were hanged. You mentioned particularly one case in which the accused had already been found guilty but sustained his innocence to the end. In that particular case was the accused convicted upon circumstantial evidence only?—A. No. He was convicted of the murder of a young girl aged nine, whom it was alleged he had violated and then murdered, and whose body, it was alleged, he had destroyed. No trace of her body was ever found. He was arrested or apprehended at a time when he was attempting to commit suicide and he made a statement in which he confessed to having committed the act which resulted in her death. At his trial he repudiated his confession and said that he had made it in a state of despondency and depression and in order to accomplish what he had long tried to do unsuccessfully, that is, to commit suicide.

Q. In other words, he confessed?—A. He confessed.

Q. Now, what about the two other cases? Were the parties convicted on circumstantial evidence only?—A. The three other cases, you mean.

Q. No, the two other cases. You said in the beginning, if I understood you correctly, that probably those four should have been given executive clemency because some of them would not be guilty?—A. I did not intend to say if that clemency was warranted on the ground that they were not guilty. That was not the ground on which I said that they should have been given executive clemency.

Q. Excuse me. Even so, were the two others who were hanged found guilty on circumstantial evidence only? That is, if you recollect the cases, otherwise, you cannot answer. You do know the difference between a man convicted on direct proof and on circumstantial proof. So I wonder if you recollect whether those two men were found guilty after only circumstantial proof?—A. There is only one case I know, out of all of the cases I have referred to, in which the testimony on which the accused was convicted was solely circumstantial.

Q. Another question is this: You have just referred us to a book published by Professor Borchard of Yale University entitled "Convicting the Innocent", in which the author refers to 65 cases, and out of that number 25 were murder cases. Of course you just said that you do not know of anybody being hanged who was afterwards found to be innocent.

The PRESIDING CHAIRMAN: In Canada.

By Mr. Dupuis:

Q. In Canada. And I want to ask you a question which comes up at this time, in my humble opinion: the fact that a person is dead, after being hanged, do you not think results in not finding any other person guilty of the crime for which he has been hanged?—A. I agree wholeheartedly with you, Mr. Dupuis, that all interest in the inquiry as to his guilt or innocence terminates upon his death.

Q. Is it not true that in the cases you have referred to, in which the accused were first found guilty but were afterwards found to be innocent, they had some opportunity to look after their own defences, an opportunity which would not have been afforded to them if they had been executed? They had an opportunity to seek interested people in their own defense, and to seek interested counsel, or police, or points of law which permitted them to prove their innocence, whereas in the case of the accused or convicted person who was hanged, he had no such opportunity?

In many cases I have found police officers say: "We are not going to look for another person because we have the guilty one in our hands and that ends our case as far as we are concerned." So the police are no longer interested in following up the case. In the case of robbery or any other non-capital criminal offense, there is an opportunity for the innocent person to prove that he is not guilty and in many cases it has been found that he was not guilty. Is that not right?—A. I would like to subscribe to the things you have said, Mr. Dupuis.

Q. Thank you very much.

The PRESIDING CHAIRMAN: Now, Mr. Thatcher.

By Mr. Thatcher:

Q. Mr. Maloney mentioned that very frequently condemned murderers were defended by inexperienced or young lawyers. I would like to know why that is. Is it perchance because the fees which the Crown usually gives for that service are not sufficiently attractive?—A. Well, the present practice in Toronto or in Ontario I should say is this: We have set up the machinery of legal aid and it is through the instrumentality of that organization that defence counsel are now obtained in cases involving an indigent accused person. Prior to the setting up of that machinery there was a policy whereby any indigent person charged with murder could secure the services of the counsel of his choice, provided that such counsel was willing to accept payment from the Attorney General, at the rate of $40 per day for each day of the trial. But now there is no provision to provide compensation for counsel.

Q. There is no compensation for counsel? I do not follow you? Do you mean that if a lawyer is named by the Crown to act as defense counsel that he does not receive remuneration?—A. No. He is not named by the Crown. He is appointed by legal aid to act as defense counsel at the request of the prisoner. He receives no compensation except for out-of-pocket expenses, such as would be incurred in or during the transcript of the evidence taken at the preliminary hearing.

The PRESIDING CHAIRMAN: And I think in that connection there is a preliminary investigation in order to determine whether the accused who seeks legal aid is in a position to pay for it.

The WITNESS: Oh yes.

By Mr. Thatcher:

Q. I understood from Mr. Justice Hope the other day that the Crown provided legal fees for defense counsel.—A. No. At one time there was an arrangement, as I have just said, whereby legal aid would be secured by the Crown provided defense counsel was willing to accept payment of $40 per day for each day of the trial.

Q. Do you not think that is something that should be changed. Do you not think that in the interests of justice defense counsel should be paid by the Crown to make sure that the accused person will get a proper defense?—A. Well, an arrangement of that kind might lead to many complications. I think the proper solution to the problem would be this: That any accused, proved to be indigent, charged with murder should have available to him the services of the

most accomplished and capable legal counsel in the vicinity without fee. The burden of defending such cases would be equitably distributed among the respective counsel available.

Q. But he cannot obtain that under the present law?—A. Under the present law there is no requirement whereby leading legal talent need defend.

The PRESIDING CHAIRMAN: Since legal aid came in, some of the senior counsel in Toronto in criminal law have taken on cases and have successfully defended people.

Mr. THATCHER: But, Mr. Chairman, I would also remind you that the witness said that, in the big majority of cases he knew of, it was young and inexperienced lawyers who were defending these cases.

The PRESIDING CHAIRMAN: On average, that would be right.

The WITNESS: May I make a suggestion? The statistics that the Department of Justice would have at its disposal would, I think, disclose or contain information that would enable you to determine how many cases in the period of the last ten years, let us say, involved persons convicted of murder who had been defended by youthful inexperienced counsel. An examination of the record of such cases would enable you to see to what extent that situation has existed.

By Mr. Thatcher:

Q. There is another point I was interested in, Mr. Maloney. You said that juries are not informed of their right to recommend mercy. Do you feel that the law should be changed in that regard, so that the judge at each trial should point out to juries that particular right?—A. I can see the danger of pointing out to the jury their right before they render a verdict.

Q. Once they have rendered a verdict, it is too late.—A. No, my view is that the jury should be instructed to return, and that the jury before they are discharged should determine whether they would recommend mercy.

Q. So you just recommend a change to the committee along those lines, from your experience?—A. If my recommendation as to abolition is not carried out, and if my alternative recommendation that the responsibility for the death penalty be placed in the discretion of a jury, as recommended in England, is not carried out either then I would suggest that as a final alternative.

Q. There is another point I would like clarification on, either this morning or later. That is, this executive clemency. As a defence counsel, what is your procedure to get a hearing from—I think you would call it—the executive, or the cabinet, or whatever it is?—A. The procedure I have followed in most of these cases is, after consultation with my client, to prepare—I should not really call it a brief, because it is not sufficiently formal to be called a brief—a detailed letter setting out such facts as in my knowledge I consider important and likely to be of assistance to the minister. I had two cases, which the minister may not recall, where I had occasion to speak on the telephone to Mr. Garson about them. He has displayed on those occasions a very great anxiety and a great desire to get whatever help I could be to him, so that the procedure has always been quite informal. It involved a letter with the facts in it. It involved in two cases a telephone conversation direct with the minister.

Q. Do you usually get a personal hearing? Does the defence counsel usually get a personal hearing?—A. The minister gives you every reason to believe that he would like to give a personal hearing, if you think you could add anything to the representations. I think that is a fair statement.

Hon. Mr. GARSON: That is right. As a rule they do not apply for a personal hearing.

Mr. THATCHER: I have just another question, Mr. Chairman. I do not want to rush in.

The PRESIDING CHAIRMAN: I am not rushing either.

By Mr. Thatcher:

Q. If the committee should not decide to abolish capital punishment, Mr. Maloney, do you think it would be advisable to consider using another method than hanging, such as the gas chamber?—A. I must be careful not to say anything that would be designed to influence the committee on a matter that is out of my field. That is essentially a medical problem. I was rather surprised in reading the English report to learn that of the various forms of execution that they considered they recommended the retention of hanging as being the most humane and most decent form of execution. With what experience I have had in the field, if hanging is retained, the committee should recommend that some precaution be taken whereby the possibility of consciousness after the accused offender has been dropped should be completely eliminated. I was very much alarmed to learn of a case—I will withhold the name, but submit it in a memorandum if you wish it—of a convicted murderer in Toronto as recently as the early 1940's, who at the time of his execution apparently, according to one witness with whom I spoke, was conscious after the drop and was making such sounds and gestures as would indicate to the people around that he wished to be taken out of his torment. They have not apparently had that experience in England because according to the report in fifty years there is no mention of an unsuccessful execution by hanging, but I think this committee should investigate the skill of our present executioners in Canada and satisfy itself of their ability to do the job skillfully as it is done, evidently, in England. I would have thought to eliminate any possibility of consciousness after the drop a medical man could administer in the arm or some other part of the body of the suspended prisoner some narcotic or drug that would completely eliminate the possibility of consciousness.

Mr. THATCHER: Perhaps they should administer the drug before.

The WITNESS: In administering the drugs often the cooperation of the prisoner is required and if administered intra-venously it must be administered with great skill, and if administered muscularly it could be quite painful. I recommend you read the English report in that respect.

By Mr. Winch:

Q. Under the present Act if the accused is found guilty it is mandatory for the judge to sentence under this charge. If capital punishment is maintained, do you think that the judge should have more discretion regarding the sentence of death or life imprisonment or that there should be degrees of murder as they have in the United States?—A. I do not think the discretion of determining whether or not the death penalty should be imposed should be vested in the judge. It is too terrible a responsibility to pass on to one man. Besides as I have already suggested one judge might differ from another judge in temperament, character and outlook. And this would lead to inequality. I would recommend that if the death penalty is to be retained that the discretion should rest with the jury, as recommended in England.

Q. Do you think we should have anything along the line of the United States as to degrees?—A. I had an open mind on that subject until recently, and my view is that the solution of these problems is not to establish degrees of murder. The reason for that is that to try to establish degrees of murder you are going to have to resort to cumbersome legalistic phraseology that is going to give rise to interminable appeals and problems of that nature. Degrees are not the solution. I subscribe to the solution suggested by the commission in England.

Q. You said you became quite close to a number of these men who had been convicted of homicide? Were you able to get close enough to their thinking, or did you get any expression from them, as to which they feared more, capital punishment or being incarcerated for life behind the walls of a prison?—A. I can say without exception in all the cases I have mentioned, if they had been given the choice they would have elected to take imprisonment for life, and I hasten to say if you will permit me to, that my submission is that that is no evidence from which this committee will be entitled to infer that the death penalty is a deterrent.

The PRESIDING CHAIRMAN: Senator Hodges?

By Hon. Mrs. Hodges:

Q. Don't you think that establishes the fact that these men, fearing the death penalty as they do, were cowards? Of course, you would expect the coward's point of view from someone who committed a cold-blooded murder. —A. In the first place, I do not agree at all that because a person—no matter what his position—fears death he is a coward.

Q. But that is a different question. You are getting away from the point. The point is, if he fears death under those conditions?—A. I don't think there is room for argument or that it supports the theory that he is a coward.

Q. Yet you say he would rather have the penalty of life imprisonment? —A. Yes, but I do not think we can infer from that that the people are cowards.

Q. However, I think a murderer is a coward, anyway. We will let the question go. Another question I would like to ask is this: I was very interested in your suggestion that in a great many of these cases the prisoners lose out because of the lack of experience of the defence counsel. Are you trying to imply by that that with more experienced counsel they would have a fair chance of escaping their sentence or do you mean to imply they would have a better chance of escaping through legal loopholes?—A. By that statement I mean that where a person is charged he is entitled to the most experienced counsel possible, not to avail himself of what you call legal loopholes—but to insure to the best of his ability that the offender's conviction is not brought about except on proper evidence and after a trial according to law and after the application to his case of all the rules of law we have built up to insure fair trials. Now, a counsel who performs that function, performs, in my submission, a duty to society, and an experienced counsel will perform that function, by virtue of his experience, with greater skill than an inexperienced counsel, and where the charge is murder and the penalty is so drastic, I think there is an inequality in the law which results in people in poorer or impoverished circumstances having to be denied the assistance of some counsel of great competence and experience.

Q. What you mean to imply is that by providing them with competent experienced counsel it would help to offset the impression you have given us of the apparent fallability of judge and jury and prosecuting counsel?—A. I agree with that. It would help to offset, yes. I do not think you will ever remove the situation where the poor cannot always be defended by the most talented counsel. That inequality exists in every facet of our society.

Q. It could possibly also exist even if he paid the highest price?—A. What do you mean?

Q. Even if he secured the services of the most high priced lawyer—and I say this with all due deference to the lawyers present—it doesn't mean that he has a talented or experienced counsel?

The PRESIDING CHAIRMAN: Mr. Fairey?

By Mr. Fairey:

Q. My sheet is pretty well cleared by all the questions that have been asked. I have just one question which I jotted down here. I was disturbed when you said that the evidence adduced at the preliminary hearing was not all disclosed by Crown counsel. Would it help if the law was changed to say that no additional evidence would be adduced at the trial which was not adduced at the preliminary hearing?—A. That legislative change would completely eliminate the danger that I say exists now. I should not call it a danger, but it would eliminate the matter I have criticized in regard to preliminary hearings, but from the point of view of the administration of justice it might not always be practical because a witness may be discovered after the preliminary inquiry who ought to be called for the proper administration of justice.

Q. But that information could then be transmitted to the defence counsel in plenty of time?—A. Yes, perhaps an amendment to the effect that no witness could be called to testify at the trial who had not testified at the preliminary hearing, or a summary of whose evidence had not been disclosed to the counsel for the defence, would be effective. That would remove the basis of my criticism in regard to preliminary hearings.

The PRESIDING CHAIRMAN: Mr. Valois?

By Mr. Valois:

Q. I wonder if my English will be equal to the questions I would like to put to you. I do not want to put words into your mouth which you have not spoken. Are we to draw the conclusion from what you said that you are against the death penalty because you feel it is not the only effective deterrent, and secondly because there are miscarriages of justice and the safeguards that are supposed to be in existence so far as the accused is concerned, are in practice very much less than we are led to believe? To go into another field, what would you say is the effect of imprisonment for burglary, is that a deterrent?—A. Oh, undoubtedly.

Q. It is?—A. Yes.

Q. That is something I do not understand very well because if we examine statistics, although we have had jails and prisons for as far back as we can remember, I think the statistics will reveal that we still have every year a good crop of burglars and thieves and so on. The idea I am trying to put to you, sir, is this: I think it might be well to start from one point, that it is human to make a mistake, and that no matter what protective or preventive measures we take, or the law may provide, it is bound to happen—there will be mistakes. This all happens in the field where the accused, if convicted, is sent to jail because he is found guilty of theft or burglary. It may happen that if a man is convicted of having killed somebody he would be hanged. It will always happen and I am afraid that if we abolished the death penalty because there might be mistakes or miscarriages of justice, then what is the use of having penitentiaries?—A. With respect, I do not see how you arrive at that conclusion on the reasoning you have offered. If I understand you correctly, first of all, errors of justice and mistaken convictions can be rectified where the death penalty has not been carried out, but they cannot be rectified where the death penalty has been carried out. I do not for a moment subscribe to the belief that we should do away with prisons. A lot of our difficulty is with repeaters at the present time and it is due largely to a concept of punishment that prevailed not only in our country but in many countries for a long period of time.

The approach to crime and punishment generally has commenced to undergo a change which you see reflected in great improvements in prison systems throughout the world. If you were to compare the prison system

in Canada today with the prison system in Canada 25 years ago you would be quite amazed at the different approach to the problem of punishment today, since it is designed not solely to punish the offender but to help to correct whatever problem might have caused him to violate the law. I think that improved prison treatment will ultimately result in less crime.

The PRESIDING CHAIRMAN: Now, Mr. Minister.

By Hon. Mr. Garson:

Q. I should like to endorse what has been said by the other members of the committee concerning our gratitude to you, Mr. Maloney, for coming here. If we are going to make any headway at all we shall need to have a balanced picture. We have already had a heavy representation of the prosecution side until you arrived.

There are a couple of points which you raised which I would like you to confirm. The impression I got from your remarks was that capital punishment is a not deterrent to capital offenses.—A. It is not the only effective deterrent.

Q. Then what other deterrents are there, in your opinion?—A. A sentence of imprisonment for life, not necessarily involving the serving of life imprisonment, in my opinion is established by the successful experiments of other jurisdictions to be an equally effective deterrent.

Q. In measuring whether capital punishment is a deterrent I gather, and perhaps wrongly, you base that on the quite extensive experience you had as defense counsel in actually meeting those men who had been proven to be guilty.

The PRESIDING CHAIRMAN: I do not think the witness is being heard.

By Hon. Mr. Garson:

Q. I am sorry. I gathered from Mr. Maloney's testimony that he had based his conclusion that capital punishment was not the only effective deterrent upon the contacts which he had had with men who ultimately had to suffer capital punishment. That is the basis, is it not?—A. I did not mean to base my conclusion that it was not the only effective deterrent on the limited experience I derived from having been associated with the cases of five or six persons under sentence of death. I also base my conclusion on the study I have made of the subject and particularly my study of the successful experiments conducted in the other jurisdictions in which they have abolished it.

Q. Have you ever had contact with any person, to your knowledge, who had contemplated murder but who had been deterred from committing murder by fear of capital punishment?—A. No, I have not.

Q. You expressed some admiration for the report of the Royal Commission on Capital Punishment. I would like to read to you from page 20 of that report and ask you if you agree with it.

> 59. Capital punishment has obviously failed as a deterrent when a murder is committed. We can number its failures. But we cannot number its successes. No one can ever know how many people have refrained from murder because of the fear of being hanged. For that we have to rely on indirect and inconclusive evidence.

Would you agree with that statement?—A. Well, no; or if I do, then with some qualification. For example, let us repeat the sentence which the Minister has read:

> No one can ever know how many people have refrained from murder because of the fear of being hanged.

Implicit in that statement is the apprehension that if you were to abolish the death penalty, then those persons who had refrained from committing murder before abolition, or like minded persons, would now commence to

commit such crimes. How do you test the validity of that statement? The only way you can do it is on the best available evidence. Look to the jurisdictions in which it has been abolished. Look to New Zealand. If the apprehension implicit in that statement is right, we would have thought that in the period of abolition all those persons who might have been restrained from committing murder by reason of the death penalty before its abolition would now have commenced to commit murder and that acordingly the murder rate would indicate a very great increase. But in actual fact that is not the experience of any of the jurisdictions in which the death penalty has been abolished. That is why I answered that question in the way I did.

Q. You base it on statistical evidence?—A. Yes sir.

Q. Now let me refer you to page 22, paragraph 62 of the Royal Commission Report, and I read:

> 62. We must now turn to the statistical evidence. This has for the most part been assembled by those who would abolish the death penalty; their object has been to disprove the deterrent value claimed for that punishment.

Would you agree with that statement? It is a statement of fact.

The PRESIDING CHAIRMAN: It is certainly one of the purposes.

The WITNESS: Yes, one of the purposes, but—

By Hon. Mr. Garson:

Q. If you do not agree with it, I do not propose to comment myself. You say you have made a study, but do you agree with this statement of fact?—A. You mean that, that is the object of people who want to abolish the death penalty?

Q. No, do you agree or disagree with the statement that I have just quoted?—A. I am not in a position to agree or disagree.

Q. You would not question it, then?—A. No.

Q. Then, with regard to this comparison that you say should be drawn, I direct your attention to paragraph 64, to this quotation:

> An initial difficulty is that it is almost impossible to draw valid comparisons between different countries. Any attempt to do so, except within very narrow limits, may always be misleading. Some of the reasons why this is so are more fully developed in Appendix 6. Briefly they amount to this: that owing to differences in the legal definitions of crimes, in the practice of the prosecuting authorities and the courts, in the methods of compiling criminal statistics, in moral standards and customary behaviour, and in political, social and economic conditions, it is extremely difficult to compare like with like, and little confidence can be felt in the soundness of the inference drawn from such comparisons.

Would you agree with that?—A. No, the only relevant statistic from any jurisdiction which has experimented with abolition is the number of homocides that have been committed in such country, how many people have been killed unlawfully; and there is no such wide variation in law that would require you to say that owing to the differences in legal definitions of crimes it is not helpful to refer to statistics. The only relevant statistic is how many people have been unlawfully killed. You do not have to resort to complicated legal definitions applicable to different jurisdictions to determine that. Secondly, when you consider the jurisdictions where abolition has been experienced with, they are sprawled across Europe and the United States, you go to New Zealand, even in Asia, in South America. Now, how can we say that such—shall we call it?—a cosmopolitan group of nations representative of every type of race

and creed, some countries industrial, some agricultural, some mainly urban, some mainly rural, how can we say that it is impossible to make an effective comparison? That is why I do not agree with that statement.

Q. You do not agree?—A. I contend that an effective comparison can be made with the other jurisdictions that have experimented with abolition, whereas this quotation you have mentioned rather would indicate that you cannot make such a comparison for the reasons the writer gave.

Q. Well, would you say that the experience, we will say, of a homogeneous population like that of Sweden, long established and settled, with one language, mainly one religion, and one way of looking at life, with the abolition of the death penalty, would be clearly indicative of the result that you would get by abolishing the death penalty in the state of Illinois in the United States?—A. No, I do not think so. If the only jurisdiction that formed a basis of comparison was Sweden, it would not be an effective basis of comparison.

Q. What country would you suggest that would compare with Illinois?—A. I think you must take an accumulation of countries. In Europe there are only two democracies west of the iron curtain that have not abolished the death penalty, either by law or in practice. I submit that they represent racially, temperamentally and in every way a cross section. If you add to them, too, the people of South America and the people of New Zealand, they represent a cross section from which you could determine what ought to be done in Illinois.

Q. And you think that in these comparisons the differences in the legal definitions of crimes, in the practice of the prosecuting authorities and the courts, and in the methods of compiling criminal statistics, and the differences in moral standards, et cetera, do not affect the inferences and conclusions at all?

Mr. WINCH: There are many more questions and I would suggest that we have Mr. Maloney back if we can.

Mr. LUSBY: Are we going to have any opinion from Mr. Maloney on the other topics which are to be the subject of consideration in this committee?

The PRESIDING CHAIRMAN: No, I do not think so.

Mr. DUPUIS: If Mr. Maloney is not going to be back I have a question I would like to ask him because it is important to me if not to the committee.

The PRESIDING CHAIRMAN: Could you put your question in writing to Mr. Maloney and get the answer. It is now after one o'clock.

Mr. BROWN (*Essex West*): Could we go on for a few minutes?

The PRESIDING CHAIRMAN: Is it the desire of the committee to sit for another ten minutes?

Mr. THATCHER: Could Mr. Maloney not come back at four o'clock today and give us all a chance for a few minutes?

Mr. BROWN (*Essex West*): Would not three o'clock be better?

The PRESIDING CHAIRMAN: Shall we adjourn until three o'clock?

Agreed.

AFTERNOON SESSION

3.00 p.m.

The PRESIDING CHAIRMAN: Gentlemen, we have a quorum. The minister has a few questions. Mr. Minister, would you like to go ahead with your questions?

Mr. Arthur Maloney, Q.C., Chairman of the Committee on Criminal Justice, Ontario Branch of the Canadian Bar Association, recalled:

By Hon. Mr. Garson:

Q. Mr. Maloney, in your remarks this morning, I understood you to cite three cases in which there was what appeared to you to be a miscarriage of justice because of a mistake of law. As I understood the mistake of law as described by you, it was that for a long while the law upon that particular point which you were discussing had been interpreted by the courts as thus-and-so; and that on the interpretation of that law various accused persons had been convicted over a period of years. Then an appeal was taken to the House of Lords, I think you said, and the House of Lords' judgment was to the effect that the interpretation of the law previously accepted was not correct, and that that interpretation as it had been acted upon previously had never been the law. All of which I accept. My question is this: is it not a fact that the application of common law or of statutes to the facts of a given case has to be made as the judges in that case at that time interpret the law?—A. It is applied in the manner in which the judges interpret the law, and it is assumed that their interpretation of the law is correct.

Q. Yes, at that time, and that was the point that I wanted to make. Was it not a fact, in the very case that you cite, that until this appeal that you spoke of was taken to the court of last resort in England the general opinion had been in England by all of the judges of the trial and appellate courts, but not of the court of the last resort, that the law was as it was applied in all those cases in which convictions were registered?—A. Yes, Mr. Minister.

Q. And it was only because the taking of the appeal to the court of last resort resulted in a new interpretation of the law, and because of that principle that in making that interpretation they said that this is what the law has always been, that one could argue as you did that the previous view of the law which was accepted generally by the judges was an incorrect one?—A. Well, a lawyer's understanding of the problem involved in this question is this, that the House of Lords should not be deemed to have been given a new interpretation to the law. They were officially pronouncing what the correct interpretation was, and that over that long interval of time inferior tribunals had misinterpreted the law. Now, the vice in all that, as I see it, is that if such a question had been raised before the House of Lords at an earlier time, the correct interpretation of the law for the guidance of all trial judges and appellate judges in subsequent cases would have been pronounced at an earlier date and fewer persons would have been executed. I rely on that example as proving that for a long interval of time the law was incorrectly interpreted and that, therefore, there were a number of persons who may have been executed and who doubtless were executed under that misapprehension of the law. I am not sure that I have answered your question very satisfactorily. If I have not, I would like to have another try at it.

The PRESIDING CHAIRMAN: Is this the idea, that at whatever level in the courts you have a pronouncement as to the interpretation of the law, that is the law until such time as a court at a higher level makes some different pronouncement?

Hon. Mr. GARSON: Precisely.

The PRESIDING CHAIRMAN: And when it finally gets to the House of Lords, even if it is a hundred years later, we use the expression that the law has become settled.

By Hon. Mr. Garson:

Q. It has become settled, but in the meanwhile the law as it is interpreted by those courts to which it has gone is the only law which can regulate the conduct of citizens, either civilly or criminally; is that not a fact?—A. I would have to agree with that, sir.

Q. And it is only in the sense that the court of last resort has happened to reach a conclusion concerning the law, which has been different from that previously accepted, that it could be argued, as you argued, that the previous conception of the law was a mistake. It was a settled law until the time that the case had been taken to the court of last resort, was it not?—A. I do not agree that it was the settled law. I agree that it was believed to be the proper interpretation of the law.

Q. Then I suppose you would suggest, or would it not be implied by your argument, that perhaps, in those cases where there was any doubt upon a point of that sort, those who make a reference to the court of last resort should do so earlier in the day, so that the law could be settled on these points?—A. Yes, sir.

The PRESIDING CHAIRMAN: Any other questions?

The WITNESS: Could I develop one thing arising out of that? I was personally involved in a case in which, because of the limited jurisdiction in regard to appeals to the Supreme Court of Canada, a very important point of law was decided against the interests of my client and he was executed. Now, that point ultimately will be brought before the Supreme Court of Canada in some future case. That tribunal may well decide the point of law against the contention that I put forward, in which case no harm could be suggested. But if the Supreme Court of Canada should decide that point of law in favour of the view which was put forward on behalf of Chambers—which is the case to which I refer—I think then that it could and would be argued that Chambers' case involved a serious miscarriage of justice.

By Hon. Mr. Garson:

Q. I am sure you will not misunderstand my asking this question. That being the case, was an appeal from the judgment of the court of appeal not indicated to the Supreme Court in the Chambers' case?—A. Yes, but this was the situation. The right of appeal to the Supreme Court of Canada in 1947 was even more limited than it is now, and to succeed in bringing an appeal before the Supreme Court of Canada at that time one had to show either (a) that there had been a dissenting judgment in the court below—that is the provincial appellate court—on a question of law, or (b) that the decision of the provincial appellate court, even if unanimous, was in conflict with the decision of another provincial appellate court in a like case.

The point of law involved in the Chambers case was this: could an accused person be convicted of murder on his own extra-judicial confession in the absence of evidence of a corpus delecti? The precise point had never arisen in Canada before in any other provincial appellate court. Therefore I could not bring my case within the second requirement. It did not come within the first requirement because there had been no dissent in the Ontario court of appeal. But, there are other decisions in the Empire and elsewhere which are in conflict with the decision of the Ontario court of appeal. If the question

should arise in some further case in Canada, I would have no doubt that leave would be given now to appeal to the Supreme Court of Canada under its broader jurisdiction.

Hon. Mr. GARSON: As a result of amendments made since that time?

The WITNESS: That is right.

By Mr. Shaw:

Q. This morning, Mr. Maloney, you recommended the abolition of the death sentence and I believe you recommended that the penalty should be life imprisonment but not necessarily imprisonment for life. What would you recommend as a yardstick for the period of time the person should spend in prison, the length of his incarceration?—A. In the first place it would be quite inadvisable and inappropriate to lay down any set period as being the period that ought to be served. I think that the period of imprisonment that ought to be served by any convicted murderer ought to be a substantial one. No matter how reformative the offender shows himself to be in prison, to be a deterrent and to impress upon society the grave view we take of the crime a substantial period of imprisonment should be served. Now, as to how substantial, that would depend on the susceptibility of the offender to the reformative influences brought to bear on him in the prison, his conduct in the prison and his opportunities for rehabilitation as determined by a board of experts. I do think if the death penalty is abolished and if life imprisonment is substituted for it, society would demand, and you should direct, that no such convicted murderer should be released back into society until he had satisfied persons sufficiently expert to pass judgment on his case that he was as close to a safe risk as was possible.

Q. In the case of a man who has been convicted of murder and sent to a prison, after an appropriate period of time is released, and then commits a similar offence, then what? Would you recommend imprisonment for life within its full meaning?—A. It may well be—and here is a question which I do not answer—that you should adopt the policy that is adopted in respect to those persons in the United States of America, namely preserve the death penalty for persons who commit another murder in those circumstances.

Could I just comment on one other thing; It is of interest to consider the statistics of other jurisdictions who have introduced abolition to see to what extent second murders have been committed by convicted murderers. For example, you will find in England that over a period commencing about 1920 to 1948, 174 convicted murderers who had their sentences of death commuted to life imprisonment were subsequently surrendered on parole back into society and out of that group of 174 one in 1947 named Walter Howland committed a second murder and a study of the circumstances of his case indicates to my satisfaction that the second murder was something the responsibility for which lay in the circumstances under which he was released. He was carelessly released.

Q. This morning one hon. member asked you a question about the practice in effect in certain of the states in the United States of America in respect to the degrees of murder. Do you not suggest at the present time, in view of what you have already said, that you would actually recommend degrees of murder? This morning you opposed it. You suggest one person serve a longer period of time than another, and you would take into consideration the nature of the crime, and you suggest the possibility of maybe continuing the death penalty for a second offender. That would constitute a recommendation of degrees.—A. I do not think that we are talking about the same thing. I think that degrees of murder are sufficiently covered under our law in its present state, subject perhaps to the provisions we mentioned this morning concerning

so-called constructive murder. My view is that the death penalty ought not to be carried out in such cases as that. The degrees of murder are different from the considerations that you apply in determining whether a convicted murderer serving a life sentence should be released. The consideration you apply in the latter case are based on his subsequent conduct after conviction in prison and how he demonstrates his capacity to submit to the reformative measures brought to bear on him in prison. Degrees of murder are confined to the circumstances under which the crime itself was committed. My fear about degrees of murder is that it will require us, as I said this morning, to introduce complicated legalistic phraseology which will be constantly before the courts for interpretation.

Would it be fair, Mr. Maloney, to suggest that what you recommend is, in effect, different types of treatment, let us suggest, for different murderers?—A. You mean, assuming that the death penalty has been abolished?

Q. Yes, and that life imprisonment is the penalty. You would then be treating different murderers in different ways under your proposed plan?—A. Yes, I would, particularly in regard to the length of imprisonment that would be required.

Q. I have one other question, Mr. Chairman, if you will permit me.

The PRESIDING CHAIRMAN: Certainly.

Q. This morning Mr. Maloney suggested, I believe, that the right or obligation resting upon a judge of imposing a death penalty where a man has been convicted of murder should be transferred to a jury. Would you care to elaborate on your views in that connection? Why do you feel this should be transferred from the justice to the jury?

The PRESIDING CHAIRMAN: Is that what you said?

The WITNESS: No. It may well be, however, that I did not make myself clear. Under our law, in its present state, the sentence of death is the mandatory penalty which must be imposed on an offender convicted of murder by a jury. That is, it is not a matter of discretion for the trial judge. He has a duty in law imposed upon him to pass this sentence once the jury have convicted for murder. What I suggest, in the event the committee does not ultimately recommend complete abolition of the death penalty, is that you recommend the implementation of the plan proposed by the present royal commission in England; namely, that you impower the jury to decide in each case whether the punishment of imprisonment for life should be imposed rather than the death penalty. Now, the commissioners in England, and I believe they all concurred in this recommendation, recommended that the possibility of introducing this proposal into Great Britain was examined and the conclusion was reached that a workable procedure could be devised. In other words, the recommendation made in England is this, that the jury impanelled to try the issue of the accused man's guilt or innocence, do so, arrive at a verdict, and having done that, that something in the form of a secondary trial immediately take place before them in which they hear additional evidence which would be helpful to them in determining whether the penalty ought to be imprisonment for life or death by hanging. That is the system in vogue in a number of the States of the United States of America. As a matter of fact, today there is only one State in which the death penalty is mandatory, as it is in our country, and that is Vermont.

The PRESIDING CHAIRMAN: Mr. Dupuis?

By Mr. Dupuis:

Q. I have asked this question of other witnesses previously, but I wonder if Mr. Maloney would care to answer it or give his opinion on this matter. If the death penalty was to be maintained, would you favour, in order to

prevent an innocent person from being hanged, that a trial judge be compelled, without any other alternative, to render sentences as follows: (1) the death penalty, in the case of direct proof, and (2) life imprisonment, in the case of circumstantial proof?—A. Well, with my defence mind, I must frankly admit that I look for reasons to eliminate the use of the death penalty. I must frankly say, as a lawyer, however that I do not think such a distinction is advisable because we must recognize that there are many cases of circumstantial evidence that establish beyond peradventure the guilt of an accused person.

Q. I have one further question. Do you agree with what I say, that you do not get the real certitude under the best circumstantial proof, that you have in cases where there is direct proof? You are not forced to answer me. —A. No, I do not want to decline to answer any question if I can help the committee. There are cases in which the evidence is exclusively circumstantial which, in my opinion, are not such as to warrant a conviction, but there are also cases dependent solely on circumstantial evidence for proof that in my opinion have very great certitude.

Q. Would you say that in 100 per cent of cases you would have 100 per cent certitude of, what chall we vall it, a person guilty? You know what I mean.

The PRESIDING CHAIRMAN: What do you mean, 100 per cent?

Mr. DUPUIS: I am sorry I cannot explain myself so well as in my own language, but I will get myself understood in just a minute.

The PRESIDING CHAIRMAN: The law says beyond a reasonable doubt; is that what you mean to say?

Mr. DUPUIS: Yes, out of 100 cases, I wonder if the witness will admit this, that there is a chance that an innocent person would be condemned on account of having brought only circumstantial proof?

The WITNESS: Yes, I would concede that, but I do not confine my argument with reference to possible miscarriages of justice to cases that are based solely on circumstantial evidence. There are equal hazards in cases of direct evidence. A case where there is direct evidence given by a plausible witness who is perjuring himself, represents a dangerous hazard, I think. Miscarriages of justice do not solely occur in cases involving circumstantial evidence. That is what I meant to convey.

The PRESIDING CHAIRMAN: Now, Mr. Thatcher.

Mr. THATCHER: I wonder if Mr. Maloney would clarify the answer he made this morning. As a defence counsel what are the grounds on which you can appeal to the Supreme Court on behalf of a murderer?

The PRESIDING CHAIRMAN: You mean the Supreme Court of Canada.

By Mr. Thatcher:

Q. Yes, to the Supreme Court of Canada.—A. Well, under the present state of the law as amended in 1949, there is no right of appeal at all to the Supreme Court of Canada unless (a) at least one judge in the provincial appellate court has dissented on a question of law as opposed to or as distinct from a question of fact or a question of mixed law and fact; or (b) leave to appeal is granted by a single judge of the Supreme Court of Canada on a question of law whether or not there has been dissent on such question of law in the court of appeal. In other words, if you have a dissent on a question of law in a provincial appellate court, then you have an appeal to the Supreme Court of Canada on that question as of right. But if there is no dissent, then you only have a right to appeal to the Supreme Court of Canada if you first apply for and then obtain leave to appeal to that court, and such leave will not be granted unless you can establish that a question of law is involved

in the case. That does not include any question of law. There is no jurisprudence to establish what type of question of law will be sufficient to enable a judge to grant you leave. But a survey of the appeals in the last four or five years would seem to indicate that you will not be granted leave on a question of law unless you show that it is one of importance and that it is one which, if decided in favour of the appellant, would probably affect the outcome of his case.

Q. Am I right in assuming that very few murder cases can be appealed to the Supreme Court of Canada?—A. Yes, that is a correct assumption; but I should also point out that while it is extremely difficult to get leave to appeal to the Supreme Court of Canada in the ordinary criminal case, it is less but still very difficult to get leave to appeal in a murder case.

Mr. WINCH: That means that an appeal to the Supreme Court is directly an appeal on the basis of a question of law and not upon the guilt or the innocence of the prisoner. That is established within the province and there is no review of the evidence as to whether the man is guilty or innocent.

The WITNESS: Except in so far as it is necessary to review the evidence in order to consider the question of law involved. Let me illustrate my point with a case in which leave to appeal was granted. Consider the case of Kelsy versus the Queen in which leave to appeal was granted on a question of law although there had been no dissent in the Court of Appeal. One of the grounds for appeal was that the only evidence against the convicted murderer was based on his own confession—that there should have been no conviction without corroboration, or alternatively no conviction unless the jury had been warned about the danger of convicting in such a case with no evidence to corroborate the confession. That was a question of law and an important one which if decided in favour of the given appellant would have materially affected the outcome of his case. Accordingly it was a case in which leave to appeal was given.

Mr. THATCHER: Mr. Chairman, I admit that I am only a layman, but it seems to me there should be an inherent right in a man, even though convicted, to be able to appeal to the Supreme Court in every case. Is there some reason?

Mr. WINCH: That is only an appeal on a matter of law.

The PRESIDING CHAIRMAN: Or mistakes in the judge's charge to the jury, or misinterpreted evidence, not putting the defence properly to the jury, and so on that is to the Provincial Court of Appeal.

By Mr. Thatcher:

Q. Do you think, Mr. Maloney, that the grounds for appeal to the Supreme Court should be extended? Would you make such a recommendation to the committee?—A. My belief is that so long as the death penalty is retained in Canada there should be an automatic appeal to the Supreme Court of Canada in the case of every convicted murderer.

Q. I would agree with you wholeheartedly on that. It would seem to me that it might even be more sensible to have such an appeal to the Supreme Court of Canada rather than to the cabinet because I should think that the cabinet would be busy with other things and it might not give the attention to the appeal that it deserves.—A. But the Court and the Executive have quite different functions.

Hon. Mr. GARSON: Would you like to ask the witness whether it would be an appeal on law or upon both law and facts?

The WITNESS: You mean to the Supreme Court of Canada?

Hon. Mr. GARSON: Yes.

The WITNESS: Yes, it would apply to every convicted murderer.

The PRESIDING CHAIRMAN: You cannot appeal the verdict of a jury unless you change the law.

Mr. THATCHER: But it would be one additional safeguard, would it not?

Hon. Mr. GARSON: That is the reason I suggested that it be cleared up. Would you not agree that there is a question whether the verdict of a jury which is based on the facts should be subsequently upset by some court of appeal?

Mr. WINCH: Why is it that in capital cases, where the sentence of death is imposed, the appeal to the Supreme judicial body of Canada is only on a question of law and not on a question of fact?

The WITNESS: You are asking me that question?

Mr. WINCH: Yes.

The WITNESS: I think I know the reason. I do not subscribe to it, however.

By Mr. Thatcher:

Q. No?—A. The reason is that the Supreme Court of Canada, if it added to its present sphere of work the additional work that would be involved in requiring it to entertain appeals in the case of all convicted murderers, might feel that it was over-burdened.

Q. But life and death are the most important things of all, are they not?—A. That is the view I take, but it is justified—at least those who subscribe to that view justify it for this additional reason: They assume that the questions involved have been considered by the provincial appellate court, usually by at least five judges, and that what are issues of fact peculiar to the individual case should not have to be twice reviewed by an appellate court.

The PRESIDING CHAIRMAN: Now, Senator Hodges.

By Hon. Mrs. Hodges:

Q. Could I ask Mr. Maloney if he is prepared to go so far as to say that he thinks that every convicted murderer should automatically have an opportunity of appealing his case to the Supreme Court?—A. Yes.

Q. And would he go so far as to approve the suggestion that every murderer, even if acquitted, should have his case also automatically go to the Supreme Court?—A. No, Madame Senator, no. I take it you are not familiar with the present state of the law in so far as an appeal from an acquittal by the Crown is concerned.

Q. No.—A. Let me say briefly that the Crown has no right of appeal from an acquittal unless the Crown is able to satisfy the appellate court that an error in law was made at the trial. That would mean, in the case of a murder trial, where the jury had rendered a most perverse verdict of acquittal that the Crown could not succeed in appealing that acquittal unless it could show that the verdict was rendered by reason of some error in law, for example, error contained in the instruction as to the law given to the jury by the trial judge. Now, the reason why verdicts of acquittal are not as appealable as verdicts of guilty is traceable back to something very basic in our conception of law, that no one should be convicted whose guilt has not been proved beyond a reasonable doubt. Now, the reason for that, the wisdom for it, is that it is designed to prevent, if possible, the conviction of innocent persons, and for fear that a miscarriage of justice might occur in any given case and that an innocent person might be convicted, great rights are given to accused persons, including rights of appeal.

Hon. Mr. McDONALD: Is it not true that appeals to the Crown are always open, that is to the Department of Justice?

The PRESIDING CHAIRMAN: That is the prerogative of mercy.

Hon. Mr. McDONALD: What cases go to the Department of Justice?

The WITNESS: Every capital case is reviewed by the Department of Justice, whether application is made for a review or not. What that review involves is something that I understand you will be told at some later date in your deliberations.

Hon. Mr. McDONALD: But there is always an appeal?

The PRESIDING CHAIRMAN: It is an appeal in a different sense. It is not the same kind of legal procedure that is prescribed in a legal form. You go to the foot of the throne.

Hon. Mr. GARSON: The appeal that goes before the court is an appeal that has to do with the question of whether the accused is guilty or not guilty. The appeal that comes to the executive, after the accused has been found guilty and no further question can be raised concerning that point, is as to what type of punishment shall be imposed.

Hon. Mr. McDONALD: Mr. Chairman, I am not a lawyer, but would you allow me to disagree with the impression that the witness gave to the committee this morning, that the department is inclined to be rather too tough on these cases: I think the impression abroad is that the Justice Department is disposed to be or inclined to be very lenient—not very lenient, but we will say very fair in the reviewing of these cases.

The PRESDING CHAIRMAN: I think we will be able to draw our own conclusions after we get the presentation from the department as to their methods and the number of cases dealt with, etc.

Hon. Mr. McDONALD: Because of what was said this morning, I thought perhaps it would be unfair to give the impression that one gets—

The PRESIDING CHAIRMAN: I understood that the witness was expressing a view based on certain experiences which he had, and he thought that they indicated certain tendencies in that department when they were considering executive clemency. He is entitled to his view, whether we agree with it or not.

Hon. Mr. McDONALD: I think he indicated that he has been successful in one appeal.

The WITNESS: Two out of eight.

Mr. THATCHER: Mr. Chairman, just one point of clarification. I would like to find out whether or not the Supreme Court would be too busy to take automatic appeals on fact as well as on law. I wonder if the minister could tell us how many cases they would have had to deal with last year, for instance, if they had been doing this.

Hon. Mr. GARSON: I think that Mr. Maloney could tell you that at least as well as I could. We have nothing to do with these cases until they come to us for commutation of sentence.

The WITNESS: There are no statistics available now. Here are statistics however for the ten year period 1940 to 1949, in Canada: 450 persons were charged with murder. 177 of them had the sentence of death imposed upon them. 91 of the total 450 were actually executed. Now, that would mean in that ten year period the only ones who would have had occasion to appeal to the Supreme Court of Canada would be the 91.

Mr. THATCHER: That is 9·1 per year?

The WITNESS: Yes.

Mr. THATCHER: That would not appear to be much more onerous for the Supreme Court.

Hon. Mr. GARSON: Then, I think Mr. Maloney should also indicate that in the 91 would be included all the ones who actually did appeal other than the ones the verdict against which had been upset by the Supreme Court.

The WITNESS: As I would interpret those figures of 177 death sentences, they would...

The PRESIDING CHAIRMAN: Would all be appealable.

The WITNESS: Would all have been appealed to a provincial court. But these figures I have mentioned don't really help to answer your question. Accurate figures could be obtained.

By Mr. Thatcher:

Q. I have one final question. In your opinion do you feel that the Supreme Court would not be overburdened if these additional cases were given to them to decide.—A. I think that if that recommendation were implemented, it would be overworked unless their civil jurisdiction was limited further. That is, if you in effect reverse the order of things, and require that in civil cases you do not permit an appeal to the Supreme Court of Canada unless the amount involved exceeds a certain amount greater than the amount now prescribed, and unless leave is given. In that way their work in respect to civil matters would be lessened and there would be an increase in work involving capital cases.

By Mr. Boisvert:

Q. Mr. Maloney, this morning you mentioned the grand jury as a safeguard for an accused person, but from you comments I deduced that there is a doubt to the effectiveness of this safeguard. My question is this: would you consider the abolition of the grand jury as an improvement in the sense of reinforcing the right of full defence?—A. No. I do not say that the grand jury is no safeguard. All I suggest to the committee is that I believe it not to be such a safeguard as is often represented to committees of this nature. The only reason this morning I referred to the grand jury among other alleged safeguards was that when I read the debates in New Zealand and England, speakers in favour of retention invariably referred to these very important steps in criminal procedure as representing the inanswerable safeguards and as a result that none but the worst would be executed. I wanted to bring to your attention to what extent they are safeguards, and sometimes not safeguards at all. In the case of the grand jury it is not common, and on the other hand it is not rare, to see a grand jury return a verdict of no bill for murder and a true bill for manslaughter. In that case it represents a safeguard. But, I simply wanted to demonstrate to you its functions with a view to showing you that the grand jury in itself would not ordinarily represent much of a safeguard to an accused person because he is not there, his counsel is not there, and they conduct their deliberations under the guidance of Crown counsel. They only hear from certain witnesses, not necessarily all of the witnesses who will ultimately be giving evidence at the trial.

Q. One other question. In support of your opinion that the death penalty in Canada should be abolished and should be replaced by an indefinite period of imprisonment you gave as a strong point that it is according to our system of law possible that an innocent person may be convicted. For the same reasons as you gave in the field, as you said, of facts and law, judges and juries are caused by their human nature to make errors, is it possible that for the same reasons—same errors—some murderers were not convicted?—A. Some murderers were not convicted?

Q. Yes.—A. I unhesitatingly say that the rules of law that we have built up to avert, where possible, the conviction of innocent persons have, in their application, resulted in the acquittal of guilty persons on many, many occasions, but that would not warrant the slightest relaxation of the rules of law.

Mr. FAIREY: Would it not, following up what Senator Hodges said, point to a necessity for reviewing the evidence of persons who have been adjudged innocent, for fear that a guilty person has been wrongly acquitted?

The PRESIDING CHAIRMAN: They only get one chance.

Mr. FAIREY: I am thinking of this—and I do not disagree, mind you—I was thinking of the safeguards for the innocent person because the end is so final. After all, an innocent person presumably has been killed. We are not thinking too much about that at the moment, but suppose that murderer is able to obtain an acquittal in the court. Now, why can't the evidence of that case be reviewed in the same way as it is reviewed in the case of a conviction? You have explained it once, I know, but what I am trying to point out is this, you have just said that sometimes guilty persons are released?

Hon. Mrs. HODGES: Sometimes.

The WITNESS: Yes.

Mr. FAIREY: And yet, there is no review of the evidence to bring that person to justice?

The PRESIDING CHAIRMAN: That is extending the speculation quite a bit, is it not, Mr. Fairey.

Hon. Mrs. HODGES: Yes, but it is a logical conclusion. I was only dealing with the case Mr. Maloney suggested, that all murderers should automatically be able to appeal to the Supreme Court of Canada.

The PRESIDING CHAIRMAN: The criminal law and all procedures are outlined to deal with persons, first to determine guilt or innocence, and secondly, if there is a determination of guilt, there are procedures outlined for proceeding further to test such a determination, but if there is a determination of innocence, the Code is silent thereafter. However, we are considering capital punishment, corporal punishment and lotteries.

Mr. FAIREY: But it is a case of capital punishment.

Mr. WINCH: I would like to ask Mr. Maloney a couple of questions. It is an undisputable fact, from what we have heard this morning, that Mr. Maloney has made a very full study of homicidal cases and capital punishment, not only in this country but in other countries across the world. We have heard this morning of cold-blooded murder. I would ask Mr. Maloney if he has, from his study of homicidal cases in this country and other countries, reached any conclusion that the majority of homicides are not committed as cold-blooded murder, are not premeditated, are not decided upon at a time of calm reasoning, but follow through in a time of fear, escape, anger, passion and at a time when their mental capacities are not as they usually are?

The WITNESS: Yes, the study I have made of the cases referred to in the texts that I have read, indicates that the great majority of convicted murderers committed their crimes in circumstances that negative the existence of that so-called cold-blooded, premeditated state of mind. When you stop to think, in Canada today; what murder has ever been committed here that you would immediately say was cold-blooded premeditated murder?

Hon. Mrs. HODGES: What about the Guay case?

The WITNESS: I was just going to say that. I think that is the only one which would occur to you, and no other. That, to me, helps to demonstrate the rarety of this type of case.

Viscount Templewood has prepared some figures which might assist you in his book, "The Shadow of the Gallows". If you will just bear with me for half a minute, I will endeavour to find them for you. In his book, "The Shadow of the Gallows," at page 76, you will find a table in which he sets out as follows: between 1900 and 1948 in England the number of murders known to the police was 7,318. The number of cases in which the murderer or suspected murderer committed suicide was 1,635. The number of persons arrested was 4,077. The number found to be insane on arraignment was 412. The number found guilty but insane was 783. The number found innocent after conviction was 46. The number discharged or acquitted was 1,013.

Now, the conclusion arrived at from those figures is this: in other words, over that period from 1900 to 1948 the conclusion is that about 61 per cent of the known murderers were all of unsound mind. That figure, proves that the death penalty is no protection against a very large number of murders because, it is assumed it is no deterrent to persons of unsound mind. Persons of sound mind, whose crimes are committed in moments of passion, are not deterred by it because they did not pause or reflect, so the cases of cold-blooded murder are very rare indeed.

Hon. Mrs. HODGES: When you speak of cold-blooded murder, what do you call the case of a woman who administers poison in small doses over a long interval.

The WITNESS: I would define that as cold-blooded murder, the kind we are talking about.

Hon. Mr. GARSON: What would you say about a gang of robbers who arm themselves, go to a bank, break into it, and are prepared to shoot their way out, and actually do kill some persons? Would that be murder or an accident?

The WITNESS: I do not put them in that category. Admittedly, their primary purpose is a very unlawful one, but their main objective is to accomplish that purpose, if possible, without injury to the life of anyone.

Hon. Mr. GARSON: What do they take the firearms for?

Mr. WINCH: Intimidation.

The WITNESS: Intimidation, yes; or, I think we must admit a secondary purpose, defence of themselves. I see a world of difference between an accused murderer who commits a crime such as the honourable minister has just described, and the Guay case. I see a great distinction in degrees of guilt.

Hon. Mrs. HODGES: You still would not approve of capital punishment in the case of the Guay case?

The WITNESS: No, Madam Senator, I would not, because either it is right to abolish the death penalty or it is wrong, and we should not be influenced by isolated cases in reaching the decision we have to arrive at. And might I say this—the death penalty did not deter Guay.

By Mr. Winch:

Q. Am I right in the impression I got this morning from Mr. Maloney that at the preliminary hearing in Ontario, neither the accused nor his counsel is present?—A. No, at the grand jury proceedings.

Q. In other words, then, the Crown counsel directs the proceedings before the grand jury all the way through?—A. The grand jury?

Q. Yes?—A. The grand jury proceedings are under the guidance of Crown counsel only.

By Mr. Brown (Essex West):

Q. You have stated, Mr. Maloney, that the defence counsel would have no idea as to the backgrounds of the jury who are empanelled or called to an

assize. Can you tell us something about the facts? Does the Crown have access to all the backgrounds of the various jurymen?—A. To my knowledge, no, and I should have qualified that remark by saying in rural communities the individual counsel would, of course, have a greater knowledge of the background of the members of a jury panel than in an urban community.

Q. But would the Crown counsel have access to that information?—A. In rural communities?

Q. In any community?—A. I think the same principle would apply to a rural community, but I don't know what facilities Crown counsel have in urban communities for learning the background of the jury panel.

The PRESIDING CHAIRMAN: I promised Mr. Thatcher that he could ask questions now.

By Mr. Thatcher:

Q. I have one short question, Mr. Chairman. Mr. Maloney stated that from 1940 to 1949 there were 177 death sentences, I believe, in Canada. I would like to know specifically how many were able to appeal their sentences to the Supreme Court? If you cannot give that information now, you could provide it later perhaps?—A. I would be glad to. I cannot give you that figure now.

The PRESIDING CHAIRMAN: Senator McDonald?

By Hon. Mr. McDonald:

Q. I was just going to follow up on the jury question. It works out in the rural districts that the jurymen are pretty well hand-picked—they are pretty well screened and known by both Crown and defence counsel. I suppose in the larger cities, like Toronto and Montreal, it is different?

The PRESIDING CHAIRMAN: Oh, yes. Now, Mr. Shaw?

By Mr. Shaw:

Q. I was going to ask the witness if he would care to comment on the present procedure in ascertaining the mental condition of a man charged with murder. It may not be a fair question. I do not know what you may know from the standpoint of a defence lawyer but are you satisfied? Have you any comments to make or recommendations to make on the basis of the present procedure? As a layman, I might say that sometimes I become greatly upset as a consequence of conflicting opinions of psychiatrists. You may get some men pretty well qualified, some who are called by the Crown and some who are called by the Defence and they clash just like that. Have you any opinion? —A. I am confining my comments to the problems of minds which arise in relation to the trial of the accused, not to procedures which take place after his conviction, or matters of that nature. But I too am struck just as you are with the number of cases where insanity is raised as a defence, wherein psychiatrists of repute in the employ of the Crown are called by the Crown and invariably testify as to the accused man's sanity.

But mind you, there are cases in which they testify to the contrary too. There are many cases in which they testify that the accused is sane. Psychiatrists of great repute, whose veracity I do not think you would have any reason to question, testify to the contrary for the defence. Now, I do not know what the reason is except that I think it shows that a state of doubt exists in the minds of two sets of experts. It seems to me that in such a case where reputable psychiatrists for the defence, whose veracity we do not question, express a considered opinion that the accused is insane, that certainly the convicted person should not be executed.

The PRESIDING CHAIRMAN: Mr. Brown.

By Mr. Brown (Brantford):

Q. I was going to ask whether the witness could give us any information as to what states or jurisdictions reserve the death penalty for persons convicted of a subsequent offense of murder?—A. It is referred to in the appendices to the report of the Royal Commission. Might I find it for you after the meeting.

Q. Yes, just so long as it is there, I am satisfied. Now I take it that you regard the chief and over-all objection to the death penalty to be that it is not a deterrent. Is that your chief objection to the death penalty?—A. My chief objection to the death penalty is that in my opinion it is not the only effective deterrent, and that being a drastic form of punishment it should not be resorted to. An examination, as I indicated earlier, of the experiments by other jurisdictions with abolition, in my opinion, establishes that it is not the only effective deterrent.

The PRESIDING CHAIRMAN: Mr. Fairey.

By Mr. Fairey:

Q. Was there not a suggestion in what you said that normally psychiatrists when called for the Crown tend to testify as to the sanity of the accused, whereas psychiatrists when called for the defence more often than not testify that he is insane?—A. Of course a psychiatrist would not be called for the defence who was to testify that the accused was sane in a case where a defence of insanity was being relied upon.

Q. Then there is no reliability in the evidence of psychiatrists?—A. I do not mean to imply that there are no cases in which psychiatrists in the employ of the Crown do not concur or agree in the suggestions of the defence that the accused was insane. There are many such cases; but there are also many cases in which there are conflicting points of view expressed by the experts. I do not say they are valueless at all. I think that where you find experts of equal authority in conflict as to their conclusions in regard to a particular offender that it should raise sufficient doubt, certainly in the mind of the Minister when he comes to consider the question of executive clemency.

The PRESIDING CHAIRMAN: I do not think the witness intended to be critical of psychiatrists and opinions of that type. All he says is that if you do get psychiatrists called for the Crown asserting the sanity of the accused, while psychiatrists called for the defence testify as to his insanity, then under those circumstances if the accused should be convicted, that he should not be hanged, because of the uncertainty. That is all.

The WITNESS: Yes, that is all I intended to convey.

The PRESIDING CHAIRMAN: Mr. Cameron.

By Mr. Cameron:

Q. Now that we have our prisoner without any hope, and he has exhausted all his legal rights and is awaiting execution, he has, as I understood you to say the right to seek executive clemency. I think you said there were two avenues of approach, one leading to the Queen and the other to the executive. Would you mind explaining what you meant by that?—A. I do not recall having expressed myself in that way. The only procedure under our law open to an accused person in Canada is through the Governor in Council who, after reviewing the case and upon appropriate recommendation from the officials who have investigated it, will or will not grant executive clemency.

Q. There is only the one avenue of approach then. He cannot approach the Queen directly. That has caused me some confusion because I thought I heard it suggested that there were two avenues of approach.—A. Whether Her Majesty, the Queen would have a special prerogative which she could exercise, I do not know.

Hon. Mr. GARSON: I think that probably stems from the provision in the Criminal Code to the effect that nothing herein contained shall be deemed to affect the royal prerogative of mercy.

Mr. CAMERON: The right is still there.

Mr. WINCH: I asked you that question on the floor of the Commons, and you said that although it was there it was never exercised.

Hon. Mr. GARSON: The Queen exercises her right of royal prerogative as a constitutional monarch.

By Mr. Cameron:

Q. You suggested that after the jury had recorded its verdict it should be charged with a subsequent duty of considering whether it should recommend mercy or not. Is that going to conserve the equality? One person has a very eloquent counsel who has a tremendous effect on the jury, and another one may be a very brilliant lawyer but unable to draw on the emotions and sympathies of the jury and may be unable to present such a striking argument on behalf of the accused. What I have in the back of my mind is that that is something that should probably be left to other agencies to determine, whether clemency should be exercised or not, rather than leave it to the jury, who might be inclined, now that they have found the man guilty, to say that mercy.—A. The inequality you seem to be apprehensive about exists in other phases of the accused man's case not just in that particular phase you are directing attention to. The only reason I raised that for consideration by the committee is that I wondered if in its consideration of applications for clemency the Department of Justice drew any inferences from the failure of a jury in any given case to make a recommendation of mercy. Now, if that is so, it would be unfortunate because, as I pointed out, juries are not told about their right, and I am satisfied from personal experience that some juries do not know of their right.

Q. I understood you to suggest that once the trial itself was over the jury should then be asked by the judge to consider whether they should or should not make such a recommendation. Undoubtedly then the counsel for the Crown and the counsel for the accused and the judge would all enter into that discussion, and the jury would then retire and come to a decision on it, and suppose they were not unanimous?—A. As I indicated in my presentation, I advocate, first of all, abolition; secondly, as an alternative, I advocate that you implement the recommendation of the royal commission in England, which recommends that the discretion be passed to the jury to determine whether or not life imprisonment should be imposed; and as a third possibility, I invited the committee to consider whether or not they should recommend that the juries be told of their right to recommend mercy. My reason for suggesting that you consider that, if you do not recommend abolition or if you do not make the other recommendation, is for fear that the department might draw an unfavorable inference from a jury's failure to recommend mercy.

Q. I was just wondering about the practical working out of such a plan.—A. The difficulties you are apprehensive about would exist even if you carried out the second recommendation.

Q. And when you were dealing with the question of clemency, you suggested that no person should be hanged where a competent psychiatrist certified as to whether or not there was some doubt as to his sanity. The thought occurred to me that that would pose this question for defence counsel. He says, "If I can secure some competent psychiatrist who says that it is doubtful whether my man is sane, he can safely go through all the trials and tribulations of a trial, and then when I get down to the minister I will just produce this certificate and the sentence will be com-

muted." Would it not be better to have an independent panel if that consideration were given to the proposal, selected by the Minister of Justice to advise him so that he could rely on their opinion rather than on the opinion of a psychiatrist retained by the accused?

The PRESIDING CHAIRMAN: I am sure that if there were a difference of opinion, the minister would resolve it by getting an independent opinion.

Hon. Mr. GARSON: Yes.

By Mr. Cameron:

Q. I thought you meant that if a psychiatrist said that, ultimately the sentence should be commuted?—A. I do not retract from what I said. I do not think you should be dissuaded from accepting my view on the speculative assumption that a psychiatrist might improperly give a helpful report after having been improperly asked to do so by an unethical counsel.

Q. If he is one who is prepared to swear under Oath those facts, then you know as far as the accused is concerned he is not going to be hanged.—A. If there is reason to doubt the integrity of the psychiatrist or the counsel who requests him to perform his function very little weight if any would be attached to his recommendation. That is not the type of psychiatrist I had in mind.

Q. I am speaking of an independent panel rather than someone retained either by the Crown or the accused.—A. You mean a permanent panel in the employ of the Crown?

Q. Not necessarily, but an impartial panel drawn for that purpose to advise the minister in performing his duties. Psychiatrists generally across Canada.—A. I do not think anyone could quarrel with that.

By Mr. Winch:

Q. If the proposal that is in the British report were put into effect of referring a question of clemency or otherwise back to a jury, would you then take the position that if the jury recommended leniency it would be mandatory on the judge to impose a life sentence and not capital punishment?—A. You are asking me if that would be the effect of carrying out the recommendation contained in the English report?

Q. If that would be your idea of it?—A. That would be the effect of implementing the recommendation in the English report.

The PRESIDING CHAIRMAN: Before we adjourn I would like to express on behalf of myself and the members of the committee our appreciation for your presentation, Mr. Maloney.

Mr. BROWN (*Essex West*): Should there be a direction that the books in the bibliography, if not in the library, should be obtained by the library?

The PRESIDING CHAIRMAN: Is the committee agreeable to that suggestion?

Agreed.

The PRESIDING CHAIRMAN: We have the direction of the committee now. The next meeting is on Thursday at 4.00 p.m. Mr. Wismer will be here.

APPENDIX A

CAPITAL AND CORPORAL PUNISHMENT

A list of books and some recent articles available in the Library of Parliament, March 15, 1954.

Annals of the American Academy of Political and Social Science. "Murder and the death penalty." November issue, 1952. (Articles offering factual information on the death penalty as a reterrent.) 166 p.

Arnold, J. C. "Murder and capital punishment." in, *The Quarterly Review,* April 1952, p. 238-51. (Summary of evidence presented to the Royal Commission).

Aschaffenburg, Gustav. "Crime and its repression." translated by A. Albrecht. Boston, Little, Brown, 1913. 331 p. (Room 25).

Banks, William. "Canada's effective criminal law system." in, *Current History,* vol. 28, 1928, p. 405-07.

Bodsworth, C. F. "Until you are dead." in, *Maclean's Magazine,* vol. 62, June 1, 1949, p. 7 and following.

Borchard, Prof. "Convicting the Innocent" (out of print, further attempts being made to acquire).

Bowden-Rowlands, Ernest. "Judgment of death." London, W. Collins, 1924. 266 p. (Room 25).

Bowers, Duke C. Life imprisonment *vs.* the death penalty: to the Honourable members of the Senate and Lower House of the Fifty-eighth General Assembly and to the Chairman and Members of the Judiciary committee thereof. Dresden, Tenn., 1916. 97 p. (A.C.P. 77).

Calvert, E. R. "Capital punishment in the Twentieth century." 5th ed. London, 1936. 236 p. (Bibliography: p. 225-9) (Room 25).

Calvert, E. R. The Death Penalty enquiry, being a review of evidence before the Select Committee on Capital Punishment, 1930. London, W. Gollancz, 1931. 116 p. (Room 25).

Calvert, T. "Capital punishment: society takes revenge." in, *National News Letter,* October, 1946. 28 p.

Canada, House of Commons. (Capital punishment—proposed abolition) in, *Debates,* vol. 1, 1914, February 5, p. 482-511; vol. 5, May 29, p. 4516-7.

Canada, House of Commons. (Debates on abolition of capital punishment) Debates, 1915, vol. 1, February 12, p. 127-141; February 18, p. 281-4; vol. 3, March 30, p. 1761-1765.

Canada, House of Commons. (Debate on abolition of the death penalty). *Debates,* 1916, vol. 2, March 20, p. 1957-1968.

Canada, House of Commons. (Debate on abolition of the death penalty). Debates, 1917, vol. 1, January 31, p. 325-334; April 19, p. 617-642; May 2, p. 1012-23, 1028-1036.

Canada, House of Commons. (Debate on the Death Penalty). *Debates,* 1924, vol. 2, April 10, p. 1265-1313.

Canada, House of Commons. (Criminal Code; abolition of Capital Punishment) . Debates, 1948, June 14, vol. 5, p. 5184-8.

Canada, House of Commons. (Abolition of Capital Punishment). *Debates,* 1950, April 18, vol. 2, p. 1659-67; June 6, vol. 3, p. 3277-83.

Canada, House of Commons. (Abolition of Capital Punishment). *Debates,* 1952-53, February 20, 1953, vol. 3, p. 2263-67.

"Canadian authorities discuss capital punishment." in, *World Wide,* January 3, 1931, p. 18 and January 10, 1931, p. 55.

Canadian Bar Review, vol. 2, 1924, p. 569-572. (Editorial on the death penalty). (Room 191).

Canadian Bar Review, vol. 8, 1930, p. 532-3: "Capital punishment." (Topics of the month). (Room 191).

Canadian Bar Review, vol. 9, 1931, p. 37. (Editorial of the report of the British Select Committee on Capital Punishment). (Room 191).

Canadian Institute of Public Opinion. Gallup Poll of Canada.

Release, February 5, 1947: "The death penalty for murder upheld by 68 per cent of Canadians." 2 p.

Release, June 25, 1947: "Canada, France differ from others; oppose banning death sentence." 2 p.

Release, March 22, 1950: "Canadians strongly in favor death penalty for murder." 2 p. (Catalogue Room).

Cecil, R. H. "Fiat justitia." in, *Spectator*, vol. 183, December 2, 1949, p. 770.

Copinger, Walter Arthur. An essay on the abolition of capital punishment. London, Stevens, 1876. 71 p. (Room 25).

Craven, C. M. "Murder and the death penalty." in, *New Statesman and Nation*, vol. 37, February 12, 1949, p. 154. Also "The death penalty." in vol 37, May 7, 1949, p. 470.

Curtis, N. M. Capital crimes and the punishment prescribed therefor by federal and state laws and those of foreign countries, with statistics. Washington, Gibson Bros., 1894. 36 p. Bibliography: p. 20-36. (C.A.P.C. 77).

Deets, L. E. "Changes in capital punishment policy since 1939." in, *Journal of Criminal Law and Criminology*, vol. 38, March 1948, p. 584-94. (Supreme Court).

Dobkin, Harry (1891-1943) defendant. The trial of Harry Dobkin; edited, with a foreword and a note on capital punishment by C. E. Bechofer-Roberts. London, Jarrolds, 1944. 176 p. (Room 25).

Duff, Charles. A new handbook on hanging, being a short introduction to the fine art of execution, containing much useful information on neck-breaking, throttling, strangling, asphyxiation, decapitation and electrocution. . . edition revised. London, Melrose, 1954. 180 p. (On order).

Economist, Editorial: "Murder" (the Royal Commission on capital punishment is seeking alternatives to death by hanging) vol. 157, August 13, 1949, p. 333-5.

Elliott, Robert G. Agent of death; the memoirs of an executioner. New York, Dutton, 1940. 315 p. (Room 25).

Fanning, C. E. (Compiler) Selected articles on capital punishment; 3rd ed. New York, H. W. Wilson, 1917. 229 p. Bibliography: p. xiii-xxvi. (Debaters' Handbook Series).

Garofalo, Raffaele. Criminology; translated by Robert W. Millar. Boston, Little, Brown, 1914. 478 p. (Room 25).

Great Britain. Departmental Committee on Corporal Punishment. *Report*. London, H.M.S.O., 1938. Chairman: Hon. E. Cadogan. (Cmd. 5684).

Great Britain. Home Office. Capital punishment. London, H.M.S.O., 1948. 20 p. (Papers by Command. Cmd. 7419).

Great Britain. House of Commons. Select Committee on Capital Punishment. *Report, with proceedings and evidence, 1929-30; 1930-31*. London, H.M.S.O., 1931. (Parliamentary Papers. Reports. 1930-31, vol. 6, p. 1).

Great Britain. Royal Commission on Capital Punishment. Memorandum and replies to a questionnaire received from foreign and commonwealth countries. 1: Commonwealth countries. London, H.M.S.O., 1951. p. 679-734.

Great Britain. Royal Commission on Capital Punishment. Memoranda and replies to a questionnaire received from foreign and commonwealth countries. 2: United States of America. London, H.M.S.O., 1952. p. 735-789.

Great Britain. Royal Commission on Capital Punishment. *Report*. London, H.M.S.O., 1953. 506 p. (Papers by Command. Cmd. 8932).

Great Britain. Royal Commission on Capital Punishment. *Report;* together with the minutes of evidence, and appendix. London, Eyre and Spottiswoode, 1866. 671 p. (Room 25).

Harris, Wilson. "Hang or anti-hang". In, *The Spectator,* July 30, 1948, p. 138-9.

Hatfield, L. H. "Capital punishment" (Trend in sentiment against, in various countries) In, *Canadian Forum,* vol. 33, June 1953, p. 54-6.

Howard League for Penal Reform. Corporal punishment; facts and figures. London, Howard League, 1953. 12 p. (On order).

Johnsen, J. E. Capial punishment. New York, H. W. Wilson, 1939. 262 p. Bibliography: p. 245-262. (Reference Shelf, v. 13, No. 1).

Mannheim, Hermann. "Capital punishment; what next?" In, *Fortnightly,* October 1948, p. 213-21.

Mannheim, Hermann. Criminal justice and social reconstruction. London, Kegan Paul, 1946. 290 p. Reading list: p. 272-280. (Room 25).

Mercer, Charles. Crime and criminals, being the jurisprudence of crime, medical, biological, and psychological. London, Univ. of London Press, 1918. 291 p. (Room 25).

Modern Moralist (pseudonym). A letter to Lord Melbourne on the executions in Canada with remarks on the principle of capital punishments. London, R. Hicks, 1839. 26 p. (Can. Pam. Vol. 5, No. 6).

New Jersey. Committee to Inquire into the subject of Capital Punishment. *Report,* to the Senate of New Jersey, 1908. Trenton, N.J., 1908. 37 p. (A.P.C. 77).

New Statesman and Nation. "Capital punishment." (Editorial) vol. 39, Jan. 28, 1950, p. 87: (Discussion) vol. 39, February 4 and 11, pp. 132, 161.

New Zealand. Parliament. Joint Capital Punishment Bill Committee. *Reports.* Wellington, 1950. 2 p. (Includes only Orders of Reference, and approval of the Bill, with exceptions).

New Zealand. Laws, statutes, etc. "The Crimes Amendment Act, 1941" (Death sentence for murder abolished, life imprisonment with hard labour substituted therefor). "The Capital Punishment Act, 1950." (Death sentence for murder restored, with exceptions in cases of expectant mothers and persons under 18 years of age).

O'Brien, Henry. "The death penalty" In, *Canadian Bar Review,* vol. 3, 1925, p. 91-4. (Room 191).

O'Sullivan, Richard. "The case against capital punishment". In, *Nineteenth Century and After,* February 1948, p. 113-7.

Page, Leo. Crime and the community. London, Faber, 1937. 394 p. (Room 25).

Romilly, Henry. The punishment of death: to which is appended his treaties on public responsibility and vote by ballot. London, J. Murray, 1836. 337 p. (Room 25).

Parsons, Philip Archibald. Crime and the criminal: an introduction to criminology. New York, Knopf, 1926. 387 p. (Room 25).

Partridge, R. "Hanging in the balance" In, *New Statesman and Nation,* vol. 39, April 29, 1950, p. 480.

Randall-Jones, A. R. "Royal prerogative of mercy" In, *Saturday Night,* July 11, 1931, p. 3.

Salcilles, Raymond. The individualization of punishment; translated by Rachel Jastrow; with an introduction by Roscoe Pound. Boston, Little, Brown, 1913. 322 p. (Room 25).

Scott, George Ryley. Flogging: yes or no? Introduction by Claud Mullins. London, Torchstream Books, 1953. 63 p. (On order).

Scott, George Ryley. The history of capital punishment, including an examination of the case for and against the death penalty. London, Torchstream Books, 1950. (On order).

Scott, George Ryley. The history of corporal punishment; a survey of flagellation in its historical, anthropological and socialogical aspects. London, T. W. Laurie, 1938. 261 p. Bibliography: p. 247-250. (Room 25).

Sutherland, Edwin H. "Murder and the death penalty." In, *Journal of the American Institutes of Criminal Law and Criminology,* vol. 15, 1924-25, p. 522-29. (S. C. 3 West).

Templewood, Samuel. 1st Viscount. The shadow of the gallows. London, Gollancz, 1951. 159 p. (Room 25).

Topping, C. W. "The death penalty in Canada" In, *Annals of the American Academy of Political and Social Science,* November 1952, vol. 284, p. 147-57.

Van der Elst, V. On the gallows. London, Doge Press, 1937. (Room 25).

Whitlock, Brand. Thou shalt not kill. Memphis, Tenn., no date. 22 p. (A. P. C. 77).

Wilson, Margaret. The crime of punishment. London, J. Cape, 1931. 318 p. Bigliography: p. 313-314. (Room 25).

LOTTERIES AND SWEEPSTAKES

A list of books and pamphlets available in the Library of Parliament, 1954.

Adams, Mildred. "In many lands the lottery gains favor anew." in, *New York Times Magazine,* March 10, 1934, p. 10. (A. P. C. 121).

Ansell, Evelyn. "A plea for lotteries." in, *Westminster Review,* October 1904, vol. 162, p. 425-32.

Bender, Eric. "Tickets to fortune: the story of sweepstakes, lotteries, and contests." in, New York, *Modern Age Books,* 1938. 174 p. (A.P.C. 211).

Blanche, Ernest E. "Lotteries yesterday, today, tomorrow." in, *Annals of the American Academy of Political and Social Science,* May 1950, p. 71-76.

Canada. House of Commons. (Debate on Army and Navy sweepstakes) in, *Debates,* 1931, June 26, p. 3014-06.

Canada. House of Commons. Debate on hospital sweepstakes in Canada, in *Debates,* April 7, 1933, p. 3834-8: April 18, p. 4036-43.

Canada. House of Commons. (Debate on sweepstakes) in, *Debates,* 1934, May 22, p. 3277-3322.

Canada. Senate. (Debate on hospital sweepstakes) in, *Debates,* 1931, May 8 to June 18, p. 84-6; 98-9; 216-20; 272-89; 292-6.

Canada, Senate. (Debate on sweepstakes) in, *Debates,* 1932, February 11 to March 1. p. 46-51; 54-8; 61-4.

Canada. Senate. (Debate on hospital sweepstakes in Canada) in, Senate Debates, March 8, 1933, p. 319-22; March 29, p. 354-5; April 4, p. 381-3; April 5, p. 390-4.

Canada. Senate. (Debate on sweepstakes) in, *Debates,* 1934, February 24 to April 11, p. 70-73; 85-6; 94-104; 116-129; 132-5; 225-35.

Canadian Broadcasting Corporation. "Should sweepstakes be legalized?" C.B.C. *National Forum* discussion by Ernest Bertrand, K.C., M.P., and the Rev. C. E. Silcox, October 23, 1938. (C.P.C. 1004).

Canadian Institute of Public Opinion. Gallup Poll of Canada.

Release, February 2, 1946: "Government run sweepstakes appeals to slim majority if conducted for charity, 52 per cent would approve." 2 p.

Release, December 7, 1949: "Appeal of government lotteries strongest in Quebec Province, but in all parts of Canada support appears growing." 2 p.

Release, August 20, 1952: "Canucks want sweepstakes run by provincial governments; if money used to finance health and education, two out of three would like them there." 2 p.

Cox, Harold. "Lottery bonds." in, *Nineteenth Century and After,* January 1931, vol. 109, p. 61-7.

Ewen, Cecil Henry L'Estrange. "Lotteries and sweepstakes." London, *Health*, 1932. 403 p. (Room 15, Law).

Githins, Perry. "How about a national Lottery?" in, *Readers' Digest*, vol. 32, p. 80-83, March 1938.

Great Britain, Parliament. Joint Select Committee on Lotteries and Indecent Advertisments. *Report*, with proceedings, evidence and appendices. London, 1908. (*House of Commons. Reports and Papers, no. 275*) 120 p.

Great Britain. Royal Commission on Betting, Lotteries and Gaming, 1949-51. Report. London, 1951. 190 p. (*Papers by Command. CMD 8190*)

Great Britain. Royal Commission on Lotteries and Betting, 1932-33. Interim report. London, 1933. 22 p. (*Papers by Command. CMD 4234*)

Great Britain. Royal Commission on Lotteries and Betting, 1932-33. *Final* report. London, 1933. 183 p. (*Papers by Command. .CMD 4341*)

Gwynn, S. "Dublin and other lotteries." in, *Fortnightly Review*, October 1932. vol. 138, p. 519-22.

"Irish Hospitals' sweepstakes." in, *Journal of Comparative Legislation*, November 1932. 3rd series, vol. 14, p. 286-7.

Landman, J. H. "The lottery for government revenue." in, *National Tax Association Bulletin*, vol. 30, p. 80-83, December 1944.

Levy, Thomas. "Parliamentary lotteries," in, *English Review*, November 1933. vol. 57, p. 526-533.

Lopez-Rey, Manuel. "Gambling in the Latin-American countries." in, *Annals of the American Academy of Political and Social Science*, May 1950, p. 132-143.

"The lottery evil in the Province of Quebec" Montreal, J. Lovell, 1899. 48 p. (C.P.V. 1168, No. 3, C.P.V. 1557, No. 4)

Muller, H. M., comp. "Lotteries." in, *The Reference Shelf*, vol. 10, No. 2. New York, H. W. Wilson, 1935. 128 p.

Newfoundland. Laws, statutes, etc. "Act further to amend chapter 105 of the consolidated statutes (third series) entitled 'Of lotteries'." St. Johns, 1932. (*Chapter 10, Acts of Newfoundland, 1932*)

Quebec. Legislative Assembly. (Debate on lotteries) see: *Montreal Star*, April 1, 1943. p. 21.

Richards, R. D. "The lottery in the history of English government finance." in, *Economic History*, January 1934, vol. 3, p. 57-76.

Street, H. A. "The law of gaming." London. 760 p. (Room 15, law)

Taschereau, Alexandre, and Athanase David. "The lottery issue." text of speeches delivered before the Quebec Legislative Assembly on March 14, 1934. Quebec, 1934. 17 + 17 p. Text in English and French. (C.P.C. 1175)

Trepanier, Leon. "Lotteries; why they must be legalized for us." Montreal, 1936. 70 p. (C.P.C. 1175)

Turano, A. M. "Wanted: a national lottery." in, *American Mercury*, vol. 41, July 1937. p. 276-82.

Walker, Mabel L. "Civic gambling." in, *Survey*, vol. 70, November 1934. p. 350.

Ouvrages en français où il est traité de la peine de mort, de peines corporelles ou de loteries

Les codes et les lois spéciales les plus usuelles en vigueur en Belgique, Bruxelles, Emile Bruyant, 1937, 16, 1889, 399 p.

Crémazie, Jacques—Les lois criminelles anglaises, Québec, Fréchette, 1842, XII, 591 p.

DALLOZ—Code pénal, Paris, Dalloz 1954, 866.

DALLOZ—Nouveau répertoire, tome III, Paris, Dalloz, 1949.

Dandurand, Raoul et Lanctôt, Charles—Traité théorique et pratique de Droit Criminel, Montréal, Périard, 1890, XXII, 695 p.

Guizot, F.—De la peine de mort en matière politique, Paris, Bechet ainé, 1822, 185 p.

Marchal, A. et Jaspar, J. P.—Droit Criminel. Traité théorique et pratique, Bruxelles, Larcier, 1952, 840 p.

Mittermaier—De la peine de mort, Paris, Marescq, 1865, 252 p.

Mitton, Fernand—Tortures et supplices en France, Paris, Henri Dragon, 1909, 282 p.

Lucas, Charles—Recueil des débats des assemblées législatives de la France sur la question de la peine de mort, Paris.

Seignette, N.—Code musulman, Paris, Challamel, 1911, 743 p.

Tarde, G.—La philosophie pénale, Paris, Masson, 1892, 578 p.

Trépanier, L.—Les loteries, Montréal, 1936.

van Bemmelen, P.—La peine et la peine de mort, La Haye, 1870, 125 p.

Note.—Les documents officiels du gouvernement canadien mentionnés dans la liste d'ouvrages anglais sont aussi disponibles en français.

APPENDIX B

(A Committee of the Religious Society of Friends (Quakers) in Canada)

DECEMBER 22, 1953.

To the Members of the House of Commons,
Ottawa, Canada.

Dear Member:

We are taking the liberty of sending to you herewith

(a) a statement issued by London Yearly Meeting of the Religious Society of Friends, Quakers, and concurred in by Canada Yearly Meeting of Friends, on the subject of *Capital Punishment.*

(b) a brief sent to the Canadian House of Commons Committee on the revision of the penal code by the Canadian Friends' Service Committee dated February, 1953.

We are sending these documents to you because of the widespread interest at the present time in this subject.

We should like to call attention to a misconception which has been given wide publicity in the press concerning a period in 1948, during which executions for murder were suspended in Great Britain. This suspension has been referred to as abolition, and it has been stated that due to a large increase in capital crime the British Government was forced to reinstate the death penalty. According to our information this period of suspension took place following a vote in the House of Commons in April 1948 in favour of a trial period, during which capital punishment could be held in abeyance. In November 1948 the House of Lords voted overwhelmingly against suspension, and capital punishment was resumed.

If this period from April to November is thought of as the truce, the following figures published in *Hansard* 27th January 1949, as given by the Home Secretary, will be of interest:

19 murders in 7 weeks before the truce.
25 murders in first 7 weeks of the truce.
17 murders in last 7 weeks of the truce.
26 murders in the 6 weeks following the resumption of executions.

It should be stated that this very short period is recognized as not being sufficient to determine a definite trend. It does, however, dispose of the widespread view that the resumption of hanging was due to a large increase in capital crime.

We trust that this information and the view expressed by the Religious Society of Friends as to the principles involved will have their due place in the further discussions on this subject.

Yours sincerely,

FRED HASLAM,
General Secretary.

Extract from the Second Part of the Christian Discipline of the Religious Society of Friends in Great Britain (approved by Canada Yearly Meeting).

Capital Punishment

"We have often expressed our *objection to capital punishment*. We re-affirm our belief in the immeasurable value of every human life, and the infinite possibilities of spiritual reclamation. We regard the law of God for the individual as binding upon the community, and we cannot rest satisfied whilst what is wrong for a single person is practised by the State. Moreover we believe that capital punishment fails as a deterrent. The sight of an individual fighting for his life adds an exceptional and dramatic interest to murder trials. There is a consequent inducement to give them wide publicity, which tends to make the thought of murder familiar, and to morbid minds even attractive.

We remember also the suffering which the capital sentence may inflict on the relatives of the person sentenced, and its effects upon others whom circumstances connect with such cases; upon the jury, the judge, the prison officers, and all who are connected with the execution.

We believe that a considerate and Christian treatment of the offender is as possible in cases of murder as in the case of other crimes, and we urge Friends to do all in their power to create a public opinion which will demand the complete abolition of the death penalty.—1925".

CANADIAN FRIENDS' SERVICE COMMITTEE
(QUAKERS)

60 Lowther Avenue,
Toronto.

17th FEBRUARY, 1953.

To—
The House of Commons' Committee on the Revision of the Criminal Code,
c/o Ministry of Justice,
Ottawa, Ont.

Dear Sirs,

The Canadian Friends' Service Committee is a committee appointed by the Religious Society of Friends (Quakers) in Canada and is the Committee responsible for considering matters pertaining to human welfare.

It is the understanding of the Canadian Friends' Service Committee

(1) that the provisions of the Canadian Criminal Code are now under revision and that the proposed revisions will be further considered by your Committee;

(2) that in the proposed revisions, capital punishment for the crime of murder is retained. It is on this point that our Committee would like to present a brief.

The subject of crime and punishment has always engaged the attention of the Society of Friends and individual members have taken part in reform movements, more particularly in Great Britain. It is because of this background that we desire to submit to your Committee the following reasons for our belief that capital punishment should no longer be retained on the statutes of Canada:

(1) *The value of human life.* Human life, created by God, is of inestimable importance. Its value would be more generally recognized if the State would no longer take away human life in the name of the law.

(2) *Provision* for reformation. Because of its irrevocable character capital punishment denies the Christian virtue of mercy and precludes the possibility of the offender being influenced by reformative measures.

(3) *Human judgment is not infallible.* It is our belief that justice in Canada is administered under a very high sense of obligation and integrity. Nevertheless, it is possible for mistakes of judgment to be made and in cases for which the penalty is death, such mistakes cannot be rectified. It may be added that the hearing before the Select Committee of the British House of Commons in 1929 revealed cases both in Europe and in the United States of America in which innocent people had been executed. The following are examples:

In Germany, Jakenbowski, executed in 1926, was posthumously exonerated in 1929 (*Times*, June 18, 1929), and Paul Dujardin, sentenced to life imprisonment for murder in 1919, was proved innocent in 1929, released and compensated (*Daily Mail*, May 20th, 1929). In Hungary, Stephen Tomka was hanged in 1913 and discovered to be innocent in 1927 (*Times*, December 8th, 1927).

In England also there are doubts about the guilt of Mrs. Thompson (1923), Thorne, (1924), Podmore, (1930), Rouse (1931) and others.

(4) *Deterrence.* While it is conceded that the fear of death may act as a deterrent to people in normal life, homicide is usually committed by people who are (*a*) under the influence of passion, anger or drink, in which case it is questionable whether the assailant gives serious thought to future consequences; and (*b*) by people acting in a calculated manner but in which possibility of escaping detection is also calculated. In both categories, capital punishment fails as a deterrent. In further support of this view regarding the efficacy of capital punishment as a deterrent, are the attached statistics with regard to the experience of other countries.

(5) *Other persons involved.* The execution can do nothing to bring back the life already taken. The period of trial is extremely trying to the relatives and friends of the victim. Nevertheless, as a matter of record, there have been many cases in which they have been among the first to ask that a second life should not be taken. For the relatives and friends of the accused, the pre-execution period is a nightmare of unwanted publicity and mental anguish. The effect of an execution on the personnel and inmates of the prison where it takes place, is often serious. Prison officials are known to have committed suicide due to the strain imposed by execution proceedings.

(6) *History of the accused.* It would seem that more extensive investigation should be made into the history of the accused person in order to discover if possible, the reasons which lead to the crime. It has been shown that temporary mental disturbances often cause violent actions.

(7) *Responsibility of Society.* Mention should be made of the element of violence in so-called educational media. The toy gun of childhood is later followed by crime fiction and the violent film. There is a continuing traffic in lethal weapons. Some attempt should be made to assess the influence of these factors and the state should accept its rightful share of responsibility for violent actions resulting therefrom.

Yours sincerely,

Signed. FRED HASLAM,
General Secretary.

ABOLITIONIST COUNTRIES

The following states have either abolished capital punishment by law for the civil crime of murder or allowed it to fall into abeyance by a policy of reprieve:—

Austria
Finally abolished June 1950.

Belgium
Abrogated by disuse. Last execution 1863, except for one case during the 1914-18 war.

Denmark
Abolished 1930. No execution since 1892.

Finland
Abolished 1949. No execution since 1826 except during the revolution of 1918.

Western Germany
Abolished 1949.

Holland
Abolished 1870. No execution since 1860.

Iceland
Abolished on establishment of Republic 1944.

Israel
Abolished 1952.

Italy
Finally abolished 1948.

Luxembourg
Abrogated by disuse. No execution since 1822.

Norway
Abolished 1905. No execution since 1876.

Portugal
Abolished 1867.

Roumania
Abolished 1864. No execution since 1838.
Restored for political crimes 1938.

Sweden
Abolished 1921. No execution since 1919.

Switzerland

Abolished 1942. No execution since 1924.

United States of America

Abolished in Michigan (1847), Wisconsin (1853), Maine (1887), Minnesota (1911), Rhode Island (1852) and North Dakota (1895). In the last two states there is abolition except for murder in the first degree committed while serving sentence for murder in the first degree.

In 35 of the remaining 42 states, there is power to pronounce an alternative sentence of life imprisonment. Ten states having abolished capital punishment, restored it, seven of them after a very short period.

Tennessee	Abolished	1915	Restored	1919
Arizona	"	1917	"	1919
Missouri	"	1917	"	1919
Colorado	"	1897	"	1901
Iowa	"	1892	"	1898
Washington	"	1913	"	1919
Oregon	"	1914	"	1920
South Dakota	"	1915	"	1939
Kansas	"	1907	"	1935

Central and South America

Argentine	Abolished 1922.
Brazil	" 1891.
Columbia	" 1910.
Costa Rica	" 1880.
Dominica	" 1924.
Ecuador	" 1897.
Honduras	not included in Constitution of 1894.
Mexico	Abolished 1928.
Panama	" 1903.
Peru	Discontinued for about 50 years. Reintroduced for political crimes 1949.
Uruguay	Abolished 1907.
Venezuela	" 1863.

Australia

Queensland — Abolished 1922. No execution since 1913.

India

Nepal — Suspended for 5 years in 1931. Not reintroduced.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don. F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

THURSDAY, MARCH 18, 1954

WITNESS:

Mr. Leslie E. Wismer, Public Relations and Research Director, The Trades and Labor Congress of Canada.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

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Mr. Maurice Boisvert
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Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. SMALL,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, March 18, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Fergusson, Hodges, and McDonald.—(3)

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Dupuis, Fairey, Fulton, Lusby, Mitchell (*London*), Murphy (*Westmorland*), Shaw, Thatcher, Winch, and Mrs. Shipley.—(15)

In attendance: Mr. Leslie E. Wismer, Public Relations and Research Director, The Trades and Labor Congress of Canada; Mr. D. G. Blair, Counsel to the Committee.

On motion of the Honourable Senator McDonald, the Honourable Senator Muriel McQueen Fergusson was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

The Committee noted with pleasure the presence of Mr. Percy R. Bengough, President of The Trades and Labor Congress of Canada.

Mr. Wismer was called, presented a brief on behalf of The Trades and Labor Congress of Canada favouring certain lotteries in Canada, and was questioned thereon.

On behalf of the Committee, the Presiding Chairman thanked the representatives of The Trades and Labor Congress of Canada for their representations.

The witness retired.

At 5.20 p.m., the Committee adjourned to meet again at 11.00 a.m., Tuesday, March 23, 1954.

A. SMALL,
Clerk of the Committee

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EVIDENCE

THURSDAY, March 18, 1954,
4.00 p.m.

The PRESIDING CHAIRMAN (*Mr. Brown, Essex West*): Ladies and gentlemen, if you will come to order a motion will now be in order to appoint a senator as acting co-chairman for the day.

Hon. Mr. MCDONALD: As co-chairman Hayden is absent, I move that Senator Fergusson take Senator Hayden's place.

The PRESIDING CHAIRMAN: All in favour?

Carried.

The PRESIDING CHAIRMAN: Senator Fergusson, will you come forward please.

(At this point Hon. Senator Fergusson took the chair as co-chairman.)

The PRESIDING CHAIRMAN: Ladies and gentlemen, you have before you the brief of the Trades and Labor Congress which has been circulated among the members of the committee. If it is in order this will be printed as part of today's meeting.

Agreed.

The PRESIDING CHAIRMAN: We are fortunate today in that we have appearing before us Mr. Leslie E. Wismer, Director of Public Relations and Research, Trades and Labor Congress of Canada. We also have before the committee an unexpected visitor and we are honoured in having him, Mr. Percy Bengough, President of the Trades and Labor Congress of Canada. Would you like to say a word, Mr. Bengough?

Mr. PERCY BENGOUGH: I would just like to thank you for your remarks. Mr. Wismer will make the presentation.

The PRESIDING CHAIRMAN: Would you care to make your presentation, Mr. Wismer, and submit yourself to questions afterwards. Members of the committee know, of course, that it is customary to refrain from asking questions while the brief is being presented.

Mr. Leslie E. Wismer, Director of Public Relations and Research, Trades and Labor Congress of Canada, called:

The WITNESS: Do you desire that I read the brief?

The PRESIDING CHAIRMAN: If that is the pleasure of the committee.

Agreed.

The WITNESS: Mr. Chairman and members: the Trades and Labour Congress of Canada is pleased to have this opportunity of appearing before your committee and of placing our views before you on the subject of lotteries.

In the annual memorandum of our congress, which was presented to the government of Canada in December last, we requested that certain changes

be made in the Criminal Code with respect to lotteries. At that time we urged that "The $50 limit be maintained on draws sponsored by organizations, but at the same time that authority be given to the provincial attorneys general to grant permits to responsible groups such as service clubs and labour organizations to conduct draws for amounts as large as the provincial governments see fit."

We would like to stress with your committee that, in making this request for this particular change in the law governing the holding of raffles and draws, we are not asking for any general relaxation of the law governing lotteries. We would not like to see any change in the law which would allow rackets to develop or give any aid or comfort to those who are inclined in this direction. Our affiliated membership, however, desires the change we are recommending in order that responsible voluntary organizations may make greater use of raffles and draws in the raising of money for necessary and useful projects.

Such a change would not, in our opinion, weaken the general provisions of the Criminal Code in regard to gaming and betting. On the other hand, the change we are recommending would allow sufficient latitude in each province and in each particular case as to make it possible for the appropriate attorney general to deal effectively with the matter. In this way, we believe, any extensive use of the new provision could be easily restricted to responsible organizations.

The above recommendation, however, is not the most important matter which we wish your committee to consider in relation to lotteries.

In our annual memorandum, presented to the cabinet last December, we also asked that "the Criminal Code be amended to allow government-sponsored lotteries in Canada".

In making this recommendation to your committee, we would like to remind you that Canadians generally seem to like lotteries. If one is to assess the situation from the interest that is taken in lotteries emanating from other countries, and in which many Canadians seem to participate legally or otherwise, it may be assumed that lotteries are very popular. At the same time risk-taking in other forms is widely endorsed in Canada.

We are urging your committee to recommend a change in the Criminal Code which will provide for the federal government sponsoring national lotteries in Canada for two main reasons. First, we believe that the widely expressed desire of Canadians to participate in lotteries should be recognized and steps taken which will make it possible for our people to participate in lotteries legally, and secondly, we believe that this form of raising revenues is sound and proper, if administered efficiently and objectively.

We would suggest to you that there are ways of attaching safeguards to a national lottery, but that these are only possible if the lottery is handled entirely by the federal government or through an agency established by the federal government for this purpose. The prizes offered should be large enough to attract widespread participation in such a lottery, but they should not be so great as to have the effect of establishing a relatively small group of new rich in each year. In other words, there should be less emphasis upon a small number of very large prizes and more upon the provision of a relatively large number of smaller prizes. In our opinion, the prizes should all consist of cash, and they should be subject to income tax.

We suggest that such lotteries should not be attempted for any specific purpose. In our opinion, a national lottery or lotteries would defeat the purpose if the revenue received were to be earmarked for any special projects. The money received, less administrative expenses and prizes, should all be placed in the consolidated revenue fund for the general purposes of government.

We further suggest that such national lotteries should be open to public subscription as often as feasible. The reason is that in this way the public desire for some type of gaming could be exercised legally with the proceeds of the lottery being filtered into the public treasury for the general use of Canada and Canadians. In this way, too, we believe, the activities of those, who would minister to the desires of those who wish to take risks in this form, would be curtailed.

Put another way, we are not recommending that our laws be amended to provide for the legalization of gaming in the broad sense, but at the same time we believe that to continue to legislate frustration in this regard is merely to ignore the existence of such habits and to force such activities underground. It is not our desire to enter into an argument on this matter from a moral point of view. Our purpose is to suggest practical ways in which the people's desires and habits can be recognized and the results of these activities be turned to the national advantage. We therefore specifically recommend:

1. That a sub-paragraph be added to paragraph (b) of sub-clause 8 of clause 179 of bill 7 which would give the right to a provincial attorney-general to grant permits to responsible organizations such as service clubs and labor organizations for the holding of raffles and draws up to any amount which in the opinion of the attorney-general were reasonable as to amount and purpose for which the money was to be raised; and
2. That an additional paragraph (e) be added to sub-clause 8 of clause 179 of bill 7 providing that the Governor in Council can initiate directly, or through an agency of the government of Canada established for the purpose, a national lottery and take any necessary steps to see that all participants in the lottery have equal opportunities in this respect, and that all of the proceeds, after the defraying of administrative expenses and the disbursement of prizes, shall become the property of the consolidated revenue fund.

We would remind your committee that these two recommendations which we are placing before you to-day represent the wishes of our affiliated membership, and arise from resolutions which have been approved by our annual convention. We hope that they will have your careful consideration and approval.

Respectfully submitted on behalf of the Executive Council of the Trades and Labor Congress of Canada.

March 18, 1954.

The PRESIDING CHAIRMAN: Now you have heard the brief, ladies and gentlemen. I presume we will follow the usual practice of interrogation by starting at one end of the table and going to the other allowing each person to have an opportunity of asking questions.

Mr. Fairey.

Mr. FAIREY: I have no questions.

The PRESIDING CHAIRMAN: Mr. Winch.

By Mr. Winch:

Q. I have only one question at the moment, Mr. Chairman. I presume that as this submission is made it is as a result of decision of a national convention of the unions that are affiliated with the Trades and Labor Congress of Canada and that very serious thought has been given to all the implications of establishing a lottery system in Canada. That is my impression from the fact that this presentation has been made. That then brings me to a question

which I would like to ask. I am only dealing now with that aspect which deals with a national lottery under government supervision. In the brief it says that the government shall take a share of the moneys received and that shall go into a consolidated revenue fund. The first query that comes to my mind there is: has the national executive of the Trades and Labor Congress of Canada given any thought as to what should be the percentage or share? And, following on that thought, at the end of the brief it says that any prize money that is paid out shall be subject to income tax. Now, in a division of the prizes that are recommended what does the national executive of the Trades and Labor Congress have in mind as to what those amounts of prizes shall be? The reason I raise the query in this way is this: on the presentation of the money paid in on lotteries immediately there shall be a percentage paid into the consolidated revenue fund and any prize money paid out shall be subject to income tax, then under the income tax regulations as they are today if there is an appreciable amount—shall we say $10,000 or $20,000 as prizes—it strikes me immediately—and I am asking it as a question—

The PRESIDING CHAIRMAN: I was wondering if you were asking a question.

By Mr. Winch:

Q. —that the majority of all the moneys collected directly or indirectly is merely going to mean another taxation on those who want to invest in lotteries because the majority as I see from your presentation is not going to go to those who spend money on lotteries, it is going to go into the consolidated revenue of Canada directly or indirectly as taxes.—A. Mr. Chairman, I thought I noted a question at the beginning, as to whether or not the amount of the prizes had been considered by the executive council of the Trades and Labor Congress, and the answer to that is no. Then I think there was another question as to the consideration of there being any part of the collections under a national lottery remaining in the consolidated revenue fund over and above expenses and the prizes paid out. There has been consideration of that matter and we believe that that should be. As to the amount of taxation, it is the opinion of the congress that the prizes should be taxable in the same way as other income is taxable. If you did not tax the winner how could you justify taxing the loser? We believe that to create a national lottery and allow windfall payments competely free from income tax would be entirely unwise. The question is, how much of the total money collected in the lottery would remain, after it is wound up, in the consolidated revenue fund? That is of course a matter of reasonably simple arithmetic I would say.

Q. That being the case, would you agree that by far the majority of the money spent or invested in a government lottery under your presentation would end up with the government and not with the persons participating? —A. No.

Q. Why?—A. I think we could make it fairly clear to the committee, Mr. Chairman, if I suggest it this way, that it is a matter of easily establishing what the administration costs, or the promotional cost of the lottery, would be: selling the tickets and accounting for the money, that naturally will have to be defrayed against the contributions which are made to the lottery. It will not be difficult to establish how much the total amount of the prizes to be paid out would be.

Q. Most of the residue then is to be divided into prizes?—A. Then the difference in the administration cost and whatever you would say would be the total amount of prizes to be paid could quite easily, I think, be related to the amount to be left in the consolidated revenue fund, and the approximate amount which will come back as a matter of income tax payment, depending of course, on the type of person who happens to win.

By Hon. Mrs. Hodges:

Q. I have read your brief with a very great deal of interest and I notice that the Trades and Labor Congress suggests a national lottery as well as lotteries in the provinces giving the right to the provincial attorneys general to grant permits to responsible groups such as service clubs and labour organizations to conduct draws, holding of raffles, etc. It seems to me—and I would like to ask—does not that suggest to you that your idea is that this country is going to be flooded with lotteries in addition to Irish sweepstakes and other lotteries? How would you govern the number of lotteries in the provinces?—A. I suggest to you that they are not quite as extensive as that. Under section 179 you will notice that the only raffles or draws which are actually to be legal in Canada are tiny affairs in which the maximum limited prize is $50. We are all aware that many a motorcar is raffled off and that there are all sorts and descriptions of schemes in this country, on the air and on the ground, by which you can win something, all indicating great interest in the matter by the public in gambling of this sort. Our first proposition arises from this problem: we have some 70 central councils in Canada located in cities and major industrial areas in Canada in every province, and they find it useful perhaps once a year, possibly around labour day or around Christmas time, to hold raffles as part of a further celebration in which they are able to raise money for some charitable purposes, and they are greatly restricted by the law as it now stands unless they use these tricks which other people do to raffle off motorcars in spite of the law. Our national convention sought to have the executive council place this proposition before the cabinet and now before this committee that there should be a way in which such responsible organizations who have time in which to raise the money could be authorized in some way to have a raffle in which the total take would be a larger amount of money, and we are suggesting it might be possible to allow a provincial attorney general to look at the individual case and if there is to be a lottery say what it should be. We are not suggesting that that should be a cash proposition. These are raffles where there would be merchandise given away.

Q. I notice in your brief that you are not concerned with the moral point of view. Do you think that the increase of these avenues of easy money—"get rich quick", "something for nothing"—are a good thing for Canada from labour's point of view?—A. Well, I would like to answer your question in this way: I cannot see very much wrong with it. I am not arguing in favour of getting money easily—

Q. The promoters get the money easily.—A. What I want to say is this, that it seems part and parcel of most peoples lives to take chances and they rather like to be involved in some sort of a scheme in which there is a chance of winning. They seem to do that naturally. There seems to be great interest in it, and it seems to us we might better recognize that fact and allow such things to go on legally rather than drive them underground.

Q. You do not think we will have such a raft of raffles and lotteries, by asking for the provincial attorneys general to give dispensation for such things, that they will exploit that very human appeal?—A. I would like to suggest to the committee that if you were to go along with the suggestion and make it possible for provincial attorneys general to legalize certain lotteries or raffles or draws, I think you could put a lot more authority in his hand to correct some of the abuses where you have a large number of these things going on which as far as I can see are completely unlawful.

Hon. Mrs. HODGES: Thank you.

By Hon. Mr. McDonald:

Q. Senator Hodges has really asked the question that was in my mind. I would like to say this, that among the people whom I have talked with regarding lotteries there seems to me to be a feeling that they are very difficult to control at the present time and they are afraid that if lotteries were legalized that it would be very difficult to control them all and that the country cannot afford it; that a lot of these people who would be going into lotteries and buying the tickets perhaps might be the people who should not be spending their money that way; and they point out to me that Canada has made many advances, we have become a great nation under the policy of fair compensation for honest service rendered. Now, if we were to legalize lotteries are we not getting away from that?—A. It may be true, Mr. Chairman, that the hon. senator's suggestion is a very correct one, except that I think it does not take into account one other thing which is that there is an enormous amount of this sort of thing going on all the time which apparently is completely illegal unless it has some strange little twist to it that you are supposed to give: what is the name of the provincial capital or something like that? who is the mystery voice? Most obvious questions are asked in order to overcome the illegality of giving away something for nothing. If you allow responsible people to raise money easily for good sound projects and do it in a way which the public seems to like, and at the same time if you allow that to be legal you would find ways and means of restricting these other things which are doing exactly what you suggest, sir, attracting the people who have the least time and money to put into this thing who are putting the most into it.

By Mr. Lusby:

Q. I would take it that you think one of the objectives of this national lottery would be the raising of revenue?—A. Yes.

Q. And I think your brief did mention that that privilege be exercised by the federal government and also be allowed to the provincial goverments? —A. Only to the federal government.

Q. How would you justify not extending that to all taxing bodies in the country? Why should not provincial governments, or towns or municipalities, have the right to raise revenues?—A. We do not suggest that the only reason for putting the national lottery into effect is the raising of money. That is only one of the reasons. It has never been suggested that we recommend anything further than a national lottery; never any suggestion that there should be provincial or municipal lotteries. Perhaps the reason for it is that those who have talked about it and thought it through think it would be far better to have it on a national scale so there would not be a multiplicity of this sort of thing going on.

Q. It seems to me that that would probably lead to a good deal of pressure. If the federal government assume that privilege it seems to me that the provincial governments, towns and all other taxing bodies would immediately think that they should have that privilege too. I take it from what you say you would think it would not be desirable to allow a large number of bodies to exercise this privilege?—A. No. I do not think we would like to leave the idea with the committee that you are going to find a new way of raising revenues and can stop thinking of raising taxes.

By Mr. Dupuis:

Q. Referring to recommendation number one, page three, I see that you suggest that the right be given to provincial attorneys general to grant permits to responsible organizations such as service clubs and labour organizations for the holding of raffles and draws up to any amount which in the opinion of the

attorney general were reasonable as to amount and purpose for which the money was to be raised. I understand that you still limit the prize to an article, not to a sum of money?—A. That is right.

Q. The amount now is $50, but it is $50 in articles or goods?—A. Yes.

Q. Not a sum of money like $50 in cash?—A. That is right.

Q. And then you suggest that the attorneys general be given the privilege of granting permits to responsible organizations. What would happen in a case where a national organization did make a draw: do you think in a situation like that there would be a conflict of power between the provincial governments and the federal to determine who should hold these raffles and draws of any sort? Do you not think there would be a conflict of authority, in the case of a national wide organization, with the provinces?—A. I might suggest to you that we believe that when parliament finally passes this law, the Criminal Code, its administration then becomes the business of the attorneys general of the provinces, and under this section there seems to be one small paragraph there giving the right for raffles up to $50; that is all that is legal. To meet the needs as expressed by our people for draws in cities across the country it is suggested that enough authority be granted to the individual attorneys general to look at an application, what the purpose of the draw is, what the money raised would be used for, and how much value in prizes they wish to give out to attract the contributors, and that they be able to issue a permit if they feel justified in the situation. It would not have anything to do with any other province. It would be a case within each province.

Q. Do you suggest that in granting permits the province should fix even the amount? Do you not think that, as in the Code as it presently stands, the amount to be fixed should be mentioned in the Code instead of leaving it to the liberty of the attorney general to decide?—A. If you are going to do that, we would have to suggest that $50 is much too low.

Q. I believe it is too low, but I think it would be right to specify the amount because there might be a disguised lottery in a province. For instance, it might sound ridiculous, but you might put as a reward 10 houses worth $20,000, and that would raise the amount to $200,000. That would mean a disguised lottery, in my opinion. That amount actually specified there in the Code should be equally specified from now on, if you increase it. It should be limited to a certain reasonable amount. Is that your opinion or not? Do you find that there could be a danger of having a disguised lottery by not specifying an amount in the Code?—A. I would like to say a word on that: it was considered by our people as very important that we stress with you that we do not want simply to open it up, that is by lifting the amount, allowing any organization the right to hold these raffles, and increasing the possibility of racketeering and that sort of thing, but rather that this sort of thing can only be done by what would be considered in any province responsible voluntary organizations seeking to raise funds for charitable purposes and that sort of thing.

Q. Maybe I do not express myself very plainly. What I meant to say was: Would you be in favour of what I asked a while ago—you are not forced to answer me, of course—of limiting that amount precisely for the reasons I have given, because there would be a danger in some province of having disguised lotteries if that amount is not specified in the Code as it is now?—A. I think that is true, but I think that in limiting the amount we should keep in mind the fact that motorcars sell at between $2,000 and $3,000, that the sort of prizes which attract people in these things nowadays would require certainly not $50 or $100. It would have to be up to $5,000 or something of that sort, considering the present level of prices of commodities of that type.

Q. But you believe that the amount should be specified in the Code, as it is now?—A. It probably would be necessary from that point of view.

By Mr. Brown (Brantford):

Q. Mr. Wismer, I have not your typed submission in front of me, but I understand that in that submission you were in favour of repealing the section limiting the amount to $50, but limiting any prizes to the amount of $50 and requiring that anything in excess of that would have to be approved by the attorneys general?—A. That was the way we sought to get at this, because we did not want just to open it up all across the country.

Q. If it were put in that form, would it not mean tremendous pressure on the attorneys general from all manner of groups and organizations which would cause a tremendous amount of work in the offices of the attorneys general? What is your view on that?—A. It would seem to me that if you put in this additional subparagraph and, if you like, go along with a fixed limit on how large it could be for these specific types of draws or raffles, you might have a flurry at the beginning, but it would seem to me that once it has settled down organizations would know what was acceptable to the attorney general in that specific province, as to the type of organization that would get such a permit and the sort of purposes for which he would grant a permit. It would become rather routine after the first flurry.

Mr. DUPUIS: May I give an answer which would probably be of profit to the committee and my hon. friend here. In this case here, when we have draws in the city of Montreal, for instance, and the amount is limited to $50, the city of Montreal has the right to pick whatever organization would be entitled to make such draws.

The PRESIDING CHAIRMAN: Mr. Brown?

Mr. BROWN (*Brantford*): That is all for the moment.

By Mr. Boisvert:

Q. Mr. Wismer, from your submission it appears that the congress that you represent would be in favour of national lotteries. You are surely aware that there was such a lottery organized and operated in France before 1939? —A. That is right.

Q. Have you any idea of the success the government of France has had with its national lottery?—A. I am afraid I cannot give you the facts and figures, no.

Mr. BOISVERT: That is all.

By Mr. Cameron:

Q. Your submission that national governments should go into the field of holding lotteries is based on the opinion of your organization that that is the majority opinion of the people of Canada, that they do not object to lotteries and, therefore, you think it would be perfectly proper for the dominion government to enter that field, to give to the people of Canada the right to take these chances, if they so desire, in a legal manner?—A. That the opportunity should be provided for the people of Canada to buy tickets in a lottery if they so desire.

Q. And you have read, I presume, the article, "Gambling in Canada", issued by the Board of Evangelism and Social Services of the United Church of Canada?—A. I am sorry, I have not.

Q. That seems to indicate that they do not feel that that is the majority opinion of the people of Canada.—A. Well, I can only say that there were no dissenting votes registered in our convention representing 600,000 Canadians.

Q. Are you seriously suggesting that the government of Canada should officially get into that field?—A. We are serious, yes.

Hon. Mr. McDONALD: How many delegates were there? Excuse me, I should not have asked that, I am out of turn.

The WITNESS: Something around 700.

By Mr. Shaw:

Q. I should like to ask Mr. Wismer if his congress has made a survey of any kind that would tend to indicate to the congress the situation in the several provinces of Canada today respecting the uniform enforcement of the present law. Have you made any survey provincially across Canada?—A. We have not made anything which you could call a national survey. I can suggest to you that our own people in discussing the situation which they find in their own regions say that a great deal of this sort of thing goes on. Certainly if you travel in this country you are bombarded with ticket-selling throughout the whole country, and come summer and early autumn, even here in the city of Ottawa, there is a car parked on every street corner with somebody selling tickets to raffle off that car. Without saying that it is a national survey, it is certainly our opinion that this goes on to a great extent in Canada.

Q. Mr. Wismer, would you, on the basis of the discussion which took place in your convention, have cause to feel that maybe the law as it stands today is enforced much more severely in some provinces than in others?—A. No, I cannot say that.

Mr. WINCH: The answer is "Yes".

By Mr. Shaw:

Q. That is my view, but I was waiting to see what Mr. Wismer thought. Mr. Wismer, has your congress secured the views of any of the attorneys general with respect to this matter, that is, extending to them the authority to grant or withhold approval?—A. No.

Q. Would you have cause to believe that they would be very reluctant about accepting that responsibility?—A. Some of them might; others might be very glad to see you relax the law.

Q. Would you have any reason to believe that probably the attorneys general might oppose it on the grounds that it would put them in an almost impossible position in trying to ascertain the legality or otherwise of the applicants? May I add one more question, then? Has your congress any views with respect to our ability to enforce the law as it stands today relating to lotteries? Does your congress think it is an enforceable law as it stands today? When I say "law", I mean in the sense that it takes in all sections.—A. No, it is not enforceable.

Mr. SHAW: That is all.

Mr. MURPHY: In your submission you talk of national lotteries. Do you think that all lotteries should be carried out on a national basis?

The WITNESS: I think there should not be allowed any lottery except on a national basis. The only legal lottery should be the one we are suggesting here.

The PRESIDING CHAIRMAN: You are not suggesting any illlegal lotteries?

By Mr. Murphy:

Q. We assume there always will be.—A. I would suggest this: we get items in the newspapers from time to time as to who won in the Irish Sweepstakes, in the National Steeplechase, in the Army and Navy, and so on, and it is suggested that it is sufficiently interesting throughout Canada that they put it in streamer headlines. We know such lotteries go on and there appears to be no way to stop them, and it would be far better to take advantage of this nationally and let it be to the general advantage of the people of Canada.

Q. These lotteries would be operated by an organization such as yours?—A. No. The national lotteries would have to be run, in our opinion, either by the government directly or by an agency which it agrees on for the purpose.

The PRESIDING CHAIRMAN: You mean, more civil servants?

Mr. DUPUIS: Yes, or banks.

The PRESIDING CHAIRMAN: Miss Bennett.

Hon. Mrs. HODGES: May I interject just here? Mr. Boisvert asked about the French state lottery. I have something here that says:

> Press reports regarding a French state lottery, postwar, state that it was discontinued because net receipts were only about 3½ per cent of the gross.

I thought I would mention that.

By Miss Bennett:

Q. I was rather curious, in reading over this submission, when I came to the last paragraph before the recommendation commencing at:

> It is not our desire to enter into an argument on this matter from a moral point of view,

and then dealing with the people's desires and habits. I was wondering if Mr. Wismer had considered just how far we could go as a country and as a government on entering into national schemes or passing national legislation without actually fundamentally considering the moral issues. I think the government more or less has to, seeing that is the fundamental basis of how you arrived at your conclusion. How far do you think a national government can go in passing legislation to cover people's desires and habits without some consideration of the moral background and the moral issues, having the viewpoint of the whole of the Canadian people in mind?—A. I suggest to the committee that a law which runs counter to the people's desires is an unenforceable law, which is the state in which this is now. There is so much desire and custom in Canada now to engage in various games of chance and that sort of thing, it is so widespread, that that in itself is the reason why the law is not enforced, although it may be true, as someone has suggested, that it is more rigidly enforced in some areas than in others. That being the case, it seems to us that parliament has a perfect right to take a look at that state of affairs and adjust the law so that it becomes an enforceable law, and if there is financial advantage to the community as a whole, to the nation, that it has a perfect right to take advantage of that financial situation.

Q. I do not want to enter into an argument on this, but if that was a general proposition would it not become dangerous from the standpoint of making laws? I am just dealing with this one type of thing, but if you went down the whole list of crimes, or whatever people might be doing, and if you just took that principle of considering their frequency and the apparent inability to legislate against them, we would be in a very serious condition. I am not saying we should or should not do this; but I am trying to look at it from the standpoint that the government might adopt in dealing with this, and I am questioning the basis that you use in summing up your proposition.—A. Let me put it another way. We have all lived through two eras in Canada, the prohibition era and the control era. It would seem to us that the control era is a more realistic era than the prohibition era was. Whatever habits the people had, whatever was morally right or wrong about the consumption of alcohol, the actual habits of the people were such in the prohibition era as to create much more habit than has been created so far in the control era. While I was not particularly anxious to raise that issue in relation to this question, it is the example which comes to me. I suggest to you, without dealing with the actual moral grounds of this question, that today in Canada

there is so much activity in chance-taking, risk-taking of this sort, that the law as it now stands appears to be unenforceable. The public does not want it enforced, and it seems to me that parliament, therefore, has a right to act, because presumably parliament exists for the purpose of dealing with the people's wishes.

Q. If there are others who wish to speak, I do not wish to pursue the argument, but I do think that in dealing with this question it might be somewhat unfortunate to say that we are not dealing with it at all from the moral point of view, because I think that in all government legislation, to legislate properly, we must consider it from that standpoint.

The PRESIDING CHAIRMAN: I am sorry, we cannot get this at the reporter's table here. Would you continue, Miss Bennett?

Miss BENNETT: I really have nothing further to say, Mr. Chairman, except that I do think that as a principle the moral issue is something we will have to deal with.

The WITNESS: I only want to say this, and I think if you read that sentence carefully it says: "It is not our desire to enter into an argument on this matter from a moral point of view." We have disregarded the morals. It was put in there intentionally that we are not coming to you to engage in a moral argument on this issue. We are aware as one member has mentioned that there are church groups interested, who believe the question should be raised from a purely moral angle. We were trying to talk to you as representatives of a great part of the public of Canada from the practical point of view.

By Mr. Mitchell:

Q. Mr. Chairman, the witness was asked whether or not any of the provincial attorneys general had been consulted, and that leads me to the next point. The attorney general is not only responsible for establishing the limit, but also for deciding what is a responsible organization. Is that the basis of your submission?—A. That is right.

Q. And the permits to conduct raffles are to be restricted to religious or charitable purposes?—A. Yes.

Q. They are?—A. To charitable purposes.

By Mr. Fulton:

Q. I was not quite clear, Mr. Chairman, on the point on page one of the submission, the second paragraph starting: "At that time we urged that 'the $50 limit be maintained on draws sponsored by organizations' ", etc. Do I understand what you have in mind there is that that part of the law as it stands now which does allow religious and charitable organizations to conduct lotteries at the $50 prize limit should be left, and in addition there should be an extension of merchandise prizes in any value with the sanction of the attorneys general.—A. In general that is what we are trying to say.

Q. Would the sort of suggestion you have in mind extend to the provincial field? If it is the desire of a community to build a recreational center or memorial hall they might apply to the attorney general for permission to conduct a lottery for the purpose of raising those funds?—A. That would be a bigger project than we had in mind. We have in mind this sort of thing: For instance, in the city of Hamilton we have a substantial central labour body to which are affiliated the unions which form part of the Trades and Labour Congress of Canada in that district, who in the past as part of their labour day celebration raised money through this type of thing which they used in the wintertime for what might really amount to relief or charitable purposes. But it has more recently happened in Ontario that they have been more strict about this and will not let them do it any more. Actually very good social work

which they were able to do through this medium is now impossible. There is not any way a council of that sort could put on a levy to raise that money. They have no constitutional authority to do that sort of thing. It seemed to us if the law provided it that a council of that sort could quite easily satisfy the attorney general of the province of its responsibility and the value of its operation and as to the size of the raffle which would be necessary to get enough funds for those purposes.

Q. I was thinking of a case which was brought to my attention recently where a community hall in a small country community had burned down and was not insured and they wanted to build another one. That was why I asked you whether you would envisage the possibility, under the extension of the law which you are advocating here, that the community hall association might apply for permission to run a lottery?—A. That was beyond what we had in mind.

By Mr. Thatcher:

Q. Mr. Chairman, there is just one aspect I would like to query Mr. Wismer on. As I understand it, for many years in the United States there have been fairly widespread gambling activities and one of the results of those activities, if newspaper reports are correct, is that gamblers have been able to get hold of state organizations and corrupt the police and pay judges and courts in some cases. I do not suppose that could happen in Canada. Still, as a result of their experiences there is a danger of crookedness coming up in gambling of that kind. I can remember a case in Ottawa last year when one of the service clubs was running a bingo where a couple of these gentlemen came in and rigged the bingo so that the same two people would always win the prizes. In your brief, Mr. Wismer, you say that the congress suggests that there would be safeguards, and you say on page two: "There are ways of attaching safeguards." I would like you to tell me what those safeguards would be?—A. The next sentence says "the only way you can do it is through the government machinery".

Q. In the United States where they have state supervised lotteries they still could not find those safeguards. What specific safeguards are there which you have in mind.—A. Well, I would not like to suggest before a committee of this sort that there is any natural comparison between the approach of Canadians to these things and the approach of those people below the line. Our whole system of government is quite different and we do not go in for the sort of things they do in Washington.

Q. Would we not be emulating the American experiences?—A. No. If parliament gave the authority to establish an organization for the purpose of holding a national lottery I think we could assume as a start that as a Crown agency it would proceed in an objective manner and would have sufficient ability to make sure that those who sold the tickets and collected the money would do so as they should and that the money would not drift off into racketeers' pockets, but would be put in the national treasury.

Q. You say on page two that: "there are ways of attaching safeguards to national lotteries". I still would like to know what they would be in your opinion?—A. We have the same sort of safeguards in the protection of our money, in the protection of our bonds and all those things. We have worked it out so that the counterfeiters and racketeers and so on have not been successful in Canada in upsetting the activities of the Crown in that respect, and I suggest with the knowledge that goes with that that we would be able to protect any issue of tickets for a national lottery and make sure that the public who bought those tickets would know that their money got back where it was supposed to get in Ottawa or wherever the headquarters was and that there was no room

in it for racketeering, or if anyone found room we from experience know how to deal with that situation in the matter of financial instruments, which these would be.

The PRESIDING CHAIRMAN: Mrs. Shipley.

Mrs. SHIPLEY: I have no questions.

The PRESIDING CHAIRMAN: Hon. Mrs. Fergusson.

Hon. Mrs. FERGUSSON: No.

By Mr. Blair:

Q. Your proposal that lotteries should receive the approval of the provincial attorneys general is phrased in general terms. What do you think would happen if a provincial organization, an organization having branches all over the province, were to ask for approval for some gigantic charitable enterprise with a large number of prizes like automobiles and so on? How could a provincial attorney general resist that kind of thing in principle? Would you not have a lottery of the size and magnitude which would compete with a national lottery? —A. My answer to you is certainly we at no time considered anything of this sort and if the language of our proposal is such to leave that open then I suggest some cap be put on it because we, of course, envisaged these local efforts.

Q. You would favour restrictions being placed on your proposal to avoid that kind of widespread provincial operation?—A. I will put it another way. We were not anxious to put restrictions on it. We would rather that the restrictions be put on it by the provincial attorney general having in mind the actual case in point. But if there is reason, from the questions which members of the committee have raised, that it is better that the cap be put in the law, we would go along with that.

Q. You think it would be better, if there are state operated lotteries, to have them operated by the federal government rather than by the provincial governments?—A. Yes.

The PRESIDING CHAIRMAN: I think the chair has probably been more than lenient today in the questioning which has taken place. May I ask the committee to confine themselves to the asking of questions, to the interrogation of the witness, rather than to the making of statements. I know several members have made long statements which take up the time of the committee and which will be more profitable probably when we are discussing the report which we will subsequently make. If we could take up the time now by strict interrogation it would be appreciated by the chair and by the other members of the committee.

By Mr. Dupuis:

Q. Do you suggest that all the proceeds after the defrayment of expenses and prizes shall become the property of the consolidated revenue fund?—A. That is right.

Q. Would you not preferably say that the receipts and the net amount should be distributed as they are in Ireland, for instance, to hospitals or any sort of recognized welfare organization by the city authorities or locally?—A. No. Not for the national lotteries. Our presentation on that is quite clear. We would not like to see the lottery replace the type of contribution for social security or social welfare. We see these things as something quite over and above the necessary cost of social security and social welfare, and we have suggested that whatever money would be raised in this way, whatever money was left over would go in the consolidated revenue fund the same

as any other money goes in. In other words, there would not be any suggestion go out that the lottery was replacing taxes or contributions or that the lottery would create any friction in the country whatsoever as to the purpose for which the money was being raised.

By Mr. Winch:

Q. I have two questions. Would Mr. Wismer comment in view of his position and contact with the membership of the Trades and Labour Congress as to whether or not in his opinion the majority of the adults in Canada have bought or do buy raffle tickets, sweepstake tickets, and bet on horses? —A. I will rule out the horses, but I am satisfied that the majority of Canadians participate in lotteries or things of that sort.

Q. One other question, Mr. Chairman. Outside of the legal aspect of the situation at the moment, has Mr. Wismer differentiated in any way between a citizen risking money on horses which is legal and buying a lottery or raffle ticket which is illegal?—A. I cannot differentiate between the two things in my own mind.

By Mr. Fairey:

Q. I am confused about this national lottery and how much money would go into the consolidated revenue fund. Am I wrong in assuming your idea is the lottery shall be conducted by the federal government and total receipts after deductions or operating costs shall then, most of it, be distributed in prize money?—A. I would think that a national lottery should disperse in prize money a sizable part of it. That is, I do not think it should be organized and run for the purposes of swelling the national treasury.

Q. That is what is confusing me. You said several times the money would go into the consolidated revenue fund. I am wondering what proportion of the total receipts you had in mind because, and Mr. Winch also raised the point, the prize money was to be taxable?—A. I would say to the committee that the 3½ per cent in France is a little too low to run a lottery on. I would say that it should be a reasonable percentage of the money collected which would find its way into the national treasury; but I am not prepared to say whether that should be 20 or 30 or 50 per cent.

Q. Let us say we had decided to do this and advertised a national lottery, what would be the purpose of the lottery? To raise money for the government?—A. I would say the purpose of the lottery is the same for all gambling, it gives Canadians a chance to win some money.

By Hon. Mrs. Fergusson:

Q. If you permitted organizations to hold raffles would they not compete with others and dry up philanthropic giving? Would the people not feel they have given to that charity and it would dry up the giving of charitable donations, which to my mind are a good thing?—A. I think the people who raised this question with us are very substantial contributors to Red Feather campaigns and Red Cross and organized welfare organizations in Canada, and they were thinking not of transplanting or hindering that activity, but it is their own activity which is raised in that direction. That is, I have in mind a council in Vancouver, Hamilton or Halifax or Montreal. The individual people who are represented in that council were not thinking that they should no longer contribute to the Red Feather or the Red Cross; they were thinking in terms of activity of their own which would be more easily operated through a campaign of their own among their membership.

Q. That is alright for the supporters of the Red Cross or the Red Feather who are anxious to raise money and who will make contributions to it under

any circumstances, but would it not dry up contributions from the smaller individuals who feel after they have bought a 25 cent ticket for Red Feather that there is no need to make donations when there is a call?—A. Well I doubt that. The Red Cross campaign is a national campaign and so would not come in under this at all, and the Red Feather campaigns although run locally are generally part and parcel of a whole national campaign at the same time. I think what we are suggesting is, after all, something of quite a local nature.

Q. In Australia where they do have national lotteries and contribute from those to the hospitals, I believe they find now their donations to the hospitals are entirely dried up whereas before the lotteries they did get contributions to the hospitals.—A. That is one of the reasons, under the national lotteries, we do not want the money earmarked for anything.

By Mr. Shaw:

Q. I would like to ask Mr. Wismer if his congress has any reason to believe people who buy lottery tickets today do not contribute to such organizations as represented by Senator Fergusson?—A. We have no reason to believe that.

Q. Secondly, would your congress favour putting this issue to the Canadian people at the time of the next election in the form of a plebiscite?—A. Yes.

By Mr. Fairey:

Q. The witness says that the old law is unenforceable in lotteries and so forth, and what right have we to suppose that any other law would be more enforceable than the present law? Could they not get under that the same as under the present law?—A. Perhaps so. Perhaps on the other hand, relaxing it to that extent, it would be easier to control the rest of it.

By Mr. Winch:

Q. I have one more supplementary question. Under the present law it is a federal law but it is very definite that there is a great deal of differentiation as to how it is enforced in the provinces and particularly there is a terrific differentiation between the province of Quebec and the Province of British Columbia, and because of that differentiation sweepstakes which are allowed in Quebec are sold in British Columbia. Under this presentation you are going to give a great deal of leeway to the provincial attorneys general. In view of the present situation may not that then accentuate the differentiation already existing in the administration of the federal law of lotteries and sweepstakes?—A. It may.

The PRESIDING CHAIRMAN: Now, ladies and gentlemen, we have had a very interesting presentation here on the question of lotteries.

Mr. Bengough and Mr. Wismer, the task of this committee is to study capital punishment and corporal punishment and lotteries. It is your intention to have anything to say with respect to capital punishment or corporal punishment?

Mr. BENGOUGH: No. We have no mandate from our membership in that respect at all.

Hon. Mr. MCDONALD: Perhaps these gentlemen would like to say something individually; they may have their own views.

Mr. BENGOUGH: Would that be of value?

The PRESIDING CHAIRMAN: I think we should take a collective view rather than an individual view.

Mr. MURPHY: I wonder if they realize that if lotteries are run by the government that the members of parliament would not be able to buy tickets?

The PRESIDING CHAIRMAN: I do not know that members of parliament do buy tickets. I can only speak for myself, and I have bought no tickets. However, I think we can pass that now. I want to thank Mr. Bengough and Mr. Wismer for their presentation, which I am sure has been very enlightening and, I trust, will be helpful to the committee in its deliberations.

Before adjourning the meeting, may I ask that the steering committee please remain after this meeting, as we have some matters to deal with.

The next meeting will be on Tuesday next, the 23rd of March, at which time we will have Warden R. M. Allan, of Kingston Penitentiary, before us.

Hon. Mrs. HODGES: At what time?

The PRESIDING CHAIRMAN: Eleven a.m., on the subject of corporal punishment.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don. F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

TUESDAY, MARCH 23, 1954
WEDNESDAY, MARCH 24, 1954

WITNESSES:

Mr. R. M. Allan, Warden of Kingston Penitentiary;
Colonel G. Hedley Basher, Deputy Minister of Reform Institutions, Province of Ontario.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

For the Senate (10)

Hon. Walter M. Aseltine
Hon. Elie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon. Salter A. Hayden (*Joint Chairman*)
Hon. Nancy Hodges
Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Miss Sybil Bennett
Mr. Maurice Boisvert
Mr. J. E. Brown
Mr. Don. F. Brown (*Joint Chairman*)
Mr. A. J. P. Cameron
Mr. Hector Dupuis
Mr. F. T. Fairey
Mr. E. D. Fulton
Hon. Stuart S. Garson
Mr. A. R. Lusby
Mr. R. W. Mitchell
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, March 23, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Hodges, McDonald, and Veniot—3.

The House of Commons: Messrs. Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Shaw, Shipley (Mrs.), Thatcher, Valois, and Winch—13.

In attendance: Mr. R. M. Allan, Warden of Kingston Penitentiary, Kingston, Ontario; Mr. D. G. Blair, Counsel to the Committee.

On motion of the Honourable Senator Hodges, the Honourable Senator McDonald was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

A question having been raised by Mr. Fulton, respecting the Presiding Chairman having allowed the witness to be photographed before this meeting with exhibits to be described by him in committee without the authority of the Committee or Subcommittee, on motion of Mr. Winch.

Agreed,—That this question be referred to the Subcommittee on Agenda and Procedure.

On motion of Mr. Fulton,

Ordered,—That the Clerk of the Committee obtain as soon as possible 35 copies of the Report of the U.K. Royal Commission on Betting, Lotteries and Gaming, 1949-51, for the use of the Committee.

Warden Allan was called, made his presentation to the Committee on corporal punishment in a federal penitentiary, and was questioned thereon. During the course of his presentation, the "cat-o-nine-tails" and the "strap" used in Kingston Penitentiary were exhibited and described by him to the Committee. Warden Allan also produced two photographs of the "strapping table" used in administering corporal punishment which he described in detail. These photographs are filed as Exhibits A and B.

Warden Allan also placed on the record two lists showing Corporal Punishment administered at Kingston Penitentiary for (a) Violations of Prison Regulations 1932-53 and (b) Court Sentences 1943-53.

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The Committee expressed its appreciation to Warden Allan for his presentation.

The witness retired.

At 12.45 p.m., the Committee adjourned to meet again at 4.00 p.m., Wednesday, March 24, 1954.

WEDNESDAY, March 24, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Hodges, McDonald, Roebuck, and Veniot—5.

The House of Commons: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Dupuis, Lusby, Mitchell (*London*), Shaw, Shipley (Mrs.), Thatcher, Valois, and Winch—12.

In attendance: Colonel G. Hedley Basher, Deputy Minister of Reform Institutions, Province of Ontario; Mr. D. G. Blair, Counsel to the Committee.

On motion of the Honourable Senator McDonald, the Honourable Senator Veniot was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

Colonel Basher was called, made his presentations on Capital and Corporal Punishment, and was questioned thereon.

On behalf of the Committee, the Presiding Chairman thanked the witness for his presentations.

The witness retired.

On motion of Mrs. Shipley,

Resolved,—That the procedure in respect of replies from the provincial Attorneys-General, providing the information requested in the Questionnaire on Capital and Corporal Punishment and Lotteries, be as follows:

1. Distribution shall not be made until all replies have been received;
2. All replies to be analyzed by Counsel to the Committee who shall prepare a consolidation to be printed, after approval by the subcommittee, as an appendix to the printed Minutes of Proceedings and Evidence for the day on which it is presented to the Committee;
3. Consideration by the Committee of the consolidated Questionnaire to be deferred until such time as it is available as an appendix to the printed Minutes of Proceedings and Evidence.

During the course of Colonel Basher's presentations, it was agreed that he would make available to the Committee the figures showing the instances of homicide from 1914 to 1953.

At 6.05 p.m., the Committee adjourned to meet again at 11.00 a.m., Tuesday, March 30, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

TUESDAY, MARCH 23, 1954,

11.00 A.M.

The PRESIDING CHAIRMAN (Mr. Brown, *Essex West*): We will come to order, ladies and gentlemen. A motion will be in order to elect a co-chairman from the Senate pro tem.

Hon. Mrs. HODGES: I move that Senator McDonald take the chair, as co-chairman.

The PRESIDING CHAIRMAN: All in favour?
Carried.

The PRESIDING CHAIRMAN: Senator McDonald, will you come forward, please.

A motion will now be in order that the clerk of the committee obtain as soon as possible 35 copies of the report of the United Kingdom Royal Commission on Betting, Lotteries and Gaming, 1949-51, for the use of the committee.

Mr. FULTON: May I suggest, off the record, that no further photographs be taken of witnesses unless and until the steering committee has taken the whole matter into consideration and brings back a report to the committee as to whether that should be permitted, and if so under what circumstances.

The PRESIDING CHAIRMAN: I will assume full responsibility for the photographs having been taken this morning. I think it is a public service that is very much in need. We must realize that it is not the business of the committee alone that we are dealing with, but the business of 15 million people across the whole of Canada, and as such they are entitled to know what is being done. The committee was not open at the time the photographs were taken and I think we are highly indebted to the newspapers for the coverage they have given to this committee and the information that they have been giving to the people of Canada. I feel that they have done a very singular service, and I think too that our purpose is not to just make up the minds of the members of the committee as to what is to be done, but that all the people of Canada should make up their minds on what is to be done.

Mr. FULTON: My suggestion was not that photographs should be prohibited. My suggestion was that photographing should not take place in the future unless and until the manner, time and conditions of it have been determined by the steering committee. I know that there are a number of members of this committee who have some feelings or misgivings on the manner in which it was conducted this morning, and I do not think it is fair to our witnesses to bring them here and possibly to expose them suddenly to having photographs taken of them under circumstances and with exhibits which might put them in an embarrassing situation. My suggestion is that we be reasonable about this matter and discuss it in the steering committee and bring in a report which would put it on some sensible basis before we permit this sort of thing in the committee.

The PRESIDING CHAIRMAN: I was requested too late yesterday to hold a subcommittee meeting—and I did not think of it anyway—to obtain permission to take photographs. I received the permission of the Senate this morning only a few minutes before this meeting.

Hon. Mr. McDONALD: You had permission?

The PRESIDING CHAIRMAN: Yes. I contacted Mr. Larose, assistant clerk of the Senate. I tried to contact the Speaker of the Senate but he was busy. The Clerk of the Senate was out; I also tried to contact the head of the Committee Branch of the Senate who was not available. The assistant head referred me to the assistant clerk of the Senate.

Hon. Mr. MCDONALD: In fairness, I cannot help but agree with Mr. Fulton that this matter should have been discussed by the steering committee before a decision of that nature was made.

The PRESIDING CHAIRMAN: The chairman must have some leeway.

Mr. FULTON: I must make it clear that I made no comment, other than merely that photographs should not be permitted in the future until the steering committee have had an opportunity to lay down the restrictions.

Mr. THATCHER: I think it is very important that the people of Canada realize what is being done with these weapons, and I am very glad that they were brought here. The more pictures that get out the better it will suit everyone. There is just one other weapon, Mr. Chairman, that I asked be brought here and that is the thing that holds the prisoner.

The PRESIDING CHAIRMAN: We have pictures of those. We are circulating them among the members.

Hon. Mrs. HODGES: I listened with interest to what Mr. Thatcher said, but the point which disturbs me is this: a picture is going out to the public of a warden holding these weapons and the inference which will be put in the minds of the public is that the warden is a pretty grim person and that that is the usual conduct. The public does not discriminate in the pictures that are taken, and I think it is unfortunate.

Mr. WINCH: I move that this whole subject be referred to the subcommittee.

Carried.

Mr. FULTON: I move that the clerk of the committee obtain as soon as possible 35 copies of the report of the U.K. Royal Commission on Betting, Lotteries and Gaming, 1949-51, for the use of the committee.

Seconded by Mr. Cameron.

Carried.

The PRESIDING CHAIRMAN: Today we have as our witness Warden R. M. Allan, of the Kingston Penitentiary, who has come here to give us the benefit of his experience with respect to the subject of corporal punishment. If it is your pleasure we will call upon Warden Allan at this time.

Mr. THATCHER: Do I understand that the warden will not be discussing capital punishment at all?

The PRESIDING CHAIRMAN: No.

R. M. Allan, Warden, Kingston Penitentiary, called:

The WITNESS: First of all, I consider it is an honour to have been requested to attend this parliamentary committee. As we all know in the administration of penitentiaries there are very few pleasantries attached to it and we have responsibilities to assume which in quite a number of occasions are very unpleasant. One of them is infliction of corporal punishment either as a result of court sentence or as a punishment for prison offences. However, I would like to express these following views on the matter, ladies and gentlemen. Do you wish to interject any questions as I go along?

The PRESIDING CHAIRMAN: Will you please make your presentation. Then after you have made your presentation the members of the committee will each be permitted to ask questions.

The WITNESS: Thank you.

It is considered that the infliction of corporal punishment is very definitely a deterrent to certain types of criminals, particularly between the age group of 16 and 24. The strap, however, from our experience, is more effective than the lash and has not the psychological effect upon the individual after its application.

While the application of corporal punishment may have varying effects on different individuals, we have never known of any instances where any persons who had received corporal punishment developed an embittered attitude towards life in general. On occasions we have known of inmates who have requested an increase in the amount of strokes provided they could obtain a reduction in sentence to be served. On one other occasion I can recall an inmate of approximately 24 years of age who commented after infliction of corporal punishment that if he had received this type of punishment in earlier life he would have stayed out of jail. To my knowledge that inmate has never returned to prison.

The procedure followed when any person is received into the penitentiary and who has received along with his sentence the application of corporal punishment, is that first a check is made with the registrar of the Supreme Court of Ontario to determine whether an application has been filed for leave to appeal. This request is usually delayed until the 30-day period has elapsed. When a clearance is received, the inmate is paraded before the penitentiary physician on the morning of the day the application is to be administered, and if certified fit, the punishment is carried out during the holding of the warden's noon-day court. The penitentiary physician is also present along with the warden or acting warden, deputy warden and other officers necessary to administer and properly control any situation which may develop.

If any doubt exists that a mental condition might be present, the inmate is referred to our psychiatrist before the infliction of corporal punishment is carried out. Should the psychiatrist certify in his opinion that the infliction of corporal punishment should not be carried out, special recommendation is forwarded to the Remission Service requesting authority for either the cancellation or postponement of this part of the sentence. The number of strokes may vary with a maximum of 20 strokes, however, a usual sentence is not more than 10 strokes. The doctor who is present may at any time stop the further application of punishment should he consider the inmate is not physically able to endure it.

The only alternative method which I might suggest in the infliction of corporal punishment would be the more liberal use of the birch rod upon the younger group, particularly between the ages of 18 and 22. I have always considered for many years that the sentencing of young boys for what might be considered minor offences, such as, initial car theft, minor breaking and entering and offences of a similar nature, that it was most regrettable that they should be sentenced to a penal institution, as a stigma of having a criminal record remains with them for the rest of their life, and in many cases has proved a major factor in eliminating any possibility of rehabilitation. When a young boy is placed in prison for the first time he enters with a wholesome dread of prison life, however, he is not long within its confines until he soon develops contacts and friends and, as young people do, immediately either through bravado or design plan ahead for future escapades. The fear of prison is also removed and he has already taken a long step towards a continued life of crime. While I have suggested a more liberal use of the birch rod, its application should only be authorized after probation and other reformative measures have failed to bring about the desired results, but at least I have considered it a more effective crime deterrent than placing young boys in a jail with its objectionable atmosphere.

I have never known the application of corporal punishment to be a contributing factor toward a young offender developing into a hardened criminal later in life. Also, in my younger days in the Old Country we, as young boys, had a most hearty respect for the birch rod, and within my own personal knowledge very few of the group of boys which I was acquainted with at that time desired even the smallest application.

I do not consider corporal punishment should be abolished for assault on females. However, it is doubtful if the sentencing of sex offenders to corporal punishment has any value. In my opinion there is no doubt that a mental condition does exist and corporal punishment in cases of this kind should be referred to a psychiatrist or psychologist before infliction.

There are no physical effects with either the infliction of the lash or strap. The type of instrument used for the infliction of the lash consists of 9 strands of light sash cord and apart from several minor red marks no breaking of the skin has ever been noticeable since the sash cord type instrument has been in use. Many years ago the "cat-o-nine-tails" consisted of leather thongs and when this was used the skin was definitely broken. The infliction of the strap leaves only a bruised condition and within my knowledge has never caused any permanent impairment or damage physically. With very few exceptions we have always placed inmates who had received corporal punishment immediately back to work the same day, however, if they request to remain away from work they are permitted to do so.

We are unable to maintain any accurate record or case history of those who might have been subjected to corporal punishment and who later continued in criminal activities.

The infliction of corporal punishment for institutional offences is carried out in a similar manner to that previously outlined. However, when any inmate commits a serious infraction of penitentiary regulations he is paraded to warden's court and the evidence is taken under oath from the reporting officer with the inmate present. The inmate is given every opportunity to express his opinion and bring out any factors which he might consider to be of value in presenting his case. He is also permitted to question the officer on any point. After the evidence has been taken this is forwarded to the Commissioner of Penitentiaries along with the warden's recommendation. The commissioner may or may not approve of the warden's recommendation. The following serious breaches of prison regulations are punishable by corporal punishment:

1. Personal violence to a fellow convict;
2. Grossly offensive or abusive language to any officer;
3. Willfully or wantonly breaking or otherwise destroying any penitentiary property;
4. When undergoing punishment, wilfully making a disturbance tending to interrupt the good order and discipline of the penitentiary;
5. Any act of gross misconduct or insubordination requiring to be suppressed by extraordinary means;
6. Escaping, or attempting or plotting to escape from the penitentiary;
7. Gross personal violence to any officer;
8. Revolt, insurrection, or mutiny, or incitement to the same;
9. Attempts to do any of the foregoing things.

However, it would be well to state that while the foregoing offences might call for recommendation of corporal punishment, in the majority of instances other types of punishment is given after considering all factors. Corporal punishment is only used as a last resort after other punishments permitted under regulations have been given without bringing about the desired results.

From prison administration angle I consider it is very necessary that the retaining of the authority of inflicting corporal punishment for serious prison offences should be continued and, while the recent revised policies in penal administration in Canada has resulted in a more relaxed atmosphere within the institution, there are a certain type of inmate who only control themselves due to the knowledge that they can still be strapped. It is definitely a deterrent and the presence of such authority assists the administration to a marked degree.

Before the infliction of any corporal punishment for prison offences the inmate is always paraded to the psychiatrist's office for a mental examination. This has been followed for the past few years in Kingston where we are fortunate in having a psychiatrist on the staff.

That, Mr. Chairman and ladies and gentlemen is my submission.

The PRESIDING CHAIRMAN: Thank you very much.

Now, I think we will follow the practice we have adopted at previous meetings of permitting each member to have a reasonable time for questioning—a short time. We will start at one end of the table and give everybody an opportunity. Shall we start at the right side today.

Mr. SHAW: Are the photographs going to be circulated?

The PRESIDING CHAIRMAN: We have here a photograph presented by Warden Allan which purports to be a sort of bench. Warden Allan, could you describe this for the purpose of the record?

The WITNESS: This is what we call our "strapping table". It is often referred to as the "paddling table" in other institutions.

Mr. FULTON: Are these going to be tendered as exhibits?

The PRESIDING CHAIRMAN: Yes.

Mr. FULTON: Could you mark that one as exhibit A?

The PRESIDING CHAIRMAN: This is exhibit A. Would you describe it for the purpose of the record?

The WITNESS: This is a strongly constructed table and the procedure followed is that we use this for the infliction of the strap and lash.

The PRESIDING CHAIRMAN: Could you describe the table in more detail? It is a table which looks to me to have a leather cushion top.

The WITNESS: Leather pads on top.

The PRESIDING CHAIRMAN: It has a strap at one end with buckles, I presume, with which to tie the feet of the individual.—A. On the lower part of it there are shackles each with two openings in which we put the feet of the inmates.

Q. Yes.—A. The shackles are bolted on; the strap above is put over the small of the back of the inmate.

Q. The strap is in the center of the table?—A. Yes; and there is a strap at one end on the top.

Q. Oh yes, I see. You have shackles down on the floor at the end of the table?—A. That is right.

Q. That is where the feet go?—A. Yes, that is where the feet go.

Q. And he bends over and rests his body on the cushion-top table?—A. Yes, he bends over, and then we strap him over the small of his back, and the strap is tightened according to the height of the man; and at the other end of the table we have straps which we fasten. You can see one of them hanging there. Those are the straps with which we fasten the man's hands.

Q. Why do you need a table so long? Is there any reason for that?—A. It actually is not as long as it appears. We have some large men there.

Q. That is exhibit A, and exhibit B is another view of the same table, is it not?—A. Yes.

The WITNESS: There are two pictures of each.

The PRESIDING CHAIRMAN: One set is a duplicate of the other set. Would you like to describe them further? Is there anything further you can add to the description?

The WITNESS: When you examine these pictures you will notice there is an adjustment bar undereneath, on both sides, by which we can either raise or lower the table according to the height of the man, in order to inflict the lash. We bare his back across his shoulders, and there is an area probably of a foot which is left without any covering at all and the lash is inflicted on that part of his body. With the strap we lower his pants and he is strapped on the buttocks, and we take precaution to see that the strap actually hits his buttocks.

The PRESIDING CHAIRMAN: Thank you. Now, Mr. Valois, have you any questions?

By Mr. Valois:

Q. Do you keep any record to show what you call the institutional offences, if you have to inflict whipping or lashing?—A. We never lash for prison offences, Mr. Valois. It is always the strap.

Q. It is always the strap?—A. I have with me a list indicating corporal punishment at Kingston penitentiary by fiscal year from 1932-33 to and including 1952-53. The list reads as follows:

CORPORAL PUNISHMENT AT KINGSTON PENITENTIARY FOR VIOLATIONS OF PRISON REGULATIONS BY FISCAL YEAR

From 1932-1933 To and Including 1952-1953

(Warden's Court)

Fiscal Year	No. of sentences administered	Maximum No. of strokes	Minimum No. of strokes	No. of sentences inflicted on offenders under 21	No. of offenders sentenced more than once
1932-33	9	10	5	nil	nil
1933-34	14	10	5	nil	1
1934-35	6	8	5	nil	nil
1935-36	28	15	5	2	nil
1936-37	13	10	3	1	3
1937-38	6	10	5	2	nil
1938-39	6	10	5	2	nil
1939-40	10	10	3	2	nil
1940-41	10	10	4	nil	1
1941-42	8	15	5	nil	1
1942-43	17	10	5	6	2
1943-44	10	10	5	1	2
1944-45	10	10	5	nil	2
1945-46	8	10	5	nil	nil
1946-47	17	20	5	nil	1
1947-48	10	10	5	3	2
1948-49	12	15	5	2	1
1949-50	1	5	-	1	nil
1950-51	1	10	-	nil	nil
1951-52	0	-	-	-	-
1952-53	2	10	5	nil	1

That is it.

The PRESIDING CHAIRMAN: Now, Senator Hodges.

Hon. Mrs. HODGES: May we have this list included in our report, Mr. Chairman?

The PRESIDING CHAIRMAN: It has all been taken down.

Hon. Mrs. HODGES: So we shall be getting it.

The PRESIDING CHAIRMAN: Yes, in the report of this meeting.

Now, Mr. Fulton.

By Mr. Fulton:

Q. Does that list include only the strapping or whipping which is imposed for prison disciplinary reasons, or does it include whipping which is imposed as part of a sentence for a crime?—A. No. This list is only for serious violations of prison regulations.

Q. Have you by any chance a similar table showing, in your penitentiary, in how many cases whipping was imposed or carried out as part of the sentence?—A. Corporal punishment, yes. I have a statement here which was obtained from the Commissioner's office. I would not be certain that it covers both, because it may just cover corporal punishment when sentenced by the court. But I could give you the figures, and perhaps later information could be obtained to find out just what is referred to, and whether it covers both or just the one.

Hon. Mr. GARSON: Could these things not be put on the record and the witness could correct them later?

Mr. FULTON: Yes.

By Hon. Mr. McDonald:

Q. Were some of the sentences not executed?—A. Some would not be, yes.

Q. Do you know why?—A. Either for mental or medical reasons. The list reads as follows:

CORPORAL PUNISHMENT

Kingston Penitentiary

Pursuant to Court Sentences

1943-53 inc.

Year	Number	Year	Number
1943	9	1950	9
1944	10	1951	8
1945	10	1952	5
1946	29	1953	10
1947	16		
1948	11	Total	133
1949	16		

The following should be subtracted from this total:

1946—less 1 sentence not administered
1947— " 2 " " "
1950— " 1 " " "

4

making a total of 129 sentences of corporal punishment administered during the years 1943-53 inclusive.

By Mr. Fulton:

Q. Is that for Kingston?—A. Yes, that table was for Kingston.

By the Presiding Chairman:

Q. Have you these statements before you so that I could hand them to the reporter?—A. Yes. He may have them. I have three copies of them here.

Q. It will be included in your brief, Mr. Allan. And have you your brief there too?—A. Yes.

Q. And that includes the statement which you gave us concerning prison discipline.

Now, Mr. Valois.

By Mr. Valois:

Q. You said, Mr. Allan, that whenever an inmate was brought before the warden and you had occasion to examine him officially, he could summon witnesses if he desired. Is that correct?—A. Yes, that is for serious offences, of course.

Q. And would you say that no mark whatever is left either from use of the strap or from lashing?—A. No. There is a mark left from both, but it is very slight.

Q. I meant permanent marks?—A. No. The strap bruises, but it is much the same as when a person receives a blow on the skin, it becomes discoloured.

Q. And you say that to your knowledge there was never any inmate who was embittered against society because he had been lashed or whipped. Do you not think your statement is a pretty broad one?—A. No and for this reason: At the present time I would say that there are perhaps from 75 to 100 inmates in Kingston who have been strapped, and I may say that they are hardened criminals. But we live with them every day and we talk with them every day and I have talked to these boys after they have been strapped or lashed, probably two or three days after, and there has been no mention whatsoever made of their bearing any grudge against any person. And I have no doubt that if you asked them, they would certainly tell you.

Q. You recommend it as being a very good deterrent?—A. I would say so, yes.

Q. That is all. Thank you.

The PRESIDING CHAIRMAN: Now, Mr. Winch.

By Mr. Winch:

Q. In the figures which you gave us from 1932-33 up to date on the infliction of corporal punishment as a matter of discipline, what is the explanation for the wide difference between the last four years and the first four years? I notice in the first four years it goes from 9, 14, 6, and 28, while in the last four years it is one, and one, and none and twice. What is the answer?—A. The answer is this: A new policy in penal administration has been adopted due to the recommendations of the Royal Commission, and it has alleviated the situation considerably. In these institutions there is a more relaxed feeling. More harmony exists between the staff and the inmates, if I might call it that, and there is more co-operation. There is less of what we in prison call "saltiness".

By Mrs. Shipley:

Q. What does the word "saltiness" mean in this sense?—A. There are a great many more privileges than before. For example, in summer the prisoners may have permission to play softball, or tennis, and they have badminton

courts. Those who cannot participate in the other games can play cards. And in winter time they have movies and boxing bouts. Last Sunday a concert party came to us from Toronto. They put on a concert for us. Then the men put on their own concerts and they have a radio program. They put on a series of 16 radio programs last year; and over a year ago they put on a series of 12 radio programs. Those programs go to the Kingston, Timmins, and Hamilton stations.

The PRESIDING CHAIRMAN: It would seem that they get more entertainment than members of Parliament?

Hon. Mrs. HODGES: When you say they get entertainment, do you mean that they participate in the program themselves?

The WITNESS: They do. They write their own scripts and they put on acts which they originate themselves.

The PRESIDING CHAIRMAN: Now, Mr. Winch.

By Mr. Winch:

Q. Since the warden has expressed himself so definitely in favour of corporal punishment for disciplinary purposes, why is it that in at least one other penitentiary they never make use of corporal punishment now, and maintain that the inmates have a greater fear of loss of good time and full meals, and of being locked up? How do you explain that differential of discipline as between the two penitentiaries?—A. We have a vast difference between Kingston penitentiary and Collins Bay.

Q. I was thinking of Okalla in British Columbia.—A. But Okalla is not actually a penitentiary, Mr. Winch.

Q. I am sorry. What I should have said was British Columbia penitentiary at New Westminster.—A. Well, I was employed in the New Westminster penitentiary for fully five years, and I recall that they did inflict corporal punishment then. I did not know that there had been any change there.

Q. Not how.—A. Actually, at Kingston we have the dregs of any normal prison population. In any normal prison population you have approximately 50 per cent of your boys who are no problem whatsoever. But with our set-up in Kingston, the better type of inmate goes to Collins Bay, we actually have the dregs of the prison population. At the present time we have 87 per cent or recidivists at Kingston. That is understandable because all the first offenders go to Collins Bay or rather are transferred there. And in fairness to your question we have had over the last four years only four times when corporal punishment has been inflicted within Kingston penitentiary, and that to my mind is remarkable.

Q. What is your experience? Once you have used the strap for the purpose of discipline, do you have to use it again on the same individual?—A. On very rare occasions, particularly with young boys, one application is enough. But with the hardened type, we may have to inflict it probably three or four times. A certain type of individual is more amenable to discipline once he has been punished.

Q. In connection with the use of the strap, have you found that a strap with holes in it raises blisters?—A. No.

Q. You have not found that?—A. No.

The PRESIDING CHAIRMAN: Now, Mr. Fairey.

By Mr. Fairey:

Q. I was interested in your remarks about your preference for the birch being administered to young boys as a deterrent. I take it you think that first offenders should receive corporal punishment?—A. No. I am sorry. I did

not mean that. I mean that after probation or after some reformative measures had been tried, then I think it is advisable to apply what we might call the birch or some similar object before sentencing him to jail.

Q. Is the birch the same thing as the old-fashioned cane?—A. Yes.

Q. And concerning the cat-o-nine-tails you said that it used to have leather thongs?—A. Yes.

Q. Which do you think is the more severe, the strap or the present lash?—A. The strap is definitely more severe.

Q. I think the average man would believe that the lash is more severe. —A. From the psychological viewpoint the lash is more severe.

Q. Is that instrument as you have it here today now common to all pentitentiaries?—A. That is standard, yes.

Q. What about the prison regulations? Are they drafted by higher authority or are they made up by the prison authorities individually?—A. They are covered in the book of regulations issued by the Commissioner of Penitentiaries.

Q. What is the maximum punishment you are allowed to give? Did you not mention that in the matter of sentencing there was a maximum of 20?—A. We usually obtain authority or recommend authority from the commissioner to inflict the number of 10. That is pretty well the maximum established now, with the proviso that we inflict 5, and 5 are withheld for a year, depending on future behaviour.

Q. I was coming to that. Which do you think is the more effective? When whipping is ordered as part of the sentence, should it be administered quite early in the sentence or just before the prisoner is released?—A. I am only speaking of course from the prison administration point of view, but I think that the infliction of any type of corporal punishment should be given early in the man's sentence.

Q. In the figures you have given us, there was no mention made of the number of strokes applied during those years. You gave the numbers of 6, 8, and 10, and so on. I wonder if any record is kept of the number of strokes of the strap given in each case?—A. There is a very definite record kept of every infliction of corporal punishment and the number of strokes given. That is all recorded.

The PRESIDING CHAIRMAN: Now, Mrs. Shipley.

Mrs. SHIPLEY: I was the one who raised the issue concerning photographs being taken of the strap and the cat-o-nine-tails, and whether or not it was wise, and I want to make it clear that it was not from a sense of squeamishness on my part. As the chairman pointed out, it is our duty in this committee to learn as much as possible about the infliction of corporal punishment and its results.

The PRESIDING CHAIRMAN: And to disseminate that information.

Mrs. SHIPLEY: Yes, I will go along with you there but do you think it would be advisable for a selected group made up from the members of this committee, at some convenient time, to witness the infliction of corporal punishment?

The PRESIDING CHAIRMAN: How are you going to arrange that?

Mrs. SHIPLEY: We would have to wait. We would not expect the warden to arrange to punish someone at our convenience. But I meant within the time that this committee is sitting, perhaps.

Mr. FULTON: I am not sure that the warden is qualified to answer a question of that kind, Mr. Chairman.

The WITNESS: I think it would be rather embarrassing.

Hon. Mrs. HODGES: The person who was being punished might think that his punishment was being enhanced. He might think: Surely I am undergoing enough by being whipped.

Mrs. SHIPLEY: That is what I wondered if the warden would say, namely, that it would not be fair to the prisoner. But perhaps there might be a situation where you could watch it without being seen.

Mr. WINCH: If the committee should do that, then it logically follows that we should also witness the matter of hanging.

Hon. Mrs. HODGES: And also see a murder.

The PRESIDING CHAIRMAN: Probably that will follow before the committee has completed its work!

Mrs. SHIPLEY: We are to determine whether there should still be corporal punishment. I think you would learn a great deal more thereby than from looking at the instrument. However, if the witness does not care to answer the question, that is all.

The PRESIDING CHAIRMAN: Now, Mr. Thatcher.

By Mr. Thatcher:

Q. The thing which struck me about these weapons is that the cat-o-nine-tails or the lash is not nearly as ferocious as I had believed or imagined it to be. I am wondering if that is the weapon which is generally used in all the other prisons?—A. It is the weapon used in all penitentiaries. I do not know what is used in the jails. I have no idea what type of instrument is used there, but this is the instrument which is common with us.

Q. I understand from one of the witnesses who appeared before us that the cat-o-nine-tails incorporated leather thongs?—A. Many years ago in British Columbia—that was the type of cat-o-nine-tails used, namely, with leather thongs. But it was discarded, I would say, 20 years ago.

The PRESIDING CHAIRMAN: I think it was Mr. Common who said that.

By Hon. Mr. McDonald:

Q. Are strapping and paddling one and the same thing?—A. Strapping and paddling are one and the same thing but some authorities refer to it as paddling, and we prefer to call it paddling. Lashing is applied across the shoulders.

Mr. FULTON: With the cat-o-nine-tails?

The WITNESS: With the cat-o-nine-tails; and the strap is applied across the bare buttocks.

The PRESIDING CHAIRMAN: Now, Mr. Thatcher.

Mr. THATCHER: How do you decide which weapon will be used?

Mr CAMERON: Mr. Chairman, Mr. Thatcher used the word "weapon". In view of the fact that these words are going across Canada, I would challenge the use of that word.

The WITNESS: The court decides in the sentence what instrument will be used. In present prison administration we use only the strap.

Mr. THATCHER: You use only the strap. Do you consider it as most effective?

The WITNESS: Yes.

Mr. WINCH: I wonder if Mr. Thatcher would mind asking why there are holes in the strap?

The WITNESS: We found that a strap which had no holes in it has the tendency to turn, and for that reason holes were put in. By turning, it might cut.

By Mr. Thatcher:

Q. Could the committee take it from the figures which you have given that it is the policy in penitentiaries to try to cut down on corporal punishment gradually?—A. Oh, very definitely, yes.

Q. And you only use it in very extreme cases?—A. Well, I enumerated a number of offences where a recommendation would be forwarded to the commissioner for approval or otherwise. We very very seldom recommend corporal punishment now and it is only where an officer has been attacked, or where there has been a vicious attack, that we use it.

Q. You stated that a doctor is always present and he can stop the application of corporal punishment for a physical condition. Have you known of any occasion where a doctor has had to stop strapping for such a reason?—A. I can recall one or two occasions where the doctor has restricted the application.

Q. Why, if it does not hurt, would that be necessary?—A. It may have an effect on the man's heart, or an inmate receiving it may collapse.

Q. Then it is still a pretty brutal punishment. It must be.

Hon. Mr. MCDONALD: Would that be an occasion where the man perhaps had a weak heart?

The WITNESS: He is examined the same day prior to it by the medical practitioner. It may be caused by shock.

Hon. Mrs. HODGES: He is scared into it.

By Mr. Thatcher:

Q. The warden stated that there is a certain class of prisoner in the penitentiary who can only be controlled if the strap is used. What kind of criminal would that be?—A. Well, there is no definition I can give you except a hardened criminal, a bank robber, a person who actually has not only adopted criminal activities, but also is a vicious type of individual along with it. There are types who are very vicious and who would not at any time hesitate if the occasion arose to even take life. I would say that that percentage would be very small, but nevertheless in the prison they can contaminate a whole lot by their actions and from that a regular series of disturbances may arise. There are other groups such as agitators who are continually creating unrest, and the mere fact that if we catch up with them and the fact that we can still inflict corporal punishment has a very decided effect on their behaviour.

By Hon. Mrs. Hodges:

Q. I want to make quite clear that when the punishment is by whipping, whipping can be either the strap or the lash?—A. Yes.

Q. And you say that the Code allows either the lash or the strap be used?—A. Yes.

Q. The warden mentioned the relaxation in prison discipline under the new dispensation. There is very little corporal punishment inflicted and you think it is a very good thing. It seems to me that hardly coincides with your former statement that corporal punishment is a deterrent?—A. My former statement dealt with the treatment of young boys before they actually were sent to prison.

Q. Yes, I may have got the wrong impression, but I was under the impression that you thought that corporal punishment even on a hardened criminal had a deterrent effect?—A. It has, yes.

Q. And yet at the same time you say since prisons have been much easier places that there is not so much corporal punishment, so the one seems to contradict the other.

The WITNESS: The strap still remains and can be applied if necessary.

Q. And you think the fear is as much a deterrent as the actual application?—A. That is correct.

Mr. MITCHELL: Mr. Allan, does the prisoner know the person who is administering the strap?

The WITNESS: No. The prisoner is blindfolded.

By Mr. Mitchell:

Q. And could you describe to us very briefly the procedure which takes place in the warden's court?—A. Do you mean before a strapping?

Q. Whether strapping is going to take place or not. You have a prisoner appear before you in a court. What takes place?—A. We obtain the evidence under oath. The officer's charge is read and the inmate is given every opportunity to question the officer on any point. The inmate can make any statements on his behalf, and the evidence is submitted to the Commissioner of Penitentiaries for approval. I am dealing with prison offences now. If the commissioner approves of the warden's recommendation, then the sentence is carried out. The inmate is then sent over to the hospital to be examined. In fact during the last few years any inmates who we considered merited corporal punishment were always sent to the psychiatrist also for an examination. If the medical practitioner or the psychiatrist reports that the prisoner is fit and that the punishment may be inflicted, then we proceed with the carrying out of the sentence.

Q. You have mentioned the age group of 16 to 24 as being the group in which you consider corporal punishment to be most beneficial. Can you give us an idea of the numbers that would fall within that age group from the figures which you have submitted? Are the majority younger offenders, or are they all ages?—A. I would say that the majority of them would be—the more restless type of boy—between 18 and 21. You have a decreasing percentage from then on. In other words, as they get older they seem to settle down more and accept life whether it is good or bad and they seem to settle into a certain mode of living. They become what we call "prison-wise". It does not always apply, of course, that a boy who requires corporal punishment while he is in prison is not going to be good when he gets out. There is no yardstick which you can apply anywhere with a prison population. We have known boys who have been regular and very difficult problems within the institution, and we also know after they have left the institution that they have rehabilitated themselves in a remarkable manner.

By Hon. Mr. McDonald:

Q. Do you know what proportion?—A. Do you mean, who rehabilitate themselves?

Q. Yes.—A. That is difficult to say. Collins Bay would be more able to give you figures on that. They have vocational training there. Dealing with my particular group I would say that the percentage of rehabilitation after release is very very small.

By Mr. Fulton:

Q. What is the reason for the difference in the portion of the anatomy to which the cat-o'-nine tails is applied as against the strap?—A. I do not know except that we have always had the orders to apply it in that manner.

Q. Are you aware of any reason why the cat-o'-nine tails should not also be applied to the buttocks instead of to the back?—A. No reason why, no.

Q. I notice that this cat-o'-nine tails which you have here has no knots at the end of it. I think that there is a general picture of a cat-o'-nine tails where the leather or cord has been knotted at the end. I notice there is an inch and a half of frayed end on this. When you use it in prison is that the way you use it?

Mr. WINCH: Is that red paint or blood on the cat-o'-nine tails?

Mr. FULTON: It is a red mark on one of the cords here.

Hon. Mr. GARSON: If it were blood it would be dark brown.

Mr. WINCH: It should have been cleaned before it was brought here.

The WITNESS: It looks like paint.

By Mr. Fulton:

Q. There were never any knots in the cat-o'-nine tails?—A. No. Leather throngs, but I never saw any with knots.

Q. I would like you to be perfectly frank with us because we are trying to assess the situation as to whether in fact corporal punishment is a brutal punishment and whether it has a brutalizing effect. Would you therefore take us into your confidence and tell us what happens when a prisoner, either as part of his sentence or as part of prison disciplinary action, is actually brought in the room where the strapping or whipping is to take place? Do they frequently resist and do your guards have to resort to force to bring them around and have them fixed to the table?—A. There are occasions, but they are very rare. I would say not more than perhaps two or three per cent.

Q. What sort of cases? Could you give us a pattern at all?—A. Particularly with respect to outside sentences they are usually brought in and the committal is read out to them, also the offence, the direction of the court, and they are then taken out of one room and right into a hall and the punishment is imposed there.

Q. At what stage are they blindfolded?—A. After they are placed on the table.

Q. And did you say in two or three cases or in two or three per cent of cases it may be necessary to drag the man to the table?—A. I have never known of any inmate who has been sentenced by an outside court require to be put on the table by force, but we have known cases where men have been sentenced for serious prison offences such as rioting where we have had to use force to put them on the table.

Q. Would you care to give us your opinion whether the necessity to use force resulted from fear on the part of the prisoner or whether he was what you described as a vicious criminal fighting at every stage of the way?—A. I suppose you could attribute a certain amount of it to fear. But I think they would be pretty hardened and just say "I am not going to be put on there" and they just simply object by all means possible.

Mr. WINCH: Do you not think that there is a slight psychological reaction?

Mrs. SHIPLEY: Maybe it is a good one.

The WITNESS: You will always get a reaction, but what it turns into is problematic.

By Mr. Fulton:

Q. Could you say something to us about the force of the blows? Whipping is applied manually. You have not a machine for it?—A. No.

Q. What are the instructions to the person applying it?—A. We have about ten officers who we detail or can detail for the infliction of corporal punishment, simply because they are consistent. We do not allow any viciousness to be

attached to it. It is a very unpleasant duty to start with, and we usually detail one of our senior officers to carry out the punishment. There is bound to be a variation in the intensity of the strokes. That is bound to happen; we cannot help it.

Q. It is clear that the object is to inflict pain?—A. Yes.

Mr. WINCH: Would you just raise the arm and strike down or do you swing?

The WITNESS: With the lash you have to raise your arm and strike down. With the strap it is a sideward motion.

By Mr. Fulton:

Q. Have you any regulations which determine the length of the arc? Could they bring it from the back and over the head?—A. Most of them let the thongs rest on their shoulder and come down this way.

Q. Would be mostly a forearm movement.—A. Yes.

Q. And what about the extent of the swing with the strap?—A. That may vary.

Q. Do you have any regulations or instructions to your own officers as to how far back they shall carry their arm before they start the forward motion?—A. No. In the first place you have to have sufficient momentum on the strap that it is going to strike in a flat position.

The PRESIDING CHAIRMAN: The fact remains that it could vary from prisoner to prisoner?

The WITNESS: Oh yes, it can vary.

By Mr. Cameron:

Q. How long have you been in prison work, Mr. Allan?—A. Forty-one years.

Q. How long have you been warden at Kingston?—A. Just close on twenty years.

Q. In that 41 years you have seen many persons whipped and strapped?—A. I beg your pardon.

Q. In that period you have seen many persons whipped or strapped?—A. That is correct.

Q. And you stated, I believe, in your evidence that you never knew of one where it had an adverse physical effect on the recipient of a permanent nature at least?—A. Permanent?

Q. Yes.—A. No. I do not know of any permanent disability arising out of it.

Q. These senior officers in the prison, I take it, get to be senior officers by reason of the fact that they have worked themselves up into a position of trust?—A. In the majority of cases, yes.

Q. They are reasonable men?—A. Yes, sir.

Q. And in applying the punishment they would do it in a reasonable way?—A. We try to.

Q. Most of them do?—A. That is it. Yes, sir.

Q. And if a man were inclined to be ruthless or severe in the infliction of the punishment, what would happen to such a person?—A. He is either recommended for a fine or dismissed.

Q. Can I assume from the answer you have given to my questions that the punishment is inflicted in a reasonable manner?—A. We try to comply with the intent of the law. It is a very unpleasant responsibility we have and we do our utmost not to abuse it or abuse the individual receiving the corporal punishment.

Q. I see by the Act that unless some other punishment is specified that when a person is ordered to be whipped it is the cat-o'-nine tails used and not the strap?—A. Outside courts may specify either instruments, but they do not always specify the type of instrument.

Q. If they do not specify it, it is the whip?—A. The strap is used.

Q. Mr. Fulton called to my attention the Act:

> "The number of strokes shall be specified in sentence; and the instrument to be used for whipping shall be a cat-o'-nine tails unless some other instrument is specified in the sentence."—A. Yes.

Q. Would it be fair to say that a very large percentage of the punishment is then by whipping; by far the larger?—A. We find over the past few years there are more inflictions of the strap.

Q. When they are specified in the sentence?—A. Yes.

Q. And you have to comply with the sentence?—A. Yes.

Q. Mr. Common was here and mentioned that where a long term sentence and a sentence of whipping has been imposed, if the sentence is for ten years or over, almost automatically the court of appeal would do away with the infliction of the whipping. What is your opinion in respect to a person serving less than ten years but still rather a long term in a prison who is also ordered to be whipped? What deterrent effect would you see in those cases?—A. I do not know whether I am qualified to answer that. That depends on the evidence submitted to the court and the magistrate's and the judge's summing up of the situation.

Q. In your earlier evidence you said that you thought that the lash or strap should be applied early during the sentence?—A. I beg your pardon. We have known cases a number of years ago where sentences specified that an inmate would receive ten strokes for a period of three months after his arrival, and ten strokes thirty days before his discharge. That fortunately has been changed. The reason that we, from the prison administration angle, would prefer to give the man his corporal punishment as soon as we can is that he gets that over with. It relieves his mind of the situation right away and then he can relax to a certain extent and has not got this dread hanging over him for two or three years afterwards as the case may be.

Q. Do you think that is a good thing in the case of a man sentenced for less than ten years but more than five years to be whipped early in his period of incarceration and then that part of his punishment is over and he still has a long period of prison life ahead of him?—A. We have known cases where the infliction of the corporal punishment has been prescribed that the court of appeal will cut down the length of the inmate's sentence.

Q. Do you think that is sound philosophy yourself?—A. Again, I do not consider I am qualified to answer.

Q. I agree with you that the punishment of the lash should be applied early in the sentence but I have a doubt in my mind as to its effectiveness if it is to be followed by a very long period of penal servitude.—A. We have no opportunity of obtaining any information whatsoever on the majority of the men we receive.

Q. I was trying to find out what was in your mind and I am not succeeding. —A. If a person is sentenced to corporal punishment and a sentence of an extensive period of years after that, actually I see no value in it.

Q. What in your experience are the after effects on a prisoner who has been subjected to whipping or strapping, and *vis-a-vis* his fellow inmates to the penitentiary? Would it have any effect on them?—A. From prison offences or from outside Courts?

Q. If he has undergone punishment what is their reaction to it?—A. The reaction to outside sentences of corporal punishment I would say are nil. They take the attitude that that is a sentence and we must accept it.

Q. They accept it. He does not become a hero?—A. No. Oh, no.

Q. The most he can expect is sympathy?

Hon. Mrs. HODGES: I do not suppose he gets much of that.

The WITNESS: They do not boast about it to my knowledge.

By Mr. Shaw:

Q. Warden Allan, you have indicated that these are standard instruments. Where are they manufactured?—A. Right in the prison.

Q. Does each penitentiary manufacture its own?—A. Yes.

Q. What effort is made to see that those made in the Kingston penitentiary, for example, are the same in quality and weight as those manufactured in another penitentiary?—A. We use what is considered to be a standard instrument.

Q. But there is no standard defined as between penitentiaries or among penitentiaries?—A. They are not manufactured all in one institution.

Hon. Mr. MCDONALD: The weight and measurements would be the same?

The WITNESS: The measurements are the same. The weight and the leather may differ.

By Mr. Shaw:

Q. An effort is made to use the same type of leather and material in these?—A. Yes.

Mr. FULTON: Is there a standard laid down?—

The WITNESS: Yes, in circular letters from the department as to the dimensions and weight of the leather.

By Mr. Shaw:

Q. You stated that the strap is now used exclusively at Kingston penitentiary?—A. It always has been, sir.

Q. Why?—A. Because it is a more effective instrument in bringing about and controlling discipline.

Q. Would you recommend, therefore, that there be a change for example in the Code in which it specifies that the strap be used rather than this other instrument?—A. I would, yes.

Q. You indicated that when evidence is taken in a warden's court that it is taken under oath. Do the laws of perjury apply to the witnesses?—A. We expect a person under oath to tell the truth.

Q. What if it is established later that he does not? What is the outcome? —A. In prison administration we expect inmates to lie. At least, we hope that they do not, but we look for it.

Q. Actually, then, taking the evidence under oath does not mean what it means in a court?—A. There is one angle to it, and that is that it indicates to the inmate when the officer is placed under oath that he at least is expected to tell the truth and establishes that feeling in the inmate. On some occasions after an offender has pleaded "not guilty" and I have found him "guilty"; when I said to him "why did you plead 'not guilty' " he has said "don't blame me for trying to beat the rap".

Q. You have a panel of senior officers who you may call upon to administer the strap. What is your procedure in selecting these men? Do you just simply say "John Smith, you are it this time"?—A. That is it.

Q. To your knowledge has any officer who has been ordered to administer the strap refused?—A. No.

Q. None to your knowledge?—A. No. That is their duty.

Q. Have you had any who tried to "beg off", shall we say?—A. We have.

Q. What reasons did they give?—A. When they "begged off" we excused them.

Q. You did not ask for reasons?—A. No.

Q. You recommended, Warden Allan, that first offenders be not strapped or lashed?—A. Yes. I am referring now particularly to persons who may be sentenced (youths only) for convictions for car theft, etc.

Q. Have you had persons come to your penitentiary who have been convicted as sex offenders where the penalty has been carried out?—A. Would you include such an offence as rape?

Q. Yes.—A. Oh, yes.

Q. Would you confine them almost exclusively to rape?—A. You mean the infliction of corporal punishment?

Q. Yes.—A. Yes.

By Mr. Brown (Brantford):

Q. Mr. Chairman, I came in late, but there are one or two questions I have. I understood you to say that there are no regulations at all as to how either instrument which is in front of us today is to be inflicted?—A. No. We have instructions in circular letters as to the type of instrument to be used.

Q. You say that in using the cat-o'-nine tails mostly just a forward movement is made. Are there any regulations to that effect?—A. No. That is left to the discretion of the administration.

Q. Then, the actual use of these instruments is merely left up to the individual official?—A. No. He is governed by the instructions of the senior officials present.

Q. You said that you do not know of anyone who had been permanently harmed by having had corporal punishment inflicted upon him. Do you know of any who have been seriously injured?—A. No. A question was put to me, do you know of any persons who have been permanently injured, and I said no, and I have not seen any inmates who have been even slightly incapacitated by infliction of corporal punishment, with the exception of perhaps over a 24 hour period.

Q. But not any longer, for instance for a week or two weeks, or anything like that?—A. Oh, no.

Q. You may have said that earlier but I just did not happen to be here. Has anyone to your knowledge been fined or dismissed for improperly inflicting corporal punishment in the prison?—A. No. When any officer starts to administer it contrary to our directions he is immediately stopped.

By Hon. Mr. Veniot:

Q. The only question I had has been answered I believe. It was mentioned that a mental examination of the criminal was made before the punishment was inflicted. I was just going to ask if a physical checkup was made of each man immediately before punishment was inflicted upon him?—A. Yes. It is done the same day.

By Mr. Winch:

Q. Is it often done in a prison where they do not have a psychiatrist? Do they call someone in?—A. We are fortunate in having a psychiatrist, and I think British Columbia, Prince Albert, Manitoba and St. Vincent de Paul have psychiatrists, but I doubt if Dorchester has due to the territorial difficulty there. But, all these institutions have a psychiatrist available. I do not know what practice they follow, but during the past three years for prison offences where corporal punishment has been recommended, we always submit a psychiatrist's report along with our evidence.

By Mr. Lusby:

Q. I think you indicated that you take precautions to see no element of sadism comes into the punishment?—A. Yes.

Q. Supposing a prisoner is to be whipped for, let us say, assaulting one of the prison officials or a guard or higher officer, is there any possibility that that man who has been assaulted would have anything whatever to do with the punishment?—A. None whatsoever. We avoid that.

Q. The only other question I would like to ask is: do you consider that as a matter of prison discipline whipping is an essential?—A. We do. We hope, of course, all the time that we do not have to inflict it.

Q. What would you do in the case of a man who normally would be whipped, but whom the psychiatrist or the doctor says is not physically fit to take the punishment?—A. I cannot do anything with him. That would depend on the psychiatrist summing up his condition. He might say he is not responsible for his actions or he is not fit to be given any other type of punishment.

Q. Have you any alternate type of punishment?—A. We have alternate types of punishment such as restricted diet, deprivation of remission, which is the time earned for good behaviour, deprivation of smoking privileges, taking his radio earphone away from him, and other minor punishments such as that.

Q. You do not consider that any of those are as effective as whipping?—A. We find pretty well 99 per cent of our population can be controlled by the minor forms of punishment we have, and the other one per cent are liable to commit a serious offence at any time. That has been our experience.

By Hon. Mr. McDonald:

Q. Warden Allan, could you tell us please who ordinarily attend the carrying out of this sentence, and why are they there?—A. You mean the inflication of corporal punishment?

Q. Yes.—A. The warden is the sole head of the institution, and either the warden or acting warden has been instructed by regulation that he must attend. The deputy warden is the senior disciplinary official of the institution. The chief keeper must attend, the doctor is there for medical reasons only and if the punishment should not be continued, he has authority to stop it. The other officers are there more or less to control the situation should the inmate become unruly. We have usually four or five. Occasionally you get a very strong individual on that table and he can lift the table itself during the infliction of the punishment and we have to put perhaps the two officers on the ledge which you see there to keep the table solid on the floor.

Q. I have been happy to know that you have done a lot in Kingston penitentiary, and in some of the other penitentiaries, in helping to rehabilitate men. I know I would be interested in having from you any suggestions on this. Have you any suggestions as to how this can be further still? You have done a lot in entertainment and sports. Is there something more that can be done?—A. We have gone a lot further than that. I was trying to convey before that we had created a more relaxing atmosphere within the institution proper. There are other institutions where they are teaching vocational trades under trained instructors for these types of activities. Again, from the rehabilitation angle, many years ago when an inmate left the institution after no matter how many years he served he left with $10 in his pocket. That has been all changed. They earn—I do not call it salary. They reach different grades, and grade I runs from about 28 cents a week, grade II about 48 cents a week, and grade III, I think, about 72 cents a week. I may be wrong on these actual figures, but they are approximately the amounts. From that amount they may purchase small luxuries such as chocolate bars and candies, and they can purchase tobacco and razor blades.

By the Presiding Chairman:

Q. Can an outsider send gifts to the prisoners of those articles which you mentioned?—A. We have to be careful. They can send school books or school supplies of any kind. They can also subscribe to magazines, but they must do so through the publisher, and the publisher sends them direct to the institution.

Q. But a friend or relation could not send chocolate bars or tobacco or things of that nature?—A. Oh, no. In addition to that we have authorized and we permit hobbies to be carried on. It is remarkable just to what extent that activity has developed. At the present time in Kingston, we have over 450 inmates carrying out hobbies of various kinds—leather work, plastics, and some of them are even knitting. We dispose of the articles they make the best possible way we can, and the money which is derived from the sale of the articles is credited to the inmate. The inmate purchases all the material and equipment himself, and from the money derived from the sale of the article. 10 per cent of the gross sale is donated to welfare and the other 90 per cent goes to the inmate himself. As an example, and perhaps this may be an exception, we had an inmate last year who was serving a 16-year sentence. He was discharged with over $1,000 to his credit from the manufacture of hand tooled leather handbags. Going out, he said, "That is the first $1,000 I ever worked for". The prisoners carry on these hobbies themselves at night after they are locked up.

The PRESIDING CHAIRMAN: Are they allowed to spend any of this money as they see fit while they are in prison? That is, could the inmate with the sum of $1,000 invest $500 outside the prison?—A. No, but he could have invested in government bonds. We arrange for that.

Q. But could he have invested in stocks on the market?—A. No, we do not permit that.

Mrs. SHIPLEY: Could I ask one more question?

The PRESIDING CHAIRMAN: Yes, but is the warden through?—A. Yes.

Hon. Mr. MCDONALD: I was just going to suggest, and I think it would be educative, that the members of this committee should attend at Kingston penitentiary ? I suggested Kingston because it is within a reasonable distance.

Hon. Mrs. HODGES: Do you mean just temporarily?

Hon. Mr. MCDONALD: Yes! I am sure it would be educative. I wonder if it could be arranged to have the members of this committee go to Kingston and be conducted through the penitentiary? We could leave by 9 o'clock in the morning and be back at 6 or 7 the same day.

The WITNESS: Well, personally, I think your request should be channelled through my commissioner's office.

The PRESIDING CHAIRMAN: Do you think we would learn anything?

The WITNESS: I would be very happy to look after you.

Hon. Mr. MCDONALD: Do you think it would be beneficial?

The WITNESS: I think you ladies and gentlemen would get a different picture and it would help you understand my evidence.

Mr. FULTON: But we are not investigating prison reforms. Unless we are going to witness the infliction of corporal punishment I cannot see that it would further the work that we are called on to do in this committee which is not a study of prison reform measures.

The PRESIDING CHAIRMAN: Perhaps we could call for volunteers.

Hon. Mr. MCDONALD: That is true, but I think it would be educative and we could witness how things are done and the life which those people live.

Mr. WINCH: I can assure you you could not leave at 9 o'clock and return by 6 or 7 the same day. It took me three days to go through the penitentiary in British Columbia in order to see its various forms of operation.

The WITNESS: I might say we have the only penitentiary in Canada for women.

Hon. Mrs. HODGES: There is no equality for women, even in prison.

Mr. FULTON: Women cannot be whipped; there is superiority, I think.

By Mrs. Shipley:

Q. Warden Allan, it has occurred from time to time that a prison guard has left a great deal wanting in his conduct, and I was particularly interested when you said an inmate who has committed some crime within the prison walls comes before you for a trial before he is given punishment. You said there were witnesses and that they were sworn. You did not, however, make it clear whether or not the prisoner himself could call witnesses. Now this may seem a silly question, but I am quite sure within a prison there are lots of men whom you know do not lie. They may have committed other crimes, but there are prisoners whose word you trust. Can that prisoner call witnesses? He might be able to call men to whose evidence you could give credence to prove whether or not this prisoner had been perhaps needled or antagonized by a guard and that might have caused him to commit whatever crime he did commit?—A. There is one factor that comes in here, Madam Senator, and that is, that no inmate will give evidence which will be against the case of another inmate. We do not expect that.

Q. But neither will a guard testify against another guard?—A. We do call witnesses if the prisoner requests them, but sometimes we limit the number of witnesses he may call because if the witnesses were not actually present their evidence is of little value and sometimes a witness will be called who was not close to the occurrence.

Mr. WINCH: Do you mean call them as character witnesses?

The WITNESS: Well no, we do not classify them as such, but we sometimes have to limit the number of witnesses a prisoner might call, and we only permit that when dealing with serious offences which may merit the infliction of corporal punishment later. We have always found, however, that no inmate will say anything against another inmate—they simply won't do it.

By Mrs. Shipley:

Q. I agree with that, and I assume one guard would not testify against another guard, but if a prisoner were to call Joe Doaks and John Doe, two witnesses whom you trust, and they testified that this guard was not conducting himself properly all the time, and this occurred on two or three occasions, would you not begin to believe them?—A. No.

Q. Then, how do you ferret out a guard who leaves much to be desired in his conduct?—A. From the approach to discipline. We always support the officer in front of the inmate.

Q. Of course.—A. Later on, we might get the officer to one side and tell him where his shortcomings are, but we can at no time do this before the inmate.

Q. Yes, I appreciate that. Perhaps there is not as much truth in it as one would be led to believe from the stories one reads, but nevertheless human nature is what it is, and you know as well as I do in the army or anywhere else there will be certain persons given authority who will abuse that authority when the higher-ups are not watching. That is what I want to know, how carefully you guard against that?—A. We have one way of coping with that, and that is by putting our best and most trusted officers in charge of groups

of inmates or gangs. The other officers who are not as reliable, or who are less experienced, are put on towers; in charge of trucks and such operations as that. By doing this, we are pretty well aware of the type of officer who is in charge of a particular gang. Needless to say, we put our best disciplinary officers in charge of our most unruly prisoners.

Q. I suppose in most cases there is no doubt about what has been done, in any event?—A. No.

Mr. WINCH: May I ask a question?

The PRESIDING CHAIRMAN: Mr. Blair has some questions, but you may proceed.

By Mr. Winch:

Q. What is meant by a restrictive diet?—A. The No. 1 diet is bread and water for nine consecutive meals; that is the limit you can give it. No. 2 diet is bread and water for breakfast; eight ounces of potatoes, eight ounces of porridge, and bread and water for dinner; and bread and water for supper. Now, you can give a man that for 21 days. That is our No. 2 diet. Those are the two punishment diets.

By Hon. Mrs. Hodges:

Q. Is No. 1 diet considered the most severe?—A. No, No. 2.

Q. Oh, yes, 21 days.—A. Yes.

Mr. BLAIR: Perhaps it would assist the record if Warden Allan could take the two instruments and describe them by reference to their dimensions and their characteristics. We refer to them frequently, but I do not think they have been fully described in the record.

Mr. WINCH: Would you speak up, please, we cannot hear you?

Mr. BLAIR: I am sorry. I just suggested that Warden Allan might describe the two instruments for the purposes of the record.

The WITNESS: Well, the strap consists of a piece of sole leather approximately 16 inches long by 2½ inches wide, with a leather handle which is approximately 10 inches long. In the body of the strap there are eight holes of approximately one-quarter inch in diameter spaced at even intervals. That would describe the strap, I believe.

The cat-o-nine-tails, or the lash, as we may call it, is an instrument with a wooden handle approximately 18 inches long with nine strips of sash cord, without knots.

The PRESIDING CHAIRMAN: Attached to the end?

The WITNESS: Yes; and in diameter approximately about one-quarter inch.

By Mr. Winch:

Q. And how long is it?—A. About 16 inches long.

By Mr. Blair:

Q. And there are no knots at the end?—A. No.

Mr. BLAIR: I wonder, Mr. Chairman, if it would be a good idea to have the two statistical tables Warden Allan presented attached to today's evidence as appendices?

The PRESIDING CHAIRMAN: I think that has already been done.

Mr. BLAIR: I was not certain that we did that.

Mr. FULTON: I think they appear in the record themselves, so they will be on the record.

Mr. BLAIR: That is true, Mr. Fulton, but there were a number of interpolations and I think for the sake of convenience they might be put at the end. Those are the only questions I have.

By Hon. Mr. McDonald:

Q. There is just one question which Mr. Shaw asked which was not answered, perhaps because the warden did not hear him. The question was when an officer is called upon to inflict the punishment, sometimes he will refuse, you said?—A. Yes.

Q. Mr. Shaw asked you why, and I do not believe you answered because you did not hear the question.

Mr. SHAW: Yes, the witness heard the question and he replied that he never asked.

The WITNESS: They are ordered to do it, and if they express reluctance to do so, and definitely say they would prefer not to, we will of course excuse them.

By Mr. Shaw:

Q. And you make no further inquiries as to why?—A. No.

Mr. FULTON: On that point, if you follow that practice, might it not result that four or five officers would find themselves in the unpleasant position of being the only ones who are willing to inflict the punishment? Do you not have to exercise some measure of persuasion on all officers to carry out the duty if you detail them to do it?

The WITNESS: We realize we cannot extend that privilege too often and we realize also that if one officer is exempted from doing that unpleasant duty then the others may also request exemption and would be entitled to get it. We have had very few occasions where an officer has expressed reluctance and has also, requested to be exempted.

Mr. SHAW: Is he ever asked the second time in a subsequent case?

The WITNESS: We try to avoid detailing him for that duty from then on. It is not a pleasant duty.

Mr. THATCHER: Can the committee have assurance that you have no instruments at Kingston used for corporal punishment which are more severe than the ones you have shown this morning.

The WITNESS: Those are the only two which we have.

Mr. THATCHER: You have no other instruments?

The WITNESS: No, apart from firearms, of course.

Mr. WINCH: And apart from the birch?

The WITNESS: We have no birch.

Mr. WINCH: You have no birch?

The WITNESS: No.

The PRESIDING CHAIRMAN: If there are no further questions I want to thank you, Warden Allan very much for your very enlightening presentation here today. It has been very helpful to the committee, and I am sure we have all benefited considerably by it. Thank you very much.

Hon. MEMBERS: Hear, hear.

The PRESIDING CHAIRMAN: There will be a meeting tomorrow at 4 o'clock in this room when we will have Colonel H. G. Basher, Ontario Deputy Minister of Reform Institutions who will speak on capital and corporal punishment.

EVIDENCE

MARCH 24, 1954.

4.00 p.m.

The PRESIDING CHAIRMAN (Mr. Brown, *Essex West*): Ladies and gentlemen, we will come to order and proceed with the business of the day. Unfortunately Senator Hayden cannot be here today. I think a motion would be in order to have a Senator act as co-chairman, in the absence of Senator Hayden.

Hon. Mr. MACDONALD: Mr. Chairman, I beg to move that Senator Veniot be co-chairman of the day in the absence of Senator Hayden.

The PRESIDING CHAIRMAN: All in favour?

Carried.

The PRESIDING CHAIRMAN: Senator Veniot, would you come forward please?

Ladies and gentlemen, today our witness is Colonel G. Hedley Basher, who is the deputy minister of reform institutions of the province of Ontario. Colonel Basher is going to speak to us with respect to capital and corporal punishment. He is taking both of them together and, if it would please you, we would have both presentations at the same time without interruption, and then you will be permitted to question Colonel Basher afterwards. Is that agreeable, Colonel Basher?

Colonel G. Hedley Basher, Deputy Minister of Reform Institutions, called:

The WITNESS: Perfectly, sir.

The PRESIDING CHAIRMAN: Just remain seated. If you would care to make your presentation now, we would appreciate it.

The WITNESS: Fine.

Mr. Chairman, ladies and gentlemen: in the first place I should like to say that it is my understanding that it is the wish of this committee that I should present certain facts and offer some observations or suggestions in respect to capital and corporal punishment. At the outset, I should like to make it quite clear that I speak solely as an individual and that I represent no person, party or government. This, in my opinion, is most important.

Before leaving Toronto, I had an opportunity to read the *Hansard* report of this committee's proceedings of the 4th of March. In the appendix to that report is a questionnaire which I believe you all have before you and which is, or has already been, sent out to the attorneys-general, throughout Canada. In discussing this questionnaire with the deputy attorney-general for Ontario, it was mutually agreed that I should present answers to the questions having a direct bearing on the administration of the penal institutions of the province of Ontario and that all questions of a legal or judicial nature should be replied to by the deputy attorney-general. However, before reaching that phase, I should like to point out that it will not be possible for me at this time to give all such answers as apply to the administration of our Ontario institutions as

some involve statistics which are not yet ready. I understand they are being compiled at the present time and I hope to have them available before very long. Before proceeding to deal with the questionnaire, I should like to take up the question of capital and corporal punishment.

Capital punishment. Should it be abolished? Should the death sentence be mandatory where guilt is established? Should alternative sentences be provided by the Code? Should there be "degrees" of murder with appropriate penalties provided for each? Is capital punishment a deterrent to crime? These questions are and have been constantly referred to and discussed for several generations. Some argue that the death penalty should be abolished on the grounds that executions have failed to prevent murder being committed. They say it merely prevents that one person from committing another murder, but it has no deterrent effect on others. They claim that a term of life imprisonment would have the same effect as far as the murderer is concerned. I cannot agree, and I venture to say that murders, numerous as they are, would be far more numerous if it were not for the deterrent effect that the knowledge of the death penalty has upon those who are vicious and feel inclined to commit murder. It is the fear of consequnces that holds such persons in check. It is true, of course, that it does not stop all, but usually these persons never expect to be caught. They almost invariably think they are more clever than those who have paid the penalty in the past. Fear of consequences, whether we like it or not, has a decided influence on the lives of most people. A child brought up in a home where he is permitted to do as he pleases develops neither concern nor respect for his parents. He rapidly becomes undisciplined, selfish and increasingly demanding. Before long he becomes unmanageable. He experiences difficulty, perhaps for the first time in his life, when he reaches school age. He automatically rebels and is more than likely supported by his parents. Consequently the teacher can do nothing with him and he becomes a bully and frequently incorrigible. He has no fear of consequences. Let us take another example, the average citizen. His daily life is governed by fear in a greater or lesser degree. He stops at the red traffic light when there is no traffic to be seen, not because he is anxious to be obedient, but because he is afraid he will get a summons.

The same applies to parking, et cetera, and various other traffic violations. A man arrives at his work on time not because he has the interests of his employer at heart, as much as that he is afraid that he will lose his job if he is late too often. A well disciplined regiment is not well disciplined because all of its members want to be well disciplined or that they are enamoured with their commanding officer. It is because they are apprehensive of the impositions, forfeitures and detentions that are likely to follow breaches of discipline. The fear of being caught prevents many a theft. Consideration of what the neighbours or one's friends think or say is another degree of apprehension and has a decided influence on what we do. If these minor things are sufficient to compel self restraint—and I claim that they and many others govern our lives—then it is logical to believe that the death penalty has had a relatively greater influence on the lives of some and has in this way acted as a deterrent. For the foregoing reasons—and there are many others, one could go on and on—it is my opinion the death penalty should not be abolished.

The present provision of the Code should stand; that is to say, the sentence of death should be mandatory where murder has been proven. It is my opinion that there should be no degrees of murder. The Code in its present form provides for the accused to be found guilty of murder; not guilty of of murder but guilty of manslaughter, and under these circumstances an appropriate sentence is possible at the discretion of the judge within certain limitations.

With regard to corporal punishment. This is something which is grossly misunderstood. It is discussed heatedly and peremptorily condemned by many who are totally ignorant of what the term implies. It is almost unbelievable, but nevertheless true, that many educated people regard corporal punishment, as we know it today, as identical with the brutal lashings and beatings which were handed out in the old days when not the slightest mercy was shown, and the poor, unfortunate wretch was lashed to within an inch of his life; when the instruments used to inflict the punishment were instruments of torture and actually caused extreme suffering, permanent scars and frequently a permanent injury. I am most thankful to be able to say that those days have long since passed, but even today we find too many, otherwise intelligent people, with a firm conviction that those conditions still obtain. I know this from experience.

In Ontario we are constantly receiving groups of students, post graduates, educators, and other interested persons. They make tours through some of our institutions. It is customarily for the superintendent to give a talk and a question period to these groups. Almost without exception the matter of corporal punishment is raised. Before replying to the question I made a point of asking the questioner if he would describe for the benefit of his colleagues his conception of corporal punishment. Without fail he would describe the worst type of beatings—the type always shown in the movies, such as "Mutiny on the Bounty" and other such pictures. The same ignorance is prevalent with regard to prison cells—people still think of them as dungeons or "holes". This mode of confinement went out with the last century and for the past several years, in Ontario at least, a prisoner is not placed in a dungeon or a "hole". Neither is he placed on a bread and water diet, not even for punishment.

To get back to corporal punishment, the description given by the student is the picture in the minds of the majority of people—long lacerations across the body, blood flowing freely, the culprit collapsing, finally to be dragged off for a hosing-down and application of salt.

I have noted that a question was asked a few days ago by a member of this committee as to whether a prisoner was hospitalized after receiving corporal punishment. Such a question is not surprising when one realizes the amount of publicity the barbaric practices of the past have been given. It is most difficult to convince people that the type of corporal punishment given today is extremely modified and that it bears not the slightest resemblance to the movie theatre type of treatment. I believe, if people could be enlightened, there would be less criticism and less opposition. Even the term corporal punishment now carries a rather disturbing picture in the mind of those who oppose its use and I believe it would be better, as well as more correct, to refer to it as "spanking", as actually that is what it means and no more.

Even today, with only a modified form in use, corporal punishment is something which must not be used promiscuously. Authority for its use must never be placed in the hands of those who would abuse that authority. It is not a "cure-all" and its use in many cases would cause greater harm than it would do good. For these reasons certain precautions are taken and certain restrictions are imposed with regard to its use. The court, for example, can only award corporal punishment for certain crimes. The governor of the jail and the superintendents of our adult institutions are restricted in awarding the strap for a limited number of breaches of discipline—violence, assault on guard or prisoner, riotous conduct, repeated insolence, refusing to work, or continuous course of bad conduct. These provincial officials are further restricted in that they may not award the lash or the so-called cat-o-nine-tails, and not more than ten slaps with the strap can be given at any time.

Before a prisoner is strapped he must be examined by a medical officer, and in most of our provincial institutions he is also seen by a psychologist. The medical officer must certify that the man is both physically and mentally fit to receive the punishment. Where there is the slightest doubt as to the man's mental condition a psychiatrist examines him also. The decision as to whether the man is fit to accept punishment is governed entirely by these reports. I should say that before this stage is reached several other forms of correction have been tried and have failed. Corporal punishment is rarely given for early breaches of discipline unless the offence is of a violent nature.

In our institutions the authority is not abused as can be seen from actual statistics over the past five years. For instance, the number of persons receiving the strap for breaches of discipline is equal to ·44 per cent of the total persons in custody. In this connection I might say that all punishment, deprivations and restrictions are entered in our records, together with the nature of the offence, the evidence, and the names of witness or witnesses.

Without going further it must be obvious that I consider corporal punishment essential as a form of punishment in penal institutions. Despite what some psychiatrists, psychologists and other inexperienced, but well meaning theorists and idealists say to the contrary, we cannot afford to remove the existing form of spanking from penal institutions. I have known of some psychiatrists and psychologists who have learned after experience to accept the use of the strap as inevitable in dealing with certain types of offenders. One psychiatrist told me that he regarded the use of the strap as the best known scientific approach in dealing with certain types. This man was sitting across the desk from me one day and I was discussing a certain case with him. And I said to him: "What would you do with a fellow like that?" And he said: "I think I would give him corporal punishment", or I think I would give him the strap." I said to him: "You surprise me. I am rather surprised that you, as a psychiatrist, would come up with that answer because I thought you would have some scientific approach." He replied, "That is a scientific approach in certain cases, and this is one of them." And he was a man with many years of experience and one of the leaders in his field. At the same time I regret that I am unable to say that the strap serves no useful purpose. I wish I could say it. I would be delighted if I could.

Certain elements of the prison population one has to deal with today—particularly the younger element—are more difficult to deal with than they were before the last war. The change was most noticeable, and it came about rapidly and has continued since. This element today is more insolent, more defiant, and more threatening than before. Patience, counselling, psychotherapy, imprisonment, and minor punishments, have not the slightest effect on their behaviour pattern. They regard those who approach them with these methods with ridicule and contempt. This element,—and I should like to point out here that I am speaking of this element only and that I am not under any circumstances condemning all prisoners into this category,—understand one language and one language only, and that is the language of physical pain. Some of them will tell you that they can serve time "standing on their heads", to use a common expression; that they do not mind serving time because they are well housed and well cared for. They pay attention to a spanking even if they have never paid attention to anything before. The fact that those in charge of our provincial adult institutions have the authority to use the strap is a great deterrent to other would-be disturbers. This form of punishment must be retained if we are to keep control of this defiant and demanding element. Until such time as some other effective method of controlling this bad and disturbing influence can be found the use of the strap in certain cases is essential.

It is true that in some jurisdictions the use of corporal punishment is unlawful. I would like to make it clear that anything that I say here is not to cast any reflection on any other part of Canada; it does not apply to any other part of Canada, and I realize that I am speaking with reference to only one province. It has been my privilege to visit some of these jurisdictions and to meet with official representatives of many others. They say, "No, we are not allowed to use corporal punishment", but when asked what they actually do to effectively deal with violent and defiant prisoners they will tell you quite frankly that they disregard the restrictions and "give them the business". In fact, some of them are much more descriptive than that. Some of the descriptions that they hand out, I would not like to repeat, but that is what they say. That is in jurisdictions where corporal punishment is officially banned.

Mr. THATCHER: Which jurisdictions would that be in Canada?

The WITNESS: I said that it was not in Canada.

Mr. THATCHER: I see.

The WITNESS: To my mind, this is much more likely to invite and cause abuse of prisoners and extreme punishment than when the corporal punishment is legal and carried out in an official manner. In Ontario—and I have no doubt the same thing applies in other parts of Canada—any member of the staff found guilty of striking or otherwise abusing a prisoner is instantly dismissed. We would not tolerate such treatment as is meted out in some jurisdictions where corporal punishment is officially forbidden.

In our institutions only one person can award punishment and that is the official in charge. As previously mentioned, only a very small percentage of the prison population receives a spanking. Of such persons, it has been claimed by many that it makes them bitter and revengeful. I have heard that said to me many times, not by the prisoner but by people on the outside who were interested, but that has not been my own experience. Many prisoners and ex-prisoners whom it has been my duty to have spanked have thanked me for having brought them to their senses. Quite recently I was standing in a railway terminal when my attention was attracted by two very well-behaved and clean-cut soldiers; one, incidentally, was just back from Korea. To my surprise, they both came over and greeted me with smiles and handshakes. Both informed me that they had served sentences during my time at Guelph. One of the two had been spanked during that sentence. Within a short period of time I spotted another ex-prisoner who was well known to me by reason of his behaviour. He had received two spankings. When I saw him he was coming toward me with a broad grin on his face. He told me that the second spanking had convinced him that he was his own worst enemy and he determined at that time that he was going to behave himself. He, too, was wearing a smart uniform. He was regularly employed and happy.

One other reference in contradiction of those who say corporal punishment only brings a feeling of revenge: I have on numerous occasions received expressions of thanks from prisoners immediately following the application of the strap, with such expressions as, "You certainly will have no more trouble with me", or, "Thank you, I deserved it and I am sure it will do me good, I should have had it before". Well, ladies and gentlemen, this is not a figment of my imagination; those things happened in my experience many, many times. These are only a few of the many instances where it has been demonstrated that those who receive the strap are not embittered or revengeful. These people did not have to come and speak to me. They could have turned their backs and walked away, but they liked to come up and say, "Hello". and shake hands and be friendly.

What I have stated so far are my views after having a fairly long experience in the administration of penal institutions.

May I now deal with the specific questions which have been embodied in the questionnaire referred to previously.

The PRESIDING CHAIRMAN: May I interrupt? You will find the questionnaire set forth in No. 2 of the Minutes of Proceedings and Evidence of this committee, at page 92.

Hon. Mrs. HODGES: Are you dealing first with corporal punishment?

The PRESIDING CHAIRMAN: We are dealing with the questionnaire, which deals with both subjects. It starts at page 92.

The WITNESS: As pointed out in the first place, by mutual arrangement between the deputy attorney general and myself, there are certain questions which I shall skip, because they have a legal or judicial bearing. Mr. Chairman, would you like for the benefit of those present to have someone read the question and I give the answer, or would you prefer that they follow them?

The PRESIDING CHAIRMAN: I would suggest that you read the question, if you wish.

The WITNESS: I do not have it.

The PRESIDING CHAIRMAN: Probably we could have the counsel read the question.

Hon. Mr. HODGES: If we had the number of the question before us.

The PRESIDING CHAIRMAN: Have you the number?

The WITNESS: Unfortunately, I have only the section of the questionnaire that was sent out, which is not the same as you have there.

The PRESIDING CHAIRMAN: Probably we could have our Counsel, Mr. Blair, read the questions and you could read the answers.

The WITNESS: As a matter of fact, I believe my replies embody the question to such an extent that you will know what I am speaking of.

Mr. BLAIR: Question 2.

The WITNESS: The conditions of confinement between the trial and the date set for execution. The prisoner having been brought back from court—you all appreciate, I am sure—is thoroughly searched and documented and so on, and allocated to his place of confinement. The prisoner is isolated from all other prisoners and placed under a constant guard. He is accommodated in a cell usually about eight feet by eight feet—I say "usually" because they do vary in size, some being larger—with built-in plumbing or in some cases ablution facilities have to be provided. The cell is invariably an open-fronted type admitting daylight and is supplied with artificial light also. It is ventilated, dry, warm, and usually opens on to a corridor. The cell is provided with a bed and bedding. A guard on duty is immediately outside the open-fronted grille of the cell. In the smaller jails food is cooked in the residence of one of the jail employees and in all cases the food is served by a member of the jail staff. In larger jails, where a paid cook is employed, the prisoner's food is cooked in the institution's kitchen. The prisoner is provided with the means for daily ablution, such as towels, soap, comb, etc., but these articles are returned after each usage. He is shaved once or twice weekly, if he requests, by a member of the staff, during which period he is handcuffed and moved to the corridor. Bathing is done either in his cell or in the corridor, depending upon the facilities of the particular jail. Reading material is available and selected literature is provided, sometimes by the officials at the jail, sometimes by the spiritual adviser, or by his family, or maybe his counsel. The prisoner is never left alone throughout each of the 24 hours. If it is necessary for a guard to leave for any reason, a relief must first be provided—if only for a

few minutes. All authorized visitors are conducted to the cell, but not into it. Visitors are not permitted to come within three feet of the cell gate. No physical contact is permitted and nothing is permitted to pass between visitor and prisoner except the spoken word. All authorized articles for the prisoner must be given to the jail governor or his representative for examination and, if acceptable, they are then handed to the prisoner by a member of the jail staff. Guards employed on this duty are selected members of the regular staff of the jail concerned.

Then, the question is asked: "what change, if any, takes place after the prisoner is informed that there will be no executive clemency?" The answer is: there is little change in the procedure after a condemned man has been notified that there will be no interference with the execution of the sentence, as all previous arrangements are based on the assumption that sentence will be carried out. However, there is usually a close liaison between the spiritual adviser and at least one member of the family, and the sheriff and/or the governor. While the defence counsel frequently is advised simultaneously with the sheriff or governor, the prisoner is advised by the sheriff or governor without delay. The prisoner may, or may not, ask immediately for his minister or a member of his family but almost invariably these are also notified by the sheriff or the governor, unless it has been made clear that the defence counsel has already informed them.

The next question is: who is present at the execution? Present at the execution is, of course, the official hangman, the sheriff, the governor of the jail, the jail surgeon, the prisoner's selected spiritual adviser, one or more sheriff's officers, two or three members of the jail staff. There is no record—and I have never heard of a report of a condemned man's family ever being present at an execution. Now, I believe perhaps in the far distant past that such might have been the custom. I do not know but I have an idea that I have heard that, but certainly not within the last one hundred years I would say. Sometimes members of the local police reinforce the jail staff and are present in the vicinity of the gallows.

Hon. Mr. ROEBUCK: What about the press?

The WITNESS: No, sir. That is a matter which has been done and undone. It was done on one occasion, I believe, but in recent executions they have not been admitted.

Hon. Mrs. HODGES: Does that pertain only to Ontario?

The WITNESS: I am speaking only of Ontario.

Hon. Mrs. HODGES: You do not know if it is applied in other provinces?

The WITNESS: No.

Hon. Mr. ROEBUCK: It used to pertain when I was a reporter many years ago.

The WITNESS: I can recall when it was done too.

The next question is: what provisions, if any, are made to conceal the execution from (1) any other inmates of the prison; and (2) the general public? Every effort is made to conceal executions where built-in gallows are located. Where, of course, there are built-in gallows, the wing where the execution is to take place is absolutely free of any prison population. Where the gallows is built-in in the jail no difficulty is presented, but where the gallows has to be built in the jail yard, and this is still done in some instances, every effort is made to ensure that the jail yard is not overlooked.

The next question has to do with sedatives or drugs. Sedatives are always made available to the condemned man at an appropriate time prior to the execution. As a matter of fact, I believe the jail surgeon will probably see him several hours before and ask him how he feels about it. But, generally

he, that is the prisoner, decides whether or not a sedative is necessary, but where it is obviously necessary, but the prisoner is reluctant to accept it, he is mostly persuaded to do so. Sedatives or drugs are administered by the jail surgeon and are usually given hypodermically. Morphine has been used and is considered to be satisfactory.

The next question is: what disposition is made of the body? The body is buried in the yard of the jail set aside for that purpose. However, in recent years where a member of the family has requested it, the body has been released for burial at some chosen spot outside. It is removed according to a pre-arranged plan by an undertaker after the inquest has been held, and usually in the very early hours of the morning and during the hours of darkness. The sheriff or his representative attends the funeral and burial services. The sheriff ensures that the casket is not opened after it leaves the jail.

The answer to the next question, I am sorry, I cannot give. It is something which I am trying to get now, but it may be very difficult to get.

The PRESIDING CHAIRMAN: Would you tell us what the question is?

The WITNESS: What is the longest period of time.

Hon. Mrs. HODGES: And the shortest.

The WITNESS: That is right.

I have said in reply to that that the answer to this question cannot be given at this time, but steps have been taken to get this information if possible.

The PRESIDING CHAIRMAN: For the purpose of the record, I think we should say that the question is: "What, in your experience, has been (1) the longest, (2) the shortest time to elapse between the time when the trap was sprung and the time when the condemned man was pronounced dead?"

The WITNESS: That is right.

The PRESIDING CHAIRMAN: And your answer has been given.

The WITNESS: Yes.

The next question is: what procedure is followed where more than one person is sentenced to be hanged at the same time? Where two persons are to be executed at the same time, the sentence of the court is carried literally. Prisoners are placed back to back on the gallows and both are executed simultaneously. So far as can be found in our records, no special arrangements have been necessary as the built-in gallows used in such cases provided sufficient space, that is to say, the size of what is called the trap and the crossbeam. To the best of my knowledge there have been only two double executions in Ontario for many decades and those took place in Toronto.

Here is a question I am unable to answer at this time. It is: the effective cause of death. It is being asked for. We are asking all institutions. There are some 42 jails in the province, and they are being asked at the present time to look up their records and see what has been given as the effective cause of death. I am afraid it is going to be a very difficult thing to get because after the inquest is held—and you will appreciate that there is an inquest held after each execution—the verdict of the jury I think more often than not is that he came to his death by hanging. I am afraid that is all we are going to be able to get.

Now, the next question has something to do with the method of hanging.

Hon. Mrs. HODGES: Number 7.

The WITNESS: Number 7, yes. My reply to that is, it is my opinion that the time has come when consideration should be given to an alternative method of carrying out the death penalty. Although I have no knowledge, official

or otherwise, of any mismanagement or untoward incident resulting from the present method, I feel now that there are other methods within reach that the possibility of their advantages, if any, should be the subject of very careful study.

The next question is number 8: the observable effects on staff, prisoners and the community. With respect to the staff, it is a decided strain on those directly concerned, and the strain begins a day or two before the execution takes place. It is particularly trying at the execution for those who are there to observe only. Others are busily engaged and have no time to think of anything but their exacting duties. Generally, those detailed to this duty are placid and are persons who can accept stress. However, a few persons have been known to become tense during the operation, while others have shown temporary reaction after the affair is well over. The effect on other prisoners has not been too noticeable, particularly since executions have been carried out near midnight. There was a time when executions were carried out about eight o'clock in the morning, but that has been changed for perhaps about 15 years or so.

At that time, that is when the executions were being carried out at 8 o'clock in the morning, it was quite noticeable that immediately after the execution had taken place routine within the jail returned to normal. There is no record of demonstrations or expressions of protest within the prison. There is, perhaps, an unusual quietness, but this could be due to one's imagination.

> (iii) A few demonstrations in opposition to the execution have taken place, but not in recent years. The last known was in Toronto in 1919. Apart from the presence of a small number of morbidly curious would-be spectators in the vicinity of the jail, the effect on the community is imperceptible in large cities, but in smaller communities the effect has been depressing in some cases, particularly where the condemned man, or his family, have previously been respected members of the community. Conversely, the executions may have had a greater deterrent effect in the community, but this is something which we are unable to measure, or appraise.

I think the questionnaire invites some comment on the effect on those carrying out the order of the court, and this is what I have in reply to that:

(*b*) It has been said that those carrying out the order of the court become hardened and callous. This has not been borne out by experience, nor does it apply anymore to those who carry out the sentence than to those who are responsible for the sentence in the first place. The men who supervise the execution do so, not from choice, but because they have been assigned to it and because they regard it as their duty.

The next is (A), corporal punishment under the Criminal Code.

The regulations in force for the execution of corporal punishment awarded by the court are the same as those governing the application of corporal punishment for breaches of discipline within the institution and referred to elsewhere in the questionnaire.

When corporal punishment is executed, the superintendent or governor, depending on whether it is a provincial reformatory, industrial farm or whether it is a county jail, is present with the medical officer and one or two of the guards. The governor or superintendent, whichever it may be, identifies the prisoner and makes sure that they have the right man by asking him his name and if he understands the sentence of the court. Do you know that you did so and so. As soon as they have identified the prisoner, the

superintendent or governor then orders the punishment to be carried out, the prisoner having been previously medically examined and found fit to undertake the punishment. The prisoner's hands and ankles are then secured and his buttocks exposed. A kidney belt is worn as a protective measure. The medical officer then stands close to the prisoner, with his fingers on the prisoner's pulse. One guard executes the punishment and it is the governor's or superintendent's responsibility to ensure that only the number of strokes awarded by the court are inflicted. There is an error there and I would like to correct it now, if I may. The kidney belt is worn only where the strap is applied, and not in cases where the lash is applied, because the lash is applied across the shoulders. To the best of my knowledge the kidney belt does not apply in cases of lashing.

The stage of the term of imprisonment at which corporal punishment is to be carried out is almost without fail directed by the court, but in more recent years, within the last two or three years, the courts are following the practice of simply awarding the sentence and not specifying when it should be carried out. Up until the last year or so the court used to specify that the prisoner was to receive five strokes after three months, or five strokes two months before the expiration of his sentence, or something along that line.

The maximum number of strokes administered at any one time does not exceed ten, but where a judge awards fifteen strokes, it is usually given in two lots of seven and eight, or it may be given in three lots of five.

The strap used for the infliction of corporal punishment is a plain leather strap, without perforations, about fifteen inches long, three inches wide, and three-sixteenths of an inch in thickness. The strap is attached to a handle which measures about seven inches. Where the order of the court directs that the lash shall be used, an instrument consisting of a wooden handle about fifteen inches long, from one end of which nine pieces of string about fifteen inches long are affixed, is used. The words "wooden handle", I know, are not very descriptive, but it is a wooden handle perhaps the size of a small broom handle about 15 inches long. These strings which are affixed to it are whipped at the extreme ends. That is a sailor's term, but whipping means—

By Hon. Mrs. Hodges:

Q. Is it unravelled?—A. It is to prevent it from unravelling.

Q. You mean there is a knot?—A. No, the end of the string is whipped. By that I mean it is bound by a piece of cotton or shoemaker's thread.

The PRESIDING CHAIRMAN: The ends are not frayed? We had one here yesterday which was frayed.

The WITNESS: You know what you do with a large piece of rope if you want to keep it from unravelling? You tie a piece of string around the end of it. In this case, they use cotton—not cotton, but thread, to keep it from unravelling. However, they are not knotted in any way. They are used completely dry and inflict a lesser punishment than the strap. The lash is applied across the shoulders.

Hon. Mrs. HODGES: I understand, thank you.

The WITNESS: The method used and the procedure followed in applying corporal punishment is identical throughout the province. That is, each institution has the same set-up.

The inmate is medically examined immediately before sentence or corporal punishment is executed and the examination is a thorough one.

As stated before, the medical officer is present throughout the execution of the sentence and is constantly watching the prisoner's physical reaction.

An inmate is visually examined after the award of corporal punishment. I have not known of a case where medical attention, or hospitalization, was necessary. Once the punishment is over, the man is quite fit to carry on with his work.

If the medical officer has reason to believe, or is suspicious that the prisoner is suffering from some form of mental ailment, or has in the past been treated for or suspected of having a mental illness, he will call in a psychiatrist for consultation. If there is the slightest doubt, the punishment awarded by the court is not carried out and the Department of Justice is notified accordingly.

The answer to the question concerning the extent of the examination by the psychiatrist is embodied, I think, in the answer to the forgoing question.

In cases where the court has awarded corporal punishment and it is later found that the prisoner is either physically or mentally incapable of enduring the punishment, punishment is suspended and a written report forwarded to the Department of Justice explaining the circumstances and giving reasons why the order of the court has not been complied with. Some member of the Department of Justice replies acknowledging the information and in all cases on record the medical decision has never been questioned.

I come now to 21. We are not in possession of any statistics which would prove that corporal punishment prevents recidivism. However, experience teaches that corporal punishment has a definite deterrent effect.

If I might, I would like to digress for a moment and refer to what I call Appendix A, entitled "Breaches of Institution Discipline", which I have here. This is a group totalling 106 prisoners who were given a spanking over a period, and these are the facts: 106 were given a spanking, and of these, 99 required only one application to correct them or to make them behave themselves from there on. 7 required a second application for further misconduct, and of the 99, 53 committed no further breaches warranting punishment of any kind. 38 committed minor offences but not of sufficient importance to warrant use of the strap. 8 committed more serious breaches than I have here in the last paragraph, but not of sufficient importance to warrant strapping.

That is a breakdown of 106 prisoners. They were taken at random without any special selection of any kind, so I think that in itself is sufficient to justify or to satisfy or to argue at least that it definitely has a deterrent effect.

B. *Corporal punishment as a disciplinary measure in provincial penal institutions.*

The official rules and regulations governing the administration of reformatories and industrial farms for male prisoners provides under rule 106 (3) as follows:

> The infliction of punishment by the lash shall only be in execution of the sentence of the court, and punishment by the strap shall only be inflicted in extreme cases and for the following offences:
>
> (*a*) Assault with violence on officers.
>
> (*b*) Assault with violence on other inmates.
>
> (*c*) Continued course of bad conduct.
>
> (*d*) Escape or attempted escape. And I might add that now and for some time past a person who escapes custody is almost without exception taken to court and dealt with in court. Any sentence given in the court must, according to law, be in addition to the unexpired term that he is serving at the time of escape. In many cases where it is a young fellow and he has got a long sentence ahead of him, it is a kindness to deal with him at the institution rather than to take him to court.

(*e*) Malicious destruction of or injury to machinery or other property.

(*f*) Malingering.

(*g*) Mutinous conduct.

(*h*) Repeated fighting after warning.

(*i*) Refusal to work after warning.

(*j*) Repeated insolence to officers.

(*k*) Riotous conduct in dormitories, cells, working gangs or elsewhere."

During the past several years the strap has been reserved—if that is the proper word—for cases of violence mostly, or where a person is consistently defiant and will not respond to other forms of punishment.

It goes on to say:

> No inmate shall be punished by infliction of the strap until the medical officer has certified that the inmate is mentally responsible for his actions, and physically fit to endure the punishment.
>
> The number of blows with the strap shall be in proportion to the offence committed, and in no case shall exceed ten at any one application.
>
> The strap is not to be used except when it is clearly necessary to achieve the reformation of the inmate and enforce proper discipline.

The regulations continue to provide for the proper recording of such punishments.

The next question has already been answered by the preceding one.

Details of the awards of corporal punishment imposed for prison offences are presently being compiled. I would like to point out that it is quite a job to find all these things. They have probably been put down in a vault or been carried away to some other vault perhaps at the other end of the town or city and they will probably have to be dug out. To find them for over a period of 25 years will take some time and it may be quite a while before I am able to produce them. But they are already working on it.

The same procedure is followed in inflicting corporal punishment where the punishment is awarded by the court or by the person in charge of the institution, except that the lash is not awarded by the official in charge of the institution. That has already been stated.

It is most desirable that corporal punishment should be limited to the most serious breaches of discipline. I would like to emphasize that, and it is felt that those outlined in the regulations, and which have been quoted, should remain, although it is rarely used except in cases of violence or persistent defiance.

As previously stated, the opinion of the psychiatrist and the medical officer is always given full weight and if either advises against corporal punishment it is not inflicted.

With regard to the question in paragraph 7, I think I have already given my answer to that question in a general way with the retention of corporal punishment as a measure of control.

I would like for a moment, if I may, to refer to what I call appendix B which is entitled "Ratio of sentences per thousand of population in the Province of Ontario". I shall read it as it is here:

> 'Crime has increased gradually over the past 40 years. Contrary to some claims, it has increased at a greater rate than has the general population. In 1913, 4·3 persons in every thousand were convicted and sentenced; in 1952, it was 8·5 per thousand. Ontario's population during that period rose from 2,767,000 to 4,766,000—an increase of 73 per cent; but the number of persons sentenced rose from 11,897 to 40,486—an increase of 240 per cent.

It shows recurring peaks and valleys on a graph, but each peak and each valley is higher than the last. In other words, it would go up and down, and it would go up further next time and not come down quite so far, and so on. But each peak and each valley is higher than the last. The high and low years in the period since 1913 were as follows:

> 1914—5·3 sentenced per thousand population; 1923—2·6 sentenced per thousand population; 1930—6·4 sentenced per thousand population; 1934—3·8 sentenced per thousand population; 1939—7·4 sentenced per thousand population; 1943—4·9 sentenced per thousand population; 1951—8·9 sentenced per thousand population; 1952—8·5 sentenced per thousand population; 1953—8·3 sentenced per thousand population.

So you see it is like the teeth of a saw except that the teeth are not all regular on the top. The next time they come up, they come up further.

With regard to convictions, I mean those who were found guilty, these figures therefore are inclusive of probations, suspended sentences and for those who have paid fines. And I might add, if it is of interest, that in the Ontario Department of Reform Institutions, we have a daily population of approximately, 4,000.

Mr. Chairman, that is all I have to say. May I go home now?

The PRESIDING CHAIRMAN: I am sure the members of the committee have many questions they would like to ask, and if it is your pleasure we will proceed in the usual manner by going along the table, permitting each member to ask questions for a limited period of time. Yesterday we started from the right and today we will start from the left. Mr. Brown.

By Mr. Brown (Brantford):

Q. Mr. Basher, is there any reason why the lash is not used in institutions rather than the strap?—A. Well, I will give you my reason, but that is not to say that that is the right reason. I am glad you asked that question. I believe that in the old days when the lash was awarded, it was awarded for very serious offences. When I say "very serious", I mean "very serious". It was awarded only for very serious offences, and the effect of the lash was something like I described just now, that it was brutal and it was excessive, but it has now been tempered for some time—I am not going to attempt to give an answer as to time, but it has worked its way down—so that now it is a lesser punishment than the strap. I say this with all due respect to the judiciary, but I believe that there are still members of the judiciary who, when awarding the lash, as they call it—sometimes it is called the "cat-o'-nine tails"—do so because they believe it is more severe in punishment than the strap, when in effect it is the other way around. I think that at the time these regulations were made they avoided allowing people in charge of institutions to award the lash, because they probably thought they were taking something from a jury or the judge in court. I think that is the answer.

Q. Do you feel that a lash is not a sufficient deterrent in institutions?—A. That, of course, is a matter of opinion. Quite frankly, I do not think any member of this committee is in a position—and I say this with all due deference —to pass judgement on either the strap or the lash, unless they see it applied. I am not suggesting for a moment that anybody is going to arrange it for you or that it could be arranged anywhere at all, but I think that, without a person seeing the actual application and its effect, it is asking too much of one's imagination to try to visualize just what the thing is. Unfortuantely, people are governed by the next best thing, which is something that you see in the movies, similar to what I described before in such a picture as "Mutiny on the Bounty" and such other pictures. That is conveyed to the public and that is the nearest approach the public gets to seeing the real thing.

Mr. THATCHER: Would it be possible to take movies of an actual strapping in the prison, so that the committee could see that, on the understanding that we would not tell them to do it for that purpose?

The WITNESS: Of course not, that is understood. Personally, I see no objection to that, sir.

Mrs. SHIPLEY: The prisoner would, of course, be blindfolded and we would not see who it was?

The WITNESS: You would not see the prisoner anyway.

Mr. BROWN (*Brantford*): You described the leather strap that was used in institutions as a strap without perforations?

The WITNESS: In Ontario institutions that is the regulation.

Mr. BROWN (*Brantford*): At a recent sitting, we had the warden of the Kingston penitentiary and he produced a strap with perforations, eight perforations, I am told.

Hon. Mrs. HODGES: We saw that yesterday.

The WITNESS: We have no jurisdiction there.

Mr. WINCH: While we are on that, could we ask what I think is a logical question? He was questioned then and he said that the reason was that if they did not have the perforations the strap had an inclination to turn and twist and they were afraid that the edge might land on the buttocks and cause a break in the flesh. That has not been your experience, I take it, because you do not use perforations?

The WITNESS: No.

Mr. BROWN (*Brantford*): Is there any bread and water diet in provincial institutions at any time, even in the way of punishment?

The WITNESS: Not now. We have what we call a balanced diet. It is a meat loaf, made up of a certain amount of ground meat with vegetables. There is a proper formula for it which has been sent out and all institutions have it. I think there is egg in it, and it is just like what you might call—

Hon. Mrs. HODGES: Meat loaf.

The WITNESS: I was going to say "shepherd's pie", a sort of dried shepherd's pie.

Mrs. SHIPLEY: You have not eaten good shepherd's pie?

By Mr. Brown (Brantford):

Q. Is that a special diet?—A. That is a restricted diet.

Q. You do have that imposed on unruly cases?—A. Definitely. A man can be placed in close confinement and on restricted diet for a period, and we try him on that.

By Mr. Shaw:

Q. Colonel Basher, you expressed the view that the committee probably should give consideration to an alternate method of execution other than hanging. Would you care to elaborate on that at all?—A. I would merely say this, that we are living in enlightened days and if there is some other method which is preferable to the existing method then I think it should be explored. That is all I have to say.

Q. A second question relative to capital punishment: I understood you to state that where the body is to be removed from the jail and turned over to relatives or others, they never allow the casket to be opened. Is that what you said?—A. That is what I said.

Q. The body is not embalmed before burial?—A. That is done before.

Q. Could you give a reason for that policy?—A. No, I could not.

Q. Another question. You stated that where corporal punishment is administered the offender returns to work, I believe you stated, in all cases or most cases. Who actually determines the man's condition?—A. The medical officer.

Q. In all cases?—A. Yes, he is right there.

Mr. SHAW: That is all, Mr. Chairman.

By Mr. Boisvert:

Q. Colonel Basher, if you use the strap to reform a prisoner, has that any application to a later time when he is considered by the remission department for parole?—A. If I understand your question correctly, sir, you are asking me whether the fact that he has had the strap during the time he has served his sentence will have any detrimental effect on his getting ticket-of-leave, for instance, or remission of sentence; is that right?

Q. That is right.—A. My answer to that is, "No", providing that during the period after he got the strap his behaviour has been good for a reasonable length of time.

Mr. BOISVERT: That is all I wanted to know, Colonel.

The PRESIDING CHAIRMAN: Mr. Lusby.

By Mr. Lushby:

Q. Colonel Basher, I took from your opening remarks that you consider the death penalty is a more effective deterrent than any other punishment would be. That is correct, is it not?—A. Yes.

Q. Is that based on a personal opinion of yours, or have you studied statistics?—A. I tried to explain why I felt that such minor things as I referred to had an influence on self-restraint throughout our daily lives, and that this thing called the death penalty would have a relatively greater influence on the doings of these people who were inclined to be violent and vicious and commit such a serious crime.

Q. It is not based on any study of statistics?—A. No, except this: you will remember, I am quite sure, that not very long ago the authorities of Great Britain decided they were going to suspend capital punishment. They found that they could not suspend it very long; they had to revert back to it.

Q. It was suggested to me that if the death penalty were abolished it would probably lead to more or less professional American criminals coming into Canada. Have you any idea, say in Ontario, what the incidence is of American criminals coming over here and committing crimes of violence, bank robbery, murder or anything like that?—A. Offhand I would say it was very small.

Q. Do you think that if the death penalty were abolished there might be a possibility that there would be an increase?—A. It could be.

By Mr. Cameron (High Park):

Q. You are suggesting, Colonel Basher, that the substitution of the word "spanking" for whipping and corporal punishment might be an improvement in the phraseology of the Criminal Code?—A. I do. I think it describes it better and that it is more correct. Because of these visual illustrations in the movie theatre the term "corporal punishment" now conveys a very awe-inspiring thought or picture.

Q. Is the person to whom the spanking or the whipping is administered blindfolded in your institution?—A. No.

Q. So that he knows the official in the jail who does it?—A. Oh, yes. And incidentally, apropos of that—I intended mentioning this before—we do not

allow a member of the staff who charges a man to carry out the punishment.

Q. Do you use a paddling machine?—A. Quite frankly I do not know what a paddling machine is. I have never seen one. I think it is a figure of speech absolutely and entirely, and I do not think you can produce one anywhere.

Q. We had a picture of what was supposed to be one here yesterday. Do you use anything—A. Nothing that that description would apply to. There is not a machine of any kind.

Hon. Mrs. HODGES: Is it a table to which a man is tied?

The WITNESS: No. It is a frame.

By Mr. Cameron (High Park):

Q. In other words, you have equipment to see that the person receiving the punishment is placed in the proper posture to receive the punishment?—A. That is right.

Q. When he is whipped does he stand up?—A. Yes.

Q. What we were shown yesterday was an apparatus used somewhat as you have described to hold the prisoner in the proper position—A. That is right.

By Hon. Mrs. Hodges:

Q. I was interested, Colonel Basher, when you mentioned that a kidney belt was always used in the application of the strap. Does it protect the man? How wide would it be?—A. Oh, it is about that wide.

The PRESIDING CHAIRMAN: Indicating about a foot wide.

By Hon. Mrs. Hodges:

Q. You mean about a foot wide. Would the blows actually fall on the kidney belt, and not on the prisoner?—A. No. It is there to protect the kidneys. It is just there in case, to prevent any possibility of the man being strapped over the kidney, which I believe are quite close to the surface.

Hon. Mrs. HODGES: Thank you.

The PRESIDING CHAIRMAN: Does the prisoner stand when he is being strapped?

The WITNESS: Yes.

By Hon. Mr. Roebuck:

Q. Mr. Basher, will you agree with me that a certainty of discovery, a facility for conviction, and that sort of thing—surely of being caught and convicted—is perhaps as great an element of deterrent as a severity in punishment?—A. No, sir, I do not agree with that. I am very sorry. Am I correct in assuming that you mean that it would be just as much a deterrent if the man who was going to commit murder knew, if he was caught, he was going to get life imprisonment?

Q. No. I was making a distinction between the two. That is, if you made apprehension more certain, would it not be as great a deterrent as if you made the penalty more severe? There are the two methods of approaching the prevention of crime, and two methods of encouraging it, that is to say, by making apprehension less certain or making pelaties less severe. My thought is whether certainty of apprehension is not something to be struggled for rather than great severity in punishment?—A. Well, I am afraid I do not see it in that light, sir. I think at the present time a man who commits a murder or any serious offence knows before he starts that the chances of his being found out are pretty much against him. He always hopes that he is a bit smarter than the other fellow and won't get caught.

The PRESIDING CHAIRMAN: Do you mean that a murderer who is going to commit a murder stops to consider that?

The WITNESS: Yes. And, if not, it may not be a case of murder at all, but a case of manslaughter.

By Hon. Mr. Roebuck:

Q. You talked about the influence of fear. Are there not other motives that prevent crime, particularly murder, besides just fear?—A. Oh, yes, there are many.

Q. Your remarks would lead one to suppose that you were depending purely and solely upon fear as a method of promoting good conduct among people.—A. If I conveyed that impression I certainly did not intend to, but I tried to explain that we are governed by the consequences of what is going to happen if we do certain things. I think we all are governed by that. I do not say that in our daily procedure of activities we should stop to consider every little thing; I do not mean that. But, I do believe that people are governed by the apprehension of something which might happen and might be unpleasant to them or to their immediate family or to their kith and kin.

Q. On the other hand, something that might be very pleasant to them. That is, the carrot as well as the whip gets the donkey to go.—A. Yes, I think they are governed by that also. I think they are governed by thinking if they carry out certain activities or do certain things they are going to benefit from that naturally. I think some are restrained from doing things they are not supposed to do by their apprehension or consciousness.

Q. Our whole moral code is built on that, or very nearly.—A. Yes.

Q. Built on the experiences of mankind that certain conditions lead to evil results usually to the person indulging in them and to others. That is the basis of the Criminal Code but, it does not always depend on fear and evil consequences.

The PRESIDING CHAIRMAN: Before we go on, I must point out I have been pretty lenient in the matter of questioning. I am not, however, pointing my finger at anybody.

Hon. Mr. ROEBUCK: You are not pointing your finger, but you are just looking at me. Keep your hands in your pockets and go ahead!

The PRESIDING CHAIRMAN: I think we should confine ourselves to asking questions in the time that is available to us rather than carrying on an argument or a discourse with the witness. We shall be further ahead if we save the argument until we make up the report. Mrs. Shipley?

By Mrs. Shipley:

Q. Mr. Chairman, I was particularly interested in the statement Colonel Basher made respecting the young prisoners of late years for whom it was found that spanking was the only measure, in the majority of cases, that affected them and made them behave.—A. Would you mind adding to that, "a certain element."

Q. Yes, a certain element of the younger prisoners. Have you found, sir, that in any group within a prison there is always a certain percentage of them who fear nothing except physical punishment?—A. Yes.

Q. And furthermore, in the application of a spanking to a prisoner, do you find it is the shame and the indignity of it, as much as the physical pain, that perhaps makes them want to avoid having it happen again?—A. I have heard that expressed several times, but quite frankly I cannot say yes to that.

Q. I was just curious. I have just one more question, Mr. Chairman. You referred, Colonel Basher, to methods other than hanging. Would you care to go so far as to say that you had in mind perhaps painless drugs or poisons

administered by doctors? Would they come within the category of the different methods you had in mind?—A. Madam, I would prefer not to go into that, because I think that is a science which an ordinary layman should not offer suggestions on.

Q. I will not press it.—A. I do not think you will find any medical officers who would want to become excutioners, and I would prefer, if you do not mind, to leave that to science.

Mrs. SHIPLEY: Sorry. Thank you.

The PRESIDING CHAIRMAN: Mr. Winch?

By Mr. Winch:

Q. I believe, Colonel Basher, you said that in a certain period the population in Ontario has increased 75 per cent?—A. 73 per cent.

Q. Yes, 73 per cent, and that within the same period of time—

The PRESIDING CHAIRMAN: What period of time?

Mr. WINCH: I do not believe he gave the years.

The WITNESS: Yes, from 1913, or the commencement of 1914, up to 1952.

Mr. WINCH: You said the population has increased 73 per cent in that period, and you said the instances of crime had increased approximately 200 per cent?

The WITNESS: Yes. 240%.

By Mr. Winch:

Q. That being the case, I would take it therefore that the penalties of capital punishment and corporal punishment and the other punishments have not acted as a deterrent to crime? What would be your comment on that?—A. I would say, sir, that the percentage referred to here would have no particular bearing on the percentage of either increase or decrease in the number of murders because that figure is all-inclusive and includes all convictions for all crimes and is not broken down.

Q. Does it include those charged with homicide?—A. Yes.

The PRESIDING CHAIRMAN: What crimes are included in that figure?

The WITNESS: That figure is inclusive of all charges under the statutes of Ontario and under the criminal laws of Canada.

The PRESIDING CHAIRMAN: You mean under the Liquor Control Act, and so on?

The WITNESS: Yes.

Hon. Mr. ROEBUCK: And the Highway Traffic Act?

The WITNESS: Yes, if they are convicted.

The PRESIDING CHAIRMAN: And speeding charges?

The WITNESS: No.

Hon. Mr. ROEBUCK: And illegal parking?

The WITNESS: This refers to convictions of all kinds. That means convictions under the Highway Traffic Act of any nature that brings about a conviction in court even although the conviction is not a prison term. A boy who is placed on probation must have been found guilty of whatever he was charged with or he would not have been put on probation, and this is also true of anyone who is placed on a suspended sentence, which means there must have been a conviction.

Mr. WINCH: Would Colonel Basher be so kind as to make available to the committee at some time in the future the figures showing the instances of homicide from the beginning of the period he mentioned up to 1952 or the latest date for which they are available?

The PRESIDING CHAIRMAN: Is that figure available, Colonel Basher?

The WITNESS: Yes.

The PRESIDING CHAIRMAN: Could you get it and submit to to the committee?

The WITNESS: Yes.

The PRESIDING CHAIRMAN: We will remind you of it.

By Mr. Winch:

Q. There is one further question, Mr. Chairman. Earlier in his evidence Colonel Basher made the statement that in his opinion homicides would be far more numerous if there was no death penalty. I would like to know, Colonel Basher, to your knowledge, does this in any way coincide with the findings of the 36 other countries and States that have no capital punishment?—A. Sir, may I answer your question in this way—and I say this with all deference—I came down here to give you my opinion, and my opinion is not based on figures, as I have mentioned in my testimony here, because I have not had time to prepare any figures. I am just giving you my own opinion after having been connected with the administration of penal institutions for a fairly long period.

Hon. Mrs. HODGES: May we ask how long?

The WITNESS: Well, 34 years.

Hon. Mrs. HODGES: Yes, thank you.

The PRESIDING CHAIRMAN: Then you have not made a study of those countries where they do not have capital punishment?

The WITNESS: Yes, I have made a study but not to the point where I could answer your question.

The PRESIDING CHAIRMAN: Mr. Thatcher?

By Mr. Thatcher:

Q. Mr. Chairman, Colonel Basher a few moments ago indicated that a man who was given corporal punishment is not hurt in any way. I must confess I am one who has always thought flogging was rather brutal and serious and if it is not I would like to be convinced. I am quite sure no honourable member of this committee is going to want to watch a demonstration of flogging, but I think there might be some merit in our seeing some movies of three or four actual floggings, and I think we should face up to it, although it may sound rather harsh. I would like Colonel Basher to tell the committee whether—if the steering committee can be sold on this—he would be willing to make such movies available.—A. I am afraid, sir, that I have no authority to make such a commitment.

The PRESIDING CHAIRMAN: I should think we would have to consult the National Film Board.

Mr. THATCHER: I do not think it is quite as funny as it might sound, Mr. Chairman.

The PRESIDING CHAIRMAN: I did not intend to be funny.

Mr. THATCHER: Anyway, I am going to make that request to the steering committee and I make it now.

The PRESIDING CHAIRMAN: It is quite reasonable, I suggest.

By Mr. Thatcher:

Q. I wonder if Colonel Basher could put some figures on the record showing how often corporal punishment was used in the Ontario institutions, let us say, last year and the year before?—A. I cannot tell you right now.

Q. I think you mentioned that while you were superintendent at the Guelph institution you found it necessary to have several young men spanked. —A. From time to time, yes. I was there six years.

Q. And several soldiers a short time ago came to you?—A. No, just two.

Q. And they said to you that they thought they should have had it before? —A. No, sir. Pardon my interrupting, but I do not want you to get off the beam on this. I said that on one occasion I was at a railway terminal and I saw two smart looking soldiers. Having been a soldier myself at one time I was naturally attracted by their appearance and by the way they conducted themselves. I was very impressed, so much so that I watched them for several minutes. I was surprised when they both walked over to me. They had recognized me although I had not recognized them. They came over and spoke to me in a very pleasant manner. One of them had just come back from Korea. They chatted. I think they said they were in Guelph in 1946. One of those fellows had been strapped. I mentioned that in order to bring out the fact that that fellow bore no malice at all. He did not have to come over and speak to me.

There have been cases when I have been present when people have been strapped and they expressed their thanks and said to me immediately after being spanked: "It is a pity that they did not have it before, because they were quite sure it would do them good."

Hon. Mr. ROEBUCK: And they did not need another strapping?

The WITNESS: They did not need another.

Mr. THATCHER: To pursue my question—I do not want you to think for a moment that I am questioning your evidence—but I would just like to see one of those chaps who had been spanked brought before this committee so that he could give us his reaction. I rather doubt if his reaction would be just the same as you have put it, or as you have expressed it.

The PRESIDING CHAIRMAN: Now, now. I think in fairness to the witness we should remember that he has come here and has been very helpful.

By Mr. Thatcher:

Q. I did not mean to accuse anybody, and if it is thought that I have done so, then I apologize. But would the institutions over which you are the deputy minister, make certain names available to us, either privately or publicly so that we could perhaps contact them and obtain their evidence in writing if they did not wish to appear, and so that we could obtain their reactions? Would you take that question under advisement?—A. I certainly will, and I can say to you that we certainly could give you names aplenty, but whether it is fair is another question.

Q. I would particularly like to get the names of those young soldiers. Would you mind taking it under advisement?—A. Well, I should think it certainly would not be difficult. I can assure you that I could have gone on and on with other incidents, but I did not want to bore the committee.

Q. If the young men themselves should tell the committee that they did not have any feeling of bitterness, then I think we could take it as being pretty true. But when the head of the institution says it, we do not know whether or not it is true.—A. I am sorry that you feel that way.

Hon. MRS. HODGES: I think we should accept Colonel Basher's evidence just as quickly as we would accept the evidence of two people whose behaviour was such that they required spanking.

The PRESIDING CHAIRMAN: May I remind the members of the committee that we should not argue or give our own opinions, but merely ask questions.

Mr. WINCH: It would be nice for the committee to have both sides.

The PRESIDING CHAIRMAN: Is that a question?

Mr. WINCH: Mr. Chairman, having worked among boys for 20 years, I certainly intend to give evidence.

Mrs. SHIPLEY: Mr. Chairman, I think both of these gentlemen are out of order. If this committee wants to have such evidence, it is up to us to decide to have them.

The PRESIDING CHAIRMAN: I think you are right. I have been very lenient and purposely so, but I think we have now come to the end.

Mr. THATCHER: I was only making a suggestion, Mr. Chairman.

The PRESIDING CHAIRMAN: You can suggest it to the subcommittee.

Mr. THATCHER: Might I go on now?

The PRESIDING CHAIRMAN: If you have another question, yes.

Mr. SHAW: Is it not a fact that this committee is going to explore every possible avenue and to get both sides of this question?

The PRESIDING CHAIRMAN: Yes.

Mr. SHAW: Then so far as we possibly can, I believe we should not argue with the witness. I think that we should receive his evidence and then weigh it for ourselves.

Mr. THATCHER: I agree with you, and I am sorry if it appears that I am arguing. Now, may I ask Colonel Basher if he, in his official capacity, has ever witnessed a hanging?

The WITNESS: Yes, sir.

By Mr. Thatcher:

Q. May I ask if you got the feeling as you watched it that it was rather brutal?—A. I did not watch it. I was there, but I was very busy. To say that you watch these things I do not think is a good description. You are going around with your eyes open; but if a person is responsible for certain things, to see that certain things are carried out, you do not stand there and watch.

Q. No.—A. I would think that the spiritual adviser or the sheriff would probably see more than I would have seen in my capacity, although, as I say, I was busy. In fact, I purposely busied myself rather than to actually stand there and gaze.

Q. Would it be a fair question—and if it is not, please do not answer—but would it be a fair question to ask if one of the reasons you would like the method changed is because you have been present at a hanging upon several occasions?—A. No, I cannot say that at all because, as I told you in my evidence, I have never, either officially or otherwise, known of any mismanagement or incident in connection with an execution which would lead me to believe that there should be some change. I am merely suggesting the possibility of change by reason of the fact that we are living in 1953 or 1954 now, and if there are better methods, then I think we should advance with the times. That is all.

The PRESIDING CHAIRMAN: What other methods would you suggest?

The WITNESS: I do not have any suggestions.

By Mr. Thatcher:

Q. You mentioned that prisoners are given a sedative?—A. It is made available.

Q. What effect does the sedative have?—A. Just the same effect as it would have on a sick man who needed a sedative and he took one. It would sort of steady his nerves.

Q. It does not render the prisoner insensible in any way?—A. No.

Mr. CAMERON (*High Park*): Mr. Chairman, I think in fairness to the question he asked, might we not ask at what period of time prior to the execution taking place is the sedative administered?

The WITNESS: In sufficient time to allow it to take effect.

By Mr. Thatcher:

Q. Do you have an official hang man in Ontario?—A. No.

Q. Where do you get your executioners from?—A. It is a peculiar sort of set-up. We have nothing to do with it. It is a matter for the sheriff of the municipality concerned. It is his responsibility. All executions are the responsibility of the sheriff.

Q. What steps do you take to make sure that you have a man who knows his job?—A. We do not take any steps. The sheriff is entirely responsible and you would have to ask him that question. I do not know.

Q. How in Ontario do you pay an executioner?—A. That, again, comes under the sheriffs, but I can say this, that my understanding is that the man has a retainer from the federal government and that he is paid by the municipality through the sheriff of that municipality for individual executions, as they occur.

Mr. THATCHER: That is all, Mr. Chairman.

By Mr. Mitchell (London):

Q. Colonel Basher, we are considering possible alternatives to capital punishment and one of those obviously is life imprisonment. Can you tell us from your experience what is the average term of a sentence of life imprisonment?—A. Well, sir, of course, the first answer I will give to that, without trying to be facetious at all, is that it depends on the man's age at the time he is sentenced, but usually a life term is anything up to 20 years. It may be reduced, and I have seen people who have been charged with murder, but where the charge has been reduced from murder to manslaughter, to be out in 12 years.

Q. Now, having to do with corporal punishment, when it is administered in your provincial institutions can it be carried out except with the approval of your department?—A. Now, just what do you mean by that?

Q. Is a report made to your department before it is administered?—A. No, sir.

Q. In other words, it is carried out on the order purely and simply of the jail governor?—A. Yes, in the case of a jail award he consults with the sheriff. I might clarify that by saying that it is an old custom and an old law, and whether it is going to be changed now or not remains to be seen, but the Select Committee on Reform Institutions which recently tabled its report and recommendations have recommended that the sheriffs no longer have any control over the jails. At the present time they are responsible to us for the good management of the county jail, and the corporal punishment carried out in a county jail is done by the governor. When I say "by the governor", I mean that it is his decision, with the approval of the sheriff and, of course, I should add, of the medical officer.

Q. My next question is this: You referred to the fact that up until comparatively recently, when corporal punishment was directed by a court, the court also directed at what time it was to be given?—A. Yes.

Q. But that has now been changed?—A. I will not say it has been changed, but shall we say it has become more of a custom not to say when.

Q. As a result of the change of custom, when is it usually administered?—A. It is usually administered soon after he arrives, instead of prolonging it and probably having several months elapse between.

Q. Yesterday Warden Allan mentioned the possibility of the use of the birch rod for young offenders who have had their chance by way of probation, and prior to sentencing them to terms of imprisonment. Would you care to comment on that?—A. Well, what is a birch rod?

Q. He described it as being the old-fashioned birch rod which I knew as a cane.—A. That is not the birch rod that is referred to in the old days in England. The birch rod was sort of a group of birch twigs, and that was used. But to answer your question I would say this, it is my opinion that our institutions would not be as full as they are if the sentences were reduced and an offender got a spanking instead. Does that answer your question?

Mr. MITCHELL (*London*): That is all, Mr. Chairman.

By Mr. Valois:

Q. I would like you to refer to question 5 in the questionnaire, about hanging. I see that the last paragraph relates to statistical information as to what would be the cause of death in hanging.—A. I referred to that, sir, and I said that the information on that is being sought at the present time. It will have to go all over the province. We will have to get that from the medical officers, some of whom are no longer in the service, and it is questionable in my mind whether the results will give anything more than that the man came by his death through hanging.

Q. That is where I was trying to lead you, to ascertain whether hanging is the most humane way of execution. Don't you think it might be a good suggestion if there would have to be a post-mortem made on the person immediately after hanging so as to try to determine the cause of death?—A. Yes.

Q. There is one other thing I would like to ask you. Whenever a convict escapes and he is brought back before a court on that charge, is there any other punishment given?—A. Do you mean, does he get the strap?

Q. Above the sentence of the court, if he is sentenced by the court, is there any disciplinary measure taken by the institution?—A. No, you cannot deal with a man twice for the same offence.

Q. Now, coming back to this question of whether it is a deterrent or not, what would you say—if you think that is an illustration—when we see hardened criminals, for instance, making a holdup and using only a toy pistol? What would you say is the motive of these criminals who merely carry a toy pistol?—A. They are trying to gain their ends without—to use a common expression—"sticking their necks out."

Mr. WINCH: Or having them stretched.

Mr. VALOIS: That is all.

By the Presiding Chairman:

Q. There is one question, Colonel. The witness yesterday referred to the last as being cords about 18 inches long, and nine in number, attached?—A. That is right.

Q. —attached to a wooden handle. Why is it that there are always nine? Why can't they have eight?—A. I suppose it is a relic of the old "cat-o-nine-tails", which was made up of a long-handled affair and to which was attached nine thongs. When I say "thongs", I mean strips of leather about one-quarter of an inch square, and those were knotted about every four inches. Those

were the things that were used in the old windjammer days, to which I referred just now when I referred to the "delightful" moving pictures that we are subjected to sometimes.

Q. I do not think that you mean delightful?—A. No. I am being a little facetious which I should not be, I know, before this committee. I do not want to mention the name of the movie again or someone might think I have an interest in its publicity, but there are others, and they are very very misleading and it is unfortunate indeed.

Q. It could have an effect if it were made of eight cords, or eleven cords? —A. I do not suppose it make any difference.

The PRESIDING CHAIRMAN: I have several other questions here, but, Br. Blair, have you any questions? I am sorry, I think Mr. Dupuis has a question.

By Mr. Dupuis:

Q. I wonder if Colonel Basher is prepared and willing to answer the following question which I have asked of other witnesses who have appeared before the committee. Would you be in favour of amending the Code, regarding a man's sentence after being found guilty of murder, in this way: that everyone who commits murder is guilty of an indictable offence, and (*a*) if in the opinion of the judge presiding at the trial such person has been found guilty on direct evidence, shall be sentenced to death; and (*b*) if in the opinion of the judge presiding at the trial such person has been found guilty on circumstantial proof—evidence, of course—shall be sentenced to imprisonment for life?—A. Well, sir, I think that a man is either found guilty of murder or he is not. And, as I said in my statement here, in my opinion if a man is found guilty of murder with all that the word implies, that the sentence of death should be mandatory. I further stated—and I would like to repeat it—that the Code in its present form, from which you are quoting, provides that a man can be found not guilty of murder but guilty of manslaughter, and the fact that that is in the Code, I think, gives the protection along the line which you are thinking.

Mr. DUPUIS: Well, I cannot put any argument further. That is the only question I have.

By Mr. Blair:

Q. Colonel Basher, would you care to comment on what you might think would be the effect of commutations of the death penalty? You have stressed the desirability of having a mandatory death sentence. To what extent do you think the same effect might be achieved as we have now if there were discretion in the awarding of the death sentence in view of the fact that not infrequently the death sentence is commuted?—A. Well, of course, as the thing stands at the present time, anyone who is found guilty of murder and sentenced to be executed has the right to appeal and, do you not get the same results from that course of action as the course of action which you—I will not say suggested—put up for comment? If a man appeals his sentence and is heard by the Supreme Court of Canada, certainly during the course of that hearing the same results could be obtained, or they can order a new trial.

Mr. WINCH: Is there not a difference there? As I understand it that appeal can only be taken on a matter of law and not on a matter of fact.

Mr. CAMERON (*High Park*): To the Supreme Court of Canada.

The PRESIDING CHAIRMAN: We cannot get this all down. I think the answer was, it would be only to the Supreme Court of Canada on law and fact.

By Mr. Blair:

Q. Colonel Basher, could you tell us what the practice is in your institution with regard to the infliction of spanking and/or corporal punishment on young offenders, if not juvenile offenders? At what age do you start?—A. Juveniles are not spanked. In our institution and juvenile institutions spanking is not given.

Hon. Mrs. HODGES: To what age?

The WITNESS: A juvenile is under 16.

The PRESIDING CHAIRMAN: Do you think that females should be spanked.

Hon. Mrs. HODGES: Yes, if they need it.

The PRESIDING CHAIRMAN: The answer is "yes".

The WITNESS: No, Mr. Chairman, I did not answer that question.

By Mr. Blair:

Q. In the administration of your prison institutions there is no line drawn as to a man's age for the infliction of corporal punishment beyond the age specified for juveniles?—A. According to law, as you know better than I, a person who is or appears to be under the age of 16 may be tried and the charge disposed of by the juvenile court, but where his age is 16 years or over he must appear in adult court, and having once appeared in adult court, he is regarded as an adult and is subject to corporal punishment if it is necessary.

By Mr. Cameron (High Park):

Q. From the time the actual machinery is commenced to execute a prisoner until the trap is sprung how much time would elapse as a general rule? You have had considerable experience I take it as the governor of the Toronto jail in executions?—A. You mean the time—

Q. The appointed hour has arrived and the prisoner is in his cell and the wardens take over to conduct him from his cell to the place of execution.—A. I know what you mean. It is a long time ago, and I would hate to state facts under those circumstances, but if my memory serves me correctly, it is a matter of seconds only.

The PRESIDING CHAIRMAN: It is now six o'clock. Ladies and gentlemen, please do not leave. There is some business we have to look after. Before proceeding with the business, Colonel Basher, I wish on behalf of the committee to extend our appreciation for your attendance here today and the cooperation which you have extended to us, and the evidence which you have presented has been very helpful. We thank you very much.

The next meeting will be on Tuesday next, March 30, at eleven a.m. when the Canadian Council of Churches, and five ladies of the Women's Missionary Society of the United Church of Canada will appear on the question of lotteries.

There is another procedural matter, moved by Mrs. Shipley, seconded by Mr. Cameron, that the procedure in respect of replies from the provincial attorneys general, providing the information requested in the questionnaire on capital, and corporal punishment and lotteries, be as follows:

1. Distribution shall not be made until all replies have been received;
2. All replies to be analyzed by Counsel to the Committee who shall prepare a consolidation to be printed, after approval by the subcommittee, as an appendix to the printed Minutes of Proceedings and Evidence for the day on which it is presented to the Committee;
3. Consideration by the Committee of the consolidated Questionnaire to be deferred until such time as it is available as an appendix to the printed Minutes of Proceedings and Evidence.

Is there any comment? All in favour?

Mr. SHAW: Is it made retroactive, because we have already had answers today?

The PRESIDING CHAIRMAN: We have not had any presented to us. The answers today were oral.

Mr. BOISVERT: Have you had any answers from the attorney general of the province of Quebec?

The PRESIDING CHAIRMAN: Not yet. I think we have only had one so far.

Is that motion agreed to?

All in favour?

Carried.

Mr. LUSBY: There was a question asked about the proficiency of these hangmen. That was a question I asked and we have not any information about it yet. I imagine that the Department of Justice should give it.

The PRESIDING CHAIRMAN: We will look into it.

Mr. LUSBY: I would like to get some information on that.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden
and
Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 7

TUESDAY, MARCH 30, 1954
WEDNESDAY, MARCH 31, 1954

WITNESSES:

Dr. Dorothy E. Long, Dominion Board Secretary of Christian Citizenship, and Mrs. Roland Garrett, Past President of Ottawa Presbyterial, both of The Woman's Missionary Society of The United Church of Canada; The Reverend Fred N. Poulton, Secretary, and The Reverend Canon W. W. Judd, General Secretary of Department of Christian Social Service of The Church of England in Canada, both of The Christian Social Council of Canada, Department of Social Relations of The Canadian Council of Churches; and Mr. William B. Common, Q.C., Director of Public Prosecutions, Ontario Attorney-General's Department.

Appendix: Brief opposed to Lotteries of The Church of England in Canada.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

For the Senate (10)

Hon. Walter M. Aseltine
Hon. Elie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon. Salter A. Hayden (*Joint Chairman*)
Hon. Nancy Hodges
Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Miss Sybil Bennett
Mr. Maurice Boisvert
Mr. J. E. Brown
Mr. Don. F. Brown (*Joint Chairman*)
Mr. A. J. P. Cameron
Mr. Hector Dupuis
Mr. F. T. Fairey
Mr. E. D. Fulton
Hon. Stuart S. Garson
Mr. A. R. Lusby
Mr. R. W. Mitchell
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, March 30, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, the Honourable Senator Hayden, presided.

Present:

The Senate: The Honourable Senators: Aseltine, Fergusson, Hayden, Hodges, and Veniot.—(5)

The House of Commons: Messrs, Boisvert, Brown (*Essex West*), Cameron (*High Park*), Fairey, Garson, Lusby, Shaw, Shipley (Mrs.), Thatcher, Valois, and Winch.—(11)

In attendance:

Representing The Woman's Missionary Society of the United Church of Canada:

Mrs. Dorothy E. Long, Ph.D., Dominion Board Secretary of Christian Citizenship;

Mrs. Roland Garrett, Past President, Ottawa Presbyterial;

Mrs. E. G. Holtby, First Vice-President, Montreal and Ottawa Conference Branch;

Mrs. Gordon Law, Corresponding Secretary, Montreal and Ottawa Conference Branch; and

Mrs. A. O. Lloyd, First Vice-President, Ottawa Presbyterial.

Representing The Christian Social Council of Canada, Department of Social Relations of The Canadian Council of Churches:

The Reverend Fred. N. Poulton, Secretary; The Reverend Canon W. W. Judd, General Secretary, Department of Christian Social Service of The Church of England in Canada; The Reverend H. E. Wintemute, President; The Reverend F. W. L. Brailey, Board of Evangelism and Social Service of The United Church of Canada; and The Reverend Professor Allan L. Farris, Secretary, Board of Evangelism and Social Action of The Presbyterian Church in Canada.

Counsel to the Committee: Mr. D. G. Blair.

In accordance with the procedure respecting briefs adopted by the Committee on March 2, the Presiding Chairman informed the delegates from both organizations that they need only make supplementary statements, following which they would be questioned.

The Presiding Chairman introduced the delegation from The Woman's Missionary Society of the United Church of Canada.

Dr. Long and Mrs. Garrett were called, presented a brief opposing lotteries on behalf of their Society (which was taken as read), made supplementary statements thereto, and were questioned thereon.

On behalf of the Committee, the Presiding Chairman thanked the delegation from the Woman's Missionary Society of The United Church of Canada for its presentation.

The witnesses retired.

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The Presiding Chairman introduced the delegation from The Christian Social Council of Canada, Department of Social Relations of The Canadian Council of Churches.

The Reverend Poulton was called, presented a brief opposing lotteries on behalf of his Council (which was taken as read), made a supplementary statement thereto, and was being questioned thereon.

The Reverend Canon Judd was called, presented a brief opposing lotteries on behalf of the Department of Christian Social Service of The Church of England in Canada (*see Appendix*), and made a supplementary statement thereto.

Questioning of the witnesses was resumed and completed.

On behalf of the Committee, the Presiding Chairman thanked the delegation from The Canadian Council of Churches for its presentations.

The witnesses retired.

At 1.00 p.m., the Committee adjourned to meet again at 4.00 p.m., Wednesday, March 31, 1954.

WEDNESDAY, March 31, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Fergusson, Hayden, Hodges, McDonald, Roebuck, and Veniot.—(7)

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron (*High Park*), Dupuis, Shaw, Shipley (Mrs.), Valois, and Winch.—(8)

In attendance: Mr. William B. Common, Q.C., Director of Public Prosecutions, Ontario Attorney-General's Department; Mr. D. G. Blair, Counsel to the Committee.

Mr. Common was recalled, made his presentation on the question of Lotteries and was questioned thereon.

The witness also made a supplementary statement relating to the evidence given by Mr. Arthur Maloney, Q.C., on March 16, 1954, respecting the administration of criminal justice in Canada.

On behalf of the Committee, the Presiding Chairman thanked the witness for his presentations.

The witness retired.

At 5.40 p.m., the Committee adjourned to meet again at 11.00 a.m., Tuesday, April 6, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

TUESDAY March 30, 1954,
11.00 A.M.

The PRESIDING CHAIRMAN: (Hon. Senator Hayden), Ladies and gentlemen, we have a quorum. We have some delegates here this morning who wish to present briefs. There is the delegation from the Woman's Missionary Society, United Church of Canada, and I suggest, subject to your wishes, that we hear them first. I understand Dr. Long, and Mrs. Garrett are going to present the brief on behalf of their organization. I might tell you also that there are several other representatives in the delegation: Mrs. Holtby, president, and Mrs. Gordon Law of the Ottawa Branch, and Mrs. Lloyd, first vice president of the Ottawa Presbyterial. I would ask Dr. Long and Mrs. Garrett if they would come up here.

Dr. Dorothy E. Long, Dominion Board Secretary of Christian Citizenship, of the Woman's Missionary Society of The United Church of Canada, called:

BRIEF ON LOTTERIES

The Woman's Missionary Society of the United Church of Canada
March, 1954

Preamble

Whereas a joint committee of both houses of parliament has been appointed to inquire into and report upon the question whether the criminal law of Canada relative to lotteries should be amended in any respect; and

Whereas it is the long-standing and considered view of the Woman's Missionary Society of The United Church of Canada that the law relative to lotteries should not be relaxed but rather should be made more restrictive;

The Dominion Board of the Woman's Missionary Society of The United Church of Canada at its regular Executive meeting on January 28, 1954, authorized the preparation of a Brief setting forth in summary form its position on the legalization of lotteries.

The Woman's Missionary Society Represents a Cross-Section of the Canadian People

Citizens in a free country like Canada are very fortunate that they may express their views without restraint to the committees of parliament. The Woman's Missionary Society appreciates the opportunity to voice its concern lest pressure be brought to bear upon Canadian law-makers to relax the high standard that has been set for this country in matters that affect both the economic and moral life of the people. The Dominion Board of the Woman's Missionary Society feels a sense of responsibility to its own extensive constituency to make plain its position while expressing its gratitude for being accorded a hearing. Some associations of Canadian citizens know life only in Canada; some have knowledge of world affairs; the Woman's Missionary Society knows life both at home and abroad for it employs 112 missionaries

overseas and 151 in Canada. Moreover, through its wide membership of 90,415 adult members in 3,264 local Auxiliaries, and 170,000 members in affiliated adult and youth groups, it has a unique opportunity to contact people in every type of community and home in every part of Canada.

Further, this strong organization reaches into the small hamlet as well as the large city. The last annual report shows how varied and extended is the membership. It includes the tiny Auxiliary like Beaverlodge in the Peace River with a membership of eight, and large Auxiliaries in the cities of eastern and western Canada with membership ranging from 100 to over 400. Its nine-point purpose is summed up in the final clause of the "Aim and Object" set forth in the attached Membership Card: "To build up a fellowship committed to the doing of God's will and to the extension of God's Kingdom in the home and the community, in Canada and throughout the world."

This "Aim and Object" contains the reasons for our concern about the gambling issue. As women of the Church we seek to be aware of those issues that further or hinder the cause of Christianity; we have a sense of responsibility for the welfare of the youth of Canada; we appreciate the vital worth of sound home and community life in the country's economy; we have practised for more than 70 years the "stewardship of possessions" to raise funds in order that we might bring "healing and education to those in need" and the Gospel of Jesus Christ to our world. Evidence of our Society's sincerity and concern for life at home and abroad is its million dollar budget raised through the offerings of its members.

The Woman's Missionary Society Policy Regarding Gambling

Our policy has been consistent over the years. Taking the past decade, we find the Dominion Board called upon its members in May, 1945 "to refrain from any form of gambling and lottery no matter how worthy may be the objective" (Annual Report, 1944-45, pg. 297); in 1951 we put our Society on record as "being opposed to gambling in all forms" and urged our members "to take no part in games of chance" and not to lend their names as patrons to organizations which carried on "gambling in any form." The present action of the Dominion Board of the Woman's Missionary Society is in accord with a Resolution passed at the last annual meeting, May, 1953:

"Whereas we believe that to legalize gambling to any degree is to encourage it with its attendant evils; and

"Whereas 'lotteries are bad economics'; and

"Whereas 'anything that interferes with the full development of human personality or damage it, is a concern of the Church';

"Resolved: That the Federal Government be petitioned to reduce drastically all legalized gambling projects such as hospital sweepstakes, bingo games, slot machines, etc., with full enforcement of the law, and that our members be urged to accept personal responsibility in the matter of example."

This action placed our organization in support of the policy adopted by the Canadian Council of Churches and in accord with the Resolutions passed by the United Church General Councils in 1940 and 1944, but the action of our Board was taken independently.

Why we oppose legalized gambling

Why are we opposed to legalized gambling? The answers are many, but may be summarized under three main heads: (1) concern for wholesome charitable enterprises; (2) concern for wholesome family life; (3) concern for sound development of human personality. On all three counts we believe gambling in its usual large-scale forms to be especially pernicious and damaging to the life of our nation.

You will notice that the Woman's Missionary Society has not favoured even the permissive clauses in Sec. 236 of the Criminal Code (236 6b), and this not because of any self-righteous attitude but for two valid reasons: we believe in sound consistent financing of charitable enterprises, and we do not believe in the principle "the end justifies the means".

Lotteries and financing of charities

Our experience in the field of charity financing is long and consistent. We shall not take your valuable time to discuss it in detail, but simply state that from its beginning our Society has adopted a policy for fund raising and systematic giving for a definite purpose which has proved successful. So today when our members give sacrificially through their Society, they are giving in support of definite activities carried on by their 263 appointees in Canada and overseas.

Charity financing needs consistent and consecrated support if it is to be maintained over a long period of time at a high level of efficiency. To us it does not seem wise to finance our enterprise on the level of gambling—calling upon public support in return for the chance to make money. An appeal to aid others on the grounds of personal amusement and the cupidity of the "donor" defeats its own ends. We believe gambling is wrong for any purpose; we also deem it inexpedient as a means of raising charitable funds. To those who claim that raffles, lotteries, and other chance schemes are needed for charity we would say that gambling is too expensive a price to pay in the long run. The net returns are low for charity. The classic example is perhaps the Irish Hospital Sweepstakes with its 12½ per cent returns for actual hospital work. We can speak from the experience of many years, with a far-flung enterprise in Africa, India, Trinidad, Japan, Korea, China and Canada. You can raise a million dollar budget consistently by appeals to the love of adventure and shared service in a definite program of Christian witness.

Gambling as an economic hazard

We do not believe that the "end justifies the means". We can agree that gambling as amusement has pleasurable excitement for many people, and in many individual forms seems innocent diversion. For many, an annual fling at the races is just recreation; chance and skill go hand-in-hand with many of our children's games; it would be a surprise to many Canadians to discover "whist drives" were illegal under British gambling laws. Admitting all this and at the risk of "sob-sister" reasoning, we still maintain that legalized gambling is a dubious business for the state to approve.

The one form of legalized gambling that the Criminal Code permits (apart from the permissive charity clauses) in Canada is on-track horse race betting. The *Globe and Mail* of Toronto reported on November 10, 1953, that race track fans bet $50,000,916 to create an Ontario record. The pari-mutuel betting on races across Canada in 1953 for 2,916 races on 376 days showed $77,796,588 wagered and prize money totalling $3,915,012.50. The off-track illegal betting could not be computed. It seems generally agreed that to extend legality to lotteries would be to put an additional tax on the people which represents a heavy drain on family finances. Race track gambling already drains off unproductive wealth; extending facilities for gambling seems of dubious social value when many families are hit now by increased unemployment.

As the housekeepers and shoppers of the nation, Canadian women know that family income can only be stretched so far. They know that rent and taxes and other items that seem in the "uncontrollable" column in their family budgets leave all too little for food, clothing, education and recreation, apart

from the desire of the family to "tithe" or otherwise apportion a suitable share of the income for services to God and mankind. What would go into lotteries, if they should be legalized, would constitute a further reduction in funds to meet the family requirements. The total cannot be proved, but there have been rumours of reduced family purchases of bread and milk during race meets in the neighbourhood. We believe in training our children in the stewardship of wealth. It is setting a bad example to youth for adults to suggest the extension of legalized gambling in a form clearly visible to youth (even if hedged about with provisos for their nonparticipation); or for our political leaders to suggest the state should subsidize hospitals and other essential services by lotteries which constitutes a "tax" appealing to the cupidity and selfishness of citizens. It has been found that legalized lotteries for hospital purposes form a tax upon those least able to bear even a small additional burden, offering great gain to a few and nothing to the many. Apart from the moral question of the appeal by the state to the greedy love of chance, there is the further disadvantage of this method of public finance working to the disadvantage of the institutions supposedly benefited. So we have seen opposition to this kind of "public support" from the Canadian Hospital Council, and from the British Hospital Association.

Gambling as a moral issue

If gambling for the many is unrewarding in itself and the money diverted into gambling channels is liable to come from the necessities of the family, it might be argued that this is a matter of regret for the people concerned directly, but not of great moment for the whole community. This was the attitude of the British Royal Commission which held the view that while there were "many amusements which, if they took the place of gambling, would leave the gambler both a happier and better man" and felt that "no sensible man could but wish that gambling played a less prominent part in the life of this country than it does", yet concluded that it would only aim at the "imposition of such restrictions as are desirable and practical to discourage or prevent excess". Against this *laissez faire* conclusion could be set its own agreement with part of the British Churches' contention that gambling *per se* was pernicious! "We would agree that many of those who gamble are attracted by the possibility of acquiring easy money, and that there will be deterioration in the character of the man whose addiction to gambling has distorted his proper sense of values."

The annual turnover in all forms of gambling the British Commission estimated at 650 million pounds, or 1·8 billion dollars, which represented ½ of 1 per cent of national income or 1 per cent of national resources. In the United States the annual turnover was estimated at about $20,000,000,000 which the Kefauver Committee did not shrug off as comparatively harmless, in its Report on Organized Crime, nor was it lightly dismissed by a recent American writer who claimed that gambling had become a problem of such moment for his nation as to rank with foreign policy and domestic tax questions.

Where does Canada stand in relation to England and the United States? For us is gambling a real cause of individual and national deterioration? If so, we must limit its influence by education, by moral sanction, and by refusing to condone infractions of the laws which try to restrict its power.

We believe that gambling is contrary to Christian ethics; it fosters reliance upon "luck" or "chance" while denying the principles of the Christian stewardship of possessions. It encourages the philosophy of "getting something for nothing", or receiving rewards out of all proportion to the investment of money or effort expended, and appeals at heart not to the spirit of true sportmanship but to the cupidity which hopes to win all for self at the expense of the

other participants. It is not in accord with the teaching of the Bible, for while there are frequent references to the casting of lots, this was only done after fasting and prayer to determine the will of God, save in the notable instance of the soldiers who cast lots for the garments of the Christ. The teaching of the Bible regarding the use of money is another matter—summed up in Paul's charge to the elders at Ephesus, "I have coveted no man's silver, or gold, or apparel".

It is a significant fact that arguments against the legalization of lotteries or of large scale public gambling are being urged by those who do so not as part of a "puritan reaction," but who are moved to concern for the public weal on non-religious grounds, and see gambling as it is developing on the North American scale to be harmful to the best moral and political life of man as well as injurious to his economic strength. While affording some psychological satisfaction to the gambler its repercussions make its social costs exorbitant. In reading the Report of the Kefauver Committee, a Canadian's first reaction might be gratitude that Canada is not the U.S.A., but the second thought might well be, "If gambling profits across the line are the principal source of big-time racketeering and gangsterism, if legalization of gambling does not terminate the predatory activities of criminal gangs and syndicates, if gambling seeks to control political and police functions of the State when once entrenched; if gambling tends to infiltrate legitimate business, let us have none of it in Canada."

Conclusion

All kinds of human activities in one sense are rooted in risk. Gambling is a created risk; its purpose an evil one. It can begin in harmless-seeming sport; it can become on this continent a vicious "racket" using snowballing profits to finance political corruption and social evils. It performs no vital economic function. It can be suppressed, unless public opinion is so apathetic as to be too late for most effective action.

Finally, we agree with the recommendation made to the last General Council of our Church, meeting in Hamilton, 1952, which opposed the legalization of lotteries for charitable and socially-useful purposes on the ground that "such a lottery would be morally indefensible and spiritually degrading to our nation; and that state lotteries are appallingly bad economics, drying up the springs of voluntary charity and offering solutions that cannot be validated."

(Mrs. John) LILLIAN M. McKILLOP,
President.

DOROTHY E. LONG, Ph. D.,
Secretary for Christian Citizenship.

The WITNESS: Mr. Chairman, ladies and gentlemen, in presenting this brief from the Woman's Missionary Society of the United Church of Canada I would like to mention first that we are a national organization and I am a member of the Dominion Board of that organization and as such was asked to be the spokeswoman for it. You will find on the first page of our brief that perhaps we have said too much about ourselves, but we thought that it was important for you to know that when we speak we are not speaking just for a group of people who are the executive of a small body, but we do speak for an organization which does reach into all parts of the country.

We have a membership, as you see near the bottom of the first page of something over 90,000 adult members, and 170,000 members in affiliated adult groups and youth organizations, so that our total strength is about a quarter

of a million. We have several very small organizations like Beaver Lodge up in Peace River which has only eight members, but in the cities and rural areas there is a very large membership, and the influence of the organization extends beyond its own membership.

In our delegation here, Mrs. Garrett is president of what you might call one section the Ottawa Presbyterial Society. We have 106 organizations like hers which draw in a local membership. She is living in Ottawa now, but has lived in Saskatchewan. Mrs. Holtby who is vice-president of one of the larger groupings, the Montreal and Ottawa Conference Branch—there are eleven of them across the country—takes in a territory that extends down to Gaspe in Quebec as well as Eastern Ontario and she has lived also in Alberta. I am mentioning this to show we are speaking as a national group, and I know in questions like lotteries, one considers public opinion as a most important factor in the enforcement of the law. We are prepared to back the law as far as our influence goes.

We have not just come to a sudden decision that we are not in favour of the extension of lottery privileges. It is a long standing policy of our organization to think in terms of raising money for charitable purposes through free-will giving. We quote on page 2 the last resolution which was passed at the last Dominion Board meeting (which has representation from all provinces in Canada), and that is just simply the last of a whole series affirming our desire that money should be raised for charitable purposes through free-will, and concern for the cause, rather than through an element of chance. We have had experience in the financing of charities that goes back some 70 years. So, I think we can speak from experience when we say that the best way to raise money for charitable purposes is from the concern of the membership and of their interest in the causes that are involved.

Our present budget runs something over $1 million, so, if it is not exactly "big business", it is important business, and I think it shows the concern of our membership for the cause of charity when they can raise that sum. For the last three years it has been over $1 million.

We are terribly concerned for people, quite apart from the financing on a charity basis. Our society has community centres, some 60 in Canada. We have supported hospitals: we are gradually getting out of the hospital field as the municipalities become more concerned, we have still an investment of a little over $500,000 in hospitals, mainly on the frontiers of the country. We have schools. We have people who work with children. We are in the field of child education, and have just published a book on it. We are terribly concerned about the influence of community life on children.

And so, our second point is that we believe in wholesome family life. Wholesome development of children does not take place in an atmosphere in which there is an element of chance. I know, when it comes to a public question like this, that the moral issue is not perhaps the paramount concern of lawmakers, although one would hate to think that our government was not concerned with moral issues. But, I know you receive pressure from all sorts of groups, and that our parliament represents people as a whole, so that you must consider all forms of public opinion.

I would like to emphasize that we are concerned, as you are, with the development of human personality, and Mrs. Garrett is going to speak more on that phase of the issue. As we stated in our brief on page 4, many of us are housekeepers. I know from my own experience with two public school children and a husband and a fixed income that there is only so much money in the family budget for all purposes. When you have a question like gambling

that does drain off money from other productive purposes, it does seem to be a matter that is of concern to the community and to family welfare. That is our argument on page 4.

We know that in the Irish sweepstakes (which are very much to the fore with the headlines which have been in the newspapers) the question of concern for charity enters in. We figured that 12½ per cent ultimately goes to the hospitals in that case. My son produced a chart of Irish sweepstakes stamps—I do not know where he got it, but I found it on his bureau, and I notice that the figures given show 11 million pounds raised in 21 sweepstakes for the Irish hospitals. But the prize given was 37 million pounds in that case. No statement is made of the amount that went to the promotion. It does not seem to us too profitable a way of financing good causes, nor of providing for a family, when one in three thousand is liable to be a winner and all the others are the losers. We are concerned too about what is happening on this continent. We know the experience of the British Royal Commission on Betting, Lotteries and Gaming. They did not consider the matter of lotteries from a question of a moral standpoint primarily, but yet their conclusion was that, difficult as the law might be to enforce, it was not in the public interest to extend the gambling facilities. The American experience has been rather sad. You know that as well as I do. There is one feature that I think perhaps concerns us as one perhaps more directly to the general issue. We admit in our brief that some people gamble for just amusement, and some children's games, such as my son plays, have the element of chance as well as the element of skill in them, yet underlying a great many of the things we have seen there seems to be a pressure to make gambling by lotteries common. We know that public opinion and a strict enforcement of the law have to support government legislation. We know that our members of parliament are concerned with public opinion. Gallup polls seem to indicate that there may be public opinion in favour of lotteries. I also saw the results of a Gallup poll that suggested that the parliamentary indemnities should not be raised. I do not know that we can trust Gallup polls too far. I know there is something in the British political theory that you need wise leadership from the legislators, I know that other laws are broken; I know there is some public shoplifting, and some petty thieving going on, but we do not relax the laws about that. I have driven a car, but am not driving it now because there seems to be too many traffic regulations to remember. I know that the laws regarding traffic are broken. One good friend of mine went through a red light and paid her fine. But we need laws for traffic and we need laws to give us direction in this question of gambling. So we would prefer that even the permissive clauses were removed from the Criminal Code. If you want gambling, make it straight gambling. We believe that life would be on a more wholesome and happy level for our children and for the adults if there was no gambling. I think that covers my submission.

Mrs. ROLLAND GARRETT: Mr. Chairman, and members of the parliamentary committee, Dr. Long has asked me to speak entirely in regard to family matters. Now, you know it is a well known fact that women use grocery money to buy lottery tickets and this is not in the best interest of the family. This money could be used to better advantage in buying shoes, clothing and necessities.

Children should not be led to believe in luck or chance. Gambling is an enemy of personal integrity, of family welfare and hurts the character of the individual, it pulls down our citizenship. Lotteries create the element of uncertainty in life and nothing is so injurious to children as the feeling of insecurity and the idea of one's gain being dependent upon the loss of others and the winner becoming the possessor of property that has not been

earned. The idea of something for nothing is not a wholesome way to raise a family. Unfortunately it is sometimes practised by the families who can least afford it.

It is natural that young folk want to take chances, but they can find outlets for their venturesome spirit in sports, and in many other legitimate channels without the temptation of lotteries.

It is generally admitted that the atmosphere created by the spirit of luck leads to extravagance, a lessening of self-control and a reduction in individual effort to work and save.

Gambling damages personality and the most precious thing we have is human personality.

We have all known some family man, a respected citizen, who has fallen a victim to the disease of gambling and he becomes an embezzler or worse. Yes, this thing destroys good men too often to think that there is anything good about it. Are we going to be a family-builder or a family-wrecker?

I thank you.

The PRESIDING CHAIRMAN: Now, members of the committee, this is the question period before we go on with the next item. Mrs. Shipley?

Mrs. SHIPLEY: I have no questions, Mr. Chairman.

The PRESIDING CHAIRMAN: Mr. Valois?

Mr. VALOIS: I have no questions, Mr. Chairman.

The PRESIDING CHAIRMAN: Senator Aseltine?

Hon. Mr. ASELTINE: I have no questions, Mr. Chairman.

The PRESIDING CHAIRMAN: Senator Fergusson?

Hon. Mrs. FERGUSSON: I have no questions, Mr. Chairman.

The PRESIDING CHAIRMAN: Mr. Winch?

By Mr. Winch:

Q. I have only one question, Mr. Chairman. I noticed on page 2 of the brief that a resolution was passed asking for the removal of the right to hold bingo games and raffles. I presume that takes in all phases of it but I would like to ask you if, in your knowledge, it is a fact that a great many churches across Canada operate bingo games and raffles?—A. I know from my own experience that they do not do so in my own church. Does that answer your question.

Q. Yes.—A. But I know that they do it in some, and I am concerned that perhaps they have reached a point where we have to try to use education and our influence. I was talking with a woman who is not a church worker but who is concerned with community life and she mentioned that where our Society was strong there was no difficulty over raffles or bingo. That was the situation as she had experienced it throughout the country. I may say that we publish a monthly magazine which has a subscription now totalling 70,000 and another magazine for children with a subscription totalling 50,000. There has been no recent article about gambling. We were waiting for a lead from here. But if I had been asked to write an article on it for the monthly magazine, or to write a paper on it, I would have done so. I think it is more than likely that I would be asked to do it. I know that we are quite ready to admit that it is a prevalent thing but we think an extension of the law, to give respectability to something which in itself is not good, will produce evil.

The PRESIDING CHAIRMAN: Now, Senator Hodges.

By Hon. Mrs. Hodges:

Q. I would like to ask Dr. Long a question. I listened with a great deal of interest to what has been said. Would you consider that a raffle of a cake at a church bazaar or at a charitable association was gambling?—A. I imagine that it is. I admit that it is not a major form of gambling and that it does not seem to have too much a public evil in it. But I think when something is bad there should not be a softening up process, and when you read as you do everyday testimony about the extent to which gambling can develop on this continent, you pray that it won't happen here.

Q. Thank you.

The PRESIDING CHAIRMAN: Now, Mr. Thatcher.

By Mr. Thatcher:

Q. I wonder if Dr. Long would tell the committee what changes, if any, she would favour being made in the Criminal Code. You mentioned section 236 on page 3. What exactly do you have in mind?—A. I am not a lawyer. I am a housewife. In speaking for our organization, I may say that this is the first assignment I have had. I have just been on the executive this year, and the very first thing they asked me to do was this brief. Therefore, I have not got a backlog of experience. But I was looking over the resolutions that had been passed at annual meetings (which draw in representatives from all over Canada) and they on the whole would prefer that this permissive clause which enables raffles and small lotteries to take place for charitable purposes be removed.

Q. Even though it be a petty raffle?—A. I imagine that they would, although I have no way of speaking authoritatively on it. The petty thing is apt to grow into the big thing.

Q. Would you be opposed to a clause which permitted this activity to be held in connection with agricultural fairs also?—A. I do not know if I could speak for agriculture. We are concerned primarily with children. I know that the difficulty now is in the fact that the law permits gambling with respect to articles valued at not more than $50.

Q. You would be opposed even if the value was as low as $50?—A. Yes, I think that would be the policy of my organization.

The PRESIDING CHAIRMAN: Now, Mr. Cameron.

Mr. CAMERON: You realized I think when you introduced your brief that parliamentarians do not formulate public thinking. They merely interpret public thinking.

Mr. BROWN (*Essex West*): Or lead it.

By Mr. Cameron:

Q. They may endeavour to lead it at times, but as individuals it is their function to formulate the law on what people are thinking. Does your organization seek to formulate opinion in this way in support of the brief with which, I might say, I agree, against this evil about which you are now talking? —A. You will notice that our membership card contains a clause at the end which concerns us. That is why we attached a copy of it to our brief. The clause reads:

> To build up a fellowship committed to the doing of God's will, and to the extension of God's kingdom in the home and the community, in Canada and throughout the world.

As I have said, we have had a long experience in what we call christian stewardship—as I look back over the records I find a Presbyterian Society which began in 1821 pledged its members to paying weekly dues to finance

missions. At the first organization meeting of the Methodist Organization (which is also in the background of the United Church) they pledged themselves to raise money systematically. Actually, for most of recent years, interest on the money that we receive one year, pays our expenses for the next year. Charity-giving should be straight giving. We have taught that and we have also enjoined upon our members their obligation to raise their money without recourse to raffles.

Q. Which would indicate the view of your organization not only to your members but to the public by and large that so far as lotteries are concerned in any shape, manner or form, you oppose them, and those are the reasons you oppose them, and you are trying to educate public opinion in the matter.—A. We are trying throughout our local organizations, whether they be small ones as in Newfoundland or large ones here.

Q. You realize that there are many organizations and many people in this country who favour lotteries?—A. Yes.

Q. And they favour bingos. You will see that particularly in the summer time in almost any fair sized community. You will find a motor boat or an automobile or something which is being raffled off or tickets sold on it, or even a house, and the reason will be said to be "oh we are going to help with boys' work or girls' work or some charitable purpose." People do not seem to think there is very much wrong in that, and they rather look forward to it and are willing to take a chance.—A. I know what my own son's reaction is. He will say: "I know we cannot afford to get a boat, but let us take a chance on that and we won't have to pay for it.

Q. You think it does appeal to the young?—A. I know that the law cannot change hearts, but it can set a standard.

Q. If you set a standard which you cannot enforce, is it good law? For example, consider a law which says that a person shall not drink. You know it would be perfectly unenforceable and that if any person is going to drink no law is going to stop him.

Mr. BROWN *(Essex West)*: You mean to become intoxicated?

Mr. CAMERON: Yes.

The WITNESS: The result is that the law is broken in many directions. I just moved to Toronto from Montreal. I noticed in the store in which I shopped in Montreal there was a little window out of which the staff could look down and see what was happening. I suppose that shop-lifting was one of the reasons for it and yet we try to enforce a law against thieving and to build up public opinion there. I know your problem and I sympathize with it. It is much like the problem of drinking. Probably most drinkers know where drinking leads people. I am quite well aware of it.

The PRESIDING CHAIRMAN: Now, Mr. Boisvert.

By Mr. Boisvert:

Q. Dr. Long, is your society opposed to race courses?—A. No. Not so far as this brief is concerned I imagine they are opposed to gambling in most forms. They do enjoin their members to refrain from anything that seems to countenance it. I know that is the one legal form in Canada.

Mr. BROWN *(Essex West)*: For the purpose of the record, you mean: Is she opposed to horse-racing, do you not?

Mr. BOISVERT: I mean race courses, race tracks and betting.

The WITNESS: We are opposed to gambling in general and we enjoin all our members not to countenance it.

The PRESIDING CHAIRMAN: Mr. Shaw.

By Mr. Shaw:

Q. Would you say that it would be the opinion of the body for which you speak today to have the Criminal Code so amended as to render lotteries illegal absolutely, which include bingos and a special clause concerning slot machines and so on?—A. Yes, I imagine that would be the case.

Q. In other words, a complete prohibition by law?—A. Yes, I would think so. It would bring it more into accord with the law according to the British Commission's recommendations.

The PRESIDING CHAIRMAN: Mr. Thatcher.

By Mr. Thatcher:

Q. Might I ask one more question: Has your group any representations to make on the subject to capital or corporal punishment?—A. Not officially. Would you like us to canvass our opinion on that?

Q. I find it very strange that a group which is influential as your group is would take it that lotteries are more important than capital or corporal punishment, or did you consider that gambling was the main problem before this committee?

Mr. BROWN *(Essex West)*: I do not think that is a fair question, Mr. Thatcher. I do not think it is fair to say that they consider it to be more important.

The PRESIDING CHAIRMAN: I think the question smacks a little bit of cross-examination. You experience these things in the course of the work you are doing?

The WITNESS: Yes.

Mr. BROWN *(Essex West)*: And they are making their presentation with respect to lotteries.

Mr. THATCHER: I wondered why lotteries was picked out ahead of the other two, and I presumed that they regarded lotteries as more important.

The WITNESS: I imagine it was because it comes into the field of charity financing as well as into the field of personality.

By Mr. Shaw:

Q. It would not be because they have no views on the other matters?—A. Oh no.

Q. If an organization is presenting a brief on lotteries I would go so far as to agree that it might be proper to ask them if they were going to make representations on the other matters before us, but I do not feel they should be cross-examined on something other than as to which they are making representations.

Mr. BOISVERT: They are free to present any suggestions.—A. We stated in our preamble that it was executive action based upon the resolution of the last Dominion Board regarding lotteries, but we did not feel that it would be democratic if we did not have the voice of the whole society re the other matters.

The PRESIDING CHAIRMAN: Our counsel has a few question to ask you.

By Mr. Blair:

Q. You mentioned the question of thieving. Fortunately there are relatively few thieves in a community, but there may be quite a number of people who like to buy lottery tickets. I wonder if you would care to comment on whether there is a difference in principle between the two types of laws, the law against theft and the law which might prohibit lotteries?—A. I can see where I should be a lawyer instead of a housewife.

Q. May I put it another way, Dr. Long: When some of the members of the committee asked you a question and in the course of your presentation, you suggested that, although there were thieves in the community, that did not mean that we should relax the laws against thieving, and you suggested by analogy that because some people liked to buy lottery tickets, on the same reasoning we should not relax the laws against lotteries. Now I ask you to comment on whether or not there may be a difference in principle between the two types of offences?

The PRESIDING CHAIRMAN: If I may interrupt, I do not think that Dr. Long intended to make a very legalistic distinction in raising it. It was just an illustration.

The WITNESS: Yes.

The PRESIDING CHAIRMAN: It may not have been the best illustration, but it was just an illustration. That is the way I took it and I think that is the way it was intended to be taken.

By Mr. Blair:

Q. I do not want to press you unduly, but there is one other question I would like to ask. I gathered from what you said that you have knowledge of a certain prevalence in Canada of lotteries; they seem to be quite numerous. I know you are aware of the social effect of lotteries and I wonder whether you would like to consider what the social effect may be of a law which would appear to be incapable of rigid enforcement? And I wonder whether you would like to say, under the present circumstances, there might be detrimental effects from having a law which cannot be rigidly enforced?—A. I would like to know first of all just how strenuous an effort was being made to enforce the law.

Mr. BROWN *(Essex West)*: Why would it be a law?

The PRESIDING CHAIRMAN: I think the general principle is that law enforcement breaks down if it is not effective and does not have the support of the people. Secondly, it breaks down if in some respects the rewards for violating the law are very great.

Mr. WINCH: Could you not put the question another way? I do not want it to be too academic, but I think I have in mind what you are trying to get at. Do you not think that there is a danger with a prohibition of any form of lottery that it might work the same as prohibition worked in the case of the alcoholic field several years ago? In other words, the idea did not cure the trouble. I am speaking of course of the period of prohibition which I take it is the theme of your brief.

The WITNESS: We would rather have that than a relaxation, if that answers your question. I know your problem and I can see it; but I can also see our problem too. I think this question of enforcement is probably a most difficult one in the legal field. I am quite ready to admit it. And yet I was impressed in reading through the report of the British Commission, with the fact that they were rather lenient in their feelings towards gambling and did not see any moral issue involved, yet they did not favour relaxing it.

Mr. WINCH: Is that the 1949 to 1951 Commission?

The WITNESS: Yes; and it seemed to me as I read it through that they felt that the arguments which were advanced before the earlier commissions still stood. They felt to have a country which is wide open to lotteries, by extending facilities for them would be more harmful than the difficulty of enforcing the law. Actually, though, as far as I was able to see, they tried to enforce the law a little more strenuously in England after 1933, and instead of having some £11 million invested in lottery tickets for the Irish Sweepstakes, it was reduced to £5 million.

Hon. Mrs. HODGES: Don't you think they went in for football pools instead?

The WITNESS: That may be, but I do not know.

The PRESIDING CHAIRMAN: I think the basis on which members of the Royal Commission in England on lotteries proceeded to oppose them was because they could not justify the state going into the business of operating lotteries. Consequently, when you eliminate the state, it then becomes a matter of private sponsorship. And how are you going to draw up a law and say that only hospitals should be permitted and no others? This Commission made a report against any change in the lottery provision. They did recommend certain changes and possibly a little broadening so as to ensure enforcement in relation to betting and such things as that.

The WITNESS: They also felt that the little ones with the limited price were a public nuisance, I gathered.

The PRESIDING CHAIRMAN: But they did not recommend striking them out. It was only a nuisance with respect to the problem of enforcement because you could not have enough police officers to go around checking every little group or game.

By Mr. Blair:

Q. I take it that you agree with the general conclusion of the English Royal Commission's Report that lotteries should not be extended. Am I right in thinking that you disagree with the reasoning of that commission which was based largely upon considerations of expediency?—A. Well, I would say that this is something which I do not know, and I do not know whether it would be a major issue with you, but from the standpoint of a church group, a moral issue would loom up as important as the problem of expediency.

Q. Thank you.

The PRESIDING CHAIRMAN: Are there any other questions? Thank you very much.

The WITNESS: We appreciate the opportunity you have given us to appear here.

The PRESIDING CHAIRMAN: We have with us today certain members of the Christian Social Council of Canada, Department of Social Relations of the Canadian Council of Churches. We have five representatives as follows:

1. The Reverend H. E. Wintemute, President, Christian Social Council of Canada.
2. The Reverend Canon W. W. Judd, General Secretary of the Department of Christian Social Service, Church of England in Canada.
3. The Reverend F. W. L. Brailey, appearing on behalf of the United Church of Canada for the Reverend Doctor J. R. Mutchmor of the Board of Evangelism and Social Service of the United Church of Canada.
4. Professor Allan L. Farris, Secretary of the Board of Evangelism and Social Action, Presbyterian Church in Canada.
5. The Reverend Fred N. Poulton, Secretary, Christian Social Council of Canada.

The Reverend Mr. Poulton is going to make the presentation.

The Reverend Fred N. Poulton, Secretary of the Christian Social Council of Canada, Department of Social Relations of the Canadian Council of Churches, called:

The WITNESS: Mr. Chairman and ladies and gentlemen: Our first word is one of sincere appreciation to the chairman and to the secretary of this committee for the courtesy—and we mean that sincerely—which they have extended to us. Our brief follows:—

To
The Chairmen and Members of the
Special Committee of the Senate
and the House of Commons.

From the motion which was adopted setting up your Committee, we understand that you task is to enquire into and report upon the questions whether the criminal law of Canada relating to (*a*) capital punishment, (*b*) corporal punishment or (*c*) lotteries should be amended in any respect and, if so, in what manner and to what extent. The Committee which appears before you at this time wishes to deal with the third of these three subjects, namely, the question of lotteries.

The Committee presenting this Brief on Lotteries In Canada has been appointed by the Board of Directors of the Christian Social Council of Canada, and it speaks officially on behalf of the churches and religious organizations which are members of that Council. The Christian Social Council of Canada, which serves as the Department of Social Relations of the Canadian Council of Churches, represents churches and religious bodies whose members and adherents comprise an estimated eighty per cent of the Christian population of Canada, other than Roman Catholic. All of these churches and organizations have registered their official opposition to any extension of gambling facilities by amendments to the Criminal Code, and it is the unanimous judgment of the Churches which we represent that the establishment of state lotteries in Canada would be detrimental to the moral, social and economic well-being of the Canadian people.

1. *Present Agitation For Lotteries.*

During the past few years there has been considerable agitation in certain sections of the country for the setting up of provincial and national lotteries under government control. The argument is advanced that foreign lotteries, such as the Irish Sweepstakes, take large sums of money out of Canada every year, and that this money could be used to better advantage here at home. It is also claimed by those who advocate the introduction of state lotteries that government-controlled lotteries present an easy, painless way in which to secure the money needed for public health, education and various worthy causes. In addition, it is suggested that the creation of lotteries under government jurisdiction would canalize the gambling instincts of the people, and thus destroy the menace of the professional gambler with his organized gambling rackets.

It is only fair to say that some of those who argue in favour of the introduction of lotteries are quite sincere in their motives. They propose such schemes because they have been led to believe that charitable causes will profit thereby. However in spite of their sincerity we submit that they are mistaken in the view which they have adopted. At the same time it must be pointed out that there is another group, represented by the gambling interests, which maintains a constant agitation for a relaxation of the present laws against gambling in Canada. These are the people to whom W. H. Stringer, former Commissioner of the Ontario Provincial Police, referred

when he stated that investigations by his anti-gambling squad had revealed the fact that gambling had become big business in this country. The introduction of legalized lotteries would offer to this group a further opportunity of gaining control over gambling and all the vices associated with it.

2. *Past Experiences With Lotteries.*

In dealing with the question of state lotteries, we do well to consider and review the experience of other nations which have carried out experiments in this field. If one would know the truth regarding the history of state lotteries, there is a considerable body of data upon which to base an opinion. Some nations have had national lotteries and sweepstakes. Yet over the years many of these have been abolished, which fact would lead us to conclude that state lotteries have developed evils and dangers of which public opinion could not approve. "Government lotteries have always been found to exert a mischievous influence upon the people," says the Encyclopedia Americana, and history reveals that various attempts at liberalizing the anti-gambling statutes by permitting certain types of government-controlled lotteries have resulted in many abuses and a marked increase in law enforcement problems. Those who think that an extension of legal methods of gambling will prevent an extension of illegal methods and practices would be well advised to read the May, 1950, issue of "The Annals of the American Academy of Political and Social Science", published in Philadelphia, which stresses the fact that state gambling activities soon degenate into vicious corruption and personal exploitation, and that legalization of gambling does nothing to decrease either legal or illegal gambling.

(a) After five years' experiment with a national lottery, pre-war France abandoned this uneconomical method of raising money since, in Premier Daladier's words, it proved "bad for people's morals to let them live in expectation of getting rich by luck instead of by hard work."

(b) In 1931 there was an agitation in Great Britain to revive the lottery as a means of revenue. A Royal Commission was appointed to consider the question, and in 1932 the members of that body brought in a unanimous verdict against state lotteries. Whether in the interest of the state or for the benefit of charitable causes, lotteries for either of these purposes were condemned by the Royal Commission. Another British Royal Commission reported in 1951 that it had come to the conclusion "that there is no important advantage to be gained by the establishment of a national lottery and that there is no reason, in this particular case, to depart from the general principle that it is undesirable for the State to make itself responsible for the provision of gambling facilities."

(c) The experience of the United States of America in the field of legalized lotteries was a sad and costly failure. From early Colonial times until the first quarter of the nineteenth century, gambling by means of the lottery was legal in the United States, and the story of that period does not make pleasant reading. Virgil W. Peterson, operating director of the Chicago Crime Commission, has the following to say concerning the American experiment with legalized lotteries: "Lotteries gave rise to other systems of gambling that were even more vicious and dishonest and the repression of which became more difficult." Mr. Peterson further states that "frauds committed by the operators of legalized lotteries assumed monstrous proportions. The public was being bled to death financially. As usual, the needy and ignorant suffered to the greatest extent. In self protection, the people acted. They not only passed laws making lotteries illegal, they inserted provisions that were designed to prohibit the various state legislatures from ever passing laws in the future that would authorize a lottery."

Though the Louisiana State Lottery Company offered the state over a million and a quarter dollars for the continuation of its charter, and endeavoured to make it respectable by securing, at large salaries, two distinguished ex-generals of the Confederate Army as supervisors, the State of Louisiana refused to continue what had become a public scandal. In 1894 the state adopted a constitutional amendment forbidding all kinds of gambling, in which appeared this bluntly worded statement: "Gambling is a vice, and the General Assembly shall pass laws to suppress it." It is significant that when *Fortune* Magazine made a survey of lottery sentiment in the United States a few years ago it found that the majority of the people in the southwest were opposed to this method of raising money. That was the section of the country in which the scandal of the Louisiana State Lottery Company was still remembered.

On January 16, 1950, in a message to the Legislature at Albany, New York, Governor Thomas E. Dewey said: "The entire history of legalized gambling in this country and abroad shows that it has brought nothing but poverty, crime and corruption, demoralization of moral and ethical standards, and ultimately a lower living standard and misery for all the people." Governor Dewey went on to say that in the early days in most sections of the United States, "gambling and lotteries were open, widespread and legal. Corruption and poverty flourished to such an extent that in state after state the people themselves revolted against gambling and established stringent constitutional provisions against it." According to The Encyclopedia Americana, lotteries "are now prohibited in all the States and Territories of the United States."

It should be borne in mind that the laws against lotteries which prevail generally in the United States were not based, as is frequently stated, on a Puritanical tradition which is now outmoded in the light of present social trends and attitudes. On the contrary, the anti-gambling statutes were based on the well-considered action of citizens in numerous states usually after the professional gamblers who controlled the underworld got completely out of hand. In general, those who were the most ardent advocates of rigid anti-gambling statutes in any locality were the substantial citizens and businessmen of the community. They were not moralists or reformers. They were concerned about the widespread criminal activities of the gambling business that threatened their security and future welfare.

Three years ago, in the United States, a year-long investigation by the Senate Crime Investigating Committee, under the Chairmanship of Senator Estes Kefauver, produced conclusive evidence to support the claim that organized gambling is the enemy of personal integrity, of family welfare, of business honesty and of good government. In its report, the Kefauver Committee stated that it was the considered opinion of its members that "the legalization of gambling would not terminate the widespread predatory activities of criminal gangs and syndicates." The investigation clearly showed that wherever widespread gambling activities are present in any city, lawlessness and official corruption are commonplace. This was found to be true whether the gambling practices were sanctioned by law or were of the illegal variety. Extensive gambling has almost always existed contemporaneously with crime, graft and lawlessness. Legalization of gambling has not been, is not, and never will be a substitute for the proper performance of duty on the part of responsible officials. It can never be a substitute for honest, efficient law enforcement.

In 1953, a Commission of the American Bar Association completed a two-year investigation of gambling in the United States. This group, which included eminent judges and lawyers, reported in the following terms: "The conclusion is inescapable that professional gambling should not under any circumstances

or in any degree be licensed or legalized." The Commission found that state lotteries "quickly degenerate into vicious corruption." The pattern was always the same, reported the Commission: increased gambling, an influx of hoodlums and political corruption.

Any unbiased study of the history of legalized lotteries in the United States of America makes it impossible for the people of Canada to ignore the fact that it was an extremely costly experiment for our good neighbours to the south, and one which we in this country would be wise to avoid.

3. Lotteries in Canada.

In spite of the experience of other nations, there are those among us who persistently urge the amendment of the Criminal Code so as to permit the legalization of lotteries in Canada. It is claimed that a majority of the people of Canada would favour the introduction of lotteries. This is possibly correct, and the reason is obvious. Other than the organized gambling interests, few have really thought beneath the surface and have little idea of the consequences of such a step; many like to be considered as "sporting" and as being "broad" in their views; and most have a vague dream of picking up the ticket which will bring them the worldly hope they have set their hearts upon by one turn of fortune's wheel. In a matter so vital to the future of all the people, serious thought is required if we are not to be swept away by a "snap judgment" or to be governed by so-called "public opinion" polls. Twenty years ago, in 1934, a bill to permit the legalizing of lotteries was introduced in the Canadian House of Commons. Speaking to the bill, the Prime Minister of that day, the Right Honourable Richard B. Bennett, said: "When I am asked to exercise my vote as a member of the House of Commons of Canada to say that we shall legalize that which has brought the misery to the human race that games of chance and lotteries have brought, I propose to exercise my vote against any such thing . . . If I were to sit upon a jury, I would have to find the evidence against lotteries far outweighs any support that can be found either in the past or the present." The leader of the opposition, who at that time was Mr. Mackenzie King, supported the view expressed by the Prime Minister. Said Mr. King: "I find myself in entire agreement with the Right Honourable the Prime Minister. My convictions in the matter are quite as firm, as profound and sincere as his own . . . I hold that there are very strong reasons why those who have to do with the shaping of public opinion should not further or countenance any measure which, by statute, would publicly encourage gambling."

When one of the provincial governments in this country proposed the introduction of legalized lotteries in aid of hospitals, the Canadian Hospital Council, which officially represents all the provincial and other hospital associations in Canada, declared against the proposal. The Council is on record as being opposed to the principle of financing hospitals by the sweepstake method, as follows: "Resolved that the Canadian Hospital Council cannot support the principle of raising funds for the financial support of hospitals by means of sweepstakes."

In the light of the experience of other nations and the wise counsel offered by those who are in a position to know the facts, the Churches which we represent submit that the introduction of legalized lotteries in Canada would be a violation of common sense and propriety, and would give official sanction to one of the shadiest of all rackets.

4. Lotteries Not The Answer.

Further, in considering this question of legalized lotteries, there is a most relevant fact which must not be ignored. Very little of the money which is raised by lotteries and sweepstakes ever gets to charities. For example, the

hospitals in Eire receive less than 19 per cent of the money invested by those who purchase sweepstake tickets. The net percentage is considerably lower if one takes into account the large sums lost on bogus and fraudulent tickets, of which the hospitals get nothing. If the Irish precedent were followed in Canada, the amount available to each of our hospitals would be very little indeed. The 600-odd Canadian hospitals for acute diseases alone require well over one hundred millions of dollars annually to keep going, apart altogether from new construction. To meet the minimum amount of one hundred millions of dollars, the annual sum required from the people of Canada on the basis of the Irish sweepstakes would be $500,000,000. Were the full cost of maintenance to be met, as some have anticipated, the total amount required would be still higher, and the hope of securing it still more absurd.

The magnificent and unqualified generosity of Canadians in support of the hospitals in this country has raised millions of dollars over the past few years. To take but one example, we would remind this Committee of the $16,000,000 which was raised in 1951 for the Toronto General Hospital for capital expenditure. Here was giving untarnished by any suggestion that unless there were prizes and rewards there would be little or no response. There was no rake-off to encourage such giving as is the case in the Irish sweepstake draws where eleven shillings out of every twenty shillings raised must be paid back in prizes to encourage the giver, and where it costs over four shillings in expenses and promoters fees in order to raise the meagre three shillings and ninepence that finally finds its way to the hospitals.

We would also draw to the attention of the members of this Parliamentary Committee the fact that the Irish sweepstakes have had most of the English-speaking world to draw from with very little competition. The money for the Irish sweepstakes has not been raised in Eire; the largest part of it has come from Great Britain, the United States of America and Canada. The question arises as to what would happen if legalized lotteries were ever permitted in Canada. Is it proposed that Canadians become dependent upon other nations for the support of institutions and charitable causes which it should be their duty and privilege to provide and maintain? Are we to believe that the people of this country are naive enough to think that Canadian-sponsored lotteries could compete with the big stakes offered elsewhere? Would there be both federal and provincial lotteries allowed in Canada, and would there be other lotteries, for a variety of good causes, besides those operated by government bodies? Once these proposed lotteries were established in Canada, what guarantee is there that there would not be a gradual widening of the type of beneficiary until finally the worthy objectives would be submerged in the deluge and each be but one of many struggling against extinction? Is it suggested that we finance our hospitals and charitable institutions by struggling to raise five times as much money as we need in order to give away four-fifths of it for promotion and prizes? These are some of the serious questions which must be faced before any move is made to amend the criminal law of Canada as it relates to lotteries. Let us be careful lest in seeking to get around our present problems we find ourselves in much greater difficulties.

5. The Churches' Attitude.

The Churches and religious organizations which we represent are convinced that the establishment of legalized lotteries in Canada would be turning back the clock to evil days. Lotteries and sweepstages have not had a happy history. Their *moral value* has never been championed, and while their evil effects upon character are more subtle and harder to determine than the material results, they are more important in the long run. *Socially* they are a denial of fellowship since their appeal is to the selfish instinct, putting forward

the lure of personal gain through others' loss. They strangle voluntary giving by discouraging people from contributing to a worthy cause unless there is a chance of winning a prize. They substitute a selfish hope of unearned wealth for the generous impulses which so ennoble men when gifts are voluntary. That has been the experience of every state and nation in which lotteries have been tried. Nor can we look for a *stable economic state* to be built on illusive dreams of wealth inspired by credulity and cupidity. In a sound economic structure there can be no place for organized government-sponsored gambling since it is always non-productive and never makes for a just distribution of goods. Hospitals and other worthy institutions would soon be in a serious plight if they had to depend upon such a notoriously unstable source of revenue as lotteries and sweepstakes. This must always be borne in mind for, as the British Royal Commission on Lotteries and Betting has pointed out, "Experience shows that interest in lotteries is essentially ephemeral in character." No government can hope to maintain a just and sound economic order if at the same time it directs the enthusiasm and energy of its citizens toward the irrational and the element of chance, by the introduction of legalized lotteries.

The Churches and religious organizations which make up the Christian Social Council of Canada stand ready to support any positive action which legislative bodies may take in an effort to curb organized gambling and its attendant evils in Canada. We shall continue to develop an educational program which will make known the facts and eventually inspire the action of an aroused majority. But, at the same time, we submit that sound legislative action is also required. Most of us accept the fact that properly enforced legislation relating to health, education and morals is conducive to physical, mental and moral betterment. It follows, therefore, that any threat to exploit a whole community clearly calls for strong legislative action. The Churches of this country ask that the State recognize its duty in this matter, for without courageous leadership our democratic system is bound to fail. It is the duty and responsibility of the State to protect its people from those who seek to exploit them for their own profit.

All of which is respectfully submitted on behalf of the Christian Social Council of Canada, serving as the Department of Social Relations of the Canadian Council of Churches.

H. E. WINTEMUTE,
Chairman.
FRED N. POULTON,
Secretary.

We come to you as you will see from the first page of the brief as official representatives of the churches named on page 2. You have that list in front of you and I shall not insult your intelligence by reading it. These are the churches and these are the organizations which we represent.

The members of the delegation include the Reverend Canon W. W. Judd of the Church of England in Canada; the Reverend H. E. Wintemute, President of the Christian Social Council of Canada and a member of the Baptist Federation of Canada; the Reverend Allan L. Farris, representing the Presbyterian Church in Canada; and the Reverend F. W. L. Brailey representing the United Church of Canada. The five of us represent those religious groups and communions that you see listed.

I would point out that the churches and groups for which we speak, represent 80 per cent of the Christian population of Canada, other than our Roman Catholic friends and neighbours. We naturally could not speak for the Roman Catholic Church since the members of that church are not members of the

Canadian Council of Churches, so we must leave it for our Roman Catholic brethren to speak for themselves on behalf of their own church. But for the rest who belong to other religious groups in Canada, we speak this morning officially on their behalf.

On page 2 you have our suggestions as to the reasons for the present agitation. And then on page 3 we come immediately to what we think are the important facts based upon experience with lotteries. This is not a new question and we are not facing it with our eyes closed. If we care to read history we will find that there is a considerable body of data on which to base an opinion.

At the top of page 4 we refer to the Royal Commission, to which reference has been made, and we would point out that the British Royal Commission in 1951 came to the conclusion that there is no important advantage to be gained by the establishment of a national lottery and that there is no reason, in this particular case, to depart from the general principle that it is undesirable for the state to make itself responsible for the provision of gambling facilities.

Then, in the next few pages we give some facts concerning the experience of our good neighbours to the south. We have been rather detailed here. We are an autonomous nation and we control our own destiny, but what takes place in the great republic to the south of us gives us some concern. We point out at the top of page six that the laws against lotteries which prevail generally in the United States were not based, as is frequently stated, on a puritanical tradition which is now outmoded. On the contrary, the anti-gambling statutes were based on the well-considered action of citizens in numerous states usually after the professional gamblers who controlled the underworld got completely out of hand. The second paragraph on page 6 points out the experience of the United States Senate Crime Investigating Committee, under the chairmanship of Senator Estes Kefauver, and their report stated that it was the opinion of its members that "the legalization of gambling would not terminate the widespread predatory activities of criminal gangs and syndicates." In fact that reverse is true. I would quote here from the pen of a man regarded highly, I believe, by all of us, namely, Mr. Paul S. Deland, who is the managing editor of the Christian Science Monitor. He says:

> The history of gambling in the United States proves that its legalization has invariably increased gambling with all its attendant criminal evils. Of course, legalization means acceptance of a practice, putting an official O.K. or "go ahead" sign on it. While the intention ostensibly is to regulate gambling, nevertheless it opens the door to abuses, as experience has proved in Nevada and every other place where such procedure has been tried. There are those who argue that with legalization such practices can be held in check: but experience shows that thus standards of morality have been lowered and the devices for abuse have been legalized.

On page 7 we refer to a recent statement of a commission of the American Bar Association, and they report:

> The conclusion is inescapable that professional gambling should not under any circumstances or in any degree be licensed or legalized.

The Commission found that state lotteries quickly degenerate into vicious corruption. The pattern was always the same, increased gambling, an influx of hoodlums, and political corruption.

Let me refer to the agitation here in Canada, and we will be perfectly honest and fair with you—if we were not you would know the facts anyway. It is claimed that a majority of the people in Canada would favour the intro-

duction of lotteries. Reference is made to public opinion polls as proof for this claim. This is possibly correct, and the reason is obvious. Other than the organized gambling interests, few have really thought beneath the surface and have little idea of the consequences of such a step; many like to be considered as 'sporting' and as being 'broad' in their views; and most have a vague dream of picking up the ticket which will bring them the worldly hope they have set their heart upon by one turn of fortune's wheel. In a matter so vital to the future of all the people, serious thought is required if we are not to be swept away by a 'snap judgment' or to be governed by so-called 'public opinion' polls. Twenty years ago, in 1934, a bill to permit the legalizing of lotteries was introduced in the Canadian House of Commons. Speaking to the bill, the Prime Minister of that day, the Right Honourable Richard B. Bennett, said: "When I am asked to exercise my vote as a member of the House of Commons of Canada to say that we shall legalize that which has brought the misery to the human race that games of chance and lotteries have brought, I propose to exercise my vote against any such thing . . . If I were to sit upon a jury, I would have to find the evidence against lotteries far outweighs any support that can be found either in the past or the present." The leader of the opposition, who at that time was Mr. Mackenzie King, supported the view expressed by the Prime Minister. Said Mr. King: "I find myself in entire agreement with the Right Honourable the Prime Minister. My convictions in the matter are quite as firm, as profound and sincere as his own . . . I hold that there are very strong reason why those who have to do with the shaping of public opinion should not further or countenance any measure which, by statute, would publicly encourage gambling."

We also refer to the proposal made by a provincial government and the declaration of the Canadian Hospital Council which said they could not support the principle of raising funds for the financing of hospitals by means of sweepstakes.

Come now to page 9. I am going over this hurriedly since you have read this brief, I know. We say that there is a most relevant fact which must not be ignored. Very little of the money which is raised by lotteries and sweepstakes ever gets to charities. For example, the hospitals in Eire receive less than 19 per cent of the money invested by those who purchase sweepstake tickets.

Some of you might say that Mrs. Long mentioned the figure 12½ per cent. The answer is obvious. The figures we are quoting in this brief are the official statistics issued by the Irish Hospitals Trust. This is the amount of money received by that corporation in Ireland. And out of the money they receive, less than 19 per cent reaches the hospitals. But, in addition there are literally thousands of bogus and fraudulent tickets. Let me read again from the annals of the American Academy of Political and Social Science:

> A huge number of chance books for the Irish Sweepstakes, for instance, were found to have been published in Montreal, imitating the genuine books. Sale of these tickets gave the printer of the books the entire profit, rather than merely a commission.

The Irish Hospital Trust Company did not even see the tickets, much less the money. And if you take into account these bogus tickets, then the amount that the hospitals finally receive out of the amounts originally paid out for tickets drops down to around 12½ per cent. We have given the figures of the money received by the Irish Sweepstake Trust, and less than 19 per cent reaches the hospitals in whose name the plea is made for the support of the Irish sweepstake.

In Canada, 600-odd Canadian hospitals for acute diseases alone require well over $100 million annually to keep going, apart altogether from new construction. To meet the minimum amount of $100 million, the annual sum required from the people of Canada, on the basis of the Irish sweepstakes, would be $500 million. Were the full cost of maintenance to be met, as some have anticipated, the total amount required would be still higher, and the hope of securing it still more absurd. And then we point out: the magnificent and unqualified generosity of Canadians in support of the hospitals in this country has raised millions of dollars over the past few years. To take but one example, we would remind this committee of the $16 million which was raised in 1951 for the Toronto General Hospital for capital expenditure. Here was giving untarnished by any suggestion that unless there were prizes and rewards there would be little or no response. There was no rake-off to encourage such giving as is the case in the Irish sweepstake draws where eleven shillings out of every twenty shillings raised must be paid back in prizes to encourage the giver, and where it costs over four shillings in expenses and promoters fees in order to raise the meagre three shillings and ninepence that finally finds its way to the hospitals.

I have not referred to the government tax there. We would also draw to the attention of the members of this parliamentary committee the fact that the Irish sweepstakes have had most of the English speaking world to draw from with very little competition. The money for the Irish sweepstakes has not been raised in Eire; the largest part of it has come from Great Britain, the United States of America and Canada.

The question arises as to what would happen if legalized lotteries were ever permitted in Canada. Is it proposed that Canadians become dependent upon other nations for the support of institutions and charitable causes which it should be their duty and privilege to provide and maintain? Are we to believe that the people of this country are naive enough to think that Canadian-sponsored lotteries could compete with the big stakes offered elsewhere? Would there be both federal and provincial lotteries allowed in Canada, and would there be other lotteries, for a variety of good causes, besides those operated by government bodies? Once these proposed lotteries were established in Canada, what guarantee is there that there would not be a gradual widening of the type of beneficiary until finally the worthy objectives would be submerged in the deluge and each be but one of many struggling against extinction? Is it suggested that we finance our hospitals and charitable institutions by struggling to raise five times as much money as we need in order to give away four-fifths of it for promotion and prizes?

Ladies and gentlemen, on behalf of the churches which I represent we suggest that those are some of the serious questions which must be faced before any move is made to amend the Criminal Law of Canada as it relates to lotteries. Let us be careful lest in seeking to get around our present problems we find ourselves in much greater difficulties. Lotteries and sweepstakes have not had a happy history. Their moral value has never been championed, and while their evil effects upon character are more subtle and harder to determine than the material results, they are more important in the long run. Socially they are a denial of fellowship since their appeal is to the selfiish instinct, putting forward the lure of personal gain through others' loss. They strangle voluntary giving by discouraging people from contributing to a worthy cause unless there is a chance of winning a prize. They substitute a selfish hope of unearned wealth for the generous impulses which so ennoble men when gifts are voluntary. That has been the experience of every state and nation in which lotteries have been tried. Nor can we look for a stable economic state to be built on illusive dreams of wealth inspired by credulity and cupidity.

In a sound economic structure there can be no place for organized government sponsoring gambling since it is always non-productive and never makes for a just distribution of goods. Hospitals and other worthy institutions would soon be in a serious plight if they had to depend upon such a notoriously unstable source of revenue as lotteries and sweepstakes. This must always be borne in mind for, as the British Royal Commission on lotteries and betting has pointed out, "Experience shows that interest in lotteries is essentially ephemeral in character." No government can hope to maintain a just and sound economic order if at the same time it directs the enthusiasm and energy of its citizens toward the irrational and the element of chance, by the introduction of legalized lotteries. We assure the members of this committee that the churches we represent stand ready to support any action to curb organized gambling which this body may propose to parliament. We shall do our best to develop an eductional program which will make known the facts and eventually inspire the action of an aroused majority. But, at the same time, we submit that sound legislative action is also required. Most of us accept the fact that properly enforced legislation relating to health, education and morals is conducive to physical, mental and moral betterment. It follows, therefore, that any threat to exploit a whole community clearly calls for strong legislative action. The churches of this country ask that the state recognize its duty in this matter, for without courageous leadership our democratic system is bound to fail. It is the duty and responsibility of the state to protect its people from those who seek to exploit them for their own profit.

All of which, ladies and gentlemen, is submitted on behalf of our organization. Mr. Chairman, the other members of the delegation and myself are prepared to try to answer any questions that may be asked.

The CHAIRMAN: I wanted to ask Canon Judd a question. We have received a brief from the Church of England on lotteries, and I wonder if there was anything you wanted to add by way of supplement to the brief? (See Appendix)

REVEREND CANON JUDD: Ladies and gentlemen of the committee, I do not want to add anything to this brief which you have in hand, because I have been told that it is going to be printed and will be found in your record. I have described it as a very brief brief. On the first pages it gives you samples of the resolutions of the General Synod of the Church of England in Canada, or its Executive Council, which meets with the Department of Christian Social Service of the Church of England in Canada. May I read you the last one passed in September:

> The council has heard with uneasiness that in the revision of the Criminal Code the sections dealing with gambling are to be subject to re-examination by a special commission and urges that no lessening of the restrictions against gambling practices, including sweepstakes and lotteries, be made by the government or parliament and instructs the Executive Committee to make appropriate and strong representations to the commission, when established, along the lines so frequently set forth by General Synod.

These other resolutions give you the lines set forth by the Church of England in Canada. That is the official opinion of the Church of England representing as far as it can across the country one million six hundred thousand people. The General Synod is made up of all the bishops and representative clergy from all the 28 dioceses, and an equal number of laymen or laywomen from those dioceses, and when it speaks it speaks on behalf of the church.

The second part of this brief gives you in a very brief form the reasons why the church has taken these stands and our reasons for bringing them to you. You have heard most of what is already set forth in this brief. May I stop here for a moment and say that this other brief presented to you by Mr. Poulton is a product of a committee, as he has said, representing the constituent bodies of the Christian Social Council of Canada. I was part of that effort as a member and I have stated that we are behind it. I also say we will not trouble you again with facts and figures, but give the arguments in very brief form:

1. (*a*) To permit lotteries, whether under governmental control or permission or otherwise, offers another form of gambling.

(*b*) No mania spreads more quickly or naturally than the practice of gambling. Gambling creates gambling. It creates a fever which spreads.

(*c*) Gambling is a menace to the moral fibre of individuals and ultimately of the nation. The desire to get something for nothing is a denial of honesty and industry.

(*d*) Gambling ultimately contributes to the power of the underworld and to the grip which it exercises in any society. The experience of the United States is entirely relevant.

(*e*) Gambling is a denial of the rational use of money either in the world of production or of finance and investment.

2. Lotteries present no sound economic policy for the support of philanthropic institutions or movements. (*a*) Participation in them and the spreading of the method of lotteries has been proven to dry up the springs of goodwill giving. (*b*) They contribute to an irrational use of finance and investment. (*c*) They cannot contribute enough even to the hospitals alone, of Canada, supposing that this be the only object of the proposed legislation.

Relevant figures to illustrate these principles will be presented to your committee in a brief by the Christian Social Council of Canada, which is fully endorsed by this Council of the Church of England in Canada.

3. Gambling in all its ramifications becomes a centre around which intemperance with its accompanying evils and prostitution flourish. This is the testimony of many, including a highly placed police officer in one of our great Canadian cities. Of the three evils gambling is the hardest to deal with. Lotteries will but contribute to this three-fold menace.

4. The extension of gambling to public lotteries permitted by the law will in no way make it easier for the law officers of the Crown and the police to enforce law, even the present law as it stands. This contention has been advanced by interests vested in gambling, and, unfortunately, at times by some authorities charged with enforcing the law.

To express it another way, it is a false contention that by extending the privilege of gambling we shall cure a moral disease in individuals and the body politic, and make the enforcement of law practicable.

Lotteries cannot help individuals or the nation to limit themselves to gambling as permitted by law. Such legalization will contribute to a spirit in them which will extend to further illegal gambling. Legalized betting as, for example, on the race tracks has never prevented the spread of illegal gambling.

5. Gambling is a denial of the principle of sacrificial giving by which throughout our history the Canadian people have been most generous supporters of philanthropic objects.

Enforcement of the law also is a question. I know of no rigid enforcement of law even for murder. You cannot determine what you mean by that. You do know what you mean by an attempt at enforcement. I was 15 years of age when the question first came before me. From the time I was 15 years of age I have never seen the principle of law enforcement made more so by the extension of certain practices, rather the extension has helped the extension of the evil and the breaking of the law. That is a personal experience. But, I do believe that the law officers of the Crown could enforce the present law. There is an element where the law is not observed, and that is where police action is needed. I want to say here that the Canadian police forces are of the best in the world. I want that on the record, but I do say that there are places where they may be lax in their duty. I do not think that there is any reason for extending the principles of gambling in the hope that you will be able to enforce the law. It is a false presumption to think that by extending the privileges of gambling we shall cure a moral disease in individuals or body politic and make the enforcement of the law practicable. You cannot expect individuals to limit themselves to something if it is permitted by law. Now, if the Minister of Justice were here he would have told you in the last five years he has had many people represent before him the desire to extend legal methods to stop this practice. There is a responsibility on parliament to uphold the highest principles of religion as it applies in these moral fields.

Finally, I want to say that we are wholly in support of the very fine brief presented by the Christian Social Council of Canada. It has been supported by our body.

I believe Mr. Poulton and others will be able to answer questions.

By Mr. Shaw:

Q. I notice that throughout the brief emphasis is placed upon objection to any extension of gambling facilities. Little reference has been made to the law as it stands today. Would Mr. Poulton comment on the law as it stands today? You realize some lotteries are legal providing the prize is not worth more than $50.—A. At the moment our main concern in this brief is that there be no extension of gambling privileges. That there be no amendments that would change the present law. We have appealed on other occasions, and if Mr. Garson were here he would remember my letters to him on behalf of the council. Among other things, we have asked that the subsection of the Criminal Code which now permits raffles or prizes at any bazaar for any charitable or religious purposes be deleted. We in the Canadian Council of Churches ask that the section be repealed.

Q. I asked the question because I got the impression throughout the presentation that your prime function may be that of extending the law rather than recommending it be restricted. Thank you for that information.

By Mr. Lusby:

Q. If it should appear that there is a very strong public opinion in favour of widening the field of gambling, would you think that the committee should take that into account?—A. I think that they should take it into account by studying the reasons behind that opinion. There is, for instance, the matter of traffic laws. I am sure that if you asked for a public opinion poll about what people thought of no parking or parking for two hours—I am speaking of Toronto now—and I am sure the same thing holds true in Ottawa too, if the people were asked their opinion concerning these traffic laws or bylaws, public opinion would say do away with many of them.

Mr. WINCH: Do you really believe that?

The WITNESS: I believe that the majority of people would say that they are just headaches. Why should I be restricted as to where I put my car, and whether I park in front of my house. I believe that, yes.

The CHAIRMAN: I think the Gallup poll might show otherwise.

The WITNESS: It might.

By Mr. Boisvert:

Q. At page 7 you say: "it is claimed that the majority of the people in Canada would favour the introduction of lotteries". Have you any ground to back up that statement?—A. The report of a public opinion poll appeared in some of our metropolitan newspapers in Canada about a month or six weeks ago in which the findings of one of these polls were given. I am not clear as to how the people are contacted. I have never been approached. But, apparently the pollsters approach a cross-section of the population, and the majority in that case said that they would favour the introduction of legalized lotteries?

Q. Do you think those polls really represent the public opinion of the country?—A. Personally I would question it.

Mr. BOISVERT: So would I.

Rev. Canon JUDD: I believe that you have heard of this problem over the last few years because of public agitation, and that public agitation has not come from the ordinary public wholly. Most of it has been generated by interests that want these gamblings extended. Now, that is nearly always the history of all agitations in these moral questions. It is a hard thing for me to support, but I ask you, ladies and gentlemen, to look at that with wide open eyes, and look back over all your reading and history of these things. Is it not the case that most of these things are engineered by interested groups.

By Mr. Cameron (High Park):

Q. Mr. Poulton you have expressed your opinion regarding section 226. What is your opinion with respect to the last clause in section 226 of the Code which permits: charitable or religious organizations to hold games for which a direct fee is charged to the player if the proceeds are to be used for the benefit of any charitable or religious object. That, I imagine, is the clause under which a bingo game, for example is held.—A. We would certainly ask for the withdrawal of that clause.

By Mr. Thatcher:

Q. Mr. Chairman, Mr. Poulton made one statement that I would like to question him on. He said that very little of the money from these lotteries ever gets to charity and emphasized the Irish sweepstakes. He may be correct on that, but did he suggest that that is true of these local church charities and things run on a petty scale?—A. My answer to that is, I do not know. In the church of which I am a member they do not have those games of chance. However, the subject under discussion so far as we are concerned is the matter of lotteries of which none is legal in Canada. I think that is correct. The only legal betting, as I understand it, in Canada is the pari-mutuel, betting at racetracks, and small raffles and games of chance held at bazaars and so on. But, the word "lottery" I think you will find does not appear as being permitted in Canada.

By Mr. Blair:

Q. Perhaps the witness would like to add the lotteries and other games of chance conducted at agricultural fairs?—A. Yes. It of course brings up the question of what is an agricultural fair. The Canadian National Exhibition?

By Mr. Thatcher:

Q. The experience I have had with these petty games of chance which have been used for charitable purposes is that most of the money has arrived at the charity. Have you any evidence to suggest that that is true?—A. Are they legal?

The PRESIDING CHAIRMAN: Yes.

The WITNESS: Then, we are not here today to debate the rightness or the wrongness. The churches we represent do not indulge in them.

Mr. FAIREY: Yes, they do. Certainly the Anglican Church does.

By Mr. Winch:

Q. That is the point I cannot understand. Mr. Poulton said he officially represents approximately 80 per cent of the Protestants of Canada.—A. Yes.

Q. And you have taken a stand that you would like to see the removal of certain clauses that would wipe out the bazaar raffles and everything else?—A. Yes.

Q. And my experience is that the Protestant churches carry on bazaar raffles and things of that nature.

Mr. BROWN (*Essex West*): Are they members of this council?

Mr. WINCH: They must be.

Mr. BROWN (*Essex West*): Is it not a fact that the council does not include all the Protestant churches?

The WITNESS: It includes 80 per cent.

REV. CANON JUDD: We all have to acknowledge that in some of our smaller churches, some to a very small extent, and some to a greater extent, there is a difference between the official opinion and the opinion of some of the members. In this particular matter we have to acknowledge it, but for the purpose of the record we have to say we are here today against the extension of privileges of gambling.

Other churches possibly are on record—and my own church, is on record—against this matter of occasional raffles with prizes of $50 and under on the basis of an "occasional" nature. Those are the two elements in the Criminal Code. My own church is against that officially. We know a few of our congregations are party to those ventures, but they are very few. There is a difference, and we have to acknowledge it, but the 80 per cent of the Protestant churches do not have any of these raffles.

We want it on the record that we are here against the extension of the privilege of gambling. One of the reasons why we want the section about the smaller raffles expunged is because it has not been lived up to. People have taken advantage of that $50. You can find on the street of any city a car valued at $2,700 or whatever it is. During wartime in Canada you found raffles of fox furs. You can find service clubs doing the same thing. We hope that that kind of thing will discontinue. We would like to see the law expunged because these extensions and irregularities go far beyond what the law allows. I think you have a very grave question to face there if you are going to deal with that question. We are not asking for that today, however.

By Mr. Valois:

Q. In your brief Mr. Poulton, I can see that you are getting the opinions of different persons or associations in the United States. For instance, you quote Mr. Dewey. I understand, of course, that everyone of them is against gambling. Have you any information as to what the gambling situation is in fact in the United States? In other words, I quite agree with you that as a matter of principle gambling is no good. But, I am told, for instance, in Reno, Nevada,

it is a place where you can gamble with slot machines and practically every kind of device for gambling?—A. That is true. There are no lotteries in Nevada. It is the one state in the United States of America that has wide open gambling. You know, of course, that economically it is not the most advanced state in the U.S.A. If the gambling business were closed tomorrow, statistics show that the state would be financially finished. But, there are no lotteries as such, which is the point of our brief.

Q. You have to admit that the public opinion very much would favour an extension of the laws?—A. According to the public opinion polls.

Q. Do you not think that one of the reasons such a public opinion is found is because in the newspapers it shows that Mr. so and so in Montreal or Vancouver has won a ticket in the Irish sweepstakes and the one who calls himself a happy winner does not exprience any trouble in catching his prize? Have you any suggestion to make about that?—A. It seems to me as a layman in legal matters that there are two factors here. First of all, I feel that our large metropolitan newspapers have a moral obligation which at times I am afraid they fail to recognize. Last Saturday in the city in which I live, both evening newspapers came out with pictures of these lucky winners. All the work we tried to do in the church for a year is nullified. Yet, on the editorial page of one of those newspapers there have been editorials urging that there be no relaxation with respect to the laws against gambling, and some of us wonder how to reconcile the news coverage with the editorial policy. We wish that these newspapers would have some sense of responsibility in this question. In the second place, if lotteries in Canada are illegal, why could not these people be charged with engaging in an illegal practice? I do not know. There is a legal expert at the end of the table who perhaps would tell us.

By Mr. Winch:

Q. In view of what you have just said I take it you are in favour of the complete enforcement of the law as it stands now as regards to lotteries?—A. Yes.

Q. Do you mean that the money paid as the prize of the lottery should be confiscated when it comes into Canada?—A. The Postmaster General and the postal authorities do a splendid job and seize these lottery tickets. But it is difficult for our postal authorities to know what is in a sealed envelope. After all it is Her Majesty's mail and unless they have a very good reason for opening it, I understand that they dare not do it.

Q. If you are going to bring $140,000 into Canada for a winner, that has to go through some procedure that the government knows about. Do you feel if that money was stopped we would stop the practice in Canada?—A. As soon as it is publicly announced that "John Jones" has won, the government should step in and say it is illegal.

By Mr. Valois:

Q. No doubt you are against slot machines?—A. Yes.

Q. So am I. There is one thing that I would like to comment on. The way a slot machine is built, it is conceivable, that when we have paid the money, we pay for it just to have the fun of seeing the cherries or the symbols going around. If you happen to go into that line, you buy those machines in the United States and will not experience any difficulty in having them come over the border. Do you feel if they were stopped at the border it might be a good way to stop that nuisance?—A. If I were in the Department of Justice I would do my best to see that they did not come into the country.

By Mrs. Shipley:

Q. I would like to refer Mr. Poulton to a statement made on page 11. It says: "socially"—and I understand here you are referring to legalized lotteries in Canada. You say: "Socially they are a denial of fellowship since their appeal is to the selfish instinct, putting forward the lure of personal gain through others' loss." Now, I presume that that statement applies to all forms of gambling, and you are saying you are against all forms of gambling?—A. Yes.

Q. I do not know how you justify the statement because, outside of the wages you earn, almost everything in which one is concerned today is a desire for gain at someone else's loss. Dealing in the stock market would be a desire for gain at someone else's loss?—A. I frankly could not go along with you. Honest, law-abiding business is not, I think, a desire for someone else's loss. It is a desire to produce a product which people want in competition with your competitors and to produce it better in order to get the business. You are not gambling his money away or taking his money.

Q. What about the stock market?—A. Much that goes on in the stock market is speculation. Investment is one thing, but certainly most of the speculation that goes on is gambling and is wrong.

Mr. WINCH: That is very interesting.

The WITNESS: I am not talking about *bona fide* investments but I am talking about market speculating.

By Hon. Mrs. Hodges:

Q. I am interested in that because I happen to know a minister of a church who speculates.—A. He should be ashamed.

Q. But at the same time he held forth in public against raffles or gambling, and I must say I found the attitude very hard to reconcile.—A. And you would not have much confidence in that man's character.

Q. I would question it.—A. So would I.

By Mrs. Shipley:

Q. There is a strong feeling by the ordinary worker who has not too much money to purchase stocks with on the market that to take a little bingo game away from him, or a chance to win something—I am not suggesting he is spending more than he can afford or that the child goes without shoes by reason of it—there is a strong feeling among those classes of people that by taking away his opportunity of going to a bingo game you are taking away his fun. But, you think that the stock market is alright because it is legalized, and if you have money enough to go to a racetrack it is legal to bet on the horses. He wants some fun too. How do you rationalize that?—A. I would point out that we are not here as a council to consider the question of bingos or small raffles. The whole point is, we are recommending no extension of the facilities for gambling in Canada by amendments to the Criminal Code that will permit the introduction of lotteries. We are not here at the moment to speak on the other matters, but we have our opinion regarding these bingos and games of chance. We have asked—and Mr. Garson will remember our letters to him each year—that section 6(b) of section 236 of the Criminal Code be repealed.

Q. That was the point I was referring to. You made that statement previously that that was the feeling of your group.—A. Of our churches, yes.

By Mr. Winch:

Q. I know for a fact in my own constituency in Vancouver that as a rule on a Wednesday or a Saturday night in my riding you will find not less than twenty bingo games going on under various auspices, and if you go there you

will find hundreds of dear old souls who are good citizens, good church goers, who look forward to this once or twice a week when they can take their 20 cents and go for an hour and play whist and have an evening of fun for 20 or 30 cents. They look forward to it. They are fine people. Where is your objection to it?—A. We feel that the principle of gambling is wrong, and therefore do not wish it under the auspices of the church. We feel that this thing is wrong, and that you do not make it right by bringing it into a church hall. We are not saying to the Lions Club or the Legion or to any other club, what they shall do, but we are saying so far as the church is concerned we wish that privilege taken away from us; we do not want it.

By the Presiding Chairman:

Q. It is a matter of choice in the particular organization whether they have a bingo or not?—A. Yes.

Q. So that if you do not trust yourself sufficiently, then you want the law to take away the privilege of your exercising this choice?—A. That is one kind of argument, but if the law were such that we were treated the same as every other group we would feel a lot better about it. I wonder if any of these three of our delegates here would like to say anything.

The PRESIDING CHAIRMAN: Our counsel has some questions to ask. I hope that the other members of your delegation feel that they are free. If you have any answers you wish to make do not hesitate.

Mr. BLAIR: Perhaps I could deal with the question of what happens to the man who wins the $100,000 lottery prize. The only provision made in the code is that any person, who buys a lottery ticket, is subject to conviction for a summary offence and a fine of $25.00. So, I am afraid it is not worth while to prosecute such persons. But, I gathered from what you said, Mr. Poulton, you would favour some legal steps being taken to confiscate the prize?

The WITNESS: Yes.

Rev. CANON JUDD: Yes.

Mr. THATCHER: It now is not subject to income tax?

Mr. BLAIR: No.

The WITNESS: That was Fred Poulton's personal opinion when I answered that question.

By Mr. Blair:

Q. By the way of elaborating your opinion, might I suggest as we face this problem we see different kinds of lotteries which have been suggested. The first are what you might call state lotteries: the second are what you might call large public lotteries with huge prizes; and, the third, are what you might call medium prizes lotteries, and I am afraid we see a lot of them in this country now, travelling on the windy side of the law, where the prizes might be an automobile or refrigerator or something of that kind. I believe that you have made yourself very clear in opposing all three types of lotteries?—A. Yes, and in that I speak for the churches.

Q. I am sure you have observed that the third type of lottery, of which I have spoken, is quite prevalent and steps apparently cannot be taken to control or confine it in this country.—A. I would question that. I would read, if I may, the official report of the Senate committee that was set up a year or so ago to report and inquire into the sale and distribution of salacious literature. At page 517 of Official Report of the Senate Debates of April 29, 1953, it says:

> They further add that thus far they have not received any representations from law enforcement agencies which would lead them to believe of those who have stated that it is unenforceable have shown

that they have invoked same and have failed to secure a conviction because the law was unenforceable; and further, in some cases it is difficult to resist the impression that not wanting to enforce the law, they offer the excuse that it is not enforceable.

We, in the churches, are not yet convinced that the law in Canada cannot be enforced with regard to the question of lotteries.

Q. It does appear from various sources of information available to this committee that one of the most serious questions which this committee faces is whether or not there is a grave social danger in having a law which is brought into contempt because of its unenforceability. In that connection, I wonder if I could read into the record the findings of the 1933 United Kingdom commission on gaming and lotteries:

> We do not ignore the objections to gambling on ethical grounds, put before us by the representatives of the Churches. But the field of ethics is not co-extensive with that of the criminal law. On the one hand there are many forms of conduct which are generally considered to be morally wrong or reprehensible, but which are not contrary to the criminal law. On the other hand there are matters in regard to which the State has found it necessary to make laws, independently of any question of morality. In any case, public opinion generally would not support legislation based solely on ethical objections to gambling.

And then it continues in a further paragraph:

> In framing legislation, we regard it as of the utmost importance that not more prohibitions should be made than are absolutely necessary. Every new prohibition creates a new class of potential offenders. It must, of course, always remain a matter of judgment, based on the facts of each case, whether a particular social evil is sufficiently serious to justify criminal legislation. But as a general principle the criminal law must not lightly be invoked: and the evils which result from any prohibition, however desirable the object aimed at, must be set in the balance against the evil which it is sought to diminish.

I wonder, Mr. Poulton, if you would be prepared to comment on the finding of the royal commission as a general principle in framing legislation with respect to lotteries and gambling?—A. Well, that is quite a statement you have read. What we had to say in our brief is that it is not prohibition for which we are asking; we are not asking that there be further restrictions placed upon the people of Canada; we are asking that the law as it stands be enforced; and we are asking that there be no opening up of the privileges of gambling. May I suggest that one way of reading the finding of the royal commission is that it is a question of a law which might not be capable of enforcement because a large section of the public see no merit in that law.

Q. You are opposing in principle this gambling?—A. That is right.

Q. And you think that the legislation should, as closely as possible, conform with that principle?—A. Yes.

REV. CANON JUDD: May I ask you the result of the 1933 Royal Commission in Great Britain?

The PRESIDING CHAIRMAN: They recommended against the extension of lotteries.

REV. CANON JUDD: Now, it resolves itself into this matter of the point of balance between enforcement and non-enforcement. Is there anybody here who can say that a $2,100 car or a $300 electric refrigerator is the point of balance? We saw cases during the war where as a result of our representation to certain service clubs and certain law officers, in one particular province, certain service

clubs withdrew their raffles. Part of that was police compulsion, and part of it was from appeal by us. But, when you see an attorney general for example conniving with something of that kind, then you ask the question who is responsible, the public or that man? He is more than the public in his position. I would challenge you with the statement that people do not know where the balance is. I do not think that it is the part of legislators to take the stand that any law cannot be enforced. We have every sympathy with the law officers of the Crown, from the Minister of Justice down, in the attempt to enforce the law, and I paid tribute to our officers in my earlier statement, but we do believe that there is this phase where force can be brought to bear in some of these places to a better extent, and half a dozen prosecutions would cure the thing in a given area.

Mr. THATCHER: Am I not right in assuming that it is only the provincial attorneys general who can carry out that prosecution?

The PRESIDING CHAIRMAN: Yes. Following up what Mr. Blair read, the Royal Commission on Betting and Lotteries that concluded their hearings in 1951 have this to say:

> 186. We are led by all the evidence we have heard to the conclusion that gambling, as a factor in the economic life of the country or as a cause of crime, is of little significance and that its effects on social behaviour, in so far as these are a suitable object for legislation, are in the great majority of cases less important than has been suggested to us by some witnesses. We therefore consider that the object of gambling legislation should be to interfere as little as possible with individual liberty to take part in the various forms of gambling but to impose such restrictions as are desirable and practicable to discourage or prevent excess.

In your view is that sound or not?

REV. CANON JUDD: I would ask, where is the point of balance? I do not agree with that commission personally. Neither did the Archbishop of Canterbury. I do not believe that the royal commission know where the point of balance of law enforcement and non-enforcemnt is.

By Mr. Blair:

Q. The point of my question was simply to establish that there may appear to be a conflict of basic principles of ethics and morals and the broad question of public policy which has been raised by the United Kingdom royal commission. I would like to ask this question: it has been suggested that commercial gambling would have a detrimental effect, and would Mr. Poulton care to comment on the connection. which might exist between the authorization of what we have called a medium sized lottery conducted by benevolent and charitable organizations and commercial gambling?—A. I am sure, as is suggested in our brief, if we opened up in Canada and hospitals were permitted to have these government controlled lotteries, who is to say that in a few years from now some other project would not say, you have allowed hospitals to sponsor lotteries, why not allow us to do it? Statistics would be produced to show that it was a needy cause, and you would have created a precedent.

Q. It has been suggested that there are forces who are urging the extension of gambling and lottery facilities. This committee has received representations from large national bodies which indicate that they would favour the extension of lotteries, and I wonder whether this might be taken as an indication of some broad public interest in an extension?—A. I would say so. I have said that in two places in our brief. It is only fair to say that some of those who argue for

the introduction of lotteries are sincere in their motives. Let us be quite clear on this. We believe that they sponsor these schemes because they think that charitable causes are benefited thereby. We are just as honest when we say that we think they are mistaken.

Q. I have one further question. We have spoken about various types of lotteries and perhaps members of the committee might have thought of one other type of quasi lottery to which there is a large amount of public attention given at the present time. They are called competitions. They occur in newspapers and radio programs, and there are elements in skill involved, and there are elements of chance. I wonder whether Mr. Poulton has any opinion to offer on the desirability of confining these so-called competitions?—A. The matter has not been discussed in our council, therefore, I could not give an official opinion. My own opinion is that if they are purely matters of skill, then there could be no criticism: but if the main element is the element of chance, I would say they should be restricted.

REV. CANON JUDD: For the purpose of the record, I wanted to comment on the question of ethics.

Mr. BLAIR: And public policy.

REV. CANON JUDD: Ethics and public policy. Our committee representing these churches is here to talk about ethics and morals. But it is also in our brief that the economics of lotteries is unsound *and we hope that will not be overlooked.* Our arguments on the ethical factor we believe to be sound, but the other factors should be taken cognizance of. It is not to be thought that we are here to deal only with what is recognized as morals.

The PRESIDING CHAIRMAN: Well, it is one o'clock and time to adjourn. I want to thank you, gentlemen, for the presentations which you have made today. We assure you they will be considered.

REV. MR. POULTON: We want to thank you, ladies and gentlemen, for your kindness in hearing us at such length.

The PRESIDING CHAIRMAN: The next meeting is tomorrow afternoon at four o'clock. Mr. Common is coming before us again to speak on lotteries.

EVIDENCE

TUESDAY, March 31, 1954,
4.00 p.m.

The PRESIDING CHAIRMAN (Mr. BROWN, *Essex West*): Ladies and gentlemen, if you will kindly come to order we will proceed with the business of the committee.

Today we have a witness who is no stranger to this committee in that he has appeared on two previous occasions, once when discussing the question of capital punishment, and again when discussing the question of corporal punishment. Today he is going to discuss the question of lotteries from the point of view of the Attorney-General's department of the Province of Ontario. We are honoured in having with us Mr. William B. Common, Q.C., director of public prosecutions, attorney-general's department of the province of Ontario. If it is your pleasure we will hear from Mr. Common at this time.

Mr. W. B. Common, Q.C., Director of Public Prosecutions, Attorney General's Department, Province of Ontario, called:

The WITNESS: Ladies and gentlemen, I think possibly it would be better if I dealt with the position of the offences of gaming, betting and lotteries as they appear in the present legislation. They are all grouped under offences against religion, morals, and public convenience. Now, whatever public convenience is I have yet to be instructed. I am not clear in my own mind what public convenience is in the legislative sense.

The lottery section appears as 236 of the Criminal Code, and it is interesting to note that lotteries are not classified at all under any offence against religion, morality or nuisance, but is thrown into the general classification of disorderly houses which, of course, it is not. So that, up to the present time the lottery section of the code is somewhat an orphan. I notice in the new code that they have properly classified and brought it under that part of the code dealing with gambling and betting offences.

I do not, of course, need to remind the members of this committee that the policy for creating the offence of conducting or participating in a lottery rests with the dominion government, and its enforcement is a matter of provincial concern.

The very nature of the offence itself indicates to me that the question is rather a social one than moral in character as a great cross section of the community do not regard the lottery sections of the code as they presently stand in the realm of criminal law. The fact that there is not general public support for the prohibition of lotteries in this country I think is reflected in the number of lotteries and raffles held by service clubs, some churches, charitable and philanthropic institutions, youth centres for swimming pools, labour unions for their work, all of which generally are undertakings with prima facie charitable or philanthropic characteristics. The fact that these organizations—I shall not say are permitted to operate—do operate, I think reflects the lack of public support for the law dealing with lotteries.

Now, while the policy for the enforcement of the provisions of the Criminal Code dealing with lotteries rest with the province, the enforcement does present some extremely difficult situations. As you all no doubt know, generally speaking the enforcement of the criminal law is a matter of local law enforcement, that is by the local municipal police forces where those forces are in existence.

With certain exceptions the Ontario provincial police do not ordinarily enforce the gambling sections of the Criminal Code. As I explained, I think, in my first appearance, the provincial police enforce the Criminal Code in those areas which have no local law enforcement agencies such as local municipal police forces. But, the activities of the Ontario provincial police in this particular sphere which is under discussion today are largely confined to gambling houses, betting houses, and even lotteries where there is a commercial aspect, and not for charitable or philanthropic purposes.

The Department of the Attorney General, through its various Crown attorneys in the various counties and districts, does not take action in regard to these philanthropic or charitable lotteries unless a specific complaint is made to the local Crown attorney who is the local representative of the attorney general in the local county or district. It frequently occurs that where information does reach the Crown attorney or law enforcement officers that a charitable or philanthropic raffle or lottery is to take place that a warning is given to those who are in charge of the undertaking that such an undertaking is contrary to the provisions of the Criminal Code, and that it would be quite desirable that that particular undertaking should be discontinued. I might say that where that does occur there has been complete cooperation by those in charge of the raffle or lottery and it has been discontinued.

It may seem rather strange in the administration of Criminal Law that that sort of practice has to be resorted to, but that again I think reflects the attitude of a large cross section of the public towards this so-called—I should not say so-called—this criminal offence, because it is a criminal offence. It also reflects complete ignorance on the part of the vast portion of the public that lotteries for charitable and philanthropic purposes, are in fact illegal because, speaking not only for myself but for others who are engaged in law enforcement, the letters and requests for permission to conduct this type of lottery are legion. The impression seems to be abroad that one simply has to write or phone in to the attorney general and merely state that they are going to run a charitable lottery and that the road is then clear. In a great number of instances they are completely aghast at the fact that running a lottery or raffle for very small amounts is in fact a criminal offence. The attitude and lack of information on the part of the public, I think, is very largely due to the fact that there are so many inconsistencies in the present law dealing with lotteries, gaming and betting, because it is somewhat difficult to deal with this question of lotteries in the abstract without wandering to some extent by necessity into the field of gaming and betting.

The present section of the code dealing with lotteries is section 236 and that section has, with very few exceptions, been in force since the codification of our present code in 1892. There have been one or two additions or changes to it, but generally speaking it is in the same form as it was when the code was first codified. Now, section 236 prohibits, for instance, the disposing of goods, wares and merchandise by any mode of chance where the competitor pays any money. For some reason parliament omitted the "money" from goods, wares and merchandise, and some of you may recall that last year the officers of the law in this city prosecuted I think the Ottawa Baseball Club for giving away, I think, a sack of silver at one of the baseball games, and the

court of appeal held that as money was given away it did not come under that particular clause. Had the Ottawa Baseball Club or any other club so engaged been charged under another section, the result might have been somewhat different.

Now, one finds that there is that inconsistency. You find an offence charged under the lottery section of the code, where, for instance in the illustration I have just given you, it might not have been an offence under section 236 but it may be an offence of keeping a common betting or gambling house. What is an offence under one section is not necessarily an offence under another section. Where you are dealing with chance and mixed chance and skill, the result is confusing. For instance, you have the exemptions where you are dealing with small raffles at churches or social bazaars where the article in question does not exceed $50 in value, permission having been obtained from the mayor of the municipality, and where there is a further condition that the article first has to have been offered for sale.

Now, the great difficulty, of course, is almost apparent and the inconsistencies are likewise. I might point out the penalty provided by parliament for anyone who contravenes this section is either two years in jail or $2,000 fine or both. One can easily see the ridiculous result that some times might flow. The ladies aid of the church may have a quilt which might conceivably be worth $51.00 and, even if they have the consent of the mayor, if it is raffled the person may be liable to two years in jail; but, on the other hand, if the quilt is not worth $50.00 that person is not liable to these penalties I have mentioned if consent is obtained.

It is difficult to explain to a member of the public the reason for the arbitrary determination of the $50 and these other conditions that parliament has imposed. In Ontario, as a lot of you know, the mayor is the chairman of the local board of police commissioners. And, I can well imagine that in a great number of cases the mayor is asked under this section for permission. Whether or not such permission is granted I am not in a position to say, but I imagine one can hazard the opinion that the head of a municipality is not going to be inquisitive as to whether the value of the quilt is $49.50 or whether it has been offered for sale or not. These are small matters, but they indicate the complete inconsistency of the existing law. Where you have the federal law providing that consent should be given by the head of the municipality who is also head of the police commission you see a possible conflict of duty that might arise in certain instances.

Now, to take the question of agricultural fairs. Those who have attended the Ottawa Exhibition, and more so the Toronto Exhibition, have seen gaming and lotteries operated on an extremely highly commercial basis, all within the law. There is no limit whatever to the amount that might be hazarded on lotteries or gaming. They are completely excepted, and they are big commercial ventures. Now, one may speculate as to whether the framers of this particular section ever intended that a special carte blanche should be given to a person for personal profit to operate under the protection of the law. The anomalous position of this is you can go into an agricultural fair like the Toronto exhibition and hazard $100 in 5 and 10 cent pieces on any game of chance, but step outside the gate and buy a 25 cent ticket on a charitable raffle and you have broken the law. The law seems to be very hard to explain and it is very difficult for the average member of the public to appreciate why this type of legislation is allowed to stand.

In addition to the inconsistencies which I have just dealt with there is another illustration. It is the pari-mutuel betting, which is probably outside the scope of this committee, but if one has money one can buy I don't know how many $50 tickets on a horse race which is permitted, but again if he steps outside

the gate and buys a 25 cent ticket on a raffle for a motor car sponsored for the benefit of cerebral palsy patients, or something like that, he is liable to the penalties provided by the Criminal Code. I mention that as another illustration of the result which ensues from strict interpretation of the law.

Reverting to the question of concessionaires in a place like the Toronto exhibition which is exempted under the provisions of section 236, if those people operating those concessions operate them one day after the fair in the same place they would be committing an offence. The concessions are legal for the duration of the fair, but if they went five minutes over it, they would be in fact committing an offence.

As I said before, the inconsistencies are not only found in the exact sections of the code itself, but judicial interpretation of the meaning of these sections and their inter-relation one with the other, that is gaming on the one hand and lotteries on the other, is at a variance. For instance the court of appeal in our province has held that while the exemption for agricultural fairs appears in the lottery sections of the code, they have held it extends to bingos, that is, bingo is gaming. The exemption for agricultural fairs is found in the lottery section, but our court of appeal has interpreted the gaming section to apply to section 236 which exempts the operation of gaming for prizes where it is conducted at an agricultural fair. I merely mention that in passing to show again the great difficulties that beset the law enforcement officers in dealing with this matter and, to a greater extent, the difficulty which the public experience in appreciating why certain things are allowed under certain conditions and prohibited under others.

Now, I did not want to get into the question of radio, and I am not in a position to say, and I am not going to even hazard an opinion, as to the legality or otherwise of competitions which are on radio. I merely mention that in passing to indicate that people listening to these radio competitions are, I think, lulled into a sense of security that this gaining something for nothing must be legal. I use all these illustrations merely to indicate how difficult it is for the public to appreciate the vagaries of the lottery and gaming sections of the code which is reflected again in the attitude of the law enforcement officers in enforcing the provisions of those particular sections.

Then, the question has been raised of these raffles and lotteries being operated for charitable purposes by professional promoters. Probably this holds for all the provinces, but certainly I do not know of any—there may have been cases—but I certainly have heard of none in Ontario where there have been professional operators undertaking to raise money for charitable and philanthropic purposes.

Now, I notice that when Mr. Wismer was here—I read his evidence which he gave when he appeared on behalf of the Trades and Labour Congress of Canada—he stated that they were in favour of government sponsored lotteries in Canada. I was not quite clear from his evidence exactly what he meant. He talked of the fact that the consolidated revenue fund should benefit to some extent from it, but he just made, as I understand it, the bald statement that that particular organization was in favour of government sponsored sweepstakes or lotteries in this country. I feel that that should not be allowed, and I am expressing my own personal opinion on that. The results in other countries as far as I have been able to ascertain, such as France, Brazil, and Mexico, etc., have not measured up to the expectations of those who advocated them, and the net result to the treasury has been exceedingly small, and the public has adopted a very apathetic attitude toward their operation. I was particularly interested in Mr. Wismer's suggestion that the attorney general of the province might issue permits or licences. I can say that that would be most unacceptable certainly to the province of Ontario, because one only needs to speculate and

cogitate to a small degree to ascertain what would be the result. There are too many laws in existence now where the consent of the attorney general has to be obtained before a prosecution is launched, and I think the attorney general of any province—I am speaking of my own particular province at the moment —would be put in the most invidious position if he had to determine what particular organization was deserving of a licence to operate a charitable or philanthropic lottery within the province. He would be subject to pressure groups, and he would have the supervision of the conduct of the lottery, the supervision of the custody of the trust funds, and the usual headaches, that go with matters of this sort would be so great that it would be unacceptable. In addition to that I venture to say that a very large provincial department would have to be established to supervise and control a rigid supervision of an operation of that type. The province of Manitoba might agree to licence, Ontario not, and so on, and you would have an inequality in the administration of the criminal law. By that I mean this. The underlying principle of criminal law should be its general application. It should have a general application throughout Canada and not be in force in one province and not in force in another. As long as parliament has created this type of offence as a crime it should be in no different position than the other crimes set out in the Criminal Code so far as the laws of general application are concerned. I must take a very decided objection to Mr. Wismer's suggestion that the attorney general of the various provinces have the right to licence.

When the discussion in the committee got on to the question of taxation, and that the proceeds of these lotteries would alleviate taxation, and go into the consolidated revenue fund, and so on, I think Mr. Lusby of this committee asked the question, as I understood it: "Should not these lotteries be extended to all levels of government from the federal and provincial down?" That, I think, does create the precise question I have dealt with that some municipalities would adopt it and others not, and you would have a complete lack of uniformity throughout the country in the administration of a particular criminal offence, which in my respectful submission and opinion is wholly undesirable.

Again, I am not a political economist or anything of that sort, but I think that the question of national sweepstakes is completely unsound for taxation purposes. It is an undignified way, in my opinion, of raising revenues, and I am sure that the Minister of Finance could not be assured of any exact sum of money in any year due to the experience in the past of other countries and, at the expense of repetition, I hazard the opinion that the public would become apathetic to this type of money raising scheme eventually.

I am sure that I have said all I can on this subject. It is rather difficult to put these matters in other than disjointed form, but I think I have done all I can.

The PRESIDING CHAIRMAN: Thank you very much, Mr. Common.

Before proceeding with interrogation, I overlooked the fact that the minister is not here today and had asked me to express his regret due to the fact that the Criminal Code may be before the House of Commons today for discussion, and we hope adoption. He has asked me to express his regrets that he is not here.

Hon. Mr. ASELTINE: I wonder if the witness would care to make any suggestions as to what amendments he thinks should be made?

The PRESIDING CHAIRMAN: Senator Aseltine, you might ask that question when your turn comes.

Hon. Mr. ASELTINE: Perhaps he could think that over in the meantime.

The PRESIDING CHAIRMAN: Could we start the interrogation at the left end of the table?

Mr. BLAIR: Mr. Chairman, if it is in order, it occurs to me that it might help the committee if Mr. Common were asked to comment upon the testimony given by Mr. Maloney. You will remember that Mr. Maloney made some comments on Mr. Common's testimony as to the conduct of prosecutions,, particularly in capital cases. I do not want to suggest anything that might be out of order, but perhaps this will be Mr. Common's last appearance before the committee, and he might wish to express an opinion.

The PRESIDING CHAIRMAN: In other words, you would like to revert to the question of capital punishment to let Mr. Common reply to what Mr. Maloney has said.

Mr. SHAW: Would it not be better first to deal with the matter of lotteries. I believe that that probably should be done, but I do believe also that we should deal with this question of lotteries first, and then move on to the other matter.

The PRESIDING CHAIRMAN: Is that agreeable to the committee?

Agreed.

By Hon. Mr. McDonald:

Q. Mr. Common, could the province pass an Act giving the attorney general authority to prohibit lotteries?—A. No, I do not think so. The exemptions are provided for in the code now and there is no power in the province at all.

Q. Could they not secure authority by passing a bill prohibiting lotteries at agricultural fairs?—A. No. It would have to come from parliament. Mind you, I presume that parliament could delegate to the attorney general some power to license or to permit, but I think that that would meet with complete disapproval of the provinces.

Hon. Mr. MCDONALD: I do not think I have anything further to say. I was very interested in what Mr. Common had to say in his evidence regarding the licensing of lotteries.

By Mr. Shaw:

Q. First of all, I would like to thank Mr. Common for writing to me in response to a question asked by me. You referred to carnivals and concessionaires at fairs and exhibitions. I do not have a copy of the code before me. Would you mind reading that subsection?

Mr. BLAIR: It is a proviso to subsection 1 of section 236. It says:

> Provided that the provisions of paragraphs (*d*) and (*e*) of this subsection in so far as they do not relate to any dice game, shell game, punch board or coin table, shall not apply to any agricultural fair or exhibition, or to any operator of a concession leased by any agricultural fair or exhibition board within its own grounds and operated during the period of the annual fair held on such grounds.

By Mr. Shaw:

Q. For my information, would you indicate what action may be taken by the police to ascertain the honesty or otherwise of the operation of these various games which are to be carried on at exhibitions and so on?—A. I can only answer that by this—and I can only speak for the Toronto exhibition which is probably the largest of its kind in the world. Certainly in the last 15 or 20 years to my knowledge, I think there was only one occasion where a game was closed up on account of dishonesty. I am not quite sure of this, but I think the police commission or the exhibition authorities investigate every type of game before the concession is granted. I might say this, that the two large concessioners at the Toronto exhibition are Beasely and Conklin shows, both of whom have enviable reputations for conducting business on a very

high level. There has never been any complaint about their games. They police their own business very effectively and I can only recall one occasion, and I do not think it was either of those companies, when a game was completely dishonest and it was closed up very quickly.

Q. There are, we know, certain less reputable concerns than those you mentioned. I think there was a case in Alberta where there was a riot when it became obvious that the games were crooked.—A. Yes.

Q. You referred to Mr. Wismer's evidence with respect to granting authority to the attorneys general to grant permission for the operation of certain lotteries, and you said that the law should be a law of general application in order to be a very good law. Do you feel, Mr. Common, that today the law of general application does apply with respect to the Criminal Code as it stands today?—A. Do you mean the whole code?

Q. In relation to lotteries and games?—A. No, I must concede that it does not. I think I explained that—again at the expense of repetition—by the fact that there was no general public support for the prohibition of the small innocuous type of raffle and lottery.

Mr. SHAW: Thank you.

By Hon. Mr. Aseltine:

Q. Mr. Chairman, I would like to say that on quite a number of occasions I have had to advise on these sections we are dealing with now and, of course, ran into difficulties immediately because in spite of my advice people would insist that someone else had conducted a scheme and no charge was laid and they could not see any reason why they could not do the same thing. I had a great deal of difficulty explaining to them that they were possibly making themselves liable. It occurs to me that perhaps some amendments to these sections could be drafted which would clear up this matter and make it more understandable to the public at large. Perhaps the witness here today has something to suggest along those lines?—A. I have no suggestion because that is a matter of complete governmental policy as far as the dominion government is concerned.

Q. I do not see why. Your suggestions might be of great help?—A. Well, frankly I have not given the required thought to any suggested changes that might be made. The first thing that comes to the average person's mind, I suppose, would be stricter law enforcement.

Q. The trouble in our district in Saskatchewan is that the law is not enforced, only here and there, and sometimes pretty far apart.—A. I think that your experience in Saskatchewan is probably the same as in other parts of the country. I do not know of any province which rigidly enforces the lottery sections of the code. There might be some that do it, but from what I understand the situation is a general one that there is a reluctance to enforce the provisions of section 236 where it affects lotteries or raffles for charitable and philanthropic purposes.

Q. It all depends upon the local attorney general's department pretty well. —A. I would not lay the omission at his door particularly. It rests with the local law enforcement agency, which is the municipal police force.

Q. We are policed by the R.C.M.P. who take their instructions quite frequently from the attorney general.—A. The situation there is different from Ontario and Quebec. There are provincial police forces in both Ontario and Quebec.

Q. Even locally we are policed by the R.C.M.P.—A. Yes. I would ask to be excused from making any suggestions as to the amendments at this stage which might be put in.

Q. I did not see any harm in asking you.—A. If we can at any time be of any assistance to the federal authorities we will be glad to oblige.

By Hon. Mrs. Hodges:

Q. I noticed in the Ottawa Journal the other day the story of a woman winning a car at a bingo, and in addition to that there were television sets, and things like that. Where would that come in in the Criminal Code?—A. Under section 226. It was at a bingo game was it?

Q. Yes, of the Lions Club.—A. That would be under section 226, that is the gaming house section. Bingo is classified as gaming.

Q. There is no limit of $50?—A. No. The gaming section is 226. That is the disorderly house section that says a common gaming house is a house or premises kept for games of chance. This section reads as follows; and I am transposing: where the premises are occasionally being used by charitable or religious organizations for playing games where a direct fee is charged to the players and if the proceeds are to be used for any charitable or religious purpose. That comes in in section 226, paragraph (b), clause (ii). That was amended in 1938.

Q. I would like to ask you another question: in view of all the irrevelancies of the Criminal Code concerning lotteries, gaming and that sort of thing, do you think that it would result in a greater respect for law enforcement if some of these clauses were revised and changed in the light of modern developments? For instance, does it seem to you fair that a strictly commercial gambling concession such as at the Toronto exhibition should be allowed to go scot free and at the same time the same law says that a church bazaar cannot be held.—A. No. It goes back to what I previously said that the Criminal law should have general application. It seems manifestly unfair to a charitable organization who cannot operate, say, for two weeks in raising money, when a person in the commercial business of operating lotteries and gaming at agricultural Fairs can do the same thing within the two weeks at the Toronto exhibition.

Q. Do you think that if some of these irrelevancies were removed that it would result in greater respect for the law?—A. Yes, I do most assuredly. I think that the attitude of the public and the position taken by law enforcement officers today is a direct result of these inconsistencies I have mentioned.

The PRESIDING CHAIRMAN: The committee will take a short recess. (On Resuming)

The PRESIDING CHAIRMAN: We will now resume.

By Hon. Mrs. Hodges:

Q. May I ask Mr. Common how do you define occasional in the use of, for instance, occasional bingos?—A. The word "occasional" is referred to in section 226 and has reference, not to whether the game is played occasionally but whether the premises are used occasionally for that game. The word "occasionally" in that aspect of the matter has not yet been judicially determined. There was a case which, again, came from Ottawa where one of the service clubs, 5 or 6 years ago, had a bingo and door prize all for charitable purposes, as I recall it. I argued the case in the court of appeal. I do not remember the details exactly, but I think this game took place in different parts of Ottawa once a week or once a month, and the court of appeal properly held that the particular premises where the game was being played were occasionally being used for bingo, and there was no offence.

Q. The same people could play a bingo game six nights a week at different places?—A. Yes. The way the statute is worded it would be occasionally. It would be a travelling game. That again shows the peculiarity of the law.

Mr. BLAIR: Do you not think that some people believe the word "occasionally" refers, not to the premises, but the lessee or occupier of the premises? Here in Ottawa they have a bingo game at the auditorium once a week, but each week it is by a different sponsor. Each service club will operate a bingo

in the Ottawa auditorium once every 4 or 5 weeks. I was wondering whether the words "occasionally" referred to the lessee or occupier of the premises rather than the premises themselves?

The WITNESS: It is synonymous, I think.

Hon. Mrs. HODGES: If two lawyers, do not agree, how do you expect the public to.

By Mrs. Shipley:

Q. Is there a permit necessary?—A. No.

Q. It is the building?—A. It is the premises; not the operator but the premises. It is the disorderly house section. That is the section under which the bingo comes and it is excepted if the game is occasionally played on those premises.

By Mr. Cameron (High Park):

Q. There is a condition too, is there not, that the proceeds of these occasional affairs are to be used for the benefit of a charitable or religious object. Suppose the hall was being used occasionally but not for a charitable or religious purpose, who would be responsible in law?—A. The occupier or owner of the building would be liable under one section for permitting it, and the person conducting it could be charged with keeping a common gaming house under those sections.

By Hon. Mr. Roebuck:

Q. I heard only a portion of Mr. Common's address, and would like to commend him very highly on what I have heard. Might it not be summed up in this way: if we abolished all exceptions that do not apply to everybody, so that you do not make flesh of one and fish of the other, we would improve the Act and make it more enforceable?—A. From a matter of law enforcement it would be desirable, but I think you would find a lot of resistance on the part of some of the bodies like service clubs. There would be an objection on their part.

Hon. Mr. HAYDEN: It would not improve the temper of the people?

The WITNESS: No.

By Hon. Mr. Roebuck:

Q. If there are any exceptions they should apply to everybody.—A. Oh, yes. I agree with you.

Q. If we abolished the exceptions that make flesh of one and fish of the other, where one can do it and another may get caught, we would simplify the law and make it more enforceable?—A. Yes.

Hon. Mr. ROEBUCK: I was not defining what the exceptions might be.

By the Presiding Chairman:

Q. When is a lottery a commercial lottery?—A. One operated for private gain.

Q. Are there not a great deal of the proceeds of all these charitable operations go to the management of the halls where they hold the charitable drawing? —A. That is necessary overhead, I think, like advertising.

Q. They get a certain percentage, I think.—A. No. I think it is a fixed fee. I have never conducted one of these things. But, I would think that ordinarily the premises are rented at a fixed figure, and that the particular club or organization bears the cost of the overhead which is taken out of the proceeds, the overhead such as the printing of tickets and so on.

Q. And if they have a draw for a car, for example, a percentage of the proceeds from the tickets goes to the seller of those tickets?—A. I do not know.

Mr. DUPUIS: In some cases amusement or show companies retain a certain percentage for operating a particular draw or gaming affair.

Hon. Mrs. HODGES: That is commercialism.

Mr. DUPUIS: The net results would be for a charitable purpose. They would be charging a certain percentage for operating that particular game or draw.

The PRESIDING CHAIRMAN: Probably the sin is committed in the name of charity.

Mr. DUPUIS: I know that in our parish we had a big bazaar and had given the management of the whole bazaar to a certain amusement firm who was retaining 40 per cent. We gave 60 per cent to the charitable organization sponsoring the bazaar.

Hon. Mr. ROEBUCK: It was suggested that we allow the small people to carry on the little bingos and little card games and that sort of thing because of public opinion. I had that whole law on my desk during the time I was attorney general, and that was the principle followed. When things were little and not doing much damage they were left alone by the provincial police, and then that practically always grew to big proportions.

Hon. Mr. HAYDEN: How did you know where to draw the line?

Hon. Mr. ROEBUCK: There was no line. You used your judgment. I remember an instance where some little affair had been going on for two or three years and the police winked at it, and then all of a sudden the people hired a hall in a big building and then started running the thing from coast to coast, and we squashed them. You will find that that is the difficulty. If you allow the small man to operate a small game, it soon develops into a big game throughout the community. That was my experience in enforcing the Act.

Hon. Mr. HAYDEN: That is a dangerous principle; that you are going to prohibit because of abuse?

Hon. Mrs. HODGES: A good many things would be prohibited on that principle.

Hon. Mr. ROEBUCK: I said that we did not squash it and then it always grew up to a point where it had to be squashed.

The PRESIDING CHAIRMAN: Then it was wrong in the first instance.

Hon. Mr. ROEBUCK: This whole Act is an exceedingly difficult thing to handle because of the privilege to some and the prohibition against others. The tenor of my remark was that you cannot allow it because it is small, because as soon as you do it grows into something big. You have got to prohibit it as a matter of principle and not as to size. It is not a good principle to allow it to proceed because it is small and innocuous and then prohibit it because it is big and starts to do more damage. You get into a lot of trouble making the laws that way.

The CHAIRMAN: No, Mr. Valois.

Mr. VALOIS: I have just one question, Mr. Common. Suppose a chap in Toronto holds a ticket on the Irish Sweepstakes and happens to win a prize. He cashes the check. Is there any interference with him by the provincial authorities?

The WITNESS: No, there is not. There used to be a provision in the code whereby money which was won on a sweepstake could be recovered at the suit of the Attorney General or of any citizen; but that provision was repealed 10 or 15 years ago.

By Hon. Mrs. Hodges:

Q. Well, we had a similar case in British Columbia more recently than that.—A. You may have local legislation out there which covered it.

Q. I think we are perhaps better people.

The PRESIDING CHAIRMAN: There is no question about that.

Hon. Mr. ROEBUCK: I remember a case of that kind and we decided that we would not do anything about it, that we would not interfere.

The WITNESS: There was a section in the code, but whether it was constitutional or not, I do not know. In any event it was repealed and some of the provinces, I believe, by means of provincial legislation provided for a right of action for the recovery of money won at a sweepstake. I think that legislation would be intra vires.

Hon. Mrs. HODGES: On two occasions enforcement was taken.

The WITNESS: If a husband won the money then the wife or friend immediately issued a writ and thereby recovered the money and protected the winnings for the family.

Mr. BLAIR: I think the section was repealed in 1934.

Mr. VALOIS: Is it legal.

The WITNESS: There is a provision in the Criminal Code under section 236, which makes it an offence to purchase a lottery ticket. I am not expressing any legal opinion about it but I think that refers to a sweepstake conducted in Canada.

Hon. Mrs. HODGES: A lot of people have been convicted on betting offences for being in possession of a lottery ticket on the Irish sweepstakes.

The WITNESS: They have been prosecuted for conducting a lottery.

Hon. Mr. HAYDEN: No, for being "in possession."

Hon. Mrs. HODGES: We had a case in British Columbia just a few weeks ago, but the accused was in possession of a book of tickets.

By Mr. Shaw:

Q. Why issue books then, in the light of the explanation that has just been given? Suppose I have a book of tickets on the Irish Sweepstake and suppose I get caught with them. Will they prosecute me although I may buy every one of them myself.—A. The matter has not been judicially determined. Let me refer for a moment to section 236 of the Criminal Code. It reads as follows:

> 236. Lotteries. Every one is guilty of an indictable offence and liable to two years' imprisonment and to a fine not exceeding two thousand dollars, who—
>
> (*b*) sells, barters, exchanges or othewise disposes of, or causes or procures, or aids or assists in, the sale, barter, exchange, or other disposal of, or offer for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property, by lots, tickets or any mode of chance whatsoever; or, . . .

Q. Is the seller covered?—A. Yes, the seller is covered under subsection (*b*).

Q. If a man is found with a book of tickets in his possession, is he prosecuted as a buyer or as a seller?—A. I think it all depends on the facts.

Q. On what?—A. On the facts.

Q. Suppose I am caught with a book of Irish Sweepstake tickets?—A. Suppose you say that you paid for them?

Q. They are not filled-out at all; I just have a book of these things in my pocket, and the R.C.M.P. apprehend me. Then what?—A. I think you would be charged with receiving. Whoever buys tickets or any such lotteries I think would be charged with receiving the tickets.

Hon. Mrs. HODGES: Is there not an offence of being in possession?

The WITNESS: No.

By Mr. Shaw:

Q. I think it would make an interesting court case.—A. I do not want to give a legal opinion on it, but my impression is that if a person had a book of Irish Sweepstake tickets in his possession, it would be almost impossible for the Crown to succeed in a prosecution because it would have to summon witnesses from Ireland to prove the existence of the sweepstake, and it would be most expensive and almost impossible to prove.

Q. You say that unless someone gave evidence to the facts they would not prosecute under that section of the Act whereby a poor man might have a $25 penalty imposed on him because "it was not worth it". I wonder who it was that we asked if there had been any prosecutions and the answer was "no".

Mrs. SHIPLEY: I think he said that since he had won $100 out of it, he could well afford to pay the $25 fine.

Mr. SHAW: No. This was a person who bought a ticket and said he would be liable to pay a fine of $25; and whoever we asked that question said there had been no prosecution because it was not worth it.

The PRESIDING CHAIRMAN: I think it was the social council.

Mr. SHAW: It was somebody who had authority.

The PRESIDING CHAIRMAN: I think it was the social council. However, I do not think we should get into a discussion among ourselves when we have a witness before us to testify.

By Mr. Valois:

Q. I had no intention of starting a legal argument, but I wanted to get your opinion. Do you think it would help the enforcement of the gambling law which we have right now if a lot of publicity got out to this effect: "You can buy a ticket on the Irish Sweepstakes and win a very nice or big sum of money?" Do you think it would help to make the enforcement of our laws easy?—A. I can only answer by saying, as I understand your question: Should we prosecute in Irish Sweepstake cases?

Q. I wonder if you would offer an opinion on that whether, on the way things are going now, it does not hinder law enforcement.—A. No, it does not. You are speaking now of Irish Sweepstake tickets, are you not?

Q. That is what you see happening every day, is it not?—A. Yes.

Q. In Montreal or in any part of Canada?—A. Yes.

Q. People buying tickets and collecting a big winning, yet nothing is done about it? Do you think that helps?—A. No, I do not think it helps the over-all situation at all. I must concede that. It is again evidence of the lack of public support of this type of offence; and the difficulties, of course, when you are dealing with a foreign sweepstake, are much more than when you are dealing with a domestic sweepstake because you can prove a domestic sweepstake, when it may be almost or entirely impossible to prove the existence of foreign sweepstake.

Mr. DUPUIS: I have conversed with several citizens who are in favour of such lotteries, and one of the arguments advanced is this: We can buy them from other countries, and all that money is going out of the country, so why

should not we get them here? And then I have explained to them the arguments against it which have been advanced in evidence here. It seems to me, according to what you have said today, that we are not too successful. But these people usually come back with the statement that: In New Zealand and in Australia where they have had such lotteries, there has been no counterfeiting and it has worked out well and the majority of the money raised is directed towards charitable purposes. Have you any knowledge of the situation in Australia or New Zealand in that respect?

The WITNESS: No. But I have been informed that in France, Brazil and Mexico the net return to the national treasury has been remarkably low.

Hon. Mr. ROEBUCK: I have had the same information with respect to Australia and New Zealand.

The WITNESS: In so far as the countries I mentioned are concerned, I think the result has been very disappointing in the net result to the national treasury.

Hon. Mrs. HODGES: I have a report which says that in the state lottery in Australia about 33 per cent of the gross returns went to the hospitals or charitable funds and the state had an amount of a little over £ 2 million which seems very small.

The WITNESS: I think that in France the return is much lower than that.

Mrs. SHIPLEY: I am glad to have that information. Thank you.

By Hon. Mr. Hayden:

Q. As I understand it, you are against lotteries either state operated or when operated by private sponsorship, even though they are restricted to charitable purposes? Is that right?—A. I do not endorse state lotteries or national sweepstakes. And in addition I object to private commercial firms sponsoring lotteries for charitable purposes on account of the large percentage which has to be turned to the sponsors of the fund, which might otherwise go to the charity itself if the funds were raised by voluntary giving.

Q. That is to say, you are opposed to the sponsorship of lotteries by the state, or national sponsorship, and you are also opposed to private commercial sponsorship. But suppose lotteries were permissible for specific charitable purposes and suppose that the charity itself provided the organization, would you still have an objection?—A. Not for that charitable object, no; no I would not.

Q. And your criticism of private commercial sponsorship is on the basis that not enough of the money is turned over to the charitable purposes—A. Yes.

Q. Is that not then a matter of administration which could be controlled as it is in England in connection with whatever betting is permitted there, where they look after the business of betting and permit betting on credit, and apply practical accounting methods and have accounting investigators to check the charges which are made.—A. As I read the report of the British Royal Commission on Betting, I think one of the objections which the commissioners took was this: That actually they could not find out the amount that these people had because their books were not available for inspection. I think we might experience the same difficulty in obtaining accurate results from the operators.

Q. Now, in respect to the report of the Royal Commisison and having regard to the extent that betting is permitted, and having regard to the fact that betting by credit is permitted and under arrangements where they send a telegram while the person placing the bet is not physically present at all, they do have a very strict audit, do they not?—A. That is right.

Q. And they do get all those records?—A. Not all of them; they do get some.

Q. But where you do not get them, you can put the man out of business? —A. If you have the sanctions with which to do it, then of course you can do it.

Q. They are not officials.—A. They are not officials.

By Mr. Shaw:

Q. Yesterday, during the last sitting, Mr. Blair, our committee counsel, made reference to that section of the Code under which the purchaser of a lottery ticket is guilty of a summary offence and can be fined $25, and he expressed the view: "I am afraid it is not worth while to prosecute such a person." I thought it was a witness who gave that information and I am sorry if I gave you the wrong impression. I want to ask Mr. Common this question —and I am honestly seeking information. Under what authority would the Royal Canadian Mounted Police seize their sweepstakes tickets or any such tickets?—A. They would have authority. What I am saying is subject to some judicial body saying that the Code would apply to foreign sweepstakes. Under the search warrant section of the Code, they would have authority to seize. May I put it this way: If it was the army and navy sweepstakes in Canada, they would have the right to apply to a justice for a search warrant. Under that search warrant they could enter and seize, and any tickets that they seize would, on the oath of the man swearing the information for the search warrant, be evidence that would be required to further the prosecution. Now, in the case of the R.C.M.P., when they seize Irish sweepstakes tickets, I presume it is done on the assumption that the Irish sweepstake comes within the provision of section 236. I am not prepared to give a legal opinion as to whether it does or not.

Q. You are not aware of cases where they have been seized?—A. I have never been aware in Ontario of cases where legitimate Irish sweepstake tickets have been seized under search warrant. There was a case in Ontario where a great number of counterfeit Irish sweepstake tickets were seized, but the charge, of course, was not laid under the lottery section but under the false pretenses section.

Q. They seized a cake, according to the press, in which these tickets were hidden.

Hon. Mrs. HODGES: What a clever idea!

Mr. SHAW: I do not know whether the R.C.M.P. thinks it is necessary to have—

Hon. Mr. VENIOT: It was the Ottawa police.

By Mr. Shaw:

Q. Would they be operating under the local governing body here?—A.No, they would not be acting under our instructions. They would be acting under their own initiative. You have reference to the Irish sweepstake. There have been seizures from time to time in the city of Ottawa from the Canadian Pacific Express and the Canadian National Express, and they have acted under search warrants. They have seized money and stubs. Whether charges have been laid, I do not know. I should say that I do know that charges have not been laid because apparently they cannot find a person to charge within the jurisdiction.

Q. I just want to see how good it may be.—A. There are rights of seizure. The right to seize does not necessarily come under the lotteries section. It comes under the general power to seize for evidence in criminal prosecutions.

Mr. BLAIR: Yesterday, when the Christian Social Council was here, it was suggested by their witness that the law was capable of enforcement if the enforcement authorities would enforce it.

The WITNESS: Of course, every law is capable of enforcement. I must concede that.

Hon. Mr. ROEBUCK: Almost none is capable of 100 per cent enforcement.

The WITNESS: Yes, true. Where you have a criminal offence or an offence which is not considered as such by the entire community, and where you have

different levels of law enforcement agencies, you will not get that 100 per cent enforcement that you would in the case of a burglary, bank robbery or murder, because public opinion is behind those sections, but it is not 100 per cent behind the gaming and lottery sections of the Code. It is regarded not as a moral or criminal question but rather as a social question.

By Mr. Blair:

Q. You said that you did not want to make any specific recommendations, but I gather that you feel that what might be called medium-sized lotteries are capable of some regulation. Would you think that perhaps one solution to this problem might be to lift the present $50 exemption in the Code and extend the area of its operation?—A. I do. I do not know why that exemption is confined to churches and bazaars and a limit put on the article to be raffled. It seems to me that we are back in the horse and buggy days. If we are to have exceptions at all, and this is a very confined type of exception, it should be extended if parliament desires to permit that sort of thing.

Q. Do you think that if such an exemption were made it would assist the enforcement authorities in limiting large and illegal lotteries, such as the sale of Irish sweepstake tickets?—A. Would you repeat that?

Q. If such an exemption were put into the Code allowing medium-sized raffles and lotteries, would it assist enforcement authorities in preventing the sale of large sweepstake tickets?—A. I do not think so. I do not think it would have any relation to it at all.

Q. Would you think it would be a good idea to eliminate altogether the exemption based upon the fiction of an agricultural fair?—A. No, I do not think it would assist the situation, because people go to these fairs in a carnival mood and they expect to have a fling. I would be the last person in the world to prevent those people from having their bit of fun or even to make a scintilla of a suggestion prohibiting it.—A. I made mention of the question of agricultural fairs, to bring attention to the extent to which this thing has grown and is protected by the law. Whether parliament in 1892 had that in mind, I do not know, but I hazard the guess that in 1892 we did not have monster bingos, etc. in midways like we have today.

By Hon. Mrs. Hodges:

Q. Would it help if the law defined when an agricultural fair is an agricultural fair and when it ceases to be an agricultural fair and becomes an exhibition?—A. Anything like the Toronto exhibtion would be extremely difficult to define.

Q. That is an agricultural fair in the sense of a fair?—A. Yes. A large part of the Toronto exhibition is devoted entirely to agriculture.

Q. But that is my point, as to whether it should be entirely an agricultural fair.—A. As we all know, when people go to these little town fairs and county fairs throughout Canada they expect to see a wheel of fortune, they expect to see a coconut shy—it is all part of the carnival spirit—and I am sure none of the members of this committee would like to deny a private citizen of the pleasures of a shooting gallery.

Hon. Mr. ROEBUCK: The pleasure of being fleeced?

The WITNESS: Yes.

By Mr. Blair:

Q. Mr. Common, you mentioned some of the present difficulties of interpretation, and you have given specific examples. One which has been commonly

mentioned is the so-called "games of chance and skill" section under which it apparently is illegal to dispose of a prize of goods by means of a contest, but it is perfectly legal to give away a large sum of money.—A. Under that subsection, yes.

Q. Are there any other anomalies of a similar character which you have observed in the operation of this section?—A. One I did not mention is the fact that you might be convicted for what might be perfectly allowable under the lotteries section but prohibited under the gaming section. Without taking the time of the committee, you may take my assurance that that is so. What is not an offence under the conducting of a lottery is an offence under the conducting of a common gaming house. That is one of the great anomalies and inconsistencies of the present law which is so hard for the public to understand.

Q. You would not like to see a system instituted whereby the conduct of lotteries would be licensed by provinces and municipalities?—A. No.

Q. You are of the opinion that, if proper exemptions were granted and specified in the Criminal Code, a system of law inforcement could be worked out more in accordance with what is happening at the moment?—A. And confined to charitable organizations.

Q. So you think that, with proper control, that would lead to exploitation of charitable and religious organizations for commercial purposes?—A. No, I do not think so.

Q. Mr. Common, earlier I mentioned Mr. Maloney's testimony. Would you like to offer any comments on that?—A. Yes, I would like to mention one thing on that. I noticed that Mr. Maloney, in giving his evidence before the committee on the 16th March, is described as the Chairman of the Committee on Criminal Justice of the Ontario Branch of the Canadian Bar Association. On reading his evidence, I take it that he was expressing his own personal views, not those of the Canadian Bar Association. As I read Mr. Maloney's evidence, I gained the impression that he was attacking the whole system of the administration of criminal justice in Canada, which, as you know, is based almost entirely on the British system of the administration of criminal justice, which has been there for years and has enjoyed a most enviable reputation throughout the entire world in regard to fairness, the existence of safeguards, and not only to justice but the appearance of justice. I was rather struck with the fact that, having regard to the criticism that Mr. Maloney made of the existing system, he did not offer particularly any worth while substitutes for the defects which he said do exist. He did say on one occasion that I was mistaken in my understanding of the situation when I stated on my first appearance before this committee that the accused was afforded every possible assistance and he was not taken by surprise, that the accused knew the Crown's case. He said that I was mistaken in that. He quoted, I think one case where that was not so, and he said that in view of my position I did not know what was being done by my subordinates and that in my present position I was unaware of what was taking place because I did not appear in the trial courts. I merely want to say that Mr. Maloney unquestionably had overlooked the fact that for some 10 or 15 years I did trial work exclusively. I had argued literally thousands of cases in the court of criminal appeal where I have had to read transcripts of evidence and not in one case, to my knowledge, have I ever been aware of the condition which Mr. Maloney alleges sometimes exist, that it is a contest between the Crown and the accused. The safeguard in that respect are apparent in that not only Crown counsel knows, or should know his job, but Mr. Maloney apparently overlooked the fact that experienced trial judges will not only frown on the practice, but would take very decided steps to see that the condition if it did exist would cease forthwith.

Now, in one case Mr. Maloney mentioned that the defence was taken by surprise, and I must concede that that was the case in one particular part of the evidence, but it was not deliberately done. It was an oversight in the Suchan and Jackson case. There was one piece of evidence which the defence did not know about, but I think the importance of that evidence can be judged by the fact that the court of appeal dismissed the appeal and leave to appeal to the Supreme Court of Canada on that and other points was refused.

I reiterate that the administration of criminal law in Canada is not a contest between the Crown and the accused. The Crown prosecutor is a quasi-judicial official fully aware of his position, and that statement of Mr. Maloney's is not, fortunately, borne out by the observations of other prominent defence counsel.

I think that is all I have to say.

The PRESIDING CHAIRMAN: Are there any further questions?

I wish to thank you, Mr. Common, for your very able presentation here today. On behalf of the committee and personally, I wish to tell you that we have appreciated your assistance not only on this occasion but on previous occasions.

The WITNESS: It has been a great pleasure, sir.

APPENDIX

THE CHURCH OF ENGLAND IN CANADA

THE DEPARTMENT OF CHRISTIAN SOCIAL SERVICE

(The Council for Social Service)

February 24, 1954.

The Officers and Members of the Parliamentary
Committee dealing with Public Lotteries,
Parliament Buildings,
Ottawa, Canada.

Right Honourable and Honourable Sirs:

CONCERNING LOTTERIES

I. ANGLICAN STATEMENTS

1. The Church of England in Canada through its General Synod which meets trienially, through the Executive Council which meets in interim years, and through the Council for Social Service, from time to time has made official representations to the Government of Canada regarding this matter. The church through its organized synods or councils is on record against any extension of the legalization of any forms of gambling in this country. The General Synod of the Church comprises all of the diocesan bishops, from Newfoundland to British Columbia, together with clergy and an equal number of the laity elected by those synods, in all upwards of some four hundred persons.

2. The following deliberate Resolution was passed in September last at the annual meeting of the executive council of General Synod in joint session with the Council for Social Service:

> The Council has heard with uneasiness that in the revision of the criminal code the sections dealing with gambling are to be subject to re-examination by a special commission and urges that no lessening of the restrictions against gambling practices, including sweepstakes and lotteries, be made by the government or parliament and instructs the executive committee to make appropriate and strong representations to the Commission, when established, along the lines so frequently set forth by General Synod.

To indicate General Synod's attitude we quote a Resolution passed at its Triennial Session in 1949:

> The General Synod of the Church of England in Canada has long recognized and deplored the evils of the gambling habit and today more than ever is concerned over its ever-tightening grip upon increasing numbers of our Canadian people:
>
> The Synod reaffirms its stand against the use of gambling practices to raise money for any Church purposes, and once again urges the Federal Government to repeal the section of the Criminal Code permitting gambling and lotteries for religious and charitable purposes:

The Synod places itself on record as opposed to any extension of the privileges of gambling by amendments to the Criminal Code, or by the granting of licenses by Governmental Departments for any other fields of gambling.

That this resolution be communicated to both Federal and all Provincial authorities concerned together with explanatory covering letters.

3. To indicate other aspects of the matter, in 1948 the Executive Council of General Synod adopted the Resolution below and also drew attention to a Statement made by the Lambeth Conference of 1948, the Conference of the Bishops of the Anglican Communion throughout the world. We embody here that Resolution and that Statement:

That this Council for Social Service records its conviction that any relaxing of laws regarding gambling will not be in the best interests of the Canadian people, and deplores in particular current agitation to establish public sweepstakes and lotteries on behalf of government or of hospitals and other institutions; and

That this Council again affirms that the raising of funds for any Church purposes by any such methods should be discouraged and refused by parochial or other authorities.

Lambeth, 1948. 44. The Conference draws attention to the grave moral and social evils that have arisen in many lands through the prevalence of gambling on a vast scale. In view of these evils we urge that no Church organization should make money by gambling. We deprecate the raising of money by the State or by any organization through sweepstakes and similar methods, however good may be the object for which the money is raised; and we warn men and women of the danger of acquiring the habit of gambling, which has led in so many cases to the deterioration of character and the ruin of homes.

4. There is no need to set forth the many other resolutions or memorials dealing with other phases of the subject. Those given above are sufficient to indicate the constant attitude of the Church since popular agitations for further privileges of gambling have disturbed the public mind.

1. (a) To permit lotteries, whether under governmental control or permission or otherwise, offers another form of gambling.

(b) No mania spreads more quickly or naturally than the practice of gambling. Gambling creates gambling. It creates a fever which spreads.

(c) Gambling is a menace to the moral fibre of individuals and ultimately of the nation. The desire to get something for nothing is a denial of honesty and industry.

(d) Gambling ultimately contributes to the power of the underworld and to the grip which it exercises in any society. The experience of the United States is entirely relevant.

(e) Gambling is a denial of the rational use of money either in the world of production or of finance and investment.

2. Lotteries present no sound economic policy for the support of philanthropic institutions or movements. (a) Participation in them and the spreading of the method of lotteries has been proven to dry up the springs of goodwill giving. (b) They contribute to an irrational use of finance and investment. (c) They cannot contribute enough even to the hospitals of Canada alone, supposing that this be the only object of the proposed legislation.

Relevant figures to illustrate these principles will be presented to your committee in a brief by the Christian Social Council of Canada, which is fully endorsed by this Council of the Church of England in Canada.

3. Gambling in all its ramifications becomes a centre around which intemperance with its accompanying evils and prostitution flourish. This is the testimony of many, including a highly placed police officer in one of our great Canadian cities. Of the three evils gambling is the hardest to deal with. Lotteries will but contribute to this three-fold menace.

4. The extension of gambling to public lotteries permitted by the law will in no way make it easier for the law officers of the Crown and the police to enforce law, even the present law as it stands. This contention has been advanced by interests vested in gambling, and, unfortunately, at times by some authorities charged with enforcing the law.

To express it another way, it is a false contention that by extending the privileges of gambling we shall cure a moral disease in individuals and the body politic, and make the enforcement of law practicable.

Lotteries cannot help individuals or the nation to limit themselves to gambling as permitted by law. Such legalization will contribute to a spirit in them which will extend to further *illegal* gambling. Legalized betting as, for example, on the race tracks has never prevented the spread of illegal gambling.

5. Gambling is a denial of the principle of sacrificial giving by which throughout our history the Canadian people have been most generous supporters of philanthropic objects.

III. Religious Sanctions

Up to the point to which legislators are responsible, this Council contends that they should buttress the efforts of the religious forces in our country which see in gambling, and particularly in large-scale gambling, a menace to the spiritual and moral fibre of our Canadian people and an additional hazard to high character and stable family life.

IV. Conclusion

These reasons and principles are set forth here in highly condensed form in order to assist more readily the officers and members of your Committee. They summarize the information given to the authorities of the Church of England in Canada and represent the Church's thinking on the subject. We trust that they will assist your Committee in reaching a sound opinion and decision to be presented to the Members of Parliament for their final consideration.

We are in full agreement with the Brief presented by The Christian Social Council of Canada, having been party to its preparation. We trust that the more detailed information in it will be considered carefully by your Committee.

The Church of England in Canada prays that its representations made over the years to successive Governments, will be given due consideration.

All of which is respectfully submitted,

ROBERT JEFFERSON,
Bishop of Ottawa, Chairman.

W. W. JUDD,
General Secretary.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don. F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

TUESDAY, APRIL 27, 1954

WITNESSES:

Representing The Chief Constables Association of Canada;

Mr. Walter H. Mulligan, President, and Police Chief of Vancouver;
Mr. George A. Shea, Secretary-Treasurer and Director of C.N.R. Police, Montreal;
Mr. Duncan MacDonell, Police Chief of Ottawa;
Mr. J. A. Robert, Police Chief of Hull; and
Mr. F. W. Davis, Police Chief of Moncton.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

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Hon. Walter M. Aseltine
Hon. Salter A. Hayden (*Joint Chairman*)
Hon. Elie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon. Nancy Hodges
Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Miss Sybil Bennett
Mr. Maurice Boisvert
Mr. J. E. Brown
Mr. Don. F. Brown (*Joint Chairman*)
Mr. A. J. P. Cameron
Mr. Hector Dupuis
Mr. F. T. Fairey
Mr. E. D. Fulton
Hon. Stuart S. Garson
Mr. A. R. Lusby
Mr. R. W. Mitchell
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

MORNING SITTING

TUESDAY, April 27, 1954.

The following members of the Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries were present at 11.00 a.m. this day: Messrs. Brown (*Brantford*), Brown (*Essex West*), Fairey, Fulton, Lusby, Murphy (*Westmorland*), Valois, and Winch—(8). In the absence of a quorum, the Joint Chairman, Mr. Don. F. Brown, announced that the Committee's proceedings are postponed until 3.30 p.m. this day when its business would be resumed from Wednesday, March 31, 1954.

AFTERNOON SITTING

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 3.30 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present: Messrs. Brown (*Brantford*), Brown (*Essex West*), Fairey, Fulton, Lusby, Mitchell (*London*), Murphy (*Westmorland*), Valois, and Winch—(9).

In attendance:

From The Chief Constables Association of Canada:

Mr. Walter H. Mulligan, President of the Association and Police Chief of Vancouver;

Mr. George A. Shea, Secretary-Treasurer of the Association and Director of C.N.R. Police, Montreal;

Mr. Duncan MacDonell, Police Chief of Ottawa;

Mr. J. A. Robert, Police Chief of Hull; and

Mr. F. W. Davis, Police Chief of Moncton.

Counsel to the Committee: Mr. D. G. Blair.

On motion of Mr. Fulton, seconded by Mr. Murphy (*Westmorland*),

Ordered,—That the Clerk of the Committee obtain as soon as possible the following documents recommended by the Subcommittee on Agenda and Procedure for the use of the Committee:

1. Three complete sets of the Minutes of Evidence taken by the U.K. Royal Commission on Betting, Lotteries and Gaming, 1949-51.
2. Three copies of the Final Report of the U.K. Royal Commission on Lotteries and Betting, June 1933;
3. Three copies of the Report of the U.K. Departmental Committee on Corporal Punishment, 1938;
4. One copy of U.S.A. Senate Report No. 725, 82nd Congress, known as the Kefauver Report on Crime and Gambling; and
5. Thirty-five copies of U.S.A. National Prisoner Statistics, No. 10, March 1954—Executions 1930-53.

The Presiding Chairman introduced the delegation from The Chief Constables Association of Canada.

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Police Chiefs Mulligan, Shea, MacDonell, Robert and Davis were called. Police Chief Mulligan made the presentation on capital punishment and, together with the other four members of the delegation, was questioned thereon.

During the course of the questioning period on capital punishment, on request of Messrs. Lusby and Winch, it was agreed that Police Chief Mulligan would make available to the Committee a report on murders in Vancouver for the last ten years.

Police Chief Mulligan also made the presentation on corporal punishment and, together with the other four members of the delegation, was questioned thereon.

During the course of the questioning period on corporal punishment, on request of Mr. Winch, it was suggested that Police Chief Mulligan be given an opportunity before leaving Ottawa of enlarging his statement on corporal punishment in respect of the Youth Guidance Detail established by Vancouver police officers.

On behalf of the Committee, the Presiding Chairman thanked the delegation from The Chief Constables Association of Canada for its presentations on capital and corporal punishment and announced that the delegation's presentation on lotteries would be commenced at 4.00 p.m. tomorrow.

At 6.00 p.m., the Committee adjourned to meet again as scheduled at 4.00 p.m., Wednesday, April 28, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

TUESDAY, April 27, 1954,
3.30 p.m.

The PRESIDING CHAIRMAN (Mr. Brown Essex West): We will come to order gentlemen.

A motion will be entertained which has been referred to and considered by the subcommittee, moved by Mr. Fulton, seconded by Mr. Murphy, that the Clerk of the committee obtain as soon as possible the following documents for the use of the committee: (1) Three complete sets of the minutes of evidence taken by the U.K. royal commission on betting, lotteries and gaming, 1949-51. (2) Three copies of the final report of the U.K. royal commission on lotteries and betting, June, 1933. (3) Three copies of the report of the U.K. Departmental Committee on corporal punishment, 1938. (4) One copy of U.S.A. Senate report No. 725, 82nd Congress, known as the Kefauver Report on crime and gambling. (5) 35 copies of U.S.A. National Prisoner Statistics, No. 10, March 1954.

All in favour?

Carried.

Now, gentlemen, we have with us today representatives of the Chief Constables' Association of Canada in the persons of Walter H. Mulligan, President of the Association, and police chief of Vancouver; Mr. F. W. Davis, Police Chief of Moncton, New Brunswick; Mr. D. MacDonell, Police Chief of the city of Ottawa; Mr. J. A. Robert, Police Chief of the city of Hull; and Mr. George A. Shea, secretary-treasurer of the Association and director of C.N.R. police, Montreal.

If it is your pleasure I will now call these gentlemen to come forward. Police Chief Mulligan is to be the spokesman.

The procedure to be adopted will be a consideration of, first, capital punishment. Afther the presentation of the brief by Police Chief Mulligan, the committee members will be permitted to examine the chiefs with such interrogations as they may deem advisable in the usual way of course. Then, we will have the presentation on corporal punishment followed by the usual interrogation; and then, tomorrow, you will have a presentation on lotteries by this association followed by the usual interrogation. If it is your pleasure we will proceed with the presentation on capital punishment.

Police Chief Mulligan.

Walter H. Mulligan, President of the Chief Constables' Association of Canada, called:

The WITNESS: Mr. Chairman and gentlemen, may I say at the outset that there were to be two delegates here this afternoon in the persons of Director of Police in the city of Montreal, Albert Langlois, and Chief Constable John Chisolm of Toronto. I am disappointed that they are not here because I feel that they would be of great assistance to the committee. Mr. Langlois' wife was taken ill so that he was unable to be here. I believe Mr. Chisolm may be here tomorrow.

In my capacity as President of the Chief Constables' Association of Canada, I want to say how much we of the police service in Canada appreciate the opportunity which you are affording us of expressing our views upon the three subjects, capital punishment, corporal punishment, and lotteries, now under consideration by your committee.

That the police should be consulted when the government is considering the drafting of new laws or the amendment of existing laws is to my mind a very logical procedure inasmuch as we are the enforcing agency, and, having the experience of the application and effects of application of the criminal laws and statutes of our country, we should be able to make a valuable contribution to the deliberations of those charged with the responsibility of making our laws.

The fact that the police as a body have never previously been consulted on such matters is possibly due, up to a point, to the attitude we have frequently adopted in the past when under criticism in our respective jurisdictions in regard to the enforcement of what are termed unpopular laws, of telling our critics that the police do not make the laws—that our job is enforcing them. This could give the impression that we are not interested.

However, from time to time, in the past, the municipal and railway police of Canada, as represented by the Chief Constables' Association of Canada, have on their own made certain representations to the Honourable the Minister of Justice, by way of resolutions passed at their annual conference, in respect to suggested amendments to the Criminal Code. Just what weight may have been given to these suggestions by the government I am unable to say, but the point I would like to make here is that there has been a tremendous change in the police service in this country over the past two decades. The old type policeman, recruited for his brawn and muscle alone, has almost entirely disappeared. Educational standards for entry into the police service generally have been raised, and we have in our ranks today highly educated men, many of them with university training, men of keen intelligence, who in the discharge of their daily duties of enforcing the law, give considerable thought to the problem of crime and particularly are they interested in the effect of punishment in relation to recidivism and the incidence of crime itself. The fact too, that the police are frequently under criticism for their enforcement of laws respecting gambling, lotteries, and liquor has caused many police executives to give serious thought to the matter of the application of these laws in their communities. I feel, gentlemen, that this improvement in the standard of the police service, and the study and thought presently being given to these matters by individual officers, places us in a position where we can be of real service on occasions such as this when revision of existing laws is under consideration, and I trust that on future occasions too, the government will not hesitate to seek the benefit of our practical experience in the field of law enforcement.

Turning now to the three particular subjects with which your committee is dealing, I would advise that in so far as I am aware, neither of them has come before our association for group discussion with the idea of submitting resolutions to the Honourable the Minister of Justice, but we have on many occasions discussed them individually amongst ourselves when we have met in conference. I feel then, that any presentation I make to you today, any expression of opinion, should be regarded in the light of coming from the chief of police of the third largest city in Canada rather than as coming from the police service as a whole. True it is that I know my opinions are shared by many other police chiefs, but I also know that these subjects are

highly contentious ones, and the chances are that if they had come up for official discussion at any of our conferences with the idea of framing resolutions, such resolutions might not be unanimous.

Now in regard to capital and corporal punishment, or for that matter, any form of punishment, the police generally take the view that this matter is outside their sphere. Broadly speaking, we take the view that our specific job is completed when we bring an offender before the courts, and this point of view is entirely consistent when considered in the light of the old and long established purpose or function of the police, which is, briefly, the prevention and detection of crime, the apprehension of offenders, and the preservation and maintenance of the peace. However, it would be totally incorrect for me to say that the police are not interested in the subject of punishment. We most definitely are for the simple reason that punishment, or the effects of punishment, have a direct bearing on the effectiveness of our efforts in controlling crime. If an offender is continually brought before the court and only a mild penalty is imposed, it is our experience that this is ineffective as a deterrent, and fails to induce in the mind of the offender any desire whatever to reform and rehabilitate himself, or persuade him to turn from his anti-social activities and become a useful member of the community.

Now speaking of capital punishment, I feel I am quite correct in saying that we of the police service are not in favour of the death penalty for murder being abolished, because there is no doubt in our minds that it does act as a deterrent. Our main objection is that abolition would adversely affect the personal safety of police officers in the daily discharge of their duties. We are the people who have to apprehend persons suspected of having committed violent and vicious crimes, persons perhaps who have already taken the life of another human being. It would be interesting to know, and if time had permitted I would have tried to obtain this vital information as to the number of policemen murdered in the execution of their duty in those parts of the world where capital punishment has been abolished. I submit that it will be found the number is much higher than in those countries where the death penalty is still in effect, and this point is the main one in our submission that our government should retain capital punishment as a form of security.

It is our belief, based on our experiences of the courts that in the final analysis, the death penalty is only inflicted on those who unquestionably deserve it, that is, persons who commit premeditated and cold-blooded murder.

The report of the British royal commission on capital punishment gave statistics which showed that over the last 50 years in England, that is, from 1900 to 1949, 1,210 persons were sentenced to death. 553 of these persons were reprieved, that is, 45·7 per cent had their sentences commuted. While I have not any statistics for Canada, I would think that our ratio would be approximately the same. You will no doubt recall that in one of the appendices to this report, the short facts of 50 cases of murder which occurred between 1931 and 1950 are set out, with the result in each case. In only 17 of these 50 cases was the death penalty carried out.

We do not believe that the death penalty can ever stop murder, but it cannot be successfully contended that it has no deterrent effect or that it has not reduced premeditated murder where the principal motive has been gain. We are perfectly willing to concede that neither capital punishment nor the threat of life imprisonment will have much effect on murders committed in the heat of passion, on the spur of the moment, or under some violent emotional stress, as opposed to callously planned and premeditated murders. The figures quoted show that in the former case, the death penalty, while imposed as a matter

of law, is seldom carried out. If, however, capital punishment is abolished, then in some of the most dreadful cases where murders have been committed with the utmost premeditation and callousness, a reprieve would be automatic, and the fear of death, which we are convinced acts as a deterrent, would be removed. We are well aware of the changing times, and the progress that has been made in higher education and learning particularly but in spite of these changes the police know only too well that basically, mankind has not changed in respect to his lusts and passions, and his desire for gain. We feel that they are the same today as they were when Cain murdered Abel.

We in Canada are very proud of the high traditions of justice that have been handed down over the years to the commonwealth countries. In England, the question of capital punishment has more than once been given the most serious consideration by select committees composed of the most brilliant brains of the country in various fields as well as in legal, medical and the judicial professions. As you will know, the latest of these committees was the royal commission on capital punishment, which was set up in 1949 and presented their report in September, 1953. You are all familiar with the contents of that report, and will know that although the commission was not specifically called on to decide whether or not capital punishment should be abolished, they did decide that the present system in its eventual results was broadly satisfactory. It would appear to us that in Canada, in respect to enforcement of the death penalty, we have also reached the stage where there is little room for further limitation short of abolition. It is clear to us that the verdict of guilty, and the imposition of the death penalty is not the last word—that in practically every case where there is any sound reason for doing so, the death sentence is commuted to imprisonment; that it is almost only in those cases where there has been deliberate, premeditated, intentional murder that the sentence of death is carried out, and that murder would be encouraged, or at least not so strongly discouraged, and society endangered if capital punishment was abolished.

Mr. Chairman, briefly that is our submission on that point.

The PRESIDING CHAIRMAN: Thank you very much, Mr. Mulligan. Members of the committee may at this time wish to submit their questions to Mr. Mulligan. If so, we will start at the right, Mr. Winch.

By Mr. Winch:

Q. Mr. Chairman, there is one question I would like to ask Police Chief Mulligan, that is, on the basis of his statement on the commutation of the death sentence can he tell us in Canada in all death sentences how many have been commuted?—A. No, I could not give you the answer to that. I mentioned the figure 45·7 per cent. That was in Britain.

The PRESIDING CHAIRMAN: If there is any other member of the delegation who can answer that we would be very pleased to have his answer.

By Mr. Winch:

Q. Could I put it this way: in your last remarks you stated that if the murder were premeditated or otherwise that the sentence was death, but on other occasions it was commuted. Have you any figures for Canada on that? —A. No, I have no figures, Mr. Winch.

By Mr. Valois:

Q. You were saying that it is your feeling that the death penalty is definitely a deterrent. Could you elaborate and tell us if any of your actual experiences would justify you in that conclusion. I mean, on what facts are you basing that opinion, or are you basing that on any facts?—A. I have

myself worked on several murder cases in the city of Vancouver and I do not intend to go into all the details, but this is my own opinion that if there were any change in the death penalty I do believe there would be an upsurge in major crime in this country, that persons would take the risk.

The PRESIDING CHAIRMAN: I think this is what Mr. Valois is trying to get at: is that one of the factors on which you base your statement?

By Mr. Valois:

Q. Yes, that is what I am trying to get at. I would be interested to know what are the facts that brought you to that conclusion that the death penalty is really a deterrent. I do not want any details, but could you illustrate that with something that happened in real life?—A. I think I see what you mean.

Q. If it is at all possible, of course?—A. Well, in my own experience in speaking with criminals in major cases, I have known many who have expressed the opinion that, for instance, if they are working on safes—that might be their particular type of criminal activity—they might have met another man who is a criminal and known to them as what they call "trigger happy", and would suggest to them that they go and hold up a bank. That criminal would not do it for fear that there might be a shot fired and someone killed and possibly both might be charged with murder and convicted.

Q. I ask this because previous witnesses have stated that in their opinion the death penalty was not so much of a deterrent as some people thought. That is why I wanted to find out from you what were some of the actual facts that brought you to that opinion.—A. That is my opinion as a police officer, and over the years in speaking with other police officers in this country and in the United States I have found that it seems to be a general opinion amongst police officers on the North American continent.

Q. Would you have met any police officers in some states where there is no death penalty who shared that same opinion?—A. Definitely.

Q. They feel that the abolition of the death penalty in those states has, you might say, made law enforcement harder and brought about a growing scale of crimes?—A. Yes. Mr. Shea and myself are members of an international association of chiefs of police, and we meet annually, usually in cities in the United States. We have heard and taken part in discussions between American officials, some from states where there is a death penalty and some from states where there is not, and we have heard their views, and many expressed that opinion.

The PRESIDING CHAIRMAN: This is the general opinion of police officers?

Police Chief F. W. DAVIS (Chief of Police, Moncton, New Brunswick): I have had personal experience investigating cases where there is no capital punishment. On checking with the police authorities in a city in North Dakota, we found that there were 12 men walking around there that had been sentenced to life for murder and later released, one that we were hunting for, and who had been sentenced in the United States four years before for a torture murder, and we were looking for him for another job. Taking life in that state meant nothing.

The PRESIDING CHAIRMAN: Mr. Shea, Secretary-Treasurer of the Association and Director of the Canadian National Railways police.

Police Director SHEA: In answer to Mr. Valois' question, may I say this, based on my own personal experiences of 40 years in police work. I control four railroads in the United States. In the state of Michigan we have a big railroad, the Grand Trunk Railway, and have had in the past 27 years, I think, four murders of policemen in the city of Detroit alone, and many other close shaves by police officers.

Mr. FULTON: On your force?

Police Director SHEA: Of our own police officers in dealing with hardened criminals. In most cases they are merely stealing from freight cars. You rarely hear of a murder committed in a case of that kind. In Canada we have not lost one. The C.P.R., unfortunately, did lose one, to my knowledge, a few years ago, but I think that that was something in the dark. I do not know, but I believe there is a feeling that it was not intentional, because these fellows were in desperation trying to get away and probably shot without knowing where they were shooting, and killed a police officer. But in Detroit in the last case that I recall the man was badly beaten with the gun and after the man had been knocked down and was helpless they "gave him the works" to make sure that he was dead. In Michigan, as most of you know, there is no capital punishment. I have discussed this many times with members of the F.B.I.—with whom we work every day in the United States—and with many chiefs of police from the larger cities, and without fear of contradiction I say that those with any experience, say 10 years or more experience, would unhesitatingly agree that capital punishment is a deterrent to such cold-blooded murders.

Mr. VALOIS: I have no more questions.

Mr. WINCH: On the same line of talk, may I ask Chief Mulligan this. In view of what he said about capital punishment—and I will bring him back to our own city of Vancouver—I believe that you were chief, or if you were not chief at that time I think you were at least a chief of the detective branch, at the time of the case in the C.P.R. yard.

The WITNESS: Yes, I had been chief constable for a month when the two policemen were murdered.

Mr. WINCH: Do you make any differentiation between a case where a man of your own force is shot under a circumstance like that, in that you say it should be capital punishment, and of a boy who is driving a car at a robbery of a bank at a time when there is a murder?

Mr. FULTON: Perhaps you had better give us the circumstances of the shooting of the two policemen.

The WITNESS: In February, 1947, three young men in a car were disturbed in the act when they were about to hold up a bank in the city of Vancouver, and a general alarm went out over the police radio system. Two of our officers working in plain clothes saw three young men run down a street into the railway yards known as Falls Creek railway yards, and they went after these young fellows and stopped them to ask them who they were and find out what they were doing, and without any warning two of them drew revolvers and shot and killed both the policemen. Another detective sergeant coming along took part in the shooting and shot and killed one of these young men, and the other two were arrested and charged. Eventually one was convicted and hanged, and in the case against the other he was acquitted. He was not armed.

The PRESIDING CHAIRMAN: Mr. Fairey.

Mr. FAIREY: If Mr. Winch wanted to pursue that, I do not mind.

By Mr. Winch:

Q. Is there any point of differentiation between that case—which I understand very well because I was there—and a case of a man who is not in the actual holdup but a party to it in the car?—A. There was a case in Vancouver where a bank teller was held up and shot. There were four men who took part in this holdup. Three of them went into the bank and committed the holdup, and the other man was driving the getaway car, and apparently under

a previous arrangement he was to drive around a block area and was to come by in time to pick up these men. He was four blocks away from the scene when the shooting and the murder took place.

Q. He was hanged?—A. He was convicted and hanged.

Q. Is there any differentiation in your mind in cases like that as regards capital punishment?—A. In that case—I was interested in it because I took part in it—the man with the car knew the business that they were going on and he knew that the other men were armed with revolvers which were loaded. He must have known that a bank teller had guns and a murder might occur, and I think he was equally to blame with the others.

Q. Have you ever seen a man hanged?—A. It is an interesting question. I was with Mr. Winch when he saw a man hanged.

Q. That is the reason I asked that question.

Mr. MURPHY (*Westmorland*): A good thing he did not say "No"!

By Mr. Fairey:

Q. Police Chief Mulligan, I just want to ask this. You said that police officers who were discharging their duties would feel in greater danger in pursuing a criminal if there was no death penalty attached to the crime of murder. Would it not be just the reverse? If I was going after a murderer, and that murderer knew that if he shot me he would be hanged, would there not be a bigger safety factor for me?—A. I think that was my argument. I said that if the death penalty were removed the police would not feel quite so safe as they do now.

Q. You feel that the criminal would be more likely to take a shot?—A. We definitely do.

Mr. FAIREY: Thank you, Mr. Chairman.

By Mr. Mitchell (London):

Q. Chief, I was interested in the question which Mr. Winch carried a little further. From your remarks, do we gather that you favour introduction of a system whereby there are various degrees of murder?—A. No, sir, I do not believe that I would be interested in different degrees of murder.

Q. In other words, those committed in the heat of passion you do not consider, as far as murder itself is concerned, any different from those that are premeditated, cold-blooded murder?—A. We do make a distinction, and we think that the courts in our land today take that into full consideration.

Mr. FULTON: You mean the juries?

The WITNESS: Yes, the juries.

The PRESIDING CHAIRMAN: And the Minister of Justice?

The WITNESS: Yes, the Minister of Justice too.

By Mr. Mitchell (London):

Q. In other words, you agree with the retention of the present method of commutation and/or reduction of charges from murder to manslaughter?—A. Yes, because we know that when the conviction is registered that does not mean the end of the case or that the man is going to be executed.

Q. Just one other question. I understand that in British Columbia you have a central place of execution, whereas in Ontario, for example, the executions take place where the crime was committed. Have you any comments on that as it affects the community? We have heard much in this committee as to the effect of executions on the stability and the reactions of the community at large.—A. In my career as police officer in Vancouver, there have been some spectacular murders, and I have always been very much interested in the state

of the public mind. We find that immediately following a murder the public are most helpful and we are flooded with information, tips, clues and ideas as to where we can find the person responsible.

The PRESIDING CHAIRMAN: Is that typical of British Columbia?

The WITNESS: British Columbia.

Police Director SHEA: I think it is typical of Canada.

Mr. WINCH: Perhaps Chief Davis can speak for the maritimes.

Police Chief DAVIS: I think it should be more stabilized and centralized.

The WITNESS: We try to apply this information intelligently and arrest the offender. Then there is a change in the public reaction. Immediately upon the completion of the trial there is a psychological change towards sympathy. But we have found that shortly afterwards the public very quickly loses interest and then looks for something else to come along, the next item of interest. Personally, we do not find any difference in the attitude of the public generally, following an execution or the conclusion of a murder case.

Mr. MITCHELL (*London*): I wonder if Chief Davis of Moncton would give us his reaction because, as I understand it, in New Brunswick executions are carried out in the same manner as they are in Ontario?

Police Chief DAVIS: Yes. Speaking from my experience, in western Canada they executed only at provincial jails, but in New Brunswick they are split into small communities and the sheriff is responsible, and they are very reluctant down there to erect a scaffold, and it invariably has to take place in the jail yard, sometimes adjacent to the houses where people live. I have always felt it should be centralized. If we have not a provincial jail, it should be in the penitentiary.

The PRESIDING CHAIRMAN: How about the families of the murderers? Should they be taken into consideration, do you think, when the body is to be released for burial?

Police Chief DAVIS: Yes.

The PRESIDING CHAIRMAN: Or should it not take place in the community where the trial takes place and the offence occurred?

Police Chief DAVIS: No.

The PRESIDING CHAIRMAN: And probably where the accused resides?

Police Chief DAVIS: I am thinking of the antiquated set-up in the different counties. We do not hang many murderers in the maritimes. The people there are law-abiding. But when we do we have to erect a scaffold. We have had two occasions in the last ten years there, and it is quite an outstanding event in the maritimes because the problem is that we have no facilities.

Mr. FULTON: You have had experience under both systems, I understood you to say?

Police Chief DAVIS: Yes.

Mr. FULTON: With respect to its effect upon the community and what I might call its neatness and desirability, which would you say was the more desirable method?

Police Chief DAVIS: The most desirable is to have it in a government institution. If you have not a provincial jail, it should be in a penitentiary.

The PRESIDING CHAIRMAN: In a central place?

Police Chief DAVIS: Yes.

Mr. FULTON: Would you go so far as to say that having it in a local jail has an undesirable effect on the community where it takes place, in that there is a certain morbid curiosity and perhaps even some permanent or semi-permanent effect on the mentality of some of the people in that community?

Police Chief DAVIS: Quite definitely. I have heard of cases where the sheriff threatened to resign his position if he had to carry out the hanging.

Mr. FULTON: I was thinking more of the effect on the community, because there has been a suggestion in this committee that it had a bad effect on the community.

Police Chief DAVIS: It would certainly have no good effect.

Police Director SHEA: Could I clarify that slightly? I think that the localities that Chief Davis speaks of do not lend themselves to it generally as does, for example, Bordeaux jail at Montreal, which is secluded from homes. It has a large wall around it and is a big institution, whereas in New Brunswick you have a number of small buildings. Some of them, I know, were originally dwellings, with a small yard, and perhaps a tenant living nearby could see into the jail yard, and it has a very morbid effect on children and teen-agers. If it were otherwise, I do not think the authorities would exclude the public from these hangings. It is not really a public hanging.

By Mr. Winch:

Q. May I ask Chief Mulligan a question? He and I saw the same hanging. Outside a capital punishment, what was your reaction, Chief Mulligan, at that hanging?—A. My reaction as I watched the proceedings was that in my career as a policeman I would be very careful in giving evidence that nothing I might say or do would affect adversely any person.

Q. What was your reaction to that type of execution?—A. I thought it was over very quickly. I thought it was done speedily and efficiently.

The PRESIDING CHAIRMAN: What Mr. Winch is trying to get at, I believe, is this: Do you think, if there is to be capital punishment, that it should be by hanging, or electrocution, or some sort of gas chamber or otherwise?

Police Chief MULLIGAN: At the time my opinion was that it was done speedily and efficiently. Personally, and as far as the police are concerned, I do not figure it is a matter for us as to the method of execution.

Mr. MURPHY (*Westmorland*): You wouldn't say it was pleasant, of course?

The WITNESS: Certainly not a pleasant experience.

Mr. FULTON: May I ask Police Chief Mulligan this? I understood you to say that in your opinion capital punishment definitely had a deterrent effect and that you based that opinion partly on conversations with criminals and that they themselves had expressed to you in one form of words or another the opinion that that was the case. Now, as I recall it, you gave us an example of one man with criminal tendencies who might refuse to associate himself in a crime with another criminal because he felt that there might be a murder as the result. Would it follow from that that in your opinion not only does the existence of capital punishment deter possible murders, but also deters possible crimes?

The WITNESS: I think it does, because we have epidemics of major crime and they are seasonal—that is, in our jurisdiction. In the winter months, with the long nights of darkness, crime increases. I feel that if capital punishment were abolished entirely we would have a great deal more crime.

The PRESIDING CHAIRMAN: Would you say that there is more crime in the winter than in the summer?

The WITNESS: In my jurisdiction, yes, very much more.

By Mr. Fulton:

Q. Can you say whether the existence of capital punishment in your opinion prevents some criminals from carrying guns and therefore from becoming potential murderers.—A. Definitely.

Q. In other words, they do not carry a gun because some of them in a moment of heat or excitement might use it?—A. Yes.

Q. Have you had any conversations with criminals on which you base that opinion?—A. Yes, I have had conversations with criminals with long records of criminal activity who expressed that view.

Q. Just for the record, I assume by the fact that the other gentlemen who are here have not indicated any different point of view that they do in fact agree with everything Police Chief Mulligan said in his presentation?

Police Director SHEA: I would say yes up to the present time.

Police Chief DAVIS: It has been my experience in talking to ex-convicts that there is a certain type who will not carry a gun on a job for that very reason. A good wise con will not carry a gun for the reason that if he gets caught on a job in the first place and he has no gun, he cannot get into more trouble.

By Mr. Fairey:

Q. Would you say that the same thing was indicated by those who carry a dummy gun?

Police Chief MULLIGAN: Yes.

Q. They carry it so as to say that they are not armed?—A. In 1948 the Chief Constables' Association met at Vancouver and I laid on the table a realistic toy gun and pointed out that in Vancouver we had had 22 holdups where realistic toy guns had been used, and I moved that the manufacture and sale of realistic toy pistols be banned. The press made rather a joke of it.

By Mr. Fulton:

Q. There have been expressions of opinion here that if capital punishment should be retained that there should be a different method. Have you any opinion to express as to the different methods of capital punishment from the point of view of its connection with the deterrent effect?—A. I do not think that we are interested in the method of execution.

The PRESIDING CHAIRMAN: No. It is the method.

By Mr. Fulton:

Q. The method. Do you think it is the death penalty that is the deterrent and not the method of execution?—A. I do.

Police Chief ROBERT: I agree with Police Chief Mulligan on that, that the death itself is the deterrent, not the method used.

The PRESIDING CHAIRMAN: The question is have you any view as to the method?

By Mr. Fulton:

Q. My question is, do you think if we are going to keep capital punishment that it would have a more deterrent effect if done by hanging or by some other method? Or, is it immaterial in your view?—A. I think it is immaterial.

Mr. MURPHY (*Westmorland*): I want to direct my question to chief of police Davis so that his opinion as to matters that we are discussing of the Maritime provinces will be on record here. Chief Davis, you spoke of a central place of execution. As you know, in New Brunswick the number of murders is very very few. What would you suggest as a central place of execution? Would you have in mind the maritime penitentiary?

Police Chief DAVIS: Yes.

Mr. MURPHY (*Westmorland*): In New Brunswick, and especially in your district, do the policemen carry guns?

Police Chief DAVIS: No. They have them but they do not carry them.

Mr. MURPHY (*Westmorland*): You might say that in New Brunswick neither the criminals nor the police carry guns?

Police Director SHEA: That is not true of all police.

Police Chief DAVIS: We can never tell whether the man we apprehend is armed or not. It does happen but not very often.

Mr. MURPHY (*Westmorland*): Respecting the recent murders in New Brunswick, how were they committed, by gunfire or otherwise?

Police Chief DAVIS: Otherwise.

The PRESIDING CHAIRMAN: How otherwise?

Police Chief DAVIS: Assault.

Mr. WINCH: What do you mean by assault?

Police Chief DAVIS: Weapon—fist, piece of wood or iron.

Mr. FULTON: Beating. In other words, beating to death.

Police Chief DAVIS: Any available weapon that is handy.

Mr. MURPHY (*Westmorland*): The maritime penitentiary is situated about 20 miles from Moncton and you have an opportunity to talk with a great number of those who are discharged from the penitentiary?

Police Chief DAVIS: Yes.

Mr. MURPHY (*Westmorland*): Would you say that from your conversation with them that the deterrent effect of hanging is the same as Chief Mulligan has set out for the rest of Canada?

Police Chief DAVIS: I would.

Mr. MURPHY (*Westmorland*): It bears it out in our own penitentiary down there?

Police Chief DAVIS: Yes.

Mr. MURPHY (*Westmorland*): You would go as far as to say that our murders in New Brunswick are accidental; they are not planned as gang murders or hold-ups?

Police Chief DAVIS: I would say this, on account of my experience across Canada in police work, that there is no organized crime in New Brunswick.

Mr. MURPHY (*Westmorland*): Thank you, chief.

Police Director SHEA: Mr. Chairman, might I add something to the question where the matter of degrees of murder was mentioned. I make a point of reading cases I am interested in in the United States. I read maybe 10 or 15 cases a month—some of them the most atrocious murders—from the state and federal courts, and I find that in the United States they will get pleas of guilty to second degree murder simply because the prosecutor says that it is going to save the state money and the prosecutor will say "now, of course a jury might let him off, we might lose". So, a smart lawyer usually says, if he feels that they have the goods on this fellow, "take the plea on the second degree murder" with a view of getting him out in 8 or 10 years. We do not have such a thing in Canada and I think that that is a deterrent to crime. If a man wishes, he could plead guilty and maybe get out in 10 or 15 years earlier with good conduct. They have all kinds of those cases in the states. We do not have those in Canada. I think that capital punishment is the deterrent.

Police Chief DAVIS: When a verdict of guilty is brought by the jury, it is well known that the judge of the court is required to submit a brief to the

Attorney General and the investigation officer is also requested to make a full report in view of any clemency, which might be asked for, and I understand that the whole matter is examined by the Attorney General, and the judge's report and the police officer's report go in and I think that they judge in Ottawa whether that should be commuted to life sentence or not.

Mr. LUSBY: I would like to address my questions to Mr. Mulligan, but there is one question to Police Chief Davis. You said that there is no organized crime in New Brunswick. Do you think you could extend that to the Maritime provinces generally?

Police Chief DAVIS: Are you asking me to speak for Halifax and Saint John?

Mr. LUSBY: Covering the whole maritimes.

Police Chief DAVIS: Yes. My experience in other parts of Canada indicates to me that there is no organized crime in the maritimes.

Mr. WINCH: And there is no organized crime in British Columbia. It is just crime.

Mr. FULTON: Would that apply also in our seaports in respect to such things as dope smuggling which do not, I think, come under your jurisdiction?

Police Chief DAVIS: I was not thinking of offences against federal statutes. I mean rackets and what have you as organized crime.

Mr. WINCH: You say that there is no organized crime of the capital punishment type in New Brunswick. I would like you to tell me whether there is any organized crime of the capital punishment type anywhere in the North American continent?

Mr. MURPHY (*Westmorland*): "Murder Incorporated".

Police Director SHEA: There was the case of two men who were up on a murder charge and were freed, and we also had a case against those two men for very serious theft. Practically the day that one man was freed from a murder charge, he was murdered, and from the little I know of this case—we worked with the R.C.M.P. and the provincial police on this—it was organized; these are known criminals. This one chap who was murdered had got away to the States and come back. It was an organized crime, I think, where they all got together and said "let us kill Jim Brown or something like that".

The PRESIDING CHAIRMAN: Did you say Brown!

Police Director SHEA: I will make it Smith. I think that they are more or less an incorporated organization, but I believe they co-operate in crime if it suits their purpose. I think that that would come under the heading of organized crime. We do not have too much of it, but we do have some organized criminals, who might from time to time not only commit crimes like theft, but it may lead to capital punishment later on.

Mr. MURPHY (*Westmorland*): What I mean by organized crime is crime of the capital punishment type by hired killers which Mr. Shea spoke about.

Police Director SHEA: Not particularly that, but where they have got to get rid of a member of a gang, because of what he knows or some such reason.

Mr. FAIREY: I think that it is regrettable that we should have it on the record that there is no organized crime in certain parts of Canada. I think it would leave the impression that there is organized crime in other parts of Canada. I do not think that is what we are here for.

Mr. LUSBY: I think that there is some relevance in this because obviously the situation is not the same in small centers as it is in big cities. That is why I wanted to ask Police Chief Mulligan a few questions about the situation in Vancouver, what incidence there was of crime accompanied by murder and that sort of thing.

Mr. WINCH: Will you also add this to your question because it ties in with exactly what you are asking: Police Chief Mulligan has been chief now for eight years—

The WITNESS: This is my eighth year.

Mr. WINCH: And you were before that head of the detective branch?

The WITNESS: Yes, for two years.

Mr. WINCH: In answering the question of my friend here, in the murders that have come to your attention in Vancouver as chief and as head of the branch, how many crimes of passion—

The PRESIDING CHAIRMAN: Is this the question you are going to ask?

Mr. WINCH: It ties in with Mr. Lusby's question.

By Mr. Lusby:

Q. I was going to ask how it ties in with large centres and how many were bold brutal murders?—A. The majority of charges of murder in Vancouver in the last few years have been crimes of emotion or passion, and not premeditated.

Mr. WINCH: That is very important.

The WITNESS: And I would like to point out that in the last few years the average number of murders have been 3, which I think speaks very well for the community in a city with such a large population. Some years ago we had 7 murders in one year, and I pointed out in my report to the Board of Police Commissioners how these had taken place. For instance, in one place a woman had committed suicide and had killed her own child by gas, and in two of the other cases men had killed their wives and committed suicide themselves.

By Mr. Winch:

Q. Now, in your 8 years as chief and the two years before that in charge of the detective work, as far as you can remember how many were actually cold-blooded murders, how many just in emotion, passion or jealousy or a fight on the street. Have you any approximation of that?—A. I would say that less than half were premeditated crimes. The majority of them were crimes of passion committed in heat or emotional stress.

Q. Following on that, they were so found guilty of murder, and were they hanged?—A. No. I do not know of any of that nature myself, of passion or emotion or stress, that were hanged. The only ones on whom the death penalty was carried out to my recollection, were ones of premeditated planned murder.

Q. Is it proper for you, Chief, to give to this committee after your return to Vancouver a report of these cases?—A. I would be very glad to. I am going to quote if I may from our annual report of murders in Vancouver: "in 1953 there were 3; in 1952 there were 3; in 1951, 2; in 1950 there were 2; in 1949, 5; in 1948, 7; that was the year I was referring to where the men had committed suicide; in 1947, 6; in 1946, 6; in 1945, 5; in 1944 there were 7.

Q. Of those how many were hanged?—A. I have not that figure but I will be glad to send that information to you for that ten year period.

By Mr. Lusby:

Q. Have you any idea how many unsolved murders there would be in your city as compared with those?—A. I would be glad to include that information also.

Q. You have not had any actual police experience in the United States, have you?—A. None whatever. My experience has been in Vancouver.

Q. But you have had I suppose a good deal of inter-change of ideas with American police chiefs?—A. Yes. We work in very close association with the city of Seattle and Washington state.

Q. Is capital punishment retained in that state?—A. Yes, in the state of Washington.

Q. Have you any idea from the conversations you have had with the police there how great an incidence of murder there is there?—A. I would only be hazarding a guess and I do not want to do that.

Q. Do you have any trouble in Vancouver with American criminals coming over? That is, what I might call professional types?—A. Very very isolated.

Q. If the death penalty were abolished in Canada might it lead to some professional American criminals coming over the border and committing crimes here in which murder might be the outcome? Do you think if the death penalty were abolished in Canada that there would be any likelihood of the American criminals coming over to Canada?—A. I would not think so.

Q. That has been suggested as a probable result of the abolition of the death penalty in Canada?—A. I would not think so.

The PRESIDING CHAIRMAN: We have some statistics on prisoners executed under civil authority in the United States in the State of Washington if that is of any assistance to you. I do not think it would be without some further study. This is a document of national prisoner statistics of the Federal Bureau of Prisons in Washington, D.C., showing executions for 1953. This is No. 10, March, 1954. This will be distributed and members of the committee will have an opportunity of studying it.

Mr. LUSBY: I suppose that does not show the numbers of murders with convictions as compared to unsolved murders.

Police Chief DAVIS: I think it should be on the record that I do not agree with Police Chief Mulligan on that answer.

Mr. FULTON: Which one?

Police Chief DAVIS: About the death penalty in Canada affecting the criminal in the United States, I think there is clearly an indication of it being detrimental. I know they fear Canadian law on the other side.

Mr. FULTON: You feel that the abolition of the death penalty might result in an influx of criminals in Canada?

Police Chief DAVIS: Yes, definitely.

Mr. WINCH: If that is your opinion then why do not the criminals of the United States go into the states of the United States where they have not that penalty, because the records show that there is no higher rate of homicide in the states in the United States where they do not have that penalty than in the states where they have it. Why do they not move into those states?

Police Chief DAVIS: I would like to see those records. I believe that the states that have no capital punishment have more convicted murderers.

Mr. WINCH: It is not on the record. The record is entirely opposite.

The PRESIDING CHAIRMAN: What record are you referring to?

Mr. WINCH: All the submissions made before the commission in Great Britain showed that the states in the United States of America that have no capital punishment have not a higher but have a lower rate of homicide than those where they have not the penalty. So that in view of that statement made here that the witness thinks the abolition of the death penalty in Canada would bring criminals into Canada, why have they not moved into their own states where they do not have capital punishment?

Police Director SHEA: In the states we know as a fact that it is much easier, for instance, to get a man away on an insanity charge in the United States than here due to the fact that they do have degrees of murder. I

would doubt the authenticity of records that show it because we know that there are a lot of unsolved murders and I wonder if they are giving the ones that are actually caught. I think that the records in Canada would show a better picture generally than those in the states because we do know in the states they have organized crime. I have had the pleasure of entertaining one of the most distinguished justices, Justice Kavanagh in the United States. I brought him over to talk in London, Ontario, some years ago, and he had visited all the penal institutions practically in Canada, Europe and the United States, and was a man of vast experience, and in discussing these things with him, I would say that the views I have already expressed and the views Chief Mulligan expressed today would be identical with the views he had. He was in Cook County, Illinois, and he felt that at the height of the bootlegging days, if they had not had capital punishment there that the picture would have been much worse than what it was.

By Mr. Blair:

Q. Chief Mulligan, in some of the earlier discussions we had here there have been questions asked about the effect of the death penalty on juries. The suggestion has been made, because there is a mandatory death penalty, juries sometimes shrink from convicting a person of murder in a proper case. I was wondering whether you or your colleagues would like to comment on that subject?—A. My experience has been, in cases I have been personally involved in and cases I have listened to, when evidence is adduced before a jury in a murder trial and it is overwhelming evidence, they do not hesitate to convict and find the accused guilty.

Q. You mentioned in the course of your remarks that in some types of cases where passion or emotion was a factor in the homicide that this was taken into account by juries. You would not regard that as being a perversion of the law?—A. No.

Mr. WINCH: Mr. Chairman,—

The PRESIDING CHAIRMAN: Let Mr. Blair finish.

Mr. WINCH: On the same phase. I think it is an important one that ought to be cleared up now. It is made very pertinent now as a result of a case of contempt of court in Vancouver in which "The Province" was fined $2,500 and counsel was fined $250. Is it not correct that the jury only has to decide, not the penalty, but as to whether or not the person actually committed murder. That is the only decision.

The WITNESS: That is correct.

Mr. WINCH: No other decision?

The WITNESS: No other.

Mr. FULTON: Except that the jury can find that he did not commit murder, but did commit manslaughter.

The WITNESS: And the judge would so direct in his charge probably.

Mr. FULTON: Yes.

Mr. LUSBY: And they may recommend leniency.

Mr. BLAIR: Your position is that a jury knowing a man convicted of murder may be hanged, do not allow that to affect their judgment?

THE WITNESS: No.

Police Chief ROBERT: I do not agree with Police Chief Mulligan on this point. The jury is influenced due to the fact that they know the penalty being imposed by the court will be death especially when there has been passion. I can cite two cases of murder, one by a sexual pervert, at which

the verdict of the jury was reduced to manslaughter, although it was a clear-cut case of murder, and the second one a homicide of a father by the son, who shot five or six bullets at his father in a public house. Although they were plain and clear, there was some sympathy on the part of the jury and they brought in a verdict of manslaughter. There is a third case that I could refer to.

Mr. FULTON: Excuse me, there. Would that not be on the basis of a defence of provocation?

Police Chief ROBERT: No, because the first murder I am telling you about—

Mr. FULTON: I was thinking particularly of the second one.

Police Chief ROBERT: The first was by a sexual pervert. He met a girl in a certain hotel in this city and brought her over to our city. After having had sexual intercourse with her he killed her, by strangling her to death, and the verdict of the jury was manslaughter. The second case I referred to was a shooting in broad daylight. The third one I referred to was committed after two members of the air force had met a certain gentleman in a night club and were taken home by him, but on their way home they robbed him and "knocked him off"—booted him to death almost—and when they went over the bridge they threw his body into the river. Owing to the fact that these two men were members of the armed forces, the jury brought in a verdict of manslaughter.

Mr. FULTON: In the second case you referred to, did I misunderstand you? I understood you to say that the son had shot at the father and then later the father killed the son.

Police Chief ROBERT: No, it was the son that actually fired at his father and killed him.

The PRESIDING CHAIRMAN: What was the reason for shooting his father?

Police Chief ROBERT: Disagreement in the home. The defence brought in that the father had been a drunkard all his life and that there had been strong disagreement in the home, and in fact the son had left home five or six months previous to the crime on account of this disagreement between him and his father, and of course the mother and sisters came in and told the jury a long story.

Mr. FULTON: In each one of these cases there would be present some element—in two of them, perhaps—of suggestion of that long history preying on the mind.

Police Chief ROBERT: In that second case I will admit that.

Mr. FULTON: In the third case, the sympathy, whether natural or not or misplaced or not, with the members of the armed forces; and in the first case, I take it, a definite suggestion of mental disorder—you used the words "sexual perversion"?

Police Chief ROBERT: Yes.

Mr. FULTON: There were what I might call complicating factors present in each one of those cases, were there not?

Police Chief ROBERT: Correct, sir.

Mr. FULTON: Your point was that the jury gave its recognition to the presence of those factors by bringing in a verdict of manslaughter instead of a verdict of murder. We have had other witnesses here who said that rather than create degrees of murder we should leave the law as it is at present and leave it to the jury. If it felt that there were any mitigating circumstances it would give recognition to that feeling by making its verdict manslaughter rather than murder.

Police Chief ROBERT: I would not agree with that. I am strongly in favour of the present system that we have.

Mr. FULTON: That is what this witness suggested.

Police Chief ROBERT: But, of course, that is something that cannot be avoided. The members of the jury know exactly the circumstances of the case and we cannot prevent their attitude from influencing their verdict. Even with its faults, I am strongly in favour of the present system. I feel sincerely that the duty of the jury is to find the accused guilty or not of murder with the possibility that the Minister of Justice or the committee, or whoever is in charge, could deal with the case.

Mr. FULTON: By commutation.

The PRESIDING CHAIRMAN: Would that not favour wealthy people? It takes money to appeal all these cases.

Police Chief ROBERT: No. In some of those cases they were not wealthy.

Mr. FULTON: It takes no money to appeal to the Minister of Justice for clemency.

The PRESIDING CHAIRMAN: Lawyers take money.

Police Director SHEA: To my mind there would be a vast difference in a local jury making up its mind to be sympathetic towards a boy like that or the two air force boys. I do not know, but there may be members of the jury who are naturally sympathetic, rather than being opposed to capital punishment. I think that it is presumptuous to think that just because they did not give a verdict of guilty they were opposed to capital punishment. I think there is a vast difference.

Police Chief DAVIS: I would agree with Chief Shea in that connection. In my experience juries, if they do have any sympathy at all, generally express it when they bring in a verdict of guilty. They generally add a strong recommendation of mercy.

The PRESIDING CHAIRMAN: Mr. Blair wishes to ask a question.

Mr. BLAIR: My questions are less important than those of the members of the committee if they want to follow this up.

Mr. LUSBY: I just wanted to ask this. Do you know of a case in which, in your opinion, the jury acquitted a man altogether of a murder charge, in which you think the fact that the penalty for murder was capital punishment would lead them to do so? In other words, would they have acquitted a man altogether because the charge was one in which, if they convicted him, he would be sentenced to be hanged?

Police Chief ROBERT: Just for that simple reason?

Mr. LUSBY: Yes.

Police Chief ROBERT: I do not know of any such case.

Mr. LUSBY: In other words, when a verdict is manslaughter it sometimes means that for some reason the jury does not consider the case one in which capital punishment should be inflicted, but they bring in a verdict of manslaughter so that the man can be punished.

Police Chief ROBERT: May I add this? I do not mean to say that any members of the jury at those three trials I have mentioned gave such verdicts because they were against capital punishment

Police Director SHEA: That is what I had in mind.

Police Chief ROBERT: They are definitely not. I was following up the question by Mr. Blair to the effect that the jury may be influenced by their own attitude or sympathy towards the accused.

Mr. FULTON: That is what juries are for, is it not?

Police Chief ROBERT: Yes, I wanted to point that out.

The PRESIDING CHAIRMAN: Mr. Murphy is trying to get in here.

Mr. MURPHY (*Westmorland*): I wanted a comment from the panel. I had started to build up by asking questions about certain sections of Canada, and the maritimes are a section particularly free from organized crime in respect to the subject we are talking about. It is suggested—that is not what we were discussing—but if we find that in certain parts of Canada there is less crime punishable by capital punishment, less murder, then there must be a reason for it. I have heard and read that the best places for criminals to hide are in large cities. In rural types of areas such as the maritimes, with small towns and cities, if a crime is committed there is only one road out, or two at the most, and there is very little chance of getting away. Our courts are not as busy as they are in other places, and the criminal is speedily dealt with. Our juries in the maritimes are not in the least spleeny about bringing in convictions for murder, and the criminal is hanged. It means that there are more unsolved crimes in the larger centres, more organized crimes. I know this personally. I read very often in my home-town newspaper that a former New Brunswick man is charged with murder in Quebec, Montreal, Vancouver or elsewhere, because, having acted rough where he comes from, he has left to go where it is more difficult for the police to find people in these larger cities. It would seem, then, that the death penalty is a deterrent to the committing of murder and that if the people who commit murders in larger cities and other districts could be as speedily caught and dealt with—personally I do not blame the police for it nor do I say that the record of those areas is black, but it is probably because many people from these other districts went there—would that not prove to you, gentlemen, that the death penalty is a deterrent to murder and other crimes punishable by death?

Police Chief ROBERT: Yes, we will all agree to that.

Mr. MURPHY (*Westmorland*): That was my idea for building up that case.

Police Director SHEA: That is a matter of population and, as you say, places to hide or escape.

Mr. BLAIR: I would like to interrupt a question at this point to mention this. We have been joined by Chief MacDonell of Ottawa.

The PRESIDING CHAIRMAN: He is on the record as being here.

Mr. BLAIR: Mr. Mulligan, there is one question relating to a question of Mr. Lusby's. I think that the answer is probably clear on the record, but I would like to establish it. Sometimes it has been suggested that, because of the death penalty, murder trials are conducted on a different basis than other criminal trials and that there is a lower percentage of convictions for murder or manslaughter on murder charges than there would be on charges for other offences. I wondered if the panel would care to comment on that?

Police Director SHEA: Do you think that is so?

Mr. BLAIR: I am suggesting this as something which is sometimes said about charges for murder, that the percentage of convictions is lower than in cases of other crimes.

Police Chief MACDONELL: I would not think so.

Police Chief DAVIS: A police officer investigating a case of murder certainly goes out of his way to be fair, and he does not make an arrest, talking from my own experience, unless he is reasonably sure in his own mind that he has a case.

The PRESIDING CHAIRMAN: Mr. Davis, when hanging has taken place as a result of murder, is there any continued investigation made after the hanging?

Mr. WINCH: As to whether he is innocent or guilty?

The PRESIDING CHAIRMAN: Any continuation of the investigation?

Police Chief DAVIS: After the sentence the police officer is usually requested to make a full report, which is forwarded to the Minister of Justice.

The PRESIDING CHAIRMAN: Is there any continued investigation as to whether there could be some mistake?

Police Chief MULLIGAN: I would say "No", unless some information is received. If we had any doubts, we would bring them to the attention of the court before the sentence was carried out.

The PRESIDING CHAIRMAN: The suggestion has been made in this committee that there may have been mistakes made, particularly in one province of Canada—I think it is Quebec. That is why I asked the question. Supposing, now, after a hanging you get some further evidence that there might have been a mistake, what is done in a case like that?

Police Chief MULLIGAN: After the police received that information they would immediately bring it to the attention of the prosecutor and the attorney general would be notified by him and there would be a complete investigation made of that information.

Mr. BLAIR: To tie that down, in view of the suggestions made, we might ask these gentlemen if they or their association are aware of any case where an innocent man might have been hanged in this country.

The WITNESS: I do not know of any.

Police Chief DAVIS: I do not.

Police Chief ROBERT: I do not either.

Police Chief DAVIS: But I will say that there have been cases where the charge has been reduced to manslaughter and it should not have been, in my opinion.

Mr. FULTON: Should not or need not?

Police Chief DAVIS: Should not.

The PRESIDING CHAIRMAN: It should have been murder, and he should have hanged?

Police Chief DAVIS: Yes.

Mr. WINCH: Are there cases where it has been called murder, and you think that it should have been called manslaughter, sentence was given for murder, and in your estimation it should have been for manslaughter?

Police Chief DAVIS: No, I have not heard of it. It is the other way around.

The PRESIDING CHAIRMAN: What he is asking is this: Do you know of any cases that have been murder and you think that they should have been manslaughter?

Police Chief DAVIS: No.

Mr. BLAIR: My next question has to do with the method of sentencing. At the present time the death penalty is mandatory. Once the person is convicted for murder the death penalty is automatically imposed. Have any of you given consideration to the exercise of discretion in the award of the death penalty, as to whether it should be either death or a sentence of imprisonment; and if so, whether that discretion should be exercised by the judge or the jury? Do you see any merit in a proposal of that kind?

Mr. MURPHY (*Westmorland*): That is not quite a question, Mr. Blair, for the police officers.

Police Director SHEA: What my view would be, Mr. Blair—and I am sure the view of most police officers—is that it ties in with our present system of capital punishment. It is a deterrent because they know it is there. It is

out-and-out murder, and the chances are that it is going to mean hanging, whereas if it were left to the judge or the jury to decide whether he should go to the penitentiary or should be hanged, there would be that great chance that he could get off. With that it would go back to the United States system, where they have degrees of murder.

Mr. WINCH: You would hang a man and that is all?

Police Director SHEA: Yes.

The PRESIDING CHAIRMAN: Perhaps we could get to the question of corporal punishment.

Police Chief ROBERT: There was a question raised right at the beginning, I believe, and I do not want to pass it up. I believe that one of the members of the committee asked about the degree of danger to police officers in the discharge of their duties if the death penalty was abolished. Mr. Mulligan answered that of course it would be worse for police officers to arrest men wanted for murder or any serious crime. I believe that some gentleman asked that.

Mr. FAIREY: I just wanted to clarify it.

Police Chief ROBERT: May I point out that at first sight it may not look right, but it is. If the death penalty were abolished, our jobs would be just as dangerous if not more so. Police officers have been killed recently in making arrests of criminals. Those criminals were not wanted for murder. May I just cite a case in Toronto, Suchan and Jackson, who were wanted at that time for armed robbery only, for which there is no death penalty. However, they shot a detective. I just wanted to mention that because I did not know whether it had been mentioned.

Mr. WINCH: The very question I was going to ask before. We have here now chiefs of police from the Atlantic to the Pacific. Outside of sentiment on capital punishment, with all the horror that it means, I did want to ask this question, and ask each one of the chiefs if they would answer it. If there was no capital punishment in Canada, do you feel that it would mean a greater risk of life on your men who have to enforce the law?

Police Chief MULLIGAN: I do.

Police Director SHEA: Definitely, yes.

Police Chief DAVIS: I would say so.

Police Chief ROBERT: I agree with that. We all agree with it.

Mr. LUSBY: If a police officer were chasing a man who had committed a murder, do you not think it would be possible that he might be more likely to shoot in order to avoid an arrest than if he knew that he would not be hanged?

Police Chief ROBERT: Not necessarily, sir, as I just pointed out.

Mr. LUSBY: I am speaking of a case where a man knows that if he were caught he would be hanged, not in other cases.

Police Chief ROBERT: Even for murder, sir.

Mr. WINCH: Not murder. If you have caught a criminal in the act and he knows that if he is caught he will be hanged, he may shoot.

Police Chief ROBERT: Definitely. An experienced criminal will not shoot a police officer.

Mr. WINCH: If he shoots, he will be hanged?

Police Chief ROBERT: Definitely it would be a deterrent to him.

Mr. WINCH: Since the man is a criminal—and we all say he is a criminal—is he not more likely, if he knows that he will be hanged, to shoot? He will not shoot if he knows that he will not be hanged but go to jail? What is your opinion of that?

Police Chief ROBERT: That was exactly the same question as was asked at the beginning.

Mr. FAIREY: May I explain what I was after? If we had no capital punishment at all, and a police officer is after a criminal for any charge whatsoever, then he is free to shoot that policeman, knowing full well he will not hang for it.

Police Chief ROBERT: Definitely.

Mr. WINCH: If he knows that if he shoots he might escape, and if he is caught he will hang?

Police Chief ROBERT: Then that will probably stop him from shooting. That is exactly what I wanted to bring out.

Mr. FAIREY: He will not shoot if he knows he will be hanged.

Mr. FULTON: I think we are getting at complete cross purposes. I think we are confusing the record. It is already somewhat confused.

Mr. BLAIR: I think that in fairness to the witness it should be recalled that Chief Mulligan made that point right at the outset.

The PRESIDING CHAIRMAN: That is right.

Mr. FULTON: There is surely no question but that all this panel of the chiefs of police are agreed that to eliminate the death penalty for capital punishment would increase the risks to their forces in enforcing the law.

Police Director SHEA: Not solely to them; to society generally as well as the police.

The WITNESS: But we are concerned with the safety of the police officers in this country.

The PRESIDING CHAIRMAN: Did you have a question Mr. Lusby?

Mr. LUSBY: I did not quite get that cleared up. I was trying to draw a distinction between the case where a police officer is endeavouring to apprehend a man for a crime—not a capital crime, a crime for which he could not be hanged—and in which case if he shoots the officer he is then incurring the risk of hanging that he would not have incurred before; between that case and the case where the officer is endeavouring to apprehend a man for a crime for which, if caught, he will presumably be hanged. I cannot see why he should not shoot the officer and hope to escape.

Mr. BLAIR: It is the difference between, let us say, a murder and a robbery.

Mr. LUSBY: A man who committed a capital crime.

The PRESIDING CHAIRMAN: Is there any comment to be made by the panel on Mr. Lusby's question?

Mr. WINCH: There is a question—

Mr. FULTON: Let us get this one first. Otherwise we will get this confused again. I have to raise a point of order here. In fairness to the witnesses and the committee, we should have one question answered before another is asked.

The PRESIDING CHAIRMAN: I thought that you were trying to get Mr. Winch's question in.

Mr. FULTON: No.

The WITNESS: I would say in answer to that question that it would be a natural conclusion that he would not take that chance of shooting at a policeman and of being caught and hanged.

Police Director SHEA: Take the chance of being hanged, he means.

Mr. WINCH: With all due deference to Mr. Fulton, I still think that this matter is a little confused. I was wanting an answer on this very subject, and I am afraid that he has rather confused the issue. The question is this,

and I will put it as clearly as I possibly can. Is there a greater degree of danger to a police officer in Canada if the law provides that if a man is caught and shoots he will be hanged, but he knows that if he does not shoot he will not be hanged? Is the police officer not in a better position if a chased criminal knows that in order to escape he does not have to shoot?

Police Director SHEA: I do not get it.

The PRESIDING CHAIRMAN: I thought that the question had been clearly stated. I thought that so far as these officers were concerned they had made their position clear.

Mr. MITCHELL (*London*): Let each individual police officer answer the question.

The PRESIDING CHAIRMAN: I think that the matter has been cleared to the satisfaction of the members of this panel, that so far as they are concerned capital punishment should be retained as a protection for a police officer. Is that right, panel?

The WITNESS: Yes.

The PRESIDING CHAIRMAN: I think that this should clear the matter as far as the panel is concerned. If so, let us proceed with the corporal punishment.

Police Chief MULLIGAN: Corporal punishment. Now, in regard to corporal punishment, there are many of us in the police profession—and I subscribe to this group—who feel that there are other effective forms of punishment than the lash, but we would not like to see corporal punishment wholly abolished for reasons I will outline to you. Although we are aware that corporal punishment was abolished in Great Britain (Criminal Justice Act of 1948), we have found it to be a most effective deterrent whenever an epidemic of major crime, such as armed holdups, occurs. As an illustration I would like to cite the experience in my own city a few years ago. We were having quite an epidemic of armed holdups. The descriptions of suspects clearly indicated that several different people were involved. As the number of these crimes increased and were reported in the press, The Hon. the Chief Justice of British Columbia called a meeting of judges and magistrates for the express purpose of securing uniformity in the punishment of persons convicted of these crimes of violence. His Lordship publicly announced through the press that it was the intention of the courts to impose lashes with sentences, as they were determined to stamp out this wave of violence. At the same time the announcement was made investigation by the police resulted in several arrests. Within the space of the next few weeks, several persons had been convicted, some in police court and some in the higher court. In each case the lash was included in the sentence, and within a very short period following, the holdups ceased completely, although we knew that we had not been successful in apprehending all those who had been engaging in these crimes.

During normal times, magistrates and judges have been known to include the lash when a person has been convicted of some violent crime, particularly in cases where the accused had been previously convicted of similar crimes, and again, there have been instances in such cases where the lash has not been imposed, and this lack of uniformity in the opinion of the police, has been the basis for much of the argument in favour of abolishing corporal punishment.

Veteran police officers report that in conversations they have had with accused men, the men have stated their intention of asking the court to impose a whipping and show leniency in the matter of jail sentence, and it has become almost accepted that if an accused convicted of a vicious crime has a whipping imposed, then his sentence in terms of years of imprisonment has been drastically reduced. The police are of the opinion that these requests are made by the criminal with the object of reducing the possibility of proceedings being taken against him under the provisions of the Habitual Offenders section of the

Criminal Code. In this regard, we do feel that section 575B of the Criminal Code relating to the preventive detention of habitual offenders can be given wider application in Canada, and persons with a long life-time history of convictions in criminal cases removed from society for an indeterminate period.

Persons charged under those sections of the Criminal Code dealing with sex penalties may be dealt with in the same way as the habitual criminal under section 1054A of the Criminal Code, by establishing that the accused person is a criminal sexual psychopath, and he also can be committed to a penal institution for an indeterminate period, subject to review by the Minister of Justice every three years.

During the past 20 years there has been a marked trend in Canada towards a broader service to the public by the police. More attention has been paid to the prevention of crime and we welcome the work that is being done by the social workers in our communities, in the increase in probation and the work of probation officers in general. However, in spite of all this, we are concerned in the reduction in the age group of those charged with the most serious crimes. Today it is the group between 18 and 24 years, and the inmates of the penitentiaries reflect this lowering in the age groups.

The problems of juvenile delinquency became very evident in the war years, and reached serious proportions in some communities after the war. In my city of Vancouver, we in the police set up a youth guidance detail composed of police officers who had shown an aptitude for dealing with youth. Since the inception of this detail in March, 1950, the police in Vancouver have listed the names of 7,500 boys and girls who have come to their attention.

Mr. WINCH: 7,500?

The WITNESS: Yes. Cases which have come to the attention of the police. Of this number approximately 2,000 boys and approximately 1,500 girls are listed on file cards in the youth detail office for their continued bad behaviour. From this group we have the records of approximately 150 boys and 100 girls who are all definitely anti-social in their attitude. All have committed numerous offences. Many of the boys have been referred from the juvenile court to the ordinary court, and from there some have been sentenced to the penitentiary and others to the provincial institutions. Speaking of these 150 boys, and the duplicates in other parts of Canada, it is the opinion of the police that corporal punishment in the form of the birch or cane could be used with good effect on this type of youthful offender, and it is our considered opinion that if this were done it would considerably reduce the possibility of corporal punishment, that is, the lash, being imposed in later years.

That is our submission, Mr. Chairman.

The PRESIDING CHAIRMAN: Are there any questions by members? We will start at this end this time.

By Mr. Lusby:

Q. Do you think that it is the physical or the psychological effect that does the most good, that is, when one of these young criminals is lashed?—A. Are you speaking of adolescents?

Q. Yes.—A. Definitely the physical.

Q. You think that it is the pain more than the humiliation?—A. Both. Of course, you would certainly feel the pain. My own police officers have complained to me in Vancouver that they have been up to the juvenile court when some boys have been accused of serious offences and in many cases these boys have been released. This type of probation is really only in first and second offences. It leaves the feeling with the police officer that they return to the corner gang and the others express surprise at seeing them back; "where have you been"; "there is nothing to it"; "it is all over". That has a very bad effect.

The PRESIDING CHAIRMAN: What do you mean has a very bad effect?

Mr. FULTON: On whom?

The WITNESS: On all the other group of hoodlums that these boys hang around with.

By Mr. Lusby:

Q. In other words it makes him a hero?—A. Yes.

Q. Do you think after he gets the lash it is the actual pain which deters him or humiliation, or a combination of both?—A. It is a combination of both, but chiefly the humiliation. I am not suggesting that first offenders be strapped. I am referring to the 150 boys who are repeaters.

Mr. FULTON: Do I understand though that you are prepared to contemplate, and in fact suggest, that there should be a discretion in the court even in the case of the first offender to order it, perhaps not the lash or the strap, but the cane or a birch as a general punishment?

The WITNESS: I was not thinking of a first offender being punished in that way.

Police Director SHEA: Nor an adult?

The WITNESS: No.

Mr. FULTON: I formed the opinion that you had felt in some cases because of the fact that when they get off scot-free they go back to their gangs that in some cases there should be discretion in the courts, some discretion to impose the birch or the cane even in the case of a first offence?

The WITNESS: Yes, I think so, a caning.

Mr. FULTON: Then you would go on beyond that, I suppose, to say that there should be a further change—that would involve a change in the law?

The WITNESS: Yes, I think it would.

The PRESIDING CHAIRMAN: I am a little confused. When a juvenile goes back to his gang after being in court and he is a hero, do you mean after or before he has had a caning?

By Mr. Fulton:

Q. I understand the witness to say he is a hero because he has had no punishment. He has been to court, up before the big-wigs, and nothing has happened. "What happened to you?" "I bamboozled them". I understood the chief to say that in those circumstances it had a bad effect on the lad and the gang to which he went back, and I think it was suggested by the chief that if the lad went back and said that he got a darn good birching that he is not going to be a hero and his confreres will think twice before they continue their activities. Is that right?—A. Yes.

Q. Therefore, you would be prepared to recommend that we consider a change in the law to make the imposition of that penalty possible?—A. I would.

Q. And I also understand you to go on from there and say that there should be perhaps a consideration of some further changes in the law to extend the types of cases in which corporal punishment can be imposed on juveniles?—A. Yes.

Q. And that again you would suggest, however, that with respect to juveniles it should be caning or birching rather than by lash?—A. Yes, rather than the lash or the paddle.

Q. What do you mean by caning or birching? Is there a standard instrument which you have in mind? —A. I was thinking of my own school days when we were caned with a willow cane on the hand.

Police Director SHEA: On the buttocks?

The WITNESS: No, on both hands.

By Mr. Fulton:

Q. One final thing: I understood you to say that you are not recommending any elimination of the present discretion as to corporal punishment in the law with respect to adults?—A. That is right, for the reason I have cited, the illustration.

Q. Therefore, any extensions you have in mind relate only to juveniles? —A. Yes.

Mr. FULTON: Thank you.

By Mr. Mitchell (London):

Q. I just have one question which deals with the present situation whereby the lash or the strap is ordered as punishment. Can you give us any idea of the number of cases you have in which either the lash or the strap are ordered. Let us say, in the last year or three years?—A. Since the period I spoke of, the epidemic of armed hold-ups six or seven years ago, there has been only the occasional isolated case in Vancouver where the lash has been imposed with a jail sentence.

Q. That leads up to the question that you feel very strongly that that one episode when there was a concentration on the value of the lash for a very short period has taught the required lesson in Vancouver?—A. Yes. It was definitely a wave of violence and it was stamped out, we think, by that means, using the lash.

By Mr. Fairey:

Q. Chief Mulligan, I put this question to a previous witness and I think you have repeated what he said, that you are, generally speaking, opposed to a birching or caning for a first offender?—A. Yes, I am a great believer in probation and I feel that in the case of any boy who has made his first mistake that when he appears in juvenile court, it should be explained to him and he should be put on probation.

Q. Just once?—A. Yes, I think so.

Q. Would you agree that punishment to be effective should be full, certain, and sudden? Isn't that the general rule?—A. Yes, to be effective, yes.

Q. Then, if we want to stamp out juvenile crime, petty thieving and things we have in mind with these youngsters, would you not agree that the time to do it is when he first starts and not when it gets into his system?—A. No, I think boys are different, and unless they ignore the warning, they should be given that first opportunity, I think.

Q. I would agree to some, but not many.—A. I have seen numerous cases where nothing has been done.

Q. I am changing the subject again to the general subject of corporal punishment, using either the lash or the strap—as we have it described here. Did I understand you to say that you would be in favour of the abolition of the lash as such and that corporal punishment should be confined to the use of the strap?—A. No, sir, I did not say that. I said that I am one of those who believe that there are other effective ways of dealing with the criminal involved in a life of crime. I mean, by using other sections of the Code.

Q. Did I understand you to say that you are in favour of the retention of corporal punishment as in the present criminal law?—A. Yes, I am.

Q. Would you agree that a combination of corporal punishment and a short sentence is preferable to a long sentence without corporal punishment? In other words, if the Act provides for the judge to give, say, five strokes of the lash and five years, or ten years, which would you think would be the greater deterrent—a lash and five years, or a straight ten years?

Police Chief ROBERT: If I may be permitted—

The PRESIDING CHAIRMAN: Could we ask the members of the panel individually?

Mr. FAIREY: I am trying to find out your opinion as to whether you think corporal punishment and a short sentence is better than a long term in prison?

The WITNESS: My answer would be that many accused people do ask for that.

The PRESIDING CHAIRMAN: What is your opinion? Would you like to express it?

The WITNESS: No, sir, because I know that some criminals do not like doing time and others do.

Police Director SHEA: I would answer affirmatively, based on this.

Mr. FAIREY: I am speaking about the interests of society.

Police Director SHEA: That five-year sentence with the lash would be a greater deterrent than the ten years, and I base my opinion on my experience over a long period of time that an incorrigible—and these are practically all incorrigibles who commit these recurring crimes—have been in jail many times and get to know the law and what happens in these cases. Therefore, they know that if they go in for a ten-year sentence, there is the subject of ticket-of-leave, at least in half that time.

Mr. WINCH: Not in Canada.

Police Director SHEA: I beg to differ. I have been here year after year, in Mr. Guthrie's time and Mr. Lapointe's time, and there have been exceptions, but the general trend is that he will go on ticket-of-leave—

Mr. VALOIS: Half-time when it is the first sentence and two-thirds of the second sentence.

Mr. FAIREY: That is getting away from the point.

Police Director SHEA: Mr. Lapointe explained it to me—I do not think it is unfair, as we found him very good and he would always explain the reasons. We also had a lot of dealings with Mr. Gallagher of the Remission Service. I would answer your question in the affirmative, that the short sentence with the lash would be a deterrent, because we all realize, I am sure, that most of these brutal criminals are cowards in the final analysis. Physical punishment they do not like, and we have known some of them who cringe at the suggestion of it. In Montreal the other day a man got a ten-year sentence, and he asked to get a shorter sentence with the lash. He probably thought he was going to get some sympathy and that the judge would not give him the lash but might say, "Well, I will give you five years". He probably did not want that lash, but he was brave enough to stand up and take a chance, hoping that he would gain the sympathy of the court. They are cowards, and I think that most police officers will agree that these brutal people who abuse women and that sort of thing—and that includes some tough boys who are tougher than any men that we run into—are cowards at heart.

Police Chief DAVIS: I will go along with what Mr. Shea says. I have spoken to many ex-penitentiary convicts, and they certainly fear the lash. I know that. That is why many criminals do not take a gun with them when they go on the job. If they carry a gun, they might possibly receive an armed robbery charge. They certainly fear the law.

The PRESIDING CHAIRMAN: What is your answer?

Police Chief DAVIS: Yes, I would be inclined to go along with a shorter term with the lash.

Police Chief ROBERT: I believe that we cannot answer this. That is the type of case that we cannot generalize.

Mr. FULTON: It depends on the criminal?

Police Chief ROBERT: In some cases the short sentence will do the trick. That is, it will have more effect on the criminal than a long sentence. In others, the lash would not have any effect at all. It is a bargaining proposition with them. Therefore, a longer sentence should be applied in their cases.

Mr. FAIREY: I was coming to that later.

Police Chief ROBERT: That is my point of view based on my experience.

Police Chief MACDONELL: I will agree with Chief Robert. I think that each case should stand on its own merits. I would say the same thing, that it depends on their homes, their upbringing and surroundings, and what can be done.

By Mr. Fairey:

Q. I have one last question. Chief Mulligan, I understood from your statement that you were in favour of more general use of those sections which enable the court to judge a criminal as an habitual criminal?—A. Yes.

Q. With an indeterminate sentence?—A. Yes, I am in favour of a wider application of it.

By Mr. Valois:

Q. I am just wondering if I should ask a question. What impressed me is that it seems that the value of the lash as a deterrent is in relation to the type of the criminal itself. It means that with the system we have there are some sections where a judge may impose the lash and in other sections he cannot because it is not included in the section? Do you think that this is done, or they are paying enough attention to that very fact, that the lash should rather be imposed in relation to the possibility of its effect on one individual, because he happens to have broken one section of the Code. Am I making myself clear? That is, instead of having the lash—of course you have to understand it is not the main thing; but what I am trying to say is this: the way I see it is that under the system we now have, we have certain sections of the Code where the judge may give as a sentence both the lash and imprisonment. Then there are other crimes wherein only imprisonment or fines can be imposed as a sentence. That takes care of the nature or gravity of the offence, but it does not have regard to the effect it may have on one individual. Are there any suggestions you could make to correct that system?—A. I think the best thing would be if there was a definite uniformity between trial judges and magistrates in imposing the lash.

Q. But again, their hands are tied down by the law.—A. No. They have a discretion.

Police Director SHEA: No. In cases where the section does not require it.

Mr. FULTON: At the present time the penalty of whipping can only be imposed for those types of crimes involving violence. Therefore, with respect, perhaps your question might be worded in this way: It is doubtful if there should be an extension of the discretion to impose whipping to other types of crimes.

Police Director SHEA: Or for the repeaters; I do not think so.

The PRESIDING CHAIRMAN: Mr. Winch?

Mr. WINCH: All my questions have been asked and answered.

The PRESIDING CHAIRMAN: We are beyond our time today and I appreciate your patience, Mr. Blair.

By Mr. Blair:

Q. I do not want to take up the time of the committee too much but it may help to fill in the evidence of previous witnesses. Have you, or any members of the panel, any information as to the reformative effects of corporal punishment? Is there any indication that criminals who may have been subject to corporal punishment are less likely to be recidivists than other types of criminals?

Police Director SHEA: I have not any definite information, but I can tell you about a conversation I had with a desperate man. He went to St. Vincent de Paul for four years, and he did not care very much about his own or anybody else's life. I asked him: What effect did penitentiary have upon him? He was a man of 47 or 48 years of age, and I tried to help him when he got out, because I thought he had reformed. Incidentally, that was 10 years ago and he has not returned to crime since. He started off with liquor and went on from there to worse. He was a brainy man and he concocted a scheme whereby he got away with some $3,000 by spurious pay cheques. There was a lot of brains behind it, and he did such a good job that even the paymaster could not tell whether it was his signature or not. We succeeded in convicting him and he nearly lost his life in the penitentiary because the steam pipes broke one night.

He was on the stone pile and in the jute mill, because he would not obey the regulations of the penitentiary when he first went in. He was a hardened criminal, but he had never been in jail before—this was his first offence. We were after him for a long time, but he was so clever, we were never able to get the evidence, although we knew that he was stealing wholesale. He admitted everything to me after he got out and told me that the jute mill and the stone pile took all the fight out of him,—so much so, that although he was an expert mechanic and steam fitter, one night just before the King's amnesty in 1939—when the King visited Canada in 1939—he was so fed up with penitentiary that he volunteered to go in and fix the steam pipes by putting on five raincoats to hold back the steam, and he was nearly scalded. He of course was unaware of the King's amnesty and took this chance, and the warden promised him for that, he would be released as soon as possible, because he had already served nearly four years, and he was freed on the occasion of the King's amnesty anyway. But he told me he took the chance on his life because of the people he was associated with—he said, "I thought I was a tough guy when I went there, but they took that out of me." He told me he spoke to fellows who had the lash and they said that if they got the chance to get a job that penitentiary would never see them again. Unfortunately they make these resolutions, but they do not always keep them. We all make resolutions and do not keep them, but these fellows are more unfortunate. However, it did have a deterrent effect on this chap. He has been out 10 years. This man has had a hard struggle. I have been interested in him and have tried to help him. He is also an inventor, and invented many little things when he was working in our shops. However, people do not like to trust a man who has served a sentence in penitentiary. He makes a living and that is all. He told me that story when he came to visit me to see what I could do for him. He is not the type to give you a line of blarney or something like that, but is really an intelligent man who doesn't say two words if one will fit the picture.

Mr. FULTON: You said he did not have the lash—it was the penitentiary?

Police Director SHEA: Yes, but he told me those criminals in there—they have some tough individuals at St. Vincent de Paul—and to use his own words, "I used to enjoy hearing them letting off steam the first month they were there, and I knew that living in the penitentiary would soon take it out of them,

because they do not like physical effort—they are naturally lazy or they would not be criminals. They find they can make a living easier by stealing and one thing and another. He said that I could leave a million dollars before him and he would now be able to pass it up, because he knows it is not worth it. I have talked to many others, too.

Mr. WINCH: Just before we adjourn for the night—I do not think it comes under our directive, but in listening this afternoon to the words of Chief Mulligan here, I believe even if it does not come under our directive and if you and the committee agree, would it be possible at one of our meetings before Police Chief Mulligan goes back to Vancouver to give us—and through us to the press and to Canada—a greater understanding of what he explained that he has the names of thousands of juveniles in Vancouver that have been brought to the attention of the police. They have boiled it down to approximately 150 boys and 100 girls and they have a committee. This is one of the most interesting things I have heard, Mr. Chairman, and although it does not come completely under our directive I would like, Mr. Chairman, if you could consider whether we could have Chief Mulligan address us on this experience and this work, and how it has been handled?

The PRESIDING CHAIRMAN: Yes. Chief Mulligan will be back tomorrow and probably will have an opportunity of amplifying his statement.

The WITNESS: I will be very glad, Mr. Chairman.

By Mr. Blair:

Q. Before we break up, I think it would help us if we could have the comments of these gentlemen on certain proposed changes in the Criminal Code. We are all familiar with the present offences for which corporal punishment may be imposed. The new Code proposes that corporal punishment should be dropped for two offences. One is the offence of gross indecency. The reason for that is that it is regarded as being an offence committed by a sexual psychopath and that there is another form of treatment more desirable. The other offence for which corporal punishment might be deleted occurs in section 292.

Police Director SHEA: What was the other section you quoted?

Mr. BLAIR: Section 206. 292 deals with assault on females.

Mr. WINCH: In the new Act?

Mr. BLAIR: I am giving the numbers out of the old Code. The new Code proposes that the offence of gross indecency be not subject to corporal punishment. Perhaps I should segregate these. Are there any comments these gentlemen would like to make on gross indecency?

The WITNESS: I would agree with that.

Police Director SHEA: I would too.

Police Chief DAVIS: Yes.

Mr. WINCH: The Criminal Code has now passed the House of Commons on that section and why do you raise it now?

Mr. FULTON: We can extend it or recommend that.

Mr. BLAIR: The other major change in corporal punishment in the new Code occurs in the old section 292, which deals with the simple assault on the wife or any other female occasioning bodily harm, and it is proposed in the new Code to abolish it in respect of that offence.

Mr. WINCH: It is the only time I would agree with it.

The PRESIDING CHAIRMAN: Have you any comment, gentlemen?

The WITNESS: The only comment I would make in respect to the assault on a man's wife is that I know sometimes they are the most dreadful cases.

Mr. FULTON: The panel is in accordance with the change which the new Code would make in that respect?

The WITNESS: Yes.

Police Director SHEA: It would depend on the seriousness of the offence.

The PRESIDING CHAIRMAN: The panel believes that it should be left to the discretion of the courts.

Police Chief ROBERT: The court should have the power to impose it.

The PRESIDING CHAIRMAN: Tomorrow we will meet in this room at 4 o'clock in the afternoon.

Mr. FULTON: I move that we adjourn.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden
and
Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 9

WEDNESDAY, APRIL 28, 1954
THURSDAY, APRIL 29, 1954

WITNESSES:

From The Chief Constables Association of Canada:

Mr. Walter H. Mulligan, President of the Association and Police Chief of Vancouver;
Mr. George A. Shea, Secretary-Treasurer of the Association and Director of C.N.R. Police, Montreal;
Mr. Duncan MacDonell, Police Chief of Ottawa;
Mr. J. A. Robert, Police Chief of Hull; and
Mr. F. W. Davis, Police Chief of Moncton.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

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Hon. Elie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon. Salter A. Hayden (*Joint Chairman*)
Hon. Nancy Hodges
Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Miss Sybil Bennett
Mr. Maurice Boisvert
Mr. J. E. Brown
Mr. Don. F. Brown (*Joint Chairman*)
Mr. A. J. P. Cameron
Mr. Hector Dupuis
Mr. F. T. Fairey
Mr. E. D. Fulton
Hon. Stuart S. Garson
Mr. A. R. Lusby
Mr. R. W. Mitchell
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

WEDNESDAY, April 28, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senator Fergusson—(1).

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron (*High Park*), Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Murphy (*Westmorland*), Shipley (Mrs.), and Winch.—(11).

In attendance:

From The Chief Constables Association of Canada: Mr. Walter H. Mulligan, President of the Association and Police Chief of Vancouver; Mr. George A. Shea, Secretary-Treasurer of the Association and Director of C.N.R. Police, Montreal; Mr. Duncan MacDonell, Police Chief of Ottawa; Mr. J. A. Robert, Police Chief of Hull; and Mr. F. W. Davis, Police Chief of Moncton.

Counsel to the Committee: Mr. D. G. Blair.

On motion of Mr. Winch, seconded by Mr. Fairey, the Honourable Senator Muriel McQueen Fergusson was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

Police Chief Mulligan made his presentation on lotteries, following which Police Chiefs Robert, Shea, Davis and MacDonell made supplementary statements thereto, all of whom were being questioned thereon when the Presiding Chairman announcd that the questioning of the witnesses would be resumed tomorrow.

At 6.10 p.m., the Committee adjourned to meet again as scheduled at 11.00 a.m., Thursday, April 29, 1954.

THURSDAY, April 29, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senator Fergusson.—(1).

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron (*High Park*), Fairey, Fulton, Mitchell (*London*), Murphy (*Westmorland*), Shipley (Mrs.), Valois, and Winch.—(10).

In attendance:

From The Chief Constables Association of Canada: Mr. George A. Shea, Secretary-Treasurer of the Association and Director of C.N.R. Police, Montreal; Mr. J. A. Robert, Police Chief of Hull; and Mr. F. W. Davis, Police Chief of Moncton.

90630—1½

Counsel to the Committee: Mr. D. G. Blair.

On motion of Mr. Murphy (*Westmorland*), seconded by Mr. Winch, the Honourable Senator Muriel McQueen Fergusson was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

The Presiding Chairman announced the unavoidable departure from Ottawa of Police Chief Mulligan of Vancouver and also the inability of Police Chief MacDonell of Ottawa to be in attendance today.

The Committee resumed and completed its questioning of Police Chiefs Shea, Robert, and Davis on the lotteries question.

At 12.30 p.m., the Committee adjourned to meet again as scheduled at 11.00 a.m., Tuesday, May 4, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

WEDNESDAY, April 28, 1954.
4.00 p.m.

The PRESIDING CHAIRMAN (*Mr. Brown, Essex West*): We will now come to order, ladies and gentlemen. A motion will now be entertained for the purpose of appointing Senator Fergusson acting Joint-Chairman for the Senate for the day.

Mr. WINCH: I so move.

Mr. MURPHY: I second the motion.

The PRESIDING CHAIRMAN: Mrs. Fergusson, will you come forward, please?

And now we will continue, if it is your pleasure, with the witnesses representing the Chief Constables' Association of Canada. We have with us again today Mr. Walter H. Mulligan, President of the Chief Constables' Association of Canada and Police Chief of Vancouver, Mr. George A. Shea, Secretary-Treasurer of the Association and Director of Canadian National Police, Central Station, Montreal, Mr. Duncan MacDonell, Chief of Police of Ottawa, Mr. J. A. Robert, Chief of Police of Hull, and Mr. F. W. Davis, Chief of Police of Moncton. Gentlemen, will you please come forward.

Now, I understand, Mr. Mulligan, that you are the spokesman for the association?

Mr. Walter H. Mulligan, President of the Chief Constables' Association of Canada, recalled:

The WITNESS: Yes, Mr. Chairman.

The PRESIDING CHAIRMAN: And the other members of the association are here to support you. To simplify matters and in order to save time, I believe you are not speaking solely for the association, but you will be expressing your individual opinions mostly?

The WITNESS: That is correct, sir.

The PRESIDING CHAIRMAN: Today we are going to discuss the question of lotteries in Canada. Have you some presentation that you would like to make?

The WITNESS: I have sir.

Mr. Chairman, ladies and gentlemen: the offences of gambling, betting and lotteries have caused the police in this country more trouble and concern, the expenditure of more time in efforts to control them than have any of the other duties we are called upon to perform.

The question as to whether the laws respecting lotteries should be amended is a highly contentious one. A certain section of the public on the one hand is in favour of broadening the laws relating to lotteries, particularly where the funds to be raised by such schemes are to be used for charitable purposes only. Another section of the public is of the opinion that the existing laws should remain in force, or be made even more restrictive by removing the certain exemptions which are now provided for in the Criminal Code. The police, gentlemen, are in the middle of this controversy, and I can assure you it is a position we do not relish. I do not think, as enforcement officers, that we should express an opinion one way or the other as to the desirability

of changing our present laws, but I do feel that in considering the issues involved, your committee should give some attention to the role of the police. There has been an inference in some of the representations already made to you that our laws as they exist are already wide enough, or elastic enough in scope to satisfy both sections of the public, i.e. those in favour of widening the laws and those who feel further restrictions should be imposed, and there has also been the inference on the part of those opposed to any broadening of the laws that the police are not at all times doing their utmost to enforce the present laws. I believe the point was made that a law could not be regarded as unenforceable merely because that law did not happen to find favour with the majority of the citizens in any community. Now in regard to this latter point, I would like to be permitted to speak as to the police experience in enforcing the lottery laws in my own city of Vancouver to show you that it is no easy matter to enforce an unpopular law, and I can best illustrate my point by quoting authentic cases which have occurred during my tenure of office, as chief of police. Now the first case, in April, 1948, was that of a sports club, and the accused approached this club and offered to raise money for them by a so-called "Quizz" contest. The accused signed a contract with the club by which he was to have sole control of the scheme and pay the club a percentage of the money raised by the use of their name. Following investigations by the police, the sports club disclaimed the accused and offered their assistance in a prosecution. The city prosecutor felt that the executive of the club were deceived and misled by the representations of the accused. A warrant was issued under section 236 of the Criminal Code.

While this investigation was proceeding, a service club commenced the selling of lottery tickets to raise funds for the particular charity which it sponsored. The chairman of the service club's charity drive was summonsed for conducting a lottery. He appeared before a judge and jury on May 31, 1948, and was acquitted. The accused in the sports club case was arrested and appeared in the magistrates' court some time after, on July 6, 1948, to be exact, and was found guilty, but the learned magistrate pointed out that in view of a recent decision in a similar case in the higher court in Vancouver where the accused had been acquitted, he would suspend sentence, and the accused was placed on a $100 bond for six months.

Our next attempt to enforce the lottery laws was in August, 1949, when as the result of press publicity, members of the police department were present at a certain location where they watched and heard the drawing of the winning ticket in a lottery being conducted under the auspices of a community association. The police seized a new Chevrolet sedan automobile, the barrel used for the draw and its contents, the winning ticket stubs and the alternate winning ticket stubs. In other words, gentlemen, instead of, as in the two previous cases quoted, stepping in before the actual draw and charging the accused with selling lottery tickets, the police this time waited for the completion of the draw to take place, believing that in so doing we would have a much stronger case. However, the four persons charged with conducting a lottery, when they appeared in magistrates' court for a preliminary hearing—they had elected for trial by a higher court—were dismissed, and it might be of interest to your committee for me to read to you the reasons cited by the learned magistrate for the dismissal of the charge against these four men. Said the magistrate:

> These four citizens were charged before me with conducting a lottery contrary to the provisions of the Criminal Code of Canada. Upon being arraigned they were given an election as to the method of their trial. They chose to be tried by a higher court, preferring, no doubt to have their case tried by a panel of jurors who knew no law, rather than by a magistrate in much the same position.

It was at one time the general opinion that the magistrate taking a preliminary enquiry was somewhat of a figurehead who must commit the accused for trial—if there was any evidence which, if believed, would warrant a conviction. Since the abolition of the grand jury in this country that rule has been relaxed and now I believe it to be good law and the magistrate should assume some of the duties formerly performed by the grand jury to the end that the time of assize court should not be taken up with long lists of frivolous cases.

The accused men, along with other citizens, have been working on this scheme for months. Prizes were openly displayed, as were posters and other advertising, and tickets were sold and purchased on the public streets. All this was done under the eyes of the police officers. Apparently nothing was done to stop it. Then, at the last moment, when hundreds of citizens had bought tickets (all equally guilty if these accused are guilty) and the draw is actually made, the police step in. Now I can readily see the reason for the delay. I have no doubt the city prosecutor advised the police that there was no lottery until the draw had been made and that no conviction could be had if they moved too soon. With that advice I agree, but where does that place the four men now before me and the citizens who have parted with their money? Have they not been encouraged to carry out their scheme by the actions, or rather lack of action, of the powers that be?

Having taken this view, I am satisfied that no reasonable jury would convict and having come to that conclusion I can see no reason why these men should be put to the inconvenience of further proceedings and the people of this city to the very considerable expense of carrying the matter further.

The accused are, therefore, dismissed.

It is to be understood that I am not seeking to lay down any rule in these matters. Each case must of necessity stand on its own particular facts. Nor is anything I have said to be taken as criticism of the police. Indeed, I wish to compliment Detective Frew and his associates upon the efficient and fair manner in which they prepared and presented the case for trial.

Shortly after the disposition of this case, with its subsequent newspaper publicity, there developed a rash of lotteries, and it was common on the down town streets of Vancouver to see as many as three persons in one block selling tickets for different lotteries. Even the city council in Vancouver gave permission for parking exemption privileges for cars advertised as prizes in forthcoming lotteries.

After some months of this sort of thing, the city council, following complaints from citizens regarding the high pressure salesmanship tactics of lottery ticket vendors on city streets then prohibited the use of the streets and sidewalks for the transaction of business pertaining to the sale of lottery tickets, and the most persistent salesmen then took up positions in doorways and on private property.

Eventually, in 1950, it was decided to make another attempt to prosecute persons for conducting a lottery, and in January, officers warned the executive of a service club that they were violating the law in conducting a lottery. Despite the warning, the service club persisted in the selling of tickets, and a search warrant was obtained by the police, who seized a larged number of tickets and a barrel containing ticket stubs. The president of the service club had previously stated that approximately $16,000 had been taken in on the sale of tickets, and that it was proposed to hold a carnival and that the drawing would take place at the carnival. Summonses were issued and served on the service

club president, the promoter who had been engaged to handle the scheme, and the latter's assistant. On March 31, 1950, the three accused appeared in magistrates' court and were committed for trial. The case went to high court and the accused was found guilty of conducting a lottery. The case was subsequently appealed and the appeal court ordered a new trial, in which a conviction was again recorded. It should be mentioned that when the barrel was opened by the officers to check and record the exact contents, it was found that in the barrel were 32 packages stapled in lots of 12 ticket stubs with buyers names inscribed. This came out in evidence in court and proved to the officers' satisfaction that the draw was not honestly conducted as it would be physically impossible to draw one single ticket stub from any one of the group of stapled stubs.

Following this successful prosecution, a change took place in regard to lotteries, and organization desirous of raising funds set up schemes to do so under the exemption clause under section 236-ss/6(b) of the Criminal Code. This clause, as you will be aware, authorizes the mayor or reeve of a community to issue a permit for the holding of raffles where the prize does not exceed fifty dollars in value, and this system has continued, obeyed by many, and abused by a few, up to the present day.

A recent example of the abuse of this exemption clause occurred in February of this year, when the officials of a committee of a very outstanding sports association put on a home cooking fair where bingo was played all day as one of the attractions. The police were informed that in addition, tickets were to be sold for a raffle, and the prize was to be a television set, the value of which was, of course, several hundred dollars. The chief constable made sure that these officials were warned that they should not do this as it was a violation of the Criminal Code, but officers of the gambling detail who visited the fair were, upon entering, asked if they wished to buy tickets for the television set draw. During the evening, officials mounted the platform and it was announced over the public address system, that the grand draw of the evening would take place and that the merchandise would be delivered to the holder of the lucky ticket. The police officers seized the box containing the ticket stubs and stopped the draw, although no television set was in evidence. The officers submitted reports in connection with this case, and the chief constable discussed these reports with the city prosecutor. As a result, the following notice was released to the press by the chief constable:

> Investigation into the proposed raffle at the Seaforth Armouries on Saturday, February 20, 1954, under the auspices of . . . . clearly indicates that there is a great deal of confusion in respect to the law on lotteries in the minds of the officials responsible.
>
> As a result of this situation, and the committee's immediate willingness to return moneys collected by sale of tickets for the raffle, it is not the intention of the police to attempt to prosecute in this case, but I want to make it perfectly clear that any violation of the Criminal Code relating to lotteries or raffles will be investigated with a view to prosecuting same.
>
> Any person or group of persons contemplating the raising of funds by raffles should seek legal advice owing to the confusion in the public mind as to the interpretation of that section of the Criminal Code which permits the holding of raffles for prizes not exceeding $50 in value where certain conditions are complied with.

Despite this announcement that it was not the intention to prosecute, there was an outburst in certain sections of the press quoting the chairman of this particular committee in statements detrimental to the police service for the action they had taken in stopping this draw. This criticism, however, was not

peculiar to this particular case; it had followed in all the cases I have quoted to you. The honest efforts of the police in Vancouver to enforce the existing laws relating to lotteries have resulted in the police being held up to public ridicule, being made the subject of adverse editorial comment in newspapers, and the target for the satire of columnists and cartoonists. Please do not misunderstand, me, gentlemen, we are not complaining on this score, but today, more than ever before there is a need for a good relationship between the police on the one hand and the public on the other, and experiences such as I have described are certainly not conducive to that desirable state of affairs. To my way of thinking, our experiences in Vancouver would indicate that public opinion in our city, as evidenced by jury decisions, is in favour of broadening the lottery laws in so far as the holding of lotteries for charitable purposes is concerned.

I feel that I should mention that any consideration which might be given to amendments to the lottery section of the Criminal Code in this regard will have a bearing on another problem that the police in Vancouver are called upon to cope with, and that is Chinese lotteries. We have a large Chinese population, many of whom have no families and permanent homes in our city, and being seasonal workers, spend a great deal of their time in the winter months frequenting Chinese clubs where they participate in Chinese lotteries. Many occidentals in the downtown area of Vancouver adjacent to Chinatown patronize these lotteries too, and I can foresee a big problem here in the light of any proposed changes.

Now, gentlemen, may I be permitted to digress from the subject of lotteries to say a word or two in respect to the playing of bingo, and I make this request in view of the general confusion which seems prevalent in the public mind about the law as it stands today. During the time I have been chief constable of the city of Vancouver, and during the period of the lottery cases I have mentioned, the playing of bingo in Vancouver has been of very small proportions with the exception of the period of the Pacific National Exhibition. There have been a few prosecutions of persons who promoted and operated bingo games for their own personal gain, but as the result of the increasing prevalence of this game in community centres and social clubs, which became pronounced in 1950, I consulted our city prosecutor as to its legality.

The prosecutor wrote me in January, 1951, in respect to this, and no action was taken by the police for several months. However, as a result of investigations leading to the possible prosecution of the groups playing bingo, the city prosecutor was again consulted, and on April 18, 1952, I received the following letter which I think is important enough for me to read, since while it mentions that the game of bingo is illegal, it refers to the section of the Criminal Code which permits incorporated bona fide social clubs to take certain moneys from the proceeds of games played on club premises. This letter reads as follows:

> I have before me a letter written you on January 19, 1951 in regard to the playing of bingo in various places in Vancouver. I am not very well satisfied with the wording of the letter as I do not consider that the question of policy in regard to law enforcement is the business of this department. We may, of course, express our opinions to you as chief constable but I believe that is as far as we are entitled to go. Ordinarily speaking, the game of bingo is illegal and anybody keeping premises for the purposes of carrying on the game is keeping a gaming house. It must be remembered, however, that section 226 (b) (ii) will apply when the circumstances bring it within this section. This is the section which permits incorporated bona fide social clubs, or branches thereof, to take certain moneys from the proceeds of the games played on the club's premises. Therefore, if bingo is played on the premises of clubs, or

branches of clubs, incorporated either by provincial or federal statute for social purposes, they should be treated in the same way as the several 'card' clubs presently operating in the city. On the other hand, people operating premises for the playing of bingo where there is no charter could, without doubt, be successfully prosecuted as keeping a gaming house.

The result of the prosecutor's ruling means that today, in the city of Vancouver, there are 17 clubs playing bingo, and all are incorporated, and licensed by the city of Vancouver. The largest of these clubs are veterans clubs. The attendance ranges from 30 to 600 persons. Two of the clubs play bingo six days per week. The others play from one to four nights. The membership fee charged ranges from 10 cents to 25 cents per year. The service charge ranges from 18 cents to 50 cents per person per night. These clubs play from 6 to 26 games in an evening, that is, in a period from one to three and one-half hours. Some of these people play bingo after regular business meetings, or it is worked in with other club activities. All the clubs are well lighted and properly conducted. However, unfortunately some operators are never satisfied and the information received by the police in Vancouver today would clearly indicate that bingo is becoming very big business and is getting out of hand in some quarters. One of the veterans' clubs I have mentioned is very well patronized and information reached the police recently that in a three-month period, the gross revenue from bingo was $62,000.

Hon. Mr. GARSON: For one club?

The WITNESS: Yes.

The breakdown of disbursements indicated that $47,000 went in prizes, $9,000 to the building fund, $5,000 to miscellaneous expenses and $1,000 to charity. It has been publicly announced in Vancouver that there might be prosecutions, and that is how the matter stands at the present time.

In apologizing, ladies and gentlemen, for the digression I seek your indulgence also to digress still further and mention that during the period of time from 1948 to the present that while we were conducting these investigations there was another very important case in respect to gambling and I am referring to a conspiracy to keep betting houses. May I read it? During the summer of 1949 the police in Vancouver decided to study the bookmaking racket with a view to ascertaining whether or not there was evidence of a conspiracy. Meetings were held between the police gambling detail and the city prosecutor.

The investigation undertaken covered the entire period from January 1, 1944, and included all premises and persons convicted of keeping betting houses, plus the activities of the racing wire service and the publishing business of two people who published a racing sheet.

The persons investigated numbered nearly 300 and the premises nearly 100. All avenues of probable information for each person and address for each year of the period since 1944 were covered, involving some thousands of individual inquiries.

When the mass of information gathered was sorted and filed on the various personnel and address files, it showed the pattern of the operation and control of the bookmaking racket and when this information was submitted and studied by our city prosecutor instructions were given for charges to be preferred against 34 persons. On October 23, 1951, the police started arresting the accused persons. The preliminary hearing opened on November 21, 1951, and it took up 13 days. On December 18, the learned magistrate committed for trial 27 of the accused, dismissing the charge against 7 persons. The honourable the attorney general of British Columbia ordered a special assize and the trial commenced on February 12, 1952, before Mr. Justice N. Whittaker and a jury. A panel of 400 jurors were summoned to appear and

a jury of 10 men and 2 women was chosen. 57 persons were called as witnesses and the total of 112 exhibits were entered. This trial continued from the opening date, February 12, 1952, until March 18, 1952, upon which date the case went to the jury. No evidence was offered by the defence. The jury deliberated for three hours and twenty minutes and returned with a verdict of not guilty.

It would appear that this case was in every way a complete conspiracy and it is significant that since the verdict there appears to be no suggestion from any quarter that anything more could have been done, or that the Crown failed in any respect to present a more complete case. The vastness of the matter to be considered by the jury, both as to facts and the rather difficult law of conspiracy, may be the reasons for the verdict given.

I mentioned, ladies and gentlemen, at the outset that the police of Canada had never passed any resolutions to be forwarded to the Honourable the Minister of Justice in regard to lotteries, and I mentioned too that any such resolutions might not be unanimous. While it is not my own personal view there are some of our senior police officers in the city of Vancouver who are of the opinion that perhaps some consideration might be given to broadening the present exemptions in the Criminal Code in respect to lotteries, that is, to authorize the holding of lotteries under the conditions which prevailed during the war years when lotteries for charitable purposes were allowed.

Now, I think that some of my colleagues present with me today, Chief Robert in particular, have some opinions in respect to that, and I would ask, before the members ask any questions, permission for Police Chief Robert to give his particular views.

The PRESIDING CHAIRMAN: Each member of the panel will be permitted to do so if he cares to.

The WITNESS: As President of the Chief Constables' Association of Canada may I thank you for the courteous hearing you have extended us. It will be a pleasure for me to report to the meeting of the Chief Constables' Association of Canada to be held in Toronto and say that your committee afforded us every opportunity to make known our views on the subjects under discussion. On their behalf I want to thank you for the privilege of appearing before you today.

The PRESIDING CHAIRMAN: Thank you very much. Mr. Shea, have you anything you wish to add?

Police Director SHEA: I would prefer to withhold my remarks until we hear Police Chief Robert. I am not sure what he wishes to say, and it might save time if we hear from him first.

Police Chief ROBERT: Mr. Chairman, I will be very short and very brief in my remarks. Police Chief Mulligan has explained fully, I believe, the numerous problems that we have to overcome in the application or enforcement of the laws as they stand now. Of course he has also at the same time pointed out the very serious abuses that have resulted from these laws. In his closing remarks he mentioned that some of the senior police officers of his department have expressed a view that the present legislation might be broadened. But, in many other quarters we feel that it should be the other way, and for a good many reasons. I believe that it might be proper to say that the police officers who feel that way would be in favour of the following changes: First, that the proviso attached to section 226 of the Criminal Code of Canada as it was amended in 1938 should be removed entirely. That proviso makes possible the holding, or the establishment of chartered clubs where gambling is actually taking place—illegal gambling I should say, and also the holding of bingos.

The PRESIDING CHAIRMAN: Did you say legal or illegal?

Police Chief ROBERT: Both. Legal and illegal. There is also section 236 that deals with lotteries. That is subsection 6 I believe, where it says that lotteries can be conducted at a bazaar and so on. We feel that this section should be re-written entirely in order to eliminate misinterpretation and therefore numerous problems that result from various decisions given by judges or police officers. We do not always agree. For instance, if I remember correctly it states that lotteries may be held at bazaars and raffles.

The PRESIDING CHAIRMAN: What section?

Police Chief ROBERT: 236, subsection 6. "Raffles for prizes of small value at any bazaar held for any charitable or religious object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or municipality", and so on providing the value of the article is not more than $50. Officers at times will ask themselves, what is a bazaar; what is permitted to go on at a bazaar? They have the permission to hold raffles there. But, what does a bazaar consist of? If I am permitted, Mr. Chairman, I would like to add that in many quarters we feel that the present section, subsection 5, of section 229, should be amended so as to include common betting house and common gaming house. This subsection covers only common bawdy-house, but it should include all types of disorderly houses.

The PRESIDING CHAIRMAN: Will you read the section you are referring to?

Police Chief ROBERT: Yes, sir. It is section 229, subsection 5: "If the owner, landlord, lessor or agent of premises in respect of which any person has been convicted as a keeper of a common bawdy house fails, after such conviction has been brought to his notice, to exercise any right he may have to determine the tennancy or right of occupation of the person so convicted . . ."

The PRESIDING CHAIRMAN: There is a little confusion. We do not quite know what you are reading from.

Mr. BLAIR: I think it has been revised and that it is now subsection 6.

The PRESIDING CHAIRMAN: What year are you reading from?

Police Chief ROBERT: 1943.

Hon. Mr. GARSON: In 1947 it was amended. However, it stands the same.

Police Chief ROBERT: Therefore, our recommendation would still stand, that is to include common betting house and common gaming house besides common bawdy house.

Mr. BLAIR: The whole point is that the Crown could proceed against the owner of one of these houses as well as the actual occupant?

Police Chief ROBERT: Correct. My final recommendation, gentlemen, would be with respect to section 641, subsection 4, regarding the seizure of telephone and telegraph and other communication systems that may be used in a betting house. We are strongly in favour that we should have the power to do it. That is why we are making those recommendations. In closing, may I say that we feel that if we take profit out of lotteries of "so-called" legal organization we will automatically put a stop to our problems and if we put more teeth in the laws, I believe we will achieve our goal.

The PRESIDING CHAIRMAN: Thank you very much, chief. Mr. Shea, have you anything you wish to add?

Police Director SHEA: Mr. Chairman, ladies and gentlemen, not being a municipal police chief, we cover the entire ten provinces of this country. We are peace officers, and where my interest ends, there my knowledge ceases. We are interested because since the mails are closed to people who operate these lotteries it has come to my personal attention. I have examined hundreds of these shipments of returns of lottery tickets and we turn them over when they come to our notice to the provincial police concerned. I was amazed within the past

few months to find that many of the returns were actually spurious tickets. They were not legitimate sweepstake tickets and, therefore, the purchaser of those tickets, although he had broken the law, had no chance of winning; all the profit would go to the racketeer running the lottery. I happen to know, through various sources of information, one particular man in the province of Quebec who has been an operator without let-up for a long time. Why it is, I am not in a position to say, because my jurisdiction does not extend to his locality or the locality of the printing of these tickets, but I find it rather strange. I do know that they have made some cases against him. They have seized his spurious tickets. My knowledge comes through the provincial police of Quebec that they were false tickets, that nobody had a chance of winning anything. I might say that the Postmaster General of Canada has many times got after the railways and then that falls in my lap. What are you going to do to stop them? Just as Chiefs Mulligan and Robert have said, we do our best, but we cannot cover everything. We have no idea of what is contained in a particular package unless they follow a regular pattern. If they were to ship a large wooden box supposedly containing machinery, but instead containing lottery books destined for some central point, we would have no way of knowing they were actually lottery tickets. These shipments which come to our attention are usually small packages that might very well go through the mail, but they ship them by express. The company, while they derive some revenue from them—usually it is about 30 cents for each one of these packages —would be glad if they ceased tomorrow, regardless of the revenue derived from them. They certainly cause us a lot of trouble, and as police officers we cannot close our eyes to this sort of thing. I know that my staff does its best—we all do our best. We immediately notify the police concerned in the municipality or the province and take it upon ourselves to instruct the agent who has accepted a parcel that under no circumstances must he accept such shipments in future. However, when that happens they usually pick another small station invariably in a rural district and try it again. We would need an army to police the situation—we cannot do it. We do stop them at interchange points where shipments are moving from Vancouver to Montreal, and often we get them at Ottawa. I think Police Chief MacDonell could enlighten you, because he has been very active, perhaps acting upon instructions from the Attorney General or someone else, and being aware that he has the right to do it. I believe we have assisted him in checking some of our trains passing through Ottawa, while the shipments are not particularly destined Ottawa. However, it will be up to the chief to tell you about it.

I find myself in this position: I have discussed it with many police chiefs, and I agree with certain things that Police Chief Mulligan says and with certain things his men say, but I am not certain that I am right. There is an old saying that the more you learn the less you know, and the more I hear about lotteries, the less I know about them and the less opinion I have to express; but it does seem to me, however, that some provinces and some forces are more active than others. The reason for that, I am not in a position to say. Perhaps they find it hopeless and that their efforts might well be given to dealing with more serious crimes. I know that every police force is more or less undermanned. Vancouver has a particularly wonderful force. They are well paid in Vancouver and have a wonderful climate—except on occasion—and it seems to be the ambition of many men to go to Vancouver—but whether lotteries have anything to do with it or not, I do not know. I have no fixed opinion except that I do think if we are going to enforce a law that law should have some teeth in it, so that when we take action, we will achieve some results from our efforts.

I followed closely the big probe which took place in Montreal, in regard to gambling in other forms. It seems pitiful that we must go along day after day, month after month and year after year making seizures without any great result, and it would appear to me that there is something faulty in the law. The administration, I think, is generally honest and they try to do a good job, but they probably become frustrated after awhile when they see no results from their efforts. Perhaps I could reserve my opinion until I hear some more about this before we close this meeting. That is all I have to say, Mr. Chairman.

The PRESIDING CHAIRMAN: Thank you, Mr. Shea.

Police Chief Davis, have you anything to add?

Police Chief DAVIS: I will just add this, Mr. Chairman. I am somewhat confused about the trend of the meeting. I thought we were going to discuss lotteries, but now I find we are discussing gambling from every angle. As far as I am personally concerned—

The PRESIDING CHAIRMAN: I suppose the answer to that is "which came first, the chicken or the egg?"

Police Chief DAVIS: We got into telephones and betting houses and gaming houses, and I am not really concerned with that.

Mr. MURPHY: We have none of that!

Police Chief DAVIS: To me, personally—

Mr. MURPHY: In the maritimes we have none of that!

Police Chief DAVIS: I must also mention, ladies and gentlemen, that Mr. Murphy is present. He was born in the city of Moncton where I now have the honour of serving as chief constable, so I am careful in what I say.

I am quite satisfied that in the city of Moncton we have no problem concerning lotteries. I am not saying that we do not have them, but I do say that there is no person to my knowledge who makes any personal gain. We have a number of small lotteries—the I.O.D.E. conduct a raffle and sell tickets for a dollar on a lamp or something like that the proceeds of which go for charitable purposes, and the Canadian Legion have their lotteries, but I am satisfied that the proceeds of each go to charitable purposes. I have listened to the arguments and I feel if some measure could be brought about whereby the resepective attorneys general in the provinces were given some authority to decide themselves and take it away from the federal government, and put it where it belongs in the hands of the individual provinces, I think perhaps then we could arrive at a better solution. That is all I have to say, Mr. Chairman.

The PRESIDING CHAIRMAN: Thank you very much, Mr. Davis.

Mr. MacDonell, have you anything you would like to add?

Police Chief MACDONELL: Further to what Mr. Shea has said, I might add that as far as the railroad is concerned, police work takes place in a lot of cases. I will tell you about an incident that happened accidentally as we were checking a local man whom we knew had been convicted at one time of conducting lotteries. He had moved out of our district into another district close by and we had received reasonable information which led us to believe that tickets were going out via the railroad. In order to check on those lottery tickets our men of course took search warrants and searched the trains—with the assistance, I must say, of the railway police, and we not only discovered what we were looking for, but we ran into other cases across Canada, although we did not have evidence to prosecute any of those cases. This kept on, and I think we turned through the magistrate's court last year something like $70,000 which had been taken from railway trains for lotteries and tickets. I have seen letters which have come back to some of the agents asking for their receipts. The postal notes or money orders that the magistrate had signed had been cashed, of

course, and these people were not able to recognize the name and some of them wrote stating that they knew they had been cashed, but could not identify the name. We have, of course, been threatened by different lawyers, but nobody has come forward in any way to do anything about it, and we are still carrying on with our investigations.

As far as bingos are concerned, we have them in the city—quite a number I believe—and we were one of the first police forces to have a test case concerning bingos. We have had some convictions. I remember one in particular —I would not say he was a professional man, but more or less an amateur as most of them were—where we got evidence and prosecuted and convicted. We still have the service clubs—the Lions, Kinsman, and I quess a couple of other clubs I am not so familiar with—and some of the finest citizens in this city are members of them. As far as I know, they have turned over a lot of money and performed much good for the city. I am not prepared to give information about the exact figures, of course. I believe, Mr. Chairman, that is about all I have to say.

The PRESIDING CHAIRMAN: Thank you very much, gentlemen. Now, if the members of the committee have questions they would like to submit, we could begin at the left of the table with Mr. Cameron. By the way, you may direct your questions to any member of the panel here.

Mr. CAMERON (*High Park*): My questions will be directed to Mr. Robert, in the main. In regard to prosecutions or the holding of lotteries by service clubs and similar organizations where they sell you a ticket and offer as inducement the opportunity to win an automobile, motor boat or house or something, is not the law sufficient—has it not got enough teeth in it now—to enable prosecutions to be brought against such organizations if it were desired to do so? I am basing that on the opinion of an Ontario prosecutor who suggested that in a community there might be opposition to those things and someone would notify the police and the police would prosecute, but that in other communities there would not be the same opposition and unless someone complained to the police they would blind their eyes to it. I rather gather that the law is not blame but probably it is due to the fact that there is a favourable opinion towards them in some communities and an unfavourable opinion in other communities.

Police Chief ROBERT: Police officers, first of all, are not lawyers, and they must depend to a great extent on the advice they receive from their city prosecutors or crown attorneys, as Mr. Mulligan mentioned. On several occasions, as Mr. Mulligan stated, he had to refer to the city prosecutors and the police have to obey and follow their advice. Personally, I feel that raffles of cars, houses and other things of that nature are illegal, that is my personal opinion. However, the police officer, as I said, must follow the advice of his counsel.

Mr. CAMERON: There is no question about it at all—they are illegal?

Police Chief ROBERT: To my point of view there is no question at all on that point.

Mr. CAMERON: The suggestion was made that the law should be amended, so you could prosecute the keeper of a gambling house or betting house?

Police Chief ROBERT: I am just referring to article 226 which serves as an excuse for the holding of such raffles. That is why I feel it would help.

Mr. CAMERON: You feel if it were out—

Police Chief DAVIS: —it would clarify the situation a great deal. That is why we suggest the removal of the proviso in section 226.

The PRESIDING CHAIRMAN: Section 326 or 226?

Police Chief ROBERT: No. Section 226.

Mr. FAIREY: That is the section that sets up licensed premises for the operation of gaming houses?

Police Chief ROBERT: I will just read the last portion of that section:

> . . . but the provisions of this subparagraph shall not apply to any house, room or place while occupied and used by an incorporated bona fide social club or branch thereof if the whole or any portion of the stakes or bets or other proceeds at or from such games is not either directly or indirectly paid to the person keeping such house, room or place, and no fee in excess of 10 cents per hour or 50 cents per day is charged to the players for the right or privilege of participating in such games, nor while occasionally being used by charitable or religious organizations for playing games therein for which a direct fee is chargeable to the players if the proceeds are to be used for the benefit of any charitable or religious object,

And so forth. Does that answer your question?

Mr. CAMERON: I gather that you say the removal of these exemptions would make it easier and there would not be any excuses at all?

Police Chief ROBERT: Definitely, sir.

The PRESIDING CHAIRMAN: Does any other member of the panel care to answer that question? If not, have you any questions, Mr. Boisvert?

Mr. BOISVERT: No questions.

The PRESIDING CHAIRMAN: Mr. Lusby?

Mr. LUSBY: I will just address my questions to the panel generally. I take it in the whole field of what we might call gambling you have on the one hand the carrying on of these ventures by people who are concerned only with their own gain, someone who runs a gaming house or derives a livelihood from organizing lotteries and so forth. There is no substantial body of public opinion in any community which favours allowing that, is that correct?

Police Chief ROBERT: Do you want me to answer that?

Q. Yes.—A. I would say the majority of citizens want the laws enforced and are not in favour of that. You are not referring to organizations but to ordinary individuals?

By Mr. Lusby:

Q. Yes, a man undertaking to organize a gaming house for his own gain? —A. Yes.

Q. And the difficulty about enforcing the regulations against that type certainly does not arise from public opinion?—A. No.

Q. When we have the other type which we might call the "quasi-respectable" type, which is what I think we are more concerned with here. Do you think if the provisions regarding lotteries held by charitable organizations and other types of organizations were widened in order to allow more of them, that that would have any effect on the carrying on of the ordinary commercial gambling ventures? Do you think it would lead to an increase in them or a decrease?—A. Personally, I feel if we do make the provision wider we are asking for more trouble, more problems and more abuses.

Police Chief MULLIGAN: Yet, Mr. Chairman and ladies and gentlemen, the argument of some of our senior officers is that if the provision were broadened sufficiently for the average organization to provide a prize that would be greater in value than $50 that it would solve a lot of the difficulties. In Vancouver the most desirable prizes appear to be television sets or two tickets to Honolulu. It is the feeling of some of the senior officers that if the exemptions were extended to meet that that it would assist in solving a lot of the difficulties.

Mrs. SHIPLEY: Do they include a car? Do they go that far?

The WITNESS: No, they are rather reluctant to broaden it too far, but I only throw that out as a suggestion.

Mr. FAIREY: That is not your opinion, chief?

The WITNESS: No, it is not my personal opinion.

Mr. LUSBY: Would the other two members care to express any opinion?

Police Director SHEA: I do not think so, except this: I think we are all agreed—everyone I have discussed it with as far as the police are concerned, and also the public, I imagine, to a large extent—that we are all opposed to persons, private individuals or racketeers, making a livelihood of this under the guise of charity. I think that is the crux of the whole thing. I believe the present law seems to provide an aspect for some of these individuals to carry on for some years as racketeers, and I think it is probably the duty of this committee—and not the duty of the police chiefs—to see that the proper recommendation is made. I do not think many of us know the answer—it is an experiment. Chief Davis said something which I think might have merit, that it would depend on the enforcement in the various provinces. Our own experience is this: I am afraid that if the Attorney General of Quebec, for instance, gave permission to some organizations to run a lottery for a very worthy cause, it would be extremely difficult to restrict the sale of tickets to the province itself. The tickets would probably land up in Vancouver and Halifax—right across the country, and where you have people carrying or shipping them. Now that the mails are pretty well closely watched, it is my impression they are going to try and ship through transportation companies. Trucks and busses today operate practically all across the country. I have never heard it mentioned, but knowing gamblers and racketeers as I do, I am aware they do not overlook any possible means, and it is quite possible they are using trucks and perhaps busses which would have less policing than the railways. An attorney general on his home ground might know the sponsors, and he might keep it out of the hands of the racketeer.

Police Chief DAVIS: Referring back to the statement I made previously when I suggested that it be put into the hands of the attorney general's department of the respective provinces, it brings back to my mind that we have had certain laws enacted in the province of New Brunswick covering slot machines. That is covered by the Criminal Code of Canada, but the province of New Brunswick saw fit to legislate their own law governing the operation of slot machines, and they call it, the Slot Machine Act. That was my thinking when I suggested that no law is enforceable unless it has public support, and if this matter was left in the hands of the respective attorneys general of the different provinces, I think perhaps they could govern themselves accordingly.

The PRESIDING CHAIRMAN: Are you through, Mr. Lusby?

Mr. LUSBY: Yes.

The PRESIDING CHAIRMAN: Mr. Murphy?

By Mr. Murphy (Westmorland):

Q. I have listened to Police Chief Mulligan and Police Chief Robert of Hull and in the one instance your questions will come out of this and I should like to have some comments on this. Police Chief Mulligan tells us that his senior officers would like to see the law relaxed and Police Chief Robert tells us that he would like to see it tightened. What I gather from our chief constables is that they are rather in the middle. I think they want to carry out the law and as it is now it puts them in the position of having to enforce certain laws of this country but having to wink at the enforcement of other laws of this country, so that if we could make gambling either strictly illegal or strictly legal these men would know what to do. Apparenty what happens

now is that if Chief Robert goes out in his district—or so I gather—and raids gambling or lotteries or certain types of them, they immediately set up the cry that this is a bazaar and comes under the heading of charitable exemptions and therefore Police Chief Robert wants it set down in black and white so he and his men will not get into trouble with the authorities, the public and everybody else, and so that he will do the right thing. On the other hand, the men in Vancouver say, "Relax the law because they are going to do it anyway, and now you are just making fools of us." I gather from this panel, gentlemen, that all you want, and your opinion is, that the laws should be set out so that you do one thing or the other so you can teach respect for the laws and not have to wink at them, is that correct?—A. Yes, that is correct in this respect: we find there is a great deal of confusion in the public mind as to what they can and cannot do. The law does not seem to be clear to them. The officials of organizations come to us and say they wish to put on a lottery in order to raise money for some very worthy cause, for instance sending underprivileged boys to summer camps which is a very worthy idea with which the police would naturally be sympathetic. We tell them they cannot do it and they ask why and we must explain, but we say that we are not the ones to tell them and that they should seek legal advice. What it almost amounts to, really, is that we are trying to tell them how to circumvent the law. Invariably they ask why this sort of thing is permitted at the exhibitions and as a result we explain the law in respect to agricultural fairs. We actually had one case where they took a cow, some goats and some rabbits and called it an agricultural fair!

Q. And wheat?—A. And they had some home cooking which the women brought.

Mrs. SHIPLEY: Well, was it?

The WITNESS: It was a success. They sent the boys to camp. I think that type of confusion should be cleared up.

Mr. MURPHY (*Westmorland*): That is just what I mean.

The WITNESS: There is also some confusion about the exemption section dealing with the prizes. I have never been able in my experience as a police officer to quite understand what is meant by "prizes previously offered for sale." People ask us if they can have just one prize valued at $50 or several. I do not think we should be the ones to try to tell them. They should understand it clearly and perhaps there should be some broadening of the law there which might have the desired effect.

Mr. MURPHY (*Westmorland*): Broadening or tightening?

The WITNESS: One or the other.

The CHAIRMAN: Is there any comment, gentlemen?

Police Chief ROBERT: Yes, I have a comment, Mr. Chairman. I have studied the problem of gambling and lotteries for a long time and I have seen the very detrimental effect this has on families and on the population in general. That is perhaps why my attitude may be different from the others sitting on this panel, although I believe that they will all agree to one point: we as police officers—and I believe I am the youngest of the five as a police officer, although not in age. I have had only 25 years in police service. The others have been in police service up to 40 years.

Police Director SHEA: Don't look at me!

Police Chief ROBERT: But I believe we will all agree on the point that we do not want to deprive charitable or religious organizations—genuine religious and charitable organizations—of possible ways to raise funds, providing that only those charitable organizations will profit by the proceeds. We do not want any professional organizers, as Police Chief Mulligan pointed out a while ago when he told us of a certain case where there was only 10 per cent of the net

revenue that was actually turned over to charity. I believe as police officers we all agree that that is not good. I have read several books on the effect of gambling or the legalization of gambling. There is an especially interesting one that has been published by the Chicago Crime Commission and written by Mr. V. Patterson, which is quite recent and covers a complete survey of all the states of America and which gives a very interesting and informative picture of this type of problem. I feel that the law should be amended as suggested for the reasons I have just mentioned.

The CHAIRMAN: You said something about the effect on families but you did not go into it in any detail. Would you care to amplify your statement?

Police Chief ROBERT: Yes. It is only human nature and one of our human weaknesses that a lot of people like gambling, but a lot of people do not know when to stop. I have known several families that have been disrupted on account of gambling. I have known several youngsters who turned or became delinquents and later criminals on account of that and on account of the behaviour of their own family. I have known several young men who have turned criminal after having taken the money that has been placed in their responsibility and gambling with it. We can cite several of these cases. Years ago—I believe some 20 years ago—when chief MacDonell and I were detectives, we investigated several cases of safe-cracking in the district and outside the district, which had been committed by a group of young criminals lead by a nice young man with a fine personality, good background, and good education, who had turned criminal on account of gambling. That is only one of the cases which come to my mind. That is the effect it has on society. I could mention several if the time permitted but I do not want to keep you gentlemen too long.

The PRESIDING CHAIRMAN: What do you mean by gambling? Do you mean that forms of bingo and raffles lead to other forms of gambling?

Police Chief ROBERT: Definitely. I could even say, Mr. Chairman, that most of the bingo games are patronized by mothers of large families and they mostly come from the working class. They cannot afford the money they spend weekly on those games. Often it has been brought to my attention that children have been neglected at night. I know of cases where police officers have acted as baby-sitters waiting for the return of the mother or father who have gone to play these games.

Mr. WINCH: That is public service.

Police Chief ROBERT: Yes, it might be called service on the part of the police.

Mr. MURPHY (*Westmorland*): Could you add a word about these travelling shows which run these wheels, and their effect, that travel from town to town in the summer time?

Police Chief ROBERT: I have not had much recent experience with them although I worked on the fair grounds for about seven years. I have not any recent experience. However, I can mention that according to what I know, that is another problem and a serious one; indeed a serious one. Some of those gadgets are the most dishonest thing you can imagine.

The PRESIDING CHAIRMAN: Do you mean guessing women's or men's weight?

Police Chief ROBERT: No. I mean those games which are gadgets such as for throwing three balls in a basket, and the contestant will place a ball, as I understand it, into a little bucket but the third one never goes in for some unknown reason. And, there are several other games of that nature. We have not talked about this problem. This is my personal opinion, that a limit should be imposed upon the amount of money that could be bet on those games if the law stays the way it is.

The PRESIDING CHAIRMAN: When you say the amount of money that should be bet, what do you mean?

Police Chief ROBERT: Limit each bet to a certain amount of 10 cents or something that will actually kill the activities. In some cities they are up to 25 cents and 50 cents.

The WITNESS: What often happens is that the operator of these games will pyramid; he will allow a person to double and go again for 10 or 20.

Mr. MURPHY (*Westmorland*): You would have to have a police officer for every booth in the fair. I was appointed a special police officer in Moncton to do that work one time. You need 50 men. You could not control it if you put a limit on the bets.

The WITNESS: In Vancouver the operator of a midway was made liable and it has been fairly successful.

By Mr. Winch:

Q. I have two questions to ask Police Chief Mulligan and one to ask Police Chief Robert. As a result of all your personal experience and contact with the general public would you feel in your estimation that there is any kind of wording at all that could be put in the Criminal Code on raffles and lotteries that would stop people from buying sweepstake tickets and raffle tickets? You do not think it is possible?—A. No, I do not think it is possible.

Q. Actually what you have in mind is it is the responsibility of the Commons or this committee to draft something that will have a sensible approach to the matter and be done in such a way that it would be enforceable by the police department.—A. I believe that is what we are really hoping.

Q. Police Chief Robert remarked that you do not want to be in a position of recommending that a *bona fide* charitable organization cannot raise money for its purposes, and you instanced a case of one of the Legion branches in Vancouver who took in a period of months $62,000 out of bingo and you mentioned one per cent went to charity.—A. $1000.

Q. But, approximately 80 per cent was paid out in cash prizes. Now, do you consider that ratio of the returns of the money of those who are investing it in bingo is a fair return on a *bona fide* charity of a veterans club or charitable organization?

Police Chief ROBERT: If the reason involved for organizing bingos in that case was charity, I believe that the returns in this case have been a little too high. If we feel that by going to a bingo game we are actually fulfilling a certain duty towards the organization that we believe is a worthy organization, I believe that we are losing all sense of charity if we feel we should win a million and, furthermore, if the organization can only obtain 10 per cent I believe it is not worthwhile due to the very bad effect it has on the society in general.

Mr. WINCH: One more question on that same phase. Would the chief mind stating just what he has in mind when he speaks of a charitable organization where they might have a raffle or bingo? The reason for the question is that the Canadian Legion or the Army or Navy Veterans may want to put up a structure, a decent structure, for the recreation of veterans of Canada. Would you consider that a charitable organization?

The WITNESS: We are in the hope that you will be able to find out that for us.

The PRESIDING CHAIRMAN: Mr. Fairey?

Mr. FAIREY: No questions.

The PRESIDING CHAIRMAN: Mrs. Shipley?

By Mrs. Shipley:

Q. I just have one question. It is a little vague I am afraid. But, assuming that this law is amended so that it is clear and easily understood by the public and the police officers who have to administer it, and assuming we might perhaps enlarge the value of the prize in lotteries, do you think it would be possible to confine the sale of the tickets within a given area such as a municipality? In other words, in Vancouver it would be confined and any properly constituted organization that received a license for permission to carry on the lottery could not sell those tickets outside their own town. I make that suggestion for this reason: I think that no matter how carefully we re-define the law, it is going to be pretty well up to the people within any community how well that law is going to be administered. If you have lottery tickets from towns around about or from any distance away, it is not possible for the general public in those circumstances to be sure that the cause itself is legitimate or to be sure that it is properly run. But, within your own community the results are prettly well in your own hands. Do you think it would be possible to confine it? That is my question.

A. I certainly think, madam, that it could be if properly set up, and by that I mean the application for a permit to do the things you have said and if that could be made out in the form of a questionnaire. I only mention this as a discussion that perhaps it could be directed to the hon. the attorney general of the province instead of the present system of directing the application to the mayor or the reeve. Perhaps in some communities it would be proper to have a local option as to whether they would like to buy lottery tickets from Vancouver.

Q. The organization would apply for the permit in the usual manner. I had in mind that each service club might be given one each year, in other words not to have more than one each year. That way you are going to hold this thing within bounds. The officers of the clubs would apply through the police department to the council and get a license or a permit in the manner that other people apply?—A. I think we might be open there for criticism. I think we would rather it go to some other authority.

Q. I do not know if the practice is the same in other cities, but in Kirkland Lake the police department investigate the applicant and if there is anything against the applicant it is the policeman's duty to inform council and council takes the onus of issuing the permit. The police department as it does in all other cases provides us with information.—A. As it stands now, Mr. Chairman, in Vancouver an organization might make an application to the mayor's office for a permit to conduct a lottery and if he thinks that they are going to obey the stipulation of $50 prizes, the permit is granted. But, we have heard of cases where they went far beyond the original intention.

Q. In my opinion that is a very bad method. I do not think that the application should be made to one elected officer. There is nothing in the Act that says the mayor could not delegate the authority to the chief of police which we did incidentally and it worked beautifully.

Mr. FAIREY: May I interrupt? You say you would not like that?

The WITNESS: No.

Mr. FAIREY: What makes you think that the attorney general of the province would?

The WITNESS: Perhaps the applications could be sent to the attorney general's office.

Mr. FAIREY: You think he would like the job of deciding whether or not to grant the license?

The WITNESS: He then could write to the chief of police of that community and ask for a report on these people, find out what the chief of police thinks and obtain any recommendations.

The PRESIDING CHAIRMAN: You think that a certain delay might discourage the applicants?

The WITNESS: It might.

Mrs. SHIPLEY: If it is going to be confined to an area, I think the granting of the authority must be within that area itself, and I am trying to place the onus on the municipality. The council of that municipality are elected and if they are not doing as the majority of the people wish the people have in their power to do something about it. I do not think it would be wise to have that application go to the province. They would not know enough about the local situation and there would be too much delay.

Police Director SHEA: May I say, madam, that you happen to be in fortunate municipality because it is a township, I believe, and the Chief of Police at Kirkland Lake not only has a town but a certain area.

Mrs. SHIPLEY: Six miles square.

Police Director SHEA: You have other municipalities where there may be a large service club with suburban branches. In Verdun in Montreal, we have that. A smaller municipality might not have that. That is why we feel that the attorney general might be the better judge of administering these things. It might extend far beyond the border of your municipality.

Mrs. SHIPLEY: I can see your difficulty in the larger centres but for smaller ones I think that would work.

Police Director SHEA: There was a lottery going on in the United States, and a friend of mine, a chief in the United States, asked me if we sponsored this lottery. They had printed a large engine on a circular which said "Canadian National Lottery". It gave the impression that it was the Canadian National Railways which purported to hold the drawing in the town of Hawkesbury, Ontario. I immediately sent a man to Hawkesbury and they informed him that they had never heard of it. It was circulated that a draw had been made, the prizes distributed, and the names of the winners were given, and that they were met at the train by a band and a social function was held. No such thing happened.

Mr. WINCH: Did you make an investigation to find out if the government was trying to get rid of the Canadian National Railways?

The PRESIDING CHAIRMAN: Mr. Fulton.

By Mr. Fulton:

Q. I take it although you probably do have your own personal views on the moral question involved you have made an attempt, which I certainly respect, and I think you have succeeded in, to discuss this purely from the point of view of law enforcement?—A. Yes.

Q. You are not trying to express a personal opinion on the moral issues involved?—A. That is correct.

Q. I have gathered the impression from what you said here dealing with lotteries and sweepstakes for charitable objects—using that in the broad general term, because we might agree that it is not the gambling aspect of it which you feel to be wrong per se—in other words, holding a lottery or sweepstake is not what you would regard a natural or moral offence, it is rather the conducting of a dishonest lottery, where the benefits to the individual buying the ticket are not as great as stated on the face of the ticket. That would be the point you have in mind?—A. Yes, I think so. I do agree with

you to a certain extent, but there are certain charitable reasons, good reasons, why money should be raised, and this is apparently the only way that certain organizations can do it and they have been doing it under the provisions set up. Now, as the chief pointed out the weaknesses of certain people are such that they cannot stop. There is also the fact that certain organizations are business people and they have sponsored some charity and want to raise money and are too busy and they retain the services of some professional organization or promoter who asks for a percentage of the proceeds and he gets busy and does what he thinks is a good job.

Q. That would be the second branch of my question later. It is either the conduct of dishonest lotteries or alternatively the conduct of a lottery where too much money is made by an individual and not sufficient proceeds go into the charity which is the ostensible purpose of the lottery.—A. We thought that perhaps all expenses towards that charity could be done without paying anyone. We feel even in a case like that that the printing of tickets could be done by some firm with their name on the back of the ticket for advertising.

The PRESIDING CHAIRMAN: Mr. Shea might have something to say on that.

Police Director SHEA: I would like to clarify that. For my part I doubt that the police would come here and make a moral issue of this. We believe if there is proper control to make the law enforceable it would serve our purpose. Police Chief Robert said that there was rather a moral issue involved. I could not go along with that, because the Queen sells liquor through government stores, and because we have Alcoholics Anonymous, we do not prevent the controlled sale of liquor. We would be for temperance rather than for prohibition, and only for well-organized charitable purposes.

Mr. FULTON: What you would want is clearly defined provisions of the law which enable you to decide which lotteries should be permitted and which not, and also to enable you to decide whether it is being conducted in a bona fide honest manner allowed by law or whether, on the other hand, it is being conducted in a manner prohibited by law?

Police Director SHEA: I would concur in that.

Police Chief DAVIS: We are talking about organizations in general. I can think of no more charitable organization, for instance, than the Y.M.C.A. or the Salvation Army. They require funds all the time. They are non-profit organizations and they solely rely upon the public for support. Yet those two organizations would not think of holding a lottery or selling tickets. They would not even give the matter a single thought of conducting anything for gain which would be in contravention of any laws. So, I think the matter is a little too broad the way we are discussing it when we talk about organizations, because there are many organizations that are desperately in need of funds, but they have a principal that they will not permit any member or number of members of their organization to obtain funds in a manner which would likely contravene any section of our federal or provincial statutes. Everything has to be taken subject to that. However worthy the notion, we should not condone an infraction of the law for a so-called good motive. There are large numbers of our society who believe that raising of money for charitable purposes by lotteries conducted within the law is a perfectly proper moral course of conduct.

Mr. FULTON: Coming back to Police Chief Mulligan, may I ask if one of the cases he referred to where the police department proceeded against the organization had as its purpose the raising of funds to provide milk for school children?

The WITNESS: That is correct.

Mr. FULTON: Which most people would agree is for a charitable purpose.

The PRESIDING CHAIRMAN: Police Chief Davis says that should be provided by the public at large by contribution rather than be taking a chance on a draw.

Mr. FULTON: They did agree to the question of raising funds by lotteries for moral reasons. I thought we had agreed so far all we wanted was a clearly defined law defining the system under which that might be done and laying it down so that the public could understand it too. That, I understand, was in Police Chief Mulligan's and Police Director Shea's mind.

Police Chief DAVIS: I made a little study of the laws in England in regard to, as I call it, gambling, and I think it is without any question of doubt that betting is permitted in England by statute. I feel if we let the bar down in this country we will probably develop a situation like they have in England where a father and mother have a bet on the sweepstakes every week, also the daughter and son. They tell me that every second person in England gambles every week on their pool. If we let the bar down too much in this country, are we going to develop the same situation?

Mr. FULTON: That is a question I would not dare to answer. Could you give us the answer?

The PRESIDING CHAIRMAN: Police Chief Robert, would you care to comment?

Police Chief ROBERT: Yes, Mr. Chairman. I feel that once games or raffles are organized for the purpose of so-called charitable organizations and that when the prizes are too high the money that must be obtained from such raffles or games must also be high. Secondly, when professional organizers make a living out of organizing raffles or games it is illegal and I think that it should not be permitted because it leads to many other problems. Problems which relate to gambling involve what we call "corruption" because we know of several cases in police work, unfortunately, which have led to very sad cases of corruption.

Mr. FULTON: But Police Chief Robert, would you not agree with me it might lead to even more problems if you made any attempt to prohibit lotteries and raffles absolutely?

Police Chief ROBERT: I am not in favour of prohibiting entirely, but I am in favour of putting a limit on them. But let us not make the gain from those lotteries too big, because there are so many greedy persons who will go after them, and they will do anything to get around the law and work their way in, until finally it is not for charity but for their personal gain and to my way of reasoning it turns out to be pure gambling.

Hon. Mr. GARSON: You feel we should take the big profit out?

Police Chief ROBERT: Yes, sir—

Hon. Mr. GARSON: And it will improve itself?

Police Chief ROBERT: Definitely.

The PRESIDING CHAIRMAN: Would you like to add anything, Police Chief MacDonell?

Police Chief MACDONELL: I agree with that. In the bingos for the service clubs it is a case of competing as to who is going to get the crowd if there is no limit on the prize. If it is a case of a business affair, one service club will think that unless they put up a television set as a prize the Lions club will get the crowd. It is competition even if it is legal and nobody is getting paid and it is conducted in a proper way. It is still a case of prizes to get the crowd there and to get the money to turn over to charity. If that continues I am afraid they will probably run themselves out of business, if they keep on competing with each other for prizes. I understand that some places have

gone into debt on a bingo because of the prizes they had arranged for and because there were not enough people present at the bingo to cover the cost of the prizes.

The PRESIDING CHAIRMAN: Mr. Fulton?

Mr. FULTON: What I was coming to from that previous question—and I see there is a difference of opinion with me, at any rate between the various members of the panel—what I was going to ask is whether in cases where you say a certain percentage was guaranteed, regulations were laid down that a certain percentage must be to a charitable organization and regulations, if you like, governing the size of the prizes and also regulations governing the conduct of the raffle and the percentage that might be taken by the person conducting it which would be bound up in the percentage that went for charity—providing those regulations were met, would it increase your task as law enforcement officers? Where the authorities could get a permit for the conduct of a raffle under those regulations it would not make your difficulty any greater if the licensing or permit of the authority was clear and specific and the terms under which the lottery could be conducted were equally clear and specific?

The PRESIDING CHAIRMAN: Were you addressing your question to Police Chief Robert?

Mr. FULTON: Yes.

Police Chief ROBERT: I will answer that question, sir, by saying that our work to enforce law would then be doubled because we would have to hire auditors to check on the revenue "take-ins", find out the cost of the prizes and make sure that the proper percentage of the proceeds went to charity and was within the limits and so on and so forth. I believe it would make it worse.

Mr. FULTON: You think it would increase your work?

Police Chief ROBERT: Yes, to a certain extent.

The WITNESS: I would not agree with that. I think if applications for permits were granted to responsible organizations on the terms you set forth, and they themselves would have their own auditing done by a responsible firm of auditors, I do not think we would have to provide much supervision.

Mr. FULTON: Your task then would be merely to ascertain whether they got the license or not?

The WITNESS: Yes, and if we then heard complaints that they were not complying we could investigate and then prosecute if necessary.

Police Chief ROBERT: Could I add a word? I am sorry to disagree with my good friend, Police Chief Mulligan, but we would have to depend on the word of the report given to us by the organizers.

The WITNESS: If the application went to the attorney general of the province and he referred it to the chief of police in the community for a report and recommendations and it was a responsible and worth-while organization composed of good citizens which conducted it and you recommended it, certainly they would comply with the terms.

Mr. FULTON: Yes, but Police Chief Robert's point is that it would be up to someone to see they complied with the terms of the license and my point is that the attorney general would draft the regulations under which the lottery would be permitted and then they would ascertain whether the application for a license came from a reputable firm and whether it complied with the interpretation of "charitable object" and if they were satisfied on these terms they could issue the permit. How could you say that would increase your difficulties?

Police Chief ROBERT: I am sorry. I may not have understood your question properly then, but what I understood was that a certain percentage would be set by the Code—say 25 per cent or 30 per cent would be set by the Code—to actually go to charity.

Mr. FULTON: That was not my intention, but it might be a possibility. You see, we have had representations that the discretion should be given to local authorities, either provincial or municipal, and I was following that up?

Police Chief ROBERT: I am sorry.

Mr. FULTON: Then it would be up to them to draw the regulations under which they would issue such licenses and lay down the percentage which would go to charitable organizations and so forth. I was asking if, from the point of view of law enforcement officers, such a scheme would increase your administrative difficulties?

Police Chief ROBERT: If there was any restriction or any percentage set in the laws made by the province or county or municipality, someone would have to control that to see if they had complied with the law.

Mr. FULTON: You do now.

Police Chief ROBERT: To a certain extent. But, when it comes to auditing the books, it is different.

Mr. FULTON: When it comes to the question of the value of the prizes?

Police Chief ROBERT: We can easily do that. But, the way I understand your question I feel it would surely mean more work to us.

The PRESIDING CHAIRMAN: Mr. Fulton, may I ask if you would permit the Minister to ask a couple of questions. We will go on tomorrow morning if it is your pleasure at 11 o'clock. The Minister has to be in Winnipeg tomorrow night and will not be here. Mr. Garson.

Hon. Mr. GARSON: I was wondering if we might clear up the points under discussion by putting to the panel some material from the British Report on this very subject. I think it is squarely to the point, and I would ask the members of the panel if they would agree that the same conclusions should apply under Canadian conditions. I will read it out and ask your comment: "once the sale of tickets in small lotteries to members of the public is permitted without restriction, the dangers of abuse are greatly increased and for this reason an even stricter control over the conduct of such lotteries would be required than is applied to the existing forms of legal lottery. If tickets were allowed to be sold freely it would, in our view, be necessary to provide that the lottery be conducted in accordance with such conditions as the following:" Now, this is the very point put to Police Chief Robert.

> (i) that the lottery should be promoted for purposes other than those of private gain, that no profit should accrue to any person from the administration of the lottery and that no commission, either in money or by way of free tickets, is paid in respect of the sales of tickets.

I will read all these and you can see if there is any one you disagree with.

> (ii) that no person whose business or employment is the provision of gambling facilities should have any part in the promotion or administration of the lottery;
>
> (iii) that no administrative expenses should be allowed except printing and stationery;
>
> (iv) that no public advertisement of the lottery or advertisement by circular should be allowed, and that neither tickets nor offers of tickets should be sent through the post;
>
> (v) that tickets should indicate by whom and for what purpose the lottery is promoted;

(vi) that prizes should be limited in value to not more than, say, 100 pounds, and that the price of tickets should not exceed 1s;

(vii) that the promoters should keep an account, which should be available for inspection by the police, showing the amount collected, the amount disbursed in prizes, the amount charged as expenses and the purpose towards which the surplus has been devoted.

Now, would you say that if we were to make any change in the present law towards the authorization of lotteries—we will say for charitable purposes—that these rules should be followed, and if not in what respect would you say they should be varied?

Police Chief MULLIGAN: I personally would say, Mr. Chairman, that if those rules were complied with and made part of the application for the permit that would solve a great deal of the problem. I would be in favour of that. It is proper control.

Hon. Mr. GARSON: Would you agree it would be necessary, however, perhaps, as Police Chief Robert has stated, that in some instances at least a careful audit would have to be maintained? I suppose a great deal would depend upon who were licensed in the first place?

Police Chief MULLIGAN: Yes. And one of the conditions could be that the sponsor obtain a firm of auditors to do that and that their report would be sufficient that there was an accurate accounting. We, in Vancouver, get applications for permits to the mayor almost every day by various organizations and many are duplicated and these I think could be properly screened and we could eliminate and reduce the number of permits issued.

Hon. Mr. GARSON: If you had an ironclad prohibition of everything else, you would be perhaps in a better postion than you are today?

The WITNESS: Yes, much better.

Mr. FULTON: It would cut down your job. Unless the auditor discloses something wrong you are finished except to maintain law and order.

The WITNESS: It costs us a great deal of money to send officers to supervise clubs who have applied in cases where we are not sure they are going to comply with the terms and we have to supervise it to see.

By Hon. Mr. Garson:

Q. Police Chief Mulligan, there was another case that you mentioned in Vancouver that I would like to ask one or two questions about.—A. Yes, sir.

Q. I think a remark has been made here by Mr. Murphy that part of the problem at least is due to the fact that there is a large body of public opinion that is really not strongly in favour of the enforcement of the present law, and I think in the light of what has been suggested by Mr. Winch that there is some doubt as to whether they would be in favour of any wording that we might devise. It is with a view to examining that state of public opinion in Vancouver that I would like to ask you in relation to this case that you spoke of, one of conspiracy, where there was a jury trial.—A. Yes, sir.

Q. Of free men sitting on a jury in a case which lasted for about?—A. About three weeks.

Q. And as I understood from you, the Crown had an ironclad case, and no defence was presented at all?—A. No defence was offered.

Q. In the face of that, this free jury brought in a verdict of acquittal?—A. Yes, sir.

Q. Is that not an indication of a very thorough-going lack of public opinion for the enforcement of the law against gambling?—A. It was our opinion, and we wondered if the jury had got involved in such a volume or mass of evidence that they could not follow the law, or that they got lost somewhere.

Q. That is right. And my next point is this: our experience in combines investigation cases which may last for 100 court days is that where you take men who are from business, as jurymen, and keep them tied up for that length of time, they get more and more disgruntled as the days go by in trying to follow a complicated mass of complex and intricate evidence which only a professional person such as a judge himself will have a difficult time to follow, and that a certain time comes when the juryman is interested more in getting away from the case and getting back to his ordinary business than anything else. Was that an influence in your opinion?—A. Yes, we had that opinion, that after ten days they had soaked up such a mass of evidence that they were confused and were looking towards the end of the file.

Mr. FULTON: Conspiracy is one of the most technical charges to prove.

By Hon. Mr. Garson:

Q. Am I clear that the accusation in that case, in line with the suggestions made by Mr. Lusby, I think, is that public opinion is opposed to people making private gain out of gambling? Do I understand correctly that in that conspiracy case all the defendants were men who were making a private gain out of gambling?—A. Yes, and all the evidence showed they had been doing it over a period of years.

Q. So if the jury was prepared to make a finding against those who were a very good type of people but who were making a private gain out of gambling, it would be very difficult to suppose that that group of men would take a strong attitude against the holding of lotteries?—A. In the condensation of the case there were really three special conspiracies. There were about 12 prominent counsel defending, and I think the jury just became absolutely confused.

Mr. FULTON: Would it not be perhaps more accurate to say that what you assume is that the jury felt that they had not been proven guilty of conspiracy, but that possibly if any one of them had been accused separately of conducting a common gaming house, he might have been convicted; but that it was the technical nature of the charge more than anything else?

The WITNESS: We thought so, because many of those men had been convicted on numerous occasions for book-making.

Hon. Mr. GARSON: Do you mean to imply that those in charge of filing the informations filed the wrong charges against them?

The WITNESS: Oh no, no.

Mr. FULTON: I did not mean to imply that. I meant that the charge was a proper charge, but was a technical one and such a difficult one to prove that in my opinion the jury just felt that they could not cope with the technical difficulties of the case.

Hon. Mr. GARSON: Were you or were you not implying by your remarks that jury trials in respect of such offences as that are inadvisable?

The WITNESS: It is our opinion, sir, that we would like to have seen that trial before a judge alone.

Police Director SHEA: I should like to make a comment to Mr. Garson. At the beginning I reserved the right to make a final comment. You covered the British proposal, firstly, that no personal or private profit from any of these organized charitable lotteries would be made. I think that that is very good. I think that we are all agreed on that. The second is this: we have heard during this discussion that certain large organizations were not able to have these businessmen give their time to organizing and therefore they turned the job over to somebody else. I think that there ought to be provision in

there that if that is necessary that club or organization must be responsible for the personnel as being employed by them and not get a percentage of the proceeds, pay them a stipulated sum—I think that parliament might decide what would be a fair sum—rather than a profit derived from the gross receipts.

Hon. Mr. GARSON: That is to say, the organization should separately take the responsibility for paying the fees of the organizer?

Police Director SHEA: And the books should be audited by a qualified firm of auditors or accountants.

Hon. Mr. GARSON: And there should be no connection between the lottery funds on the one hand and the payment of the fee on the other?

Police Director SHEA: Yes.

Hon. Mr. GARSON: If they did not want to do it themselves, they could get the firm to do it?

Police Director SHEA: Yes, I wanted to make that safeguard.

The PRESIDING CHAIRMAN: I hesitate to draw this meeting to a close. We will meet tomorrow morning at 11 o'clock, with the understanding that Mr. Fulton will be the first to question, followed by Mr. Mitchell, then followed by Senator Fergusson and others.

EVIDENCE

APRIL 29, 1954.
11.00 a.m.

The PRESIDING CHAIRMAN (Mr. Brown, *Essex West*): We have to elect a Senate co-chairman. Moved by Mr. Murphy, seconded by Mr. Winch, that Mrs. Fergusson be elected co-chairman. All in favour?

Carried.

(Hon. Mrs. Fergusson took the chair as co-chairman.)

The PRESIDING CHAIRMAN: Ladies and gentlemen, as you know, we have the Chief Constables' Association with us, but unfortunately Chief Mulligan of Vancouver had to make a change in his plans and has had to leave the city to be in Winnipeg. We have the other members of the panel with us.

Police Director SHEA: The only one that is not here is Police Chief MacDonell, who cannot come this morning.

Police Director George A. Shea, Secretary-Treasurer, Chief Constables' Association, called:

The PRESIDING CHAIRMAN: It was understood yesterday that when we reconvened we would continue questioning, with Mr. Fulton and Mr. Mitchell (London) having preference.

Mr. FULTON: Mr. Chairman, I have a question or two for Police Chief Robert and then one for Police Director Shea. Chief Robert, I hope that I am fair in saying that yesterday you expressed the strongest views of any of the panel against any relaxation of the lottery laws. You gave us certain examples from your own experience of cases where gambling had resulted in broken homes. I should like to ask you this: whether in the majority of those cases there was any other factor besides straight gambling, such as liquor in a case of gambling on premises and in a way which was not in accordance with the present provisions of the Code, or whether it was just the straight gambling?

Police Chief ROBERT: Several cases that I know of are straight gambling. In others, of course, there is the combination of liquor and gambling and other causes.

Mr. FULTON: Gambling even within the law?

Police Chief ROBERT: I would say illegal gambling, such as betting off a race track—"bookies", as we call them—and barbotte games.

The WITNESS: The famous Montreal game, "barbotte".

Police Chief ROBERT: A special game played in Montreal.

The PRESIDING CHAIRMAN: For the purposes of the record, would you tell us how it is played?

Mr. FULTON: No, I do not think we should know.

Mr. MURPHY (*Westmorland*): Davie does not want it to spread from Montreal.

The PRESIDING CHAIRMAN: What is it?

Police Chief ROBERT: It is a dice game.

Mr. BOISVERT: "Barbotte" is a fish.

Mr. FULTON: Would you be prepared to express an opinion as to whether we can devise gambling laws which, if they were sufficiently clear, you would be easily able to enforce, and if gambling were kept within those limits it should not result in the bad conditions that you described?

Police Chief ROBERT: I would be of that opinion. If the laws were made clear so that it would not lead to any misinterpretation by police officers or any other authorities called upon to enforce them, or even lawyers, I believe it would relieve the problem tremendously.

Mr. FULTON: I would like to ask Mr. Shea this question, Mr. Chairman. Section 234 is one that has always intrigued me. I do a great deal of travelling by rail and there is a certain part of the trains in which section 234 is posted, which is what is called "a conspicuous place", and I would imagine that the strict interpretation and application of that section would result in a great many people being up before magistrates, against whom the section is not applied. Just for the purposes of the record, I might say that it makes it an indictable offence with a liability to one year's imprisonment for any person who in effect gambles on railway trains or steamships. My opinion would be that it is wide enough to include games of bridge if there are any stakes at all involved. I should have checked, but perhaps I could ask Mr. Blair: is this section carried forward into the new Code?

Mr. BLAIR: I believe it is, Mr. Fulton.

By Mr. Fulton:

Q. Mr. Shea, do you know of any cases in which that section has been applied in recent years?—A. I can tell you, Mr. Fulton, that it is many years since we have actually had occasion to prosecute for gambling on our trains. Since the depression we have not had it, because we went to war with the gamblers coming over at race times from the United States, card sharps travelling on our trains, especially between Montreal and Toronto, or between Toronto and Chicago or Detroit. We have an association similar to this in the United States, and I have been chairman of that and held positions on committees. We work hand in hand. We tab all these well-known card sharps that travel on trains, and that sort of thing. So we have practically done away with them, and today you might say that there is nothing but friendly games between people, playing bridge or something of that kind.

Q. Would it be your opinion that something along these lines is necessary? —A. I would say "Yes", as a preventative, because these people know that in Canada we have very strong laws. In the United States they tell us, "You are lucky to have such wide laws." Crooks give us a wide berth here.

Q. Would it be a correct statement to say that if this section were vigorously and uniformly enforced many of your conductors and so on would find themselves in difficulty at the present time?—A. I do not quite understand the question. In what way would they be in difficulty?

Q. Is it not so wide that it is the duty of a conductor under the present law to break up even an innocent bridge game?—A. He is the captain of the ship, and for any criminal offence we have an arrangement whereby the conductor—(after all he is armed with this authority for emergency purposes, but we cannot expect him to be a policeman and wield a big stick on his passengers)—can settle any disorderly conduct amicably. He can detrain a person who becomes too boisterous, but he must put him off at a station where he can get a taxi to a hotel or something of that kind and not at an isolated place in the country where there is no means of conveyance. We have arranged for the conductor to wire ahead to the first place where there is a policeman and he will take care of the matter there.

Q. You have told me that you think it is necessary to have this to enable you to deal with the card sharps. On the other hand, I do not like laws which are so widely drawn that in the vast majority of cases they are ignored. By subsection 2 of section 234 there is imposed what is really an absolute duty on every conductor in charge of any railway train or steamboat, etc., "in or at which any such offence, as aforesaid, is committed or attempted, shall with or without warrant, arrest any person who he has good reason to believe to have committed or attempted to commit any such offence". If we are right in our assumption that the offence includes also a private game of bridge where even the lowest stakes are involved, there is actually a duty on the conductor to break up that game and indeed to arrest the offenders. What I am asking is whether you think it would be possible or desirable to re-frame that section so that there is discretion left to the conductor where he knows that the game is an innocent one between four friends who happen to be travelling on the same train, so that he does not have the duty—which at the present time is ignored —and he can use his discretion so that if he knows or has reason to believe that there is a definite gambling game going on he can exercise his powers of arrest. My question, therefore, is: Would you be willing to express an opinion as to whether it is desirable to modify the section so as to give the conductor a discretion?—A. Mr. Fulton, I think that the legislators when they framed this —if I recall correctly, I have not read it for some time, there were no changes in section 234 in the new code—took this into account. A conductor is not a police officer nor a barrister who can judge the enormity of an offence. This law was framed whereby he had the power to do these things. These men do not have much experience in this matter. In fact, you probably would not find any conductor in the country who knows any more than that there is a law. They are informed as to their power and that they should stop these things, and they do. You could call the first ten conductors you meet and, apart from the fact that they might say that a few gentlemen play cards in the parlour car or something of that kind, they would say that there was no money involved in this. These people may be members of parliament.

The PRESIDING CHAIRMAN: No.

Mr. FULTON: He said "four friends".

The WITNESS: These games might give the impression to some people who are not conductors that there was more involved.

Mr. WINCH: I have seen conductors more than once tell players to take the stakes off the table in a train.

Mr. BLAIR: For the benefit of the record, section 234 is reproduced in section 180 of the new Code, and the conductor still has the power to arrest, but there is no penalty for him failing to make an arrest.

Mr. FULTON: My only point was this. It seemed to me to place an onus on conductors and that it was not fair in that it imposes an absolute duty on them. There are many cases in which there is no vicious form of gambling going on. As a matter of principle, I do not like to have the kind of law that is more honoured in the breach than in the observance, and I wondered whether it would be fairer to all concerned to modify it, but I take it that your opinion is that you do not think it is necessary?

Police Director SHEA: I do not think it should be modified. In the first place, a conductor, I imagine, if he did not have the authority and he was not expected by the company to enforce it, would not like it—it is a distasteful thing. So I think that if it is mandatory for him to police the situation it is better than to give him discretion, because he would not use that discretion often. His discretion would be to stay out of the thing, I think.

Mr. MITCHELL (*London*): I was interested in some remarks made by Chief Davis and the other members of the panel yesterday, which I would like to pursue a little further. The Chief indicated that the Y.M.C.A. and the Salvation Army do not conduct lotteries, and that to those two charities could be added many more. I am thinking at the moment of the Institute for the Blind, the Family Service Bureau, the Red Cross, the Boy Scouts, and undoubtedly others. The people who operate those charities and do the work which produces the necessary funds usually represent a fairly responsible section of society in any community. Would the chiefs care to comment on whether or not that represents responsible opinion in each community, that lotteries are not the method, for one reason or another, for raising funds for charity? Perhaps Chief Davis would comment.

Police Chief DAVIS: In principle, I would say this, that a number of organizations do resort to raising funds through that method.

Mr. MITCHELL (*London*): Is there any other reason that you have gathered from observing the operation of these various charities that perhaps some of the most responsible charities do not resort to lotteries?

Police Chief DAVIS: I think that perhaps this is a matter of principle.

Mr. MITCHELL (*London*): It is a matter of principle? Perhaps I could come at it in another way. Would you think that persons who operate those charities feel that if they operated bingos or raffles it would prejudice them in any other fund-raising activity which they sought to undertake?

Police Chief DAVIS: Possibly.

Mr. MITCHELL (*London*): Chief Robert, have you any comment on those statements?

Police Chief ROBERT: No, sir.

Mr. MITCHELL (*London*): Judging from your experiences in supervising and investigating these various lotteries, can you say that the people who participate in them do so for the purpose of assisting the charity or for the purpose of personal gain?

Police Chief DAVIS: I know of no lottery being conducted in my area where there are any personal gains. All proceeds go to charitable purposes.

Mr. MITCHELL (*London*): I am looking at it from the point of view of the person buying the ticket.

Mr. MURPHY (*Westmorland*): The player.

Mr. WINCH: I would say that it is the hope of winning something.

Police Chief DAVIS: Oh, yes, definitely.

Mr. FULTON: Perhaps a combination of motives?

Police Chief DAVIS: Yes.

Mr. MITCHELL (*London*): Mr. Fulton raised a question with Chief Robert. Is it correct that your feeling—and perhaps it is the only difference which you have with other members of the panel—that legalized gambling in the form of these lotteries and raffles is the opening of the door to perhaps larger gambling operations by the people who participate?

Police Chief ROBERT: Correct, sir.

Mr. MITCHELL (*London*): That is all, Mr. Chairman.

Mr. BOISVERT: Chief Robert, I wish to ask you two questions. The first one is this: Could it be taken as a fact that lotteries and gambling using any kind of games are a fertile ground for racketeers, big and small?

Police Chief ROBERT: Yes, sir.

Mr. BOISVERT: My second question is this: Is it possible that even if lotteries, raffles and bingos are carried on for charitable purposes the most respectable are misled by some tricky operatives?

Police Chief ROBERT: It happens quite often, sir.

Mr. FAIREY: I was going to ask Chief Robert, following up that question by my colleague: I gather from your answers that you are opposed to gambling in any form?

Police Chief ROBERT: Yes, sir.

Mr. FAIREY: From the moral point of view that it is wrong? And you also say that you would not deny it entirely?

Police Chief ROBERT: I do not understand your question clearly.

Mr. FAIREY: Is this your opinion, that gambling, even if it is not evil in itself, does lead, as my colleague said, to further gambling and broken homes and so on?

Police Chief ROBERT: Right, sir.

Mr. FAIREY: Do you think it possible to forbid gambling altogether by law and make such a law enforceable?

Police Chief ROBERT: Yes, sir, that is my sincere views.

Mr. FAIREY: And you think, too, that those persons who indulge in some form of gambling in the guise of giving something to charity are being misled, in the main?

Police Chief ROBERT: Not in the main, but some of them are. A great percentage of the people that buy raffle tickets will do it with the hope of gaining something and not simply to help.

Mr. FAIREY: In other words, if they were asked to contribute to a charity without the bait of a prize they would not contribute to that charity?

Police Chief ROBERT: I would not say that, Sir.

The PRESIDING CHAIRMAN: With respect to your views on being opposed to gambling in principle, is it because of your police experience?

Police Chief ROBERT: Police experience and knowledge I have acquired during the last 25 years.

Mr. WINCH: May I follow with one question. As the chief has very definite opinions does he also take the position that there should be no legalized horse race betting?

Police Chief ROBERT: You mean at the racetrack?

Mr. WINCH: Yes. Is that not gambling too?

Police Chief ROBERT: Yes, to a certain extent. But it is gambling under a certain control and if I remember correctly you cannot hold a meeting for more than 14 consecutive days at the same track in the whole year. Therefore it is not a continuous affair. If it was a 12 month affair, I would say that I am definitely against it. And, although it is legal, I know of several cases where people go out to the track who cannot afford it and will even lose their wages and will borrow money to bet on horses.

The PRESIDING CHAIRMAN: I think we all know of such cases.

Mr. BOISVERT: Do you, Chief Robert, know how much money was bet on races in the province of Quebec last year?

Police Chief ROBERT: No, I do not have those figures.

The PRESIDING CHAIRMAN: Do you have those figures, Mr. Boisvert?

Mr. BOISVERT: About 3 or 4 million some odd dollars.

Mrs. SHIPLEY: From horse racing it is one step further to speculation on the stock market. I know hundreds of people who have lost more money than

they could afford on the stock market. It is a straight gamble unless you buy established stocks with old established companies. What is your feeling on that?

Police Chief ROBERT: I believe it is not the same thing at all.

Mrs. SHIPLEY: It is not the same?

Police Chief ROBERT: No, I do not think it is. First of all, it is not the working class who actually buy stocks. There might be a small certain percentage. But, they are not going to spend so much on the market in buying mining shares or shares of any nature. There is no quick return on the money invested. It is not the same thing. Gambling is a fast game. It creates passion in human beings. I may have had some experience which has left with me that attitude, because I have seen gamblers sitting night after night and mothers of large families playing bingo who never thought of anything else for hours when they were playing and you could see it was a real passion with them; it was something horrible to see, I might say. You cannot find the same sentiment or passion in playing the stock market, I believe.

The PRESIDING CHAIRMAN: You think that in the stock market it is not for some people a sense of gambling, it is rather a sense of investment?

Police Chief ROBERT: Correct, Sir.

The PRESIDING CHAIRMAN: And for the development of the country.

Mr. MURPHY (*Westmorland*): Like the western lands we bought in the maritimes. They were under water.

The PRESIDING CHAIRMAN: There is one born every minute they say.

Mr. VALOIS: With respect to betting on a market and betting on horses, you cannot escape it if you bet on the horse race it is a bet; if you speculate on the stock market, it is just that you are making gambling of something which on itself is not a gamble. If you go in the stock market and use it as a way of gambling you would make a gamble out of that, but it is not of itself a gamble. I think that is the conclusion that may be drawn.

The PRESIDING CHAIRMAN: Somebody said that everything was a gamble.

Police Chief ROBERT: Even a businessman opening a store or the young man who goes into business—in that case it is a gamble. Will he succeed? He does not know. I compare the stock market to persons keeping a store and other types of legitimate business.

Hon. Mrs. FERGUSSON: I would like to address this question to Chief Robert and perhaps you may not care to answer. Many people—I do not say that I agree with them—say that these people who take part in bingos have no other outlet to amuse themselves and it is something which they can do. You gave us some generalizations, but can you give us some definite cases where there were deliberately bad results from people taking part in lotteries or bingos? I do not mean the names, but can you give us the cases?

Police Chief ROBERT: I believe I did answer that question yesterday fairly clearly.

Hon. Mrs. FERGUSSON: I mean particular cases. As I remember it was more a generalization. I may be wrong.

Police Chief ROBERT: I would not like to comment on this. I am sorry. I may be able to do it some other time informally.

Mr. BOISVERT: May I ask another question, Mr. Chairman. Chief Robert, according to your experience could you tell us if horse racing is an honest sport as it is carried out today?

Police Chief ROBERT: Do you mean off the track or on the track?

Mr. BLAIR: Do you mean the betting?

Police Chief ROBERT: Do you mean off or on the track?

Mr. BOISVERT: Both.

Police Chief ROBERT: By off the track I mean bookies. If it is on the track it is controlled actually by the federal police officers and other controllers. Off the track it is quite different.

Mr. FULTON: Were you asking about the betting or the actual conduct of the races?

Mr. BOISVERT: It was a general question, but I was coming to the betting.

Police Chief ROBERT: We cannot generalize on the betting because there are betting places that are run honestly although they are illegal in themselves. But, others besides being illegal are dishonest.

Mr. BOISVERT: Now, I am coming to the sport itself. Could the racing be arranged before it is started by some tricky operator?

Police Chief ROBERT: I am sorry, sir, but I cannot answer that question, not being familiar with the sport itself.

Mr. BLAIR: I have a number of questions I would like to ask, but I will put myself in the hands of the committee if they think I am taking too much time.

Mr. FULTON: May I ask a question first? Mr. Robert, perhaps this might seem as though I am asking you to make an easy generalization, therefore, I would like your personal candid opinion. You gave us the example of mothers participating in bingo to such an extent that it comes down to desertion or neglect of their children.

The PRESIDING CHAIRMAN: I do not think Mr. Robert wants to name names and places.

Mr. FULTON: I am not going to ask him that.

The PRESIDING CHAIRMAN: He has informed me that if you wish to have a meeting in camera some time he will be very happy to answer those questions.

Mr. FULTON: My question is a general one I wish to ask you whether you feel the desire or weakness—if you like—reflected in that course of conduct is an inherent one which if the innocent game of bingo was no longer possible that that weakness might find its outlet in some other form of activity with the same result?

Police Chief ROBERT: I am sorry, I am not prepared to answer that question.

Mr. FULTON: What I am really asking you is this: is it the gambling just because of its inherent viciousness which attracts this person and ruins her and her home, or is it perhaps not fair to suggest that we all have inherent weaknesses and where that outlet had been available the same result with respect to the home might have followed?

The PRESIDING CHAIRMAN: Do you not think that that is a question for a psychiatrist?

Mr. FULTON: The chief has expressed that opinion. I will not press it if he does not wish to answer.

Police Chief ROBERT: I would rather not, sir.

Mr. MITCHELL (*London*): May I ask just one question. Perhaps it will clear our minds. Do you, Chief Robert, object to the playing of small stakes amongst a group of friends?

Police Chief ROBERT: No, Sir.

Mr. MITCHELL (*London*): That is the answer.

Police Chief ROBERT: Providing there is not a gain for someone in particular. That is if, for instance, the housekeeper is not actually the one who will get all the benefits and make a living out of it.

Mr. BLAIR: Mr. Chairman, the first group of questions I would like to ask are of a general nature and then I would like to ask some detailed questions about the wording of the present Code. I wonder if the members of the panel could tell us what are the main types of lotteries which are conducted in this country at the present time?

Police Director SHEA: The more voluminous ones which come to our attention are the Irish sweepstakes, the Kentucky derby lotteries, and the Army and Navy. The Army and Navy is very big in Canada. I personally do not know if any individual derives any income personally from the Army and Navy. They probably have an operator who does this, I do not know. They have a tremendous sale of tickets in Canada, and I believe that they have something which the others do not have, that is they give you a membership and you can have a lucky number.

The PRESIDING CHAIRMAN: You mean the betting is done by selling a membership?

The WITNESS: Yes, a membership card. There was a club which was banned in Montreal, and they were selling membership tickets, and I remember while the big probe was going on in Montreal, the lawyer who was handling the prosecution visited the hall and immediately he entered they sold him a ticket and he found there was nothing illegal about it. When they held the draw, they elected a president, about three vice-presidents, and 100 directors. The president got $500 for his month as president and the vice-presidents lower in rate. The directors got $5.00 each. Perhaps I should not call it a prize, but it is supposed to be his dividend or stipend for the month. I might say no individual benefited alone. We looked into that.

The PRESIDING CHAIRMAN: One does not get anything for selling the membership?

The WITNESS: Yes. In one organization they printed 2,600 tickets and 50 per cent went into the stipend or whatever you want to call it. The lowest figure was $5.00 for a director.

The PRESIDING CHAIRMAN: Where did the other 50 per cent go?

The WITNESS: To the church. And that particular church was in a district which became highly industrialized. The attendance had dropped off and the people they did have were not people who could make great contributions to the church.

Mr. BLAIR: You have mentioned large sweepstakes, on a more or less national basis and this special scheme which has been used in one locality.

The WITNESS: It was the "booster club".

Mr. BLAIR: In addition to that would the panel like to express any opinion on the prevalence of lotteries run by service clubs and organizations of that type for worthy charitable purposes?

Police Director SHEA: I will take a stab at this. You can correct me if I am wrong. I think we have already brought out here that the police are not here as great moralists to dispense with all types of gambling. I believe it is something we have with us and all we can hope for is to get as good a measure of control as possible. I am sure that the stock market and the race track would be far more detrimental than these lotteries if they were not controlled. I think the handbooks in the larger cities, from what we read in the newspapers particularly, give the best manifestation of the volume of betting by illegal means.

Police Chief DAVIS: I think I should mention that there was a lottery—of course we have a small one in our community. But, I do know of one which has been operating, I am informed, for over 20 years, I believe from the west coast. They have on their tickets death benefits and the procedure is if they complete their last 12 tickets and there is a death by their subscriber, he is entitled to, by turning his ticket in, $100. It is what they call the death benefit plan. I think that that has been operating for over 20 years.

Mr. BLAIR: What I am trying to do is look for examples of types of lotteries. The Kefauver committee regarded the numbers game as being the biggest lottery conducted in the United States. Is the game of numbers played to any significant extent in Canada?

Police Chief ROBERT: No, except in Chinese districts in large cities.

The Presiding CHAIRMAN: And coloured districts.

Police Chief ROBERT: To a certain extent, but mostly by the Chinese in the Chinese districts. It is not called the numbers game but it is similar to it.

Police Director SHEA: I did not quite answer all your question, Mr. Blair. Your question related to well known charitable organizations holding lotteries. We must face the fact that as far as those organizations are concerned, I believe they are sincere, but our information has been, and some of it comes from Chief Robert when we were discussing this matter, that the business men who operate these well known lotteries do not have the time personally to devote to it, and therefore, they employ some individual or individuals who operate it and who do it on a large percentage basis or large commission, whatever you like to call it, and that is what we are opposed to, because we deem that a racket, and what we are hoping will come out of this—I am speaking for myself and others, and I discussed it with director Langlois in Montreal and the chief at Toronto—what we hope will come out of this is a better form of control to take it away from people who not only make a good livelihood, but who become wealthy from the same of these lottery tickets, so that the charities will derive sufficient benefit from them.

Mr. BLAIR: You have raised the question of control, and I have two general questions to ask. One is as a result of the English royal commission report.

By the Presiding Chairman:

Q. Before you proceed: do I gather that your opinion, Mr. Shea, is that most of these draws or raffles are for the benefit of operators or promoters rather than for charity?—A. Not intentionally, but it works out that way.

Q. That is the effect?—A. Yes. I would go so far as to say, most of them. We know there are many smaller churches and other organizations, which are different. To that I would like to add something in answer to Mr. Mitchell's question. I think it dealt with the Salvation Army, which Mr. Davis brought up. Mr. Davis is in a city of maybe 45,000 people, and it is a different picture in a city of a million or more. We know the Salvation Army and we work very closely with them ourselves. They have a Christmas fund for which they collect publicly. We, through our company, make an annual collection for them. We go to all our employees for the Salvation Army, the same as with the Welfare Federation, the Federation of Catholic Charities in Montreal, the French Federation, the Jewish Federation of Charities, etc. We handle all these within our own company, and the C.P.R. and all big organizations do likewise, and in that there is no loss of money. The Salvation Army derives the full benefit from it and, therefore, I do not think that they have the same incentive or reason for holding a lottery. The Salvation Army is comparatively small compared with other religious bodies in any municipality. They are a world-wide organization and do wonderful work, but, speaking for myself, I know that

the Salvation Army has another means of revenue, through old clothing and old furniture, and that is quite a big factor in a big city. The other welfare organizations do not have that.

Mr. BLAIR: Dealing with this question of control, I would like to read a few extracts from the report of the Kefauver committee, and I should say that it was concerned with the problem of gambling in general, of which lotteries and the policy game in the United States form only a part. They say this:

> The widespread incidence of illegal gambling disclosed by the committee's investigations has resulted in the suggestion, made by many well-meaning and conscientious individuals, that the anti-gambling laws should be abandoned as unenforceable, and that the business of gambling should be legalized and licensed.
>
> This suggestion appears to be premised on the dual assumptions that once gambling is legalized the crooks and the cheats will retire from the field and leave the operations of the handbooks, policy wheels and the gaming rooms to honest and upstanding businessmen, and that public officials, who have previously been persuaded to ignore or affirmatively aid illegal gambling operations, will automatically prove incorruptible when entrusted with responsibility for controlling these same operations through a licensing system . . .

Then it goes on to say:

> There has not been presented to this committee any plan for the extension of controlled gambling which carries with it a substantial chance of success. On the contrary, each plan for extending legal gambling appears to play into the hands of the gangster element.

Now, in view of the fact that the suggestion has been made that there is some way in which lotteries can be satisfactorily controlled, would you like to comment on this recommendation of the Kefauver committee?

Police Director SHEA: I would like to comment, Mr. Blair, as I am somewhat familiar with the matter. I go to Chicago, and I was there when this went on. I think there is no comparison between the system employed in the United States that brought about the Kefauver committee and our present rackets in Canada in regard to lotteries. They have the policy and the numbers racket there, and it was of terrific proportions. It got into the hands of actual gangsters, not only racketeers but gangsters and murderers. These are not just assumptions. Luciano, who is back in Italy, is said today to be operating right from his headquarters in Italy. Although he is banned from the United States, his organization was of such proportions that it is still carried on. This is the opinion of responsible police officers in the United States with whom I come in contact. In Canada we have charitable organizations, which with the best intentions in the world have organized to collect through the sale of lottery tickets. People who may not be criminals have come along and devised a means of doing the work and deriving a great benefit from it. Up till about five or six years ago no spurious tickets had come to my attention, but we have seen thousands and thousands of them, and the police tell me the same thing. I have seized hundreds of these shipments and turned them over to the provincial police in the province where the seizure was made. They are experts at this, and they say, "These are spurious; these are not the genuine tickets". Even the man who bought them thought they were genuine, but with these he had no chance of winning. It was a pure racket from beginning to end. If you or I bought one of those tickets, we would have no means of knowing whether it was spurious or genuine. We think it has gone too far, that it has got to be a pure racket and that they are taking advantage of legal organizations.

By the Presiding Chairman:

Q. Follow that line. You started in to say that many well-intentioned people and organizations are going into the lottery business, but you didn't follow that along.—A. My inference was that these well-intentioned people are not personally deriving any benefit from it, but they are allowing it to get into the hands of the people who make the money for themselves, with only a small percentage to the charitable cause.

Q. And it encourages this big-time gambling that occurs in other countries? —A. There is no comparison between gambling in Canada and that dealt with by the Kefauver committee. They did not have any legal lotteries. The numbers racket was not controlled. They wanted to ban the thing altogether.

Mr. BLAIR: Without asking a leading question—

Mr. FULTON: Ask a leading question.

Mr. BLAIR: All right. What you have just said seems to indicate that lotteries at one time may have been organized for charity, pure and simple, by little charitable groups, but are increasingly being run by promoters who take percentages and other forms of remuneration, and their activities appear to be becoming more pronounced. Now, the finding of the Kefauver report was that the legalization of this type of activity, in the Kefauver committee's opinion, would not assist in the control of that element, and that was the question which I was putting to the committee. Would the legalization of these types of activity assist in the control of the activities of promoters?

Mr. FULTON: They are legal now.

Police Director SHEA: That is the question. I think that Mr. Robert has very forcibly placed before this committee that what is considered to be legal is not really legal. They are circumventing the law really, and I think that they are also circumventing the law when a private individual, say, makes 50 per cent of a charitable drawing, which was never originally intended.

Mr. BLAIR: Would you care to comment on this, Chief Robert?

Police Chief ROBERT: The first thing I would like to say on this is: Legalization will not eliminate the problem of gambling; it will increase it. Racketeers that are actually in the gambling business, or professional gamblers, will not simply change their way of living and become honest citizens merely on account of a change in the laws of legalization of gambling. They will certainly carry on as usual in another form of gambling. They will change their ways, but they will stick to the same racket. In fact, I believe that in the only place in the United States where there is legalized gambling the owners of the legalized establishments are ex-racketeers and gangsters.

Mr. BLAIR: That would be the state of Nevada?

Police Chief ROBERT: I did not mention any state.

Mr. FULTON: I am sorry, but I am confused, and I wonder if I could have my confusion cleared up. Are we discussing the legalization of numbers games and such things as are not now permitted in Canada, or are we discussing the control of lotteries, which are permitted under certain circumstances in Canada, which the panel has pointed out? In their opinion, they have in some cases become out of hand. I am not clear as to whether Mr. Blair and the panel are at one and whether they are both discussing the same thing. Are they discussing the legalization of what is not now legal in Canada, or are they discussing methods of keeping that which is legal within the bounds of the law that we have to control it?

The WITNESS: That was my understanding.

The PRESIDING CHAIRMAN: My understanding is that we are just giving a background as to how these things grow up when you start with lotteries and what they grow into.

Police Chief ROBERT: That is correct. Would you want me to comment on this? As far as the control of lotteries is concerned, personally I would be strongly in favour of the laws, or proposed laws, read to us by the Hon. Mr. Garson yesterday afternoon providing prizes are not high. There was some mention of £100. I feel that even £100, or $280, would be too high. As I said in my remarks yesterday, let us take the large profit out of gambling or lotteries and you will remove the problems entirely.

Mr. BLAIR: Chief Robert, I would like to ask you another question following that. At the present time, it is legal to hold a raffle with a very small prize of $50, and it seems that that kind of raffle has no great appeal. People are not interested in a $50 prize. They are interested in prizes like refrigerators, television sets or automobiles. I put it to you that, if the limitation on the prize is put at too low a figure, we may start this whole thing over again.

Police Chief ROBERT: It is not my opinion, sir. If we put it low, that will prevent many people from using lotteries or raffles to raise money. They will not go for that any more. If they want to raise money for charities they will adopt some other means or a direct appeal to the public, as the other charitable organizations do. I believe that when this day comes it will be a great improvement on what it is today, and that is why I am strongly in favour of a very low prize for raffles and lotteries.

The PRESIDING CHAIRMAN: You have confidence, then, Chief, that if there is some worthy cause and the need is made known to the public in any community, that the citizens of that community will arise and meet that need?

Police Chief ROBERT: Definitely. I have confidence in our people.

The PRESIDING CHAIRMAN: They will contribute in a direct way?

Police Chief ROBERT: Yes, sir.

The PRESIDING CHAIRMAN: That was demonstrated in my own city of Windsor, Ontario, when we had a tornado. There were a number of people who lost their lives—18 or more, I believe—and a great deal of damage was done, and yet when that was made known, the people arose and they oversubscribed the needs for restoring those properties to the individual house owners. I think that the same thing happened in Sarnia, where they had a serious tornado not long ago, and I think it happened in the Winnipeg flood.

Mrs. SHIPLEY: That is an unusual circumstance. It is not a year-to-year need such as that of a service club, although their work is just as worthy. I don't think your example is quite correct.

The PRESIDING CHAIRMAN: I know that it is correct.

Mr. FULTON: It is not apt.

The PRESIDING CHAIRMAN: You believe that it is an unusual incident. But you do not think that the public would arise to meet the need when it is recurring from year to year?

Mrs. SHIPLEY: I can only say that the experience in many small towns has been that once the Community Chest has made its annual drive, when the service clubs—all of whom do wonderful work, but they are not included in the Community Chest—go to collect sufficient funds to do their work, and do it well, they find in many cases that in order to raise the money they must offer the people something. Then thousands of people will come to them who do not contribute to the Community Chest, and who would not contribute anything to a worthy cause unless there was some chance of winning something.

Mr. BOISVERT: It is well known that in the province of Quebec when a farmer's home is burned it is rebuilt by the community, quite naturally. There is no question about it. All the farmers come together and rebuild it and supply food and clothing for the family without any games or raffles of any kind.

The PRESIDING CHAIRMAN: What Mrs. Shipley says, and we should not be getting into an argument—

Mr. BOISVERT: I quite agree with you, Mr. Chairman.

The PRESIDING CHAIRMAN: There is a later opportunity for that, but Mrs. Shipley says that for an unusual event they will arise to meet the need, but not for day-to-day matters that go on over the years.

Mr. BOISVERT: It has been done for hundreds of years in the province of Quebec.

Mr. MURPHY *(Westmorland)*: I wanted to finish my questioning, and I wanted to ask Chief Robert this. After hearing what Mr. Brown said, you do not believe in this Robin Hood type of charity, that is, taking from one regardless of means and giving to another?

Police Chief ROBERT: No, sir.

Mr. MURPHY: That the end does not justify the means?

Police Chief ROBERT: Certainly, I feel that if a cause is really worthy, even though there is an appeal every year, people will actually answer generously to the appeal if the needs are explained to them; but of course it is hard to judge from our past experiences, because many good organizations felt that lotteries and raffles were the easiest way to raise money. They did not bother to find any other way, so they took the easiest way and they formed a mentality in our people by saying, "We can give you something for practically nothing; just give us a dollar or two."

Mr. MURPHY *(Westmorland)*: Do you think, Chief Robert, that there is any charity at all in the buying of raffle tickets?

Police Chief ROBERT: No, sir.

Mr. MURPHY *(Westmorland)*: It is summed up by saying, "Oh, charity, how many sins are committed in thy name!"?

The PRESIDING CHAIRMAN: You are not quoting your Scripture correctly.

Mr. FULTON: I do not think that we will advance our discussion by this, because the problem is not as simple as that, and if it is left at that it might appear to be. I know of communities where the most worthy charities are regularly falling behind their objectives. There is a real problem in places where Community Chests do not exist because the community is not big enough for that sort of organization, and yet the strictly charitable drive is falling short of its objective. It is not a simple problem that you can deal with by saying that lotteries are not really charitable in their concept. That is how they originate, and it seems to me that our problem is whether or not lotteries for charitable purposes should be defined in law to ensure that they are confined to charitable purposes, to enable the police to control them.

The PRESIDING CHAIRMAN: We have invited witnesses here for the purpose of expressing their opinions, based on their experiences. We have got them, and I think that we appreciate it too, because it tells us very frankly from the position occupied by the witnesses what their experiences have been.

Mr. WINCH: That may be correct, but we are going round and round in a circle now.

The PRESIDING CHAIRMAN: It is sometimes hard to tell when you are arguing and when you are discussing.

Mr. BLAIR: Just dealing with Mr. Fulton's question a few moments ago, I realize that the Kefauver committee was covering the whole field of gambling, but I was simply using that extract to raise the question of the ability to control. Reference was made yesterday to a suggestion contained in the report of the English commission, and you will remember that Mr. Garson read a seven-point proposal outlining the various features of control. I think it is

only fair to add to that that this suggestion was very carefully considered by the English commission, but it was not adopted by them. I would like to have the opinions of the panel on the comments which the commission made. They said, on page 122, paragraph 399 of their report:

> In the first place, the methods suggested for the control of small lotteries open to the public are necessarily complicated and it would be optimistic to assume that the conditions proposed would be observed any more strictly than are the conditions prescribed by the present law. Secondly, the police would probably have even greater difficulty both in ensuring that genuine lotteries were conducted in accordance with the law and in suppressing lotteries promoted for private gain.

To give a full picture of the English commission's findings, I think that I should add this final sentence, as it indicates that the problem may be different there from the problem in Canada. They continue:

> Finally, we have formed the impression that despite the present restrictions on the sale of tickets, small and private lotteries used as a means of raising funds for some local object are already something of a nuisance, particularly in the weeks before Christmas, in the way that charity collections were before steps were taken to regulate them.

That seems to indicate that these things are not popular in Britain. I wondered if the panel would like to comment on the ability to control in accordance with the seven points which were mentioned yesterday.

Police Director SHEA: I should say, Mr. Chairman, that there is, again, a vast difference between what we understand goes on in England and these big sweepstakes that we have here. I am told that in England mother and father and everybody put up 10 cents a week, or something like that. They have these small lotteries. We do not have anything like that in this country. These are big things here that cost about $3 or $4 a ticket. In England they still have those, and I do not think that they should be confused with these local 10-cent lotteries that have been running for a long time.

Mr. FULTON: You mean things like football pools?

The WITNESS: Yes, they are regular. Every week they pay their 10 or 20 cents. I think you should make a distinction there. Mrs. Shipley said something about appeals. I agree with what you said, Mr. Chairman, but I think that there is a vast difference between disasters, where everybody is in a common class and they ship clothing all over the country and they give money, but I speak as one who has every year to deal with a large number of appeals. Last year I had 32 come into my office.

The PRESIDING CHAIRMAN: From whom?

The WITNESS: So-called charitable organizations. We are ashamed to go to our men and ask them again. We collected for a large organization and a very worthy cause, and then we were going to collect for naval cadets, or something of that kind. The men could not afford to do all these things, so we meet our objectives only by the hardest work, hounding these people to get it, and we get their boss to talk to them. We do not just advertise for people looking for charities to donate to. Mr. Fulton suggested that there is a vast difference between that and a worthy cause. You have to get after them. I have participated in these things. So-called good people bring you back four or five nights and say, "The cheque is not ready yet; come and see me later, I am busy tonight." They are hoping that you will get fed up and will not come back.

Mr. BLAIR: The English commission seems to be saying that attaching more conditions to the conduct of legal lotteries and the imposition of more restrictions and qualifications, simply increases the work of the police forces

without ensuring that they will be any more successful in actually making the law stick and enforcing the law. I wondered if Chief Davis or Chief Robert would like to offer any comment on this proposition.

Police Chief DAVIS: I would agree with you that it would present more difficulty in the actual enforcement, if it was complicated by amending the Code to permit certain organized lotteries under certain conditions. I think it would complicate matters and make it more difficult for the police.

Mr. BLAIR: Yesterday you expressed a different opinion?

Police Chief DAVIS: I think I gave an opinion in line with the others that the law should be more clear and that the control should be left to each province.

Mr. BLAIR: Yesterday we were discussing the opinion of Chief Mulligan, that instead of having them spell it out in detail permits would be issued by a public body along the lines of that.

Police Director SHEA: Perhaps the attorney general or a high government official of each province could keep the thing under his thumb. He could delegate that to some official in the town, but he should keep his thumb on it and not let it get out of control.

Mr. FULTON: The idea was the issuance of a permit.

The WITNESS: Yes, and the applicants could be investigated by the police.

Police Chief ROBERT: I am sorry not to agree with Chief Davis on this.

Mr. BLAIR: Your view would be that this would be no easier to enforce?

Police Chief ROBERT: It would be much easier to enforce. What causes all our problems right now is the lack of clear and precise laws and loopholes in some other section of the Code.

Mr. BLAIR: The next group of questions are on the detailed provisions. I think we are all familiar with the fact that the main exemption provided in the Code is the one that permits small raffles up to $50. In the experience of the panel, are the prize limits generally exceeded?

Police Chief ROBERT: You see, it is not very clear as it is. Prizes of $50. It does not mention how many prizes of $50, and consequently you may be giving out $5,000 in one raffle if you make it 100 prizes of $50.

The WITNESS: So long as each article does not go over $50; that is an interpretation.

Police Chief ROBERT: There are also conditions requiring that prizes had first to be offered for sale—

Mr. BLAIR: The Section deals with raffles at a bazaar. Chief Robert has indicated one difficulty was that a bazaar was not defined. I would like to ask whether you have difficulty in deciding whether the tickets actually have to be offered for sale at that bazaar or whether it is permissible to offer them for sale in the streets to be brought to the bazaar.

The PRESIDING CHAIRMAN: You mean pre-sale.

Mr. BLAIR: Yes.

Police Chief ROBERT: That is exactly it. It has not been defined and even a bazaar is not defined. I know of a case where a church organization came to the police to ask permission to hold a raffle at a bazaar. The bazaar was more or less a carnival. They had rides and a ferris-wheel and many other types of amusement. They had a large number of concessions, wheels of fortune, bingos and everything. They asked if they could raffle something on the ground also. That is the problem of the police officers had to meet. That is what creates all the problem. If that section was redrafted in a clear and precise manner, I believe it will eliminate a lot of problems.

Mr. BLAIR: I would like to ask a general question, about this exempting provision. As it stands now it seems to be designed to limit a lottery to being held in a particular place, for example in a church hall. Do you think it is desirable to continue that pattern of limiting the small lottery to a particular bazaar in a defined place?

Police Chief ROBERT: Yes, provided it is at a bazaar and not a pre-sale which will last six months or even longer.

Mr. BLAIR: Do you think that the permission to hold lotteries in a defined space invites infraction by way of selling the tickets outside of that hall?

Police Chief ROBERT: Yes, sir. Actually that is what is being done, but if the laws contained contrary provisions, the results would be different.

Mr. BLAIR: But, do you think it is advisable to continue with the section in a Code which invites such an immediate type of infraction?

Police Chief ROBERT: No, but the laws will always be violated.

Mr. BLAIR: I want to ask some questions about quiz contests?

Police Director SHEA: Would you mind if I make a comment first. I think there are two aspects to this thing here. I have listened and tried to read what I think is in Mr. Robert's mind. You must define the prize the same as the bazaar; define it, whether one article or ten articles. But, you could put this thing out of business even though legalized if you brought the prize down so far that nobody wants to buy it, but, is that a good idea? If you make liquor so bad that nobody wants to drink it, then you encourage somebody to make better bootleg liquor. I think we should make the best possible of the thing that we have to deal with now. We are interested in dealing with something that is with us. One may have all the ideals in the world; personally I do not gamble, I cannot afford it. But, I am not going to say that a man who can afford to should be prohibited. I do not believe in prohibition.

Mr. BLAIR: I am not bringing it up with the purpose of raising questions of policy, but simply with a view to enforcement. How do these sections work out? This section [s. 236 (1)(d)] which deals with contests says it is an offence to dispose of any goods, wares or merchandise by any game or mode of chance or mixed chance and skill in which the contestant or competitor pays money or other valuable consideration. As we all know, it is not an offence to award a prize of money on the basis of a contest involving mixed chance or skill. I wonder if the panel would like to express any opinion on the operation of this particular section at the present time?

Police Chief ROBERT: I have not had any personal experience recently with these sections, so I would not like to comment on them.

Police Director SHEA: It does not raise its ugly head like some of these other things.

Mr. BLAIR: Just one other question on this section: is this the type of section which creates confusion in the public mind? Is this the type of section which may make it more difficult to enlist public support for the enforcement of other sections relating to lotteries? This is section 236, 1 (d).

Police Director SHEA: Did you read it in its entirety?

Mr. BLAIR: Yes. This is the section which would deal with quiz programs and contests over the radio and newspapers where there is an element of chance and an element of skill, and the section prohibits these contests if the prize is merchandise, but it does not prohibit a contest where the prize is money.

Police Chief ROBERT: The only fault we can find with that is money should be included.

Mr. FULTON: It is only if the participant himself pays money or valuable consideration to take part.

Mr. BLAIR: There are cases which will indicate if you send in a coupon or something of that sort you have given consideration just by making the effort.

The PRESIDING CHAIRMAN: If there are no further questions, I wish to extend to the panel our most sincere thanks for their coming here.

Mr. FULTON: Hear, hear.

The PRESIDING CHAIRMAN: Police Chief Mulligan, who is not here at this meeting, came all the way from Vancouver; Police Chief Davis from Moncton, Police Director Shea from Montreal; and Police Chief Robert, who has given very valuable assistance, from Hull; and Police Chief MacDonell, who is not here today, from Ottawa. We want to thank you, gentlemen, for the assistance and help you have given to this committee.

Police Director SHEA: We thank you, Mr. Chairman. We are glad to have been here. This is the first opportunity that The Chief Constables Association of Canada has had of appearing before a parliamentary committee. We have had the privilege of discussing matters with the Minister of Justice, but it is the first time we have ever been called before a Joint Committee of the Senate and the House of Commons, and I think our members at the Annual Conference will have a far better opinion of the members of the Senate and the House than they have had, when we explain this situation to them.

The PRESIDING CHAIRMAN: Thank you, Mr. Shea.

The sub-committee will meet this afternoon in this room at 4 o'clock.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

TUESDAY, MAY 4, 1954

WITNESSES:

Representing The Canadian Welfare Council:

Mr. Norman Borins, Q.C., Toronto; Dr. Alastair William MacLeod, Professor of Psychiatry, Montreal; Rev. D. B. Macdonald, Chairman, Delinquency and Crime Division, Ottawa; and Mr. W. T. McGrath, Secretary, Delinquency and Crime Division, Ottawa.

Appendix: Exchange of Correspondence with Erle Stanley Gardner of "The Court of Last Resort".

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

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Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, May 4, 1954

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m., 2.00 p.m., and 3.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Beauregard, Fergusson, Hodges, and Veniot.—(4).

The House of Commons: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Fairey, Fulton, Garson, Shaw, Shipley (Mrs.), Thatcher, Valois, and Winch.—(11).

In attendance:

Representing The Canadian Welfare Council (Delinquency and Crime Division):

Mr. Norman Borins, Q.C., Toronto;

Dr. Alastair William MacLeod, Professor of Psychiatry, Montreal;

Rev. D. B. Macdonald, Chairman, Delinquency and Crime Division; and

Mr. W. T. McGrath, Secretary, Delinquency and Crime Division.

Counsel to the Committee: Mr. D. G. Blair.

On motion of Mr. Shaw, seconded by Mr. Brown (*Brantford*), the Honourable Senator Nancy Hodges was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

On motion of Mrs. Shipley, seconded by the Honourable Senator Fergusson,

Ordered,—That the Clerk of the Committee obtain as soon as possible, as recommended by the Subcommittee on Agenda and Procedure, 50 copies of an offprint from a forthcoming issue of the Canadian Bar Review containing the symposium of the Open Forum on Capital Punishment held by the Ontario Branch of the Canadian Bar Association in Toronto in February, 1954, for the use of members of the Committee.

On motion of Mr. Winch, seconded by Mr. Thatcher,

Ordered,—That, as recommended by the Subcommittee on Agenda and Procedure, the letter from Erle Stanley Gardner dated April 20, respecting U.S.A. murder cases where innocence was established after pronouncement of sentence, be printed, with his consent, as an Appendix to today's Minutes of Proceedings and Evidence and that copies be released to the Press together with the letter addressed to him on April 8. (*See Appendix*).

The Presiding Chairman introduced the delegation from The Canadian Welfare Council.

Reverend Macdonald outlined the functions of each delegate in respect of the Council's hearing.

Mr. Borins presented the brief of The Canadian Welfare Council favouring eventual abolition of the death penalty (which was "taken as read" in accordance with the procedure adopted by the Committee on March 2), and made a supplementary oral presentation thereto.

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Mr. McGrath described the organization, functions, and activities of The Canadian Welfare Council.

Dr. MacLeod made an oral presentation on the sociological effects of capital punishment based on experiences gained from psychiatric treatment of criminals.

During the course of their presentations made at the morning and afternoon sittings, the delegates from The Canadian Welfare Council were questioned thereon.

On request of Counsel to the Committee, it was agreed that Mr. Borins would supply from his files a record of references to abolitionist countries where it would indicate that capital punishment does not deter murder any more than any other forms of punishment.

Reverend Macdonald presented a copy of a sermon he delivered on capital punishment, with reference to which it was agreed that it be referred to the Subcommittee on Agenda and Procedure.

On behalf of the Committee, the Presiding Chairman thanked the delegation of The Canadian Welfare Council for their presentations on capital punishment.

At 3.30 p.m., the Committee adjourned to meet again as scheduled at 4.00 p.m., Wednesday, May 5, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

TUESDAY, May 4, 1954.
11.00 a.m.

The PRESIDING CHAIRMAN (*Mr. Brown, Essex West*): Ladies and gentlemen, if you will come to order, please, a motion will be entertained to elect an acting joint chairman from the Senate for the day.

Mr. SHAW: I would move that Senator Hodges act as joint chairman for the day.

Seconded by Mr. Brown (*Brantford*). Carried.

The PRESIDING CHAIRMAN: Senator Hodges will you please come forward.
(Senator Hodges assumed the chair as acting co-chairman.)

The PRESIDING CHAIRMAN: The following motion will now be entertained: moved by Mrs. Shipley, seconded by Senator Fergusson, That the clerk of the committee obtain as soon as possible, as recommended by the sub-committee on agenda and procedure, 50 copies of an offprint from a forthcoming issue of the Canadian Bar Review containing the symposium of the Open Forum on capital punishment held by the Ontario Branch of the Canadian Bar Association in Toronto in February, 1954, for the use of members of the committee.
All in favour. Carried.

And, also: That, as recommended by the subcommittee on agenda and procedure, the letter from Erle Stanley Gardner dated April 20, respecting U.S.A. murder cases where innocence was established after pronouncement of sentence, be printed, with his consent, as an appendix to today's minutes of proceedings and evidence and that copies be released to the press together with the letter addressed to him on April 8.

Moved by Mr. Winch, seconded by Mr. Thatcher. Carried.
(*See Appendix*)

The PRESIDING CHAIRMAN: Now, ladies and gentlemen, we have with us today the Canadian Welfare Council. We are pleased to have the Rev. D. B. Macdonald, chairman of the Delinquency and Crime Division of the Canadian Welfare Council. Mr. Norman Borins, Q.C., Dr. Alastair William MacLeod, Assistant Professor, Department of Psychiatry, at McGill University, Montreal, and Mr. W. T. McGrath who is secretary of the Delinquency and Crime Division of the Canadian Welfare Council.

You have the brief before you on the question of capital punishment. Which of the gentlemen is the spokesman?

Rev. Mr. MACDONALD: May I say a few words. Mr. Borins is going to present our brief. He was Assistant Crown Prosecutor of York county for eleven years, and for the past seven years has been in private practice, and in addition to dealing with portions of our brief Mr. Borins will be available to answer questions on procedure in court trials. Dr. MacLeod is Assistant Director of the Mental Hygiene Institute of Montreal, Assistant Professor of the Department of Psychiatry at McGill, and he has had extensive experience in experimental psychiatric treatment in England, and is secretary of the Canadian Institute for the Study and Treatment of Delinquency. Mr. McGrath is secretary of the Delinquency and Crime Division of the Canadian Welfare Council. I am going to ask Mr. Borins to make the presentation, with your permission, Mr. Chairman.

The PRESIDING CHAIRMAN: You will not be reading the brief in full, Mr. Borins?

Mr. BORINS: No.

The PRESIDING CHAIRMAN: The brief will be inserted at this point. If you will make comment on the brief we will appreciate it and then you may submit yourself for questioning by the committee if that is in order. However, I do not want to interfere with your method of procedure.

Mr. Norman Borins, Q.C., called:

The WITNESS:

On the retention of the death penalty as a punishment under the provisions of the Criminal Code

The Canadian Welfare Council favours the eventual abolition of the death penalty. We agree that a thorough study of the matter is required before a decision based on fact and in line with the wishes of the Canadian people can be reached. and we commend the federal government for setting up a joint committee of the Senate and House of Commons to carry out such a study. We appreciate the opportunity to present our recommendations and to set out the considerations that have led us to the conclusion that the abolition of capital punishment is desirable.

We are of the opinion that the first step in such a study should be an examination of the basic philosophy and concepts that underlie our treatment of the criminal. We consider it essential that such philosophy be clearly understood and clearly stated before an attempt is made to frame the provisions of our criminal law. Until agreement is reached on the purpose to be accomplished there cannot be agreement on the details of the Criminal Code.

The responsibility for crime does not rest with the individual criminal alone. In many of its aspects crime is not so much an aberration of the individual as a group phenomenon, and the social group is, to a large extent, the source of the crime problem. Crime should be regarded as a symptom of an underlying social disease and the individual criminal should be regarded as the weak spot where the disease breaks through. The social disease may manifest itself in other ways besides crime, for instance as mental illness, and we should look upon crime in much the same way we look upon those other manifestations of an imperfect society.

In many ways the criminal is the product of his environment. Throughout his childhood, in fact throughout his life, he is influenced by pressures from the community in which he lives, from his associates, and, most of all, from the members of his family. If this environment is favourable, it is relatively easy for him to make a good adjustment; if the environment is not favourable, the adjustment is more difficult. The failure to provide the kind of environment which leads to an acceptable adjustment on the part of the individual rests with the community as a whole.

We recognize that some forms of punishment must be retained as long as our community is unable to cope with the fundamental causes of crime, but far from feeling a sense of satisfaction that the wrongdoer has suffered his just deserts. every member of the community should have a deep feeling of remorse and failure, and should work towards the end that such a situation should not repeat itself.

Such an attitude would make the retention of any form of vindictive punishment impossible. Vengeance has no place in our criminal law. We believe that punishment of the offender can be justified only so far as it (a) deters potential offenders or (b) reforms the individual offender.

We believe, further, that the social scientists, particularly the sociologists, anthropologists, and psychiatrists, have collected valuable information regarding the causation of crime and the treatment of the offender, and that this information should be given careful consideration. It is not desirable to rely entirely on the opinions of individuals who have only personal experience to guide them.

How we deal with murderers takes on an enhanced importance because this matter has become in many respects a test case of the extent to which we are able to accept these concepts of crime. If we are able to look at the murderer objectively and with some understanding of the factors that have contributed to his being a murderer, we should be able to look at offenders guilty of lesser offences with similar objectivity.

The Joint Commission on Revision of the Criminal Code has before it a great bulk of evidence, statistical and otherwise, dealing with capital punishment, and it seems unnecessary to burden the commission members with further detailed documentation. We are therefore giving only in brief form the considerations that have led us to our opinion.

When the above tests are applied to the use of capital punishment, it is clear that it cannot be justified on the grounds that it reforms the individual offender. He can be reformed only if he remains alive.

The question whether the death penalty deters potential offenders is a difficult one to answer. However, the social scientists have been unable to find evidence of any special deterrent value to the death penalty. Most of the West European and South and Central American countries, and six of the United States have abolished the death penalty, some a century ago, and statistics for those areas show no increase in the murder rate after the abolition of the death penalty. To quote from the report of the Royal Commission on Capital Punishment of Great Britain:

> We recognize that it is impossible to arrive confidently at firm conclusions about the deterrent effect of the death penalty, or indeed of any form of punishment. The general conclusion which we reach, after careful review of all the evidence we have been able to obtain as to the deterrent effect of capital punishment, may be stated as follows. Prima facie the penalty of death is likely to have a stronger effect as a deterrent to normal human beings than any other form of punishment, and there is some evidence (though no convincing statistical evidence) that this is in fact so. But this effect does not operate universally or uniformly, and there are many offenders on whom it is limited and may often be negligible. It is accordingly important to view this question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty.

The belief is often expressed that by retaining death as the penalty for murder, society expresses its abhorrence of the act in the strongest possible terms and that members of the community are deterred from committing the crime because its enormity is thus stressed. We doubt that society's disapproval has much effect on the potential murderer. We believe rather that the brutalizing presence of the death penalty among us tends to strengthen those factors which bring about murder and crime in general. We believe that murder is less likely in a wholesome social atmosphere than in an atmosphere fouled by the morbidity, melodrama and horror associated with executions.

Experience with the abolition of the death penalty in connection with crimes other than murder would indicate there is no risk involved in abolition. In England in 1780 there were 350 separate crimes punishable by the death

penalty. In 1810, Sir Samuel Romilly introduced a bill in the British parliament to abolish capital punishment for stealing five shillings or more from a shop. Speaking in opposition to the bill in the House of Lords, Lord Ellenborough, Chief Justice of the King's Bench, predicted that the repeal of this law would lead to the abolition of the death penalty for stealing five shillings from a dwelling, in which case no man could "trust himself for an hour without the most alarming apprehensions that, on his return, every vestige of his property will be swept away by the hardened robber." Gradually, however, through the years, the number of crimes punishable by death has been reduced without a corresponding increase in the rate of crime. As society became more stable, the crime rate dropped for reasons in no way connected with punishment.

Some thought about the individual murderer will offer further indications that the death penalty does not deter. Murderers might be classed arbitrarily into three groups—the insane killer, the person who kills impulsively while in the grip of an uncontrollable passion, and the deliberate killer who murders for gain. It is hard to see which of these three groups would be influenced by the fear of the death penalty. The insane killer has no control over his actions, and neither has the person who is in the grip of an uncontrollable passion. The deliberate killer does not expect to get caught. Whether he is executed or sentenced to life in prison, the murder proves unprofitable if he is brought to justice.

There are also indications that juries hesitate to bring in a verdict of guilty when there is a risk of a death penalty. The following quotation is from an article by Professor C. W. Topping, The Death Penalty in Canada, published in the Annals of the American Academy of Political and Social Science for November 1952:

> It seems clear that there is an inverse relationship between severity of punishment and certainty of punishment, and that Canadians are suffering under a delusion when they assert that they know how to hang. The net result of the administration of justice in Canada as it relates to capital offences is that murder has become the least risky of any or all the offences which a citizen might choose to commit.

Professor Topping presents statistics on the rate of conviction of persons accused of murder, as contrasted to other crimes, to support his statement.

It also appears that the basic principles of our judicial system are set aside in the case of the convicted murderer. There were 172 people convicted of murder in Canada in the ten-year period 1942-51, and the court had no choice but to pass the death sentence. The decision on what should happen to the murderer rested with the cabinet. During this same period there were 40 commutations. The prerogative of mercy must be maintained to provide for the exceptional case, but it is difficult to maintain that it is being used only in exceptional circumstances when it was invoked in 25 per cent of the cases. This means that not only the freedom of the individual but his very life is in the hands of the administration. There should be no limitation on the prerogative of mercy, but the cabinet should not be put in the position of making routine decrees that should rest with the court. The fact that interference with the court's sentence was thought necessary in such a large proportion of the cases emphasizes that an automatic death sentence in connection with murder is not acceptable, and that each case must be considered individually.

There is also the risk of error. There are a number of instances on record *in countries other than Canada* where innocent people have been executed. The recent cases of Ronald Powers who served ten months and Paul Cachia who served twenty-eight months, both for robberies they did not commit,

illustrate that miscarriages of justice do occur in Canada. Had a murder occurred in connection with these robberies, it is probable that these two men would have been executed before the error was established. If the convicted person is sentenced to prison and the error is uncovered later, something can be done to rectify the situation. Once an execution has taken place, nothing can be done.

The sensationalism that attends both a murder trial and the execution of a condemned person has an undesirable effect on the community. Children and even adults are fascinated by the drama of a person on trial for his life, a fascination which is not nearly so strong in connection with crimes where the death penalty is not involved. One result is that the murderer often goes to his death with the maudlin sympathy of a large part of the public. This in turn cheapens the law in the eyes of the community. There is little dignity or majesty in the public's view of a murder trial.

There are other arguments in favour of abolition of the death penalty. One is the religious and moral argument of the sanctity of human life. Are we justified in setting aside our religious and moral principles against taking human life even in the case of punishing the murderer?

Another argument which might be brought forward against the retention of the death penalty is the horror of the experience for the family of the executed person. To have a relative convicted of murder and sentenced to life imprisonment is difficult enough, but the experience of hanging can affect relatives for life, particularly the children. The hanging of the guilty person in no way helps the family of the person who was murdered.

Other arguments have to do with good prison personnel. Highly qualified staff is being recruited for our prison services, and it would be unfortunate if this development were curtailed because potential staff refused to take employment in a service where they might be asked to supervise or participate in an execution.

However, the Canadian Welfare Council is aware that a large body of thoughtful and humanitarian public opinion in Canada has misgivings about the effect of the complete abolition of capital punishment. Some think there may be a deterrent effect to a death penalty and that until we have found a way to remove the causes of crime this deterrence may be necessary. Some feel that as our society becomes more stable the danger involved in abolition may lessen and that the question is essentially one of when abolition should take place. Still another reason for these misgiving is the fact that our treatment services have not yet reached the peak of excellence that seems desirable and this raises the question of what would happen to the murderer if no means of dealing with him, except imprisonment, were available.

After considering the above arguments, and recognizing the necessity of keeping legislation in line with public opinion, the Canadian Welfare Council expresses approval of the abolition of the death penalty in principle, and recommends, as a first step, the abolition of the mandatory death sentence.

One good result of this would be to put the responsibility of deciding whether the death penalty should be imposed in a specific case either on the judge or on the jury. The Royal Commission on Capital Punishment in Great Britain felt this was too great a burden to place on one person, and recommended that the responsibility rest with the jury. We do not have a recommendation to offer on this problem. However, if discretion is left to the jury, we feel strongly that a majority decision should be sufficient, and that it should not be necessary for the jury to reach a unanimous verdict in recommending that the death penalty should not apply in a particular case. This is a matter of the expression of public opinion, and a majority vote of the jury

should be sufficient. If a unanimous vote is required, it would mean that one member of the jury could send the convicted murderer to his death against the opinion of the other eleven members of the jury.

We believe that the adoption of this recommendation would lead to a gradual reduction in the use of capital punishment, and provide an opportunity to note the effects on the rate of murder. We are fully confident that before too many years have passed the desired goal—complete abolition of the death penalty—would prove feasible.

The Canadian Welfare Council
245 Cooper Street
Ottawa 4, Ontario.

The WITNESS: I am quite prepared that the brief be taken as read, but perhaps I might read part of it:

> The Canadian Welfare Council favours the eventual abolition of the death penalty. We agree that a thorough study of the matter is required before a decision based on fact and in line with the wishes of the Canadian people can be reached, and we commend the federal government for setting up a joint committee of the Senate and House of Commons to carry out such a study. We appreciate the opportunity to present our recommendations and to set out the considerations that have led us to the conclusion that the abolition of capital punishment is desirable.

Now, turning to page 10 of the brief I just want to refer to the concluding paragraphs:

> After considering the above arguments, and recognizing the necessity of keeping legislation in line with public opinion, the Canadian Welfare Council expresses approval of the abolition of the death penalty in principle, and recommends, as a first step, the abolition of the mandatory death sentence.
>
> One good result of this would be to put the responsibility of deciding whether the death penalty should be imposed in a specific case either on the judge or on the jury. The Royal Commission on Capital Punishment in Great Britain felt this was too great a burden to place on one person, and recommended that the responsibility rest with the jury. We do not have a recommendation to offer on this problem. However, if discretion is left to the jury, we feel strongly that a majority decision should be sufficient, and that it should not be necessary for the jury to reach a unanimous verdict in recommending that the death penalty should not apply in a particular case. This is a matter of the expression of public opinion, and a majority vote of the jury should be sufficient. If a unanimous vote is required, it would mean that one member of the jury could send the convicted murderer to his death against the opinion of the other eleven members of the jury.

May I here intercede with my own recommendation as to how the matter should be dealt with in the event that only the mandatory feature of punishment should be abolished. My own conclusion is that the procedure that would be most feasible would be that nothing be said to the jury by either Crown counsel or defence counsel in summing up their case, nor by the presiding judge in his charge to the jury about the question of punishment or about any recommendation for leniency. In other words, to retain the same practice as we have it now; but once a verdict is returned I would personally recommend this procedure, that the presiding judge then charge the jury on the matter of a punishment and that the law be so amended that the jury should then be

burdened with the problem of deciding on punishment. In this way: that they leave the courtroom and again retire to the jury room to deliberate on the matter of punishment and they should be free to come back with a recommendation of leniency, and in the event that such a recommendation is brought back then that should have the effect of removing the mandate to the judge so that he then becomes free to pass any sentence up to life imprisonment.

You will note that in the brief the Canadian Welfare Council merely makes the recommendation as a first step, the abolition of the mandatory death sentence but they say: "we do not have a recommendation to offer on this problem." Namely, they have no suggestion as to the procedure. What I have just suggested as procedure is something that has occurred to me.

I now return to the brief and read the concluding paragraph on page 11:

> We believe that the adoption of this recommendation would lead to a gradual reduction in the use of capital punishment, and provide an opportunity to note the effects on the rate of murder. We are fully confident that before too many years have passed the desired goal—complete abolition of the death penalty—would prove feasible.

In other words, while the Canadian Welfare Council favours the eventual abolition of the death penalty, we are suggesting a compromise at the present time.

Now, that is the only reference I wish to make to the brief, because I think it would be taking up time unnecessarily to read the entire brief. I do, however, now wish to make certain remarks of my own, Mr. Chairman, and whatever I may say I do not think in fairness to the Council, should be attributed to the Council because I am only authorized to give the committee on behalf of the Council what is stated in the brief. Those of you who have read the English report of the Royal Commission on capital punishment, 1949-1953, will realize that my remarks are based to a very great extent on recommendations and findings by that commission and a good deal of it is quoted.

Now, for murder in so far as our law is concerned the penalty, of course, is mandatory, yet perhaps there is no single class of offences that vary so widely, both in character and in culpability as the class comprising those which may fall within the comprehensive law definition of murder. Convicted persons may be men, or they may be women, youths, girls, or hardly older than children; they may be normal or they may be feeble-minded, neurotic, epileptic, borderline cases, or insane, and in each case the mentally abnormal may be differently affected by their abnormality. The crime may be human and understandable, calling more for pity than censure, or brutal and callous to an almost unbelievable degree. It may have occurred so much in the heat of the passion as to rule out the possibility of premeditation, or it may have been well prepared and carried out in cold blood. One crime may be committed in order to carry out another crime, or in the course of committing it or to secure escape after its commission; murderous intent may be unmistakable or it may be absent, or death itself may depend on an accident. The motives, springing from weakness as often as from wickedness, show some of the most base and some of the better emotions of mankind, cuoidity, revenge, lust, jealousy, anger, fear, pity, despair, duty, self righteousness, political fanaticism or there may be no intelligible motive at all. Our law, in spite of all that, is not flexible at all. Our law of insanity defences is the law as established by the M' Naghten Rules in 1843. They have not been enlarged. The Royal Commission in England recommended abolition of the Rules. Certainly in my opinion they need to be enlarged and modified to be consistent with the progress made in psychiatry in recent years. Our law still reflects the concept of an earlier age that every murderer forfeits his life because he has taken another life. This rigidity is the outstanding

defect of our law of murder. The work of this honourable committee, therefore, is linked with the work of the Royal Commission who will study the law pertaining to the defence of insanity and I suppose that collaboration will be desirable and essential. The necessity for abolishing capital punishment may not be so apparent if there is enlargement in the insanity law or modification and distinction made in the various types of murder I have referred to.

The PRESIDING CHAIRMAN: I do not like to interrupt you but I think we should point out at this time that so far as the question of defence of insanity is concerned that is now before a Royal Commission of which Mr. Justice McRuer is chairman, and not before this committee.

The WITNESS: I understand that. I was just merely touching that.

The PRESIDING CHAIRMAN: I thought we should make that clear for the purpose of the record.

The WITNESS: Now, if there is enlargement of the insanity law—if some of the matters of law that I will be touching on are changed—if that is done it may be suggested by some that the desirability of abolishing capital punishment disappears, or the mandatory feature of the sentence may disappear. It may be that in practice the inflexilibity of law and some of the problems I have referred to are taken care of by the exercise of the prerogative of the cabinets of government; that is executive clemency. While I feel that such a prerogative should never be taken away, this method does not cure the ills I spoke of, that is the rigidity of the insanity laws and the laws of provocation. The decision of the cabinet is not, perhaps, always the correct one. The review of the cabinet may not always detect the lack of premeditation or a deteriorated mind or the other things I have referred to.

It is commonly said that punishment has three principal purposes and they are referred to in the brief that has been filed with this committee: namely, retribution, deterrence, and reformation. I think that in so far as number one and number three are concerned, they can be disposed of very quickly. There is something wrong, it seems to me, in the state marking its disapproval of the breaking of its laws by a punishment proportionate to the gravity of the offence. Modern penological thought discounts retribution as one phase of vengeance. Now, if I am permitted to, Mr. Chairman, I would like to read a portion of a paper delivered by Rabbi Abraham L. Feinberg of Holy Blossom Temple, Toronto, at the panel discussion of the Ontario Bar Association which you referred to this morning, and I read this perhaps with great respect to the chairman of our committee, the Reverend Mr. Macdonald, as I did not know that he delivered a very excellent sermon on the entire matter which received wide publicity here in Ottawa. and I think that perhaps it should be suggested that a copy of Reverend Mr. Macdonald's sermon be put in.

Dealing with the one matter that is often referred to as one of the purposes of capital punishment, namely retribution, I thought I could do no better than to read a portion from a paper delivered by Rabbi Abraham L. Feinberg which is as follows:

> The state is a moral being subject to the same imperatives as the individual. Once the Canadian people begin to regard the state as an impersonal, inhuman, monolith apart from themselves, the state ceases to be a servant and becomes the master—and we are psychologically on the road to totalitarianism.
>
> When one is hanged the Canadian citizens hire, pay, and give the hangman status as their representative. It is a grim exercise of conscience, and a necessary lesson in government, for all of us to realize that the execution of a criminal is not a sensationalized spectacle to be read about and witnessed, but a calculated act wherein every citizen participates.

The very essence of democracy is the principle that the state is the people, and that, like them, it must obey a higher law.

This truth has special meaning today, when our civilization is challenged by communism. In contrast to the amorality of the Soviet state, which acknowledges no sovereignty except its own power and deals with entire populations as mere instruments of strategy, the western democracies claim that they are identified with ethics and religion, believers in, and responsible to God.

What is the basic law of God on earth—if not the absolute inviolability and supremacy of human life? The root whence everything of value grows in our society is respect for life, as a sacred gift conferred and withdrawn by God alone. If any real progress has been made by mankind in the pursuit of peace and justice, it is because this seminal concept, the holiness of life, has been more widely understood and implemented. Even war, once a routine and vaunted activity of nations, must now be proved necessary for self-defence—because the human race has developed a deeper respect for life. Capital punishment, once the penalty for many misdeeds, is now confined in nearly all cases to the crime of murder, the wilful destruction of another's life.

Will reverence for life be preserved by adding a deliberate, official, public killing to a killing that is ordinarily passionate, personal and private? Is the state above the obligation to hold life inviolable? Can the state teach its young to be moral by breaking the most crucial of all moral precepts?

I did not read it all.

I might say, Mr. Chairman, that I have quoted this portion of Rabbi Feinberg's paper with his permission. I did not decide to do so because I happen to be in his congregation but I do subscribe to everything he says certainly as far as the first part is concerned, namely retribution.

The only position which in my opinion carries justification is "deterrence" —but statistics confirm the suspicion that capital punishment achieves nothing that cannot be achieved by imprisonment. My personal experience is that the death penalty results in many verdicts of not guilty where the verdict should be one of guilty. I should not complain of that, but nevertheless that is my finding as a result of my personal experience. My personal belief is that far from being protective capital punishment is merely punitive in aim, primitive in form, negative in effect, and ultimately a peril to the moral fibre of our people and should be abolished. I go further than the recommendation by the Canadian Welfare Council. I believe that the reference to this committee is not confined to the issue alone of whether capital punishment should be retained or abolished but also to find some practical compromise between the present scope of the death penalty and its abolition. That I believe involves consideration and change in the law. I recommend to this committee the conclusions of the English Royal Commission which appears on page 213 in article 609. It is very brief and I will read it if I may Mr. Chairman. I will read 609:

We have examined every aspect of the existing law, practice and procedure relating to the scope and definition of murder, and to the treatment of persons charged with, or convicted of, murder, and have considered numerous proposals for amending them. We are agreed in recommending

(*a*) that the doctrine of constructive malice should be abolished;

(*b*) that "aiding or abetting suicide" should no longer be treated as murder, but should be made a substantive offence punishable with imprisonment for life or for any lesser term;

(c) that the law should be amended to enable a jury to return a verdict of manslaughter where they are satisfied that the accused was deprived of his self-control by provocation, and that a reasonable man might have been so deprived, notwithstanding that the provocation was by words alone;

(d) (by a majority) that the M'Naghten Rules should be abrogated, or, (with one dissentient) that, if they are retained, they should be enlarged to cover cases where the accused, as a result of insanity or mental deficiency, did not know the nature and quality of the act, or did not know that it was wrong; or was unable to prevent himself from committing it; and

(e) (by a majority) that the law should be amended to provide that the sentence of death should not be passed on any person convicted of murder who was under 21 years of age at the time of the commission of the offence.

These are not matters that I personally recommend myself, but I thought I might, with respect, recommend them to the committee for their consideration. I would stress certainly the abrogation of the M'Naghten Rules or the enlargement of the Rules, and an amendment to our law in so far as provocation is concerned. Those are my remarks, Mr. Chairman.

The PRESIDING CHAIRMAN: Thank you very much. As a matter of foundation for the committee, could we have someone tell us about the Canadian Welfare Council, how it is constituted and what its purposes are?

The WITNESS: Could I ask the secretary to do that.

Mr. MCGRATH: The Canadian Welfare Council is a national voluntary organization in the broad field of welfare. It covers the whole country and is voluntary in the sense that it is not a branch of government. It is made up of member agencies and member individuals. There are about 380 agencies which are members of the Canadian Welfare Council, some very large, some quite small, and I think at this stage there are something like 1300 individuals.

The types of agencies range from technical groups like the John Howard Societies and Training schools for delinquents, to bodies like service clubs, women's organizations and bodies of that nature having a general interest in welfare.

The Canadian Welfare Council is divided into four divisions. One is family and child welfare; one is the chests and councils, which deals with money raising aspects; one is public welfare, for big financial programs sponsored by the government; and then there is the delinquency and crime division which we represent.

However, the Canadian Welfare Council is controlled by a Board of Governors which is made up of representatives of all divisions and a matter of this nature is processed not by the division represented only but by the total membership. In this case it came from the delinquency and crime division and of course originated with us, but went to all divisions for discussion before it reached the stage of approval.

The PRESIDING CHAIRMAN: Are there any other members of the panel who would care to make any presentation.

Rev. Mr. MACDONALD: We feel that the committee might ask questions and we would be prepared to answer them.

The PRESIDING CHAIRMAN: That is in order. We will ask for questions starting with Mr. Valois.

By Mr. Valois:

Q. I notice that in your brief on page 8 it is submitted that: "the fact that interference with the court's sentence was thought necessary in such a large proportion of the cases emphasizes that an automatic death sentence in connection with murder is not acceptable, and that each case must be considered individually." I understand that is the opinion of the Canadian Welfare Council and they do not suggest any way. You have gone further than the council?—A. Yes, sir.

Q. You said that instead of having the death sentence that it should be left with the jury?—A. Yes, sir.

Q. Is it your opinion that the jury will be in a better position to exercise what we might call leniency than the cabinet in its executive capacity?—A. If that right were given to the jury it still would not take away the prerogative that exists with the cabinet to exercise executive clemency. In other words, the jury might refuse to bring in a recommendation of leniency and then there would be no alternative but for the judge to pass the death penalty. In other words, it would become mandatory again. The recommendation of leniency by the jury would have the effect of taking away the mandate so that the judge would not have to pass the death sentence. Should the jury not bring in that recommendation then the sentence is mandatory and then there is still the right to go to the cabinet.

Q. There is one point I will try to make. I may not make myself understood because English is not my own tongue. But, do you say that the verdict of the jury would have to be based solely on legal grounds. For instance, if the jury feels that there is provocation, instead of saying it is manslaughter they would say we recommend leniency so as to take away from the judge the duty of imposing death. Would the jury be confined to these reasons, or, for instance, could they go to the background of the accused on account of environment and so on that they feel leniency should be granted?—A. My recommendation would mean this: that the jury, to begin with, would still be free to bring in a verdict of guilty of manslaughter and not murder perhaps for the reason that there is extreme provocation, or perhaps for the reason that there is lack of evidence to establish a clear case of an intentional killing, or perhaps for the reason that there is a strong case established for the defence. If the jury brings in a verdict for those reasons of guilty of manslaughter then all the other procedure is not required. If they bring in a verdict of guilty on a charge of murder, then the judge would charge them all over again and say to them: "Now, gentlemen of the jury, with the change in the law you are now burdened with the task of dealing with the matter of punishment. Now you will go back to your jury room and consider all the facts of the matter of punishment and if you bring in a recommendation of leniency then I am no longer compelled to pass the death penalty". They will not be told all that until they find the verdict; then they will deliberate on the matter of punishment. The defence and the Crown would be free to adduce such evidence as would assist the jury.

Q. That is why I wanted to have your answer, because I felt that the jury might be handicapped because an investigation of the circumstances may be harder for a jury than for the cabinet who rely on reports from the police and the presiding judge and even the defence attorney. I am quite satisfied with that.—A. If I may add, I would say that I do not go so far as to say that we now have dishonest verdicts, although there may be or may not be. I do not want to make an issue of that, but with capital punishment there are often justifiable suggestions that the jury in order to stay away from the death penalty bring in a verdict of manslaughter. With the new procedure I think that the verdicts would be based more closely on the evidence because the people generally would soon get to know that there has been a change in the

law and that the jury would not worry when going into the jury room to deal with the question of murder or innocence that a verdict of guilty of murder is the end of it.

The PRESIDING CHAIRMAN: Have you any questions, Mr. Valois, which you would like to ask other members of the panel?

Mr. VALOIS: No.

The PRESIDING CHAIRMAN: I hope that the committee will feel free to direct any questions to any member of the panel.

By Mrs. Shipley:

Q. This committee has heard considerable evidence on the fairness—at least what I call the fairness—of our law. I for one was pleased to hear the provisions made for the protection and just trial of the prisoner. You, no doubt, are more familiar with that than even I, whereby a psychiatrist is available, the man is examined at any time during the trial or during the time he is being held for trial, and that adequate defence counsel is provided, and money is provided to bring witnesses for his defence, and so on. I am assuming that, and that it has gone to the Appeal Courts and the statement was made by Mr. Borins that it finally comes to the cabinet; all these things have taken place. Then, this morning you gave this statement: when the case has gone through all this procedure it arrives before the cabinet for consideration and you have said that the cabinet in its investigation may not detect certain mitigating circumstances. You cited the circumstances. I am at a loss to know where the weakness must exist; if after all this procedure and all of the provisions that are made for the prisoner, where is the weakness if by that time there are mitigating circumstances which have not been brought to the attention of the court or that the cabinet could not determine? Is it the fact that defence counsel is not adequate, or what is the cause?—A. Generally speaking in the matter of providing counsel, medical evidence, and the like, I suppose one must concede that the department of the attorney general in the various provinces are cooperating as much as they can possibly cooperate. But that cooperation may be inadequate. It is not inadequate deliberately, but it is nevertheless inadequate and they are not to be criticized for it, because if counsel is not an experienced counsel it is surely not the fault of the attorney general's department. But, you asked wherein does the fault lie. It may very well be that in these cases involving capital punishment as they do now, that quite often counsel is provided who is not experienced and when that happens there can be a great deal of fault. The inexperience of counsel can be quickly detected sometimes in the record of the trial. I can even think of illustrations I have seen in prosecution of cases where mistakes were being made, and wherever it was possible for me in a fair prosecution of the case I corrected some of them myself by assisting defence counsel, but it must be admitted that that is one of the faults.

Q. Would that be progressive to the provincial Appeal Courts and the Supreme Courts right up on to the cabinet? Would that never be corrected?—A. It ends with the trial because once the trial is over there is nothing left but a record, and when it goes to the Court of Appeal in the province there is only the record to deal with and if defence counsel submitted certain things or made improper submissions or incomplete submissions then that cannot be remedied by the Court of Appeal.

Q. It can be considered in a consideration by the Cabinet?—A. But not by the Court of Appeal because they must confine themselves to the record, likewise the Supreme Court of Canada.

Q. We have grand juries in Ontario who determine if the charge is a correct one and then, in making the statement that juries are loathe to bring in a guilty verdict because a man is to be hanged, if they do so, are you not

overlooking to some degree the fact that the jury has the power to reduce the charge and find the man guilty of manslaughter?—A. You mean first the grand jury?

Q. Yes.—A. The procedure with the grand jury is that a bill of indictment is presented and witnesses are called. There is no presiding judge.

Q. I meant the petit jury, the one that is at the trial. They have the power to bring in a manslaughter charge and reduce the charge at that stage?—A. Yes.

Q. Would that not offset what you stated?—A. They may do that in some cases, but they do not do it in all cases where they should.

Q. But, nevertheless, the right is theirs?—A. Yes, if properly charged by presiding judge.

Q. On page 8 of the brief you state: "there are a number of cases on record where innocent people have been executed." This committee has been endeavouring to find one case in Canada where there is proof that an innocent person has been executed, and we have been unable to do so. I wonder if this group would be good enough to give us the record of such cases as they had?—A. I can answer that in this way. I have read the presentation of Mr. Arthur Maloney and the references he has made would be the references we would make.

Q. Did he table specific cases?—A. I thought he had.

Mr. McGRATH: I think that the statement in the brief does not refer to Canada. It says there are a number of instances.

By Mrs. Shipley:

Q. Then, it has no particular bearing on a change in Canadian law unless it refers to cases in Canada.—A. If this brief is confined to Canada, then what I said about Mr. Maloney is not correct. I thought it was with reference to cases elsewhere.

Q. We are trying to find cases in Canada.

Hon. Mr. GARSON: Would not anyone reading the brief think that it might refer to Canada. This is a pretty important point. The administration of justice here would be seriously libelled if this explanation had not come to the attention of the committee because Mrs. Shipley asked her question.

Mrs. SHIPLEY: It is clear that this group has no knowledge of cases in Canada where innocent people have been executed and subsequently proven not guilty?

The WITNESS: That is correct.

The PRESIDING CHAIRMAN: The witness has no knowledge of that?

The WITNESS: That is right.

The PRESIDING CHAIRMAN: Then, I would suggest that the brief be revised to that extent before it is printed in these records.

Hon. Mr. GARSON: You might say: "while there are a number of instances on record in countries other than "Canada."

Mr. McGRATH: Yes.

Hon. Mrs. FERGUSON: Mr. Chairman, from Dr. MacLeod's experience I would gather that he has had a great deal to do with psychiatric treatment of criminals and I wonder if he can tell us something about what he considers the sociological effect of capital punishment?

Dr. MACLEOD: That is rather a difficult question because it is impossible to devise an experiment which would give conclusive evidence. Much work has been done, but very few conclusive findings have come to light. If I could speak for a few moments about the difficulty, not of treatment, but of diagnosis; unfortunately the legal conception of insanity does not compare with the

medical conception of mental illness. There are many people mentally ill and mentally abnormal whose judgment is impaired at the moment in which they carry out the physical assault who would not show any impairment on a subsequent examination, and certainly would show no evidence which at the moment would satisfy a jury or counsel. However, the advance that is being made in diagnostic medicine and the cases accumulating allow me to say with some certainty that in a relatively short time there will be the possibility of break-off especially in the area of epilepsy and allied epileptic disorders. The sociological impact so to speak of sentencing to death somebody who in a community is considered perfectly normal and has all the advantages of a normal person and has still committed a murder is not quite the same situation that would arise in a person mentally abnormal or mentally sick whom we had a certain responsibility to treat and investigate. Now, the only way I come into this committee, and the subject on which I can speak, is those fields of medicine where we feel there are quite a number of people who have been charged and convicted of murder who are mentally ill, but we realize that they are not legally insane, and we think that by not having some method of removing the mandatory death sentence we are removing society from the responsibility of investigating these cases. I do not say that it does do so, but, putting theory aside, in actual practice diagnostic facilities would not be found in Canada except in highly concentrated medical centres like McGill and Dalhousie. The work of this committee is in some way connected with the work of the commission meeting on mental illness and pleas of insanity. One thing we suggest is that present psychiatric examinations may miss quite a lot of important factors and we would like to see the possibility of the judge being in a position to refer the case not to an individual psychiatrist but to a commission appointed by the Royal College of Physicians and Surgeons who would set up an impartial panel to give the convicted person every consideration possible. So, the sociological impact is very difficult to estimate. The community does not manage to get the full deterrent value from a hanging because it excites many sadistic extincts. I speak from personal experience having spoken to people and especially with murderers and robbers and so on. The deterrent effect on the community is vastly overrated. There is a tendency in the community to feel that it is a good job well done, that the person is guilty and should hang, or else they take a rather morbid interest which is sometimes built up as the trial proceeds.

The PRESIDING CHAIRMAN: Could you give us your personal experience?

Dr. MACLEOD: In the type of work which we do in advanced psychiatric therapy we do hear quite a lot of personal confessions of people. We could not certainly give the names of the patients. But, there is no doubt that during an important murder trial these people are seriously affected by what is going on and what they read in the papers, and I am using that as an example of the effect of the murder trial, and these people I have special knowledge of. I cannot speak of others. In some people there is a considerable morbid interest in the thing.

The PRESIDING CHAIRMAN: Could you give us a specific case of an individual—call it case "A"?

Dr. MACLEOD: I can speak of some sexual patients in England.

The PRESIDING CHAIRMAN: This is from hearsay?

Dr. MACLEOD: No. Cases I actually had under treatment.

Hon. Mr. GARSON: Have you any Canadian cases?

Dr. MACLEOD: I have done nothing but university work since coming to Canada.

The PRESIDING CHAIRMAN: I think that crime is universal.

Dr. MACLEOD: Yes.

Mr. FULTON: I would be interested in a case from England.

Dr. MACLEOD: I am thinking of one case under treatment who had been referred for treatment by the courts for homosexuality and was up for sentence. There was an important murder trial on at the time, and his whole attitude in reading the papers was to feel very excited and act out some of his own drives by putting himself in the position of the person being hanged, and some of the homosexual practices involving being tied up which he managed to have satisfied by people in the community who fit in with this perversion. I think I pointed out earlier how difficult it is to set up an experiment which would give us this data.

Mr. FAIREY: Would the same degree of morbidity be occasioned by a description of the murder itself as by the trial of the murderer?

Dr. MACLEOD: I have no evidence.

Mr. FULTON: Does the experience which you have had indicate that the effect of the murder trial and the death sentence—the effect to which you are referring—are confined to people who themselves are already suffering from some sickness or disorder?

Dr. MACLEOD: The only ones I would see would be those people.

Mr. FAIREY: Would that not be an argument for the suppression of so much publicity in connection with murder trials?

Dr. MACLEOD: Yes, we have no doubt about that at all. I think the recent outbreak of slashing women's legs in Montreal is a clear example of that. The publicity of these lurid details does definitely lead to an outbreak of mental abnormality in some individuals. The only cases I have seen are cases under treatment in which they clearly had a predisposition to do this.

The PRESIDING CHAIRMAN: You are telling us of general cases of the reaction of the public to murders. Would you give us some actual experience of your own in this connection?

Dr. MACLEOD: I do not quite understand.

The PRESIDING CHAIRMAN: You said a moment ago you were referring to the reaction of the public in the case of a hanging. Could you give us any actual personal observation?

Dr. MACLEOD: No, I am quoting perhaps from literature, because there have been no lynchings and so forth as far as I know in England. I have no evidence at all other than the medical evidence which has been accumulated.

Hon. Mrs. HODGES: Would you not admit that the press in England is very much more lurid and sensational and go into a lot of what we would call unwise sensationalism of the actual murder itself. Do you not think that that has probably had the effect on some of these people?

Dr. MACLEOD: It could be. I do not want to go one bit beyond my area of competence. I can only speak of isolated cases. I do not want to generalize too widely.

The PRESIDING CHAIRMAN: We would like you to give what you actually have experienced personally.

Dr. MACLEOD: The only evidence I would like to give to the committee is experience I have had of patients under treatment.

Mr. FULTON: The one which you have given is of a chap under treatment for psychopathic homosexuality?

Dr. MACLEOD: Yes. It was a case I was treating at the time. I was therefore able to study this.

Hon. Mr. GARSON: I am somewhat nonplussed as to the point your evidence is making. Is your submission that because homosexuals and psychiatrically

abnormal people react in an excited manner to the crime of murder that, therefore, capital punishment has no deterrent effect upon normal people?

Dr. MACLEOD: No. I was trying to make the point in answer to the question what did I know of the sociological aspects and I could only give evidence in these areas.

Hon. Mr. GARSON: The experience of the abnormal section of society would not be a very satisfactory criterion for the retention or abolition of capital punishment, would it?

Mr. MACLEOD: No, sir. At the risk of being facetious, I would point out that much senior medical opinion is that there is no such a thing as the 100 per cent well person either mentally or physically, and in all of us there is an area that is normal and an area which is quite abnormal and that all of us would be affected.

Hon. Mr. GARSON: Do you say that we are all sufficiently abnormal that the reaction of a homosexual and others would be indicative of how the rest of us would act.

Dr. MACLEOD: No. The attitude I am thinking of at the moment is that if you accept the fact that the community has treated him as a normal person, that the community is failing by allowing the death penalty to be the only treatment, we feel the community is being relieved of its responsibility to examine more fully what were the factors that led to the mental illness, one manifestation of which was murder of another human being.

Mr. FULTON: Do you say we are prescribing in advance to the jury?

Dr. MACLEOD: Yes, and I think it is a very bad prescription as far as a doctor is concerned.

Hon. Mr. GARSON: Are you suggesting all murderers suffer from a form of mental illness?

Dr. MACLEOD: No. I do not know of anybody who has any evidence that is worthwhile. That is, do normal people commit murder? I do not know. I do know that more mentally abnormal people commit murder, and their mental abnormality is such that it would be accepted by a majority of physicians today while that abnormality could not be given legal status under the present law.

Mr. WINCH: Is the key of your presentation to the effect that a person can commit murder and they do commit murder in a state of abnormality, but it comes to a trial and they are investigated by a psychiatrist and the medical profession may not be able to show the abnormality under the law which caused the commission of that homicide.

Dr. MACLEOD: Yes. That is very clearly what I am stating.

Hon. Mr. GARSON: A perfectly normal person I suppose is capable of anger?

Dr. MACLEOD: Yes.

Hon. Mr. GARSON: Is anger regarded by psychiatrists as a state of abnormality?

Dr. MACLEOD: No. Everybody is born with the ability to exercise anger under certain states of frustration. The majority of individuals seem to develop the ability to control this anger when necessary, in social surroundings. There are a number of people who have a definite impairment of this disability. There is some evidence—actually from a town in England where they investigated murderers who had committed brutal murders compared with individuals who had committed premeditated murder, and there is no doubt that in the brutal murders there was evidence of this impairment of ability to control anger, and it can be related to epileptic illness and extensions of the concept of epileptic illness.

Hon. Mr. GARSON: Do you say that uncontrolled anger is a symptom of abnormality?

Dr. MACLEOD: No. I would have to say this: if a case were presented to me of a person who had apparently showed uncontrolled anger, I would not be able to say whether it was a symptom until the individual had been submitted to a full diagnostic examination.

Hon. Mr. GARSON: It is a question of scientific checking and must be determined on the facts of that case?

Dr. MACLEOD: Yes.

Hon. Mrs. FERGUSSON: On page 3, the second paragraph, it says: "we believe that punishment of the offender can be justified only so far as it (*a*) deters potential offenders or (*b*) reforms the individual offender." I would like to ask Mr. Macdonald if from his experience in penitentiaries he is of the opinion that people who are given life imprisonment or long sentence very often do reform during that period?

Rev. Mr. MACDONALD: Well now, my experience is very brief. It was 16 years ago in Stony Mountain Penitentiary at the time of the Archambault Commission. I think it is agreed that the findings of the Archambault Commission were such to give this nation a mild shock. I do know of one case—and I think that the minister might know of him too—of one individual in that penitentiary who was certainly reformed. He was reformed purely through the power of the Gospel of Jesus Christ. I happen to know him personally. But, that is the only case of spiritual reformation that I have actually seen. Shall I say that the spiritual temper of the prisoners as far as going into it was concerned was such that at that time I felt personally that it was not conducive to their reformation.

By Mr. Fairey:

Q. Mr. Borins, you made several statements with respect to the rigidity and inflexibility of the law and said on page 7 in that long paragraph:

> There were 172 people convicted of murder in Canada in the ten-year period 1942-51, and the court had no choice but to pass the death sentence. The decision on what should happen to the murderer rested with the cabinet. During this same period there were 40 commutations. The prerogative of mercy must be maintained to provide for the exceptional case, but it is difficult to maintain that it is being used only in exceptional circumstances when it was involved in 25 per cent of the cases.

Is that not rather contradicting your argument of inflexibility in the law? —A. The inflexibility I referred to was the law dealing with arrest and the trial—the law of evidence. I certainly had not in my mind what happens after the trial, and I was not even referring to the brief when I was talking about the inflexibility, I was expressing my own views.

Q. One other thing. You expressed an opinion that juries are likely to give a verdict of not guilty because of the inevitability of the death sentence and that is rather contradictory to the evidence this committee has had before. Have you had any evidence or experience to support such a view that juries by and large are more likely to be lenient and hesitate to bring in the verdict of guilty because they know that the judge will impose the death sentence?—A. It would be impossible, sir, for me to say in the case of Regina vs. "A" that the jury in that particular case brought in a verdict of guilty of manslaughter because of capital punishment because it would be impossible for me to say that with a 100 per cent of exactness because you would have to talk to the jurors and sit in the jury room. What I meant was this, that there have been quite a number of cases in which the Crown has adduced

evidence of a clear case of murder and the verdict was guilty of manslaughter, and what I meant was it is an irrestible conclusion that one must draw that the jury hesitates to bring in a verdict of guilty of murder because of capital punishment. It is not only the inference in conclusion that I draw, but in many cases I have talked to jurors which we are permitted to do. As far as the grand jury is concerned there is an oath of secrecy, but in so far as the trial jury is concerned, quite often both Crown and defence counsel talk to the jurors afterwards because it is good experience to see what deliberations go on. I personally have been told by jurors that they felt sorry for the fellow and on the basis of sympathy they did not want to render a verdict. I have been engaged in some cases myself where I felt that that happened.

Q. It is interesting because the evidence—the reply to direct questions—has been that juries do not hesitate when the case is clear to bring in a verdict.—A. I am quite honestly surprised at that evidence.

Q. I was interested in the suggestion of yours that a certain discretion be allowed to the judge or the jury and that the death sentence should not be mandatory. Our feeling has been here, from other evidence, that the responsibility for the particular degree of punishment should not be left to one man, the judge or the small group of persons, but it should be the responsibility of the Canadian people through legislation. You do not agree with that view?—A. To begin with I just want to distinguish between what the Canadian Welfare Council says and what I say. The Canadian Welfare Council recommends as a first step the abolition of the mandatory death sentence and then go on to say that they do not have a recommendation to offer on this problem. It was my own personal view that the machinery that might work would be a change in the law entitling the jury—more than entitling the jury—but requesting the jury to accept the burden of dealing with the sentence. If that is a change in the law—

Q. May I interfere?—A. Yes.

Q. If you give that power to the jury—and tying into the answer to my previous question—where they hesitate to punish, would not that be a weakness of the law right there?—A. That change of law would come about through Parliament so it will be the will of the people. The jury cannot do it unless they are legally empowered to do so.

By Mrs. Shipley:

Q. Is not bringing in the verdict of manslaughter on the part of the jury saying what you are? Is that not why they bring it in because they feel some leniency should be shown?—A. I think it is important that the law is complied with, and that that principle, is a very important principle, and if the evidence is clear that the accused person is guilty of murder then it is not a satisfactory situation to have a verdict brought in guilty of manslaughter. What you are suggesting, Mrs. Shipley, is: well, with the law as it is and with the prerogative of the cabinet, and having regard what the juries do in any event, everything works out just the same. Is that your suggestion?

Q. Exactly.—A. Well, I do not agree it works out the same. But, suppose it does, is it a satisfactory situation to have juries falling down on a job?

By Hon. Mrs. Hodges:

Q. Are you trying to imply that it should be mandatory?—A. No. I am against capital punishment and I am pointing out the abolishment of capital punishment would correct a situation that now exists, and that is that juries bring in verdicts of guilty of manslaughter where the verdict clearly should be one of murder.

By Mr. Valois:

Q. When the jury today, let us say, brings wrongly a verdict of manslaughter, what happens? The judge will of course, I suppose, sentence the man to jail?—A. Yes.

Q. Even to life. If the death penalty were abolished, even if a verdict were found against the accused of guilty of murder at most what would happen then would be a sentence to jail for life.

Rev. Mr. MACDONALD: Might I intercede? There are a great many of us who believe in the Gospel of Redemption and we do hope that in the years to come the penal institutions of Canada will be such that reformation will be possible, and in fact a great improvement has been made over the years, and we are asking that society be protected for such a time until it is possible to attempt reformation and possibly redemption.

Mr. SHAW: If you have abandoned the procedure of soliciting questions in order we should know it.

The PRESIDING CHAIRMAN: We have not abandoned it. But perhaps we have deviated from it. We have not abandoned the principle of allowing each member to ask questions. I will confess that I have been rather lax in administering the procedure as has been set down by the committee because I felt that the questions that were being asked by other members have been quite pertinent to the question before the panel and if I have deviated too much I apologize.

Mr. Fairey, have you finished?

Mr. FAIREY: I think that will do.

The PRESIDING CHAIRMAN: Mr. Winch.

Mr. WINCH: My questions have been answered.

The PRESIDING CHAIRMAN: Mr. Fulton.

By Mr. Fulton:

Q. This brief makes no recommendation on the question as to where the discretion should lie if your recommendation were carried out, that is the mandatory death sentence being removed. I would like to ask the panel if they would like to express their personal opinion as to whether they think the discretion should lie with the judge or the jury?

Mr. BORINS: I have answered that by saying with the jury.

Q. That is your opinion?—A. Yes, sir.

Q. Have any other members of the panel any views on that?

Dr. MACLEOD: Dispensation of clemency is in many ways different from a thorough investigation of the case. If I could quote from personal experience, from the reading of case reports about a patient you can never get the same understanding of a human being as when you see him on the spot, and I feel that the jury itself is, of course, representative of the community and I cannot imagine any finer panel of the community who would be in a better position to give weight to all the factors than the jury. I feel that it is asking too much to put all this on one man, I think that the jury should accept this responsibility.

Mr. FULTON: You think that a jury who have been asked to exercise this very onerous duty of deciding whether or not the man is guilty of the offence, of taking the life of another man, should then be asked to go back and decide whether this man should himself suffer the death penalty?

Dr. MACLEOD: I think that they should be asked to consider whether there was anything which would mitigate the crime down to manslaughter. They should ask themselves whether if there were any extenuating circumstances.

I would not put it that they should decide whether he hangs, but should go very carefully over all the evidence and their impression of the person himself and the possibility of reform.

Mr. FULTON: Would it not come down to that in the long run? What you are asking is that the jury should decide whether he hangs or not, rather than that the law should decide it?

Dr. MACLEOD: You are asking the jury as a group of human beings, taking everything into consideration, do you think that this individual was faced with a situation which in some way impaired his ability to live up to what we expect of a person, and was it entirely due to his fault, or in some way mitigated by his upbringing or his experience in life.

Mr. FULTON: Perhaps it would be a matter of argument as to whether that would be a proper duty to impose on a jury, but you feel that would be the preferable way to have it?

Dr. MACLEOD: Yes.

Mr. BORINS: You just asked the question whether Dr. MacLeod feels that the jury or the law should decide it. Now, if the jury were enabled to make the decision they would be doing something because of a change in the law.

Mr. FULTON: The law would be enabling the jury to do it. In one case the law decides, or the jury is asked to decide, whether the man did or did not commit the crime and if he did he is automatically subject to the death penalty. What you are asking is that the jury should make the decision on that. You told us I think that the recommendations of the British Royal Commission—would it be fair to say—should be pretty closely followed by this committee?

The WITNESS: That these matters be considered where they apply and fit into our law.

By Mr. Fulton:

Q. I am going to ask some questions on this. Turning to paragraph 609, on page 213, would you agree with me in my statement that we do not have the doctrine of constructive malice in Canada?—A. We have it but it is described in a different way. That is where death results in the commission of an offence. Now, here the doctrine of constructive malice should be abolished. In my opinion I am not prepared to agree in every case where death results in the commission of another offence that it is murder because there can be such a thing as an accident. But, we do have constructive malice in different language. We do not find that language in the Criminal Code. I do agree with you to some extent.

Q. Then, leaving out (*b*) and coming to (*c*), would you agree with me that the recommendation contained in subparagraph (*c*) is already the law of Canada?—A. Well, except for the words "deprived of his self control". We deal with provocation in the Criminal Code. That is what I meant when I was referring to an enlargement of the M'Naghten Rules, and that I think is what Dr. MacLeod meant when he was talking about people whose ability to control anger is impaired, that the law in that respect should be enlarged to include people of that kind.

Q. Are we not confusing sub-paragraph (*c*) and (*d*)? Frankly I do not quite understand the effect of your amendments. You are asking that the M'Naghten Rules be enlarged but surely only to the effect that they recommend forms of insanity which the law does now recognize?—A. Yes.

Q. But, they do not necessarily refer to provocation which applies to consideration of whether or not a man was insane. If it is established that he was provoked as a reasonable man there is very little question as to

whether or not he is insane.—A. I do not think that the court puts that interpretation upon it. The M'Naghten Rules in my opinion deal with a prolonged disease of the mind, and again that is the first complaint about it, because most of the psychiatrists give serious consideration to temporary black-out of the mind which has no place in our law, at the present time. I think that would be a question of fact for the jury would it not?

Q. That would require an amendment to the law.—A. It would, because the decisions in Canada at the present time pay no attention to a defence of that kind. Mind you, even although they cannot pay attention to a defence of that kind, nevertheless, quite often defence counsel will adduce evidence with a psychiatrist to establish that at the moment of the commission of offence there was loss of reasoning, and while that is not a defence some juries have acquitted people on that evidence.

Q. We are dealing with the defence of provocation here, not with the matter of an enlargement of the defence of insanity, and I wanted to deal with the question of insanity and although the cases and the Code establish it as a matter for the jury to determine whether or not the provocation existed, the jury are entitled to take into consideration just what they want to take into consideration?—A. Yes.

Q. So I am asking you really this: so far as the phrasing of the law or the jurisprudence surrounding the offence of provocation is concerned is it not a fact, that sub-paragraph (*d*) is the law in Canada?—A. It is pretty close to it, except that (*c*) as it is worded here emphasizes the words "deprived of his self control" and I think a wider interpretation of that is intended than the interpretation placed upon the matter by our courts. Our courts I do not think put as wide an interpretation as is intended here on the matter. I may be wrong.

Q. Would it perhaps be fair to say that you are not saying there is a change of substance necessary? It is not necessary in your view to introduce a new principle, but perhaps merely to clarify the present principle?—A. Exactly. In so far as provocation is concerned, yes.

Mr. FULTON: I have nothing further to say about (*d*) and (*c*).

Dr. MACLEOD: Could I add something about that. The modern attitude in medicine is that under stress it would be possible to break down any reasonable man if he were subjected to stress. There is the question of provocation of a reasonable man. and what might be provocation in a set of circumstances in an outburst of rage.

The PRESIDING CHAIRMAN: Now, Dr. MacLeod, I think you were going to give us some further evidence.

Dr. MACLEOD: I am speaking of this question of evidence which as far as I can see really implies that we have requested a man who has been faced with a social situation which has been so provoking that he is unable to control himself resulting in his general impairment. Modern medicine suggests that there can be many cases of mental illness or abnormality which would create no difficulty at all to the psychiatrist. They lie in the ability of a person to control himself; but these cases are not considered at all under the present law, such as uncontrollable impulse and the so-called reasonable person. I was wondering—I do not personally agree with the words "self-control" or "prevention". I think we have to decide whether there could be medical evidence uncovered that would be satisfactory to a body of disinterested scientific people.

Mr. FULTON: What you are recommending in effect is that our law should recommend that what in law is called an irresistible impluse—

Dr. MACLEOD: Yes sir.

Mr. FULTON: That would seem to relate to the defence of insanity.

Dr. MACLEOD: I was really pointing out that the principle might be modified, if we consider it against the background of modern medicine.

By Mr. Fulton:

Q. Mr. Borins in answering a question asked by Mrs. Shipley, I think, as to the difficulties in the safeguards that we have set up around the accused person, said that in his opinion based on his experience there were cases where the accused had not been adequately defended and then went on to say that the court of appeal passes its judgment entirely on the record. Therefore, once the trial was concluded, there was really no way in which, under the code, as a matter of law, you could ask that the case be reconsidered.

Mr. BORINS: That is right.

Q. Whatever is used, it is a matter of executive clemency from there on?—A. That is right.

Q. Would you agree that that is going perhaps a little too far and that there are probably further safeguards or defences in the law itself in that the court of appeal can direct a new trial if it is satisfied that there has been a substantial miscarriage of justice, and that it is quite open to counsel to go before the court of appeal and argue that a man's defence was not properly presented to the jury, and not only that there was misdirection or non-direction by the judge, but that in fact the man's defence was not disclosed to the jury? —A. I do not think the court of appeal would pay attention to that ground, nor are they entitled to accept that as a ground. I know because I tried it and I did not succeed. That is not an answer, of course, but I saw this happen in a case where a young lad of 19 years of age was accused of raping a woman of about 40 years of age and I felt there was insufficient evidence. However, the police had obtained a statement admitting intercourse and sexual relations, and this female complainant testified. Why the defence counsel in that case did not put the accused in the box I will never understand; and the only conclusion I could come to was that it was through lack of experience. Moreover, the young man had no record about which he had to worry about being disclosed. He was in prison and I thought there was a very grave miscarriage of justice there resulting in a sentence of 2 years. I think that is a very strong illustration. We went to the court of appeal and I argued as well as I could that there had been a serious mistake made here. As a matter of fact, I had an affidavit from the appellant that it was his desire to give evidence and explain everything that had happened. But he relied on the advice of counsel not to go into the witness box. I think that counsel in that case felt he could never be convicted, and in regard to his interpretation of the law he felt quite safe in advising his client not to go into the witness box.

Now the court of appeal does not have to pay attention to affidavits nor could they give effect to my submission along those lines, with the result that the conviction was confirmed. That is the answer to your question. I do not think it is a ground upon which the court of appeal can act or recommend.

Q. I wonder if you are prepared to express an opinion or make a recommendation as to whether you feel that the grounds of appeal might be enlarged in capital cases? Have you given sufficient thought to that subject? It is a matter which might be very interesting to this committee.—A. I think the provisions of our Criminal Code are already wide enough as it is and in spite of what I said as to one of the grounds in answer to a question from Mrs. Shipley, I think it would be dangerous to make that a ground upon which the court of appeal could rely, namely, that counsel was inexperienced, because that might be used too often. It might be abused and that would be dangerous, in my opinion. But the present section of the Criminal Code goes far enough. Just last week in Toronto the court of appeal quashed a conviction for murder and substituted a verdict of

guilty of manslaughter, and sentenced two young men to 8 years. I think that was an administration of justice in action. Now, if our Criminal Code in respect to the court of appeal should go that far, I think it has gone far enough.

Q. Well then, I wonder how I should put it: Your point here then is perhaps that before the sentence of death is passed—no, that is not what I really want to say. You are not going so far then as to say that our law does not erect sufficient safeguards around the accused person?——A. There are sufficient safeguards there if they are properly enforced. Mr. Maloney referred to a number of safeguards and then proceeded to criticize some of them. And then he was answered by Mr. Common. I think one of the complaints which Mr. Maloney made was that crown counsel does not always disclose all the evidence at the preliminary hearing. Well, to make the preliminary hearing an effective safeguard, the defence counsel has the right to ask the Crown at the preliminary hearing who the witnesses are and he has the right to call them. In Mr. Maloney's illustration, no one appeared for the accused, Jackson, in that case. However, he states that he was denied the summary of what the 40 witnesses named on the indictment would have to say, and he said he was denied that. I do not know what happened there myself and all I can say is this: That if Mr. Maloney is correct in that assertion—and I know Mr. Maloney well enough to admit that if he says this was a fact, then it was a fact; and if this was so, I think it was certainly wrong to withhold a summary of the evidence or some information particularly in a case where the accused person appeared at the trial or hearing without counsel. Of course at that particular time in Toronto there was a lot of hysteria because of the brutal slaying of Sergeant Tong with whom I worked in many many cases and because of a number of escapes that took place around that time; but as to safeguards, if they are properly enforced and respected—there are sufficient safeguards. And I think Mr. Maloney referred to the judiciary and to the varied temperament of one judge and another judge.

I have nothing to say in that regard except that I think we ought to pride ourselves on the judiciary in this country, and except for one thought that I have in mind: but I do not know how it can be applied to our system, and that is when we are dealing with criminal law it is a highly specialized branch of the law requiring a vast amount of technical knowledge and knowledge as to how criminals act and talk. When you talk to a man who is an accused his words are, I submit, to be interpreted not as words would be interpreted if used by a private person. I always felt it would be a splendid thing if it could be applied to our system and if we could have some form of specialized court in so far as criminal work is concerned; that is, if the person appointed to the bench is a person who has had many years in prosecution and defence work in criminal cases; it would be a splendid thing if we could avail ourselves of his special knowledge and experience, and if such a judge could be confined almost exclusively to trying criminal cases. Now I am not making that suggestion with the slightest idea of criticizing the judiciary in any way. I have the greatest respect for them.

Q May I ask you this: Here I must confess ignorance, but is there not some approach to what you have just been describing in the English system of administration of criminal justice? Don't they have a court on the criminal side? —A. They have a criminal court of appeal.

Q. Well, on the appeal side, but do they not have any court of first instance, do you know?—A. I do not know, I am not aware of it.

Q. I have a number of other questions which I would like to ask arising out of some of the statements made in the brief, but I think I will let them stand until later.

The PRESIDING CHAIRMAN: Now, Mr. Boisvert.

By Mr. Boisvert:

Q. I had many questions to ask with respect to the brief but I will limit myself to one question now. Your council favours the eventual abolition of the death penalty and the abolition of the death penalty in every case of murder. Isn't that in the conclusions of your brief? It comes to this conclusion: You are contending that we should re-examine the basic philosophy and the concepts that apply to our understanding of a criminal and on page 2 of your brief you state:

> The responsibility for crime does not rest with the individual criminal alone.

And in the second paragraph on page 2 you say:

> In many ways the criminal is the product of his environment.

Don't you think that you switch the moral responsibility from the individual to society by those two allegations?—A. It is not a complete switch.

Q. Not a complete switch, but is it not a switch?—A. No. Perhaps it is difficult to interpret. I agree that it is a switch. I think it is merely a submission that there is a responsibility on the part of society and we strongly urge that, particularly with young offenders, with teenagers, many of them are products of their environment. When we talk about environment we talk about the home and parental control and parental supervision. That is all part of modern day society. The views that are expressed there are the views of social scientists. I noticed that expression, "social scientist" and I thought you were referring to phychiatrists and phychologists.

Mr. WINCH: Perhaps Dr. MacLeod might comment on that.

Dr. MACLEOD: I will try. First of all I would like to differentiate between phychiatrists and psychologists.

By Mr. Boisvert:

Q. I would know the answer to this question: Is it not true that during the past there was a time when society was not organized as it is today? —A. I suppose so.

Q. And is it not a fact that the crime of murder has always existed throughout the ages?—A. Yes, that is a fact.

Q. And was there not a general principle accepted by every individual throughout the ages that the crime of murder should be punished?—A. I do not understand the question.

Q. Is it not a fact that throughout the ages there was a principle that the crime of murder had to be punished by death?—A. There was a policy that capital punishment should be abolished and it has been abolished in a great many places.

Q. I agree with you, but that is in modern times. I know that in France, for instance, during the revolution they abolished the death penalty but it was restored later on by a new government. In some countries they have abolished it, but is it not possible that if we proceed to abolish the death penalty we are going to develop among society the desire to punish the crime of murder by free justice rendered by the people surrounding the individual, be it man or woman, who was killed by the murderer?—A. The records of those countries that have abolished capital punishment I do not think support you in that.

Q. Then I shall read you the opinion of a great jurist from Belgium and he says this: It is found in the report of the Royal Commission on Capital Punishment, "No. 3, Europe," published with the report of the Royal Commission.

The PRESIDING CHAIRMAN: Might I interrupt to say that the witness has merely expressed his opinion and that is what we have him here for.

Mr. BOISVERT: I would like to ask him to comment on another opinion that I am going to read:

Mr. FULTON: Does he agree with it?

By Mr. Boisvert:

Q. Would you agree with what is said by that great jurist of Belgium?

> In certain cases of murder committed in troubled times or in particularly odious circumstances, the death sentence is the only punishment capable of preventing either manifestations of private vengeance or outbreaks of public wrath.

Would you have any comment to make?—A. I should like to know if he means that the death penalty is justifiable?

Q. In Belgium, as you know, the death penalty is the sentence, but it is never executed. That is his contention, and he is avery great jurist. He said that if we abolish the death penalty, we are going to develop among our society the desire of people to render their own justice in handling the murderer which would be very bad for society. And in the United States today we see many of those executions.—A. May I answer that by reading also from the report of the Royal Commission on Capital Punishment, that is, the 1949-53 report at page 98, and I am reading the conclusions on matters dealing with the defence of insanity, and here is what the commission has to say:

> Recently, however, the suggestion has sometimes been made that the insane murderer should be punished equally with the sane, or that, although he ought not to be executed as a punishment, he should be painlessly exterminated as a measure of social hygiene. The argument is in each case the same—that his continued existence will be of no benefit to himself, and that he will be not only a useless burden, but also a potential danger to the community, since there is always a risk that he may escape and commit another crime. Such doctrines have been preached and practised in National-Socialist Germany, but they are repugnant to the moral traditions of Western civilization and we are confident that they would be unhesitatingly rejected by the great majority of the population of this country. We assum the continuance of the ancient and humane principle that has long formed part of our common law.

That is our answer.

Q. When you speak of humanity you must bear in mind also the fact that there are those who intend to commit murder.—A. Well, of course, the committee report of the Canadian Welfare Council suggested the technique of a mandatory feature of leaving it to the jury, and if that were the law, then there would still be the possibility that the person who, on the evidence, has calmly planned a murder, and there would be evidence established of premeditation; and if it was a brutal killing the law would still allow for a final verdict of hanging. The council is not going all the way, I might say, in fairness to the council.

Q. From your last answer you would ask us to change the Criminal Code in having degrees of murder?—A. No, not degrees, just removing the mandatory element.

Mr. SHAW: Mr. Chairman, I should like to move that the delegation be asked to appear again at another sitting, I have a number of questions I want to ask. It is now 1:00 o'clock and I realize that someone may suggest that we sit for just a little longer time. Some of us have other commitments and I have a number of questions to ask Dr. MacLeod. I am particularly interested in his evidence and I should like to ask some questions of Mr. Borins but I do not think that I should ask them now so I suggest that they appear at another sitting.

Hon. Mrs. HODGES: Could we make it this afternoon?

The PRESIDING CHAIRMAN: As a matter of fact, because the committee has been discussing the question of lotteries, I took a gamble.

Mr. BOISVERT: Are you sure of winning?

The PRESIDING CHAIRMAN: No. I did not win. I thought we would be through at 1:00 o'clock and I instructed the clerk to say that we would give up this room for this afternoon for 3.30 o'clock. But if you feel we will not finish, perhaps we can ascertain whether the room will be available this afternoon at another hour.

Mr. SHAW: Would the delegation representing the Canadian Welfare Council find it possible to return at a later date?

Mr. FULTON: I think it would be better if they did.

The PRESIDING CHAIRMAN: We have tomorrow taken up.

Mr. SHAW: Whether it be tomorrow or next week does not matter.

The PRESIDING CHAIRMAN: We have an exacting schedule to follow.

Hon. Mrs. HODGES: Could we not meet immediately after lunch?

Mr. WINCH: I think we should carry on while all this is fresh in our minds.

The PRESIDING CHAIRMAN: Would it be convenient to your delegation to meet at 1.30?

Hon. Mrs. HODGES: Make it 2.00 o'clock.

The PRESIDING CHAIRMAN: We cannot tell you until we find out whether we can have this room at 2.00 o'clock. For a moment I cannot tell you. That is why I suggest we carry on for a few moments until the clerk gets back to tell us whether we can have the room this afternoon. I think your suggestion is advisable that we carry on sometime today. Is it agreeable that we carry on for a few moments, Mr. Shaw?

Mr. SHAW: Yes.

The PRESIDING CHAIRMAN: Are you through, Mr. Boisvert? Now, Mr. Brown?

By Mr. Brown (Brantford):

Q. I raise a question that came to my mind and I ask whether the submissions which have been made do not tend to set up degrees of murder. It seems to me that they certainly do and I would like to have your comment. —A. There is a great distinction in murder.

Q. You mean murder which does not entail the death penalty and murder which does?—A. No. I think the submission tries to avoid the setting up of degrees because we were asking that the law in some respects be enlarged; for instance, the law dealing with insanity, or the law dealing with the question of irresistible impulse and the like.

The PRESIDING CHAIRMAN: It is now after 1.00 o'clock. Could we not meet at 2.00 o'clock until 2.30 and if necessary from 3.00 o'clock until 3.30? We cannot have the room after 3.30. Is that agreeable?

Mr. FULTON: Is it possible for the witnesses?

The PRESIDING CHAIRMAN: Is that agreeable to the witnesses?
Agreed.

Hon. Mrs. HODGES: We cannot be here later than 3.30; we cannot keep this room because it is taken for another committee.

The PRESIDING CHAIRMAN: We will recess until 2.00 o'clock.

AFTERNOON SESSION

2.00 p.m.

The PRESIDING CHAIRMAN (*Mr. Brown, Essex West*): When we adjourned you were interrogating Mr. Borins, Mr. Brown.

Mr. Norman Borins, Q.C., called:

By Mr. Brown (Brantford):

Q. Yes, I was asking Mr. Borins whether the council's recommendations did not tend to set up rather vague degrees of murder which were left wholly to a jury?—A. I do not think so, Mr. Brown, because the law is not changed in that respect at all. The recommendation deals merely with sentence. I do not see how it affects the degrees—that is, in law. It may be that the results may appear that we are recommending that, but nevertheless we are not.

Q. What concerns me is this: would it not result in a person being sentenced to death for murder perhaps in one locality under certain circumstances whereas in another locality or before another jury he would not have been sentenced to death? In other words, you are instituting a system which I have sometimes heard referred to as "justice by ear." The matter is left wholly in the discretion of the jury, and a man might be convicted and sentenced to death in one part of Canada whereas in another part of Canada he would not receive the death sentence. My submission is: would that not lead to confusion in the administration of the law?—A. Is that not our whole system of administration of law—both in civil and criminal cases—Mr. Brown?

Q. To some degree, but would this not widen it very considerably?—A. One judge may, when trying a case with a jury, be completely satisfied that a man is guilty of the rape charge he is facing and yet another judge would laugh at the decision and say, "You don't know women like a know women! You are all wrong. That man is not guilty of rape at all."

Q. True, but would this not tend to lead to a much wider divergency of penalty in communities and different sections of the country?—A. I do not think so, Mr. Brown. I definitely am of the opinion that it does not establish the degrees of murder and that while one jury might with the same set of circumstances bring in a recommendation of mercy another jury might not. They are no different from judges or any human being trying a case and having to decide on a set of facts, having to decide whether one particular witness should be believed or whether one particular witness is telling the truth or not and how much weight should be attached to the evidence of the particular witness. Those are things which cannot be avoided. That is our system. There is no other way of trying cases—it does not matter whether it is the judge or the jury.

Q. I was not referring so much to our present system, but would that not increase that divergency which does exist?—A. Do you not find divergency in sentences today?

Q. Yes, to a degree. There could not help be some divergency, but I was wondering what your views would be. Would this not tend to increase the divergency across Canada between sentences?—A. I have a lot of faith in juries. The recommendation that I was making is this: that nothing is said to the jury during the course of a trial that might influence them in their verdict. Not a word is said about any recommendation for mercy. None of the circumstances concerning the background of the individual are mentioned, so that the jury is not in any way influenced. But after the verdict,

the jury is then called back for another issue and they are entitled to hear a wide range of evidence. The rules of evidence are relaxed. Pople are brought in to speak of the family and the reputation of the accused, and about all other circumstances that might be revelant to the question of punishment. I think you can rest assured that if in any particular case the facts establish there was a great deal of premeditation and a very brutal killing and there is no existence of provocation or any sort of abnormality that the jury is likely to mete out a sentence of capital punishment by withholding a recommendation of mercy in any event.

Q. And do you not think that if those statements were implemented that a man's life would depend more on the vagaries of public opinion in different localities than ever before?—A. No, I do not think so, because I have had experience in trials throughout various parts of the province of Ontario and I find that one group of people is no different from another group of people. That is, one jury is no different from another. It all depends on how you submit your case to the jury.

Q. I have no further questions.

The PRESIDING CHAIRMAN: Mr. Shaw?

By Mr. Shaw:

Q. My first two questions are based on the brief. Turning to page one of the brief and going back to the use of the word "eventual", Mr. Borins, would you be prepared to state categorically on behalf of the Canadian Welfare Council that they are opposed to capital punishment? The use of that word disturbs me—bothers me.—A. I will attempt an answer to that, but I would like the other people here with me to feel free to correct me or to add or take away from anything I say. I have the feeling when the matter was brought before the Canadian Welfare Council board that in principle there was agreement that on the ground of public expediency it was felt that we should not rush at this and I think it was desired that we compromise and deal with it step by step but that is why the words "eventual abolition" are there—to indicate that in principle they would like to see capital punishment done away with.

Q. We as members of this committee, Mr. Borins, will sit for a certain period of time and then make a recommendation. Would I, as a member of this committee, be fair in informing myself that as a matter of policy the Canadian Welfare Council is opposed to capital punishment? In weighing their evidence I would have to be able to answer that myself.—A. I would think so, yes.

Q. There is a sentence on page 11 which disturbs me a bit—referring to a jury: "If a unanimous vote is required, it would mean that one member of the jury could send the convicted murderer to his death against the opinion of the other 11 members of the jury." What do you mean by that?—A. I suppose what is meant by that is this: if a unanimous verdict is required on the question of punishment, as on the question of guilt or innocence, then one person on a jury may withhold the recommendation of mercy, and in that way this one person may, if a unanimous decision is required, prevent a recommendation from being brought into the court and the result would have to be a mandatory bringing about of a death penalty.

Q. Then I would be correct in assuming, would I, that this refers only to the recommendation of mercy and not to the guilt or otherwise?—A. No, definitely not.

Q. I should like to direct one or two questions to Dr. MacLeod. Doctor, did I hear you correctly when you stated you had been in Canada two years?

Dr. MACLEOD: I have been in Canada for two years, but I have been back about three—but I have been out of Canada.

Mr. SHAW: Have you had cause, doctor, to pay any particular attention to the use of psychiatrists in capital cases both by the Crown and Defence?

Dr. MACLEOD: No, not in Canada.

Mr. SHAW: I asked you that because I am a layman and sometimes confused and bothered to note that when the defence calls a psychiatrist the Crown calls one too. They have two expert witnesses directly opposite in their testimony. Now, have you any recommendation with respect to any type of board that should be set up to which each and every one of these cases might be referred, let us say? It seems to suggest that it should be maybe at pre-trial, or maybe during the trial, or maybe following conviction, but in any event prior to execution.

Dr. MACLEOD: Yes, sir, we have made that recommendation in public. We hope that the time will come when it will be neither the prosecution nor the defence that will call expert witnesses, but it will be the judge. We advocated the setting up of a board, perhaps of representatives from the Royal College of Physicians and Surgeons, and if necessary the medical people concerned at the universities, say, professors of medicine or psychiatry. It would be an impartial board. The judge would have the right to refer the case to it, we would suggest at the time of pre-trial. It would not be asked to give an opinion as to guilt, but merely an opinion as to the person's mental state and whether there was any evidence as to whether his ability to control his impulses was impaired as a result of mental abnormality or illness. They would not have to fulfil the requirements of the present M'Naghten Rules which, quite frankly, we do not think can be fulfilled in straight medicine. In other words, there is no such thing, in my opinion, as the example described in the M'Naghten Rules. You cannot have insanity in one part of the personality and not in another. A human being works as a whole person, and the board would merely give the judge the benefit of a modern medical examination carried out at a centre competent to do so. The group that I am with are very much against the idea of the prosecution and defence calling expert witnesses and each one reviewing the others case. We do not think that the condemned person is being given a fair trial. What I mean by "trial" is in the medical sense.

Mr. SHAW: I have other questions, but I must be away at 3.30.

The PRESIDING CHAIRMAN: We will be back at 3 o'clock, if you so desire.

By Hon. Mrs. Hodges:

Q. I would like to ask a question, Mr. Borins, I was interested in your recommendation that the question of the sentence should be left to the jury. You had implied that the accused would get a fairer chance of escape from capital punishment if it were left to a jury than if it was left to the present stages of reference to the court of appeal and final submission to the cabinet. I am asking for your frank opinion. Do you frankly think that a jury of ordinary people with no experience of crime or psychiatry or anything like that, in a highly emotionally charged atmosphere, could give as reasoned and logical a sentence as someone who is, according to your own suggestion, fully cognizant of the criminal law and all that goes with it and has experience? —A. If the death penalty is mandatory and that system should remain, I am not suggesting that our present system is an unfair one.

Q. I am not discussing that. I am saying that you think that the jury should have the sentencing decision. Do you think that they would be more competent, as compared with our present system?—A. I would think that an accused person is safer in the hands of 12 laymen.

Q. In spite of the fact that there may be abnormal people among them, people of abnormal conduct who themselves are not fully competent, mentally competent or otherwise?

Rev. Mr. MACDONALD: It could also apply to judges.

By Hon. Mrs. Hodges:

Q. But I am just asking a question.

Mr. BORINS: They will not be guessing on these things. There will be a wide opinion on the question of punishment. There will be doctors called in by the Crown, doctors called by the defence and many other witnesses on the question of punishment, and the jury will make its decision on that basis.

Q. As I say, it is a highly emotionally charged atmosphere. Speaking from this point of view, I just wanted to hear your view.—A. Well, it is considered by lawyers that in deciding on questions of fact the jury system is a good system. If there is a case involving special questions of law and very little question of fact, one may make an application outside of criminal cases for a trial without a jury and strike out a jury notice. But I can think of no cases where fact alone is being considered when it comes to the question of sentence. That being so, I think that the jury is the competent group to deal with it.

Hon. Mrs. HODGES: Thank you.

By Mr. Blair:

Q. Mr. Borins, at one stage in your testimony this morning you mentioned that the record showed that capital punishment achieves nothing that could not be achieved by other forms of punishment. I wondered what records you have in mind?—A. I had in mind, Mr. Blair, the records of those countries and states where capital punishment has been abolished. I have not the records here, but I know that they exist because I have read them, and there are records in the Royal Commission on Capital Punishment referred to it here. If you wish, I could undertake to send along at a later date any records that I have in my files at home.

Q. If that would not be too much trouble, I think that it would be helpful to have statistics of this nature. Would you care to comment on one of the statements of the report of the United Kingdom royal commission found in paragraph 64 at page 23? They say:

> We agree with Professor Sellin that the only conclusion which can be drawn from the figures is that there is no clear evidence of any influence of the death penalty on the homicide rates of these states, and that, "whether the death penalty is used or not and whether executions are frequent or not, both death-penalty states and abolition states show rates which suggest that these rates are conditioned by other factors than the death penalty".

A. In other words, does that statement mean that where you have the death penalty if the situation is not any better than where you do not have it, you might as well do away with it.

Q. The statement speaks for itself. I was wondering whether you have any comment to make about that?—A. That is my comment. Since those who wish to retain capital punishment cannot come along with an argument and say, "Look at these countries and states where capital punishment has been abolished, and there has been an increase of crime and murder." Since those people are unable to do that, then my submission is, why have capital punishment?

The PRESIDING CHAIRMAN: Ladies and gentlemen, could we reconvene here at 3.00 o'clock? We will not be able to have this room after 3.30.

Agreed.

By Mr. Blair:

Q. I have one or two more questions. I would like to ask Mr. Borins about his support of the British royal commission's recommendation that the doctrine of constructive malice should be abolished. I understood Mr. Borins to say that this would not involve a major rewriting of the Criminal Code.—A. That is correct.

Q. Mr. Borins, in paragraph 111 of the British royal commission's report at page 41, the commission points out that the choice lies between retaining the doctrine of constructive malice or abolishing it altogether, and it stresses that the adoption of a proposal such as section 175 of the draft British Code of 1878 would not be satisfactory. Now, Mr. Borins, I think you know that our present definition of murder follows that section 175 and I wonder if you had considered this when you mentioned that we would not have to rewrite the definition of murder?—A. Yes.

Q. Well then, on this question of constructive malice, what you are really proposing then is that section 260 as it stands at the moment should be practically rewritten in order to provide a new definition for it?—A. Yes.

Mr. BLAIR: Mr. Chairman, I believe there is considerable interest in having some further comments from the panel on the question of environment as a factor in criminality and I raise that now for your consideration .

The PRESIDING CHAIRMAN: Well, are there any further questions to be submitted by the committee?

Mr. WINCH: That actually was my question and I endeavoured to raise it at a time when the matter of environment was being discussed as to whether or not it should have a bearing in a decision of a judge or jury on the question of guilt in a homicidal case. So if I can put it as a direct question I think I am most certainly speaking on behalf of the majority of this committee: could we ask Dr. MacLeod for his own personal experience and also for his knowledge on behalf of himself and his profession as to what he and his profession consider the position which environment plays in criminality, and if he can give any particular reference with respect to homicidal cases, and as to what consideration should be given to environment in a judgment in a homicidal case.

Dr. MACLEOD: This is a very important question as far as we are concerned as doctors, and therefore I ask for your leniency to preface my remarks with a previous answer in relation to a previous question which I gave. First of all, I point out that the information we have is very inconclusive. For example, if we are asked: Is capital punishment a deterrent, quite frankly there is no conclusive evidence as to whether it is or is not. We have to take samples from investigations which have been carried on, and part of the recommendations of the report. The samples I am giving are of people who are really not in need of treatment and in another case they are people to whom capital punishment is not a deterrent.

The PRESIDING CHAIRMAN: Can you give us a particular instance?

Dr. MACLEOD: You mean from people I have had under treatment?

The PRESIDING CHAIRMAN: Can you tell us of a specific case?

Dr. MACLEOD: I mentioned one today in which the individual had sadistic propensities. He developed fantasies of how he himself would have liked to have carried out a similar crime. He imagined a similar situation of killing somebody and then escaping and having the police chase him, and the way he would have carried out that kind of crime. So we could only give medical opinion that those are types of fantasy people who do commit crimes have but I want to go into the question of environment. There is a conclusive body of evidence that if you remove a human being out of the social scene for a

little period of time you can produce considerable deterioration in his personality. I can quote extracts from Professor Hebb at McGill who says that if you take an ordinary human being out of his environment and put ping pong balls which are cut in half over his eyes and put gloves on his hands and put him in a quiet room, you can produce symptoms which are found in severe cases of mental illness. We also have evidence that if you take a child away from its mother, especially during the first two years of life, there is serious impairment which takes place in the child's ability to develop and mature physically, intellectually, and socially and there is some evidence as well that in a case of incarceration of a criminal for a long time in institutions which had no rehabilitation program, or if you force retirement on people from work before they are ready for retirement which would take them out of the stream of social influences, you can produce a rapid breakdown which cannot be restored very easily.

Then your maturation of a child from infancy to the adult group involves acquiring skills, not only physical but social skills, and there is evidence to show that the ability to control one's temper has a tremendous bearing on the social development of youth, and if they have not had the benefit of a healthy home environment, one is inclined to believe that there may be organic evidence of those defects, and one can sometimes see members of a group in a group in a situation where the mother cannot control the children and some of the cases are the result of social environment. There are other factors and circumstances such as hereditary factors as well and all of them have not been investigated yet.

Social environment does play a considerable part in impairing a person's ability to conform to social standards, morally and legally.

Mr. FULTON: As to the term "social environment" in the context in which you are using it—does it relate to society as a whole, or to the home environment?

Dr. MACLEOD: It relates fundamentally to the home or the home environment and definitely there seems to be the need for a child to have a healthy family environment so that from there on, to school and into the community; by social environment it definitely means the family.

Mr. WINCH: Do you also include community environment?

Dr. MACLEOD: "Community" means very little. It has to be spoken of in concrete terms: and as you say, a human being must have other persons to make up the home environment of that person.

Mr. WINCH: And our economy?

Dr. MACLEOD: In so far as all those factors are concerned, there may be emotional worry about where the money was coming from, and what the housing was like in so far as it could be ascertained. Slum areas have an emotional relationship with murder; they are factors which influence human beings on the emotional side and they set up a chain reaction in influencing a growing child. Now, the history of this discovery has had a bearing upon physical medicine.

Mr. FAIREY: You mentioned slums as an environment. You were trying to narrow the concept of environment, and I take it that you will admit that there can be a happy environment even in slum districts?

Dr. MACLEOD: There is no clear-cut evidence that economic factors alone if taken out of their context play an important part; but there is a considerable group of individuals who surround their children during their development, and if it is not possible to do so in a slum area, then that interferes with the development of the child.

Mr. FAIREY: But it is possible?

Dr. MACLEOD: Perhaps I should put it this way: It is less possible in a slum environment taking that factor into consideration than it is in a healthy environment. But speaking as a doctor, one cannot help but comment on the fact that we think a very materially satisfying environment cannot but be helpful to emotional and spiritual development; it is the warmth of the environment which is important, but this type of deprivation can occur in the very best families. There is no evidence at all that good economic conditions of themselves imply a healthy emotional upbringing of the child.

Hon. Mrs. HODGES: That is borne out by statistics and the number of delinquent cases that come from apparently good homes?

Dr. MACLEOD: I would refer the committee to the publications of the World Health Organization in which can be found a tremendous amount of evidence from all countries to substantiate the view, as I said earlier, that the history of physical medicine starts off to foster that end which was desirable.

Later on people came to realize that certain organs of the body do not exist in isolation but are part of a system. You cannot remove them without altering other organs of the system and as there are many organs which are interrelated, if you remove one then you interfere with the system as a group. And later they realized that you cannot understand illness until you take into consideration the mental attitude of the individual and the special surroundings, so as to determine his emotional side. So you cannot understand an illness until you know exactly the physical symptoms as well as the mental symptoms and the social stresses and strains which the individual has.

Every human being sees the world a little differently and it is impossible for an untrained observer to understand what is in the eyes of another person. We spoke about capital punishment as a deterrent but it is impossible for an outside observer to say whether it is a deterrent for one individual or not unless he has an opportunity to go over with that individual all his thoughts and feelings about it. There is no conclusive evidence at all that capital punishment is a deterrent. That seems on the surface to be a reasonable statement, but there is no scientific evidence.

Mr. FULTON: Unless some person were to say that he was deterred by it.

Dr. MACLEOD: He could not prove that because the act had not yet been committed.

Hon. Mrs. HODGES: If he were deterred, it would not be committed.

Dr. MACLEOD: There is no way of proving it scientifically.

Mr. SHAW: Quite frequently a criminal may emerge out of a family of five or six; five of them being 100 per cent all right and the sixth being a criminal type.

Dr. MACLEOD: Yes.

Mr. SHAW: Would you care to comment on that?

Dr. MACLEOD: I think that is what we are trying to do now in this research work. One of the most interesting things is to study why it is that when two individuals are faced with a similar situation, one individual will overcome it and be the better as a result of it, while another individual will break down. Nobody knows all the factors concerned. If you put an individual under stresses or strains for example, some of those juvenile delinquent children will not respond to corporal punishment of any type whatsoever. All it will do is to make them harsh and against society. The punishment must be carried on to a point where it is physically destructive before it will affect them, while those who respond to it very seldom carry out the crimes for which it is given, and those who have got physical punishment for carrying out those crimes are rarely affected by it. But there is no clear-cut knowledge

yet as to why it is that one person is able to meet a situation and overcome it and be healthy while another person is not. We know the problem.

When the germ theory came in it was thought to be a very simple thing that if a germ gets into the body the person is ill. Then we realized that if you put the same germs into three people, one would get ill and die while another would not get ill at all while a third would get ill and not die. The problem is that you may have three children suffering from great emotional stress and strain and the next step is: How is it some can have emotional stress and strain and not break down and never reflect it. We are just beginning to find out what environment in mental medicine means. We have a pretty good knowledge that the person who is not given proper mental and maternal care will tend to show a deficiency disease which shows up in the child's inability to conform to the community standards of morality and behaviour in relation to other children.

Mr. SHAW: These people were from the same area and were raised in the same home and subject to the same influences, generally.

Dr. MACLEOD: Nearly always we find that if you study them carefully they were not raised with the same kind of stimulus; but what is it that brings about an overwhelming trend in the case of one person and not in the case of another.

Mr. WINCH: Is it correct to say that for some psychological reason the second or third child in a family is more apt to be anti-social than is the first?

Dr. MACLEOD: There has been a lot of work done, but that work has not been conclusive as yet. It is in the active stage of investigation. The medical field is not yet satisfied with any of the experimental results that have come forward; but the evidence which has accumulated would indicate that all of these factors are important. The attitude now is that there is not any one single cause, and that it is not true in the case of just one germ or one experience in life; it is the total picture that we must take from infancy to adulthood.

Mr. FULTON: I wonder if Dr. MacLeod would care to offer any opinion based upon conversations with criminals, although not murderers, and whether they said to him that one of the reasons that anyone gives that he would not carry a gun at all is that it might be that he would go into a bank and use that gun although he did not intend to do so when he went out to commit a crime; or that the "trigger-happy" individual might use it and therefore for some reason, far beyond possible conclusions, namely that the death sentence it would act as a deterrent in one case and not in another, and that it would prevent a crime from being committed. Have you information based on actual conversations with people who were of the criminal type in that they had committed crimes? Would that be psychologically sound? One of the reasons why in one case they would not associate with what they call a "trigger happy" criminal, and in another case would not carry a gun was for fear that given the right circumstances, or wrong circumstances, they might become panicky and use that gun although they had not intended to when they went out to commit the crime. On the other set of circumstances because the "trigger happy" individual might use it, and for the same fear of the possible circumstances, namely the death sentence, they would not carry the gun or associate with the "trigger happy" criminal in the joint enterprise. That, they told us, was based on conversations with criminals. Would that be, in your opinion, psychologically sound?

Dr. MACLEOD: I have spoken to criminals myself who have put these views forward, but some of these murders are carried out in a moment of impulse and the individual recovers pretty quickly after the murder. I have also asked myself, if the death sentence were not mandatory, how many of these

individuals would have given themselves up afterwards voluntarily if it only was a sentence of life. If the punishment is death, once they have committed a murder, there is no sense of being caught. They might just as well kill again to avoid it.

Mr. FULTON: Going back to the question I asked for your comment on, with regard to the statement of other witnesses, would it be your opinion that in the conversations which were reported these criminals were stating what you would regard to be a rational thing or were they in effect inventing this?

Dr. MACLEOD: I think your point is fair. Only an individual may say he will do something but his actions disprove it. If you sent around somebody on a survey, they would speak of beauty and goodness and say that certainly they believe in that, but if you study practices rather than attitude, you find a different picture. People really mean it, but human beings' behaviour is determined by social conditions and when they find themselves in a certain situation they act altogether differently than they think they would. If they start thinking and if they become emotionally excited they start forgetting some of these ideas. We have cases of individuals who would say this thing when alone and be emphatic about it, but I do not think there is any evidence to show that these people so to speak would have avoided getting into relationships with other people for the commission of a crime if the social condition permitted it. That is if they found themselves being encouraged that this was an easy job to do and there was no intention of killing the person. However, there is no doubt that there is evidence which would suggest that certain killers would be deterred in so far as they would not go along with a well known trigger-happy person but there are relatively few because most people commit crimes in an unpremeditated way. The number of people who really commit a murder are often people who do it—

Mr. FULTON: In the heat of passion.

Dr. MACLEOD: Yes, or under abnormal functioning of the mind. That is, when they are in a group and think it is easy to get away with it, some of these things drop to the side and I have spoken to criminals who have been caught and they have pointed out that all their good advice has fallen to the wayside when it came to the actual time. They never thought, so to speak, that this would happen. I think on this question of constructive malice that it would be quite impossible for a well-meaning criminal to know when he was with a trigger-happy person because that person can appear absolutely normal before he has the reputation and might be one of these people who were mentally ill and would not show it until they were very hungry or depressed or something like that and in such cases throw reason to the wind. I do not think there is any evidence, although one would have to say there is common sense which would indicate that there are a certain number of people.

Mr. WINCH: Dr. MacLeod started to give us an answer this morning and I think it would clear our minds if he would explain in this kind of a study and analysis just what is the difference between the field of psychiatry, psychology and sociology. What is the difference in the application and analysis?

Dr. MACLEOD: It is a question that psychiatrists, psychologists, and sociologists would differ in. At the moment a psychiatrist would consider himself competent to deal with the diagnosis and treatment of mental and physical illness. He must be a doctor first with full medical training. A psychologist would be more concerned with a persons' mental condition, and would give psychometric tests and offer vocational guidance, etc. A sociologist might be any one of the people; a sociologist could be a person with different backgrounds, he might be a psychiatrist, or a psychologist, an anthropologist, or anything. He is interested in how people act as members of the social group.

Hon. Mrs. HODGES: He might be either of them.

Dr. MACLEOD: Yes. There is the suggestion that the social scene is so complex that no one man can deal with it and that you have to have a team. On that team there would be a psychiatrist, a psychologist, a sociologist, an anthropologist, a minister, and the whole group would tackle the problem.

The PRESIDING CHAIRMAN: I hesitate to draw this meeting to a conclusion.

Hon. Mrs. FERGUSSON: Mr. Borins spoke of a sermon by Mr. Macdonald and if it is available could we have it filed?

Mr. BORINS: I am glad that you mentioned that because I intended to suggest that it should be filed.

The PRESIDING CHAIRMAN: We will submit this to the Subcommittee on Agenda and Procedure.

Hon. Mrs. FERGUSSON: Yes.

The PRESIDING CHAIRMAN: I believe that the Canadian Welfare Council may have a further submission to make with respect to lotteries and corporal punishment at a later meeting and we will have the opportunity of having them before us again.

May I, on behalf of the committee, extend to you gentlemen our very sincere thanks for the presentations you have made here today and the assistance which you have given this committee.

Tomorrow we will meet at 4 o'clock when we will have a sheriff who has supervised certain hangings and a jail physician who has been in attendance at hangings on more than one occasion.

APPENDIX

ERLE STANLEY GARDNER
RANCHO DEL PAISANO
TEMECULA, CALIFORNIA

APRIL 20, 1954.

A. Small, Esq.,
Clerk of the Joint Committee on Capital
and Corporal Punishment and Lotteries
House of Commons
Ottawa, Ontario, Canada.

Dear Mr. Small:

I am very much interested in your letter of April 8th, sent to me care of Argosy Magazine, and then forwarded to me here in California.

As a member of Argosy's "Court of Last Resort" I have had quite a bit of experience with cases in which there undoubtedly have been miscarriages of justice.

Jurors are not infallible. The *percentage* of error in this country is small but nevertheless the *numbers* are large.

I have made no firsthand investigation of the administration of justice in Canada and for that reason am in no position to draw any conclusions that would be applicable to conditions in your country. I have made some first-hand investigation in England, spending some time with the British Home Office, and a visit to Scotland Yard which was followed up by a series of interesting meetings with one of the Superintendents of the Yard while he was on a visit to this country, and several meetings with Sir Arthur Dixon of the British Home Office while he was in the United States.

I think generally the chances for a miscarriage of justice are much greater in the United States than in England. For one thing the sheer volume of crime in this country keeps our police forces perpetually overworked and understaffed. Moreover, in many instances the fact that police salaries lag far behind the spiraling cost of living means that we have an occasional investigative blunder and quite frequently a failure to appreciate, correlate and interpret evidence.

Moreover, our newspaper system inevitably exerts a certain amount of pressure on the police.

Take the case of Silas Rogers. (I am sending you under separate cover the latest paper-backed edition of my book, "The Court of Last Resort" which contains a discussion of these cases and which I trust may be of some interest to you and perhaps to your committee.) The police arrested Silas Rogers as a suspect. Quite evidently they picked him up to hold for further investigation but had no great hope of connecting him with the crime. However, developments during the next few hours saw two persons (who had no connection with each other, against each of whom, however, there was a significant amount of tangible evidence) slip through the fingers of the police, leaving Rogers as the only one they had been able to catch.

Every bit of evidence they had against Rogers was the fact that he was a Negro wearing a white cap and the murderer was a Negro who was supposed to have been wearing a white or light-colored cap.

A police officer had been murdered. The newspapers were demanding action. Under the pressure of our journalistic system *a* suspect became *the* suspect, and eventually the defendant.

Silas Rogers was innocent. He was wrongfully convicted of murder, was sentenced to death, the sentence was commuted to life imprisonment, and finally he was pardoned.

Nor can we say that there is any such thing as a "dead-open-and-shut case". Take the case of William Marvin Lindley, for instance, which is a case I personally investigated and which furnished the inspiration for the start of the Court of Last Resort.

Lindley was convicted of a sex murder in northern California. He was identified by an eyewitness. He was supposedly identified by the dying declaration of the girl. The circumstantial evidence was against him. He tried to prove an alibi which blew up for the crucial fifteen or twenty minutes during which the crime was being committed.

Perhaps the most damning evidence against Lindley was the testimony of a sheepherder on the other side of the river who, while tending his sheep, had watched Lindley in the bushes observing three girls in swimming. This eyewitness testified to seeing Lindley attack one of the girls (the one who was found in a dying condition at the scene of the attack).

However, it subsequently appeared that this sheepherder, who identified Lindley, whose identification had been partly based on the color of clothes and hat, was color-blind. He described the murderer as wearing tan clothes and hat, and because Lindley wore tan clothes and a tan hat the description seemed to fit. It subsequently turned out, however, that the witness would describe vivid blue as tan, and bright orange as tan. In fact there was a whole collection of colors which he referred to as tan. It was, he explained afterwards, his favorite color.

After I started my investigation I was able to prove from the transcript that at a time when the murderer had unquestionably been standing in the bushes watching the three girls in swimming, Lindley had actually been riding in an automobile with *the father of the murdered girl.*—Yet a cursory reading of the transcript made such a damming case against Lindley that there seemed absolutely no possibility of his being innocent. The jury had convicted him, the case had gone before the California Supreme Court, and that Court, after studying the transcript, had confirmed the conviction.

Frankly, I am not at all familiar with the situation in Canada. In this country I feel that we need a good overhauling of our whole system of criminal laws. I feel that we need something which is the equivalent of the British Home Office, which has the right, when it desires, to review questions of fact as well as questions of law. Too many innocent people are convicted and far too many guilty people are acquitted.

If I can give you any further information concerning cases mentioned in "The Court of Last Resort" or any other matter which I have investigated here, I will be only too glad to do so.

Sincerely yours,

(Signed) ERLE STANLEY GARDNER

OTTAWA, Ontario,

April 8, 1954.

PERSONAL

Mr. Erle Stanley Gardner,
c/o Argosy's "Court of Last Resort",
205 East 42nd Street,
New York 17, N.Y.

Dear Mr. Gardner:

A Joint Parliamentary Committee of the Senate and the House of Commons of Canada has been established "to inquire into and report upon the questions whether the criminal law of Canada relating to (*a*) capital punishment, (*b*) corporal punishment or (*c*) lotteries should be amended in any respect and, if so, in what manner and to what extent".

The Joint Committee in its inquiries respecting capital punishment is seeking sources of information on whether or not capital punishment is to be abolished in Canada. In this connection it has been suggested that you, or other sources you may suggest, might assist and contribute factual material to the Joint Committee in respect of murder cases in the United States of America where the accused was later proven innocent and, in particular, where innocence was proven after the sentence was fully served or execution carried out.

Should you also be willing to appear before the Joint Committee in Ottawa to elaborate on the foregoing and submit to questioning, could you provide in an early reply:

1. A brief preliminary summary indicating the nature and extent of any factual information or material that you or others could present;
2. An indication of the terms and conditions that would be satisfactory with respect to an appearance in Ottawa; and
3. A rough indication as to when, during May or early June, such an appearance could be arranged (The Committee meets twice-weekly on Tuesdays, Wednesdays or Thursdays for daily sessions approximating two hours).

Respectfully yours,

A. SMALL,
Clerk of the Joint Committee on Capital and Corporal Punishment and Lotteries.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don. F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

WEDNESDAY, MAY 5, 1954

WITNESSES:

Colonel J. D. Conover, Sheriff, County of York, Toronto; and

Dr. W. H. Hills, Physician, Don Gaol, Toronto.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

91000—1

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Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 5, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Fergusson, Hayden, Hodges, and McDonald.—(5).

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron (*High Park*), Fairey, Fulton, Shaw, Shipley, (Mrs.), Thatcher, Valois, and Winch.—(10).

In attendance:

Colonel J. D. Conover, Sheriff, County of York, Toronto;

Dr. W. H. Hills, Physician of Toronto Gaol; and

Mr. D. G. Blair, Counsel to the Committee.

The Presiding Chairman introduced Colonel Conover and Dr. Hills.

At 4.10 p.m., the Committee's proceedings were interrupted by a Division in the House of Commons.

At 4.30 p.m., the Committee resumed its proceedings.

Colonel Conover and Dr. Hills made their oral presentations on capital punishment, based on their personal experiences in their respective appointments, and were questioned thereon.

On motion of Mr. Shaw, it was agreed that the matter of calling the executioner for an *in camera* hearing be referred to the Subcommittee on Agenda and Procedure.

On behalf of the Committee, the Presiding Chairman thanked Colonel Conover and Dr. Hills for their presentations on capital punishment.

At 6.05 p.m., the Committee adjourned to meet again as scheduled at 11.00 a.m., Tuesday, May 11, 1954.

A. SMALL,
Clerk of the Committee.

91000—1½

EVIDENCE

WEDNESDAY, May 5, 1954,
4.00 p.m.

The PRESIDING CHAIRMAN (Mr. Brown, *Essex West*): Ladies and gentlemen, could we come to order, please.

The Senate is in session at the moment and they are dealing with, I believe, the second reading of the Criminal Code. Consequently the members of the Senate will not be here for a minute or two. If we could proceed now, we could hear the evidence of Sheriff J. D. Conover of Toronto, and Dr. W. H. Hills, Physician, of Toronto. If it is your pleasure I will call Sheriff Conover and Dr. Hills forward. Our witnesses today are going to help us out with respect to the terms of reference on capital punishment, I believe, and corporal punishment.

Sheriff J. D. Conover, called:

The WITNESS: I do not feel in a position to deal with corporal punishment. I have no experience.

The PRESIDING CHAIRMAN: Capital punishment.

The WITNESS: Yes.

The PRESIDING CHAIRMAN: Sheriff Conover, I believe you are sheriff of the city of Toronto?

The WITNESS: The County of York which includes the city of Toronto.

The PRESIDING CHAIRMAN: You are the sheriff?

The WITNESS: Yes.

The PRESIDING CHAIRMAN: When were you appointed?

The WITNESS: About nine years ago.

The PRESIDING CHAIRMAN: Have you any experiences with capital punishment?

The WITNESS: During that time there have been two executions.

The PRESIDING CHAIRMAN: Dr. Hills, you are a graduate of what university?

Dr. HILLS: Toronto University.

The PRESIDING CHAIRMAN: You are the jail physician at the Don Jail?

Dr. HILLS: At the Toronto jail.

The PRESIDING CHAIRMAN: That is the Don jail?

Dr. HILLS: Yes.

The PRESIDING CHAIRMAN: How long have you been a physician there?

Dr. HILLS: Thirteen years.

The PRESIDING CHAIRMAN: Is that a full time job?

Dr. HILLS: No.

The PRESIDING CHAIRMAN: You carry on a practice as well?

Dr. HILLS: I have other work.

The PRESIDING CHAIRMAN: In Toronto?

Dr. HILLS: Yes.

Mr. WINCH: How many hangings has he witnessed?

Dr. HILLS: I have seen four men hanged.

Mr. THATCHER: I was wondering if I heard the sheriff say two executions?

The WITNESS: Three men executed, but two executions. One was a double execution.

Mr. THATCHER: Would that be all there would be in nine years in Toronto?

The WITNESS: In the county of York.

The PRESIDING CHAIRMAN: We will proceed with Sheriff Conover.

The WITNESS: Mr. Chairman, and members of the committee, your counsel to this committee approached me with the suggestion that I was a man with wide experience in attending the carrying out of the sentences of the courts in capital cases which is far from correct. Although I have been sheriff of the largest judicial district in Canada for nine years, there have only been two executions during this period. My first attendance was shortly after my appointment when the sentence of the court was carried out on a young man for the murder of his girl friend, and the second was the much publicized execution of two men for the murder of a police officer. During those nine years, however, 59 murder trials have been held resulting in the following sentences: 3 executed, 2 sentences commuted, 5 acquitted, 5 insanity, 2 cases traversed, 40 manslaughter.

(Proceedings interrupted at 4.10 p.m. by a Division in the House of Commons)

The PRESIDING CHAIRMAN: We had just started before this recess. I wonder if we could have Sheriff Conover start over again.

The WITNESS: Mr. Chairman, and members of the committee: Your counsel to this committee approached me with the suggestion that I was a man with wide experience in attending the carrying out of the sentences of the courts in capital cases which is far from correct. Although I have been sheriff of the largest judicial district in Canada for nine years there have only been two executions during this period. My first attendance was shortly after my appointment when the sentence of the court was carried out on a young man for the murder of his girl friend and the second was the much publicized execution of two men for the murder of a police officer. During this nine years however, 59 murder trials have been held resulting in the following sentences; 3 executed, 2 sentences commuted, 5 acquitted, 5 insanity, 2 cases traversed, 40 manslaughter.

It might surprise the members of this committee to learn that during this nine year period municipalities with less than one tenth the population of the one that I represent have had more executions. I have read some of the testimony of previous witnesses that juries as a whole are conscious of their oath "and a true verdict find according to the evidence" but I am quite satisfied that if not deliberately then subconsciously, they are inclined to go somewhat beyond the explanation of the trial judge of "reasonable doubt". The suggestion that the sentence for murder should be left to the jury would in my opinion result in the factual if not actual abolition of the death penalty. There is no doubt that where the responsibility for some very serious decision such as that of life or death is borne by several the burden is lessened but juries are a cross section of our community and it would be impossible to find twelve persons in any jury panel with the same high devotion to duty so as to preclude disagreements and "a true verdict find according to the evidence" where a life is at stake. When the sentence is someone else's responsibility it is a different matter, at the present time it is the Crown

pronounced by the judge. The same line of reasoning applies to the executioner. During the period of my office when the province of Ontario had its own executioner, I had several discussions with him as to whether officiating at the executions bothered him and was informed that they did not as he was only the instrument of the Crown for carrying out the order of the court and did not have as much on his conscience as the jury who convicted the prisoner or the judge who pronounced the sentence. That type of philosophy is however rare to find and unless someone is found and that shortly, we may one of these days find ourselves in the position of having a considerable number of condemned prisoners on our hands with no one trained to carry out the orders of the court. I do not doubt that volunteers for a price would be available but imagine the furor of the press and the public if an execution was badly carried out and the condemned tortured as they probably were in the dark ages when a noose was put around the prisoner's neck and the vehicle removed, leaving the unfortunate to strangle. I have reason to believe that at the present time in the Dominion of Canada there is only one man with experience as a hangman and he is not a young man. I have been told that efforts have been made to train an assistant but that so far, without success.

I might add I had a discussion with the present official hangman and he informed me that he had different volunteers who participated in one or two executions and then, as he said, they developed a nervous condition and quit their job.

Awkward situations have already occurred due to the scarcity of hangmen and conflicting dates necessitating extending the date of execution have occurred. Surveys have been made as to the possibility of getting an experienced man from the United States but in only six states is the method of execution by hanging. Most states that have retained capital punishment use the electric chair, in some others a gas chamber, while in at least one the condemned has a preference of either shooting or hanging. In one of the States canvassed that still retains hanging, the actual execution is carried out by a team at the penitentiary. One guard places the noose around the neck of the condemned, one holds the slack of the rope, one springs the trap at the signal of the warden or deputy and two others lower the body after the drop, which is another method of distributing the responsibility.

While section 1066 of the Criminal Code states that the sheriff "charged with the excution", I do not interpret this the same way as Mr. Common where he said in his evidence, "If the sheriff cannot get any professional executioner, he must of course carry out the execution himself". Charged with in my opinion means has the responsibiilty for or as he said a few sentences earlier, "The official in charge of arrangements is the sheriff of the county or district in which the accused is awaiting the carrying out of the death sentence". Some sheriffs have, I presume, officiated at a good many executions while others have completed terms of office without being required to function at such a grim ritual. I am quite satisfied that the government which passed this section had no such interpretation in mind as given by Mr. Common. With my limited experience, two executions, I do not consider that the technique is very complicated but the responsibility and the result of a slip up could be so serious that I feel a resignation would be simpler and less disastrous. The sheriff's participation in the execution commences during the trial when the presiding justice consults him as to a date for the execution in the event of a murder verdict. This date is fitted in to the excutioner's schedule and is fixed not less than two months from the date of the verdict to permit of time for an appeal. If an appeal is taken and dismissed unanimously the counsel can then only appeal to the Supreme Court of Canada with leave of a judge thereof.

If leave is refused then the law takes its course on the date previously fixed. From the time of the sentence the condemned is confined in a safe place within the prison and is under constant observation until the sentence is carried out. The prisoner never leaves his cell and of course is very limited in so far as exercise is concerned. Visitors are restricted to a chaplain or minister of religion and jail staff without permission and others with permission are limited to close relatives, not oftener than one a day.

The attitude of the condemned in the two cases above mentioned was entirely different. In the first case, which might be called a crime of passion, the prisoner was quiet, co-operative and might be said to welcome the day of his execution. In the second case the prisoners were defiant and insolent, practically up to the time executive clemency was refused, when they became intensely religious.

The executioner usually arrives the day before the execution is to take place and checks the gallows, including the trap, and may or may not do two or three tests with a sandbag. The condemned already has been informed by the governor of the result of executive clemency and shortly before midnight is visited by the jail surgeon to inquire as to whether a sedative is desired. A few minutes after midnight the executioner, the sheriff or his representative, the governor, the religious adviser and a number of guards proceed to the death cell where the condemned is informed that the time for carrying out the sentence of the court has arrived. The executioner handcuffs the prisoner and the procession immediately proceeds to the execution chamber where the executioner straps the ankles, places a hood over the head of the prisoner, the noose around the neck and springs the trap. The time involved is very short and depends to a certain extent on the length of the prayer of the religious adviser.

Immediately after the trap is sprung those who are present proceed to the lower level while the executioner proceeds down the steps of the execution chamber and examines the body. The doctor, the coroner, the sheriff and the governor wait out in the corridor until they are informed by the executioner that he considers that the man or woman is dead. Then the doctor and the coroner proceed to examine the prisoner and pronounce death. I shall leave that part of the explanation to Dr. Hills who is with me today.

I might say also, that I am speaking now of the Toronto jail where they have an execution chamber. It is my understanding in a great many of the county jails that there is no execution chamber and it is necessary in cases of the carrying out of capital punishment for a gallows to be built in the jail yard. Some of the county jails have been converted in emergencies but most of them have no execution chamber.

It is then the duty of the jail surgeon and the coroner to report to the Sheriff when the condemned is dead. The body is then cut down and placed in a casket and sealed. It is kept under guard until burial takes place, which is usually 8 a.m. the same day. The sheriff and the spiritual adviser proceed with the body to the cemetery, not the jail yard as stated by a former witness.

The reason for that is that the health authorities have refused to permit interment within certain limits of the municipalities.

The length of time between the springing of the trap and the report of the surgeon that death has taken place varies. In the first case, if I remember correctly, it was approximately 15 minutes while in the second case it was approximately 40 minutes before the doctors were sure that death had occurred.

For some days prior to the execution a state of tension exists, not only amongst the jail staff but throughout the whole jail. Everybody is on edge and those confined show a sullenness and resentment to authority which leads

me to feel that there should be a central place of execution, not only to relieve the strain on the jail staffs but to remove it from the morbid curiosity of the general public. I understand on the night of the double execution a crowd of between two and three thousand people started to gather outside the jail about ten p.m. and remained until the official notice that the sentence of the court had been carried out was nailed on the jail door.

I have no views on the method of carrying out the death penalty but would rather leave that to those who are in a position to give more expert evidence. The strain on those who are obliged to take part for some time prior to the date of execution is considerable and if the death penalty is to remain, any change that might modify this strain would be justified.

As director of legal aid for the county of York, I would like to correct any impression that may have been conveyed by previous witnesses that persons accused of murder are defended by inexperienced counsel. Since legal aid has been in effect in the county of York, counsel have been appointed in 15 out of 22 cases of murder. While it is true that some of the counsel were young, most of them had attended before as juniors in previous murder trials. It has been the practice where possible to obtain senior counsel and to appoint a bright young junior as his assistant. Before appointing counsel the case is discussed with the Crown Attorney by myself and the possibility of a conviction assessed. If a conviction for murder appears possible every effort is made to obtain senior counsel and in my county this has always been possible.

While my experience in the courts has not been as extensive as that of some of the previous witnesses I have found Crown counsel not only impartial but most helpful to defending counsel, particularly juniors in capital cases.

At page 154 and 155 of Mr. Maloney's evidence he mentions a certain lawyer who acted as defence counsel in four murder trials and is now confined in a mental institution. All these trials occurred before legal aid was in effect when the system of providing counsel was different. At that time a free list was kept at the local jail and any accused could make his own choice from those listed, provided the counsel were prepared to act.

Any further information concerning executions I think I should leave to Dr. Hills who is with me today and who is jail surgeon at the Toronto jail. Although he has been there for 13 years, during that period he has only been at four executions, I believe, and I shall leave him to tell you his story from the doctor's angle at the jail.

The CHAIRMAN: Thank you very much, Sheriff. Dr. Hills?

Hon. Mr. ASELTINE: We will have an opportunity of questioning the sheriff later?

The PRESIDING CHAIRMAN: Yes.

Dr. HILLS: I have been associated with the reform institutions for the last 19 years of which 13 have been spent as physician of the Toronto jail. There have been, as Sheriff Conover has mentioned, four men hanged at the Toronto jail in the time that I have been there. I believe that the purpose of my visit here today is to give some information and observations concerning those executions and executions in general and circumstances associated with them. The remarks of Sheriff Conover in general are in agreement with my own findings and opinions and—although I know little or nothing of the legal aspect—I feel we are in agreement about conditions in jail. I have seen more than the four men mentioned as condemned men but a number of them have had their sentences commuted or changed. Of the aspects of these cases that I thought you would be wishing to hear from me, there is the matter of the condition and treatment of the prisoner before the execution, the

condition and treatment of the prisoner on the occasion of his execution, and the medical findings subsequent to execution, I would say that there is nothing unusual in the physical condition of a man who is awaiting to be hanged as he waits in his rather small cell for the month or so that he does have to wait. That is, he remains healthy, free of illness. I have had little trouble with those men regarding complaints of illness and regarding illness. Due to the confinement they are affected somewhat by constipation and their general condition may be somewhat deteriorated, but they are not greatly affected. The attitude of those men, as they wait, is to me at least friendly, co-operative, and pleasant. That is, as time goes on they do become pretty much that way, although they might, and sometimes have been at first, somewhat adverse and antagonistic, unco-operative. I did notice a little difference in the findings of Sheriff Conover in two cases he mentioned in which he found the men resentful. There was never any resentment or malice shown to me. They were always polite and properly behaved.

Regarding the execution itself, I am present for an hour or so before the hanging to see that anything that can be done for the man from my standpoint is done. The clergyman probably does more. I offer my services. There is little I can do. If the man has requested sedation some nights previous that is taken care of. Anything that is required in the way of a sedative is given. Anything that is asked for in the way of a sedative that is reasonable is given. On the occasion of the approaching hanging, the man is asked if he would like to have sedation. The sedation that I use is half a grain of morphine and one hundredth of hyoscine. In the case of the first execution, the man replied that he would be alright and thanked me. In the second case the man said that he did not need anything. In the third case I gave a sedative. It was not requested, but was accepted after I suggested it.

The men, in my experience, are calm, composed and quiet. They seem to be well prepared for the end which is probably due to the attentions of the clergymen who have taken care of them for some time. After the hanging, the physician's duty is to pronounce death in accordance with the Criminal Code. It is an unpleasant duty. The physician—this is in the Toronto Jail—climbs a step ladder and puts a stethoscope on the man's heart when the hangman has called him. The heart beats very strongly and loudly. The rate is hastened.

Mr. WINCH: After the hanging?

Dr. HILLS: After the hanging the rate is faster, and then slower, and the sound remains loud, and presently the rate becomes slower and the sounds become quieter and quieter. Did I say that they were slow and irregular?

The PRESIDING CHAIRMAN: No.

Dr. HILLS: The heart beat becomes irregular and slows until it stops. I have found in the four cases—and these are quoted from memory as there are no records made of such times and also it is rather difficult to take times on such occasions that the heart stops; the times in which are very close to 22 minutes, 30 minutes, 35 minutes, and 45 minutes respectively. Those are the times at which, in the four cases, death was pronounced, and in each case the heart sounds were heard until that stage, or very close to that time. In each of these four cases I would say that the neck was angulated and lengthened, and that the cause of death appeared to be primarily fracture of the neck and strangulation would have to be considered as a secondary cause, although probably not the actual cause, of death. I think that is all I have to say.

The PRESIDING CHAIRMAN: Thank you very much.

Dr. HILLS: If there are any questions I shall be glad to help.

The PRESIDING CHAIRMAN: Probably we could start today with Mr. Blair who is counsel for the committee.

By Mr. Blair:

Q. Sheriff Conover, at one stage in your remarks you mentioned juries went, as you said, beyond reasonable doubt in rendering verdicts. Perhaps you could explain to the committee in more detail what you have in mind in saying that.—A. What I had in mind as far as juries are concerned was that I think they are very glad to look for an excuse to bring in a verdict of manslaughter. I, of course, have never discussed with a juryman what went on in the juryroom because they were under oath and would not be allowed to discuss the talk and argument and discussion that goes on in there. From the number of murder trials that have been held in the county of York, and the number that have been found guilty of manslaughter—some of them quite vicious crimes, or vicious murders—I am inclined to believe from that that juries are, particularly in the southern part of the province, inclined to bring in a verdict of manslaughter.

Q. Would it be correct to say that the reason for that is they shrink from sending a man to death, or is it sympathy with the causes which have brought about the homicide?—A. I am afraid that I have never been a juror on a murder trial and do not know what goes on in the jury's mind. I am only assuming from statistics I have been able to gather that that is what happens.

Q. Apart from the four people who were executed, I imagine both Dr. Hills and Sheriff Conover would have had some contact with the other 59 persons charged with murder and I wondered if, as a result of that contact with the large number of people charged with murder, they would be prepared to offer any views on the effect of the death penalty as a deterrent to murder?—A. I have talked with quite a few who have been accused of murder and have been brought forward at their trial for murder and my own opinion is that the death penalty insofar as most of them was concerned was not a deterrent. Looking over the list, as far as my memory serves me, a large proportion of those accused of murder were for what you might call crimes of passion and very few if any were what might be called premeditated murder. We have had some where people have set forth to rob and it has resulted in murder. I presume that might be called premeditated murder because they took a weapon with them, either for their protection or defence, and were prepared to use it if necessary in carrying out their purpose. But, of the majority it is my personal opinion that in a number of them it would be in a moment of drunkenness or some feeling that rose in them at the moment and they never even contemplated what might happen to them as a result. Now, the Doctor has possibly examined most of these people accused of murder and he might care to express his views on that subject.

The PRESIDING CHAIRMAN: Dr. Hills, would you care to make a comment?

Dr. HILLS: I note from the record that there were five certified as insane out of the 59. I have, as Colonel Conover mentions, talked to all these people. Unfortunately, I have not had the time to make a tabulation or classification of them. It seems to me that fear of the death penalty does not mean anything.

Mr. BLAIR: I have no more questions.

By Hon. Mr. McDonald:

Q. At this time I would like to ask the sheriff or the doctor here to express their views, if they would care to or to recommend any change in the manner of the execution?—A. I have no views on the subject. I feel that a central place of execution might remove a certain strain on the staff and prisoners and so on, but as to the method that is something beyond me because I am not prepared to say how soon death takes place after the trap is sprung in hanging, or how fast it could take place with some other method.

Q. Since these meetings of the committee have started I have met a number of people and I have heard the criticism that hanging is archaic, and

that we should find some method better than hanging. I do not know whether they think it is more humane, but certainly not quite so archaic.—A. Certainly I have heard doctors express the view that they know of quicker methods that might not be quite so archaic, such as injection.

Q. What about electrocution?—A. The comment I have heard about that is that while death may be sudden it has a terrific effect on the staff and people in the institution where it is carried out. The horrible smell of burning flesh seems to remain for days. It seems to permeate the execution room and the whole building. I have heard that from people who have been in institutions where death by electrocution has been carried out.

Hon. Mr. McDONALD: Have you had any experience, Dr. Hills, with electrocutions?

Dr. HILLS: I have sat on the seat at Sing Sing. It is uncomfortable.

Hon. Mrs. HODGES: Not in the condition under which you sat on it.

Dr. HILLS: The place has an abnoxious, nauseating, disgusting odour, which I think is not only there on occasions; I think it is there all the time.

The PRESIDING CHAIRMAN: They did not spring the juice into the chair when you were on it?

Dr. HILLS: I made sure everything was dead.

Hon. Mr. McDONALD: That is all.

The PRESIDING CHAIRMAN: Mr. Shaw?

By Mr. Shaw:

Q. Sheriff Conover am I correct in my understanding that there is but one official executioner in Canada?—A. That is correct.

Q. And you emphasized the fact, I believe, that in your discussions with him it did not seem to bother him at all?—A. This was a former executioner.

Q. Have you had cause to discuss the matter with the present official executioner?—A. No.

Q. Did I hear you correctly when you said that you were finding it impossible to secure an assistant? In other words a possible successor to the present executioner?—A. I did have a discussion with the present executioner in regard to finding an assistant and with respect to the success he was having in training an assistant.

Q. Have you had any discussion with any of these persons who acted once as assistants to him?—A. No. They are not in close proximity to my area.

Mr. SHAW: Mr. Chairman, I should like to ask Dr. Hills, since he indicated that in these four cases the time of the actual execution was 25, 35, and 45 minutes—when, Doctor, do you feel that the moment arrives when the executed person ceases to feel pain or any other sensation? In other words, when does he lose consciousness?

Dr. HILLS: I think within a second of the time when the trap is sprung. He will hit the noose within less than a second and I think that by the time the second is over that he is unconscious.

Mr. WINCH: Only he is not dead?

Dr. HILLS: Not legally dead. The heart is still beating and with the heart beating we cannot pronounce death.

Mr. SHAW: Doctor, you refer to the administering of sedatives to those who are to be executed. Are there any instances within your experience where that has been done against the will of the condemned person?

Dr. HILLS: Sedatives given to the condemned person against his will?

Mr. SHAW: Yes.

Dr. HILLS: I do not know of anything like that.

The PRESIDING CHAIRMAN: Mr. Boisvert?

Mr. BOISVERT: No questions.

The PRESIDING CHAIRMAN: Mr. Cameron.

By Mr. Cameron (High Park):

Q. From the time that the prisoner leaves the cell until the drop how long a time would elapse?—A. Between leaving the cell until the trap was sprung?

Q. Yes.—A. A matter of a very few minutes. In the Don Jail I think it would be the time required to walk 25 or 30 paces and the hangman, if he is experienced, takes very little time in preparing the condemned person. I think that in one case the length of time it would take to recite the Lord's Prayer. In the other case there was a shorter prayer even than that. So it was a matter of a very few minutes.

Q. In connection with the Lord's Prayer is the condemned man prepared for execution when that is being said or before?—A. That has been done.

Q. In reality from the time when he reaches the execution chamber until the drop it is only a matter of a few seconds?—A. A very few minutes. You cannot get through the Lord's Prayer in seconds, I do not think.

Q. A comparatively short time?—A. Yes.

Q. In other words, the minimum of mental torture the prisoner would be going through would be as short as it was possible to make it in regard to what had to be done?—A. That is correct.

Q. Have you any observations to make or any comment as an observer as to what happens from the time that the prisoner is dropped from above?—A. No, my duty is finished—not finished because I must sign a certificate that the sentence of the court has been carried out and that can only be done after death. My further duty is to see that the body is interred without being viewed by an unauthorized person or even relatives.

Q. What I had in mind was would you have any views, from the time when a condemned man is dropped, as to any visible signs that he was suffering pain or making a struggle for life or anything of that kind from your observations from above?—A. No. Immediately the trap is sprung I move to the lower level and wait the verdict of the doctor.

Q. You gave us the approximate time you waited outside?—A. That is right.

By the Presiding Chairman:

Q. You say that the body is not viewed by even the relatives?—A. That is correct.

Q. Is not the body sometimes released to relatives for burial.—A. It is released sealed in a casket. The relatives may attend the interment of the body, and they may make arrangements with an undertaker if they wish a more expensive form of casket. But if they have not the money or do not desire to do so, the casket is provided by the municipality, and they are not allowed to view the body.

By Mr. Cameron (High Park):

Q. You would not enter the chamber below until you are told it is proper to do so by the hangman?—A. I can do so, but I do not.

Q. It seems to be the practice in Toronto that you do not?—A. Yes.

By Mr. Fulton:

Q. Who actually indicates that the moment has come to make the drop? Is it the chaplain? Does he indicate that he has finished the prayer?—A. The executioner proceeds immediately.

Q. From whom does he receive the indication that it is now time to do it? —A. I think he knows that it is his job to carry out the execution, and as soon as the chaplain reaches the end of his prayer and he knew that the chaplain had reached the end of the prayer, he pressed the spring and the execution took place.

Q. The chaplain has been discussing the matter with the prisoner and has been preparing him and I wonder if it is the practice that the trap is not sprung until the chaplain signifies in some way?—A. I do not think they put that responsibility on the chaplain.

Q. I was wondering how it was done?—A. In the first case it was obvious when the time had arrived and when the spiritual adviser finished with the Lord's Prayer the executioner immediately sprung the trap. It was obvious in the second case that the spiritual adviser had finished his prayer.

Q. I was wondering if you could tell me whether, at least in the cases over which you have had jurisdiction, that it is clear that the execution will not take place at a moment when the chaplain feels there is still something to be done for the man by way of prayer?—A. I assume that is correct, but it never entered my mind that there would be any question about the time.

Q. Then there is no instruction, as it were, issued to the executioner that he should take the cue from the chaplain?—A. No.

Q. But in the cases you have experience of that has happened?—A. Yes.

Mr. FULTON: Dr. Hills, I do not think you expressed an opinion as to alternative methods of execution? Would you care to do so?

Dr. HILLS: I think, first of all, the medical man is attending an operation which is against all his teaching, training and experience. He is given to the saving of life. This is entirely opposed to all his ideas. If it has to be done, perhaps it should be done in a different way. The medical man would recommend, I think, that injection was the proper way because that would be the way that he would terminate a life if it was necessary to terminate a life. He would inject sufficient morphine that unconsciousness would be lost very shortly. There would be cessation of respiration and death.

Mr. BOISVERT: How long would it take to declare the man dead after an injection of morphine?

Dr. HILLS: How long would it take to cause death?

Mr. BOISVERT: Yes.

Dr. HILLS: I am sorry that I can only guess. It may be in the book. I have seen two cases of excess morphine both of which I happened to save. I think possibly about fifteen minutes might be sufficient to stop the heart. It might stop sooner. Of course, if you use curare that might be much faster.

Mr. FULTON: Do you think any doctor would do it?

Dr. HILLS: I do not know.

Mr. FULTON: I take it it is perfectly clear from your previous evidence that it is your opinion that unconsciousness and all sensation on the part of the condemned man ceases virtually the moment he comes to the end of the rope on the drop.

Dr. HILLS: I believe so.

Hon. Mrs. HODGES: I should like to direct a question to Sheriff Conover. He made reference to the gathering of morbid crowds outside the jail at the time of the execution. Does that only happen in cases where gallows have to be erected?

The WITNESS: In the Toronto jail there is a permanent execution chamber.

Hon. Mrs. HODGES: Yes, I understood you to say that. Do you say that happened there?

The WITNESS: Yes, a crowd of between 2,000 and 3,000 gathered outside the jail in Toronto where the double execution took place which I have referred to. The crowd gathered some hours before.

Hon. Mrs. HODGES: Could that be obviated by any lack of publication of the time of the execution. Would that help?

The WITNESS: At the time of the sentence the judge must set the date.

Hon. Mrs. HODGES: The date is set but the actual time is not published?

The WITNESS: The Secretary of State has issued instructions that, in so far as possible and wherever it is possible, the execution should take place shortly after midnight of the day fixed.

Hon. Mrs. HODGES: So the morbid public is accustomed to that time?

The WITNESS: Yes.

Hon. Mrs. HODGES: And there is nothing that could be done in that way?

The WITNESS: The only way would be a central place of execution that is removed from centres of population.

Hon. Mrs. HODGES: You think that would be the answer?

The WITNESS: Yes, and not only that but it would also eliminate the publicity.

Hon. Mrs. HODGES: Oh quite, yes.

Mr. FULTON: Dr. Hills, were all four executions which you observed carried out by the same hangman?

Dr. HILLS: No.

Mr. FULTON: And yet in all four there was the same degree of professional skill?

Dr. HILLS: I believe both men were competent.

The PRESIDING CHAIRMAN: Mr. Winch?

By Mr. Winch:

Q. I have a series of questions. I will make them short if I possibly can. I would like to ask the sheriff, first of all, why it is the hangman who examines the body after the drop before the doctor examines it?—A. He is hired to carry out the execution.

Q. He has already dropped him, and the only matter then is that of death, so why does the hangman and not the doctor examine the body first?—A. I cannot answer that.

Q. Is there a reason for it?—A. No reason I know of, except that the executioner is responsible for the carrying out of the sentence of the court and also provides the instrument for the carrying out of that execution, such as the rope and hood and the handcuffs and so on. He also cuts down the body after he is informed by the doctor that death has set in.

Q. And the hangman is not a medical man?—A. Oh no.

Q. And therefore he actually does not know whether the man is dead or not?—A. Oh yes, the doctor has pronounced death.

Mr. FULTON: The sheriff is trying to answer the question.

The WITNESS: The doctor pronounces him dead before the hangman cuts him down.

By Mr. Winch:

Q. Why does the hangman examine him first?—A. To see that he has carried out his job properly, I presume.

Q. I will let that go for now. I understood from what you said, sheriff—

The PRESIDING CHAIRMAN: Would it not be a proper question to ask him if it is the practice to have the hangman examine the body before the doctor does?

Mr. FULTON: He has already said that is done before the doctor is even called in.

Hon. Mr. HAYDEN: I suppose he does not want to have the doctor climb the stepladder too soon.

Mr. WINCH: I was not going to ask this, but I will now. The doctor has said that after being examined it is from 22 to 45 minutes, in a medical sense, before the man is dead?

Hon. Mr. HAYDEN: No, from the time he drops. I think that is what he said.

Dr. HILLS: From the drop, yes.

Mr. WINCH: From the time you were called in until you pronounced death, what was the length of time in the four cases mentioned?

Dr. HILLS: The hangman calls the physician in a few minutes.

Mr. WINCH: And in all those four cases which you had to attend—and I know you did not like to; I know that—on those four occasions when you were called in was the heart still beating?

Dr. HILLS: The heart was beating when I first examined.

Mr. WINCH: That is what I am asking you. After you were called in was the heart still beating?

Mr. FULTON: There is a correction. The doctor has already said he is not called in—

Dr. HILLS: The man is hanging and you go up on the stepladder and put the stethoscope on his heart and you listen to the heartbeat. You cannot say that the man is dead until the heart beats stop.

Mr. WINCH: And in each case in your experience the heart was still beating?

Dr. HILLS: Oh yes, quite. Very strongly. On the first examination they are, quite strongly, but the body is not cut down until he is pronounced dead.

Mr. WINCH: At the time you were called in by the executioner in each case the man was unconscious but he was still medically alive?

Dr. HILLS: The man was unconscious but legally not dead. That is, while the heart beats you have to wait until it stops before you can pronounce death.

Mr. WINCH: Otherwise then, legally he has been hung, but medically he is still alive?

Hon. Mrs. HODGES: No, medically he is dead.

Mr. FULTON: Don't twist the evidence like that! The doctor has already said just the opposite.

Mr. WINCH: I do not understand that. His heart was still beating so medically he was still alive, was he not?

The PRESIDING CHAIRMAN: Whether it is medical or legal, he is dead.

Mr. WINCH: The point I am trying to get at is this: is hanging instantaneous death?

Dr. HILLS: No.

Mr. WINCH: That answers my question, thank you. Now, I would like to ask the sheriff this question. You said you hanged two men at once. Were they hanged individually and dropped at the same time or were the two strapped together?

The WITNESS: They were not strapped together; two separate ropes from the beam, two separate nooses, both men standing on the trap at the same time the trap sprung and both men hanged at the same time.

Mr. WINCH: The reason I asked was that in British Columbia once they hanged three men by strapping them together and one was held up, but I will go into that later. There is one other question I would like to ask the sheriff. Did I gather from what you said—

Mr. FULTON: I am not sure that evidence should be received from Mr. Winch.

The PRESIDING CHAIRMAN: I think we can discuss that later, if Mr. Winch would continue with his examination of the witness.

Mr. WINCH: I would, if Mr. Fulton would allow me.

Mr. FULTON: I will object when you proceed to give evidence yourself, and raise a point of order.

Mr. WINCH: All the same, McCarthy.

Mr. FULTON: You should know; you are an expert in that field.

The PRESIDING CHAIRMAN (Mr. Brown, *Essex West*): Gentlemen, I do not think there is any partisan political advantage to be derived from this committee. I think we all realize that. We have a witness here today and I think we should avail ourselves of the opportunity of getting the best evidence we can from him.

Mr. WINCH: I am trying, Mr. Chairman.

Mr. FULTON: That is my purpose, to get the best evidence we can—from the witness.

Mr. WINCH: I gather, and if I am wrong I know you will correct me, that you made a statement something to the effect that if the sheriff himself had to carry out the actual execution that there would be resignations. Do I take from that, if I understand you correctly, that if you yourself could not have an official hangman that rather than perform the act yourself you would resign?

The WITNESS: I think in the interests of the condemned and in the interests of the general public I would be required to. I am not an expert in carrying out executions by hanging, although I have attended two, so I think that my only alternative would be to resign my position.

The PRESIDING CHAIRMAN: Mr. Thatcher?

By Mr. Thatcher:

Q. Mr. Chairman, I think I understand the sheriff to say that he did not think that hanging was a deterrent. Is that a fair statement?—A. In the majority of cases.

Q. Well then, would you feel that capital punishment should be abolished? —A. In my official capacity or my personal capacity?

Q. I would say in both?—A. In my official capacity I would like to see capital punishment abolished. In my personal capacity I have different feelings in the matter. I have thought it over and read on the subject and found that in institutions where capital punishment has been abolished that the person guilty of murder is apt to cause trouble. Not only that, they have nothing to lose. They are possibly incarcerated for life and the fact that they may murder somebody else would not make any difference to their treatment because the authorities could not do anything further to them and from my personal viewpoint I think capital punishment should be retained.

Hon. Mr. HODGES: Then you think it is a deterrent in that sense?

The WITNESS: I think it is a deterrent to the vicious type of criminal that we do get from time to time and if he had escaped the death sentence once he would be inclined perhaps to think twice before committing a second murder if the death penalty were retained.

By Mr. Thatcher:

Q. Do you think it should be only retained for some one who commits murder a second time?—A. I would not like to commit myself on that.

Q. Perhaps I have not got this right but it seems that your evidence is rather contradictory. Earlier you said you do not think it is a deterrent and yet you think it should be retained. What exactly is the reason you think it should be retained?—A. For the reason I just gave you a minute ago. The person who is sentenced to life imprisonment in a state or province where there is no death penalty has nothing further to lose.

Q. And might commit a second murder?—A. Yes.

Q. But if we hang him if he committed a second murder, could we not let him off the first time?

Hon. Mrs. HODGES: You mean, give every dog a first bite?

The PRESIDING CHAIRMAN: That is arguing and not questioning.

By Mr. Thatcher:

Q. I would like to go on and ask Dr. Hills the same question, whether he thinks that the death penalty is a deterrent? I think he said in evidence that he did not?

Dr. HILLS: I cannot see that it is.

Mr. THATCHER: Then would you favour or feel that the death penalty should be abolished?

Dr. HILLS: In my official or my personal capacity? I have no opinion in my official capacity. I just take care of the people, that is all.

Mr. THATCHER: You would not care to express an opinion whether you would like to see it abolished or not?

Dr. HILLS: Certainly I would like to.

Mr. THATCHER: In the four cases you have had, how many times have you had to give a sedative?

Dr. HILLS: I did not have to give any in the latter two, but after a little discussion I did give a sedative to them.

Mr. THATCHER: Are you permitted by law to give a sedative which is strong enough to render the prisoner fairly well insensible?

Dr. HILLS: I think so.

Mr. THATCHER: And is that usually the case when a prisoner is hanged that the drugs have been strong enough that the prisoner does not know too much about what is going on?

Dr. HILLS: No.

Mr. THATCHER: That is not usually done?

Dr. HILLS: No, I do not think so. I never heard of that being done.

Mr. THATCHER: I was just wondering. I did not know the practice. Have you observed, after the man has been dropped through the trap door, any struggle or convulsions?

Dr. HILLS: Yes, there are movements of the limbs.

Mr. THATCHER: And from your experience would you say that the body was limp the moment it hit the end of the rope?

Dr. HILLS: Yes, there are the movements caused . . .

Hon. Mr. ASELTINE: Muscular movements of the body?

Dr. HILLS: Yes, it has nothing to do with the brain.

Mr. THATCHER: You would not say movements were caused by pain?

Dr. HILLS: No, they are just the kicking movements you see in cases where a rooster has its head cut off?

Mr. THATCHER: Have you seen any accidents take place in the cases you have been at?

Dr. HILLS: No.

Mr. THATCHER: Have you heard hangmen speak of any accidents which have taken place?

Dr. HILLS: No.

Mr. THATCHER: I see. Would you say as a result of your observations of several hangings that hanging is a merciful death, or is it, as one of the senators said, an archaic way of execution?

Dr. HILLS: It appears to me as archaic.

Mr. THATCHER: And perhaps actually inhuman?

Dr. HILLS: Actually, yes.

By Mr. Thatcher:

Q. I would like to ask the sheriff another question. He may have answered it already but perhaps I just did not understand him if he did. How many people are present at an execution?—A. The sheriff or his representative, the governor, the religious adviser, approximately four jail guards . . .

Q. No newspaper men?—A. No.

Mr. BLAIR: And the coroner?

The WITNESS: Yes, the coroner and the jail surgeon. The coroner does not usually attend at the execution chamber. He usually attends with the doctor after the condemned has been hanged.

By Mr. Thatcher:

Q. It is pretty difficult for the men who have to attend the actual execution for some time before and after the execution?—A. It is quite a strain.

Q. Just one further question. You mentioned in the figures you gave us that of the 52 persons— —A. 57, I believe.

Q. 57 in the Toronto area who had been tried for murder—

Hon. Mr. HAYDEN: I believe it was 59.

By Mr. Thatcher:

Q. That only three have been actually executed. I was surprised at that low rate. I wondered if one of the reasons would be that there are very good lawyers in the Toronto area?

Hon. Mr. HAYDEN: He said there were only three executions he attended.

The WITNESS: No, there were only three amongst those 59 in the nine years.

By Mr. Thatcher:

Q. Would you say that was because there are very good lawyers in the Toronto area?—A. There is no doubt about that.

Hon. Mr. HODGES: In the presence of Toronto lawyers, of course!

Mr. THATCHER: Do you think that it might have been that the juries are reluctant to convict for murder?

The WITNESS: Personally I think that is quite true, yes, that the juries are looking for an excuse to bring in a verdict of manslaughter. I think I expressed that opinion before.

Mr. THATCHER: Would that not be an added argument against capital punishment? Are you not in effect saying that if the sentence had been life imprisonment there would have been more than three convictions.

Hon. Mr. HAYDEN: The end is the same anyway.

The WITNESS: It is practically the same thing, as Senator Hayden suggests. The judge in pronouncing sentence takes into account to a large extent the brutality of the episode in those cases which end in manslaughter as it did in 40 of the 59 murder trials which took place in the nine-year period I referred to.

Mr. THATCHER: Am I not right in saying that under the trap doors there is a screen of some kind?

The WITNESS: In the Toronto jail, the execution chamber is in a tower in the jail yard and is part of the building. It is entered from a corridor on the second floor where the trap and the beam over which the rope is tied is contained, and the body drops to the floor below this chamber and it has a door opening into the corridor of the jail on the ground floor.

Q. Your predecessor at the hearings of a committee similar to this committee, I think in 1937, said on at least one occasion the hangman had to go below and drag on the man's legs to bring about death. That has not happened recently to your knowledge?—A. I was practicing law then.

Q. In view of the fact that no one would be there, that would be the reason the hangman goes down?—A. I imagine he goes down to see that he has carried out his job properly.

Q. What size rope do they use in these hangings?—A. ¾ of an inch.

Q. How long?—A. Well, it depends on the height of the person or the weight of a person that is to be hanged. The noose, I believe, requires some considerable number of feet in order to be properly tied. And then there is the amount that is tied around the beam or the ring above the trap. I would not know exactly, but I would think somewhere in the neighbourhood of 30 feet of rope.

Mr. THATCHER: Thank you.

By Hon. Mr. Aseltine:

Q. All these people you mentioned who are present at the execution, do they see the whole operation or is the place boxed in so that they cannot actually see the man dropped?—A. They must all be present.

Q. How much can they see?—A. They can see the noose going around the man's neck and he being dropped through a hole in the floor.

Q. That is all they can see?—A. Yes.

Hon. Mr. ASELTINE: I would like to ask the doctor a question. I am interested in alternative methods. You suggested one alternative method, namely that of injecting morphine. Do you consider that a more merciful method than that of hanging the man?

Dr. HILLS: Yes.

Hon. Mr. ASELTINE: In what respect is it more merciful? Is there any less pain? Does the man suffer any pain after the injection? He would be unconscious immediately?

Dr. HILLS: Well, as soon as the injection took effect. It takes a little time.

Hon. Mr. ASELTINE: He would not feel any pain in the meantime?

Dr. HILLS: Oh, no. A doctor could terminate a life very pleasantly, painlessly.

Mr. WINCH: He would just go to sleep?

Dr. HILLS: Nothing to it. A man would never know anything at all about it.

Hon. Mr. ASELTINE: Do you know if that method has ever been adopted by any state or country?

Dr. HILLS: I do not think so.

Hon. Mr. ASELTINE: Do you know of anyone who could give us that information?

Dr. HILLS: Dr. Lawson might be able to.

The WITNESS: I doubt if he could give you the information as to any other state or country that uses that method of execution.

Mr. BLAIR: It might assist the committee if I said that enquiries are being made to try and obtain that information.

Hon. Mr. ASELTINE: You have given your one alternative method. What have you to say about electrocution? Is that not a speedier method than even the injection you speak of?

Dr. HILLS: Not as pleasant. Walking in and sitting in the chair and getting strapped down and smelling that place. It looks hideous; it smells bad.

Hon. Mr. ASELTINE: You think it is more inhuman than hanging?

Dr. HILLS: It is questionable.

Hon. Mr. ASELTINE: It is more inhuman than giving him the injection at any rate?

Dr. HILLS: Oh, yes. I was going to say that, actually, though the electrocution is painless. There is the unpleasantness of sitting in the chair and being strapped down and smelling the place and seeing it.

Mrs. SHIPLEY: I would like to ask Dr. Hills a question. In view of the interest that has been shown in the statement that it takes 20 to 45 minutes for the heart to stop beating, is it not true that in almost any form of execution or any form of fatal injury that could be given to any human being that the heart would not stop beating for some considerable period of time, almost anything one could mention?

Dr. HILLS: Except a bullet through the heart.

Mrs. SHIPLEY: Thank you. That covers that point. Now, the next question is neither of the witnesses have commented on the use of a gas chamber as compared to electrocution or hanging. Would you care to comment on that Dr. Hills?

Dr. HILLS: I have not seen one. It does not appeal to me.

Mrs. SHIPLEY: You, Colonel Conover?

The WITNESS: I think that this committee has read anything I have read on that.

The PRESIDING CHAIRMAN: You have no personal experience?

The WITNESS: No, nor any knowledge.

By Mrs. Shipley:

Q. This question may be out of order. I was somewhat shocked to read in the newspapers that a reverend gentleman in Toronto made the statement that he had been responsible for having a sentence commuted and I have forgotten the exact manner in which this came about, but it was something to the effect that the hangman was very displeased because he was done out of $500. Have you any knowledge about the truthfulness of such a statement or whether it could have happened?—A. It is rather difficult to say. All I could say is this.

Q. You do not have to answer the question.—A. I understand that the present official hangman for the province of Quebec, and the only official hangman in Canada at the present time, keeps himself rather remote from

the public and his profession as secret as possible and I doubt if he would publicize the fact that he was the hangman to anybody except to those he might be officially in contact with.

Q. There has been no subsequent report in the press of this statement that you know of?—A. No.

Mr. WINCH: Is he still called Mr. Ellis?

The WITNESS: No, he has a different name.

Mr. FULTON: Is he paid for each case or is he paid a salary?

The WITNESS: I understand that he is retained on salary by the province of Quebec and permitted to take on other work in other provinces at so much an execution.

By Hon. Mrs. Fergusson:

Q. Colonel Conover, I think you have answered part of my question, but you spoke of the official executioner. How do you become an official executioner? Do you pass tests? How do you know you are competent, or how do other people know you are competent to carry out an execution?—A. I think it has been passed on from one to another.

Hon. Mrs. HODGES: In a family, do you mean?

The WITNESS: No. Not in a family, but those who have participated in executions and have signified their desire to carry out the work and have participated sufficiently to acquire the necessary knowledge to carry out the execution.

By Hon. Mrs. Fergusson:

Q. My point really is, is there anything to restrict a sheriff when he needs an executioner to have an official executioner or could he hire anyone whom he thinks would be suitable to do the job?—A. I think that the Criminal Code permits him to hire anyone who could or would do the job. I think most sheriffs who are charged with the execution would be rather diffident about employing an inexperienced person in view of the publicity which might arise from a mistake or a poor job of work.

Q. Suppose it happened that the executioner could not possibly attend at the right time. Suppose he were ill?—A. I can tell a story about what happened in British Columbia.

Hon. Mrs. HODGES: I must warn you there are some British Columbians here.

The WITNESS: I understand that. The plane was late and the sheriff got quite perturbed when it got within about an hour of the time of execution and the executioner had not arrived, so he went to his office and wrote out his resignation and when the executioner arrived on time, as he did, the sheriff tore his resignation up.

Mr. FULTON: That was a case of reprieve for the sheriff!

The PRESIDING CHAIRMAN: Any further questions, Senator Fergusson.

Hon. Mrs. FERGUSSON: No.

The PRESIDING CHAIRMAN: Any questions, Mr. Fairey?

Mr. FAIREY: No.

The PRESIDING CHAIRMAN: Any questions, Mr. Valois?

Mr. VALOIS: No.

The PRESIDING CHAIRMAN: Senator Hayden?

By Hon. Mr. Hayden:

Q. Sheriff Conover, when you were talking about the jail staff and the prisoners being upset as the execution date approaches and the crowd gathering in the street, is that not all part of the sentence of death and the carrying out of it is supposed to induce in the public such an abhorrence of the thing that it will be a lesson?—A. I am afraid from my observations I do not believe that that is the case. I think it is simply morbid curiosity.

Q. Not on the part of the staff?—A. No, but it inflicts a strain on the staff.

Q. You would not expect a hanging penalty to be a deterrent to a person who commits a crime in a rage or sudden anger?—A. No.

Q. You would only expect it to be a deterrent where somebody was planning a murder?—A. That is correct.

Q. And you are not in a position to say whether or not in those cases it is or is not a deterrent?—A. No.

By Mr. Fulton:

Q. On the question of alternative methods of execution, do you consider it would be a lesser evil if there could be some other method such as Dr. Hills suggested and that it would be less of a strain?—A. Yes, I definitely do.

Hon. Mrs. HODGES: There is not the preparation?

The WITNESS: No.

Hon. Mrs. HODGES: It seems to me that is the worst part of it.

Hon. Mr. HAYDEN: You mean the carnival?

Hon. Mrs. HODGES: I mean having the man's ankles strapped, putting the rope around him and erecting the gallows, and so forth.

Hon. Mr. HAYDEN: That is all part of the theory of deterrent effect.

Hon. Mrs. HODGES: Do you not think it is that preparation in itself which creates the morbid curiosity and arouses that feeling in the public?

Mr. FULTON: It is the aspect of the gallows.

Mr. SHAW: Especially when the public can even hear the nails being driven in.

Mr. THATCHER: The doctor, I think, said a good alternative, in his opinion, would be an injection. I mean, as an alternative to hanging. I am wondering —Mr. Fulton suggested perhaps he could not find a doctor who would be willing to do that—would it be possible for a layman, if the injection had been prepared, to administer it? Could a layman do that?

Dr. HILLS: Oh yes, a layman could administer it or the man could administer it to himself.

Mr. THATCHER: In other words, it does not require a doctor to give that injection?

Dr. HILLS: No.

The PRESIDING CHAIRMAN: If he gave it to himself it would be suicide.

Mr. FULTON: We could not allow that.

Mr. WINCH: I think I have one more question.

The PRESIDING CHAIRMAN: I think Mr. Blair comes before you, if you do not mind.

Mr. BLAIR: In order to clarify the record—I believe Sheriff Conover could confirm that, as sheriff, he attended at all murder trials in the Toronto District?

The WITNESS: Yes, or a representative. I have been present at a good many for a short time, but not throughout the whole trial. My other work does not permit me to do that.

Mr. BLAIR: And the other question I have to ask is about the coroner's jury which is summoned at the examination but does not attend the execution?

The WITNESS: No, it is only there for the purpose of viewing the body and stating the cause of death.

Mr. BLAIR: And it reaches its findings immediately after the death?

The WITNESS: That is correct, yes.

The PRESIDING CHAIRMAN: Now, Mr. Thatcher?

By Mr. Thatcher:

Q. I have only one question. I do not like to ask it but I feel that I must on account of the evidence which was given to us before, that there is no reaction in the actual jail or in those who take part in the actual execution. I wonder if the sheriff or the doctor could tell us, as servants who have to carry out the law, what their reaction is in the days or hours before an execution, and when you know that you have to carry out the law in putting a man to death. What is your reaction?—A. It is difficult to define. There is a sense of strain. There is no doubt about that. You feel sort of tense to a certain extent, or nervy. But beyond that I could not go. I am thinking back to what I felt like a year and a half ago.

Q. Are you sleepless?—A. I do not think I have lost any sleep before the execution.

Q. You say you do not think you have lost any sleep before?—A. No.

Mr. THATCHER: And what about you, Dr. Hills?

Dr. HILLS: I might take a little phenobarbital I am not very tough.

The PRESIDING CHAIRMAN: I understood you were one of the champion boxers at university.

Dr. HILLS: I can take it, but I do not like to see anyone suffer.

Mr. FULTON: Is the suffering you speak of—except for the 100 per cent—is it mainly mental? You referred to hanging as inhuman and archaic. I do not quarrel with you about that, but are you thinking of physical or mental suffering?

Dr. HILLS: It is mental, yes.

Mr. SHAW: Mr. Chairman, I am going to recommend to the steering committee that they consider making it possible for us to have an executioner as a witness, whether it be in a dark room, or here, or elsewhere, or whether or not he be hooded *a la* Gouzenko. No matter how it is arranged I think it should be done and I throw it out to you and to the steering committee.

The PRESIDING CHAIRMAN: Which hangman should we call?

Mr. SHAW: I understand there is only one recognized hangman as such in Canada now.

The PRESIDING CHAIRMAN: The matter could be referred to the subcommittee.

Mr. THATCHER: It might remove a great deal of mystery about this situation if we did.

Hon. Mrs. HODGES: Do you think there is any mystery about it?

Hon. Mr. HAYDEN: I thought the objection was that it was not hidden and that there was so much evidence of what was going on that that was the thing which should be done away with.

The PRESIDING CHAIRMAN: That matter will be referred to the subcommittee on Agenda and Procedure.

Dr. Hills and Sheriff Conover, on behalf of the committee, I want to extend to you our thanks and appreciation for your attendance here. You have come here from Toronto to help us out and we appreciate it very much. Thank you.

We shall meet on Tuesday next at 11.00 o'clock, but, before we get away, I have here, from the library, a book entitled "The Shadow of the Gallows." Those of you who would like to borrow this for a short period of time from the clerk of the committee may do so.

FIRST SESSION—TWENTY-SECOND PARLIAMENT

1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 12

TUESDAY, MAY 11, 1954

WITNESS:

The Honourable Stuart S. Garson, Minister of Justice.

Appendix A: Statistical Tables, A to O inclusive, appended to the statement of the Minister of Justice.

Appendix B: Report of Chief Constable Mulligan on Murders in Vancouver, 1944 to 1953.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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OTTAWA, 1954.

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Hon. Clarence Joseph Veniot

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Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. W. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. SMALL,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

MORNING SITTING

TUESDAY, May 11, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, the Honourable Senator Salter A. Hayden, presided.

Present:

The Senate: The Honourable Senators Fergusson, Hayden, Hodges, McDonald, and Veniot.—(5)

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Fulton, Garson, Mitchell (*London*), Shaw, Shipley (Mrs.), Thatcher, Valois, and Winch. —(14).

In attendance: The Honourable Stuart S. Garson, Minister of Justice; Mr. A. J. MacLeod, Director, Remission Service, Department of Justice; and Mr. D. G. Blair, Counsel to the Committee.

The Presiding Chairman, the Honourable Senator Salter A. Hayden, informed the Committee that Mr. Don. F. Brown, Joint Chairman, had a statement to make. Mr. Brown informed the Committee that he had received a confidential telegram from the official hangman of the Province of Quebec requesting to be heard by the Committee. It was agreed that this request be considered by the Subcommittee on Agenda and Procedure since this matter had been referred to the Subcommittee at the previous meeting.

The Honourable Stuart S. Garson, assisted by Mr. MacLeod, was called and made a statement on commutation and remission of sentences in capital cases.

During the course of Mr. Garson's statement, references having been made to statistical tables which were also distributed to each member present, on motion of Mr. Winch it was,

Ordered,—That Tables A to O inclusive, entitled as follows, be printed as an Appendix (see Appendix A) to this day's Minutes of Proceedings and Evidence:

Table A—Disposition of Capital Cases (1930-49);

Table B—Proportion of Executions (1930-49);

Table C—Proportion of Disposed of by Appeal Courts (1930-49);

Table D—Proportion of Commutations (1930-49);

Table E—Proportion of Commutations—Supplementary (1930-49);

Table F—Recommendations as to Mercy (1930-49);

Table G—Analysis re Victims of Convicted Murderers (1930-52);

Table H—Ages of Persons Convicted of Murder (1930-52);

Table I—Capital Cases by Provinces (1930-49);

Table J—Length of Detention where Death Sentence Commuted (1930-39);

Table K—Experience of Defence Counsel acting for Persons Convicted of Murder (1948-52);

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Table L—Appeals to Appeal Courts (1948-52);

Table M—Analysis re Commutation where Insanity an Issue (1937-52);

Table N—Analysis re Commutation where Intoxication an Issue (1937-52); and

Table O—Number and Location of Persons Serving Life Sentences.

At 12.35 p.m., the Committee adjourned to meet again at 3.30 p.m. this day.

AFTERNOON SITTING

The Committee resumed its proceedings at 3.30 p.m. The Honourable Senator Salter A. Hayden, presided.

Present:

The Senate: The Honourable Senators Hayden and Hodges.—(2).

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Garson, Lusby, Mitchell (*London*), Shaw, Shipley (Mrs.), Thatcher, and Winch.—(13).

The Committee commenced and completed its questioning of Mr. Garson and Mr. MacLeod with regard to the statement made on commutation and remission of sentences.

During the course of the questioning period, it was agreed that the Department of Justice, insofar as possible, would make available to the Committee the following information:

1. *Re Table J:* Of the 23 persons serving commuted sentences for homicide, how many broke parole or got into trouble again and had to be returned to penitentiary, (including attempts to commit second murders either in penitentiary, during escape, or after release)?
2. *Re Table O:* Of the 24 persons who became insane subsequent to admittance to penitentiary, what was the length of time served in penitentiary in each case up to the time the inmate became insane?
3. Consideration *in camera* at some future date of a brief containing the analyses of material on a typical commutation-remission case.
4. Supplementary statistics of interest to the Committee to be filed, if and when prepared or received by the Department of Justice, with the Committee and printed as Appendices.

On behalf of the Committee, the Presiding Chairman thanked Mr. Garson and Mr. MacLeod for their presentations.

The witnesses retired.

At 5.35 p.m., the Committee adjourned to meet again as scheduled at 11.00 a.m., Thursday, May 13, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

TUESDAY, May 11, 1954,
11.00 a.m.

The Presiding CHAIRMAN (Hon. Mr. Hayden): Members of the committee, we have a quorum, so I will call the meeting to order. Our co-chairman has a statement to make first.

Mr. BROWN (*Essex West*): There was a question brought up as to whether or not we should invite the official hangman of the Province of Quebec to appear before this committee. There was considerable evidence given by the last witnesses as to the office of the hangman and he has sent me a very confidential telegram taking exception to some of the evidence.

Hon. Mrs. HODGES: The hangman has?

Mr. BROWN (*Essex West*): Yes, and has expressed the desire, under certain conditions, to appear before the committee. I think this matter should be considered by the subcommittee. I do not see how he can be heard before the end of the present session but, at the earliest opportunity, I am sure the subcommittee will want to direct that he be invited.

Mr. FULTON: Mr. Chairman, do you think there should be placed on the record now any exceptions he has taken so that they can be cleared up as quickly as possible?

Mr. BROWN (*Essex West*): He has not said what he resents, but he resents very much publication of the testimony.

Hon. Mrs. HODGES: He marks the Telegram "confidential", does he?

Mr. BROWN (*Essex West*): Yes. I think the matter should be referred to the subcommittee and considered there.

Mr. SHAW: May I suggest your subcommittee could take into consideration the responsibility for working in an extra meeting. I do not know how reasonable that is, I understand you are pretty well filled up.

Mr. BROWN (*Essex West*): That is right, the subcommittee will give consideration, I am sure, to all these matters.

The Presiding CHAIRMAN: We have today as our witness the Minister of Justice, Mr. Garson, who is going to deal with commutations and remissions. Mr. Garson.

Hon Mr. GARSON (*Minister of Justice*): Mr. Chairman and members of the committee, previous witnesses have described to the committee the procedure and practice followed both at the trial of persons who are charged with capital offences and likewise in appeals from verdicts of guilty in such capital cases.

My purpose today is to attempt to describe and explain how the Governor General in Council in the exercise of the prerogative of mercy decides to commute or not to commute the death penalty.

My statement will be in two parts: first, I shall describe the nature and extent of the investigation that is made for the purpose of securing the necessary information upon which to base a decision to commute or not to commute the sentence of death. Second, I shall set out the criteria by which this information is weighed in arriving at such a judgment as to commutation.

NATURE AND EXTENT OF INVESTIGATION

As soon as a sentence of death is imposed upon a person in Canada upon conviction for a capital offence, the convicted man has a right of appeal which he usually exercises. The court of appeal may quash the conviction and direct a verdict of acquittal to be entered or it may substitute a verdict of manslaughter or it may order a new trial.

In the meanwhile, the remission service of the Department of Justice commences an inquiry for the purpose of preparing the necessary material for the consideration of commutation by the Governor in Council. The reason that is commenced early is that it takes time to gather the material and if we are going to be ready to consider commutation when the appeal has been disposed of we have to act promptly from the beginning. As I have said, the inquiry is commenced notwithstanding that the case may never have to be considered by the Governor in Council. We gather our material and if the court of appeal quashes the conviction and directs a new trial, we just close the commutation file. Our effort then has been spent in making sure that we shall not delay a proper consideration of the question of commutation if it becomes necessary.

In order that the commutation investigation may be uniformly thorough in all provinces in all capital sentences, uniform instructions have been issued to the judges in Canada who have imposed such sentences.

I propose now to put these instructions on the record. In doing so I would remind the committee that references therein to the Secretary of State should now be read as references to the Minister of Justice; for an order in council was recently passed transferring to the Minister of Justice, in this respect, all the powers, duties and functions that heretofore have rested with the Secretary of State.

I will now quote the "Resume of Instructions" to the judges:

1. The date of execution should be set at least:

(*a*) Two months from the date of passing of the sentence in the provinces of . . . . . Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island

(*b*) Two months and a half in the provinces of . . Manitoba, Saskatchewan, Alberta, British Columbia

(*c*) Three months in the Yukon Territory.

(*d*) It should not be set for a legal or religious holiday.

The reason for the difference in the periods of time is that the periods of time within which the appeal may be launched vary from one province to another and we have to make allowance for that in instructions we send out to the judges.

Mr. FULTON: It omits mention of Newfoundland there.

Hon. Mr. GARSON: Yes, that is right. I am quoting the instructions that we have been using and we have not had occasion to use any in Newfoundland as yet. We will have to amend that in due course.

I am referring again to the instructions to the judges and this is the second paragraph:

2. During the two weeks following the trial:

(*a*) The trial judge should send directly to the Secretary of State his report containing a substantial summary of the salient facts of the case, together with any remarks or recommendations from his personal notes taken during the trial with reference to the exercise of executive clemency.

The report is then referred to the Minister of Justice, who, after perusing the evidence, gives to each capital case the most anxious consideration. When reaching a decision before making his report to council, he finds it very helpful to have the views of the trial judge regarding any feature of the case which has a bearing upon the exercise of executive clemency.

This is all addressed to the judges telling them why we need their views. Then paragraph (b) reads:

(*b*) It is also imperative that the trial judge should give instructions to the stenographer to complete and forward to the Secretary of State the transcript of evidence at the earliest possible date, together with his address to the jury.

That is the judge's address to the jury. Then paragraph 3:

3. Plan and sketches of the 'locus' and also photographs, if any, which which may have been filed as exhibits should be sent to the Secretary of State, but only after the time for lodging an appeal has elapsed.

They may be needed on appeal.

If, in the opinion of the trial judge, certain other exhibits are essential for the consideration of the case, they should also be sent. During the review of the case, if other exhibits should be needed, they will be asked for by the Department.

4. The Secretary of State should be notified by telegram of any proceedings in appeal as soon as they are instituted and of their disposal.

5. In the event of an appeal being dismissed such of the exhibits as are mentioned above should be sent to the Department of the Secretary of State together with both factums submitted upon the hearing of the appeal.

6. Should the Secretary of State be officially notified that an appeal has been launched in a case where the exhibits are with the department, they will be promptly returned to the registrar.

The picture I would like to leave with the members of the committee is that we are trying to prepare for a consideration of commutation simultaneously with the appeal going on; and we have to arrange each proceedings so we shall not be discommoding either one or the other.

7. The trial judge, when making his report, is invited to give his personal detailed observations regarding medical testimony or any insanity issue and concerning the prisoner himself.

8. If a reprieve is granted in any case, the Secretary of State should be notified by telegram as soon as it is granted.

The popular belief of the public that we have the power to grant a reprieve is quite wrong; the reprieve is granted by a judge of the court and if it has been granted we should be notified.

The second group in these instructions to the judges has to do with the preparation of transcript. It reads as follows:

RE PREPARATION OF TRANSCRIPT

1. A copy of the evidence should be forwarded to the Secretary of State within fifteen days after the trial regardless of an appeal or possibility of an appeal being taken.

2. This copy should be an original one and well done, on good paper, not transparent, which can be easily read.

3. The blank back of the preceding page in the evidence should be arranged to be on the left when bound.

4. It is customary for transcripts in all capital cases to include all proceedings subsequent to the judge's charge, and including the sentence, namely:—

(*a*) the time the jury retired and returned.
(*b*) whether or not a rider was attached to the verdict.
(*c*) judge's query of accused prior to passing of sentence.
(*d*) accused's response, if any.
(*e*) remarks of judge prior to passing of sentence.
(*f*) sentence.

5. A complete index, with page number opposite, as to witnesses and exhibits should be contained in the volume of evidence.

6. The addresses of counsel to the jury need not be included in the transcript unless specially asked for.

7. If on account of illness or some other unavoidable causes, the transcription of the evidence should be delayed over the given time, it should be forwarded in sections (100 to 150 pages) so that the necessary review of the case may be started as soon as possible.

8. Reporter's account for transcription of evidence should be presented in triplicate.

Then, the next part has to do with details of execution:

RE DETAILS OF EXECUTION

.....

2. Contrary to popular belief, there is no official hangman or executioner for the dominion. The sheriff or any person delegated by the sheriff should act as such.

3. Since in capital cases the decision of His Excellency the Governor General in Council is seldom reached and announced before the last few days preceding the date for execution, the sheriff, in every case, should make preparations for the execution. The usual period allowed between the date of the sentence and the date fixed for execution leaves barely sufficient time for all the work that has to be done in Ottawa by officials concerned with each capital case. No matter how favourable or unfavourable to commutation the jury and judge may be, the evidence must be analysed before submission to the Minister of Justice, and studied by him before the case goes to council.

4. The decision of His Excellency the Governor General in Council is made known by telegram from the Department of the Secretary of State, and confirmed by letter. It is the rule in all cases that the sheriff should repeat back the telegram, word for word, immediately upon its receipt.

5. Immediately after the execution, documents as called for under section 1072 of the Criminal Code should be forwarded to the Department of the Secretary of State with all possible despatch."

That is the end of the instructions to the judges.

The material that is available, in every case, for the consideration of the responsible minister and the cabinet is as follows:

Transcript of Evidence. This is the written record of the proceedings at trial and includes every word spoken by witnesses, the judge, counsel, jurors and the accused. It includes anything that the accused may say when he is asked whether he has anything to say before sentence is passed upon him.

Ordinarily it does not include the counsel's addresses, the judge's address, but not counsel's.

Exhibits. When the time for an appeal has expired without an appeal being taken or, if an appeal has been taken, when judgment has been rendered thereon, all the documentary exhibits in the case are sent to the Department of Justice in order that they may be examined in connection with the reading of the transcript of the evidence. It is usually found not to be necessary to require the production of exhibits other than documents and photographs but where they are required, they are requested from and are provided by the registrar of the court in whose custody they are at the time.

Judge's Report. This is the report referred to in section 1063 of the Criminal Code. It is a detailed summary of the important features of the case. It reviews the evidence adduced for the prosecution and the defence and comments upon any questions of law that may have arisen. Where there is conflicting evidence the judge is frequently invited to express his opinion with respect to the weight to be given to the evidence, if he does not do so in the first instance.

That is, if we get a report from him and we are not quite content with his comments upon the conflicting evidence, we write back to him and say: "Well, what about this particular matter? We would like you to offer some further comment."

Police Report. The investigating police force submits a detailed report of the investigation that it conducted in connection with the case. This will frequently contain information that may be relevant but which, for one reason or another, has not been adduced as evidence at the trial or is not mentioned in the judge's report.

It, for example, may not be admissible under the rules of evidence at the trial, but it may nevertheless have a bearing upon commutation.

Fingerprint Section Report. In every case there is procured from the fingerprint section of the R.C.M. Police a report showing the fingerprints of the convicted person, his photograph and his record of previous convictions, if any.

Sheriff's Report. During the period in which the condemned person is in custody awaiting the day for execution of the sentence of death imposed upon him, a report is obtained from the sheriff or the keeper of the prison in which he is confined. This report includes a statement by the prison physician with respect to the mental and physical condition of the condemned person. Of course, if the condemned person is in custody for any substantial period of time, reports will be obtained periodically.

Representations of Defence Counsel. As the committee has previously been informed, it is not necessary for a condemned person to submit, either by himself or through his counsel, agent or friends, any application for clemency. Each case receives the same careful and painstaking perusal and consideration before the minister goes to the Governor in Council with his recommendation. It is customary, however, for the counsel who defended the condemned person at his trial or who acted for him on his appeal, to write to the Minister of Justice setting out his reasons in support of an exercise of clemency by the Crown.

He may call long distance or he may get on the train and come to Ottawa and make his presentation in person. He is not restricted in any way. He is allowed all the time he wishes. He could bring the prisoner's friends or relatives. We hear them all. There are also put on file all the letters that have been written by the family and friends of the accused and any petitions that may have been signed on his behalf or letters which have been written by any person who is interested in the matter. They all go on the file and are considered.

Material Relating to Appeals. Where a convicted person takes an appeal to the court of appeal from his conviction and the appeal is dismissed, the department obtains copies of the reasons for judgment of the judges as soon judgment is rendered. Copies of the notes of argument filed on behalf of the convicted person and the Crown are also obtained. The same applies with respect to appeals to the Supreme Court of Canada. If there is no appeal as of right to the Supreme Court of Canada but application is made for leave to appeal to that court, and is refused, the reasons for judgment of the judge who dismisses the application are obtained immediately as well as any notes of argument that may have been filed on behalf of the convicted person or the Crown.

The material that I have just referred to is the minimum available for consideration by the minister and the Governor in Council in every capital case.

I think, Mr. Chairman, I should explain that at the present time the minister who is now responsible for consideration of this material and for making recommendations to the Governor in Council is the Solicitor General, the Hon. Ross Macdonald.

However, no two cases are ever the same and it frequently happens that, in considering a particular case, points of difficulty will arise in respect of which the minister will consider that, before any decision can be made, additional information or clarification is necessary. In such a case the minister is at some pains to ensure that the problem is settled to his satisfaction, either by correspondence with the persons who are competent to inform him in connection with the subject matter of his inquiry or by sending an officer of the remission service to interview the persons concerned or by interviewing them himself. The point that I wish to make here is that no detail is ever considered to be too trivial, where the life of a condemned person is concerned, to merit the most comprehensive inquiry and investigation.

There is one class of case in which this additional inquiry is invariably involved. That is the case where insanity has been raised as a defence at the trial but the accused has, nevertheless, been found guilty, or where, although insanity has not been raised as a defence at the trial, some suggestion is made after the trial that insanity should have been raised, or at the least, there is reason to believe that the condemned person is not mentally normal.

Where insanity has been raised at the trial there will, almost invariably, have been an inquiry at the trial to determine the issue whether the accused was then fit to stand his trial.

Apart from whether he was insane at the time the offence was committed, is he sufficiently sane at the time of the trial itself to instruct counsel so he can have a fair trial?

On the trial of that issue, evidence will have been given by psychiatrists, both for the Crown and for the defence. That evidence is perused with great care by the officials in the department and, of course, by the minister. The evidence is often highly technical and may involve the question whether the accused person was suffering from one of a variety of forms or types of mental deviation and, if so, precisely which of those forms or types; or it may involve

the question whether the accused person was suffering at all from any form of mental deviation. With respect to this latter point I might say that it sometimes happens that, after all the evidence and available material has been studied, the only proper conclusion that can be arrived at is that the supposed mental deviation or deterioration was not more than a sham and a pretence on the part of the accused. In any event, as I shall mention in more detail later, it is the practice of the minister concerned to avail himself of the experience and advice of independent experts in the field of psychiatry.

Thus, in a case of this kind where evidence, perhaps conflicting, has been given by psychiatrists for the Crown and for the defence at the trial of the issue, we weigh the evidence as carefully as we can and then we seek independent psychiatric experts to assist us in deciding the conflicts in the evidence before us.

Unless the accused has been found guilty and sentenced to death and the question of the commutation of that death sentence arises the minister will not have occasion to consider the psychiatric evidence given at the trial on the issue as to whether the accused was then fit to stand his trial. In such event, he considers it only as having a bearing upon the question of commutation. The minister and the Governor General in Council must be careful at all times that in exercising the royal prerogative of mercy they do not set themselves up as a final court of appeal on questions of either law or fact and in that way interfere with the judiciary, the jury or the administration of justice.

As we all know, one of the first attacks upon liberty in any country that has been free is an interference by the executive with the independence of the judiciary in the administration of justice. We have to be careful in discharging our duties here that we do not, by our actions, set ourselves up as a court of appeal over all the other courts of appeal.

The duty and right of the Governor General in Council in this connection are confined to the exercise of the royal prerogative of mercy. In such cases, involving the question of whether the convicted man is insane, there is usually a substantial amount of professional opinion available for consideration. That is, before it comes to us it is on record at the trial.

There will be the evidence of the psychiatrists called to express opinions on the trial of the issue whether the accused is fit to stand his trial. Additional expert evidence may also have been given at the trial on the question whether the accused was suffering from insanity, within the legal definition of that word, at the time of the commission of the offence. There will usually be, in the transcript of evidence, statements given by persons who knew the accused before the offence was committed, with respect to his conduct prior to the commission of the offence. There will be a report fom the keeper of the prison in which he is confined with respect to the nature of his conduct during the period following his trial and, for that matter, during the period when he was in custody awaiting trial.

It is the practice to make all this material available to an independent psychiatrist of repute.

That is, if we have any doubts in the matter we gather together all of the material which is on record in connection with the case and we hand that over to the independent psychiatrist.

At the present time that psychiatrist is Doctor J. P. S. Cathcart, of Ottawa, formerly the chief neuropsychiatrist for the Department of Veterans Affairs, who is now in private practice in Ottawa. With respect to cases arising in the province of Quebec, it has been the practice to retain the services, in this connection, of Doctor J. A. Huard, superintendent of the Bordeaux Hospital for the Insane. It is the usual practice for the psychiatric adviser to the minister to visit the institution in which the condemned person is held and spend a substantial period of time interviewing him.

This is done before he ventures to express any opinion of his own on the basis of the evidence given by the other psychiatrists and upon the points to which that evidence was addressed.

That interview is not any haphazard affair. Before visiting the institution, of course, the examining psychiatrist has, from the material which he has examined concerning the condemned man, some idea of what he is like and of the mental deviations from which he is thought to be suffering. Before the psychiatric examination begins, the prisoner is first medically examined and appropriate tests are given to him that will assist the psychiatrist in forming his opinion. For instance, if it is any form of mental deviation that might be caused by syphilis, a Wassermann test is available and other medical tests of the same kind are made.

The balance of the interview between the psychiatrist and the condemned man will ordinarily consist of questions and answers and conversation. It will generally occupy a full day and, if necessary, more than a day. When this examination has been completed and the psychiatrist has had an opportunity to consider all of the circumstances involved in the case, a meeting is held between him, the minister and the departmental officials. At that meeting, or if necessary at a series of meetings, the entire case is reviewed.

The minister does not, of course, limit himself to one independent psychiatrist if the circumstances appear to warrant obtaining still another independent opinion. The minister welcomes, of course, the opinion of the prison psychiatrist, if there is one. He also welcomes the opinion of the psychiatrists who have had the inmate under examination in any provincial mental institution to which he may have been sent for examination during any time between the day when the offence is alleged to have been committed and the day scheduled for execution of the sentence. He is glad to have the opinion of any psychiatrist to whom, at any time, the condemned man may have turned for treatment.

After the most serious consideration of all the factors involved and assisted by the psychiatrist's reports and advice the minister has to arrive at his decision which he takes then as a recommendation to his colleagues in the cabinet. Here again the whole question is thoroughly reviewed in the light of the collective experience of all the members of the cabinet and the final decision is reached which is the basis of commutation.

That concludes my remarks concerning the nature and extent of the investigation which is made and I would now like to deal with the criteria by which those facts which the investigation has disclosed are judged in arriving at our conclusion.

The criminal law of Canada is based upon the criminal law of England. It is not surprising, therefore, to find that the principles by which the responsible minister of the Crown in Canada is guided in determining the nature of the recommendation that he will take to cabinet in a capital case are, in many respects, similar to those that apply in the United Kingdom.

As a matter of fact, if we grant any intellectual competence to the British authorities and to our own, it is hard to see how, in applying their minds to what are similiar problems, they would not have reached similar conclusions.

There is one point which, while upon careful reflection it is obvious enough, cannot be too strongly emphasized. That is that there are not, and there cannot be, precise rules laid down for the purpose of determining, in any given case, whether or not there should be a commutation of a sentence of death to one of life imprisonment or lesser punishment.

I think that it would be appropriate for me, in this connection, to quote paragraph 10 of the minutes of evidence given by representatives of the Home Office before the Royal Commission on Capital Punishment in the United Kingdom on the first day of that commission's inquiry, August 4, 1949. The memorandum submitted by the Home Office contained the following paragraph 10:

> The principles which guide the Home Secretary in deciding what advice should be given The King cannot be very precisely defined.

I think I should point out what may have been established before in evidence before this committee; and that is that in the United Kingdom the Home Secretary bears upon his own shoulders entirely the full responsibility for deciding whether there should be commutation Here the practice is that the responsible minister—and this is a very grave responsibility in itself—recommends to his colleagues what he thinks the disposition of the question of commutation should be. His colleagues do not necessarily have to accept his advice and on the odd occasion they may dissent from it.

Hon. Mrs. HODGES: Does not the Home Secretary refer it to the Governor in Council at all?

Hon. Mr. GARSON: No, he is the man. You remember the last fairly controversial case that occured in Great Britain?

Mr. THATCHER: The Bentley case.

Hon. Mr. GARSON: Yes. Sir David Maxwell Fyfe in that case had to bear a heavy responsibility for what I think was a very honest and courageous decision. I was quoting from a memorandum submitted by the Home Office and after that first preliminary sentence they proceed to quote from Mr. Herbert Gladstone and they say this, as stated by Mr. Herbert Gladstone in the House of Commons on 11th April, 1907. This is quoted in 1949, so you can see there is continuity of their policy.

> It would be neither desirable nor possible to lay down hard and fast rules as to the exercise of the prerogative of mercy. Numerous considerations—the motive, the degree of premeditation or deliberation, the amount of provocation, the state of mind of the prisoner, his physical condition, his character and antecedents, the recommendation or absence of recommendation from the jury, and many others—have to be taken into account in every case; and the decision depends on a full review of a complex combination of circumstances, and often on the careful balancing of conflicting considerations.

I do not think that could be better stated. Mr. Herbert Gladstone then proceeds to quote Sir William Harcourt:

> As Sir William Harcourt said in this House, 'The exercise of the prerogative of mercy does not depend on principles of strict law or justice, still less does it depend on sentiment in any way. It is a question of policy and judgment in each case, and in my opinion a capital execution which in its circumstances creates horror and compassion for the culprit rather than a sense of indignation at his crime is a great evil'.

Then I continue quoting from Mr. Herbert Gladstone's own statement:

> There are, it is true, important principles which I and my advisers have constantly to bear in mind; but an attempt to reduce these principles to formulae and to exclude all considerations which are incapable of being formulated in precise terms, would not, I believe, aid any Home Secretary in the difficult questions which he has to decide.

That is the end of Mr. Herbert Gladstone's quotation, but going on with the quotation from the Home Office, they say this:

> Some indication can, nevertheless, be given of the practice followed by successive Home Secretaries in some classes of case and of the weight given to certain considerations.

The reasons I quoted from this Home Office statement are that I am certain, without any excess of modesty, that I could not state these principles as well myself; and also to indicate that the Home Office in 1949 is quoting what Mr. Herbert Gladstone said in 1907 and he in turn, is quoting what Sir William Harcourt said on a previous occasion. Clearly there is a well-settled approach to this problem of commutation which has long stood the test of time in Great Britain and, in Canada. Considerations similar to the foregoing apply in respect of the royal prerogative of mercy in Canada in respect of the question of commutation of sentences of death. It should not be expected, however, that the indications that may be given will have the form of precise definitions. At best, all that can be done is to indicate some of the broad, general principles that are kept in mind in respect of every capital case that comes before the cabinet for decision.

It frequently happens that the chief defence raised on behalf of the accused person at his trial becomes the chief argument in favour of commutation in the event that it proves to be inadequate as a defence to the charge and the conviction of the accused results. Thus, where insanity is raised as a defence at the trial, and is not successfully maintained, insanity will generally be the feature that is urged as the basis for commutation. Similar considerations apply in respect of the defences of drunkenness and provocation, drunkenness connected with provocation as to whether a provocation which would not be a sufficient excuse for a man if he were sober becomes sufficient excuse in relation to a person who is intoxicated at the time the provocation was offered.

Then, where the defence is that the Crown has not proved, beyond a reasonable doubt, that it was the accused, in fact, who committed the offence, that allegation will also usually be urged as the chief ground in favour of commutation of the sentence of death to one of life imprisonment.

Where a legal defence that has been raised unsuccessfully at the trial is advanced as the chief reason for commutation, the Governor in Council is not bound, and obviously should not be bound, to apply the same strict rules of interpretation that must be applied in a court of law. It may very well happen, therefore, that evidence of insanity that has proved to be insufficient, at the trial, to relieve the accused of criminal responsibility for his act, may be sufficient to justify commutation by the Governor in Council. Similar considerations apply in respect of all other legal defences that may have proved unsuccessful at the trial.

Another aspect of the matter should also be kept in mind. The proceedings at the trial are governed by rules of procedure that have been developed throughout the centuries. Similarly, the question whether any particular item of evidence is or is not admissible is governed by rules of evidence established throughout the years in the interests of the due administration of justice. Such rules, both of procedure and evidence, are essential to ensure the proper and effective operation of a system of law. No such rules of procedure or evidence apply, or should apply, however, to restrict the power of the Governor in Council to exercise clemency under those four headings I have mentioned, that is, insanity, drunkenness, provocation and reasonable doubt.

I propose now to discuss, somewhat briefly and somewhat generally, the circumstances in which a legal defence that has proved to be unsuccessful at

the trial of an accused for a capital offence, may nevertheless be sufficient to justify interference on the part of the Governor in Council.

Let me first discuss this question of the matter of the mental condition of the condemned person either at the time that the offence was committed or at the time scheduled for the execution of the sentence of death imposed upon him. This mental condition is frequently advanced as a reason for commutation of the sentence of death to one of imprisonment.

Where the issue of insanitty has been raised at the trial, there will have been an opportunity for the jury to make a finding on the question whether the accused person was unfit, by reason of insanity, to stand trial. Similarly, the jury will have had an opportunity to determine whether the accused person should be found not guilty on the ground that he was insane at the time the offence was committed. I have already indicated the material that will be available for consideration by the responsible Minister and by Cabinet in such a case and I have also indicated the additional steps that are taken to secure relevant information in this connection.

I have no hesitation in saying that the degree of mental abnormality that is sufficient to warrant a commutation of a sentence of death to one of imprisonment is less than is required, under the law, to warrant a finding by the jury that a person is not guilty on account of insanity. The standard that must be applied by the jury is set out in section 19 of the present Criminal Code, which is a codification of the well known M'Naghten Rules. Section 19 provides as follows:

> 19. No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such an act or omission was wrong.
>
> 2. A person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, under the provisions hereinafter contained, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.
>
> 3. Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved.

As you can see, this section lays down the tests or standards to be applied for the purpose of determining whether a person shall or shall not be found by a court of law to be criminally responsible for his conduct in a particular set of circumstances. The jury may have found a sufficient degree of mental normality in the accused to hold him criminally responsible. The jury may have said, "Well, he may have some aberration; but he appreciates the nature and quality of his act; he knows that that act was wrong; and, therefore, we find him guilty." But if there appears to have been, nevertheless, a degree of abnormality sufficient to affect materially the control of his conduct, especially when he was under great mental stress or emotional strain, the tendency, depending of course upon the facts of the case under review, would be to exercise clemency by way of commutation.

It sometimes happens, of course, that although an accused person may have been sane at the time the offence was committed and may have been fit to stand his trial, nevertheless between the time of conviction and the day set for execution of the death sentence, mental deterioration or abnormality sets in or increases so that it cannot be said that, immediately prior to the day set for the execution, the condemned man is sane. In such a case it is invariably the practice to commute the sentence to one of life imprisonment, and that is in disregard of how heinous his crime may have been.

Again, if, after conviction, there appeared to be good reason to believe that, notwithstanding the finding of the jury, the accused was not, by reason of insanity, fit to stand his trial, the Minister of Justice would feel bound to direct a new trial under section 1022 of the Criminal Code which, of course, he has the power to do.

The extent to which the defence of insanity, although insufficient to result in the acquittal of an accused at the trial has been sufficient to justify commutation of the death sentence to one of life imprisonment, is indicated by table M, which was distributed this morning. If you look at that table you will see that between the years 1937 and 1952 insanity was the only defence raised or one of the several defences raised in seventy-two cases, and in each one of those cases the accused was convicted.

Mrs. SHIPLEY: Twenty-two cases, is it not? I am sorry, it is seventy-two.

Hon. Mr. GARSON: Yes, that is right. In each one of those cases the accused was convicted, notwithstanding the defence of insanity, but in forty-three out of the seventy-two cases the sentence was commuted to life imprisonment.

My next heading is drunkenness.

Drunkenness is a defence, sufficient to reduce a charge of murder to manslaughter, where the degree of drunkenness is sufficient to have made it impossible for the accused to form the intent that is an essential element in the crime of murder.

That is, in a criminal case the Crown must prove that the accused had a *mens rea* or guilty mind. If he was too drunk to form a guilty mind that fact would negative that essential element of *mens rea,* and disprove the Crown's case.

Of course, the burden of establishing drunkenness sufficient to constitute a defence is on the accused. Where it is raised as a defence at the trial, but the jury nevertheless finds the accused guilty of murder, it will generally be one of the prime considerations in determining whether or not the sentence of death should be commuted. The Governor in Council will consider all the relevant circumstances, including the effect that the quantity of alcohol consumed might be expected to have upon a person such as the accused.

An indication of the extent to which, between 1937 and 1952, the element of intoxication, while not sufficient to avoid a conviction for murder was nevertheless sufficient to result in commutation of the death sentence, appears in Table N. That table discloses that during the period in question intoxication was raised as the only defence or as one of several defences in thirty-three cases in which a conviction for murder nevertheless resulted. Of those thirty-three cases, however, eleven were commuted to sentences of life imprisonment.

May I next deal with provocation.

Section 261 of the Criminal Code provides in subsections (1) and (2) as follows:

> Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.
>
> 2. Any wrongful act or insult of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

The members of the jury, of course, having heard first-hand the evidence of all the witnesses, are in the best position to judge, as reasonable men,

whether the death was caused in the heat of passion as a result of sudden provocation. Where the jury's finding in this respect is adverse to the accused, it would be unusual, indeed, for the Governor in Council, in the absence of other material considerations, to substitute his judgment in the matter for that of the jury.

That would be a matter, if the Governor in Council were not extremely careful, of the executive interfering with the jury's rights in the administration of justice.

However, it frequently occurs that other circumstances are present which lead to the conclusion that it is proper in a given case, to substitute a sentence of life imprisonment for that of the death sentence. Those circumstances might involve such matters as lack of mental and emotional maturity, youths, acts of provocation extending over a long period of time, intoxication, unstable temperament, and so on.

I think I should add, Mr. Chairman, that the Governor in Council would approach a matter of this kind very circumspectly; and it would require a considerable amount of additional evidence to warrant commutation in spite of the jury's verdict.

Yet from to time cases do arise where, notwithstanding the guilty verdict rendered by the jury and, it may be, the dismissal of an appeal by the Court of Appeal, some doubt exists in the mind of the Minister of Justice with respect to the question whether, in fact, the condemned person was the one who caused the injury as a result of which the death of the deceased person occurred. This does not occur very frequently, because, I suppose, of the safeguardes provided by the law against unjust conviction. Unless the guilt of the accused is established, beyond a reasonable doubt, to the satisfaction of the jurors, they will presumably not return a verdict of guilty. Similarly, if the verdict of the jury is unreasonable or cannot be supported having regard to the evidence, the Court of Appeal will quash the conviction and direct a judgment and verdict of acquittal to be entered, or direct a new trial, or substitute a verdict of manslaughter.

Notwithstanding these safeguards, however, it may be that, in a very limited number of cases, the responsible Minister may have some doubt with respect to the guilt of the accused. This will particularly be the case where, after all legal proceedings have been concluded, new evidence comes to hand which was not available at the trial, and the jury did not have it before them.

In such a case, it is not the practice in Canada, as it is in the United Kingdom, to substitute a sentence of life imprisonment for the sentence of death already imposed upon the accused. In our view, if such doubt exists, it goes to the guilt or innocence of the accused.

If he is innocent, it is not sufficient that the sentence of death imposed upon him should be replaced by a sentence of life imprisonment. The question of his guilt or innocence should be placed again before the appropriate court and that, in Canada, is what is done. Paragraph (*a*) of subsection (2) of section 1022 of the Criminal Code provides that

> Upon any application for the mercy of the Crown on behalf of any person convicted on indictment, the Minister of Justice,
>
> (*a*) if he entertains a doubt whether such person ought to have been convicted, may, after such inquiry as he thinks proper, instead of advising His Majesty to remit or to commute the sentence, direct by an order in writing a new trial at such time and before such court as the Minister of Justice thinks proper;

There have been in Canada, nine cases of persons convicted of murder in respect of whom new trials were ordered by Ministers of Justice under the

authority of this provision in the criminal law. Of these, five resulted in acquittal, three resulted in convictions, and one accused was found unfit, because of insanity, to stand trial.

Under the authority of this same section, the Minister of Justice, instead of ordering a new trial, may refer the whole case to the Court of Appeal, if no appeal has already been taken. The appeal case so ordered is then heard and determined by the Court of Appeal in the usual way. The last and a recent example we had of that was where, through some slip on the part of the accused's solicitor, he had neglected to file an appeal within the proper time and we accordingly ordered an appeal under this section, 1022 of the Criminal Code.

Five capital cases have been referred to courts of appeal under the authority of these provisions. In four of the cases the appeals were dismissed. In the remaining case the court of appeal ordered a new trial, pursuant to which the accused was again convicted.

Incidentally, the outcome of these appeals showed that the Courts thought that the Minister of Justice's doubt was not well founded. Yet, if there is doubt in a capital case as to the prisoner's guilt, it seems better that that doubt should be considered by the Courts under section 1022 as I have stated.

Moreover, again under the authority of the same section, if the Minister does not consider it appropriate to order a new trial or to refer the whole case to the Court of Appeal, but he desires the assistance of the Court of Appeal on any point arising in the case, he may refer that point to the Court of Appeal for its opinion, and the court is required to consider the point so referred and furnish to the Minister its opinion in connection therewith.

YOUTH

Canada does not have, as there is in the United Kingdom, a statutory provision setting out a minimum age with respect to the execution of the punishment of death. In the United Kingdom the sentence of death was abolished for persons under the age of 18 by the Children and Young Persons Act, 1933, but, as reported in the proceedings of the United Kingdom Royal Commission on Capital Punishment, it had previously been the practice for many years not to exact the supreme penalty in the case of a person under that age. The same result has been obtained in Canada by virtue of the royal prerogative of mercy. In Canada no person has ever been executed while he was under the age of 18 years.

We have not any statute covering it, but it is just as it was in the United Kingdom before they passed their law.

Mr. SHAW: Have you had any case where they were convicted while under 18 years of age?

Hon. Mr. GARSON: Yes. In only one case has an execution occurred where the offence was committed while the accused was under that age. In that case the accused was 17 years and 10 months at the time the offence was committed and the offence, in addition to murder, involved kidnapping and arson. Table H sets out the ages of persons convicted of murder during the period 1930-1952.

This relatively arbitrary rule of practice applies in respect of persons under the age of 18 years, but youth is also a substantial consideration where the condemned person is 18 years or over. The factor of youth, in conjunction with other material considerations, will frequently be the occasion for an exercise of clemency by way of commutation of the sentence of death to one of life imprisonment. Those considerations, among others, will include

the nature of the home life and upbringing of the accused, his degree of emotional development, his degree of mental development, his temperament, and so on.

If you look at table H, you will see in the first column that there has been no execution of anyone under the age of 21 since 1947.

Now, I would like to deal with cases of constructive murder. Cases have arisen in the past where, in all the circumstances, and especially having regard to the considerations that premeditation and intent to kill or to inflict an injury known to the accused to be likely to kill, were apparently absent, the Governor in Council has seen fit to commute a sentence of death to one of imprisonment for life.

There is a provision in the Criminal Code that an accused is presumed to intend the consequences of his act, and if the natural consequence is death then he is presumed to have intended that death.

There have been cases of commutation where, although the jury must have been satisfied that the accused intended death of another as the natural consequences of his acts, there was no apparent reason or motive for the accused to wish to cause the death of his victim. These considerations are, however, in such cases, usually coupled with other material considerations such as youth, persuasion of strong-willed companions, honest mistake, unforeseen results resulting from the performance of an official act, self-defence, thoughtlessness, or, in more general terms, conduct tending to negative moral guilt and therefore tending to make the offence less culpable, and in such cases commutation is granted.

Cases sometimes arise where two or more persons are involved in conduct which results in the commission of a murder, but all such persons are charged with murder because they are parties to the offence by virtue of section 69 of the Criminal Code. I would like to quote that section:

> 69. Every one is a party to and guilty of an offence who
> (*a*) actually commits it;
> (*b*) does or omits an act for the purpose of aiding any person to commit the offence;
> (*c*) abets any person in commission of the offence; or
> (*d*) counsels or procures any person to commit the offence.

Mr. THATCHER: how does that fit in with your statement that there has to be intent?

Hon. Mr. GARSON: It fits in in this way; the Crown has to prove intent, either to commit the crime itself as set out in the definition of the crime in question, or the kind of intent that the Crown would have to prove in this particular case under section 69 would be the intent to commit the murder or the intent to aid another to commit the murder, or the intent to abet another in committing murder, or the intent to counsel or procure another to commit the murder. If the accused aided, abbetted, or counselled or procured the murderer to commit it, he too would be guilty of the offence.

Mr. THATCHER: That would not mean he necessarily had intent?

Hon. Mr. GARSON: Yes. It would mean he had the intent to aid, abet or counsel or procure another to commit an offence. Suppose two assassins go out to kill a certain victim for hire, one is assisting the other and they are engaged in a common enterprise. The assistant is certainly intending to aid the other person to commit the offence and under this Section 69 the Crown would not need to prove that he intended to kill the victim himself.

The PRESIDING CHAIRMAN: If one did the assisting and one did the killing?

Hon. Mr. GARSON: Yes.

Mr. FULTON: Is there not a broader principle that if anyone intends to commit a crime through which death results, it automatically results in murder?

Hon. Mr. GARSON: That comes under another section. I was trying to relate Mr. Thatcher's question to this section. He says how could these people under this section be guilty of murder. They are guilty of murder if they do anything to aid a person to commit it or abet any one in the commission of that offence. For example, if one gangster hired another to assassinate a third, the first gangster by counselling and procuring this murder himself would be guilty of the murder if the counselling and procuring of it could be proven against him.

Mr. THATCHER: Suppose we were out with bank robbers and suppose that in the hold-up with no intention of killing a man one actually did, how would the others have intent under the law?

Hon. Mr. GARSON: The point you now raise comes under another section of the Code. If you are asking the question from a moral point of view—as I rather infer that you disapprove of this principle from a moral point of view —I suppose that the answer would be that that is an offence because the law says it is.

Mr. THATCHER: You would not take that as a reason for commuting a sentence because there had not been intent?

Hon. Mr. GARSON: Oh, yes. "Culpable homicide is murder, (*a*) if the offender means to cause the death of the person killed; (*b*) if the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and is reckless whether death ensues or not." He says I will give him a shot through the liver and another one through the kidneys and I do not care whether he dies or not; that is murder if he dies. (*c*) If the offender means to cause death, or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, although he does not mean to hurt the person killed." If you shoot at me with intent and kill Senator Hayden instead you commit the murder of Senator Hayden.

Hon. Mrs. HODGES: He is just as dead.

Hon. Mr. GARSON: "(*d*) If the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting anyone." If, for example, he arms himself and robs a bank and during the course of the robbery he fires at the manager just to wound him, intending merely to put him out of the running, and his aim is bad and hits him mortally although not meaning to kill him, it is murder if the manager dies.

Mr. THATCHER: I understand that, but how about the accomplice?

The PRESIDING CHAIRMAN: I think that is more a question for later.

Hon. Mr. GARSON: Perhaps I can clear that up now. The point now raised comes, I think, under Section 69, Subsection 2, which reads: "If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence, committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose."

Mr. THATCHER: I still cannot see how accomplices necessarily have intent to murder.

Hon. Mr. GARSON: They have intent to murder because the Code in effect says that they have.

Mr. THATCHER: But, do you not think that perhaps morally there is something wrong with that section?

Hon. Mr. GARSON: That is the point that you are bringing up.

I have quoted this section 69. Now let me proceed. All are parties to the commission of the offence and all are liable to be convicted of murder, even though the participation of one in the occurrence may have been much less than the participation of the other. That is your point. Occasions have arisen when, having regard to all the circumstances, it has been thought proper to commute the sentence of the lesser participant but to let the law takes its course in the case of the others. I suggest perhaps that commutation meets your moral point. Is that right?

Mr. THATCHER: Yes.

Hon. Mr. GARSON: The report of the United Kingdom Royal Commission on Capital Punishment, states, at page 11, that "in certain classes of case a reprieve is a foregone conclusion." Such cases are those that are described as calling more for pity than for censure, those, for instance, of what are commonly known as "mercy killings" and the survivors of "genuine suicide pacts". Not a suicide pact where a man wants to get rid of an embarrassing lady friend, for example, and they enter into a solemn suicide pact, and she goes through with it and he takes care not to do so.

Mr. SHAW: Or vice versa.

Hon. Mr. GARSON: Or vice versa. The United Kingdom Report notes that there has not been since 1849 a case of the execution of a mother for the murder of her own child under the age of one year.

I do not think it would be fair to say that in Canada the practice of the Governor in Council involves, as a "foregone conclusion", commutation in the case of mercy killings and survivors of genuine suicide pacts. I say this for the reason that there has not come to the Governor in Council, for decision, a sufficient number of cases for it to be said that a "practice" in this respect exists. The reason is, I suppose that such cases, if genuine, would tend to excite the sympathy of the jury, which would thereby be moved to return a verdict other than that of guilty of murder. It is only when in a mercy death or genuine suicide pact the jury finds harshly, in spite of it being a mercy killing, or genuine suicide pact, that the accused is guilty, that the question of commutation of a death penalty arises. If the jury acquits in such cases the question of commutation never gets to us. Now I have no doubt that the Governor in Council would regard with the greatest sympathy the case of a person convicted of a genuine "mercy killing" or the survivor of a genuine "suicide pact". As a matter of fact there was a case you may have read of in Drumheller about two years ago which was a case of a mercy killing and there was no hesitation at all in granting commutation in that case. Yet while we have the greatest sympathy in all such cases, I do not think that we can say that it is a foregone conclusion that such persons in Canada would have their sentence of death commuted.

As far as the killing by a mother of her child in arms is concerned, I should think that there again the tendency would be for the jury to return some verdict other than guilty of murder. Prior to the enactment of the infanticide provisions in the Criminal Code of Canada in 1948, juries tended to return verdicts of manslaughter in such cases. Indeed, the charge most frequently laid in such cases was manslaughter rather than murder. Since 1948, the Code has provided for a charge of infanticide to be laid against such a person. Subsection (2) of section 262 provides that

> a woman who by wilful act or omission causes the death of her new born child shall be deemed not to have committed murder or

manslaughter if at the time of the act or omission she had not fully recovered from the effect of giving birth to such a child and by reason thereof the balance of her mind was then disturbed, but shall be deemed to have committed an indictable offence, namely, infanticide.

This provision has been amended in the Criminal Code Bill, which is now before Parliament, so that, upon the coming into force of the new Criminal Code, the provision will provide as follows:

A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.

The maximum punishment upon conviction for infanticide is imprisonment for three years.

I do not think it could be said that, in every case where a mother kills her child during the period of a year or so after its birth, and is convicted of murder in respect thereof, it would be a foregone conclusion, in Canada, that the sentence of death would be commuted to one of life imprisonment. Certainly, however, the circumstances would be considered most carefully with a view to determining whether the case contained elements calculated to make it fall more within the definition of infanticide than within the definition of murder. The case in which an unmarried mother killed her newborn child under the distress of mind and fear of shame caused by the birth would undoubtedly be one in which the tendency would be to commute the sentence of death to life imprisonment.

What I have said thus far cannot, in any sense, be taken to be exhaustive of the principles that are kept in mind in determining whether a sentence of death should be commuted. I want to repeat again that every capital case must necessarily be dealt with in the light of all the circumstances. No two murders are ever committed in exactly the same way and no two convicted murderers are ever exactly alike. A circumstance that, in relation to one case, may have great weight in support of the view that clemency should be exercised may, in another case involving different facts and different personalities, be of much less weight.

The Executive, in advising on the question of the commutation of a death sentence does not, in any sense, operate as a court of justice. Its function is to advise with respect to the manner in which the mercy of the Crown shall be exercised: and, it must take cognizance of human weaknesses and failings. The advice tendered, however, must also be based upon the concept that the law against murder is intended to protect law abiding citizens and society itself from the crime of murder. Capital punishment is provided for by law primarily as a deterrent. Its value as such would be destroyed if for improper reasons the executive pardoned him whom after a fair trial a jury of his peers had found to be guilty of murder, without any extenuating circumstances. The Royal Prerogative of Mercy is a recognition in our constitution that there may be circumstances where, by reason of the rigidity of the law, the punishment of death is a greater punishment thant that which is merited by the conduct in respect of which the person has been condemned to death. In those circumstances executive clemency operates to relieve the harshness of the punishment imposed by virtue of the rigidity of the law: but there is preserved the deterrent effect of the threat of capital punishment in respect of those cases where, in all the circumstances, the punishment of death is not excessive having regard to the nature of the offence committed.

The PRESIDING CHAIRMAN: Possibly we should adjourn and meet again at 3.30.

We should have a motion that these tables A to O inclusive, which we have here, be appended to the proceedings for today.

Moved by Mr. Winch.

Carried.

AFTERNOON SESSION

3.30 p.m.

The PRESIDING CHAIRMAN (*Hon. Mr. Hayden*): Ladies and gentlemen, we have a quorum and we have reached the question period. Before going on with that, I would like to say that the next meeting is on Thursday morning at 11.00 o'clock. The subcommittee will be meeting tomorrow afternoon at 3.30 in room 148 of the Senate.

Hon. Mrs. HODGES: And it will be at 11.00 o'clock in this room on Thursday?

The PRESIDING CHAIRMAN: Yes, 11.00 o'clock on Thursday in this room, that is to hear the United Church. Mrs. Shipley?

Mrs. SHIPLEY: Thank you, Mr. Chairman. I believe, Mr. Garson, that you said the final plea of the counsel for the defence and the Crown was not submitted as part of the transcript that was sent to your department?

Hon. Mr. GARSON: That is right.

Mrs. SHIPLEY: Would you care to comment on the reasons why?

Hon. Mr. GARSON: I do not know that I could offer any particular reason except that has been the practice. I am just offering my own opinion, just rationalizing if you will a fact, that there may have been a feeling that what the Governor in Council was concerned with was the views of the adjudicating officers rather than those of the pleaders either for or against the accused.

Mrs. SHIPLEY: Is it that in our courts they might appeal to the sympathies in their final plea to the jury rather than sticking to facts of evidence?

Hon. Mr. GARSON: Well—

Mrs. SHIPLEY: Might that be one of the reasons?

Hon. Mr. GARSON: Yes, that could be one reason but I think the fact is that the jury's verdict and the judge's charge are both the final resolving of such pleas pro and con.

Mrs. SHIPLEY: In other words, a golden-tongued orator in presenting such a plea, if an accused did not have such a person defending him it would not make much difference at the time it got to your attention whether the man was an eloquent speaker or not. You deal with facts?

Hon. Mr. GARSON: Yes, that is right, and we also deal, so far as the original material is concerned, with the judge's view of those facts in his charge to the jury and with the jury's verdict on those facts and any rider it may wish to attach making a recommendation of mercy or with the fact that it did not attach such a rider.

Mrs. SHIPLEY: I have just one other short question.

Mr. BLAIR: It is not the usual practice for shorthand reporters to take down the addresses of counsel.

Hon. Mrs. HODGES: Either prosecuting or defending?

The PRESIDING CHAIRMAN: No, not ordinarily, but the judge may sometimes direct and sometimes it becomes important, as I understand it, because there have been odd cases where an appeal has been allowed and a new trial granted on the basis of inflammatory statements of Crown counsel made when addressing the jury.

Hon. Mrs. HODGES: In cases like that, what do you do? Do you rely on memory if you have no shorthand report?

The PRESIDING CHAIRMAN: You would have to rely on your notes if there was no shorthand report.

Mr. LUSBY: Is it not the custom to take down the addresses in capital cases?

The PRESIDING CHAIRMAN: It may be in capital cases but not the ordinary cases.

Hon. Mrs. HODGES: Is it not in capital cases?

Hon. Mr. GARSON: Well, my impression is that it varies from one province to another, in some provinces they do, and in some provinces they do not. You may remember that in my main remarks I said we get these if we need them where they are available.

Mrs. SHIPLEY: The other question is, I thought I understood you to say that the previous record of convictions of an accused person was submitted either to your department or to the court during the trial and I always understood that they never were referred to in a trial.

Hon. Mr. GARSON: You are quite right. I indicated that amongst other material which we do secure was the fingerprint record. That is what I said:

> In every case there is procured from the fingerprint section of the R.C.M.P. a report showing the fingerprints of the convicted person, his photograph and his record of previous convictions, if any.

That has quite a bearing upon commutation. If we are going to accept the extraneous evidence which we do accept on the question of commutation, that is an important part of it.

Mrs. SHIPLEY: I just wanted to make clear it was not during the trial.

The PRESIDING CHAIRMAN: Senator Hodges?

Hon. Mrs. HODGES: I was tremendously impressed with the extent of the safeguards applied, is it fair to ask you whether, in your judgment, even further safeguards could be applied?

Hon. Mr. GARSON: I think it is a perfectly fair question, but I do not know what they would be. If we knew of any we would be inclined to apply them.

Hon. Mrs. HODGES: You feel, as far as is humanly possible, you make sure no one is hanged wrongly?

Hon. Mr. GARSON: We are just human beings. We can be mistaken. There is this about it; we got our commutation procedure largely from British precedents. We have carried on their tradition here in Canada. They have had a very long experience in dealing with such matters, and the safeguards we have now have not been thought up in a short time, but are safeguards that all those long years of experience indicate are worth while. We have the accumulation of all of those devices to protect the accused.

Hon. Mrs. HODGES: And in your experience, your own experience, you have no other suggestion to offer?

Hon. Mr. GARSON: No, I have not. If I had any ideas I would have suggested them to my colleagues and had them incorporated in our procedure.

The PRESIDING CHAIRMAN: Mr. Thatcher?

Mr. THATCHER: Yes, Mr. Chairman, I would like to ask the minister if a jury recommends mercy in one of these cases is it usual for the cabinet or the Governor in Council to honour that recommendation by commutation?

Hon. Mr. GARSON: Yes, we give the most careful consideration to such jury recommendations. I will give you the figures in just a moment. They are the best indication of whether it is usual or not. "Usual", however, is a word that can be open to an interpretation indicating we are in the habit of honouring such recommendations. We give careful consideration to the jury's recommendation for mercy but we regard it as only one of the important factors in

the final judgment which we reach. Sometimes it seems fairly clear from the other facts of the case that the jury's recommendation for mercy, we suspect, has been a means of getting some juror who is rather conscience stricken about capital punishment to concur in a verdict of guilty if the jury will add a rider for mercy. Again it may represent a compromise in a jury between a verdict for manslaughter on the one hand and murder on the other, when those who are holding out for manslaughter in effect may say, "Well, if we can get a rider for mercy in here we will agree to a verdict of murder". You must remember the jury has a difficult task convincing twelve men to reach any unanimous verdict. We give the most careful consideration to a jury's recommendation for mercy in all cases. Weighing it in the light of all of the facts we do not give effect to it in all cases, but we give effect to it in the majority of cases. If you will turn to table F you will see there a record of the convictions from the year 1930 to 1939 inclusive and from 1940 to 1949 inclusive, a total period of twenty years. If you will follow the first line, the total number of convictions in the first decade is male, 198, female, 10. Out of the total number of convictions there were recommended for mercy a total of male, 38, female, 4; that is 42 altogether. Now, if you will go a little further to the right you will see "disposed of by appeal court, 4 male, 1 female."

Hon. Mrs. HODGES: That is in "recommended to mercy"?

Hon. Mr. GARSON: Oh, yes, that is in the recommendation for mercy category. What happens is, there is a trial, the accused is convicted and the jury says, "We recommend the accused to mercy." Then, of all the cases in which that recommendation was made, 5 were disposed of by the court of appeal and the conviction quashed upon some technical ground, before the question of commutation came before us. If you take the total number of recommendations for mercy which is 42 and there are 5 disposed of by the court of appeal, that leaves a net amount of 37 accused that came on to the Governor in Council asking for his consideration of commutation by reason of, amongst other things, the jury's recommendation of mercy. Of those 37 cases we commuted 23 male persons, commuted the death sentence of 23 male accused and 3 female accused, making a total of 26. That is 26/37ths or 70 per cent. There is the best proof of the extent to which we give effect to the jury's recommendation for mercy.

In the next period, from 1940 to 1949, you will see that we commuted 24 out of a possible 32 death penalties or 75 per cent.

If you look further up the column to the right to those not recommended for mercy you will see that in the decade from 1930 to 1939, using the same formula that I have already indicated, we commuted only 12½ per cent or exactly one-eighth. In the period, 1940 to 1949 inclusive, we commuted only 20 per cent. So you can see from that that we have commuted many times the percentage where there was a recommendation for mercy as compared with where there was not a recommendation for mercy. I think that is right because one must remember that we, like the court of appeal, are not in as advantageous a position to view the case generally as the judge and jury who are there observing the demeanor of the witnesses and the accused and hearing the evidence at first hand.

Mr. THATCHER: Could I interject right there? That is a point that appeals to me. What would be the dangers of us changing this law to make it read that if the jury recommend mercy that it would be automatic? Would you point out the dangers of doing that if there are some?

Hon. Mr. GARSON: Well, I think really what you are asking there is the question as to whether the accused is to be sentenced to death should be left with the jury; and what the effect of that would be?

Mr. THATCHER: If they have recommended mercy I presume he would get life imprisonment.

Hon. Mr. GARSON: If it were automatic, that would leave to the jury the question as to whether a given accused should receive the death sentence. For the jury would know that life imprisonment would be automatic the minute they recommended mercy. I think my answer to the second question as to whether that is a wise move would be the same that has been made here by the judges.

Mr. THATCHER: You stated this morning in Canada there is no official hangman, but if I understand the witnesses that have been here so far I know there is only one that does the job, is that not correct?

Hon. Mr. GARSON: Yes, I understand that is a profession with him and while he is not official he has not much difficulty getting the assignment because there is not much competition.

Mr. THATCHER: Do you recall, Mr. Garson, any sheriff resigning rather than doing the job himself? One of them said he would not care to.

Hon. Mr. GARSON: No, I would not recall, because I would not come into contact with that at all. It has been indicated by previous witnesses that the whole task of carrying out the death penalty is a provincial responsibility which does not come to us at all. I could perhaps have encountered that when I was in provincial public life but not here; and we never had any difficulty in Manitoba in such matters that came to my attention.

Mr. THATCHER: The sheriff in Toronto said the hangman was getting pretty old and there was no one learning the trade. What is going to happen if this fellow cannot carry on with the job, what will you do?

Hon. Mr. GARSON: I will not be doing it because it is a provincial responsibility.

Mr. THATCHER: You make the law but you do not have to carry it out?

Hon. Mr. GARSON: That is right.

Mr. THATCHER: In some of these cases that are commuted to life imprisonment, how many years does that usually entail in jail?

Hon. Mr. GARSON: Well, we have a table here which is an effort to provide an answer to that question, table J. This is only part of the story, it is the only part that we have been able to provide statistics on. This indicates a number of persons serving commuted sentences for life whose release was authorized on a ticket of leave. It is broken down into different categories, those who served nine years, ten years and so on. In relation to those who have not been released we have a number serving life sentences now, but I am not in a position to tell you how long they have served respectively. The numbers are indicated in table O. We might be able to get you the length of time these people have served, but we have not been able to do so up to the present time.

Mr. THATCHER: There is no average, it is not necessarily ten or fifteen or twenty years.

The PRESIDING CHAIRMAN: There does not seem to be from the table.

Hon. Mr. GARSON: No, what we are trying to do in our present penal administration is to relate the release of these prisoners to the opinion which has been formed by the prison officials as to whether they can make a go of it when they are released. If they cannot make it go we owe it to society and to the prisoners not to let them out. In those cases where they think they have reformed sufficiently to be released we release them on ticket of leave.

Mr. THATCHER: Just one more question, if I may? This morning we were talking about intent and my mind goes back to that Bentley case we mentioned this morning in England where the chap who fired the shot which killed a policeman was put into jail for life because he was underage and the chap

who was wrestling with the policeman was hanged. I know technically the way Canadian law reads the chap that was grappling with the policeman might have been hanged in this country also, but I cannot reconcile that man as having intent to murder when he did not have a gun. Now, what about the dangers of changing Canadian law so we do not abolish capital punishment, suppose we are going to keep it, if we had a clause in there somewhere, I do not know how to do it legally, but there had absolutely to be intent to murder before a man may be hanged. In other words, that chap could not be hanged. What is dangerous about that?

Mr. WINCH: Is that not the case where he actually told the other man to shoot?

Hon. Mrs. HODGES: Yes, he said, "Go ahead and shoot."

Hon. Mr. GARSON: That is it, the honourable members have put their fingers on an important point. The reason why I would hesitate very much indeed to discuss the disposition of such a case in Great Britain is this: as I said this morning, each case has to be decided on its own facts and those facts have to be gone over with very great care. For instance, if one slurred over this one fact of his telling the other man to shoot—

Mr. THATCHER: Excuse me, he said, "Give it to him," and the defence was he meant the other boy to give the gun to him; that was the defence.

Hon. Mr. GARSON: Yes, but apparently the Home Secretary did not put that interpretation upon that defence.

The PRESIDING CHAIRMAN: Nor the jury either.

Mr. THATCHER: You understand the point I am getting at. Would it not be better if we insisted there must be deliberate intent to murder before a man can be given capital punishment?

Hon. Mr. GARSON: Well, as I said to you this morning, in so arguing you are really raising a moral problem. You are saying in effect that the criminal law of Canada as it is now drafted does not reflect what you Mr. Thatcher think that it should from a moral point of view. In your view you think only that man should be convicted of murder who intended to murder. Rightly or wrongly, both in Great Britain and in Canada, based upon human experience over a long period of time, the view has been of those who were responsible for drafting criminal law, as I indicated this morning, that those people are parties to an offence who either actually commit it or who aid some person else in committing it or who abet any person in the offence or who counsel or procure the commission of it. I gave the example this morning that if one hires an assassin to kill another the law says that he is equally guilty as a murderer; you would say that inasmuch as the man who hired the assassin did not himself commit murder he should not be guilty of murder.

Mr. THATCHER: No, not a case like that; I would agree with that; but there are other cases.

Hon. Mr. GARSON: Well, let us consider another such a case in which a group of heavily armed robbers go to perpetrate a robbery and there is one out of four of them who is driving a getaway car. This man knows his accomplices are armed to the teeth; he knows that they are prepared to shoot their way in and shoot their way out; he knows that death may very well supervene, yet he goes and drives them there and takes them away. Now, it is a question of legislative policy: should or should not a man of that sort be responsible for the consequences that are likely to ensure from the type of enterprise in which he joins with other people? I think, in all deference, as a moral question and not a legal question, that he should be responsible and the law so states. If you say he should not, I respect your viewpoint, but I do not agree with it.

Mr. THATCHER: I follow that.

Hon. Mr. GARSON: Now, that was outlined this morning and I do not think it can be put in clearer terms than this:

> I am quoting now from Section 69 (2) of the present Criminal Code. If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose.

That principle is rather hard, perhaps, when we apply it to an offence which is punishable by death, because there is a finality to death that we all shrink from; but if you apply that principle to a robbery, supposing you have a man driving a getaway car and the other two rob the bank and get away with $50,000 and the police never catch them; are you going to say that the man who drove the car, who knowingly drove the car, who knew what he was doing when he drove the car is just a chauffeur and is not morally responsible for what took place?

Mr. THATCHER: I see your point, but I do feel personally that the man who was a chauffeur did not commit murder, therefore I do not see why the state should hang him. I will drop it there.

Hon. Mr. GARSON: It is a question of how, in the determination of our legislative policy, we approach what is a moral problem, and you say in a case of that sort the man should not be involved although he was quite prepared that his associates in crime should shoot the people down.

Mr. THATCHER: But he may not even know.

Hon. Mr. GARSON: Oh, well, if he could really prove that he did not know, that might but a different complexion on the matter.

Mr. THATCHER: Does he not have to have a gun, does he not have to go in with a gun and they assume he does know?

Hon. Mr. GARSON: That is quite true but, on the other hand, the counsel who is defending this particular accused was able to bring before the court evidence which the jury would believe to indicate that notwithstanding the others were armed his client did not know of this he might succeed in this defence if the jury could be convinced. This would be a very difficult job to do; but if there was evidence that this accused had no reason to know that what happened was likely to happen he would—

The PRESIDING CHAIRMAN: Suppose when they were planning this robbery this man with a conscience said, "It is all right to go in with those guns but show me that those guns are not loaded". If you could establish that and then the others go in and slip a bullet in the gun on the way in, in those circumstances I think the man in the car might succeed in his defence.

Hon. Mr. GARSON: He might, but in order to do so he would have to convince the jury, and if the jury found him guilty he would have to convince us on the question of commutation.

Mr. THATCHER: I would think on a robbery they would go in, not intending to kill anybody, but in the process of the robbery one shot a person, then I still cannot understand why a man in the car should be hanged.

The PRESIDING CHAIRMAN: Mr. Winch?

Mr. WINCH: I am interested in those who have been found guilty of a homicide. Under table J it is pointed out that from 1930 until 1939 there have been 23 who have had their death sentences commuted and that as a result of the commutation those who were guilty of homicide in this group served anywhere from nine years up to eighteen years.

Hon. Mr. GARSON: May I put it this way. This table is a table of those who, having had their death penalty commuted to life imprisonment, were then, by a subsequent and additional exercise of the royal prerogative, released on ticket of leave after the expiration of these various times indicated in this table.

Mr. WINCH: That is the point I am coming to, is there any differentiation between the words "ticket of leave" and "parole" or are they the same?

Hon. Mr. GARSON: No.

Mr. WINCH: There is no difference?

Hon. Mr. GARSON: No.

Mr. WINCH: That leads me to my question, of those 23 who were guilty of a homicide, they were found guilty and they got executive clemency first and after that they got the additional clemency after serving from nine years to eighteen years. Are there any figures as to how many, if any, of those 23 broke their parole or got themselves into trouble again and had to be returned to the penitentiary? You see my point? I am trying to show what is best for those who commit murder; that they can be reformed under the correct attention.

Hon. Mr. GARSON: I haven't the figures with me. We have been trying to get them and we may perhaps be able to get them.

Mr. WINCH: That would be most interesting and conclusive.

Hon. Mr. GARSON: Well, it would be rather a reflection upon our judgment if there were any that did not make good because where the offence has been a very serious one we try to avoid releasing those who will not make good. You can see that if we let one of those prisoners out and another murder was committed by him there would be very severe criticism of our revision service and penal system.

Mr. WINCH: It seems to me if you go into the figures it would be almost conclusive evidence that because you commit a homicide it does not prove that you cannot be reformed.

Hon. Mr. GARSON: Oh, well, we have never taken that position.

Mr. WINCH: It would be very interesting to see whether that could be established.

Hon. Mr. GARSON: Well, in the administration of penitentiaries we do not say for a moment the prisoners cannot be reclaimed. Our whole effort is to reclaim them. When you see 70 to 75 per cent recommendation of the jury given effect to by us, that is a good indication of what our attitude is. As long as we can be sure they are going to make good there is every reason in the world to be humanitarian, and if you wish to put it on the lowest basis there is a substantial treasury saving in the release of these prisoners.

Mrs. SHIPLEY: I would like to say for the record that the group of persons we are referring to at this moment, are a selected group of those who committed homicide.

Mr. WINCH: I had a follow-up question on that. I believe the meaning of "life" in Canada is twenty years?

Hon. Mr. GARSON: No.

Mr. WINCH: I think that should be clarified.

Hon. Mr. GARSON: Automatically they are not released after twenty years on a life sentence; we can keep them there as long as they live if it seems proper to do so. The terms of imprisonment imposed is for life, just as it states and the term actually served varies depending upon whether we think they can get rehabilitated themselves if released. You can understand that we have a responsibility to them, they are prisoners and criminals if you like but, after all, it is a case of "There but for the grace of God go I," and

we want to do our best for them. On the other hand, we have responsibility to society and if any one of the prisoners we let out on ticket of leave got involved in another murder people would certainly take a very dark view of the action of our Remissions Branch in releasing him.

The PRESIDING CHAIRMAN: Anything else, Mr. Winch?

Mr. WINCH: Yes, one question if I may. Is my information correct that at the present time your department has some kind of study going on on the question of remission?

Hon. Mr. GARSON: Yes, that is right.

Mr. WINCH: Does that committee include in its terms of reference a study of remissions as far as homicidal prisoners are concerned?

Hon. Mr. GARSON: It covers remissions generally.

The PRESIDING CHAIRMAN: Mr. Lusby?

Mr. LUSBY: I was not here this morning, but there was one question I would like to ask which arises out of a previous one. I understand when you are dealing with the question of commutation you have the man's previous criminal record, if any, before you?

Hon. Mr. GARSON: Yes.

Mr. LUSBY: Did I understand you to say that that may have a great deal of weight in deciding against commutation?

Hon. Mr. GARSON: You mean commutation or letting out on ticket of leave?

Mr. LUSBY: I was referring to the death sentence more.

Hon. Mr. GARSON: Yes, this factor carries weight but I do not think I can too strongly emphasize that all of the factors we have in connection with any one case have to be considered, each in relation to all of the others, therefore, the amount of weight one might give to a criminal record in one case might be quite different from what one would give to it in another. It depends in part on the nature of the criminal record. A man may have quite a lot of convictions for forgery or crimes of that type. Then he becomes involved in a crime of violence for the first time and because he has been guilty of that other crime of say, forgery, does not necessarily indicate that he is disposed to be guilty of a crime of violence.

Mr. LUSBY: That is what I had in mind; whatever weight was given to it would depend more on the nature of the criminal record than its length.

Hon. Mr. GARSON: Oh, yes.

Mr. LUSBY: In other words, you are not following the old adage of giving a dog a bad name and hanging him?

Hon. Mr. GARSON: Not at all; we have to consider every single fact that we have before us and each is considered in the light of all the other facts of that case. That is the reason why, as I indicated in my remarks this morning, it is difficult to lay down rules as if we were considering a multiplication table or arithmetical values.

The PRESIDING CHAIRMAN: Mr. Boisvert?

Mr. BOISVERT: Would you be kind enough to comment briefly about the plea of self-defence which is raised quite often in murder cases?

Hon. Mr. GARSON: You mean as regards commutation?

Mr. BOISVERT: Yes.

Hon. Mr. GARSON: Well, self-defence in a homicide case is referred to in section 53 of the present Criminal Code. Perhaps I had better read the whole of section 53:

Every one unlawfully assaulted, not having provoked such assault, is justified in repelling force by force, if the force he uses is not meant to cause death or grievous bodily harm, and is no more than is necessary for the purpose of self-defence.

2. Every one so assaulted is justified, though he causes death or grievous bodily harm, if he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purposes, and if he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm.

In other words, if that defence is raised in a charge of murder he has to satisfy the jury that in causing death of his victim he himself was under a reasonable apprehension of death or grievous bodily harm. That is a question of fact. If the jury, having had the advantage of observing the demeanour of the accused in a case of this sort—if he was pleading self-defence he would have to take the stand to explain his position—if the jurymen are unanimously of the view that the defence of self-defence which the accused has raised has not been established by the evidence which he has adduced, then on that straight question of fact I should think that the Governor in Council would be very wary about setting himself up in effect as a court of appeal above the jury on that question of fact and granting a commutation upon the ground that the jury's verdict was in error. However, circumstances may arise; there may be some new evidence turned up that was not available before the jury which would warrant commutation. One cannot generalize, one cannot set any fixed rules in cases of this sort.

In a great majority of cases I would not think there would be much chance of the jury's verdict of guilty, with no recommendation for mercy, being overruled on an application for commutation based on self defence. However, there may be further ground for leniency: age, intoxication, insanity or weakness of mind falling short of the rules in the M'Naghten case and if they were present then commutation may be granted on those other grounds. Does that answer your question?

Mr. BOISVERT: Yes.

Mr. SHAW: Sometimes it is difficult to determine the degree of danger with which you are faced. I had a personal experience about twenty years ago. I was in a hotel room and I was wakened up at 1.00 o'clock in the morning by a person trying to get into the room. That person tried to break into the room through the corridor and then went into the room next to mine and tried to force his way in through the bathroom and then came back again to my door. I came to the conclusion he intended to get in and I grabbed an empty bottle. I felt fear such as I had never felt before; I would have killed him and in a case like that I do not know what it was that prevented me and yet I am liable to be accused of murder.

Hon. Mr. GARSON: Yes, but having, I am sure, a perfectly clear record up to that time—

Hon. Mrs. HODGES: If not since.

Mrs. SHIPLEY: And it being the only bottle in the room.

Hon. Mr. GARSON: It would just be a straight case. I do not think a jury would have any trouble although they might, perhaps, have thought you might have let the man come into the room as you could see what it was all about before you hit him. He may have been a drunk trying to get in.

Mr. SHAW: I had no telephone in the room and I had no way of telling.

Hon. Mr. GARSON: Well, I think it would be just a straight case of whether you could get the jury to believe the justification which you advance.

Mr. BOISVERT: One more question, with respect to table O. I would like to know if it is possible—I think you referred before to this question, the length of time served by a prisoner convicted of murder who became insane subsequent to admittance to the penitentiary, if it is possible I would like to—

Hon. Mr. GARSON: To get the length of time he was in prison before he became insane?

Mr. BOISVERT: Yes.

Hon Mr. GARSON: In each one of these cases?

Mr. BOISVERT: Yes.

Hon. Mr. GARSON: Very well.

The PRESIDING CHAIRMAN: Mr. Mitchell?

Mr. MITCHELL (*London*): I just have one question. Who gives the ultimate order as to ticket of leave or parole, is that the minister himself?

Hon. Mr. GARSON: No, it is given in the name of the Governor General, you see, it is a royal prerogative of mercy and is given in the name of the Governor General.

Mr. MITCHELL (*London*): Yes, but who is the final body or authority that considers it?

Hon. Mr. GARSON: In the case of capital cases, as I indicated this morning, it is the Governor General in Council. In all cases other than capital cases it is the responsible minister who at the present time is the Solicitor General.

Mr. MITCHELL (*London*): That also applies to the question of remission, commutation of the death penalty?

Hon. Mr. GARSON: Yes, in every commutation of the death penalty. The final say is the responsibility of the Governor in Council, that is the cabinet. With regard to all other remissions it is on the recommendation of the minister.

Mr. WINCH: That does not go before the cabinet?

Hon. Mr. GARSON: No, there are 10,000 applications for pardon every year.

Mr. MITCHELL (*London*): So that even in the case of a person convicted of murder whose sentence has been commuted to life imprisonment, any ticket of leave which might be granted to him is granted on the authority of the minister and not of the Governor in Council.

The PRESIDING CHAIRMAN: Mr. Shaw?

Mr. SHAW: When Dr. MacLeod, a medical doctor and psychiatrist, was before us, he recommended the setting up of a board of independent medical scientists, as he called them, to deal with the question of insanity at any stage if a man had been apprehended and charged with the commission of a crime. Would the minister care to say something about it? It is something about which I feel some concern, the question of dealing with a mentally ill person.

Hon. Mr. GARSON: Well, I would prefer not to comment on that for this reason, that as a matter of government policy which I announced in the House of Commons and which had the support, as I understand it, of the House, we all agreed that this joint committee should be set up to consider the three subject-matters which have been assigned to it and that the question of insanity as a defence to a charge of criminal liability and of matters related to that subject would be sent to a royal commission which has since been set up under the chairmanship of Chief Justice McRuer. We have two first-rate psychiatrists on that commission. For these reasons I would prefer to withhold my comment on these matters until after that report of this royal commission becomes available.

Mr. SHAW: I realize that. But coming to the matter of commutation, is it not true you utilize the services of one psychiatrist in helping to reach a decision?

Hon. Mr. GARSON: No, not one.

Mr. SHAW: You mentioned a doctor from Ottawa.

Hon. Mr. GARSON: Yes, but I also said in my remarks this morning that we did not limit ourselves to one if there were doubtful cases. You must also remember that by the time Dr. Cathcart gets into these cases, a number of other psychiatrists as a rule have had a go at it before and have given testimony concerning it.

Mr. SHAW: Is that apart from the actual court case?

Hon. Mr. GARSON: No, it is not.

Mr. SHAW: That is the part that disturbs me, the contradictory evidence.

Hon. Mr. GARSON: Well, I can remember cases I have had to consider within the last year where we have not been satisfied with just one phychiatrist. When you are deciding a matter of that importance and there is any doubt about the issue there is no reason why we should hold ourselves down to one psychiatrist.

Mr. SHAW: I believe you mentioned this morning that there were nine cases where appeals were granted because of new evidence. That is after the man has been sentenced to death. I think you said there were nine cases when new evidence had come to light, new trials were ordered and five had been acquitted?

Hon. Mr. GARSON: Yes.

Mr. SHAW: My comment there is this: can we conclude that as a consequence of the acquittals the five were innocent? We can, can we not?

Hon. Mr. GARSON: The only thing you can conclude is that in the previous trials the jury found them guilty and in the second trials the jury found them innocent.

Mr. SHAW: Therefore, the logical conclusion we must take is that they are innocent?

Hon. Mr. GARSON: They have not been found guilty.

Mr. SHAW: Is that the attitude? If I am charged with murder and I am convicted and subsequent evidence leads to a new trial and I am acquitted, does society have a right to say I am guilty?

Hon. Mr. GARSON: No.

Mr. SHAW: Well then, I am innocent.

Hon. Mr. GARSON: Well, you are discharged by the jury, found to be innocent by the jury and that is a complete answer. Perhaps I wrongly inferred the implication that I thought you were trying to indicate by your question, that the fact that the jury in its second series of trials acquitted the person the jury in the first trials had convicted, that there is some reflection, some unnecessary reflection on the jury in the first trial.

Mr. SHAW: Oh, no, there is no reflection. What I was coming to was this: had this new evidence not come to light before the execution, nothing could be done about it. Now, that causes me a bit of concern. Having this situation we have no way of knowing in how many cases new evidence may have come to light sometime later which may in turn have led to the new trial. I do not think you can answer that, but it causes me some concern. Mr. Garson, is the present medical doctor also a psychiatrist?

Hon. Mr. GARSON: You are referring to our own penitentiary?

Mr. SHAW: Yes.

Hon. Mr. GARSON: I might answer it in this way. Ordinarily I would say he is not, but we have, I think, at all or nearly all of our penitentiaries resident psychiatrists in addition to the doctors.

Mr. SHAW: Because what I was going to ask you was this: a man may become insane, I would assume, within a few hours of his execution as a consequence of great strain, and I wanted to be sure there was psychiatric treatment, someone to ascertain that fact, almost at the time of his execution; that is available, is it?

Hon. Mr. GARSON: Well now, I am sorry; the executions do not take place in the penitentiary. The rule is this with regard to prisoners generally; they are prosecuted by the provincial authorities. When they are convicted, if they are sentenced to a period of more than two years, they go into the custodial care of a federal penitentiary, and, therefore, under our federal jurisdiction. If they are sentenced to less than two years they go into a provincial prison and they are the responsibility of the provincial authorities. Those who are convicted of a capital offence and who are therefore merely in custody pending their execution never come into the care of the federal penitentiary at all, and therefore remain the responsibility of the provincial authorities.

Mr. SHAW: Have you any knowledge?

Hon. Mr. GARSON: As to whether they have psychiatrists in the provincial prisons, no.

Mr. SHAW: In other words, we do not know to what extent care is exercised in declaring whether or not a man is sane or insane at the time of his execution. He could become insane a day before.

Hon. Mr. GARSON: I cannot speak from personal knowledge because I have not had anything to do with the administration of provincial jails. I would be very much surprised indeed if there were any chance of the fact of a jail prisoner becoming insane not coming to the attention of the jail governor, especially if the prisoner was under sentence of death.

Mr. SHAW: Just one other question. I am seeking information. An individual is declared unfit to stand trial because of being insane; exactly what happens to him from that point on?

Hon. Mr. GARSON: He is committed to a mental institution.

Mr. SHAW: What if he is judged sane later on?

Hon. Mr. GARSON: He is brought to trial.

Mr. SHAW: Have there been any executions resulting from a man being tried after having been committed to an insane asylum and then being executed?

Hon. Mr. GARSON: I could not answer that question offhand without having the records carefully searched. I would question very much whether there was. As a rule the criminally insane do not recover as often as your question might imply.

Mr. SHAW: I have read where individuals have been brought to trial; there is no evidence they were insane at the time of the offence, it was just that they were insane afterward, and I have seen cases where they have been sent to trial and I just wondered what happened to them afterward.

Mr. WINCH: Those figures would not be here because if he is found insane he is still under the jurisdiction of the province and enters a provincial mental institution and he never comes to the attention of the federal authorities.

Hon. Mr. GARSON: He might in this way: if he is insane at the time of his trial he is not in a position to make a fair and competent defence; he cannot instruct counsel, so it is not fair to try him. If being insane the prisoner instead of being tried is committed to a provincial mental hospital and if later he becomes sane then the charge can be proceeded with against him.

Mr. WINCH: That is by the province?

Hon. Mr. GARSON: By the province. Being sane he can then instruct counsel. The case goes ahead. If the jury acquits him, that is the end of the matter. If the jury convicts him, and after they convict him of murder then the case in the ordinary course of events, comes before the Governor in Council as to whether we should commute. In that question of commutation his mental condition at the time the offence was committed and at the time the execution would take place, are relevant matters for us to consider.

Mr. SHAW: Can you recall any such case?

Hon. Mr. GARSON: No, I cannot.

The PRESIDING CHAIRMAN: Mr. Blair?

Mr. BLAIR: One thing that has been mentioned here on several occasions is the extreme reaction of public opinion on the eve of an execution. It has been indicated that it has a detrimental effect on communities, particularly small ones, and I wonder if this reaction is ever taken into account in connection with commutation?

Hon. Mr. GARSON: Yes, we take it into account as a factor, but just one factor that we weigh with all the others in reaching a judgment.

Mr. BLAIR: There has been mention made too of the question of executing the death sentence on women. I notice from the statistics that very few women are executed in Canada. I wonder if you would be prepared to comment on any general practice which may have developed with reference to the execution of women?

Hon. Mr. GARSON: Well, the question of the commutation of the death penalty imposed upon a woman is one which we judge, I think it is fair to say, with more leniency that we would in the case of a man, I think it is also correct to say that in most cases the moral culpability of the crime of murder as committed by a woman as a rule is less than that of a man, speaking generally. That does not mean that there are not cases where sentence of death imposed upon a woman is not commuted. The committee may recall the lady who was involved in this bomb explosion on the aeroplane—we did not commute her death sentence.

Hon. Mrs. HODGES: Mrs. Pitre.

Hon. Mr. GARSON: As in other cases it depends on the circumstances, but we try, as the statistics show, to be at least as merciful as with men.

Mr. BLAIR: One suggestion made here—and it was one, which I think troubled some members of the committee—was to the effect that, in some instances, persons were not adequately defended on a capital charge. I notice table K gives the experience of defence counsel acting in capital cases. From your experience in these matters, have you formed the impression that people charged with murder are adequately defended?

Hon. Mr. GARSON: Well, I must say that is an opinion I would hesitate to express. The examination of the transcripts of these trials gives one a fairly accurate impression of the theory of the defence which the defending counsel sets up; but without being in the position of confidential relationship as a solicitor to his client, it is pretty hard to form an opinion as to the adequacy of that defence theory and the skill with which it has been presented without knowing as a direct matter between solicitor and client what the defence counsel had to contend with in defending his client. I do not think I would personally want to add very much to what table K discloses and you can see from it the majority of the counsel who acted for the accused in these cases are men of very considerable experience.

Mr. WINCH: Can you say, Mr. Minister, as to how it was possible for a person to go before a court on a charge of murder and not have any counsel as this indicates?

The PRESIDING CHAIRMAN: That is one case.

Mr. WINCH: Yes, just how would a judge allow a person to come before a court on a charge of murder and not have counsel unless, of course, he was a lawyer, which I do not know.

Hon. Mr. GARSON: No, this was not a lawyer. In that case the accused, if I remember rightly, gave himself up. He not only gave himself up but he admitted he had committed another crime as well as this one and had got away with it, another murder. He said, in effect, "I won't have a counsel, I don't want to have a counsel because I feel I have this coming to me and I want to get it over with as quickly as I possibly can."

Hon. Mrs. HODGES: That was comparatively recently, was it not?

Mr. WINCH: Would he have psychiatric examination?

Hon. Mr. GARSON: Certainly, that is one of the first things that occurred to us, but he was carefully examined by a psychiatrist and the psychiatrist said that he was perfectly sane. His was a very honourable, honest, forthright statement; I think one of the most honest statements I have ever read. He was quite content. He was not exactly remorseful; I think he was more disgusted with himself and that is what he wanted to do, get it over with as quickly as possible.

Mr. SHAW: Was he executed?

Hon. Mr. GARSON: Yes.

Mr. LUSBY: In that case would the judge himself not decide whether the plea of guilty would be accepted.

Hon. Mr. GARSON: As I recall it, he tried to keep this man from making the plea but the prisoner said in effect, "No, I am guilty of this offence and the other one besides that was not brought home to me, and I want to expose and expiate my crimes."

Mr. WINCH: In a case like that is a very thorough study made for confirmation of his statement in order to prove that the man is not just trying to use this method for the purpose of committing suicide?

Hon. Mr. GARSON: Yes, of course, this was in the province of British Columbia and Mr. MacLeod, who knows more about the case than I do, tells me that all the evidence by which he was convicted was adduced by the Crown. In view of the rather extraordinary attitude which the prisoner had taken the Crown felt they had to proceed very carefully and prove the case regardless of the accused's attitude.

The PRESIDING CHAIRMAN: Mr. Blair, you had a few questions?

Mr. BLAIR: Mr. Garson, there are two questions which arise from the testimony before the United Kingdom royal commission, and I raise them almost to have them disposed of. The first was that there might be some advantage in publishing the reasons for commutation and the second was that the whole function of commutation, rather than being left with a minister of the Crown, should be reserved for a panel of experts in the nature of a parole board. Would you care to comment on these two suggestions?

Hon. Mr. GARSON: Well, in the first place, as regards publication of the reasons for commutation, I would not think that would be helpful. I think the arrangement we have now works very well indeed. I think we go to great pains to see that justice is done to the prisoner and I do not honestly believe that if these reasons for commutation were published, discussed, carried in the newspapers, and the like that that would improve matters or make for any greater consideration or justice for the prisoner.

The second point was as to having a panel of experts. Well, if we were to follow that suggestion we would require legislation. I have not had an

opportunity of considering the question; for, the question does arise in my mind as to whether we would not have to have a constitutional amendment before the function of commutation could be assigned to such a panel of experts. The authority for the Governor General to discharge the Royal Prerogative of Mercy is contained in the instructions which he receives from Her Majesty. That is the legal basis for the action upon which the Governor General's Council advises him. How that function would be transferred from the Crown as discharged by Her Majesty's Viceroy in Canada in council and delegated to a panel of experts would pose a legal and constitutional question of considerable difficulty, I should think. But, even it were done, and leaving aside the question of the legal difficulty, to deal more with the merit of the suggestion, I cannot see where a body of experts would offer any better hope of reaching a more sound judgment than that of the Governor in Council, having regard to the fact that the issue which is under consideration is—except in those cases where scientific questions such as those of insanity are involved—a straight question of the exercising of good judgment on the basis of a set of facts.

Mr. WINCH: Could I follow up with a question on the same thing, on this matter of a parole board. Could I put it this way: am I correct, Mr. Garson, in view of the fact that Mr. MacLeod is here, who I believe is in charge of the Remission Service, that he and his staff are the same ones who go over all this material that comes to you on capital punishment?

Hon. Mr. GARSON: That is right.

Mr. WINCH: My question is: how much reading time and study can that same staff give when you say that they also have to handle around 10,000 applications for pardon in a year?

Hon. Mr. GARSON: We have quite a fair sized staff. The men who gather that information and handle the cases involving capital punishment are some of the heads, the more responsible men of the department—they prepare the brief which is presented to the responsible minister, and he considers the brief and all the other data, and then takes his own recommendation and that of his officer into the cabinet. This brief which they prepare is an analysis of all the evidence which has been given at the trial with copious quotations of those parts which are considered more relevant. The evidence of every witness that appears is analyzed and the points that are established by that witness are listed and the critical points which the evidence established are pointed up, and in that sense one could say in all truth that they were experts in the gathering and weighing of such facts. That is all that the officers of the Remission Branch do.

Mr. SHAW: They do not make any recommendation?

Hon. Mr. GARSON: Yes. They make a recommendation to the minister. Then the minister goes over all the material that they have submitted to him and he forms his own conclusions. When he goes to his colleagues in the cabinet council he outlines the facts of the case and then he concludes his review of the case by saying in effect "My officers recommend commutation," or "my officers recommend that the law should take its course;" and he adds "I concur with their recommendation"; or, "I am sorry I cannot concur with their recommendation;" This is not a very common case; but the minister sometimes feels he must say in effect "I cannot concur in their recommendation. My reason is I think that on such and such a point their judgment is wrong, and I think the correct judgment on these points is as follows." Now, in such a case the minister's colleagues have to decide between his views and his officer's views.

Mr. WINCH: Could we see a sample of such a brief without making public whose brief it is?

Hon. Mr. GARSON: Yes, but I think we should produce it at an in camera session. We try to treat information relating to these prisoners as confidentially as if they were ordinary citizens.

By Mr. Blair:

Q. Mr. Garson, the proceedings of this committee I imagine will be quite widely publicized and there will be a tendency to compare the statistics put on record here with the statistics adduced in the United Kingdom. For that reason, I would like you to comment, if you would, on table III which appears on page 13 of the United Kingdom Royal Commission Report and table D of your own statistics. These tables show the proportion of sentences of death commuted. In the United Kingdom the percentage from the year 1900 to 1949 was 45·7 per cent, and in Canada the percentage for the 20 year period 1930-1949 was 21·6 per cent.

Hon. Mr. GARSON: Yes.

Mr. BLAIR: Now, imagine that these figures are explainable with reference to your table G which refers to types of murders committed, and the comparable table appearing on page 304 of the United Kingdom Royal Commission Report.

Hon. Mr. GARSON: Yes, that is right. This is a very interesting point. If the members will have a look at this table G they will see listed there under different headings the victims of convicted murderers. I would like you to look at the first seven columns where the victims are respectively wife, husband, parent, sweetheart, mistress, children, or sexual assaults. In other words these murders arise out of family or sexual relationships. If I take these figures off and add this very rapidly, in the United Kingdom they had 210 wives who were victims of murder, 14 husbands, 320 parents, 120 sweethearts, 184 mistresses, and 193 children, categorized into murders of children under one year (77), and over one year (85) and in connection with sexual assaults, over one year (31). For murder in connection with other sexual assaults, there were 44 victims. Now, that makes up a total of 785 murders arising out of family and sexual connections out of the grand total of 1,210 murders. In Canada under these same headings, there are 25 wives, 5 husbands, 10 parents, 4 sweethearts, 15 mistresses, 3 children, and 18 sexual assaults, or 80 out of 308. This is a substantially smaller percentage in Canada than in Great Britain.

But, when you come to murder committed in connection with robbery you find that in Canada there are 100 out of 308 or nearly 33 per cent; and in the United Kingdom 161, that is 66 women and 95 men out of 1,080, or about roughly 13 per cent.

Mr. WINCH: How does that break down between cold blooded murder and murder of passion?

Hon. Mr. GARSON: That is what I am getting at. A family murder where there is no money motive involved arises out of the passion of love or the passion of hatred, or in other words out of just the emotions ordinarily associated with family connections or with sex. That is one thing; and a murder which is committed in connection with robbery which in the majority of cases is a straight cold blooded premeditated act, is another. In the United Kingdom the murders represented by these family affairs outnumber those committed for reasons of robbery by a large margin.

Mr. WINCH: They do in Vancouver too.

Hon. Mr. GARSON: Whereas in Canada it is the other way about.

Hon. Mrs. HODGES: Do you not think that the strain of the war years might have some effect on the emotions?

Hon. Mr. GARSON: This British record goes back to 1900.

Hon. Mrs. HODGES: Yes, but I notice that in 1949 they were very strong. That may have some effect on it.

Hon. Mr. GARSON: It may.

Hon. Mrs. HODGES: Because of family tensions and such.

Hon. Mr. GARSON: This comparison seems to support the view stated by some of the witnesses before the British Royal Commission, that the statistics of one country are of little assistance to one who is trying to reach a sound judgment as applied to another country.

Mr. WINCH: But it does make a difference in your cabinet, as to whether it was a cold blooded murder or one of passion?

Hon. Mr. GARSON: Yes. And, to answer Mr. Blair's question, one reason why we have a lower percentage of commutation than in Great Britain is we are dealing with murders a much larger percentage of which have been those associated with robbery for example, that are planned and premeditated. In the proper exercise of commutation such types of murder will deserve a lower rate of commutation generally speaking than will those murders which arise out of family and lovers quarrels, jealously, and the like.

Mr. WINCH: Is it possible to explain why you say that for Canada—I admit I do not know. But, the other day when Chief Mulligan of Vancouver was before the committee, the committee asked the chief if he could let us have the information from 1944 until 1953 as to the murders in Vancouver and those which he maintained were cold blooded and brutal murder and those which were from emotion or jealousy, and he has been kind enough to do that and given the names of all the victims in that period until 1953 of homicides in Vancouver.

Hon. Mrs. HODGES: In what period?

Mr. WINCH: 1944 to 1953.

Mr. BROWN (*Essex West*): Is that material before the committee?

Mr. WINCH: Yes. He sent me a copy as well. I asked the question, and a copy was sent to me direct as well. In that period until 1953 there were 53 homicides in Vancouver; 17 he classifies as cold blooded murder and 36 as murders of passion. That is not the pattern of Canada, you say?

Hon. Mr. GARSON: No, and you can see from that that it would be quite wrong to think, in so far as these facts that we have been discussing have a bearing upon the question of whether the proper policy for a country was capital punishment or not capital punishment—it would be quite wrong to think that because capital punishment might be a proper penalty for the prevalent type of murder in that country, it would follow logically that capital punishment would be a proper type of penalty for a quite different type of murder prevalent in another country. In other words, the only way in which, in my humble opinion, we can reach a wise judgment in this matter is to look at the facts in Canada and decide what, in relation to the Canadian facts, seems to be the proper solution in Canada. I think most of us would regard these crimes of passion as being in a totally different category and I would say, if one can generalize in these matters, that they are socially, less harmful than the cold blooded premeditated gangster, bank robber, type of murder. We have seen in cities to the south of us here what a state of lawlessness can develop from a lack of certainty of punishment; and that even where capital punishment was nominally the punishment, the lack of certainty of it robbed it of its deterrent effect. As Chief Shea the other day said in Detroit they had had 4 of their men murdered and none at all across the river in Windsor. I know it is not very scientific to say that that contrast is solely due to there being capital punishment in Windsor and no capital punishment in Detroit, but these facts must be one important factor I would think.

Mr. BLAIR: There is just one further question. I personally am aware of the amount of time which has been spent in preparing the statistics in the form in which they have appeared today, and they run back to 1930. I wondered if further statistics along these lines are prepared for hearings before this committee if an arrangement might be worked out whereby they could be filed with the committee and appended to the proceedings.

Hon. Mr. GARSON: Yes.

Mr. CAMERON (*High Park*): I would like to thank the minister for taking us behind the doors of the council chamber in a frank and open manner and ask him if I am correct in my thinking that the place of the execution and the revulsion of a certain community against the execution of a prisoner might be considered one of the factors in deciding whether or not the sentence would be commuted, and if it was one of the factors that was considered, then it would not be the decisive factor unless everything else was equal. I would not like to think that because one person was charged of murder and going to be hanged in a certain community that a similar sentence might be commuted in another community.

Hon. Mr. GARSON: I am glad that you brought it up because in reference to public opinion I did not intend to include the place of execution. What I had in mind was cases like the Bentley case. You may have a case involving two culprits; one of greater apparent culpability by a wide margin than the other, and it may be through a series of misadventures that in the trial of the more culpable criminal that there is some slip-up in the prosecution and an acquittal is brought in; and then on a later trial of the man who is obviously much less culpable the jury brings in a verdict of murder. In a case of that sort where there is a strong public opinion, a great feeling of public revulsion, to the fact that the man who is less culpable is being hanged and the other who is much more guilty is getting off, the problem that that would pose for the Governor in Council would be as to whether as between the two criminals it would not be a more salutary disposition of the case to grant commutation to the man who was much less culpable and not make a martyr of him and have a general feeling amongst the whole country that the administration of justice had been most unfair to this unfortunate man. That particular question would be taken into account by the Governor in Council along with all the other circumstances of the case. It would not dominate, but it would be one factor to be taken into consideration.

Mr. CAMERON (*High Park*): In other words, the members of the cabinet are human beings and not icicles. Would that be a short answer?

Hon. Mr. GARSON: Yes.

Mr. CAMERON (*High Park*): There has been some comment made about not giving publicity to the decisions on commutation. Is it not true that in the Bentley case that the question was asked in the House as to the reason why here was a refusal to reduce the sentence and one of the reasons advanced was that as persons under 18 years of age were not liable to be hanged in Great Britain that criminals who practise crimes of violence might use them to do the gunman's work and the older one may have a chance to escape scot-free?

Hon. Mr. GARSON: That is quite right, but as I recall it the question was not asked until after the event.

The PRESIDING CHAIRMAN: After the execution.

Hon. Mr. GARSON: Yes.

Mr. CAMERON (*High Park*): All I know is what I read in the newspapers. But, my recollection from reading it in the newspapers was that the person had surrendered himself into custody and was in custody when the murder took place.

Hon. Mrs. HODGES: No. The policeman had hold of him and he told the other fellow to shoot.

Mr. CAMERON (*High Park*): He was in custody when the shooting took place.

Hon. Mr. GARSON: He was in the custody of the policeman.

Mr. CAMERON (*High Park*): Yes.

Hon. Mr. GARSON: Yes.

Mr. CAMERON (*High Park*): I am not satisfied myself that justice was done in that case.

Hon. Mr. GARSON: All I can say about that case was that I was delighted that it was not I who had to make the decision. It was an extremely difficult one.

Mr. CAMERON (*High Park*): Some one said something about the man outside the bank or the place being robbed not being equally guilty with the man inside who committed the murder, but I recall Colonel Basher saying that he thought there was a very deterrent effect in that phase of the law because people who might be inclined to get mixed up with crimes of violence would not associate themselves with people known to be trigger happy, so that to that extent it is deterrent.

Hon. Mr. GARSON: Yes.

Mr. CAMERON (*High Park*): I gathered that when the judge and the jury have found the accused has not established that he is not guilty by reason of coming within the M'Naghten Rules, if there is any doubt about it it may be that when it gets before the cabinet it is a case where the psychiatrist says he cannot say that he was not but possibly he was incapable of forming intention.

Hon. Mr. GARSON: Your question is what?

Mr. CAMERON (*High Park*): I was wondering if the obvious result is that it is not a case of certainty; it is a case of possibility. Possibly he was incapable of forming intent. He may have been capable, but there is a possibility that he was not.

The PRESIDING CHAIRMAN: You mean that you start out with a presumption of insanity when the department is considering the case?

Mr. CAMERON (*High Park*): Yes.

Hon. Mr. GARSON: I do not know that I would say that. In cases where insanity is raised by the accused as a defence to a trial itself, the defence in order to bring itself within the rule of the M'Naghten case has to prove that the accused was so insane that he did not understand the nature and quality of the act and that he did not know that it was a wrongful act that he was committing. Now, if the accused is found guilty by the jury, then what the Governor in Council has to decide is as to whether the mental aberration of the accused, notwithstanding that it did not come within that rule in the M'Naghten case, was still sufficiently serious to warrant commutation.

Mr. CAMERON (*High Park*): That is just putting my thought in different and probably more guarded words than my own.

Mrs. SHIPLEY: Just one short question. Are we obtaining the statistics in the cases where the death penalty has been commuted to life imprisonment to show how many of these prisoners have attempted to commit a second murder while in the penitentiary or during a period of escape?

Hon. Mr. GARSON: We are getting that.

Mr. WINCH: Just one more question. I appreciate the two very informative sessions we have had today, and I will ask this question while Mr. MacLeod is here. After there has been the granting of executive clemency, the jail sentence then automatically comes to the branch of remission of which

Mr. MacLeod is the head, and does Mr. MacLeod's branch automatically review the cases of these men for the purpose of seeing as to whether or not there should be any further clemency, and if so what are the periods of the review?

Hon. Mr. GARSON: You mean while they are in custody?

Mr. WINCH: Yes. After executive clemency is granted and the accused is sentenced to life imprisonment that is the end as far as the cabinet are concerned, and it then comes under the Remission Branch if something further is to be done. Is there an automatic review to see if there should be any more clemency and how often does that review take place?

Hon. Mr. GARSON: Perhaps I would illuminate that matter a bit if I were to explain that by that time the prisoner has gone into the federal penitentiary system and when he comes in there we have in addition to the penitentiary psychiatrist another university graduate—usually a trained psychologist who is a classification officer. He keeps a card index system and has an interview with this man in the same way the personnel officers of the more intelligent industries interview employees. This classification officer enters the criminal's family history, education, aptitudes, deficiency or competence, on his record. That is his card while he is in prison. Then, this classification officer is in periodical contact with all the convicts all the time they are there and he is available for consultation. If they wish to take advantage of correspondence or vocational training courses while in penitentiary they consult him. He keeps constant tab on all the inmates of his penitentiary. That is the responsibility that we pay him to discharge. It is originally his recommendation—not only in respect of these commuted capital cases, but in respect of all prisoners—on which we in part base our judgment whether it is safe to let the convict be discharged on ticket of leave. We have found that of those who take our vocational training classes and who are subsequently discharged from the penitentiary that over 80 per cent make good. This is a very high rate of reformation. One of the main purposes of having the criminal in the penitentiary is to reform him, but reformation is a matter of expert judgment on the part of people who are trained in these fields and in sufficiently close contact with the prisoner to form intelligent judgments concerning them. We try not to have the prisoners discharged from the institution until we are sure that they can make good.

Mr. WINCH: Perhaps I have not made it quite clear. Supposing some one has had executive clemency and has been in the penitentiary for 12 years, would he have to make application: now, I should have consideration for a ticket of leave. Or would you be receiving every three years or at the end of 12 years a recommendation from your classification officer on this man or does he have to make recommendation that his case be sent down to the Remission Branch for consideration?

Hon. Mr. GARSON: You mean must somebody initiate it?

Mr. WINCH: Yes.

Hon. Mr. GARSON: I would not like to state it positively because this is not a matter of internal prison matters.

Mr. WINCH: I am not discussing it from that angle, but from the angle of the person who committed murder and has been sent in now for life?

Hon. Mr. GARSON: While he may have committed a murder, he is a prisoner just like the man who has robbed a bank or who committed bigamy and what we are concerned with is how quickly we can reform the prisoner and put him in a position in which it would be safe to turn him out into society again. We have a heavy population in the prisons because although the rate of recidivism in the penitentiaries has been held and is on the decline to some extent, the rate

of new crime has been growing in the last few years and there is no incentive to keep any of the prisoners in any longer than necessary before we can safely discharge them.

Mr. WINCH: How do you get notice here in Ottawa on these 23 which you let out—they go from 9 years up to 18 years. Is it automatic, or did they have to apply?—A. That is a point I am trying to get.

Mr. MACLEOD: Our ordinary routine practice in remission is based upon applications by the inmate or by someone on his behalf. The application on his behalf may be by a relative it may be by some interested citizen in the community it may very well be an officer of the institution or the penitentiary who has seen this man make good progress and thinks his particular case should be investigated again to determine whether or not there should be remission of sentence or release on ticket-of-leave. It would be most unusual—perhaps I should say impossible but I will limit it to unusual—for a person serving a life sentence which is in effect what a person is serving when his sentence of death has been commuted, it would be most unusual for that man to go unnoticed; it would be impossible for him to go unnoticed because we will have in the remission service a gradually increasing file in relation to him. We will have the reports of the classiffication officer who is employed in the penitentiary and to whom the minister has referred. In other words, our own representatives visit the institution twice a year to interview any inmates who wish to interview our representative at that time and have a face to face talk with our representative. We have a permanent representative on the west coast in Vancouver and another permanent representative in Montreal. We have our own staff here in Ottawa who are quite close to two institutions at Kingston. We are planning, of course, to increase that staff as we get capable men to do that. But, to get back to the point, while there is not an automatic review of these cases such as there is in the case of the habitual criminal who is serving an indeterminate sentence, or the criminal sexual psychopath in respect to whom there is a statutory declaration that his case be reviewed once every three years there is not, in the case of the prisoner for life, an automatic review, but there is an adequate review.

Mr. LUSBY: If the case is reviewed and it is decided not to let him out, is there any time that must elapse before it can be reviewed again?

Mr. MACLEOD: No. He can apply as often as he wants, but if on a life term he has served ten years and his case has been reviewed and he has been informed that it is not found to be possible to recommend after investigation that he be released, if he writes again in six months it is obvious that we will not start an investigation at that time, but we will keep that case in mind and will be adding reports of the classification officer and instructor, and our own representatives who have visited him and so on, and in another two years we will probably conduct another investigation.

The PRESIDING CHAIRMAN: Mr. Minister, before we adjourn, I want to thank you very much on behalf of the committee for your presentation here today. . .

Hon. Mrs. HODGES: Hear, hear.

The PRESIDING CHAIRMAN: Mr. MacLeod, I want to thank you for your contribution.

APPENDIX A

This appendix contains statistics relating to capital cases during the period 1930-1949 and, in some cases, during the period 1939-1952. They are compiled from the records of the Remission Service of the Department of Justice. In preparing the statistics each case has been treated as having been dealt with, by execution or commutation or by the court of appeal, as the case may be, in the same year as that in which the sentence of death was imposed. That is to say, if a sentence of death was imposed, for instance, in November of a particular year and was commuted in February of the following year, the case is treated, for the purpose of these statistics, as having been one where the sentence was imposed and commuted in the same calendar year. Other statistics that may be available to the Committee may not have been prepared on this basis.

TABLE A.

DISPOSITION OF CAPITAL CASES (1930-1949)

This table is the counterpart of Table I in Appendix 3 of the United Kingdom Royal Commission Report, at pages 298-301. "Otherwise" means otherwise disposed of by the court of appeal, i.e., by quashing the conviction and entering a verdict of not guilty or ordering a new trial or substituting a verdict for a lesser offence.

M.—Male
F.—Female

Year	Sentenced to death		Executed		Commuted		Otherwise	
	M.	F.	M.	F.	M.	F.	M.	F.
1930	23	0	13	0	5	0	5	0
1931	32	0	25	0	3	0	4	0
1932	22	1	13	0	5	0	4	1
1933	21	0	16	0	3	0	2	0
1934	23	3	11	1	4	1	8	1
1935	14	3	11	1	2	1	1	1
1936	21	1	14	0	3	1	4	0
1937	14	0	7	0	2	0	5	0
1938	18	1	8	1	8	0	2	0
1939	10	1	4	0	3	1	3	0
10 yrs.	198	10	122	3	38	4	38	3
1940	19	2	9	0	6	0	4	2
1941	15	0	7	0	7	0	1	0
1942	12	1	6	0	1	0	5	1
1943	10	0	7	0	1	0	2	0
1944	18	0	9	0	4	0	5	0
1945	19	0	10	0	5	0	4	0
1946	24	5	12	1	7	1	5	3
1947	19	0	10	0	3	0	6	0
1948	26	0	13*	0	5	0	8	0
1949	29	0	11	0	6	0	12	0
10 yrs.	191	8	94	1	45	1	52	6

* Includes one condemned person who committed suicide.

TABLE B.

PROPORTION OF EXECUTIONS (1930-1949)

This table shows the number of persons who, during the relevant period, were executed as a result of the imposition of sentence of death upon them. The number of cases disposed of by appeal courts and by commutation will be found in Tables C, D and E.

M.—Male
F.—Female
T.—Total

Period	(1) Sentenced to death			(2) Executed			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1930–1939.....	198	10	208	122	3	125	61·6	30·0	60·1
1940–1949.....	191	8	199	94*	1	95	49·2	12·5	47·7
TOTAL.....	389	18	407	216	4	220	55·6	22·3	54·0

* Includes one condemned person who committed suicide.

TABLE C.

PROPORTION DISPOSED OF BY APPEAL COURTS (1930–1949)

This table shows the number of persons who, during the relevant period, had their convictions quashed by appeal courts and in respect of whom a verdict of not guilty was entered, a new trial ordered or another verdict substituted.

M.—Male
F.—Female
T.—Total

Period	(1) Sentenced to death			(2) Disposal by Court of Appeal			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1930–1939.....	198	10	208	38	3	41	19·2	30·0	19·7
1940–1949.....	191	8	199	52	6	58	27·2	75·0	29·2
TOTAL.....	389	18	407	90	9	99	23·1	50·0	24·4

TABLE D.

PROPORTION OF COMMUTATIONS (1930-1949)

This table shows the number of persons whose sentences were, during the relevant period, commuted to sentences of life imprisonment. It is the counterpart of Table III of the United Kingdom Royal Commission Report, at page 13. This table is to be distinguished from Table E which deals *not* with all sentences of death imposed during the relevant period, but only with those that came before the Governor in Council for decision on the question of commutation.

M.—Male
F.—Female
T.—Total

Period	(1) Sentenced to death			(2) Commuted			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1930-1939.....	198	10	208	38	4	42	19·2	40·0	20·2
1940-1949.....	191	8	199	45	1	46	23·6	12·5	23·1
TOTAL.....	389	18	407	83	5	88	21·3	27·7	21·6

TABLE E.

PROPORTION OF COMMUTATIONS (1930-1949)

This table shows the number of persons whose sentences were, during the relevant period, commuted to sentences of life imprisonment by the exercise of the royal prerogative. It is to be noted that the figures in this table do not take into account cases disposed of by appeal courts. This table relates only to cases that were dealt with by the Governor in Council.

M.—Male
F.—Female
T.—Total

Period	(1) Considered by Governor in Council			(2) Commuted			(3) (2) as a percentage of (1)		
	M.	F.	T.	M.	F.	T.	Per cent M.	Per cent F.	Per cent T.
1930-1939.....	160	7	167	38	4	42	23·7	57·1	25·2
1940-1949.....	139	2	141	45	1	46	32·4	50·0	32·6
TOTAL.....	299	9	308	83	5	88	27·7	55·5	28·5

TABLE F.

RECOMMENDATIONS AS TO MERCY (1930-1949)

This table is the counterpart of Table I of the United Kingdom Royal Commission Report, at page 9.

M.—Male
F.—Female

Year	Recommended to Mercy										Not Recommended to Mercy							
	Convicted and sentenced to death		Total		Commuted		Executed		Disposed of by appeal court		Total		Commuted		Executed		Disposed of by appeal court	
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.
1930 – to – 1939 –	198	10	38	4	23	3	11	0	4	1	160	6	15	1	111	3	34	2
1940 – to – 1949 –	191	8	49	5	24	0	8	0	17	5	142	3	21	1	86	1	35	1
TOTAL.....	389	18	87	9	47	3	19	0	21	6	302	9	36	2	197	4	69	3

M.—Male
F.—Female
C.—Commutation
E.—Execution

TABLE C.

ANALYSIS RE VICTIMS OF CONVICTED MURDERERS (1930-1952)

This table is the counterpart of Table I in Appendix 3 of the United Kingdom Royal Commission Report, at pages 304-306

	For murder of wife		For murder of husband		For murder of parent				For murder of sweetheart				For murder of mistress				For murder of children				Sexual Assault				Robbery				Revenge or Jealousy				Escaping Custody or arrest				For murder of policeman				Miscellaneous				Total
	M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		
	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	
1930	....	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	3	6	....	....	2	3	....	....	....	....	....	....	....	1	....	....	....	2	....	....	18
1931	1	2	....	....	....	2	....	....	....	....	....	....	....	1	....	....	....	....	....	....	....	....	....	....	....	8	....	....	1	5	....	....	....	....	....	....	....	2	....	....	1	5	....	....	28
1932	....	....	....	....	....	....	....	....	....	....	....	....	....	3	....	....	....	....	....	....	....	....	....	....	....	6	....	....	....	....	....	....	....	....	....	....	....	1	....	....	5	3	....	....	18
1933	1	....	....	....	1	1	....	....	....	....	....	....	....	1	....	....	....	1	....	....	....	....	....	....	....	7	....	....	....	6	....	....	....	....	....	....	....	....	....	....	1	....	....	....	19
1934	1	1	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	4	....	....	1	2	....	....	....	....	....	....	....	1	....	....	2	3	....	1	17
1935	....	1	1	1	....	2	....	....	....	....	....	....	....	....	....	....	....	1	....	....	....	....	....	....	....	1	....	....	....	1	....	....	....	....	....	....	1	4	....	....	1	1	....	....	15
1936	....	2	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	1	....	....	....	1	4	....	....	....	2	....	....	1	....	....	....	....	1	....	....	1	4	....	....	18
1937	....	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	1	....	....	....	1	1	....	....	....	1	....	....	....	....	....	....	....	2	....	....	1	1	....	....	9
1938	2	1	....	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	1	4	....	....	1	....	....	....	....	....	....	....	....	....	....	....	4	3	....	....	17
1939	1	....	....	....	....	....	....	....	1	....	....	....	....	2	....	....	....	....	....	....	....	1	....	....	....	....	1	....	1	....	....	....	....	....	....	....	....	....	....	....	....	....	1	....	8
TOTAL 10 yrs	6	9	3	2	1	5	....	....	1	....	....	....	....	7	....	....	....	2	....	....	....	3	....	....	6	42	....	....	6	20	....	....	1	....	....	....	1	12	....	....	16	22	1	1	167
1940	....	1	....	....	....	....	....	....	....	....	....	....	....	1	....	....	....	....	....	....	....	....	....	....	4	3	....	....	1	1	....	....	....	....	....	....	....	1	....	....	1	2	....	....	15
1941	1	2	....	....	....	....	....	....	1	....	....	....	2	....	....	....	....	....	....	....	....	1	....	....	1	4	....	....	....	....	....	....	1	....	....	....	....	....	....	....	1	....	....	....	14
1942	....	1	....	....	....	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	2	....	....	....	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	1	1	....	....	7
1943	....	....	....	....	....	....	....	....	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	7	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	8
1944	1	1	....	....	....	....	....	....	....	....	....	....	....	1	....	....	....	....	....	....	....	1	....	....	1	5	....	....	1	1	....	....	1	....	....	....	....	....	....	....	....	....	....	....	13
1945	....	....	....	....	2	1	....	....	1	....	....	....	....	....	....	....	....	....	....	....	1	2	....	....	1	3	....	....	....	1	....	....	....	....	....	....	....	....	....	....	....	3	....	....	15
1946	1	....	....	....	....	....	....	....	....	....	....	....	1	....	....	....	1	....	....	....	....	2	....	....	1	2	....	1	1	1	....	....	....	....	....	....	....	1	....	....	2	6	1	....	21
1947	....	....	....	....	....	....	....	....	....	....	....	....	2	....	....	....	....	....	....	....	....	5	....	....	1	4	....	....	....	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	13
1948	....	1	....	....	....	....	....	....	....	....	....	....	....	1*	....	....	....	....	....	....	....	1	....	....	4	3	....	....	1	3	....	....	....	1	....	....	....	....	....	....	....	3	....	....	18
1949	....	1	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	7	....	....	3	2	....	....	....	....	....	....	....	....	....	....	3	1	....	....	17
TOTAL 10 yrs	3	7	....	....	2	2	....	....	3	....	....	....	5	3	....	....	1	....	....	....	1	14	....	....	13	39	....	1	7	10	....	....	2	1	....	....	....	2	....	....	8	16	1	....	141
TOTAL 20 yrs	9	16	3	2	3	7	....	....	4	....	....	....	5	10	....	....	1	2	....	....	1	17	....	....	19	81	....	1	13	30	....	....	3	1	....	....	1	14	....	....	24	38	2	1	308
1950	....	1	....	....	....	....	....	....	....	....	....	....	....	1	....	....	....	....	....	....	....	1	....	....	3	4	....	....	....	....	....	....	....	....	....	....	....	1	....	....	....	2	....	....	13
1951	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	1	1	....	1	2	....	....	....	5	....	....	....	....	....	....	....	....	....	....	....	1	....	....	1	1	....	1	14
1952	2	3	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	2	2	....	....	3	2	....	....	....	....	....	....	....	2	....	....	1	1	....	....	18

* This condemned person committed suicide.

TABLE H.

AGES OF PERSONS CONVICTED OF MURDER (1930-1952)

This table is the counterpart of Table 6 of Appendix 3 of the United Kingdom Royal Commission Report, at pages 308-9.

M. — Male
F. — Female
C. — Commutation
E. — Execution

Year	20 yrs. and under				21-30 yrs.				31-40 yrs.				41-50 yrs.				51-60 yrs.				Over 60 yrs.				Total
	M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		M.		F.		
	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	
1930	1	...	...	...	2	7	...	...	1	2	...	...	...	3	...	...	1	1	...	...	...	...	...	...	18
1931	...	...	...	...	2	9	...	...	...	8	...	...	1	4	...	...	...	4	...	...	...	...	...	...	28
1932	...	1	...	...	3	5	...	...	1	3	...	...	...	2	...	...	1	2	...	...	...	...	...	...	18
1933	...	3	...	...	1	8	...	...	2	2	...	...	...	2	...	...	...	1	...	...	...	...	...	...	19
1934	1	1	...	...	2	5	...	...	...	2	1	...	...	2	...	1	1	1	...	...	...	...	...	...	17
1935	1	...	...	...	1	4	1	...	...	2	...	...	...	4	...	1	...	1	...	...	...	...	...	...	15
1936	2	1	...	...	...	6	...	...	...	4	1	...	...	2	...	...	1	1	...	...	...	...	...	...	18
1937	1	1	...	...	1	1	...	...	...	4	...	...	...	1	...	...	...	...	...	...	...	...	...	...	9
1938	1	...	...	...	3	2	...	...	1	4	...	1	2	2	...	...	1	...	...	...	...	...	...	...	17
1939	...	...	...	...	1	3	...	...	2	...	...	...	...	...	...	...	...	...	1	...	...	1	...	...	8
Total	7	7	0	0	16	50	1	0	7	31	2	1	3	22	0	2	5	11	1	0	0	1	0	0	167
1940	2	...	...	...	2	3	...	...	2	3	...	...	...	3	...	...	...	...	...	...	...	...	...	...	15
1941	...	1	...	...	2	4	...	...	1	1	...	...	3	1	...	...	1	...	...	...	...	...	...	...	14
1942	...	...	...	...	...	4	...	...	...	...	...	...	...	1	...	...	1	...	...	...	...	1	...	...	7
1943	1	1	...	...	...	6	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	8
1944	2	...	...	...	1	7	...	...	...	...	...	...	...	2	...	...	1	...	...	...	...	...	...	...	13
1945	3	2	...	...	...	3	...	...	1	...	...	...	...	4	...	...	1	1	...	...	...	...	...	...	15
1946	1	1	...	...	3	8	...	...	1	2	1	1	1	1	...	...	...	...	...	...	1	...	...	...	21
1947	1	2	...	...	1	4	...	...	...	3	...	...	...	1	...	...	1	...	...	...	...	...	...	...	13
1948	4	...	...	...	...	7	...	...	1	4*	...	...	...	1	...	...	...	1	...	...	...	...	...	...	18
1949	2	...	...	...	2	5	...	...	...	3	...	...	1	2	...	...	1	1	...	...	...	...	...	...	17
Total	16	7	0	0	11	51	0	0	6	16	1	1	5	16	0	0	6	3	0	0	1	1	0	0	141
Total 20 yrs.	23	14	0	0	27	101	1	0	13	47	3	2	8	38	0	2	11	14	1	0	1	2	0	0	308
1950	2	...	...	...	1	2	...	...	...	6	...	...	...	1	...	...	...	1	...	...	...	...	...	...	13
1951	1	...	...	...	...	5	1	...	...	2	...	...	...	3	...	1	...	...	...	...	1	...	...	...	14
1952	1	...	...	...	3	4	...	...	1	4	...	...	...	1	...	...	2	...	...	...	1	1	...	...	18

* Includes one condemned person who committed suicide.

TABLE I.

CAPITAL CASES BY PROVINCES
(1930-1949)

Province		1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	Total 10 yrs.	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	Total 10 yrs.
Alberta	C.	1	1	.....	.....	1	.....	1	.....	1	.....	5	.....	.....	.....	.....	.....	.....	3	.....	1	1	5
	E.	1	4	.....	2	3	2	1	.....	.....	.....	13	.....	.....	2	1	3	.....	6	.....	2	2	16
British Columbia	C.	1	.....	.....	.....	.....	1	1	.....	.....	.....	3	1	1	.....	.....	.....	.....	.....	.....	.....	.....	2
	E.	.....	4	.....	.....	.....	2	2	.....	1	1	10	1	.....	.....	1	.....	3	.....	2	.....	2	9
Manitoba	C.	.....	.....	1	1	.....	.....	.....	.....	3	.....	5	.....	.....	.....	.....	.....	1	1	.....	.....	.....	2
	E.	.....	4	.....	2	3	.....	2	1	3	.....	15	.....	1	.....	.....	1	1	.....	2	1	.....	6
New Brunswick	C.	1	.....	.....	.....	1	.....	.....	.....	2	1	5	.....	.....	.....	.....	1	.....	1	.....	.....	.....	2
	E.	.....	.....	.....	1	.....	.....	2	.....	.....	.....	3	.....	.....	2	.....	.....	.....	1	.....	.....	2	5
Nova Scotia	C.	.....	.....	1	2	.....	.....	.....	.....	.....	.....	3	2	.....	.....	.....	.....	.....	1	.....	.....	.....	3
	E.	1	1	.....	2	1	.....	.....	1	.....	.....	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ontario	C.	1	2	2	.....	1	2	.....	1	1	3	13	1	3	1	1	2	1	1	1	4	3	18
	E.	4	6	8	4	.....	4	4	2	1	2	35	5	.....	1	3	4	2	5	5	3	2	30
Prince Edward Island	C.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	E.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	.....	.....	.....	.....	2
Quebec	C.	1	.....	.....	.....	1	.....	1	1	1	.....	5	2	2	.....	.....	1	1	1	2	.....	1	10
	E.	5	6	3	3	4	4	3	3	4	.....	35	1	4	1	2	1	3	1	1	6	3	23
Saskatchewan	C.	.....	.....	1	.....	1	.....	1	.....	.....	.....	3	.....	1	.....	.....	.....	2	.....	.....	.....	1	4
	E.	2	.....	1	2	1	.....	.....	.....	.....	1	7	2	.....	.....	.....	.....	1	.....	.....	1*	.....	4
Yukon Territories	C.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....											
	E.	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	1											
		18	28	18	19	17	15	18	9	17	8	167	15	14	7	8	13	15	21	13	18	17	141

* Committed suicide.

TABLE J.

LENGTH OF DETENTION WHERE DEATH SENTENCE COMMUTED (1930-1939)

Year sentence commenced	Number of prisoners serving commuted sentences for life whose release was authorized on a Ticket of Leave		Served 9 years		Served 10 years		Served 11 years		Served 12 years		Served 13 years		Served 14 years		Served 15 years		Served 16 years		Served 17 years		Served 18 years		Total
	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	
1930	3	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	1	.....	.....	.....	.....	.....	1	.....	.....	.....	3
1931	2	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	2
1932	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	1	.....	2
1933	2	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	2
1934	2	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	2
1935	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	1
1936	4	1	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	1	1	2	.....	.....	.....	.....	.....	.....	.....	5
1937	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	1
1938	3	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	.....	.....	.....	3
1939	2	1	.....	.....	.....	.....	.....	.....	1	1	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	3
Total	22	2	1	.....	1	.....	1	.....	4	1	.....	.....	4	1	6	.....	2	.....	2	.....	1	.....	24

M. — Male
F. — Female

TABLE K.

EXPERIENCE OF DEFENCE COUNSEL ACTING FOR PERSONS CONVICTED OF MURDER (1948-1952)

Year	1 Year Experience		2 Years Experience		3-5 Years Experience		6-10 Years Experience		11-15 Years Experience		16-20 Years Experience		Over 20 Years Experience		Total
	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	C.	E.	
1948	.....	1	.....	.....	.....	5	1	1	1	1	.....	.....	3	5	18
1949	1	2	.....	1	1	.....	1	.....	1	1	2	.....	.....	7	17
1950	.....	1	1	1	1	.....	.....	1	.....	1	.....	4	1	2	13
1951	1	.....	.....	1	.....	5	.....	.....	1	.....	.....	2	1	3	14
1952	1	.....	1	.....	2	1	.....	1	1	2	.....	1	3	4	17
Total	3	4	2	3	4	11	2	3	4	5	2	7	8	21	79

N.B. In one case there was no defence counsel. Plea of guilty accepted.

C. — Commutation
E. — Execution

TABLE L.

APPEALS TO APPEAL COURTS
(1948-1952)

Year	Commutations			Executions		
	Appeal Court of Province	Applications to Supreme Court of Canada, which were refused	Supreme Court of Canada	Appeal Court of Province	Applications to Supreme Court of Canada, which were refused	Supreme Court of Canada
1948	4	.....	.....	7	1	1
1949	2	.....	.....	6	2	.....
1950	1	.....	.....	4	2	2
1951	2	.....	.....	7	1	3
1952	5	.....	1	8	5	.....
TOTAL	14	.....	1	32	11	6

TABLE M.

ANALYSIS RE COMMUTATION WHERE INSANITY AN ISSUE
(1937-1952)

Year	Insanity one of several defences raised		Insanity the only defence raised	
	Commutation	Execution	Commutation	Execution
1937	1	0	0	1
1938	2	0	3	0
1939	0	1	0	1
1940	1	0	1	1
1941	2	1	3	1
1942	0	0	1	1
1943	0	1	1	0
1944	1	0	0	2
1945	2	2	2	0
1946	7	2	0	0
1947	0	0	0	3
1948	0	1	2	2
1949	2	1	4	2
1950	0	3	0	0
1951	0	0	1	1
1952	4	2	3	0
	22	14	21	15

TABLE N.

ANALYSIS RE COMMUTATION WHERE INTOXICATION AN ISSUE
(1937-1952)

Year	Intoxication one of several defences		Intoxication the only defence raised	
	Commutation	Execution	Commutation	Execution
1937	1	0	0	0
1938	0	0	0	0
1939	0	0	1	0
1940	0	1	1	1
1941	0	0	1	0
1942	0	1	0	0
1943	0	1	0	0
1944	0	1	0	0
1945	1	3	0	1
1946	3	1	0	0
1947	0	1	0	1
1948	0	1	0	1
1949	0	1	0	0
1950	0	2	1	0
1951	1	1	0	1
1952	1	3	0	0
	7	17	4	5

TABLE O.

PERSONS SERVING LIFE SENTENCES (1954)

—	Persons serving life sentences as result of murder convictions	Persons serving life sentences as result of murder convictions, who became insane subsequent to admittance to penitentiary
British Columbia	4	1
Dorchester	9	2
Kingston	18	7
Manitoba	13	3
Saskatchewan	20	9
St. Vincent de Paul	19	2
TOTAL	83	24

APPENDIX B

NOTE: *This report was authorized to be printed as an Appendix to this issue on adoption of the Third Report of the Subcommittee on Agenda and Procedure.*

MAY 6, 1954.

RE: MURDERS IN VANCOUVER
1944 TO 1953

A—Number of cold-blooded or brutal murders.
B—Number of murders of passion, emotion, jealousy, etc. (non-premeditated).

Date	Victim	A	B	Disposition		
				Hanged	Other Sentence	Unsolved
1944						
Apr. 2	Wellington Wallace		X		Reduced to Manslaughter —15 years	
May 7	Clifford Lennox		X		Life Imprisonment	
July 7	Mrs. Laura Rusan / Mrs. Millie Preston		X		Manslaughter— 20 years	
Aug. 24	David Cuthbertson	X			Two Juveniles arrested— no prosecution	
Dec. 14	Jung Wah Hay	X				X
Sept. 20	Kevin Thompson		X		Acquittal—self-defence	
1945						
May 2	Olga Hauryluk		X	X		
May 5	Otto V. Vidlund		X		Reduced to manslaughter Stay of Proceedings	
June 22	Svere A. Danielson		X		Manslaughter-Dismissed	
Aug. 8	Geo. J. Higginson (4 mos.)		X		14 years	
Sept. 13	Diana Blunt	X			12 yr. old boy—held at His Majesty's pleasure	
Oct. 1	Reginald C. Price	X				X
1946						
June 4	Mrs. Mary Hovel		X		Murder—Suicide	
Apr. 19	Wm. Kowenala		X		Manslaughter-Acquitted	
July 25	Garry Billings	X		X		
Sept. 3	Lilliam Lee		X			X
Dec. 22	Harry Henderson	X				X
1947						
Feb. 26	Charles Boyes (Police) / Geo. Ledingham (Police)	X		X		
Mar. 3	Viola M. Woolridge		X		Manslaughter—Released on Probation for 7 years $1,000.00 bond	
May 25	David J. Sherlock (14)		X		Manslaughter-Bound-over—$1,000 bond	
June 18	Harry Woo	X			(1) 15 years (2) 5 years	
June 22	Norma Burton		X		Manslaughter—12 years	
Aug. 25	Sidney S. Petrie	X		X	Committed suicide while awaiting execution	
Oct. 20	Roddy Moore (8)		X			X
Nov. 30	Geo. Bolt		X		7 years	
1948						
June 7	Ralph H. Forsythe		X		Manslaughter-Not guilty	
July 1	Jalmar Leino		X		Manslaughter-Not guilty	
Sept. 27	Mrs. Louie Shong		X		Murder-Suicide	
Sept. 22	Andrew Kirkpatrick	X			Manslaughter-15 years	
Oct. 6	Naida B. Foyer		X		Manslaughter—10 years	
Nov. 24	Frances J. Jones (18 mos.)		X		Committed to Mental Institution	
Nov. 30	James M. Whitfield		X		Murder-Suicide	

APPENDIX B—*Concluded*

Date	Victim	A	B	Disposition		
				Hanged	Other Sentence	Unsolved
1949						
June 6	Mary and Mike Geluch..	X		X		
July 9	Archie MacDonald.....		X		Manslaughter–Dismissed	
Oct. 2	William Kelly.....		X			X
Dec. 6	Wm. H. Bent.....	X				X
Dec. 15	V. L. St. Laurent.....		X		Manslaughter - Charge dismissed	
Nov. 9	Blanche Fisher.....		X	X		
1950						
Feb. 27	Mah Poy.....		X		Manslaughter–Not guilty	
Mar. 16	Gertrude Bonner.....		X		Murder–Suicide	
Aug. 12	Barbara H. Dzubac.....		X		Murder–Suicide	
Sept. 1	Low Qwon Lee.....		X		Manslaughter–Not guilty	
1951						
Apr. 22	Velma Reuben.....		X		Manslaughter–25 years	
July 15	Stanley Deren.....		X		Manslaughter–18 months	
July 6	Albert J. Bockas.....	X				X
July 28	Mary Parker.....		X		Manslaughter–10 years	
Oct. 11	Wm. McIntosh.....	X				X
1952						
May 22	Renaldo Valpe.....	X			Manslaughter–10 years	
June 14	Joseph Hyland.....	X		X		
July 28	Betty J. Weber.....		X		Murder–Suicide	
1953						
Jan. 29	Peter J. Albertson.....		X		Committed to Mental Institution	
Mar. 4	Mrs. Los Angeles Smith .		X	X		
Dec. 11	Frank Pitsch.....	X		X ?	Sentenced to Hang - Appeal pending	

Recapitulation

A — Number of cold blooded or brutal murders..... 17

B — Number of murders of passion, emotion, jealousy, etc..... 36

Total..... 53

C — Number of cases involving hanging in A.....5 plus 1 (?)
B.....3 — 8 plus 1 (?)

D — Number of unsolved murders..... 9

NOTE: It should be noted that in many cases charges of murder were reduced to manslaughter and the accused found "not guilty" or charge "dismissed". Generally speaking, these charges resulted from street fights, brawls, or similar incidents, where the victim died as result of injuries received.

W. H. MULLIGAN
Chief Constable

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 13

THURSDAY, MAY 13, 1954

WITNESSES:

Representing Board of Evangelism and Social Service, The United Church of Canada:

Rev. A. Lloyd Smith, Chairman of the Board, Montreal;
Rev. J. R. Mutchmor, Secretary of the Board, Toronto;
Rev. C. H. Ferguson, President, Montreal and Ottawa Conference, Kemptville;
Rev. Hugh Rae, Member of the Board, Ottawa;
Mr. Reginald Gardiner, Member of the Board, Hamilton; and
Mr. J. Morley Lawrence, Member of the Board, Windsor.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954

COMMITTEE MEMBERSHIP

For the Senate (10)

Hon. Walter M. Aseltine
Hon. Elie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon. Salter A. Hayden (*Joint Chairman*)
Hon. Nancy Hodges
Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Miss Sybil Bennett
Mr. Maurice Boisvert
Mr. Don F. Brown (*Joint Chairman*)
Mr. J. E. Brown
Mr. A. J. P. Cameron
Mr. Hector Dupuis
Mr. F. T. Fairey
Mr. E. D. Fulton
Hon. Stuart S. Garson
Mr. A. R. Lusby
Mr. R. W. Mitchell
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. SMALL,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, May 13, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Bouffard, Fergusson, Hodges, McDonald, and Veniot—(6).

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Mitchell (*London*), Shaw, Shipley (Mrs.), Thatcher, and Winch—(11).

In attendance:

Representing the Board of Evangelism and Social Service of The United Church of Canada:

Reverend A. Lloyd Smith, Chairman of the Board, Montreal, Quebec; Reverend J. R. Mutchmor, Secretary of the Board, Toronto, Ontario; Reverend C. H. Ferguson, President, Montreal and Ottawa Conference, Kemptville, Ontario; Reverend Hugh Rae, member of the Board, Ottawa, Ontario; Mr. Reginald Gardiner, member of the Board, Hamilton, Ontario; and Mr. J. Morley Lawrence, member of the Board, Windsor, Ontario.

Counsel to the Committee: Mr. D. G. Blair.

On motion of the Honourable Senator McDonald, seconded by the Honourable Senator Veniot, the Honourable Senator Nancy Hodges was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

The Presiding Chairman presented the Third Report of the Subcommittee on Agenda and Procedure, which was read by Mrs. Shipley, as follows:

Your Subcommittee on Agenda and Procedure met at 3.30 p.m., Wednesday, May 12, and 10.30 a.m., Thursday, May 13, and has agreed to present the following as its

THIRD REPORT

1. On May 4, 1954, the Committee referred to its subcommittee a copy of a sermon on capital punishment by the Reverend D. B. Macdonald, which he presented to the Committee on that date.

Your subcommittee recommends that this document be filed with the miscellaneous representations received by the Committee which are being classified for selection and ultimate recommendation by your subcommittee for possible printing as an Appendix to the Committee's Minutes of Proceedings and Evidence.

2. On May 5, 1954, the Committee referred to its subcommittee the matter of calling the official hangman for the Province of Quebec for an *in camera* hearing. On May 11, 1954, the confidential telegram received from him was likewise referred.

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Your subcommittee recommends that the official hangman for the Province of Quebec should be called to appear to give evidence; and that the Joint Chairmen be authorized to contact him to determine the arrangements that would be suitable to him together with a time when he could be available, either during this session or the next, and then report thereon to the subcommittee.

In connection with the original telegram received from him, your subcommittee recommends that it be filed with the Department of Justice in order to confine his identity, but that a copy of the text be retained with the Committee's records.

3. On April 27, 1954, the Committee agreed that Police Chief Mulligan should make available to the Committee a report on murders in Vancouver for the last ten years.

Your subcommittee recommends that the said report be printed as an Appendix to the Minutes of Proceedings and Evidence for May 11, 1954. *(See Appendix B, Minutes of Proceedings and Evidence, No. 12).*

4. Your subcommittee also recommends:

(a) That the Parliamentary Library procure a copy of the book entitled "Hanged and Innocent", published by Victor Gollancz under the joint authorship of Messrs. Silverman *et al*;

(b) That a further reminder be sent to those provinces that have not yet indicated their intentions with respect to the Questionnaire sent to the provincial Attorney-General; and

(c) That no further arrangements be made by the subcommittee for the attendance of witnesses after the first sitting week in June.

All of which is respectfully submitted.

Mrs. Shipley moved, seconded by Mr. Winch, that the Third Report of the Subcommittee on Agenda and Procedure be now concurred in.

Mr. Boisvert, Senator Hodges, and Mr. Brown (*Brantford*) having indicated their objections to calling the official hangman for the province of Quebec, the said report was adopted on division.

The Presiding Chairman introduced the delegation from the Board of Evangelism and Social Service of The United Church of Canada.

Reverend Mutchmor presented the Board's brief on capital and corporal punishment and lotteries (which was "taken as read" in accordance with the procedure adopted by the Committee on March 2) with the following corrections:

1. *Respecting Capital Punishment:*

(1) Delete second sentence at the top of page 8 of the brief, which reads *If the least possible doubt exists, the sentence should be commuted,* and substitute therefor "If the least possible and reasonable doubt exists that murder has been committed, there should be no conviction at all."

2. *Respecting Lotteries:*

(1) Delete the word to in the tenth last line at the bottom of page 10 of the brief, and substitute therefor the word "so". (2) Delete the words *Cardinal Emile Leger of Montreal* in the second last paragraph on page 24 of the brief, and substitute therefor "Monsignor Paul Emile Leger, Cardinal of Montreal,".

The members of the delegation made supplementary statements and were then questioned by the Committee.

On behalf of the Committee, the Presiding Chairman thanked the members of the delegation representing the Board of Evangelism and Social Service of the United Church of Canada for their presentations.

The witnesses retired.

At 12.55 p.m., the Committee adjourned to meet again as scheduled at 11.00 a.m., Tuesday, May 18, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

MAY 13, 1954.
11.00 a.m.

The PRESIDING CHAIRMAN (*Mr. Brown, Essex West*): Ladies and gentlemen, if you would come to order, a motion will be entertained to elect a joint chairman for the day from the Senate. Moved by the Hon. Senator McDonald and seconded by the Hon. Senator Veniot that the Hon. Senator Nancy Hodges serve as joint chairman for the day. All in favour?

Carried.

Senator Hodges, will you please come forward? And now the third report of the subcommitee on agenda and procedure will be read by Mrs. Shipley.

Mrs. SHIPLEY:

"Your subcommittee on agenda and procedure met at 3.30 p.m., Wednesday, May 12, and 10.30 a.m., Thursday, May 13, and has agreed to present the following as its

THIRD REPORT

1. On May 4, 1954, the committee referred to its subcommittee a copy of a sermon on capital punishment by the Reverend D. B. Macdonald, which he presented to the committee on that date.

Your subcommittee recommends that this document be filed with the miscellaneous representations received by the committee which are being classified for selection and ultimate recommendation by your subcommittee for possible printing as an appendix to the committee's minutes of proceedings and evidence."

Do you wish me to deal with them one by one, sir?

The PRESIDING CHAIRMAN: No, I think we will just take it in full.

Mrs. SHIPLEY:

"2. On May 5, 1954, the committee referred to its subcommittee the matter of calling the official hangman for the province of Quebec for an *in camera* hearing. On May 11, 1954, the confidential telegram received from him was likewise referred.

Your subcommittee recommends that the official hangman for the province of Quebec should be called to appear to give evidence; and that the joint chairmen be authoribed to contact him to determine the arrangements that would be suitable to him together with a time when he could be available, either during this session or the next, and then report thereon to the subcommittee.

In connection with the original telegram received from him, your subcommittee recommends that it be filed with the Department of Justice in order to confine his identity, but that a copy of the text be retained with the committee's records."

Hon. Mr. McDONALD: Without the signature?

The PRESIDING CHAIRMAN: We will discuss that in a moment.

Mrs. SHIPLEY:

"3. On April 27, 1954, the committee agreed that Police Chief Mulligan should make available to the committee a report on murders in Vancouver for the last ten years.

Your subcommittee recommends that the said report be printed as an appendix to the minutes of proceedings and evidence for May 11, 1954.

(*See Appendix B, Minutes of Proceedings and Evidence, No. 12.*)

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(*b*) That a further reminder be sent to those provinces that have not yet indicated their intentions with respect to the questionnaire sent to the provincial attorneys-general; and

(*c*) That no further arrangements be made by the subcommittee for the attendance of witnesses after the first sitting week in June.

All of which is respectfully submitted."

The PRESIDING CHAIRMAN: Moved by Mrs. Shipley; seconded by Mr. Winch, that the Third Report of the subcommittee be adopted.

Now, Senator McDonald, the original telegram will be filed with the Department of Justice. That is, the original which has the name of the official hangman affixed. In other words, it reveals the name of the person. That will be filed for safekeeping and is not available to the public. A copy of it will be filed by the clerk of this committee without the name.

Hon. Mr. MCDONALD: Did he use his actual name?

The PRESIDING CHAIRMAN: Well, one never knows. I do not know. I know he put a name on it.

Hon. Mrs. HODGES: May I ask a question? I notice the subcommittee recommends that the official hangman should be called to appear. Is he to give evidence *in camera*?

The PRESIDING CHAIRMAN: That is what it says above.

Hon. Mrs. HODGES: It says that above, but it does not say that in the recommendation of the committee?

The PRESIDING CHAIRMAN: That will have to be determined by the committee itself.

Hon. Mrs. HODGES: I was not certain if the subcommittee recommended that it be *in camera*. It does not make it quite clear, you see.

The PRESIDING CHAIRMAN: What the subcommittee recommended was that the joint chairmen contact this individual and see what arrangements could be made. It may be he will want to appear *in camera*, or he may want to appear in public. That will be determined after he has been contacted.

Hon. Mrs. HODGES: I understand.

Mr. THATCHER: Why did the subcommittee feel that it should be held *in camera*?

The PRESIDING CHAIRMAN: We did not say it should be *in camera*.

Hon. Mrs. HODGES: It was the committee who suggested that.

Mr. BOISVERT: I would like to register my opposition to having the official hangman appear as a witness before this committee. I do not think his appearance will bring anything to us which we do not know already and, personally, I have a feeling that it would not be good for this committee to have the official hangman as a witness. I do not think it would be desirable for this committee to have the official hangman as a witness. I do not like this, and I want to register my opposition as strongly as possible. There is something terrible about it.

Mr. THATCHER: You bet! That is why we should have him.

Mr. BOISVERT: There is something terrible about the taking of human life and I think this would bring on a morbidity before this committee to which I am opposed, and I will not be present when he appears to be examined as a witness.

Hon. Mrs. HODGES: I would like to associate myself with Mr. Boisvert. I feel the same way. It seems to me a very gruesome thing and I cannot see that it is going to add much to the information of this committee. However, I feel that if the committee decides to call him I should, out of a sense of public duty, be here, but I do think it is extremely morbid.

The PRESIDING CHAIRMAN: We could suggest that people such as Mr. Boisvert be called to the meeting of the subcommittee when any information has been obtained from this individual. We have not heard yet whether or not the hangman will appear or when he would be willing to appear although he has expressed the desire to come.

Mr. WINCH: That is just the comment I was going to make; he has asked to come before the committee.

Mr. SHAW: Mr. Chairman, I would hesitate to suggest that the professional hangman be *subpoenaed* if he is not willing. He has however indicated his willingness to come and, while it may be morbid listening to his evidence, we have had the prison doctor and the sheriff and after all, executions are conducted in our society and let us not be hesitant about going right to the root of the thing. As long as we are going to execute people we require an executioner. I suggested from the beginning that he appear and he has asked for permission to appear, so I think he should be given an opportunity to come before the committee.

The PRESIDING CHAIRMAN: Probably when we have had some information, we could bring it to the committee and they could decide what to do. All in favour? Opposed: Mr. Boisvert, Mrs. Hodges and Mr. Brown (*Brantford*).

Mr. FAIREY: What are they voting against?

The PRESIDING CHAIRMAN: The adoption of the report.

Hon. Mrs. HODGES: Just that one suggestion?

The PRESIDING CHAIRMAN: This is a motion to adopt the third report.

Mrs. SHIPLEY: You will have to deal with it in sections, don't you think?

The PRESIDING CHAIRMAN: The motion was that we adopt the report as read by you. Was there an amendment? I have not heard any.

Mr. MITCHELL (*London*): The objections to it are recorded?

The PRESIDING CHAIRMAN: Yes, we know their feelings. All in favour? Contrary? I have the names of those who are opposed. Carried on division.

Now then, we have a delegation here today from the Board of Evangelism and Social Service of the United Church of Canada, Reverend A. Lloyd Smith, Dominion-Douglas United Church, Montreal, Quebec; Reverend J. R. Mutchmor, secretary, Board of Evangelism and Social Service, Toronto, Ontario; Reverend C. H. Ferguson, president, Montreal and Ottawa Conference, Kemptville, Ontario; Reverend Hugh Rae, member, Board of Evangelism and Social Service, Ottawa, Ontario; Mr. Reginald Gardiner, member, Board of Evangelism and Social Service, Hamilton, Ontario; Mr. J. Morley Lawrence, member, Board of Evangelism and Social Service, Windsor, Ontario.

If it is your pleasure, we will now call upon this delegation to come forward.

Hon. Mr. MACDONALD: May I suggest that the men be introduced individually to the committee?

The PRESIDING CHAIRMAN: Yes, I will be glad to do that when they come forward. Will you come forward gentlemen, please.

Mr. Garson, the Minister of Justice, who has administrative control of the question which is under discussion and who is a member of this committee, has asked me to express his regret at his inability to be here because this morning cabinet meets, and consequently he has to be in cabinet which is his first obligation.

I am going to ask that the members of your delegation please rise when I introduce them so the members of the committee will know who you are: Reverend A. Lloyd Smith; Reverend J. R. Mutchmor, Reverend C. H. Ferguson, Reverend Hugh Rae, Mr. Reginald Gardiner, and Mr. J. Morley Lawrence.

Now, the brief has been filed and the members of the committee have read it. Which of you gentlemen is the economist?

Rev. Dr. MUTCHMOR: We were unable to secure the services of an economist, Mr. Chairman.

The PRESIDING CHAIRMAN: Then, you have read the brief of the Christian Social Council of Canada and you have the brief of the others who have made their presentations, I presume, Dr. Mutchmor?

Rev. Dr. MUTCHMOR: Yes.

The PRESIDING CHAIRMAN: Would you then like to comment on the brief which you have presented here today?

Rev. J. R. Mutchmor, Secretary, Board of Evangelism and Social Service, The United Church of Canada, Toronto, Ontario, called:

The PRESIDING CHAIRMAN: Please remain seated, if you would.

The WITNESS: Thank you madam and Mr. Chairman and members of the committee. We received clear instructions from the clerk of the committee and, as requested, forwarded the 50 copies of the brief which is to be taken as read.

Mr. Chairman, Ladies and Gentlemen:

The delegation of The United Church of Canada presenting this brief consists of the Rev. Clarence H. Ferguson, Kemptville, Ontario, president of the Montreal and Ottawa Conference of our Communion; the Rev. Dr. A. Lloyd Smith, minister of the Dominion-Douglas United Church, Westmount, Quebec; the Rev. Dr. Hugh Rae, minister of First United Church, Ottawa and formerly of Vancouver, B.C.; Mr. Reginald G. Gardiner, Hamilton, Ontario, President of local 1005, United Steel Workers of America (Stelco, Hamilton); Mr. J. Morley Lawrence, managing director and a vice-president, Bordens, Ltd., Windsor, Ontario, and Rev. Dr. J. R. Mutchmor, Toronto, Secretary of the Board of Evangelism and Social Service of The United Church of Canada.

We are here to present officially the considered opinions of The United Church of Canada concerning some aspects of the subjects being studied by the parliamentary committee.

First: We express appreciation of this opportunity. It is one more illustration of the close, effective, working relationship that exists between the churches and the governments of Canada, its provinces and municipalities.

We believe it is both the right and duty of The United Church of Canada as a branch of the Christian church to co-operate with the state in a common effort to determine the best methods to deal with crime including those redemptive processes essential to the restoration of the criminal. We believe also in stressing the need for and value of preventive work and the importance of all character building methods and programs as the best way to reduce crime. We believe, in short, that only the good way of life can effectively overcome the evil ways. We would accentuate not the prohibitive and penalizing methods, some of which are necessary, but the positive and character building ones.

Second: We would point out that The United Church of Canada, which in 1953 had 870,000 members in full communion, more than 2,100,000 persons under pastoral care and over 600,000 in Sunday school classes, is in a position both to create and inform public opinion. The 1951 census shows that 2,867,271 persons reported themselves as United Church people. One-quarter of our country's marriages are solemnized by United Church ministers. The work of The United Church is established in every part of Canada. Ours is a communion with pastoral charges in rural, village, town and city areas in every province.

In addition to its work the United Church has made and now maintains a strong Christian witness. We are deeply concerned about moral issues. We keep these matters clearly and effectively before our people. We believe we should always first speak to our own members about the dangers of crime, the need for better social conditions, such as housing, the requirements of character building programs, particularly for youth, the necessity to avoid such evils as intemperance and gambling, and generally the demands of a good life and the maintenance of a responsible society.

Our church is a conciliar, or council-governed church, that is, it is democratic and the positions taken by the church in controversial matters must and do represent the opinion of the majority of this large group of Canadian citizens. Being a large group and responsible to the opinion of our members, we do not support narrow or bigoted points of view. We are a tolerant and not a fanatical or pseudo-Puritan people. But we have a deep and real concern for the poor, the children, the young people and for the freedom of this land we love from crime and poverty. We stand for the building up in Canada of ideals of integrity, hard and honest work, high moral and religious standards of living. We believe in the future of Canada, but are convinced that that future can only be made secure as the foundations are rooted in strong, moral principles of daily living.

Our view of the task of government is that it exists not merely to give people what they want, but to give them strong leadership towards the highest standards of daily life and to protect them against all that would undermine those principles which make highest moral development of the citizens of Canada.

Third: We would make clear some aspects of our views concerning the relation between church and state. While we support and favour well established social security procedures, we do not think that the responsibility of each individual to do his best and to lead a good life should be forgotten. We believe the strong should help the weak but we think also that the test of the value of a law should not be made entirely on the John Stuart Mill teaching of the greatest good for the greatest number. We think the acceptance of utilitarianism should have well defined limits.

Similarly, we believe that the doctrine of majority opinion is not entirely sound. The Rousseau teaching that the voice of the people is the voice of God is not a Christian teaching. While we believe in democratic procedures we do not think that these alone can give us a Christian society.

We hold that ours should be a responsible society—our government a representative one. We believe that such a society and government can be established and maintained only when men live and work as Christians. Modern democracy includes the right of self-government. It recognizes the place of conscience. It includes the passing and observance of laws that are related to the divine law. Our present Prime Minister speaking at the time as the Minister of Justice on the divorce question, once reminded the House of Commons that "those who take their law from the Bible have to take it as

it is". *Hansard*, June 21, 1946, pages 2792-2794. This is a good illustration of the place and significance of scriptural teaching and thus of Christian ethics in the making of laws and the responsibility for their enforcement.

We believe further, that in a responsible society, due respect for law is essential. Such respect can be encouraged and maintained only by thorough enforcement of law. We believe that the chief responsibility rests with the Minister of Justice, and the provincial attorneys-general. These are the chief law officers of the Crown.

We think law enforcement is weakened unnecessarily when any defeatist view or any action of accommodation is considered seriously. For example the argument of the following syllogism we believe is weak and fallacious, namely:

"If a certain section of the Criminal Code, say 236, 6 (b) were any good, it would be enforced. It is not being enforced. Therefore it is no good. Therefore, let us amend it to make it enforceable."

It is with these views and teaching in mind that we believe that the church must be the conscience of the state. Therefore, we contend that no majority as such can make evil into good—a wrong way into a right way.

Fourth: We approach the subject of the committee's enquiry in a two-fold manner. Corporal and capital punishment concerns the right discipline of persons. Lotteries raises the question of the right to things, their ownership and use.

Concerning persons we would stress the Christian teaching that man is a child of God. Man is superior to things. He has an inborn sense of worth. He has "honour and dignity". Every man at his lowest and worst has something good left in him—a divine spark that will respond to a favourable impulse or to change the metaphor a little remaining germ of goodness that may grow into noble character again.

We believe further that man's natural dignity is enhanced by grace. This grace when hindered by sin can be renewed by the indwelling power of Jesus Christ. It is because we believe this and because the state recognizes this redemptive truth that ordained ministers of the Christian church are members of staffs of penitentiaries and an increasing number of reformatories.

It is because of this brief in the redemptive character of the grace of Jesus Christ that the United Church both or on her own and in cooperation with other communions, operates some homes and institutions for girls and women committed by provincial authorities.

I

From this background of doctrinal belief and teaching, study and experience, we respectfully offer some comments about corporal punishment as follows:

First: When man as a child of God uses his freedom of choice for lawless and selfish ends, he estranges himself from God and hurts both himself and his fellowmen. He comes under God's judgment. He puts himself in a position where the state, on behalf of Society, must discipline him. The state of which he is a citizen, has the duty to punish and reform.

Second: We believe the state must exercise its rightful authority over those of its members who break its laws. We believe there cannot be effective law enforcement without penalties and one penalty is loss of freedom imposed by custody. We believe that custody must be disciplinary and character building.

Third: We regret that at the present level of progress in correctional work the use of corporal punishment as a last resort may be a necessity. We believe that the state should look forward to its abolition. If the state cannot see its way to do this at the present juncture in correctional work,

it should continue its enquiries and research, making a project of the task of the gradual elimination of this form of punishment which is most degrading to human dignity, both for those who inflict it and those upon whom it is inflicted.

Fourth: If, as, and when corporal punishment is continued, it may be ordered in two ways; by a court of law and by the superintendent of a custodial institution. Orders for corporal punishment are and should continue to be given as last resort measures. Archaic and cruel methods such as leg irons and tying to a wall should be abolished.

This delegation believes that it is the responsibility of the state to decide if the lash and the strap are to be continued. Provincial and federal records both show that barely one percent of the total number of all prisoners are so punished.

This delegation in representing the United Church in the matter of corporal punishment, summarizes its findings as follows:

(*a*) Good law must include penalties.

(*b*) Penalties may include corporal punishment.

(*c*) Corporal punishment should be rarely used and when used only on the authority of a court or the senior official of a custodial institution.

(*d*) Archaic forms of corporal punishment such as leg irons should be abolished.

(*e*) The state must decide about continuing the use of the strap and lash. If these forms of punishment are continued, their use must be strictly supervised and every effort made to minimize the dehumanizing character of such punishment.

The United Church records its appreciation of the recent and remarkably good progress in substituting more positive methods of treatment. It believes that the use of corporal punishment will continue to decline as more remedial measures are favoured. The United Church strongly supports all recent reforms in the care and custody of prisonners. It welcomed the royal commission report on Canada's penal institutions, 1938. It appreciates similar efforts made recently in several provinces and particularly in British Columbia, Saskatchewan and Ontario. It supports improved standards of care including psychiatric studies and treatments, better medical care, improvement of personnel standards and all forms of positive leadership such as that of Brigadier Ralph Gibson.

Our communion believes that crime is like cancer. Cure depends upon early detection of human disobedience, weakness and disease and early prompt treament by every proven positive means. We emphasize in particular the importance of close-up personal work. Mere routines of punishment as such, avail little. Crudely and carelessly used they are extremely harmful. The result too often is that bad men are made worse.

The constructive value of any form of punishment should be determined by research studies. Such studies should be made concerning "repeaters". If the studies indicate clearly that failure, not success, results from the use of any method, that method should be changed. This committee, therefore, suggests that the parliamentary committee consider favourably more research work in regard to corporal punishment.

II

CAPITAL PUNISHMENT

The question whether the criminal law of Canada should be amended in any respect and if so in what manner is a serious and difficult one. About four years ago the general council of the United Church referred the question of capital punishment to its Board of Evangelism and Social Service, for study and report, but the board was unable to present any report to the council meeting in September, 1952. Likewise in September 1954, the Board of Evangelism and Social Service will not present any definite recommendations re capital punishment to the 16th. General Council of the United Church. It will, however, present some findings. The following excerpts from the Board's report of February 1954, indicate the results of its study to date.

Considerations

(1) Is capital punishment a deterrent? There are arguments on both sides and statistics are quoted both for and against capital punishment as a deterrent. Most of these statistics are based upon situations where this mode of punishment has been abolished, or abolished and re-introduced, in comparison with places where it has been retained. As many factors enter in, such as law enforcement, attitudes of courts, difference in customs and habits of nations and states involved, many of these statistical arguments are not significant. However, the weight of evidence on the side of capital punishment as a deterrent is not large. As one writer says, "who is deterred? Not the insane! Not the frightened bandit with a gun! Not the one who kills under strong emotional stress! Not the gangster from the underworld who appears ready to take what he calls "the rap"! Perhaps only the crafty schemer who may be ready to risk his life is, in some cases of cold deliberate planning, deterred by consideration of the possibility of capital punishment."

(2) The second consideration is the defence of society. By execution the murderer is removed from the human scene. This is final so far as defence of society is concerned. This argument seems to be the most forceful in favour of capital punishment.

(3) The third consideration is retribution. In particularly severe crimes there seems to be a demand that the punishment should be made to fit the crime. This, however, conflicts with the idea of reformation. A great English lawyer, Sir John Solmond, says, "There is a necessary conflict between deterrent and reformative theories of punishment, but the chief end of the law of crime is to make the evil doer an example and a warning to all like minded with him."

Findings

The following should be noted:

(1) Capital punishment being final, no effort should be spared to make absolutely certain of guilt. If the least possible and reasonable doubt exists that murder has been committed, there should be no conviction at all.

(2) In Canada there is often a serious gap between the conviction and the execution of murderers. In Great Britain the time that elapses between conviction and execution is rarely more than six weeks and this includes the time allowed for appeal.

From a report from the Department of Justice in Canada we note the following:

Time convicted, December 1950—executed July 1952.

Time convicted, May 1951—executed June 1952.

Time convicted, March 1951—executed March 1953.

We believe careful consideration should be given to a more speedy execution of justice.

(3) Methods of execution. The question of whether hanging is the right method always comes to the fore when capital punishment is considered. The story of the execution of Suchan and Jackson in the Don Jail in Toronto raised in many Canadians' minds, questions regarding this method of execution. If capital punishment is to remain as a part of Canadian law, many would favour a provincial site rather than a local one.

(4) Reform measures must be a factor in considering capital punishment. Although it must be admitted that deterrence is a prime factor for the state, yet reformation, where at all possible, must be the primary consideration.

Should the death penalty be abolished? The United Church is unable to give a definite answer. It will not have an official opinion until its general council meets in Sackville, N.B., September, 1954. And this council may not reach a definite conclusion.

This delegation, however, can present some recommendations of the United Church's Board of Evangelism and Social Service as follows:

(1) The decision about the continuance of the death penalty must be made by parliament on report from its special committee.

(2) If the death penalty is to be continued serious consideration should be given to the continuance of hanging as the method to be used.

(3) The death penalty should be used only as a punishment for murder that is premeditated, murder in connection with robbery with violence, treason, kidnapping and some other heinous and callous crimes involving the loss of life by an innocent person or persons.

(4) The death penalty if continued should not be inflicted in a public place. It would be preferable to have one site only in each province.

(5) Only on the rarest occasions, if at all, should the death penalty be inflicted on persons under 21 years of age.

III

LOTTERIES, A GENERAL STATEMENT

A lottery is a form or method of gambling. Gambling is a vicious thing that has a considerable attraction for many kinds of people. It lures a large number of Canadians. Ours is a country not far removed from pioneer ways and customs. Our people face, meet and generally overcome, many natural risks. Probably this aspect of our way of life leads us to create readily additional and unnecessary risks and to gamble on them.

Gambling among Canadians is caused by the evils of credulity and cupidity. We readily believe in the possibility of one chance in a hundred thousand. We accept the philosophy of the "lucky" number. We are also greedy and lazy. The lure of something for nothing attracts us.

A generally accepted definition of gambling is "an agreement between two parties, whereby the transfer of something of value from one to the other is made dependent upon a certain event in such a way that the gain of one party is balanced by the loss of another."

In a sweepstake or lottery the amount lost by all who win nothing exactly balances the gross sum received by winners, promoters, governmental tax collectors, and to a diminishing extent to a "cause" to be aided.

Gambling which is not creative and is unproductive of anything of human value is now a highly organized business. It's a different thing from small scale, personally arranged betting. Gambling in North America has been shown by the U.S. Senate Kefauver Committee studies to be a highly organized business. For example, the heavily populated areas of the United States were divided by such men as Frank Costello of New York, among gambling syndicates. Before they were partly disorganized by law enforcement authorities following the Kefauver Committee studies, such areas as Florida and adjacent states, the Philadelphia region, metropolitan New York, populous Los Angeles and so on were controlled by rich, powerful, top-level gamblers. One of Frank Costello's centres of operation was the barber shop of the Waldorf Astoria in New York. Mickey Cohen was Los Angeles' gambling czar. In the recent New York State race track story, the list of principals included the names of prominent legislators, and some high placed labour leaders, as well as the names of several race trace society leaders.

The history of lotteries is an old and long one. In England, for example, from 1566 to 1823, lottery was a form of wagering that attracted much attention. Until 1698 there was no legal prohibition of private lotteries, but in that year the British Parliament having experience of what lotteries were, framed an act declaring that all lotteries were common and public nuisances and might thereafter be allowed only when authorized by Act of parliament.

During the next century lotteries were authorized by parliament for various public purposes—but opposition even to these began to gather strength and in 1773 the city of London petitioned the House of Commons against the authorization of lotteries as "highly injurious to the commerce of the Kingdom and to the welfare and prosperity of the people." Even so the state felt it could not give up the revenue thus obtained.

In 1808 things had got so bad in the administration of lotteries that a select committee of the House of Commons was appointed to enquire into the situation—and from its report the following is a quotation:

> The pecuniary advantage from a state lottery is much greater in appearance than in reality. No mode of raising money appears to your committee so burdensome, so pernicious and so unproductive. There is no species of adventure known where the chances are so great against the adventurer—none where the infatuation is more powerful, lasting and destructive. Your committee find that by the effects of the lottery idleness, dissipation and poverty are increased—the most sacred and confidential trusts are betrayed—crimes are committed and even suicide is produced. Such have been the constant and fatal attendants upon state lotteries and such, your committee have too good ground to believe, will be their invariable attendants so long as they are suffered under whatever checks and regulations exist.

That was the judgment in 1808 based on a continuous experience of lotteries running back 250 years. The committee recommended that state lotteries be discontinued. In 1823 they were stopped.

In 1931 an agitation was begun in Great Britain to revive the lottery as a means of revenue. By royal warrant a representative commission was chosen to consider the matter. The commission found that lotteries lend themselves very easily to exploitation and fraud, allowing great scope for the running up of fictitious bills for expenses and the payment of salaries and commissions on a lavish scale. There are also many opportunities for direct fraud. When a ticket is sold, all that the purchaser gets is a numbered counterfoil and it is impossible for him to tell that the corresponding ticket will be put in the drum from which at length the winning tickets are drawn.

The commission declared: "A large lottery represents gambling in its easiest form. It calls for no skill or knowledge and thus appeals to many who would not risk their money backing a horse. The large prizes are a dazzling lure to the ordinary man, so attractive that those who take a chance in a large lottery do not trouble to ascertain how infinitesimal is the chance they have of being a winner. In the Irish sweep the holder of a ticket has one chance in 390,000 of winning the highest prize and one in 4,000 to win the lowest. Lotteries appeal with especial force to those in straitened circumstances since they hope to gain financial stability by winning a prize—and lottery tickets are purchased with money that for the sake of well-being should have been spent otherwise."

The royal commission came to these conclusions:

(1) The demand for legalization of large public lotteries in this country (Great Britain) is based upon insufficient appreciation of the difficulties and disadvantages involved.

(2) We recommend that the law against foreign and illegal lotteries should be reenacted and strengthened. We do not recommend the institution of large lotteries in this country. We regard such a step as undesirable in itself and unlikely to assist very materially in suppressing the sale of tickets in the Irish sweepstakes.

There was another British royal commission on gambling which reported in 1951. This commission stated, "There is no important advantage to be gained by the establishment of a national lottery... There is no reason to depart from the general principle that it is undesirable for the State to make itself responsible for the provision of gambling facilities."

It is probably unnecessary to add to these references: the briefer one regarding the Kefauver committee and the more extended reference to the reports of two British royal commissions. It should be noted, however, that the R.C.M.P. has a publication entitled, "Law and Order in Canadian Democracy", Queen's Printer, Ottawa, 1952. In Chapter VII of this publication the threats of "organized crime" in the U.S.A. to Canadian life are noted. The R.C.M.P. refer to gambling, smuggling, and bootlegging and in particular to rackets and syndicates.

It is the considered opinion of the United Church that Canada's two central provinces should jointly or separately appoint a royal commission (s) to investigate the existence of organized crime including organized gambling as referred to by the R.C.M.P. We believe there has been ample evidence of the existence of this evil in Ontario and Quebec and its relation to organized syndicated controlled and gangster led gambling in the U.S.A. We believe further that the operation of government sponsored or other legalized lotteries in Ontario and Quebec would result in Toronto and Montreal becoming the sweepstakes centres of North America.

IV

THE ENFORCEMENT OF CANADIAN LAW AGAINST GAMBLING

Consideration should be given to the very question as to why this matter of the possible legalizing of lotteries is before you and therefore before the people of Canada. There are seven reason that we observe for consideration of the problem of lotteries and law enforcement re gambling in Canada.

(1) Law enforcement by the attorneys-general of our provinces regarding Section 236 of the Criminal Code has sometimes been inconsistent and weak.

Lotteries for charity and for some causes often not so charitable, have grown in number since the war period of 1939-45 when money was raised in every imaginable way for charitable purposes. The charitable provisions (6) (b) of Section 236 of the Code have been misused in an irresponsible and often dishonest manner. Laxity has been allowed and in some cases encouraged. This section provides for "raffles for prizes of small value at any bazaar held for any charitable or religious object." The article raffled is not supposed to be "of a value exceeding fifty dollars" and must "have first been offered for sale".

Under this simple provision articles in value of many thousands of dollars are and have been raffled, and were certainly never first offered for sale. Few prosecutions have been undertaken by attorneys-general for such violation of the criminal law of Canada. Our people have been led to believe that you can easily "get away" with a breach of this part of the Criminal Code.

(2) Well intentioned people seeing this violation of the law frequently wish amendment might be passed so that what is now done in flagrant disregard of the Criminal Code might be done legally. The church respects the good intentions of this group, but says to them that the way out of bad law enforcement is to good law enforcement, not to any weakening of the moral principles and standards on which law is based. To legalize lotteries would be to reward the iniquity of thousands of law breakers. This puts law into disrespect, and derides the dignity of the state. It illustrates the evil results which ensue when principles are traded for expedients.

(3) Demands are being made by self interested parties who wish to take advantage of the cupidity and credulity of thousands of people to get lotteries legalized for their own profit and advantage. Such law breakers would continue to evade the law, perhaps keep it as to its letter and break it as to its spirit. Whatever amendment might be made downward to placate those who urge greater freedom for lottery holding, would be used by these people for further evasion and ultimately further demands for the weakening of the law.

(4) There are persons interested solely in charity and its organizations who urge legalized lotteries. The few who do this are extremely vocal but do not have the support of the most experienced and wisest organizers of charitable campaigns, including the Canadian Hospitals Association and the best leadership in service clubs. It is said that canvassers for charities like to have a ticket to sell, rather than merely make an appeal for a voluntary donation. The United Church denies that charity must be self-interested. We raise millions of dollars in this country each year for charitable and beneficient causes, both directly for the church and also for other national causes. Voluntary giving, in our experience, is the easiest and not the hardest way of raising funds for charity. For every one dollar ticket sold on a car which is raffled for a good cause, five dollars could be collected by means of direct donation.

(5) There are those who say we must be "realistic", that laws against gambling cannot be enforced and therefore should be radically amended. To these we would refer a recent book by David R. Allen, entitled, "The Nature of Gambling" (Coward-McCann, New York, 1952), which is a historic, social-ogical and economic survey of gambling from a non-moral but legal point of view. Mr. Allen asks three questions and gives three answers regarding gambling. (i) Is it a universal human activity? This is answered affirmatively. (ii) Is it a harmful activity? The answer is affirmative because wherever it becomes prevalent, law has to be used to regulate and control it. (iii) Is gambling suppressible? The answer is that public gambling can be controlled and suppressed wherever there is a normal public opinion, effective police and adequate laws. We believe the majority of people in Canada are "realistic" in their wish that gambling be controlled or even suppressed. We believe we have an effective police force and can have, what we do not now have, adequate laws. Laws have not been applied or even tried in many instances against illegal lotteries.

(6) There is a further group of people who believe in what they call "liberty". They regard all laws against gambling and lotteries as "blue law", devices of spoil-sport people who wish to take the joy out of life. Nothing is farther from the truth. In trying to eliminate gambling we aim at preserving the joy of life for many people for whom gambling has destroyed it. We refuse to confuse liberty with license and the risks of life which are normative with created and unnecessary risks, which lead to gambling. We believe life requires adventure, daring, risk, what Robert Louis Stevenson called an "affair of cavalry". We consider that gambling is a perversion of this desire and to legalize lotteries would be to pander to such perversion, and to prostitute one of the noblest human attributes requiring daring and courage to an ignoble end.

(7) Finally, there is a group of people to which we belong, who believe that something should be done about the present chaotic state of law enforcement in Canada regarding gambling. To this end we record the official views of The United Church of Canada.

V

The Official Position of the United Church

The following are excerpts and references from the record of proceedings of the general councils, the highest court of the United Church of Canada.

(1) In 1932, the fifth general council declared: "Our present laws relating to gambling should be strengthened and more strictly enforced." "Our people should not yield to the insidious temptation to support good objects by immoral methods, such as raffles and lotteries." (Record of proceedings, 1932, Pages 100-101.)

(2) In 1934, the sixth general council declared: "We record our opposition to sweepstakes and other gambling methods for the maintenance of hospitals and other essential institutions . . . further this council commends the recent action of the House of Commons in rejecting the Sweepstakes Bill." (Record of Proceedings, 1934, Page 67.)

(3) In 1938 the eighth general council declared: "We strongly urge our people, for the good of their own spiritual life and in the interests of society, to abstain from all gambling practices and to discourage their use in their respective communities." (Record of proceedings, 1938, Page 103.)

(4) In 1940 the ninth general council declared: "The General Council enjoins all congregations under its jurisdiction together with all their

subsidiary organizations, to refrain from the use of gambling devices for raising funds and it urges all members and adherents of the United Church to avoid participation in any gambling enterprises." (Record of proceedings, 1940, Pages 91-92.)

(5) In 1944 the eleventh general council declared that it reaffirmed the 1940 declaration which "enjoined our people":
(1) To refrain from any form of gambling, no matter how worthy the object for which money is being raised.
(2) To use their influence to encourage groups or clubs to which they may belong, such as service clubs or patriotic societies, to use other means of raising money to carry on their work.
(3) To oppose unhesitatingly, any schemes in our churches that savour of gambling for the raising of money for church purposes. (Record of proceedings, 1944, Page 71.)

(6) In 1946 the twelfth general council "commended attorneys-general of Ontario and the four western provinces, for their public declarations that they would enforce the Criminal Code provisions against bingos, lotteries and sweepstakes", and expressed "appreciation of the response of members of organizations" of the church's decision "to enjoin all members to refrain from every form of gambling and urged that in this regard even greater progress be made." (Record of proceedings, 1946, Page 217.)

(7) In 1948 the thirteenth general council reaffirmed "its opposition to every form of gambling" and endorsed the 1948 pronouncements of the Lambeth Conference of Bishops in Great Britain which stated "we deprecate the raising of money by the state or by any organization, through sweepstakes and similar methods however good the object may be for which the money is raised; and we warn men and women of the danger of acquiring the habit of gambling, which has led in so many cases to the deterioration of character and the ruin of homes." (Record of proceedings, 1948, Page 89.)

(8) In 1950 the fourteenth general council called upon its ministers and members to:
(1) Oppose both the liquor trade and the gambling interests—in the promotion of their evil plans.
(2) To stand strongly against the alignment of the liquor and gambling businesses with recreational and community organizations of social, industrial, political and other types." (Record of proceedings, 1950, Page 96.)

(9) In 1952 the fifteenth general council passed the following:
(1) Urge United Church people who are members of social clubs and other organizations which use gambling for money raising, to make the church's stand their stand and to witness boldly against all such schemes as morally decadent and un-Christian.
(2) Reaffirm its church's demand that the Criminal Code be revised to exclude such provisions as exempt and thus legalize such gambling enterprises that are for religious and charitable purposes. (Record of proceedings, 1952, Page 182.)

Summary:

The United Church's general objections to gambling include the following arguments:

(1) It contradicts the teaching that we are to love our neighbor as ourself. This means it destroys fellowship in the nation or community which tolerates it.

(2) It is bad stewardship of our resources because it uses money irresponsibly without a due regard to its value.

(3) It teaches people to rely upon getting something for nothing, instead of relying upon their own work to earn a living.

(4) It emphasizes luck and supersitition, leading to irrational modes of thinking and living, rather than reliance on law and order in the universe.

(5) It corrupts human character, community life, civil government and ultimately every nation which attempts to legalize it.

VI

THE UNITED CHURCH'S SPECIFIC OBJECTIONS TO LOTTERIES AND THE LEGALIZING OF THEM INCLUDE THE FOLLOWING CONSIDERATIONS

(1) The legalizing of lotteries would be a degenerative political action, subscribing to the worst ethics and morals of our society and contradicting the best. It would be contrary to the considered views of the wisest statesmen and legislators throughout the world. Political leaders of high principle and Christian conviction like the late Sir Stafford Cripps, Governor Thomas E. Dewey of New York and others have been unanimous in their opposition to gambling in any form.

The following statements by well known authorities are worth noting. Says Thomas E. Dewey, governor of New York State, in reply to Mayor O'Dwyer (involved in revelations of gambling rackets contained in the Kefauver Report) and his request for legalized "strictly controlled gambling" said:

"The entire history of legalized gambling in this country and abroad, shows that it has brought nothing but poverty, crime and corruption, demoralization of moral and ethical standards, and ultimately a lower living standard and misery for all the people. I am unalterably opposed to the proposal made by the Mayor of the City of New York."

(New York State legislative speech, March 1950)

In the annals of the American Academy of Political and Social Science, May 1950, (page 76), Ernest E. Blanche, chief statistician for the logistics division, general staff, United States army, and an outstanding American research authority on gambling games, writes:

"Morally and legally wrong and outlawed lotteries do more than mulct the rich and poor alike; lotteries change the very pattern of living, distort the sense of values and incubate the eggs of crime. Examine the sociological and economic implications of the lottery and you will behold a Frankenstein monster capable of consuming both those who run the lotteries and those who play them. The financial returns, insignificant in proportion to the national income or the federal expenditures, are like the thirty pieces of silver paid to Judas for the betrayal."

In the same number of the annals, (page 23) Paul S. Deland, managing editor of the Christian Science Monitor writes: "The history of gambling in the United States proves that its legalization has invariably increased gambling with all its attendant criminal evils. Legalization means acceptance of a practice, putting an official okay or 'go ahead' sign on it."

Messrs. Seebohm Rowntree and G. R. Lavers, in their monumental book, "English Life and Leisure", Longmans, London, 1951, associate themselves strongly with J. A. Hobson's devastating criticism of gambling as "the organized rejection of reason." They further quote Hobson as describing gambling as an unethical atempt to "obtain property without effort."

Rowntree and Lavers list economic objections such as (page 151,152):

(*a*) The wasteful use of transport facilities for persons, race horses, grey-hounds and so on, as part of the organized gambling enterprise.

(*b*) The wasteful use of paper for coupons, press reports, programs and pictures and related items.

(c) The wasteful use of the time of thousands of employed persons who do no creative work. They estimate that the U.K. loses annually the labour of from 300,000 to 400,000 persons.

Many years ago the late Lord Bryce pointed to the dangers of civic corruption from such evils as gambling. In his classic volumes entitled "The American Commonwealth", Vols. I and II, MacMillan, New York, 1904, there is a chapter (Vol. I entitled, "The Government of Cities". On pages 648 and 649 Lord Bryce analyzes this problem as follows:

> The question of city government is that which chiefly occupies practical publicists, because it is admittedly the weakest point of the country. (The United States).
>
> What Dante said of his own city may be said of the cities of America: they are like the sick man who finds no rest upon his bed, but seeks to ease his pain by turning from side to side. Every now and then the patient finds some relief in a drastic remedy, such as the enactment of a new charter and the expulsion at an election of a gang of knaves. Presently, however, the weak points of the charter are discovered, the state legislature again begins to interfere by special acts; civic zeal grows cold and allows bad men to creep back into the chief posts.

(2) Lotteries for charity undermine the charitable attitudes of the people, until at last the institutions supported by such lotteries lose all voluntary charitable support. This has been the experience of the Irish hospitals where lotteries were first legalized to raise funds for capital expenditure, but because the sources of charity were dried up by lotteries, had to be extended to include the raising of funds by this means for current as well as capital expenditure. It is noted in the 1952 report of the Irish sweepstake, that 6,846,008 pounds sterling were received, but less than one-fifth of this amount, namely 1,255,915 pounds were paid to the Irish hospitals.

(3) Lotteries are downright dishonest. They are economically immoral, promising what they cannot perform. In Hansard for March 11th. 1954, page 2879, the expenditures of government grants for hospital construction, tuberculosis control, cancer control, mental health control, crippled children and other health measures are given province by province. If you total them you will find they add up to the grand sum of $27,333,965. To raise even this sum of federal grants, which is only a small proportion of the total outlay for such worthy causes, on the basis of the Irish lotteries, eight times this amount would have to subscribed, or $218,671,720 by 109,335,825 two dollar tickets or seven such tickets for every man, woman, child and baby in Canada, an impossible and nonsensical task. What is true in the large is true also in the small.

Before a charity receives anything from even a small lottery, its promotors give a "winner" a $2,500 car, or even a house. They also pay proportionately large bills for salaries, wages, commissions, rentals, printing, accounting, advertising and so on. Such dishonest economics are degrading to the society which supports them as well as disastrous for the economic welfare of the people who participate in them.

(4) Legalized gambling in any form is a front for organized crime and gangsterism. The Kefauver Committee Report on Organized Crime in the United States, Didier, New York, 1951-52, see p. 175-6, among its findings includes the following general comments:

GENERAL CONCLUSIONS

(5) Gambling profits are the principal support of big-time racketeering and gangsterism. These profits provide the financial resources whereby ordinary criminals are converted into big-time racketeers, political bosses, pseudo businessmen, and alleged philanthropists. Thus, the $2 horse bettor and the 5-cent numbers player are not only suckers because they are gambling against hopeless odds, but they also provide the moneys which enable underworld characters to undermine our institutions.

"The legalization of gambling would not terminate the widespread predatory activities of criminal gangs and syndicates. The history of legalized gambling in Nevada and in other parts of the country gives no assurance that mobsters and racketeers can be converted into responsible businessmen through the simple process of obtaining state and local licenses for their gambling enterprises. Gambling moreover, historically has been associated with cheating and corruption.

This report is replete with instances of the closest association between legalized gambling and organized crime. At a time when Frank Costello, Mickey Cohen, and Harry Gross and their kind are serving penitentiary sentences, is not the time for Canada to legalize lotteries.

(5) Such legalizing of lotteries would be an unfriendly act to the United States of America, where in most border states, in particular, lotteries are forbidden. Large sums of money would cross the border to enrich Canadian institutions at the expense of Americans. The drug traffic, bootlegging, gangsterism, call for the strongest legal measures against them and one way of doing this is to support the U.S. in its efforts to combat the gambler who uses legalized gambling as a front for crime.

(6) Such lotteries would be a tax upon poor people who would buy tickets in the hope of becoming suddenly rich, and getting something for nothing. It would be "robbery without violence". It would collect large sums of money from the many losers who are frequently among the low income groups and give them to the few winners. In short, it would lead such people to hope they could perhaps avoid the need for industry and thrift and obtain riches easily and without effort by winning a lottery.

(7) Lotteries like all forms of gambling are contrary to New Testament teaching regarding stewardship, the love of one's neighbor, the reliance on law and order rather than luck or superstition and the whole spiritual content of Christian ethics.

VII

THE DUTY OF THE STATE

The church believes the state has a solemn duty in this matter of gambling. It believes the state should listen to the church when it speaks on such an issue as this, since in a Christian nation the church should be the conscience of the state in moral problems and issues involving the character and behaviour of citizens. The issues involved in this matter of lotteries are many, but as a Christian church we note only four vitally important ones. These are:

(1) The state must have a regard for all its people. It has a duty to protect the misguided against bad leadership and the poor and needy against the exploitation of their need and their poverty.

(2) The Canadian government should have a vision of the future. It must consider that Canada is a young and rapidly growing nation, and realize that only on the basis of good morals, individual integrity, industry and sound economics can the foundations for the future be securely built. To admit into

legal status the morally doubtful and evil practices of lotteries and gambling would be perilous to the future security of our nation and the character of our citizens.

(3) The government has an obligation to the citizens of Canada to see that the legislation which one province passes does not necessarily become the basis of Canadian law as a whole. We are aware of the fact that the Quebec government has legislation now in its books to permit a provincial lottery. We do not believe that this should affect at all the decisions of this committee which must take into account the wishes of the whole nation rather than any one segment of it. We do not want to see Quebec the base and Montreal the centre for a traffic in lotteries in Canada.

(4) As a church we believe there is a moral problem involved in lotteries. We consider it a principle that a good law is one that protects and benefits the majority of the people. It is the moral duty of the state to support everything which enhances human personality and to eliminate anything that corrupts or weakens character. Our view of gambling and lotteries as outlined above is that morally to support gambling in any form is indefensible from the state's point of view.

VIII

SUMMARY RE GAMBLING

This delegation presenting this brief on behalf of The United Church of Canada, believes that the Criminal Code should not be amended either to make possible a greater variety or extent of gambling of any kind. We think the words, "for any charitable or religious object", should be deleted from section 236, 6 (b). We are strongly of opinion that the chief law officers of the Crown should increase their efforts to enforce section 236. We promise that The United Church of Canada will continue to do all in her power to create an informed public opinion in support of every effort to suppress and reduce gambling.

This delegation takes this opportunity to express the hope that leaders in education in community life in sports and in business will join with organized religious bodies in a common effort to aid all law enforcement authorities to suppress the gambler and gambling.

It is our considered opinion that the following steps should be taken:

(1) Leaders in education should not permit school premises to be used for bingo or any other kind of gambling. School children should not be asked to distribute or sell tickets on raffles or other gambling undertakings.

(2) In community life, service clubs and similar bodies should stand against the so-called "easy" gambling way of raising money. It should be realized that an illegal means, such as gambling, cannot be made good and attractive by a charitable or patriotic purpose.

(3) Sports and athletic organizations should join in a common effort to reduce gambling because this evil is a serious threat to clean wholesome athletics and the good amusement it provides to many thousands in Canada.

(4) Business leaders should avoid the very appearance of the gambling evil. Free "deals" and door prizes and the raffling of cars and other commodities hurts good business. This kind of method when used by big business harms itself and the many smaller competitors. It is both evil and unfair. At best, such gambling devices serve only as false stimulants—they have no permanent worth.

(5) Law enforcement authorities, federal, provincial and municipal, should do everything in their power to discourage and suppress gambling. That this can be done is evident from the good records of many municipal areas.

In Toronto city proper, for example, the raffling of cars on the streets is not permitted. If this control can be exercised in Toronto, it can be enforced in the former suburbs of Toronto. If the chief of police in North Bay or Hull can be strict, other chiefs of police in Northern Ontario and the Ottawa area can and should do likewise. In brief, law enforcement is both possible and desirable. Failure to suppress gambling will result always in an increase in crime.

(6) Stricter supervision of race tracks and on-track betting is necessary. On-track legal betting increases the volume of off-track illegal betting. There are clearly defined dangers in the present stepped-up activity of Canada's racing promoters including those of the millionaire variety. Recent New York state exposures revealed that some top-level racing promoters were involved with gamblers. As a result a very immoral situation developed. The New York requirement about the publication, at least annually, of information about the ownership and control of race tracks should be investigated by the parliamentary committee with a view to including similar requirements in Canadian federal and provincial controls. It is to be noted that the federal department of agriculture and the R.C.M.P. now have oversight of pari-mutual race track betting.

(7) All church bodies should increase their efforts to suppress gambling. The Canadian Council of Churches in its brief made this need clear and urgent for all the Protestant churches. Monsignor Paul-Emile Leger, Cardinal of Montreal, is leading a vigorous campaign against gambling in his diocese. This committee should note these major efforts of the Christian churches.

In conclusion, this delegation of The United Church of Canada records again its appreciation of this privilege to present this brief, which is respectfully submitted.

A. LLOYD SMITH,
Chairman.

J. R. MUTCHMOR,
Secretary.

Dr. MUTCHMOR: Now, there are two or three slight corrections which I might ask to be made: at the top of page 8, the second sentence should read:

> If the least possible and reasonable doubt exists that murder has been committed, there should be no conviction at all.

The PRESIDING CHAIRMAN: Could I now read that sentence, Dr. Mutchmor?

> (1) Capital punishment being final, no effort should be spared to make absolutely certain of guilt. If the least possible and reasonable doubt exists that murder has been committed, there should be no conviction at all.

The balance of the sentence will be then deleted.

Dr. MUTCHMOR: Then on page 10 there is a small point. Please look at the single space typing at the bottom of the page in the third line:

> No mode of raising money appears to your committee to burdensome, so pernicious and so unproductive.

The word "to" should be "so."

And on page 24, we wish to put in what we understand is the correct title for the cardinal of Montreal. The seventh line on the last page at the beginning of the sentence should read:

> Monsignor Paul Emile Leger, Cardinal of Montreal.

I may say, Mr. Chairman, that Dr. Smith, if he is permitted to do so, would like to say a word regarding a statement made by the cardinal which we would like to file as an appendix when we reach that point. Now, on behalf of the delegation, and for the possible assistance of the committee, I would like to make a few comments.

Our approach to the three-fold subject of inquiry and study is made out of some knowledge and experience and from a very deep concern.

We believe that the complete review of the Criminal Code is a major and worthy undertaking. We have much confidence in our governments and legislative bodies, federal, provincial and municipal, and in all the agencies of law enforcement in Canada and her provinces.

We come here as churchmen. We would stress both mercy and justice. We believe that both crime and the well-being and those who commit it are the concerns equally of this committee. Before God, and within the walls of this parliament, we know we come far short of being what we should be ourselves. We do not come with any self-assurance or any belief that we have all the answers to the complex matters that must be considered by this committee, but we believe we can be of some help. We come officially to speak for one of the churches of Canada, the United Church, which is a relatively large communion. We are at work in every part, the old, the new and the very new parts of this dominion. Ours is also a witnessing church. The witness of the United Church of Canada is made in her courts and by her responsible boards and committees. It is made from her pulpits and by her people. It is a strong and steady witness. This witness is an effort to relate the eternal to the contemporary, the New Testament to the newspaper and the church to society.

We are pleased that you have heard our Woman's Missionary Society brief, and the brief of the Canadian Council of Churches of which we are a member. In the brief before you, we would comment on some sections in particular: first, as pointed out in the brief, we are more concerned about the prevention of crime than about crime itself. We are deeply concerned about the reformation of the criminal. Secondly, we are more concerned about the many men, including young men and the relatively few women who commit crime, than in the material damage they do. We believe this committee is likewise concerned. The main thing to remember is the person in trouble. That person, as a child of God, must have every chance to make good. We strongly advocate that there be far more time given and far more money spent on the prevention of crime and on the reclaiming of criminals. Thirdly, concerning capital punishment, we have not been able to submit much that will be of help to you, but we have done our best. We have much sympathy with the views of the law enforcement officers as expressed before this committee. When we state on page 9 of the brief that on the rarest occasions only should capital punishment be inflicted on the young person under 21, we have in mind the possibility of his reformation. We know, however, that more often than not the young criminal can be more dangerous than the older one. He can be very quick on the trigger. In the fourth place, concerning lotteries, we have tried to do three or four things: (1) we have set out the official position of the United Church and we wish to assure you that our communion is working hard at this difficult problem; (2) we have stated in the brief some of the history of this problem in the United Kingdom and in the United States of America. Again, we know gambling, like some other social evils, is greatly accentuated in a prosperous time like the present, and we think of Canada today as being really one big boom town and there is a considerable amount of loose money in circulation. I think there are some $4 for every $1 in circulation a few years ago, and in times of prosperity these evils flourish much like,—the Bible phrase, "a Green bay tree."

(4) Now, we wish in this brief to point out the danger of organized crime. We have noted from the proceedings that there have been references made to the United Kingdom, and to the views concerning gambling in that country, but we would point out that in North America we organize everything—we do things "in a big way". Unfortunately, just as we are skilful in organizing good

things, there are members of our society who are equally skilful in organizing bad things, and crime in North America, as made clear by the Senate committee which Senator Kefauver conducted, crime in North America is highly organized.

We would point out the danger of crime and of gambling, including lotteries, in our larger cities and we have a fear that should there be a relaxing of the laws controlling gambling, that Toronto and Montreal would become the sweepstake centers of Canada.

We regret we were unable to get the services of an economist. but on page 18 and in some other parts of the brief, there are references to the economic aspect of this problem of lotteries and gambling in general. We have noted, for example, the estimate that in the United Kingdom there are some 200,000 to 300,000 persons fully employed in gambling undertakings. Now, in the latter part of the brief—the last two pages—we have set out some of the relationships of gambling, and other activities related to it, to various parts of our life. I will just read the headings of this concluding summary, Mr. Chairman. We have referred, on pages 22, 23 and 24 beginning at the bottom of page 22, to the infiltration of the gambling evil into our schools in ways that may seem quite innocent, but can be quite dangerous. Secondly, gambling in the community life. Thirdly, gambling in respect to sports. Fourth, gambling in business. Then, the question of gambling and the enforcement of the law which is one of the chief matters. Then, we have something to say about on track pari-mutuel legal betting at horse races and the relationship of it to the increase in off-track illegal betting. The racetrack season is just beginning in full force and that may be a point on which there may be questions. We refer also to the concern of all church bodies—not only our own communion, about the gambling menace.

Finally, Mr. Chairman, if I may just add these words, we are very grateful to you for introducing the members of our delegation. I would like to say that Dr. Smith from Montreal, a representative from our largest city, and from our sister province of Quebec which has legislation on its books for legalized lotteries, will be ready to answer questions regarding that area of our church. Mr. Lawrence is from Windsor, a border city, and is closely in touch with the service clubs of that city and with its industry generally and with its community life. Mr. Gardiner is head of a large labour union and there may be some question about the relationship of this problem to organized labour especially in view of the fact that the largest labour organization has presented a brief before this committee. Mr. Ferguson, the president of this conference of our church within whose bounds we have met, comes from the good town of Kemptville and would like to speak with respect to this problem with relation to town and rural life. Dr. Rae, for many years on the west coast, and now in Ottawa, will be prepared to answer questions about this kind of situation respecting lotteries in the capital, and perhaps something from his west coast experience.

The PRESIDING CHAIRMAN: Thank you very much. Members of the committee may wish to submit questions. I think we should divide these into two parts. I think it would be fair to say that the brief deals to a large extent with the question of lotteries. I do not know that there is much new on the question of capital punishment or corporal punishment. Are there any questions on capital punishment? Are there any questions on corporal punishment?

Mr. BOISVERT: On capital punishment, Mr. Chairman. In the fourth paragraph on page 5 I read: "Archaic and cruel methods such as leg irons and tying to a wall should be abolished." I am taking exception to this paragraph because I do not think it exists in Canada.

Dr. MUTCHMOR: Mr. Chairman, there is a reference to leg irons in the recently published Ontario Report of the Legislative Committee of which Mr. Stewart was a chairman.

The PRESIDING CHAIRMAN: We have no evidence of it before this committee.

By Mr. Fairey:

Q. That was one of the things I was going to mention. We did ask for a description of a bench on which the person may be secured, but there were no leg irons. The other thing I was going to ask refers to page 8 the last sub-paragraph (3): "The death penalty should be used only as a punishment for murder that is premeditated". The delegation is not taking the stand that the death penalty should be abolished *in toto* and they believe that the death penalty should be retained for certain specific kinds of murder?

Dr. MUTCHMOR: Mr. Chairman, we are in a slightly awkward position at this point in that this is a question referred by the general council of our church to its Board of Evangelism to report on at its council meeting in September next. We cannot make a statement about the position of the United Church on this question, but we can say that when this was thoroughly discussed at the annual meeting of the Board of Evangelism and Social Service we could not get a common mind on it. I would say that slightly over half the members on the board favoured the continuance of the death penalty, the remainder would like to see it abolished.

Mr. FAIREY: That, of course, is the main question we are trying to decide ourselves. Thank you, Mr. Chairman, that is all.

The PRESIDING CHAIRMAN: Then, we will proceed with lotteries.

By Mr. Shaw:

Q. Before you leave the question of corporal punishment, I take it from the brief that you are not recommending the abolition of corporal punishment, but rather that a study be continued with a view, maybe, to its ultimate abolition. You are not making a specific recommendation now?

Dr. MUTCHMOR: No specific recommendation, but you have stated the position as set out in the brief.

The PRESIDING CHAIRMAN: Could you point out briefly what is new on the question of lotteries that we have not received. We have received evidence on lotteries from the Canadian Council of Churches and from the unions and from a great many organizations, and we are trying to find out something new that we have not received. Probably we could simplify it by starting with Senator Veniot and go along the table to ascertain what questions the committee has in mind.

Hon. Mr. MCDONALD: Mr. Chairman, I would like to ask the representative from the union, Mr. Gardiner, what he has to say on this question. I wish to ask Mr. Gardiner what his views are as a labour union man on this question.

Mr. Reginald GARDINER: My view as a person associated with labour but not speaking as the voice of the congress to which I am affiliated is that I am unalterably opposed to lotteries of any kind. I do not know what sort of representation the committee may have received, Mr. Chairman, from a labour group that have presented a brief to the committee. I am not aware of the contents of that presentation. I do not think our own Canadian Congress of Labour has submitted a brief.

The PRESIDING CHAIRMAN: No, the Trades and Labour Congress of Canada did.

Mr. GARDINER: Personally I am unalterably opposed to it because it seems to me to be the most wasteful method of raising finances for any kind of cause. For instance, just two nights ago in my own local union there was a group of members that operated a Christmas tree for the children last Christmas which ended up with quite a deficit, and they undertook to run a draw—I did not have anything to do with it, nor did I know that it was being held—and they strenuously tried to sell tickets for it and it was a dead horse as far as these deficits were concerned. There are always those. But, they made the magnificent sum of $4 more than the cost of the prizes put up, and all that effort was gone for nothing. I am quite sure that those who contributed to that little draw innocently would have given the money just as generously had it been asked for as a stright contribution to wipe out a deficit. That is generally my viewpoint on the situation.

Hon. Mr. MCDONALD: Thank you.

Mr. SHAW: I notice that on page 12 reference is made to: "Law enforcement by the attorneys general of our provinces regarding section 236 of the Criminal Code has sometimes been inconsistent and weak." Would you care to comment further upon that, Dr. Mutchmor?

Dr. MUTCHMOR: Mr. Chairman, we do not think that in some of the provinces the attorney general's department is sufficiently active in this matter of enforcement. Sometimes when we bring to the attention of some of these departments a specific case where the Code is not being adhered to we are of the opinion that either they cannot act or do not act with sufficient vigor and strength. There have been times when we have had to write as many as three or four letters or have made as many phone calls to get some action under the Code.

Miss BENNETT: Mr. Chairman, I would like to make a suggestion that the members of this delegation waiting upon us give a short concise statement to us of what they wish to highlight and then we will be in a position to ask questions which may be more quickly disposed of. Perhaps it is my fault, but I did not receive the copy of the brief until now.

The PRESIDING CHAIRMAN: You were sent one through the mail.

Miss BENNETT: It may have been my fault, but I think that that would help to clarify matters and give us a working idea of what this delegation has put before us.

The PRESIDING CHAIRMAN: Perhaps you were not here when I gave a little synopsis.

Miss BENNETT: It leaves me in a difficult position. If we had a little concise statement from each member it would help us all in perhaps being a little more lucid in our questions and a little more connected. It is merely a suggestion.

The PRESIDING CHAIRMAN: What ever the committee would like to have done will be followed.

Hon. Mrs. HODGES: I hesitate to say anything, Mr. Chairman, but the rest of us have pretty well studied the brief and it is hardly fair to hold up the members of the committee who might have questions.

Miss BENNETT: It was not for my sake, although the various members waiting on us, or two or three of them, could sum up briefly the highlights they had in mind.

The PRESIDING CHAIRMAN: Probably after the questioning we could do that.

Hon. Mrs. FERGUSSON: I agree with Miss Bennett. I have studied the brief, and still would like to have a statement from them.

The PRESIDING CHAIRMAN: We do not want to confine the activities of the panel, or the statements they wish to make. I thought that their presentation was through and that we had started on the questions. Could we finish the questioning and then have the statements. If anything they like to bring out is not covered by the questions, they could make a statement. Would that be agreable to the panel?

Agreed.

By Mr. Shaw:

Q. Dr. Mutchmor, is it proper for me to take it from the brief that the United Church would desire that the Criminal Code be amended to remove those sections which now permit gambling under certain conditions, for instance, charitable and religious organizations may do it in certain exceptions. Do you ask for the amendment of those sections of the Code to remove those permissive aspects of it?—A. We are on record in requesting that the religious and charitable permissible sections be removed.

Q. You would limit your representations to that?—A. Yes.

By Mrs. Shipley:

Q. I would like to ask the Dr. Mutchmor about a statement he made. As I understood it, I think you said something to this effect: that the Kefauver Committee of the United States Senate exposed the wide extent of crime, or some words to that effect, in North America. Do you not mean in the United States of America?—A. No. Mr. Chairman, the work of the Kefauver Committee certainly exposed the organized character of crime in the United States, but related to that exposure there was also exposure of crime, for example, in the city of Windsor. I do not like to pick out the city of Windsor to answer this question, but it is a good illustration. Windsor was the site of the wire for the metropolitan Detroit district. Doubtless the members of the committee know the signifiance of the word "wire" in respect to racetracks and racetrack gambling. After the law enforcement officers of metropolitan Detroit had got rid of the wire facility in the American section of that metropolitan area, the wire continued to operate in the city of Windsor.

The PRESIDING CHAIRMAN: How long?

The WITNESS: I would not know for what period of time, but for some time at least before Judge Archibald Cochrane of Brampton was sent there to be the chairman of the Police Commission.

The PRESIDING CHAIRMAN: I think that it would be fair to say that it was not operating too long.

Mr. LAWRENCE: Not too long, but it was there.

By Mrs. Shipley:

Q. I remember that incident, but I submit that the Kefauver Committee did not examine the extent of crime or its growth in Canada.

Dr. MUTCHMOR: Well, I would say further if you take the R.C.M.P. report —I do not know if I have the exact title, but you doubtless know the title of the report, law and order in Canada or some such title—in that report, as we refer to it in the brief, reference is made to organized crime including the organized gambling aspect of crime, and that finding of the Royal Canadian Mounted Police parallels exactly the finding of the Kefauver Committee.

Q. That could be.—A. And that bears on what I have said somewhat inaccurately, and I thank you for the correction. It is a North American problem. I could add to that, Mr. Chairman, and say that it is a rather well accepted fact that operators of these gambling syndicates in Detroit, Cleveland, Buffalo and through to Philadelphia and New York, doubtless have their opposite numbers working in Montreal, Toronto, Windsor, and the Niagara peninsula area. I cannot give you evidence, but I would point out what seems to be the situation, namely that there is a relationship between or among these kinds of crime, that is, high-grading of ore, bootlegging of liquor, and the transfer of women in what appears to be organized prostitution back and forth across the line, and in the drug traffic, as well as gambling.

The PRESIDING CHAIRMAN: I think we should confine ourselves pretty much to lotteries. Is that not the committee's opinion.

Mr. THATCHER: I am kind of interested in learning about the city of Windsor.

The PRESIDING CHAIRMAN: I think the best way is to get it from somebody who lives there.

Mr. BOISVERT: Call the chairman as a witness.

The PRESIDING CHAIRMAN: I would be very happy to give evidence on Windsor at any time.

Mr. SHAW: We should not overlook the fact that the witness was asked a question relative to crime, so I would not be too critical of the witness.

The PRESIDING CHAIRMAN: I did not intend to be critical of the witness, but I think we should confine our questioning to lotteries.

Mrs. SHIPLEY: I am sorry, but I felt in view of the crimes exposed in the Kefauver Report that this should be brought up in view of the suggestion made that the same thing existed in Canada. I am finished.

Mr. FAIREY: Arising out of an answer to a question asked, I think, by Mr. Shaw, that the United Church as a group are opposed to every form of lottery, even what we call the simple little church lotteries which are sometimes held, I wonder if any of the members of the panel would like to comment upon the view that has been expressed that people like to and are willing to pay small sums in games of chance. It is a form of amusement to some people, and they spent 50 cents or something like that in an evening. Do you think there is any harm in that? Is there any justification for depriving people of that simple form of entertainment which they like? I may not like it—I might like to spend my 50 cents and go to a picture show—but some people do like to play bingo or some similar game of chance. Is there anything wrong with that?

The CHAIRMAN: Reverend Ferguson?

Rev. Mr. FERGUSON: In service clubs groups and in conversation in small towns, men have said that very thing to me and I think we have to recognize that on the surface they are sincere about it, but when you face them with the implications of that particular type of amusement where they go and perhaps consider it their night's amusement; but at the same time while they are there they have to recognize that there is a majority perhaps of the group who came that night who did not come with that motive and who get their sense of values tremendously confused. I am particularly interested from that standpoint and from the standpoint of christian education trying to impress our young people with a true sense of values and a right sense of stewardship. When you start the matter of enforcement then they say: "But these things are allowed in the name of charity—they must be all right." The end justifies the means. I sometimes like to think of this: crippled children are often the

objects of the finances that are raised, but my conviction is that for one crippled child we help perhaps we are making moral cripples of half a dozen or ten children.

Mr. FAIREY: Thank you.

The PRESIDING CHAIRMAN: Mr. Lawrence?

Mr. LAWRENCE: I was just going to say, Mr. Chairman, this sort of thing can prove very expensive. At one time in Windsor, as you likely know, Mr. Brown, several churches used to have weekly bingos and the prize each time would be half of the total that was collected. These are the 50 cent bingos where people go for amusement, but now we have this sort of thing—these were taken from the Windsor Star.

The PRESIDING CHAIRMAN: The witness is now holding up an advertisement.

Mr. LAWRENCE: One of these is a church affair, and one was sponsored by the Canadian Legion. The church bazaar offers the choice of a 1954 Plymouth, Pontiac, Ford or Chevrolet—no stop number—10 rounds for $30, five rounds for $50, and two rounds for $500,—all in one night!

The PRESIDING CHAIRMAN: For the purpose of the record, could I just briefly describe this?

Mr. LAWRENCE: Yes.

The PRESIDING CHAIRMAN: Mr. Lawrence has handed me two, three-column ads from a newspaper, advertising automobiles as a prize. The one sponsored by the Canadian Legion is advertised as a mammoth bingo—"This is the big jackpot, someone will own a new 1954 Meteor". And the other, sponsored by a church, is advertised as a mammoth bazaar: "This is the jackpot—your choice of a 1954 Plymouth, Pontiac, Ford or Chevrolet—no stop number", and so on, giving prizes of $500 cash and other things. Mr. Lawrence has indicated that these were clipped from the Windsor *Star* dated May 12, 1954.

Mr. LAWRENCE: The proceeds are supposed to go to charity. It states that in small letters. One of these is to be held in a city-owned property, the market building. I do not know whether you want to keep them?

The PRESIDING CHAIRMAN: Would you let us have them?

Mr. LAWRENCE: Yes. They were taken out of last night's Windsor *Star*. The one that is to be held in the arena is sponsored by the Canadian Legion. The arena is owned by a private organization. The arena operates this with some service club or charity or something as a front. It is not a case of the Legion hiring the arena, the arena arranges it all, pays the expenses and splits 50-50 on the profits, so it is not entirely going to charity. That is why I say these innocent games where people seek a little amusement have grown into a big business.

The WITNESS: I would suggest that Dr. Smith might comment, Mr. Chairman, from the Montreal point of view.

The PRESIDING CHAIRMAN: We would be happy to have any member of the panel comment.

Rev. Mr. SMITH: Thank you. I speak as a working minister facing the responsibility of securing each year a very considerable budget for the support of our church and the various benevolences that we are glad to help forward, and through all the years of my somewhat extended ministry, in none of the churches that I have had anything to do with have we ever needed to have recourse to any of these second-rate methods of raising money. If we want to raise money we ask our people for money. Along this line, I happen to belong to one of the service clubs which definitely has an international policy of no complicity with lotteries of any sort. Moreover, before I come to what I want to say further on this point, I would like to speak a word on behalf of

Montreal where in five or six years we have raised in the neighbourhood of $50 million or $60 million for hospitals. We went out and asked our people for it, and they gave it. I think the best way to get money from people is to go and ask them for it. If you have a good cause you will likely get it.

Mr. Mutchmor has referred to a document which it is my privilege to have brought with me today. It is a circular issued by Mons. Paul-Emile Léger, our honoured archbishop and cardinal, who is giving a very strong lead in this matter to his people. Now, I have no right to speak for him as his representative, but yesterday we were—

The PRESIDING CHAIRMAN: For the purpose of the record, the cardinal is a member of the Roman Catholic church, is he not?

Rev. Mr. SMITH: Yes. We were informed that this circular which had been publicly issued was a public document and there was no objection to our bringing it with us and presenting it here today. Now, the document is in French, and if the committee are prepared to listen to my somewhat stumbling translation, I will give them the translation of the important parts of it and then, sir, I would be very happy to submit it to any of the French-Canadian folk who are here and have them read it in the French, so that every person might hear and understand it.

The PRESIDING CHAIRMAN: Perhaps you could file it with the committee and we would have it printed in French with the translation following. Would that be in order? You could read what you understand to be the translation.

Rev. Mr. SMITH: All right.

This is a circular issued on the 29th day of January 1951 and deals with several matters and in the fourth place deals with the prohibition of games of chance. The cardinal begins—I am giving quite a free translation because I take it for granted you will get the full text—the cardinal begins by saying he is dealing with a subject that is somewhat delicate, but proceeds with some degree of confidence because he has a circular issued in December, 1898 by Monsignor Bruchési probihiting all those bazaars—"Tous les bazars pour quelque raison que ce soit". Would you give me some idiomatic translation of that?

Mr. BOISVERT: If I understand it correctly, he is prohibiting all kinds of bazaars or raffles for some charitable purpose.

Rev. Mr. SMITH: That is what I understood it to mean, sir, and then on the 22nd of November, 1922, Monsignor Gauthier prohibited "les tombolas". Then the cardinal goes on to say that the development which he has seen of the games of chance constitutes a grave problem to the Christian conscience. He explains that the church is not an organization for raising money—"Organisation financière". Certainly, he continues, it is much less a school for games. It is the mystical body of Christ and a mistress of truth and of virtue. Our churches are a visible expression of holiness and are a vestibule of heaven where the Christian learns the practice of virtue and above all of charity. And then he goes on to draw attention to the fact that certain of these things which he is going to prohibit are interfering with this sort of education in the churches. Now, in the paragraph that you all will read he says it is somewhat humiliating to hear the things which he has been told and then he goes on to what I wish to present to your committee, sir. I will translate it freely:

> After serious reflection before God and having taking counsel we prohibit absolutely from next Ash Wednesday,

—that would be 1951—

> to organize, patronize, to hold or to make these soirees-bazaars,

—I do not have any English equivalent for that—"or to assist in the playing of games of chance such as bingo or other things and also prohibit these games where the attraction is a prize of consequence such as an automobile or a house used to attract the public. This prohibition covers all the orders (charitable institutions), all the churches, all the religious communities and we remind all of the obligation to respect—to make respected—without looking for exceptions, the law with regard to games of chance."

The PRESIDING CHAIRMAN: Could I have that? You mark the part you have read in free translation from the French and we will have it inscribed in the evidence at this point.

Aussi après mûre réflection devant Dieu et après avoir pris conseil, nous défendons donc absolument, à partir du Mercredi des Cendres, d'organiser, de patronner, de tenir ou de faire des soirées-bazars où les assistants jouent à des jeux hasard, genre bingo ou autres, ansi que ces tirages, où l'appât d'un prix de présence coûteux, (automobile, maison), attire le public.

Cette défense atteint toutes les Oeuvres, toutes les églises, toutes les Communautés religieuses, et nous rappelons à tous l'obligation de respecter et de faire respecter, sans recherche d'exception, la loi sur les jeux de hasard.

Rev. Mr. SMITH: That is the only copy I have, so I would like to have it back eventually.

Hon. Mr. BOUFFARD: It would be an easy thing to get a copy of this from Montreal so we could give it back to Mr. Smith.

The PRESIDING CHAIRMAN: Yes, we will give it back to you. There will also be a translation of this into English for the purpose of the record. These minutes go out from this committee in French and in English; some copies in French and some in English. That is to say, a certain number are printed in French. We will have that copy which goes in English inscribed in the record in French, and then the translation will appear in English at this point.

Hon. Mrs. HODGES: May I ask a question? Have you finished Dr. Smith?

Rev. Mr. SMITH: I was just going to say to the committee that as a Protestant minister I appreciate very much the backing of the position which is mine personally and which is represented by the church by so outstanding a religious leader as the cardinal. That is all I want to say.

Hon. Mrs. HODGES: May I ask Dr. Smith a question? I notice that directive, or whatever you call it, is dated 1951. Have you any evidence that the archbishop still holds those views?

Rev. Mr. SMITH: I think he was quoted in the press comparatively recently to that effect, but I do not have that with me.

Hon. Mr. BOUFFARD: There is no doubt about that.

Hon. Mrs. HODGES: The only reason I ask that question is because—although I may be mistaken—I have seen some advertisements and so on in Montreal papers that there are still a number of Catholic churches conducting bingos, bazaars and raffles. Please do not take this as criticism or in any way as a reflection on the Catholic church.

Rev. Mr. SMITH: If that were so I would be surprised and I can only depend on the authoritative expression of the Catholic opinion which I have presented.

Hon. Mrs. HODGES: I am merely asking for information.

Dr. MUTCHMOR: Our committee received a report within the last month or so which cited an instance where a Catholic church was holding a bingo. The cardinal appeared in the hall where the bingo game was in progress and stopped it himself. He is not only speaking but acting.

Hon. Mrs. HODGES: As I say, I was only asking for information and I did not wish to appear to criticize.

The CHAIRMAN: Miss Bennett?

Miss BENNETT: Not at the moment, thank you.

The CHAIRMAN: Senator Fergusson?

Hon. Mrs. FERGUSSON: Not at the moment, although I would like to have Mr. Ferguson tell us something—apparently he would be able to talk on the effects of gambling on the community and I would like some examples, but perhaps he would be able to present them himself.

The CHAIRMAN: You are at liberty to ask him.

Hon. Mrs. FERGUSSON: Could you give us some examples of the effect of lotteries on the community life instances where it has done harm?

Rev. Mr. FERGUSON: I am not sure I could lay my finger on an exact illustration, but I could give one of a general nature. Every minister of a church has a concern for this church budget, and we are in a building project just now which is an expensive one, and I have a great concern for it. I have met in the Bay of Quinte district and Montreal many people with varying senses of stewardship and I have certainly a great conviction that those who are always thinking of schemes to raise money which brings us right in this particular field are not the people who come across. The actual end result of this falls short of the people who do the particular type of thing Dr. Smith has just mentioned—ask them, present a good cause and you will receive a better response. Does that answer your question?

Hon. Mrs. FERGUSSON: Yes, thank you.

The PRESIDING CHAIRMAN: Mr. Blair?

Mrs. SHIPLEY: I think Mr. Gardiner wanted to speak to that point?

The PRESIDING CHAIRMAN: I hope that any member of the panel will feel free to answer any question.

Mr. GARDINER: Two of the questions which the committee have asked intrigued me to some extent, the one asked by Mr. Fairey and the one asked by Mrs. Fergusson. I will deal with Mrs. Fergusson's question first. Her question if I remember correctly, was could any specific instance of the effects of lotteries on the community be quoted. Well, probably the answer should be narrowed down to specific instances of effects on people. I do not know whether the committee has considered some of these radio quizzes as falling into the category of the terms of reference of this committee—I do not know that—but I do know some of these prizes on the radio programs amount to quite sizable sums at times. I am personally aware of one housewife—I would not say this was the only factor that brought about a nervous breakdown, but it certainly was a contributing factor—and her interest in this particular program, and the fact that she almost won but did not win caused a nervous breakdown from which she is still suffering and she is, in fact, in a mental institution at the present time. I just wanted to give you that information.

The PRESIDING CHAIRMAN: Tell us more about the nature of the quiz.

Mr. GARDINER: I think it is called "Fiesta". Personally I do not take any interest in it so I could not tell you.

The PRESIDING CHAIRMAN: Tell us how they operate and what they do?

Mr. GARDINER: I think it is a housewives' program and takes place during the day.

The PRESIDING CHAIRMAN: Is it the type where you receive a certain phone call?

Mr. GARDINER: Yes, something like that, and you are supposed to answer a question. I really do not know the nature of it.

Hon. Mrs. HODGES: Is there a money prize?

Mr. GARDINER: Yes.

The PRESIDING CHAIRMAN: Perhaps Mr. Fairey could tell us?

Mr. FAIREY: No. We have them in different forms. I know some of them.

The WITNESS: There are many different kinds and I suppose one is just as malicious as another.

The PRESIDING CHAIRMAN: Tell me, does the person who receives the phone call have to make any expenditure in order to enter the contest?

Mr. GARDINER: I could not answer that question as to whether or not they have to have a box top or a label from a box of tea or something which they would have in the house; I do not know.

Hon. Mr. BOUFFARD: Sometimes they have to buy a package of gum.

Hon. Mrs. HODGES: Or cereal.

Dr. MUTCHMOR: We are concerned about the nature of the quizzes and the whole question of gambling. We have made protests against some of the larger companies using this method of radio quiz or give-away tactics and causing a good deal of hardship to the smaller people, and we are pleased to note that some of the large chain stores have changed their policy in this regard upon the request, in some instances, of our own communion. I am thinking now of one very large super market, claiming to be the largest in Canada, which at its opening and soon after used as prizes three cars. Now, the business in that part of Toronto where this give-away method was used, insofar as the smaller merchants were concerned, went to almost nothing. They simply could not compete against a big company with these free gifts. Two things happened then which were quite significant. One was that a judge ruled that these chain grocery stores which were selling goods other than groceries were departmental stores and were therefore subject to a higher tax, and that seemed effective.

Hon. Mr. ASELTINE: Was it not prohibited by the Criminal Code?

Dr. MUTCHMOR: That was not brought in as much as taxes. And the second factor was—I think reference was made to the Stevens' Commission on price spreads and the possibility that part of the commission's report which had to deal with give aways would be revived. I am not sure, Mr. Chairman, but I think parliament is entering again on a study of the subject of price spreads.

Mr. BLAIR: The combines investigation branch.

Mr. GARDINER: In answer to Mr. Fairey's question about these innocent 50-cent bingos and so on, I recognize the dilemma that the committee must be in. I think they feel that the Canadian public is more or less acquiescent in this sort of thing and in reading the brief that has been presented today, the thought occurred to me that perhaps the public would be prepared to see this law enforced and at least take action but the kind of penalty that is meted out by the court for infractions of this law may not meet with the approval of the general public who are inclined to be somewhat lenient in something the same way as Mr. Fairey was able to express. The thought occurred to me—and I am not being facetious about this because I know ridicule is a potent weapon and I just throw this out as a suggestion—that those who are convicted of this law could be required to stand on the city hall steps and read the pertinent sections of our report about the evils that stem from this sort of "innocent" thing and the silly waste of time, money and effort and manpower that is spent on this sort of thing. It would serve the dual purpose of holding him up to ridicule and at the same time making the public aware of things they are not aware of. I do not know whether that has any merit or not.

Hon. Mrs. HODGES: I would like to ask Mr. Lawrence if he thinks that would be a deterrent? I'm sorry, I meant to say Mr. Gardiner.

Mr. GARDINER: I think probably it would be.

Hon. Mrs. HODGES: I doubt it, judging from the profit-making methods of the people who organize these things.

Mr. GARDINER: Some of these things are innocent, as Mr. Fairey indicated, and if they are organized like Mr. Mutchmor indicated, exception to which was taken by Mrs. Shipley, then I doubt that the ridicule would be a competent weapon but for just an ordinary citizen who is somewhat jealous about his reputation in the community I am quite sure it would be a deterrent. It also might make him aware of something that he did not know before.

Hon. Mrs. HODGES: Thank you.

The CHAIRMAN: Mr. Blair?

Mr. BLAIR: Mr. Chairman, there has been reference in the United Kingdom and in the United States to the possible disruptive effect of lotteries and other forms of gambling on industrial production. I wonder if the panel is in a position to offer any evidence or comment on the effect which lotteries may have on the productive efficiency of the nation?

The PRESIDING CHAIRMAN: I presume that is directed to Mr. Gardiner?

Mr. BLAIR: I think primarily to Mr. Gardiner, but whoever would care to answer may do so.

Mr. GARDINER: Would you mind repeating your question?

Mr. BLAIR: I will put it in a little different way. It is not uncommon for raffles and lotteries of one kind and another to be held in industrial plants. Is it the information of this panel that this has the effect in any way of disrupting production and efficiency?

Mr. GARDINER: Well, that is rather difficult to answer. Do you mean the selling of these tickets interferes with the men working on the bench and so on, is that what you mean? Or do you mean the effects on the individual as to the element of chance in the thing which effects his work?

Mr. BLAIR: Both, I would think.

Mr. GARDINER: That is a difficult question to answer, sir, and I would suspect myself that that sort of activity takes place in the change house while the men are changing and washing at lunch time and so on.

Mr. BLAIR: It might be fair to say that you have not noticed this as a significant factor in your experience?

Mr. GARDINER: Yes, I think that is a fair statement.

Dr. MUTCHMOR: Might I call attention to the bottom of page 18 of the brief? There is a quotation there from a book entitled "English Life and Leisure" by Messrs. Seebohm Rowntree and G. R. Lavers. Mr. Rowntree is the outstanding authority in the United Kingdom on this subject and in the section on gambling there are listed some of the wasteful aspects of this kind of activity. He mentioned the transport facilities for horses, greyhounds, persons and so on. We could parallel that in Canada where there is a considerable amount of transport—rail and automobile and truck—used for persons and race horses and so on. Now, the printing part of this undertaking is very considerable, and it could be argued that paper so used, from an economic point of view, is wasted. Most serious, however, is the waste of time. Now I quote from memory—200,000 to 300,000 persons are fully employed at this—but these authors who are very dependable put the figure even higher—from 300,000 to 400,000 persons.

On page 55 of the Didier Company edition of the Kefauver committee report on organized crime there is an interesting reference to the effect of gambling on two companies in Detroit, the Briggs Manufacturing Company and the Michigan Stove Works. I do not wish to speak at length on this

report but the committee can look this up and get the information concerning what happened there. Briefly, what happened was that the gambling syndicate—not only infiltrated the labour organizations, but in order to guarantee industrial peace they compelled the manager of the company to contribute several hundred thousands of dollars—it was a straight case of blackmail. I come back to the point that organized crime is not peanuts; it is a big operation and the most serious aspect of gambling is the organization of crime and the corruption of the police.

Mr. BLAIR: The point in my question was simply to see if the panel could assist us by offering any evidence on this question in Canada, and I take it you have no Canadian evidence on this question at the moment?

Dr. MUTCHMOR: In Canada we use transport facilities and paper.

The CHAIRMAN: I think he is referring to the corruption of the police.

Mr. BLAIR: I was referring to industrial disruption. I do not want to enter into an argument with the witness, but I think in fairness to the position in the United Kingdom it should be pointed out that the finding of the United Kingdom royal commission in 1949, as to the number of persons employed in gambling as reported at page 20 of their report, is thus stated:

> The total number of persons employed full time or working on their own account appears to have been in recent years about 47,000 and the number of part-time employees about 30,000.

And at another stage in the report they deal with the estimates of 300,000 persons and consider it unduly high.

In following this question of economics, I wonder if the members of the delegation are in a position to assist us by offering any tangible evidence on the effect of lotteries, in the way of causing poverty or misery among those who participate in them. This is mentioned in the brief and has been mentioned before in this committee.

Dr. MUTCHMOR: Well, Mr. Chairman, all we can do is to relate our own observations. If you were to go this afternoon to the corner of Dufferin Street and Bloor Street in Toronto and watch the persons getting off the street cars to go to the Dufferin race track to make their bets for the day and from your impression estimate the economic status of those people, I think you would conclude that upwards of 70 per cent are from the low income families. Personally, I have had rather long experience now in social work and the persons whom I have known who have fallen victims to the gambling evil are far more pathetic and far more difficult to help than those who have become alcoholics, and they are almost as difficult to help as those who have become drug addicts—and I speak from a long experience. It looks like a simple thing to play a game of bingo or buy a $2 ticket or put some money on a horse's nose, but the results—the net results—are serious. Now, I think that you will find that milkmen and breadmen—Mr. Lawrence might wish to comment because he is from a milk company—find it more difficult to sell and collect at the time when the big races are on in our big cities. I am referring particularly to Toronto which is the racetrack centre in Canada.

Mr. J. Morley LAWRENCE: Mr. Chairman, I could comment on four cases I have in mind, experience with employees. The first one was when I paid a $10 garnishee and got it back in ten weeks and was provoked when I found that the man had $10 worth of sweepstake tickets in his pocket at the moment. There was the case of one man in Niagara Falls who won $20,000 and in one year he was broke and had cashed in on his insurance. The other case was of three men in Windsor who agreed that if one man won the sweepstake he would give a third to each of the others and they won $30,000 among them. Within one year two of those men were out of work and were divorced.

The PRESIDING CHAIRMAN: Could you tell about the other case in South Essex, or do you know about that?

Mr. LAWRENCE: No, I am afraid I do not recall the one you are referring to. Those are just cases in our own experience and I think that you will all agree that those are very unfortunate cases. One thing which has not been brought up is that in the case of raffles I believe that tickets are usually 25 cents or five for a dollar. Most of the tickets are sold one at a time so that the seller makes a nickel a ticket. We have one organization in Windsor, which Mr. Brown knows, which raffles one or more cars a year and the men in their off time sell tickets for other numerous organizations which raffle cars, and I know that some of those make as high as $500 or $600 a year on those tickets, and none of that finds its way into the income tax collectors' hands. Mr. Chairman, I think you know the group I refer to. It is in no way a charitable affair at all. What they make on the ticket is in each man's own pocket.

By Mr. Blair:

Q. We have had suggestions that there may be an organized penetration into charitable lotteries by people who are interested in them for the purpose of making a livelihood. I wonder whether the gentlemen here are in a position to comment more generally on the conduct of these charitable lotteries in Canada from that standpoint? Have you, apart from the evidence you have already given, any other evidence of abuses of the lottery laws in that respect?

Dr. MUTCHMOR: There was a good illustration in one of our large cities in which an ex-controller promoted bingos on a large scale and in the course of this promotion it was brought out by one of the papers that he not only purchased the prizes but owned the company from which the prizes were purchased, so that he was looking after himself from both ends of the operation.

Q. I have one more specific question. The panel was asked earlier as to what sections of the law it would like to see amended and the answer was given that the exemption insofar as it is related to charitable and religious objects should be taken out of the Criminal Code. We have also heard a suggestion regarding contests and prizes which are also permitted under an existing exemption. There is another type of exemption permitting lotteries and other types of gaming at agricultural fairs. I wonder whether the panel have any specific recommendation to make about these other two types of exempting provisions?

Dr. MUTCHMOR: I tried to speak on behalf of the delegation regarding the quite extensive practice of many kinds of business firms in their efforts to stimulate trade by the use of giving away prizes. We think that on the basis of free enterprise that that thing is unwise because we think the price of an article should be determined by the material, the style, and the amount of labour, and that that price should be paid for by the purchaser. We do not think that something being disposed of for nothing is good for business in the long run. Now, regarding fall fairs, we have discussed that matter and we think that in that area of our community life it is extremely difficult. Fall fairs generally are held at harvest time when much money is in circulation. It is a long established practice to have a good time at the fall fair. A stronger section in the Code or stricter enforcement might reduce gambling at fall fairs. But, we would point out that just as we have said that crime is organized, so there are many evidences that organized groups are moving into these fall fairs and establishing what might be called rackets, and at that point there may be some corruption of municipal bodies in the buying of and continuing to hold concessions.

The PRESIDING CHAIRMAN: Have you any evidence of any corruption?

Dr. MUTCHMOR: Our Mayor Lamport who does not always see eye to eye with me made quite a heavy attack on the record of the management of the Board of the Toronto National Exhibition and part of his attack was in this area. He claimed that the people of Toronto were not getting enough money out of the selling of these concessions, and as a result the amount paid annually for some of these concessions has been considerably increased.

Mrs. SHIPLEY: Mr. Chairman, I do not think that is proof of corruption of the board. That was your question, was it not?

The PRESIDING CHAIRMAN: I think the answer stands by itself. I do not think there is any charge or any evidence of corruption.

By Mr. Blair:

Q. I propose to read a statement from the Report of the 1932-33 Royal Commission on Lotteries and Betting in the United Kingdom, because I am employed as counsel for this committee and I appreciate the difficult task the committee faces in balancing legislative policy. This Royal Commission's recommendation as to the principle of legislative policy to be followed with respect to gambling is as follows: I am quoting from page 67 of the report: "Stated broadly we think that the general aim of the state in dealing with facilities for organized or professional gambling should be to prohibit or place restrictions upon such facilities, and such facilities only, as can be shown to have serious social consequences if not checked." I wonder whether the panel, or perhaps the committee might wish to comment on that?

Rev. Mr. SMITH: I do not know whether I have the same copy of the report as has just been quoted from. I have the 1949-51 report.

Mr. BLAIR: I chose the earlier one because if anything it is stiffer in its wording.

Rev. Mr. SMITH: I am not at all acquainted with the report from which you quoted. But, there were two parts of the 1951 report which I wish to bring to the attention of the committee. I understand that there are some copies of this report available to this committee and if so I would be grateful if the members would read what is to be found in the section on the principles of gambling legislation in paragraphs 208 and 209 on page 61. Now, this has to do with the various principles of legislation, and may I read a few lines Mr. Chairman?

The PRESIDING CHAIRMAN: Yes, by all means.

Rev. Mr. SMITH:

> We conclude, therefore, that the general arguments in favour of the proposition that the State should itself provide gambling facilities are not in themselves sufficient to justify so radical a change. It is possible that we have underestimated the advantages to be gained but, even so, we would think that they were outweighed by the objections, which are considerable. In the first place, if the state undertakes the provision of gambling facilities with the object, among others, of securing revenue, it is very difficult to avoid giving the impression that the state has an interest in stimulating gambling.

If I may pause at this moment, it seems to me that gambling is an evil and that the state should not countenance or encourage it. "The provision of gambling facilities is in no sense an essential service, and it is our view inappropriate for inclusion within the sphere of the state's activities. Thirdly, the transfer of existing forms of gambling to state control would raise difficult questions of compensation." ...Finally the proposition is one which we believe would be resisted strongly by many different sections of public opinion... We conclude, therefore, that this major change is, in present circumstances, neither

desirable nor practicable." Now, if I may make a comment, I was lead into a study into the history of gambling when I first faced this issue many years ago and I began to read the history of gaming. I do not hold myself as an expert, but, however, the resume which has been presented in the report brings to a conclusion an experience of almost 250 years of the practice of lotteries of one kind and another in England, and it is something that weighs with me. They were stopped absolutely in 1923, and then in 1931 they began to agitate for them again at that time, and, as our report shows, the finding was against the institution of the lotteries as a means of raising revenue in England; and now 20 years later the question comes up again. In spite of the fact that in England there has been an enormous development of gambling with the football pools and with the greyhound racing and all that sort of thing, nevertheless the finding of this commission in 1951 was that from their point of view a national lottery is undersirable. Then, from that point it went on to discuss whether there was any possibility of having large scale lotteries conducted by the state. Now, I refer to paragraph 393 on page 120 of the report because I have observed in the copy of the minutes and proceedings, No. 2 on page 103, that you have sent out to the attorney general enquiries as to whether there would be any way in which lotteries could be operated that would be acceptable. Now, beginning with this paragraph 393 on page 120, you find a clear and extended discussion of the ways in which this might possibly be made acceptable. I go to the conclusion as you will find it—I do not want to take too much time of the committee—you will find the conclusion in paragraph 400 on page 122; "We conclude, therefore, that any proposal for the extension of the scope of these types of lottery would be likely to have drawbacks which are at least as great as those attaching to the existing law. ...We are forced to the conclusion that we cannot recommend any change in the law." Now, the experience of our motherland over these years, where they have faced this matter in a very much more grievous form than we have to face it here in Canada, has a great deal of weight with me as I try to take an objective view of it. If they, in a worse predicament than we are, make no change, it seems to me as far as we are concerned we ought to make certainly no change towards release of lotteries, but I would like to see us strenghten our hand a bit the other way. One of the things that disturbs me very much as I view this as a moral, and financial question too, is the way in which both the press and the radio play up in headline stories the success of the people who get these large prizes. They are heralded as if they really have done something, although actually, to my understanding, they are law breakers and have done something that should not have been done. And, there are some people who beat the customs, but we would think it very serious if the radio or the press played up the fact that someone had gone abroad and come back with a parcel of diamonds or something and had got away with it. We would think that that would be a serious form of publicity of something on which we have standards which we hope to maintain. I do hope that if the committee feel that the law is good and should be maintained that there would be some way to have it brought to bear and put a quietus to this kind of storytelling by the press and radio.

Hon. Mr. ASELTINE: You would curtail the freedom of the press in that respect?

Rev. Mr. SMITH: That is something I would like to talk about on the other side of it. I believe in the free press, but I believe that there are ways in which both the press and the radio—let me put it this way: I know the men of the English press in our own city are sincere and trying to do the right thing, and if they had a suggestion to deplore and cut down on that kind of publicity they would agree.

Hon. Mrs. HODGES: May I point out, as a newspaper woman of long standing news consists of what is unusual and it may be the very fact that it is so unusual for people to win prizes in these things that they are played up in the newspaper.

The PRESIDING CHAIRMAN: Perhaps it is our concept of news which should be changed.

Hon. Mrs. HODGES: Perhaps.

The PRESIDING CHAIRMAN: All newspapers do not carry these accounts you refer to. Some will not carry them.

The Rev. Mr. SMITH: I am glad to know that.

Dr. MUTCHMOR: There is one comment before you adjourn. It is the question of enforcement which has come up in this committee. We would like to draw your attention to a paragraph on page 23 of our report that in Toronto proper, for example, the raffling of a car is not permitted. As soon as a car appears on the street and the police get the information that car is compelled to stop doing business. Now, I have had a fair amount of experience and I want to pay tribute to our Toronto police. All I have to do is to pick up the phone and inside of five minutes the police are there and the car is taken off the street. That is not true in our suburbs, and is not true as has been related in Windsor. If this can be done by Toronto police—there are no cars as far as I know on Montreal streets, so the police in Montreal must have that rule. North Bay is very strict about the matter. Long ago Winnipeg got rid of these cars. Other communities could be mentioned. If law enforcement officers in some small and large centres can do this, then this can be done in other parts of Canada, and we would like to submit that more active law enforcement will get very much desired results.

By Mr. Fairey:

Q. Is that restriction in Toronto due to the prohibition on the use of the city streets for selling purposes, and could they evade that rule by going into private property like a vacant lot.—A. That stems very largely from the good record of General Draper. He had no use for gamblers; he hated them, and the minute they came within his area they had to get out in a hurry because he knew this kind of operator always makes for trouble both within the police force by way of corruption and in the community. Now, his successor, Chief John Chisholm is of the same kind. Even as late as last Saturday I saw a car near St. Clair and Yonge and I phoned station No. 5 and out it went.

The PRESIDING CHAIRMAN: What you mean is that it can happen in Toronto, but they stop it?

Dr. MUTCHMOR: They do not put up a wall or gate to keep them from coming in, but as soon as a report comes to them they act at once. We want to pay tribute to that police force.

Hon. Mrs. HODGES: In the case where the car is taken off the street, are they permitted to take a car on a private lot and carry on?

Dr. MUTCHMOR: I would not like to be questioned too closely about this, but a musical organization recently thought that it would be a good way to augment their funds. They happened to have had so many tickets sold in the Toronto area that the police thought it had gone too far and could not be stopped.

The PRESIDING CHAIRMAN: Then it has happened in Toronto?

Dr. MUTCHMOR: I was pointing out that cars are not raffled on the street. This special case I refer to was of a car on which tickets were not sold on the street. The police got in touch with the city solicitor and the solicitor

wrote a letter on behalf of the city to the organization calling their attention to the law. I wrote on behalf of the United Church to that solicitor, and then I had a phone call from the morality department that the president of this organization had been brought into the police station and informed about the law. Now, I submit, Mr. Chairman, if a large city like Toronto can do that, it can be done in other places.

The PRESIDING CHAIRMAN: What did they do with the car?

Dr. MUTCHMOR: That car has been or will be raffled. It is an exception that proves a good rule.

Mr. SHAW: Have you encountered the situation where if it is a local body raffling a car, nothing much is done, but let an outsider come in and see how quickly they will pounce on him?

Dr. MUTCHMOR: We have used those tactics too, Mr. Chairman.

Rev. Mr. RAE: Mr. Chairman, there are one or two matters. When I came to this city I found many things being done—

The PRESIDING CHAIRMAN: That is to Ottawa?

Rev. Mr. RAE: Yes. I came from Vancouver. I found some things happening here that do not happen in Vancouver and I asked the reason why and they said: this is a very patriotic city. I said that Vancouver is equally patriotic too. I said, how about the enforcement of law with reference to bingos? We do not have to deal with that in Vancouver. How do things happen here the way they do? I enquired of the police and the attorney general and I had this communication from the deputy attorney general which indicated why there were so many:

> The Criminal Code contains a number of exceptions which permit lotteries, bingos and other forms of gambling under certain circumstances and conditions. You may know that the police in Ottawa prosecuted a person for conducting bingo games on behalf of a service club for charitable purposes every night for a week. The magistrate convicted but the court of appeal set aside the conviction on the ground that it came within the exception.
>
> The exception in the Criminal Code is not that a charitable organization may occasionally conduct a bingo game for charitable purposes, the exception is in connection with the use of a place for holding such games.

The PRESIDING CHAIRMAN: Could we have that letter?

Rev. Mr. RAE: You may have it, and I think it makes reference to section 226 of the Code, and I think that is a very serious word "occasionally". I might cross the street perhaps occasionally in a day and it is perfectly legal to interpret that as several times a day, or in a year, or several times in a lifetime. That word becomes a problem and should be looked into. Here the theatre people were greatly disturbed about the loss of revenue. They were offering quite a legitimate business to the public and found themselves losing seriously. I think that is something that should be looked into, and the theatre people should have an opportunity of saying something themselves. No doubt they can defend their own case.

The PRESIDING CHAIRMAN: Representation has been made by the theatres and we hope at some time to hear them.

Mr. BLAIR: They also run contests.

Rev. Mr. RAE: Whenever the people who administer the law make up their minds to do something it is done with respect to taking cars off the street and selling tickets. For example, one or two of the outside municipalities endeavoured to make sales and did so for years until the authorities bestirred

themselves and said nothing doing; you cannot come in from Kemptville and sell tickets to us here, we will not allow it in the city. They could go further in administering the law as in some cities they do and I would say with the cities I am familiar with they are very stringent in the matter. If Attorneys General give solid support in matters of this kind we could expect better administration in other parts of the country where it is weak. If you travel to some of the smaller places in the summertime it is just an open fairground. I think perhaps all the other matters have been touched upon in the presentation and perhaps this is all I might say at the moment.

The PRESIDING CHAIRMAN: Gentlemen of the panel I wish on behalf of the committee to express our thanks and appreciation for your attendance here today to assist us with this very delicate subject with which we are dealing. I know you have gone to great personal inconvenience to be here and we thank you very much for your assistance.

Dr. MUTCHMOR: Madam and Mr. Chairman, we wish to thank you and the other members of the committee for your kindness in receiving us and for the time you have given to the consideration of the brief from the United Church of Canada.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 14

TUESDAY, MAY 18, 1954
WEDNESDAY, MAY 19, 1954

WITNESSES:

Mr. Hugh Christie, Warden, Oakalla Prison Farm, South Burnaby, B.C.

Mr. A. M. Kirkpatrick, Executive Director, John Howard Society of Ontario, Toronto, Ont.

APPENDIX: Letter from Mr. Joseph McCulley, Warden, Hart House, University of Toronto.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954

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For the House of Commons (17)

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Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. SMALL,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, May 18, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, the Honourable Senator Hayden, presided.

Present:

The Senate: The Honourable Senators Fergusson, Hayden, Hodges, and Veniot—(4).

The House of Commons: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Shaw, Shipley (Mrs.), Thatcher, and Winch—(9).

In attendance: Mr. Hugh Christie, Warden of Oakalla Prison Farm, South Burnaby, B.C.; The Honourable Senator John Power Howden; and Mr. D. G. Blair, Counsel to the Committee.

On May 4, 1954, the Committee asked Mr. Borins if he would supply from his files a record of references to abolitionist countries where it would indicate that capital punishment does not deter murder any more than other forms of punishment. In this regard, the Presiding Chairman announced that a reply dated May 12 has been received from The Canadian Welfare Council indicating that Mr. Borins has no further data beyond that contained in the Report of the U.K. Royal Commission on Capital Punishment, 1949-53.

The Presiding Chairman introduced Warden Christie.

Warden Christie made his oral presentations based on personal observations and experience with capital and corporal cases and was questioned thereon by the Committee and, with the Committee's permission, by Senator Howden.

On behalf of the Committee, the Presiding Chairman thanked Warden Christie for his presentations on capital and corporal punishment.

At 1.00 o'clock p.m., the Committee adjourned to meet again as scheduled at 4.00 p.m., Wednesday, May 19, 1954.

WEDNESDAY, May 19, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Fergusson, Hodges, and McDonald—(4).

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron, (*High Park*), Fairey, Lusby, Mitchell (*London*), Shaw, Shipley (Mrs.), Thatcher, Valois, and Winch—(11).

In attendance: Mr. A. M. Kirkpatrick, Executive Director, John Howard Society of Ontario; Mr. B. C. Hamilton, President, Ottawa Branch, John Howard Society of Ontario; Mr. F. J. Neville, Executive Secretary, Ottawa Branch, John Howard Society of Ontario; and Mr. D. G. Blair, Counsel to the Committee.

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The Presiding Chairman called on Counsel to the Committee to introduce Mr. Kirkpatrick.

The Committee agreed that a letter dated May 18 from Mr. Joseph McCulley, expressing his inability to be in attendance with Mr. Kirkpatrick as scheduled, be printed as an Appendix to this day's Minutes of Proceedings and Evidence.

Mr. Kirkpatrick presented his prepared statement on abolition of capital and corporal punishment, copies of which had been circulated in advance to members of the Committee. After commenting on certain parts of his statement, he and Messrs. Hamilton and Neville were questioned thereon.

On behalf of the Committee, the Presiding Chairman thanked Mr. Kirkpatrick for his presentations and also Messrs. Hamilton and Neville for their assistance.

At 6.00 p.m., the Committee adjourned to meet again as scheduled at 11.00 a.m., Tuesday, May 25, 1954.

A. SMALL,
Clerk of the Committee.

EVIDENCE

MAY 18, 1954.
11.00 a.m.

The PRESIDING CHAIRMAN (Hon. Mr. Hayden): I will call the committee to order. We have a quorum and before we get on with the business of the meeting we have a letter from the Canadian Welfare Council which I think should go on record. This is a letter from the Secretary, Deliquency and Crime Division. It deals with a request that had been made to Mr. Borins to supply from his records certain information respecting countries that had abolished capital punishment that might indicate capital punishment is no greater deterrent than other forms of punishment. They have checked their records and have no further data beyond that contained in the Royal Commission report on Capital Punishment of the United Kingdom.

Now, today we have with us Warden Hugh Christie, of Oakalla Prison Farm, South Burnaby, British Columbia, and I turn him over to your tender mercies; Mr. Christie.

Warden Hugh Christie, Oakalla Prison Farm, South Burnaby, B.C., called:

The WITNESS: Mr. Chairman, members of the committee, I have been asked by the Hon. Mr. Hayden to sing my own praises. It is evidently felt that my background would be important in assessing the weight of my arguments.

I started at this type of work organizing for service clubs, delinquent gangs, with the object of redirecting their activities to the point where they would avoid going to institutions. I started in very young, in my middle teens, with my first paid job and went on from that to work with the Y.M.C.A. as a Boys' Work Secretary and later as Program Director of their Y.M.C.A. camp at the coast. From there I went on to work in the boys' industrial schools. I spent seven years at the boys' industrial school in British Columbia, finishing as their assistant superintendent. From there I went into the services. After the services I worked with the Children's Aid Society, Family Welfare and City Social Service department in Vancouver. I proceeded from this to work as a field worker and case work supervisor for the Department of Social Welfare in British Columbia and latterly became case work supervisor for the director of welfare in Victoria. From there I went to Saskatchewan where I spent five to six years as their Director of Corrections in charge of their probation and parole and juvenile and adult institutions, male and female. From there a year's professorship at the University of British Columbia lecturing in criminology and sociology. From there to Oakalla Prison Farm where I have just completed approximately two years as the warden.

The Oakalla Prison Farm includes a women's jail, a Borstal unit referred to as the young offenders' unit, and a main section which houses the less reformable criminals. The total population there when I left was approximately 1,090.

I am still a little afraid of parliamentary committees and therefore will read most of my material to you.

I have some knowledge of the material presented and referred to in the proceedings of the committee to date. It would appear that the traditional arguments have been well covered. It would seem well therefore, to repeat only enough of this material to provide a basis for your interrogation.

Before I proceed, however, I must place clearly on your records the fact that my comments are only my personal views and do not necessarily reflect the views of the government of British Columbia or the Attorney General's Department of that province.

I believe that the death sentence should be replaced by life imprisonment. In so doing we would eliminate an influence which is brutalizing and degenerative to all society, and substitute an equally just but merciful punishment which more appropriately reflects the security and maturity common to people who are able to accept their responsibility for control without panic, abuse of authority or inhumanity.

I believe further that it will soon be impossible for a people who have our present scientific knowledge at their disposal to retain either corporal or capital punishment as methods of control. It will, however, in my estimation, take some time for our present knowledge to extend to the point where we realize how illogical, unnecessary and socially damaging it is to continue their use.

In the meantime in our prisons today our treatment of prisoners is based on the development of a feeling that the inmate is in harmony with society and our work in treatment is rendered hopeless by the fact that we attempt to carry on such things as hanging in the same institution where we are trying to do a reform job with our youthful and most hopeful offenders. I would respectfully suggest therefore that the brutalizing influence of hangings be removed from provincial institutions by having this work carried out in the federal penitentaries where long-term and less reformable criminals are confined.

It seems quite out of harmony with common sense, to be carrying out hangings in the institution where you have your young kids fifteen years of age, your most hopeful individuals, and where you do on the other hand have federal penitentiary institutions nearby in most of the provinces where they do have the so-called long-term non-reformable groups confined.

Some of the Traditional Arguments

1. It is inconsistent to suggest that the commandment "Thou shall not kill" does not apply to the state as well as to individuals.

I will say no more about this except that I believe firmly that it is one of the main arguments. I would like to go on to an argument which stresses the fact that the origin of delinquency differs so little from that of the mentally ill that little difference in their treatment is justified.

No individual is born delinquent, yet given the opportunity to change his environment, everyone in this room could be made delinquent or mentally ill. It is a related and interesting fact that it would probably be much easier to make criminals of those of us who feel most strongly about hanging the murderer. We as a society have the right to set up an artificial set of standards or circumstances and quite rightly so, which make some people, who are, at the outset, no more delinquent or mentally ill than ourselves, into criminals and mental patients.

There is nothing wrong with that but we have established an artificial set of standards which affect some people much differently from others. If we made some further fundamental changes in this social structure, the original group could adjust readily, but a different group would find it impossible to adjust. This sociological phenomenon is not a matter of conjecture, but rather

it is a proven principle. We have accepted the authority to change and dictate the circumstances which doom certain people to maladjustment. We have acknowledged the responsibility for treatment and humane care for part of that group (our mentally ill) in the acceptance of the McNaghton Rules and the use of Mental Hospitals on a lifetime basis. We now find after 100 or so years that the causal factors for criminality or psychopathy are the same as for mental illness, the timing and sequence of these factors being the deciding factor in whether mental illness, psychopathy, or normalcy is our lot.

The timing and the sequence of these environmental factors are determining factors in whether any individual becomes psychopathic, mentally ill or normal.

As this scientific fact becomes more widely understood it is going to be impossible honestly to justify continuing capital punishment. Control is essential, sentimentality is to be abhorred. The condoning of any delinquent act is not to be considered, but inhumanity and the above-mentioned inconsistency can only be tolerated as long as the Canadian citizen's knowledge is blocked in this area.

Mrs. SHIPLEY: Mr. Chairman, are there copies of this brief for us?

The WITNESS: I had rather short notice and I have only been able to prepare this brief en route. I would be only too happy to make it available.

Mrs. SHIPLEY: I am sorry to interrupt, but it would be much easier to ask questions if we had a copy in front of us.

Mr. BROWN (*Essex West*): Now that we have had a little break in the proceedings I think we should assure Warden Christie that he can feel perfectly free and easy to discuss this matter in any way he deems advisable. This parliamentary committee is not a stiff and austere body. We are merely here trying to learn and you can feel free to discuss the matter just the way you want to discuss it.

The PRESIDING CHAIRMAN: There may be questions afterward but we are not critics at the moment and we want to ascertain Mr. Christie's opinions.

The WITNESS: I do believe that the law must be a reflection of public opinion; nevertheless I must state what I think public opinion will be when the full knowledge is at their disposal. I am not suggesting whether we should make the move at the moment or not. We will leave that until later.

The decision to abolish capital punishment is inevitable. The only matter in question is the length of time it will take. Society has some responsibility for its progeny. It is hardly fair to allow the unlucky person who is a casualty of their decisions to accept the full burden of responsibility by paying with his life.

And if what I have said and the brief way I have said it has given any suggestion that I am critical of this type of structure I will rectify it now. I see this as a logical thing, this matter of society taking the responsibility for "calling the shots," but because there will inevitably be casualties I think they should take the responsibility for those casualties and I think it is too much to expect an individual to accept the full burden by paying with his life.

Should one individual be expected to shoulder so much of the responsibility for either deterrence or public conscience?

I do not think that capital punishment has a deterrent effect which could be considered significant. Even if we were to concede some more wholesome value such as the reinforcing of the public conscience by hanging, it still could hardly be considered fair to place the major responsibility for this control or expiation of the public on the poor devil who is expected to give his life

for that purpose. Surely there is some more equitable way of sharing the responsibility between the parent society and the individual which was produced but obviously must be controlled for its own protection.

I hope you will suggest a more detailed discussion of this coming area if you so wish. I would like to go on to some of the theory regarding punishment as a lead in studying its effect as a deterrent. I think we have to discuss a little theory to understand what effect deterrents would have.

Correctional theory associated with corporal punishment would suggest that:

1. It would increase the psychopathic person's hostility and aggressiveness towards society. It would if sufficiently severe, temporarily force him to block or redirect his hostility thus increased to some other form of anti-social act.

We can discuss the practical aspects later. I have seen quite a large number of corporal punishments and some capital and we can discuss this factual material later, if the committee so wishes.

If the psychopath's intelligence were the ruling factor, he might not return to his original form of expression, but unfortunately emotions overrule intelligence in the disturbed person. Because the only form of expression which will give the psychopath release of tension is hostility, this redirection will not be social but rather always an anti-social act, of equivalent or greater intensity. It will only be temporarily redirected and will return with greater intensity as the original urge or causal factors are still there.

You suggested informality—possibly you can say right here whether the presentation is clear enough?

The PRESIDING CHAIRMAN: Clear enough. We are keeping right up with you.

The WITNESS: Good enough. Under punishment, anti-social actions will only be temporarily redirected and will tend to return with greater intensity as the original urge or causal factor is still there.

2. With the mentally ill person, it would further confuse or disturb, and therefore increase his problem.

3. On the normal person, it could have a deterrent or redirective effect as long as the relationship between the person punishing and the person punished were sufficiently good to endure the experience and thereby not increase the aggressiveness or defiance which might encourage a continuation of the delinquency. In other words, control can be effective on a long-term basis only when it is devoid of the feelings we normally associate with punishment and when a positive relationship continues to exist between the individual and the authority person.

The fact is that normal people develop the feeling that we are in harmony with society. We have a feeling of affection for society and people around us and we must express that affection to be comfortable, You love your wife and children and you must express it in some way to get release of tension, to be relaxed, to be comfortable. The psychopathic person because of his background—sometimes it is deprivation, sometimes it is too much of the opposite—develops the feeling that society is against him and he is against it, and instead of a feeling of affection and harmony with society he has a feeling that society is against him and he says, "Dad hates me," or "Society hates me and I hate them and I hate all it stands for," and that hostility which is comparable to the affection you feel must be expressed for him to be comfortable. Hence, you find a lad who steals a car even when he could have his dad's car, and he steals money when he has money in his pocket; he must express his hostility to get the same feeling of comfort that you get when expressing your affection. That is what it boils down to.

It can be seen from these comments that severe punishment has many dangers and few advantages. Like practically any life experience it can have a value when applied to the right person, by the right person, in the right way, and at the right time. It can be used to block momentarily the actions of the normal and the psychopathic person. It increases the intensity and does not for any length of time change the type of delinquent activity used by the psychopath. It can be used by a well-loved parent on a child as long as the experience is not so severe that it ruins the love relationship—maybe I should use a more comprehensive word than the word "love"—and thereby leads to an increased delinquency expression. The advantage of parents avoiding it are only too clear when you consider the likelihood of the over-punitive parent with a poor child-to-parent relationship being the one who is most likely to use it with consequent dangerous results. I have seen corporal punishment used to the detriment of the individual, but to the advantage of an institution which had no alternative means of control at its disposal. There are better and less dangerous means of control, but it would be a mistake to take corporal punishment as a means of control away from an institution if it had no other means of control at its disposal. Any institution which has rooms provided for complete segregation or disassociation such as are used in a mental institution has no need of corporal punishment. Corporal punishment has been necessary at a stage of development when alternative methods have not been available. There will be no excuse for it when facilities are provided, which should be in the very near future.

The thought of capital punishment, if the thought were dominant in his mind at the time, could unquestionably deter the normal person. The normal person does not murder or have the thought of hanging in his mind at the time of an accident. Our record of capital cases proves this point.

I have had the very interesting experience of going into a terribly crowded institution which because of mass conditions, and lack of resources had to use corporal punishment as a control, and we have used it considerably. We are at the point now where it is almost eliminated, but at the beginning stages the fact was that we had to use it until some better method was gradually instituted. I had the interesting job of trying to make this rather brutal means of control into a more therapeutic control, a situation where the prisoner is not left full of vindictiveness and aggressiveness, and I have had the opportunity of observing the end results, good or bad, of that experience. I have seen most of the institutions from St. John's, Newfoundland, to the coast of British Columbia and I would say from my own assessment that the time has come when we can very rapidly substitute other means of control in every instance. As you have heard, the penitentiaries have almost eliminated its necessity.

Possibly at this time it might be as well to digress further and speak a little of some of actual cases. I can think of some cases which might be interesting to you. First of all, to do with court decisions, with court orders of paddling. Not too long ago I had five youngsters in from Vancouver Island to be paddled, and this is a situation which you quite well might expect to happen again. We had five lads, one of them a very normal youngster, four of them very disturbed youngsters, delinquents probably on the way towards psychopathy.

Hon. Mrs. HODGES: What were their ages?

The WITNESS: They were between the ages of sixteen and twenty-five. The normal lad said, "By golly, I had this coming to me. Let us get it over with," and since there was no definite time specified he signed a waiver of right to appeal and was paddled.

Mr. FAIREY: How many strokes?

The WITNESS: Five paddles. I don't think it did any more good than a prison sentence would have because when he entered the prison he realized he had made a mistake and he was ready to turn around and settle down to business. I don't think in all honesty the paddling did any harm either and after the paddling was over—we did it in as therapeutic a way as possible—we shook hands and he said, "By golly, this is not for me," and he went away and it will be interesting to see if he comes back. Most people that we paddled do. I dont' think the corporal punishment had any effect on him. It might have embittered him a little, but I didn't see any evidence one way or the other.

The other four lads who could be diagnosed as people who were moving towards a career of delinquency were very bitter and they said, "We are not going to accept this." They appealed the case and none of them was paddled and they went back to the community.

Now, it struck me at the time as being a rather useless and unfair thing that had happened, but it is an interesting incident. As I say, I don't believe that corporal punishment has any long-term use as a deterrent. Its value is for its immediate use to provide temporary control within institutions. I don't see anything that would lead me to believe that the lad had been damaged in any way that was going to be lasting at all, but it has amazed me how many hopeful cases such as his, which after being paddled, come back.

Mr. FAIREY: Would a question right here be in order, Mr. Chairman?

The PRESIDING CHAIRMAN: Well, you might open the door. I think possibly you can make a note of it and when we get around to questioning we will open the gate wide open.

The WITNESS: Possibly I could mention an experiment. When I came to Oakalla the lads from fifteen to twenty-five were hardly ever put outside to work. Lads of that age are usually obstreperous and jump to conclusions and they are very poor runaway risks.

Mr. BROWN (*Essex West*): What do you mean by "runaway risks"?

The WITNESS: The old con is less likely to run away than the new offender. The old con knows what side his bread is buttered on. He plays ball. The young hooligans are more likely to jump the fence.

We took the chance and placed about 200 of these young "zoot suit" hooligans on very heavy farm work—a program of very heavy work and recreation—worked them hard and played them hard. They were the same lads that required a lot of control, the type that had you at your wit's end because eventually you had used every light restriction and eventually you had to use some strong form of control. At that time we did not have too many isolation cells and these lads therefore were the type that got paddled. We put them to work and the end result was surprising even to myself. We had after a very short time, 200 hard-working kids who had stopped talking about the jobs they were going to pull and the "women" they knew, and at the end of the year they had increased the farm production over 100 per cent over the previous year. You heard hooligans talking about who had the best cabbage patch—we grow a lot of cabbages in British Columbia—and some of them got three crops off one plot of land. And, as I say, it was a definite factor in helping us to gradually eliminate corporal punishment. It was a very interesting experiment with a profit for all concerned.

I will just finish off this section by saying: The people who have had corporal punishment practically all return and we would have in any year at least 50 inmates and probably more who have had corporal punishment and who are returned to prison. These men would provide a very good basis for

research. I don't know what they would say, but if you wanted to get their reaction it would be a very good opportunity for you to interview people. Some, you might decide, had not been affected in a detrimental way. Others, you would find, are very, very bitter as a result of it. You would have a very good opportunity for study, possibly better than in any other institution in Canada.

The disturbed person who murders as a result of his abnormalities is not under question as we have already acknowledged, in the McNaughton Rules, the desirability of giving him a life sentence for treatment in a mental hospital.

The psychopathic person could be deterred temporarily if a hanging had been carried out a few hours or a few days previously and it were fresh in his mind, but this situation does not exist. Since the basic cause of his problem is not being changed and his problem of hostility against society, and his desire for revenge or aggression being increased, we tend to lose more than we gain. The psychopath always expects malevolence from society. Capital punishment only confirms his belief about society's hatred. He expects nothing else. He is afraid, but no more so than the person who is a member of our military forces.

I have a list of 36 cases of hangings carried out at Oakalla since 1919; I have only seen three of them myself; but I have talked a great deal with the men who were present at the time and I cannot find any individual whom I would say could be diagnosed as a normal individual, I suspect you would find the same situation if you could study all the people who are committed to hanging. Normal people just don't commit murder.

The psychopath is something like the soldier who expects to die as a result of battle. He expects his life to end eventually in some way but he doesn't let it worry him.

The criminal's fear of the gallows is a fairy story built up by well-meaning people to deter others. We could build up just as effective a hoax about the horrors of life imprisonment if it were our wish. Of the 36 persons put to death at Oakalla since 1919, I can find no evidence in any case but one, one case only, of any unusual fear of being hanged. It is not the traumatic thing that we build up in the funny-paper style.

I have seen much more hysteria and violence by men faced with the prospect of a five-year penitentiary sentence or a life indefinite sentence as a habitual criminal. The three men I have seen hanged were extremely calm, their only expression being the feeling that this was the logical final action they had expected from a society that had hated and punished them all their lives. Cunningham, the first man I saw, a good Scotsman from Nova Scotia, a psychopath in my estimation...

Hon. Mrs. HODGES: A good Scotsman?

The WITNESS: All Scotsman are good, aren't they?

He refused the usual wrist straps, and walked quietly to the scaffold. Viatkin, the second man I saw, nearly dead from T.B., was a little dreamy and asked about the disposition of his body.

That was the time at which we changed the time of executions because we thought it a better thing to change the time to midnight and he wanted to know whether the funeral people had been notified of the change—he did not want his body left lying around. He was dreamy and not too much disturbed.

Sonny Jones, though a troublesome inmate while awaiting trial, walked quietly to the scaffold, knelt down and said his prayers, and proceeded to be hanged.

And that, ladies and gentlemen, seems to be the situation throughout. Hanging, when you really know the situation, is not a thing which deters. We

could probably spend a little bit of time on the question of the effect on the institution when you have a hanging—and this is just a subjective judgment when you move around and see a thousand odd prisoners in the institution and their reaction to it, you find the prison is usually quiet. The prisoners don't impress you as having an attitude which you would normally expect to associate with deterrence when the hanging takes place. Instead you get a general identification with the prisoner being hanged and the general feeling "This is the work of society, this hateful group, this punishing group. You can never change my point of view, you have hanged this man." And particularly from what I gather happened in 1946 when they pulled the head right off a prisoner when they hanged him. The well of feeling that grew up among the prisoners for the punished and against society at that time seems quite inconsistent with anything that would deter.

Their feeling about being hanged was not the important thing. Hanging is just a hanging—it is soon over with although it is a gruesome thing. The important thing is that it aligns people whom you are trying to treat and get in harmony with society, it aligns them against you and with the person being hanged. It seems to increase psychopathy in the criminal group in the prison at the time. I would be very, very interested in some research being done by people who look at it from a coldly objective research point of view.

I think in going over these people, the whole list here, there is not one of them that could be considered normal. They are psychopathic primarily. Some of them could have been mentally ill. There are certain mentally ill people such as, paranoids who could murder also.

Mr. BROWN (*Essex West*): For the record, what do you mean by paranoids?

The WITNESS: A paranoid is a person who feels that people are persecuting him and he is fighting back. As a matter of fact, Ottawa comes into their thinking quite commonly. It is quite common for a paranoic person to look to the head of government as the head of society and because he feels that people are after him he lashes out against them and in his mental illness could kill somebody without being too conscious of what he is doing. He, of course, as I say, is a mentally ill person.

Another interesting thing is that this abnormality does not always grow out of poverty. It arises from a deprived situation and a deprived situation is not always a poverty stricken situation. You find people in your psychopathic group who as a result of the plenty around them and the lack of need to develop did not have to adjust to the standards of society. Since everyone had catered to them they had not had to develop any capacity to live with people and therefore had the alternative, as everybody has, when finally faced with a problem they had no capacity to cope with, of being mentally ill—withdrew or fought out against what appeared to them to be an unfair and unrelenting society.

It is surprising the number of people in our prisons from professional families.

As mentioned, the prison is usually fairly quiet at the time of a hanging, the prisoners, generally speaking, do not show the feelings we would normally expect from a person being deterred. They tend more to identify with the person being hanged, and feel an increased welling-up of a morbid and repressive hatred against authority and society and all it stands for. There is seldom anything said as the prisoner walks to the gallows a few feet from them. At a recent hanging, however, a couple of persons called down that they would be following soon,—a very strong identification takes place with the person being hanged.

The idea that hanging deters people from murder is a farce as ridiculous as the idea that a soldier expects to be killed when he charges into battle.

Those of you who have been in similar situations know. The odds are against you but you have to go through with it. Regardless of the odds against him, man cannot fully accept the inevitability of his own destruction.

The deterrent effect of capital punishment is negligible. Capital punishment is used to make those of us who have a fair degree of guilt and aggression within ourselves feel more comfortable. The expression of hostility against the murderer gives us a scapegoat and a release of tension non-existent only in the person who could not wish to kill.

I accepted the idea reluctantly too, but the feelings within you and I have recognized those same qualities within myself—and the feeling that causes the man to murder—are as your psychiatrist can confirm more than casually related.

We all recognize within ourselves at times many of the inferior qualities found in the criminal, such as lust, greed, and murderous feelings. To the extent that these tendencies exist in ourselves, so do we relieve our own feelings of guilt by punishing others. It has no real value to society, but is the derivation of the traditional feeling towards criminals who, in actuality, are so little different in their origin from mental patients, that little if any difference in treatment is justified.

The abolition of corporal and capital punishment before people understand enough of the subject to realize their inconsistency has allowed in other instances, in my estimation, this very emotionally charged question to become a political football. I think this is a factor that has to be considered.

Hon. Mrs. HODGES: Please, Mr. Chairman, could we have that statement repeated?

The WITNESS: The abolition of corporal and capital punishment before people understand enough of the subject to realize their inconsistency has allowed in other instances in my estimation this very emotionally charged question to become a political football. In other words, I will break that down by saying this: There are hazards to be considered in abolishing capital punishment before people realize just why or against the peoples will.

The PRESIDING CHAIRMAN: You mean there is a degree of development in society. If you reach that, you are ready to accept abolition of capital punishment, or more ready?

The WITNESS: Yes, I think you must assess the degree of people's readiness because, if you do it before they really know why you are abolishing it, they are over vulnerable to an emotional appeal. Maybe that is the job of the committee, to let the people know the facts. But if you abolish it before the people are ready I could win the next election, I think, by exploiting this emotional feeling which I could build up around the necessity of bringing it back. When there is any subject of that kind, unless the people have real knowledge as to why they have made the decision, they are vulnerable to its abuse as a political thing.

Mr. BROWN (*Essex West*): What you believe then is that it is only a matter of time until capital punishment is abolished, but that one purpose of this committee is to prepare the people, fully inform all the provinces of its abolition?

The WITNESS: I respectfully suggest that that might be one of the duties of the committee, to see that the people do get the full facts.

Hon. Mr. HOWDEN: Would you make a statement as to what you consider the purpose of capital punishment—punitive or self-preservative?

The PRESIDING CHAIRMAN: Senator, our practice is to reserve the questions until the end and then everyone gets an opportunity.

The WITNESS: A greater public knowledge of the casual factors in delinquency and crime and the methods which are successful in treatment is therefore one of our greatest public needs. Lifers require no more care and custody than other long-term prisoners.

I have had murderers in prison that we know are murderers and they require no more care than other long-term prisoners.

The increase of prison population involved in the abolition of capital punishment and would not require any difference or any expansion in our present building program. There are many good alternatives to corporal punishment but a good segregation cell with the right type of person in charge is far more effective than corporal punishment. As long as you have isolation cells or segregation cells and an intelligent person properly trained to look after those confined, you have a device which is more effective than corporal punishment.

As stated, control is essential, sentimentality is to be abhorred—but the continuation of the inhumanity and inconsistency involved in corporal and capital punishment is really justified only for the length of time it takes to put the facts before the people, build a decent set of properly supervised segregation cells in our prisons, and change the present law.

In closing I would like to suggest that a careful study might be made by competent research people on prisoners prior to and undergoing corporal and capital punishment. Although we have almost eliminated the former corporal punishment, we still have the odd case and we do have many men coming in and out of prison who have been paddled before and who could be willing to be interviewed. There seems these days to always be a group of people awaiting trial for murder or awaiting execution who might also, under study, provide information which would confirm or deny the points under consideration by your committee.

Dr. Stevenson, a psychiatrist with twenty-five years' experience in Ontario mental hospitals, and his psychological and social work staff are already in Oakalla prison doing research under federal health grants on the drug problem. There would be a high degree of overlap in these two problems. He has been studying people awaiting execution and people with a serious degree of psychopathy. There would be much common ground; and a similar project or an addition to their present study might be worthy of your consideration. Too many facts that you look up in a book today are personal opinions. Again, I am sure you find the B.C. government cooperative; but these are my personal views only and would have to be dealt with accordingly.

I think, ladies and gentlemen, although we could go on for days, that the remaining material is material which you have all gone over already and will go over again and it would therefore be better for me to terminate my comments at this point and invite questions.

The PRESIDING CHAIRMAN: Today I am going to start at the left of the committee table. Mr. Shaw?

Mr. SHAW: Warden Christie, referred to the five lads, one of whom had corporal punishment inflicted upon him. Would you be able to comment, Warden Christie, upon other cases where corporal punishment has been inflicted; let us say, the hardened or criminal repeaters whom you have had conversations with following the administration of corporal punishment?

The WITNESS: Yes, I handle it as a personal problem. As a matter of fact, I always obtain help from the psychiatrist. He worked in a child guidance clinic before he came to us and I always talk the problem over with the treatment people first. There are times when we have had—not recently, but we have had to use corporal punishment as an institutional control and have

used it on hardened criminals. It makes them extremely bitter. The intensity of those feelings is very great. In spite of our best efforts to assure them that it has to be, there is an intense bitterness created. I can give you cases, if it is legitimate for the committee to examine cases.

Mr. BROWN (*Essex West*): Why not give us one or two?

Mr. WINCH: You don't need to mention names, just the cases.

The WITNESS: You do find the individual who has been in and out of prison a great deal and who in many prisons in Canada today just has not had to do a day's work. As a matter of fact, when I started at Oakalla, only 200 out of 1,000 prisoners worked. Supervisory staff is frequently not available and you must remember that to many criminals the greatest embarrassment they can suffer is to do a day's work. As a matter of fact corporal punishment is much less embarrassing to them. It is always a great trial and the intensity of feeling is great. Sometimes after trying every type of restriction, it comes to the point where there has been an actual assault on the staff, and that is one of the main reasons for corporal punishment. You bring them up and explain to them that you cannot let them get away with that sort of thing and they are paddled. I can think of many such cases where bitterness and hostility goes so deep that it has rendered a case much less open to reformation whereas, on the other hand, treating the case differently; I could see a very great possibility of reformation.

Mr. BROWN (*Essex West*): How different?

The WITNESS: Treatment, to boil it down to a simple formula. First of all, the psychopath is an individual who, for one reason or another, has become convinced that people hate him. He therefore hates them. He therefore hates society and everything society stands for. To express that hostility, to relieve tension, and to fulfil the psychopathic needs that he has, he has to strike out at something—Treatment, conversely, involves the proving to that individual, first of all, that some one person has faith in him, believes that he has worth, and that they respect the dignity of his person. He then says, "By golly, that chap thinks I am all right; maybe he is all right, too." and that begins your case-work relationship. He says, "Somebody thinks I am all right, I think they are all right, maybe what he thinks is all right, too." You work from there to a group relationship.

Mr. FAIREY: What do you mean by "treatment"?

The WITNESS: Reformation.

Mr. FAIREY: But I mean the method?

The WITNESS: I am describing the method.

The PRESIDING CHAIRMAN: He has troubles on the way?

The WITNESS: Yes, he has little troubles on the way—I am generalizing for the sake of simplicity, but it works from there down to the relationship where that person he respects can show him that he can work happily in a group. Possibly I should give an example. When we first started our newest institution, we set our groups down at the table. Young hoodlum kids. The food, instead of being served to each individually in his cell as in the main prison is served out in vegetable dishes on the table. At the first meal they grabbed all they could get and forgot about the others at the far end of the table, so that the six people at that end did not have much breakfast—that was all right, they went hungry. At noontime, we started at the far end and the six at the other end of the table did not get anything, they went hungry. At supper time, they took their share and found out something about the give and take of living in a group or community. A very practical problem to call therapy, but the psychopath learns something from it. He says, "By golly, in this small group I am doing all right. I can give and take with this group

and I end up O.K. By golly, maybe this is all right." And then as the final step you say, "Society is that way too if you play ball. You can give and take with society and you can end up without being on the dirty end of the stick." I wonder about these colloquialisms going in the record.

Mr. BROWN (*Essex West*): That is all right. That will make it more readable.

The WITNESS: Then the delinquent says, "Maybe If I can get along with this group I can get along with society and maybe society is all right I'll give it a try," and he steps out. If he gets a job and enough help, he is assimilated into society and he is assured that society has some place for him and he is as egocentric as the rest of us. That is a simple example of what I call the "reformation process".

Mr. SHAW: Would you destroy the possibility of this person-to-person relationship by corporal punishment?

The WITNESS: I would say that you make much more difficult that initial relationship because, in fact, you build up his hostility. He says, "I knew they hated me, I know I must get along without them." That is what happens. I would not say it is completely destroyed.

The PRESIDING CHAIRMAN: Mr. Cameron?

Mr. CAMERON: I think you have answered what I was cogitating in my mind and that is that a normal person is a well adjusted person and an abnormal person is a man that has knots in his mind, but you have now given what you consider the cure—kindness, understanding and patience?

The WITNESS: Along with control. Kindness, and patience, and understanding of what is going on within that individual, but add to that control and understanding of what is going within that individual as you go along with your treatment of him. I agree with you 100 per cent, but the reason I interject this is that just kindness and patience do not do the trick; you must have in your more severe cases some control and an understanding of the subject, the problems he had had and the problems he is capable of managing next, or else he can end up just sitting there soaking up kindness.

Mr. BROWN (*Essex West*): What do you mean by this control?

The WITNESS: You have got a youngster, a young hooligan, who has never done a day's work in his life and he decides it is better to get everything the easy way. You have him placed in your prison; in prison he gets to feel the same thing; in prison he won't work; he professes a sick stomach. Just to give him kindness, does not do the trick. Some people might think that if you give him kindness he will be ashamed of his folly. That is not true of the psychopath who seems to take kindness for granted. But if you take something from him and give him something in return for that kindness, start with something small, you start a building process. If you expect something he cannot handle, you knock him down. If you give him a small problem at first, along with your kindness and understanding of him, he will take that small problem and he will move from that to a bigger one and each succeeding problem gives him a greater capacity to handle the next one and he grows. You start the process that should have started as a youngster when he did his chores at home.

The PRESIDING CHAIRMAN: Does control mean that you make him realize there is a set of rules?

The WITNESS: Yes, there are standards that he must meet and he must meet them at the level he is able to handle them at that particular time. In other words, you must have staff people who can judge the degree he has reached. You have a youngster who looks bright and you are expecting him to measure up along with the rest of the kids. He looks good, looks intelligent,

and always has a smart remark. You find later that the reason he is not able to go along is that he has not the capacity. You have to meet him first at the level he can handle physically, intellectually, and socially.

You find individuals who cannot be related to any society; they have had such a harsh life they cannot get along with anyone. They cannot see me as anyone but an authoritative person who is beating them down. But they can get interested in a dog or horse and if you get them interested in a dog or horse or cow, or something like that, they will build a dog kennel, or do some carpenter work. They need something. They need to get into the carpenter shop to get something done and so you barter—I don't like that word—but you barter their need for your need and you say, "Well, you can go up to the carpenter shop if you live up to this requirement, if you can measure up in the carpentry work group in the institution." And you start that process going and there is a give and take and you build up and build up and finally you can build enough to fit him for work and life in society.

Mr. BROWN (*Essex West*): You said something a moment ago that it begins at home.

The WITNESS: Normally, yes. Your youngster in the infantile stages trades your affection for conformity. He wants to wet his pants and the only reason he does not wet his pants is that he needs from someone the things we all need: warmth, food, affection and attention. We need these three major things and as we grow up we try to obtain these things which our parents allow us if we also satisfy the standards of society. We start out just satisfying ourselves and if we are left with just kindness we never do anything but satisfy ourselves. But, as we go along, we are only allowed to get our satisfaction as we give something in return. In other words, we stop wetting our pants in return for the affection and warmth of the mother and you gradually build up a process in which you give and you receive and there is a give and take relationship. I hate to put it on such a practical basis but frankly all the various theories whether it be, Freud or anyone else, boil down to that basis. All people develop that way but some get no affection or they get so much without anything being required that they arrive at twenty-one not knowing how to come to grips with the cold reality of making a living and the employer does not feel the way the parents did. He wants them to produce. At that time they just cannot adjust and they say, "Well, I will just take it the easy way."

Mr. BROWN (*Essex West*): What you are saying is that the method of reformation is to teach the person who is in the prison to learn to be of service and to learn to do things for other people?

The WITNESS: Yes, I would state it more broadly by saying that you teach him that he can give and take and get all the happiness that he wants out of life. The good Lord made us in such a way that to get the most out of life you have to combine social usefulness with personal satisfaction in all things.

The PRESIDING CHAIRMAN: Teach him not to be selfish?

The WITNESS: Yes.

The PRESIDING CHAIRMAN: Mr. Brown is next.

Mr. BROWN (*Brantford*): Warden Christie, in exercising that control over the prisoner that you have spoken of, is there in your opinion any advantage at all in corporal punishment other than an immediate advantage?

The WITNESS: No. I have with me—I would not be prepared to table them because I was unable due to short notice to get them compiled in a scientific way—but I have a list of those who were punished by corporal punishment, and going down the list for the last four years practically all have come back.

Mr. BROWN (*Brantford*): So in your view you would recommend its abolition?

The WITNESS: Yes. I think we have reached a point where we can do it with such a simple alternative that we are ready to go ahead. I further suggest that in studying capital punishment you have a very similar situation to corporal punishment. If we can in Oakalla with over 1,000 prisoners eliminate corporal punishment completely and do just as good or better a job, there is some parallel that might be observed, from a research point of view, which could be applied to capital punishment.

Mr. BROWN (*Brantford*): Just one other question. If capital punishment were abolished and a life sentence substituted, then the question comes up of the ultimate discharge of that prisoner and there seems to be a feeling in people's minds of the danger that means of re-entering society. Now, I have in mind some years ago a case in Ontario where a rather notorious prisoner was serving a life term and he was ultimately discharged on the representations of a large body of people. He was acceptable and able to enter society and he became involved in a very short time in a robbery and the lives of other people were taken and he had to suffer the death penalty. Now, what protection has society got in lieu of capital punishment?

The WITNESS: It is strange. That is the first case I have heard of a prisoner committing a second murder.

The PRESIDING CHAIRMAN: No, it was not murder the first time.

The WITNESS: I have no particular thought about releasing a man. I am suggesting life imprisonment. If it were my son I would accept the fact that he had proven that he was unable to live in an ordered society and that therefore society had undertaken the necessary action. I would hope the prisons of the future were ones who provided an objective control which would ensure as constructive a life for him as possible. The lifer is often very much like the person who has accepted the inevitability of a fatal illness. He accepts the fact that he is going to be in prison for the rest of his life and often lives a very useful and productive life within that community. You have to see it to believe it, how much maturation can take place as a result of the years with certain lifers. I would not be concerned if they were never released. Today, however, we are using certain of the shock therapy treatments in Oakalla and there are also experiments being carried out with the electro-encephalogram as a possible means of detecting psychopathy. By the use of an analyzer along with the electro-encephalogram you can get a very sensitive tracing. There is sufficient evidence to suggest that the changes that take place in the person, who is becoming more and more psychopathic, can be detected.

Now, if you could do this—and research indicates that this may some day be so—it means that in the future there may be mechanical methods which can measure accurately the possibility of further acts against society. It is rather unbelievable, but we have research going on today with such equipment that strongly suggests the social sciences may match medicine in accuracy in the not too distant future.

The PRESIDING CHAIRMAN: The electro-encephalogram is used in the study of the brain?

The WITNESS: Yes. It is used today mainly to diagnose epilepsy.

By Mr. Boisvert:

Q. You said that you do not see much deterrence in capital punishment. That is your opinion.—A. I said long-term deterrence.

Q. Do you know the opinion of Sir Harold Scott, commenting on one crime in England, in the case of Jenkins and Hedley, where he said—this is at page 337 of the Royal Commission Report on Capital Punishment 1949-53—"heavy prison sentences did not deter these men but the death penalty did and we have not had organized trouble from this quarter since."—A. I would rather not argue on that point. I would counter by asking the question as to whether the death sentence deterred them any more than would life imprisonment?

The PRESIDING CHAIRMAN: To the extent that the death penalty was applied, it certainly would.

The WITNESS: You overlook what you encourage in the way of a tendency toward murder in the group in the prison observing that act.

By Mr. Boisvert:

Q. I will come to an opinion that was expressed by the Minister of Justice in New Zealand. The Minister of Justice stated—this is at page 337 of the same volume—

> The most striking case occurred in 1948 when we had positive evidence that on two occasions a man committed murder and on one occasion after he committed murder he said 'you do not get hanged for murder nowadays; even if you commit murder nowadays you only get eight years for it. That is the good government we have.'

A. You frequently get more in Canada for life imprisonment than eight years. This is exactly what I was talking about. I am familiar with the report you refer to. If I was a politician, I could find more than two cases to substantiate any opinion.

Q. There are many more cases—thousands—of people who think that capital punishment is a deterrent.—A. All I can say is my opinion, and I may be quite wrong.

Q. I respect your opinion.—A. I do not agree.

Q. Is there an increase in capital crimes in this country nowadays?—A. Without records, I can only speak of the situation in British Columbia, and I can say we have far more people in our row of cells that we use for people charged with murder and in our death cells, than we have had for many years.

Q. You do not know the statistics about crime in the country as a whole?—A. No. I would not be prepared to attempt to quote statistics.

Q. Is there any increase in rioting in penitentiaries in America, in the United States, I will say.—A. Yes. We are all aware of the violence, and the rioting.

Mr. BROWN (*Essex West*): How about in your own jail?

The WITNESS: Our jail uses corporal punishment more than any other jail in Canada, and capital punishment just as much. And we have had a riot.

Hon. Mrs. HODGES: A riot?

The WITNESS: Yes.

Hon. Mrs. HODGES: Just one riot?

The WITNESS: Yes.

Mr. BROWN (*Essex West*): When?

The WITNESS: A year and a half ago.

By Mr. Boisvert:

Q. Do you not think that, if we were to abolish capital punishment, we might see the society reverting to a primitive form of execution of murderer; I will say, for example, lynching?—A. I honestly do not think that there would be any increase in murder as a result of changing from capital punishment to

life imprisonment. I do think that there would be an increase in the number of people who would be found guilty of murder and given life imprisonment, but I do not think that there would be an increase in the actual crimes committed.

By Mr. Winch:

Q. Mr. Christie has told us of the effect on, or the reaction amongst, the prisoners on the day of a hanging. What is the reaction amongst the guards or officials to a hanging?—A. We have a very extensive staff training process going on, and it is so out of harmony with scientific principles we are teaching that it sets them back and has a very definite unfortunate effect on them. It is very much in contradiction to our modern theory concerning treatment.

By Mr. Thatcher:

Q. I think you said that there was danger in abolishing corporal and capital punishment before the people are ready for it. As far as capital punishment is concerned, I understood you to say that the people had to be educated to a point where they were ready to accept it. Do you not think that the Canadian people are at that point now, or would more educating have to be done?—A. I would not care to hazard a guess because I do not have sufficient information at my disposal. I do not know. I know definitely that there are a large group of people who are ready. There is no question about that. I am not suggesting that it should take a long time. What I am saying is, if they do make the decision, they should know why. It is not so much a matter of the length of time, but certain facts must be there, otherwise the same thing will happen as has happened in New Zealand.

Mr. BROWN (*Essex West*): For the purpose of the record, would you explain what you feel has happened in New Zealand.

By Mr. Thatcher:

Q. Would you care to elaborate on that?—A. I suggest that in New Zealand they returned to a method of using capital punishment on the basis of arguments presented by a political person. The arguments that were presented do not convince me that it was not to serve a political end.

Q. You stated that in one case in your institution—I think it was in 1946—a head came off in a hanging?—A. Yes.

Q. Are accidents common?—A. The problem is this, that strangulation is always a long, slow process and there is always that possibility if the rope is too short. Therefore, in an attempt to avoid that, you sometimes can make the rope long enough that you pull the man's head off. I do not know if they are common. Out of 36 cases they have pulled one head off. It takes from 12 to 18 minutes for the heart to stop beating after an individual drops—but, in the last case of Sonny Jones, the heart remained active and strong so long that I could not myself hazard a guess as to whether or not it was strangulation.

By Mr. Brown (Essex West):

Q. How long was it?—A. I would not be prepared to answer that, but I could check with the medical examiner. I would say longer than in the case of Cunningham or Viatkin.

Q. How long was that?—A. Approximately 15 minutes total.

Mr. THATCHER: If capital punishment should be retained, do you feel that any other method should be adopted which would be more humane?

The WITNESS: The only methods that I would suggest would have the effect of linking a punitive purpose with a well established therapeutic profession, and I am, therefore, not in a position to make any statement in answer to your question—if you follow me.

By Hon. Mrs. Hodges:

Q. I was very much interested in what you said about corporal punishment. You mentioned that on several occasions you knew of corporal punishment being administered to some people who were mentally ill. I understood from all the information we have heard to date that psychiatrists were consulted when these people went into jail and every precaution was taken before corporal punishment was administered?—A. I do not think that I said that. I do not know of any case when a person was given corporal punishment who was mentally ill?

Q. I must have misunderstood you.—A. I could have made a mistake.

The PRESIDING CHAIRMAN: I think he compared these people in jail to the mentally ill, but did not say they were mentally ill.

By Hon. Mrs. Hodges:

Q. That was my impression. I am sorry.—A. I can see how that happened. I do not know of any case where corporal punishment has been used on a person mentally ill. If we had such a case we would immediately refer it to the remission service.

Q. Do you have competent psychiatrists examine people who are destined for corporal punishment?—A. It is a standard practice. It is law, as a matter of fact, that you must have a medical doctor examine him, not a psychiatrist. We are fortunate in that we do have a doctor for the government psychiatric clinic.

Q. He does examine them to the best of your belief?—A. He not only examines them, but he is actually there at the time of the paddling.

Q. You spoke of a group of 100 "zoot-suiters" put to hard work and recreation. Would you get any of those back at all?—A. I think it would be normal to expect that there would be some recidivists.

Q. Would the proportion of recidivists be any greater than the proportion among those who had corporal punishment?—A. It would be less. We have a closed group who go through that hard work and therapeutic treatment program and their recidivism rate is amazingly less than for those in the other parts of the prison. The difference would be the difference between 20 per cent returning in this program and 66 per cent returning in the main section.

The PRESIDING CHAIRMAN: I think that in your closed unit you have selected risks?

The WITNESS: That is correct.

By Hon. Mrs. Hodges:

Q. I notice that you emphasize that capital punishment had no deterrent effect on the inmates of the jail. Do you think it has any deterrent effect on society at large?—A. I do not think society at large needs to be deterred; I do not think they are deterred.

Q. You do not think that they need to be deterred?—A. I do not think the normal person kills.

Q. I was not speaking of a normal person. I was speaking of society at large which includes everybody. It seems to me that the people who emphasize the deterrent effect are more concerned with the deterred effect on society at large than on those in jails?—A. People fall into three categories, either normal, mentally ill, or psychopathic. I said, to a psychopath and a mentally ill person it does not deter and to a normal person it does not need to deter so it hardly matters but you are talking about a sort of twilight between normalsy and—

Q. There are people who do not fit into certain categories, the undisciplined person for example.—A. If we find as a result of good research—and I think we do need a research group looking into these people under question—that

it does deter, I suggest that we can build up an even more striking deterrent in life imprisonment, particularly if we considered my point that death does not deter people. If it did, we probably would not drive a car. There are probably more deaths in driving a car than in hanging.

By Mrs. Shipley:

Q. Early in your talk you made the very positive statement you believe that the Commandment "Thou shall not kill" applied equally to the state as to the individual?—A. Yes.

Q. Would you care to express your opinion as to your feeling on the matter if a state of war exists?—A. I do not believe in killing. I went into the service because it had to be. And, I carry out corporal punishment if the majority feel that that is what the law should be; but, I do not believe in it.

Q. I am sorry to ask the question, but it was necessary for me to assess your thinking in order to know your opinion.—A. In cases of national emergency I come closer to being able to accept the idea of killing than at any other time. In other words, war is more justifiable than many other forms of killing to me. I do not feel that a national emergency is comparable to the situation with respect to murder; I think the number involved is even smaller than for car accidents.

Q. Thank you. Now, I believe you made a statement to this effect: that the jury feels that the individual who is hanged gives his life as a salve to the conscience of the public. In effect was that what you said?—A. It is close enough. I described it as feeling a need within the person, not necessarily bad or good—to see the things which they are punishing in themselves being punished in somebody else.

Q. I accept that statement. Now, you believe that our judges and our juries are not unbiased when they bring in their verdict, and rather than their verdict being based on the crime which the accused has committed, it is based on an inner feeling?—A. No, I did not say that. The verdict as to whether he is "guilty" or "not guilty" of murder is a factual thing which I am not suggesting is biased in any way. The decision concerning what you do with the man is the place where personal feelings come into it.

Q. Very well. In the largest judicial area, or at least the area of the greatest number of persons in Ontario, that is in and around Toronto, we had evidence to the effect that—I believe the figure is 57 persons—were found guilty of murder in a period of I believe eight years, only four of whom were hanged.

Mr. SHAW: Were not 40 of those manslaughter verdicts?

The PRESIDING CHAIRMAN: There were 59 charges of murder.

Mr. SHAW: I understood Mrs. Shipley to say: "were convicted of murder".

The PRESIDING CHAIRMAN: There were 59 charges of murder, 40 verdicts of manslaughter, 7 convictions for murder and four executions.

By Mrs. Shipley:

Q. Thank you. That is the statement I wanted. That would hardly bear out your statement, would it?—A. I do not think it has any relationship to the statement. I might believe in capital punishment and I still might show good judgment of leniency when faced with the necessity of dealing with a particular case.

Q. You do not feel that inner feeling you referred to before has a great bearing on the decisions reached?

The PRESIDING CHAIRMAN: I think the warden was re-emphasizing the theory of capital punishment.

The WITNESS: Well, the thing I want to avoid is to suggest that anybody in any specific case who brings in a manslaughter verdict was not doing exactly the right thing. That is, if they brought it in as manslaughter, I have got to accept it as that. I do not know the cases. Your suggestion, I take it, is they were guilty of murder.

Mrs. SHIPLEY: They were accused of murder.

The WITNESS: I do not think I can discuss a subject like that. I do not know whether it was murder or not.

The PRESIDING CHAIRMAN: The offences were proper offences as provided in the Code and the evidence establishes the correctness of that.

The WITNESS: That is what I must assume.

Mr. BROWN (*Essex West*): You are suggesting then that, if hanging was abolished, there would probably be more convictions of murder?

The WITNESS: I would go along with that.

By Mrs. Shipley:

Q. That is not what I was suggesting. I was rather disturbed about your statement about the inner feeling people have and that Canadian citizens are hanged because the public have a feeling within themselves that they might have done the same thing.—A. I think I can answer your question and avoid sticking my neck out any farther. A great philosopher said—a Frenchman—that "To understand all was to forgive all". It is an amazing thing, I think, because I find the same tendencies in myself. When Sonny Jones came into prison on a sex case, I had as much feeling as anybody else. But as I knew more and more why he developed the tendencies he had, the punitive feeling disappeared. I had no sympathy for Sonny Jones, in the long run I thought he should go to life imprisonment, shall I say as being not less than capital punishment. All the acrimony against him had gone out of my thinking after I realized the circumstances that made him what he was. I am suggesting, until people do get this complete understanding, that people do things for a reason—and until they know a case well enough to understand what factors made him the type of individual he is, they tend to make their judgments of people on the basis of emotions. It is quite possible that a person sitting on a jury does get down to some understanding why the individual involved did do as he did and suggest manslaughter rather than murder. I am not in a position to say that in any specific case, but that is a possibility. But, in actuality the majority of the Canadian citizens' feeling about capital punishment is based as much on emotion as anything else. To give facts to a person concerning capital punishment is not nearly as effective as to give facts on the price of butter. It is an emotionally charged subject where you tend to feel what you feel, and when some one discusses it with you you are always looking for arguments to substantiate your personal feelings—whether it be myself or you; it is a very emotionally charged subject. The facts before the public will help appreciably the same way that the facts before you and I help appreciably. But the job of public education will not be easy.

By Mr. Fairey:

Q. I think most of the questions I was going to ask have been answered. I was going to interject earlier on in the case of the five boys, one of whom was a normal person and said "Let's get it over with", and he was strapped; and the others appealed and were excused.—A. Yes.

Q. Was it your opinion that in the case of the normal boy who said "Let's get it over", in that case the actual strapping of that boy did not act as a deterrent to him not to repeat the crime for which he was convicted; and that it

would have been just as effective, when he said "Let's get it over with", if you had said "we won't bother to do it"?—A. I have a feeling that whether that lad comes back or not he was not influenced in any positive way by the corporal punishment.

The PRESIDING CHAIRMAN: Do you not think that the reality of the thing when he was there and it was stark staring in front of him, being a normal lad, he might realize the thing he had gotten into?

The WITNESS: We are not quite prepared to concede that it matters either way. I have however said in effect that when the relationship is good, you have a normal youngster you like and he likes you, and nothing can change that. Deterrence of many kinds can redirect actions.

By Mr. Fairey:

Q. I agree with you. I have had a good deal of experience with boys in school. But I feel that punishment does act as a deterrent in my opinion.—A. I agree in a normal individual where the relationship remains satisfactory, but I do not think within these limits that the deterrent used makes too much difference, I think actually that certainty is more important than quantum of punishment. That is my honest feeling.

Q. Was not that true in your experience at school that the certainty of getting it acted as a deterrent?—A. Yes. If I had gotten away with it, I would have probably pulled another caper?

Q. Is there a different instrument used in British Columbia, which we call the paddle, as against the strap?—A. No. In the British Columbia rules and regulations it is described as one similar to that used in the penitentiary service. It is a strap with preforations in it to allow it to move straight in the air and not to turn sideways and cut someone.

The PRESIDING CHAIRMAN: Senator Howden wishes to ask a question. Senator Howden is not a member of the committee, but I believe that he should be allowed to ask a question.

By Hon. Mr. Howden:

Q. What is the purpose of capital punishment, punitive or self-preservative?—A. I think it is self-comforting.

Q. Is that all?—A. It is punitive. I do not think that it serves a useful purpose in self-preservation at this stage of development which is what I am speaking of. But, I do think it serves the purpose of being self-comforting and gives us a feeling that we have certainly done the right thing in punishing this act that is bad. We aren't too sure we are right but we feel pretty sure of not being criticized after the man is hanged.

Q. I am not a young man; I am a medical man. I have lived in Winnipeg and I have the memory of two distinct repeaters. In fact, over the years, it has impressed itself on my mind that murderers do repeat.—A. I have never seen it shown in statistics. As a matter of fact, the common statistic is that they do not. But, as a sensible person, I would not say that it could not happen or that it was unlikely to happen. I do not say that. It was not my point that they will not repeat again. My point is that it is just as effective a way of saying that they do not repeat by giving them life imprisonment.

Q. What would you substitute for the paddle?—A. I would substitute a disassociation cell in which the individual, if he was not willing to conform to the rules of the society and the community he is in, the prison, that he would be removed completely from that. We call them segregation cells, or dissassociation cells. It is the same kind of cell you use in a mental hospital where the person is completely separated from the other people and under the jurisdiction of a sound staff who can deal with him in a proper way and assist him in seeing the error of his ways. It is very effective.

Q. Actually hanging is without sensation. The rope is knotted behind the left ear and when it drops the spinal column is broken?—A. I am not worried about the sensation.

Q. Absolutely all sensation is cut off. The lower brain is the end of the sensation?—A. If the neck is broken, that is so. However, if it is not broken, it is strangulation.

Q. I do not think that there is any cruelty in hanging.—A. That is not my point, it is not the cruelty of it for the individual. I have seen hangings and it is not the cruelty that strikes me. It is the effect on the other individuals that you are attempting to deter from following the same course; it is the rightness of the act and the effect on society that is important.

Hon. Mr. HOWDEN: That satisfies me.

By Mr. Blair:

Q. Warden Christie you said that there are three aims of punishment, reformation, deterrence, and retribution. Am I correct in assuming that your view on capital punishment at the present time is that it satisfies only the aim of retribution in the broad sense?—A. That is right. It only satisfies the one, retribution.

Q. And the exchange you had with Mrs. Shipley was along the lines of indicating that the retributive factor in your view— —A. Was heavily weighted. I do not mean that it excludes everything else, but is a heavily-weighted factor which we must consider.

Q. And retribution, in the sense of being society's feeling of reprobation? —A. Along with it is expiation as well.

Q. I think it would be helpful if you were to put on the record the differentiation between what you have called the psychopath and the mentally ill person.—A. We all start life having these major needs; warmth, shelter, food and affection. We grow up first of all trying to get those things but we are also required to live up to certain artificial standards. Some of us, because of poverty or neglect, or because we are given too much, or for some other reason of circumstance are not able to satisfy both ourselves and society. We therefore do not feel comfortable and nature provides us with alternatives. The first alternative is to just keep trying and if the problems are not too great or we get just enough help, we develop as a normal individual. But, if the problems are too great we have two alternatives, delinquency and mental illness. The psychopathic or delinquent person says: Society is against me and he fights back becoming more and more hostile and building up a greater and greater need to express his growing hatred for society. The mentally ill person, finding life is too difficult, withdraws or makes neurotic excuses. I am Napoleon fighting the battle of Waterloo, and it is his safeguard against failure and the uncomfortable feeling. Nature gives him the opportunity to withdraw, and he is comfortable. That is his comfort. There is a high degree of that in asthma. The neurotic, unaware of what is happening, sometimes develops a paralysis or other mechanism to excuse his inability to adjust. The mental illness is unlike the psychopathic state in that the psychopathic individual says: I will not withdraw; they are against me and I am against them and I have got to fight for a place in society. Frequently a lot of the people with good stuff in them, and because they have, along with other qualities, the strength to fight, become psychopathic by developing this feeling that society is against them and they build up instead of a feeling of affection, a feeling of hostility that must be expressed in the same way that your affection must be expressed.

Q. It seems clear to me that you draw a distinction between a psychopath and a mentally ill person on the basis that the mentally ill person draws so much away from society that his mind is gone, and the psychopath lives in society and fights against it.—A. If I feed the baby and he becomes well

developed, and then I neglect him, he may fight against it because he has the physical strength and the capacity to grow up battling and hostile; but if you neglect him right from the beginning, the youngster is frail, and at the ninth month of age you may see from the expressionless face that before he is through his teens he may, unless he receives a different sort of help, have some mental illness as his only possible outlet. It is a matter of which circumstance came first, and how much appropriate care and understanding is available. When you can diagnose and predict some of these things, you see that it is just a difference of time or the circumstances they meet that determine whether normalcy or psychopathy or mental illness will be their lot. That example of the youngster is a very very striking one.

Q. The committee will recall the evidence of the police chiefs on the basis of their experience with different types of criminals, as to whether or not they were deterred from carrying weapons or committing violence because of the death penalty for murder. They describe these criminals as persons who might commit a deliberate murder, not as people emotionally disturbed, but criminals who had deliberately entered upon a life of crime and were deterred from committing an act of murder by the presence of the death penalty.—A. A person cannot become a professional criminal unless he has something wrong with him such as very poorly developed super-ego or conscience in which case you do have a type of maladjustment which you call a psychopathic condition. I know plenty of criminals. I have 7,000 a year on the books at Oakalla. Over the twenty odd years I have been in business, I have seen a lot of delinquents and criminals and I do not know one that would not use a gun because of any idea that he might get the death sentence. There probably are some but it is more likely that your professional would get someone else to pack his gun and do his shooting for him, but the end result is the same thing.

Hon. Mrs. HODGES: Do you think that very fact, that he will get someone else, is because he is afraid of the death penalty?

The WITNESS: No. I think it is because he does not want to get a prison sentence at all.

Mr. FAIRY: He would get a prison sentence as an accomplice.

The WITNESS: If I can get you to do my shooting, you are more likely to get a heavy sentence than the poor accomplice. Proving who plans the thing is a very difficult matter. I know that they do pack a gun at all times, which may be a matter of not wanting to be picked up for packing a gun. But, when it comes to doing a job, they pack it if for no other reason than that. They want to have it if somebody takes a shot at them. I do not see the deterrence of the death penalty. It is there, but not in the proportion that stands in the way of a lot of other feelings they have.

Mr. FAIREY: May I just ask one other question while we are on this carrying of guns? Why is it criminals will sometimes carry a dummy gun rather than a real gun if they are not afraid of committing a murder for which they would be hanged?

The WITNESS: I know a number of instances where they have carried a dummy gun because they did not want to kill. They were pretty normal people.

Mr. FAIREY: They would not do it for fear of the sentence?

The WITNESS: To say that anything never happens would be ridiculous, of course, but I would say that the incidence of that sort of thing would be so rare that it would be negligible.

I do not deny the existence of deterrence. Punishment certainly has an effect. My points centre around the relative effects of various deterrents and the net gain or loss when measured against their relative disadvantages.

The PRESIDING CHAIRMAN: I have an announcement to make. We have a meeting tomorrow at 4.00 p.m. The witness will be Mr. Kirkpatrick, Ontario John Howard Society, and Mr. McCully of the Ontario Penal Association.

Before we adjourn I want to express the thanks of the committee for the presentation you have made today, Warden Christie.

EVIDENCE

MAY 19, 1954,
4.00 P.M.

The PRESIDING CHAIRMAN *(Mr. Brown, Essex West)*: We will come to order, ladies and gentlemen. We have witnesses today on the question of capital and corporal punishment and I would call upon Mr. Blair to introduce the guests today.

Mr. BLAIR *(Counsel to the Committee)*: Members of the committee: First of all I would like to say that I have received a letter from Mr. Joseph McCulley, who was to have appeared, expressing his great regret at not being able to come at the last moment. I think some members of the committee know that Mr. McCulley is engaged in other work for the government at the moment and there has been an unfortunate conflict, but he asked me to inform the committee that he has worked with Mr. Kirkpatrick in the preparation of the brief and he wholeheartedly concurs in what the brief says. I suggest that perhaps Mr. McCulley's letter might be attached to the proceedings as an appendix.

Hon. Mrs. HODGES: I so move.
—(See Appendix)

Mr. BLAIR: Our chief witness today is Mr. A. M. Kirkpatrick of Toronto who at the present time is the Executive Director of the John Howard Society of Ontario.

The PRESIDING CHAIRMAN: You should have said formerly of Windsor, Ontario.

Mr. BLAIR: Oh, I was coming to that. I could speak for ten minutes on Windsor.

Mr. Kirkpatrick comes from Winnipeg and was educated there and took post-graduate work at the University of Chicago. While at the University of Chicago he studied under Professor Clifford Shaw, one of the recognized American authorities on crime and delinquency. Upon returning to Winnipeg he was the executive secretary of the Y.M.C.A. of that city and spent some time working with the Juvenile Court doing work particularly in the organizing of gangs and young delinquents who were referred to him by the Juvenile Court for attention.

From Winnipeg he moved to Windsor where he was general secretary of the Y.M.C.A. and where he had a hand in the organization of the John Howard Society of that city. He served for five and a half years in the Canadian navy and commanded three vessels during the course of his service. After the war he took further post-graduate work at the University of Chicago and about a year ago upon his return from that university assumed his present position with the John Howard Society of Ontario.

Mr. Kirkpatrick has with him Mr. Neville, Executive Secretary of the Ottawa Branch, John Howard Society of Ontario. I think I should say this, that Mr. Kirkpatrick was good enough to prepare a statement for the members of the committee. It is not a brief in the strict sense of the word because he was asked to come here. I think in the course of making his presentation he

will abbreviate the statement, but he has asked permission to have his statement printed as it stands in the record before you, with the insertion of his remarks.

The PRESIDING CHAIRMAN: And the other guest?

Mr. BLAIR: I mentioned Mr. Neville of the Ottawa John Howard Society and we may be joined later by Lieutenant Commander Hamilton, President of the Ottawa John Howard Society.

The PRESIDING CHAIRMAN: Mr. Kirkpatrick, if it is the pleasure of the committee we will proceed with your presentation. Just at this point I assume it is the wish of the committee that this statement be put into the record as suggested by our counsel.

Hon. Mrs. HODGES: So moved.

Mr. A. M. Kirkpatrick, Executive Director, John Howard Society of Ontario, called:

The WITNESS:

Right honourable and honourable sirs:

1. In appearing before your committee, I must emphasize that I do so as a private citizen and not in my official capacity as executive director of the John Howard Society of Ontario. This society is a service rendering group interested in the welfare of ex-prisoners and not a pressure group for the abolition of capital or corporal punishment. Hence there are represented on our boards and committees various points of view in regard to these questions. The views that I express are my own and must in no way be interpreted as reflecting the position of the society or its official boards and committees.

2. Before discussing directly the questions of corporal and capital punishment, I ask your indulgence to make some observations as to my views on the nature of crime and the development of punishment as a means of social control. It is necessary to do this in order that my views on the major questions under discussion may appear in proper perspective. These views have been arrived at not only from considerable educational specialization but from a life time of experience in dealing professionally with boys, young men, and men.

NATURE OF CRIME

3. Crime bears on the citizen in two main ways. He reads about it in the present tense of the daily press in which all the dramatic values are reported. His reaction is usually a vicarious sense of personal injury. More realistically he or his family may be a direct casualty of a criminal act and he reacts with the full vigour of one individually attacked in person or substance and cries for redress.

4. These are understandable reactions and the sordid and dangerous nature of crime must not be condoned. Neither must we minimize the rights and feelings of the criminally wronged. We must, however, establish some perspective about the criminal and the criminal act which views them in relation to the past tense as well as the morning's headlines.

5. The criminal act is what we perceive and punish; but the criminal was not made a criminal, except in legal terms, by the commission of the offence. Though there is no one causative factor on which it is safe to generalize, the developmental history of the delinquent and criminal career is usually deeply rooted in the early years.

6. Faulty nurture and training lay the base for distorted adult personalities unable to cope with the tensions and strains of interpersonal relationships.

Home and family breakdown, often accompanied by drunkenness, flagrant immorality, desertion by parents, over-crowding, poverty, high incidence of sickness, play their part in fixing warped attitudes about society. Environmental and group influences transmit patterns of anti-social behaviour that persist in generation after generation of young people in the depressed areas of our communities. Faulty standards and values result and are expressed in behaviour of a hostile and aggressive nature related to the neighbourhood gang life which has established such habit patterns in the early years. The actions of adults speak louder than words to children and young people many of whom are exposed to the most impoverished of human values and have for emulation only the most unfortunate patterns of behaviour.

Might I interject here to tell you of a man who has had six terms for drug addiction and whom I interviewed within the last two months. This man's story goes back to a history in the city of Winnipeg and if there are any here from Winnipeg they would know the district. In his early home life his father was removed when he was about three years of age. He never had a male adult in that home and he earned his living, so he told me, as a boy by sweeping out the homes and making the fires in the red light district in that particular community. This lad has tried desperately to rid himself of this habit and he takes it right back to a history of insecurity in a home of tension, in association with improper adult personalities which have brought him to a personal insecurity which he cannot master any longer. That might illustrate the kind of thing I am trying to say.

7. In the 1953 report of the Department of Reform Institutions of the province of Ontario there is a table which aptly delineates the factors associated with the development of early delinquency and later crime. (1)

Factors Contributing to Delinquency of Those Committed or Admitted

Alcoholic parents	27
Desertion in home	20
Either parent immoral	21
Either parent mentally defective	7
Either parent with court record	17
Father dead	24
Mother dead	18
Both parents dead	6
Fair home but no control	85
Poor home and no control	161
Stepfather	17
Stepmother	6
Parents separated	105
Associations	9
Mentality of child	23
Total	546

8. In a recently published study Sheldon and Eleanor Glueck write, "Analysis of the wide variety and the perplexing interpenetration of the factors entering into the causal process in juvenile delinquency makes it clear that no simple nostrum, statute, institution, or administrative set-up can be expected to prevent or cure the social and anti-social conduct of youth. . . . It will be recalled that over half the delinquents in this research had manifested serious signs of anti-social behaviour before the eighth year of life, and another

(1)—Province of Ontario, Department of Reform Institutions, 1953 Report—Part 2—Training Schools—P. 43.

40 per cent before the eleventh year, thus comprising a total of nine-tenths of the entire group whose marked difficulties in adjusting to social demands were already clearly established before puberty". (2)

9. It is by no means suggested that all criminals are mentally ill. But the concept of criminality as an end-product of early developed personality disorder and ranking with the neuroses and psychoses is becoming more widely accepted and understood. It is increasingly recognized that criminal behaviour is symptomatic in that the criminal is either using a learned pattern of behaviour which has served him in the past or has regressed to a personality level which yields him some protection or gratification. We are not dealing with some predestination of the individual; but rather with the destination towards which he has been directed by the play of family and social forces acting upon the individual organism.

CONCEPT OF PUNISHMENT

10. Society does not profit by punishment for punishment's sake. Whatever punishment we inflict on the criminal should be designed to change him that he may live acceptable in society. Rather than make the punishment merely fit the crime, we need also to make the punishment attempt to fit the criminal in relation to the particular problems of re-training and re-adjustment he may present.

11. It is commonly said that punishment has three principle purposes—retribution, deterrence and reformation. Of these it is generally conceded that retribution should no longer assume a place in modern penology. But any system of penology must maintain, as its fundamental basis, the protection of society. The Archambault Report discusses this matter in some detail.

12. "It is a matter of common knowledge that, in early days, the punishment of criminals was a matter of personal revenge. Later, the State became responsible for its administration, and it was used as a deterrent, and as atonement to society. . . . Now, however, it is admitted by all the foremost students of penology that the revengeful or retributive character of punishment should be completely eliminated, and that the deterrent effect of punishment alone, while still of some value to prevent those who have been arrested from committing crime, is practically valueless in so far as it concerns those who have been before, or who are now, confined in prisons or penitentiaries. . . . Therefore, entirely apart from humanitarian grounds and from a purely economic point of view, and for the eventual benefit of society, the task of the prison should be, not merely the temporary protection of society through the incarceration of captured offenders, but the transformation of reformable criminals into law-abiding citizens, and the prevention of those who are accidental or occasional criminals from becoming habitual offenders". (3)

13. The great majority of our citizens are not only law-abiding in the negative sense that they would not knowingly violate the law; but in a more positive sense lead lives which make a contribution to society and social living above the requirements of the law. There has been, however, a steady increase in convictions in Canada from 2,286 per 100,000 of population in 1927 to 9,675 per 100,000 of population in 1951. (4) This increase takes into account our national population growth and indicates not only that the conditions conducive to the spread of crime are gaining ground but also that our methods of dealing with the offenders are failing to keep pace with the growth of the problem.

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(2)—Sheldon and Eleanor Glueck—Unravelling Juvenile Delinquency. P. 285.

(3)—Report of the Royal Commission to Investigate the Penal System of Canada (Archambault) 1938. P. 9.

(4)—Statistics of Criminal and Other Offences, 1951. P. 158.

14. The offender is not the only person to be considered. The fundamental purpose of the criminal law, which includes the punishment prescribed for various offences, is the protection of the lives and property of the persons making up our society. The criminal group must not be allowed to prey on society with impunity. At any given period there are people whose behaviour is not susceptible to change either because they themselves are not able to co-operate in such a process, because we do not know enough to help them, or because we have inadequate or ineffective facilities to effect the necessary change. Such people need to be separated from society for their own protection and that of other people.

15. Such separation, involving deprivation of liberty in penal institutions, is punishment of a very real nature. Increasingly the administrators of our penal institutions are recognizing that, within the bounds of secure custody, they serve the ends of justice and society best by the establishment of treatment objectives and programs rather than the maintenance of the sterile concetps of retributive punishment inherent in the legacy of days gone by.

16. Whatever may be the effect of punishment as a deterrent on the criminal section of the population the real question before your Committee is not "whether" punishment but "what" punishment.

17. The more severe the prison regime or the specific punishment, the more effective it was thought to be. The fallacy of such a concept has been exposed by the development in the medical and social sciences of our knowledge of human behaviour. We have today a variety of methods of inducing change in human beings. Decreasing reliance is being based on fear in this hierarchy of human motivations.

18. The United States Air Force is having remarkable success in "reclaiming" its prisoners rather than "discharging" them. "A few base commanders, air provost marshals, and confinement officers have had the notion that their guardhouse should earn a certain notoriety for being "tough". This notion is based on the theory that "tough" guardhouses deter potential offenders from actions which will land them in the guardhouse. These officers cling stubbornly to this belief despite the fact that "tough" guardhouses continue to be well-populated. . . . "Tough" treatment of prisoners impedes any attempt at reclamation, causing the prisoners to become resentful, surly, and resistant. Often, such treatment makes a prisoner less fit for adjustment to his organization than he was prior to his confinement because the bad attitudes which led to his confinement become more deeply ingrained and lead to further offences. The theory of "tough" treatment as a deterrent has been refuted by centuries of experience with offenders. Every conceivable type of punishment, degradation, and humiliation has been tried. They have not only failed to deter wrongdoers, but in some instances have increased the number of offences committed". ([5])

19. To say that the severity of punishment serves as a deterrent to others is belied by the history of punishment in Anglo-Saxon society which only a few generations ago was harsh and brutal in its treatment of the criminal with no lessening of crime and no salutory social value as a result. The principle of punishing human beings as examples to society at large without relation to the individual circumstances of their lives and social development is surely indefensible today. Punishment must never be allowed to become an end in itself; but should be related in positive terms to the regeneration of the individual in society.

([5])—Department of the Air Force, Washington, D.C. Air Force Letter No. 125-8. Treatment of Prisoners. Pp. 1 and 2.

20. The views people hold about capital and corporal punishment are evidences of their beliefs about the nature of human behaviour and their values in regard to human beings. Hence these matters cannot be separated from the totality of our social values as things apart; but should be considered as integral parts of the entire process of society's treatment of the offender.

CORPORAL PUNISHMENT

21. In discussing corporal punishment it is necessary to differentiate clearly between the use of corporal punishment for paternal discipline of a judicial nature in the home as against its use as an instrument of social control in social institutions such as juvenile courts, criminal courts, or correctional institutions for either children or adults. There are other and wiser alternatives available for the modification of human behaviour and corporal punishment should be replaced by other methods of control in our courts and penal institutions.

22. All too often, as revealed in the histories of delinquent children, corporal punishment has been used in their homes as the sole means of discipline and as an automatic parental coercion of a harsh and punitive nature not tempered by affection or judgent. Many parents seem to know of no other method of control and neglect the slower but more effective processes of nurture and child training in which the resort to corporal punishment may be an occasional and reluctant expedient. The evidence available to us from medical and psychological sources indicates that much of our present day personality disorder is due in no small degree to the faulty relationships of children and parents centered largely around these problems of training and control in the home.

I would like to add here just a couple of very short extracts of cases from a study by Mr. David Archibald who is at present director of the Ontario Alcoholism Foundation. This is an unpublished study made in 1951 which I have been allowed to use:

Case Number 1:

"Dad used to punish me a lot. He used to hit or slap me most of the time, but if he got really mad he'd take a stick or a strap to me. I was scared most of the time—but I think it was the strappings and stuff that made me hate him so much."

Arthur, in his own words, describes how he desired revenge for some of the beatings his father gave him:

"One time—he took a long slat and made me sit in a chair all afternoon while he sat opposite me whittling it down. Then he took me down to the basement and strapped me with it. If I'd have been big enough I'd have fought back—hit him with anything; but I wasn't so I just said to myself that I'd find some way to get even. I guess I always felt that way when he beat me."

The same type of punishment was given to Arthur at school. The same general reaction prevailed:

"I guess I'll always hate both Mrs. 'X' and the principal. One time I got the strap for talking. I was pretty mad this time. I would sure liked to have been able to hit him back. Would still like to get even with him. I guess I always felt like that toward him—particularly after getting a strapping. But there wasn't much I could do about it then. If I did do anything I'd only get the strap again, so I'd just say to myself that I'd make it up some way."

In the reformatory Arthur broke one of the rules of the institution and was given four strokes of the strap. The punishment and his reaction to it is described in the following quotation:

"They sentenced me to the strap—I don't know whether any particular number of strokes was required, anyway I got four. It was an awful experience. They put you in a machine, your hands and legs are clamped so that you are in bending postion. Your shirt is drawn over your head and you don't see anything from then on. They put something around your back, I guess to protect your kidneys, and then they strap you on the backside. The first stroke I couldn't holler—it knocked the wind out of me. They wait about twenty seconds between each stroke to allow you to get your wind back. I couldn't holler or anything for the first three. When I got the fourth, I got my wind and hollered. I went all to pieces. I guess I was pretty badly shaken. I think the machine is pretty cruel. After you get it you feel like you'd like to kill the guys that gave it to you, but what's the use, they got you coming and going there. All I can say to myself is that I'll make it up some way."

Case Number 2:

"Once in a while Dad used to give me the strap. This would only make me mad—I used to fight back when he tried to strap me but he was bigger than me. He wouldn't give me the strap now though, you can bet your boots on that."

At school Jack used to receive the strap frequently:

"The principal used to give the strap all the time. I hated his guts. He thought he could make me do things by strapping me all the time, but he couldn't. When I did my work wrong and got the strap for it I used to get mad and stubborn and then I wouldn't do it at all."

And in the reformatory:

"I got the strap for fighting and being insolent to one of the guards. At first I could have done anything to the guy that gave it to me. I can't say it ever did much good because I've been in fights since. It's funny, I'd fight without even thinking of getting the strap for it. They thought they were going to break me down by giving me the strap, but they've got another think coming there. I've had too damn many strappings."

23. Attention should be focussed then on improving the facilities for education available to parents in home-making and child training and in getting the parents who need this education to accept the opportunities available. It was wiser to train a child than to re-make a man.

24. Emphasis should be placed on the protective forces for children in our society and on the preventive work of educational and recreational agencies. It is a common conviction that the way to handle the aggressive adolescent is to beat some sense into him. With delinquent adolescents it is often found that this has already been done till beatings have ceased to have any potential effect and the youth has become too old and sizeable for the parent to handle in this way. The experience of many educators and recreation workers is that adolescents often present problems of human relations rather than crime: but that, given opportunity and proper leadership, they will generally respond favourably to positive training and guidance without recourse to corporal or other forms of punishment.

May, I quote from my experience of six years with the Winnipeg Juvenile Court in which we took the leaders of neighbourhood gangs, the toughest fellows we could get, and working with them built up their companions into groups and using the natural forces of boy group life in their own neighbourhood developed outlets for their hostilities and their aggressions—factors which in adolescents we often mistake for criminal intent. There is some crime amongst adolescents too but also many problems of inter-relationship. I know it is possible to develop and utilize that kind of force in adolescents constructively.

CORPORAL PUNISHMENT IN JUVENILE COURTS

25. It is unnecessary to emphasize the purpose or nature of the juvenile and family courts. The concept of the juvenile court judge has been that of guardian, friend and counsellor to the child and his parents in the hope that understanding and just treatment might make possible the reclaiming of many children whose backgrounds and parental influences have not always been of the best. Many children who are brought before the juvenile courts have been found by practical experience to have been the victims of severe physical punishment by parents whose understanding of their nature and behaviour have been so limited as to leave them no other course to follow in the handling of their children.

26. A juvenile court judge has always had it in his power to recommend and insist that parents punish their children by such means as he may direct. This places the punishing of the child where it properly belongs in parental hands rather than extending the power of the court, as is often suggested, to have corporal punishment administered by sentence of the court under direction of the magistrate or the officers of the court. It follows that this would destroy the essential and desirable relationship between the judge himself and the child and the parents of the child.

27. By the administering of corporal punishment, the officers of the court would be placed in a difficult position in their probation work in which they are seeking to understand and yet to restrain the child by utilizing every force that can be brought to bear on the child's problem from all the positive resources of the community. This would also place a serious restriction on the type of personnel who would be willing to serve in our juvenile courts or child training institutions since we believe few professionally trained persons of good standing would be willing to place themselves in the position where, in line of duty, they might be called upon to administer corporal punishment. Dr. William Healy of the Judge Baker Foundation, Boston is quoted: "It is not possible to know too much about a delinquent boy if you hope to help him mend his ways". Persons with this attitude are needed in our services for both juvenile and adults.

28. To illustrate that these views regarding the treatment of the juvenile offender are rooted in practical experience ,it is noted that since January, 1946 it has proved possible to operate both Bowmanville and Cobourg (formerly Galt) Training Schools for Boys without the use of corporal punishment. The Girls Training School at Galt is similarly operated without resort to corporal punishment. The children and adolescents in these schools are admittedly the most difficult to handle in the Province of Ontario.

CORPORAL PUNISHMENT IN INSTITUTIONS

29. In any social institution the need to use corporal punishment and the extensiveness of its use is related to the effectiveness of the programme of treatment which is in operation and the training and security of the staff who are involved in managing the enterprise.

30. The Archambault Report touches on this question summarizing the views of more than a decade ago. "Having in mind that there are in the Canadian Penitentiaries a large number of vicious and incorrigible criminals, your Commissioners are of the opinion that, in the interests of the maintenance of discipline, it is advisable to retain the right to administer corporal punishment, but that the English policy should be put into effect in Canada so that corporal punishment may only be inflicted, with the authorization of the Prison Commission, for mutiny, or incitement to mutiny, and gross personal violence to any officer or servant of the prison." ([6])

31. The use of corporal punishment in our Canadian Penitentiaries has virtually fallen into disuse and, with the possible exception of serious personal violence to fellow inmates and officers, or servants of the institutions, should now be officially abolished. This should be done at least for a trial period not only in the penitentiaries, which house our most incorrigible and difficult prisoners, but also in our gaols and reformatories. It may be said that the young offenders in reformatories are more intractable than older men. They undoubtedly do present a much different problem, but some institutions dealing with this type of offender will be found to have almost no recourse to corporal punishment while others use it extensively.

It might be wise to put into the record here paragraph 29 from the annual report of the Commissioner of the Penitentiaries for the year 1953 in which he tables the behaviour of inmates. This shows for 1948 the total number of behaviour offences in the penitentiaries to be 5,550 and for 1952, 3,889. At the same time the population in the penitentiaries was increasing from 4,012 to 4,734.

Now, that may be partly due to the lessening of some restrictions in some of the institutions; but also largely due to the training of staff and to the understanding of staff of the inmates and the very great change in the whole climate of these Canadian penitentiaries in the last few years.

32. To illustrate this statement statistically your Committee might secure from the Deparment of Justice and, if possible, from the administrative authorities of the gaols and reformatories a report on corporal punishment as used for institutional disciplinary control over the last twenty-five years in these institutions.

33. Some of our institutions house intractable human beings whose hostility and aggression create serious problems of disciplinary control. Newer methods are proving that it is wiser not to counter such hostility by unnecessary force which breeds bitterness; but rather to divert it by work and training programmes, by the use of disassociation, by the loss of "good time", and by the creation of privileges which may be withdrawn. Sanctions may be progressively increased with minor penalties achieving great results in the prison setting. Basic to such methods is the individualizing of the inmate and getting at the causes of his incorrigibility. All penal institutions are by nature self-contained social units in which grave abuses of human life and personality have occurred in the past. This must be avoided in any progressive penal system.

Again may I illustrate. I talked within the last two weeks to two men, one of whom was a young man of twenty-three who had already spent one-third of his life behind bars. He had been strapped four times. The first time had been at a training school and he told me that up to that point he had not thought about strapping; but when he knew he was going to get it he was terribly afraid. When he had had it, it ceased to have any particular value to him and he was subsequently strapped on three other occasions.

([6]) Report of the Royal Commission. (Archambault). Op. cit. P. 61.

I asked him if the other inmates made fun of him because of this and he said, "Well, no, they figured it might be their turn and they just accepted it." I asked him if it made him a big shot because he had had it, and he said no, he would not say that, but it certainly did not decrease his prestige to have had it.

I talked then to an old timer who had served several penitentiary terms and who we are desperately trying to help not to go back. He was strapped. I asked him what he thought about it. He said, "Well, I am a bit peculiar. I know this is not the normal reaction but I would prefer to be strapped to having solitary confinement. I don't think this is typical of the reaction of most people. But I hate to be alone and I would rather take a strapping than go into solitary." I tried to find out from him what the general reaction to strapping was and he seemed to feel the same way about it as the younger lad —that it did not decrease his prestige with other inmates and that it was accepted as part of "what might happen to you if you step out of line."

Other inmates have voiced the same kind of general opinion about it.

34. Walter M. Wallack, Ed.D., warden of Wallkill Prison in New York State and president of the American Prison Association says, "Boiled down, what I have said is that the nature of authority should be constructive and positive as opposed to destructive and negative. Essentially, brute force is negative in penology, but not always so. To the extent that it is applied humanely for the purpose of necessary restraint, it is positive. We cannot permit recalcitrants to run wild and destroy property or injure others or themselves whether that results from pure "cussedness", mental instability, or whatever. When it is necessary to manhandle an inmate, that should be done only to subdue him, not to injure him unnecessarily for revenge, or to teach him a lesson, or to show him who is boss, or to punish him, or for any other motive beyond his immediate subjugation. .... However, violent treatment such as beating, cold water spray, hanging by the thumbs, and similar torture, prevents reasoning and arouses resentment, hate and a desire to even scores. It is, therefore, negative and destructive as correction, as well as wicked and repugnant". ([7]) The fact that in a contemporary address mention can still be made of such physical mishandling illustrates that the legacy of the past is not too distant.

CORPORAL PUNISHMENT PRESCRIBED BY CRIMINAL COURTS

35. In the case of certain criminal offences the judiciary has discretionary power through the provisions of the Criminal Code, to order that corporal punishment in a stipulated amount be administered within the institution to which the offender is sentenced for confinement. Such punishment is usually ordered in the case of crimes which have been committed by an apparently incorrigible individual or in which some particularly vicious or bizarre episode has occurred.

36. No published statistics appear to be available in Canada indicating the total extent to which corporal punishment is prescribed by the courts; but two published tables indicate that for burglary the lash has been seldom used except in the year 1949 when in nine cases it was ordered, and that for robbery its use has been greatly limited since 1941. In the last three years shown in this latter table it was ordered in three cases in 1951 and not at all in 1949 or 1950. ([8]) This hardly indicates a sufficiently deterrent factor to

([7]) Walter M. Wallack. Proceedings of the Frederick A. Moran Institute on Delinquency and Crime—St. Lawrence University, 1953. P. 103.
([8]) Statistics. Op. cit. P. 163.

warrant its retention when related to the total number of convictions for robbery in Canada which varied between seven and nine hundred during this three year period.

I have since found that in 1952 the lash was ordered 33 times and the strap 14 times in all of Canada by the courts for a total of 47 such applications.

37. It would appear that it is the incorrigibility and/or the viciousness which is being punished by the lash or strap in such cases. The guilt has been established and the sentence of imprisonment prescribed according to the criminal code. The prescribing of the lash is apparently added to curb the incorrigibility or viciousness which is in reality evidence of the warped or distorted personality of the offender. This disturbed personality is not likely to be improved by such bodily ministrations.

38. The responsibility of the judge faced with such a decision is a grave one and the magistrate or judge is constrained to use every means at his disposal in the administration of justice. But the courts are in themselves only one part of the treatment of the offender whose potential rehabilitation within the correctional system begins at the point of arrest and runs through the police and court procedures, probation, institutional treatment, and parole to "after-care" following release.

39. The common objective of all concerned in this whole process should be the protection of society by the rehabilitation of the offender. But no one can rehabilitate another person. Opportunities and inducements may be provided but the desire to change must come from within the individual. The use of fear aroused by physical punishment is based on a concept of wilfulness and may have some immediate value while the threat is imminent but has little permanent effect in the re-integration of character which is essential for life in the free society in which the offender has already demonstrated failure to adapt.

40. We should now abandon this provision in the Criminal Code and bend our energies to improve all the steps in the correctional process that they may be more effective, from the earliest manifestations of criminal behaviour, in bringing about the rehabilitation of the offender. It is manifestly unsound to send a man to a penal institution which hopefully has the resources and intention of helping him and to provide, by court sentence, that he be lashed by those officers who are to be his examples and guides to re-establishment. His hostility to the institution and the staff are likely to mount and obscure later efforts to help him adjust.

41. The institutional programme depends greatly on the recruiting of humane personnel with understanding and capacity for training in the handling of their fellow-men. Such personnel will find it increasingly difficult to rationalize the use of the lash or the paddle with the methods now in use in progressive penal institutions.

CAPITAL PUNISHMENT

42. The foregoing views regarding the nature of crime as a developmental process in human experience and the concept of punishment as designed to secure society's protection and the rehabilitation of the offender form the basis for the discussion of capital punishment. There are other alternatives available in the form of life imprisonment for the punishment of the capital

offender and society would be better served by the abolition of the death sentence and the penalty of execution. Abolition will neither stop nor reduce murder; but the evidence is that it will not result in any increase in the taking of human life.

43. There is undoubtedly a sharp division of opinion among our citizens in regard to this proposal, but the question is usually discussed on an emotional basis which identifies with the fears of the community rather than its conscience. When this matter is examined rationally and dispassionately there are few who do not agree that the death penalty should be progressively abolished and that this will come in due course.

44. By the very nature of this disunity about the penalty of death it would seem that the onus of proof should be on those who believe in its retention to establish the case for its continuance and to justify its retention. It seems an appalling travesty of human logic that executions should be continued and persons deprived of life when there is so much disagreement in the electorate as to the value accruing to society. In law it is the right of the accused to receive the benefit of all doubt. No less should this be the case in matters of social policy where the life of the condemned is at stake.

45. The offences punishable by death in Canada are treason, rape and murder. No one has been executed in Canada for treason in modern times. The attitude of the Government in the removal of the death penalty for this offence has already been expressed by the Honourable, the Minister of Justice, and reported in the press of April 6, 1954. No further comment seems necessary.

THE OFFENCE OF RAPE

46. Sex offences need to be examined with a view to establishing the emotional, mental and physical normality of the offender. We are dealing here with a fundamental human appetite. An offence, legally defined as rape, may be committed under overwhelming tension or under the stress of provocation either real or implied. The degree of individual responsibility of this offender is often difficult to define. The abnormality of the sex deviate is indicated in part by the disparity in ages of the parties concerned, the repetitious nature of the offence, and the bizarre or obscene circumstances accompanying the primary offence. The sickness of this type of offender is illustrated by the very abhorrent nature of his act.

47. The imposition of the death penalty for rape has been extremely uncommon in Canada and should be removed from the Criminal Code since as long as it remains on the statute books it may be a contributing factor in murder. The victim of a rape is the best witness against the accused who in his desire to prevent identification and conviction, may murder and incur no greater penalty for the taking of life than for the offence of rape.

48. Execution seems scarcely an appropriate method of treating persons whose natural desires have become distorted or improperly channelled. There is in all of Canada no institution for the treatment and study of the sex offender. The establishment of such an institution as part of our correctional system would do much to enlighten us regarding the nature of this offender and the treatment he should receive.

THE OFFENCE OF MURDER

49. While it is impossible to classify the infinite variations of the human personality it seems, generally speaking, that killing is wrought by four main types of person—the insane, the emotionally overwrought by natural or induced

causes such as alcohol, the calculating self-centered egotist, and the professional robber or gunman. In the case of the first two groups the normal shackles of restraint are absent in the emotional outburst which results in death. The principals in the latter two groups have no intention of being caught and match their planning against the resources of society at the disposal of those responsible for law enforcement.

50. There are few who would argue capital punishment today on the basis of a "life for a life". This is generally agreed to be an outmoded concept of punishment. But many of honest conviction and purpose argue the deterrent effect of the death penalty. How then does deterrence affect such persons as described above?

51. Those in the grip of insane or overwhelming emotions are not deterred by rational considerations from attacking the frustrating object on which their rage is focussed and in any event are given the protection of the law relating to insanity and manslaughter. The calculating, premeditating murderer, seeking to remove another human being who is thwarting the gratification of desire or ambition, is so self-centered in his egotism that he believes he can devise the "perfect crime" and find little in universal human experience to deter him. The professional robber or gunman uses the threat of death as a means of securing his ends and killing is incidental to his main objective. He assumes the risk of trial for murder when he takes his gun in hand. Having once killed and being liable for arrest and execution there is little to deter him from desperate crime and multiple murder. This is a factor which should be of interest to our police forces who have the dangerous task of apprehending such men. He can only hang once.

It has always seemed curious to me that people who have committed an armed robbery, and, who risk only being apprehended and sentenced to imprisonment, should kill. They are not being apprehended for murder, they are not in jeopardy of death and yet, only in jeopardy of imprisonment, they kill when it might have been logically inferred that the death penalty should have deterred them.

52. The following is a commentary on the deterrent effect of the death penalty. "In brief, people are believed to refrain from crime because they fear punishment. Since people fear death more than anything else, the death penalty is the most effective deterrent, so runs the argument. It is further alleged that the effectiveness of the death penalty as a deterrent depends both on its certain application and on knowledge of this fact in the population; hence, the argument continues, regular use of the death penalty increases its deterrent value. . , . Involved in the deterrence argument is the assumption that men deliberately choose among rival courses of action in the light of foreseeable consequences, the criterion of choice being personal gratification. This psychological hedonism, needless to say, is not in accord with modern psychology and sociology, which see human behaviour as largely unplanned and habitual, rather than calculated and voluntary. The belief in the deterrent value of the death penalty is thus seen not as a scientific proposition, but rather as a social conviction widely used to justify and reinforce existing ways of treatment that perhaps rest mainly on feelings of vengeance". (°)

53. Frequently comparisons are made with other countries where there is no death penalty in force. Such comparison of criminal statistics, not only between countries, but even between jurisdictions in the same country, is subject to a high degree of weighting and is consequently invalid if used in

(°) Karl F. Schuessler—The Deterrent Influence of the Death Penalty. The Annals. Nov. 1952. Pp. 54 and 55.

direct correlation. The pattern of crime, including murder, and the statistical record of its enforcement are different in different countries and are determined by the social and economic climate of the people—their respect for law, their respect for the police, their religious and moral attitudes, and the value they place on property and human life. These are the effective deterrents to the taking of human life.

54. Without making comparisons the experience of certain States in the United States and that of New Zealand and Australia is presented by the British Royal Commission. "We agree with Professor Sellin that the only conclusion which can be drawn from the figures is that there is no clear evidence of any influence of the death penalty on the homicide rate of these states, and that, "whether the death penalty is used or not and whether executions are frequent, or not, both death-penalty States and abolition States show rates which suggest that these rates are conditioned by other factors than the death penalty.

55. "There is some evidence that abolition may be followed for a short time by an increase in homicides and crimes of violence, and a fortiori it might be thought likely that a temporary increase of this kind would occur if capital punishment were abolished in a country where it was not previously in abeyance but was regularly applied in practice; but it would appear that, as soon as a country has become accustomed to the new form of the extreme penalty, abolition will not in the long run lead to an increase in crime. The general conclusion which we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to a fall.

56. "We recognize that it is impossible to arrive confidently at firm conclusions about the deterrent effect of the death penalty, or indeed of any form of punishment. The general conclusion which we reach, after careful review of all the evidence we have been able to obtain as to the deterrent effect of capital punishment, may be stated as follows: Prima facie the penatly of death is likely to have a stronger effect as a deterrent to normal human beings than any other form of punishment, and there is some evidence (though no convincing statistical evidence) that this is in fact so. But this effect does not operate universally or uniformally, and there are many offenders on whom it is limited and may often be negligible. It is accordingly important to view this question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty". ([10])

57. The effectiveness of the death penalty as a means of controlling the incidence of murder appears to have been popularly over-rated. "As a matter of fact, it seems clear that the presence or absence of the death penalty makes no particular difference in the amount of murder in any given State. Its murder rate will be closely parallel to that of adjoining States, where conditions of life and social-cultural attitudes are similar". ([11])

58. In the Annual Report of the Chief Constable of the City of Toronto for 1952 there is a table giving a comparison of major crimes reported to the police for the past five years. ([12]) Showing that the incidence of murder,

([10]) Royal Commission on Capital Punishment—1949-1953. Pp. 23 and 24.
([11]) George B. Vold. The Extent and Trend of Capital Crimes in the United States. The Annals. Nov. 1952. P.4.
([12]) Chief Constable, City of Toronto, Annual Report 1952. P. 36.

attempted murder, and manslaughter in a major urban community is certainly not decreasing, under present methods of deterrence, the table with population figures added, is reproduced in part hereunder:

	Major Crimes Reported to the Police				
	1948	1949	1950	1951	1952
Population	670,035	673,104	667,487	653,499	667,364
Murder	8	6	3	6	13
Attempted Murder	2	4	7	2	12
Manslaughter	8	3	5	5	9
Totals	18	13	15	13	34

59. In Canada, since 1927 the greatest number of executions was twenty-two in 1931. ([13]) For 1951, the last year shown in this table, there were only six executed though 52 persons were charged with murder. We are unable to determine the number of murders known to the police for this year; but even these figures indicate that the liability to execution for the commission of murder is not at all certain. The very rarity of its use reflects on its effectiveness as a potential deterrent.

60. While the stake was life to each victim and inestimable tragedy to his family the execution of the killer fails to restore the life of the victim and serves no purpose in the reformation of the accused. The deterrent effect of the death penalty, when rationally examined, is difficult to determine since no one has yet been able to estimate, on other than an opinion basis, the force of deterrence due to the death penalty. By the act of execution many persons believe that the ends of justice have been served, the crime expiated, the death of the victim avenged, and the natural feelings of relatives and friends appeased. But this type of thinking is too reminiscent of the days of personal vengeance and the blood feud to incorporate in a modern judicial system and a criminal code.

61. The possibility of a miscarriage of justice is inherent in any system of justice under law. We have the greatest respect for our judicial system, the members of the judiciary, and the wisdom and honesty of juries. But there have been cases even in recent years where offenders have been sentenced and later cleared of implication in the crime.

I should make clear that I have no indication of any such error or miscarriage in regard to a capital offence in Canada.

62. Last year in the Christie case in Great Britain grave doubts were evident in the public mind as to the innocence of Timothy Evans who had been already hanged. After serving nineteen years of a life sentence for murder in Minnesota, Leonard Hankins was last year cleared of the charge and released. This indicates the possibility of error which is unacceptable when dealing with the death penalty. Execution is too definite. There is no possibility of exoneration and restoration to society when death has termined the drama.

63. And it is a drama. It becomes for many people the most absorbing tragedy in modern life to follow the trial of a person accused of murder and in jeopardy of death. Public interest of an almost prurient nature heightens under the influence of the modern media of mass communication. There seems to be released among us a perverted curiosity verging on mass sadism which crowds the trial courts and surrounds the place of execution. Unhappy and unpleasant emotions are stirred in most of us.

([13]) Statistics. Op. cit. P. 164.

64. Juries have the privilege of reducing the charge from murder to manslaughter or of recommending mercy if there are mitigating circumstances. Increasingly it seems evident that juries are reluctant to convict when the death penalty is at stake. Hence it appears to be in cases where there are no apparent mitigations or where the circumstances of the crime have been particularly heinous or perverted that juries convict. The infamous or vicious nature of the crime, offending against human decency, makes it possible for their conscience to be eased in the passing of a verdict, of guilty. Again we question if we are punishing for the death of a victim or perhaps because of the disturbed, abnormal personality of the accused. As with corporal punishment and the lash it seems to be the very adhorrent nature of the crime which ultimately secures for the accused the penalty of death. But these are the very factors which cry aloud the abnormality of the accused and mark his sickness whatever the degree of apparent legal responsibility.

65. Over the twenty-five years from 1927 to 1951 the record indicates that 512 or almost half of the 1,118 charged with murder were acquitted of murder. ([14]) A few numbering 155 were "detailed for lunacy". A total of 452 or slightly more than one-third were sentenced to death. Of this latter group 111 or about a quarter were commuted and 264 were executed. The balance of 77 are presumably awaiting execution or are in the process of appeal. Only a study of the individual cases will show the reason for failure to obtain a favourable appeal decision or to secure executive clemency in the cases of the 264 who were executed over these years. We urge that such a study be made by the Department of Justice and made available to your Committee.

66. One specific aspect of the matter should be considered. This is the possibility of the killing of fellow inmates in a quarrel or of prison officers in the course of an escape or riot. It is argued that if a man is doing life for murder and knows he cannot hang he will not be deterred from killing and that this will increase the hazards of the already hazardous occupation of custodial officers. Opinion among custodial officers is divided in regard to this; but some feel that such hazard will not be increased by the removal of the death penalty.

67. From the Report of the British Royal Commission on Capital Punishment we quote the following: "But the Home Office, giving evidence to the Select Committee of 1930, expressed the opinion that, even if capital punishment were abolished, the greater number of prisoners serving sentences for murder would still be unlikely to "give any exceptional trouble" though there would no doubt be some increase in the difficult class of prisoners "who have not only committed murder but have been of criminal habits or tendencies, or are of a generally violent and insubordinate or sullen and morose temperament". This accords with the experience of countries where capital punishment has been abolished; the evidence given to us in the countries we visited, and the information we received from others, were uniformly to the effect that murderers are no more likely than any other prisoners to commit acts of violence against officers or fellow prisoners or to attempt escape; on the contrary it would appear that in all countries murderers are, on the whole, better behaved than most prisoners. It must be remembered too that prisoners serving life sentences have a special incentive to good behaviour, since the time they have in fact to serve depends so largely on it". ([15])

68. Study of the causes of prison riots has indicated that these grew largely out of frustration and hopelessness centering on sterile prison programmes and apparently capricious systems of parole. Our penitentiaries have

([14])—Statistics. Op. cit. P. 164.
([15])—Royal Commission on Capital Punishment. Op. cit. P. 216.

changed out of all measure in the last few years and there is a different attitude among staff and inmates due not only to a changed concept of constructive work and training but to the attitudes and training of staff. The administration of Parole or Ticket-of-Leave is also changing and inmates are increasingly hopeful that their own efforts to co-operate and to change their attitudes will be recognized by parole. These changes in the penitentiaries are the real protections of the custodial officers and inmates. Quarrels among inmates may flare up and are guarded against with great care. They are not likely to be deterred by the death penalty. Inmates are unlikely to riot or run the risks of escape from a maximum security institution unless there are mounting tensions and pressures unalleviated by sound programme, individualizing of treatment and hope for a new future in society.

69. Examination of the time served in Canada by persons given life sentence shows that the total number of persons released on Ticket-of-Leave in 1951 was eight. ([16]) Seven of these had been imprisoned for the offence of murder and one for rape. The shortest length of time served was eight years and five months while the longest time served was twenty-seven years and three months. The average length of time served by this group was fourteen years and eight months. The tremendous motivation aroused in prison by the possibility of parole is often unrecognized by society at large. A study of the success or failure of murderers now on Ticket-of-Leave would be illuminating if made by the Department of Justice and submitted to your Committee.

I can give the names to your chairman, in confidence, of five murderers who are now on parole and are living as you or I and have had no further violations of any kind. I know of five. There are lots of others.

70. Murderers are usually one crime offenders. It is believed their record on parole would be found to be good. Support for this belief is given by Paul W. Tappan, Ph.D., who writes: "Sex offenders have one of the lowest rates as "repeaters" of all types of crime. Among serious crimes homicide alone has a lower rate of recidivism". ([17]) From an unpublished study by Lloyd E. Ohlin, Director of the Centre for Education and Research in Corrections of the University of Chicago we reproduce the following table. This indicates a violation rate of persons paroled from a sentence of homicide or assault of only 13·5 which again supports the view that a considerable number of murderers are first offenders and not people of criminal tendencies.

Parole Violation Rates by Type of Offence for Offenders Paroled, January 1, 1936 to December 31, 1944 from the Stateville-Joliet and Menard Branches of the Illinois State Penitentiary System.

Offence	Total Cases	Number of Violators	Violation Rate
Sex Offences	153	18	11·8
Homicide & Assault	385	52	13·5
Miscellaneous Offences	219	52	23·7
Robbery	3,197	842	26·3
Larceny & Stolen Property	1,626	513	31·6
Forgery and Fraud	643	218	33·9
Burglary	1,726	651	37·7
No Record	64	41	64·1
Total—	8,013	2,387	29·8

([16])—Statistics. Op. cit. P. 150.
([17])—Paul W. Tappan. The Habitual Sex Offender, State of New Jersey 1950. P. 14.

71. Few could read the description of a hanging given by the Honourable Member for Vancouver East, Mr. Harold E. Winch, as reported in Hansard of January 12, 1954 at Page 1033, without deep emotion and stirring of conscience. Should the judgment of your Committee be that the death penalty may not be abolished alternate methods of execution should be investigated and expert medical testimony should be secured on this question. The Bureau of Prisons of the United States Department of Justice reports that only three of the 62 executions in 1953 were carried out by hanging—one in Maryland and two in the State of Washington. Twenty-one were by lethal gas and thirty-eight by electrocution. (15)

72. To move from research and the knowledge of the social and medical sciences to social policy and socio-legal action in the areas of aberrant human behaviour is extremely difficult. But the opportunity to amend our Criminal Code may come only once in a generation. Hence in a peculiar way there is a statesmanlike responsibility on the members of your Committee to recognize a progressive approach to the understanding and treatment of crime and the criminal. The task before your Committee is to translate into law the best knowledge of the medical and social sciences and separate out the emotiol and traditional thinking on which we have based in the past so many of our concepts of human behaviour.

73. If total abolition of the death sentence may not be invoked, it is timely that a trial period of say ten years be legislated so that the effect in our own country may be studied and evaluated. We must be mindful of the lives which may be forfeited to criminal impulse as well as those which may be exacted in penalty after due process of law. Experience over a trial period may be desirable as a step towards the final determination of this issue.

74. The moral or ethical right even of the State to deprive the citizen of life is a matter largely of religious belief and individual opinion open to debate; but in essence the death penalty belies all hope of the regeneration of the individual and negates the very principles on which we base all education, philosophy, religion and the development of civilization itself. The story of human striving reveals some redemptive power in human beings which justifies the worth of all our efforts to improve not only the individual but our way of life. It is axiomatic that no human being is beyond the reach of this redemptive power.

The PRESIDING CHAIRMAN: Now, ladies and gentlemen, during Mr. Kirkpatrick's presentation, we were joined by Lieutenant Commander B. C. Hamilton, R.C.N., who is president of the Ottawa Branch of the John Howard Society of Ontario. We are glad to have him with us. Are any of you gentlemen prepared to answer questions or have you any further presentation you would like to make?

Lt. Com. HAMILTON: I have no presentation. I have already written you a letter but I am perfectly willing to answer questions.

The PRESIDING CHAIRMAN: By the way, Commander Hamilton, can you give us something of your background in this work?

Lt. Com. HAMILTON: I left the sea during the depression years in 1934 and went into the British prison service under Sir Alexander Patterson who is probably known at least by name to members of this committee and who was then the chairman of the Prison Commission of Great Britain. I served in Borstal and in the British prisons.

(15)—National Prisoner Statistics. No. 10, March 1954. Federal Bureau of Prisons, Washington D.C.

I went back to sea during the war and was released from the navy in 1945, just after V.E. Day, to take up an appointment to which I had been nominated just before the war broke out as commissioner of prisons in the Island of Mauritius in the Indian ocean in the colonial office.

I came to Canada in 1948 and I have been in the Canadian navy since 1950. I would like to underline that anything I say has no blessing of the Canadian navy or of the John Howard Society.

The PRESIDING CHAIRMAN: Do you concur in what Mr. Kirkpatrick has said?

Lt. Com. HAMILTON: I most heartily concur in what Mr. Kirkpatrick has said.

The PRESIDING CHAIRMAN: And are you prepared to answer any questions if submitted to you?

Lt. Com. HAMILTON: I am perfectly prepared to answer any questions.

The PRESIDING CHAIRMAN: Now, Mr. Neville. Have you any presentation you would like to make?

Mr. NEVILLE: No, I have not, sir.

The PRESIDING CHAIRMAN: Would you be prepared to answer any questions if put to you?

Mr. NEVILLE: Yes, sir.

The PRESIDING CHAIRMAN: Do you concur in what has been said by Mr. Kirkpatrick?

Mr. NEVILLE: Yes.

The PRESIDING CHAIRMAN: You are, I believe, the Executive Secretary of the Ottawa Branch of the John Howard Society?

Mr. NEVILLE: Yes.

The PRESIDING CHAIRMAN: If it is your pleasure, ladies and gentlemen, we will commence the questions at the right since we commenced at the left yesterday. Now, Mr. Cameron, have you any questions you would like to submit?

Mr. CAMERON (*High Park*): Mr. Kirkpatrick, when you were dealing with section 36, you mentioned 47 whippings having been ordered by the courts. Have you by any chance the breakdown for the particular crimes?

Mr. KIRKPATRICK: I believe I can give you that, sir. It is in the record.

Mr. BLAIR (*Counsel to the Committee*): Perhaps if I might interject at this point, I am hopeful at the end of this week, or certainly some time next week, that we will have a full statistical breakdown from the Dominion Bureau of Statistics extending the table that Mr. Kirkpatrick has before him.

Mr. CAMERON: Probably that is sufficient, then, Mr. Chairman.

The PRESIDING CHAIRMAN: Any answer you would like to make to that, Mr. Kirkpatrick?

Mr. KIRKPATRICK: The breakdown is here. It is very lengthy. I am reading from the Statistics of Criminal and Other Offences of 1952 published by the Dominion Bureau of Statistics, at page 50.

Mr. CAMERON: You were mentioning in section 42 about an alternative method of punishing the murderer, namely, by life imprisonment and then when you get over to, I think it is, paragraph 73 you suggest that a trial period might be instituted where capital punishment would be done away with during that period of time and life imprisonment substituted. I think you

have also suggested that there is in this country now a very substantial body of opinion which would support the abolition of capital punishment. My question is, do you care to hazard a guess as to the state of public opinion percentagewise in that regard?

Mr. KIRKPATRICK: I would not care to hazard a guess, sir. The Gallup Poll made an opinion study in 1952, I believe.

Mr. WINCH: In July of 1953.

Mr. KIRKPATRICK: Thank you for your correction—in which they did not publish, as I understand it, any figures. They simply indicated that the majority opinion was in favour of the rentention of capital punishment. I cannot hazard a guess, but I think if I may suggest it here, this committee has done a tremendously valuable task in educating the public to the consideration of this question. Rarely have I seen such press coverage coming from a parliamentary committee, Mr. Chairman, which indicates there is deep concern among the electorate, in my opinion, in regard to this matter.

Mr. WINCH: Might I follow that up and ask if the counsel is being successful in getting that breakdown of the Gallup Poll last year?

Mr. BLAIR: We have not got any further towards it, but we are following it up.

By Hon. Mrs. Fergusson:

Q. This brief has covered so many points that any points that come to your mind have already been covered, but there is one point in paragraph 43 on page 9, Mr. Kirkpatrick, where you say:

> —there are few who do not agree that the death penalty should be progressively abolished and that this will come in due course.

Could you elaborate on how you suggest that could take place?—A. It is simply a summary, Mr. Chairman, of my discussions with groups and my conversations about this matter over the last year or six months. I find that most people—this is opinion—most people will agree that eventually this should be done, but they are not sure at this time. I find that is a common reaction in discussions.

Q. In those discussions have they suggested any first primary step that could be taken towards that end?—A. No, I have tried to suggest that in the proposal of a ten-year period of trial. I also think that we need a good deal more public education, as suggested by Mr. Cameron's question in regard to this whole matter. Whatever side people take let us have them consider it and try and consider it on the evidence and consider it logically because it is an emotional question.

The PRESIDING CHAIRMAN: Senator Aseltine?

Hon. Mr. ASELTINE: I have some questions regarding rape. Can the witness tell us how many people have been hanged after having been committed for rape in Canada?

Mr. KIRKPATRICK: Very, very few.

Hon. Mr. ASELTINE: Have any ever been hanged?

Mr. KIRKPATRICK: I think one or two, sir.

Mr. WINCH: That is contained in a table given us, Senator Aseltine, about ten days ago by the Minister of Justice.

By Hon. Mr. Aseltine:

Q. Is it your opinion that in view of the death penalty for this offence the criminal frequently goes the whole way and murders the victim because

he is afraid that he may be identified by the victim if he allows the victim to remain alive?—A. That is a possibility. I would not like to quote specific cases but there have been cases in which there has been criminal assault and murder.

Q. Quite a number of them?—A. Yes, but again it is a question of opinion. Not knowing as much as we ought to know about the sex deviate, it seems logical that this could be the case.

Q. It would follow then that if the death penalty for rape were abolished there would be fewer murders of the victims of rape?—A. That would be my inference.

Q. That is your opinion?—A. Yes.

Mr. BLAIR: Perhaps I can interject here to remind the committee that the new Criminal Code proposes the abolition of the death penalty for rape and clause 135 of the bill prescribes the penalty of life imprisonment.

Hon. Mr. ASELTINE: That is all I have.

By Mr. Fairey:

Q. Mr. Chairman, getting back again to corporal punishment, this seems rather a minor point. In paragraphs 21 and 22 you say:

> . . . it is necessary to differentiate clearly between the use of corporal punishment for paternal discipline of a judicial nature...

In other words, it is all right for a parent to inflict corporal punishment in certain cases but what I am coming to is this: If that is so, would you agree that it is possible to place another person, a person other than the parent in the same position and with the same end in view? For instance, under the school law in British Columbia if corporal punishment is used it should be such as would be administered by a kind and judicious parent. In other words, the corporal punishment inflicted by the teacher or person authorized to inflict corporal punishment should have the same effect after it was completed as if it were inflicted by a kind and judicious parent?—A. I would not agree that the atmosphere of a social institution is the same as that of the home or the relationship between the child and any other administrator of a social institution is the same as that between the child and the parent; there is a great deal of understanding and give and take in a home.

Q. And in a school?—A. But of a different nature. There are bonds and ties in a home in my opinion. A child will accept certain things in the home that he will not accept from other people.

Q. I was going to follow that up by a comment on the two cases you quoted of Jack and Arthur. In your experience have you ever come across a boy or person who had been the subject of corporal punishment who was grateful for it, who recognized that it was just punishment and that he deserved it and that was the end of it? I mean quite the opposite of the attitude of these two people?—A. No, sir, I have not, except possibly in my school days, in which occasionally we were whipped and sometimes we knew we deserved it and that was all right.

The PRESIDING CHAIRMAN: Sometimes we resented it, too.

Mr. KIRKPATRICK: In most cases we resented it very much.

Hon. Mrs. HODGES: It didn't embitter you for life?

Mr. KIRKPATRICK: No, I do not think so. But, the circumstances of a school are vastly different from the circumstances of a penal institution.

By Mr. Fairey:

Q. What I am trying to say is that you do not think that there should be rapport in an institution between a prisoner and the official, and that the prisoner would not recognize the justice of corporal punishment as being the best deterrent rather than solitary confinement?—A. There might be some men who say: "I do not like solitary confinement, I just cannot be alone, and I would rather take the paddling." But, I can not say that is a general attitude. And, even with the growth of good feeling which is coming in many of our correction institutions, I think this would be dissipated by the extensive use of corporal punishment.

Q. I did not say extensive use. Let us leave that. On page 7 there was something which I thought was contradictory: "The corporal punishment may only be inflicted, with the authorization of the prison commission, for mutiny . . ." and so on. If corporal punishment is bad and no good, and not a deterrent why should it be inflicted for anything?—A. I quoted that to indicate the thinking at the time of the Archambault Report which was in 1938. Much has happened in our Canadian penitentiaries since that time, and I indicated in the next paragraph that corporal punishment in the penitentiaries to the best of my belief is now virtually in disuse. In paragraph 31 I say: "The use of corporal punishment in our Canadian penitentiaries has virtually fallen into disuse . . ." Then, as a result of careful consideration in endeavouring to present to you a responsible statement I concluded: "With the possible exception of serious personal violence to fellow inmates and officiers, or servants of the institutions..." I know that some prison officials feel that they must have that available. I have never operated a penal institution, but I know that there are some cases in which they feel that they need that kind of deterrent. I hope, however, that the development of the treatment program in our institutions which is going on, certainly in our penitentiaries, will mean that in another few years even the most traditional of our prison people would no longer think that it was necessary. But, I wanted to present to you a responsible statement so I included that qualification.

The PRESIDING CHAIRMAN: Lieutenant Commander Hamilton, have you any comment to make on that?

Lt. Com. HAMILTON: I certainly support that statement most wholeheartedly. I have no personal experience of the inside of Canadian penitentiaries but I can quote an example of what happened when I first went to Mauritius. A man's punishment of whipping had still to be confirmed on my arrival, and it was confirmed about a month after I got there. I had to supervise the administration of the whipping. A fortnight afterwards he was up in front of me charged with a repetition of the very same offence for which he had been whipped. On that occasion he was not whipped. He was placed on another type of punishment and he did not re-commit that offence during the following three years that I remained in charge of the Mauritius prison.

Mr. KIRKPATRICK: May I suggest that I think this whole question of deterrence is pleaded on an intellectual basis—that people reason about receiving corporal punishment. This is an intellectual concept. People do not act on intellect. They act on emotion which is only in part intellect. But it is not this intellectual kind of concept that gets into the emotions of the people in the situations involved.

The PRESIDING CHAIRMAN: Senator Hodges.

Hon. Mrs. HODGES: Colonel Fairey asked the questions I was going to ask.

The PRESIDING CHAIRMAN: Mr. Thatcher.

Mr. THATCHER: No questions.

The PRESIDING CHAIRMAN: Mr. Winch.

Mr. WINCH: Mr. Chairman, I find the brief so comprehensive and complete that I have no questions.

The PRESIDING CHAIRMAN: Mr. Mitchell.

Mr. MITCHELL (*London*): No questions.

The PRESIDING CHAIRMAN: Mr. Lusby.

By Mr. Lusby:

Q. I was interested in what you had to say about the deterrent effect of corporal punishment. I notice in paragraph 14 you say: "The fundamental purpose of the criminal law, which includes the punishment prescribed for various offences, is the protection of the lives and property of the persons making up our society." I take it from that that you will agree that the fact that a certain punishment would have a deterrent effect on people likely to commit the crime should be a very important factor, should it not?—A. I think that we are all deterred in driving along the highway in regard to speed by the apparent proximity of the provincial police officer at some point. In other words, I suppose that there is a long range social deterrence value in punishment, but when it comes to the individual circumstances in which the person is reacting to the situation I question very much if the deterrent effect is too great.

Q. Well, consider the case of a murderer now who is planning a murder. Let us say he is going to murder someone in order to rob him, or steal something. Would you not say that he is using his intellect to some degree there? It is not a matter of emotion or sudden impulse?—A. Mr. Guay in Quebec certainly used a great deal of intellect; he was sure that he would not be caught. But, he went ahead with his crime.

Q. When you say a person is sure he will not be caught do you not think that anyone planning a murder, though not expecting to be caught has in the back of his mind that there may be the possibility of his being caught?—A. Then he does not fear death.

Q. He may not fear death, but if he thinks that he has a possibility of escaping do you not think he would also weigh to some extent what would happen if he is caught?—A. If he does he still goes ahead with his object because his avarice, or lust, or greed is so great that he will take the chance.

Q. That might be, but is it not possible someone else making an appraisal would be deterred?—A. We can never measure the success of deterrence.

Q. You do not go so far as to say definitely that capital punishment is not a more effective deterrent in all cases?—A. I can go so far as to say there is no indication that it does deter. There are many things which would deter a person from crime besides the death penalty—religious factors, social discriminations of all kinds, abhorrence of the nature of the crime; many things restrain a person.

Q. I was taking the example of a man planning a murder for some purpose of his own and it seems to me, weighing the possibility that he might be caught and might be hanged, that it would in many cases have a greater deterrent effect upon him than imprisonment.—A. There is no evidence that I have been able to find that that is so, sir.

Q. I notice that you say in paragraph 19: "To say that the severity of punishment serves as a deterrent to others is belied by the history of punishment in Anglo-Saxon society which only a few generations ago was harsh and brutal in its treatment of the criminal with no lessening of crime and no salutary social value as a result." Well, how do you arrive at the fact that

the scale of punishment in that day did not lessen crime? In other words if the punishment had not been so severe a few generations ago then you say definitely there would not have been more crime a few gnerations ago?—A. Would you mind rephrasing your question?

Q. You say here in effect that the severity of punishment a few generations ago did not lessen crime?—A. Yes.

Q. I am just wondering how you arrived at that conclusion?

Mr. WINCH: All the records of Great Britain show that.

Mr. KIRKPATRICK: Here is a publication: "The Beacon", from Dorchester Penitentiary, N.B., Canada. If you have not spent a dollar and secured a copy of the penitentiary publication in your area you will have missed fascinating reading. Here is what one inmate writes about this.

The PRESIDING CHAIRMAN: Is this a publication put out by the inmates of the Dorchester institution?

Mr. KIRKPATRICK: Yes, sir.

Mr. WINCH: You will also find the publication from the British Columbia penitentiary most interesting.

Mr. KIRKPATRICK: Yes. The "Collins Bay Diamond" and the "Kingston Telescope" are also excellent. There is a very interesting paragraph here: "Public executions began to go out of style in the latter part of the 19th Century, but as recently as some 70 years ago, England still held public hangings. There are cases on record of pickpockets plying their 'art' at these executions, while the spectators were entranced in the proceedings. In those days the punishment for theft from persons was death by hanging. It is quite obvious that the threat of capital punishment, did not in any way, deter them from committing these crimes."

Hon. Mrs. HODGES: Is that a quotation from some authority?

Mr. KIRKPATRICK: It is not given as a quotation. The historical penal record is full of this kind of information.

Mr. WINCH: I think I know where that comes from. We would be very glad to file with the committee a series of pamphlets issued in the United States. This comes from a pamphlet of Warden Lawes of Sing Sing Penitentiary.

The PRESIDING CHAIRMAN: This committee already has publications on file.

By Mr. Lusby:

Q. I had in mind that probably some generations ago there would be a great deal more incentive to crime than today?—A. With all the conditions that surround family life in our urban communities today we have increasing problems of crime.

Q. But back a few generations ago I suppose a fairly common incentive to the crime of theft was that people were actually starving and would steal a loaf of bread because they could not get food any other way, which would not be the case today. I have another question. This comes back to what I was speaking about before. You said that you did not think that to the man who plans the murder the fact that he might be hanged would be any great deterrent. Could you not apply that to any form of punishment? For example, if the maximum penalty for robbery was 20 years, you would say that 10 years would be just as great a deterrent, or 5 years?—A. I said, sir, I think that there was no evidence that I could find to indicate that capital punishment was the deterrent that it is popularly believed to be. When it comes to the question of punishment generally I indicated that it was not a question as to whether punishment but what punishment.

The PRESIDING CHAIRMAN: The purpose is reformation in punishment.

The WITNESS: That is right. Therefore, I do not want to apply the same reasoning, or the same logic, in regard to capital punishment as to any kind of punishment because I think you are dealing with the third factor, reformation of the prisoner, through penal servitude, parole, probation, or whatever method we should use.

By Mr. Lusby:

Q. Could you give any opinion, if a prisoner can be reformed, how long it would probably take to affect his reformation while he was in confinement?—A. It is a completely individual matter. There is a committee studying the question of parole and ticket-of-leave now. Eminent Canadians, under Mr. Justice Fauteux, such as Mr. Edmison, Mr. McCulley, and Mr. Common are on this committee. Parole and ticket-of-leave might well be accelerated and related to the individual development of the men within the institutions. It is a commonly known concept that men come to a readiness for parole and when they are ready psychologically and emotionally to go out, then parole should happen. This is a generalization. There are exceptions. I think it should be a completely individual matter as to when a man is ready for parole.

The PRESIDING CHAIRMAN: Lt. Com. Hamilton, have you any comment?

Lt. Com. HAMILTON: I think that the major deterrent factor in any punishment is the certainly or otherwise of being found out. When a criminal contemplates a criminal action, or a murderer contemplates murder, it is the degree of certainty of his detection that he analyses, not the penalty that will be applied once he is detected. Mr. Kirkpatrick's original parallel that maybe the 50 mile an hour speed limit deters us on the highway when there is a patrol about, is probably the best one of the lot. We will take a risk when we see the highway empty, but not when it is not.

By Mr. Shaw:

Q. I have a question arising out of the last sentence on the first page which says: "Environmental and group influences transmit patterns of anti-social behaviour that persist in generation after generation of young people in the depressed areas of our communities." What is the full connotation of that word "depressed"? Did you have in mind economically depressed?—A. Dr. Clifford Shaw who wrote "Delinquency Areas" one of the early studies of delinquency of the 1930's, said that in the centre of our cities—I am speaking of urban communities at the moment—there seems to be an area which produces most of our delinquents. These areas seem to produce what I chose to call "social vital statistics"—unemployment relief, high-incidence sickness and hospitalization, high ratio of appearances in police courts, many appearances in juvenile courts, where the housing is bad; many of these factors seem to be associated in what we call "depressed areas". This is not the only factor in producing crime because there are children who grow up in those areas who make fine citizens and there are homes in those areas which are fine homes even if the little children are dirty and ragged. This is not the only factor. Somewhere there develops a factor in the early relationship in the home on which these community circumstances play a part and help determine the good or ill of the child's character. You also find crime and delinquency in some of our so-called good homes, good areas, and so-called good high schools, but you will find in those homes that there may also be problems of relationships between children and parents. All these matters of inter-person relationships in the home contribute to this thing and are played upon by the whole social situation.

Q. Relating it now to your own personal experience I assume that you have dealth with a tremendous number of persons who have been convicted for one crime or another?—A. Not a tremendous number, but a reasonable number.

Q. A great many?—A. Yes, a number.

Q. Could you break down the cases and give us an indication of the relative numbers who may come from let us say "poor homes" or so-called "good homes"?—A. I would say that most of the criminal population comes from a grade school educational level, from poor economic situations, and largely from depressed areas. There is a relationship between what happens to a child and where he lives in the community. It is not necessarily poverty. The families might be working, they may be employed, but if you say "poor" in the sense of the relationships in the home, then I would agree.

Q. That would be the larger number?—A. Yes.

Lt. Com. HAMILTON: I fully agree again.

Mr. KIRKPATRICK: You can find the kind of information you want here.

The PRESIDING CHAIRMAN: In the report of the Dominion Bureau of Statistics for 1952.

By Mrs. Shipley:

Q. First of all I would like to say that I have an unlimited respect for the work done by your Society, sir, and I think this is an excellent brief. But, both today and yesterday we have heard much about the act of any crime, not necessarily a capital crime, and that society is responsible, and the inference has been particularly that society and the family has been singled out. Now, I would like to ask if you have not come in contact with many cases where you have been unable to find whether society in the person of the family or the school has been responsible, and where you can find no reason—let me say excuse—for the behaviour of a person?—A. I think with our limited diagnostic facilities I would agree that at any given time it is impossible to put your finger on the source of the particular problem of a personality disorder of a criminality. Yes, I would agree with that, but I think one could find that out if one knew enough and had enough information about the person. You mentioned that we stress the family. I am sympathetic about the family and parents. Parents are themselves influenced by the kind of training they have had and many parents who are giving poor treatment to their children are really doing their best in their limited ways. The baby did not ask to be here. The baby develops and grows in terms of the kind of nurture and training and social forces which press in upon him.

Q. You feel that there are no hopeless cases if they are given the proper care in the home?—A. That, I suggest, is an academic question. I would say this: there are people who may have to be locked up for life and even natural life; that is possible—to protect themselves and protect society. There are people who are insane.

Q. I am talking about people the psychiatrists and the psychologists declare perfectly sane. Other than their abnormal behaviour in committing crimes, they know right from wrong perfectly well.—A. Still we all do things we should not do although we know right from wrong. It is not always a matter of intellect. Emotion enters into it and many of us do things emotionally which we regret afterwards.

Q. It is my experience that people who do wrong are sometimes very prone to blame someone else, with no justification whatsoever. Do you not think that with as broad a feeling as is expressed by certain groups that society and parents are at fault in every, or almost every case, that we are going to encourage that attitude in those who prefer to get all they can the

easy way rather than conform and get working and earn a living in a legitimate way?—A. I think you have put your finger on one of the very important points in respect to the whole question of rehabilitation and treatment of the offender. Until he comes himself to say "I am at least partly responsible", then you do not get too far.

Q. Thank you.—A. That point I would completely agree with. That is one of the most difficult problems we have, to get a man finally to come and say "I myself have some responsibility about this". Many of the dedicated and consecrated men working in our penitentiaries try hard, as we do, to bring the men to this point of view. There are men who are dedicated to this task in our institutions and sometimes I wonder why they stay there.

Lt. Com. HAMILTON: I think you were referring to the type of criminal who apparently does something out of apparent viciousness that we can find no reason to excuse.

Mrs. SHIPLEY: Yes.

Lt. Com. HAMILTON: I think it is precisely the two forms of punishment before this committee which are the worst two to apply to them. The death penalty possibly, but to flog a man because you cannot find an excuse for his action will drive that man to repeat the action because of a vengeful motive. I would interject most earnestly that to flog the man because you can find no background for his crime would probably be the most dangerous thing you could do.

Mr. KIRKPATRICK: What we do, essentially, when we lash a man is to say. "We do not really understand you, but we are going to compel you to conform regardless of your particular problem." The essence of the reform program is to understand the criminal and help him understand himself and bring him to a point where he can be of some value as a productive unit in our economic society.

The PRESIDING CHAIRMAN: You mean: "What we are going to do is show you who is boss."

Mr. KIRKPATRICK: I said control.

By Mr. Blair:

Q. I was interested in the testimony given by the members of the police forces, who said that they felt that the presence of the capital punishment sentence was an effective deterrent to many people engaging in the life of crime and that it has the effect of deterring these people from carrying weapons and otherwise committing acts of violence in connection with their ordinary criminal activities. I wondered whether, from your own experience, you would be able to comment upon this suggestion?—A. Well, I have said what I feel about it here, Mr. Blair. When a man takes a gun in his hand to go out and rob a bank or to intimidate a person, the gun is generally for the purpose of intimidation to achieve his end, whatever it is. I think he has already waived any deterrence of punishment when he takes a gun in his hand.

Q. Perhaps I could put my question in another way. There are presumably a number of people who commit crimes in this country who do not carry weapons to commit what might be called ordinary thefts and acts of robbery. Have you had an opportunity to speak to such people to discover whether or not their acts or crimes are governed by the presence of the death penalty?—A. No. I could not say that I have particularly asked this question. I think that the kind of crime depends on the kind of personality that you have. If I could be technical for a moment Dr. Karen Horney, who died last year, a world famous psychiatrist, said people are motivated by three fundamental

drives: fear, rage and love; and that those who have built in much fear in their development as persons will tend to escape and will not meet responsibility. Those who have built in much rage, not in the ordinary sense of rage with anger, as a motivating factor will tend to be aggressive and hostile; and those who have built in much love will be the people who will tend to cooperate.

So, I think that you will find the kind of man who takes a gun is the kind of man who is hostile and aggressive, who has battled his way up the line as a kid and that has been the way he has taken what he wanted to have for whatever reasons. I think that is the kind of man who is the gunman, who is aggressive and does not mind meeting his victim. There are a lot of others who are sneak thieves who never intend to meet their victim. They do not want to see him and do not expect to see him at all. You get a difference in the way people operate. They usually stay in the same general type of crime. I think you would have to base such judgment more on the basic personality of the individual.

Q. What you are saying then is that criminals adapt themselves to their crimes by their personality patterns and the man who wishes to do violence will do violence and the other man who has no instinct for violence will commit other types of crime?—A. By and large I think that is correct. A drug addict, for example, is almost always an insecure kind of person who is trying to compensate in some way for the insecurity of his life.

Q. Then your view on this subject is that you do not think there are criminals, by and large, who are deterred by the death penalty, from committing grievous acts of violence in connection with their ordinary criminal pursuits. —A. No. I think if a man goes out to rob and has a gun and gets in a jam, through whatever reason—excitement or self-preservation—he acts and may kill; but he made that decision when he took the gun.

Q. What would motivate him to take the gun?—A. The gun is incidental to the process of the crime. You either imply that you have a gun or you show it, if it is the kind of a crime which needs a weapon to intimidate the party concerned.

Q. Among the people who have committed criminal offences that you have met, do you find any knowledge on their part of the type of crimes for which corporal punishment may be inflicted? What I am trying to get at is whether there is any awareness in the criminal population of the existence of corporal punishment as a penalty?—A. I have never particularly discussed it. I have just assumed that they know very well what the penalties are for the various crimes. I have never discussed the matter, but I am sure they do.

Q. Do you think corporal punishment might be inflicted to more advantage, as a result of a judicial sentence, if the courts were put in possession of a full psychiatric background report on the prisoner prior to sentence?—A. I think if the court knew all about the person it would be very unlikely to sentence a person to lashing. I think that is one reason why juries in murder cases may fail to convict or will reduce the sentence because in the course of the evidence they learn more about the particular individual and see the person as a human being and understand someting of the way he has developed.

Mr. BLAIR: Thank you.

The PRESIDING CHAIRMAN: I want, Mr. Kirkpatrick, Mr. Hamilton and Mr. Neville, to thank you for the very frank and comprehensive presentation which you have made here. I am sure it will prove to be very helpful to us in our deliberations when we come to make a report on these matters. We thank you very much.

Now, the next meeting will be on Tuesday, May 25, at 11 a.m. when the witness will be Commissioner L. H. Nicholson of the Royal Canadian Mounted Police.

APPENDIX

HART HOUSE

UNIVERSITY OF TORONTO

Toronto 5, Ont.
18th May, 1954.

Office of the Warden
D. Gordon Blair, Esq.
c/o Joint Parliamentary Committee on Corporal
and Capital Punishment
Ottawa, Ont.

Dear Mr. Blair:

I had hoped that it might be possible for me to accompany Mr. A. M. Kirkpatrick in the presentation of his Brief on the subject of corporal and capital punishment. It has so transpired, however, that it is not possible for me to get to Ottawa at this time.

I am therefore writing to you to indicate my joint agreement with the thesis which Mr. Kirkpatrick is presenting. This agreement is an expression of my own personal views and is not to be construed as representing the opinions of any other individuals or groups.

We have gone over the Brief in considerable detail; we have consulted with a wide variety of persons who have been interested in this whole problem from a variety of differing points of view. It is my feeling that the brief as it stands presents a coherent philosopy of treatment for offenders in line with the best knowledge of the behaviour sciences. Both Mr. Kirkpatrick and myself realize that the whole subject is an extremely contentious one; if it were not, your Committee would not have been formed.

It is our hope, however, that the representations contained in this Brief may receive your careful consideration in your deliberations.

Your truly,

JOSEPH McCULLEY,
Warden.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 15

TUESDAY, MAY 25, 1954

WITNESS:

Commissioner L. H. Nicholson, Royal Canadian Mounted Police.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954

COMMITTEE MEMBERSHIP

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Hon. Elie Beauregard
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Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
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Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

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Mr. Maurice Boisvert
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Mr. Hector Dupuis
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Mr. E. D. Fulton
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Mr. R. W. Mitchell
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, May 25, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, the Honourable Senator Hayden, presided.

Present:

The Senate: The Honourable Senators Hayden, Hodges, McDonald, Roebuck and Veniot.—(5).

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Fairey, Fulton, Mitchell (*London*), Shaw, Thatcher, and Winch.—(10).

In attendance: Commissioner L. H. Nicholson, Royal Canadian Mounted Police; and Mr. D. G. Blair, Counsel to the Committee.

The Presiding Chairman introduced Commissioner Nicholson.

Commissioner Nicholson made his oral presentations on capital and corporal punishment and lotteries and was questioned thereon.

On behalf of the Committee, the Presiding Chairman thanked the witness for his presentations.

The witness retired.

At 12.25 p.m., the Committee adjourned to meet again as scheduled at 4.00 p.m., Thursday, May 27, 1954.

A. SMALL,
Clerk of the Committee.

91650—1½

EVIDENCE

TUESDAY, May 25, 1954
11.00 A.M.

The PRESIDING CHAIRMAN (*Hon. Mr. Hayden*): Ladies and gentlemen, we have a quorum. I will call the meeting to order.

I should tell you that at the next meeting, next Thursday at 4.00 p.m., we are having Dr. Malcolm S. MacLean of Welland. He took part in the Open Forum on Capital Punishment of the Ontario section of the Canadian Bar Association last February, and I think you will find him well worth while listening to.

This morning we have Commissioner Nicholson of the R.C.M.P. Which subjects are you dealing with, Commissioner?

Commissioner L. H. Nicholson, Royal Canadian Mounted Police, called:

The WITNESS: I am prepared to say something on the three subjects if you wish me to.

The PRESIDING CHAIRMAN: The order of reference is, capital punishment, corporal punishment, and lotteries.

The WITNESS: Perhaps I could take capital punishment first.

My statement on capital punishment, Mr. Chairman, ladies and gentlemen, is:

1. I would first like to make it clear that the views I express here are my own personal views. I have made no canvass but I do think what I say here would be in harmony with the opinions of many, if not most, of the officers of the force.

2. I believe that capital punishment, however harsh and distasteful it may be, is still a necessary part of our legal machinery. I also believe there should be periodic surveys of the situation to determine if changing conditions lessen the need for this extreme punishment or indicate a better method of imposing it.

3. The particular factors in support of my opinion which I should like to mention are:

(*a*) The need to keep both the certainty and the severity of our law-enforcement standards at least on a level with those found in the United States, if we are to avoid making Canada both a refuge and a new field of operations for gangsters from that country.

(*b*) The deterrent effect of the threat of the death penalty upon our own professional criminals.

4. In my view the present law provides so many effective safeguards that the possibility of an innocent person being condemned and executed is so remote that it is, from a practical standpoint, negligible. The possibility of the death penalty being imposed upon a person properly convicted for a slaying but where the circumstances and precedents indicate a lesser type of punishment is, in my opinion, similarly remote.

5. As to the threat of an influx of gangsters from the United States, we know that as water finds its own level these people will flow into any area which offers

(*a*) profitable operations; and

(*b*) the least risk of certain *and severe* punishment.

I fear that the abolition of the death penalty in Canada would not go unnoticed in gangster circles in the United States.

6. Our own professional criminals—robbers, hold-up men, safeblowers and the like—are, I am convinced, very conscious of the present difference between the punishment for murder and that which they face for lesser crimes. I know, for instance, that many safeblowers do not carry arms because they do not want to risk committing a murder if interrupted on the job. Likewise, in the heyday of liquor smuggling in Ontario, Quebec and the Maritimes we had few shootings and that, I am sure, was because the smuggler was very much alive to the difference between jail, if he was caught with a load of contraband, and hanging, if he was convicted of murder. Alter the law, make life imprisonment the maximum for murder, and what do we find in the case of let us say a professional safeblower with a long record and forty-five to sixty years of age. If caught and convicted of safeblowing he is liable to fourteen years' imprisonment and, if found to be a habitual criminal, to an indefinite term at the discretion of the executive. From this standpoint then, why should he not take a chance on shooting his way out if interrupted. What difference, especially at his age, between a life sentence if the worst happens, and fourteen years or more if he does not resist and is caught. Certainly the difference is not enough to stop him from shooting if the merchant or the policeman comes along and threatens his getaway.

7. For these reasons I am of the opinion that we have not yet reached the time when capital punishment can be abolished.

The PRESIDING CHAIRMAN: We will hear the three papers and then we will have the questions.

The WITNESS: This is my statement on corporal punishment:

I believe that corporal punishment should be retained for imposition at the discretion of the court in the case of young offenders who commit vicious, cruel crimes and who threaten to become incorrigible.

I believe this type of punishment should also be retained for use as a disciplinary instrument in jails and penitentiaries.

Statement re lotteries.

As a matter of personal opinion I dislike the thought of any marked extension of public gambling facilities. My reasons for this dislike are the same as those already explained before the committee, notably by my friend the Chief Constable of Hull.

2. At the same time I think it must be accepted that a large segment of our population want to take part in gambling of the lottery type and have very little respect for our present law. Witness the number who buy Irish sweepstake tickets and, perhaps more significant, the number who buy tickets on draws that are complete fakes and never take place at all. We know of literally hundreds of thousands of dollars worth of such tickets which have been seized—and I should judge that only a small percentage of the over-all distribution is seized. And look at the thousands of people who clamour to get into the big bingo games—games that are essentially lotteries but put on for charity, though operated for the most part by professionals on a hire or share basis.

3. So long as this is the public attitude I think we might as well be realistic and admit, as with prohibition, that good enforcement under our present laws is unlikely, if not impossible.

4. On balance, therefore, I would suggest that you consider extending legal gambling facilities enough to put the marginal, the clandestine and the downright crooked gambling games out of business by providing a legal outlet for the obvious public demand.

5. It would also be well, I suggest, to define principles that will permit the difference between legal and illegal gambling to be clearly distinguishable to the public. These principles might be:

(a) that no public gambling is allowed unless the funds of the bettors can be protected by reasonable and practical means;

(b) that no professional gamblers or operators can participate except on a salary basis.

6. If it is accepted, as I think it must be, that a large proportion of the people of this country want to gamble in a modest way and will insist on patronizing illegal games if legal ones are not available, then I submit the aim should be to provide controlled gambling facilities and thus prevent exploitation of the gambling instinct of the public. At the same time if the line of demarcation between legal and illegal gambling can be fixed at a point which is generally acceptable, then I am sure enforcement will be a great deal more effective and efficient than it is today.

The Presiding CHAIRMAN: I think we will start the questions today at the right. Mr. Fulton.

By Mr. Fulton:

Q. With respect to capital punishment, Commissioner Nicholson, I drew the impression as you read your paper that your views have been formulated mainly with a view to its effect on the professional prisoner?—A. Yes.

Q. And the point you were making is it deters the professional from putting himself in a position—not always, but to a large extent—where he might become a killer?—A. Yes, that was one of my principal points.

Q. You were not arguing with respect to its deterrent effect in support of a general proposition that it deters even those who were deranged or mentally ill or subject to some provocation?—A. No.

Q. And you, as a policeman and law enforcement officer, I take it base your conclusion that it has a deterrent effect on the professional criminal from experience. You did not refer to actual experiences. But, are your views on the basis of your experience or of theory or partly one and partly the other? —A. Experience.

The PRESIDING CHAIRMAN: Mr. Fulton, have you any questions on the other subjects?

By Mr. Fulton:

Q. I would like to know if the commissioner could assist the committee by enlarging on his views with respect to how we solve this problem of providing legalized outlets for the urge to gamble and at the same time keep our laws sufficiently rigid to give an effective and enforceable system as against the gangster gambler?

The PRESIDING CHAIRMAN: You mean, thus far but no farther.

Mr. FULTON: Yes.

The WITNESS: As to how it might be controlled, if I may I should like to point out to the committee that my force operates as a provincial force in eight provinces and as a municipal force in about 120 odd towns and cities as well as doing our primary job as a federal force. I would be glad if the committee would excuse me from distinguishing as to whether it would be better for the control to be exercised on a federal, provincial or municipal level. I think that the problem presents a number of possibilities. It might be

controlled governmentally; it might be controlled by an extension of the present system of permits to charitable, religious and benevolent organizations; it might be controlled by the licensing of the national organizations; or the charter of organizations in much the same way as the pari-mutuel problem. These are alternatives but I do not wish to indicate which one should be favoured. I do not feel that I am in a position to expand on that aspect. I have always felt however, that tying gambling control with charity and with religion is rather a false front. It gives a false impression. Surely if gambling is wrong, it is not made right by permitting it to go ahead under religious or charitable auspices, and leads I think, to difficulties in interpretation. That would not prevent the administration of some altered system to be placed under religious or charitable organizations. But, I just suggest that connecting gambling—or in effect making it a proper thing by connecting it with religious or charitable organizations—does give the wrong impression.

By Miss Bennett:

Q. I was wondering were you drawing any line of demarcation between the professional criminal and the person who commits murder from an emotional standpoint? Is there anything you could tell us perhaps about a man who commits murder for sex reasons or for some high emotionalism? Have you anything to advance in that respect?—A. Perhaps this may be the answer if I quote a sentence from my statement: "The possibility of the death penalty being imposed upon a person properly convicted for a slaying but where the circumstance and precedents indicate a lesser type of punishment is, in my opinion, remote." I think under our present law there are ample safeguards to protect people who are convicted of a killing, but perhaps fall within the classes you mention.

Q. I was just curious to know whether you had some remedy or suggestion for us in that regard to deal with that other type?—A. No. I feel that the factor of influence on professional criminals is a strong one and I feel that the present machinery presently adequately protects the other classes of murderers.

Q. Then there was the point about keeping ourselves on a level with the law operating in the United States. There are several states that do not impose capital punishment I believe, are there not?—A. Yes.

Q. Do you find in dealing with crime here in Canada that there is any relationship between those states that do not have capital punishment and the number of crimes that are committed there which are of a capital nature. Could you give us any light on that?—A. We have not detected anything in the way of a flow of criminals to Canada from there, or vice versa. The majority of the states do, still, of course, have capital punishment.

By Mr. Thatcher:

Q. I would like to ask Commissioner Nicholson what he would think of establishing degress of murder. You mentioned that you thought there were adequate safeguards today. Would those safeguards become better if there was a first degree murder which would still have a deterrent effect, and then second degree murder for these other offences?—A. I do not think that I would want to make a definite recommendation or give a definite view on that point. I suppose it offers an opportunity for the classification of quite a lot of different types, but it does seem to me that our present machinery accomplishes about that without having a scale of slots to put each case in.

Q. I see. What facts, Commissioner Nicholson, or what thoughts, would you have regarding the method? Do you think it is hanging itself which is the main deterrent, or just execution generally? In other words, would you have any comment to make on whether we should consider changing it to

the electric chair, gas chamber, or injection, or something of that kind?—A. I think that the method of execution should be kept under fairly continual review. I do not feel that I am competent to indicate which is the best way.

Q. So far as deterrence is concerned?—A. I do not think it makes a great deal of difference. It is the execution rather than the method.

By Hon. Mr. Roebuck:

Q. I wondered if the commissioner had considered the relative effect on the public at large, which is a very important consideration, in connection with capital punishment as to whether the practicality of the execution does more harm to the general public than the less spectacular method of life imprisonment?—A. I do not think that it does enough harm or has enough influence that it should affect the treatment because murder in itself is a nasty and harsh thing, and the method of punishment, to my mind, must also be nasty and harsh.

Q. The question of degrees of murder was already asked you, and, of course, we have degrees of murder; we do not define it so, but we have. One way in which we have gotten away from too drastic enforcement of the law is the alternative of manslaughter. Now, that has gone a great distance in softening the administration of the law of murder. But what do you think of giving a little wider scope to the judges and juries defining first degree murder as that first type of murder in which we think the man ought to be hanged and other types in which there may be some mitigating circumstances where the whole general picture may not be so vicious. At the present moment that is now exercised by the executive. Would it not be better to have it exercised in public by the juries and the courts rather than behind closed doors by people who were not there and have not heard the evidence?—A. There are a good many considerations, naturally, on that question, but I, to answer it shortly, feel that the present machinery is working and I have not been convinced that anything proposed as an alternative would be better.

Hon. Mr. ROEBUCK: That is all.

By Mr. Winch:

Q. I just have two questions. One is for a greater clarity of a question already asked. Commissioner Nicholson said he was afraid that if the capital punishment was removed in Canada that, as water finds its own level, we would have an influx into Canada of the professional criminals from the United States. If that is correct, I would like to ask the commissioner if he has any information, or has he heard or seen any indication, that there has been an influx of the professional criminals from the states of the United States that have the death penalty into those states in the United States that have not?—A. No. I am afraid, Mr. Winch, I have not.

Q. The only other question, Mr. Chairman, is on the matter of corporal punishment. The commissioner definitely states that he is in favour of the retention of corporal punishment, both in the hands of the judge in sentencing and for purposes of discipline in prisons. The other day before this committee we had as a witness a warden of a provincial jail who has had 20 years in penology in Saskatchewan and in British Columbia, and from his experience he stated that he had not found that the imposition of corporal punishment in any way acted as a deterrent; that it very definitely created an emotion of opposition and antagonism in the majority, or in a great number, but in particular on the youthful offenders, and it was his experience that a great many of those who had the corporal punishment inflicted became recidivists. Has the commissioner any knowledge or personal experience that would indicate that the experience of this man in 20 years in penology in Canada is incorrect?—A. I read the evidence referred to carefully and I appreciate that there is

a great deal of experience back of it, and I would certainly not say it is incorrect because this is a matter of opinion. I have merely answered—or prepared my paper—as to what my view is. I have said that I feel that it should be imposed at the discretion of the court and for cruel, vicious crimes. I mean the crimes of the bad hoodlum type, where the boy threatens to become incorrigible, and I draw attention to the word "threatens". I do not think there is much point in punishing one already considered incorrigible. But I feel in regard to a certain type of bad boy that a whipping does serve a purpose in relation to a certain type of crime; I mean those crimes such as assault in connection with robberies where old people are beaten up by bad youths, and the type of indecent assault where a number of boys—young men —attack a girl. I think that that type of crime, juvenile gangsterism, is a crime where a whipping probably offers some hope of scaring the boy away from the crime and away from a life of crime.

Q. That is the point on which I admit I am confused. The commissioner makes it clear that he only thinks it should be used on a certain type of criminal, that is the brutal and vicious type. The commissioner must have something on his mind in this; I would like to get it clear. Why do you think that corporal punishment is any use on the type of person who will commit that type of a crime? Does it not seem to axiomatically follow that a person of that mentality is exactly the type of person that that type of punishment will not have any beneficial effect on?—A. To the really hardened young criminal I think it is very doubtful that it will have an effect, but, to those hanging on the fringe of juvenile gangs it may be a check on their being eventually committed to a life of crime, and I feel that that is the type that may be served by a good severe whipping. I know that is contrary to views expressed by social workers, but I can only say that it is my honest opinion.

The PRESIDING CHAIRMAN: Now, Mr. Brown.

By Mr. Brown (Brantford):

Q. Mr. Commissioner, would you be in favour of a national lottery in Canada?—A. I must ask to be excused from answering that, because my force does serve in three different areas of enforcement in the country. I think the entire coverage of lotteries—if that is the ultimate arrangement—should be controlled in some manner so that the thing does not go too far; but as to whether it should be national, provincial, or municipal, or administered in some other way, I am afraid that perhaps I have not thought the thing out thoroughly enough, and that the views which I might express might perhaps get me into trouble with the people with whom my force has to work.

Q. Have you any practical views as to how far we should go in opening up the matter of legalized lotteries, other than what you have already said?

The PRESIDING CHAIRMAN: You mean as to money limits?

By Mr. Brown (Brantford):

Q. Yes.—A. I think the objective, first of all, should be very clear, that is, to stop this illegal gambling or the marginal type of gambling, where it is always a question as to whether or not it is an offence. I think that should be the clear objective. I think methods of control are available. For instance, if a distinction could be drawn between the amount of money taken in and the amount of money distributed and the profit limited, it would take away the incentive. I think that offers itself as the one method of control. As to the frequency of lotteries or to the extent to which they should be permitted to operate, again I think it should be a matter of what the public seems to want, and with the main objective of getting clear of these frauds and marginal games.

The PRESIDING CHAIRMAN: Now, Mr. Boisvert:

By Mr. Boisvert:

Q. Is it not a fact that criminality is increasing both in the United States and Canada?—A. Yes, incidence rate of crime is increasing in both countries.

The PRESIDING CHAIRMAN: Mr. Shaw.

By Mr. Shaw:

Q. Mr. Chairman, I have two or three questions. I would like to ask the commissioner if he stated that he thought it was impossible to administer the law as it stands today with reference to gambling? Would you say it was impossible?—A. I think my exact words were not quite that blunt. I think I said:

> So long as this is the public attitude I think we might as well be realistic and admit, as with prohibition, that good enforcement under our present laws is unlikely, if not impossible.

Q. Would you agree that the situation which exists today with respect to lottery causes disrespect for the law?—A. That is my feeling.

Q. And would you suggest, if there is disrespect for the law in relation to gambling, that that disrespect might even go beyond the field referred to as gambling?—A. Yes.

Q. You refer to pari-mutuels as a possible method of handling lotteries. What has been the experience of your force with respect to pari-mutuels? Have you had many complaints with respect to any dishonesty that might have crept into their operation?—A. I can think of no complaints in that respect.

Q. You feel, therefore, that it would be a very likely way by which you could handle them satisfactorily, that is, as we handle pari-mutuels today?—A. That procedure is working, administratively, in a very satisfactory way.

Q. Now, with respect to capital punishment, you laid emphasis on the young offender, the hoodlum. Would you believe it possible for us to legislate effectively in this field? Let me make it quite clear; could we write a law in such a way as to make it applicable to certains persons and not to others? Or would you think it is only possible to have a penalty for an offence regardless of the age of the offender?—A. No. I think a limit could be set. For instance, there is a section in the Code now which just simply states that whipping shall not be imposed with respect to women. That is a very simple and straightforward statement, and I think, if it were desired, such a limit could be set for men.

Hon. Mrs. HODGES: What age does one have to be in order to be amenable to corporal punishment?

The PRESIDING CHAIRMAN: That varies.

The WITNESS: I think that question is a difficult one to answer, but I think that 25 would not be too far out.

By Mr. Shaw:

Q. Would you state, commissioner, that insofar as the repeater is concerned, that is, the hardened criminal that corporal punishment should not be used except as a disciplinary measure, in the prison?

The WITNESS: That is my view.

Q. And with respect to capital punishment?—A. May I interject?

Q. Yes.—A. With respect to the habitual criminal, the provisions of the Code seem to me to take care of the incorrigible or the recidivist, the person who is firmly on the way.

Q. In other words, you feel that corporal punishment does have its place in the reformative field?—A. Yes.

Q. Outside of the disciplinary measures in the prison?—A. Yes.

The PRESIDING CHAIRMAN: As a matter of sentence, you mean?

By Mr. Shaw:

Q. Yes. I see. In relation to capital punishment, in your reference to persons who committed murder, apart from those who were gangsters or professional criminals, do you think that capital punishment has a deterrent effect at all, apart from the ones you categorize as professional or gangster types?—A. I do not know if I can answer you directly, but perhaps this will help: I would put it this way: that if it is accepted that there may be a deterrent effect upon the professional criminal, but questionable whether there is a deterrent effect upon the other types, then if capital punishment is abolished, the effect would be to sacrifice the additional number of people who would become victims to the professional criminals. The merchant who interrupts the professional criminal when he is breaking into his shop, the taxi driver who is held up in a getaway and then shot, and the policeman who comes by while the crime is under way: the effect I say would be to sacrifice those people in order to save the other type of murderer, the husband who kills his wife because he is tired of her and wants to marry another woman, or the rapist who kills his victim so that he will not be identified. It would be a matter of sacrificing one group in order to save the other. I do not think that I could recommend it.

Mr. FULTON: The saving would be questionable, anyway.

By Mr. Shaw:

Q. Shortly after midnight, last night, a certain person was executed. Nevertheless, over the past week-end we were told by the press that four murders had been committed, right on the eve of an execution. That has caused me to think about the deterrent effect of capital punishment within a certain field, that is, the non-professional, gangster-type, criminal field. That is all.

The PRESIDING CHAIRMAN: Now, Mr. Brown.

By Mr. Brown (Essex West):

Q. For purposes of a background, I wonder if the commissioner could tell us how long he has been in the Royal Canadian Mounted Police?—A. I am in my thirtieth year of service.

Q. Did you practise your vocation before that time?—A. No.

Q. You have been stationed in how many provinces?—A. Three.

Q. Could you give us which ones?—A. New Brunswick, Nova Scotia, and Saskatchewan.

Q. You have been in the east and the west and now you are in Ontario. Have you ever witnessed a hanging?—A. No.

Q. Did you not say that according to our present practice it is very unlikely that an error could be made in capital punishment? I believe you will agree that in other matters frequently there have beeen mistakes made. After all, we see that judges and juries are human and we are subject to error; and with our method of presenting evidence to the court, we are human beings and we are all subject to error. You know of certain cases recently in Ontario where there have been errors. You are aware of these? —A. Yes. You are not speaking of capital cases?

Q. No. There are other offences where the persons have been convicted on the evidence and have been sentenced to jail and have served for some time until new evidence was eventually brought out and they have subsequently been released. You know of such cases?—A. Yes.

Q. Do you know of any cases of capital punishment in other countries where errors have been made?—A. Yes, there have been cases in other countries.

Q. You would agree then that if the punishment had been life imprisonment, and if new evidence had been brought out subsequent to the trial and conviction, that there would be a chance of rectification, would there not? —A. Yes.

Q. Whereas, if the victim was hanged, it is rather unlikely that rectification would take place?—A. Yes.

Q. Now, then, you have also said that gangsters might swarm into Canada from the United States and ply their vocation in Canada if they found it to be profitable. I live on the border. As a matter of fact I think my constituency is the only constituency in Canada—this is not for publicity purposes—which is south of the United States. We are on the border. Do you not think that a good, solid, conscientious police force is a good deterrent for such activities? In fact, we have proven it in our own area. I answer the question before you answer it.—A. You mean that certainty is better than severity.

Q. Do you not think that a good police administration, a good well-trained police force, is a much better deterrent than passing laws which are probably not too well administered?—A. I think that good police administration is certainly a deterrent. I would not attempt to say that severity is better than certainty, but it does seem to me that severiy is also necessary.

Q. And it is usually certain?—A. If it were to avoid an influx of this type of people; I do not suggest that they are all suddenly going to pack up and come to Canada. But I can say that they are conscious of the severity of our law as well as of the certainty of its enforcement.

Q. You also spoke about the bootlegging days. Have you ever had any experience on the border in the bootlegging days?—A. I had a great deal of experience in the maritimes, on the seacoast.

Q. I live at a border point too. Do you know that in the United States many of the states do not have capital punishment?—A. Yes.

Q. And Canada has had capital punishment for murder, but there have been murders committed on the border?—A. Oh, yes.

Q. Many of them.—A. I do not recall many, but I do recall some.

Q. Well, there have been a few down our way and yet the neighbouring states have not had capital punishment, although we have had capital punishment.

Mr. SHAW: On a point of order, Mr. Chairman, has Mr. Brown any objection to identifying his constituency?

Mr. BROWN (*Essex West*): I have already done so.

Mr. SHAW: You said it was south of the United States.

Mr. BROWN (*Essex West*): Well, in case there is any doubt, let me say that it is Windsor, Ontario.

The PRESIDING CHAIRMAN: I do not think there is any doubt about it. It is very well known because it is so well represented.

By Mr. Brown (Essex West):

Q. You also said that we have not yet reached the time for the abolition of capital punishment. Do you believe that we will eventually come to the time when we will ask for the abolition of capital punishment?—A. I would not like to be a prophet one way or another. I think we have made some progress in social measures and I hope that in the years to come we may reach it.

Q. I am not trying to be facetious, but you think that we have made some progress. You believe it is really progress. You will recall that in the dark ages, for instance, 100 years ago, hanging was imposed for every minor offence.

Since we do not hang for such minor offences today; therefore, there is progress?—A. Yes, indeed.

Q. And you think that in the future we might progress to the extent of being able to eliminate capital punishment?—A. That would be an excellent objective to work for, provided society allows it, or when it allows it.

Q. Now then, with respect to lotteries, you believe that there should be some extension of public lotteries or gambling? I am not just sure how to put it—you believe there should be some extension of public gambling or lotteries in Canada and you think it would be desirable from the police point of view because you could not enforce the present law. Is that right? —A. Well, because there is difficulty in enforcing it and in maintaining a good standard of enforcement.

Q. You think it would eliminate a great deal of the illegal gambling that is taking place today. Is that a fact?—A. Yes.

Q. Well, if a person is taking arsenic, would you say that he should be stopped or encouraged?

Mr. FULTON: It all depends on the person.

By Mr. Brown (Essex West):

Q. Suppose a person is going to commit sucide. Do you think that he should be stopped or encouraged?—A. I think he should be stopped.

Q. Do you think that lotteries are good for the economy of the country? —A. Let me answer you question this way: I think—I am sorry if I appear to be avoiding it—but I can only answer your question this way.

Q. I am not trying to put you on the spot. We are simply trying to learn things, to find out what people in such positions as yours believe and think. —A. In the first place, I dislike a law that is not generally popular. I feel that the present gambling laws are not generally popular. I think we might just as well accept that and be realistic about it. I have said that I dislike the idea of public gambling. If the public view or public opinion were different and also reflected a dislike for public gambling I think it would be a fine thing, but that is not the situation.

How many people welcome the opportunity to buy an Irish Sweepstake ticket? So long as that is the situation, I believe we might as well be realistic about it. Moreover, I, for one, firmly believe that we cannot amend public opinion by legislation. There it is and it must be accepted.

Q. There are a great many illegal lotteries, and we have been told that hundreds of thousands of lottery tickets are seized every year and that, of course, means just so much money going into the pockets of the promoter. —A. Yes.

Q. In other words, it is money which is taken out of the regular economic stream of the country?—A. Yes.

Q. It is just sucked off?—A. Yes.

Q. Have you any idea how much money that would involve?—A. No. I do know that hundreds of thousands of dollars worth of tickets have been seized. How much money that means, however, I do not know.

Q. Do you know how many of those tickets have actually been turned into cash?—A. The greater part of them, probably.

Q. You say "the greater part of them, probably".—A. Yes; most of them were seized as the counterfoils coming back.

Q. And that money is just simply lost?—A. Entirely.

Q. For instance, in the case of Irish Sweepstake tickets, that money goes out of the country.—A. Yes.

Q. So that money does not do us any good?—A. That is right.

Q. It does not do us any good because it is going out of the country and we do not get any return for it?—A. Except the winners.

Q. Except the winners; but the winners only get a small percentage, do they not?—A. I do not know the percentage.

Q. And even the money which goes to the winners—have you had any experience with people who have won on a sweepstake ticket?—A. Do you mean: if I knew them personally?

Q. Yes.—A. No.

Q. Well, we have had evidence given here that those who have won have not benefitted in the long run.—A. I could not question that, because I am not in a position to do so.

The PRESIDING CHAIRMAN: Was it suggested because it was sweepstake money? Suppose they had got money from any other source? Would they have done any better?

Mr. BROWN (*Essex West*): No. I would say it was because they got something for nothing.

Mr. SHAW: Suppose they had inherited it?

The PRESIDING CHAIRMAN: That is what I said.

Mr. BROWN (*Essex West*): Yes, suppose they had inherited it; they would not have known how to handle it.

The PRESIDING CHAIRMAN: The chances are that they would not know how to handle any money.

Mr. BROWN (*Essex West*): That could be so; but it was a beneficial effect, according to the evidence.

Mr. FULTON: That sounds like a strong argument in favour of confiscating succession duties, and I do not agree with you.

By Mr. Brown (Essex West):

Q. We are trying to find out what possible means there are—either of extending lottery laws, or limiting them. You said something about national lotteries. Were you in favour of national lotteries?—A. I said I would prefer not to answer that question, if you will please excuse me.

Q. I am sorry. Have you seen the effect of the operation of national lotteries in any other country?—A. Oh, in a small way I have seen it in France.

Q. What was the effect there?—A. Well, one think I dislike about such a broad lottery which covers the whole country, is the kiosk selling lottery tickets on each corner. I personally dislike it.

Q. And I agree with you.—A. And I dislike the set-up.

Q. You say: "selling lottery tickets on each corner"; is there a possibility in these national lotteries of the same thing which we have in the sweepstake tickets, of fake tickets being sold?—A. I suppose there is a possibility, yes.

Q. Could you tell us the amount of revenue in France which went to the national treasury by reason of these lotteries?—A. No, I could not.

The PRESIDING CHAIRMAN: Mr. Roebuck.

By Hon. Mr. Roebuck:

Q. Do you not think it would help if we could abolish the distinction between the persons who are allowed to conduct lotteries, such as fall fairs?—A. Yes, that is one of the anomalies.

Q. We allow it, too, when religious people undertake it in their bingos. In such cases the police keep away. Maybe there are other illustrations as well of it being a crime in one case and not a crime in another.—A. That is right.

Q. If we made a start by getting rid of that distinction, do you not think it would help?

The PRESIDING CHAIRMAN: Help in which way?

Hon. Mr. ROEBUCK: In getting rid of the anomalies.

The PRESIDING CHAIRMAN: But in which way?

Hon. Mr. ROEBUCK: I would abolish the exceptions made for fall fairs.

The PRESIDING CHAIRMAN: You would just have a general law prohibiting such things?

Hon. Mr. ROEBUCK: Yes, so that everybody would get the same chance. I woud have no "fish of one and flesh of another". If you have got to have lotteries in order to satisfy a "depraved" public taste, well then, let us all have lotteries.

The PRESIDING CHAIRMAN: You have got "depraved" in quotation marks, have you not?

Hon. Mr. ROEBUCK: Yes.

The PRESIDING CHAIRMAN: I thought so.

By Mr. Thatcher:

Q. I have a follow-up question to one of Mr. Brown's questions. I understood the commissioner to say that he is opposed to the abolition of capital punishment but he said later that he also hoped it would be an objective for the future. Am I correct in that?—A. Yes.

Q. Might I assume then that your main objection to abolition is a matter of timing rather than of principle?—A. Well, taking the present, I have answered in the sense of the present, as the situation exists today.

Q. But you still think we should strive to obtain that objective later on?—A. Yes, but I would not attempt to fix a time and say it should be ten, twenty, or fifty years. I say that surely we could keep, as a social objective, the goal of abolishing capital punishment.

Q. What factors would make it possible to abolish it in the future which do not exist today?—A. Well, a very noticeable lessening of the incidence of crime, and a great deal more public—

The PRESIDING CHAIRMAN: Public support?

The WITNESS: A great deal more public acceptance, and better public behaviour would perhaps indicate that society is getting to the point where we could say: we do not want capital punishment any more.

Q. And a more general appreciation of man's obligations to his fellow men.—A. Yes.

Q. That is one of the things that I am sure will make for the abolition of capital punishment.

Hon. Mrs. HODGES: I noticed that Mr. Brown spoke of his spot on the border.

The PRESIDING CHAIRMAN: Which Mr. Brown?

Hon. Mrs. HODGES: The co-chairman; he spoke of certain states which did not have capital punishment, which impinge rather closely on his part of the country, and that they had not had any noticeable lessening of murders there. In fact, he stated that murders take place there in spite of the fact that some states have abolished hanging.

Mr. BROWN (*Essex West*): I was trying to associate bootlegging and the effect of it upon capital punishment.

Hon. Mrs. HODGES: Did you not say that capital punishment had been abolished in some of those states, yet there had been murders there?

Mr. BROWN (*Essex West*): Yes.

Hon. Mrs. HODGES: Well then, let me ask the commissioner this question: do you not think that there might have been more murders in those other states had it not been for the retention of capital punishment?

The WITNESS: That there might have been more murders?

Hon. Mrs. HODGES: Yes.

The WITNESS: Yes, I would say there might have been.

Mr. BROWN (*Essex West*): Why?

Hon. Mrs. HODGES: Because for just as much reason as abolishing it.

Mr. BROWN (*Essex West*): It is six of one and half a dozen of the other. I agreed with you there.

Hon. Mrs. HODGES: Yes.

The WITNESS: I have actually talked to big smuggling operators in the 1930's who told me that they would not let their men carry arms when they were running cargoes of liquor because they did not want them to become involved in murders.

Mr. BROWN (*Essex West*): Is it not correct in our area that they did carry firearms?

The WITNESS: I know very little of that area, but I do know the other part of the country well.

Hon. Mrs. HODGES: In connection with lotteries, does the commissioner—he is a member of the police force which has federal jurisdiction as well as provincial and municipal—think the position regarding the enforcement of the law on lotteries would be helped if it were enforced a little more consistently all across Canada? I notice in Quebec you have enormous bingo games with enormous prizes which would not be tolerated in British Columbia.

Mr. WINCH: And it is mostly the R.C.M.P. in British Columbia.

The WITNESS: My force operates in certain jurisdictions; other police forces in other jurisdictions. I should not like to attempt any comparison, or a study, of enforcement in other jurisdictions.

Hon. Mrs. HODGES: Even between the R.C.M.P.?

The WITNESS: No.

Hon. Mrs. HODGES: Do you not think that if it were enforced more consistently it would remedy the situation?

The WITNESS: I do not think it would effect public opinion.

By Mr. Winch:

Q. On the same phase, if all these matters are governed by a federal law and if the R.C.M.P. is one force, although operating in varying sectors, just what is the reason—if you can answer—as to why the federal law shall be enforced in a different way in different parts of Canada?—A. Well, of course, the criminal law is a federal law but enforceable by the provinces. The matter rests with the provinces.

Q. That is my point. The R.C.M.P. takes its instructions from the province in which it is operating?—A. Yes, indeed. In any province where we are under contract we act in the same manner as if we were a provincial police force.

Mr. SHAW: Therefore, you cannot have complete uniformity?

The WITNESS: Only if the provinces would get together on this.

By Mr. Fulton:

Q. I have a question first with respect to corporal punishment. You referred to it as a deterrent for young hoodlums who are in danger of becoming incorrigible. Would there be, in your opinion, proper grounds for the belief

that it would also have a deterrent effect on the younger members of the gang, say even those who were not punished themselves but had knowledge that this type of activity leads to physical punishment?—A. Yes, I think it would indeed. The recruits coming along; yes, indeed it would.

Q. With relation to lotteries would you give us either a professional or personal opinion, whichever you prefer, as to the question of whether carrying on gambling activities even if they are under the law today tends to breed a class of people who become criminals and tends to foster gangsterism and corrupt practices?—A. I do not think buying an Irish sweepstake ticket does foster other illegal activities or make the person a criminal. I hope not in any case.

Q. We have heard the opinion expressed before that there tends to be built up around the activity of the carrying on of lotteries by those who carry them on, not those who buy the tickets, and bingos and other forms of illicit or semi-illicit gambling, a gangster class. It was suggested that, if we enlarge the opportunities for carrying on organized gambling, we would be providing greater facilities for the spread of gangsterism. Touching that aspect which I had in mind, would you care to express an opinion as to the incidence of gangsterism as coupled with the incidence of gambling activities?—A. I think that any field of gambling presents a very attractive target to gangsterism. They are ready to break in on it whenever there is an opportunity. Our present situation, I think, encourages that or allows it. They are watching for every opportunity to set up fake draws and to capitalize on the desire to gamble.

Mr. BROWN (*Essex West*): If we are to accept an extension of lotteries, there will be a greater tendency to gangsterism.

The WITNESS: No. If we set up a carefully controlled system I think administratively it could be handled so that gangsters and criminals do not take part in it. Our pari-mutuel system has operated for years and I know of no serious reflection on the way it has operated. Nothing in the way of gangster control or crookedness has crept in. There must be a way of setting up, administratively, a machinery that will as effectively take care of the other types of gambling.

The PRESIDING CHAIRMAN: And without making it a national scheme.

The WITNESS: Not necessarily a national scheme, no.

By Mr. Blair:

Q. With respect to corporal punishment you suggest it be confined primarily to the young offender. Do you suggest also that the range of offences for which corporal punishment should be imposed should be extended?—A. Upon these younger criminals?

Q. Yes.—A. I think it is pretty adequately covered now.

Q. At the present time, roughly speaking, it is confined to cases of aggravated robbery or violent assault?—A. Yes and certain sexual crimes.

Q. Yes.—A. I do not advocate necessarily that it should be applied in other than the way I have mentioned as a deterrent upon the bad young offender. I have not attempted to say in detail just where the line should be drawn.

Q. And you think that probably the present scope of corporal punishment in the Criminal Code would meet the suggestions you have in mind?—A. Yes.

Q. Commissioner Nicholson, with respect to capital punishment, there has been a discussion here before of the conduct of criminal trials and I wonder whether you would be prepared to comment, from your experience, on the adequacy of the defence which is made for persons charged of capital crimes? —A. In the cases I have had very close contact with I know of no case where I think it could be fairly said that the accused suffered through lack of adequate defence.

Q. Would you care to comment on the suggestion that juries frequently convict of manslaughter in circumstances where murder alone was indicated? —A. I prefer not to comment on that.

Q. Would you be prepared to comment on this, that there may be an increasing number of instances where juries convict on the lesser count of manslaughter than murder?—A. If you do not mind I would like to check some statistics which might provide a bit of an answer.

Q. Perhaps I should have raised my question in another way and asked whether there was any indication that this practice of juries was tending to increase·—A. I think—looking quickly at some statistics—we do not see an indication of it, but perhaps the figures are not extensive enough to be conclusive.

Q. I think I should withdraw my earlier question. On the basis of your experience do you see any tendency on the part of juries to increase convictions of manslaughter rather than murder?—A. No, I do not think I see any tendency, but I would like to say that that should not be taken as a conclusive answer. I have made no analysis of it.

Q. It is possible that if the thing were very patent that it would have come to your attention.—A. Yes, I think probably it would.

Q. With respect to lotteries, what type of fake lotteries have you in mind as representing an abuse of the present law?—A. Well, a draw based upon any national or well known matter lends itself to setting up as a lottery.

Hon. Mr. ROEBUCK: A horse race?

The WITNESS: Yes. All sorts of things; boat races or anything which attracts widespread attention can be used.

By Mr. Blair:

Q. What particular problem do these fake lotteries present? Why is it difficult to get at them?—A. In the first place there is very little public interest or public support.

Q. For a prosecution?—A. For the police when they are attempting to round the sellers up. In fact, the normal thing is that the public do not want to help them.

Q. Even where the purpose of the lottery is fraudulent?—A. The sellers do not admit that it is fraudulent and the buyers do not know.

Q. Then perhaps it might be fair to ask a more general question. Is it quite clear that the real difficulty in enforcing this law is that public opinion appears to favour lotteries of some kind or another?—A. Yes, indeed.

Q. And the problem you face in enforcing lottery laws does not arise from the partial exemptions given to certain groups which may induce certain other people to promote lotteries which are illegal.—A. I am sorry, I did not get that.

Q. Some people have suggested that the difficulty in enforcement of the present law arises from the practical fact that the police have to distinguish between the exempt lotteries and the ones which are clearly illegal.

Hon. Mr. ROEBUCK: Some of the difficulties.

The WITNESS: It may be an obstacle to good enforcement, but the principal one is the lack of interest on the part of the public.

By Mr. Blair:

Q. Perhaps you would like to comment again on the suggestion made that enforcement would be made more easy if all the exemption provisions were removed from the Criminal Code?

The PRESIDING CHAIRMAN: It would solve the problem if you have public support for the thing.

By Mr. Blair:

Q. I would like to ask the commissioner to put his view on record. The suggestion has been made on several occasions by other witnesses that the real answer to this problem is to remove all the exemptions and make it easier for the police force to enforce the prohibition against lotteries?—A. I think the exemptions might be removed but some other machinery would have to take their place.

Hon. Mr. ROEBUCK: I would like to know what the commissioner really does suggest.

The PRESIDING CHAIRMAN: He said licensing, or by way of charters, or something of that sort.

The WITNESS: I said that I think that it is not beyond the bounds of possibility to set up machinery that would do it. Control might be exercised through national organization; it might be exercised through a charter or licence. I was not more specific than that. A number of measures that suggest themselves are audits, controls on the size of the pot, percentage of distribution.

Hon. Mr. ROEBUCK: That might prevent a certain number of frauds where people just carry money away; the system of audit might prevent that.

The PRESIDING CHAIRMAN: Or the limitation on participation by those who manage the operation.

Hon. Mr. ROEBUCK: Unless you have a different proposition, you have some people licensed to do something and others are not allowed to do it under the Criminal Code and there you are getting into "flesh of one and fish of the other".

Mr. SHAW: You have it now.

Hon. Mr. ROEBUCK: Yes. You have it now. Is it not a serious objection?

The PRESIDING CHAIRMAN: Anytime you provide saving clauses anywhere, that is the effect of it.

Hon. Mr. ROEBUCK: Usually, yes.

By Mr. Blair:

Q. I wonder whether the commissioner has given any study to any of the schemes developed in the various American states for the partial legalization of lotteries and whether he has any comment on how effective those have been in aiding enforcement of the law?—A. It would not be correct for me to say I have given it any study. I have heard of them. I have read a bit about this, but I do not think I know enough of the effect or the result to comment in any comprehensive way on it.

Mr. SHAW: May I ask a question.

The PRESIDING CHAIRMAN: Yes.

By Mr. Shaw:

Q. We have certain of these carnival groups at large from fair to fair and from stampede to stampede, and do they cause the force much difficulty? I ask that because of a near riot in Calgary when it was concluded that it was completely dishonest. Do you have much difficulty with those?—A. We have some difficulty, yes. Periodically there is an outbreak because the public find that the wheel of fortune is fixed.

Q. What effort is made by your force to ascertain whether or not they are operating honestly?—A. I could answer that in the following way: in the first place, they operate in these small agricultural fairs as the law allows, presumably under a permit of some sort, and presumably the fair board and management have passed them as being permitted to operate on the midway, and perhaps, depending upon complaints, we temper our check.

Q. Some of them operate not in association with a fair. For example, I know in my own town maybe once a year one of these little fairs will come in and set up on the edge of town, but under the auspices of no organization. I have often wondered what effort is made to ascertain whether or not they are operating legal games?—A. The effort differs in areas and may depend somewhat on how busy the police are on other matters.

Q. There is no set pattern?—A. No particular set pattern.

The PRESIDING CHAIRMAN: I would like to thank Commissioner Nicholson on behalf of the committee.

FIRST SESSION—TWENTY-SECOND PARLIAMENT

1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 16

THURSDAY, MAY 27, 1954

WITNESS:

Dr. Malcolm S. MacLean, Welland, Ontario, former Jail Surgeon, Welland County.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

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Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. SMALL,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, May 27, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Fergusson and Hodges—(2).

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Fairey, Shaw, Thatcher, and Winch—(8).

In attendance: Dr. Malcolm S. MacLean, Welland, Ontario, former Jail Surgeon of Welland County; Mr. D. G. Blair, Counsel to the Committee.

On motion of Mr. Shaw, seconded by Mr. Brown (*Brantford*), the Honourable Senator Nancy Hodges was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

The Presiding Chairman introduced Dr. MacLean.

Dr. MacLean made an oral presentation based on his personal observations and medical experiences with capital punishment cases and also made a short statement respecting corporal punishment, following which he was questioned by the Committee.

On behalf of the Committee, the Presiding Chairman thanked Dr. MacLean for his presentations on capital and corporal punishment.

The Presiding Chairman informed the Committee that the Canadian Association of Exhibitions would not be making its former representations at this session of Parliament and, consequently, its hearing scheduled for Thursday, June 3, 1954, is cancelled.

At 5.15 p.m., the Committee adjourned to meet again as scheduled at 11.30 a.m., Tuesday, June 1, 1954.

A. SMALL
Clerk of the Committee.

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EVIDENCE

MAY 27, 1954.
4.00 p.m.

The PRESIDING CHAIRMAN (*Mr. Brown, Essex West*): Ladies and Gentlemen, will you please come to order. Senator Hayden, I believe, will not be here today. A motion will be entertained: Moved by Mr. Shaw, seconded by Mr. Brown (*Brantford*), that Senator Hodges be appointed to act as co-chairman on behalf of the Senate for the day. All in favour?

Carried.

Ladies and gentlemen, our witness today is Dr. Malcolm S. MacLean, formerly jail surgeon of Welland County, Welland, Ontario. He is a practising physician in Ontario, and has had experience with capital and corporal punishment. Now, without stealing Dr. MacLean's thunder, I might say he has presented a brief to the select committee of the Ontario Legislature investigating prison reform and he also appeared before the Canadian Bar Association, Ontario division, last winter. I heard him at that time and I thought it would be interesting for the committee if they could hear his views on this subject. If it is your wish I will call on Dr. MacLean now to present to you what he has. Dr. MacLean, just remain seated if you would, or you may stand if you wish.

Dr. Malcolm S. MacLean, Welland, Ontario:

The WITNESS: I think I can do it easier standing.

"Mr. Chairman and members of this committee:

I appear before this committee on the invitation of your Co-chairman, Mr. Brown, who heard my recent address before the Ontario Division of The Canadian Bar Association when I participated in a panel discussion speaking to a resolution recommending the abolition of capital punishment from the criminal law of Canada. On that panel representatives of the bench and the bar, the church,—Roman Catholic, Protestant and Jewish,—psychiatrist and myself discussed the topic and of the eleven speakers only four were in favour of the retention of the death penalty and of these four all suggested modifications of the penalty on its mode of application. My appearance on that panel was the result of certain publicity attending my presentation of a brief before The Select Committee of The Ontario Legislature investigating Reform Institutions in that Province and I am happy to state that some of my representations to that committee found a place in their recommendations recently presented to the Ontario Legislature.

I appear before your committee as a private citizen, not representing any party or organization or association concerned with the subject matter, nor do I belong to any such organization. I do not hold any public position tending to bias my presentment before you. The views to be presented are the result of my own observations and studies and collection of facts and I welcome the opportunity to present them, as I feel that I have had experience close to the subject which should be useful to this committee.

I held the appointment as jail surgeon to Welland County, in the province of Ontario for seventeen years, from 1936 to 1953. For nearly six years of

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that time I was on leave of absence while serving with The R.C.A.F. I resigned the appointment in June, 1953, as pressure of my private practice was preventing me from performing the duties of jail surgeon in a satisfactory manner. I speak today in the light of eleven years experience as surgeon to one of Ontario's busiest county jails.

During the 17 years from 1936 to 1953 in Welland county, the charge of murder was entered 15 times with 7 convictions and sentences of death. Of those convicted, four were executed, two were commuted, and one was transported to an asylum to be held at the discretion of the Governor General. Disposition of the other eight cases was: one, "no bill" on grand jury hearing; three "not guilty"; three charges reduced to manslaughter; and one "not guilty" by reason of insanity.

In the course of eleven years actual service as jail surgeon I have witnessed the sentence of death by hanging carried out four times. I have attended others who were sentenced to hang but had reprieves and commutation of sentence, some of these at almost the last minute. I have attended and observed others who faced the murder charge but came to trial on the reduced charge of manslaughter, or had the reduced verdict returned at the conclusion of their trials.

From this experience I would give this committee some conclusions I have reached regarding the need for capital punishment, the reactions of the condemned, the effect upon those responsible for the holding in custody and the carrying out of the sentence, effects upon the community where the execution takes place and my conclusions regarding the mode of execution.

As a county coroner I have been called by the police to dark, dirty places to view the remains of the victims of foul brutal homicide. In the post-mortem room I have been appalled at the violence of the injuries inflicted. Later in the court room I have had to give evidence which helped to convict and then I have had to attend the perpetrators of these crimes while they awaited their fate. I have had finally to witness their executions and declare that they were dead and that the sentence of the court had been carried out.

Having a first hand knowledge of the violent brutality of these deeds, and having considered the motives behind the crimes, I have been forced to the conclusion that in these cases, from my personal experience, the death penalty was deserved and no lesser penalty would have been adequate punishment or retribution for such violence, and that Mr. Chairman is my first conclusion to be presented to this committee—that the death penalty should be retained as the punishment for such violent homicides.

The presence of the death penalty in the criminal law of Canada had, of course, no deterrent effect in the cases of which I have had personal knowledge. In the gratification of a perverted sexual lust, or in the heat of passion, or in the drive for satisfaction of greed, the violence of the moment oversways logical thinking and possible consequences of the act are not weighed. In these types of case capital punishment has no deterrent effect.

I would tell this committee of the reactions of the condemned. From my observations of them, I have concluded that the punishment is served while waiting and not in the final act of death. All four went to the gallows apparently calm.

I have heard them, in the face of the irrefutable evidence which convicted them, maintain protestations of innocence right up to the hour of death. In the majority of cases there has been no reformation of soul, rather a defiance of society, which they considered responsible for their plight.

I have seen an eighteen year old boy, who was charged with murder committed while carrying out a robbery and who, along with his juvenile

companion, was awaiting trial, become acutely manic, thrashing about in his delirium so demented and so violent that it took five strong officers to subdue him sufficiently that appropriate medication could be administered and he be transported in a straight jacket to the Ontario Hospital for treatment. He recovered when the Psychiatrists there convinced him that he would face trial on the reduced charge of manslaughter and the shadow of the gallows was removed.

In other cases there has been a stunned acceptance of the sentence and a living death of mental torment while the time of execution or reprieve is awaited. In these cases observers close to the scene have the feeling that the life has been extinguished prior to the execution. These facts are presented, Mr. Chairman, ladies and gentlemen, so that you will realize, once the sentence of death is passed, the mode of execution is not the significant factor.

So much for the effects of the sentence upon the condemned. Let us consider for a moment those responsible for the holding in custody and the carrying out of the sentence.

The pronouncement of the sentence of death converts the county jail from a reform institution to a house of death. A pall of depression from that moment falls over staff and inmates alike, while the condemned one and those holding in custody await the day of execution, always a considerable period away.

The lights go on in the death cell and are not extinguished until the sentence of the court is carried out. The condemned is under constant guard lest he escape or defeat the ends of justice by self-destruction. The success of this procedure was recently well demonstrated in Ontario! A drama more horrible in effect upon the public than the hanging would have been.

The sound of hammering while the scaffiold is constructed is living death for the condemned and intensifies the depression suffered by the staff and inmates of the county jail.

These sounds wafted over the jail walls transfer an uneasiness to the whole county seat, delighting the morbid who would buy a piece of the scaffold or a piece of the hemp, but casting a gloom over the happy, industrious majority of intelligent citizens of the county town who suffer because such an event has to be carried out in their midst. The mayor and council, the clergy, and officers of the Crown are beseiged by requests to have the execution carried out in some other place.

The Chairman, and members of this committee, I would urge that you recommend that executions be not carried out in county or district jails which should be reform institutions, but that central places, provincial penitentiaries where available, or federal penitentiaries be appointed as the places where those sentenced to death are held in custody, and the sentence of the court be carried out. All other major punishment is carried out in penitentiaries—why saddle the local jail with the responsibility of the supreme punishment?

In this connection an editorial from yesterday's Toronto Daily Star adds emphasis to my opinion in this regard, and with your permission I wouid like to read it.

> Toronto *Daily Star,* Wednesday, May 26, 1954.
>
> A disgraceful hanging.
>
> P. E. R. Balcombe was hanged in the county jailyard at Cornwall at 1.12 Tuesday morning. At 10.45 the previous evening a crowd began to gather on the nearby street from which the canvas covered top of the gallows was plainly to be seen at a distance of about 50 feet. When the execution took place some 500 people are estimated to have been present, and most of them stayed for half an hour after the hanging took place; some until the official posting up of a notice at 2.45 a.m. It is disheartening to read that

The crowd, most of them teenagers, including many young girls, was in a holiday mood, shooting off firecrackers, joking and laughing for more than two hours, before the execution took place.

It would be easy to moralize upon the sad weakness of humanity which seems to make the cruel business of hanging so morbidly interesting to many, and the effect of this experience upon those present, especially the young. But the practical issue is the necessity of removing the temptation to attend hangings from young and old alike. One way to do this is to abolish hanging as a means of capital punishment and that, we think, should be done. Another way would be to abolish capital punishment altogether—a more debatable change. But in the absence of either of these reforms, there is something which could be done at once: Have no hangings in centres of population. Have, instead, a remote place of execution where none but the necessary witnesses would be present; no giggling adolescents, no morbidly curious adults. The *Star* has been urging that course for years. The sooner it is taken, the sooner will scenes like that at Cornwall be eliminated. And it must not be thought they are peculiar to Cornwall or any other city. There was a somewhat similar one at Toronto not so long ago. I have witnessed four hangings at the Welland County Jail. The first three were performed from a scaffold constructed in the jail yard. The last one was performed in an execution chamber constructed in the jail proper and was definitely a better type of procedure. The construction of a scaffold in the jail yard is a horrible procedure—Welland Jail is incorporated with the court house and county offices, is right down town on the main street with the jail yard not far from the street so that the whole procedure is pretty close to the public and although the inmates cannot see the yard, the sounds of hammering and sawing bring the event very close to them. This construction, maybe a few days in advance of the execution time, causes intense suffering to the one for whom it is being prepared. With executions in jail yards, the final walk is fairly long, culminating in the climb up the thirteen steps of the scaffold. With an execution chamber, the condemned have only a short walk and the procedure takes less time.

In all cases I offered sedative approximately three-quarters of an hour before execution time and it was always accepted—I used the same as Doctor Hills, ½ grain morphia and 1/100 grain of hyoscene by hypodermic injection. I have no way of knowing if this was helpful or not but believe, due to the stimulation of impending events, it probably does not have too much effect.

Mr. Chairman and members of this Committee, I have given much thought to the next portion of my evidence. I have concluded that as a public service I should place upon the records of this committee a description of a double hanging I have witnessed. On this occasion a man and a woman, husband and wife, were sentenced to hang for the crime of homicide. The cold gray walls of the jail yard are illuminated by a single floodlight which gleams on the new wood of the centre object, the gallows, occupying one side of the yard. The small audience, consisting of some twelve police officers, local and provincial, many of whom had been concerned in the case and were present to witness the end result of their efforts to bring the criminals to justice, are lined up in a V-formation on either side of the small door. The sheriff has a position in the middle of the yard from which he can view the whole proceedings. The jail surgeon has his position at the foot of the stairs. A few minutes after twelve the small door opens and the man appears, blindfolded, with hands manacled behind his back, supported on one side by the hangman and on the other by a sheriff's officer. A few short steps to the scaffold steps, his spiritual counsellor following reciting the twenty-third psalm, then the climb up the steps. Near the top, the minister starts The Lord's Prayer, and during its recital the legs are strapped together and the noose adjusted about the neck, and, as the prayer

is concluded, the trap is sprung and the thud of the dropped body is heard. Five minutes afterwards the hangman and the jail surgeon enter the curtain below the scaffold. The surgeon listens to the heart beating its last and declares the man dead eighteen minutes after his drop. The jail surgeon leaves, the remains are cut down and removed for coroner's inspection. The audience of police and jail officials are visibly affected by the scene they have witnessed, but they line up again for the second act of this grim drama. Their faces are a study: grim, sweating as the door opens and the woman appears, dressed in the gray jail habit with ankle-length skirt, blindfolded, with hands manacled behind her back. The same spiritual advisor, the same psalm and prayer. She is half supported, half carried up the steps. A pause at the top while the legs are strapped over the skirt. The prayer continues, then ends, and then the silence of the scene is shattered as she calls out in a loud piercing voice, which was heard outside the walls. "May God bless you all!" With this eerie benediction in our ears, the trap is sprung. Death is pronounced in eight minutes. The proclamations that the sentence of the court have been carried out are prepared by the jail surgeon and the sheriff and posted on the court house door, and, in leaving the building, the jail surgeon has to pick his way around the evidences of physical revolt left by the small audience of police whom we are accustomed to think of as seasoned and toughened for all eventualities. This type of spectacle was too much for them—for me also—it was four or five days before I felt able to resume my work.

These details are given, Mr. Chairman, so that your committee will be impressed, if any doubt remains in your minds at this stage of your deliberations, that execution by hanging is a repulsive, inhuman procedure passed down to us from the dark ages, and has no place in this enlightened age. The trend of thought today is away from the bloody supreme sanctions of the past towards the predominately less physical forms of today.

I would inform this committee of my opinion that execution by hanging, being an agency under human control, is subject to human error and not always efficient. What is the mechanism involved? I quote Sidney Smith, a world authority in Medical Jurisprudence. In describing judicial hanging in his book "Forensic Medicine," he says—"The sudden stoppage of the moving body associated with the position of the knot causes the head to be jerked violently, dislocating and fracturing the cervical column and rupturing the cord. The dislocation often takes place between the 2nd and 3rd cervical vertebrae. Death is instantaneous although the heart may continue to beat for several minutes."

Other authorities on forensic medicine give "times of death in judicial hangings as follows: John Glaister, ten minutes; R. L. Emerson, ten minutes; MacFall in Buchanan's Forensic Medicine, as long as 14½ minutes; Littlejohn, 2 to 14 minutes; Woodman and Tidy, 5 minutes; Charles Duff, "New handbook on hanging, 1953," a couple of minutes to a quarter of an hour." Times of death after springing of the trap observed by me were 25, 18, 8, and 12 minutes. I would classify the last two as efficient hangings. In the first case, the pit under the scaffold was a few inches too shallow, or the rope a few inches too long, accounting for the prolonged time. In the 18 minute case, the knot of the noose rode too high. These incidents, however, were not severe enough to cause the victim any suffering and the sentence of the court that they be hanged by the neck until dead was carried out, but they bear out my contention that the method is not always efficient and hence must be abolished.

The fear that the hanging might be bungled is with the condemned and I have had to reassure them in this regard and convince them that they would have no suffering, always hoping for their sake, and for mine, that I was right.

Having no direct knowledge of electrocution or of lethal gas as modes of execution, I would favour either one as physical or chemical means of fast, certain death if capital punishment is to remain a part of the criminal law of Canada. We as a dominion have progressed too far in the forefront of world leadership to retain this method from the dark ages.

Thank you very much.

The PRESIDING CHAIRMAN: Thank you very much, Dr. MacLean. Now, members of the committee may wish to submit questions to Dr. MacLean, and, if it is your pleasure, I will start at the left today with Mr. Shaw.

By Mr. Shaw:

Q. Thank you, Mr. Chairman. I have just two questions at the moment. Doctor MacLean, would you care to comment upon the suggestion of Dr. Hills that the injection of a drug as a method of execution might be used?—A. I would like to comment on it and state that injection of a drug would be another form of chemical agency that could be used for execution. But, I do not know how it would be done. I would be positive in saying that no doctor that I know would take such a responsibility.

The PRESIDING CHAIRMAN: You might tell us why they would not, Dr. MacLean?

The WITNESS: Doctors are in a healing profession, not in the killing profession. It is too close to the human element when there are physical or chemical elements available that can be used from a distance.

Mr. SHAW: Thank you. Earlier in your evidence you referred to the fact that in your capacity as coroner you had been called upon to witness the violence that had been inflicted on a person or an individual in a homicide. But you said in those instances the death penalty was deserved. Do I take it from this that you recommend the death penalty only where the murder is cold-blooded and premeditated, and that you would say in other cases the penalty should not apply?

The WITNESS: That would be right.

By Hon. Mrs. Hodges:

Q. Could I follow up with a question? I understood from you, Dr. MacLean, that it was the brutality and the viciousness of the effect upon the victim which made you say in those cases it was deserved. Could it not be that it could be even more brutal and even more vicious in the case of an unpremeditated murder than in a cold-blooded premeditated murder? I am thinking of young hoodlums who go out and beat up old age pensioners for a small sum, beating them up brutally. Would you say in such cases the brutality inflicted upon the victim was such as to warrant the death sentence?—A. Yes.

Q. It was not necessarily cold-blooded and premeditated?—A. The brutality.

Mr. SHAW: I would call it both cold-blooded and premeditated. In that case it is cold-blooded and premeditated.

By Mr. Thatcher:

Q. Would the witness go further into this? His first conclusion, if I understood him correctly, was that he believed that these murderers deserved the death penalty and yet in the latter part of his brief I thought he said that capital punishment should be abolished?—A. No, sir. The method should be abolished.

Mr. THATCHER: I understand you now.

The PRESIDING CHAIRMAN: What he said was: hanging should be abolished, not that capital punishment should be abolished.

The WITNESS: The method should be changed.

By Mr. Brown (Brantford):

Q. Did I understand that you have no experience with the infliction of the death penalty by the electric chair?—A. No, I have not.

Q. I was a little concerned about the matter because I noticed in regard to the electric chair about two weeks ago that there was a newspaper item that a person had been subjected to the death penalty by this means and it had not achieved the end and he had to be put through the procedure the second time in the electric chair. His life had not been brought to an end. Have you any comment to make on the electric chair as a method?—A. I have already said that I feel that it is preferable because it is a physical agency further removed from human control.

The PRESIDING CHAIRMAN: I think what the doctor is trying to say is that he knows of hanging and that it is not a humane way of doing it and that any other method which would be more humane would be more acceptable.

The WITNESS: That is it.

By Mr. Brown (Brantford):

Q. Is your objection largely based on the effect on others of the imposition of the death penalty, hanging, rather than on the person himself?—A. Yes. It is not for its effect on the victim. It is for the effect on those who have to carry it out; they have to witness it and also the effects upon the public generally. My second point is that the method is not necessarily efficient and, therefore, it is not a good method.

The PRESIDING CHAIRMAN: Would there not have to be witnesses to an electrocution?

The WITNESS: Yes.

The PRESIDING CHAIRMAN: Then you would still have objection, I presume, to electrocution. No matter what method you use, you are going to require some witnesses.

Mr. SHAW: It is the method which may have the effect upon the witness. While death ensues in either case, the very nature of the method might have a different effect upon the witnesses. I am not saying that is my view, but that very easily could be the case.

Mr. BROWN (*Branford*): I presume that is what you actually meant?

The WITNESS: That is what I meant.

Mr. BOISVERT: Doctor MacLean, are you aware that in England in the Royal Commission on Capital Punishment they have decided to keep hanging as the method equivalent to the gas chamber or electrocution?

The WITNESS: Yes, I am aware of that.

By Mr. Thatcher:

Q. There is just one point I would like the doctor to clarify for me if he would. I take it that the main reason he thinks the death penalty should be maintained is because it is a deterrent?—A. I pointed out it was not a deterrent in the type of cases of which I have had personal knowledge.

Q. What is the main reason then that you think the death penalty should be maintained?—A. I think my wording was: "No lesser penalty would have been adequate punishment or retribution for such violence." That is my personal opinion.

Mr. THATCHER: I see. That is all, Mr. Chairman.

By Mr. Fairey:

Q. Just one question, Mr. Chairman. I think that I jotted down, Doctor, that you said: out of 15 cases, four had been condemned to death and executed, and in three charges it had been reduced to manslaughter. Would it be your opinion that the charges had been reduced because the jury themselves had any opinion against the infliction of the death penalty?—A. I would prefer not to comment on that. I am not in a position to do so.

Q. When you gave evidence about the time of the persistence of the heart-beat, did you not say that there was no sensation, in your opinion?—A. In the cases that I considered were prolonged, I do not believe that they suffered anything.

Q. Just one other thing, Doctor MacLean. You have stated that you were in favour of the retention of the death penalty in certain cases but objected to the method. You are searching for a method which would remove it from the close personal responsibility of a person for carrying it out, was that it? —A. Under less close personal control.

Q. So that no person could feel responsible for having to carry out the death penalty?—A. Someone still has to pull the switch or turn on the lethal gas. I would imagine that the hangman might prefer doing that to what he is doing. I do not know.

Q. In executions in military forces, usually they have several men with rifles and only one is loaded or perhaps two. You do not like the idea of shooting?—A. No, I do not.

The PRESIDING CHAIRMAN: You did serve in the armed forces for six years?

The WITNESS: Yes, sir.

By Miss Bennett:

Q. Doctor MacLean, I understood you to say that you had not witnessed any execution by any other method than hanging?—A. No, I have not.

Q. Therefore, your opinion that it is probably an antiquated method of carrying out the death sentence would not be by actual comparison? That is your private opinion?—A. Private opinion.

Mr. FAIREY: You have not any other suggestion of how it might be done, Doctor? We have to decide that.

The WITNESS: I said a minute ago that I did not like the proposition that was made that a hypodermic syringe might be used.

Hon. Mrs. HODGES: I noticed that you suggested the electric chair or gas. We had a witness here—I forget which witness for the moment—who said, from personal observation, I believe, that the smell of burnt flesh was so terrible in the chamber in which the electric chair was situated that it was a more horrible process, in his estimation, than hanging.

The PRESIDING CHAIRMAN: Doctor Hills.

By Hon. Mrs. Hodges:

Q. Doctor Hills said that. Someone else expressed the opinion that gas was not very quick and took quite a long time. I suppose that you have no other suggestion, as a medical man, of something else that could be less brutal and devoid of all this?—A. No, I have not.

Q. No other suggestions?—A. No, madam.

Q. But you favour having a central place that would be too far away for the morbid public to see it?—A. Decidedly.

Q. Who is it that decides where the hanging is to take place? Is it a provincial decision?—A. It is in the Code.

Q. Do the federal authorities decide it?—A. No, provincial.

The PRESIDING CHAIRMAN: It is criminal law.

Hon. Mrs. HODGES: I know, but I do not know where the place of execution is laid down.

Mr. WINCH: I asked that question yesterday in the House of Commons.

Mr. FAIREY: Does it not say in the Code that he shall be taken to the place where the crime was committed?

Mr. BLAIR: The place from whence he came. In provinces like Ontario, where prisoners are incarcerated in county jails, that means that they have to go back to county jails. In provinces like the western provinces, where there are no county jails and only provincial jails, the executions are carried out there. The new Criminal Code, I believe, provides that, if the provincial authorities make the necessary arrangements, they can carry out these executions in a centrally located prison in a province.

The PRESIDING CHAIRMAN: But not in a federal penitentiary?

Mr. BLAIR: No.

The PRESIDING CHAIRMAN: A suggestion was made by Doctor MacLean that it should be done in a federal penitentiary, but I do not think that could be done because penitentiaries are federally controlled and the administration of justice is in the hands of the provinces.

Hon. Mrs. HODGES: It would at least ensure a decent measure of privacy for execution.

Mr. BLAIR: It would appear that the proposal in the new Code is to leave it open to the provinces to make whatever arrangements they feel are suitable to their circumstances.

The PRESIDING CHAIRMAN: Are there any more questions?

Mr. BLAIR: I have a few. I was wondering if Doctor MacLean, from his perusal of the literature on forensic medicine on this subject, had come to any conclusions as to the frequency of bungling in hanging. Is it a common occurrence for a hanging to be badly handled?

The WITNESS: My conception of a bungled hanging is one that does not come off. I think that there are inefficient hangings, but those hangings still result in the sentence of the court being carried out, that the man be hanged by the neck until he is dead.

The PRESIDING CHAIRMAN: What do you mean by "inefficient"?

The WITNESS: I quoted Sidney Smith as saying that the cause of death was "dislocating and fracturing the cervical column and rupturing the spinal cord". He says that death is instantaneous although the heart may continue to beat for some length of time. In hangings that did not come out that way, the death might be partly due to shock from an injured cord and partly by suffocation. I think that that would account for the longer times in perhaps two of the cases I have observed.

Mr. FAIREY: That is the point I was trying to make. In those cases, where there was a longer period of time elapsing between the drop and the cessation of the heart beat, in your opinion would you say the man was not dead?

The WITNESS: I have no way of knowing. I said that they would not suffer.

Mr. THATCHER: 50 per cent inefficiency is quite a rate.

Mr. FAIREY: I think this is an important point. Would not the length of the persistence of the heart beat depend a good deal upon the person?

The WITNESS: Yes, it is governed partly by the person's normal physique.

By Mr. Blair:

Q. My next question is this: is there any reason to suppose that if these executions are all done carefully, this kind of accident or inefficiency could be avoided?—A. I have no way of answering that.

Q. I would like to ask you, Doctor, about the conduct of this double execution. This may be a painful subject. Would it not be preferable to have a double execution carried out so that it is simultaneous rather than to have the executions carried out in succession?—A. I would have been happier if it had been carried out more rapidly.

Q. Doctor, you referred to the four cases which you had witnessed, and you suggested that the death penalty had obviously had no deterrent effect in those cases. Was that because they were crimes which arose out of a violent passion or simply because they were premeditated crimes committed by people not affected by the fear of death?—A. I think in the four cases with which I was concerned, they were all crimes of some kind of passion. I took the trouble to elaborate a bit there. I elaborated in this way: "In the gratification of a perverted sexual lust, or in the heat of passion, or in the drive for satisfaction of greed, the violence of the moment oversways logical thinking and the possible consequences of the act are not weighed." That is my opinion.

Q. In any of these four cases, or any other charges of murder of which you have knowledge, has there been an element of cool deliberate killing not accompanied by some emotional or passionate upset?—A. Well, yes. Is that pertinent to my type of evidence at all? I recall one case that might come under that heading and the charge was reduced to manslaughter.

Q. The only reason I ask these questions—and they are subject to the wish of the committee—is to try to ascertain to what extent murders are committed deliberately and intentionally by people in cool blood.—A. I am afraid I could not help you.

Q. Could the brutality, of which you speak and which you have stated induces you to believe that death is a proper sentence, arise from the violence of an emotional outburst?—A. Yes.

Q. And that appears to have been the case in the four hangings that you have witnessed?—A. Yes sir.

Q. I have no further questions.

Hon. Mrs. HODGES: Could I ask a further question? Doctor, in your experience as a physician, outside of jails and that sort of thing, from your long experience with human nature, do you think that capital punishment is a deterrent to the community at large?—A. My own personal opinion is that it must be.

Q. You think that?—A. Yes.

Mr. THATCHER: But that is not the main reason why you oppose abolition?

The WITNESS: No.

Hon. Mrs. HODGES: I am just asking to get information.

Mr. THATCHER: I have one more question I would like to ask. Doctor, in the four hangings you have witnessed, has the hangman had to take a sedative or alcohol to your knowledge?

The WITNESS: I would not know.

Hon. Mrs. HODGES: You have not administered one?

The WITNESS: Never for him.

By Mr. Shaw:

Q. I have another question. Relating to these four cases, doctor, in every case did the hangman enter the pit before you did?—A. No. He did in the first case, and in the other cases I went in at the same time he did.

Q. And did you ever witness any case where he had cause to touch or handle the executed person before you did?—A. There is something there that I do not know because in the first case of which I spoke, where the time of death was recorded as 25 minutes and where the pit under the scaffold was a little shallow, I do not know what went on in there, but I was not called in until about 15 minutes.

Q. What about the other cases you spoke of?—A. No, he did not touch anything except to open the shirt, so I could get my stethescope at the heart.

Q. He did that?—A. Yes.

Q. You referred to the fact that on the occasion when the man and woman were executed, there were 12 policemen present?—A. Yes.

Q. Did you have any knowledge whether they were compelled to be present or not?—A. I have no knowledge, but I have the impression that they were perhaps compelled to be present.

Q. The reason I ask is that you did state—and possibly you just did not mean it the way it was said—they were there to see the final act in the cases they had been on.—A. I do not think the police officers were there out of curiosity at all. I think they were all officers, local and provincial police officers, who had been concerned in the case, and their superior officers were present also.

Mr. SHAW: Thank you.

Mr. WINCH: Mr. Chairman, could I ask the doctor if he could give us any comment of the effect on prisoners of the application of corporal punishment?

By the Presiding Chairman:

Q. Before we go into that, perhaps I could ask one question. Could you make some answer with respect to corporal punishment later? I know you do not have a presentation on it, but would you mind answering questions on the subject?—A. I could say a few brief words.

Q. Then probably I could ask this: You said something about—I did not quite understand your evidence—an 18 year old boy who had committed a murder and had been taken into custody and there had become quite violent and he had then been taken to the Ontario hospital where he was—I am not just sure what your evidence was after that.—A. He was transported in a straitjacket to the Ontario hospital for treatment. He recovered when the psychiatrist there convinced him that he would face trial on the reduced charge of manslaughter and the shadow of the gallows was removed.

Q. Was he subsequently hanged?—A. No.

Hon. Mrs. HODGES: What did he get, life sentence?

The WITNESS: No, I do not think so. Maybe I should not answer that question because I do not definitely remember what he did get.

Mr. FAIREY: Is there an inference there that he was faking when he threw this business and was transported to the hospital for treatment and, as soon as he knew the charge was to be reduced, he recovered? Why?

The WITNESS: In my opinion he was suffering from an acute mania but the psychiatrist said it was hysteria.

Hon. Mr. HODGES: You do not know whether he was subsequently committed to a mental institution?

The WITNESS: I do not think he was, madam, which would bear out the phychiatrist's opinion that it was hysteria. He remained all right, and I think is serving a sentence now.

The PRESIDING CHAIRMAN: I see.

The WITNESS: He was very young.

By the Presiding Chairman:

Q. These other persons who were executed had all committed violent crimes, is that not right?—A. Yes.

Q. And you felt they deserved the hanging. Did I understand you to say that you felt it was the only fitting retribution?—A. Yes, I said that.

Q. Would you say these people who committed these violent offences were in full control of their mental faculties at the time the offences were committed? —A. I cannot answer that. They must have been or they would not have been convicted.

Q. They were found by a jury to have sound mind; but they were violent offences?—A. They were.

Q. And you feel there should be retribution for that sort of violent offence? —A. That is my personal opinion.

Q. And you feel, too, that there should not be the sentence of death imposed upon others who have not committed such violent offences, or that there should be degrees of murder?—A. I would prefer not to comment on that; I have not been able to study that aspect of it. I think that for the violent degree of murder which I mentioned the death penalty is deserved.

Q. Yes; the death penalty is deserved in these cases but maybe in other cases it would not be; and as a matter of fact I noticed that in seven convictions, three of them have been reduced to manslaughter?—A. Yes.

The PRESIDING CHAIRMAN: Now, Mr. Winch?

By Mr. Winch:

Q. Dr. MacLean, since you have been a jail surgeon, you must have been in attendance when you have seen the application of corporal punishment?— A. Yes.

Q. Can you tell us the effect on the person to whom it is applied?

Mr. SHAW: The physical or the mental?

By Mr. Winch:

Q. Both the physical and the mental, if it is possible for the doctor to give us that information.—A. I would make my answer in the form of a brief statement because my experience has been very limited to just before the war, and with one strapping which I saw after the war.

The present situation in Welland county is that there are two new magistrates, both younger men, and each one is waiting for the other to order a strapping so that he can go and witness it and know whether he should use strapping as a sentence. So we have not had any recently—since before the war. The magistrates having jurisdiction there did not order very many and usually they were for the younger type of offender, and the punishment was carried out in the county jail by the use of a flat strap, and in many cases the administration of the strap was the punishment. The man was allowed to go as soon as he had received his punishment. So I have no follow-up on that and I do not know.

The PRESIDING CHAIRMAN: What sort of strap was used? How wide would it be?

The WITNESS: The strap used was probably from two to two and one-half inches wide.

Mr. SHAW: Was it perforated?

The WITNESS: There were no perforations and no corrugations.

Mr. WINCH: Did it cause bruises?

The WITNESS: It causes bruises.

Mr. THATCHER: And bleeding?

The WITNESS: Where the magistrate ordered five strokes of the strap, the party administering the strap would be able to lay them over the buttocks in such a way that they did not overlap, and so physical damage by bruising or bleeding would not be too severe. But where the magistrate ordered ten strokes of the strap, then it was impossible for the one administering the punishment to lay it on in such a way that it would not cause some bleeding. I have had occasion to stop some punishments because I felt that more damage was being done that was meant to be done.

The PRESIDING CHAIRMAN: Now, Miss Bennett?

By Miss Bennett:

Q. What did you do? If you would see these prisoners over a long term, what did you observe to be their physical and mental reaction immediately before and following the strapping? I am asking that to see if it was more or less justified.—A. Your question is difficult for me to answer because I would see only some of them afterwards; I have seen some on more than one occasion. The routine is that every prisoner is physically checked when admitted to the jail and then he is checked physically just before the punishment is administered. I have had no occasion to observe them for any length of time to reach any conclusion as to how they reacted. There were not many cases in my experience.

Q. Was there any mental grief over having committed a wrong and being subject to this punishment which would retard the recurrence of the same kind of crime again?—A. I have no answer to that.

Q. Do you think that where the skin is broken, there could possibly be any permanent injury from a strapping of that kind?—A. I doubt it.

The PRESIDING CHAIRMAN: Now, Mr. Winch?

By Mr. Winch:

Q. In the case where you had to stop the strapping because of the danger to the individual, did that person get the rest of the strapping at a later date? —A. No, sir, if the surgeon stops it, then the punishment is carried out.

Mr. THATCHER: Would the doctor say whether he advised the retention or the abolition of corporal punishment?

The WITNESS: No, I am not prepared to state that because I have not studied it enough.

The PRESIDING CHAIRMAN: Are there any more questions on corporal punishment?

Mr. SHAW: I have one, Mr. Chairman. Would Dr. MacLean be able to indicate to us, out of the total number of cases of corporal punishment, in how many of those cases actually as many as ten strokes of the strap were administered? Is it a common thing where the penalty is ten, that they would be administered, all ten at the same time, so to speak?

The WITNESS: Yes, in the county jails they are.

Mr. SHAW: In all cases, would you say?

The WITNESS: I only had experience with one jail and only with a few cases.

Mr. SHAW: And in all those cases with which you are familiar wherein ten strokes constituted the penalty, were they all administered at the one time?

The WITNESS: Yes.

Mr. THATCHER: Would you say that, in your opinion, the strap was a brutal punishment?

The WITNESS: I think it is. I am a gentle type of man.

The PRESIDING CHAIRMAN: If there are no further questions on corporal punishment, then Mr. Blair has a question on capital punishment.

By Mr. Blair:

Q. You may not wish to comment on it, but this committee has received evidence from other people indicating that murderers as a class are what might be called "abnormal people". We have heard the word "psychopath" used in describing them, as well as other words indicating some kind of mental or emotional abnormality. You have witnessed fifteen people charged with the offence of murder and I wonder if you would be prepared to generalize on the kind of people they were, whether they were normal or abnormal, and if so, in what respect and to what extent they deviated from normality as we generally understand that term?—A. Only to this extent: one of the cases I observed hanged was for a homosexual offence which was accompanied or which culminated in homicide and that man definitely was not a normal being. I would say that to speak of the whole fifteen in which the charge was entered, most of them seemed like ordinary average people.

Q. With no obvious marks either of mental or grave emotional disturbance, or other illness about them?—A. No.

Q. I have no further questions, Mr. Chairman.

The PRESIDING CHAIRMAN: Well, if there are no further questions I want to extend to Dr. MacLean our appreciation and thanks for his coming here to help us in our deliberations. I am sure it will be helpful to us when we come to make up our report whenever that may be and I am not prepared to state when.

Mr. THATCHER: Is it likely to be at the next session?

The PRESIDING CHAIRMAN: It will have to depend on this committee.

Mr. THATCHER: Are you suggesting that it be at the next session?

The PRESIDING CHAIRMAN: I can assure you that it will not be at this session, but I will not make any comment as to whether it will be at the next session.

Again I want to thank you, Dr. MacLean, for your presentation.

The next meeting of the committee will be on Tuesday. The House will be in session at 11 o'clock so we will have to set back the hour of our committee meeting until 11.30 or upon reaching the orders of the day.

Mr. THATCHER: Who will be the witness?

The PRESIDING CHAIRMAN: The witness will be Professor Thorsten Sellin, who is chairman of the sociology department of the University of Pennsylvania. Incidentally, he will be the first person from outside the country that we will have as a witness before this committee. He will probably take all of Tuesday and Wednesday. There will be no meeting on Thursday. We will not be having the Canadian Association of Exhibitions here on Thursday.

Mr. THATCHER: What about the hangman?

The PRESIDING CHAIRMAN: We have nothing definite to report. We have made approaches and we have certain commitments, but it has not been discussed by the subcommittee as yet.

Mr. THATCHER: I see.

The PRESIDING CHAIRMAN: We will not have the Canadian Association of Exhibitions on Thursday.

Mr. WINCH: What about the hangman? Have you anything definite on him?

The PRESIDING CHAIRMAN: We have nothing definite. We made approaches and we have certain commitments, but that has not been discussed by the subcommittee yet.

Mr. SHAW: I was going to suggest, in as much as the Canadian Association of Exhibitions might not be here on Thursday, that it might be well to decide not to have anybody else that week.

The PRESIDING CHAIRMAN: As the Canadian Association of Exhibitions will not appear, then Professor Thorsten Sellin may go over to Thursday.

Mr. SHAW: What I had in mind is, if they cannot appear and if the professor does not go on to Thursday, you might as well forget the Thursday sitting.

The PRESIDING CHAIRMAN: That is what I am saying.

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 17

TUESDAY, JUNE 1, 1954
WEDNESDAY, JUNE 2, 1954

WITNESS:

Professor Thorsten Sellin, Chairman, Department of Sociology, University of Pennsylvania.

Appendix: Prepared Statement on Abolition of Capital Punishment, with Diagrammatic Graphs I—VII, of Professor Thorsten Sellin.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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OTTAWA, 1954.

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Hon. Elie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon. Salter A. Hayden (*Joint Chairman*)
Hon. Nancy Hodges
Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Miss Sybil Bennett
Mr. Maurice Boisvert
Mr. Don F. Brown (*Joint Chairman*)
Mr. J. E. Brown
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Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

MORNING SITTING

TUESDAY, JUNE 1, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.30 a.m. The Joint Chairman, Mr. Don F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Fergusson, Hodges and Veniot.—(4)

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron (*High Park*), Fairey, Fulton, Mitchell (*London*), Shaw, Shipley (Mrs.), and Thatcher.—(9)

In attendance: Professor Thorsten Sellin, Chairman, Department of Sociology, University of Pennsylvania, Philadelphia; Mr. D. G. Blair, Counsel to the Committee.

On motion of the Honourable Senator Hodges, seconded by Mrs. Shipley, the Honourable Senator Muriel McQueen Fergusson was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

The Presiding Chairman called on Counsel to the Committee to introduce Professor Sellin.

Professor Sellin presented his prepared statement on abolition of capital punishment, copies of which had been circulated in advance to members of the committee. During his commentaries on his statement on capital punishment, Professor Sellin referred to seven graphs illustrating Homicide Death Rates and Executions in certain of the United States of America, (Diagrams I to VII inclusive), which were ordered to be printed, together with his prepared statement on capital punishment, as an Appendix.

At the conclusion of Professor Sellin's oral remarks on capital punishment, the Committee continued its proceedings *in camera*.

At 1.15 p.m., the Committee adjourned until 4.00 p.m.

AFTERNOON SITTING

The Committee resumed its proceedings at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Beauregard, Fergusson, and Veniot.—(4)

The House of Commons: Messrs. Boisvert, Brown (*Essex West*), Cameron (*High Park*), Fulton, Mitchell (*London*), Shipley (Mrs.), Thatcher, and Winch.—(8)

92022—1½

In attendance: Professor Thorsten Sellin, Chairman, Department of Sociology, University of Pennsylvania, Philadelphia; Mr. D. G. Blair, Counsel to the Committee.

The Committee commenced its questioning of Professor Sellin in respect of his presentation to the Committee on the abolition of capital punishment.

During the course of its questioning period, it was agreed that Professor Sellin would gather further information and statistics with respect to capital punishment for submission to the Committee.

At 5.50 p.m., the Committee's proceedings were interrupted by a Division in the House of Commons.

The Committee adjourned to meet again at 11.30 a.m., Wednesday, June 2, 1954.

MORNING SITTING

WEDNESDAY, June 2, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.30 a.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Fergusson, Hodges, and Veniot.—(4)

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Fulton, Mitchell (*London*), Shaw, Shipley (Mrs.), Valois, and Winch.—(12)

In attendance: Professor Thorsten Sellin, Chairman, Department of Sociology, University of Pennsylvania, Philadelphia; Mr. D. G. Blair, Counsel to the Committee.

On motion of the Honourable Senator Fergusson, seconded by Miss Bennett, the Honourable Senator Nancy Hodges was elected to act for the day on behalf of the Joint Chairman representing the Senate due to his unavoidable absence.

The Committee resumed its questioning of Professor Sellin in respect of his presentation to the Committee on the abolition of capital punishment.

At 1.05 p.m., the Committee continued its proceedings *in camera*.

At 1.15 p.m., the Committee adjourned until 4.00 p.m.

AFTERNOON SITTING

The Committee resumed its proceedings at 4.00 p.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Fergusson, Hodges, and Veniot.—(4)

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Fairey, Shaw, Shipley (Mrs.), Thatcher, Valois, and Winch.—(11)

In attendance: Professor Thorsten Sellin, Chairman, Department of Sociology, University of Pennsylvania, Philadelphia; Mr. D. G. Blair, Counsel to the Committee.

The Committee resumed and completed its questioning of Professor Sellin in respect of his presentation to the Committee on the abolition of capital punishment.

Professor Sellin also presented and read a prepared statement on abolition of corporal punishment, copies of which had been circulated in advance to members of the Committee, and was questioned thereon.

On behalf of the Committee, the Acting Joint Chairman and the Presiding Chairman each expressed the Committee's appreciation and thanked the witness for his presentations.

The witness retired.

At 5.40 p.m., the Committee adjourned to the call of the Chair.

A. SMALL,
Clerk of the Committee.

EVIDENCE

TUESDAY, June 1, 1954,
11.30 a.m.

The PRESIDING CHAIRMAN (Mr. Brown, Essex West): We will please come to order. A motion will now be entertained to elect a co-chairman for the day from the Senate.

Hon. Mrs. HODGES: I would like to move that Senator Fergusson take the chair.

The PRESIDING CHAIRMAN: Moved by Senator Hodges and seconded by Mrs. Shipley that the Honourable Mrs. Fergusson assume the chair for the day.

Carried.

(Hon. Mrs. Fergusson assumed the chair as co-chairman.)

The PRESIDING CHAIRMAN: I think we should tell you what the schedule is: we will sit until 1.00 o'clock, and if it is your pleasure we will meet again at 4 o'clock this afternoon in this room, and tomorrow again at 11.30. There will be no meeting tomorrow afternoon. In fact, this will be the last witness we shall have at this session.

Hon. Mrs. HODGES: There will be no other meetings afterwards?

The PRESIDING CHAIRMAN: Yes.

Hon. Mrs. HODGES: There will be meetings, but no other witnesses?

The PRESIDING CHAIRMAN: That is right.

Hon. Mr. ASELTINE: Will there be an interim report?

The PRESIDING CHAIRMAN: Yes, and we shall have to meet for the purpose of drafting that report.

I am going to call upon Mr. Blair to introduce our distinguished guest for today.

Mr. BLAIR: Madam Chairman, Mr. Chairman, and members of the committee: We have with us today Professor Thorsten Sellin of the University of Pennsylvania. His accomplishments are so many and he is so modest that I think it is necessary for me to put on the record his qualifications to speak to you today.

Professor Sellin has been associated with the University of Pennsylvania since 1921; since 1930 he has been Professor of Sociology, and for the past ten years he has been chairman of the Department of Sociology. During this time he has taught criminology almost exclusively in his academic courses. In his long term of service with the University of Pennsylvania he has taken a considerable amount of time off devoting it to public service, both in the United States and in foreign countries.

In the years 1930 to 1933 he was consultant at the Bureau of Social Hygiene in New York, concerned mainly with studies of penal treatment. In 1946-1947 he was consultant to the Commission studying revision of the Swedish Penal Code, and at the same time acted as visiting professor of criminology in various Swedish universities.

In 1949 he was elected Secretary-General of the International Penal and Penitentiary Commission with its head office in Berne, Switzerland. This was an inter-governmental body devoted to the study of penology, and he held this position for a period of 20 months when the work of this old international organization was taken over by the United Nations. He has worked with

various United Nations committees in the past five years, three in particular having to do with the establishment of plans and procedure for the penal studies of the United Nations. Last year he was chairman of a United Nations committee drafting plans for a world congress on penology to be held in Geneva in 1955.

During this time he has acted as an American representative and correspondent to various United Nations bodies concerned with the question of penology and has attended, as observer for the American government, regional meetings in Europe and in South America under the aegis of the United Nations.

In his own country, he was a member of the advisory committee of the American Law Institute which drafted the Model Youth Correction Act, and he is at the present time a member of another advisory committee of the American Law Institute drafting a model penal code. This summer Professor Sellin is going to California on behalf of the Institute to study the work of the adult and youth correction authorities in that state.

Since 1929, he has been editor of the Annals of the American Academy of Political and Social Science; there have been frequent references in this committee recently to two volumes of the Annals, one in 1952, having to do with capital punishment, and another in 1950, on the question of gambling. Professor Sellin, in addition, has published many books and articles on criminological subjects. I have great pleasure in asking Professor Sellin to address the committee.

Professor Thorsten Sellin, Chairman, Sociology Department, University of Pennsylvania, called:

The WITNESS: Ladies and gentlemen, it is a great pleasure for me to be in Canada, a country with which I have very early connections from over 40 years ago when my family immigrated to Canada and our ship steamed up the St. Lawrence River and landed in Quebec and we stepped on an immigrant train to travel farther west.

I have presented to you a statement on the death penalty (*see Appendix*) which I hope will furnish a substantial basis for the questions you may wish to address to me on the subject. It might be wise, however, to go through the statement in part, at least, and point to some of the data found in it, especially as I have asked the secretary of the committee to have some photostats made of certain diagrams contained in my memorandum to the Royal Commission on Capital Punishment.

The PRESIDING CHAIRMAN: Could I interrupt you at this point, Professor? We have photostatic copies of the charts which I am going to distribute (*See Diagrams I to VII at end of Appendix*). There are not enough copies to go around and I have to ask members to share the copies that are presented. Thank you very much.

The WITNESS: As you will note, there are a great many countries which have abolished the death penalty. They are mostly in Europe and the Americas. It is a curious fact that among the nations of western culture, where the trend toward abolition has been the most apparent, the English speaking countries seem to be most attached to this penalty.

There is no ready answer for this distribution of countries with and without the death penalty because if we compare them we find that in both classes, countries with or without the death penalty, there are nations with the same level of civilization, the same religion, the same kind of population, the same form of government, the same sense of justice and morality, and the same rate of homicides. If you study Table I (see appendix) in my statements,

you will observe that in both columns there are countries with greatly different rates of homicide. The table is not presented with any idea that any conclusions can be drawn from it as to whether the death penalty is good or bad. I prepared the table purely for the purpose of showing you that the level of the homicide rate apparently is not a necessary determinant in the decision to keep or not to keep the death penalty. Here we have El Salvador, a death penalty you find Colombia and Puerto Rico with 16 and 14 respectively per and Wales at the bottom with a rate of ·5. In countries without the death penalty you find Columbia and Puerto Rico with 16 and 14 respectively per 100,000 population, and the Netherlands at the bottom with even a lower homicide rate than that of England and Wales, ·4. The table does not contain a complete list of the countries with or without the death penalty for the simple reason that the Demographic Year Book of the United Nations from which I have taken these figures did not give mortality statistics from all countries. Some countries are evidently not in a position to report these rates; perhaps they have not established them.

The PRESIDING CHAIRMAN: Would you like to read the brief?

The WITNESS: I think that would probably be tiresome to the committee. Some of the members have no doubt read it.

No matter what arguments are used for the retention or abolition of the death penalty, if we look at the history of punishments we find that the arguments have not been changed much in the last couple of hundred years: objectively they have not changed much, but their content has undergone considerable change. It is obvious that we do not feel the same today as people did a couple of hundred years ago about some of the forms of capital punishment nor about the crimes for which this punishment should be imposed. We have removed the death penalty from most of the offences earlier punishable by death, and we have changed greatly the way of imposing the death penalty. We no longer believe in public punishments, for instance. We no longer believe in putting people to death in a cruel or brutal or torturing manner; that was once regarded as absolutely necessary and proper. Now we hide the executions in the privacy of a prison yard or a prison chamber and do everything we can to make the execution rapid and painless. As a matter of fact we give little publicity to an execution. It is very difficult sometimes to discover in the newspapers that an execution has occurred. The notice is often buried somewhere on an inside page.

It is evident from these facts that while a sense of justice and hight moral concepts are constant in man, because they are necessary to all social life, the ideas of what is just and moral have changed. It does not seem, therefore, that the existence of the death penalty rests upon any immutable principle. We have changed our ideas about it, and a great many countries have even abolished it. It would be presumpuous to assume that a country that possesses the death penalty has higher moral standards or a keener sense of justice than countries that do not have that penalty, because if you will look at the list of countries that do or do not have it you find in both of them countries leading in civilization.

In my statement, I referred in passing, to the fact that it is difficult to say why the abolition movement has been so strong during the last century, shall I say. It would appear to me that we have two factors operating. We have on the one hand the democratic philosophy which we find rooted in the thinking of the 18th century, the century of enlightenment, and best expressed, in so far as the penal law is concerned, in the great essay on crimes and punishments which Cesare Beccaria published in 1764. He voiced the beliefs of the philosophers that punishment should be equal, that all men before the law should receive the same punishment for the same crime. His aim was both

to humanize and democratize the criminal law. Beccaria was not in favour of the death penalty and his influence was great in his day. As a matter of fact, some of the earliest moves to abolish the death penalty came as a result of his writings.

On the other hand, the 19th century saw great progress in the behaviour sciences. Psychiatrists and others who began to study the criminal clinically gradually came to the conclusion that the concept of political equality, which assumed that all who committed a given crime should be subjected to the same punishment, did not afford a logical basis for the treatment of criminal behaviour. These scientists did not look on the criminal as a kind of undistinguishable unit in a democratic state, but as an individual person, different from other individuals—unique, in a sense—whose conduct was influenced by a multiplicity of factors. Instead of equality of punishment, they demanded a differentiation of punishment depending upon the characteristics of the offender and his needs, and aimed at removing the cause of his crime. I think that the roots of the abolition of the death penalty are, in part, found in these behaviour sciences that stress therapy, cure, treatment, because they are clinical in their approach. The older traditions of law clashed, of course, with these more modern ideas.

The influence of the behaviour sciences has been tremendous in the last century. It is largely to them that we owe such innovations as the indeterminate sentence, parole, and the juvenile court, and other modern developments in the penal law, designed to individualization of treatment rather than punishment by formula, so to speak.

Now, with regard to the arguments for and against the death penalty, some are dogmatic in character, and I do not propose to deal with them particularly because they are based on belief in other things than the utilitarian results or effects of the death penalty. These latter arguments about the death penalty are presumably based on experience rather than on faith. They claim that the death penalty has certain effects that can be measured or evaluated in some way. I have listed a few of those in my statement.

The first and most important, no doubt, is the argument about the specific deterrent effect of the death penalty; I shall speak only about murder in this connection. By "specific deterrent", I mean that no other punishment would be equally forceful in securing this effect. In arguments about the death penalty, we have to keep in mind that we are not arguing about the death penalty as opposed to no penalty, but as opposed to some other penalty, such as life imprisonment. If the death penalty is a specific deterrent to murder, it should be less frequent in states that have it than in those that have abolished it, other factors being equal. That "other factors being equal" is most important. I often see in statements about the death penalty, especially in the United States, comparisons of murder or homicide rates in states with and states without the death penalty, and I find, of course, that on that basis states without a death penalty have very much lower homicide rates because there is no attempt to equate these other factors. The southern states for instance, have the highest homicide rates and all have the death penalty, while, on the other hand, the ones that do not have the death penalty are, as you know, close to Canada, all northern states and with economic and social conditions quite different from those in the southern part of the country. Therefore, it is not permissible to compare, without any further qualifications, all states with and all states that are as alike as possible in all social and economic respects and have about the same type of population and the same amount of urbanization, one state not having the death penalty and the other state having it, a comparison between these states would enable us to come to better conclusions as to the relationship between homicide rates and the death penalty. That is the type of comparison that I shall make.

Another argument would be that, if the death penalty is a specific deterrent to murder, murders should increase when the penalty is abolished and they should decrease when the death penalty is re-established. Furthermore, if we assume that the death penalty does have a deterrent effect, that affect should show itself most strongly in communities from which persons who are executed come, where the crime was known, the trial received great publicity and the person executed has a certain acquaintanceship, friends and relatives perhaps, and the community itself is, more than other communities, keenly aware of the fact that the death penalty is actually being used. But before discussing that, we have to determine what element in the death penalty is supposed to have a deterrent effect. Belgium, for instance, has never abolished the death penalty, but since 1863 Belgium has never used the death penalty in times of peace. Every sentence to death—and sentences to death are being passed in Belgium every year—is automatically commuted to life imprisonment. If that is a known policy, I suppose the fact that the death penalty is found in a statute alone cannot be regarded as giving it any element of deterrent. Furthermore, there is many a slip between the cup and the lip in the use of the death penalty. Even where persons are charged with murder, they may not be sentenced to death, and if they are so sentenced, they may not be executed. There we have the whole problem of the administration of justice, including the policy of reprieves. A mere sentence to death, therefore, even in a country which uses the death penalty, presumably cannot have the same deterrent effect as an execution. I assume that it is the execution which has the greatest deterrent effect. Therefore, in studying the specific deterrence of the death penalty for murder, we ought to study executions and the relation of executions to homicide rates.

I discuss in my statement (see Appendix) the difficulties involved in arriving at any idea as to the number of murders. The general conclusion of those who have studied statistics is that the data on homicides, while they are not perfect by any means, reflect best the murder rate on the assumption that among, shall we say, 100 homicides regularly from year to year the percentage of murder remains the same. One can argue about the correctness of this assumption, but all I can say is that whether you defend the death penalty or whether you oppose it, these are the data on which arguments on either side are usually based.

The diagrams, to which your chairman referred, are before you, and I would like to call your attention to several of them (See end of Appendix). In diagram I are shown the Homicide Death Rates and Executions in Maine, New Hampshire and Vermont. You have here three states that, as you undoubtedly know, are reasonably similar in character. They are contiguous. All three lie along your border to the south. Culturally, there is great similarity among these states. One of the states, Maine, does not have the death penalty. The other two have it. They are all small states. I do not recall exactly the population, but my recollection is that New Hampshire does not have more than about 850,000 or 900,000 people. Therefore, homicides would be relatively few in number. But, if you did not know that Maine did not have the death penalty, would you be able to pick out the state without the death penalty from this diagram? I have tried this out on a great many of my classes of students and found them completely unable to identify the abolitionist states.

The PRESIDING CHAIRMAN: At this point, may I interrupt you, Professor?

The WITNESS: Yes.

The PRESIDING CHAIRMAN: These charts would not ordinarily appear in the records of our proceedings. Is it your pleasure that they be appended as part of the record?

Agreed. (*See end of Appendix*).

Mr. BLAIR: Is the homicide rate expressed in percentages?

The WITNESS: Those are not percentages; they are the number per 100,000 population. We would call that the crude rate because there is no account taken of differences in sex or age distribution in population. I regret the necessity for having to present such crude rates. In Maine, New Hampshire, and Vermont, and in the other states, it probably does not make very much difference because the ratios of the sexes and the age groups are probably rather similar. It would become important, however, if one were to compare states one of which has a very high proportion of male adult population compared with another that has a small proportion of adult population because homicide rates are heavily dependent upon these differences. Homicides are, for instance, not committed by children, and if in one state the proportion of children under 15 is much smaller than in another state that would have an important distorting influence on the crude rates.

Hon. Mrs. HODGES: May I ask a question here? This does not make it very clear. For instance, it says homicide death rates and executions in Maine.

The WITNESS: In Maine, New Hampshire and Vermont.

Hon. Mrs. HODGES: You say there is no death penalty in Maine.

The WITNESS: Yes, and therefore there are no executions in Maine.

Hon. Mrs. HODGES: I do not quite understand the Maine line. That is the percentage of homicides?

The WITNESS: That is the rate of homicides per 100,000 population in Maine.

Hon. Mrs. HODGES: Are the others the rates of executions or homicide?

The WITNESS: They are all homicide death rates. You will notice in the Vermont figure under the dotted line in 1932 there is a number 1.

Hon. Mrs. HODGES: I see.

The WITNESS: There was one execution that year in Vermont and you will notice also in 1947 a number 1 under the dotted line; there was one execution that year. In New Hampshire there was one execution—that is the broken line—in 1939; that was the first one in 17 years.

Hon. Mrs. HODGES: Thank you. It was not clear otherwise.

The WITNESS: Now then, we come to Rhode Island, Massachusetts and Connecticut (Diagram II). Here we have again one state, Rhode Island—that is the solid line—which does not have the death penalty, while Massachusetts and Connecticut have the death penalty. Again, when you notice the homicide rates per 100,000 population they seem to fluctuate approximately the same in these states. It is impossible, in other words, to distinguish from among these three states, by any inspection of this diagram, the state which does not have the death penalty.

Diagram III shows the homicide death rates in Michigan, Indiana, and Ohio. The Michigan homicide death rate is the solid line. In 1926, you notice that it rises higher than the others, but afterwards it drops and runs most of the time below the other two. The interesting thing about this diagram, however, is a downward trend which you have noted undoubtedly in the other two diagrams—not so much in the first one, but it is noticeable in the second and you will also see it in the following ones.

Mr. THATCHER: Which state has not the death penalty in this chart?

The WITNESS: Michigan. Both in this and following charts you will notice the higher rate in the middle twenties, but generally speaking, it declines to 1948, I regret that the diagrams stop at that year, but the time at my disposal for preparing this statement has not been long enough in connection with my

other duties to be able to secure some of the later figures and prepare new drawings. You will notice that the trend has been downward, whether the state used the death penalty or not.

In diagram IV we have Minnesota, Iowa and Wisconsin. Minnesota and Wisconsin do not have the death penalty while Iowa has it. Again, you will notice, except in the early twenties, the first half of the decade after the war the rate was higher in Minnesota, but later on the three curves run along together and again the general trend is downward.

In Diagram V are found the homicide death rates in North Dakota, South Dakota, and Nebraska. South Dakota introduced the death penalty again in 1939. Nebraska has always had this penalty. North Dakota abolished the death penalty in 1915. South Dakota is the broken line. One might be tempted to assume that the introduction of the death penalty in South Dakota was the cause of the fall of the homicide rate down to 1940 and 1941, but if one looks at 1934 and notices the peak in South Dakota at that time and the sudden drop to almost nothing in 1937, one has to conclude that we have a coincidence here. The first execution did not occur until 1947 and in 1948 the homicide rate doubled. North Dakota has a generally low rate, compared with the others, but I am not suggesting that this is due to the absence of capital punishment, I am not presenting these diagrams for any other purpose than to show the similarity in the general level and range of the homicide rates, and similarly the trends.

In Diagram VI we have the same data for Colorado, Missouri and Kansas. Kansas introduced the death penalty in 1935 but had no execution until 1943. The other states had it during the entire period for which this diagram was drawn. Kansas is the bottom curve. You will notice that the drop in the homicide rate had already started early in 1921; there was a rise in 1931; and then again a drop occurred which continued down to 1940 after which the rate stabilized more or less. Practically speaking, the three have the same trend, responsive evidently to the social and economic conditions of these states.

The last diagram (Diagram VII) that I am showing you, shows the homicide death rate in four southern states. All of them have always had the death penalty and exercise it. You notice here again in a broad way the same downward trend, except in North Carolina, which seems to have had a rather stable homicide rate since 1925. The other three states follow the same general trends as those already shown.

The conclusion to which one comes in looking at these diagrams, it seems to me, would be that it is impossible to discover any relationship between the executions and the homicide rates. Whether the state has the death penalty and uses it or does not have it, the homicide rates show the same general trends over a period of time. Therefore, the death penalty certainly cannot be regarded as a specific deterrent for murder. I quote from the Minister of Justice in New Zealand. In 1950, you will recall, he argued for the re-introduction of the death penalty in New Zealand and said that he was satisfied that the statistics of murder "Neither prove nor disprove the case for capital punishment, and therefore they neither prove nor disprove the case against it." This is correct if it means that such statistics have little to do with a people's like or dislike for this penalty, but it is incorrect if it means that statistics prove nothing. What the statistics prove is not the case for or against the death penalty, but the case against the general deterrent effect of that penalty.

For my memorandum to the Royal Commission on Capital Punishment I examined data from a considerable number of foreign states that once experimented with abolition as well as data from certain American states that had temporarily abandoned the death penalty, and those of you who have had an opportunity to read the three case histories in the Annals volume

on Murder and the Penalty of Death covering Oregon, Washington and Missouri, will note what I observed in my survey that the re-introduction of the death penalty was not generally due to any special increase in the murder rate. In some cases there seemed to be an increase; in others a decrease. There was often some political problem involved, some peculiar, though temporary situation. It is interesting to note that four American states abolished the death penalty in 1913, 1914, 1915 and 1917 and re-introduced it in 1919 and 1920 during the demobilization period just after the first World War. We know that this is always a difficult period both economically and socially and I suspect very strongly that where there was an increase in homicides it was associated with the peculiar problems of demobilization. When one studies the homicide rates of these American states that re-introduced the death penalty one finds that the rates continued upward later on and reached those peaks in the middle twenties that you have seen in diagrams I to VII.

There is one interesting illustration that I might cite in connection with Italy. Italy used to be known for a high homicide rate; and and on page 650 of my memorandum to the Royal Commission I reported on a study made by the former head of the bureau of criminal statistics of Italy, Dr. Alfredo Spallanzani, of the homicide rates in Italy covering a period from 1891 down to 1947. Now, Italy had no death penalty between 1889 and 1929 when the Mussoli government re-introduced it. The new constitution of Italy of 1948 abolished the death penalty. But, if we look at the homicide rates in Italy—and in this case the rate is based upon homicides ascertained by the investigation authorities, that is the examining magistrates and the judicial police and not general homicide rates of the type displayed in the diagrams—we find that from 1881-1885 down to 1929, there was a general drop in the rates. In other words, the decline had started before the abolition of the death penalty, continued during the abolition of the death penalty, continued after the re-introduction of the death penalty until 1941, when it reached the low point of 1·8 per 100,000 as compared with 14·2 per 100,000 population during the period 1881-1885. Since that time, however, the rate has risen. In 1945 the index figure was the highest it had ever been. This index to which I am referring uses as a base figure of 100 the homicide rate for the 1881-1885 period, the rates of later quinquennia and years being expressed as percentages of the base figure of 100, in 1944 that index was 49 as compared with 100 in 1881-1885, and it rose in 1945 to 115. In the next two years, which are the last years covered by the study, it dropped to 78.

The PRESIDING CHAIRMAN: This chart does not show the rate per thousand?

The WITNESS: No, it is the rate per 100,000 population. It does not show the rate after 1941, because this study was published in 1949 and presumably the population figures were not available so as to make it possible to compute the rate, but one can see that there was a tremendous increase in the homicides as obtained by the investigating authorities in 1945. Then it dropped again, and in 1948 the death penalty was abolished again by the Italian government. I assume that the rate has continued to decline, because social conditions in Italy have become more and more settled since 1947; that high rate of 1945 is obviously a postwar phenomenon. This was a terribly difficult year in Italy and that accounts, no doubt, for the great rise.

Mr. BLAIR: I wonder, if it would meet the wishes of the committee to have this table, about which Professor Sellin has been speaking, reproduced from the British testimony and put on the record here.

The PRESIDING CHAIRMAN: Is it agreed?

Carried.

HOMICIDES ASCERTAINED BY THE INVESTIGATING AUTHORITIES* (UFFICI D'ISTRUZIONE) IN ITALY 1881-1947

Years	Annual Average	Index	Rate per 100,000 population
1881-85	4,441	100	14·2
1886-90	3,831	86	
1891-95	3,474	78	11·3
1896-1900	3,191	72	
1901-05	2,687	61	8·3
1906-10	2,603	59	
1911-15	2,476	54	7·0
1916-20	1,857	42	
1921-25	2,726	62	7·2
1926-30	1,067	33	
1931-35	1,920	43	4·7
1936-40	1,377	39	3·2
1941	830	19	1·8
1942	783	17	
1943	1,018	25	
1944	2,249	49	
1945	5,107	115	
1946	3,436	78	
1947	3,451	78	

* Alfredo Spallanzani: 'Notizie statistiche sugli omicidi volontari commessi in Italia dal 1881 al 1947'. La Giustizia Penale 54, pt. 1: cols. 257-268, Sept. 1949.

The WITNESS: I can go through the rest of my statement very rapidly, because I do not think that there is much in it that needs to be stressed. I refer briefly to errors of justice. I notice that the claim has been made before your committee that, so far as you have discovered in Canada, no one who was innocent has been executed. Obviously I would be the last person to challenge any such statement. I can only say that in other countries experience indicates that there have been persons executed who were later on found to be innocent. Others have been saved from execution by a twist of fate, one might say, and were later found to be innocent. We would probably, if one were to search very carefully in our American literature, locate quite a large number of cases where there has been serious doubt as to the guilt of the offender, perhaps sometimes technical guilt, and yet executions have occurred. I closed that part of my statement by saying that some might argue that such errors are human and unintentional, and that by and large they are outweighed by the great service to society which the death penalty is presumed to have in deterring others. This would seem to be the only possible argument, since those who defend the death penalty only because it is a just or well-deserved retribution for crime, or atonement for taking a human life, could hardly tolerate or defend the execution of innocent people—if justice or atonement were the only real reasons for an execution. But, if there is no way of proving deterrent effect of the death penalty on others, the execution of a single innocent person becomes indefensible. It is an irreparable punishment.

The third section of my statement was put in because it presents one of the oddities of capital punishment, the death penalty as a stimulant to murder. I thought you might be interested in it, simply because it is usually not referred to in debates about this punishment. It is difficult to find cases of it at the present time, but they seem to have been at one time common enough to merit attention. It is, no doubt, true that today such persons would be regarded as mentally disordered and would be taken care of in other ways

than by punishment; they would be committed to mental hospitals, for instance. Regardless of the twisted manner in which their minds may operate at the moment, if they hope that murder would be a desirous way of committing suicide, the death penalty would have been the stimulant and cause of murder.

Lastly, I took up briefly the problem of the protection of society by means of life imprisonment. Does the life sentence furnish adequate protection against murder? I refer you to Table II of my statement, in which you will notice certain facts about the time served by persons who were paroled or pardoned or who were released in other ways, those who died in prison, and whether or not they were first-degree commitments or second-degree commitments.

By Mr. Fulton:

Q. Mr. Chairman, may I ask the professor if he would please explain the table? I cannot understand or appreciate the reason why there are two columns under "Died", each headed "No".—A. That is the number of cases. "ATS" is the "average time served", in other words how long they had served.

Q. Why are there two columns showing the numbers who had been committed for first-degree murder?—A. There is only one column showing the number. The other is second degree.

Q. Underneath "First Degree" you have "Died", and you have two columns, each headed "No", which I presume means "number". The figure in each column is not the same.—A. No, under first-degree commitments, the first column that says "number" gives the total; in the following three main columns, each is divided into two columns giving the actual number and the average time that they had served when they were released, either by death or some other manner.

Q. I think there is an error in the reproduction of the table in the mimeographed copies that we have. There should be a vertical line between the first column and the second, and that should extend from the horizontal line under "First Degree Commitments" to the bottom of the table. That is omitted in our copies.—A. I have only my own copy. I did not see the mimeographed copy.

I do not know that there is much to say about this table. One might assume that Connecticut and Massachusetts, which had a mandatory death penalty at that time, would offer some peculiarities. In Connecticut, for instance, there were 58 persons released from prisons during this period of 1926-1937 having originally been committed to prison for murder. Eight left by execution. One was either paroled or pardoned, after 25 years. On the other hand, 49 of those released had been originally sentenced for murder in the second degree, carrying a life sentence.

Hon. Mrs. HODGES: In Pennsylvania, we take it that the average term served there for first-degree commitments was only five years?

The WITNESS: If the person died. That is the actual length of a life sentence, because a life sentence is terminated by death, whether it is the first day after a person arrives in prison or the twenty-fifth year. Those that actually completed their life sentence therefore, had served an average of 5·2 years in Pennsylvania (41 cases); 8·9 years in New Jersey (7 cases); 8·1 years in California (89 cases); 10·4 years in Kansas (21 cases); and 8·2 years in Michigan (52 cases). It is more interesting to notice those who were paroled or pardoned, because those are the ones you would be likely to be more concerned with. The average time served by those referred to as "other releases", due to court orders, transfers to mental institutions, etc., was extremely short except in Kansas. In the two states that had a mandatory death penalty, Connecticut and Massachusetts, most of those convicted of first

degree murder were executed, and only the few whose sentences were commuted could be released. In the one such case in Connecticut the prisoner had spent 25 years in prison, and in Massachusetts there were two cases that averaged 25½ years. In states that did not have the death penalty (Kansas and Michigan), you will notice that there was a shorter period; but note that in Michigan, which does not have the death penalty on first-degree commitments, those pardoned or paroled had served on the average 13·8 years. This was somewhat higher than the averages for New Jersey, California and Pennsylvania. I do not know exactly what that means. It is interesting to note that out of the total of 407 released in Michigan, 193 were released after having been committed for first-degree murder, while 214, almost the same number, were released after having been committed for second-degree murder. Again, one would be tempted to assume that in a state which does not have the death penalty a first-degree murder conviction would be more likely, but the Pennsylvania figures are contradictory, because there were there altogether, including those executed, only 200 persons committed for murder in the first degree, 103 to be executed and 97 to serve life sentences, while 950 were committed for murder in the second degree. So the theory that Michigan has relatively more first-degree convictions because it does not have the death penalty, does not seem to be true.

I reported in the statement on a questionnaire which was sent out by the International Penal and Penitentiary Commission, which had established a committee for the study of the death penalty, not for its deterrent effect, but a study on the penitentiary aspects of capital punishment; in other words, the effect of the death penalty on institutional administration. That questionnaire was sent out to all the member states of the Commission, but the replies were not sufficiently complete to merit publication. We did analyze all the replies, however, and to some of the questions they were fairly full. I have taken a sample of theirs for use in this connection. The important general conclusion that could be drawn from these replies would be that prisoners sentenced to life imprisonment, or whose sentences have been commuted, do not seem to behave either in prison, or after discharge, on license or on parole or by pardon, in such a way as to render them a serious threat to the community. It would appear from the replies and from other documents concerning the behaviour of this particular group of offenders that they are not difficult prisoners. They commit less than their share of disciplinary violations and those who are released commit less than what might be regarded as their share of later crimes. It is true that occasionally such a prisoner has been known to commit a second murder. One case is mentioned in the reply from England and Wales that over a period of time such a prisoner committed a second murder.

I referred to an article in the Annals where Dr. Giardini, who is Director of Parole in Pennsylvania, secured certain data from states covering capital offences—and they vary from ten years in one state, to 20 and 38 years in other states. The total of 195 prisoners reported did not include those pardoned or who left the institutions of these states by parole, or transfer to a mental institution and so on. The report made to Dr. Giardini by the parole departments of these twenty states suggests that the institutional behaviour of murderers was very good compared, with what we know of the post-institutional behaviour of parolees who have been committed for other offences. They are quite favourable figures as a matter of fact.

In concluding the statement, I mentioned the fact that I think this whole question of the death penalty is basically not a question of statistics, but a question of feelings, and that the ethos of a people may be such that it supports this particular punishment. In other countries there is a lack of such support. In either of these classes of countries the attitude depends upon a great variety of factors which have probably little to do with statistics on whether or not

the death penalty is a deterrent. At the end of my statement, I quoted from Professor Kadecka who was the Austrian delegate to the International Penal and Penitentiary Commission, who after making a study of the death penalty and homicides in his own country, concluded that the data he had found would probably offer arguments for either side and that neither would convince the other, because the question of the death penalty is not yet a question of experience, but one of personal conviction, sentiment, and faith.

I apologize for having made this lengthy presentation. You must be tired of it if you already have read the statement.

The PRESIDING CHAIRMAN: Now, it being one o'clock, we will adjourn until this afternoon at 4 o'clock.

The WITNESS: I am at your disposal, Mr. Chairman.

The PRESIDING CHAIRMAN: We will proceed in camera for a few moments.

(The committee went into camera).

AFTERNOON SESSION

The PRESIDING CHAIRMAN: Will you come to order, ladies and gentlemen, please.

I think Professor Sellin, you had completed your presentation on capital punishment?

Professor Thorsten Sellin, Chairman, Sociology Department, University of Pennsylvania, recalled:

The WITNESS: Yes.

The PRESIDING CHAIRMAN: I would like Mr. Blair to submit a question or two at the outset to clarify some of the matters.

By Mr. Blair:

Q. Mr. Chairman, these questions are purely for clarification of what was said this morning. Professor Sellin, in your opening remarks you mentioned what you called dogmatic arguments on the question of capital punishment. I wonder whether you might wish to summarize some of the more important dogmatic arguments so that they might appear in one place in our record?—A. I have not attempted to collect all such arguments for or against the death penalty. They can be found scattered, for instance, in the evidence given to the Royal Commission on Capital Punishment and in the work of writers for or against the death penalty. As an illustration I might say that the claim that the death penalty is the only punishment by which a murderer can properly expiate or atone for his crime, that he who takes a life deliberately or wilfully should lose his own life, is what I would call a dogmatic claim. I do not know of any way of disproving or proving such a statement. It is the way one feels about it. On the other side is the statement, shall we say, that no one has the right deliberately to take another person's life, because the Creator has given him that life, and man should not take it. I place that in the same category of dogmatic statements. One person believes it; another does not believe it.

I mentioned this morning that the death penalty did not seem to rest on any immutable principle. It is perfectly clear that in Canada and in England, and in other states that have the death penalty, there are enough people who believe in it so that they can make their voices heard and maintain, support, or secure legislation which imposes capital punishment.

In the Netherlands and in the Scandinavian countries and in Italy, Western Germany, and some of these Latin American countries I mentioned, it is evident that people do not take that view, and that their concept of justice, therefore, differs in this regard. They do not believe that a person should expiate his crime by having his life removed from him.

The death penalty has been regarded as the only just punishment of murder. But abolitionist countries do not have the same concept of justice in this case, and it would be difficult for anybody to claim that their concept of justice is inferior to the concept that exists in countries that have the death penalty. I remember that Sir Alexander Paterson, who was chairman of the Prison Commission of England and Wales in his evidence before the Select committee on capital punishment back in the 1930's stated that he supported the death penalty because life imprisonment was not humane—that a person after he had spent a long time in prison was not fitted for society and that it was cruelty to hold him in prison, and charity to put him to death. I call that a dogmatic statement because, while it is true that there are persons who have committed murder who refuse absolutely every effort to secure leniency or reprieve and insist on being put to death because they themselves feel that somehow or other they have forfeited life, the vast majority of persons who are in that position, strongly prefer imprisonment to death. I can say that the first type of person would be a great rarity, and, if a prisoner were asked which penalty he would prefer he would in all but extremely rare cases select what Mr. Paterson regarded as the more inhumane punishment of life imprisonment.

The PRESIDING CHAIRMAN: How about the right of the state to take a life?

The WITNESS: The right of the state to take life can hardly be disputed. The state requires us to go to war and lose our lives in defence of our country. I can hardly believe that one would maintain with any great force that the state does not have the right to remove someone if it wants to under almost any circumstances that the state decides proper. But, that again is a dogmatic opinion resting on the general assumption that the state is supreme. As I said before, I am loathe to discuss this type of argument because I can offer nothing in the way of evidence or proof dealing with it. It belongs so strictly in what one might call the area of sentiment. Were I to hold strongly to the argument that a murderer should expiate his crime by losing his life I would be untouched, if I were logical, by any proof which clearly showed that the use of the death penalty increases murder—were such proof available. I would then hold that anyone who takes a life deliberately should lose it. The moment I let an argument intrude which can be proved or disproved, an argument based on a claim that the death penalty has certain specific effects, that it deters or does something else, which appeals to experience, then I must be willing to examine the question in the light of empirical evidence.

By Mr. Blair:

Q. I believe, Profesor Sellin, that you have some data available on the murders of police officers in the course of their duty which may be of interest to the committee, particularly in relation to the question as to whether or not police officers are better protected where capital punishment is still in force.—A. I do have some data, but they are rather defective because I have made no real effort to search for them. We have no general source of information about such matters in the United States. We have to go to the published annual police reports of our large police departments. It would no doubt be possible by questionnaire to secure the information and I intend to do so when I have a little more time.

The PRESIDING CHAIRMAN: Would you provide this committee with that information?

The WITNESS: I would be very glad to do so.

These police reports give data on police officers who have died in the performance of duty, but when I began to analyze case by case the material in the reports I discovered that it is the custom of the police to list the death of anyone under any circumstances who dies while he is performing his duty. In other words, the officer who is on the beat and falls dead with a heart attack, the officer who is crossing the street hurrying to get somewhere and is run over by an automobile and killed, the officer on a motorcycle who may be chasing a suspect—any suspect, not necessarily a murderer— and who may lose control over his motorcycle and run into a telegraph pole, these men all die in the performance of duty, but I take it that the argument we are interested in is the death of police officers while they are arresting a suspect or in a situation where the suspect uses firearms, or some other weapon, and attacks the policeman. When the police officer arrests a prisoner and that prisoner resists arrest and knocks the officer down, as a result of which he is injured and later dies from his injuries, I doubt that this is the kind of case which would concern us, because that might happen under any circumstances. I therefore selected very carefully from certain police reports those cases which seemed to be definitely ones where an officer was killed by a suspect.

First let me give you what I discovered in the city of Cincinnati, because there I have data for 100 years—from 1850, when Cincinnati had a population of 115,000, to 1950, when it had a population of 504,000. I shall give you only the number of officers killed in the manner I have indicated, for each one of the decades beginning 1850 to 1859, inclusive, and ending with 1940 to 1949, inclusive. In the first of these decades three officers were killed; in the second, three; in the third, five; in the fourth, one; in the fifth, three; in the sixth, four; in the decade of 1910 to 1919 which. I do not need to point out to you, was the decade of the first world war and demobilization, eight; in the decade of 1920 to 1929, the prohibition decade in the United States, there were nine; in the 1930's, three; in the 1940's, two. This is in a city of a state that has the death penalty, and as we noted, the population had increased from 115,000 to over half a million during the century covered.

Now, let us take Los Angeles. Unfortunately, the data I picked up for Los Angeles refer only to the period 1925-42. In 1930, Los Angeles had a population of 1,240,000 in round figures; in 1940, a population of 1½ million. Since that time it has increased to almost 2 million. I shall run through these figures very rapidly. In 1925, no officers were killed; then four, two, one, one, three, one, one, two, none, one, two, and then there were five years without any officers being killed, and in 1942 one. California has the death penalty, as you know.

Then I took Detroit. Detroit is the only really large city in a non-death-penalty state. I have here figures beginning with 1928 and ending with 1948, a 20-year period. They are very curious. They were very high in the early years.

The PRESIDING CHAIRMAN: Did they have a death penalty at that time?

The WITNESS: No, Michigan has never had the death penalty, so that this is not a death-penalty state. Detroit had a population in 1930 of over 1½ million, and in 1940 over 1,623,000; and in 1950, which is only two years after my figures stop, it had 1,849,000, or very close to 2 million. Now, in 1928 there were four officers killed and eleven wounded; in 1929 there were four killed and thirteen wounded; in 1930, the figures were three and seven; in 1931, there were two and five; in 1932, one and three; in 1933, one killed and none wounded; in 1934, none killed and four wounded; in 1935, one killed; in 1936, one killed and four wounded; in 1937, one killed and none wounded; in 1938, two killed and none wounded; in 1939, one killed and two wounded. Since that date, beginning with 1940 to 1948, inclusive, none were wounded and there were none

killed in 1940, 1941 and 1942. In 1943, there was one killed by a criminal and one shot during a race riot. Then there were none killed during 1944, and in 1946—I am sorry, I do not have the data for 1945 for Detroit. In 1947, two were killed and none wounded; in 1948, none killed and none wounded. What has happened since 1948, I do not know; but a curious thing in these figures is that the high figures were in 1928, 1929, 1930 and 1931, and then they begin to drop off. In spite of the increase in population you begin to have some blank years, or only one or two killed during the year, and beginning with the forties there are only two years from 1940 to 1948 when any police officer was killed, one in 1943 and two in 1947, and none wounded.

We must remember that there is no death penalty in Michigan and that these killings nevertheless dropped off very much in the way they dropped off in the other cities as well, and knowing Detroit in the late twenties I suspect that the larger number of killings and woundings at this time may well be explainable by the organized crime situation in Detroit and other peculiar local circumstances. In other words, it is evident that if the death penalty is necessary for a deterrent, it is difficult to explain the drop in these killings and woundings in Detroit. The donwward trend seems to be a phenomenon that has been occurring in all of the cities I have mentioned. It is a curious thing which I propose to investigate further by securing a great deal more material from American cities to see if it holds true for all of them. I have some additional data for Philadelphia.

Hon. Mr. ASELTINE: Do you have any figures for Chicago?

The WITNESS: No, because I did not have any more than one or two reports handy.

Mr. WINCH: Could I ask a question before the witness leaves this subject? Is it your understanding or analysis from the studies you have made that the cycle of homicides is approximately the same both in cities that have the death penalty and those which do not?

The WITNESS: I am sorry to say that I have no homicide rates for cities. In my presentation this morning I discussed only the homicide rates of contiguous states with or without the death penalty. If those rates are examined there is no way of telling which states have the death penalty and which do not.

Mr. WINCH: In Detroit they do not have the death penalty and in Los Angeles they do and you found the number of police killed almost the same, proportionally?

The WITNESS: I would hesitate to say that right away because first of all the two cities differ very greatly from one another. As you know, Los Angeles is a great sprawling community that has increased its size by constant incorporaton until it covers an enormous area in part sparsely populated. It is not like Detroit which is a solidly packed urban community.

The PRESIDING CHAIRMAN: With two cities within its corporate boundaries? Hamtramck and Highland Park are both cities in themselves?

The WITNESS: Yes, that is true, but Los Angeles on the other hand, as I said, contains a great many small communities inside its city limits. For 1928 to 1933—the years for which I have comparative figures of police killed in Los Angeles and Detroit—while Detroit at that time had over 300,000 more people in it, there were nine policemen killed in Los Angeles and 15 killed in Detroit, which had a population about 300,000 larger than that of Los Angeles. I doubt if one can draw any conclusions from these figures without knowing the political, social and economic conditions and the amount of organized crime in the two cities for that particular period. Since that time, as I said, killings of police by criminals have largely disappeared in both cities so that since 1933 there is no reason to assume that Detroit is any worse than Los Angeles

in that respect. For Philadelphia I have data from 1941 to 1953 inclusive, a period of 13 years. During those 13 years there were ten police killed by criminals.

Mr. WINCH: What is the population of Philadelphia?

The WITNESS: In 1950 Philadelphia had 2,065,000 inhabitants—about 200,000 more than Detroit. There were ten police killed by automobiles during the same period of 13 years.

Mr. WINCH: Were they killed in the course of pursuing criminals or something of that nature?

The WITNESS: No, not at all. They were traffic police who were knocked down by automobiles, or they were involved themselves in motorcycle or motor vehicle accidents. There was one killed by an explosion. One had a heart attack after he made an arrest and died later and one died as a result of the accidental discharge of his own revolver. When he was pursuing an offender he pulled out his gun at some time or other and it was accidentally discharged. Comparing Detroit with Philadelphia during the period from 1941 to 1948, there were three policement killed in Detroit and six killed in Philadelphia. Now, Pennsylvania has the death penalty and Michigan does not. Again, let me say that I do not consider that these figures have any bearing on that question. One case more or less may depend on peculiar circumstances.

These are the only data I have so far gathered concerning police killings and woundings. It seems to me, however, to indicate a trend which strikes me as being similar in a sense to the general homicide rate trend which I showed you in connection with the graphs of the various states.

The Presiding CHAIRMAN: In other words, you do not think the death penalty has any effect on the homicide of policemen one way or the other?

The WITNESS: I doubt it very much.

The CHAIRMAN: Now, if it is your pleasure we will start the questioning period. Mr. Thatcher?

Mr. THATCHER: I have just one or two questions, Mr. Chairman. Would you say then, Professor Sellin, that the chief conclusion you arrive at from this evidence is that the homicide rate in a country is not much affected by whether or not you have the death penalty?

The WITNESS: Yes, I would say, that as far as one can tell from statistics, it does not seem to make any difference whether or not the state has the death penalty. The homicide rates seem to move independently of that fact and are, so far as I can see, connected with local circumstances, the character of the population, shifts in the nature of the population during a period of time and other social conditions in general, which under certain circumstances favour a high homicide rate. And then if they change, they favour a lower homicide rate.

Q. In your opinion, life imprisonment would be just as much a deterrent to murder as the death penalty?—A. If you consider the fact that those states which did not have the death penalty have no other substitute, and if with that substitute the homicide rates are no different in those states from the homicide rates in the states which have the death penalty, I do not see how you can come to any other conclusion.

Q. Thank you. And would you say from the studies which you have made that throughout the western world, generally, the trend is away from capital punishment?—A. Certainly. Since the war several countries have abolished the death penalty which had it previously. I think the trend was established before the first world war and that up to that time there was, generally speaking, a tendency to abolish the death penalty in more and more countries. Of course, then came the world war and during and after the world war there was a recrudescence of the death penalty. Even in some

countries that had previously abolished it, there was a temporary restoration; both Norway, Denmark, and the Netherlands as well as Belgium had recourse again to the death penalty for collaborators, for crimes in the nature of treason.

As soon as that brief period of readjustment had been passed through, they all went back to the old penalty of life imprisonment.

Germany, of course, had the death penalty until the new constitution was adopted in Western Germany in 1950 and it was heavily used during the Nazi regime.

You will recall that Mussolini introduced the death penalty again, but the government of Italy abolished it in 1948. So Western Germany and Italy are the two countries which have been added to the abolishment list in Europe in the late years. In the Middle East, Israel abolished the death penalty in February 16, 1954.

There have been no recent additions to the abolitionist states in Latin America to my knowledge. The trend was pretty well established before the second world war.

If you consider the fact that most of the states that have abolished it had the death penalty 100 years ago, I suppose that from a long-term point of view we can say that there has been a decided trend towards abolition of the death penalty for murder.

Q. Thank you. Now, one more question; I wonder if you care to express your personal opinion or your personal views from the studies which you have made? As to whether you think that capital punishment should be abolished?—A. As a student of criminal behaviour, I would like to see a punishment utilized that is effective. But when I see a punishment that is not efficient but seems to be utilized in a sense a haphazard manner, I question its value. I cannot say that my opposition to the death penalty is due to any sentimental regard for this or that particular criminal. I recognize that many at least of those who are sentenced to death are, from their records and so on, not very desirable members of society. I recognize also that we are not in some respects particularly careful of human life. We kill thousands of people by reckless driving and we kill other thousands of people by carelessness in industry in not providing the necessary safeguards.

But I would like to see penal treatment based on something less than emotions because I think that emotions and sentiments are not going to provide us with a proper basis for dealing with the crime problem. I think the use of the death penalty, therefore, has in a sense, hampered us in developing more effective forms of treatment.

Q. Thank you.

The PRESIDING CHAIRMAN: Now, Mr. Boisvert?

Mr. BOISVERT: No, Mr. Chairman.

The PRESIDING CHAIRMAN: Mr. Mitchell?

Mr. WINCH: Might I ask a supplementary question, Mr. Chairman?

The PRESIDING CHAIRMAN: Is it agreeable to the committee?

By Mr. Winch:

Q. As a result of your last statement and because of your extensive study of capital punishment, are there any considerations in your mind whereby you personally think that capital punishment should be exercised, and if so, what are they?—A. I can understand the very strong sentiment and feeling which develops during a great crisis such as a war. I can understand the sentiment of the peoples of the Netherlands and of Denmark who, during the occupation saw some of their fellowmen join the occupation forces and fight against their country, whatever the reason may have been.

What has happened, however, in all of these countries is that while they utilized the death penalty during the very first years for collaborators—that is, immediately after the war, there was a wave of death sentences imposed and actually executed—gradually as cases came up later, and as a case would drag out for many years before it was disposed of by the courts, the courts more and more began to impose prison terms. I do not believe it was because the cases which were delayed were less serious in character, but that there developed, after the first immediate reaction, a greater and greater reluctance to utilize the death penalty. Now, in peacetime I see no argument for it.

Q. In time of peace in the United States and in Canada under our criminal law of Canada and under yours of the United States, are there any circumstances in your mind, or any criminal act against a society, wherein as a result of all your intensive study you think we should have capital punishment?—A. No.

By Mr. Mitchell (London):

Q. Mr. Chairman, there is one point in Professor Sellin's submission this morning which I feel was not necessarily overlooked but has not been adequately covered. We, in this committee, Professor Sellin, have discussed at various times degrees of murder such as you have in many states of the United States and we have also discussed the practice which has grown up and which is now in fact authorized by the Criminal Code of convicting for manslaughter rather than convicting for murder, and these various definitions, both in your law and ours, are designed to cover the difference between what I might call cold blooded premeditated murder and a murder which is committed either as a result of provocation or as a result of passion. We also have some evidence before us that the percentage of cold blooded murders to the number of homicides in one country may be considerably higher than the percentage in another country, and that in fact in one country there may be more cold blooded premeditated murders in one province than in another. Your figures and your graphs this morning indicate homicides as a whole. They do not attempt to distinguish between the premeditated murder and the one that is committed as a result of provocation or passion. Now, it is admitted—at least I would be prepared to acknowledge—that the death penalty, or the execution itself, as you indicated the difference in term, cannot have any substantial degree of deterrence for a person who commits a murder in the heat of passion. Would you also say that your graphs represent a true statement as to the figures that would result from examination of premiditated murders?—A. I suppose that when one thinks of premeditated murder the best example is gangster murder, the practice of taking somebody for a ride. It is as premeditated as anything could possibly be. As you know these murders have occurred in some parts of the United States in certain cities, in particular, with considerable regularity, and in the past—less now than before—it was extremely common in some cities during the twenties. I forget the exact number, but I think there were something like 300 in round figures of these gangster murders in Chicago during the twenties and not a single prosecution.

Q. May I interject that the degree of deterrence which the death penalty had in the state of Illinois, if it was there at all, was reduced by virtue of the failure of the law enforcement officers for whatever the reason may be?—A. You were asking me whether or not I knew whether the homicide rate, or the rate of deliberate murder, would be the same as these in the graphs I have shown you and what possible relation there might be between such a rate if we had it and the use of the death penalty. My answer was designed to show that when it comes to murders committed by organized gangs in states that have the death penalty—most of them did occur in states that have the death penalty because all of our large cities with organized crime are in such states. The

existence of the death penalty and the fact that some people were executed in Illinois during these years did not seem to cause any hesitation on the part of gangsters. You referred to the fact that this is a failure of law enforcement. Then, we place the whole argument on a different basis. There is no doubt in my mind that we have to consider the effectiveness of law enforcement in connection with the deterrent effect of any kind of punishment. I take it for granted that if punishments are not exacted or if they are exacted in such an extremely small percentage of cases that there is little risk of being punished for a crime, then there can be no deterrent effect in the punishment itself because the risk is slight that one will be punished. Where the risk is great that one will be punished—which is the case comparatively speaking in homicide because it is a crime which has a rather high detectability, you might say —the question arises whether it is the enforcement with subsequent imposition of some punishment which has the deterrent value or whether it is merely one particular type of punishment such as the death penalty, which has a deterrent value. Beccaria, in 1764, stated that it is the certainty and not the severity of punishment that is effective.

Q. On these graphs then, Professor Sellin, would you be prepared in so far as what I call premeditated murder is concerned, to say they would be substantially the same as— —A. I said there is a basic assumption underlying these homicide rates; that this, one type of murder is proportionately the same from year to year. It is impossible for me or anybody also to know the exact proportion of murders, premeditated or unpremeditated, in the homicides that occur in a community because that is dependent upon so many things. Some homicides are never discovered; they may be listed as accidents, and so on. Some homicides change definition during the administration of justice. For instance, in one southern state there is a tremendously high number of indictments for first degree murder and a very, very low proportionate number of convictions. It seems peculiar until you realize that the district attorney in that state, who is paid on a fee basis, receives $50 a case if he prosecutes on a capital charge and only $25 a case if he prosecutes on a non-capital charge. I suspect that that has something to do with the disproportion I mentioned. Without knowing the details of the administration of justice, without knowing how prosecuting attorneys operate and the whole procedure of getting a case into and through the courts, the efficiency of the police and so on, it becomes very difficult to draw any specific conclusions with regard to the question you raise as well as with regard to many other problems involved here.

Q. One other question arising out of these figures—and they are very interesting ones—that you gave us with respect to Detroit, Los Angeles and Philadelphia, from which it appeared that the incidence of murder was much higher in the years such as depression years and, as you said, demobilization years. From that increase, does it not appear that there were more policemen killed and wounded in the cities in the states which did not have capital punishment during those crucial periods?—A. I want to point out the fact that I had only one city in an abolitionist state, and that was Detroit, and I had data only for 1928-48. If you take the depression as having struck hardest in 1932, for instance, and if you take the 1930's, from 1930 to 1939, there were three policemen killed in Cincinnati, which in 1940 had a population of 455,000. In Los Angeles, which had a population of 1½ million by the end of the thirties and had 1,238,000 in 1930, there were 10 policemen killed during that same period, as compared with three, but population was about three times as large in Los Angeles as in Cincinnati. Proportionately, there were no more police killed in one than in the other. Now Detroit, which is the only abolitionist-state city that I have, with a population of between 1,568,000 in 1930 and 1,623,000 in 1940, had a much larger number of policemen killed; they had 14 killed. There is a difference there of 14, as compared with 9 in Los Angeles. But you

have to consider the nature, as I said, of Los Angeles and the peculiar character of Detroit, a large industrial city with a tremendously great proportion of adult males, because the population pyramid of Detroit is quite peculiar. I had occasion some time in the past to look at it, and the male population in the working-age period of life in Detroit is quite abnormally swelled, undoubtedly because of the labour situation in Detroit with its great factories. So one has to consider the difference in the population of these two cities. I suspect that a comparative study of the population distribution by age and sex of Los Angeles and of Detroit would yield quite different data and would show that the types of people living in these two cities are different.

The PRESIDING CHAIRMAN: In Los Angeles they would be old and senile, and in Detroit they would be young and virile?

The WITNESS: I do not know whether that would be true, but I think that there would be a considerable difference in the character of the population of the two cities. Since the crime rates are generally highest among males between 16 and 40, the proportion of males of 16 to 40 in the population of a city will determine to a certain degree the extent of criminality, because women have very low crime rates and so have children under 16. When it comes to robbery, burglary, automobile thefts and offences of that nature, the rates are highest for those between 16 and 25.

Mr. MITCHELL (*London*): Is it not possible that the existence of the death penalty might have had something to do with the difference?

The WITNESS: I doubt it. If it does the burden of proof rests on someone, and I do not know which one should undertake the proof, the one who defends the death penalty or the one who opposes it. Throughout the history of debates on this subject, it has always been the opponents of the death penalty who have tried to secure the best possible empirical evidence; the proponents have tended to rest their case on dogmatic assertions rather than on research.

By Mr. Winch:

Q. I have a question which arises as a result of the question asked by Mr. Mitchell. Is it your experience as a result of your studies that the majority of gangster slayings in the United States are in those states which have the death penalty?—A. Yes, it is perfectly obvious, because I have never known that there was large organized crime in Rhode Island or Maine. They are states with small populations. Then you have North Dakota, which has no death penalty, Wisconsin, Michigan and Minnesota. Minnesota, Wisconsin and Michigan are the only states in which you may find some organized criminality. All the rest of the states have the death penalty and, therefore, Chicago, New York, Philadelphia, Pittsburgh, Los Angeles, San Francisco, and so on, are in death-penalty states, as well as all the large cities of the south.

Q. Actually, sir, my question is this: As a result of your intensive studies, when it comes to the gangster influence in the United States, the death penalty is not a deterrent to the commission of homicide?—A. Apparently not, since gangsters seem to flourish most in death penalty states.

By Mr. Fulton:

Q. There is no comparable city where gangsterism exists and where they have not the death penalty?—A. Detroit, I think, would be a comparable city, because Detroit has had organized criminality on a large scale.

Q. What about Los Angeles?—A. The twin cities have been reputed to have some organized criminality.

Q. What about Los Angeles?—A. Los Angeles always has had some.

Q. The fact is that the rate of police killings does appear to be higher in Detroit than in Los Angeles?—A. I have not discussed rates at all. I have given absolute numbers.

Q. Absolute numbers, very well.—A. I do not know how one should compute such rates.

Q. I should not have used the word. What I meant was the absolute number.—A. That is true, but, of course, I have only Los Angeles. What would happen if I had Chicago? I will get Chicago so that you will see what the situation is there. It is a city perhaps, in a sense, more comparable to Detroit from the point of view of its industrial character. Of course, it is twice as large, but Chicago would probably be a better comparison with Detroit than Los Angeles would be.

Q. Mr. Chairman, I am not going to ask many questions because I had to be away in the earlier stages of the meeting and would probably be repeating what was asked before, but I had a question with respect to page 28 of the professor's brief. If it has not been covered before, I would be interested in following it up. On page 28 of your brief, professor, you are analyzing the situation with regard to the behaviour of persons who, as I understand your brief, had been convicted of homicide, but had been given life imprisonment as a sentence, and had then been paroled and you then make the statement:

> Taking Pennsylvania data, the accuracy of which Dr. Giardini belived to be reliable, 36 paroles in capital cases had been given between 1914 and 1952. Of these 3 had been returned with sentences for new crimes and one for parole violation; one had absconded, 7 had died, 7 had completed their parole satisfactorily and 17 were still on parole on March 31, 1952.

You do not tell us, and I wonder if you know, what the new crimes were for which those three were returned?—A. No, I do not know. The article from which the data were taken did not mention it. It appears in the Annals volume and I took the material from there.

The CHAIRMAN: What book are you referring to?

The WITNESS: The volume of the Annals on Murder and the Penalty of Death. The table from which I took the material is found on page 91 of this article by Dr. G. I. Giardini and Mr. R. G. Farrow, of the staff of the parole board of Pennsylvania.

By Mr. Fulton:

Q. I am perfectly prepared to accept the total figures. The point I wanted to make would have some bearing if we had some information as to the type of crime.* There you have three returned and one absconded. I presume that means he just failed to observe his parole and they lost track of him, which means that 4 out of 36 committed subsequent crimes.—A. One at least had disappeared. Apparently he had not committed a subsequent crime because in that case he probably would have been fingerprinted. His fingerprints would have been cleared through the F.B.I. in Washington and the Pennsylvania penitentiary would have been informed of the fact.

Q. I would presume it would be a crime if he broke his parole?—A. Not necessarily. He may have left the state without authorization or otherwise have broken a parole condition.

Q. So you have your four subsequent offences—four and one subsequent offences—out of 36. That is five out of 36.—A. But you must remember that this covers a period from 1914 to 1952. These people were not released during one year but over a very long period of time, and when you consider the fact that parole statistics generally from penitentiaries show a very very high percentage of returns—I do not have such data with me but I could

*In its reply to the questionnaire of the International Penal and Penitentiary Commission, Pennsylvania reported that 3 parolled murderers had been re-committed to prison for new offenses, none of which was murder. See Appendix [Ed. note]

easily secure it from the very excellent and detailed annual reports of the New York State division of parole for instance— I would consider 4 out of 36 —and unfortunately there is no way of telling in which year these were returned—as a very very favourable and extremely low rate of recidivism, especially considering the period covered.

Q. You were using the word "favourable" on page 28 of your brief as meaning favourable in comparison with other parole figures?—A. That is correct.

Q. But you still have the fact that if you take the 36 who had been paroled —I grant it is over a period from 1914 to 1952 but we are dealing with totals— and only 36 paroles occurred in that period. Of this number 17 were still on parole which leaves a total of 19 to be dealt with and of those 19 five had committed subsequent offences so that five out of those 19, or five out of a total of 36, committed subsequent offences. I am wondering whether in absolute terms it is safe to regard this as a favourable figure remembering that these men are convicted murderers?—A. It is safe considering that the incidence of recidivism for crimes against property committed by parolees is rather high.

Q. That may be so, but I used the words "in absolute terms." Is it safe to say it is a favourable rate that five out of 19 convicted murderers who have been paroled committed subsequent crimes? I wonder if you would not agree that that is rather a dangerous generalization?—A. Not in comparison with what generally happens to people who are paroled from prisons and that is the context of this entire presentation and it is tied up with the statements and replies made from various countries as to the later criminality of persons who have left prison after having been originally committed for murder, and that figure seems to me to fall right in with the replies made by England, Wales, Scotland and other places. It was meant only in that connection.

Q. For comparison with the number of returns experienced with other offences?—A. Yes, the fact also being true that when a person with a previous criminal record is returned to prison for murder, his previous record, with extremely rare exceptions, contained exclusively other offences than homicide.

Q. I had taken it when I read it as being a part of your case against the proposition that it is dangerous to give persons convicted of murder only life imprisonment. As I read your statement you were dealing with that argument which is quite frequently advanced in justification of capital punishment and I had read your statement as indicating that you felt the parole figures—the performance of those paroled after having been convicted of homicide— disposed of that argument and now you say, however, it was not in that sense absolutely that you had used the word "favourable" but merely in comparison with the return rate of those convicted on other offences and who were subsequently paroled.—A. Yes. It appears on page 29 of my brief in the first paragraph where I say:

> It is a well-known fact that the incidence of recidivism is high for crimes against property and considerably lower for offences against the person, including sex offences. It is our policy nevertheless to sentence thieves of all kinds for relatively short terms. We release on parole all but a small proportion of prisoners from our penitentiaries, taking the risk that they will again commit crimes, a risk that increases with every new sentence and subsequent parole. It appears from the data referred to above and similar data that the type of criminality which may again be engaged in by a person paroled after serving part of a sentence for murder is no worse than that which may be expected from other prisoners paroled; indeed the risk of later criminality by released murderers appears to be very small. Judging from these facts and the manner in which the capital offenders are released, it seems that

imprisonment and parole offer adequate protection against whatever future damage to society such offenders might do. Such damages do occur but their seriousness should be weighed against the risk of errors of justice and other detrimental effects of the death penalty.

Q. I think you said there have been some cases of paroled or released convicted murderers repeating that particular crime. Do you know of many occasions when that has happened?—A. No. In the questionnaire which we sent out from the International Penal Penitentiary Commission, that question was asked and there was only one case mentioned in a reply. That reply was the one from England and Wales which said that there had been one case in which there had been a second murder committed. But in all the countries which replied to this questionnaire—they dealt with quite a long period of time—that was the only case. I know of other countries where it has occurred. I recall at least one Pennsylvania case and I believe there was one mentioned in one of the articles in the Annals.

The PRESIDING CHAIRMAN: Mr. Winch?

Mr. WINCH: No, Mr. Chairman. All my questions have been asked.

The PRESIDING CHAIRMAN: Mr. Cameron?

By Mr. Cameron:

Q. Professor Sellin, in your table (No. I) you indicate that a great many of the Latin-American countries do not have the death penalty. Do you agree with me that in so far as they are concerned their value of human life may be somewhat less than the value placed upon human life in such countries as Canada, Australia and New Zealand?—A. I do not know.

Q. I offer it merely as a suggestion that the value which they place upon human life in some of those countries is much less than the value we place upon human life in countries such as Canada and the United States.—A. It is possible, of course. I have no specific knowledge of it.

Q. Will you agree with me that the value placed on human life in countries such as Canada and the United States is probably the highest of all the countries, and that we value human life, let us say, in Canada higher than anywhere else in the world, or in countries similar to Canada?—A. If you put in "similar" I might agree with you; otherwise, I would not, because I doubt it.

Q. There are other countries however, such as India and China and so on where the value of human life is rated much lower than it is in some countries? —A. I would be glad to agree with you that, generally speaking, human life is rated very high in Canada and in the United States and in similar countries.

Q. May that not be one of the reasons, because we rate human life so highly, that we exact such a severe penalty upon anyone who takes it away from a person?—A. In that case you would have to consider the Netherlands, Norway, Sweden, Switzerland, Denmark, and Western Germany who have either the same or a lower homicide rate than Canada, and assume that they did not place an equally high value on human life. I do not think that is a possible argument.

Q. You mentioned two countries, Germany and Italy. Is it not a fact that in Germany some years ago they were accused of genocide on a very large and extensive scale which indicated a very low regard for the value of human life?—A. At that time, yes.

Mr. WINCH: In only one country, though.

The WITNESS: But that still does not take care of Denmark, Switzerland, Sweden, Norway and the Netherlands.

By Mr. Cameron:

Q. Well it does seem to be an anomaly to me at any rate that countries which placed such a low value on human life at one time, through a change of administration now place such an extremely high value on it at this particular time in regard to the person who commits a crime of violence.—A. That is not at all strange to me because politics can change, different sections of the population can come into power and bring great changes in attitudes on these matters. Certain parties seem always to have been opposed to the death penalty and traditionally so, while others have traditionally supported the death penalty. On the whole, conservatives in all countries tend to be conservative in this respect as well. These changes in attitudes have to be understood in connection with the historical changes which have occurred in a country's economic and social problems, as well as in their political orientation, and I think that explains the Western Germany situation.

Q. You will agree that the most grievous crime there is is that of taking human life without cause.—A. Of course it is, there is no doubt about it.

Q. And that society in accepting the penalty or endeavouring to prevent that crime should take the most grievous measures to do so.—A. Society undoubtedly has the right to take the measures that it believes to be most effective. But to me, the death penalty is not an effective deterrent of murder.

Q. As you stated before, that is a question of opinion. And you can be dogmatic about it on the other side.—A. No, that is not a dogmatic problem, as I have explained in connection with the statement which I quoted from the Minister of Justice for New Zealand, as you will recall.

Q. Then I withdraw the word "dogmatic". —A. The Minister of Justice for New Zealand stated that statistics did not prove the case for capital punishment or against capital punishment. That is true because statistics are not the only thing which enters into the discussion. But what statistics can prove is whether or not the death penalty has a deterrent effect and reduces murder, and I think that they prove that this is not the case. I think it is impossible to discover that the death penalty has anything whatsoever to do with the existence or with the non-existence of murder in a community. That phenomenon is based upon much deeper and more important conditions, such as, as I said, the character of the population, the economic conditions, the social conditions and enlightenment of the community and a variety of other things.

By Mr. Cameron (High Park):

Q. The inference I drew from the diagrams and the inference that you were drawing from them, was as opposed to states which had the death penalty and states which did not have the death penalty and which are more or less comparable on economic and ethnic grounds with countries such as that, that the inference was the death penalty apparently was not a deterrent, nor that it deterred people from committing murders because where they did not have the death penalty these murders were more or less on the same parallel lines? —A. That is homicides, yes.

Q. Yes. It is an inference?—A. Yes, an inference from data.

Q. And you, I take it, agree with the statement that it is the certainty of the punishment and not the severity of punishment which is one of the very greatest agencies in preserving law and order. You agree with that statement? —A. I agree with it, but I would qualify it. I would qualify it in this way. The certainty seems to be more effective in certain types of offences, and less effective in others. I think when it comes to murder even certainty of punishment is a less effective deterrent, than in most other crimes. Murder is contrary to all of our deepest instincts. In spite of what seems like rather high homicide rates in the United States, when we consider the tremendous urbanization problem of that country, its great variety of races and population

groups, and the many conflicts, situations that arise in that type of population, I am certainly surprised to find that in 2,421 cities with a total population of 70 million, which is almost half of the population of the United States, there were in 1951 only a total of 3,416 murders and manslaughters excluding negligent manslaughters which are almost entirely due to reckless operation of automobiles. And what is the proportion of murders in that figure of 3,416? That we can only guess. I do not know what the exact proportion would be, but chances are that there are much fewer murders than manslaughters; therefore, maybe not more than 1,000 or at the very most 1,500 of these would have been murders. Considering all of the conflict situations in which human beings find themselves, what is it that keeps them from taking lives under certain circumstances if it is not the general moral ideas that have been developed in them from childhood on, a strong sentiment that life is sacred. This is what controls us. Most of us have been in situations where we have been wronged by somebody, perhaps very deeply, but the idea of taking that person's life has never even occurred to us. Why not? Because we have been conditioned that way. Our entire bringing-up and all the moral influences to which we have been subjected have made it impossible for us. So far as the argument of the police is concerned that there are some people who do not carry weapons for fear that they may kill some one and suffer the death penalty, I suspect that what they are afraid of is to take a human life, and not of the subsequent punishment.

Q. Just leaving out of consideration for a moment the deterrent effect, might it not be that the existence of the death penalty is but the outward expression in one form of the inward conditioning towards the sanctity of human life, and is the instinctive reaction of a society so conditioned, which says that human life is so sacred that to take it will automatically invoke the supreme penalty?—A. Alexander Paterson thought that the death penalty was much more humane than life imprisonment.

Q. I am not using that argument.—A. No, but I understand your argument. Life imprisonment is a serious penalty.

Q. Not as serious?—A. Again it depends on whether you are an Alexender Paterson or not. To him, death was a less serious penalty.

Q. There might be room for argument in support of the contention that the existence of the death penalty is but the outward indication, if you like, of that inner conditioning, the instinctive reaction which says that human life is so sacred in our view that if it is taken the supreme penalty must be imposed.—A. I agree that there is room for argument along those lines. I would agree that the reason for keeping the death penalty under those circumstances is, no doubt, tied up with the belief in the sacredness of human life. At one time property was regarded with the same degree of sacredness. Anyone who took five shillings or more had to be hanged.

Q. I know that.—A. The fact is that it is true that people were hanged for these things, and at that time—

Q. Perhaps we did not have a sense of proportion then.—A. I do not know. Someone at least believed that it was such a serious crime that the only way—

Q. I do not think that society as a whole did.—A. I do not know. The only thing I know is that governments established it and governments executed it.

Q. Governments were not very democratic in those days. They were perhaps not the reflection of the will of society in the same way as we like to think they are today.—A. Again I can only point to the Netherlands and the Scandinavian countries, which do not feel that it is necessay to use death penalty in these cases, and yet they regard human life as extremely sacred.

Mr. FULTON: Yes, I am sure they do.

By Mr. Boisvert:

Q. I have just one question. Professor Sellin, would you be kind enough to tell me why the incidence of recidivism is higher for crimes against property than for crimes against the person?—A. We know that persons who commit crimes against property tend to persist in such behaviour much more than those who commit crimes against the person. Statistics show that whatever may have been the reason for a person beginning to take another's property, once he has begun to engage in that kind of behaviour and finds it in some way profitable in either a small or large degree, he tends to persist in doing it.

Q. Would it not be possible, Professor, that there is no deterrent now for crimes against property and there is the death penalty for a few crimes against the person as, for example, murder, and in this country we have also the death penalty for the crime of rape.—A. Generally speaking, crimes against property have increased regularly. Your question is, had there been a death penalty, would there be fewer of them? I do not think so.

Q. My question is this, Professor: is it not because there is no death penalty for crimes against property, when there is a death penalty for crimes against the person, as an example, murder?—A. I do not think so.

Mr. FULTON: You cannot be a recidivist if you are dead.

The WITNESS: That is perfectly true, you cannot. But crimes against property were apparently the most common forms of crime even during the time that the death penalty was used to combat them.

By Mr. Boisvert:

Q. Penalties are milder for those crimes, according to the penal law in every country?—A. Generally. It is impossible today to experiment with the death penalty for such offences in countries like ours. Therefore, we can only suppose what might happen. If anyone were to argue the death penalty for theft or a similar offence today, he would be considered a barbarian.

Q. That is true, but the fact remains that the death penalty is imposed in nearly all the countries of the world for crimes against a person and there is not that kind of penalty for crimes against property.—A. Yes.

Q. I would like to know if it would not be possible that the deterrent is exactly in that very point?—A. Attitudes toward property have changed so that it becomes almost impossible to debate the question. People apparently do not place the value on property today which they placed on it in the days when the death penalty was utilized for theft; even then the most common offences for which people were punished were property offences. We have utilized every possible penalty in the past in dealing with property offenders. We have never succeeded in reducing such offences by punishment but only by changing social and economic conditions that cause them.

Mr. BOISVERT: Thank you.

Mr. MITCHELL (*London*): May I ask one question?

The CHAIRMAN: One moment, please. Senator Fergusson?

By Hon. Mrs. Fergusson:

Q. I have merely one question, Professor Sellin. The suggestion has been made that the countries that have the death penalty consider life more sacred and, therefore, they have that serious penalty for taking life. But could it not be that the countries that do not have the death penalty really consider life more sacred because they are not prepared to take it in such a case and are not prepared even to have the state take it in the case of a serious offence? —A. That may be a matter of opinion. Whether it is because they believe that life is more sacred or believe that it is not necessary to use this penalty

for the purpose of preventing this particular type of offence, is probably difficult to decide. A great many people have opposed the death penalty on the ground that it is no longer necessary in order to keep the murder rate down. Some countries did not hesitate to re-introduce the death penalty immediately after the war for traitorous collaborators, and there were a great many executions in Norway, Denmark, the Netherlands and in Belgium during that short span of time because of a tremendously aroused public resentment and a fear on the part of the government that if it did not permit this feeling of vengeance and retribution to be satisfied, serious disturbances might occur, just as there have been people who have argued for the death penalty, as otherwise lynchings would occur; on that point, however, the facts remain that in the United States, lynchings have occurred only in states which have the death penalty and that in the past fifty years lynchings have steadily declined in those states.

A few decades ago there used to be from 20 to 30 lynchings every year. But now, for two years in succession, there have been no lynchings in the United States.

Mr. WINCH: You say that all the lynchings in the United States have occurred in those states which had the death penalty?

The WITNESS: Yes, because lynchings primarily grew out of a conflict between the dominant white group and the Negro group and involved certain types of offences or behaviour which the dominant group in the southern states regarded as a challenge, you might say, to its sovereign authority and as violating rules of conduct which it felt to be important.

The gradual disappearance of lynchings reflects a change in relationships between the races in the southern states; these changes have occurred during the last twenty years in particular and have just been in a sense, given final approval by the U.S. Supreme Court decision regarding racial segregation in public schools.

The PRESIDING CHAIRMAN: I hate to draw this discussion to a close at the moment but the Division bell summons us to the Chamber of the House of Commons.

We were about to close anyway. Tomorrow morning we will meet in room 430 at 11.30 o'clock and if we go over into the afternoon we will have room 368.

You will find your copy of Professor Sellin's presentation on corporal punishment in your mailboxes.

EVIDENCE

June 2, 1954
11.30 A.M.

The PRESIDING CHAIRMAN (Mr. Brown, *Essex West*): Would you please come to order? A motion will be entertained to elect a co-chairman from the Senate for today.

Moved by Senator Fergusson, seconded by Miss Bennett, that the Honourable Mrs. Hodges be elected co-chairman for the Senate for the day.

Carried.

(Hon. Mrs. Hodges took the chair as co-chairman.)

The PRESIDING CHAIRMAN: There will be a very short *in camera* meeting of the committee today at four o'clock, provided that we do not finish this morning, or would you rather have it at the close of this morning's session?

Mr. FULTON: Let us see how we get on.

The PRESIDING CHAIRMAN: Yes. As you know, we have Professor Sellin with us as our witness. Yesterday he was discussing the question of capital punishment. Several members submitted questions, and I understand that there are more questions on capital punishment which the members of the committee desire to ask Professor Sellin. If it is your pleasure, we will proceed with that questioning, and then we will continue with corporal punishment.

Agreed.

Professor Thorsten Sellin, Chairman, Sociology Department, University of Pennsylvania, recalled:

The PRESIDING CHAIRMAN: Have you a question, Mrs. Shipley?

Mrs. SHIPLEY: I regretted that I had to leave yesterday, but I would particularly like to ask Professor Sellin, in view of his vast experience, if he has formed any opinion on the most humane method of execution, where the death penalty is still carried out.

The WITNESS: I suppose that the most humane method is the one that most quickly would put a person to death with as little personal suffering as possible. Judging from the descriptions of hangings in the evidence given before the Royal Commission on Capital Punishment, I see no reason to assume that any other form of execution is any better. I do not see how it is possible to assume that lethal gas or electrocution is any better. It is, no doubt, possible that if hangings are unskilfully done unfortunate instances may occur. That may be unpleasant from an aesthetic point of view but just as effective, one might say.

By Hon. Mrs. Hodges:

Q. May I follow that up with a question? In your experience, do you know if there is any degree of inefficiency in connection with the execution by, for instance, the electric chair or lethal gas in cases where they are in practice? —A. I have heard of cases where the apparatus has failed at the moment and there have been delays for necessary repairs and things of that order.

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Q. Would you think, then, that the ratio of inefficiency, if one might put it that way, is as great for the other methods of execution as in hanging, in your experience?—A. I do not recall any case where electrocution has failed to kill a person promptly.

Q. There was a case, if I remember rightly, a few months ago in the United States—I have forgotten exactly where, but I daresay some of the members heard of it—where the man was not killed at the first jolt, or whatever it is called, and they had to administer it again.—A. They always do.

Q. This was a case which was made much of in the newspapers.—A. I have not read about it.

Hon. Mrs. HODGES: Thank you, Professor Sellin.

Mr. BOISVERT: Would you allow me to ask a supplementary question? Have you given any thought to the guillotine as a way of putting an end to life?

The WITNESS: It is certainly a quick method, but rather a messy one.

Mrs. SHIPLEY: Have you any opinion on the method of injecting poisons that would act very rapidly?

The WITNESS: I would think that that would be most objectionable to the person who has to impose that punishment, because it is such a direct personal contact. After all, in hanging he places the noose around the person's neck and adjusts it and then steps away and pushes a button or pulls a lever, but does not actually directly administer death to the person. In the lethal gas chamber, or in any system such as, for instance, the electric chair, the executioner stands in another room and administers the punishment. I would think that there would be great objection to using injections.

Mrs. SHIPLEY: Thank you, sir.

The PRESIDING CHAIRMAN: Are there other members of the committee who have questions?

By Mr. Mitchell (London):

Q. Mr. Chairman, I should like to refer Professor Sellin to the report of the Royal Commission on Capital Punishment, section 59, on page 20, where it reports:

> Capital punishment has obviously failed as a deterrent when a murder is committed. We can number its failures. But we cannot number its successes. No one can ever know how many people have refrained from murder because of the fear of being hanged.

I wonder if Professor Sellin would comment on that statement?—A. I can only say that, so far as I can see, it is perfectly true.

Q. Secondly, going further into the figures which the professor gave us yesterday with respect to Detroit, Los Angeles, Philadelphia, and particularly, in this case, Detroit, Commissioner Nicholson referred to the bootlegging period prior to 1933 and to his impression that the number of killings of police officers on this side of the border was negligible, whereas from Professor Sellin's comments yesterday it appears that there were numerous police officers killed in Detroit during that period. Commissioner Nicholson's conclusion from this fact was that the fear of the death penalty resulted in the bootleggers not carrying guns and accordingly not killing police officers on this side of the border. Have you anything to say in that connection, Professor Sellin?—A. I imagine that that is an opinion expressed by the commissioner which is based on assumptions which may or may not be true. One would certainly have to investigate that problem to discover whether there is any reason for assuming that it is true. A mere statement of that nature I do not think would be adequate proof. I certainly would not be willing to accept it. There are other

states that do not have the death penalty in the United States. I do not believe that American gangsters or bootleggers flock to those states because they would be safe from the death penalty. There are entirely different problems involved here.

Q. But we have contiguous states. On one side of the border we find a considerable number of police officers killed, and in our chairman's constituency we find few or none.

The PRESIDING CHAIRMAN: Pro rata there were a considerable number.

The WITNESS: In your cities you would not have organized criminality of the character that would be found in Detroit. I think those are matters that have to be taken into consideration. Speaking of those who live by crime, may I read a quotation from Dr. Amos Squire's "Sing Sing Doctor". Doctor Squire was for more than 30 years chief physician of Sing Sing and attended many executions. Since in former years they often had as many as a dozen annually, he must have attended hundreds during that period. He says in his book, in a chapter on "Irrevocable Capital Punishment":

> I am not prepared to assert dogmatically that the fear of the death penalty deters no one from committing murder. But after more than thirty years' association with Sing Sing Prison, and after studying many murderers at close range, I am certain that capital punishment does not exert the deterrent effect it is ordinarily supposed to. Murderers fall into four general classes—those who are insane, those who kill as a result of anger, hate, jealousy, or outraged honour, those who kill in connection with a professional crime career, and those who kill to get possession of another's property, although they have not previously been engaged in criminal pursuits.
>
> The insane have no fear of death. The person who kills under the sway of violent emotion is at the time indifferent to consequences. The gangster looks upon the possibility of being executed by the state in the same way that he looks upon the possibility of being killed in the practice of his profession—a risk he must run in order to get what he wants.
>
> The person who deliberately plans murder for profit invariably believes he is too clever to be caught and therefore does not fear the death penalty. When a man arrives at the point where he is determined to kill, for whatever reason, either he does not take into consideration the prospect of having to forfeit his own life or he does not care.
>
> I can conceive of how a fear of consequences might restrain some persons from progressing along a course of depraved thinking to the point where they cannot turn back. But I believe that anyone who feels murderously inclined, but hasn't the nerve to carry out his desire because of fear of capital punishment, would be—and is in those states that do not have capital punishment—restrained equally as well by the prospect of life imprisonment.
>
> Capital punishment is irrevocable. When a mistake has been made, there is no correcting it. An execution cannot be carried out in complete secrecy. Society, which has demanded the penalty, must know that it has been inflicted. Each time a person is executed, the effect upon the public is infinitely more degrading than deterrent. Innocent relatives of the victim suffer far more than he does.

By Mr. Fulton:

Q. May I ask a question? Professor Sellin, you would not, I take it from anything you said, go so far as to discount the evidence given us by experienced police officers that in their opinion, based on actual conversations with criminals, fear of the death penalty does deter them from carrying firearms, lest in a moment of agitation, fear or surprise, they might use them and thus incur that

risk?—A. Well, what I would like to be sure about is that it is the fear of the death penalty rather than the fear of taking a life that governs the individuals, because I think most of us would not like to take a human life. There are many, no doubt, who engage in criminal activity where the risk of taking human life is slight, or who perhaps engage in such activities because they do not want to take human lives. They do not want to have another person's blood on their conscience. I would doubt that it is the fear of execution which has led them to that belief or given them that attitude. I suspect that it is due to the moral ideas that they have absorbed with regard to the question of human life.

Q. Of course, that would be asking us to make a very considerable assumption, that a man who has put aside many other moral values still retains that one to the point where the dislike of taking a human life is the controlling factor. No one can prove it, but I should think it would be at least as probable that it is the fear of death, that is the fear of himself incurring the death penalty. My point is that he has been able successfully to overcome the moral scruples with respect to stealing, and even perhaps other acts of violence and criminal acts, and still you are suggesting that the reason he does not carry firearms is that that is one moral scruple that he cannot overcome. I would suggest that it is more likely that he does not carry them because he is afraid of being hanged.—A. I see no reason for accepting that argument, because, after all, we are compartmentalized in a great many ways with regard to the moral values we hold. A person may have little regard for another person's property, but he may have a very high regard for another person's life. After all, we find plenty of instances where a person even of high social status may have overcome his scruples about committing frauds, such as embezzling money, because that particular moral attitude or value has changed, it would never occur to him to break into a house and get property that way. Certainly it might never occur to him to take a human life. I think that human beings are so extremely complex when it comes to attitudes of what is right and what is wrong that one cannot infer, from the fact that a person thinks that what society believes is wrong in one particular sphere and he has somehow come to regard as permissable or possible, that, therefore, all his norms have been destroyed and he would as easily commit some other crime than the crime he actually does commit. I do not think it follows that because a person steals he, therefore, could more easily take a life.

Q. Would you agree with the general statement of principle that fear is a deterrent, or would you say that fear is not a deterrent?—A. Yes, I would not be willing to deny the fact that fear of consequences may be a deterrent. As a general rule that would be true. I think it is perfectly clear that if, shall we say, traffic laws are strictly enforced we do not want to expose ourselves to losing $2 or $10 regularly and, therefore, we avoid doing something which we know is definitely going to result in a harm to our pocketbook. The question here is whether or not the death penalty specifically acts as a greater deterrent than life imprisonment, and that is what I question.

Q. Coming to the other point and relating that to what you said earlier, these men given to a life of crime—and this is based on the evidence of the police officers—have apparently overcome their fear of the prison sentence which results, if they are caught in their lesser crimes of burglary, robbery and so on, and I am suggesting to you that they have overcome their fear of long or repeated prison terms. They are not sufficiently fearful of them for that fear to have the effect of deterring them from the repetition of commission of their lesser crimes; and I am suggesting it is possible, from what you have said, that the fear of the death penalty is sufficient to deter them from carrying the firearm so that they will not put themselves in a position to be likely to incur the death penalty.—A. I do not know whether it is the fear of the death penalty or the fear of taking human life, that they do not feel they can do

that, and therefore avoid the possibility of being placed in a position where inevitably, or as a result of the force of circumstances, they might have a cutting arm or a firearm ready and use it. In many of these instances where you have constructive malice, you really have self defence situations objectively while technically it becomes murder, and under the circumstances where you avoid carrying such arms it could mean a desire not to take life. Whether or not it is that or the fear of the death penalty, I suppose is something that no one can definitely say. But, the testimony of the police does not seem to be corroborated, let us say by this Sing Sing doctor, and I would want to know what experienced prison administrators who meet the same people in the institutions, get the same testimony from prisoners. I have not seen such testimony on the part of the prison administrators and they would seem to me to be in almost a better situation than police officers actually to discover over a period of time whether there is anything to this particular claim made by the police.

Q. Of course the doctor of Sing Sing would not have in his death cells at any time the man who had been deterred from committing a murder because of the fear of the death penalty. That man would not be there.—A. He would have in prison a great many persons who were sentenced to die and sentenced to various terms for robbery and burglary and other offences which are the ones which might be involved in the type of case which you have referred to.

Mr. FULTON: Thank you.

By Mr. Blair:

Q. Professor Sellin, I wonder if you could clarify for the committee the difference if any, between the conclusions you have drawn from the statistical evidence of deterrence and the conclusions drawn by the Royal Commission in the United Kingdom. Perhaps if I read paragraph 68 of the Royal Commission Report occurring at page 24 it will help the members:

> The general conclusion which we reach, after careful review of all the evidence we have been able to obtain as to the deterrent effect of capital punishment, may be stated as follows. Prima facie the penalty of death is likely to have a stronger effect as a deterrent to normal human beings, than any other form of punishment, and there is some evidence (though no convincing statistical evidence) that this is in fact so. But this effect does not operate universally or uniformly, and there are many offenders on whom it is limited and may often be negligible. It is accordingly important to view this question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty.

—A. I assume that the commission came to that conclusion on the basis of evidence of the type that Mr. Fulton has just mentioned. I do not recall at the moment—it is a long time since I read the report—what the specific nature of the evidence was. I do not know whether it was opinion evidence, pure and simple, or whether it had any stronger basis. I am afraid that I cannot make any further comments on that.

Mr. BOISVERT: How could we find out in a city those who are deterred from committing a murder? According to what you said yesterday and today you are basing your opinion on statistics issued by sheriffs and by doctors of penitentiaries, and they are referring to criminals after crimes were committed, and we may assume from those statistics that we cannot form an opinion to judge if it would be a good thing to abolish that penalty and have it replaced by life imprisonment. Now, I am getting to the first part of my

question: How could we know in any society the numbers of those who were deterred from committing murder on account of fear of being sentenced to death?

The WITNESS: I do not know.

The PRESIDING CHAIRMAN: That was gone into yesterday. Perhaps you were not here at the first part yesterday.

Mr. BOISVERT: No, I am sorry, I was not here.

The PRESIDING CHAIRMAN: Professor Sellin went into that in great detail.

Mr. BOISVERT: I am very sorry.

By Mr. Blair:

Q. Professor Sellin, on the basis of your studies on the subject of capital punishment, particularly in the United States, I wonder whether you would be in a position to indicate to this committee the extent to which a discretion is given to the court or jury to award capital punishment or a lesser sentence upon conviction for the charge of murder?—A. I thought I had brought with me some material on that because I just had a study made of what is a capital offence in the various states of the Union. It was my impression that this question of the discretionary use of capital punishment had also been included in that particular study, but I find upon examining the manuscript that it deals merely with a definition of capital offences. Therefore, I am not prepared to state offhand how the discretion is used, that is, the procedure. I do know that the mandatory penalty for murder has been removed in the federal code and in all states of the United States except Vermont. The states of Connecticut and Massachusetts removed the mandatory clause in 1951. There are, however, a number of states that have retained the mandatory clause for certain other offences. I do not have a complete list of those states or the offences involved, but I can give you some examples. For instance, the death penalty is mandatory in Alabama for first degree murder by persons serving a life sentence.

By Mrs. Hodges:

Q. How could a person commit a first degree murder while serving a life sentence?—A. He can with malice aforethought kill a guard or a fellow prisoner or kill a visitor to the institution if he has an opportunity.

Q. You do not let them out of jail to do that?—A. No. You will recall from yesterday's testimony that those who get out almost never commit murders. Then, kidnapping for ransom when the victim is injured, and also rape carry mandatory death sentences in Arkansas, train robbery in New Mexico, attempts on the life of the president or certain other high state officials in Ohio, attempt to escape prison, in Nevada, perjury in capital cases resulting in death, in Texas, and killing by stabbing or by poisoning in South Carolina.

Q. Does that mean not for killing by shooting a person?—A. Yes.

Q. Although the person is just as dead?—A. I suspect that in some of these cases you will find that the legislation is hastily drafted and someone proposes discretionary power in murder cases.

Q. Do they find, since shooting is apparently immune from the mandatory death penalty, that there are more murders by shooting down there?—A. Again, it would be impossible for me to answer that question. There are 48 states and I have no data at hand for most of them.

Q. It was this particular state?—A. In order to be able to discuss that. I would have had to make a particular study of that particular problem in the state of South Carolina, which I have not done.

By Mr. Blair:

Q. Just for the record I might mention that there is a summary of the American law on this subject on page 461 of the United Kingdom report. I take it from what you say that you have no data at the moment which would indicate the proportion of convictions for murder where the death sentence is imposed as opposed to life imprisonment in these states where discretion exists?—A. I have some, but I am not at all sure what they mean because they do not always seem to jibe with the situations claimed for other states. But, there was a study made some years ago based on Rhode Island and Massachusetts data. I can give the citation—I will not look for it now but I can give the citation when I see the transcript*— where comparable data were supplied for Rhode Island and Massachusetts, although not covering completely the same period: for Rhode Island (a state without the death penalty) for the years 1896 to 1927 and for Massachusetts for the years 1896 to 1916. In Rhode Island there were altogether 211 persons indicted for murder; of those 26 were convicted of murder in the first degree; 39 were convicted of murder in the second degree; and 66 were convicted of manslaughter. There were other dispositions such as committals for insanity, and so on, which we do not need to go into. What is interesting is the relationship of the figures of first degree and second degree murder and of manslaughter convictions. In Massachusetts, during 1896 to 1916 there were 405 persons indicted for murder; 23 were convicted of murder of the first degree which meant a mandatory death sentence; 150 were convicted of murder in the second degree which meant a mandatory life sentence; 81 were convicted of manslaughter. I think that this might be an indication of juries' deliberately convicting persons of murder in the second degree when they are unwilling to see the death penalty imposed even though the facts might merit a conviction in the first degree. In Rhode Island the figures would seem to suggest that there is less unwillingness to commit for first degree murder since the proportions are so much closer, 26 to 39, as compared 23 to 150. I doubt that, objectively seen, the types of murder were proportionately so different in these two nearby states. For the volume of the Annals to which reference has been made, the volume on Murder and the Penalty of Death—a Boston attorney, Mr. Herbert B. Ehrmann, prepared an article on the death penalty and the administration of justice and he uncovered some very curious data. He studied the disposition of capital cases in Suffolk County, which includes Boston, and Middlesex county which lies northwest of Boston. In Suffolk county he found that 3·9 per cent of those accused of capital crime were convicted of murder in the first degree, 20·2 per cent were convicted of murder in the second degree, and 30·4 per cent were convicted of manslaughter. In Middlesex county, however, 16·8 per cent were convicted of murder in the first degree, 20·4 per cent—a figure not much larger—were convicted of murder in the second degree, and 26·4 per cent were convicted of manslaughter. He says:

> Explanations may be offered for these startling differences. Suffolk contains a larger percentage of more recent immigration; its racial, religious, and ethnic proportions of population vary substantially from those in Middlesex; its residents, on the whole, are on a lower economic level; they are less suburbanite; there is a tradition of "hanging" prosecutors in Middlesex. The very nature of these explanations, however, indicates the complexity of the problem. If citizens of the same state, living in adjoining counties, operating under the same administration of justice, differ so drastically in their attitude toward the death penalty, how is it possible to generalize for an entire state or nation? He also gives some data for six other counties. They look to me as if they were mostly in the western part of the state. There

* H. A. Phelps, "Effectiveness of life imprisonment as a repressive measure against murder in Rhode Island," Journal of the Amer. Statistical Assoc. 23: 174-81, March Supplement, 1928.

during the same period, 1925-41, out of 129 indictments for murder, 3 persons were convicted of murder in the first degree, 56 were convicted of murder in the second degree, and 23 were convicted of manslaughter. Again, those counties seem to follow more the pattern of Suffolk county rather than of Middlesex county. I am not sure that I have anything else to offer on that particular point.

Q. Do you think that it will be possible for the committee to find statistics which would indicate the percentage of murder convictions in which the capital sentence has been awarded and the percentage where life imprisonment has been awarded?—A. Oh, yes. I think so.

Q. Professor Sellin, I come back again to the first question I asked, and I invite your further comments on it, because I am somewhat concerned about any difference which may exist between your conclusions based upon statistical material you presented yesterday and the conclusions of the United Kingdom royal commission on capital punishment. This time I would like to direct your attention to paragraph 65, appearing on page 23 of the United Kingdom report, and also to the concluding sentence of paragraph 64, also on page 23:—

> We agree with Professor Sellin that the only conclusion which can be drawn from the figures is that there is no clear evidence of any influence of the death penalty on the homicide rates of these states, and that, "whether the death penalty is used or not and whether executions are frequent or not, both death penalty states and abolition states show rates which suggest that these rates are conditioned by other factors than the death penalty".

It is my understanding that you went rather further yesterday in your interpretation of the statistics, and I wondered if you would indicate what extension you precisely made in your testimony?—A. I do not recall offhand to what extent I went further than that. When it comes to the study of the deterrent factor of the death penalty, I have endeavoured to keep rather closely to the statistical evidence, because I do not have other evidence of a nature that I would consider probative on the particular question. Do you recall any specific statement that I made yesterday.

Q. I do not want to put words into your mouth.

The CHAIRMAN: It is all right if you do. We are not in a court of law.

Mr. BLAIR: I think that your statement was to this effect, that statistics might or might not be conclusive, but they did indicate that the question as to the advisability of retaining the death penalty had to be determined upon other grounds.

The WITNESS: Yes, that is true. In so far as I can find no statistical support for the claim that the abolition of the death penalty generally and regularly causes an increase in homicide rates or that its reintroduction causes a decrease, I would be compelled to say that statistics prove that there is no relationship between those two facts. Either one of these things might occur, that is an increase or a decrease, in this or that particular state. It is obvious that that is true, but, if we examine the situation in each instance, we discover that there have arisen peculiar circumstances and conditions connected with social and economic life, population changes, the administration of justice, the presence or absence of organized criminality, or change in such forms of behaviour and so on, which seem to account adequately for these increases or decreases. To assume that the death penalty was the special factor which caused these changes seems to me inadmissible.

Mr. BLAIR: In view of Professor Sellin's wide study of this matter. The first question relates to a suggestion given in your testimony to the United Kingdom Royal Commission that one of the fears expressed by people about

the result of the abolition of the death penalty is that it might result in the population taking the law into their own hands and lynching persons who had committed heinous crimes. I wonder if you would be prepared to comment on the reasonable prospects of such things occurring.

The WITNESS: There were no lynchings in the United States last year or the year before last. In recent years before that, lynchings have occurred at increasingly rare intervals. Twenty-five to 30 years ago there were many lynchings every year, but the rate of lynchings has gone down. The lynchings occur in the death-penalty states; they practically never occur in the north; they have been in the past primarily a southern phenomenon. They have reflected the relationships between the coloured and white races in the south. It is true that on occasion a white man has been lynched. That was more true a century ago or, shall we say, 75 years ago, than in more recent decades, but I do not know from the statistics and I have not studied the individual cases enough to know whether by "white" was meant native southern white or whether it meant white immigrant, someone who came from below the border or abroad.

Mrs. SHIPLEY: Or north of it.

The WITNESS: It might have involved somebody from the north of the United States occasionally; it is conceivable. Many of these lynchings have taken place, not because of murder but in connection with rape or accusations of rape and, in the more distant past, because a negro failed to step off the sidewalk or failed to observe some of the well-established relationships of master and servant or oldtime slave, which remained in people's minds and caused this reaction on the part of the public. Therefore, I think that the fact that these lynchings have greatly declined and now perhaps have permanently disappeared indicates a changing relationship between the races in the south, and greater attention paid to the civil rights and the protection of individual rights. Every year there have been lynchings prevented by the officials. If one reads the history of lynchings of some years ago it suggests that in many instances those who were entrusted with law enforcement, sheriffs and jail-keepers and so on, so sympathized with the mob that little, if any, attempt was made to prevent the removal of a prisoner from jail. It is curious that in many instances such lynchings occurred in the cases of prisoners who were indicted, were awaiting trial, and who undoubtedly would have been convicted and executed by the state, indicating again the character of the antagonism existing between these racial groups. Considering history, the disappearance of lynchings and the fact that the highest homicide rates are in these very states where lynchings were most frequent and that the death penalty existed in those states, I do not see that there is any reason to believe that if life imprisonment were substituted for the death penalty in Canada—because it is not a question of removing punishment for the crime—that would lead people to take the law into their own hands. They would obey the dictates of the legislature in this connection and consider that the new punishment would be properly imposed. There have, I assume, been persons convicted in Canada of murder who had their sentences commuted, and persons who were convicted of a lessed degree of homicide for some reason, in cases where the public regarded such leniency as an affront to justice, because public opinion demanded the death penalty, yet I have heard of no mob breaking into jails in cases of that type and attempting to lynch such persons.

The PRESIDING CHAIRMAN: Have they ever apprehended and prosecuted people who have committed lynchings?

The WITNESS: Yes, indeed, in recent years there have been many prosecutions of that type, and some convictions.

Hon. Mrs. HODGES: What is the sentence for lynching?

The WITNESS: It carries a discretionary death penalty in Alabama, Indiana, Kentucky, South Carolina, South Dakota, Texas and West Virginia. In some of the other states it would be considered murder in the first degree, and it would fall under the general definition of murder.

By Mr. Blair:

Q. Professor Sellin, when you were before the United Kingdom royal commission, I believe it was the chairman who asked this question, which occurs on page 673 of the minutes of evidence, question 8885. The question is:

> If it were true that the deterrent effect of the death penalty is greater in the case of vocational criminals than in the case of other sorts of murderers, then there might be a case for abolishing the death penalty in some countries but not in others, according to the type of murder which is most frequent. Do you know of any statistics which would show separately murders committed by criminals in the course of committing another crime and such murders as passionate murders?

A. I do not have any such statistics with me. I know that they exist, but I could not offhand give any in that connection.

Q. You are not able to enlarge upon that further at this time? Professor Sellin mentioned yesterday that more and more executions tended to be conducted in secret with very little publicity given to them, particularly in the United States. I wondered whether he was prepared to comment on the suggestion that we have had here that the execution of the death sentence has a detrimental effect on the community in which the execution occurs.—A. I do not believe that I can answer that question. The word "detrimental" would require a definition. I refer to the statement in which I reported on a study we made in Philadelphia to find out whether or not an execution had any effect upon homicides in Philadelphia. We selected five cases which were drawn from different years, cases where the crime had been committed in the city, and there had been great publicity about the crime. One of these cases was a bank holdup in which four young men were involved, in the northern part of the city. One of these men sat in an escape car several blocks away from the bank. After the successful robbery, the three offenders left the bank, but the alarm was sounded immediately and the police came upon the scene and evidently captured the man in the car and had the man under arrest before one of these other men who had a gun shot back at a watchman or policeman—I forget the details—who was shooting at them. As I recall it the distance was rather great and that this return of fire on the part of the bank robber was more accurate than one could expect, and probably accidentally so, but the person was killed. All of these four men were executed the same night, and in the leading evening paper in Philadelphia at that time, the *Evening Public Ledger*, a full first page spread was carried describing the offence, giving biographies of the men involved, and describing the execution, so that no one in Philadelphia who could read could possibly have escaped this dramatic display showing that these four men were executed. The other four cases were somewhat of the same character. The crimes were all spectacular and highly publicized. So, we said, let us see whether these executions had any effect on homicides in Philadelphia. We took the dates of these five executions, then we went to the coroner's office and to the police and we secured the dates of every homicide committed in Philadelphia for sixty days prior to and sixty days after the execution for each one of these five executions. We said to ourselves that obviously the death penalty would not deter people from committing negligent manslaughter; it has furthermore nothing to do with justifiable or excusable homicides. So, we eliminated these offences completely, and from the study of the other cases we tried to eliminate those that were

clearly manslaughter cases. I am sure we were not successful in actually arriving at only those cases which would, under the definition of the law, be regarded as murder in the first degree, but at least we made no conscious selection. Then we marked on the calendar, with the execution date in the middle, each one of these homicides. We then attempted to find out if there was any kind of lag or delay after the execution so that one might say that the impression of the execution had caused somebody—even if they were few—to desist, at least temporarily, from committing murder. We found nothing. In one instance, as I recall it, there was an increase of homicides immediately after the execution. In another case there was a decrease. In the others there was no evidence of either. I mention this study, which is the only one of the kind so far made, to indicate that by this method, assuming the deterrent effect would be greatest in the community where the whole affair was best known and where people associated with the case had relatives and acquaintances and an interest in the case, we discovered no observable effect of executions on the frequency of homicides. It may be that we had been unable to, shall we say, select cases in such a way that no error crept in because we had to include cases that we did not know would be murder in the first degree, but we did the best we could under the circumstances and came to this completely negative result.

By Mr. Blair:

Q. The other point I had in mind was, assuming there is a benefit from the observable reaction of the execution or the death sentence, have you any comment to offer on the countervailing force of morbidity among the public arising from undue interest in the execution in a community?—A. In view of the fact that there is little publicity given to executions—now I am speaking on the basis of American experience—I think that most people do not know when an execution occurs. When it comes to something like the execution of the two kidnappers of a year or two ago, when every daily paper carried pages full of the crime, certainly the public learned about the existence of the death penalty. Depending upon their attitude to the death penalty, I suppose they would sympathize with the decision to execute, or feel that it was a degrading thing to give all this publicity to the execution. But, how can one measure these effects? Here we are in the realm of opinion. I have one comment that may show you the effect of executions on prisoners. Henry A. Geisert published a book in 1939 entitled "The Criminal, A Study". It is a work by a Catholic chaplain at one of the mid-western penitentiaries. He says:

> . . . as far as my observations go, if arousing bitter feelings among prisoners is a deterrent to crime, the advocates of execution certainly have the right of way. And this resentment is pretty much the only sentiment I find aroused, except admiration for the 'dead game sport' when the press relates how the guilty man met his doom in a spirit of bravado. The pending execution of a criminal in New York caused a lively gamble among his friends in our prison, which was far removed from the place of execution . . .

Remember that he is speaking of a mid-western penitentiary.

> Wagers were laid regarding the courage wherewith he would go to his death. Following the day of execution, the papers were minutely scanned to learn which opinion won. Again, while the strength or weakness with which a man faced this dreadful ordeal constituted about the only object of intense interest among our prisoners, yet they resented the execution of a fellowman as brutal butchery. A man who bravely meets death on the scaffold or in the electric chair, becomes a heroic figure among a vast horde of criminals, if my experience may act as a guide.

Hon. Mr. ASELTINE: Mr. Chairman, yesterday I was at the end of the line and I had to leave before I had an opportunity of asking any question. This morning I also appear about the end of the line and, as a consequence, most of the questions I have, have already been put. But, there is one matter that I would like to have dealt with. That is, in Canada, if a man commits murder, he knows if he is convicted he is going to suffer the death penalty. Now, in the United States, a man can be convicted of first degree murder in which case he suffers the death penalty.

The PRESIDING CHAIRMAN: Not in all states.

Hon. Mr. ASELTINE: In cases where it is mandatory. But, he can also be convicted of second degree murder. We have not in this country, as far as I know, anything of that nature at all. It seems to me that when a man in the United States contemplates the commission of a murder he has more than a 50-50 chance of getting a life sentence and not suffering the death penalty at all. Therefore, I cannot see that the figures which have been presented to us by the professor have very much bearing on the situation we have in Canada at all.

The PRESIDING CHAIRMAN: Is that your question?

Hon. Mr. ASELTINE: Yes, I would like him to comment on that.

The PRESIDING CHAIRMAN: It is more of a statement.

Hon. Mr. ASELTINE: He has presented certain graphs and figures, and I would like him to comment on what I have stated. I will put it as a question. Do the conditions in the United States not vary so differently, or so considerably from what they are in Canada, that the figures which you have given us and the graphs which you have appended cannot apply to any very great extent in this country?

The WITNESS: I am afraid that I do not know enough about Canada to make a comparison because my studies have been entirely limited to the United States and a few of the European countries. I have presented no figures whatsoever from Canada, nor have I enquired into the effect of the death penalty in Canada. I would have to ask a great many questions myself before I were able to answer that statement.

Mr. FAIREY: I was going to ask some questions following the questions asked by Mr. Fulton. This may have been asked when I was not here. Would the professor like to comment on the statement made by Chief Mulligan of Vancouver, who appeared here, when he expressed concern about the possibility of the abolition of the death penalty and its effect upon the arresting officers. He said that he felt that officers in the discharge of their duties—

The PRESIDING CHAIRMAN: We did discuss that yesterday at great length, but perhaps Professor Sellin would like to make a further comment.

The WITNESS: I can only add one thing in regard to that. A few years ago when Austria abolished the death penalty some of the strongest arguments presented for abolition of the death penalty were presented by the police of Austria because they said: We feel, if there is no death penalty, there will be no necessity for a prisoner to attempt to kill an officer in order to stop being arrested. This, in a sense, is also based on the assumption of the great deterrent effect of the death penalty. In that respect the police officers of all nations seem to agree. But, the Austrian police did not take the attitude of the British police, for instance, before the Royal Commission on Capital Punishment. When you think of the countries that have abolished the death penalty in Europe, they do not seem to be afraid that as a result of it more policemen are going to be killed. I think these matters are tied up greatly with the whole cultural setting and the condition of the nation.

Mr. SHAW: It was impossible for me to be here yesterday afternoon and I had intended to ask this: Professor Sellin, I was intrigued by this set of graphical diagrams, I to VII, indicating the homicide death rates in American states; in some states there were death penalties and in some there were not. With respect to this gradual decline in the incidence of death rates, have you indicated what, in your belief, are the reasons for this constant decline as shown through all those diagrams? Would you comment on that?

The WITNESS: I do not know if I commented on the specific reason for it and I am not sure I could give more than an extremely general answer. I think, in part, there have been changes—improvements—in our economic and social conditions in the United States over a period of time now which are responsible for the result you mention.

The PRESIDING CHAIRMAN: We read statements made all the time in newspapers that crime is on the increase. That is a question I was going to ask yesterday.

Mr. SHAW: You referred to the general improvement in economic and social conditions. Could you think of any other factors that stand out as a possible reason for this? Would you agree then that maybe better law, or stricter enforcement of the law, might be a factor?

The WITNESS: I think that on the whole we now have less organized crime in the United States than we had, obviously, in the 1920's or the 1930's, and the highest crime rates tend to be pretty well in the larger cities, so that the larger the city the higher the crime rate, not necessarily so much in criminal homicides as in robbery and burglary offences, for instance. And, remember that a great many of what we call murders occur in connection with breaking and entering, holdups, and so on, so that if you have a very high crime rate for robbery there is a likelihood, I should think, that the proportion, or at least the actual number of killings occurring in connection with robbery, would be found where you have a high robbery rate and burglary rate, and the big cities lead in this respect.

In so far as there has been a decline in that type of crime, it is bound to be reflected in the homicide rate somewhat. Then, of course, since homicide death rates include all the gangster killings, when there is a decline or a change in the nature of organized crime that it is bound to be reflected in the homicide rates. Since the depth of the depression and the end of the prohibition era, there has been a downward trend in the homicide rate, as reflected in these statistics. You will note also from the diagram something to which I did not call attention yesterday, that while in each single group of states the level of the rate is about the same, there are differences in that level. When you take, for instance, Michigan, Indiana and Ohio, the level runs somewhere between 3 per 100,000 and 10 per 100,000, while in Maine, New Hampshire and Vermont it runs somewhere between ½ per 100,000 and 3½ per 100,000. But, while the level varies, the trends are about the same.

The PRESIDING CHAIRMAN: Ladies and gentlemen, would you wait for a moment while we have a short session *in camera*? We will meet this afternoon in Room 368, our regular meeting room, at 4.00 p.m. There are other members of the committee who have questions to submit, and I am not going to deprive them of that opportunity, if they will reserve their questions for four o'clock.

The committee proceeded *in camera*.

AFTERNOON SESSION

The PRESIDING CHAIRMAN (Mr. Brown, *Essex West*): This morning we were discussing capital punishment with Professor Sellin. I believe that Miss Bennett had a question to ask.

Professor Thorsten Sellin, Chairman, Sociology Department, University of Pennsylvania, recalled:

Miss BENNETT: Thank you, Mr. Chairman. Professor Sellin, I was greatly disappointed that I was unable to hear your discussion yesterday morning but, having that in mind and your comments this morning, do you think that in the development of our society we have arrived at the point where we should undertake the experiment of the abolition of capital punishment?

The WITNESS: I should think so, considering your low homicide rates. Many countries with higher homicide rates have abolished the death penalty, but it is obvious that this is a question which depends on public opinion in the country. If a larger proportion or, shall we say, if the majority in a country are not convinced that it is wise to abolish the death penalty, the only way is to convert the majority into a minority by public education. I suspect that the vast majority of people who hold opinions either for or against the death penalty do so on grounds which are not supported by any real evidence, but by traditions which they unquestioningly assume to be right. I do not know how far a legislative body can go in educating public opinion. There certainly have been instances when legislatures have themselves been convinced of the desirability of a policy in any particular field and have proceeded to adopt it, taking steps to inform the public of the reasons for it, presenting the arguments for the change in policy and expecting that that would change the opinion of the public.

The PRESIDING CHAIRMAN: Does any other member of the committee have a question? Mr. Blair.

Mr. BLAIR: A further question arises from the question asked by Senator Aseltine this morning. In the statistical tables and graphical diagrams presented yesterday, comparisons were made between states which had abolished the death penalty and states where the death penalty was retained. Senator Aseltine posed the question as to whether the fact that, in most of the states with the death penalty, its award was discretionary would have had any effect on those figures, and whether there might have been a lower rate of homicide in those states had the death penalty been mandatory. I wondered whether you would like to comment further on those tables.

The WITNESS: Let us look again at the diagram which compares Rhode Island, Massachusetts and Connecticut for the period 1920-48. Rhode Island has no death penalty and Massachusetts and Connecticut, being states of a rather similar character in so far as industry, population and so on are concerned, had a mandatory death penalty. If one observes the curves of the homicide rates for those three states, it would seem that one would come to the conclusion that they moved, all three of them, in the same general direction and within the same approximate limits. Now, if one takes the states of Michigan, Indiana and Ohio, Michigan having no death penalty and Indiana and Ohio having a discretionary death penalty, you get the same general picture. In all three states you have the same general trend and level of the homicide rates.

Hon. Mr. ASELTINE: In Canada we have no second degree as you have in the United States. That is what is bothering me.

The WITNESS: These are only general homicide death rates. Whatever the degrees may be, whatever the actions of the court may be in assessing death penalty or life imprisonment, where they have discretion to do so, and in states where they had no discretion to do so, as in Connecticut and Massachusetts, nevertheless the rates move in a manner which suggests that the death penalty had nothing to do with any change in the homicide rate. I should think that these rates suggest that homicide is related to something else and that one would have to study what has happened in the economic and social field, urbanization changes, the existence of peculiar conditions during certain periods to account for now an upsurge and now a drop in the rates.

Mr. SHAW: It was agreed earlier, was it not, that those graphical diagrams would be included?

The PRESIDING CHAIRMAN: They will follow the statement on capital punishment to be appended to the evidence. Are there any further questions? If not, shall we proceed to the question of corporal punishment?

CORPORAL PUNISHMENT

You have before you, or at least you have had placed in your mailboxes, a brief prepared by Professor Sellin on the question of corporal punishment. If it is your pleasure, I will ask Professor Sellin if he would either read or deal with this brief in such manner as he may deem fit.

The WITNESS: I think that, in order to save space in your proceedings, it would be simple for me to read this statement and in connection with the diagram explain perhaps a little more fully at that point what the diagram means.

May I say, first of all, that I have made no particular study of corporal punishment. We do not have it in the United States as a punishment for crime except in the little state of Delaware, which is one of the smallest states of the union. We no longer have it in penal institutions as a punishment for disciplinary offences. I am speaking of flogging in this particular connection. There may be other punishments that might be regarded as corporal and occasionally found in some institution which is not regarded as modern but an inquiry made a few years ago by questionnaire and which brought replies from some 50-odd prison wardens in the largest institutions of the country, the results of which were published in an issue of the "Prison World", a magazine issued by the American Prison Association, revealed that none of these institutions at least used whipping in connection with any disciplinary punishment. The only reason why, at the time when I was asked to come up and talk to you especially about capital punishment, I suggested that I would be glad to discuss corporal punishment a little was that I noticed in your bibliography no reference, and in the testimony before your committee no reference to the only two research studies that I know of which deal with the question of the deterrent effect of flogging. The only purpose for preparing this statement, was to bring that information before you. I do not, therefore, claim that I can discuss corporal punishment in general in any of its various aspects with any great profit either to myself or to you, but these two studies may be of interest to you.

In discussing corporal punishment, I propose to deal only with two problems. It is claimed by those who support this punishment that it is an effective deterrent to further criminality on the part of those who have been whipped. It is also said that the fear of being subjected to corporal punishment deters people in general from the commission of offences which carry that penalty. These arguments illustrate the two aspects of deterrence, the individual and the general.

Research on either of these aspects is extremely rare. Fortunately, however, there are two interesting studies, which are rather recent and deal directly with the two problems mentioned. One of them was made by Professor Robert Graham Caldwell about ten years ago, when he was a member of the faculty of the University of Delaware; the other was published in 1939 by Mr. E. Lewis-Faning, of the statistical staff of the British Medical Research Council. Professor Caldwell was in a unique position to study the history and the effects of the whipping post in the state of Delaware, the only state of the Union which has retained it for a number of common law felonies. His Book, Red Hannah. Delaware's Whipping Post, is the first and only adequate study of this archaic form of punishment for crime in Delaware. (1) Mr. Lewis-Faning's study deals with the relationship between the rate of robberies with violence, known to the police of England and Wales, and flogging as a punishment during the period 1864-1936. So far as I know it is the only statistical study of its kind based on English experience; it was prompted by certain statements made in the report of the so-called Cadogan Committee, a departmental committee which examined the question of corporal punishment in England and issued a report in 1938. I shall present the findings of these two researches as briefly as possible.

1. How do prisoners who have been punished by whipping behave afterwards?

Deleware's statutes contain twenty-four crimes which may be punished by whipping. In all but one of these offences, wife-beating, a prison sentence must also be imposed, if corporal punishment is used; the wife-beater may instead have to pay a fine. At least one of the crimes is archaic—wrecking—but the others include such offences as breaking and entering a dwelling at night with intent to commit a crime other than murder, rape or first degree arson; certain kinds of arson; robbery, first offence; grand larceny, etc. Seven of the offences have been added to the statutes at different times between 1901 and 1925, and 32 whippings (24 of them wife-beaters) have occurred for four of these crimes between 1900 and 1942, the last year for which data are available in the Caldwell study.

During 1900-1942, there were 7,302 persons convicted in the three counties of Delaware of crimes for which whipping might have been ordered, but only 1,604 (22 per cent) were whipped. Actually these 1,604 cases represented 1,320 persons because 169 were whipped twice (12·8 per cent), 41 three times (3·1 per cent), 7 four times and 3 five times. Eleven hundred whippings were administered for larceny, 287 for breaking and entering, 172 for robbery and 45 for other offences. Of those whipped 68·1 per cent were Negroes, 24·7 per cent whites and 7·2 per cent of unrecorded racial origin.

It is interesting to note that in spite of the fact that seven corporal offences were added to the statutes during the period studied, the courts evidently changed their attitudes towards the penalty considerably. During the first decade 1900-09, 84·2 per cent of those convicted of robbery were actually whipped; 63·1 per cent of those convicted of breaking and entering, 56·1 per cent of those convicted of larceny, and 30·3 per cent of those convicted of other corporal crimes were similarly punished. During the last decade, 1933-1942, however, the corresponding percentages were 35·9, 12·9, 6·0 and 9·5. From 1900, when 70 per cent of those convicted were whipped to 1942 when only 6·7 per cent were so punished the drop is extraordinary and can only mean an increasing reluctance to inflict this punishment. While I have no data for the years since 1942, the rarity of Philadelphia's newspaper notices announcing whippings in Delaware suggests that this trend has not changed. A part of the reason may be an act of 1941 which eliminated corporal punishment for petty larcency (goods of under $25 in value).

(1) See also his "The deterrent influence of corporal punishment upon prisoners who have been whipped," Amer. Sociol. Review 9:171-7, April, 1944.

Dr. Caldwell examined the charge sometimes made that negroes were discriminated against in the use of corporal punishment. He investigated the race of the 510 prisoners who in 1940-42 were convicted of crimes for which corporal punishment was a discretionary penalty and found that 3·5 per cent of the whites and 14·5 per cent of the negroes were whipped. He pointed out, however, that the proportion of recidivists was much higher in the negro group and that this might well account for the seeming discrimination.

The part of this research which is of greatest concern to us is the study of the criminal careers of prisoners who have been whipped. It was found impossible to cover in that study the entire period examined or the entire state of Delaware; records were so defective that only in New Castle county, in which the city of Wilmington is located, could adequate information be secured and only for the period beginning in 1920. In order to test the effect of the lash on prisoners who had been whipped the records of prisoners so punished from 1920 to 1939 inclusive were followed through the year 1942. Dr. Caldwell located data about the 320 different prisoners, all of whom had been whipped at least once; 73·8 per cent of them were negroes.

The conclusions drawn by Dr. Caldwell from this part of his research may be quoted from his work:

"(1) Criminals who were convicted of crimes for which they might have been whipped but were not, tended to be better educated, younger, less hardened in criminal habits, more often white, and more often found guilty of crimes against property (rather than crimes against the person) than those who were whipped.

(2) The whipping of criminals did not effectively deter them from again committing a crime. Not only were many such persons (61·9 per cent) after their first whipping convicted of crimes, but a large number of them (48·8 per cent) were found guilty of major offences. Moreover, a high percentage (41·9 per cent) were convicted of crimes for which the laws of Delaware prescribed the penalty of whipping, and many (30·9 per cent) were found guilty of having committed such crimes in Delaware, and not in some neighbouring state.

(3) The subjection of criminals to more than one whipping was not effective in changing their criminal habits. After having received at least two whippings, many (65·1 per cent) were again convicted of some crime, and a large percentage (57·1 per cent) were found guilty of major crimes.

(4) Negroes who had been whipped showed a greater tendency to continue their criminal careers than did whites who had been similarly punished. After their first whipping, 65·3 per cent of the negroes, as compared with 52·4 per cent of the whites, were again convicted of some crime. . . .

(5) The use of imprisonment as a punishment for those who might have been whipped but were not proved ineffective in deterring them, after their release from prison, from again committing crime. Of such persons who were imprisoned during 1928, 1932, 1936 and 1940, 61·1 per cent were again convicted of some crime.

(6) Probation was used with better results than imprisonment in the handling of some of those who might have been whipped but were not. Of such persons who were placed on probation during 1928, 1932, 1936 and 1940, 37·5 per cent were again convicted of some crime.

(7) The amount of recidivism was greater among those who had been whipped (66·8 per cent of those whipped during the period 1920-39, inclusive, and 68·5 per cent of those whipped during 1928, 1932, 1936 and 1940) than it was among those who might have been whipped but were not (52·3 per cent of those convicted in 1928, 1932, 1936 and 1940) and among those who might have been whipped but instead were only imprisoned (61·1 per cent of

those convicted in 1928, 1932, 1936 and 1940); and there was the least amount of recidivism among those who might have been whipped but instead were placed on probation (37·5 per cent of those convicted in 1928, 1932, 1936 and 1940).

It must be recognized, however, that this comparison is somewhat obscured by the combination of a number of factors. There was, in the first place, the element of selection in the processes of apprehension, prosecution and punishment. Not all persons who committed crimes for which they might have been whipped were apprehended and prosecuted. It may be that the most skillful and hardened in crime eluded the law enforcement agencies, and so their activities were not reflected in the police, court and prison statistics. Furthermore, there was the tendency, as revealed by the examination of the prisoners' criminal records, of not whipping the better trained, the younger, and the less hardened in crime. This tendency possibly accounts to some extent for the lower recidivism among those who were not whipped.

In addition, it should be remembered that those who were whipped also received terms of imprisonment as part of their sentence, so there is the possibility that both these methods of punishments affected the subsequent behaviour of the prisoners. The problem is further complicated by the fact that some of those who were whipped were not only imprisoned but also fined, and that many of those who were whipped had previously been imprisoned.

Finally, there were other more subtle factors, many of which were not involved in the processes of law enforcement, that greatly affected, in varying degrees, both those who were whipped and those who might have been whipped but were not. The love of dear ones, the hatred of enemies, the encouragement of friends and relatives, the security or insecurity of economic and social position, the attitudes of guards and wardens, and many other influences played an unending stream upon the lives of those whose criminal careers were statistically analyzed in this study.

All this, of course, is just another way of saying that human beings do not live in a statistical vacuum and that each of us is a product of a multiplicity of environmental and hereditary influences. Even a slight insight into these congeries of human relationships could have been achieved only by an intensive case study of each prisoner. Nevertheless, despite the complexity of the problem, the available statistics do seem to indicate that neither whipping nor imprisonment effectively deterred those who had been so punished from again committing crimes . . ." [1]

We have seen that Delaware uses the whipping post chiefly in dealing with robbery, breaking and entering, and larceny. I hesitate even to cite statistics of these crimes known to the police in Delaware and in contiguous states, because of the great differences between these states. Delaware's one large city has only a little over 100,000 inhabitants and the other four Delaware cities that report data for Uniform Crime Reports, issued by the FBI have fewer than 10,000 each. Around the state lie the more populous and urbanized states of Pennsylvania, New Jersey and Maryland, all of which have metropolitan cities and different social and economic conditions. In 1950, however, comparing Delaware's robbery rate with that of Maryland—these are urban rates—the former was 36·3 per 100,000 population and the latter 49·0. The burglary-breaking and entering rates were, correspondingly, 357·5 and 240·7, and the larceny rates 1,013·9 and 566·7. If we look at the Delaware rates alone and consider that the city of Wilmington is the chief source, we find that the rates for these three crimes are higher in Delaware than in the group of 123 cities in the United States which have a population of between 50,000 and 100,000 inhabitants, but, except for the larceny rate, lower than the rates of the group of 67 cities with between 100,000 and 250,000 inhabitants.

(1) Robert Graham Caldwell, *Red Hannah, Delaware's Whipping Post*. xi, 144 pp. Philadelphia: University of Pennsylvania Press, 1947; pp. 80-82.

New Jersey has much lower rates for these three crimes than does Delaware and Pennsylvania rates are lower, too, except for robbery. For the reasons already stated, none of these comparisons can be considered as of any significance for testing the value of the whipping post in Delaware.

II. *Does flogging have a deterrent effect on the general population?*

After its examination of the use of corporal punishment in England, the Cadogan committee recommended that it be abolished. The committee recognized that "a sentence of corporal punishment is clearly not reformative, and its retention could therefore be justified only on the ground of its value as a deterrent—either in preventing the individual offender who suffers from it from repeating his offence, or in discouraging others from committing similar offences." "It would be out of accord with modern theories of penal treatment to justify the retention of any form of punishment merely on retributive grounds." [1]

The conclusions of the committee were based on hearings as well as on studies of the trends of criminality punishable by flogging and studies of 440 persons convicted of robbery with violence during 1921-30 inclusive. The subsequent conduct of these persons did not show that those who were flogged did any better—indeed, the committee felt that they did worse—than those who were not flogged.

Mr. Lewis-Faning, in the article to which reference was made at the beginning of this statement, examined the findings of the committee in the light of modern statistical principles and, besides, made a study of his own of the crimes of robbery with violence in England for the period 1864-1936, in order to determine if the rates for this crime were affected by corporal punishment.

With respect to some of the generalizations about flogging at which the committee arrived ("There is a tendency to make greater use of corporal punishment in the case of persons in the age groups 21-30 and 31-40"; "There is a slight tendency on the part of the courts to impose longer sentence of imprisonment in cases where corporal punishment is not ordered"; "In cases where the offender has a more serious criminal record corporal punishment was imposed more freely"; "Corporal punishment may be a less effective deterrent for persons in the higher age groups"; "The subsequent record of those sentenced to corporal punishment is worse than that of those not sentenced to corporal punishment, except as regards those who previously had the worst criminal record.") Mr. Lewis-Faning, after applying standard tests of statistical significance to the data upon which these generalizations were based arrived at the conclusion that "the only statistical conclusion come to by the committee the validity of which is beyond question is that corporal punishment is imposed more freely on persons having a previous record of serious crime."[2] All other conclusions arrived at by the committee were not statistically significant and could have been due to chance.

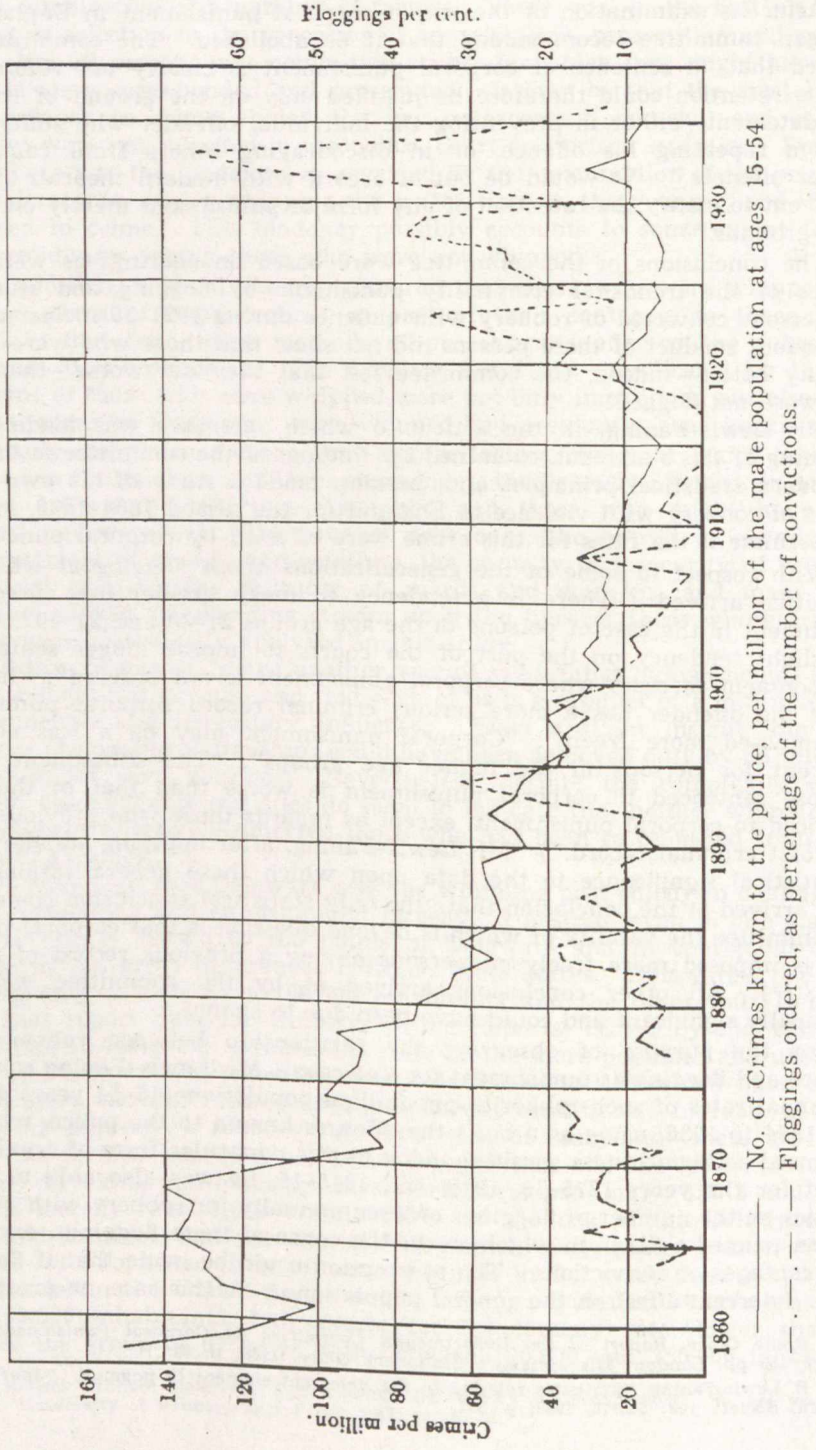
For the purpose of observing the relationship between robbery with violence and flogging as punishment for this crime, Mr. Lewis-Faning computed the annual rates of such robberies per million population (15-54 years of age) from 1864 to 1936, using as a basis the offenses known to the police, which he recognized as furnishing a sensitive index to this particular form of criminality. Expect for the years 1875-76, 1910, and 1915-16, he was also able to secure statistics on the number of floggings ordered annually for robbery with violence and constructed a diagram which shows the curve of these floggings, expressed in percentages of convictions. The assumption could be made that if floggings have a deterrent effect on the general population or, in this case, on prospective

[1] Home Office, *Report of the Departmental Committee on Corporal Punishment.* (Cmd 5684) vi, 153 pp. London: His Majesty's Stationery Office, 1938; p. 60.

[2] E. Lewis-Faning, "Statistics relating to the deterrent element in flogging. "Jour. Royal Statistical Society 102: 565-78, 1939; p. 571.

robbers, the greater the percentage of convictions in which floggings were ordered, the greater would be the risk of being flogged and, therefore, the greater the hesitation before engaging in such a crime.

The accompanying diagram graphically portrays Mr. Lewis-Faning's results.



I call your attention to this diagram which is before you; it appears in the article we are discussing.

The PRESIDING CHAIRMAN: Is it agreed that the diagram become part of the record at this point?

Agreed.

The WITNESS: You will note that the heavy black line shows the number of crimes of robbery with violence known to the police, per million of the male population at ages 15 to 54. It is a crime which is peculiar to males. The lower dotted line you notice is broken in two or three places which is due to the absence of figures for a total of five scattered years. It shows the proportion, or the percentage, of sentences for robbery with violence in which floggings were ordered. You will note the curious fact that from the 1870's on, except for a peak in 1894, the proportion of flogging sentences to convictions was very low, and that beginning with about 1920 these proportions begin to rise very greatly, although previous to that the crime rate for robbery with violence had been constantly declining, Mr. Lewis-Faning, therefore states:

> During the period 1864-1936, there is no evidence that the infliction of corporal punishment has in any way acted as a deterrent to prevent others from committing... (robbery with violence). Rather, does it appear that there is no relation at all between the number of floggings and the amount of crime in the same year, the previous year or the subsequent year. Broadly, the amount of this type of crime has fallen from 70 cases per million of the population in the 'sixties to less than 20 cases per million since 1921. The amount of flogging, on the other hand, which before the war (the first world war) only once, in 1894, exceeded 20 per cent of the number of persons convicted, has since 1921 only three times been below this figure. Five times has it been between 30 and 40 per cent and twice between 55 and 65 per cent. This seems to indicate that as robbery with violence has decreased in frequency, so it has become more detestable and has been treated with more severity. (p. 578).

And, as in answer to the committee's view that retribution cannot be defended as an aim of corporal punishment, Mr. Lewis-Faning adds, "Far from being imposed for its deterrent element which it has never possessed, in reality, and to a greater degree than before the war, it is being imposed as a retributive," the very reason which the Cadogan committee said was not admissible. The committee had come to the conclusion that only if flogging could be proved to have deterrent value could it possibly be justified.

Ten years after the publication of the Cadogan report, England abolished flogging as a punishment for crime.

My own view of corporal punishment was expressed in a foreword to Professor Caldwell's book, which said that the use of the lash "rests on the belief that wrongdoing should be paid for by physical pain", taken out of the culprit's hide; that physical suffering is a correction that even the simplest mind can understand and try to avoid in the future; or that it is a kind of solvent cleansing the spirit and rendering an evil mind good. Thus the ingredients of vengeance, deterrence, and reformation have been blended with a dash of expectation that the general public, knowing the threat of pain, would desist from violations of the law.

"Whipping is still occasionally defined by the law of a few nations as a punishment for crime, but in modern times the tendency toward its abolition has been marked. Modern psychology has punctured the belief that physical violence practised on a person can render him a better man; in deed, it has proved that it usually makes him worse. And if a man is not made better by

punishment, his future actions will hardly be governed by it. The deterrent power of the lash is therefore absent. Nor has any evidence been adduced to show that whipping frightens others into law obedience. Such an effect can hardly be postulated when one considers the nature of this penalty today. Finally, it has been alleged, and is probably true, that whipping has a brutalizing effect on those who inflict it. The beating of any defenseless person cannot but leave a mark on the executioner.

"What then remains? Vengeance. If the whipping post neither deters nor reforms... nor scares the prospective offender, its only purpose is to exact vengeance, a sordid motive for punishment which has no place in a democratic penal code. As if conscious of this, the legislator usually hides the whipping post inside the walls of the prison, safe from public gaze, like the family skeleton in the closet.

"Enlightened democracies recognize today that penal legislation must protect society against crime by returning the offender to society better able to resist the pressures and temptations of the workaday world, and that if this cannot be done by any known methods of treatment he must be given prolonged care until he can be released without danger to his fellowmen. In this scheme, sympathetic understanding and treatment must govern, not vengeance. The whipping post belongs to the trapping of a past age or to the tyrant's arsenal of weapons. Veneration for tradition and the cult of the antique have no place in modern penal law any more than in the workshop, the laboratory or the farm. The law must keep abreast of the growth of scientific knowledge and the demand for efficiency and positive results that stamp our material culture."([1])

The PRESIDING CHAIRMAN: That is the presentation by Doctor Sellin. Have the committee members any questions?

Mrs. SHIPLEY: Before we start the questions, could I have a word defined? When Professor Sellin uses the term "flogging" I am assuming that he means what is called strapping, paddling, lashing, all forms of punishment of that kind?

The WITNESS: That is correct. I used the term "flogging" or "whipping" because it is called whipping in Delaware and flogging in England, and those are the only two states with which I dealt in this report.

By Hon. Mr. Aseltine:

Q. Has the professor anything to say about flogging prisoners after they are committed to a penitentiary, for infractions of the rules?—A. It is disappearing in the United States.

In the late thirties, it was reported in the volume on Prisons of the Attorney General's Survey of Release Procedures that whipping with the strap or the lash was used in seventeen prisons. Most of them were in southern states (Alabama, Arkansas, Delaware, Kentucky, Louisiana, Mississippi, Tennessee, Texas, and Virginia), but it was reported also in use in some road camps operated by the San Quentin prison in California, in two of the Colorado prisons, in one institution in Indiana and in two in Missouri. Two years ago, a questionnaire was sent by Professor Negley K. Teeters of Temple University, Philadelphia to the wardens of all the 68 state and Federal penitentiaries. The results were published in the Prison World for May-June, 1952. Fifty-eight institutions in thirty-eight states replied to the questionnaire. One warden in an unidentified state confessed to using flogging as a disciplinary punishment, but among those who failed to reply at all were the wardens of three southern states already mentioned. Furthermore, it is possible that some of those who replied failed to tell the truth.

Q. You have no statistics?—A I have no statistics on that.

([1]) Caldwell, op.cit., pp. vii-viii.

The PRESIDING CHAIRMAN: I think we have evidence before this committee about the penitentiary at Kingston, where in one year there were a large number of administrations of corporal punishment but, due to certain administrative changes and improvements in the prison methods, that has almost disappeared, until today there are very few administrations of corporal punishment.

The WITNESS: It has been found by American prison administrators that the deprivation of privileges, loss of good time, solitary confinement for a brief time and reduction in grade are more effective ways. There is nothing that a prisoner hates to lose so much as alleviations of prison life. May I add that the Standard Minimum Rules for the Treatment of Prisoners contain the following rule: "Coporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences". These Rules were drafted by a committee of the International Penal and Penitentiary Commission and were approved by the Commission at its final session in 1951. Since then they have been approved by both European and Latin American government delegates to regional conferences in Geneva, 1952, and in Rio de Janeiro in 1953, under the auspices of the United Nations.

Hon. Mr. ASELTINE: I have one more question. How many states of the union practise corporal punishment?

The WITNESS: Delaware is practically the only one. Maryland has retained it for wife-beating, but I have no statistics from Maryland. A few years ago the statement was made that it was very rarely used. Those are the only two states in the union that use whipping as a punishment for crime. That means that 46 states have abolished it completley, nor is it found in the federal code.

By Mrs. Shipley:

Q. I wonder, Professor, if you have any knowledge of states or communities where, when very young persons are accused of not too serious crimes, the authorities administering justice might advocate whipping—or I think I should use the term "spanking"—administered by the parents under the jurisdiction of an officer of the court?—A. I do not know that strapping, or whatever you wish to call it, has been in use and is still in use in some correctional schools in the United States, but so far as I know it is not used anywhere on order of the court.

Q. Without any commitment to an institution?—A. Where used, it is entirely for disciplinary purposes, for violations of discipline in an institution.

Q. Do you know of any cases where it has been administered and the child has not been committed to a correctional institution?—A. No. I do not suppose that there is a legislative session in the United States—maybe that is too broad a statement—a legislative year in the United States that somebody, somewhere, does not raise the question of the whipping post. Occasionally also some judge, let us say, thinks that it would be a very good idea if the whipping post were re-established. These are isolated voices that fall on deaf ears.

Hon. Mrs. FERGUSSON: I just wanted to ask Professor Sellin if he has any information on when corporal punishment was abolished in the different states. I do not mean in each of the 48 states, but was there a general trend to do that in the early 1900's, or before that or since that?

The WITNESS: I am afraid that I can give only a general statement about that. The movement abolishing whipping goes back, at least in the northern states, to long before the civil war. (Corporal punishments were abolished

in Pennsylvania as early as 1786.) It was retained longer in some of the southern states. It is curious, for instance, that in Delaware the pillory was not abolished until 1905. This one state has held on to archaic forms of punishment longer than any other state.

Mr. SHAW: What is the significance of the title of Professor Caldwell's book, "Red Hannah"?

The WITNESS: "Red Hannah" is the nickname that the Delawareans give to the whipping post.

By Mr. Blair:

Q. Perhaps you could tell us whether the whipping post is still in use? —A. The whipping post has not been abolished in Delaware, but whippings are becoming more and more rare. Courts are not imposing it with the same frequency.

Q. The prisoner is tied to a post?—A. Yes, there is an illustration here of a whipping. (Witness shows illustration facing page 56 of Professor Caldwell's book). This occurred in 1935, when an 18-year-old prisoner received 10 lashes. The illustration is reproduced from a newspaper.

Mr. MITCHELL (*London*): What kind of an instrument is that?

The WITNESS: It looks like a cat-o'-nine-tails.

Mrs. SHIPLEY: With knotted ends?

The WITNESS: No.

Hon. Mrs. HODGES: It has a longer handle than the one we have seen.

The PRESIDING CHAIRMAN: Does the administrator always dress up as he is in that picture?

The WITNESS: The warden of the institution does it, however he may be dressed.

Hon. Mrs. FERGUSSON: I saw the instrument they used in one of our penitentiaries, and they have a belt that they put over the man's back to protect his kidneys and something at the back of his neck. There does not seem to be anything like that there.

The WITNESS: No, there does not, so far as these pictures show. In chapter I of his book, Professor Caldwell refers to a case in 1945, giving the sentence and then describing the whipping. He says:

> Ten days later, about thirty persons, including several women, gathered in the yard of the New Castle County Workhouse to witness the public flogging of Harris and Palmer. Before each prisoner was whipped, he was stripped to the waist, his hands were shackled to the "post", and the sentence of the court was read. Warden Wilson administered the whippings, and Deputy Warden Wheatley counted as each of the ten strokes was well laid on the bare backs of the prisoners. Although the Warden kept his arm stiff at the elbow while applying the lashes, nevertheless great welts were raised on the bodies of the men, both of whom screamed and struggled during the whippings. The punishment was inflicted with the traditional cat-o'-nine-tails, which consists of nine leather cords, each a quarter of an inch wide and about two feet long, attached to a stick about eighteen inches in length. After the flogging the men were taken to the prison infirmary for examination and treatment.

Mr. BROWN (*Brantford*): What year was that?

The WITNESS: It was in 1945.

The PRESIDING CHAIRMAN: Have you any further questions, Senator Fergusson?

Hon. Mrs. FERGUSSON: No, thank you.

The PRESIDING CHAIRMAN: Mr. Winch?

Mr. WINCH: No.

The PRESIDING CHAIRMAN: Mr. Thatcher?

Mr. THATCHER: No.

The PRESIDING CHAIRMAN: Mr. Mitchell?

By Mr. Mitchell (London):

Q. Professor Sellin, the studies with which you have dealt in your brief seem to deal with a comparison of whipping and imprisonment and yet you pick the age groups 21 to 30, and 31 to 41, I think.—A. I do not know where you get those ages from?

Q. That was in the British report I think.—A. Your reference is to a conclusion to which the Cadogan committee came with respect to the effect of corporal punishment, a conclusion which Mr. Lewis-Faning finds has no statistical validity. The 440 prisoners studied by the Cadogan committee fell into no particular age group, and the prisoners studied by Professor Caldwell included every prisoner during the period 1920 to 1939 who was sentenced to be whipped by the court of Newcastle County, which means Wilmington and the immediate surrounding territory.

Q. Then it would appear that the greater number of floggings were ordered in cases of robbery with violence or armed robbery?—A. You are now speaking of England?

Q. Yes.—A. I inferred that from the fact that Mr. Lewis-Faning picked that particular crime to study, and glancing through the Cadogan Committee's Report I also gained the impression that it was robbery accompanied with violence which was most commonly punished by the courts in this manner.

Q. We have had several suggestions made to the committee, Professor Sellin, with respect to the use of some form of corporal punishment—caning has been mentioned or strapping—for offences by people that have been described as young hoodlums either after a period of probation and on a second offence, or perhaps even after an initial jail sentence. Would you care to give to the committee your views on the application of such a form of corporal punishment in connection with young hoodlums of an age say from 18 to 24?—A. I would say that being corporally punished would give them status among their fellow hoodlums, to use your term, because they had received the punishment and had stood up well under it. There is no assurance, that such a punishment would do more than inflict some temporary pain on them without doing any good. That kind of punishment always produces resentment at the indignity felt by the one being punished, and this would cancel any positive value that it might conceivably have. I think we have gotten away from the idea of using corporal punishment, as a result of the findings of modern psychology which indicate that it cannot be of any value whatsoever in dealing with criminals. It seems to me that if we want to succeed in reinstating people, who have committed crimes in the community, if we want to train them, reform them—if you please—we must use every device possible that is going to strengthen their good qualities and not make them worse. We are compelled to return practically all of them to the community. Most sentences are short and we need all the time possible in our correctional institutions or otherwise for the application of positive forms of treatment, rather than a negative form of treatment such as corporal punishment. I firmly believe that it is more likely to hinder the reformation of the individual than be beneficial.

Q. You do not feel then that an extension of the parole system combined with—where necessary—the imposition of a caning would have a better effect than simply the automatic sentencing of some of these embryo criminals to jail?—A. Do you mean in this instance, placing a person on probation?

Q. Yes.—A. Give him a caning and send him on probation rather than to prison?

Q. I am suggesting he be placed on probation on the first offence and on the second offence rather than being sent to jail, where he may become entrenched in his ways, that he be given a caning and sent back out into the world again?—A. I do not think that anybody wants to go to prison, and I should think that most offenders would prefer to take a few lashes and be free rather than be deprived of their liberty, if you were to give them the choice, but I take it that is not the question. The question is whether such a procedure would reform an offender; that I would seriously doubt.

Mr. MITCHELL (*London*): That is all.

By Mr. Boisvert:

Q. Professor Sellin, are you aware that in the United Kingdom there is a trend now to restore flogging as a deterrent to crimes of violence?—A. I have heard about it.

Q. Was it abolished in 1948?—A. Yes, by the Criminal Justice Act.

Mr. BOISVERT: That is all, Mr. Chairman.

Mr. SHAW: Although Professor Caldwell's book was written ten years ago and your foreword was written at the same time, the fact that you have quoted that foreword indicates that as today this is your thinkingg with regard to corporal punishment?

The WITNESS: Yes.

Mr. SHAW: It has not changed in the ten years?

The WITNESS: No, not in the slightest.

The PRESIDING CHAIRMAN: Mr. Brown?

Mr. BROWN (*Brantford*): No questions.

The PRESIDING CHAIRMAN: Mr. Veniot?

Mr. VENIOT: No.

The PRESIDING CHAIRMAN: Mr. Blair?

By Mr. Blair:

Q. Looking at your diagram, on the surface it might appear that the rise in application of corporal punishment just prior to 1920 may have had some effect in controlling robbery with violence, and I notice looking at this more particularly in the years following 1930 there seems to have been, between 1930 and 1935, a little peak of robbery with violence and this is followed by a very substantial increase in the application of corporal punishment. As corporal punishment comes down robbery with violence comes down. I wonder whether you would indicate whether there was some corelation between the punishment and the crime?—A. Not according to Mr. Lewis Faning. That is the difficulty with peaks and valleys in diagrams of this type because when you look at one point of it it might appear as if there were a direct relationship, but when you look at another part you do not find it, and therefore, there is nothing constant in the relationship between those two curves. If one looks at the diagram—and it covers a very long period, 1864 to 1936 inclusive, a period of 72 years—during the early decades flogging was, you might say, rarely ordered. Since these are floggings ordered in connection with robberies with violence, presumably the risk of being flogged was not equally great during the entire period. From about 1920 the risk of being flogged became greater and greater; you notice that the robbery rate drops a little one year and rises another year, but there seems to be no relationship between those changes and the risk of being flogged: at least Mr. Lewis-Faning found none that had any statistical significance. From 1864 to about 1920 robbery with

violence declined in England and Wales, reaching a more or less stable level after 1920. What has happened since I do not know. It would be interesting to follow it up and get more recent data which would be easy to secure from the criminal statistics of England. Flogging was abolished in 1948 when one would assume that, in view of the difficulties of post-war adjustment, economic problems, and so on, rates of robbery with violence would probably have tended to be higher than normal.

Q. Well, I take it that you would interpret these figures the same way that the Cadogan Committee itself interpreted them? I notice that they deal quite extensively with them in paragraph 8 of their report at page 59 indicating that there seems to be no relationship between corporal ponishment and the extent of robbery with violence?—A. Yes, that would seem to be obvious from the diagram.

Q. At page 3 of your statement, you quote from Dr. Caldwell, and paragraph 2 of his work states that the rate of recidivism among those whipped was 61·9 per cent. Now, turning over to page 4 in paragraph 7 you say: the amount of recidivism was greater among those who had been whipped and was 66·8 per cent. I wonder whether you could indicate how these two figures could tie in? I think there is an explanation. May I suggest that the only explanation I can see is perhaps that first figure refers to people who have been only whipped once and the figure in paragraph 7 might be the total of whippings.—A. I find, on consulting Dr. Caldwell's book, pp. 76 and 78, that the figure of 61·9 per cent refers to 320 prisoners whipped at least once during the period 1920-1939; the figure of 66·8 per cent, on the other hand, refers to 211 prisoners whipped during 1928-1939.

By Mr. Cameron (High Park):

Q. What is your opinion of the "old fashioned woodshed" technique? —A. Of no value in dealing with criminal offenders.

Q. Do you see no punitive value at all in the inflicting of corporal punishment in certain types of offences? One particularly mentioned was wife beating where the husband inflicts physical pain on his wife. Do you not think that is probably a very just sentence, to subject him somewhat to his own medicine? —A. We call that a poetic punishment, I believe. I do not know because I do not know what happens to wife beaters after they have been punished.

Q. The husband has done this and suppose he is very remorseful, do you not think that the punishment is probably better for him and society; that he suffers some of the pain he has inflicted on his wife?—A. The question is, does he stop beating his wife? That is the purpose of the punishment.

Q. I am not discussing now hardened wife beaters who make it a habit of beating up their wives once a week, but the person who in the stress of an emotion causes physical pain to his wife to such an extent he is brought into the police court and is before the magistrate and the magistrate instead of saying this man has to earn for the family and so on, says I think I will order him several beatings with the whip and let him go. Is that not apt to have a more therapeutic value to the man himself? His soul is cleansed from the offence he did against his wife much more than if he spent two days in jail? —A. I am afraid I do not know what the effect would be, but I think that type of person you have mentioned would profit more from medical treatment.

The PRESIDING CHAIRMAN: I do not think you were here at the opening of Professor Sellin's remarks, Mr. Cameron.

Mr. CAMERON (*High Park*): No, I was not.

The PRESIDING CHAIRMAN: He said that he did not profess to have made many studies on corporal punishment.

By Mr. Cameron (High Park):

Q. The answers of a man with the obvious qualifiications of Professor Sellin are very valuable. I am just trying to clear my own thinking on this matter. There are many crimes in this country that one would class as crimes of violence against women. I have an idea in my own mind that such an offender is punished more effectively if given the strap and a short sentence, as it brings to him the fact that he knows it is wrong. The punishment is justified; he has inflicted it on someone himself; and there is a more beneficial effect than if he spends the next year in jail.—A. I think that the best way to find out is to make a series of studies of persons who have been treated in this way to find out what happens to them. Otherwise, we are making assumptions which may seem logical to some persons and yet—

Q. I ask it as a matter of opinion.—A. You are asking me to express an opinion on questions of justice, public vengeance or retribution, which I have steered clear of as much as possible. I have tried to keep to the question of deterrence, and I have presented data, so far as I have been able to discover them, based on research, which do not seem to indicate—

Q. I am not thinking so much about deterrence.—A. You want to know how I feel about it. I prefer not to engage in that kind of an argument, if you will excuse me.

The PRESIDING CHAIRMAN: Are there any more questions? I will ask Senator Hodges to express to Doctor Sellin our appreciation.

Hon. Mrs. HODGES: I have very much pleasure in extending to Professor Sellin the appreciation of this committee for his courtesy in coming up here and giving us such a wealth of his experience and expressing it in a way that shows that he has made a keenly analytical study of it. I am sure that it will contribute a great deal to the deliberations of this committee, and I have very much pleasure in extending our thanks to Professor Sellin.

The WITNESS: Thank you very much, Madam Chairman. This experience has been to me a very pleasant one, and what is more it has shown me quite clearly how many gaps there are in the information which we possess about the death penalty, this most serious of all punishments, and how many additional inquiries need to be made about this or that aspect of it, inquiries that have not so far been made except in the most superficial manner. I have, from that point of view, also benefited greatly from the discussion, because your questions have shown those gaps perfectly clearly. Thank you very much.

The PRESIDING CHAIRMAN: May I, Professor Sellin, add my personal appreciation, and also on behalf of the committee, to you for your visit here and the assistance which you have given to this committee. I am sure that you have proved most helpful. Thank you very much.

The WITNESS: I shall be glad to send you additional information if you at any future time should want it on any specific question in this connection referring to the United States. The question of whether or not more police are killed by criminals in abolitionist states than in death-penalty states is one, for instance, on which I might secure data that would have some interest.

The PRESIDING CHAIRMAN: There has been a question raised from time to time as to whether we cannot get Canadian information. I think we will all agree that the population of Canada is such that it does not lend itself to the accumulation of such information as we can obtain from the United States. I think that the information which we are able to get from a densely populated area with the large population of the United States is more helpful to us than what we might get from Canada. We have not the experts—or, if we have, we have not been able to uncover them—of the calibre of Professor Sellin. We have not been able to get the statistical information which he

has available to him and which he has given to this Committee, and I think that this committee is well advised to take whatever information they can get from whatever source it may be obtained, because, after all, crime is crime no matter where it is. Social and economic conditions may be different, but basically I think that the information would be very valuable. I certainly think that we should avail ourselves of every opportunity of getting this information and I certainly want to thank Professor Sellin for his offer of subsequent assistance to this committee.

Before we adjourn: there will be a meeting of the subcommittee next Tuesday at 11.30 a.m.—you will be advised of the place—so that we may get on to the drafting of our report to the Houses of Parliament.

The meeting is now adjourned.

APPENDIX

Statement prepared by Professor Thorsten Sellin.

THE DEATH PENALTY

In most countries that have retained the death penalty executions occur occasionally but with what seems to be a decreasing frequency. The setting of these executions is not always the same and the techniques may vary, but they all have one thing in common. Whether the extinction of the offender's life is participated in by only two persons, as in Japan, by two scores of persons as in California or by a public multitude as in Latin America, those assembled on such an occasion are there, in the privacy of a room or a prison yard or without privacy in a public place, for the deliberate purpose of witnessing or assisting in putting a human being to death. They are impersonally, so to speak, obeying the order of a court of justice which in turn obeys the dictates of a legislature chosen by an electorate or responsible to an authority whose opinion it reflects. There must always be something macabre about such scenes; they remind us that this oldest and presumably most severe of all present-day punishments still enjoys popular support in many states.

A considerable number of countries, however, no longer tolerate the death penalty. Generally speaking, it is still acceptable to all the states of Australia, except Queensland; all the states of Asia, except Israel and the Indian provinces of Travancore and Nepal; and all the African governments. It is in Europe and the Americas that we find the great cleavage of opinion. The death penalty is still in use in peace time in all the countries behind the iron curtain and in the Balkans. West of that area, however, all countries have abandoned it except the United Kingdom, Ireland, France and Spain. In Latin America it has been abolished by the South American states of Argentina, Brazil, Colombia, Ecuador, Venezuela and Uruguay, and the Central American states of Costa Rica, Dominican Republic, Mexico (federal law and all but ten of the states) and Panama. Puerto Rico abolished it in 1929. North of the Rio Grande only six of the states of the United States have removed it. It is a curious fact that among nations of western culture, the English-speaking have shown the greatest attachment to this penalty.

There is no ready answer for this distribution of countries with and without the death penalty, which in this connection I am restricting to the civil criminal code that governs the average citizen in time of peace. If we compare these two classes of western countries—the only culture area in which we find a decided trend away from the death penalty—we discover in both classes nations with the same level of civilization, the same religion, the same kind of population, the same form of government, the same sense of justice and morality and—the same rates of homicides. We also find in each class countries which in some of these respects, including the homicide rates, differ very greatly from each other. Let us look at table I which gives the homicide rates of some countries in the two groups.

TABLE I

COMPARATIVE HOMICIDE DEATH RATES IN 1948 OF SOME COUNTRIES WITH OR WITHOUT THE DEATH PENALTY FOR MURDER

Rates per 100,000 population

Countries with death penalty		Countries without death penalty	
Name of country	Rate	Name of country	Rate
El Salvador	44·3	Colombia	15·9
Bolivia(1)	6·6	Puerto Rico	14·1
U.S.A.	5·8	Costa Rica(1)	5·0
Spain	1·4	Dominican Republic	4·9
Canada	1·2	Finland	4·6
Australia	1·1	Italy	2·4
New Zealand	1·1	Austria	2·1
France	0·8	Portugal	1·6
Ireland	0·6	Belgium	1·4
Scotland	0·6	Western Germany(2)	1·2
England and Wales	0·5	Denmark	1·0
		Switzerland	1·0
		Sweden	0·8
		Norway	0·5
		Netherlands	0·4

SOURCE: United Nations, Demographic Yearbook, 1952. New York, 1952, Table 20.
(1) 1947 rate.
(2) 1949 rate.

This table is not presented with any suggestion that it illustrates the virtue of using or not using the death penalty. It does not and can not do so. What it illustrates is that countries with high rates of homicides equally like or dislike this penalty, and so do countries with low homicide rates. Behind these two divergent policies there obviously lie other reasons than the extent of criminality of a homicidal nature, reasons of an intangible character, connected with the political, economic and social structure of a country, and buttressed by traditions protected by sentiments and beliefs which apparently are not influenced by the level of criminality.

No matter what arguments are used for the retention or abolition of the death penalty today a glance at the history of punishment shows that they have remained the same in objective and form but have changed in content and significance. If as many people say the death penalty is a moral necessity and the only just retribution for crime or that the sense of justice of a people requires it, it is obvious that the last two centuries have seen great transformations in concepts of morality and justice. We have abolished torturing forms of punishment like breaking on the wheel and burning at the stake; we no longer see either justice or morality in hanging for theft. If, on the other hand, we say that the death penalty is a great preventive because the fear of such an ignominious death holds prospective criminals in check, history shows that we increasingly tend to substitute other punishments for it, that we have exerted ourselves in discovering ways and means to make executions as painless and rapid as possible, and that we have further reduced prevention by hiding executions from public view and giving them the least possible official publicity. These incontrovertible facts signify that while a sense of justice and high moral concepts are constant in man, because they are necessary to all social life, the ideas of what is just and moral change. The people of some nations that formerly regarded it as just, moral and proper to hang a thief, brand a rogue and burn a witch, now either consider it immoral to take life at all as a punishment or immoral to take it except in extremely abnormal circumstances such as in wartime. Therefore it seems obvious that the existence

of the death penalty does not depend on any immutable principle. Like all social policies it depends on changes in attitudes and beliefs which are influenced by the conditions and circumstances of social life.

It would require too long an analysis to attempt to explain why the abolition movement has made such strides in the last century and a half, but the struggle about this punishment seems to be one between ancient and deeply rooted beliefs in retribution, atonement or vengeance on the one hand, and, on the other, beliefs in the personal value and dignity of the common men that were born of the democratic movement of the eighteenth century, as well as beliefs in the scientific approach to an understanding of the motive forces of human conduct, which are the result of the growth of the sciences of behavior during the nineteenth and twentieth centuries. If these newer trends of our thinking continue undisturbed the death penalty will disappear in all the countries of Western culture sooner or later.

Those who debate the validity, propriety or necessity of capital punishment offer arguments which are quite understandable in terms of what has just been said. Some of these arguments are of a dogmatic nature and require equally dogmatic replies. Whether, for instance, the death penalty is just or unjust depends entirely on a person's concept of justice. I shall here avoid such arguments, since they remind one of the story told of Sidney Smith, who upon seeing two persons arguing over a back fence without arriving at any agreement told his companion that one could expect no other result since the disputants were standing on different premises. There are, however, other types of arguments which begin with the same premise but appeal to experience and could arrive at different conclusions depending on evidence. These arguments assume that the existence or use of the death penalty produces certain demonstrable effects, such effects being cited as justification for retaining or abolishing it. It is some of these arguments which should be examined in the light of the modest evidence that statistics and illustrative cases can yield for or against them.

Chief among the utilitarian claims made in connection with the death penalty are the following assertions:

1. The death penalty is a specific deterrent of murder or whatever crime may be so punishable. By specific deterrent is meant that no other punishment—life imprisonment, for instance—would have as strong an effect. Opponents of the death penalty deny that it has such specific power.

2. The use of the death penalty occasionally results in an error of justice, causing the execution of an innocent person. Statements before your committee indicate that this claim is doubted so far as Canada is concerned.

3. The existence of the death penalty is a stimulus to murder and therefore results occasionally in the loss of an innocent person's life, which would otherwise be safe. This claim has not been raised hitherto in testimony before the committee.

4. Whether or not life imprisonment or some other punishment may be as deterrent as the death penalty, it does not adequately protect society against the further criminality of the prisoner, because he will remain a threat to fellow-prisoners or the prison personnel while incarcerated and may again become a public threat because he may escape or be released into the community by pardon or parole.

There are no doubt other arguments of similar nature which would be susceptible of proof or disproof by an examination of facts. Some of them are too absurd to merit attention and are rarely heard nowadays. They have, at least, not been mentioned before this committee. Those listed above have considerable interest, however, and in subsequent pages I shall try to deal with them, fully recognizing that in connection with many of them the evidence is more in the nature of straws in the wind than definitive proof.

However, opinions for or against the death penalty that claim to be based on beliefs about its effects rest on the interpretation of the kind of data which will be presented here.

I. IS THE DEATH PENALTY A SPECIFIC DETERRENT TO MURDER?

It seems reasonable to assume that if the death penalty exercises a deterrent or preventive effect on prospective murderers

(a) Murders should be less frequent in states that have the death penalty than in those that have abolished it, other factors being equal. Comparisons of this nature must be made among states that are as alike as possible in all other respects—character of population, social and economic condition, etc.—in order not to introduce factors known to influence murder rates in a serious manner but present in only one of these states.

(b) Murders should increase when the death penalty is abolished and should decline when it is restored.

(c) The deterrent effect should be greatest and should therefore affect murder rates most powerfully in those communities where the crime occurred and its consequences are most strongly brought home to the population.

Prior to any analysis of available data we are compelled to make certain assumptions. First we must decide what element in the death penalty gives it a maximum of deterrent power. Its mere inclusion in a statute which is not applied in practice would not be enough. We can assume—those who debate the issue do it generally speaking—that it is the execution which by its finality is the strongest agency of deterrence. We should therefore examine the effect of executions on murder rates.

This brings us to a second necessary assumption. We do not know with any great degree of accuracy how many murders punishable by death occur. In the United States, for instance, where only murders in the first degree or similar murders are subject to the death penalty, no accurate statistics of such offences exist, yet this is the only type of murder which people are presumably to be deterred from committing. Most deaths are no doubt recorded, but among deaths regarded as accidental or due to natural causes or suicide there are no doubt some successful murders. Where the killer never becomes known it is often impossible to determine if the death was the result of murder or manslaughter. This is, of course, a problem which exists in all countries. We are everywhere compelled to use other statistics than those of strictly capital homicides.

Most advanced countries today possess statistics of reported deaths classified by cause of death. One of these causes is homicide, i.e. deaths caused by others. Students of criminal statistics have examined these data with some care and have arrived at the conclusion that the homicide death rate is adequate for an estimate of the trend of murder. This conclusion is based on the assumption that the proportion of murder in the total of such deaths remains unchanged from year to year. Accepting this assumption, we shall examine the relationship between executions and the rates of deaths due to homicide. One may challenge the assumption, but the fact remains that there are no better statistical data on which to base arguments about deterrence. Other statistics, such as conviction statistics, have even greater defects.

A. Comparative homicide death rates in death-penalty states and abolition states.

In examining this problem, we shall limit ourselves to data from some American states, six of which have abolished the death penalty for murder, namely, Maine, Rhode Island, Michigan, Wisconsin, Minnesota and North Dakota. All but one of these states (Rhode Island) lie along the southern

border of Canada. We shall compare the level and trend of the homicide rates of each of these states with similar rates and trends in contiguous states that have retained the death penalty. The seven graphs here presented (see Diagrams I to VII at end of this Appendix) cover for the most part the period 1920-1948. They were originally included in a memorandum prepared for the Royal Commission on Capital Punishment, and the diagrams and statistical tables upon which they are based are found respectively in the minutes of evidence (30th Day) and the report of that commission (pp. 350-1). It is not necessary to reproduce the tables here, for the diagrams illustrate the situation quite effectively. The number of executions during a given year has been inserted at the proper place along the curves, but is in some instances lacking before 1930; in that year the United States Bureau of the Census first began to collect data on executions in the various states. In a few instances the curves for the homicide rates do not begin with 1920, because the states in question (Iowa, North Dakota, South Dakota) had not yet begun to report such rates to the Bureau of the Census.

An examination of the diagrams reveals several things:

1. The level of the homicide rate varies in different groups of states. It is lowest in the New England areas and in the northern states of the middle west and lies somewhat higher in Michigan, Indiana and Ohio.

2. Within each group of states having similar social and economic conditions and populations, it is impossible to distinguish the abolition state from the others.

3. The trends of the homicide rates of states with or without the death penalty are similar.

The inevitable conclusion is that executions have no discernible effect on homicide rates which, as we have seen, are regarded as adequate indicators of murder rates.

B. Do murders increase when the death penalty is abolished? Do they decrease when it is re-established?

A number of American states and a few European countries, as well as New Zealand, have experimented with the abolition of the death penalty and have restored it, after periods of varying length. In some instances, these periods have been short—one year in Arizona, 1917-1918, two years in Missouri, 1917-1919, for instance—while in other cases the periods have been long enough to furnish a basis for conclusion. Kansas had no executions between 1870 and 1907, abolished the death penalty in 1907 and introduced it again in 1935. South Dakota had no death penalty between 1915 and 1939. The diagrams here presented show the trends of the homicide rates in these two states compared with rates in neighbouring states. It is apparent that in neither state did the introduction of the death penalty have any direct effect on the rates for homicide.

An examination of the homicide rates or other pertinent statistics concerning Iowa, which abolished the death penalty between 1872 and 1878, Colorado (1897-1901), Washington (1913-1919), Oregon (1914-1920), Tennessee (1915-1917) as well as the states of Missouri and Arizona already mentioned does not afford any basis for concluding that the policy of abolition and restoration bore any relationship to the death penalty. In some instances there were fewer homicides during the abolition period and in other cases more homicides.

Various European countries which have experimented with abolition yield no more conclusive evidence of the supposed salutary effect of the penalty. Data from countries or states that have abolished it without restoring it

reveal nothing that shows any connection between their policy and the homicide rate. Generally speaking, the homicide rate continues whatever trend it had before the abolition of the death penalty or before its restoration.[1]

It might be argued that the absence of any demonstrable effect of the death penalty on the homicide rate is due to the fact that this punishment is not used often enough. It is clear from history that its use has been declining. This reflects changing social attitudes towards this penalty. Past experience argues against the possibility that an increased use of executions would have any effect on the frequency of murder and it is idle to suggest that we should experiment again with a harsher policy, for public sentiment would not support it. It may appear paradoxical but it seems to be true that the death penalty can be retained only by using it so sparingly that it cannot possibly serve any useful purpose which would not be as well served by some other punishment.

C. Is there special evidence of deterrent effects in the locality in which the executed offender committed his crime?

Some years ago a careful study[2] was made in the city of Philadelphia, which has a population of about two million. The study tried to discover the frequency of wilful homicides during 60 days prior to and 60 days after five widely separated executions which were highly publicized and followed upon equally well publicized crimes and trials. The dates of homicides occurring during the periods studied were established with the aid of the police and the coroner's office and an effort was made to eliminate homicides which were not of a capital nature. Those remaining were plotted on a calendar basis and an effort made to find what effect the execution had on the frequency of the homicides that followed it, compared with the distribution of these crimes preceding the execution date. The assumption was made that if the execution had any effect there would be fewer homicides in the days and weeks after the execution than before it. During the total of 300 days prior to the executions there were 105 days without homicides, while during the same period after the executions there were 74 such days. There were a total of 91 homicides before and 113 after the executions.

D. Conclusion

It is obvious from the data presented, as well as from more detailed data given in the report of the Royal Commision on Capital Punishment, that there is no observable relationship between homicide death rates and the practice of executing criminals for murder. In other words, whether or not a state uses the death penalty, murders will occur in number and frequency determined by other factors inherent in the social, political and economic conditions of the country. The death penalty is no specific deterrent for murder. It is interesting to note that this supposed effect is discussed only in debates about the abolition or adoption of this penalty. Students of the problem of murder and of murders rarely think of mentioning the death penalty when they discuss ways and means of preventing murder, probably because they have found no relation between them.

In 1950, when the Minister of Justice of New Zealand argued for the restoration of the death penalty (abolished in 1941) he said that he was satisfied that the statistics of murder "neither prove nor disprove the case for capital punishment, and therefore they neither prove nor disprove the case against it." This is correct if it means that such statistics seem to have little

[1] The best existing analysis of available data on the death penalty as a deterrent is found in appendix 6 of the Royal Commission on Capital Punishment, 1949-1953 Report (Cmd 8932)

[2] Robert H. Dann, *The Deterrent Effect of Capital Punishment*, 20 pp. Philadelphia, 1935. Friends' Social Service Series, Bulletin No. 29.

to do with a people's like or dislike for this penalty, but it is incorrect if it means that statistics prove nothing. What these statistics prove is not the case for or against the death penalty, but the case against the general deterrent effect of that penalty.

II. ERRORS OF JUSTICE

Justice can never be infallible. Granted that courts do their best to convict only the guilty and impose the penalty of death only on those who merit it according to the law in force, there still exists the possibility that in isolated instances an innocent person may be executed. There are well-documented cases on record testifying to this possibility. Some of them have been analyzed by Professor Otto Pollak in an article on this question in the November, 1952, volume of the Annals of the American Academy of Political and Social Science. In Professor Edwin M. Borchard's work *Convicting the Innocent* (New Haven: Yale University Press, 1932) nine American cases of persons who escaped execution by a hair's breadth are also related. In a study of the pardoning power of the president of the United States, published in 1941 (W. H. Humbert, The Pardoning Power of the President, Washington, D.C., 1941) the reason assigned for granting a pardon in 46 cases between 1887 and 1899 was "the dying confession of the real murderer".

In his work on Capital Punishment in the United States (Philadelphia, 1917), Professor Raymond T. Bye gives a considerable number of cases in which innocent persons were executed, as well as cases where life terms were imposed for murder and the convict later found to be innocent. Dr. Amos O. Squire, formerly chief physician of Sing Sing prison in New York and in 1935 medical examiner of Westchester County, New York, published that year an autobiographical work under the title of Sing Sing Doctor. In a chapter on "Irrevocable Capital Punishment", Dr. Squire refers to two English cases, one in 1869 and one in Manchester in 1876; in the first case an innocent woman was executed and in the second a last minute reprieve resulted in imprisonment which ended some years later when the real criminal confessed to the murder. In the famous case of Jesse Lucas in 1908, testimony found many years later to be perjured resulted in his being sentenced to death; had his sentence not been commuted his life would have been lost. Warden Lewis E. Lawes of Sing Sing, in his book Meet the Murderer (New York, 1940), recites several cases from his own experience that involved the execution of people about whose guilt he had become very doubtful. In a case which did not involve the death penalty and was finally resolved on May 3, 1954, in Philadelphia, a man was cleared in a second trial after having served 24 years of a life sentence for a slaying he did not commit.

No one has, to my knowledge, really searched the history of capital punishment with the express purpose of discovering how frequently it has been applied erroneously. They are probably rather rare, considering the total number of executions. Some might argue that such errors are human and unintentional, and that by and large they are outweighed by the great service to society which the death penalty is presumed to have in deterring others. This would seem to be the only possible argument, since those who defend the death penalty only because it is a just or a well-deserved retribution for crime, or atonement for taking a human life, could hardly tolerate or defend the execution of innocent people. But, if there is no way of proving the deterrent effect of the death penalty on others, the execution of a single innocent person becomes indefensible.

III. CAPITAL PUNISHMENT AS CAUSE OF MURDER

It is a curious fact that there are cases on record that show that the desire to be executed has caused persons to commit a capital crime. Such crimes are indirect forms of suicide as a rule, the individual involved being unable to take his own life. In other instances a pathological desire to die by execution has been noted. For instance, in 1820, in Dresden, Germany, a murderer was beheaded publicly. The ritual made such an impression on a weak-minded woman present that, four weeks later, she killed a girl who was visiting her. She then went to the police, who on visiting her house found the date of the execution just mentioned marked on her door. She said that this execution, as well as two others she had witnessed in 1804 and 1809, had put into her head the idea of committing a murder so that she could die in the same way.[3]

Committing suicide by execution seems to have been a well-known procedure in olden days. In the Journals of Henry Melchior Huhlenberg (Philadelphia, 1945), a leading pastor in Philadelphia before the Revolution made the following entries in his diary:

> May 23, 1765. Heard a distressing report from New York. A number of awakened members of Brother Wyegand's congregation have been holding weekly devotional hours, and one member of the said company cut the throat of his own three-months old son . . . . The malefactor confessed that he had been tired of life and tormented with the notion that he should take his own life, but that he had not been able to summon up courage to kill himself, so he had hit upon this act as a way in which he might die by the process of the law. (Vol. 2, p. 235)
>
> Sept. 1, 1765. From five to six o'clock I spent in the prison, speaking and praying with a thirty-year-old German, named Henrich Albers, born in Lüneburg, Hanover. He had purposely cut the throat of a twelve-year-old German boy in order that he might lose his own life. (*Ibid*, p. 264.)

The motivation behind such crimes is more clearly stated in the description of a case reported in a medico-legal work published in Germany in 1789.[4]

> The 43 or 44-year-old woman suffered from a depression which developed severe states of anxiety during which suicidal thoughts became more and more pressing. Being a deeply religious woman, who prayed much and sought relief in devotional exercises, she, in her illness, considered that if she committed suicide, her soul would not be saved and she would be lost. Again and again the idea came to her: If you kill yourself, you will be eternally damned and what will become of your poor husband and your infant? Suddenly a bright notion came to her: You must kill your child and then you will be killed. The innocent child will go to Heaven earlier and, before you lose your life by a strange hand, you will have time for penance and to receive God's mercy.—While her husband was away, she nursed the infant, kissed it and threw it into the privy vault. When she thought that the infant was dead she went to the police.—In prison she was quiet and happy and afraid of only one thing, that the court might declare her insane, spare her life and send her to Spandau, for then her plan would have miscarried. I believe that this woman has taught us something, namely that even an abolished death penalty may have an element of deterrence.

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[3] Frede, "Hinrichtung als Mordsuggestion", *Monatsschrift für Kriminal psychologie und Strafrechtsreform*, 19:252-3, 1928.

[4] H. von. Hentig, "Die Todesstrafe als Mordreiz", Monatsschrift für Kriminal psychologie und Strafrechtsreform, 20:305, 1929.

These cases must have once been fairly frequent[5] because Denmark, by an ordinance of Dec. 18, 1767, deliberately abandoned the death penalty in cases where "melancholy and other dismal persons [committed murder] for the exclusive purpose of losing their lives". A leading Danish jurist of that period explained that this limitation was introduced because of "the thinking that was then current among the unenlightened that by murdering another person and thereby being sentenced to death, one might still attain salvation whereas if one were to take one's own life, one would be plunged into eternal damnation."[6]

The ordinance was ineffective in one case, at least, that of Jens Nielsen, who was born in 1862 and spent a most unhappy and unfortunate childhood. In 1884 he was sentenced to 16 years of hard labor for theft and arson. The following year he tried to kill a prison guard. He was tried, sentenced to death and received a commutation to life. He was then placed in solitary confinement. A year later he tried again to kill a guard, "realizing that he could not stand solitary confinement, did not have the nerve to commit suicide and wanted to force his execution." He was again tried, sentenced to death and the sentence commuted. In 1892, having remained in solitary confinement all that time, he tried again to kill a guard. This time he got his wish, was sentenced to death and executed, November 8, 1892.[7]

It may well be that cases of this type no longer are common, but they have not disappeared completely. Less than two decades ago, one occurred in Lyons, France, described by Dr. Edmond Locard, chief of the police science laboratory of that city.[8]

> A couple attended the Celestine Theater in Lyon. When the curtain had risen, the hall being half dark, the husband saw his wife fall forward. He raised her and discovered that she had been struck in the back. The knife was in the wound. The show was stopped. The wounded was removed to the foyer where she died. The killer made no resistance when he was arrested. He admitted his crime. His victim was a complete stranger to him, as was her husband. He did not know their names. He had no reason to wish them ill. Although the deed appeared that of one demented, judicial investigation was started. No reason that could explain the act was discovered. On the other hand, the criminal revealed no sign of insanity. He was an honorable worker, pious, honest, without vices; he could not be executed by insanity or furor, to use the terms of the law. After the sentence to death he gave the following strange explanation: "I do not want to sin. For some time I have felt temptations against purity. I fear I cannot remain chaste. I could not think of suicide, which is a sin more serious than fornication. I therefore decided to commit a capital crime, for thus I would have time to repent before my execution and would arrive immaculate in Heaven!

There are no doubt isolated cases still where the death penalty incites to murder. In all likelihood those involved would be found to be mentally deranged and placed in appropriate institutions. However rare they may be, such indirect suicides furnish an argument against the death penalty.

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[5] A large number, from the middle of the 17th century to 1829 are reported in Professor H. von Weber's study "Selbstmord als Mordmotiv" in Monatsschrift für Kriminalbiologie und Strafrechtsreform, 28:161-81, April 1937.

[6] Quoted in Johannes Andenaes, "General prevention—illusion or reality". Journal of Criminal Law, Criminology and Police Science, 43: 176-198, July-August, 1952.

[7] Stener Grundtvig, Dodsdommene i Danmark 1866-1892, Copenhagen, 1893.

[8] Dr. Edmond Locard, "Le crime sans cause", La Giustizia Penale (Rome), Pt. I, 45: 411-422, November, 1939.

IV. DOES THE LIFE SENTENCE FURNISH ADEQUATE PROTECTION AGAINST MURDER?

Even though some advocates of the death penalty acknowledge that it is not a specific general deterrent they still believe that it possesses the undoubted effect of removing one convicted of murder in so permanent a way that he will never again be a menace to the community, whether it be the prison community or that outside to which he may be returned by release before he dies. Therefore, we need to know if those who have been sentenced to prison after conviction on a capital charge actually prove to be such a menace:

First let us examine what happens to such prisoners. Some years ago a study was made of all the cases of this type in which the prisoner was released from prison at some time during the period 1926-37 in seven American states, five of them death penalty states and two of them abolitionist states. The data are contained in the following table II.

TABLE II

METHOD OF RELEASE AND TIME SERVED BY PRISONERS ORIGINALLY COMMITTED TO STATE PRISONS IN SEVEN AMERICAN STATES AFTER CONVICTION OF A CAPITAL CRIME (MURDER) AND RELEASED FROM THESE PRISONS DURING 1926–37

State	Number released	Number executed	First degree commitments (a)							Second degree commitments						
			Number	Died		Paroled or pardoned		Other released		Number	Died		Paroled or pardoned		Other released	
				Number	Average time served (years)	Number	Average time served (years)	Number	Average time served (years)		Number	Average time served (years)	Number	Average time served (years)	Number	Average time served (years)
Connecticut (b)	58	8	1	.....	.....	1	25·0	.....	.....	49	13	16·9	36	18·0	.....	.....
Massachusettes (b)	144	26	3	.....	.....	2	25·5	.....	.....	115	15	12·3	80	15·8	20	4·5
Pennsylvania	1,150	103	97	41	5·2	48	12·8	8	2·8	950	63	4·4	827	8·2	60	6·9
New Jersey	371	44	79	7	8·9	56	12·1	16	3·9	248	20	6·5	188	7·9	40	5·3
California	568	121	270	89	8·1	181	12·8	.....	.....	177	28	7·6	132	10·4	17	11·8
Kansas (c)	217	.....	98	21	10·4	42	9·4	34	11·1	119	8	7·0	45	6·7	66	8·3
Michigan (d)	407	.....	193	52	8·2	92	13·8	49	3·3	214	19	4·1	180	7·3	15	3·3

(a) Excluding executed death sentences.
(b) Had mandatory death penalty upon conviction of murder, first degree until 1951.
(c) Death penalty re-instituted in 1935.
(d) Abolished death penalty in 1846.

Of the first degree cases listed in the table as having been pardoned or paroled, 363 were paroled into the community, 23 were paroled in order to permit their deportation and 36 were given pardons. The corresponding figures for second degree releases were 1,280, 60 and 143. In addition, Connecticut pardoned 5 convicts for deportation. Among the first degree releases headed "other releases" 25 were released by order of a court, 36 were transferred to mental institutions, 24 escaped and 23 were released at the expiration of their sentence, which may mean that the convicts involved had earlier received a commutation of their life sentences to a term of years. Of the "other releases" of second degree murderers, 38 were by order of the court, 35 were transfers to mental institutions, 24 escaped and 121 served to the expiration of their terms, whether these were commuted terms or original terms. The investigation containing these data was made by Alfred Harries, special agent of the Bureau of the Census, and was based on information supplied to the bureau in connection with its annual report on prisoners in state and federal prisons and reformatories.[9]

Prison authorities rather generally find little to complain about prisoners who are serving sentences for murder. In 1950, The International Penal and Penitentiary Commission conducted a survey by questionnaire sent to the governments of a considerable number of states. The results were never published. One of the questions asked for available information indicating whether violent assaults on prison personnel or fellow prisoners, suicide or attempted suicide, escape or attempted escape, and disciplinary violations in general were more frequently committed by these prisoners than by others.

Austria, Belgium, Denmark, England and Wales, Finland, Norway, Sweden, Switzerland and the warden of the Eastern Penitentiary, Philadelphia, replied that there were no indications that these forms of behaviour occurred more frequently among those serving time for capital crimes. Countries without the death penalty reported no more serious disciplinary problems than the countries which had retained the death penalty, an important observation because one might be tempted to assume that those executed in the latter countries might have been the ones that would have been the most difficult prisoners to deal with. Their counterparts who were given life terms in the countries without capital punishment evidently behaved no worse than the rest.

Scotland, Northern Ireland and Ireland reported more specifically that bad conduct was less frequent in this class of convicts. In Scotland, the unanimous opinion of governors and officers of long service was that these prisoners as a rule ranked with the most orderly and well-balanced prisoners and that incidents connected with them were much less than average. Ireland pointed out that they were in general amenable to prison rules, were better behaved than prisoners serving short sentences and that there was no record of violence on their part. Northern Ireland stressed that reprieved murderers were generally first offenders and must by experience be classified as well-conducted convicts. The director of the Philadelphia prison mentioned called these prisoners generally model prisoners. Finland noted that they were more difficult to handle in the beginning and attempted to escape more often but that after some time they became more adaptable and easy to manage because they realized that their behaviour would be taken into account later when they could apply for a pardon.

The reply from Belgium was even more specific. With respect to violent assault the rare cases since 1933 justified the observation that they were always the deeds of mentally ill or unbalanced prisoners. Those sentenced to death and given commuted life sentences (standard practice in Belgium) distinguished

[9] Manuscript partly published under the title "How long is a life sentence for murder?" in the Proceedings of the 69th Annual Congress of the American Prison Association, 1939, pp. 513-524. For data of a similar nature secured from Commonwealth countries and Europe, see appendix 16 of Report of Royal Commission on Capital Punishment.

themselves only in so far as that category contained a higher proportion of mental cases (30 per cent of those originally sentenced to death were suspected of mental disorders as compared with 20 per cent of those originally sentenced to life). Suicides or attempts thereat had become exceedingly rare due to special preventive measures and no escape had occurred because of strict supervision. Generally speaking, disciplinary violations were no more frequent among this category of prisoners.

England and Wales listed 3 suicides among 202 reprieved prisoners. Denmark reported that among its 21 lifers, there had been two assaults on staff members (by the same prisoner), one suicide and four attempts (one prisoner twice), one escape (recaptured a few days later) and one attempted escape. No appreciable differences could be found between lifers and others either in these respects or regarding breaches of discipline. Sweden reported that among 32 lifers studied none had been guilty of assaults or disciplinary violations; one had commited suicide.

There is, of course, no doubt that prisoners who are not executed but instead sentenced to imprisonment should be expected to have their share of difficulties in conduct during their incarceration, but statements by prison authorities indicate that murders in prison are generally committed by prisoners of other classes.

What of the conduct of these who, having been originally sent to prison for a capital crime and are later paroled, licensed or pardoned? The questionnaire to which reference has been made also requested information on this point. England and Wales reported that of 112 reprieved murderers released during the 20 years of 1928-1948, five were subsequently and during this period convicted of serious offenses; one of these five was convicted of a second murder and executed. This was the only case of a second murder reported in the replies. Scotland reported that of 10 convicts released on license one had been recommitted for a new crime. Ireland stated that of 32 released convicts one had been returned for violating the conditions of his release; none of them was known to have committed a new offense Of 10 convicts released in New Jersey none had been returned to prison and of 36 in Pennsylvania, one had been returned for violating parole and 3 for new crimes, none of them murder. Of 72 Belgian convicts released, 3 committed new crimes; one was sentenced for a serious offense to life imprisonment after having been in liberty four years. He was recognized as mentally ill after his second term began; the remaining two were sentenced for theft. Northern Ireland stated that no released murderer had returned to prison and that the few heard of from time to time were law-abiding citizens. Finland reported that of 84 released prisoners, information was available about 77, of whom 51 were still under supervision, 2 had died, and eight been re-convicted of some offense. Of 28 released prisoners, Norway stated that five had been re-convicted within five years after release; one of them twice. Within ten years, one was sentenced again. All but one of the new crimes involved thefts. Switzerland stated that while no statistics were available recidivism by life prisoners were rare: only one case, involving a trifling offense, was known.

In reply to a question asking what statistics showed with regard to the recidivist rate of released murderers compared with other offenders, the following statements were made.

England and Wales. "Indications are that reprieved murderers are less liable to commit further crimes than are other categories of convicted persons."

Scotland. "The number of persons convicted of murder who after release commit further offenses is very small and bears very favorable comparison with other categories of prisoners."

Austria. "The penitentiary of Graz finds that recidivism in this category is much inferior to that in other categories; it knows only of two cases."

Belgium. "Recidivism in this category is very small and extremely rare with regard to subsequent felonies. This is explained by the fact that a good number of convicts formerly condemned to death are freed only after the average age of criminality (half of them are more than fifty years old). Moreover the conditions of social rehabilitation and reformation are more strictly demanded in regard to these prisoners."

Norway. "The group investigated is so small that no definite conclusion can be drawn with regard to the probability of new crimes. It may, however, be said that the probability of relapse to the same or related crime is very small indeed."

Sweden. "None of the released 32 life prisoners has relapsed."[10]

For an article in the Annals volume to which reference has been made the director of parole in Pennsylvania (which has retained the death penalty for murder), Dr. G. I. Giardini secured data from twenty states covering capital offenders released on parole during a period that varied from 10 years in one state to between 20 and 38 years in the others. The total of 195 prisoners reported did not include those pardoned or who left the institutions of these states alive but by other forms of release than parole. Furthermore, it is likely that the information supplied on the 195 is not complete. During the periods of time covered 11 of these prisoners had been returned to prison for new offenses and 7 for parole violations; 5 had disappeared, 11 had died, 34 had completed parole and 127 were still on parole. Taking Pennsylvania data, the accuracy of which Dr. Giardini believed to be reliable, 36 paroles in capital cases had been given between 1914 and 1952. Of these 3 had been returned with sentences for new crimes and one for parole violation; one had absconded, 7 had died, 7 had completed their parole satisfactorily and 17 were still on parole on March 31, 1952. These are very favorable figures and there is no good reason to suspect that the post-release conduct of those given pardons, released by court order or released by the expiration of their sentences would have any worse record.

It is a well-known fact that the incidence of recidivism is high for crimes against property and considerably lower for offenses against the person, including sex offenses. It is our policy nevertheless to sentence thieves of all kinds for relatively short terms. We release on parole all but a small proportion of prisoners from our penitentiaries, taking the risk that they will again commit crimes, a risk that increases with every new sentence and subsequent parole. It appears from the data referred to above and similar data that the type of criminality which may again be engaged in by a person paroled after serving part of a sentence for murder is no worse than that which may be expected from other prisoners paroled; indeed the risk of later criminality by a released murderer appears to be very small. Judging from these facts and the manner in which capital offenders are released, it seems that imprisonment and parole offer adequate protection against whatever future damage to society such offenders might do. Such damages do occur but their seriousness should be weighed against the risk of errors of justice and other detrimental effects of the death penalty.

There are many other aspects of the death penalty that should be considered in any discussion of its validity, such as its effect on the administration of justice, but this statement has already tested the patience of its readers. Another aspect is the evident inequality with which the death penalty is applied, a circumstance which does not appear to have given concern to its advocates. Merely as an illustration we might point out that in England and Wales, if a man was tried for murder during the decade 1900-1909, his chance

[10] Appendix 15 of the report of the Royal Commission on Capital Punishment gives a great deal of similar information.

of being sentenced to death was 58 per cent; in 1940-1949, this chance had dropped to 45·6 per cent. During the same periods, a women's chances of being so sentenced were respectively 12·5 and 13 per cent. Once having been sentenced to death, the risk of being executed was 60 out of 100 for men during 1900-1909, and 55·5 out of 100 during 1940-1949; the corresponding risks for women were 19 and 5·3 out of 100. No absolute standards of justice could account for these differences, especially when we consider the policy of reprieve. It would seem that there must be an assumption that women need not be deterred as much as do men or that women cannot be so easily deterred as men, or that women should not suffer retribution or make atonement as much as men or that justice does not require that a murderess pay with her life in the same proportion of cases. From whatever angle we view this phenomenon which is common in all death penalty countries and which has even led Guatemala, Honduras and El Salvador to exempt women completely from the death penalty, we must conclude that it raises a serious issue.

In my memorandum prepared for the Royal Commission on Capital Punishment, I concluded with the following statement:

> The question of whether the death penalty is to be dropped, retained or instituted is not dependent on the evidence as to its utilitarian effects, but on the strength of popular beliefs and sentiments not easily influenced by such evidence. These beliefs and sentiments have their roots in a people's culture. They are conditioned by a multitude of factors, such as the character of social institutions, social, political and economic ideas, etc. If at a given time such beliefs and sentiments become so oriented that they favor the abolition of the death penalty, facts like those presented in this paper will be acceptable as evidence, but are likely to be as quickly ignored if social changes provoke resurgence of the old sentiments. When a people no longer *likes* the death penalty for murderers it will be removed no matter what may happen to the homicide rates. This is what has happened in the past in connection with crimes against property.

The same thought was expressed by Professor Ferdinand Kadecka in a report to the International Penal and Penitentiary Commission in 1936. Commenting on the murders in Austria during 1924-1934 he observed that the data would furnish arguments both to the opponents and the proponents of the death penalty and that neither would convince the other. "This", he said, "is because the question of the death penalty is not—or at least is not yet—a question of experience but a question of personal conviction, sentiment and faith."

DIAGRAM I. Maine, New Hampshire and Vermont: Homicide Death Rates, 1920-1948, per 100,000 population; and Executions, (figures at points on graph), 1930-1948.

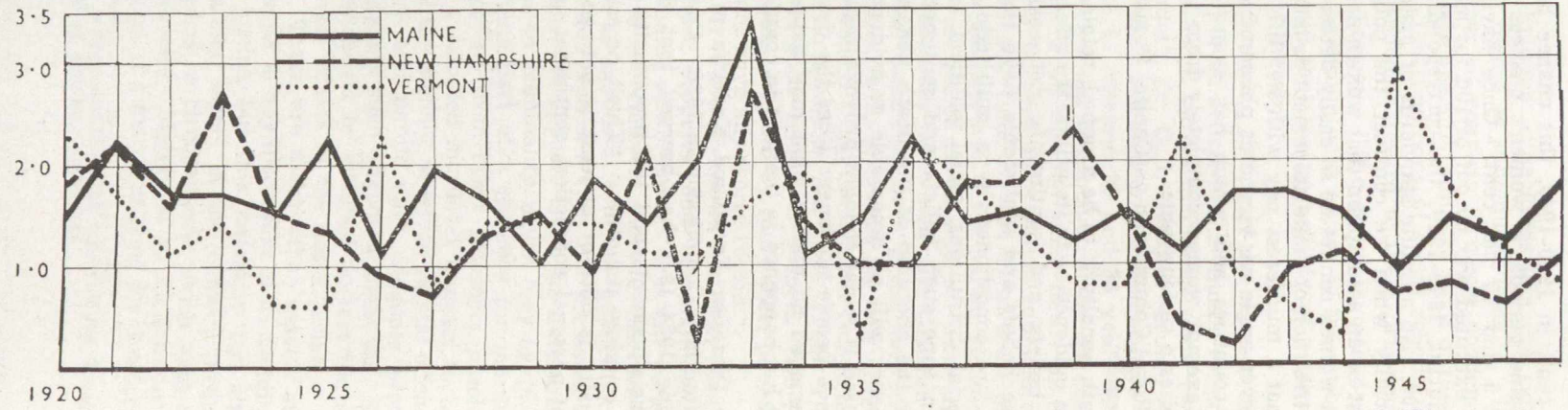


DIAGRAM II. Rhode Island, Massachusetts and Connecticut: Homicide Death rates, 1920-1948, per 100,000 population; and Executions, (Connecticut, 1926-1948; Massachusetts, 1920-1948)

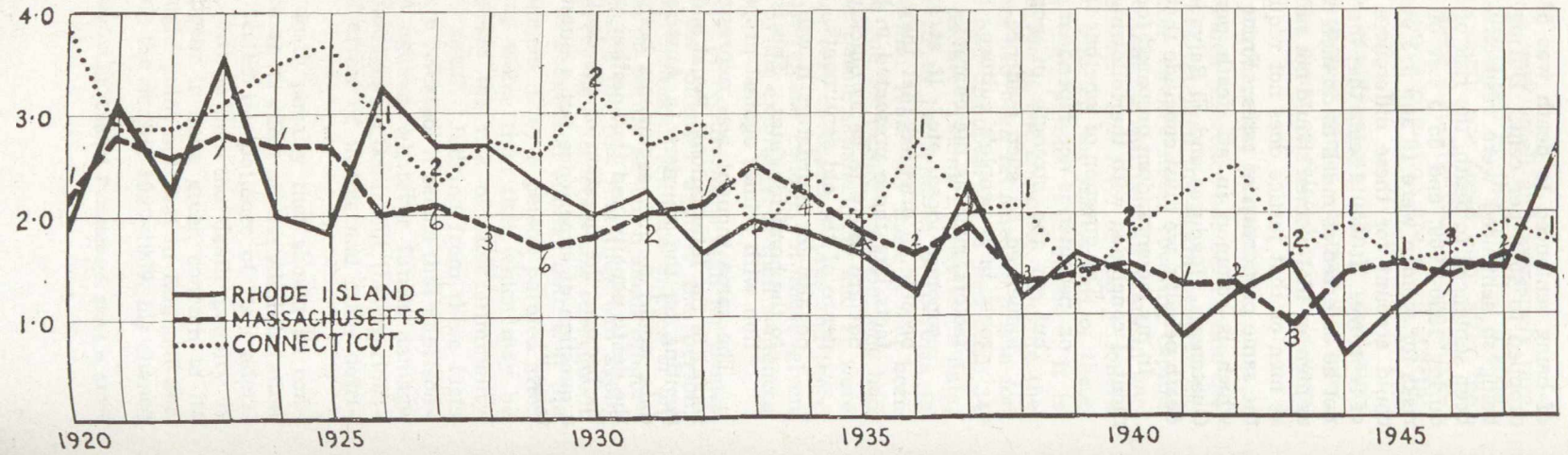


DIAGRAM III. Michigan, Indiana and Ohio: Homicide Death Rates, 1920-1948, per 100,000 population; and Executions, 1930-1948

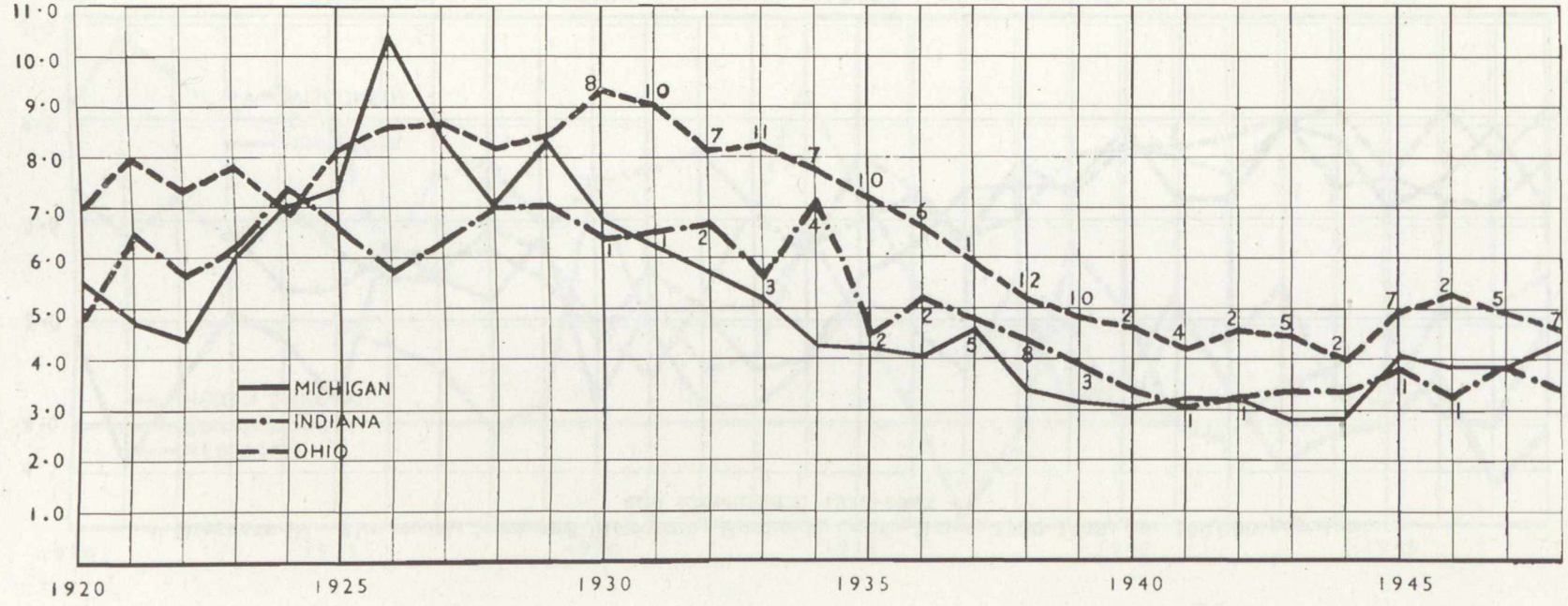


DIAGRAM IV. Minnesota, Iowa and Wisconsin; Homicide Death Rates, 1920-1948, per 100,000 population; and Executions, 1930-1948

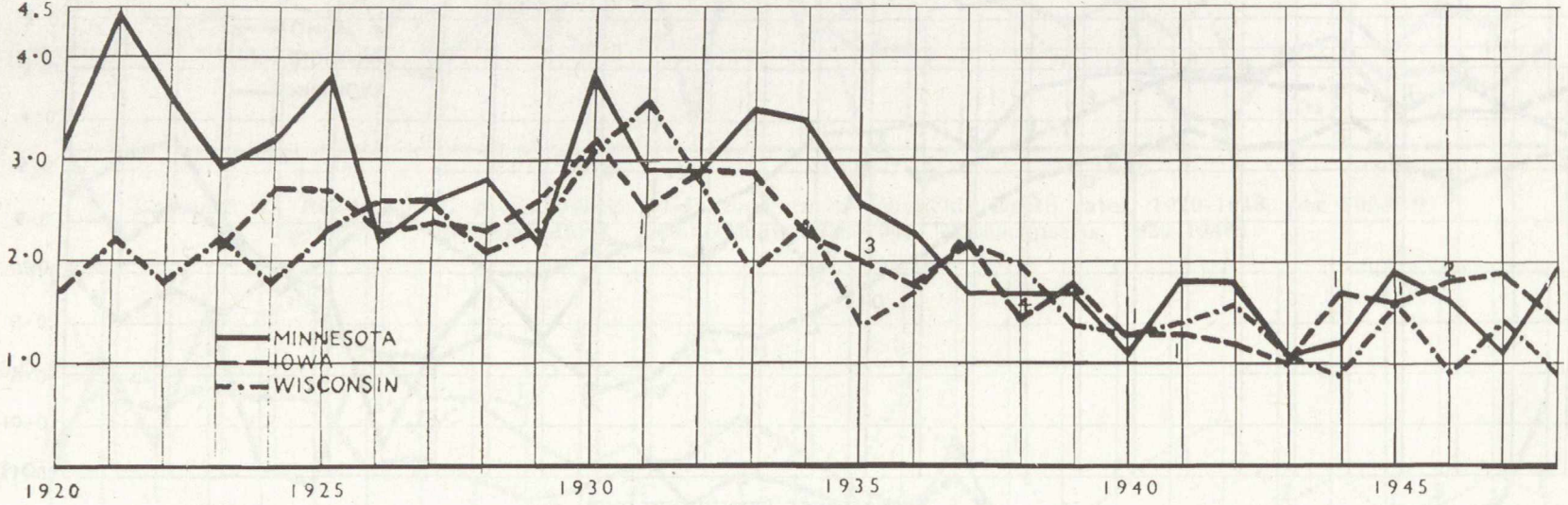


DIAGRAM V. North Dakota, South Dakota and Nebraska: Homicide Death Rates, 1920-1948, per 100,000 population; and Executions (Nebraska, 1930-1948; South Dakota, 1939-1948)

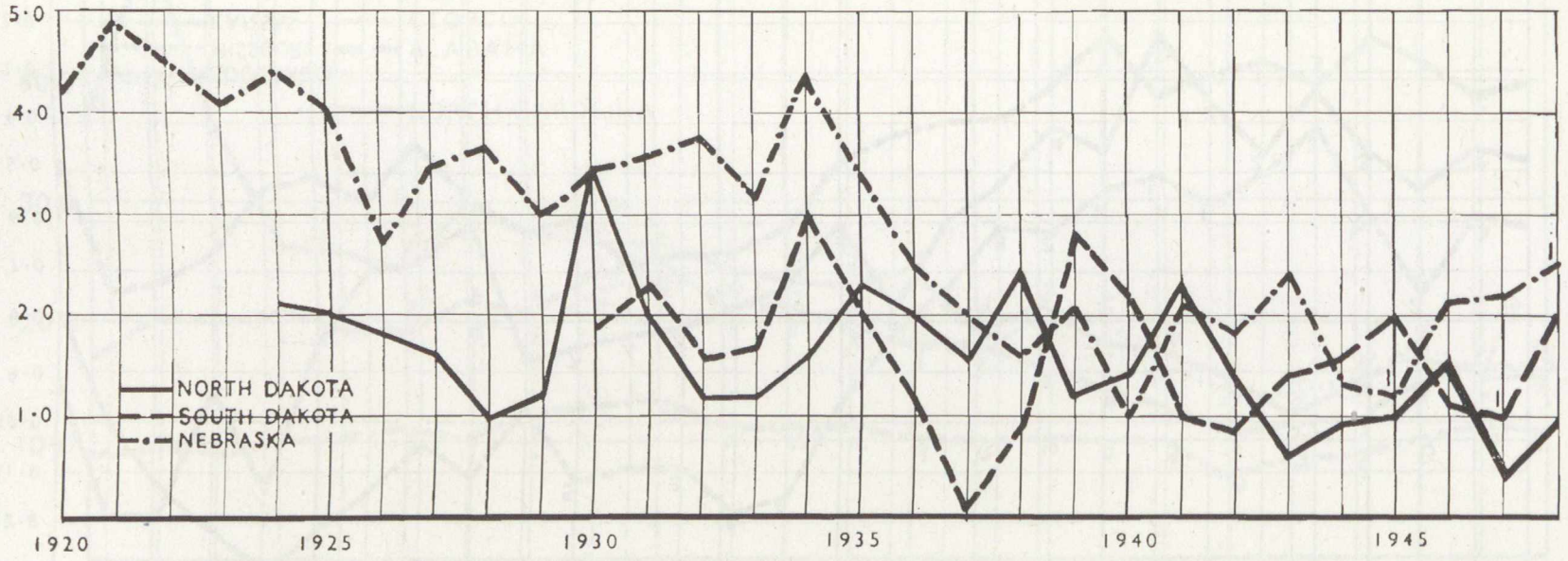


DIAGRAM VI. Colorado, Missouri and Kansas: Homicide Death Rates, 1920-1948, per 100,000 population; and Executions, 1930-1948

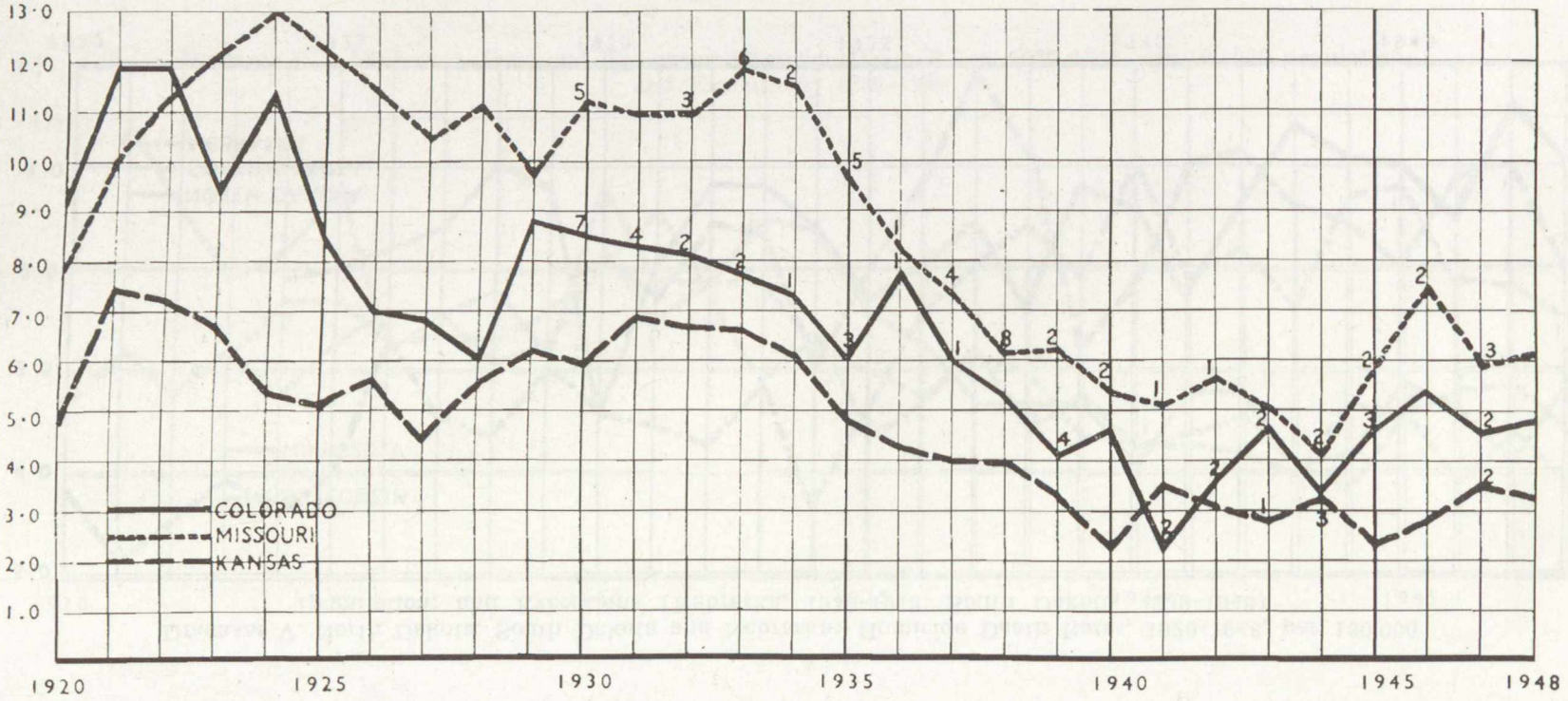
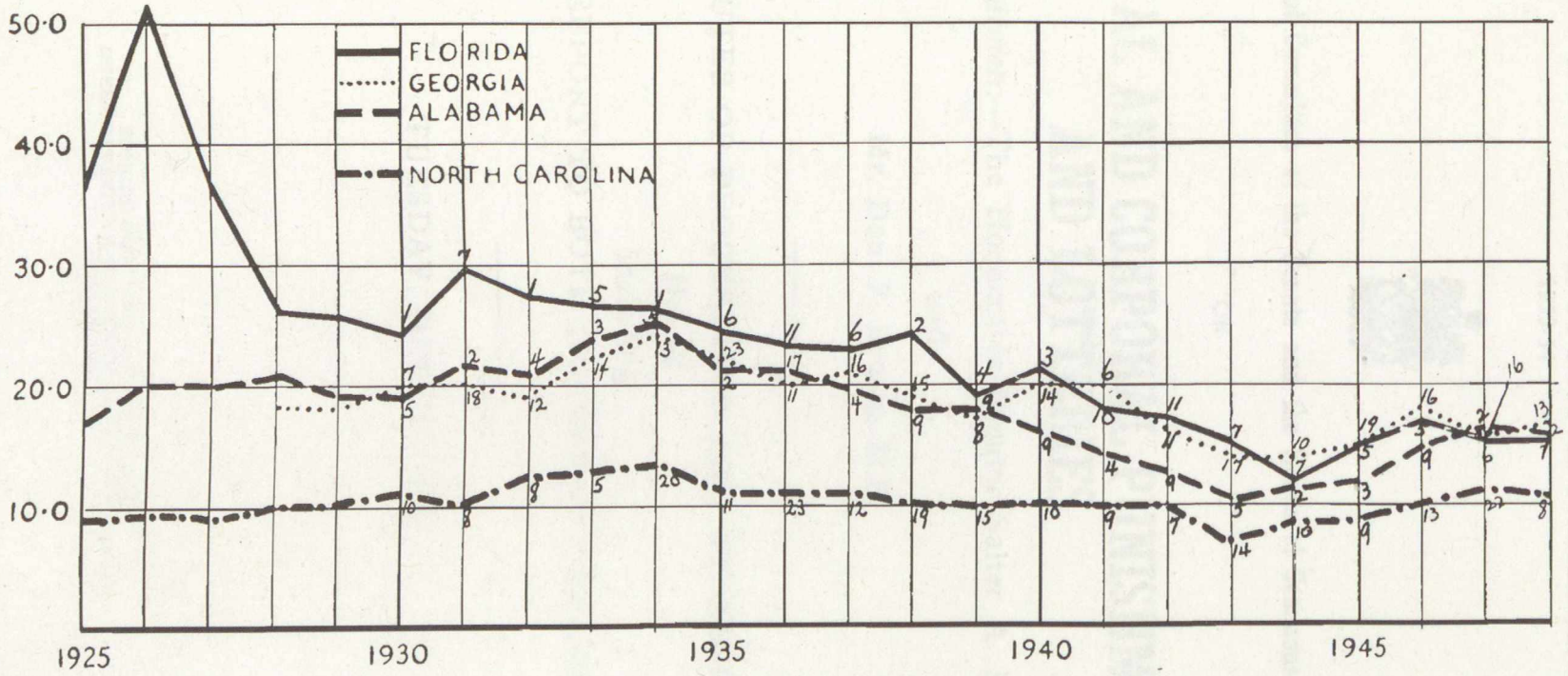
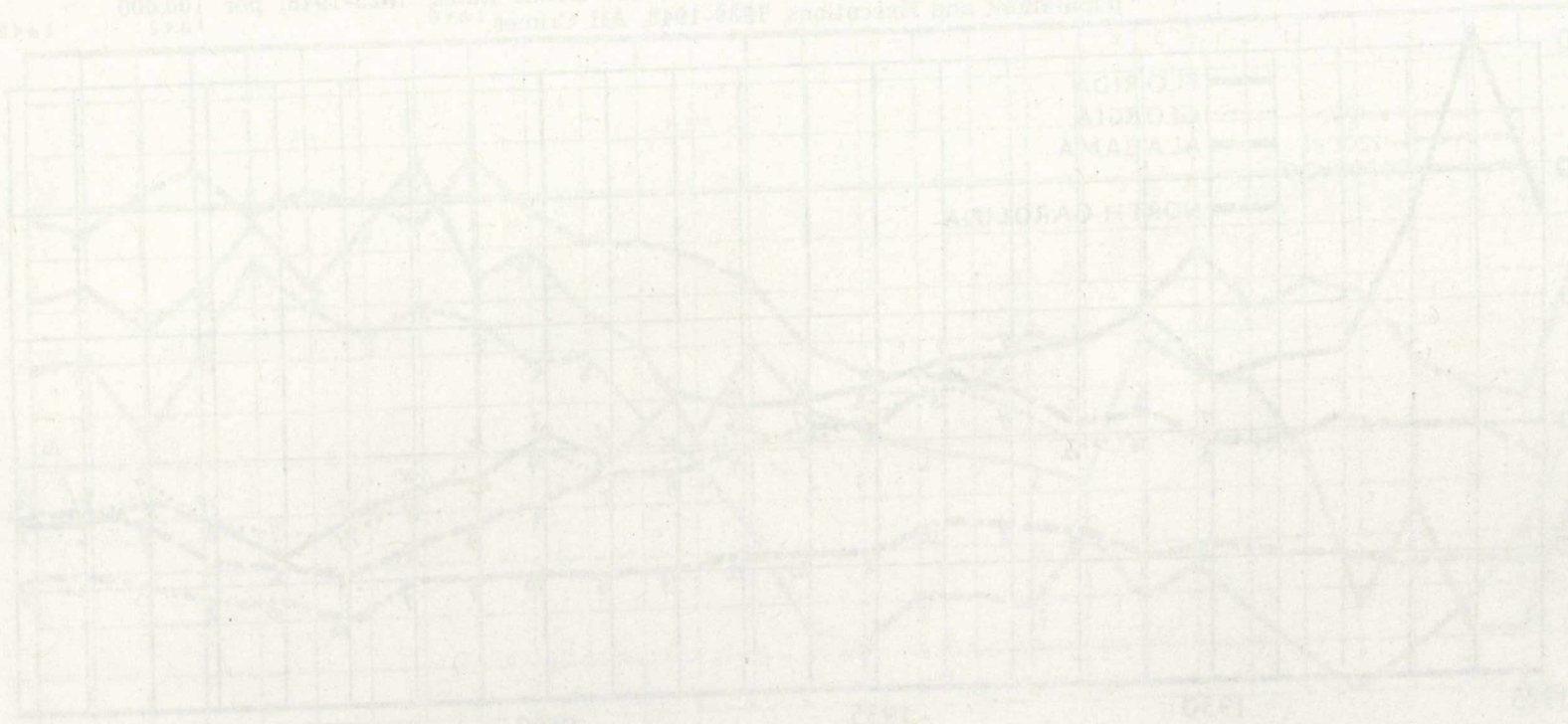


DIAGRAM VII. Florida, Georgia, Alabama, North Carolina: Homicide Death Rates, 1925-1948, per 100,000 population; and Executions, 1930-1948, All Crimes





FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54

Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 18

including

THIRD REPORT TO BOTH HOUSES OF PARLIAMENT

TUESDAY, JUNE 15, 1954

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

COMMITTEE MEMBERSHIP

For the Senate (10)

Hon. Walter M. Aseltine
Hon. Elie Beauregard
Hon. Paul Henri Bouffard
Hon. John W. de B. Farris
Hon. Muriel McQueen Fergusson
Hon. Salter A. Hayden (*Joint Chairman*)
Hon. Nancy Hodges
Hon. John A. McDonald
Hon. Arthur W. Roebuck
Hon. Clarence Joseph Veniot

For the House of Commons (17)

Miss Sybil Bennett
Mr. Maurice Boisvert
Mr. Don. F. Brown (*Joint Chairman*)
Mr. J. E. Brown
Mr. A. J. P. Cameron
Mr. Hector Dupuis
Mr. F. T. Fairey
Mr. E. D. Fulton
Hon. Stuart S. Garson
Mr. A. R. Lusby
Mr. R. W. Mitchell
Mr. H. J. Murphy
Mr. F. D. Shaw
Mrs. Ann Shipley
Mr. Ross Thatcher
Mr. Phillippe Valois
Mr. H. E. Winch

A. Small,
Clerk of the Committee.

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CORRIGENDA

The Order of Reference of the House of Commons, dated Monday, February 15, 1954, appearing at the top of page 5 of Issue Number 1 of the printed Minutes and Proceedings and Evidence, should read as follows:—

Ordered,—That the following:

That the following Members act on behalf of this House on the Joint Committee of both Houses of Parliament as provided in the motion of the Minister of Justice on January 12, 1954, and appointed to enquire into and report upon the questions whether the criminal law of Canada relating to (*a*) capital punishment, (*b*) corporal punishment or (*c*) lotteries should be amended in any respect and, if so, in what manner and to what extent: Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Decore, Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Montgomery, Murphy, (*Westmorland*), Shaw, Thatcher, Valois and Winch.

be substituted for the Order of Reference dated February 3, 1954, to the said Committee.

Substitute the word "formal" for the word *former* in the fifth last line of the Minutes of Proceedings and Evidence for May 27, 1954 (page 643, Issue No. 16).

REPORT TO BOTH HOUSES

The Special Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries begs leave to present the following as its

THIRD REPORT

On January 12, 1954, the House of Commons passed the following Resolution:—

> That a Joint Committee of both Houses of Parliament be appointed to inquire into and report upon the questions whether the criminal law of Canada relating to (*a*) capital punishment, (*b*) corporal punishment or (*c*) lotteries should be amended in any respect and, if so, in what manner and to what extent;
>
> That 17 Members of the House of Commons, to be designated at a later date, be Members of the Joint Committee on the part of this House and that Standing Order 65 of the House of Commons be suspended in relation thereto;
>
> That the Committee have power to appoint from among its members, such subcommittees as may be deemed advisable or necessary; to call for persons, papers and records; to sit while the House is sitting and to report from time to time;
>
> That the Committee have power to print such papers and evidence from day to day as may be ordered by the Committee for the use of the Committee and of Parliament, and that Standing Order 64 of the House of Commons be suspended in relation thereto;
>
> And that a message be sent to the Senate requesting that House to unite with this House for the above purpose and to select, if the Senate deems advisable, some of its members to act on the proposed Joint Committee.

The following Members of the House of Commons were subsequently appointed to the Joint Committee:—

Messrs, Boisvert, Brown (*Brantford*), Brown (*Essex West*), Cameron (*High Park*), Decore, Dupuis, Fairey, Fulton, Garson, Lusby, Mitchell (*London*), Montgomery, Murphy (*Westmorland*), Shaw, Thatcher, Valois and Winch.

On February 10, 1954, the following Resolution was adopted in the Senate:—

> That the Senate do unite with the House of Commons in the appointment of a Joint Committee of both Houses of Parliament to inquire into and report upon the questions whether the criminal law of Canada relating to (*a*) capital punishment, (*b*) corporal punishment or (*c*) lotteries, should be amended in any respect and, if so, in what manner and to what extent;
>
> That the following Senators be appointed on behalf of the Senate on the said Joint Committee, namely, the Honourable Senators Aseltine, Beauregard, Bouffard, Farris, Fergusson, Hayden, Hodges, McDonald, Roebuck and Veniot.
>
> That the Committee have power to appoint, from among its members, such subcommittees as may be deemed advisable or necessary and to sit while the House is sitting.

That the Committee have power to print such papers and evidence from day to day as may be ordered by the Committee for the use of the Committee and of Parliament.

That the Committee have power to send for persons, papers and records, and to report to the Senate from time to time.

That a message be sent to the House of Commons to inform that House accordingly.

On March 2, 1954, both Houses of Parliament authorized the Committee to retain the services of counsel.

The original membership of the Committee was changed on February 15 by the substitution of Mrs. Ann Shipley, M.P., for Mr. John Decore, M.P., and on March 5 by the substitution of Miss Sybil Bennett, M.P., for Mr. G. W. Montgomery, M.P.

On February 17, the Committee established a Subcommittee on Agenda and Procedure which was authorized, upon the adoption of its First and Second Reports, to prepare and arrange a schedule of witnesses with sittings to be held twice weekly insofar as practicable.

The Committee held its first sitting on February 17 for preliminary organization, meeting thereafter at least twice weekly, except during the Easter recess of Parliament, until June 2 when the last public hearing was held. Thereafter, the Committee's proceedings were devoted to preparing its report. In all, the Committee held 30 meetings, all of which were in open session excepting parts of those meetings devoted to discussion on procedure or to preparation of its report. The subcommittee held 17 meetings relating to the agenda and procedure of the Committee.

During the course of its inquiries, the Committee adduced evidence from individuals, organizations, and governmental sources indicated in Schedule A (*Appendix E*) of the last issue (No. 18) of the Committee's printed proceedings. The Committee also had access to reports and documents, acquired or ordered for reference by the Committee, as listed in Schedule B (*Appendix E*) of the same issue of the proceedings. In addition, the Committee received over 300 miscellaneous representations in the form of letters, resolutions, and petitions from individuals and organizations all across Canada which were considered and analyzed by the subcommittee on Agenda and Procedure for possible evidence or sources of information.

The Committee wishes to express its gratitude for the valuable assistance received from witnesses, individuals, organizations and provincial governments who made oral representation or submitted written evidence to the Committee. In addition, the Committee very much appreciates the assistance received from the Department of Justice, Counsel to the Committee, and the Committees Branches of both Houses of Parliament for their contributions in facilitating the work and proceedings of the Committee.

The Committee, recognizing that it is in the national interest to have a well informed public opinion concerning the three subject matters it has been considering, desires to express its appreciation of the contribution made to this end by the extensive and fair coverage given its proceedings by the press and radio of Canada.

The Committee urges that all national organizations interested in the problems before it, formulate their views during the Parliamentary recess and prepare to make their considered opinions known to the Committee at the next Session.

The Committee finds that it will not be able to complete at the current session of this Parliament its inquiries into the matters referred to it for report and, accordingly, recommends:

1. That a corresponding Committee be established and appointed early in the next session of this Parliament to resume the studies and continue the inquiries initiated by this Committee.

2. That the government, in co-operation and consultation with the provincial governments, consider the question of the revision of existing reporting and compilation procedures relating to criminal statistics.

3. That the services of Counsel to the Committee be retained on the same basis as presently authorized until the end of the current session of Parliament for the purpose of completing certain inquiries already instituted.

A copy of the Committee's Minutes and Proceedings and Evidence is tabled herewith.

All of which is respectfully submitted.

SALTER A. HAYDEN,
DON. F. BROWN,
Joint Chairmen.

NOTE: The foregoing Report was concurred in by the House of Commons on June 16, 1954, and by the Senate on June 17, 1954. The First and Second Reports were a matter of routine only, having to do with fixing the Committee's quorum and retention of Counsel. (*See printed Proceedings No. 1*).

MINUTES OF PROCEEDINGS

TUESDAY, June 15, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met *in camera* at 11.30 a.m. The Joint Chairman, Mr. Don. F. Brown, presided.

Present:

The Senate: The Honourable Senators Aseltine, Fergusson, and Veniot.—(3).

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Fairey, Lusby, Shaw, Shipley (Mrs.), Thatcher, and Winch.—(10).

In attendance: Mr. D. G. Blair, Counsel to the Committee.

The Presiding Chairman presented for consideration the Fourth Report of the Subcommittee on Agenda and Procedure, copies of which had been distributed to members in advance. (*Text appears immediately following these Minutes.*)

On motion of Mrs. Shipley, seconded by Mr. Winch, the Fourth Report of the Subcommittee on Agenda and Procedure, as presented, was unanimously adopted.

The Presiding Chairman presented for consideration the Subcommittee's draft of the Committee's Third Report to both Houses, copies of which had been distributed to members in advance. (*Text appears immediately preceding these Minutes.*)

On motion of Mr. Winch, seconded by Mrs. Shipley, the Third Report to both Houses, as presented, was unanimously adopted for presentation to, and concurrence in, by the Senate and the House of Commons.

The Committee adjourned *sine die.*

A SMALL,
Clerk of the Committee.

REPORT OF SUBCOMMITTEE ON AGENDA AND PROCEDURE

Your Subcommittee on Agenda and Procedure met at 11.30 a.m. and 4.30 p.m., June 8, and 11.30 a.m., June 11, and has agreed to present the following as its

FOURTH REPORT

1. During the course of the Committee's proceedings, over 300 miscellaneous representations were received from various individuals and organizations. These representations have been examined for possible sources of evidence, classified and listed by subject, and summarized in report form.

Your subcommittee recommends that the foregoing be filed with the Committee's records and be available for reference by any member of this or a continuing Committee of the next session of Parliament.

2. The following books and publications have been referred to or recommended by witnesses appearing before the Committee:

(1) Jean Grave, "Le problème de la peine de mort et sa réapparition en Suisse. A propos de la 'Motion Gysler' ". *Revue de la criminologie et de police technique* (Genève) 6:3-123, Jan.-Mars, 1952.

(2) "Le problème de la peine de mort". *Bulletin,* Société intern. de Criminologie, année 1953, pp. 11-62.

(3) François Clerc, "A propos de la peine de mort". PP. 73-89 of a symposium entitled *L'homme face à la mort,* published by Delachaux & Niestle, 1952.

(4) "The Nature of Gambling" by David D. Allen, published by Coward-McCann, Inc., in 1952 (Longmans, Green & Co., Toronto, hold Canadian rights).

(5) Third Interim Report, dated May 1, 1951, of U.S. Senate Special Committee to investigate Organized Crime in Interstate Commerce (under chairmanship of Senator Kefauver), together with some of the more important books thereon dealing with the findings and conclusions.

(6) Annals of the American Academy of Political and Social Science, published in May, 1950, containing the symposium on gambling.

Your subcommittee recommends that a copy of the foregoing be procured by the Parliamentary Library.

3. Your Joint Chairmen have communicated with the person who has officiated at most recent hangings in Canada, have determined that he would be willing to appear to give evidence in camera with no publicity, and have reported accordingly to your subcommittee.

Your subcommittee, in view of the conditions specified by the hangman, recommends that this report be filed with the Committee's records for reconsideration by the continuing committee to be recommended for reconstitution at the next session of Parliament.

4. Counsel to the committee presented statistical information and tables relating to homicides and corporal punishment prepared by the Dominion Bureau of Statistics.

Your subcommittee recommends that the homicide statistics be filed with the records of the committee but that the corporal punishment statistics be printed as an Appendix to the final edition (No. 18) of this committee's proceedings. (*See Tables 1 to 8 at end of Appendix B*).

5. Counsel to the committee also presented the following information:

(1) Summary of Evidence on Capital Punishment.

(2) Summary of Evidence on Corporal Punishment.

(3) Summary of Evidence on Lotteries.

(4) Analysis of Correspondence from Public.

(5) Report on Provincial Replies to Questionnaires.

(6) Preparation for Resumption of Committee's Work at the Next Session.

Your subcommittee recommends that (1) to (6) inclusive of the foregoing be filed with the committee's records for use by the continuing committee to be recommended for reconstitution at the next session of Parliament.

In connection with the document entitled "Preparation for Resumption of Committee's Work at the Next Session", it is necessary that counsel to the committee immediately make further inquiries and investigations as outlined therein and, accordingly, your subcommittee recommends that retention of counsel's services until the end of the current session of Parliament be authorized by both Houses.

6. Replies to the Questionnaires have been received from some of the provincial Attorneys-General and also from the Commissioner of Penitentiaries.

Your subcommittee recommends that this information be printed as an Appendix to the final edition (No. 18) of this committee's proceedings, in question and answer form in so far as practicable (*See Appendices A, B, C and D*).

7. The offprint from the Canadian Bar Review of the symposium of the Open Forum on Capital Punishment held by the Ontario Branch of the Canadian Bar Association (ordered on May 4) will not be available for the present session.

Your subcommitte recommends that the clerk of the committee be authorized to obtain copies and approve same for payment, between the current and next session of Parliament, and to file same with the committee's records for distribution to the members of the continuing committee to be recommended for reconstitution at the next session of Parliament.

8. Your subcommittee has prepared a draft Third Report to both Houses for the committee's consideration in the form attached.

Your subcommittee recommends that the said report, in the form approved by the committee, be presented by the Joint Chairmen to their respective Houses for concurrence.

All of which is respectfully submitted.

SALTER A. HAYDEN,
DON F. BROWN,
Joint Chairmen.

APPENDIX A

CAPITAL PUNISHMENT

PROVINCIAL ATTORNEY-GENERAL'S REPLIES TO QUESTIONNAIRE

(Note: For replies of a general nature, see Appendix D)

Question 1—Trial

What provision is made by the province for legal aid to an accused charged with a capital offence for the purposes of his trial?

Answers—

B.C.—In capital cases where the accused is destitute and has not employed counsel, counsel is appointed by the Court and paid an honorarium by the Attorney-General's Department.

Alta.—If accused is indigent he is supplied with counsel and may choose own counsel, if counsel is willing to act for fees allowed. Defence counsel paid on the same basis as that set out in Order in Council covering payment to Agents of the Attorney General. In cases of murder, manslaughter or rape, tried in the Supreme Court, the fee is $100.00 for the first day and $75.00 for each succeeding day and these fees may be increased in the discretion of the Attorney-General. In addition the accused receives a free copy of the transcript of the evidence taken at the preliminary hearing.

Sask.—It is the practice for this department to pay counsel assigned to an accused who is without funds to conduct his defence at his trial for murder a counsel fee not exceeding $75.00 or $50.00 per day, including the first day, when the trial lasts more than one day, upon the trial judge assigning counsel and so recommending that such counsel fee be paid, and counsel assigned to the accused is not paid for absence from home, subsistence, railway fare or any disbursements.

In all cases in which counsel is assigned to an accused who is without funds, and in such cases only, the Crown, upon request of counsel assigned, will assume the expense for the attendance of certain witnesses for the defence upon an affidavit being sumbitted to this department setting out:

1. that the accused is without funds to procure the attendance of the necessary and material witnesses for the defence,
2. that the witnesses, naming them, with their addresses, are necessary and material witnesses for the defence, and
3. stating shortly what evidence each such witness can give to show that he is a necessary and material witness for the defence.

Upon such affidavit being furnished to the department setting out the necessary information covering the above mentioned points, then the matter of procuring the attendance of the necessary and material witnesses for the defence is referred to the agent of the Attorney General prosecuting the case. Such defence witnesses are not only subpoenaed by the Crown but are paid by the Crown in the same manner as Crown witnesses.

Ont.—The Law Society of Upper Canada has a scheme for legal aid to indigent prisoners. The Law Society has appointed a Director in each County and District of the Province and application is made to him by an indigent prisoner who is without Counsel. The Director contacts the County or District Law Ass'n. and Counsel is assigned to the prisoner. The Province on request of Counsel assigned, supplies him with a copy of the evidence at the preliminary hearing and authorizes the Crown Attorney to place any necessary defence witness on the Crown Witness Sheet. This does not apply to expert witnesses. If a question of insanity arises, the Province arranges to have the accused examined by two or more competent alienists and this report is handed to Defence Counsel.

Question 2—Period Between Trial and Date Set for Execution

What, generally, are the conditions of confinement of the condemned prisoner during the period between the imposition of sentence of death and the day set for execution?

Answers—

B.C.—Prisoner is confined in a cell apart from the remainder of the cell block and provided with a special guard. He receives normal meals, visitors, spiritual advice by permission of sheriff, and the freedom of the area in front of his cell for exercise, meals, for approximately eight hours each day.

Alta.—Held in special death cell under a twenty-four hour guard and fed by tray in cell—visited twice daily by Warden, Deputy Warden and Chief Guard.

Sask.—The condemned prisoner is held in a steel-lined death cell which is completely segregated from the main part of the cell block. He is confined to this cell unless, by authority of the sheriff, he is to be removed for a specific reason. A 24-hour daily guard is posted outside the death cell.

Ont.—The prisoner, having been brought back from court, is thoroughly searched and documented and allocated to his place of confinement. He is isolated from all other prisoners and placed under constant guard. He is accommodated in a cell usually about eight feet by eight feet, some are larger, with built-in plumbing or in some cases ablution facilities have to be provided. The cell is invariably an open-front type admitting daylight and is also supplied with artificial light. It is ventilated, dry, warm and usually opens on to a corridor. The cell is provided with a bed and bedding. A guard on duty is immediately outside the gate of the cell. In the smaller jails food is cooked in the residence of one of the jail employees and in all cases the food is served by a member of the jail staff. In larger jails, where a paid cook is employed, the prisoner's food is cooked in the institution kitchen. The prisoner is provided with means for daily ablution, such as towels, soap, comb, etc., but these articles are returned after each usage. He is shaved once or twice weekly, if he requests, by a member of the staff, during which period he is handcuffed and moved to the corridor, depending upon the facilities of the particular jail. Reading material is available and selected literature is provided, sometimes by the officials at the jail, sometimes by the spiritual adviser, or by his family. The prisoner is never left alone throughout each of the 24 hours. If it is necessary for a guard to leave for any reason, a relief must first be provided,—if only for a few minutes. All authorized visitors are conducted to the cell, but not into it. Visitors are not permitted to come within three feet of the cell. No physical contact is permitted and nothing is permitted to pass between visitor and prisoner except the spoken word. All authorized articles for the prisoner must be given to the jail governor or his representative for examination and, if acceptable, they are then handed to the prisoner by a member of the jail staff. Guards employed on this duty are selected members of the regular staff of the jail concerned.

Question 3—Appeal

(a) What information is supplied to the condemned man with respect to his right of appeal?

Answers—

B.C.—He is supplied with information by the gaol officials as to his right to appeal.

Alta.—All the information necessary on privilege of appeal. In addition the condemned prisoner's counsel, who acted at the trial, always gives same information in this regard.

Sask.—Ordinarily the condemned man's counsel will advise him relative to his right to appeal, otherwise the prison superintendent will ensure that the condemned person is informed of his right to appeal.

Ont.—It is presumed that Defence Counsel in each case informs the condemned man of his right to appeal. The Governors of the local gaols are in possession of Notice of Appeal forms available to the prisoner if he desires to make application for leave to appeal in writing.

Question 3 (b)

What provision is made for legal aid?

Answers—

B.C.—The accused is advised by gaol officials that he can employ counsel and, if he is destitute, counsel will be arranged for by the Attorney-General's Department.

Alta.—In proper cases the Attorney-General will supply counsel for an appeal and will provide appeal books—the Appellate Division may suggest to Crown that counsel be appointed and appeal books provided.

Sask.—It is the practice for this department to pay counsel assigned to an accused, by the Court of Appeal, who is without sufficient means to enable him to obtain aid on a criminal appeal, as provided by subsection (4) of section 1021 of the Criminal Code, in cases of murder upon the Court of Appeal recommending to the Department of the Attorney-General the payment of a counsel fee not exceeding $75.00 and counsel so assigned to the accused is not paid for absence from home, subsistence, railway fare or any disbursements.

In all cases in which counsel has been assigned to an accused by the Court of Appeal, the department will consider instructing the court reporter who takes down the evidence at the trial to extend the evidence without charge in the same manner as in Crown appeals.

Ont.—Usually Defence Counsel appearing at the trial, appears for the appellant in the Court of Appeal; otherwise the Registrar of the Supreme Court assigns Counsel from a panel. Living expenses of out of town Counsel during the hearing of the appeal are usually paid by the Province. The cost of transcript of the evidence (seven copies) are paid for by the Province.

Question 3 (c)

In what circumstances does the province pay all or any of the costs of appeal?

Answers—

B.C.—In every case where the accused is destitute.

Alta.—Same as 3 (b).

Sask.—See answer to 3 (b).

Ont.—Answered by 3 (b).

Question 3 (d)

What conditions of confinement apply during the period when the appeal is pending?

Answers—

B.C.—Same as period between date of sentence and date of execution.

Alta.—There is no change in conditions of confinement during period when appeal pending.

Sask.—If an appeal is pending, the accused is held in a cell within the cell block and is considered to be awaiting trial.

Ont.—The same conditions as applied in answer to question 2.

Question 3 (e)

To what extent is assistance rendered by the province to enable the accused to appeal?

Answers—

B.C.—The Province pays the cost of providing appeal books, an honorarium to counsel for the accused to conduct the appeal together with any and all necessary and incidental expenses.

Alta.—Same as 3 (b).

Sask.—See answer to 3 (b).

Ont.—Answered by 3 (b).

Question 4—Post Appeal Period

What assistance is given to the convicted man in preparing a submission to the Minister of Justice for commutation of his sentence?

Answers—

B.C.—This is a matter for the accused's counsel to attend to.

Alta.—All assistance necessary—as a rule this matter is attended to by defence counsel.

Sask.—This is left to counsel acting for the accused insofar as this department is concerned.

Ont.—None.

Question 5—Hanging

(a) What procedure is followed in the prison, in relation to the condemned man, after notification is received that there will be no interference in the execution of sentence until the time of execution?

Answers—

B.C.—The religious adviser and prison medical officer are notified. No other special arrangements are made with regard to the condemned man.

Alta.—The Warden contacts the condemned man's spiritual advisor and together they notify him.

Sask.—If the execution order is upheld, the prisoner is held in a death cell under 24-hour surveillance.

Ont.—There is little change in the procedure after a condemned man has been notified that there will be no interference with the execution of the sentence, as all previous arrangements are based on the assumption that sentence will be carried out. However, there is usually a close liaison between the spiritual advisor and at least one member of the family, and the sheriff and/or the governor. While the defence counsel frequently is advised simultaneously with the sheriff or governor, the prisoner is advised by the sheriff or governor without delay. The prisoner may, or may not, ask immediately for his minister or a member of his family but almost invariably these are also notified by the sheriff or the governor, unless it has been made clear that the defence counsel has already informed them.

Question 5 (b)

Having regard to section 1066 of the Criminal Code, what persons are ordinarily present at the execution of a sentence of death and in particular are any special provisions made with regard to the presence of relatives or members of the press?

Answers—

B.C.—Spectators are limited to six or eight (just enough to empanel a jury) which usually include members of the Press. The matter is in the

discretion of the Sheriff and, if a relative requested a pass, the Sheriff would try and persuade him or her not to go to the execution, but if he persisted, the Sheriff would issue a pass.

Alta.—The Sheriff, executioner, Warden and staff, gaol physician, additional medical officer, Coroner, spiritual adviser and some members of the police. No members of the press are permitted to be present.

Sask.—Ordinarily the following are present at the execution: the sheriff charged with the execution, the prison superintendent, the prison surgeon, the deputy warden, one or two senior custodial officers, the condemned man's priest or minister, and members of his family who may be authorized by the sheriff. The press do not attend.

Ont.—Present at the execution are the official hangman, the sheriff, the governor of the jail, the jail surgeon, the prisoner's selected spiritual adviser, one or more sheriff's officers, two or three members of the jail staff. There is no record of a condemned man's family ever being present at an execution.

Question 5 (c)

What provisions, if any, are made to conceal the execution from
(i) *any other inmates of the prison; and*
(ii) *the general public.*

Answers—

B.C.—Executions are carried out in enclosed space within gaol building completely concealed from other inmates and public.

Alta.—At Lethbridge gaol the death cells and permanent scaffold are isolated from rest of prison. At Fort Saskatchewan gaol the scaffold is erected in the exercise yard screened by canvas. Plans are under way to construct enclosed permanent scaffold.

It is impossible for the general public to view any part of execution.

Sask.—No announcement of the time of execution is made, and it occurs usually in the early morning hours when other prisoners are asleep. The death cell and gallows are so situated as to make it unnecessary for the condemned man to pass through the cell block.

Ont.—Where there are built-in gallows, the wing where the execution is to take place is cleared of any prison population. Where the gallows is built-in in the jail, no difficulty is presented, but where the gallows has to be erected in the jail yard (this is still done in some instances), every effort is made to ensure that the jail yard is not under observation.

Question 5 (d)

What practice is usually followed with regard to the administration of sedatives or drugs to the condemned man prior to execution? Under what circumstances are sedatives or drugs administered? What types or kinds of sedatives or drugs are administered?

Answers—

B.C.—No drugs are administered to condemned persons except that, immediately prior to execution, sedatives are sometimes given to induce sleep.

Alta.—Sedative is offered and only administered if requested—morphine is the drug used.

Sask.—No information.

Ont.—The matter of sedatives is left to the jail surgeon. These are made available to the condemned man at an appropriate time prior to the execution. In some cases these are refused by the prisoner. Various drugs are used such as morphine, veronal and the barbiturates. They are usually administered hypodermically.

N.B.—The Sheriff of the County or District is responsible for the custody and execution of a condemned prisoner.

Question 5 (e)

What disposition is ordinarily made of the body of the executed person in your province?

Answers—

B.C.—An Order-in-Council is always obtained in this Province under Section 1071 of the Criminal Code for burial outside prison walls, as Warden claims no place available for burial inside the walls. Body is usually turned over to an undertaker and buried in cemetery unless claimed by relatives.

Alta.—If not claimed by relatives, burial takes place same day in the prison cemetery.

Sask.—In no case has burial been made within the gaol walls. The body, therefore, is either taken for burial by the family of the executed person or is disposed of otherwise by order of the Lieutenant-Governor-in-Council. Specific dispositions made are not known.

Ont.—The body is buried in the yard of the jail set aside for that purpose. However, in recent years where a member of the family has requested it, the body has been released for burial at some chosen spot outside. It is removed according to a pre-arranged plan by an undertaker after the inquest has been held, and usually in the very early hours of the morning and during the hours of darkness. The sheriff or his representative attends the funeral and burial services. The sheriff ensures that the casket is not opened after it leaves the jail.

Question 5 (f)—What, in your experience, has been

(i) *the longest,*
(ii) *the shortest*

time to elapse between the time when the trap was sprung and the time when the condemned man was pronounced dead?

Answers—

B.C.—(i) Twenty minutes.
(ii) Twelve minutes.

Alta.—(i) Longest, 16½ minutes.
(ii) Shortest, 4 minutes.

Sask.—No information. This should be obtainable from the sheriff with whom the data is filed.

Ont.—According to medical opinion, the condemned man is rendered instantly unconscious when his neck is broken or vertebrae fractured. However, the heart may continue to beat for some time, depending on the physical condition and age of the prisoner. (i) Longest: 22 minutes. (ii) Shortest: 3 minutes.

Question 5 (g)

What procedure is followed where more than one person is sentenced to be hanged at the same time? If the executions are carried out simultaneously, what special arrangements are made for this purpose?

Answers—

B.C.—Each person is prepared for execution and all stand on trap together and are dropped simultaneously.

Alta.—If for the same offence hanged back to back at the same time—no special arrangements required.

Sask.—We have no such experience.

Ont.—Where two persons are to be executed at the same time, the sentence of the court is carried out literally. Prisoners are placed back to back on the gallows and both are executed simultaneously. So far as can be found in our records, no special arrangements have been necessary as the built-in gallows used in such cases have provided sufficient space, that is to say, the size of the trap and the crossbeam.

Question 5 (h)

With respect to hangings which have taken place in your province, in the period 1930-1953, or any portion or sampling of these years, can you advise what medical authorities have indicated to be the effective cause of death? If so, please tabulate, to the extent possible, the various effective causes of death and the number of deaths attributable to each cause?

Answers—

B.C.—The Sheriff conducting the execution states that the thirty five persons that he has seen hanged have all died from a fractured vertebrae. There have been no strangulations. There has been one decapitation.

Alta.—Not available.

Sask.—This information is filed with the sheriff and is not on our records.

Ont.—Fractured vertebrae or broken neck in all cases except two when strangulation was given as cause.

Question 5 (i)

If statistical information in relation to question 5 (h) above, is not available, can you offer an opinion as to the number or proportion of hangings in which death results from:—

(i) *a broken neck,*
(ii) *strangulation, or*
(iii) *any other cause.*

Answers—

B.C.—See answer to 5 (h) above.

Alta.—(i) 98% of broken neck
(ii) 2% of strangulation
(iii) nil

Sask.—Any attempt to answer would be pure speculation.

Ont.—See 5 (h) above.

Question 6—Place of execution.

(a) Where are sentences of death ordinarily executed in your province?

Answers—

B.C.—In the main Provincial Prison at Oakalla Prison Farm.

Alta.—Fort Saskatchewan and Lethbridge Gaols.

Sask.—The Provincial Gaol for Men at Prince Albert is the place designated for executions in this province.

Ont.—In the County or District Jail where the offence was committed.

Question 6 (b)—

In your opinion, should any special provision be made for the execution of the sentences of death in specified institutions and, if so, what, in your view, should these special provisions be?

Answers—

B.C.—It would seem that the execution of sentences of death in a prison for men serving sentences of under two years, is somewhat inappropriate and that executions should take place in the Penitentiary.

Alta.—No.

Sask.—In our opinion, executions should be carried out in one institution in the province, whose primary function, otherwise, is that of a police lock-up. This would remove from institutions charged with rehabilitative functions a completely antithetical function and would locate it in a setting whose main operation would not be unduly influenced.

Ont.—No recommendation.

Question 7—Method of Execution

(a) Have you any comments on the suitability of hanging as a method of executing the death sentence?

Answers—

B.C.—The best way to answer this question would be to give the views of various officials who have had experience in this matter.

The Sheriff of New Westminster, who has been conducting the hangings in this Province for the last 25 years, states: "I know of no way that could be quicker or less painful than hanging".

Mr. Christie, who has been Warden of Oakalla Gaol since July 1952, states that hanging is not the best method and suggests drugs, gas, or life imprisonment.

The Deputy Attorney-General of the Province, who has held office since 1934, is of the opinion that the law as to capital punishment works out satisfactorily, and he can see no reason for a change and thinks that any alleviation of the law in this respect would be a retrograde step and that capital punishment is valuable as a deterrent to crime. As to any alternative method of executing the sentence of death, it is pointed out that the Commission on Capital Punishment which recently presented its report in England, went into this matter at great length, and came to the conclusion that under all the circumstances, death by hanging was the least objectionable method of capital punishment.

Alta.—No.

Sask.—Hanging, as a method of inflicting death, is primitive and subject to errors, resulting in torture. In our opinion, execution itself is indefensible. If it is to persist, however, administration of lethal doses of gas or drugs would appear to be more humane.

Ont.—No comment.

Question 7 (b)—

(b) In your view, should any alternative method of executing the sentence of death be considered as more appropriate and suitable and, if so, what method or methods would you suggest?

Answers—

B.C.—See answer to 7 (a).

Alta.—Some investigation might be made as to the most humane method of execution.

Sask.—See answer to 7 (a).

Ont.—No comment.

Question 8—The Effects of the Execution of the Sentence of Death

(a) In your experience, what observable effect does the execution of a sentence of death have on:

(i) the prison officers and employees or other persons in attendance?

(ii) the other inmates of the prison?

(iii) the community where the sentence of death is carried out?

Answers—

B.C.—The Warden of the Gaol where executions take place, reports as follows:

(i) Officers are picked for suitability to stand ordeal. Considered a nasty business. No volunteers. Would be avoided if men not enlisted for duty by direct order.

(ii) Carried out at 12:01 midnight. Very little effect, if any, on other inmates of the prison.

(iii) No effect. Not any more conscious of affair than people 100 miles away.

Alta.—

(i) Not a very pleasant task, but it has to be done.

(ii) Other inmates unable to witness execution, but for that day an air of despondency prevails.

(iii) No noticeable effect.

Sask.—

(i) Prison employees tend to react with depression and repugnance as the result of an execution. Senior officials consider change of employment seriously at such times.

(ii) Other inmates tend to become tense and sullen towards authority during the time immediately preceding execution.

(iii) Community feelings vary from smugness to a sense of genuine shame, and sympathy for the deceased.

Ont.—

(i) There is decided strain on those directly concerned and the strain begins a day or two before the execution takes place.

(ii) The effect has not been noticeable since executions have been carried out near midnight, for the past 15 years or so.

(iii) Generally no noticeable reaction although there is the usual group outside who show morbid curiosity.

Question 8 (b)—

Have you any comments arising from the effects observed and set forth in answer to question 8 (a)?

Answers—

B.C.—The Warden of the Gaol where executions take place, reports as follows:

Hanging seems to have little, if any, effect on the course of conduct of prison officers and employees.

Alta.—None, other than the fact that it is an unpleasant duty.

Sask.—In no way does the execution appear to have an ameliorative result since it tends to evoke a bitter attitude towards the officials of justice, and sympathy for the offender. Moreover, good prison personnel are reluctant to remain at this employment if executions are likely to take place.

Ont.—Nil. See 8 (a).

Question 9—Extension or Limitation of Capital Punishment

(a) In your opinion, should capital punishment be imposed as an alternative punishment in respect of any offences which it is not now authorized in the Criminal Code and, if so, what offences.

Answers—

B.C.—No.

Alta.—No.

Sask.—No.

Ont.—No comment.

Question 9(b)

In your opinion, should the sentence of capital punishment be deleted from the Criminal Code?

Answers—

B.C.—No.

Alta.—No.

Sask.—Yes.

Ont.—No comment.

Question 9(c)

If you are of the opinion that the sentence of capital punishment should be retained, would you consider

(i) *that it should not be authorized in respect of all offences for which it is presently authorized and, if so, in respect of which offences would you consider it should be deleted?*

(ii) *that, in respect of the offence of murder, provision should be made for an alternative punishment of life or any lesser term of imprisonment?*

Answers—

B.C.—

(i) Capital Punishment should be retained for all offences for which it is presently authorized, except rape.

(ii) No.

Alta.—No comment.

Sask.—See answer to 9(a).

Ont.—No comment.

Question 9(d)

If you consider that an alternative should be provided for the sentence of capital punishment, would you consider that the discretion as to sentence should be placed on the judge or the jury or that any other special provision should be made as to the exercise of this discretion?

Answers—

B.C.—Not applicable.

Alta.—No comment.

Sask.—The discretion should be left with the jury after having heard expert testimony relevant to the nature of offender's present condition and what treatment, if any, may be appropriate.

Ont.—No comment.

Question 10—Definition of Murder.

(a) Should you consider that capital punishment should be retained as a sentence for a conviction of murder, would you favour any modification of the present definition of murder, whether by specifying degrees of murder or by redefining the responsibility of accessories and accomplices or in any other manner?

Answers—

B.C.—No.

Alta.—No.

Sask.—See answers to 9(a) and 9(d).

Ont.—No comment.

Question 10(b)

Should you consider the redefinition of the offence of murder as desirable, have you any views as to the differentiation which might be made in the sentences provided for different degrees of murder and different participants in the offence of murder?

Answers—

B.C.—Not applicable.

Alta.—No.

Sask.—See answers to 9(a) and 9(d).

Ont.—No comment.

Question 10(c)

Should any special provisions be made for the sentencing of persons charged in respect of what are called

(i) *mercy killings?*

(ii) *suicide pacts?*

Answers—

B.C.—No. Leave to discretion of the authorities and the verdict of the jury.

Alta.—No.

Sask.—See answers to 9(a) and 9(d).

Ont.—No comment.

Question 10(d)

In addition to the other matters raised in this paragraph, have you any comments to make on what is sometimes called "constructive murder" and any suggestions to offer as to the redefinition of the crime of murder and the punishment therefor relating to this matter?

Answers—

B.C.—No comment.

Alta.—No comment.

Sask.—See answers to 9(a) and 9(d).

Ont.—No comment.

Question 11—Young Persons and Females.

(a) In your opinion, should the death sentence be imposed upon young offenders?

Answers—

B.C.—Yes, subject to answer to 11 (b).

Alta.—No.

Sask.—Further to the reply to 9 (a) it might be observed that if special concessions are considered excusing young or female offenders from the death penalty, the whole value of the deterrence of this form of punishment is called into question. Moreover, such exemption might result in having young persons or females used to commit murder by adult males, both parties being aware of the immunity enjoyed by the actual killer.

Ont.—No comment.

Question 11 (b)—

Would you consider that the Criminal Code should specify a minimum age for the application of the death sentence and, if so, what age would you consider appropriate?

Answers—

B.C.—Yes. Consider that death sentence should not be imposed upon persons 14 years of age or under. The question whether the death sentence should be carried out on young persons over that age should be left for the decision of the Governor-General in Council in each case on a full review of the facts.

Alta.—14 years.

Sask.—See answer to 11 (*a*).

Ont.—No comment.

Question 11 (c)—

In your opinion, is it desirable to impose capital punishment on females?

Answers—

B.C.—Yes, subject to executive clemency.

Alta.—Yes.

Sask.—See answer to 11 (a).

Ont.—No comment.

Question 11 (d)—

Have you any comments of a general nature on the question of the imposition of sentences of death on young persons and females?

B.C.—No, except as in 11 (*a*) to 11 (*c*).

Alta.—No.

Sask.—See answer to 11 (*a*).

Ont.—No comment.

Question 12—General—

(*a*) *Do you consider that the sentence of capital punishment operates as a deterrent in connection with*

(i) *the offence of murder?*

(ii) *other offences involving violence from which death might result?*

Answers—

B.C.—Yes, as to both (i) and (ii).

Alta.—Yes, as to (i); no comment as to (ii).

Sask.—Not at all.

Ont.—No comment.

Question 12 (b)—

Would you consider that the same deterrent effect might result from the imposition of any lesser sentence in respect of the offence of murder?

Answers—

B.C.—No.

Alta.—No.

Sask.—See answer to 12 (*a*).

Ont.—No comment.

Question 12 (c)—

Do you consider that the retention of the mandatory sentence of capital punishment for murder affects the judgment of juries in murder trials to an observable extent and in any way interferes with the proper conviction of the persons charged with murder?

Answers—

B.C.—No, not if the trial is properly conducted.

Alta.—No comment.

Sask.—Statistical data concerning convictions for murder appear to uphold the belief that juries are reluctant to find a guilty verdict in view of the mandatory resulting sentence.

Ont.—No comment.

Question 12 (d)—

Would you consider that either the abolition of capital punishment or the provision of alternative punishments where capital punishment is now prescribed would assist or hinder the administration of justice in your province?

Answers—

B.C.—I think it would hinder the administration of justice in that the chief deterrent to murder would be removed, resulting probably in an increase in the number of murders committed.

Alta.—It would hinder the administration of justice.

Sask.—We believe the abolition of capital punishment would materially assist the administration of justice in this province.

Ont.—No comment.

Question 13—Statistical Information—

(*a*) *Please set out on the attached Table A, for each of the years 1930-1953, the number of culpable homicides, together with the number of cases in which charges were laid, categorizing such charges under the headings of murder, manslaughter, infanticide and other charges, if any.*

(*b*) *Please set out on the attached Table B, for each of the years 1930-1953, the number of charges of murder, together with the particulars of detentions for lunacy, acquittals, convictions for lesser offences, convictions for murder, convictions quashed on appeal, commutations and executions.*

(*c*) *Please supply whatever explanatory comment or material you may think desirable in connection with the statistics to be set forth in tables A and B.*

Answers—

B.C.—Statistics for an accurate presentation of culpable homicides in this province for the last 23 years are not readily available. Table B, however, has been completed as far as possible for the years 1930-1953, and is attached hereto.

Statistics required may be obtainable from the Dominion Bureau of Statistics at Ottawa.

Alta.—See Table C.

Sask.—Tables A and B have been completed as far as possible and are submitted herewith.

Ont.—This Department has no statistical information other than may be found in the Canada Year Book. See Table D.

CAPITAL PUNISHMENT TABLE A (Saskatchewan)—HOMICIDES

Year	Number of culpable homicides	Number of charges laid	Number of charges of murder	Number of charges of manslaughter	Number of charges of infanticide	Number of other charges, if any
1930	13	12	6	6	.....	.....
1931	13	13	2	11	.....	.....
1932	11	11	8	3	.....	.....
1933	9	9	5	4	.....	1
1934	13	13	6	7	.....	.....
1935	10	10	4	5	.....	.....
1936	10	10	7	3	.....	.....
1937	10	10	5	5	.....	.....
1938	11	11	6	5	.....	.....
1939	9	9	4	5	.....	.....
1940	12	12	7	5	.....	.....
1941	3	3	2	.....	.....	.....
1942	8	8	3	5	.....	.....
1943	7	7	5	2	.....	.....
1944	3	3	.....	.....	.....	.....
1945	8	8	5	3	.....	.....
1946	6	6	6	.....	.....	.....
1947	3	3	2	1	.....	.....
1948	3	3	3	.....	.....	.....
1949	7	7	3	4	.....	.....
1950	4	4	3	1	.....	.....
1951	3	3	1	2	.....	.....
1952	6	6	2	3	1	.....
1953	2	2	1	1	.....	.....

TABLE B—(BRITISH COLUMBIA)—CAPITAL PUNISHMENT—PARTICULARS OF MURDER CHARGES

Year	Charges of murder	Detained for lunacy	Acquittals on grounds other than insanity	Convictions for lesser offence of manslaughter, infanticide or concealment of birth under SS 951 (2) and 952	Convictions and sentences of death	Convictions quashed in appeal courts	Commutations	Executions
1930	8	3	4	.....	1	.....	.....	.....
1931	9	2	.....	3	4	.....	.....	.....
1932	10	3	5	2	.....	.....	.....	.....
1933	9	1	5	3	.....	.....	.....	.....
1934	16	3	4	6	3	.....	.....	.....
1935	10	1	3	3	3	.....	.....	3
1936	7	.....	1	5	1	.....	.....	.....
1937	10	.....	5	4	1	.....	.....	1
1938	4	.....	4	.....	.....	.....	.....	.....
1939	8	.....	3	4	1	1	.....	.....
1940	11	.....	6	.....	5	3	.....	.....
1941	6	.....	2	3	1	.....	.....	.....
1942	7	.....	3	.....	4	4	.....	.....
1943	15	1	3	10	1	1	.....	1
1944	12	1	5	3	3	.....	.....	1
1945	10	2	1	3	4	1	.....	3
1946	7	1	4	2	.....	.....	.....	.....
1947	15	2	4	5	4	1	.....	.....
1948	14	1	7	4	2	.....	.....	.....
1949	13	.....	6	3	4	.....	.....	2
1950	6	.....	1	2	3	3	.....	2
1951	12	.....	1	7	4	2	.....	1
1952	12	.....	4	5	3	.....	.....	2
1953	14	2	3	6	3	.....	.....	1

TABLE B—(SASKATCHEWAN)—CAPITAL PUNISHMENT

PARTICULARS OF MURDER CHARGES

Year	Charges of murder	Detained for lunacy	Acquittals on grounds other than insanity	Convictions for lesser offence of manslaughter, infanticide or concealment of birth under SS 951 (2) and 952	Convictions and sentences of death	Convictions quashed in appeal courts	Commutations	Executions
1930	6	2	.....	3	1	.....	.....	1
1931	2	.....	.....	2	.....	.....	.....	.....
1932	8	3	.....	3	2	.....	.....	2
1933	5	1	1	.....	2	.....	1	1
1934	7	1	2	2	2	.....	1	1
1935	6	2	3	.....	1	.....	.....	1
1936	6	1	2	1	2	.....	.....	2
1937	5	1	4	.....	.....	.....	.....	.....
1938	3	1	1	1	.....	.....	.....	.....
1939	4	1	.....	1	2	.....	.....	2
1940	7	3	.....	2	2	.....	.....	2
1941	4	.....	1	2	1	.....	1	.....
1942	3	.....	1	1	1	.....	.....	1
1943	5	2	1	2	.....	.....	.....	.....
1944	4	.....	2	2	.....	.....	.....	.....
1945	5	2	.....	1	2	.....	.....	2
1946	7	3	3	1	.....	.....	.....	.....
1947	2	.....	2	.....	.....	.....	.....	.....
1948	4	2	1 (suicide)	.....	1	.....	.....	.....
1949	3	2	1	.....	.....	.....	.....	.....
1950	3	1	1	1	.....	.....	.....	.....
1951	1	.....	.....	1	.....	.....	.....	.....
1952	2	1	.....	1	.....	.....	.....	.....
1953	1	1	.....	.....	.....	.....	.....	.....

TABLE C—(ALBERTA)—CAPITAL PUNISHMENT

JANUARY 1st, 1934 TO DECEMBER 31st, 1953

MURDER		MANSLAUGHTER		
Number of Charges	100	Number of Charges		211
DISPOSITION—		Stay of Proceedings	24	
Hanged	27	Dismissed	86	
Committed to life imprisonment	2	REDUCED TO:		
Stay of Proceedings	4	Dangerous Driving	5	
Dismissed	33	Failing to stop at scene of accident	1	
Reduced to Manslaughter	9	Imprisonment	60	
Imprisonment	25	Fined	28	
	100	Suspended Sentence	7	
				211

TABLE D—(ONTARIO)—CAPITAL PUNISHMENT

(NOTE:—The information in this Table was supplied on request of the Committee—*See p. 262-3 of Proceedings No. 6, March 24, 1954*)

Years ending September 30th	Number of Convictions for Murder	Number of Persons Executed
1914	4	.....
1915	7	3
1916	5	3
1917	4	.....
1918	6	.....
1919	10	7
1920	3	1
1921	4	5
1922	9	3
1923	3	2
1924	9	3
1925	3	1
1926	.....	.....
1927	3	2
1928	8	1
1929	8	4
1930	5	3
1931	18	3
1932	8	5
1933	8	9
1934	2	1
6 months period—Oct. 1/34-Mar. 31/35	3	3
Years ending March 31st.		
1936	5	3
1937	6	3
1938	7	5
1939	6	3
1940	4	4
1941	9	5
1942	2	2
1943	2	.....
1944	6	3
1945	15	4
1946	7	3
1947	7	3
1948	11	5
1949	4	3
1950	6	2
1951	5	1
1952	5	3
1953	9	3
	246	114

APPENDIX B

CORPORAL PUNISHMENT

REPLIES OF PROVINCIAL ATTORNEYS-GENERAL AND COMMISSIONER OF PENITENTIARIES TO QUESTIONNAIRE

including

SUPPLEMENTARY STATISTICAL TABLES ON CORPORAL PUNISHMENT PREPARED BY THE DOMINION BUREAU OF STATISTICS

(Note: For replies of a general nature, see Appendix D)

Part A.—Corporal Punishment Under The Criminal Code

Question 1.—Statistical Information

(a) Please set out on the attached Table A, for each of the years 1930-1953, the number of persons convicted under the Criminal Code, who were sentenced to imprisonment in penal institutions other than penitentiaries and who, in addition, were sentenced to corporal punishment.

(b) Please set out on the attached Table B, for each of the years 1930-1953, particulars of sentences of corporal punishment, execution of sentences and offenders sentenced as enumerated therein;

(c) Please indicate the reasons why any sentences of corporal punishment were not executed.

Answers—

B.C.—Statistics cannot be obtained without great deal of research. May be obtainable from the Dominion Bureau of Statistics, Ottawa.

Alta.—(See Table A (Alberta) and Table B (Alberta) at end of this Questionnaire).

Sask.—There are no records available in this department to furnish the statistical information requested for Tables A and B. Suggest that this matter be taken up with the head office of the Royal Canadian Mounted Police at Ottawa.

Ont.—The Department of the Attorney-General has no statistical information other than may be found in the Canada Year Book.

For summary of statistics submitted by the Department of Reform Institutions, see Table B (Ontario) and Table D (Ontario) at end of this Questionnaire.

Com. of Pen.—Table A (Commissioner of Penitentiaries) at end of this Questionnaire shows the number of persons convicted under the Criminal Code who were sentenced to penitentiaries and in addition awarded corporal punishment from 1943 to 1953, and shows also the Section of the Code under which such sentences were awarded.

Table B (Commissioner of Penitentiaries) at end of this Questionnaire shows particulars of the corporal punishment awarded during the same years, and the reasons why it was not administered in certain cases.

Question 2.—

What regulations were in force in penal institutions in your province in respect of execution of a sentence of corporal punishment?

Answers—

B.C.—Instructions contained in order of commitment are carried out in all cases when health permits. Doctor always examines and is in attendance.

Alta.—Sentence of the Courts, pursuant to the Criminal Code.

Sask.—Regulations require that lashes be withheld "until such time as the result of an appeal of the sentence, if any, has been definitely ascertained." The gaol superintendent must have the gaol surgeon examine the prisoner and report to the superintendent whether such corporal punishment as is ordered will be dangerous to the prisoner's health. The gaol surgeon must be present throughout the infliction of the punishment.

Ont.—The regulations in force for the execution of corporal punishment awarded by the court are the same as those governing the application of corporal punishment for breaches of discipline within the institution and referred to in the answer to question 7 of this Questionnaire.

Com. of Pen.—The regulations covering the carrying out of a sentence of corporal punishment in the penitentiaries are as follows:—

226. If the punishment awarded is confirmed, the Warden shall proceed to have it inflicted. The Warden shall notify the Physician of the hour thereof, but no corporal punishment shall be inflicted unless and until the Physician certifies in writing that the convict is physically fit to withstand such punishment.

227. If the Physician pronounces the convict as fit, the Warden shall name the officer or officers who is or are to inflict the punishment, and shall state the number of lashes or strokes to be given.

228. The Warden shall be present at the punishment; if he be unavoidably absent, the Deputy Warden shall be present in his stead.

229. All corporal punishment within the prison shall be attended by the Physician, who shall give such orders for preventing injury to health as he may deem necessary, and it shall be the duty of the Warden to carry them into effect.

230. The Warden shall record and report the hour at which the punishment is inflicted, the nature and amount of punishment, and any orders which he or the Physician may have given on the occasion. He shall report the reason for any change in the punishment awarded.

232. The Warden shall notify the Commissioner of the infliction of lashes by Order of Court, and shall forward the notification in duplicate, one copy being marked "For the information of the Honourable the Minister of Justice".

Question 3.

What persons are ordinarily present when the punishment of whipping is executed in a provincial institution in your province and what are their functions?

Answers—

B.C.—Doctor, Warden and sufficient staff to obscure identity of person administering paddle.

Alta.—Warden, Deputy Warden, Medical Officer and other necessary guards.

Sask.—Present at whippings are the superintendent, the deputy warden, the gaol surgeon, and two or three custodial officers. The two senior officials are present to witness and direct the carrying out of the sentence, the surgeon is present in case medical attention is required, and more than one officer is present so that the prisoner is not able to identify the one selected to inflict the penalty.

Ont.—When corporal punishment is executed, the superintendent or governor, depending on whether it is a provincial reformatory, industrial farm or whether it is a county jail, is present with the medical officer and one or two of the guards.

Com. of Pen.—The Warden or Deputy Warden, Chief Keeper, Penitentiary Physician and such other officers as the Warden may detail, including one officer to inflict the punishment.

Question 4.

At what stage of the term of imprisonment is a sentence of corporal punishment usually executed?

Answers—

B.C.—Immediately after appeal period has expired, or sooner if sentence less than appeal period.

Alta.—Not until after 30 days have elapsed, which is the period allowed for entering an appeal against a conviction and if an appeal is entered, sentence of corporal punishment is not executed until after decision of Appeal Court.

Sask—The punishment is executed as soon as possible after the possibility of appeal ceases to exist, unless the court has indicated that part of the punishment is to be inflicted towards the end of the sentence.

Ont.—The stage of the term of imprisonment at which corporal punishment is to be carried out was usually directed by the court but within the last two or three years, the courts are following the practice of simply awarding the sentence and not specifying when it should be carried out.

Com. of Pen.—As soon as possible after it has been determined from the Registrar of the Court of Appeal that there has been no appeal, and that no further right of appeal exists.

Question 5.

What is the maximum number of strokes administered at any one session?

Answers—

B.C.—No stated maximum. Ten strokes is the maximum observed at one time.

Alta.—Ten strokes if Medical Officer permits.

Sask.—Five strokes at any one time is ordinarily the maximum except where the court order may require a total of six or seven strokes.

Ont.—The maximum number of strokes administered at any one time does not exceed ten, but where a judge awards fifteen strokes, it is usually given in two lots of seven and eight, or it may be given in three lots of five.

Com. of Pen.—This depends on the Order made by the Court, in awarding the sentence—See Section 1060, Criminal Code.

Question 6.

What types of instruments are used in the respective provincial institutions and what is the physical description of each such instrument?

Answers—

B.C.—Same as used in penitentiaries. Paddle—a 3″ leather strap, 3″ wide ¼″ thick with small perforations at short intervals. Lash—a series of 12 knotted strings about 3′ long attached to short 2′ length of broom handle (a less effective instrument than the paddle).

Alta.—Cat-o'-nine tails—wooden handle 19 inches long with nine leather thongs approximately 24″ in length, ¼″ wide and 5/32 of an inch in depth—total weight of ten ounces.

Sask.—The lash is used—it has a wooden handle to which are attached nine strands of heavy cord, two feet long, knotted at the end.

Ont.—The strap, used for the inflicting of corporal punishment, is a plain leather strap, without perforations, about 15″ long, 3″ wide and 3/16″ in thickness. The strap is attached to a handle which measures about 7 inches. When the court awards the lash, an instrument is used consisting of a wooden handle about 15″ long, from one end of which nine pieces of string about 15″ long are affixed.

Com. of Pen.—The lash and the paddle or strap, as demonstrated and described to the Committee by Warden Allan on March 23, 1954 (*See Proceedings No. 6*).

Question 7.

What is the procedure, in detail, that is followed in executing a sentence of corporal punishment in each of the provincial institutions and what explanation is there of any variation in procedure that may exist as between different institutions?

Answers—

B.C.—Doctor checks inmate's ability to take punishment. Inmate is strapped to a table, hood is placed over head, ankles and wrists fastened and he is held by officers over shoulders and back. Pants are allowed to drop. Paddle is administered by one of a number of officers at the direction of Warden. Doctor is in attendance and checks inmate after punishment. Warden talks with inmate after punishment and also officers are warned against discussion of details. Record signed by Warden and Doctor.

Lash similarly administered except inmate is strapped to tripod in standing position rather than bent over table.

Alta.—Stripped to waist and back washed by Medical Officer with alcohol, and blindfolded before guard, who is to administer punishment, enters room.

Sask.—The inmate is placed face down on a long table after being stripped to the waist. A blanket covers his head and neck. While he is held firmly to the table an officer, indicated by the officer in charge, administers the lashes to the inmate's back.

Ont.—The governor or superintendent, whichever it may be, identifies the prisoner and makes sure that they have the right man by asking him his name and if he understands the sentence of the court. As soon as they have

identified the prisoner, the superintendent or governor then orders the punishment to be carried out, the prisoner having been previously medically examined and found fit to undergo the punishment. The prisoner's hands and ankles are then secured and his buttocks exposed. A kidney belt is worn as a protective measure when the strap is used. It is not necessary with the lash because the lash is applied to the shoulders. The medical officer then stands close to the prisoner, with his fingers on the prisoner's pulse. One guard executes the punishment and it is the governor's or superintendent's responsibility to ensure that only the number of strokes awarded by the court are inflicted. There is no variation of procedure among institutions.

Com. of Pen.—The inmate is informed of the sentence which has to be carried out, he is examined by the Penitentiary Physician to determine his fitness to undergo the punishment, and by the Psychiatrist if there are symptoms indicating mental ill-health, and if the reports received are not adverse, he is placed on the table or bench provided for the purpose, and the punishment is administered in the presence of the officers referred to answer to Question 3.

Question 8.

Is the inmate medically examined immediately before a sentence of corporal punishment is executed and what is the extent of that examination?

Answers—

B.C.—Careful examination is carried out.

Alta.—The procedure is that the prisoner after the 30 day period of physical and mental reaction is certified by the Medical Officer as physically fit.

Sask.—The medical examination previous to corporal punishment includes examination of heart, blood pressure. Other health factors are assessed in the case of a physical disability or a current condition of illness.

Ont.—The inmate is medically examined immediately before sentence of corporal punishment is executed and examination is a thorough one.

Com. of Pen.—The inmate is given a thorough physical examination by the Penitentiary Physician immediately prior to the execution of the sentence.

Question 9—

Is the inmate medically examined at any time during the course of the execution of a sentence of corporal punishment and what is the extent of that examination?

Answers—

B.C.—Careful examination is carried out.

Alta.—Medical Officer present and if he considers punishment stopped he does so.

Sask.—Periodically the surgeon takes the prisoner's pulse during the punishment.

Ont.—The medical officer is present throughout the execution of the sentence and is constantly watching the prisoner's physical reaction. (*See also answer to Question 7*).

Com. of Pen.—The Physician is present during the execution of the sentence and can intervene if he considers it necessary.

Question 10—

Is the inmate medically examined after the execution of a sentence of corporal punishment and what is the extent of that examination?

Answers—

B.C.—Yes, to the degree necessary.

Alta.—Removed to hospital ward and attended to by Medical Officer.

Sask.—After punishment, the surgeon again examines the prisoner with respect to his heart, blood pressure and the condition of the area of his back on which lashes have been imposed.

Ont.—An inmate is visually examined after the award of corporal punishment. There is no known case when medical attention or hospitalization was necessary. Once the punishment is over the man is quite fit to carry on with his work.

Com. of Pen.—He may be examined after the execution of the sentence if the Physician considers it necessary.

Question 11—

Is any other medical examination given to the inmate in connection with the execution of a sentence of corporal punishment and, if so, at what time or times is the examination given and what is the nature thereof?

B.C.—Only one examination, but if man is not fit, he is not paddled.

Alta.—None.

Sask.—None other.

Ont.—No.

Com. of Pen.—Further medical examination may be carried out if the Physician considers it necessary.

Question 12—

To what extent are inmates examined by psychiatrists before a sentence of corporal punishment is executed upon them?

Answers—

B.C.—Wherever pyschiatric examination is indicated, it is provided.

Alta.—None.

Sask.—No psychiatric examination is made once the possibility of appeal ceases to exist.

Ont.—It must be assumed that the prisoner is not suffering from mental illness or the court would not have awarded corporal punishment. However, if the medical officer has reason to believe or is suspicious that the prisoner may be suffering from some form of mental ailment, he will call in a psychiatrist for consultation. If there is the slightest doubt, the punishment awarded by the court is not carried out and the Department of Justice is notified accordingly.

Com. of Pen.—Where the Warden or the officers who have dealt with the inmate have any reason to suspect a mental condition, an examination by a Psychiatrist may be ordered.

Question 13—

Where, before corporal punishment is scheduled to be inflicted, the medical opinion is to the effect that the inmate is physically incapable of enduring the punishment or the psychiatric opinion is to the effect that to inflict the punishment would serve no useful purpose, is it the practice of the Governor of the Gaol or the Attorney General of the Province to send the opinion to the Remission Service of the Department of Justice with comments on the question whether the sentence of corporal punishment should be remitted?

Answers—

B.C.—This would be done but examination is usually considered a wise move before sentence is passed in order to avoid any necessity of alteration of sentence.

Alta.—No.

Sask.—Such opinions are transmitted to the Attorney General's Department.

Ont.—Yes.

Com. of Pen.—If either the Physician or the psychiatrist recommends that the sentence of corporal punishment should not be carried out, the matter is referred to the Remission Service and execution is suspended until a reply has been received.

Question 14—

In the administration of justice within the province has the Attorney General issued any instruction to Crown prosecutors that, as a matter of policy, corporal punishment should not be sought in the case of first offenders or young offenders or any other class of offenders?

Answers—

B.C.—No, it is left to the discretion of the Court.

Alta.—No.

Sask.—No information.

Ont.—The Attorney-General has not issued any instructions to Crown Prosecutors with respect to the imposition of Corporal Punishment.

Com. of Pen.—These are matters for the opinion of the officials responsible for law enforcement within the Provinces, and do not concern the penitentiaries, whose duty it is to carry out the sentence awarded by the Court.

Question 15—

Has the Attorney General, as a matter of policy, instructed Crown attorneys that they should, as a matter of policy, seek the imposition of corporal punishment in respect of any of the following offences: ss. 80, 204, 206, 276, 292, 293, 299, 300, 301, 302, 446, 447? If so, under what circumstances are Crown attorneys instructed to seek the imposition of corporal punishment?

Answers—

B.C.—No.

Alta.—No.

Sask.—No.

Ont.—The Attorney-General has not issued any instructions to Crown Prosecutors with respect to the imposition of corporal punishment.

Com. of Pen.—Not applicable. *See answer to Question 14.*

Question 16—

In your opinion, does the Criminal Code now authorize the imposition of corporal punishment for any offence, in respect of which you consider that corporal punishment should not be authorized?

Answers—

B.C.—No.

Alta.—No.

Sask.—Yes.

Ont.—No comment.

Com. of Pen.—Not applicable. See answer to Question 14.

Question 17—

In your opinion, are there any offences in the Criminal Code for which the imposition of corporal punishment should be authorized and, in respect of which, it is not now authorized?

Answers—

B.C.—No.

Alta.—No.

Sask.—No.

Ont.—No comment.

Com. of Pen.—Not applicable. See answer to Question 14.

Question 18—

In your opinion, is it advisable to delete corporal punishment for the offences enumerated in ss. 80, 206 and 292 of the present Criminal Code, as proposed in the revision now before the House of Commons in Bill No. 7?

Answers—

B.C.—The question seems not to be which offences corporal punishment should be allowable in, but rather the judicious use of corporal punishment wherever it would be good treatment for the individual.

Alta.—Yes.

Sask.—In our opinion, corporal punishment should be entirely abolished as a means of judicial punishment.

Ont.—No comment.

Com. of Pen.—Not applicable. See answer to Question 14.

Question 19—

Have you any comments on the use of different methods of corporal punishment, including whipping, paddling, birching or spanking and, if so, their suitability for different classes of offences and offenders?

Answers—

B.C.—The Warden of Oakalla Prison Farm believes that the use of the paddle within the institution in some cases is a better method of treatment than a long term of imprisonment. The physical effect of paddling while short-lived is long remembered.

Alta.—It is considered that whipping should be inflicted by a uniform method with a strap which should be of uniform size and design in the provinces. For juvenile offenders it is recommended that paddling be instituted with a uniform type of paddle.

Sask.—The specific instrument makes little difference, all are attended with possible dangers and appear to make no valid contribution to the protection of society.

Ont.—No comment.

Com. of Pen.—No comments.

Question 20—

In your opinion, does corporal punishment operate as a deterrent to (a) the young offender, (b) the recidivist, (c) the sexual offender?

Answers—

B.C.—There seems to be some evidence of paddling having been useful in helping young offenders to redirect their activity. No information of the effect on the sex offender or recidivist.

Alta.—Yes.

Sask.—We know of no evidence to support the view that corporal punishment in fact operates as a deterrent to any group of offenders.

Ont.—No comment.

Com. of Pen.—With respect to Questions 20 to 22 inclusive, the following statistics are submitted:—

(*a*) *The Young Offender.*—During the period from January 1st, 1943 to December 31st, 1953, 55 youths under the age of 20 were admitted to the penitentiaries with a sentence of corporal punishment awarded by the Courts.

First offenders	34	
Recidivists	21	
		55

Of the 34 first offenders,

Became recidivists after having received corporal punishment	7	
No record of further sentences	24	
Still incarcerated	3	
Of the 21 recidivists, subsequently convicted	7	
No record of further sentences	10	
Still incarcerated	4	
		55

(*b*) *The recidivist* (including recidivist young offenders and sex offenders).—During the same period 193 persons were awarded corporal punishment who had previously served sentences of imprisonment. Of these:—

Subsequently convicted again after having received corporal punishment	59	
No record of further sentences	56	
Still incarcerated	78	
		193

(c) *The Sex Offender.*—During the same period 95 persons were awarded corporal punishment by the Courts in connection with a sex offence.

Of these,		
First offenders	76	
Recidivists	19	
		95
Of the 76 first offenders,		
No record of further sex offences after release	60	
Subsequently convicted of further sex offence	4	
Still incarcerated	12	
Of the 19 recidivists,		
No record of further sex offences after release	6	
Subsequently convicted of further sex offence	3	
Still incarcerated	10	
		95

Question 21.

Have you any information, by way of statistics or otherwise, to indicate the effect of corporal punishment in relation to the question of recidivism?

Answers—

B.C.—No.

Alta.—No.

Sask.—We have no such statistical information relevant to this province.

Ont.—We are not in possession of any statistics which would prove that corporal punishment prevents recidivism. However, experience teaches that corporal punishment has a definite deterrent effect.

Com. of Pen.—See answer to Question 20.

Question 22.

In your opinion, does the infliction of corporal punishment upon a person who is convicted of an offence for which, under the present laws, corporal punishment may be imposed, operate as a deterrent to the offender in respect of the subsequent commission of similar offences? Alternatively, have you any views on the question whether the imposition of corporal punishment in such cases operates to embitter the offender against society more than would be the case if imprisonment only had been imposed?

Answers—

B.C.—Think it reasonable to assume that it does. The Warden of Oakalla Prison Farm believes most prisoners would take corporal punishment with less hostility than a long sentence.

Alta.—Yes.

Sask.—Although the province has not maintained statistics on which to postulate an opinion, there is statistical evidence from other jurisdictions which leads us to believe that where the lash is imposed the likelihood of reform is reduced. Again, both statistically and logically, those subject to judicially-imposed corporal punishment tend to become embittered and confirmed in their resentment to authority.

Ont.—No comment.

Com. of Pen.—See answer to Question 20.

Question 23.

In addition to the matters raised in the above questions, have you any comments on the use of corporal punishment as an aid to administration of Justice in your province?

Answers—

B.C.—Believe that corporal punishment should be retained for crimes of violence. It is seldom imposed these days, but is useful to curb epidemics of crimes of violence which arise sometimes in some areas.

Alta.—No.

Sask.—We consider the use of corporal punishment, as a disposition of the court, to be detrimental to the administration of justice in this province. Since its use is quite irrelevant as a means of ameliorating and socializing the attitude of the offender, the last tends to be regarded as an instrument of unadulterated revenge. The offender readily rationalizes that since the lex talionis is accepted by the law-enforcement agencies, sanctioned by society, he too may legitimately wreak his vengeance upon society for real or alleged grievances. Thus, society and the offender become increasingly separated in understanding, each retaliating with intensifying force the effect of which is likely to be suffered innocently by citizens who become convenient subjects for the offenders' retaliation.

Ont.—No.

Com. of Pen.—This applies to Provincial Attorneys General.

Part B.—Corporal Punishment as a Disciplinary Measure in Provincial Penal Institutions

Question 1.

What regulations are in force in penal institutions in your province with respect to the use of corporal punishment as a disciplinary measure?

Answers—

B.C.—The following Gaol regulations are in force:

No punishments or deprivations of any kind shall be awarded to any prisoner except by the Warden or Chief Matron, who shall have power to order punishments or deprivations for the following offences, namely:—

(1) Disobedience of the rules and regulations of the Gaol:
(2) Common assault by one prisoner upon another:
(3) Cursing or using profane language:
(4) Indecent behaviour or language toward another prisoner, toward any officer of the Gaol, or toward a visitor:
(5) Idleness or negligence at work:
(6) Wilfully destroying or defacing Gaol property:
(7) Insubordination of any sort.

In any of the foregoing offences the Warden may award any of the following punishments or deprivations in his discretion according to the seriousness of the offence:—

(*a*) Solitary confinement in a dark cell, with or without bedding, on such diet as the Medical Officer pronounces sufficient:
(*b*) Bread and water diet, not to exceed twenty-one meals at one time:

(c) Shackled to cell gate during working-hours:

(d) Flogging with the leather paddle or strap (of the same nature and description as that used in the Federal penitentiaries, as distinguished from the "lash") upon receipt of a certificate from the Medical Officer that the prisoner is physically fit to undergo corporal punishment:

(e) Forfeiture of remission of sentence or of good conduct money:

(f) Confinement in cell without bed or lights.

Before awarding punishment to any prisoner, the Warden or Chief Matron shall make careful inquiry into all the facts connected with the commission of any offence, and shall make an entry, signed by him or her, in the Punishment Book of the following particulars:—

(1) The name of the prisoner:

(2) The nature of the offence:

(3) The name of the complainant and witnesses:

(4) The punishment or deprivation awarded:

(5) The Warden shall submit in writing weekly to the Inspector of Gaols for transmission to the Attorney-General, a report showing the number and name of the prisoner, together with a description of the offence, and punishment or deprivation awarded.

Alta.—Corporal punishment is not used as a disciplinary measure in Provincial Institutions.

Sask.—The regulations governing prisons in this Province state: "No corporal punishment shall be inflicted on any inmate by an officer of the Gaol unless it has been ordered by the Court passing sentence."

Ont.—The infliction of punishment by the lash shall only be in execution of a sentence of the court and punishment by the strap shall only be inflicted in extreme cases and for the following offences:

(a) Assault with violence on officers.

(b) Assault with violence on other inmates.

(c) Continued course of bad conduct.

(d) Escape or attempted escape.

(e) Malicious destruction of or injury to machinery or other property.

(f) Malingering to evade work.

(g) Mutinous conduct.

(h) Repeated fighting after warning.

(i) Refusal to work after warning.

(j) Repeated insolence to officers.

(k) Riotous conduct in dormitories, cells, working gang or elsewhere.

(l) Attempting to commit sodomy and other unmentionable crimes of like character.

Other Regulations:

(4) No inmate shall be punished by inflication of the strap until the Medical Officer has certified that the inmate is mentally responsible for his actions, and physically fit to endure the punishment.

(5) The Superintendent or Sergeant and the Medical Officer shall be present throughout the time the inmate is receiving such punishment.

(6) The number of blows with the strap shall be in proportion to the offence committed and in no case shall exceed ten at any one application.

(7) The strap is not to be used except when it is clearly necessary to achieve the reformation of the inmate and enforce proper discipline.

(8) The strap used for such punishment shall be a plain leather strap not less than three inches in width and shall not contain perforations of any kind. It shall be applied across the bare buttocks and great care shall be exercised to prevent hurting the prisoner elsewhere.

(9) The application of the strap shall be by an officer designated by the Superintendent.

Com. of Pen.—The following paragraphs of the Penitentiary Regulations deal with the award of corporal punishment as a disciplinary measure within the penitentiary:—

165. If a convict is charged with and found guilty of any offence or repeated offence for which the punishments aforementioned are deemed insufficient, or is charged with and found guilty of any offence mentioned in this Regulation, the Warden may award that the convict shall be flogged or strapped in addition to any other punishment. The offences lastly referred to are:—

1. Personal violence to a fellow convict;
2. Grossly offensive or abusive language to any officer;
3. Wilfully or wantonly breaking or otherwise destroying any penitentiary property;
4. When undergoing punishment, wilfully making a disturbance tending to interrupt the good order and discipline of the Penitentiary;
5. Any act of gross misconduct or insubordination requiring to be suppressed by extraordinary means;
6. Escaping, or attempting or plotting to escape from the Penitentiary;
7. Gross personal violence to any officer;
8. Revolt, insurrection, or mutiny, or incitement to the same;
9. Attempts to do any of the foregoing things.

225. Should the Warden consider the offence to be one which would necessitate corporal punishment, he shall cause a summary of the evidence to be taken down in writing and signed by the witnesses. If the convict should be found guilty of the offence, the Warden shall award such punishment as such offence may justify, and shall transmit the summary of evidence, and particulars of the punishment awarded, to the Commissioner for confirmation or otherwise.

231. If in any case in which a convict is found guilty of an offence against Penitentiary Regulations, and the convict has been awarded corporal punishment, which award has been duly approved by the Commissioner, it shall appear to the Warden before the infliction of the punishment, regard being had to the character, mentality, and disposition of the convict, that it is expedient to withhold all or a portion of the corporal punishment on probation of good conduct, the Warden may withhold all or any of the punishment for a period not exceeding one year, on the convict giving the Warden satisfactory assurance of future good conduct, and during such period the convict shall be subject to receive the punishment awarded. Provided that the punishment so suspended shall not be administered unless and until the convict is again reported for an offence against Penitentiary Regulations and found guilty thereof.

and the Regulations referred to in the answer to Question 2, Part A, of this Questionnaire.

Question 2.

If no general regulations are in force, can you indicate the types of disciplinary offence in respect of which corporal punishment is ordinarily imposed?

Answers—

B.C.—Answered by 1 (Part B).

Alta.—See answer to Question 1 (Part B).

Sask.—See answer to Question 1 (Part B).

Ont.—See answer to Question 1 (Part B).

Com. of Pen.—The present practice is to approve an award of Corporal punishment only when other forms of punishment have been tried and failed, or when an emergency has arisen which requires decisive action to restore good order and discipline.

It is now the practice to authorize it only in cases which involve violence, revolt or continued and prolonged defiance of authority.

Question 3

Please set out in the attached Table C, for each of the years 1930-1953, the number of sentences of corporal punishment imposed for prison offences, specifying, where possible, the sentences imposed in institutions for young offenders and types of offences for which corporal punishment was imposed?

Answers—

B.C.—Statistics not readily available.

Alta.—See answer to Question 1 (Part B).

Sask.—We have no information concerning corporal punishment inflicted for prison offences; such offences have been dealt with by other penalties.

Ont.—Statistics prior to 1948 are not readily available. (*See Table D (Ontario) at end of this Questionnaire*).

Com. of Pen.—Table C (Commissioner of Penitentiaries) at end of this Questionnaire gives particulars of the cases where corporal punishment has been awarded for prison offences during the period 1932-1953.

Question 4.

Do the methods or procedures followed in administration of corporal punishment for prison offences differ from those employed on sentences under the Criminal Code and, if so, what are the differences?

Answers—

B.C.—No.

Alta.—See answer to Question 1 (Part B).

Sask.—See answer to Question 3 (Part B).

Ont.—Yes. The same procedure is followed except that the lash is not used.

Com. of Pen.—The methods adopted in administering corporal punishment for prison offences are the same as those already described for sentences under the Criminal Code.

Question 5.

In your opinion is it desirable to limit the imposition of corporal punishment to certain classes of disciplinary offences and, if so, what classes of offences?

Answers—

B.C.—No.

Alta.—See answer to question 1 (Part B).

Sask.—Corporal punishment is not considered a desirable penalty whatsoever for any prison offence.

Ont.—Yes. See answer to question 1 (Part B).

Com. of Pen.—It is considered desirable that the imposition of corporal punishment should be limited to certain specific types of offences, as set forth in Regulation 165 (Question 1).

Question 6.

Where corporal punishment is inflicted for prison offences, is regard had to the opinion of psychiatrists, medical doctors or other qualified personnel as to the effect of the sentence on the offender?

Answers—

B.C.—No corporal punishment is allowed without the medical officer's signed authority. It is seldom meted out without careful discussions of the psychiatric factors with medical factors involved.

Alta.—See answer to Question 1 (Part B).

Sask.—See answer to Question 5. (Part B.).

Ont.—Yes, should he again be guilty of a serious breach of discipline.

Com. of Pen.—When the Warden proposes to recommend to the Commissioner that corporal punishment should be awarded, it is now the practice to have the psychiatrist interview the offender and submit a report.

Question 7.

Have you any comments of a general nature on the employment of corporal punishment in relation to the administration of penal institutions in your province?

Answers—

B.C.—Has been a useful device at this stage of development of our Gaols.

Alta.—See answer to Question 1 (Part B).

Sask.—Resort to corporal punishment as a means of aiding the prison administration would be considered an act of desperate frustration and the admission of a lack of adequate administrative control over the institution. Where a condition of severe riot occurs which cannot be suppressed except by the use of violence, our belief is that although violence may be required to arrest the riot it can in no way be considered a cure of the underlying difficulties which still remain to be solved—by rational methods.

Ont.—A breakdown of 106 prisoners selected at random gives the following statistics which may indicate that corporal punishment has a decided deterrent effect:

106 were given corporal punishment, of these, 99 required only one application to correct them. 7 required a second application for further misconduct, and of the 99, 53 committed no further breaches warranting punishment of any kind. 38 committed minor offences but not of sufficient importance to warrant use of the strap. 8 committed more serious breaches than the 38 but not of sufficient importance to warrant strapping.

Com. of Pen.—While corporal punishment is now approved very sparingly in the penitentiaries, it is considered that the fact that it may be awarded is a strong deterrent to those who would otherwise be inclined to participate in mutinous and violent conduct.

NOTE: *See also Supplementary Statistical Tables 1 to 8 inclusive, prepared by Dominion Bureau of Statistics, at end of Appendix B following provincial Table.*

TABLE A—(ALBERTA)—CORPORAL PUNISHMENT

Number of Sentences of Corporal Punishment Under Sections of the Criminal Code Enumerated Below.

Year	80	204	206	276	292	293	299	300	301	302	446	447	Total
1951							2						2
1953					1								1
													3

TABLE B—(ALBERTA)—CORPORAL PUNISHMENT

Particulars of Sentences of Corporal Punishment, Types of Offender, Execution of Sentence.

Year	Number of sentences	Maximum number of strokes	Minimum number of strokes	Average sentence	Age of youngest offender	Number of offenders below 20	Number of first offenders	Number of sentences not executed
1951	2	5 each		9 months	20	Nil	Nil	Nil
1953	1	3 each		1 year		Nil	Nil	Nil

TABLE A—(COMMISSIONER OF PENITENTIARIES)—CORPORAL PUNISHMENT

Number of persons sentenced to penitentiaries, 1943-1953, who in addition were awarded Corporal Punishment under the Statutes, showing the Sections under which it was awarded.

Year	204	206	216	276	292	293	299	300	301	302	446	447	448	*O.N.D. Act, S.4 (1)	Total
1943	1	3						1	2	1	9		1		18
1944		2			2		1	1	2	1	8				17
1945							4	1	1	2	15				23
1946	3		1		5		3	1	2	1	37		1		54
1947	5	1			3		2	2	1	2	14		4	1	35
1948	4				1		8	4			27		1		45
1949	2	3			4		20	2		1	15		10		57
1950		1			1		1				12				15
1951	2	1			2		2				8				15
1952	1	1			1		6	3	1		7		3	6	29
1953	2				1		6	1			6		1	1	18

* *Opium and Narcotic Drugs Act.*

TABLE B—(COMMISSIONER OF PENITENTIARIES)—CORPORAL PUNISHMENT

Particulars of the Corporal punishment awarded by the Courts to those sentenced to Penitentiaries, 1943-1953.

Year	Number of Whippings	Maximum number of lashes	Minimum number of lashes	Average Sentence		Age of youngest offender	Number of offenders below 20	Number of first offenders	Number of sentences not executed	Reason why lashes not inflicted
				Years	Lashes					
1943	17	20	3	4·5	9·5	.....	nil	5	1	Heart condition.
1944	17	30	2	3·8	10·0	18	4	7	0	
1945	23	20	5	5·4	10·6	17	4	10	0	
1946	53	20	4	3·8	10·0	18	7	14	1	Poor physical condition; hernia.
1947	34	14	5	4·9	9·6	18	7	15	2	1. Poor physical condition; hernia. 2. Varicose veins and varicose ulcers.
1948	45	20	4	4·5	8·3	16	6	16	0	
1949	57	21	1	4·7	8·0	16	17	27	0	
1950	14	10	5	5·0	7·4	16	5	4	1	Mental condition; schizophrenia.
1951	15	20	4	7·8	9·3	.....	nil	3	0	
1952	29	14	2	4·3	7·7	18	3	9	0	
1953	17	10	2	5·3	7·5	19	2	6	1	Imbecile.

TABLE B—(ONTARIO)—CORPORAL PUNISHMENT[1] 1949-1953

Year	Number of Sentences including Corporal Punishment	Number of Strokes		Approximate[2] Average Sentence (Months)	Age of Youngest Offender (Years)	Number of Offenders below 20 Years	Number of First Offenders	Sentences not Executed	
		Maximum	Minimum					Number	Reason
1949	28	20	4	13	16	16	14	2	Sentences varied by Supreme Court of Ontario.
1950	15	12	5	9	18	1	4	1	Physically unfit.
1951	27	12	5	9	16	9	7	0	
1952	20	12	5	13	18	1	4	1	Physically unfit.
1953	9	12	5	14	17	2	5	0	

[1] The data shown in this table have been summarized from several tables provided by the Province of Ontario.
[2] The figures shown for average sentence are approximations only, and are rounded to the nearest month.

TABLE C—(COMMISSIONER OF PENITENTIARIES)—CORPORAL PUNISHMENT

CORPORAL PUNISHMENT AWARDED IN PENITENTIARIES FOR PRISON OFFENCES BY FISCAL YEAR FROM 1932-1933 TO AND INCLUDING 1952-53.

Fiscal Year	Number of Sentences Actually Administered	Maximum Number of Strokes Administered	Minimum Number of Strokes Administered	Number of Sentences Inflicted on Offenders Under 21	Number of Offenders Sentenced more than once
1932–1933	47	15	5	(?)	1
1933–1934	29	20	4	(?)	2
1934–1935	55	15	3	2	7
1935–1936	55	15	2	9	1
1936–1937	26	15	3	5	4
1937–1938	30	12	4	7	0
1938–1939	26	12	5	3	0
1939–1940	28	15	3	3	1
1940–1941	47	15	4	10	4
1941–1942	30	15	5	11	2
1942–1943	27	15	5	8	3
1943–1944	29	15	5	8	3
1944–1945	67	12	3	13	8
1945–1946	65	15	5	8	2
1946–1947	43	15	5	5	2
1947–1948	28	15	5	12	3
1948–1949	66	15	2	14	8
1949–1950	33	10	3	3	1
1950–1951	8	12	7	1	0
1951–1952	7	12	2	0	0
1952–1953	23	10	5	7	2

TABLE D (Ontario)

NUMBER OF CASES OF CORPORAL PUNISHMENT DURING FISCAL YEARS ENDING MARCH 31, 1949, 1950, 1951, 1952, 1953

1948-1949

Total number of prisoners in custody during year, 43,348.

Number of prisoners who received corporal punishment for infractions of discipline, 259 (·6% of number in custody).

1949-1950

Total number of prisoners in custody during year, 48,139.

Number of prisoners who received corporal punishment for infractions of discipline, 246 (·5% of number in custody).

1950-1951

Total number of prisoners in custody during year, 51,517.

Number of prisoners who received corporal punishment for infractions of discipline, 200 (·4% of number in custody).

1951-1952

Total number of prisoners in custody during year, 50,622.

Number of prisoners who received corporal punishment for infractions of discipline, 105 (·2% of number in custody).

1952-1953

Total number of prisoners in custody during year, 51,080.

Number of prisoners who received corporal punishment for infractions of discipline, 250 (·5% of number in custody).

SUPPLEMENTARY STATISTICAL TABLES (No. 1 to 8) ON CORPORAL PUNISHMENT

(Prepared by the Dominion Bureau of Statistics)

The data included in the following tables show, for each year from 1930 to 1952, the total number of convictions under certain sections of the Criminal Code (Table 1) and, separately, the number of these convictions where there was an extra sentence of corporal punishment (Table 2). In Table 3, the number of convictions with extra sentence of corporal punishment, for each year, is expressed as a percentage of the total number of convictions. For example, in 1930 there were 45 convictions under Section 204 of the Criminal Code; of these, 6, or 13·3 per cent, were convictions with extra sentence of corporal punishment. In 1952, under the same Section, there were 29 convictions; and, of these, 1, or 3·4 per cent, was a conviction with extra sentence. In Tables 4, 5 and 6, the data of the preceding tables have been grouped into five-year intervals, thus permitting the calculation of an annual average for each of the four groups shown. Tables 7 and 8 show the number of remissions of corporal punishment by years and five-year groups respectively.

92353—4½

Data were requested under specified sections of the Criminal Code. For statistical purposes, certain of these sections are classified as distinct and separate categories; others are included in broad groups embracing several sections of the code. Sections 80, 204 and 300 are shown separately; the remainder are included in groups, which are indicated in the footnotes to Table 1.

No offences have been reported under Section 80 for the years shown. As pointed out in Table 1, Section 276 is included in the general category "wounding and shooting", together with Sections 273, 274 and 275. No conviction with extra sentence of corporal punishment has been recorded under this heading from 1930 to 1952. The data on the total number of convictions under this heading have, therefore, been omitted from Table 1.

TABLE 1.—TOTAL* NUMBER OF CONVICTIONS, AS REPORTED BY THE COURTS, UNDER CERTAIN SECTIONS OF THE CRIMINAL CODE, BY YEAR, CANADA, 1930-1952

Year	Section of the Criminal Code									
	80 (1)	204	206 (2)	276 (3)	292 (4)	299 (5)	300	301 (6)	447 (7)	Total
1930	.....	45	399	.....	299	16	14	99	411	1,213
1931	.....	39	325	.....	189	30	6	124	647	1,360
1932	.....	51	353	.....	255	23	13	85	420	1,200
1933	.....	31	378	.....	296	16	6	101	398	1,226
1934	.....	41	292	.....	183	24	10	92	380	1,022
1935	.....	51	279	.....	302	14	8	108	421	1,183
1936	.....	69	330	.....	248	9	12	128	350	1,146
1937	.....	40	323	.....	101	14	7	141	383	1,009
1938	.....	64	398	.....	279	27	10	108	421	1,307
1939	.....	59	349	.....	289	16	12	116	560	1,401
1940	.....	52	496	.....	278	23	17	118	517	1,501
1941	.....	37	486	.....	297	26	9	91	444	1,390
1942	.....	42	455	.....	287	25	6	83	330	1,228
1943	.....	42	484	.....	317	18	16	119	449	1,445
1944	.....	37	466	.....	305	22	8	82	479	1,399
1945	.....	44	436	.....	333	12	11	83	432	1,378
1946	.....	40	591	.....	391	38	5	84	734	1,884
1947	.....	49	576	.....	370	22	17	100	607	1,741
1948	.....	47	557	.....	348	24	12	86	682	1,756
1949	.....	47	500	.....	351	33	22	57	611	1,621
1950	.....	27	497	.....	342	36	17	65	626	1,610
1951	.....	44	520	.....	306	31	10	74	600	1,585
1952	.....	29	533	.....	295	41	11	72	624	1,605

* All convictions under the Sections specified, including those with extra sentence of corporal punishment.

(1) No offences reported under Section 80.

(2) Includes convictions under Sections 202 and 203, and, prior to 1950, those under Section 293. (See footnote 4).

(3) Section 276 is coded under the general heading "wounding and shooting", which also includes Sections 273, 274 and 275. No conviction with extra sentence of corporal punishment has been recorded under this heading from 1930 an 1952 and therefore the total number of convictions have not been shown.

(4) Includes convictions under Sections 292*(a)*, *(b)* and *(c)*, 294 and 773*(d)*, and from 1950 to 1952 inclusive, Section 293. (See footnote 2).

(5) Includes convictions under Section 298.

(6) Includes convictions under Section 302.

(7) Includes convictions under Sections 445, 446*(a)*, *(b)* and *(c)*, 448 and 449.

TABLE 2—NUMBER OF CONVICTIONS WITH EXTRA SENTENCE OF CORPORAL PUNISHMENT, AS REPORTED BY THE COURTS, UNDER CERTAIN SECTIONS[1] OF THE CRIMINAL CODE, BY YEAR, CANADA, 1930-1952.

Year	Section of the Criminal Code									
	80 (1)	204	206 (1)	276 (1)	292 (1)	299 (1)	300	301 (1)	447 (1)	Total
1930	.....	6	4	.....	30	7	2	10	36	95
1931	.....	11	4	.....	26	6	.....	11	107	165
1932	.....	7	2	.....	35	3	.....	8	61	116
1933	.....	2	6	.....	38	4	2	4	62	118
1934	.....	11	5	.....	19	12	.....	3	34	84
1935	.....	6	.....	.....	16	1	1	14	33	71
1936	.....	7	4	.....	21	1	2	23	19	77
1937	.....	4	6	.....	18	3	2	10	30	73
1938	.....	7	3	.....	23	5	2	6	32	78
1939	.....	6	2	.....	7	2	.....	7	16	40
1940	.....	4	6	.....	8	6	1	4	14	43
1941	.....	.....	1	.....	8	3	.....	4	7	23
1942	.....	.....	1	.....	7	3	1	3	6	21
1943	.....	1	1	.....	.....	1	.....	1	3	7
1944	.....	1	4	.....	6	.....	.....	.....	14	25
1945	.....	2	1	.....	8	1	.....	2	15	29
1946	.....	2	1	.....	7	8	.....	1	22	41
1947	.....	1	4	.....	13	1	.....	4	23	46
1948	.....	4	3	.....	4	3	1	.....	24	39
1949	.....	1	3	.....	9	12	1	2	35	63
1950	.....	.....	1	.....	6	7	2	1	22	39
1951	.....	3	1	.....	8	2	.....	7	14	35
1952	.....	1	2	.....	12	4	1	2	13	35

(1) See footnotes, Table 1.

TABLE 3—CONVICTIONS WITH EXTRA SENTENCE OF CORPORAL PUNISHMENT EXPRESSED AS A PERCENTAGE OF TOTAL CONVICTIONS FOR CERTAIN SECTIONS (1) OF THE CRIMINAL CODE, BY YEAR, CANADA, 1930-1952.

Year	Section of the Criminal Code									
	80 (1)	204	206 (1)	276 (1)	292 (1)	299 (1)	300	301 (1)	447 (1)	Total
	%	%	%	%	%	%	%	%	%	%
1930	.....	13·3	1·0	.....	13·1	43·8	14·3	10·1	8·8	7·8
1931	.....	28·2	1·2	.....	13·8	20·0	.....	8·9	16·5	12·1
1932	.....	13·7	0·6	.....	13·7	13·0	.....	9·4	14·5	9·7
1933	.....	6·5	1·6	.....	12·8	25·0	33·3	4·0	15·6	9·6
1934	.....	26·8	1·7	.....	10·4	50·0	.....	3·3	8·9	8·2
1935	.....	11·8	.....	.....	5·3	7·1	12·5	13·0	7·8	6·0
1936	.....	10·1	1·2	.....	8·5	11·1	16·7	18·0	5·4	6·7
1937	.....	10·0	1·9	.....	17·8	21·4	28·6	7·1	7·8	7·2
1938	.....	10·9	0·8	.....	8·2	18·5	20·0	5·6	7·6	6·0
1939	.....	10·2	0·6	.....	2·4	12·5	.....	6·0	2·9	2·9
1940	.....	7·7	1·2	.....	2·9	26·1	5·9	3·4	2·7	2·9
1941	.....	.....	0·2	.....	2·7	11·5	.....	4·4	1·6	1·7
1942	.....	.....	0·2	.....	2·4	12·0	16·7	3·6	1·8	1·7
1943	.....	2·4	0·2	.....	.....	5·5	.....	1·0	0·7	0·5
1944	.....	2·7	0·9	.....	2·0	.....	.....	.....	2·9	1·8
1945	.....	4·5	0·2	.....	2·4	8·3	.....	2·4	3·5	2·1
1946	.....	5·0	0·2	.....	1·8	31·1	.....	1·2	3·0	2·2
1947	.....	2·0	0·7	.....	3·5	4·5	.....	4·0	3·8	2·6
1948	.....	8·5	0·5	.....	1·1	12·5	8·3	.....	3·5	2·2
1949	.....	2·1	0·6	.....	2·6	36·4	4·5	3·5	5·7	3·9
1950	.....	.....	0·2	.....	1·8	19·4	11·8	1·5	3·5	2·4
1951	.....	6·8	0·2	.....	2·6	6·5	.....	9·5	2·3	2·2
1952	.....	3·4	0·4	.....	4·1	9·8	9·1	2·8	2·1	2·2

(1) See footnotes, Table 1.

TABLE 4—TOTAL* NUMBER OF CONVICTIONS UNDER CERTAIN SECTIONS (1) OF THE CRIMINAL CODE, BY FIVE-YEAR GROUPS, 1930-1949, AND SINGLE YEARS, 1950-1952, CANADA.

Section of Criminal Code	Annual average				Number in		
	1930-1934	1935-1939	1940-1944	1945-1949	1950	1951	1952
Total	1,204	1,209	1,392	1,676	1,610	1,585	1,605
80(1)	.....	.....	.....	.....	.....	.....	.....
204	41	57	42	45	27	44	29
206 (1)	350	335	477	537	497	520	533
276 (1)	.....	.....	.....	.....	.....	.....	.....
292 (1)	230	244	297	359	342	306	295
299 (1)	22	16	23	26	36	31	41
300	10	10	11	14	17	10	11
301 (1)	100	120	99	82	65	74	72
447 (1)	451	427	443	613	626	600	624

* All convictions under the sections specified, including those with extra sentence of corporal punishment.

(1) See footnotes, Table 1.

TABLE 5—CONVICTIONS WITH EXTRA SENTENCE OF CORPORAL PUNISHMENT UNDER CERTAIN SECTIONS (1) OF THE CRIMINAL CODE, BY FIVE-YEAR GROUPS, 1930-1949, AND SINGLE YEARS, 1950-1952, CANADA.

Section of Criminal Code	Annual average				Number in		
	1930-1934	1935-1939	1940-1944	1945-1949	1950	1951	1952
Total	115.6	67.8	23.8	43.6	39	35	35
80 (1)	.....	.....	.....	.....	.....	.....	.....
204	7.4	6.0	1.2	2.0	.....	3	1
206 (1)	4.2	3.0	2.6	2.4	1	1	2
276 (1)	.....	.....	.....	.....	.....	.....	.....
292 (1)	29.6	17.0	5.8	8.2	6	8	12
299 (1)	6.4	2.4	2.6	5.0	7	2	4
300	0.8	1.4	0.4	0.4	2	.....	1
301 (1)	7.2	12.0	2.4	1.8	1	7	2
447 (1)	60.0	26.0	8.8	23.8	22	14	13

(1) See footnotes, Table 1.

TABLE 6—CONVICTIONS WITH CORPORAL PUNISHMENT EXPRESSED AS A PERCENTAGE OF TOTAL CONVICTIONS FOR CERTAIN SECTIONS (1) OF THE CRIMINAL CODE BY FIVE-YEAR GROUPS, 1930-1949, AND SINGLE YEARS, 1950-1952, CANADA.

Section of Criminal Code	Annual average				Number in		
	1930-1934	1935-1939	1940-1944	1945-1949	1950	1951	1952
Total	9.6	5.6	1.7	2.6	2.4	2.2	2.2
80 (1)	.....	.....	.....	.....	.....	.....	.....
204	18.0	10.5	2.9	4.4	.....	6.8	3.4
206 (1)	1.2	0.9	0.5	0.4	0.2	0.2	0.4
276 (1)	.....	.....	.....	.....	.....	.....	.....
292 (1)	12.9	7.0	2.0	2.3	1.8	2.6	4.1
299 (1)	29.1	15.0	11.3	19.2	19.4	6.5	9.8
300	8.0	14.0	3.6	2.9	11.8	.....	9.1
301 (1)	7.2	10.0	24.2	2.2	1.5	9.5	2.8
447 (1)	13.3	6.1	2.0	3.9	3.5	2.3	2.1

(1 See footnotes, Table 1.

TABLE 7—REMISSION OF CORPORAL PUNISHMENT AWARDED UNDER CERTAIN SECTIONS(1) OF THE CRIMINAL CODE, BY YEAR, 1930-1952, CANADA

Year	Convictions under these sections (1)			Remissions of corporal punishment	
	Total	With extra sentence of corporal punishment		Number	Per cent of the number with extra sentence of corporal punishment (*d* as % of *b*)
		Number	Per cent of total convictions (*b* as % of *a*)		
	(a)	*(b)*	*(c)*	*(d)*	*(e)*
1930	1,213	95	7·8	3	3·2
1931	1,360	165	12·1	7	4·2
1932	1,200	116	9·7	6	5·2
1933	1,226	118	9·6	9	7·6
1934	1,022	84	8·2	5	6·0
1935	1,183	71	6·0	2	2·8
1936	1,146	77	6·7	7	9·1
1937	1,009	73	7·2	2	2·7
1938	1,307	78	6·0	1	1·3
1939	1,401	40	2·9	5	12·5
1940	1,501	43	2·9	3	7·0
1941	1,390	23	1·7	1	4·3
1942	1,228	21	1·7	2	9·5
1943	1,445	7	0·5	.....	.....
1944	1,399	25	1·8	2	8·0
1945	1,378	29	2·1	.....	.....
1946	1,884	41	2·2	3	7·3
1947	1,741	46	2·6	1	2·2
1948	1,756	39	2·2	2	5·1
1949	1,621	63	3·9	2	3·2
1950	1,610	39	2·4	.....	.....
1951	1,585	35	2·2	1	2·9
1952	1,605	35	2·2	1	2·9

(1) Sections 80, 202, 203, 204, 206, 273, 274, 275, 276, 292*(a)*, *(b)* and *(c)*, 293, 294, 298, 299, 300, 301, 302 445, 446*(a)*, *(b)* and *(c)*, 447, 448, 449 and 773*(d)*.

TABLE 8—REMISSIONS OF CORPORAL PUNISHMENT AWARDED UNDER CERTAIN SECTIONS(1) OF THE CRIMINAL CODE BY FIVE-YEAR GROUPS, 1930-1949, AND SINGLE YEARS, 1950-1952, CANADA.

Years	Convictions under these sections (1)			Remissions of corporal punishment	
		With extra sentence of corporal punishment			
	Annual average or total number	Annual average or number	per cent of annual average or total number of convictions (*b* as % of *a*)	Annual average or number	per cent of the annual average or number with extra sentence of corporal punishment (*d* as % of *b*)
	(a)	*(b)*	*(c)*	*(d)*	*(e)*
Annual averages and percentages for:					
1930-1934	1,204	115·6	9·6	6·0	5·2
1935-1939	1,209	67·8	5·6	3·4	5·0
1940-1944	1,392	23·8	1·7	1·6	6·7
1945-1949	1,676	43·6	1·6	1·6	3·7
Number and percentages in:					
1950	1,610	39	2·4	.....	.....
1951	1,585	35	2·2	1	2·9
1952	1,605	35	2·2	1	2·9

(1) Sections 80, 202, 203, 204, 206, 273, 274, 275, 276, 292*(a)*, *(b)* and *(c)*, 293, 294, 298, 299, 300, 301, 302, 445, 446*(a)*, *(b)* and *(c)*, 447, 448, 449 and 773*(d)*.

APPENDIX C

LOTTERIES

REPLIES OF PROVINCIAL ATTORNEYS-GENERAL TO QUESTIONNAIRE

(Note: For replies of a general nature, see Appendix D)

Question 1—Statistical Information

(a) Please set out on the attached Table A, for each of the years 1930-1953, the number of persons convicted under the enumerated paragraphs of section 236 of the Criminal Code;

(b) If the information is available, please set out on the attached Table A, in the column provided, the number of persons convicted for keeping a common gaming house under section 229 where the conviction involved offences in the nature of lotteries described in section 236;

(c) Please set out on the attached Table B, for each of the years 1930-1953, particulars as to the disposition of charges laid under section 236 and, if the information is available, charges under section 229 involving offences in the nature of lotteries described in section 236;

(d) Please set out on the attached Table B, if the information is available, particulars as to the number of forfeitures under section 236 (3) and the total amounts forfeited;

(e) Please supply whatever explanatory comment or material you may think desirable in connection with the statistics to be set forth in Tables A and B.

Answers—

B.C.—It would take too long and involve too much work on the part of the staff to compile information requested. May be obtainable from the Dominion Bureau of Statistics at Ottawa.

Alta.—None available.

Sask.—Tables A and B have been completed as far as possible and are submitted herewith.

Ont.—We have no other information than that found in the Canada Year Book.

Question 2—Present Enforcement Policies

(a) Has the Attorney General issued any instructions to Crown attorneys or the police with respect to the policy to be followed in the enforcement of section 236 and section 229, in so far as the latter section pertains to offences involving lotteries?

Answers—

B.C.—No. provisions of the Criminal Code relating to lotteries and bingo games are enforced in this Province insofar as it is possible to do so.

Alta.—No.

Sask.—The public interest and community sentiment is the guiding principle in the enforcement of the lottery sections of the Criminal Code.

In Saskatchewan local autonomy is respected. Each of our eight cities has a Police Commission or Police Committee of the City Council. Many of the towns have agreements with the R.C.M. Police for the policing of their town. These agreements contain the following provision:

> The ordinary police work of the Royal Canadian Mounted Police to be in accordance with the wishes and under the direction of the Mayor or the Chairman of the Police Committee of the Council of the Town.

The Non-Commissioned Officer or Constable in charge of the Royal Canadian Mounted Police detachment in the Town in carrying out this agreement shall act under the direction of the Mayor or/the Chairman of the Police Committee of the Town insofar as the enforcement of municipal bylaws and the Criminal Code within the boundaries of the municipality are concerned. . . .

The Royal Canadian Mounted Police will conduct all investigations . . . and may at any time call in the Solicitor of the Town to aid them in any such prosecutions . . . without cost to either the Provincial or Federal Governments.

Ont.—No.

Question 2 (b)—

If so, what is the nature of such instructions?

Answers—

B.C.—Answered in 2(*a*).

Alta.—No comment.

Sask.—Answered in 2(*a*).

Ont.—Answered by 2(*a*).

Question 2 (c)—

If no specific instructions or directions have been issued, are you aware of any special practices which are followed by Crown attorneys or the police in your province in connection with the laying of charges concerning lotteries under sections 229 and 236?

Answers—

B.C.—Answered in 2(*a*).

Alta.—No comment.

Sask.—Answered in 2(*a*).

Ont.—We are not aware of any special practices.

Question 2 (d)—

Are any special policies or practices followed in respect of the laying of charges for lotteries conducted by religious, charitable, benevolent organizations or social clubs?

Answers—

B.C.—Answered in 2(*a*).

Alta.—No comment.

Sask.—Answered in 2(*a*).

Ont.—Under our Police Act the responsibility for policing in Cities and Towns and some other municipalities, belongs to the municipality. It is apparent that the enforcement of the laws relating to lotteries and bingos for charitable or benevolent purposes is not uniform.

Question 2 (e)—

Are any special policies or practices followed in respect of bingo games organized and held by religious, charitable, benevolent organizations or social clubs?

Answers—

B.C.—Answered in 2(*a*).

Alta.—No comment.

Sask.—Answered in 2(*a*).

Ont.—Answered in 2(*a*).

Question 2 (f)—

Are any special policies or practices followed in respect of the laying of charges in connection with the sale of sweepstake tickets and, if so, is any differentiation made between

(i) sweepstakes organized within Canada;

(ii) sweepstakes organized within the province;

(iii) sweepstakes organized in a foreign country?

Answers—

B.C.—Answered in 2(*a*).

Alta.—No comment.

Sask.—Answered in 2(*a*).

Ont.—No.

Question 2 (g)

Are you in possession of any statistical information as to the number of lotteries conducted in your province in the years in question which were deemed to have fallen within the exceptions enumerated in:

(i) *the proviso in respect of agricultural fairs or exhibitions contained in section 236 (1);*

(ii) *the provisions of section 236 (5);*

(iii) *the proviso of section 226 (1) dealing with social clubs and the use of the premises of social clubs for lotteries and games sponsored by religious and charitable organizations.*

Answers—

B.C.—Answered in 2 (*a*).

Alta.—No comment.

Sask.—Answered in 2 (*a*).

Ont.—No.

Question 3—Recommendations

(a) In your opinion, what specific amendments should be made to the present provisions of the Criminal Code dealing with lotteries and, in particular, sections 226 (1), insofar as it relates to lotteries, and 236, in order to assist in the administration of justice in your province?

(b) In connection with any proposed amendment to the present sections of the Criminal Code, would you consider that:

(i) *any special provision should be made in respect of lotteries conducted by religious, charitable or benevolent organizations and, if so, what provisions would you recommend?*

(ii) *any special provisions should be made in respect of bingo games conducted by religious, charitable or benevolent organizations and, if so, what provision would you recommend?*

(iii) *any special provisions should be made in respect of the sale of sweepstake tickets by organizations organized for religious, charitable or benevolent purposes, whether in Canada or foreign countries, and, if so, what provisions would you recommend?*

(iv) *any additional provisions should be made in respect of lotteries conducted at or in connection with agricultural fairs and exhibitions or other types of fairs and exhibitions and, if so, what provisions would you recommend?*

(v) *any additional provisions should be made in connection with lotteries conducted by or on the premises of social clubs, specified in the proviso to s. 226 (1) and, if so, what provisions would you recommend?*

(c) Would you consider, in particular, that any provision should be made in the Criminal Code for the exemption of lotteries conducted by religious, charitable or benevolent organizations, or at or in connection with agricultural fairs or exhibitions or other types of fairs or exhibitions or by other types of organizations, when the conduct of such lotteries has been licenced by competent provincial authority and, if so, what provisions would you recommend?

(d) Have you any views on the question whether the Criminal Code should be amended to provide for the conduct of government operated lotteries for specified purposes and, if so, what provisions would you recommend?

(e) If you are of the opinion that under specified circumstances government operated lotteries should be permitted, to what extent would you consider it advisable to permit the conduct of lotteries by other organizations?

(f) Have you any comments of a general nature relating to special problems arising from the enforcement of the present sections of the Criminal Code dealing with lotteries in addition to any of the matters mentioned above, have you any suggestions as to how these problems might be obviated?

Answers—

B.C.—As to suggested amendments to the law dealing with lotteries, it is suggested that the Code be amended to allow lotteries to be run under Government supervision where the proceeds are devoted to recognized charitable purposes only, provided that the expense of its operations is regulated and no person or corporation other than the charitable organization makes a profit. No charitable organization should be entitled to hold more than one lottery a year.

In this connection, mention might be made of a recent prosecution in Vancouver of a Service Club, for conducting a lottery for charitable purposes. The case was heard at the Vancouver assizes and the jury acquitted the accused, although a clear case had been made against him under the Act.

With regard to the suggestion of additional provisions in respect of lotteries conducted at or in connection with agricultural fairs and exhibitions, it is suggested that the law be amended to allow agricultural fairs or exhibitions to sell in advance off the fair grounds lottery tickets in conjunction with admission tickets to the fair.

Alta.—Recommendations have already been submitted by Attorney-General.

Sask.—The Province of Saskatchewan makes no specific recommendations for amendments.

Ont.—The Attorney-General does not desire to make any recommendations.

(NOTE: *For recommendations of other Provinces, see Appendix D*).

LOTTERIES

TABLE A (SASKATCHEWAN)

Convictions Under S-236 and S-229 of The Criminal Code

Year	236(1)(*a*)	236(1)(*b*)	236(1)(*bb*)	236(1)(*c*)	236(1)(*d*)	236(1)(*e*)	236(5)	229 For Offences described in 236	Total
	Sec. 236								
1930	8							35	43
1931									
1932	1	(Years 1930 to 1943 Files Under Sub-Sections of Section 236 not Available.)						8	9
1933	5							18	23
1934	4							6	10
1935	10							15	25
1936	5							16	21
1937	7							35	42
1938	9							25	34
1939	12							32	44
1940	11							26	37
1941	Nil							11	11
1942	Nil							10	10
1943	4							3	7
	236 (1*a*)								
1944	Nil	1	.....	.....	.....	.....	.....	7	8
1945	1	.....	.....	.....	.....	.....	.....	15	16
1946	.....	3	.....	.....	.....	4	.....	17	24
1947	.....	4	.....	.....	.....	6	.....	9	19
1948	.....	2	.....	.....	.....	.....	.....	10	12
1949	.....	1	.....	2	.....	1	.....	13	17
1950	.....	.....	.....	.....	.....	3	.....	4	7
1951	.....	.....	.....	.....	.....	.....	.....	2	2
1952	.....	5	.....	.....	1	1	.....	1	8
1953	.....	2	.....	1	.....	.....	.....	5	8

NOTE.—The above statistical information has been obtained from the Officer Commanding, R.C.M. Police, Regina. The city police such as in the City of Regina have no statistical information completed as to this.

LOTTERIES

TABLE B (SASKATCHEWAN)

Disposition of Charges Involving Lotteries under SS.236 and 229

Year	Total number of charges	Acquittals	Convictions	Convictions quashed on appeal	Number of forfeitures under S-236(3)	Amounts forfeited under S-236(3)
1930 1931	43	.....	43	Not available	Not available	Not available
1932	9	1	8	"	"	"
1933	23	1	22	"	"	"
1934	10	.....	10	"	"	"
1935	25	1	24	"	"	"
1936	21	.....	21	"	"	"
1937	42	.....	42	"	"	"
1938	34	1	33	"	"	"
1939	44	.....	44	"	"	"
1940	37	.....	37	"	"	"
1941	11	1	10	"	"	"
1942	10	.....	10	"	"	"
1943	7	.....	7	"	"	"
1944	8	.....	8	Nil	5	$176.65
1945	16	2	13	"	6	205.30
1946	24	2	22	"	9	119.46
1947	19	.....	19	"	8	105.20
1948	12	.....	12	"	7	444.65
1949	17	.....	16	"	8	218.29
1950	7	.....	7	"	5	53.61
1951	2	.....	2	"	1	.....
1952	8	.....	8	"	4	.....
1953	8	.....	7	"	4	47.15

NOTE—The above statistical information has been obtained from the Officer Commanding, R.C.M. Police, Regina. The city police such as in the City of Regina have no statistical information completed as to this.

APPENDIX D

NOTE: The following replies are of a general nature and, therefore, were not capable of being incorporated in answer form into the preceding Questionnaires on Capital and Corporal Punishment and Lotteries (Appendices A, B and C).

ATTORNEY GENERAL
NOVA SCOTIA

HALIFAX, 5th May, 1954.

Mr. A. Small,
Clerk of the Joint Committee on
Capital and Corporal Punishment and Lotteries,
Committees Branch,
House of Commons,
Ottawa, Canada.

Dear Sir:—

I have now discussed with the other members of Government the contents of your letter of February 26 and it is our opinion that the criminal law of Canada relating to (*a*) Capital punishment and (*b*) Corporal Punishment should not be amended in any respect and it is not my intention to make representations to your Committee on these two subject matters.

In connection with (*c*) lotteries, it is our feeling that the provisions of the Code regarding this subject matter should be amended to a more modified form so that lotteries may be held by persons or organizations for non-personal gain and the amount of any prize that may be offered be substantially increased to a value not exceeding $500.00. Again, I do not wish to make any special representation to the Committee concerning this matter but I felt I must pass along my views on this point.

Set out hereunder is a list of homicides that were committed in this jurisdiction from the period January 1941 to December 1953:

Murder	Motor Manslaughter	Manslaughter from Hunting Accidents	All other Manslaughters and Infanticides
61	149	23	42

If there is any further information you wish on these matters, I will be pleased to supply it if we have such information available in our records.

Yours very truly,

(*Signed*) M. A. PATTERSON,
M. A. Patterson,
Attorney General.

PRINCE EDWARD ISLAND
CHARLOTTETOWN

MAY 27, 1954.

Donald F. Brown, Esq., M.P.,
House of Commons,
OTTAWA, Canada.

Dear Sir,

Your communication with Senator Hayden as Joint Chairman of the Special Committee of the Senate and House of Commons on Capital and Corporal Punishment and Lotteries under date of May 19th has been received, and contents duly noted.

In our opinion, we can see no valid reason for changing the present law, either with respect to capital or corporal punishment. With regard to lotteries, the law as presently exists is substantially satisfactory, except our suggestion would be that paragraph B of subsection 6 of section 236 might be amended to allow the sale of tickets other than at a bazaar, and for purposes philanthropic, as well as charitable and religious.

Yours very truly,

W. E. Darby,
Attorney General.

DEPARTMENT OF THE ATTORNEY GENERAL
ST. JOHN'S, NEWFOUNDLAND

MARCH 12, 1954.

A. Small, Esq.,
Clerk of the Joint Committee on Capital
and Corporal Punishment and Lotteries,
Committees Branch,
House of Commons,
Ottawa, Canada.

Dear Sir:

I am requested by the Honourable L. R. Curtis, Q.C., Attorney General for Newfoundland, to acknowledge receipt of your letter of February 26th.

The Attorney General has not yet decided on the question of submitting written representations or personal attendance before the Committee.

The sample of questionnaire referred to in paragraph 2 of your letter has not yet been received.

As to the number of murders committed in Newfoundland over the past twenty years, the following is a summary of the information sought.

During the past twenty years twenty-six persons have been charged with the offence of murder.

One murder trial involved two persons who were acquitted; another murder trial involved three persons who were found not guilty of murder but guilty of manslaughter. Two of them were sentenced to twenty years' imprisonment and the other to ten years' imprisonment.

Of the remaining twenty-one persons, twenty had separate trials and the other one, due to insanity was, under the law then applicable in Newfoundland, committed to the Hospital for Mental and Nervous Diseases by order of the Attorney General.

Five persons were acquitted; six were found not guilty of murder but guilty of manslaughter and two of them were sentenced to ten years' imprisonment, three to seven years' imprisonment and one (a female) to five years' imprisonment. Another (a female) was found not guilty of murder but guilty of infanticide and sentenced to one year's imprisonment.

Two other persons were found not guilty by reason of insanity and were, subsequently, transferred to the Hospital for Mental and Nervous Diseases at St. John's.

The remaining six persons were found guilty of murder and the death sentence was carried out on one of those persons. One, aged nineteen years, had his sentence commuted to life imprisonment; and the remaining four, who were all under eighteen years of age at the time of the offence, were found guilty of murder and ordered to be detained in His Majesty's Penitentiary at St. John's during His Majesty's pleasure.

These last four cases happened previous to the Criminal Code of Canada coming into effect in Newfoundland; and, as they were under eighteen years of age, the Judge was not empowered under the law then applicable, to pass sentence of death.

I trust the above information is what you require.

If we can be of any further assistance please do not hesitate to write me.

Yours truly,

H. P. CARTER,
Director of Public Prosections.

APPENDIX E

SCHEDULE A

EVIDENCE TAKEN BY THE JOINT PARLIAMENTARY COMMITTEE ON CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

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RAE, The Rev. Hugh—See "UNITED CHURCH OF CANADA"
ROBERT, J. A.—See "CHIEF CONSTABLES ASSOCIATION OF CANADA"
SHEA, George A.—See "CHIEF CONSTABLES ASSOCIATION OF CANADA"
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REFERENCES ACQUIRED OR ORDERED BY THE JOINT PARLIAMENTARY COMMITTEE ON CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

1. Bibliography of English and French References in Parliamentary Library (*See Appendix A, Minutes of Proceedings and Evidence, No. 4*).
2. "Court of Last Resort" by Erle Stanley Gardner.
3. Report No. 10, March 1954, U.S.A. National Prisoner Statistics on Executions 1930-53.
4. Report No. 725, 82nd Congress, U.S.A. Senate (Kefauver Report).
5. Report of U.K. Departmental Committee on Corporal Punishment, 1938.
6. Report of U.K. Royal Commission on Lotteries and Betting, 1932-3.
7. Report of U.K. Royal Commission on Betting, Lotteries and Gaming, 1949-51, including Minutes of Evidence with Index and Selected Statements.
8. Report of U.K. Royal Commission on Capital Punishment, 1949-53, including Minutes of Evidence and also Memoranda and Replies to a Questionnaire received from Foreign and Commonwealth Countries (I—Commonwealth Countries; II—United States of America; III—Europe).
9. Symposium of Open Forum on Capital Punishment held by the Ontario Branch of The Canadian Bar Association in February 1954 (*Offprint of The Canadian Bar Review Containing same not available at time of printing*).
10. THE PRISON WORLD, Jan.-Feb. 1952 Issue (No. 1, Vol. 14), containing "Draft of Standard Minimum Rules for Treatment of Prisoners", prepared by the International Penal and Penitentiary Commission at the request of the United Nations.

BIBLIOTHEQUE DU PARLEMENT
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