

1 asking here is whether we considered making this express-
2 ly applicable to the Legislature?

3 MR. MARTINEAU: Right.

4 PROFESSOR ASPER: I thought it was.

5 MR. MARTINEAU: I don't believe it is, and
6 I think under what the Court of Appeals has held about
7 cruel and unusual punishment, the Legislature can impose
8 any sort of penalty it wants and as long as the court
9 is within the bounds set by the Legislature, the punish-
10 ment is not cruel and unusual, so in effect, this pro-
11 vision has been held to be meaningless.

12 THE CHAIRMAN: That is not literally true,
13 is it? You are not suggesting that the Court of Appeals
14 would say that if the Legislature prescribed punishment
15 by rack or thumbscrew that it would be proper?

16 MR. MARTINEAU: I don't know about corporal
17 punishment. Certainly as to the period of incarceration
18 is what I am really concerned about, and that is, you
19 can have a life sentence for statutory rape or a life
20 sentence for --

21 THE CHAIRMAN: What it comes to is a holding