

Constitution that will not allow the Legislature to say that if somebody steals something, you can cut off their fingers. If somebody looks at that which the society wishes they would not look at, you can punch their eyes out. Those things don't happen in this society, not because it's a humane society but because the Constitution prohibits it, and if you will consider some of the bills that surface in legislatures, you will see that that barbarous spirit is still abroad in the land. And without a constitutional bulwark to prevent it from moving to fruition, we would have stocks, we would have women accused of witchcraft and burned at the stake. All of those things passed by the wayside, not because society became more humane but because the law said you cannot do it. Then people reluctantly accepted it. The Eighth Amendment, which is taken for granted now, was not adopted without opposition. (Machine malfunction, no tape overlap, some debate may be lost.) So people cannot sit back and say that the rights of the public will be protected by the Legislature alone. Constitutions are put in place as restrictions on the Legislature when you're at the state level. Anything the Constitution does not prohibit the Legislature from doing, the Legislature can do. That's why I want to ensure this right of appeal in the Constitution itself. There was a case that occurred, in Omaha, where a man was convicted of second degree murder, fortunately, not first degree murder, where he could be executed. He offered his alibi at his trial. No, he didn't...he couldn't...he didn't have an alibi at his trial, but he denied having committed the crime. He, himself, said that he was not there, but he had nobody to confirm it. After he was convicted, then he began to think and he remembered that he was at a place in Council Bluffs and there were a number of people at that place who were credible and could confirm that that was where he was. His family had enough money to not only hire a lawyer but a detective to track these people down. They came into a hearing to seek a new trial on the basis of new evidence. The county attorney of Douglas County resisted that effort, even though this new evidence was there and the witnesses were there to verify what this person said. The county attorney resisted it. The Supreme Court reversed, because this was new evidence, and ordered a new trial. The county attorney showed that he knew he could not convict, because with these witnesses, who were unimpeachable, apparently, would testify that this man was not at the scene of the murder, so no new trial occurred.

SPEAKER BARRETT: One minute.