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Mr. Gormley: (cont'd) that the Council which is a non-statutory body is still not strong enough to handle the present needs of this particular problem. There's no question I'm sure you've seen from your own studies that the number of criminal cases disposed of in the superior court just since 1966 has doubled. I think any of you that deal with the criminal law, I'm certain that the next speaker Mr. Zeldes is an expert on this will indicate to you that the complexity of dealing with criminal law problems especially serious felonies almost defies the imagination of some of us that are doing this work only 8 or 10 years ago. So there has been a general recognition of the need for a centralized office to handle the prosecution of crime within the state. There are three bills that I assume are being considered here today although we have only been able to have access to one of those bills. The bill presented by I assume the leadership of the Republican Party which would create a department of justice under the attorney general.

H.B.#5367 - AN ACT CREATING A DIVISION OF CRIMINAL JUSTICE WITHIN THE OFFICE OF THE ATTORNEY GENERAL.

From what I understand the leaders of the Democratic Party have also submitted a bill which essentially does the same thing at least in name I have seen a draft of that bill, although Ihave not seen the final bill and apparently because of some difficulty in printing that bill is not available.

H.B.#6759- AN ACT ESTABLISHING A STATE DEPARTMENT OF JUSTICE.

There was a thrid bill on this subject that was kindly signed by the Senate and House Chairmen at the request of the Council of State's Attorneys on the last day for filing bills on February 1st. This bill is the bill that is supported by the Council of State's Attorneys and it would in essence create the office of chief state's attorney who would handle the criminal prosecution of cases in both the circuit and superior courts throughout the state. I think when you look at all three of these bills that there is a lot more that we agree upon than what we disagree upon. Really this is the key to what I would like to try to say today.

S.B.#851 - AN ACT CONCERNING THE OFFICE OF CHIEF STATE'S ATTORNEY.

Mr. Gormley: (cont'd) I think that there's been a recognition that certain objectives and goals must be met by this type of legislation. There should be a centralized office for the administration of criminal law. There should be a unification of the prosecuting functions in the superior and circuit courts. There should be a coordination and integration of the prosecuting function. All of these three items which I think are the goals of the party billssubmitted by the Democratic Party and the Republican Party and also by the Council of State's Attorneys are all meant to serve that one goal. We would obviously desire that improvements be made in the area, in the field that we now work. We're the first to admit that we're not perfect and that progress must be made if we're going to meet the needs of the 70's with the increase in the amount of crime and its complexities in the years to come.

As a Council and as I would say for myself personally I would applaud the Governor and the leadership of both Houses of this Assembly for formulating legislation that is meant to handle these particular goals and achieve these particular goals. So what I wantto try to first emphasize as a member of the Council of State's Attorneys is that we do support the goals of these bills. We are not up here merely as antagonists to what you have proposed. I would hope that what newspaper articles you may have read over the weekend would not give you the impression that we are in an antagonistic position to the overall needs and goals of your own legislation. We do, however, have reasons of our own why we feel that our particular bill is the preferable bill. And I think that that is probably the most important part of what I am going to say. It's difficult in words to sum up all of the feelings that I have with reference to this particular subject. But as one who has worked in this particular area for 8 years I am opposed very strongly to the political appointment of state's attorneys. As has been mentioned by a prior speaker we have approximately 200 years history -- behind us all of which, during which time the state's attorneys have been appointed by the judges of the superior court. We like to pride ourselves on the fact that there has been no corruption within our ranks, that there has been no influence attempted to be perpetrated on us and we have run what would be considered clean shops over the years. I feel very proud to be part of that 200 year history. You know one thing when we talk about political appointments and one of the earlier speakers, I believe, Representative Stevens indicated that our complaint here is probably most illusory than real.

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Mr Gormley: (cont'd) It may be difficult to combat that particular argument but there are certain things that I think need to be said and that will prove our own point that politics should not be involved in the appointment of state's attorneys.

Although I have not seen the bill proposed by the Democratic Party I have seen a draft of it which admittedly may not be the final bill that is proposed. But having had some prior political experience myself in years goneby the major difference that I can see within the bill is that in the Repbulican bill reappointment of the state's attorneys is to be made by the attorney general with the approval of the Governor. My understanding is that the Democratic bill would propose that those appointments be made by the attorney general alone. Although maybe you people may not accept my premise I seem to already see that politics has already entered in the field of the appointment of the state's attorneys in the state of Connecticut. Because we have a rather unique situation this year with a Republican Governor and a Democratic Attorney General. And I gather from what little I know about these two bills that the respective parties have attempted as best they can through this legislation to make that appointment their own. So I think that politics is already begun to creep into this particular area.

With reference to the again item of politics within this particular area I think I should call to your attention a particular rule of the superior court which was passed by the judges of the superior court as far back as 1949, which completely rules our conduct with reference to political activity. When one accepts the job as an assistant state's attorney or a state's attorney he is completely removed from politics from this rule. The time that I accepted this job I was a member of this General Assembly. I was a member of a town committee. I was a member of a board of finance. And all of those connections I had to sever. I have had no political affiliation or contacts since that day because the rule is promolgated by the judges of the superior court 1949 it prevents me or any other state's attorney from in anyway involving ourselves in politics. If, however, our appointments in the future will be made by someone who is an elected official in this state I don't see how in good conscience or I don't see how it is humanly possible that those of us who will hope for reappointment in years to come will be able to do it without doing disservice to a rule that we have had to live by over the years and a rule which presumably we will be

Mr. Gormley: (cont'd) told to continue to live by. The system that we propose would be with the Council of the chief state's attorney accomplishes all of the goals of unification and centralization that you would propose in your particular bills. The one thing it does not do is make our appointments up to the Attorney General of the Governor. It leaves our appointments where they have been for some 200 years with the judiciary. I for one and I'm speaking for myself and I believe on behalf of all members of the Council feel that that is where it ought to lie. We have been told many times that our system is unique. That probably no other state in the Union appoints its prosecutors in the superior court as does the state of Connecticut. We are a unique system and I take pride in being a part of that unique system. I also say to you that in the 200 years that that system has nutured and grown that there has been no finger of suspicion of corruption pointed at anyone of the officials in the superior court. I think that it is a record that we should take great pride in. And a record that you should consider very highly before you would change the nature of our appointments.

There are other portions of the Republican bill and I assume of the Democratic bill which I've not had the opportunity to read that I think will eventually do a disservice to the job that we are trying to do. I would assume that all of these bills would make an effort to provide career people to work inthis particular field. When you make the appointment of a state's attorney or his assistants by whatever name the two bills would now call us I'm not sure what we are to be called in the future but when our appointments are strictly based on an appointment by the Attorney General and we recognize the fact that the Attorney General will not always remain the same person nor will he remain a member of the same party.All of us would have to live in at least some fear that our appointments would not be made. Many of you would say, well, that's ridiculous as long as you're doing a good job nobody is going to put you out. Well, I know Robert Morgenthal the U.S. attorney for the district of New Yorkfelt the same way some two years ago. And although Representative Stevens alluded to the fact that politics has not entered the field of the federal system I think the fact that John Newman is no longer the U.S. attorney for the state of Connecticut and Robert Morgenthal tried to fight the battle and maintain his position as the U.S. Attorney for the southend district of New York both of them are now off the scene. I don't think that that's a good system to have personally. I think the fact

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Mr Gormley: (cont'd) that there is a continuity at the present time is a desirable system. I don't think that each time, a new governor or a new attorney general is elected that automatically there should be a clean sweep either at the top or the bottom or the middle. I think that whether we rise or fall should be based on whether we are currently doing the job. As it stands now with our appointments by the judges of the superior court we must tow the line, we must do the job or we don't have to get reappointmented. Our appointments are only for a two year period. And if the judges become satisfiedwith the performance of our duty they owe us absolutely nothing and can remove us without a hearing, without anything I prefer to live under that system with all I have to do is prove to those people that I deal with most directly that I am handling the duties as the state's attorney of Fairfield County with the competence that they would require of me.

There is one other area within the bill that I think I should make reference to. And one is with reference to the full-time and part-time assistants. I have been a strong supporter of the idea from your bill in 1967 that state's attorneys should be full-time. I applaud the committee for that particular bill. I would have it no other way in my own county However, the requirement at least in the republican bill and I would gather in the bill of the democratic party would be that all other personnel within the department be made to be full-time. I don't think that there should be that requirement imposed upon the system. There is within the system a need for some full-time people. There is within the system the need for some part-time people. As it stands now the only three areas where this has really become a problem have been the three major counties And in New Haven County there are two full-time state's attorneys In Hartford County there are two full-time state's attorneys. In Fairfield we have been able to meet the needs of our office with five part-time people Now the word part-time is kind of misleading term, when you talk about this particular subject Part-time really means that these people are allowed to have a private practice with whatever extra time they may have. And I think any of you who are from Fairfield County, and there are some here that I see today, pretty well know the amount of time that my so called, part-time people put in. In the overall 9-5 job they are literally there 9-5 everyday of the week. Everyone of them is required to be there every morning,

Mr. Gormley: (cont'd) unless he gets my specific permission not to be there. What they can do on Saturdays and Sundays and evenings to try to make a little extra money to make ends meet is their problem, as long as it does not interfer with the requirements of my office. When the time comes that I feel I need a full-time man I only have to go to the judges of the superior court because I've already been told this and they are fully already willing and able to provide a full-time man for me One of the great obstacles, of course, in this particular area is paying the full-time man what he is required to make in order to leave private practice. This is the real problem. What you can do by forcing full-time people on the system with no part-time people is possibly taking four assistant state's attorneys who work on a part-time basis and you might count it for a salary of $10,000. All of whom have now had considerable trial experience, all of whom do an excellent job and they would be replaced possibly by two people who would be full-time, who might make $20,000. I nost give you these figures just by way of explanation. I'm not sure that I can get the talent from those two people at $20,000 and provide the service for the people of Fairfield County that I can provide from the type of people that I have as part-time assistants at $10,000. Before you just accept the fact that we should all be full-time, recognize that we must fill the position that you create And that we are going to lose very talented people who just will not be able to make the transition fr m a part-time status to a full-time status under what would have to be the pay status of those particular positions.

I think, there's another very important factor when you talk about the overall effect of these bills. Since I was a young man, I think, just listening to radio programs and television programs, I got the idea in my mind what a district attorney was. I think most people have that picture in their minds of what a district attorney is I think the people in the state of Connecticut have in their mind what a state's attorney is. It's been a part of our history for 200 years In most of these bills we just more or less seem to dissolve and become an assistant attorney general or in the republican bill a state's attorney but from no particular county, just a state's attorney who lives and operates under political machinery. I think this will do more harm to the overall administration fo justice than you could possibly realize. People understand this particular office, people look to this office,

Mr. Gormley: (cont'd) and people respect this office. It is one of the main reasons why I chose to leave private practice and embark upon this kind of a career. Because I know I had followed people such as Homer Cummings, Loren Willis, Otto Sour. And I hoped when I took this position and I still feel very strongly about this that this is my career and I hope to be there. Should I still be putting my boots on each morning when I either am 60 or 65 under this particular bill. So I think, in brief summation, gentlemen, what I'm really trying to say to you is that the goals of these bills are very similar. They differ in only two major points, as far as I can see. One is with the political appointment of the state's attorneys, the second with the full-time requirement of all assistants state's attorneys. This political thing is a difficult one to adjust myself to and I tried to make that plain to you but as I sit here now I just thought of this on the way up this morning, it's not really part of any of my prepared remarks , I tried to think of what I would do four years from now if either of the two party bills were to pass. And the attorney general were the spokesman for the entire prosecuting forces of the state of Connecticut. Fully recognizing that attorney general if the law is not change that is an elected official and more than likely unless we have what happened in this last election will be of the same political party as the governor. At that time bills will be proposed, things will be included within the platform, inauguration speeches will be made, and the attorney general will come before this committee to make presentation with reference to party bills, bills on the subject of criminal law. One can only expect as a part of an administration he is going to speak the administration's byline. I don't think that if I were still laboring in the field at that time, and I sincerely hope that I will, that under that form of my appointment that I would have the gutts to come here today and buck the system becausethe overall idea of this thing is that the head of the department is the one who will speak on legislation. I think, we heard that over the years -- hopefully inadequate in speaking out on bills. It is our strong feeling that the office of chief state's attorney which will be an office unto itself, an office where he will have no other functions of trying cases within any county that this man would be the one who can independently speak to you in years to come. And to press for the type of legislation that is needed to fulfill the task that we now face and to fight the battle against organized crime whenever that battle becomes obvious. In closing I would just say one

Mr. Gormley: (cont'd) thing. I have tried as best as I can today to make my presentation on all three of these bills and on personally one bill. It is not our wish to make ourselves antagonistic to what you people have proposed. We would much rather point out the areas where we are in total agreement which is in the majority of areas. If you look at what the attorney general or his chief deputy under the democratic bill or the deputy attorney general under the republican bill or the chief state's attorney under our bill is supposed to do. The language almost reads identical. The cooperation that he is to demand from local and state police departments almost reads identical So in almost everway the treatment of this problem is the same but goals of this, these three bills are the same. It is my strong feeling that unless this legislature can meet the burden of proving to the people of the state that the appointment of the state's attorney should be somewhere other than with the judges they should leave it where it is.

There is an additional constitutional problem that I'm sure some of you are aware of. As it presently stands there are many cases in our lower courts which do say that the state attorneys must be appointed by the judges of the superior court. Council and your next speaker is one of them, has raised in many of his cases a motion to dismiss on the basis that we should be appointed by the attorney general as opposed to the judges of the superior court. At least up until this time he has been unsuccessful in having any judge rule in his favor. There are probably 10 lower court decisions that rather unmistakably set forth the principle that our appointments must be made by the judges of the superior court. There is language in a supreme court of Connecticut case, Adams vs. Rubinow, which I'm sure most of you are conversant with that makes this point in the footnote rather clear. And as I close, I would just like to read from that footnote.

" It perhaps should be pointed out that personnel in the judicial department, other than judges themselves, whose mode of appointment is established in the constitution, have from time immemorial been appointed by the judges of the respective courts. As to constitutional courts, there is no question that under our state constitution appointments other than those whose mode is prescribed in the constitution are governed by the division of governmental powers. Thus the appointment of the personnel in a constitutional court including but not limited to state's attorneys, public defenders, clerks of court and messengers is not within the power of the General Assembly." This issue may well go to our state supreme court and be decided in something other than a footnote. But I think you can gather from this language within the case of Adams vs.

Mr. Gormley: (cont'd) Rubinow that the lower courts and our supreme court have concluded at least up until this time that the legislature does not have the power to engage itself in reappointments within the superior court. I would think, gentlemen, that until that matter is raised in our highest court, and I'm sure it will in time, that the bill as proposed by the state's attorneys which meets all of the goals that you seek to achieve in the administration of criminal justice should be the one that you favorably look upon. In the event that the supreme court should reverse its position there'll be plenty of time in the future to change the system to something else. But as it stands now both from the political stand point and from the stand point of providing career oppotunities for young men to enter this field or providing security for people to stay in this field and what I consider to be a mandate of both the lower and supreme court of this state, I feel that the bill as proposed by the state's attorneys is the bill that should be looked upon favorably by your committee. Thank you. I do have with me letters addressed to both the Senate and House Chairmen of this Committee from my predecessor Otto Sour, State's Attorney of Fairfield County. Mr. Sour is not well enough to be here today. He did dictate these letters his comments in them are directed to the issues that I have brought forth for you today and I'd like to leave them with your clerk for whoever else would take them.

Rep. Carrozzella: Leave them with the secretary. Would you stay for some questions please?

Mr. Gormley: Yes, surely.

Rep. Papandrea: I gather that some of the comments that appeared in the press were not accurate based on the attitude you expressed here this morning. But I was reading from the Hartford Cornel, Hartford Courant rather, headlines in an article by Gerald J. Demussi for the Courant, Saturday February 6th, which has bold cationed headlines " STATE'S ATTORNEYS VOW TO QUIT IF PLAN O.K." --very detailed statement it would seem by you saying "my staff of assistant state's attorneys has already advised me that they will resign if this bill passes, Gormley said. And he added, I am not prepared to work under that system either."

I'd like to know whether or not that is an accurate statement, sir, in view of what you've said here this morning.

Mr. Gormley: The statement, the exact quotes probably are accurate. But I think they should be qualified and I more or less did anticipate that this question might be raised today. Obviously when one has a press conference

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Mr. Gormley: (cont'd) at any time and the press is entitled to highlight that aspect of the press conference that they chose to. In no part of the formal statement that the state's attorneys made that day was there anything with reference to this. This was in answer to specific questions by cetain members of the press to us. In answer to one of those questions I honestly indicated that,we are now only talking the republican bill which is the only one that I have had a chance to read, where all of the people within my staff would have to go full-time. Speaking for them they have come forth and said that they could not or would not take a full-time job under this particular type of bill where they were guaranteed absolutely no tenure, no security, no hearing upon dismissal. I have one of my assistants who is thinking very strongly of becoming full-time. If he does it would be the greatest asset to my staff. Some of the members here know who I am talking about. He has told me that under the republican bill, this is all that this is premised on, republican bill unamended assuming that it went through exactly as it is now written, that he could not leave fifteen years of private practice to embark upon this kind of a career with no safeguards to his future. Now with reference to myself, and I speak again purely for myself because I'm the one who made that statement, not any other state's attorney, and again that if the republican bill as it is presently before the committee were to pass unamended with no protections whatsoever, I would feel that I could not work under that system. I am not speaking for any other members of the state's attorneys they are all free to express themselves on that particular point. But that statement was made in answer to a specific question related to one very specific bill. Now I recognize the fact that any one of these bills whether it be our bill, that proposed by the republican party or that proposed by the democratic party could well be amended during the course of this session, in such ways that safeguards or protection for people who want to make this a career could be made that would make the job desirable. But in that we are here the only thing that we have had before us is one bill and we've really not even had a chance to see the democratic bill and how it treats this particular subject. The answer that I gave was based strictly on a factual situation as it was then presented to me. And I answered it as honestly and truthfully as I can. I'm not threatening to resign. I hope to God that I will be doing this kind of work for many years to come. I never would have left private practice and the type of firm I was with unless I had the firm desire in my mind to do this for the rest

Mr. Gormley: (cont'd) of my life and my career. But all things change and I honestly don't think that anyone of these bills are going to go through totally unamended and hopefully something will occur during the course of this session that will make this job a desirable career opportunity for all young men who would aspire in this particular area. But I do feel strongly on this one point that the political appointment of state's attorneys is not timely at the present time. There has been no good reason shown for changing it Two hundred years history is not worth just throwing down the drain unless the finger of guilt or the lack of performance can be pointed at us saying you haven't done your job. And therefore, you should be appointed in some different way.

Rep. Papandrea: Mr Gormley, I personally want to go on the record here as being quite disappointed in what appears to me to be an almost intemperate political attack on the proposals that were to be heard by this committee this morning. And it really is a technique that I think is beneath the dignity of the office that you are here this morning seeking to preserve from political influence. But I do think that you have done a disservice to the state's attorney by debating through headlines. And I would say this to you that if you were here this morning you would have seen the necessity for being a little more patient before making such a wholesale attack on what is proposed by this committee because the democratic sponsored bill, which incidentally has been prefiled, and its content in principle has been outlined here this morning. And I want to make it very clear that it is not in anyway political and it assures that every position that you are concerned with would be administered under Chapter 67 of the state statutes which is the merit system. So we do not fall victim under any circumstances to the charge of political influence. And I think that the history of the people in previous administrations, the history and the conduct of the office of attorney general by the incumbent attorney general preclude any speculation that this is ripe ground or fertile ground for politics and in such an area of great concern to the people of this state.

And the secondthing that I would point out to you is that the democratic bill does make provision for part-time help if part-time help should be necessary. But that the democratic proposal does take into account the need to have as effective and as modern a system as possible, utilizing full-time people and personnel wherever necessary. But we went to great lengths in the testimony this morning

Rep. Papandrea: (cont'd) to point out, Mr. Gormley, that it was the intention to urge the Legislature to retain the very valuable and talented people that we already have in criminal law enforcement in this state within the new system. And I'm just very sorry that this type of headline and this type of debate outside this committee had to be necessary because I think it reflects very poorly. And it was in very poor taste because I think our ends as you have said are very similar, our purposes and goals are almost identical. And while you can point to a history of 200 years free of corruption under the present system I would like to say very definitely that with the people that the citizens of this state place in the office of attorney general and the office of governor, we are, I think, a very sophisticated state. We need not worry what the next 200 years will see any corruption. And I think you demean in a way the character and the caliber of the people who serve the state faithfully and well.

Mr. Gormley: Senator, all I can say in answer and I assume that that is not a question you've asked me, we would probably further demean this hearing if I were to answer you at the present time, I would like to under other circumstances but unfortunately, I'm not able to at this time.

Rep. Papandrea: I would like you to read the outline of our proposal if you would.

Mr. Gormley: I sent a man up to Hartford yesterday to try to get your bill or some outline of it but I was told that nothing was available.

Rep. Carrozzella: Mr. Gormley, may I ask you a question or two also? You made a statement that no good reason has been shown as to why to give the attorney general criminal jurisdiction. I'm sure that you are aware of the presidents commission on law enforcement and the administration of justice which was conducted under President Johnson.

Mr. Gormley: I am.

Rep. Carrozzella: I'm sure you're aware also of the Wickersham Commission which called for increased authority in the state attorney general about thirty-five years ago a study was done. Are you aware of the report of that commisssion?

Mr. Gormley: I am, sir.

Rep. Carrozzella: And are you also aware of the president's commissions report that states that states should stregthen the coordination of local prosecution by enhancing the authority of the state attorney general? Which is a recommendation of that commission.

Mr. Gormley: I am aware of that specific language. I am also aware that I thought I had it with me but of other language within the president's commission report that sets forth language that would indicate that the criminal administration under an elected attorney general is not the preferable method of doing it. The minimum bar standards of the American Bar Association also has language within it that I think would support the fact that the non-political appointment of prosecuting personnel of the courts is a preferable system.

Rep. Carrozzella: And are you also aware of the administration of criminal justice in Connecticut? The initial plan and action program that was submitted May Of '69? That year in Connecticut, a study done?

Mr. Gormley: I'm not specifically aware of that I am conversant with the report of the Judicial Council that was only, it only came down I believe a week ago and I'm sure that all of you gentlemen have had an opportunity to read it which comes out very strongly for the creation of the position of chief state's attorney. On that particular report I have great respect for.

Rep. Carrozzella: One of the, in reading from that report, one of the criticisms of the present system is the fact that, " judiciary, because it must act as impartial arbiter between prosecution and defense can not actively promote the state's interest in prosecuting offenders. "

Would you agree that that's one of the faults in our present system? In allowing the judges to appoint?

Mr. Gormley: I don't agree with that particular criticism.

Rep. Carrozzella: Can I further ask you in the event a bill is ultimatley passed which gives to the state's attorney general the power of appointment, and that we in that bill provide for no political influence insofar as that appointment, would you be in favor of such a bill?

Mr. Gormley: If, the only way I can answer that is that I don't think it is possible to accomplish that end with an appointment by an elected attorney general. So I would have to say I could not be in agreement with it.

Rep. Nieditz: Representative Nieditz of the 12th. We have testimony, Mr. Gormley, several weeks ago from a distinguished jurist who was going back over the years. Who had a political as well as a very distinguished judicial career, that while the operation of our state's attorney's

Rep. Neiditz: (cont'd) offices are not political it is in fact true that the original, initial appointment of state's attorneys over the years does have some political ramifications. I mean the same type of political ramifications that you're suggesting might be inherent in the office of the attorney general or by the governor. I think our governor does appoint our judges and unless you wish to make a wholesale inditement of the bench,our superior court and our supreme court, many of whom have been a very distinguished people, I don't see what sauce for the goose can't be sauce for the gander.

Mr. Gormley: Well, I am not going to make the inditement that you suggest obviously. I think the bench has many wonderful and capable judges. They also have what is essentially lifetime tenure in that I can think of no judge who has failed in his appointment in the superior court bench. If possibly you were willing to give that same type of lifetime tenure to me I might have agreement with your proposal. But I don't see any such tenure for me in any of the bills nor do I see a situation that is comparable to the situation that the judges find themselves in.

Rep. Newman: In all fairness, I'd like to set the record of this meeting straight. And I think that the House Chairman will agree with me. This meeting was, this hearing was called to order at 10:30a.m.sharp this morning for the purpose of hearing from legislators. There were none present to testify at that time so the chair ajourned the meeting until 11:00a.m. for other testimony such as Mr. Gormley's. Mr. Gormley was here at 10:30a.m. he was here before 10:30a.m. but when he was told that the meeting was put off til 11:00 a,m. I imagine that he walked away somewhere in the building and he wasn't here to hear Representative Papandrea. I'd like to put the record straight on that because Rep. Papandrea sort of put a notice on Mr. Gormley for coming in late and not hearin what he had to say. I don't think that he's to blame. And I'd like to set the record straight.

Mr. Gormely: I would thank you, sir, that is in fact what did happen .

Rep. Carrozzella: Thank you very much. Jack,would permit the attorney general to give his testimony then, we'll call on you next? Mr. Killian?

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Mr. Killian: Mr Chairman, ladies and gentlemen of the Judiciary Committee: My name is Robert J Killian I'm Attorney General I think that it's important that in the press release of the Council of State's Attorneys it states that the state's attorneys are cognizant that a separate and independent office of criminal justice ought to be established. And it goes on to say that such a change is necessary to handle effectively the large volume of criminal business. So that we start, I would say, from a point of agreement. I would say also just in passing this fact probably has been true for a number of years. But the state's attorneys did not come into this Legislature with their own bill until this year.

Now, much has been said about the danger of having the office of the criminal prosecutors of this state passed to political hands. If that wold be true, if the business of the state and its people should not be in the hands of an elected state official then, I suppose the attorney general should be stripped of his power, his present power as civil lawyer for the people of this state, responsible for millions of dillars of public funds and responsible for the handling of the multitude of state legal problems which have been the attorney general's authority since its inception. I don't take personally this attitude on the part of Mr. Gormley or the spoken attitude on the part of the other members of his Council. But I would say to you that there are 44 lawyers presently in the office of the attorney general. And I would be hard put to tell you what the politics of vitually any of them are, except for myself and Roy Daily who is Deputy Attorney General. These men are tenure. They're merit system employees. There is no place in the form to ask what their politics are. And I dare say that there is a considerable number of republicans Men who over the years, who no longer participate in governement or in politics because they are part of the merit system or this governement. I think that as Representative Neiditz indicated and I'm sure that it's in the minds of many here today. That if we want to follow the thinking of the state's attorneys to it's conclusion then, I think that the governor hinself ought to be stripped of his powers of appointment of judges Because this is where the power of appointment starts.

And I think another thing. An issur has been reised about the propriety, if not the constitutionality of the appointment of state's attorneys by the judges. And I think

Mr. Killian: (cont'd) that in the bill which has been presented by the state's attorneys it is interesting to note that the Council which it provided consisting of 7 judges and two lawyers. They're charged with the responsibility of promolgating rules and regulations with which the criminal side of courts will live. And I think that there's something that we can say about whether or not the judiciary should provide the rules and the regulations which later these same judges may be called upon to pass judgement. Because I feel that the question of rule making, this has been raised by the supreme court of the United States, the question of whether or not the judges should make rules by which people should be prosecuted and then themselves be called upon to place in judgement those very rules. And I think that this is a weakness in our system. I think it is a matter of wonderment to me that this has not been challenged long since.

I don't have any question, members of this great Judiciary Committee, but that the bill which have been proposed and what has been called the democratic bill, there would be no objection I'm sure on the part of this attorney general, and I'm sure that there is interest on the part of this Legislature to see to it that proper and full tenure is reposed in not only the state's attorneys and their assistants but also the prosecuting attorneys of our circuit court. I think it is avoiding the question, begging the question to raise objections to this legislation on the grounds that politicians are going to become involved. I would say further that if it's a question of integrity, if it's a question of who possesses the goodness ans integrity to pass these laws to prosecute under the laws of this legislature, then, I would say that there are people other than the state's attorneys in this state who are able and who are willing and who are proper people to do that. And I think that it is highly improper that state's attorneys will come here and before they come here to indicate in the press that if it comes to pass that this legislation is adopted that they will quit. Well, I will say this to you, that there is nobody in this room or in this building whose failure to perform, whose retirement from office or from public srevice is going to have in anyway, in anyway is going to block or going to impede the proper conduct of the business of the government of this state of Connecticut. And I think that you include that, that you involve that in the serious business that we have before us.

I would say to you ladies and gentlemen of the Committee that I am in favor of what has been called the democratic bill. I think that the people of this state expect and have long waited for a central authority who should be

Mr. Killian: (cont'd) in charge of the prosecution of justice in our state courts. And I think that whether that person be me or some other person and it almost wasn't me and I still was in favor of the fact at the time has long since passed that we have operated the presecution of criminals and serious crimes inthis state along lines fragmented on the ancient county line. And I would say to you that we need tenured people in this business of prosecution. I am interested in tenured people I have lived with happily merit system people in the office of attorney general now for 3½ years. There have been men in that office who have been there for over 30 years. And I think the state is entitled to this type of public service. And I would say that if this legislature and if this committee initially in its wisdom adopts legislation, I hope that it provides full tenure for the people who will come under the mantle of the bill. Thank you very much. Are there any questions?

Sen Jackson: Thank you, Mr. Attorney General. Are there any questions of Mr. Killian. Mr. Zeldes.

Mr. Zeldes: Mr. Chairman: My name is Jacob Zeldes. I am the chairman of the Committee on Administration of Criminal Justice of the Connecticut Bar Association. I am here at the request of the president of the State Bar Association to make a very brief statement. It is essentially to express a non-position of the Connecticut Bar Association. The Association desires time to reflect upon the three proposals that it has become aware of to this time. I think that these are far reaching proposals effecting the administration of criminal justice in this jurisdiction and modifying a system that has been in existence for 200 years in Connecticut.

I would only urge that this committee take no definitive steps until the Bar as a whole has had time to circulate an to study and to perhaps formulate an opinion which might be presented for the assistance of this committee.

By way of personal observation in divesting myself as chairman and as a representative of the Bar I should add this. I would hope that the committee would welcome all types of expressions of opinion,perhaps even in press conferences and that the views of the states attorneys the men who have occupied these positions for many, many years would be considered so that when the committee does

Mr. Zeldes: (cont'd) make its final determination of proposed legislation that no animosity between the various groups in the state develops. I think that this type of issue is such a far reaching and inportant type of public issue that it should receive the widest possible public discussion. And I rhink that the state's attorneys, perhaps even the public defenders, members of the Bar generally, and the Bar Association should discuss all of these proposals in depth. In many forms, not just in presenting statements before this committee

One other personal observation that I would add is simply this. Mr. Gormley pointed out to you that there is the now famous footnote for the Adams vs. Rubinow. Which does suggest that appointment procedure other thatn the judges at least assuming that the prosecutors are part of the judicial department would be unconstitutional. I have been on the losing end of that argument in about 10 superior court decisions. Now I would urge that if this committee and the General Assembly does see fit to enact either the democratic proposed bill or the republican proposed bill which removes the appointment power from the Judiciary to the General Assembly that there should be some provision written into that legislation delaying the effective date of any such a major change until the constitutionality has been passed in the courts.

The footnote that Mr. Gormley spoke about it has been challenged in cases but is fairly precise in its meaning. I think that the Legislature should have an interest in whatever system is developed in avoiding chaos and unconstitutional doubt in the system I notcie that the federal voting rights act had such a provision so that there could be a certain amount of clarity before it became effective. I have nothing else to add, Mr. Chairman. Thank you very much.

Rep. Neiditz: Mr. Chairman, unless the chair has questions? I'm somewhat mistified by the fact that this is now February and a representative of the Bar Association is coming here and asking this committee and the Legislature to take no action in this field until the Bar Association has had a chance to study it. This is incredible to me and in both platforms of both parties had relatively similar platforms. They varied in certain details and I should think the Bar Association by this time would have been able to make its views clear. And I'd hope that it won't be a matter of months. We do constitutionally go out of session the first

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Rep. Neidtiz: (cont'd) Wednesday after the first Monday in June. It's been my past experience that many Bar Association committees work 6 and 8 years on things and have come up with a nat (sic). I say this in all sincerity.

I also feel that there is, if it's a committee of the Bar Association we want to know that it's a committee. If it's the officers of the Bar Association we want to know that. If it's all of the members of the Bar Association, I'll go further, all members of the Bar. There are many members of the Bar who are not members of the private Bar Association.

Mr. Zeldes: Essentially the way policy is formulated at the Bar Association level, as I understand it, the State Bar Association level, is that a committee reports to the board of governors. Our committee,for example, the Committee for the Administration of Criminal Justice which will study these three bills and which were not available until just the last 48 hours or so. At least to me. It will be studied at the next meeting and then the report is not published, no expression of opinion is made by any committee of the Connecticut Bar Association. But a position is hopefully arrive upon and forwarded to the board of governors who formulate the Connecticut Bar Association official position and make it known to you as members of this committee and the General Assembly. I think that in that way there is no active and deversive statements being issued by the various committees or sub-committees of the Bar. And the Bar speaks in that manner.

I'll be very frank to say, sir, that on our committee, consisting of about 40 lawyers of which is divided evenly with those who are generally associated with the defense of criminal cases as I am and those who are associated with the prosecution we may not be able to arrive at a postion. And if we do arrive at a position I'm sure that you would like to know whether it's by vote of 21-19. Or whether the unanimous feeling in that respect. But it's a hotly debated committee meeting which goes on to the board of governors.

Rep. Gillies: You appreciate of course that we, although we will be very happy I'm sure the committee will be very pleased to hear any comments or recommendations that you may have relative to these bills. We are going to have to move in some direction so will be very happy to hear from you. But we trust that it won't take you too long to come up with something.

Mr. Zeldes: I understand that and I appreciate your attitude.

Rep. Mahaney: Mr.Zeldes: I'm Representative Mahaney from Waterbury. You have achieved through my own knowledge a position in this state of reputation of being a very active criminal defense lawyer. I know you appear here as a representative of the Bar Committee that you serve on. I'm wondering whether or not you, yourself personally divorcing yourself from that representtative capacity that you appear in here today would give us, this committee the benefit of your own personal thoughts on the concept of this bill that we have. Certainly the concept has been wel-known as Representative Neiditz has pointed out and I think the three bills that are before us give us, put some meat on the bones of the concept. Would you be in a position this morning to give us the benefit of your personal thinking not as a representative of the Bar? Your personal thinking predicated on the vast experience and the reputation that you have gianed in this field?

Mr. Zeldes: The view that I do have is a personal view. And as I said earlier in one sense I'm a partisan advocate because I have advocated in certain cases and there are cases still pending in the courts that the manner of appointing the state's attorneys violates both due process, at the present time, violates due process of law and the separation of powers. In that it puts in one department both the judging function and the prosecuting function. And that in effect, excuse me, the prosecutor, my adversary at times is an employee of a special type of the judge who must resolve the conflict. On the other hand I think I should also enphasis that in a non-adversary point of view and from the personal point of view I have grave reservations about jumping too quickly into throwing this into a system unless it's very thouroughly thought out. And here again I speak and I speak to some of you who are lawyers, with a statement that is not the type of statement that can be established by proof in court. But which is a feeling and apparently that's what you inquired of me, sir. And I think in certain areas of the law in this state just using zoning for an example, there is a feeling that certain lawyers should be consulted in certain communities for certain types of zoning results . I think in that broad, general feeling goes over to the prosecutorial function by any type of device that we're being in great disservice to the people of Connecticut. I think that's a very particle and a very emperical approach to it. And

Mr. Zeldes: (cont'd) not anything that can be documented analytically. Philosophically and analytically, I do believe that the prosecition of criminal matters is an executive function rather than a judicial function I do feel, however, that Connecticut should look carefully to its own relationship between its governor and its attorney general before jumping into a step in this regard. For example, the attorney general in some respects is assumed to be the governor's lawyer. And yet it can develop as it does at this time that they're on opposite sides of the political fence. All of these matters, I should think, should be very, very thouroughly analyzed 'til we see what er're getting at. The views that I have expressed in the courts and as I say I should emphasize again, that I've uniformly lost in these arguments. The views that I've expressed there are based on a pure legal analysis of the separation of powers clause and the due process of law clauses of both the state and federal constitutions, One of the important aspects of the due process matter is the fact that the state's attorney's to a certain extent have greater controls over dockets and assignments then their adversaries the defense counsel do. I think this calls into play certain due process arguments and questions. But all of those things are on a very legalistic and analytical, philosophical approach. And I think that the problems that you have is to weigh,perhaps, what the very many practical problems that'll come into the picture if there's any major change after so long a time.

Sen. Jackson: Thank you , Mr. Zeldes. Mr. Goucher. Is he here?

Mr. Goucher: Gentlemen, my name is -- Goucher. And I'm the state's attorney for Windam County.

Sen. Jackson: I'm sorry if I've mispronounced your name.

Mr Goucher: That's perfectly all right. That's usually the pronounciation that's given if you see the spelling.

I probably could be said to represent the smaller counties Windam County certainly being one of the smaller counties. However, I'm also expressing the view of the Council of State's Attorneys. Since we have served as a body we do work together an the very reason the Council was formed some 2½ years ago was in order to give some continuity , some coordinating to the prosecution processes in the superior court, at least. I think it is regretable that the theme was struck apparently in the headlines that appeared in the Hartford Courant. A theme which certainly was not at all part of the official posture of the council

Mr. Goucher: (cont'd) when this press conference was held. It was not part of the official or the prepared text that was presented at the time. And it was in answer to a question to one of the state's attorneys. And it didn't in fact include an answer or a question to the other state's attorneys present.

So I would like to say this that I would hope, and in fact, I have confidence that this body, that this judiciary committee that would be considering the merits of the bills that are presented to it, the administration bill, the democratic bill and the bill that the Council of State's Attorneys is proposing that in the consideration of these bills if the consideration will go solely to the merits of the bill. I would certainly urge upon you that whatever any person in office presently would do in the event that any of these bills would be passed, certainly is of no concern of yours. It has no bearing actually on your consideration of whether the bill is good or not. And so I would urge you to consider the merits. That when you look at the merits of the bills that are being proposed that you have to consider the concept. The concept if it would be changed completely in so far as the prosecution of criminal cases is concerned. Now, I'm heartened by the fact that apparently the democrat bill does differ from the administration bill in the sense that it seeks to develop tenure, to develop the merit system within its bill in so far as the attorneys who would be prosecuting cases presumably.

However, I would again strike the theme that if you've got system that's working is it a good idea to change it? And certainly, the prosecution of cases in the superior court has worked and is working. The only criticism that is heard on occasion seems to stem from the circuit court level. And the bill that has been proposed by the Council of State's Attorneys seeks to correct that. This is a good aspect of both bills that have been presented by the administration and by the democrat. And this is a provision that the State's Attorneys Council bill seeks to create and develop and that is coordinating the prosecution of cases so that your circuit court prosecutors come under the jurisdiction of the chief state's attorney as provided for in the Council of State's Attorneys bill. I would point out too that where presently the judges are the only ones that make the appointments of state's attorneys and of circuit court prosecutors at the present time. The bill that the Council of State's Attorneys has proposed calls for a commission, a justice commission that would in fact,

Mr. Goucher: (cont'd) make these appointments.

Now, I would also like to address myself for just a moment to the fact that it is unusual for state's attorneys to come before a committee of the Legislature of the Judiciary Committee, in order to make our views known. This has never or hardly been done in the past. But I think that the note that Mr. Zeldes struck in his remark is one that really explains the reason why we have. And that is the fact that he has urged upon you that in your consideration of these bills that you listen carefully to voices in all areas included public defenders, states attorneys and prosecutors in the list of areas that he has urged you to listen. This is the only reason why we chose to come forward and to make our views known because it does involve the question of changing the concept of the appointment of prosecutors in the state of Connnecticut. And so for that reason, for whatever benefit it may provide you this is the reason why we have come forward. I would leave one more thought with you and that would be that in all of the bills that I have seen so far there as to, and this is only one small point but I still think someone should voice it, nevertheless, in connection with the retirement benefits, credit is given to service of the state's attorneys and of the prosecutors and the assistant state's attorneys but there is no provision at the present time I don't believe to include giving credit for public defenders who have served in the superior court over a number of years. And I think that if any retirement system or provision that is made there should be included the service of the public defenders in the superior court. Are there any questions?

Sen. Jackson: Thank you. Mr. Bill. Mr. Bill.

Mr. Bill: Mr. Chairman, and members of the Committee. I come over here as a past state's attorney for Hartford County. I served from 1949-1959. I've listened very intently to remarks of those that have preceded me. And I noticed the question of politics has been brought up. As against a non-political office and I think I might qualify on both sides of the fence because I was admitted to practice in 1922 which is 49 years ago. And I'm beginning to realize it. And the next year I came over here to the legislature as assistant clerk of the Senate. I went over at the House the next two sessions as assistant clerk of the House. I served as clerk of the House for two sessions. And I served as clerk of the Senate in 1935. I was engrossing clerk. Later on I was sevretary to the State Central Committee of the Republican Party at the time that Governor Baldwin was elected Governor. I served for four years. At that time I left politics to take over with my father who had been practicing for many years. He was getting old and

Mr. Bill: (cont'd) I went back there and gave up any participation in politics. And it wasn't until 1949 that I was asked by Chief Justice Malpy if I would serve as state's attorney. I knew nothing about it until he called me over. And to show that it wasn't political I learned that Judge Edward J. Daily, Sr. who had been a democratic attorney general and then was a superior court judge had suggested my name as state's attorney at that time.

I come in here with the feeling that I've always had that over the years I've had a chance to watch the operations of the state's attorney. I've defended a number of cases before I went to that office. And I then came to the office and I had the feeling and the experience that there was never any pressure from the outside. Of anything in the way of politics. I never had a call to my knowledge from anybody of a political nature to make any decision as to a criminal case..

Now, as to the judges, of course,you must realize that it isn't one man who puts you in there. I don't know what the number are now. I know in the superior court closer to the supreme court I suppose about 30 at least. And you have in there judges of different views and different parties. And I've noticed too that spealing for the judges that some remarks not been made here but in the press, It's always delighted me that no matter how much over the years that a judge's been in politics in the superior court, that once put on the bench I haven't known one man that ever used politics in his decisions or ruling on the bench. And during my experience as state's attorney I had to fight my way for cases just as much as the defense did. I never saw any favoritism or any leaning toward the state in any cases I ever had. And I had lost two cases in the supreme court. One a capital case 3-2 the Tyborski Case. I've never seen any indication that any judge of the superior court has shown any favoritism to the state in trying a case, in fact I think sometimes knowing the fact that perhaps the state's attorney with his familiarity of the office and his knowledge of the criminal law that he must have has put some defense lawyers in a bad position. And sometimes, perhaps if there's any leaning it might be towards that particular area.

Now, what I have come here to say is that if you're going to have state's attorneys with any thought of tenure that are going into it as they should in a professional way to carry it out until the age limit it seems to me they ought not to be subjected to the whims of political parties.

Mr. Bill: (cont'd) And I don't mean that every attorney general that comes in of a different party might oust all those before him. But you know that leaders in the parties, I don't care who it is, politics is politics, the state's attorneys office is very controversial. Questions come up about people that are close to other people that get different ideas of what the state's attorney had done or is going to do. Hate that arises between some laymen and prosecution. Laymen read cases in the paper. They get their knowledge of the status of the state's attorneys office and what he's doing from what some reporter has written who perhaps doesn't quite understand all the different things in the law. Now it always seemed to me that to put up a state's attorney to election by the people would be wrong. He would be in a position of reading popular polls as to how he's coming out and of who he's going to hit and who he's going to hurt if he prosecuted this case. And who he might favor by prosecuting that or letting up on the other.

Now, you come to the question, take Bob Killian, for instance, his experience. I only learned it from the press. He did a good job as far as I know. Serving as attorney general and yet from the press I learned that he had not been slated to be put back in that office for some reason or other or the whim of some candidate on the ticket. I don't know. But I do know and I guess it's a fact that probably, I haven't asked Bob but I think he'd tell us that he had to fight for the position. Now we all know that he did a good job, that he's a good man. Somebody up high wanted somebody else. And it almost became a certainty. And when he got all through this then he went on a squeeker.

Now, these state's attorneys here are depending upon that one man. And of course, I say it is, even like the judges, the judges aren't particularly controversial. I think most everybody feels that the judge hears this side and he hears that side and he comes out with what's a fair decision. State's attorney is, he's on one side. When he makes up his mind he's on that side. And a lot of people think that he's persecuted. And when he asks for recommendations then, people oh and ah. Either he's soft or he's too tough. And he's very controversial. And relatives get hit. I mean it's a very delicate office. And you come out of there with a lot of emnity. I went into a parking office here a while ago and the fellow -- that I rose up and said your attorney Bill? And I said yes.

Mr. Bill: (cont'd) He said, " You sent me to prison " Well, I backed off. I didn't know what was coming and I said, "What did you do?" And he said,"Well, I killed a man." But he said, "You only gave me a year so I think you're all right." But I mean there's what you get. He said, "I killed a man with a pool stick. We were playing pool and had an argument. And only got a 1-3. How's that?"

But you see that's what you get up against and I've been out of there 10 years. And so this is a pretty delicate office. And we've been going for over 200 years And we've been appointed by the judges. The judges are insulated to the extent that they must have some knowledge of,well, let's face it. They're put in there probably in the beginning for political reasons. But they've always turned out to be good men. And they've never gone on, as I know of, and made a political office of it. And they've put the state's attorneys in there. And there isn't one man judging the state's attorneys. And I didn't know a lot of them, the judges as I went on there as state's attorney from different counties. And as a whole they have to judge it not by what one man might do. And as I say I never saw favoritism. Now it looks to me that you're if you pass this one, you're putting the state's attorneys in a pocket with the attorney general who has got to go out and fight for his office. He's got to fight for it in his party first where he might be opposed and he might have nothing to do with the state's attorney that's a trouble there. He might have some other reason. The party might have some other reason And then, he's got to go out and face the electors. As a matter of fact, the states attorneys, the attorney general might lose because some of the electors are gunning for him to get the state's attorney. So you have all these factors here. And my question is if we can't show what's wrong with the present system, and I haven't heard anything here that was to me impressive,then, why all of a sudden change it over to something else? Now, you know as well as I do that this thing must have been thought out way back when it started where they vested the power. And you know that with all the things going on that this has been suggested time to time over the years. And I remember as clerk of the Senate and the House making up the minutes and having petitions that the state's attorney be appointed by the governor or the attorney general. It's been a big question but why are we doing it that I don't know. As others have said ahead of me, we've had no scandal. I've been around in practice as I said for 49 years adn I would know if we've had not even a breath or scandal or gossip about anything, not any state's attorney in the state. I think it's a marvelous record. Then, why do we

Mr. Bill: (cont'd) all of a sudden try something that does have a lot of questions to it? And could put it in, I think it will, to politics. And for this reason, having read I don't know about a third bill, but I read two bills, one was the formation of a criminal justice system and the other was by the state's attorneys.

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And the one that I would advocate here is the one in behalf of the state's attorneys had put in here. To have this chief state's attorney. I think that's what we need. I think the only defect in the system now is that when I left over there we didn't have too much continutity or we didn't have contact too much with the other state's attorneys in the other towns. Now you'll have a chief state's attorney. He'll be a coordinator. There'll be meetings and I understand there is a council since I went out where they have had their problems. But you'd be under the watch of this chief state's attorney. And in back of him would be the judges. Now, what else do you want? I don't see what it's all about.

So I come over here still believing that it ought to stay ought to go in under the same idea that the state's attorneys have volunteered.

Are there any questions?

Rep. Bingham: Mr. Bill: State Representative Bingham, 157th. Are you saying that the District Attorney Hogan,Roberts, Gregary in New York panned it to the emotitions of the people when they get elected as district attorney? You stated that you would be opposed to an electoral system of state's attorneys also.

Mr. Bill: Well, I know that there's elections of judges and so forth down in New York. You have the investigations of course, that is in Connecticut. You've got a gangster crowd down there. We all know about that. They have their finger on elections. One of the big cases coming up down there with wiretapping. They got some famous man who went to jail, I can't remember his name now, you probably know it, for tampering with judgeships which are under election. And the attorneys down there, prosecutors down there under the same influence they got more question of

Mr. Bill: (cont'd) organized crime. They'd be better off without elections down there, I think. And of course, from the angle of the United States, the federal situation you can see, as somebody said, some of the district attorneys that became very famous under the democratic rule were ousted and the republican rule now, I'm not hear to say that, but looking at it it was political. It was political.

Rep. Bingham: How do you feel that the federal system works?

Mr. Bill: That's what I'm talking about. I believe that, well, you have your man down in New York. He made a play for his office. Where did he get? Nowhere, as far as I know, of course, I don't follow in politically. But apparently he's very popular. Clark also was removed. There are four new people that think he's a candidate for the democratic party for president next time, he's being put in there. Now, he was removed. So when we compare the federal system, I think, that goes against this bill for the attorney general. That's what I'm talking about.

Rep. Bingham: Thank you, Mr. Bill.

Sen. Jackson: Mr. Bill, there's one further question from the committee.

Sen. Smith: Senator Smith, 2nd District. Some, at least a few judges are of the opinion that appointments of prosecutors and state's attorneys by judges are unconstitutional. What's your view on that? As a former state's attorney?

Mr. Bill: To tell you the truth, I've never examined the law. I couldn't give you an opinion. It never has come up to me to look it up or examine it so I couldn't tell you. I heard a case cited here recently but as I said, I've been out of the field of that office for ten years and I'm still practicing law but I'm over here with no future. I mean I'm on the way out as far as age is concerned so I have no ax to grind. Only it seems to me that the backbone of this country is the judiciary and the prosecutors. If once they disintegrate why you haven't got anything left. That's the bulkwark of the country. If your courts fail and your prosecutors fail then, this country is going right down hill, that's my opinion, so we've got to watch out what we do.

Sen. Smith: Can I understand you sir? You're saying that the present system will support your ideas but if we change it you think it would lead to the disintegration of our judiciary?

Mr. Bill: Well, there's nothing perfect, sir. But if something has worked for 200 years and I haven't heard anything here that would change my mind but what it has, then, I'd be very, very slow in dumping that and going to some field where you don't know where you're going.

Sen. Smith: In other words, sir, if I can understand you correctly, you would believe that it's more of an opportunity for politics to enter in? And if it were changed than it is at present? Political pressure? As a former state's attorney and of course, are you a practicing lawyer now?

Mr. Bill: Yes, yes

Sen. Smith: All right, with your familiarity with our judicial system and of our backlog in our court cases you see I happen to be a layman and I'm trying to get an understanding about something. Sometime last year, one individual in a very controversial case got a trial within a week and a half's time after his arrest when there were many others waiting for trial because of the overloaded, crowded docket. In your opinion, could you tell what kinds of, what kind of situation would have to pervail in our present system which would get anyone a trial within a week and a half with our present court's load, loaded docket, rather?

Mr. Bill: I don't think I could answer any specific case, I know that since I left the office in '59 that it's all changed aroulnd because I only had two assistants over there. Judge Wright and Mr. LaBelle. The 3 of us were running the office. We had an overload then. And since I've been out of there I haven't kept in contact. I've done no criminal work at all. I've never appeared in either state courts or federal courts in defense of anybody, I made that a rule. So I haven't followed it but I do know that the courts with the overpopulation and the great increase in crime that they've been overwhelmed. I know in Hartford there. And I couldn't tell you if you're asking me why is some particular case given preference to many others and picked out and tried ahead of them there must be some particular reason I wouldn't know. You'd have to name the case and ask the man who's now in office how it happened. I couldn't tell you.

Sen. Smith: I just wanted to know what you thought about it.

Sen. Jackson: Thank you , Mr. Bill. Mr. Gersten.

Mr. Gersten: Mr. Chairman, ladies and gentelmen of the Judiciary Committee: I'm a former legislator and a practicing attorney. And I had the honor to serve on this committee for 2 terms. It seems to me that when you have a bill that

Mr.Gersten: (cont'd) appoints an assistant or deputy attorney general to serve at the pleasure of the attorney general and who has general supervision over all the criminal law of the state of Connecticut. You might be taking a step forward but I think you could possibly be taking a mile backward. I know that when we sat on the judiciary committee and we interviewed judges who were appointed by the governor we had the oppotunity in executive session to go into the philosophy of that prospective appointee, his judicial temperment, and what his views were. And we had unrestricted opportunity to talk to him. When that man finally became a judge of the superior court and he took his oath of office did we not reach a certain refinement in the state of Connecticut? When he sat on the bench and he together with other judges of the superior court then selected the state's attorneys? If you were to make a comparison and a contrast with what you propose to do under this particular bill and what we have today, I think that we have an excellent system that far surpasses anything in the country. Now I think if a bill like this were to pass you're going to have a vast concentration of power. And power is not good when it is concentrated in the hands of one person. That's what you're going to have here. I think you loose the certain objectivity. I think that you usher in a competitive concept and this competitive concept would put one against the other. And when I say one against the other - the executive against the judiciary. We're now talking about something that's new, untried and untested. And a sort of a panacia for what? There's nothing novel in this. We discussed it in 1957 and we talked about it in 1959. I think that this bill creates a big shadow of uncertainty and I think that it's an unwise bill. And I respectfully urge that it not pass.

Thank you.

Sen. Jackson: Thank you, Mr. Gersten. Mr. Byrne.

Mr. Byrne: For the record my name is Attorney John Byrne, assistant Public Defender, Superior Court Hartford County. I feel like a thorne among the roses here. I'm the , I represent those who will be the ones to be judged and governed by the conversation that's taken place here today. I'm sure that they won't be here because they don't probably know where we are or where the Judiciary Committee is.

I'm here to speak today on several bills that are before this committee but also to let you know that there is somebody interested in the public defenders system here in Connecticut. Now, I want to make it clear that I'm speaking

Mr. Byrne: (cont'd) here as an individual relying on my own personal experiences and not on behalf of any public defender system because there isn't one. And I would assume that there'll be no other public defender here speaking today but don't take that as an indication that every thing is fine. Or that there is no need for substantial change and improvement in the defenders system. Before I get into my comments with reference to where the changes should be made I'd like to take issue with comments that were made by persons who have held themselves up as experts in the field of court reform and more particularly with reference to criminal court.

I take issue with those who say that only well paid and well placed private counsel can obtain justice for fortunate accused. Other comments have been made to the effect that our appointments,public defenders, are mainly on the sole basis of political consideration. And I don't think that there's any need at this time to get into how I was appointed and certainly there was no political involvement at all. Some judge called me and asked me if I'd like to take the position. And also it's been said that there are, judges and public defenders recommend guilty pleas to clients because judges favor this kind of disposition. To allow these statements to pass without taking strong exception would be to cast serious doubt on my ability and more seriously on my integrity as an attorney. However, these remarks by uniformed people are more serious an that they infer that judges do not concern themselves with the doing of justice. And that the judges have means within their power to deny justice to those that appear before them.

Over the years I've had the oppotunity, I believe to appear before all the judges of the superior court whether on criminal matters or civil matters. And as to their judicial competency and ability I compliment them. And I also compliment this committee and the general assembly for the appointments they've made over the years. And of course, it's my opinion that the present system of judicial appointments should be retained. And I think too that we place too many burdens and responsibilities upon the judges and which in turn take time away from their functions as seeing that justice be done. It would be my suggestion that the judicial department be operated administratively speaking by a judicial committee. And the committee made up of the chief court administrator, the chief judge of the and the chief judge of the circuit court. Their responsibilities would solely be administrative. And I think an example of, is that we have a chief court administrator who also is given the responsibilities of sitting on the supreme court and having to decide cases. I feel,also that we have the chief judge of the superior court and I

Mr. Byrne: (cont'd) can speak with some experience that he was the presiding criminal judge last fall in Hartford. He was just overburdened with the nitty-gritty little administrative problems. I think it's unfair to him and to the judges to burden them with these problems. And the only ones that would run the judicial department would be this judicial committee.

Now, as pertains to the public defenders office. If this General Assembly does nothing else this session, you must make the compensation of the full-time assistant public defenders the same as the full-time state's attorney. I want to point out that I'm not here speaking for myself because I'm one of those who are "part-time assistant public defender" and what that means in the statistics over in the judicial department will show that that means out of a court week of 24 hours we spend approximately 18 in public defender work. Now, at the present time in the superior court in Hartford, there is approximately a$3,200 difference between the two. Now I would also point out in the Judicial Council's report to the governor they have made the suggestion that there be no significant compensation differential. I feel as far as the full-time personnel are concerned betweeen the assistant state's attorneys and the assistant public defenders that there be no compensation differential, Futher, my other suggestion is going to be that there should be comparable personnel and facilities between the offices of the state's attorneys and the offices of the public defender. At the present time this is not the situation. Would you believe that with a case load of some 800-1000 cases a year we do not have a secretary? Now if you decide to completely revamp the public defender system may I suggest that constitutionally speaking an independent department of defense services be created and an appointment be made as the appointments are made by this body for the appointments of judges. That would be a judicial recommendation to the whole legislature and in appointment with confirmation by the legislature with a fixed term. Now if we do have the problems of this constitutional difficulty then, I would suggest that the judicial committee as I have made mention of before appoint a full-time assistant state's attorney. This is a full-time chief public defender. This judicial committee would appoint the various assistant public defenders for both the superior court and the circuit which the chief public defender would nominate. No other judge would participate in the appointment of public defenders. The chief public defender would be solely responsible to the judicial commission or committee whatever you want to call it, for operation of his office. I've already briefed you

Mr. Byrne: (cont'd) the point of my feelings with reference to a department of defense services. I'm not going to go into the other details which certainly could get gone into by me for this committee. But there are many other people who want to discuss, I suppose you might call it the more important problems of where do we go with the state's attorneys. But as I have mentioned before to some of the members of the legislature that I would be willing without compensation to work with your council an' your staff to put forth what I feel is a system that has to work in Connecticut. Now and I again speak with some experience, that the biggest problem as a defender, that I run into in representing people is the comment that , "oh, well, you're appointed by the state." Now, superimposed upon that the talk here today of the attorney general running the whole program and nothing being done with reference to the public defender. All I'm saying is that whatever you're going to do with the department of justice bill I believe, that the public defender system in Connecticut should get similar and comparable consideration and appointments. My personal feeling is that it should be a department outside the judicial department.

Now my closing I would like to say, whatever this committee and the general assembly decide to do in the area of public defense, you must always keep in mind that if we say that all men must live within our system of laws every man must be guaranteed that he will obtain justice within that system. If the poor and the indigent are not given such a guarantee then, they should not be expected to live in and abide by our system of laws.

Thank you.

Rep. Bingham: Attorney Bill? Byrne. I'm sorry. Do you have investigators in your office?

Mr. Byrne: We have one investigator who we obtained less than one year ago.

Rep. Bingham: How many does the state's attorney have?

Mr. Byrne: They have I believe at least, well, they have 6 county detectives. Plus all the state police and police departments throughout the county.

Rep. Bingham: You feel that's outwieghed?

Mr. Byrne: I think it's quite obvious that it's quite outwieghed. And prior to that, prior to the appointment of an investigator, again, I think it's about a year ago. I personally on the less serious matters would do my own investigation. And this the other public defenders would

Mr. Byrne: (cont'd) also do, on their own time.

Rep. Bingham: How's your typing?

Mr. Byrne: Well, my partners and some of you know them if you do any civil work in Connecticut that any motions that are to be filed or any briefs that are to be written as far as the public defender and that office are concerned, I do them at my own office.

Rep. Bingham: Have you been provided with at set of statutes in your office?

Mr. Byrne: Yes, they're in the Senate Courtroom. Which if I...

Rep. Bingham: Well, you don't have one set though?

Mr. Byrne: No, we don't.

Rep. Bingham: For your office. Do you have Criminal Law Reporter in your office?

Mr. Byrne: We have gotten to the Criminal Law Reporter in the last year. Now as I say I would invite any of those who would like to come and see the facilities not only in Hartford but other places to feel free to come. But also I'd like to make one further commment. At the present time we do not have a public defender in Tolland County. The reason for that being that he got tired of having his secretary work at the courthouse.

Rep. Bingham: Thank you.

Sen. Jackson: Captain Bishop.

Capt. Bishop: Mr. Chairman, ladies and gentlemen of the Committee: I'm here representing the state police department. The state police department takes a supporting position with respect to the creation of the division of criminal justice within the office of the attorney general as provided for in bill# 5367.

H.B.#5367 - AN ACT CREATING A DIVISION OF CRIMINAL JUSTICE WITHIN THE OFFICE OF THE ATTORNEY GENERAL.

I'd like to add at this point that we support this bill in its concept as it relates to investigative and prosecutive aspects. I would like to indulge for a moment and ask your indulgence to, if when I have finished my remarks

Capt. Bishop: (cont'd) you would like me to expand or enlarge I would respectfully ask that you allow me to do so in executive session.

State police department feels that the state of Connecticut must start to fashion a coherent and hermonious system of justice. The control of crime is a shared reponsibility, calling for cooperation at all levels of government. A system implies that some unity of purpose in organized if the relationship among its component parts. This bill may provide a smooth functioning system of criminal justice. As it now exists, it is a fragmented and often competing amalgamation of criminal justice agencies. The creation of a division of criminal justice within the office of the attorney general would supply, we think, the control and coordination that is essential in eliminating today's pervasive fragmentation of these agencies. A catalyst is needed to bring investigative and prosecutorial agencies closer together. Such a catalyst is offered in this bill that would yield the necessary and systematic relationship among all law enforcement, while at times being diffused by new programs and funding, has been noble although these programs have created and promoted efficiency to some degree. (inefficiency) The passage of this bill would seemingly promote uniform and efficient administration of all the criminal justice agencies in the state. If all the resources of law enforcement are to be used effectively a degree of specialization, a system of coordination among agencies is necessary. Today this is lacking. Additionally the bill before you today would establish not only better coordination for law enforcement but uniformity of prosecution within our courts. Such uniform methods and procedures have been conspicuously absent in certain areas of the prosecution arena. Standardization of judicial rules and procedures are essentially necessary to both the effective and efficient coordination of the investigatorial and prosecutorial methods. These improvements would not only benefit law enforcement and the courts in the accomplishment of their tasks but the alledged criminal as well. The present methods and procedures as we know them have been inconsistent. The duplication and lack of coordination has fostered inefficiency. The focus of the attack now is shifting from the individual needs of law enforcement to that of both law enforcement and the courts and therefore, the Connecticut State Police firmly supports this bill. I would just add one note. I do not want to leave this committee with the impression that there is no cooperation with, among agencies at the moment there is. We're seeking better cooperation and coordination. Thank you.

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Sen. Jackson: Thank you, Captain. Mr. Dailey.

Mr. Dailey: Mr. Cahirman, ladies and gentlemen of this Committee: My name is Edward J. Dailey, Jr. I'm here to speak in opposition to the bill which would place the state's attorney under the control of the attorney general.

H.B.#5367 - AN ACT CREATING A DIVISION OF CRIMINAL JUSTICE WITHIN THE OFFICE OF THE ATTORNEY GENERAL

I don't want to if I can avoid it, repeat anything that has been said before me by Misters: Gormley, Goucher, Bill and Gersten. I want the Committee to understand that I subscribe 100% to all that they've said here. I further don't want to take up your time by my getting in any debate with those who've spoken before me in opposition to this b ill. But there are somethings which I would like to call to your attention that I don't think have been called to your attention yet.

I was amused and pleased to hear the anecdote related to you by the distinguished former State's Attorney Bill about the former democratic judge who had recommended him an active republican to be the State's Attorney for Hartofrd County. That judge, Judge Dailey was my father. It's my understanding that when I was nominated to be an assistant state's attorney here in Hartofrd County some 7 or 8 years ago it was Justice Charles House of Manchester who when he had been active politically had been a republican and nominated me although as I'm sure some of you know I have been active in democratic politics.for some period of time. And I give you both those illustrations because I think it should lay to rest very effectively this claim or what wo uld seem to be a claim at least, that the present system of judges appointing state's attorneys and assistant state's attorneys smacks of political favoritism because I just think that's absurd. I don't think that it does.

I think further the charges that have been made here whether veiled or in the open that there is some conflict created by this system is further preposterous. I'm in a little bit more unique position than anybody else in this room, I was an assistant public defender in the superior court for Hartford County some time before I was in the state's attorneys office. I was an assistant state's attorney for about 5 years. In the last couple of years since I've resigned I've practiced before the criminal courts in this state. So that I think I have a great deal of knowledge of the workings of this system a great deal of objectivity in that I've seen the system from extremely different angles. I believe that this has been said here before today that if this bill is implemented and if the attorney general becomes the appointing agent relative to the

Mr. Dailey: (cont'd)state's attorney it does represent a step backwards. I don not believe the involvement of the attorney general is necessary. If you gentlemen, if this body as a whole feels that some change is needed in the present state's attorney system then, I would refer you to the bill which has been submitted by the Council of State's Attorneys. I think it's an excellent bill. And it would certainly seem to me as has been said before that it would quiet all the criticisms that might be made under the present system.

There's one other point that hasn't been brought up that I think is very, very important and it is an enormous plus in the way the system is run presently. And that is that the judges of our superior court are the people who really are at all times on top of the situation in the criminal courts. They know,for instance, what lawyers presumably are going to best be able to function in the state's attorneys office. They know the integrity of the various people that are being considered for these jobs. They also know what the situation is in the criminal courts. They know when the backlog that's been referred to here earlier is getting so heavy that it necessitates some other kind of action as you may or may not know -- in November of December of this year a kind of blitzkrieg was organized because the judges realized the situation was getting out of hand. And I understand there is another such procedure coming up in March. Because the judges have also been made aware of that the situation is again is getting ahead of them. It is the judges and I think the judges exclusively and alone who have the ability to watch this docket to see who is performing properly and who is not perfoming properly in the courts. That winds up the remarks that I have on that particular matter. I would like to say however, if I may that there is another bill before this Committee, I hope this not out of order if I am tell me please. It's bill number 435 which was presented by Senator Alfano and Representative Bingham.

S.B.# - AN ACT CONCERNING RETIREMENT OF STATE'S ATTORNEYS.

And what that bill does, I'd like to address myself to that very briefly. Is simply to take the retirement section of the statute which is presently operative and insert there the word public defender. So that hte sentence will read as follows: " Each incumbent state's attorney shall, for retirement purposes, be be entitled to credit for any or all the prior years of service he has already accrued on July 1, 1967, while serving in the office of state's attorney, assistatnt state's attorney,"then it is added," PUBLIC DEFENDER IN THE SUPERIOR COURT".

The reason I direct your attention to that bill is as has been pointed out here eariler and I think by one of the other speakers I think it was Harry Goucher, there are already people who were public defenders in the superior court system for some time who

Mr. Dailey: (cont'd) are now state's attorneys. One of them is Robert Pigeon. In Tolland County, I'm sure that many of you know that the not only one of the most able state's attorneys in the state but he is also certainly one of the most able lawyers in the state. He was the public defender in Rockvulle County for 17 years and was -- on after the passage of his bill in 1967 to become the state's attorney. The fact of the matter is that because of his age this bill is not implemented. He will not qualify for retirement. I'm sure that that was not the aim of this Committee when this bill was sent to the general body nor was it in the general body to penalize a man who's spen that number of years in service to the state of Connecticut to deny him retirement since he has given up his practice and has been a full-time state's attorney. I'm sorry Mr. -- I may have interrupted I didn't mean to interrupt. you before.

Rep. Bingham: I think it's a good bill and it ought to pass. Do you feel that the present system is a violation of a separation of powers?

Mr. Dailey: No, I don't.

Rep. Bingham: Could you explain?

Mr. Dailey: Well, I can't very. I'm not going to great length as you have heard, I believe from Mr. Zeldes who spoke before this question has been dealt with on more than one occasion. He said that 10 I know personally of 3 or 4 cases on which the question has been dealt with. And I was very surprised to hear one of the members of your Committee suggest that there are some judges who would take the position relative to the question you've just asked that it is such a violation. I've never heard that position expressed by any judge and I would be interested in hearing it if it were true.

Rep. Willard: Mr. Dailey, you might have answered this question but most of the dialogue resolves between whether or not we should have one or three bills. Would you address bases on your experience would you express yourself briefly as to whether or not you feel that there should be any changes at all. Not so much which bill we should have in your experience should there be any changes at all?

Mr. Dailey: My belief is that absolutely, unequivocally there should be no change. If there is some overwhelming feeling to which I'm not particularly sensitive about this alledged conflict between judges and state's attorneys as I said before I think is

Mr. Dailey: (cont'd) absolute nonesense based on my experience. And I think that the bill that should be adopted is the one presented by the Council of State's Attorneys...

Rep. Willard: Well, if I could just ask you a little bit more specifically and question in regards to the parent reports that indicate that there should be some centralized form of criminal investigation. That's what we're concerned with not the idea of who whether there's a conflict judicially as to rules and things like that. That what I'm more interested in.

Mr. Dailey: Let me make the following suggestion to you. Rather than take up your time with remarks from me becasue I'm not nearly as conversant with that situation as is John LaBelle, State's Attorney in Hartford County. He's going to address you I understand. I'm right,Senator, his name is on that list, sir? Am I not? Mr. LaBelle's name? The state's attorneys in this county have for some time had a Council. They do have regular meetings. I maybe incorrect, I'll be corrected by a later speaker if I am, but I believe that they meet monthly, at least and sometimes they meet more frequently to deal with the various problems that come up amongst the various counties. There is not the kind of fragmentation that I've ever observed that's been referred to by earlier speakers. So that there is already apparatus which has been set up by the state's attorneys themselves to take care of the problem which you've raised and I think to a very large extent that kind of apparatus which is set up in their bill is apparatus which is already working and has been working, working very successfully, as far as I can determine for at least 2 or 3 years.

Rep. Willard: Just one more quick question. You feel that there is any need of any legislation to implement this concept that they have. Their ability to get together and do things on their own in view of the county separation.

Mr. Dailey: I do not. Quite frankly I'd be guided by what they said. They are the, those 8 men are the state's attorneys and if they feel that that bill is necessary I'd be persuaded that it is necessary because as you do know they're all extraordinarily bright and honorable people. And certainly wouldn't be here before this body with any act unless they believe that it was in the best interests of the state of Connecticut and I'd defer to their judgement.

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Rep. Willard: Thank you.

Mr. Dailey: Thank you, sir.

Sen.Jackson: Mr. LaBelle.

Mr. LaBelle: Mr. Chairman, members of the Committee: I'm John LaBelle, State's Attorney for Hartford County and Chairman of the Council of State's Attorneys. Perhaps, rather than publish some of the things that have already been said I'll speak to some of the questions that have beeen made.

Frankly, I'm satisfied that we need an office of criminal justice. And that's the purpose for this state's attorneys bill that was filled. We need that because we need to take out of the state's attorneys offices certain functions administratively that now take up state's attorneys times in and away from prosecution duties. I say away from prosecution duties because they are things that the state's attorneys have to do on the line that they don't have the time to do. I'm satisfied that an office of chief state's attorney for example, should set up and appellate division. And handle all of the appeals for all of the state's attorneys. Do all of the book work. Do all of the study, prepare all of the briefs in conjunction with the particular state's attorney in the particular county that tried the case.

I'm satisfied that the office of chief state's attorney should set up a training division. We should be in a position from that one office to go around and train police departments all the same way. We should go around and train prosecutors all the same way. We should have a division in that office to take care of post-confiction remedies. We're all deludged now with habeas corpus. We have appeals. We have them in the United States district court. We have cases in every appellate court in the land. There isn't a day goes by that aren't writing a brief for some court mostly on post-conviction remedies when you get into the federal system. We should have a division in the office of chief state's attorney to handle these post-confiction poceedings and help the offices in each county the state's attorneys offices handle these matters. If we had that kind of an office we could integrate the entire prosecutorial system. This would apply to cases in the circuit court. We could train circuit court prosecutors. We could have them be promoted from assistant circuit court prosecutor to circuit court prosecutor to assistant state's attorneys. All of this could be done under the

Mr. LaBelle: (cont'd) bill that we have suggested. I think, we need such a type of an office. And also in that bill we have got around what we considered that constitutional mandate that the state's attorneys on the superior court level must be appointed by the judges.

Now, secondly, I don't have any constitutional problem with the fact that the judges appoint the state's attorneys. I don't agree with Mr. Zeldes and I can tell him many arguments that he hasn't even heard of. For example, in the United States system everyday of the week the judge of the United States District Court appoints public defenders to represent informal paupers and indigent defendents.There's nothing wrong that. In the United States District Court system if there's a vacancy in the office of the United State's District Attorney the judges fill that office until it's filled by the President. There's nothing wrong with that. There's nothing unconstitutional about it. There's no more, there isn't any sounder argument to say that the prosecutorial function belongs to the executive than it belongs to the judicial. It probably belongs to the judicial more than the executive. And there has been absolutely no interference. Once a state's attorney has been appointed by the judges with respect to the operation of our office. We're only appointed for two years. If we don't cut the mustard then, we're not reappointed. And I don't think there's anything constitutionally, empherically wrong with that method.

Now, the third thing I want to say, and I hope I can tell you this in the right perspective. I sometimes am misunderstood, I want you to understand why it would be bad to have state's attorneys appointed and under the control of an elected official. This applys to everybody who holds an elected office. If the state's attorneys office is independent it makes your offices more independent. It makes the governor's office more independent. Here is why. If a state's attorney, if an attorney general has to run for re-election, obviously he has to have some backing. If one of his backers comes to him and says to him, I have a somebody who's a friend of mine that's arrested, will you take, speak to the state's attorney in Hartford County and see what you can do for him? The easiest thing that he, the toughest thing that that man would have to do would have to tell his supporter, well, I'll do something about it, I'll speak to the state's attorney, he's under me, I'll speak to him. If that situation is not there, he can simply say, I have nothing to do with the state's attorney's office, I can not do

Mr. LaBelle: (cont'd) anything abut it. I can not help it. It applies to you as representatives of your own community. If you go back to your community and one of your constituents comes to you and says I'd like to have you speak to the attorney general, I got a fellow that got arrested. The easiest and most independent thing that you can say is to say, I have nothing to do with that. I can't talk to anybody abut it. The state's attorney is entirely independent. The same thing applies to the governor. There isn't a day goes by that the governor doesn't get some kind of a complaint. And when he gets it if it pertains to something that's happening in the state's attorney's office the greatest independence that he can have is to say that I can do nothing about it. That's outside of my function. It's in the state's attorny's hands exclusively. And that is the system we operate under. This is the only one in the United States like it. New York could very well emulate it. Many others could. We are absolutely independent. And we have to be. We have to make decisions. We have to call them as we see them, without any question about who we hurt or what is done. We have to do what is right. And when we are appointed, the way we are appointed we can operate that way in the state's attorney's office.

I'd be happy to answer any questions.

Rep. Bingham: Mr. LaBelle: What provision in the Connecticut Constitution mandates the appointment of State's Attorneys by judges?

Mr. LaBelle: Well, of course, in the Adams and Rubinow case

Rep. Bingham: No, it's a constitutional provision. I think, you said it was a constitutional mandate.

Mr. LaBelle: I take it from that case that it is. But I will also say to you that since 1706 when the king's attorneys were first appointed, when the office was first established of public prosecutor, in this state they were appointed by the judges. In those days they were called county judges. In 1818 when the constitution was adopted the same system was followed. And I consider that this method since long before the constitution was first adopted that this method is the method of, that our supreme court would consider the constitutional requirement.

Rep. Bingham: There were some attorneys in Boston who disagreed with the system I think.

Mr. LaBelle: There may be. I don't happen to disagree with it. I think it is sound.

Rep. Bingham: Does your bill provide the full-time state's attorneys?

Mr. LaBelle: It does not change the present method of appointment which allows the judges to appoint part-time if it's necessary. I'd like to address myself to this question.

I am a part-time state's attorney, in name at least. I want to assure you that I am not a part-time state's attorney only in name. Any of you who practice in the superior court in Hartford County know that I'm there everyday of the week. And I leave at six o'clock every night. And I take work home nights and weekends. I happen to like this business and I've been in it a long while. I am a part-time state's attorney in name and salary only that's all. I agree that all of the prosecutors in all of the courts eventually ought to be full-time. I concede that. But you can not achieve that overnight. If we had an office of chief state's attorney, one of the things we would do would be to train people. We would recuit people. We would get them into the system early. We would have a classification system where there would be promotions, salary increases, so forth. Then, as this operates and the training and recruitment occurs we can begin to get full-time prosecutors into the system which you can not, and I say this to the Committee in all respect to you, you can not say right now in any of courts you must have everybody full-time as of July 1, for example. Take Hartford County state's attorneys' office, I have 6 assistant state's attorneys, two of them are full-time and four of them are part-time. All of them are great men, good trial lawyers. But the 4 assistant state's attorneys that are part-time have been practicing law for 15 years approximately, all of them. They all of them are trial lawyers. I can put them into a case, and try a case with any attorney in the state and know that they will represent the state in the highest caliber of advocacy. I couldn't possibly get along without that type of man. I can't begin to train men to take their place. It takes a couple of years to train a man to be a prosecutor. And you can not if you pass any bill, whatever bill you pass simply say that this type of thing must take effect on such and such a date. I think your democratic bill takes this into consideration. I haven't seen your bill, I have seen it only this morning quickly. I heard you mention it.

Mr. LaBelle: (cont'd) The office of criminal justice that the state's attorneys submitted have a siminlar provision where the chief state's attorney could appoint part-time prosecutors on a certification that he couldn't fill the office with a full-time man at that point. But you must remember that this is something that has to come in a gradual way and with a office of chief state's attorney or whatever you decide to do it with a supervisory office these things could be accomplished when you recruit and when you train and when you get prosecutors that are prepared to compete with other lawyers.

I'd be happy to answer any other questions.

Mr. Newman: Thank you, Mr. Chairman: My name is John Newman, of the West Hartford-- I'm a member of the Planning Committee on Criminal Administration which two years ago proposed to this Committee a consolidation of the prosecution -- defender functions. Although, my appearance today is not as representing that committee but simply expressing our personal views.

First of all, let me say that I'm delighted with the progress that has been made in 2 years where most of the people appearing before your Committee are talking about how to consolidate prosecution and defender functions and not whether to do it, which was the case 2 years ago. I don't propose to take up the Committee's time to restate some of the concerns as to why these changes should be made. They've been written extensively in other places. I do want to call your attention to one or two items about that.

Most of what has been said today against any change, particularly on the prosecution side has been said in the context of the state's attorneys in the superior court. And has been for most exclusively if not entirely outside the context of prosecution in the circuit court. And I would suggest to you that the concerns of those of us who are for some unification of the prosecution process some centralization, some providing of direction are far more concerned about the need for this in the circuit court level than at the state's attorney's level in the superior court. Indeed, if there was no circuit court, if there was no minor court jurisdiction in Connecticut, which is obviously is inconceivable, that all we were talking about a superior court state's attorney, I doubt if the effort towards consolidation would have gotten to the point where it is today. The need arises largely in circuit court.

Mr. Newman: (cont'd) However, it is not non-existent in the superior court level. And let me call to your attention one consideration that has not been mentioned.

The concerns expressed so far have talked in terms of whether or not it's right or wrong for judges to appoint prosecutor and I quite agree with the argument suggested that in the state's attorneys' level there has not been the type of judicial, either direct in appearance or subtle pressure which would warrant change. There are other considerations, wholely apart from that. For example, funding. The state's attorney, John LaBelle, just indicated to you the virtues of having some sort of a council of state's attorneys what it can do in the way of training and other purposes. And yet, when the State Planning Committee on Criminal Administration wanted to put some federal money into those very purposes the state judicial department made the judgement and balancing the various concerns they have they have to allocate the state judicial dollar. But because the state judicial dollar now includes the prosecution dollar the judicial department decided not to put federal money into the very purposes that John LaBelle and the other state's attorneys wanted, namely, the strengthening of the Council of State's Attorneys.

So that there are financial considerations wholely apart from the mechanics of the prosecution of a case which justify a strengthening, a coordination, a centralization of the prosecution function. And the same is true for the defense function. Now, as far as chosing up between either bills or principles, I just want to express a view to you. That whatever change you make should insolate from politics. A change that permits the intrusion of politics is far worse than the preservation of the present system. And that's the reason that when the Planning Committee originally proposed to you a bill that is somewhat similar to the bill the state's attorneys have proposed it did not vest prosecution authority in the elected official. It vested it in a chief state's attorney, appointed by a commission. You can differ on the composition of that commission whether it should be all judges, whether it should have broader representation which I personally would support, but to me there is virtue in achieving political insolation by having a broadly based commission designate the head of the system. And to that extent I would find the state's attorneys' bill far preferable to any proposal that vest this power in an

Mr. Newman: (cont'd) elected official, for all the reasons that John LaBelle and others have given. If there is interest in going to some use of the attorney general's office, I would suggest to you that there are still ways to substantially reduce the possible intrusion of politics into this area although they are not contained in the specifici bill that you've got. For example, an attorney general can be in, the director of the office but his power over personnel can be isolated as against politics by the intervention of a commission, just as you have proposals before you for a judicial merit selection commission there can be a similar inclusion of a prosecutor and defender merit selection commission which can nominate prosecutors and guard against their political removal. So that even if you're of a mind to go the elective power root you can still go substantially farther than the bills before you in guarding against the intrusion of politics. But I would hope you would take the route that is the most removed from politics. That you would recognize the virtue of the Connecticut system in not having politics intrude through an elective office role in this process and at the same time take the power away from the complete control of the judges. And you can do that by an independent commission which appoints the chief of the office and guards the appointees under him against political removal given a change of administration. YOu can vest the chief of this office with two kinds of power, and I think however you structure you are going to come down to one or the other, you can either give him power over personnel or you can give him power over cases.

The State's Attorneys' bill appears to give the chief of the office power over cases. While protecting personnel by tenure arrangements. Between the two choices, I think that's the preferable route. But I would suggest thatif you create any kind of centralized authority you create a real authority and not a shame authority. That whoever runs this system has the power to run it. There have been some concerns expressed that you don't want to give power to one person. And yet, in the prosecution of crime someone is always going to have the last word. It may be the top man in the system, it may be the middle man, it may be the lowest man on the case. But however the system is structured one man is ultimately going to decide whether a case gets prosecuted. You can't blank that fact. And I would suggest that whatever system you do vest enough power in the head of the system to be sure that he can run the system, to be sure that he can implement'

Mr. Newman: (cont'd) policy decision, to be sure that he can require reporting from the constituent branches of his agency so that there is a record keeping so that people know what's happening throughout the system. And so that the type of policies that need to be formulated in a prosecutive branch just as they need to be formulated in any other function of government, can be located somewhere so that somebody's accountable. And everything that I've said I mean to apply both to the defender side and the prosecution side. On the defender side as well it seems to me the independent commission route is the best route to both insolate yourself from politics and also to remove any appearance that the judiciary is running the system.

Sen. Jackson: Thank you, John. Mr. Santeniello. I'm sorry.

Rep. Gillies: In the bill that had been proposed in the last session the discussion as to whether or not an independent commission was made a part of that bill?

Mr. Newman: The bill that was submitted two years ago was a commission but it was solely a commission of judges. Personally , I don't think that's the best way to do it. I think that's better than making no change but I think the best way is a commission along the lines of the state's attorney bill starts to do because it does include 2 members appointed by the governor. I think, you can have an even broader commission than that. I think, for example, a commission that has at least the breadth of the State Judicial Council which includes law school deans is an appropriate way of allocating seats on a commission that sort. And there may be other interested groups that ought to be represented.

Rep. Gillies: Thank you.

Mr. Santeniello: Thank you, my name is Albert Santeniello, I've been a practicing attorney for 30 years. I'm here to express my view on this present bill of the attorney general appointing the state attorneys.

H.B.#5367- AN ACT CREATING A DIVISION OF CRIMINAL JUSTICE WITHIN THE OFFICE OF THE ATTORNEY GENERAL.

Mr. Santeniello: (cont'd)

H.B.#6878- AN ACT CONCERNING AN OFFICE OF CRIMINAL JUSTICE

I'm of the belief that the appointment by the attorney general is greatly political. Of course, I believe that the people are aware also that the appointment of judges is political. However, it seems that when the judges get on the bench they sort of out grow their political system that put them there. And they become people who are free from politics. Now, when they appoint a state's attorney they have seen that person in action and they know that he is qualified to do criminal work. There's a panel that appoints and this panel pick the best man. So far 200 years they've done a darn good job. That's the reason that I still favor the present system. You take an attorney general here would be an excellent person. He may not know the first thing about criminal law, he may be a corporation counsel and you people know how a candidate gets on the state ticket. They get down to nominate the attorney general and if they don't think there's a good chance of winning they'll say Joe why don't you run. We need a candidate from Oshgosh to fill out the ticket. And lightening could strike and Joe's a nice fellow. He's a great corporation lawyer but he doesn't know anything about criminal law. And in his hands will rest the appointment of attorney generals and assistant attorney generals. I think, gentlemen, that that's quite important because many candidates are picked that way. I don't have to tell you pepole that sometimes you're tapped on the shoulder and you have to go. I don not believe that this judiciary should be disintegrated. I think you ought to keep it in one package with's worked well for 200 years. And as for the constitutional question let's wait until the supreme court decides it. And if the judges are doing it illegally, well, let's legalize it, because I think they're doing a darn good job. Since the attorney general's office has been free from scandal I don't think we should monkey around with it. I think, gentlemen, that you might be opening up a pandora's box if you let the attorney general do the appointment. This is no reflection on the present attorney general. I'm talking some future attorney general who might not be qualified.

Rep. Carrozzella: Thank you.

Mr. Santeniello: Thank you.

TUESDAY JUDICIARY COMMITTEE FEBRUARY 9, 1971

Rep. Carrozzella: Mr. Brown.

Mr. Brown: Mr. Chairman, members of the Committee: My name is Allan Brown,Jr. I practice law in Nowich. I had the honor of serving the state of Connecticut for 12 years as state's attorney in New London County. I also carried on a very active practice defending criminal cases prior to doing that and I also do some criminal defense work at the present tme. I'm not going to have any extended remarks because I think that the field has been very well covered by those who have spoken. But I would certainly urge the Committee in its consideration this matter to give most serious consideration to not moving the power of appointment from the judicial department. I think, that from my experience the method ofcarrying on prosecutions when you are insolated from any political pressures whatsoever or personal pressures of that type, I'm sure that the office can be carried out properly. As I have stated that the ground has been well-plowed by all the speakers. I think from my own experience my conviction is that the matter should remain in the control of the judicial department and by appointment of the judges. I do think that the proposals for centralized better organization of state's attorneys is worthwhile. And has to be done in order to meet modern needs.

I thank you for listening.

Rep. Carrozzella: Thank you. Mr. Danforth. All right, Paul, you want to speal first?

Mr. Flynn: Mr. Chairman,Mrs. Simons, Members of the Committee: My name is Paul Flynn, I'm a practicing lawyer in New Haven, Connecticut. I appear today as a member of the board of directors of the New Haven Legal Assistance Association. And I currently serve in the office of vice-president of that organization. That is a non-profit corporation that designed to provide legal services to the indigent and the poor. And it serves the greater New Haven area. Those who follow me will address themselves to a specific bill which has been submitted as a prefile by Senator Alfono. And it has as its purpose to create an independent vendor services for the state of Connecticut which would provide through the employment of both full-time personnel and/or by a contract with private legal aid organizations and defender services legal services to all persons charged in criminal matters which, where there would be a possible loss of liberty.

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TUESDAY JUDICIARY COMMITTEE FEBRUARY 9, 1971

Mr. Flynn: (cont'd)

H.B.#6759- AN ACT ESTABLISHING A STATE DEPARTMENT OF JUSTICE.

I would direct your attention to the report of the Advisory Committee for the Prosecution and Defense Functions of the American Bar Association, dated in June 1967 and bearing the very distinguished panel, headed by the Chief Justice of the United States, by the Chief Justice of the Court of Appeals for the 2nd Circuit, J. Edward Lombard, David Peck a former Appellate Judge of great moment in the state of New York. And I think of some peculiar moment, James V. Bennett, who was for many years,in my recollection, the director of the Bureau of the Department of Justice. In that report which is currently, which has been adopted by the American Bar Association they set out, make an observation, on page 6 of that report, to the fact that the defender services when they are provided by the state should carry with them some form of local option to a veriated program which is the purpose of this particular bill. It would insure the professional independence of the defendant,sotthat his relationship to his client, but it would also provide within this state, we suggest to you, an opportunity for the problems of Litchfield County which may vary from the problems of Hartford County or Fairfield County to be, have available to them independent procedures by which this defender service may be promulgated.

Now, if I can without boring you to death, I would like to quote(from that)a comment by Mr. Bennett when he was serving as the director of Prisons. And I would like to relate this to if I can to an inner city type problem. Mr. Bennett some years ago observed that the defendant who was unable to obtain competent counsel is swept rapidly through the machinery of our courts and begins his imprisonment in a bitter and uncompromising frame of mind. Any feeling that he might have that society is against him is reinforced and he fights back in those ways that remain available to him. He declines to improve his education in the prison school. He refuses to undertake vocational training. And he is unapproachable to his counselors. Indeed, he may even become violent to his fellow prisoners and keepers or even psychotic after brooding night after night in the loneliness of his cell over the injustice that he is convinced has been inflicted upon him. Oe of the ways that we suggest to you to overcome this particular type of danger, or this particular

Mr. Flynn:(cont'd) type of problem is to make abailable the full range of systems that currently exist in the United States. There are some, for example, that are completely publicly financed. There are others that are completely privately financed.by raising independent funds in the private community. There are those which are partially private and partially public. And I suggest to you for the state of Connecticut that a practice which would permit this would be a more sensible practice. And the proposal that we would submit is one that has its fundamental design, the professional requirement of an integrity between that in that relationship between the lawyer and the client. We suggest to that the method of handling this should be done by a commission that would be appointed by the governor and by the legislature and by the president of the Connecticut Bar Association, the deans of the Law Schools of the state of Connecticut and what I call the legal services project directors council which are a group of 9 separate agencies that span the entire spectrum of this state. A system which is in comfort with that which was suggested by John Newman when he was here so that it can be removed from the fear in the mind of the person that is being represented if there is some influence, let's say, that may be imposed by the appointed authority and at the same time so that responsible elements of the broad spectrum of the community may be represented. I don't want to dwell on this point.

I would also like to observe in my capacity as a private citizen that I have earlier appeared before this Committee with respect to certain legislation that has been pending in wiretapping and I observed at that time that I thought that that was a peculiarly broad that was being invested in law enforcement in this state and that there ought to be some centralized responsibility for its use. And I think in that respect I would have to change an opinion that I have maintained personally for a number of years that the, that that centralized authority, that centralized prosecutorial authority should now exist, and that it should not be diversed within the 9 counties and judicial districts of this state. And I don't know that there's anything so sacrosanct about the judiciary appointing it. I distinguish between partisan politics which are republicans and democrats and other people and politics which are human relations. You just don't take human relations out of any appointive authority. I don't care whether it's judiciary or the legislature or the executive. I don't see anything sacrosanct about the

Mr. Flynn: (cont'd) the jurist who wears a black mother hubbard that invests him with that public pressence that is any greater than the public pressence of other responsible officers of this state, be they the Governor, or the Speaker of this House, or the President Protem of the Senate, or other people of responsible positions or as Mr. Newman suggested if you don't wish to go that far, then, to a broad spectrum independent council representing the diverse elements of this state, so that it will remove it from the political spectrum, by that I mean the partisan spectrum.

I thank you very much for your attention.

Rep. Carrozzella: Thank you.

Mr. Flynn: Anybody have any questions?

Rep. Sullivan: This is David Sullivan from the 130th District. Mr. Flynn, I was inpressed when you were up here 2 weeks ago with your commints on wiretap. And I'd just like to clarify something that you said in there, in your closing remarks about changing your opinion in the light of the wiretap proposals. I don't really, how does that reflect on what you said 2 weeks ago?

Mr. Flynn: I'm not sure that everyone in this room would qualify. I know of only one state's attorney who has done various things that I have done. Mr. Markle has probably had morr jobs appointive and elective or whatever you want to call it than I have. But I have been appointed as a prosecutor by the federal court. I have been appointed as a state's attorney by the judges of the superior court. I have been appointed by, I don't know if it's the judges all 8 judges, as special public degender. And I have been appointed as a special state's attorney. And I in my early criminal training was under a man whom I have the greatest respect for, who is now serving on the court of appealls in New York. He felt, and I think that he conveyed to me the impression that the prosecutorial arm always ought to be removed from the, I'd guess you'd call it the public wheel, but our prosecutorial functions are becoming much more sophisticated today and the opportunity for future abuse is there. But the responsibility for that abuse is diverse because the abuse can take place in 3 or 4 different agencies where no one is acting in complete concert and no one assumes the totality of responsibility. And for that reason it would seem to me that if there is to be abuse the long finger should be able to

Mr. Flynn: (cont'd) be able to be pointed at one man, as Mr. Newman said ultimately in the prosecutorial function somebody, on somebody's back rests the final result. But under our present system, there is no requirement that a prosecutor in Fairfield County listen to the prosecutor in Tolland County. I'm sure that they would. These are all honorable men. But there's no one to whom you can point a singular finger of responsibility. And when you are expanding the techniques, broadening the techniques it seems to me that at that stage the system requires some change to accommodate that broadening and the responsibility has to become more precise and more fixed. And that way I say that there should be one centralized figure. The method of appointing in this seems to me a method for you people to decide, I don't comment on that but there should be some centralized responsibility to whom you can turn and that figure will have to assume the responsibility for any abuses.

Rep. Sullivan: Thank you, Mr. Flynn.

Rep. Carrozzella: Mr. Danforth.

Mr. Danforth: Ladies and Gentlemen of the Judidicary Committee: My name is Fred Danforth. Since 1964, I've been a director of the New Haven Legal Assistance Association which is a private organization in New Haven through neighborhood and fowntown offices provides criminal services in both civil and criminal cases.

I'm here today also as the President of the Project Directors Council. There are 9 legal services programs in Connecticut and the directors of all these programs meet once monthly to discuss common problems. And we take turns chairing that and this year is the year that I am doing it.

In New Haven you really have 2 systems at the moment which are operating for the provision of defender services. The defender services from the court, the public defender system in both the circuit and the superior court. And the legal services program which receives 1/3 2/3 money from the Department of Community Affairs. So that in New Haven, people that can not afford a lawyer have a choice to chose one or the other service. We represent about 2,000 people each year in criminal cases all the way from breach of peace to homicide. And it seems to me that the time had come to reccommend to the Legislature that we sit down and try to find the best parts of the current public defender system, the best ways to use legal services and to try to

Mr. Danforth: (cont'd) at a state level develop a more comprehensive and better way of delivering these services.

I'll leave with the Committee a statement that position of the project director and one which we are going to try to seek support for in the coming months. It breaks down into three parts. The first is that any system should be governed by a body, and I'd like to pick up here for a moment from what John Newman said, that is insolated from the judiciary. It seemed very clear to me, that, both in fact and in image, it's very important to have both the lawyer who is being the defender and his client feeling absolutely free that he is under no more control than a private lawyer would be. We recommended in here that the legislature create a commission that is broadly representative of the interests. This is the recommendation of the American Bar Association.

The second part of it is that under any system it seems that we should move as quickly as we can toward a full-time career system that is adequately funded, that begins from the point of arrest to appeal and colateral proceedings that has supportive staff investigation, and here the work that was done by the Governor's Planning Committee, I think is very helpful, the bill that was before this Legislature the last time. In other words, to recognize that the defense side should be funded proportionately and on an equal basis with the prosecution side.

The third part of our bill is that under any system there may be differing ways, different local options that make sense. And it is our recommendation that this commission through a full-time director try to get local input, probably on county lines, the superior court jurisdiction line to try to see the best ways of providing defender serivces in a given area. As Paul Flynn said there maybe a different way of doing it in Hartford than in Stamford. To look to existing services, here is where the legal services program which are or may provide defender services, I think should be looked to to see which of those are strong, where you want to build on those, as you would look to the existing personnel in the public defender system and see which of those people you would want to hire under a new system. All of the decisions in this regard made by this commission with the appointments from, I think, the Governor, and the legislature and the deans of the law school, perhaps from the judicial council, from the Bar Association, and I think you should have the important people from legal services.

Mr. Danforth: (cont'd) I think there is a very real advantage to bringing this out into, first this commission, and secondly to allowing for the contracting with private agencies. I think there's a greater chance to get other than state money into the provision of the defender services. There is model cities money that is available for providing defender services. There are existing offices with libraries and staffs throughout the state and neighborhood legal services that can be used. I think under any system the thing that we must realize is that our courts have become terribly crowded, sort of processing business, has become a value that, upon which we place too much importance. And we've got to pause and realize that there are individuals passing through our courts on the criminal side, some 200,000 a year. I think more than 90% of them finally disposed of in our circuit court and really stop and say to the system, hey, let's take a minute, let's pause and take some time with this individual case. It'll take some more money and I think that if we look at the amount that has been put into the defense side in this state and out through the public defender system and through legal services and other money that has been put in, the increase that we would have to put in is not all that large. We will be preparing a bill and information on cost which we will have before this Committee at a later date.

Rep. Ritter: Thank you, Mr. Danforth. Are there any questions that anyone would like to ask?

Mr. Danforth: I've prepared a summary of these remarks and copies.

Rep. Ritter: Mr. William Fitzgerald.

Mr. Fitzgerald: Members of the Committee: My name is William Fitzgerald. I'm a practicing attorney in the city of Waterbury. And for some 30 years prior to my retirement in the month of July 1968, I had the honor to occupy the office of State's Attorney for the County of New Haven and Waterbury and for some 7 years prior to that time the office of assitant state's attorney. And if I may I'd like to express a very briefly a few thoughts on the general subject of centralizing and coordinating the enforcement of the criminal law of this state. Undoubtedly, it seems to me desirable to have a centralized office in the administration of criminal justice in this state with a chief, whatever his title maybe, chief state's attorney or other, with a deputy or as many assitants as may be necessary to

Mr. Fitzgerald: (cont'd) carry out an efficient and forceful enforcement of the criminal law. Logically, the chief state's attorney or chief of the criminal divison should have authority and power to direct the activities of all law enforcement officers operating in the state, including all state's attorneys, assitant state's attorneys and circuit court prosecuting attorneys, and thus among other things to coordinate prosecution of crime in the superior and circuit courts. Because there are problems and ambitions peculiar to each county and district, it seems to me that appointment of the state's attorneys should not be made at large but that each state's attorney should be appointed for the particular county or district in which he is resident and with the particular problems that and conditions with which he is familiar. Of course, a crucial question arises as to who should have the power to appoint the chief state's attorney, his deputy, or deputies, the state's attorneys and the assistant state's attorneys. The superior court is, of course, a constitutional court and it's pointed out by the supreme court of this state in a 1968 case of Adams vs. Rubinow, to which reference has been made repeatedly this morning, appointments other than those whose mode is prescribed in the constitution are governed by the division of governmental powers. And the appointment of personnel in a constitutional court is so within the power and authority of the superior court, the judges of which have appointed such personnel from time immemorial. The system of appointment presently in effect has worked well over the many years. The judges know the qualifications and abilities of those eligible for appointment. And they have been able over the years to select people capable of functioning efficiently. And so quite apart from the strictly legal considerations, there is every reason for the power of appointment of state's attorneys should continue to reside in the judges of the superior court. And the criminal justice division or office of criminal justice should be within the judicial department.

Rep. Ritter: Thank you very much. Are there any questions anyone would like to ask. Thank you, Mr. Fitzgerald. Warren Upsom.

Mr. Upsom: I practice law in Waterbury. I'm one of the few users of this microphone today who haven't had any official connections as a prosecutor or a public defender. I favor the consolidation of the judiciary, of the criminal prosecution function. I don't think that the, I just want to point out one reason for it. Within the last 3 months,

Mr. Upsom: (cont'd) there was a prosecution in the works involving General Motors for the polution of the Hudson River. If you people will recall the prosecutor in the United State's Attorney's Office in New York who is handling it told the press that he was told to stop the prosecution. And shortly thereafter, he was fired. Now, word came down was promulgated appearantly that that prosecution was contrary to policy of the appointing authority of that assistant prosecutor. I just say that whether that is true or not the possibility that that sort of a charge can be made seems to me to be the real reason why the attorney general should not have the appointing authority or even superivse the operation of the state's attorneys in Connecticut or any prosecuting officer. I think it should be independent agency that makes the appointments. And the head of the department should be responsible and he should supervise those under him. But I don't think that it should be an elected official. I agree with what Mr. LaBelle said about the desirability of keeping this function free from people who have to resist the attemps of political friends to secure pressures as far as prosecution is concerned.

Mr. Ritter: Thank you very much. Mr. Richard Jacobs.

Mr. Jacobs: Members of the Committee: I know the time is late and numbers are few, I'd like to address myself to the bill a statement of purpose of which has been filed by Senator Alfano and which Mr. Danforth spoke to you about and Mr. Paul Flynn.

H.B.#:- AN ACT ESTABLISHING A STATE DEPARTMENT OF JUSTICE.

It follows the recommmendation of the Committee of the American Bar Association of standards relating to defense services. That Committee which was chaired by Chief Justice Warren Burger. And the report of that committee states in part that lawyers defending poor people should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. Now, I son't think that there's anyone who deals with the law in the state of Connecticut who would say that the people who defend indigents accused of crime have reached parity with the prosecutors. The prosecutors are very strong in vocal group and it's right that they should be. You've had your public defenders system woefully underfinanced and the question is really one of fairness. I think it's probably one of constitutional fairness. HOw do you give

Mr. Jacobs: (cont'd) the poor fellow accused of crime the same guns to do battle as the fellow on the other side, the prosecution? It's right that as the distinguished state's attorney of Hartford County, Mr. LaBelle, a man with the great sense of fairness, it's right that the state's attorney should pursue excellence. They should have training facilities and should be able to wage their battle against crime. It is equally desirable and necessary that the poor people accused of crime not suffer in their legal rights simply because they're poor. And I think that our state has come to this realization. And that the growth of the degense services for the poor is just the result of public pressures and the feeling of what is right. After hundreds of years of indifference by society to poor people who have been accused of vrime. I neglected to state at the outset that I am the President of the New Haven Legal Assistance Association which is known as LAA. I come here speaking on behalf of that organization and with the endorsement of our board of directors for the bill of Senator Alfano. LAA is a private legal services organization which started serving poor people in 1965. It served 335 people accused of crime. In 1970, it served 2,00 people. Now, that just shows the pressure that has been created. It just shows the necessity, the ever growing necessity for these services. I'm proud to say that LAA has served these people well. But it doesn't begin to do the job that is necessary to serve all of them. Under the bill as submitted, you would have a commission not the judiciary but a commission. It's been suggested that have members appointed by the governor the legislature, the president of the Connecticut Bar Association, the deans of Connecticut and Yale Law Schools and the Legal Services Project Directors Council of which Mr. Danforth is a member, that these epople would appoint the members of the commission. Now, why would this be good? Why would this be superior to having the judges apppoint all prosecutors and all people who represent poor people accused of crime? I think that the whole nature of our judicial process is such that good advocacy gets good results and brings out fairness. If the people who appoint prosecutors make it their business to get the best possible prosecutors, the prosecution will do it's job well. If the people who appoint defenders try to get the best possible defenders then the defense will do its' job well. If there is a judge left to sit in the middle and somehow try to balance these things you're probably going to get some kind of a middling result. Other than both sides pursuing excellence and advocacy having its way.

Mr. Jacobs: (cont'd) I suggest that setting up an independent means of appointing people who defend poor people is right. And that it without any disparragement to the judiciary. I think that the judiciary is imposed upon in trying to have to strike this balance. In New Haven, there are many groups,which get served, representing community groups which get served by LAA. And 7 neighborhood froups, and another corporation representing poor people have submitted a letter to the New Haven Register urging support of LAA in its funding. There's been some talk that private legal services organizations are going to get their funds for criminal defense cut off and that it is best to take all this money and give it to the public defender. Now, the public defender should be supported. He should be built up. And I don't come here to say that it should not be that way. I do say on behalf of my organization, LAA, that they excellently represent thousands of poor people in New Haven. And if we represented 2,000 last year that must mean 8,000 people, members of whose families got directly affected by having their people well-represented by LAA. People who believe in the system as it exists and feel that they can get a fair shake. I submit to the Committee and to the Legislature that it would be a great disservice to the people of New Haven and to the people wherever legal services organizations exist to dismantle these going, viable, excellent organizations, cut off their funding, take them out of the criminal business and take all that money and give it to the public defender. I think the public defender should be built up. I think that there's going to be no way to fill that void when you take out the services for 2,000 people in New Haven for 1970 and you say that in 1972 there's going to be no LAA, representing you poor people. We have to look to our own good as members of society to build up the rights of individuals accused of crime. To let every person,no matter how poor,know that he can get a fair trial, that he can get a fair shake in court. The bill as submitted is unique in the states. It would not tie the defense of poor people to the public defender system alone. It would allow this board, this commission which would be created to contract with legal service organizations, with public defenders, with private counsel wherever the need could best be filled. It would have the flexibility to get these services providing the best possible way. This would parallel the present federal law of the criminal justice act. There there is this flexibility. I say that we have to look to the rights of individuals. That fairness requires it of us all. And that the best interests

Mr. Jacobs: (cont'd) of the people in the state would be served by building up this independent,viable commission which could deal with existing facilities, such as legal services organization, use them and build them and at the same time deal witht the public defender. I think that we can't expect the existing system where the public defender and the prosecutor are all part of the judicial department budget to cope with this. We need a fresh view and I'm sure that you'll give this a very careful look. If we have this legislation in our state, I think we'll lead the way for all the country.

Rep. Ritter: Mr. Jacobs, Rep. Ritter of the 6th District: You know whether any neighborhood groups in the state have had a chance to review Mr. Alfano's bill, and if they have have they taken any position on it?

Mr. Jacobs: I know, Mr. Ritter, that the Project Directors Council of Connecticut's Legal Services Program, these are the private programs serving poor people apart from the public defender system is behind this bill. No votes have been taken by any organization other than New Haven LAA which had its board of directors meeting last night. So I'm not able to speak for anyone else. I would be terribly surprise if all the legal services organizations in the state did not support it. I would also be terribly surprised if all the neighborhood groups of poor people who get servied by these organizations did not vocally and actively support it, just as the neighborhood groups in New Haven express their concern over the possible divestment of LAA's criminal funding. We receive from the Legislature for the year 19, or from the department of community affairs for the year 1970,$137,000. That was matched by some $63,000 in other funds. In other words, $200,000 was spent by our organization on criminal work. And it served 2,000 people. We feel that the dollar value there, we feel that the dignity and the quality of the representation is what we need. I think that our lawyers are achieving a parity with the prosecution. But of course, we still have a long way to go. We don't have the investigative services. We don't have anywhere near the guns that the prosecution has. I would hope that one day justice will be viewed the same from both sides.

Rep. Ritter: Thank you. Any questions from anyone?

Rep. Paoletta: Mr. Jacobs. This side. Representative Paoletta 136th. I'm a little confused the LAA deal in just criminal defense work?

Mr. Jacobs: No, it does not, Mr. Paoletta. In fact, criminal defense work comprised about 1/5 of LAA's work. It deals with many more civil cases than--

Rep. Paoletta: What's the nature of the civil cases that are handled by your outfit?

Mr. Jacobs: They are civil cases which poor people encounter. We don't set up many trusts. What we do is handle alot of summary process cases, consumer, debtor-creditor relationships cases, welfare cases, dealing with the welfare department.

Rep. Paoletta: Would you be a little more specific please. When you say welfare cases, what doyou mean. What would you handle? What kind of a civil matter would you handle with the welfare department?

Mr. Jacobs: The cutting off of somebody's welfare payments. The fair hearings before the welfare department. And the whole gamit of cases that individuals encounter going to small claims court, juvenile court matters and it represents all of what happens to people, especially to poor people. I might say that we have some feed back from members of our board. There are poor people who sit on our board. And from members of the community, they say that members of the community is satisfied. That it is being represented and I think that this is good for us all. Because rather than having people talking about destroying the system they see that it can work and that these LAA lawyers serve them. They work for them. They're in no different relationship to their clients than I am to mine.

Rep. Paoletta: Mr. Jacobs, can you tell me please how do you determine who is poor and what your standards are for arriving at that conclusion?

Mr. Jacobs: Mr. Paoletta, you have gotten me at a time when we just went over this at length last night at our board of directors meeting. It's certainly very hard to determine who's poor or eligible for -- I beg your pardon?

Rep. Paoletta: I was going to cut you short only because maybe I can shorten the question. What standards do you apply? How do you go about? Do oyou investigate whether somebody qualifies for your services or does someone just walk into your place of work and state that I need your services?

Mr. Jacobs: We interrogate everyone who comes in there. It's our policy not to take everyone who comes in. There's a form, a financial statement that has to be filed. There are standards which have to be observed. It was $50 per person. If you made more than $50, you could not be eligible for this service. Now, I think that's considerably low welfare standard. At a meeting last night it was voted to try an alternative standard. It was felt that the $50 standard for a single person was too low. And that has been reaised to $70. You're dealing with very minimal standards. Now, we just can't possibly go out and investigate with an investigator the status of everyone who comes in and applies for our services. Otherwise, we'd be in that business instead of the legal service business.

Rep. Paoletta: Yes I was interested in your statistics when you quoted in 1965 you handled approximately 355, is that the figure you used?

Mr. Jacobs: I think it was 335 in criminal cases.

Rep. Paoletta: Only criminal cases?

Mr. Jacobs: Yes.

Rep. Paoletta: And how about criminal cases in 1970?

Mr. Jacobs: Just about 2 000.

Rep. Paoletta: Now, it is your estimation that the ratio of indigency in the state has increased by that proportion in the past 5 or 6 years?

Mr. Jacobs: Not at all. I think that what has increased is the knowledge of people that they aren't beat. That they have a chance. That there's a resource right out in their neighborhood. We have 5 neighborhood offices in New Haven. That there's someone who'll fight for you. That you don't lose just because you're in court. The need has always been there. It's just being recognized.

Rep. Ritter: Any further questions?

Rep. Paoletta: Yes, one more question please, Mr. Chairman. I assume that you are here basically to seek additional funds for your outfit. Is that correct? Is that the basic reason you're here?

Mr. Jacobs: The basic reason I'm here, Representative Paoletta, is to support this bill. Our organization is very much concerned that its funding not be cut off. And that the commitments which we have made not have to be forsworn. Yes, we have a definite financial interest in this sort of legislation being enacted. I would say that apart from our own financial interest it is good legislation and it would help the state, the poor people and the people that are not poor.

Rep. Paoletta: If it came to a point where, as you know the state is in a tremendous fiscal problem, if it can to a situation where obviously dollars are going to be paramount would you be willing to forego the criminal aspect of your services in deference to the public defender system? So that your department would deal only with civil matters?

Mr. Jacobs: We would be unwilling to do that. Of course, it can be done to us whether we'd be willing at all. We don't want to--

Rep. Paoletta: Well, what would be your objection to that kind of a situation?

Mr. Jacobs: Our objection would be that there is no one at this time who can provide this service to the poor people served by LAA other than LAA. In other words suppose that you take the money that we expect and --

Rep. Paoletta: I'm only talking about crim inal.

Mr. Jacobs: Yes, in criminal. There just aren't enough public defenders. They're so overburdened. They're already overwhelmed with work. They're having a hard time doing what they have to do already. We're not stealing their business. Believe me. We're just handling work of our own that isn't being handled elsewhere. Assuming that over a period of years you could bring up the public defender system to be able to handle all the work you'd still be face with years or a void in which people by the thousands who now have an available resource in New Haven LAA, would have nothing. I really don't like to think about the effect on all those poor people and the possible effect on New Haven. We have built up a credibility in the present system of justice by showing the poor people that he can win. By showing that he can lose honorably and not know that he's

Mr. Jacobs: (cont'd) been run roughshod over. But if you take away this resource and say, all right, poor man, 2 years from now the public defender will be able to do for you what LAA is doing for you now. He won't understand. I suggest that the public defender be built up and that where legal services organizations are doing a good job that they be permitted to exist. These things can co-exist. We don't want to cut the public defender's throat. We want the need to be met throughout. And I think that the funds are going to be appropriated for the prosecution, they should be appropriated also for the defense. And the defense of poor people should not be looked to as a step-child of the law.

Rep. Ritter: Thank you, Mr. Jacobs. Mr. Philip Lincoln of the Connecticut Association of Chiefs of Police. Is Mr. Lincoln here? Mr. Willis, Bridgeport? Mr. Willis, do you wish to be heard? Yes, it's his turn at bat.

Mr. Willis: Mr. Chairman, Ladies and Gentlemen, excuse me, I do have to be over in court rather shortly.

I'm a practicing lawyer from Bridgeport. I have never been a state's attorney. I am not one now.

Rep. Ritter: Do you aspire to be one?

Mr. Willis: I do not aspire to be one, thank you. I am as impartial as anyone can be. I am interested, however, because I am a lawyer and in the administration of criminal justice. Our office does not happen to do any criminal work. I've been an observer of, a bystander and deeply interested. It seems to me that the best interests of the people of this state will be served by the adoption of the bill that was proposed by the council of state's attorneys.

H.B.#6878- AN ACT CONCERNING AN OFFICE OF CRIMINAL JUSTICE.

I can't add a great deal to what has already been said today, particularly by Mr. LaBelle, and by Mr. Gormley. It does appear, however, that our system has worked and has worked well for many years. And that the only real need for change is to improve it. To modify it, rather than to make the wholesale changes that have been suggested. The necessary modifications and improvements, I don't think can well be effected by passing the bill that the state's attorneys have proposed. Thank you.

Rep. Ritter: Thank you, Mr. Willis. Are there any questions? Mr. Pendleton.

Mr. Pendleton: Honorable Members of the Joint-Committee on the Judiciary: I'm Charles L. Pendleton, a minister who works with people concerned about the courts.

Many citizens are learning about the Connecticut courts by visiting them, by watching them and by being involved in then as defendents. We respectfully ask you to consider the citizens point of view, which is essentially a consummers's point of view, as you listen to proposed changes dealing with prosecution and defense. The product of the circuit court, and the circuit court only here, is sorrow and punishment for nearly all citizens who are unfortunate enough to be caught in its processes. That means that guilty people are found guilty. And so are most innocent people because the circuit court is a court to find epople guilty. How well it functions in this regard is a matter of record. Simply look at the report of the chief court administrator and percentages. The last available to me is 1968.

55% of all cases recorded were recorded as guilty.

19% more were fines paid to the Violations Bureau that makes 74% with findings against. In addition,

20% more were nollies. Which meant that

94%+ of the defendents were convicted or were left by the court with the liability of doubt. The nolly is a form of probation without the finding of guilty. That does not mean that 5%+ were cleared.

3.7% were transferred to another jurisdiction.

1.3% of the people that went into the circuit court in that year were found not guilty. And the situation still pretty much maintains. In these percentages is applied to a vast number of cases. Nearly a quarter of a million. By study and observation we've had an awareness of how this situation works for several years. And from discussions with you eminent gentlemen before we know that you're also concerned. We reached the same conclusion as the state's attorneys about the department of justice which would function under an attorney general and for the same reasons. But as consummers we go further and ask for the elimination of all political considerations from our system of justice. Two years ago, this Committee was deliberating on two bills which would have set up an office of chief prosecutor and chief public defendent. Thye called for the men of the highest credentials, equipped with the personnel and tools to do the job selected by a

Mr. Pendleton: (cont'd) non-partisan committee of experts. We recommended the solution then, and we recommend it now, because many of us, citizens of this state studied it. I know it's very brash for a mere minister to come and talk to you in the presence of the testimony that you've heard. But I believe that the point of view of the consummer is very important because the issue is not a matter of political appointments, nor of tenure but it's a matter of whether or not justice will be administered in all our courts. Everything that I've heard said about the superior courts here, I must concur with and in no way try to pass any reflection upon them. But as far as the circuit court is concerned this is very important to the people of Connecticut, too. Mostly because of the large number of people who go through it every year.

Thank you very much, gentlemen.

Rep. Ritter: Are there any questions of Mr. Pendleton? Thank you. Is there anyone else who wishes to be heard at this time? If not we declare the Hearing closed.

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SENATE

PROCEEDINGS
1971

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THE CLERK:

The following bills were passed on a Consent Motion by Senator Caldwell with the approval of the Minority Leader;

GOVERNMENT ADMINISTRATION AND POLICY: Substitute House Bill 8682. House Bill 5854. JUDICIARY: Substitute House Bill 7495. House Bill 5662; Substitute House Bill 851. GOVERNMENT ADMINISTRATION AND POLICY: Senate Bill 652; Senate Bill 1145; JUDICIARY Senate Bill 1788; Senate Bill 805; Substitute Senate Bill 1093; Substitute Senate Bill 868; Substitute Senate Bill 1441; BANKS AND REGULATED ACTIVITIES: Substitute Senate Bill 467; GOVERNMENT ADMINISTRATION AND POLICY: Senate Bill 1833; JUDICIARY Substitute Senate Bill 1296; TRANSPORTATION: Senate Bill 1115; Substitute Senate Bill 255; ELECTIONS: Substitute Senate Bill 508; JUDICIARY: Substitute Senate Bill 1022; Substitute Senate Bill 1543; TRANSPORTATION: Substitittute Senate Bill 1807; JUDICIARY Substitute Senate Bill 550; substitute senate bill 823; JUDICIARY: Senate Bill 898. TRANSPORTATION Substitute Senate Bill 807; FINANCE: Substitute Senate Bill 1576; Senate Bill 1570; Substitute Senate Bill 1572; Substitute Senate Bill 1549; Substitute Senate Bill 1549; Substitute Senate Bill 1625; Substitute Senate Bill 1045; TRANSPORTATION: Substitute Senate Bill 815; EDUCATION: Substitute Senate Bill 1840; GOVERNMENT ADMINISTRATION AND POLICY: House Bill 6870; House Bill 9249; INSURANCE AND REAL ESTATE: House Bill 6995; GOVERNMENT ADMINISTRATION AND POLICY: House Bill 9242.

THE CHAIR:

Is there any objection to the passage of the bills, as called by the Clerk? If not, Senator Fauliso, do you move the passage of all said bills?

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GENERAL ASSEMBLY
HOUSE

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Calendar No. 1563, Senate Bill No. 455, An Act Concerning Retail Installment Sale Contract Requirements, file 1545.

On page 2, Calendar No. 1564, Substitute for Senate Bill No. 467, An Act Concerning the Powers of Credit Unions to Make Unsecured Loans, file 1514.

Calendar No. 1565, Substitute for Senate Bill No. 508, An Act Concerning the Appointment of the Head Moderator for Elections and Primaries, file 1597.

Calendar No. 1567, Senate Bill No. 0652, An Act Concerning the Imposition of Finance Charges in Open End Consumer Credit Plans, file 1535.

Calendar No. 1572, Substitute for Senate Bill No. 815, An Act Concerning Motor Carriers of Property for Hire in Intrastate Commerce, file 1689.

Calendar No. 1573, Substitute for Senate Bill 0846, An Act Concerning Criminal Contempt, file 1593.

Calendar No. 1574, Substitute for Senate Bill No. 851, An Act Authorizing County Detectives to Administer Oaths, file 1536.

On page 3, Calendar No. 1575, Substitute for Senate Bill No. 868, An Act Concerning...Permitting Family Relations Officers to be Complainant to Initiate Action for all Non-support Cases, file 1523.

Calendar No. 1577, Senate Bill No. 898, An Act Providing for the Killing of Dogs by Resident State Policemen when such