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Legislative History

Of

"AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES."

Public Act 12-5
2012 Senate Bill No. 280

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Legislative History for Connecticut Act

PA12-5 SB280

55 Senate Proceedings, Parts 2-3 2012, pp. 532-814

55 House Proceedings, Parts 3-4, 2012 pp. 1000-1390

Connecticut. Joint Standing Committee Hearings. Judiciary Parts 8-10 , 2012 Session, pp. 2461-2540, 2543-2667, 2686-2743, 2749-2751, 2754-2878, 2894-3094, 3098-3111

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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On page 19, Calendar 240, Substitute for Senate Bill Number 280, AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES, favorable report by the Committee on the Judiciary.

SPEAKER DONOVAN:

Chairman of Judiciary, Representative Jerry Fox, you have the floor, sir.

REP. FOX (146th):

Thank you, Mr. Speaker.

I move for acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

SPEAKER DONOVAN:

The question is on acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

Will you remark?

REP. FOX (146th):

Thank you, Mr. Speaker.

As we all know, this is the bill that changes capital felony murder to murder with special circumstances. And what it does is it substitutes the sentence of the death penalty for life without possibility of release.

Now, Mr. Speaker, we have debated this issue for years. We've debated this issue for decades for -- for some of the members of this chamber. Many of us have struggled with how we determine the best way to punish those who have committed terrible crimes while still maintaining a system that is workable, that is fair, and that is not arbitrary. Mr. Speaker, since 1973, there have been thousands of murders in Connecticut. On death row, we only -- at this time, have 11 individuals who are sentenced to death. There are arguments that the death penalty is a deterrent. There are arguments that it's used as a tool by prosecutors in a plea bargain setting, and I'm sure we're going to hear all of that as we go forward.

But, I think one thing that we've seen over the years, especially given that since 1960 we've only executed one individual, and the reason that individual was executed was because he actually had to go to court to waive certain appeal rights that he still had available. That the death penalty does not bring finality. The process that we have in place does not bring finality. The cost of the death penalty, the litigation that ensues is one that is substantial and one that places a tremendous burden on

our -- our law enforcement and our public defenders.

Also, Mr. Speaker, we've learned, not in Connecticut, but in other states where those on death row have been found to actually be innocent. They -- through the advances of science, we have learned that they -- that they did not commit the crimes that put them on death row. And while Connecticut has not had a death penalty case that has reached that level, we have learned in recent years that we have -- we have made mistakes. And we, as a state and as a system of justice, are capable of making mistakes, and we've learned that individuals have been required to serve sometimes as long as two decades in our -- in our prison system while we, ultimately, determine that they are actually, in fact, innocent.

So, Mr. Speaker, I know that there -- this will be a long debate. I know that members feel strongly. I know that many struggle with this issue, and I think that that's only appropriate, but I expect as we go forward and as we hear the arguments that are presented that ultimately we will -- we will determine that, as a public policy, our best system is to proceed with a maximum incarceration that is life without the possibility of release.

Now, Mr. Speaker, the Senate when they've passed this bill they also passed Senate Amendment "A", and the Clerk has LCO Number 3027, and I would ask that that be called.

SPEAKER DONOVAN:

Will the Clerk please call LCO 3027, which is previously designated Senate "A."

THE CLERK:

LCO 3027 Senate "A" offered by Senator Williams, et al.

SPEAKER DONOVAN:

The Representative asked leave of the Chamber to summarize. Are there any objections to summarization?

If not, Representative Fox, you may proceed.

REP. FOX (146th):

Thank you, Mr. Speaker.

In the Senate, the -- what has come out in recent days was that certain members did go to visit the correctional facilities, specifically, death row. And what was determined is that we should put in place a -- a system -- if we're going to go forward with this bill, life without -- where the maximum sentence is life without the possibility of release, we should

create a -- a system where these prisoners would be in a more restricted environment.

I move adoption of the amendment, and I would ask that I be allowed to continue.

SPEAKER DONOVAN:

The question is on adoption.

Please proceed.

REP. FOX (146th):

Thank you.

What this -- what Senate Amendment "A" does, Mr. Speaker, is it creates the special circumstances high security status. What it says is that upon incarceration or upon conviction the inmates would be -- would be first placed in administrative segregation. The place where that currently takes place is Northern Correctional. That process, as I understand it, takes about six to nine months. Administrative segregation is where the Department of Corrections currently puts the worst of their worst. It's actually a housing that is worse than the current death row.

While in administrative segregation, an evaluation would take place and at that point it would be determined whether they can -- they should remain

in administrative segregation or go in to the special circumstances high security status. If they are -- if they do go into that status, it would -- the inmates would be housed separately; their movements would be escorted; they would be moved to a different cell every 90 days; there would be no contact during visits; they would have no contact with any inmates that are not part of this high-security status; and they would have no more than two hours of activity a day, which is, as I understand it, is the constitutional requirement set out by our United States Supreme Court.

Mr. Speaker, I would urge adoption of the amendment.

SPEAKER DONOVAN:

Thank you, Representative.

Would you care to remark further?

Our House Minority Leader Representative Larry Cafero, you have the floor, sir.

REP. CAFERO (142nd):

No, sir.

SPEAKER DONOVAN:

Care to remark further on the amendment? Care to remark further on the amendment?

If not, let me try your minds. All those in favor of the amendment, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

All those opposed, nay.

The ayes have it. The amendment is adopted.

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker.

Mr. Speaker, the Senate also passed Senate Amendment "I." The Clerk has it in his possession, LCO Number 3068. I would ask that that be called.

SPEAKER DONOVAN:

Will the Clerk please call LCO 3068, which was previously designated Senate Amendment "I."

THE CLERK:

LCO Number 3068, Senate "I" offered by Senator Williams, et al.

SPEAKER DONOVAN:

The Representative seeks leave of the Chamber to summarize.

Any objection?

Hearing none, Representative, you may proceed.

REP. FOX (146th):

Thank you, Mr. Speaker.

This is a joint amendment that was introduced on the floor of the Senate. It -- the reference by the Senate Minority Leader was that it was a "belt and suspenders" to the discussion that ensued over the previous hours. And what it does is it references an existing statute that states that if the Legislature reduces a penalty that penalty still stands. And the statute itself is -- well, there's two statutes, 50 -- Connecticut General Statute 54-194 and Connecticut General Statutes 1-1, subsection (t). And essentially what they say is repeal of a statute does not reflect any convictions that would have occurred earlier. And the reason for this amendment and why -- why it was felt to be important is that the underlying bill states that the -- the change in penalty is a prospective change in penalty.

For those who listened to the Senate debate, it was very clear that that was the legislative intent of the bill, but what this also does is it -- it spells it out even more clearly.

And I move the amendment, and I urge adoption.

SPEAKER DONOVAN:

The question before the Chamber is on adoption of the House -- Senate Amendment Schedule "I." Would you remark further? Would you remark further?

If not, let me try your minds. All those in favor of the amendment, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

All those opposed, nay.

The ayes have it. The amendment is adopted.

Remark further on the bill as amended? Remark further on the bill as amended?

House Minority Leader Larry Cafero, you have the floor, sir.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

Mr. Speaker, just for the record, my comments are not made in summation.

SPEAKER DONOVAN:

Please proceed, sir.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

At this point, I'd like to pose some questions to the proponent of the bill, Representative Fox.

SPEAKER DONOVAN:

Please proceed, sir.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

Through you, Mr. Speaker, to Representative Fox, it is my understanding -- and I think what is so important because of the importance and significance of this bill that all of us here who are about to vote one way or the other on it understand exactly what we're voting on. And to that end, it is my understanding that the bill before us eliminates the death penalty in the State of Connecticut, prospectively, meaning from this point forward the official policy of the State of Connecticut will be that we no longer have a death penalty and no person, regardless of their offense, may ever be put to death; is that correct?

Through you, Mr. Speaker

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

At the beginning of the question, I was prepared to answer yes, but towards the end of the question I

just want to make sure that that it is clear. There are 11 people currently on death row. There are also several others who may have committed crimes that would be death penalty eligible, so for those crimes the death penalty is still available. However, the beginning of the question said that the -- this would make it so that nobody who commits a crime, from passage of this bill forward is -- would face the death penalty. That part of the question is correct.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

So, again, for point of clarification, through you, sir, upon the passage of this bill, anybody that commits a crime no matter how heinous, no matter how deplorable will never face the death penalty; is that correct?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

From passage of this bill, the -- the maximum

penalty would be life without possibility of release for those who are convicted of capital felonies.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

So, through you, is it fair to say that with regard to crimes committed after the passage of this bill, it is the official policy of the State of Connecticut that we have no death penalty?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

For those who commit crimes after the passage of this bill, the death penalty would not be available.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you.

And the converse of that question, through you, Mr. Speaker, is for all those people who might have committed crimes -- certainly the 11 that we say are

on death row -- they would be subject to the death penalty; in other words, they could be killed by the State, but people going forward cannot; is that correct?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

Those on death row would still face, and those who have been sentenced to death still face the death penalty. Yes, that's correct.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

So, through you, Mr. Speaker, even though, prospectively, our policy is that we do not have a death penalty in the State of Connecticut, it is feasible that at least 11 people could die at the hands of the State, and the State of Connecticut even after this bill passes; is that correct?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

Yes, that is correct.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

Through you, Mr. Speaker, I also heard a description of what is known as Senate Amendment "A" that was passed by this Chamber moments ago. And in the description it was said that there are certain conditions under which people that are going to be convicted of what once was a capital felony and now is a crime with special circumstances, would be in a certain unique kind of confinement and that was assured by the passage of Senate Amendment "A"; is that correct?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

That is correct.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

And, through you, Mr. Speaker, and once again, for the edification of the Chamber, can you describe those conditions that would now be -- now be the case for those convicted of this new named crime?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Yes, Mr. Speaker.

And, through you, the conditions are that the inmate would be on what is this special circumstances high security status. The inmate would be housed separate from inmates who were not on that status; conditions of confinement would be imposed and include that the inmate's movements be escorted; that he's -- the inmate be moved to a new cell at least every 90 days; two searches of the inmate's cell shall take place -- at least two searches -- each week; no contact permitted during the inmate's social visits; and that the inmate be assigned to work assignments that are within the assigned housing unit not outside of the assigned housing unit; and, also, that there

are no more than two hours of activity a day.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you.

So, through you, Mr. Speaker, if one were to be subject to these terms of confinement, they have two hours of what? Free time, is that what it's called or recreation?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

It's two hours outside of your cell. So what it would -- the way -- the best description I can maybe give is the way it works at Northern is that there's -- there is a cage-like area where it's made out of concrete where inmates can -- it is outdoors. You look up and you see a fenced-in area, but it is actually outdoors. It's a very small tight area. The other alternative is the -- there is a room with a table. It has some law books. It may have some other books, but that is -- that is also what would be

considered space outside of your cell.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

And, through you, I understand, based on your description, that they would be allowed social visits but could not have any physical contact during those visits, but is it true that they would be allowed social visits?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

Yes. I believe they would be allowed social visits. I think they -- I mean, I know those on death row currently are allowed social visits. I know there's a -- the time constraints and limitations upon those, but, yes, they would be allowed those.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you.

Through you, Mr. Speaker.

Just to make it clear, though, those on death row are slated to die, but this new category of sentencing or confinement, these people are not sentenced to die, so they would have, for the rest of their life, an opportunity to have social visits without physical contact; is that correct?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

I believe all of the prisoners in corrections, unless they're in administrative segregation, are allowed social visits, so I believe they would be treated similar to that.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you.

Through you, Mr. Speaker.

Again, just for the edification of the Chamber, remember we're replacing a death penalty so, though, we might have social visits for those who are

currently slated to die, they are slated to die. In the case at hand, they will not die, certainly not at the hands of the State, but they will be allowed social visits.

And my question, I guess, through you, Mr. Speaker, is would those social visits take place during their two hours of free time or would that be in addition to their two hours of free time?

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

On that I am not sure. I just -- I do know the time is limited. I'm not sure if that is included. I know it's -- it's limited by the number of visits that they could potentially get each week, and I'm not sure if it's counted towards their two hours.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Well, through you, Mr. Speaker, then, what I understand is in these social visits, it would allow a prisoner convicted of what once was a capital felony murder and not slated to die an opportunity to see his

or her family, their children, their grandchildren, and have social interaction with them at some unspecified time during their incarceration; is that correct?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

I'm sorry, Mr. Speaker. I was trying to get the answer on the previous question. If --

SPEAKER DONOVAN:

Representative Cafero, could you please repeat the question?

REP. CAFERO (142nd):

Yes, thank you.

Through you, Mr. Speaker.

My question was these social visits which allow a prisoner, who once was slated to die because he was -- he or she was convicted of a capital murder is no longer slated to die for the rest of their natural life, an opportunity to socialize without physical contact with their loved ones, their family, their spouse, their children, their grandchildren for an undetermined amount of time based on what you told us

for the rest of their life; is that correct?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Well, Mr. Speaker, they've never been slated to die because they have not yet -- if they are held under the status that they would not have been eligible for the death penalty. Mr. -- the -- they will be allowed visits just like those on death row are currently allowed visits.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

And once again, as we know, the whole import of this bill is the difference between those we're talking about in the future and those we're talking about currently on death row are those 11 are slated to die. Upon the passage of this bill, forever more, no one else will ever be slated to die.

My next question is, through you, Mr. Speaker, with regard to these conditions of confinement, are they automatic? Does every person convicted of what

once was capital felony automatically get these restrictive conditions for the rest of their life?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

If they are convicted of murder with special circumstances, these are the conditions that would be imposed upon them.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

And, through you, Mr. Speaker, is there any discretion as to whether or not these conditions would be imposed upon them?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

These conditions are required to be imposed upon them. The only -- the only possibility that would allow them to be removed from their cell would be if

in the event that they required some sort of medical treatment or some other emergency that -- or some other necessity that would be part of something that they needed to do. For example, if they went into cardiac arrest or if they were epileptic, had a seizure, something along those lines, but even if that were to take place, the conditions that are set out would still -- they would still have to fall under those conditions.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

Through you, Mr. Speaker.

If that is the case, I'm somewhat confused because in looking at Amendment "A" that is now part of the bill, I look at lines 22 through 30. And it indicates that the Commissioner shall establish a reclassification process for the purpose of the section in question, that the reclassification process shall include an assessment of the risk of an inmate described in the subsection. What is that all about?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker.

That is during the period that the inmate is in administrative segregation, the -- an assessment would take place to determine whether or not that inmate could either be -- should remain in administrative segregation or would be eligible for the special circumstances high security status. The one that we've been describing here.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

So you -- through you, Mr. Speaker.

I'm confused. What is the difference between the administrative classification and the special circumstances?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker.

The -- as I tried to say in my opening remarks, the administrative segregation is actually a status

that is higher than the -- the current death row, and it would be a status that is higher than special circumstances high security status. It's for those individuals who pose a risk to others or to themselves. They would be -- as I understand -- those in administrative segregation are placed there for a period of -- it can be six to ten months. It's usually for a very serious disciplinary situation. And if from there -- I believe they get one hour a day during that period of activity outside of their cell, and the rest of the time they are in their cell. So it is a harsher standard than the other. The high security status is the one that we've been describing. This would be a harsher status.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Well, through you, Mr. Speaker.

And this might be just a matter of construction, but it leaves us confused, because if you look at lines 22 through 30 of the Senate "A" Amendment, it lays out a process by which the Commissioner would establish this reclassification process for the purposes of placement in an administrative

segregation. The next section, which starts at line 31, indicates that the Commissioner shall place such inmate -- such inmate I presume, referring to the preceding section -- in the high security conditions that are described, which we've been describing. So it seems to indicate to me that the very classification of this high security -- whatever the heck it's called -- as outlined in lines 31 through 45, only happens after a risk assessment is done. If I'm incorrect, can you please correct me on that?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

When the inmate is convicted and sentenced to this penalty, they would go -- the way it would work now is they would go to Northern correctional, as set out in the first line 5 of the -- of the amendment, they go straight into the administrative segregation. During that time a risk assessment is done. It may be concluded that these individuals are so dangerous, so violent, they cannot leave administrative segregation, at which case, they would not qualify for the -- the

special circumstances status. So those are the two options that would be available to this inmate for the rest of their life, essentially.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Well, I would suggest, through you, Mr. Speaker.

That the -- the wording is somewhat confusing because it seems to indicate that there is going to be some assessment as to the risk of this prisoner. And when we talk about the risk of a prisoner, we're talking about people -- I know currently on death row and I realize this applies to people in the future, who have crushed the skull of 13-year-olds with a sledgehammer, who brutally murdered, burnt, raped, kidnapped their -- their victims. I'm not so sure -- you wouldn't always come up with the fact they're a high risk. But the way this thing seems to be written is it gives some discretion as to their conditions of confinement.

So let me ask you this, if someone were to convicted -- be convicted with murder under the special circumstances, even if they were a frail, an elderly 85-year-old prisoner, would they still be

subject automatically for the rest of their natural life to the conditions outlined in lines 31 through 45?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

Yes, they would.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

I thank you, Mr. Speaker.

There has been a lot of question because of the relative uniqueness of this piece of legislation, and certainly it's assumed to passage and, therefore, becoming law. Of the constitutionality of it, the constitutionality of banning the death penalty in a state and, yet, by the terms of the bill still allowing at least 11 or more people to potentially die at the hands of the State. Are you concerned with regard -- or can you speak on the constitutionality of this particular piece of legislation?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Yes, thank you, Mr. Speaker.

The bill expressly states that the penalty is prospective. I believe and I expect that the intent -- the legislative intent, as we leave this chamber, as well as was clearly stated in the Senate, is that, yes, the legislation is intended to be prospective.

Now with respect to constitutional arguments, I would -- there potentially could be two. I know that there were two that were raised in the -- in the Senate: one dealing with the Eighth Amendment; the other dealing with the Equal Protection claim. And what -- what we would anticipate is that given the history of -- especially the Death Penalty Statute in the State of Connecticut, is that we have in the past actually made changes to our Death Penalty Statutes and they were, in fact, prospective. One was in 1846 when the Legislature created distinctions between first-degree murder and second-degree murder. Prior to that, all murders were subject to the death penalty. But more recently, in 1951, we enacted a statute that allowed the jury to make a determination

as to whether or not a first-degree murder should be either -- a death sentence should be part of that or also -- or life in prison. And that -- that actually -- that statute was referenced by our Supreme Court in a case that followed several years after, and it was upheld by our Supreme Court.

And what -- what our Supreme Court stated is that the first -- the penalty for first-degree murders committed prior to the effective date of the 1951 statute was -- was death. And the penalty for first-degree murders after that could potentially be life without the possibility of release. So it -- there is a history behind this. It has happened before in terms of the prospective nature of our death penalty. I recognized the question. I understand that these cases are heavily litigated and every avenue is always explored to its fullest, but that is where our law stands now.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you.

Through you, Mr. Speaker.

In the examples you cited, the 1800 case and the

1951 case, was it ever, at any point, the official policy of the State to ban capital punishment?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

We have had the death penalty now for -- for over 150 years, so, no.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

I would argue then this would be a case of first impression. A time wherein, a unique time where a state -- and to my knowledge there's only one other state who has it this way -- where you have a group of people who are subject to death at the hands of the state and, yet, you draw a line in the sand at a point in time and say regardless of what anyone does thereafter, the official policy thereafter of the state is to ban the death penalty. Do you know of any other state that has a similar law?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

As I'm sure members of the Chamber are aware, New Mexico did pass a similar law several years ago.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO (142nd):

And through you, Mr. Speaker.

Has the constitutionality of that law been challenged?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

I can give some background on that law. At the time the law was passed, New Mexico had two people on death row. Those two still remain on their death row. There also was a -- a highly publicized case in which a -- a murder had occurred and a defendant was eligible for the death penalty. What happened is the defendant was convicted at trial of murder, and then,

the defendant -- in the interim these -- the New Mexico legislature passed their law, which was the prospective death penalty. The defendant appealed to the Supreme Court saying that he should not be subjected to a death penalty hearing because New Mexico has, essentially, done away with the death penalty because of their prospective bill. I think that -- I'm paraphrasing it -- but that's essentially what -- what the reasons were.

The New Mexico Supreme Court came back with a -- a one-sentence decision denying this request, and as I understand it, the death penalty hearing for this defendant is currently taking place -- or jury selection, at least, is currently taking place right now. So the question -- to get back to the question -- I -- in my opinion, it has not been determined, yet, by the New Mexico Supreme Court the constitutionality of their statute. They did have an opportunity to say, no, you can't go forward with a death penalty hearing. They did decide not to. I'm not surprised that they decided to not address the question at the time because who knows what may happen during this death penalty hearing. The individual may not be sentenced to death and then this would not be

necessary, so there's my summation on it.

(Deputy Speaker Orange in the Chair.)

DEPUTY SPEAKER ORANGE:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Madam Speaker.

And I guess I have the same understanding. You see, in New Mexico, the issue of whether or not their law, which is similar to the law that we have before us, of constitutionality has never been decided. Let me be clear and repeat that. The constitutionality of the law in New Mexico, which is quite similar to the law that we are about to discuss and vote on, has never has never been determined as to whether or not it is constitutional. In fact, every report covering the New Mexico case has specifically said the issue of constitutionality has never been addressed and could only be ripe to be addressed if, in fact, the gentleman that is subject to the case is convicted of murder. But the bottom line is, ladies and gentlemen, it has never been decided.

Through you, Madam Speaker.

If, in fact, the bill that we are about to vote on passes and is signed into law is subsequently ruled unconstitutional, what is the effect of anyone who might have been convicted under the law or those who are still on death row or were convicted of crimes prior to the passage of the law?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

If all of these individuals -- all these inmates on death row all have current appeals pending, and the way Senate Amendment "A" is worded is that should they no longer be on death row, they would then fall into this special circumstances high security status that is set out in Senate Amendment "A."

I should point out that over recent -- over the past, say, 20 years, we have had inmates come off of death row because of successful appeals; and that is reason for that language in the statute -- in the Senate Amendment "A."

DEPUTY SPEAKER ORANGE:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Madam Speaker.

I guess to be more specific, once again, and I understand there has always been a right of various prisoners who are on death row to appeal the decision; and if they're victorious, they would be removed from death row. But what I'm talking about is the constitutionality, perspective constitutionality determination by the Supreme Court of this particular bill. If, in fact, it is deemed unconstitutional, what happens to the 11 people on death row? What is their status?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

And, through you.

I think it would be helpful for me to -- in order to respond if I -- there are potentially a couple of different constitutional claims. What is the claim -- the constitutional claim that is being made, if you don't mind?

DEPUTY SPEAKER ORANGE:

Representative Cafero.

REP. CAFERO (142nd):

Through you, Madam Speaker.

In layman's terms, if somebody challenged the constitutionality of a law that allows or bands the death penalty prospectively but allows it to stay in effect for anyone who committed a certain crime prior to a certain date, if that is challenged and they're successful, ruling that that bifurcated system is unconstitutional, what happens to the 11 people who have been convicted and are -- and are currently on death row?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

If an appeal is successful by one of the inmates or all of the inmates on death row, they would fall into the -- the special circumstances high security status.

Now, there are several claims that could be made -- but I do want to point out that our Supreme Court did say, back in 1954, when asked to find that the disparate penalties were -- were unconstitutional,

this was a person who was sentenced to death that -- and I'll just read straight from it. It says, "The plaintiff is being treated in exactly the same manner as all others who committed murder in the first degree prior to October 1, 1951, and he has been accorded the equal protection of the laws." So -- but if there is a successful appeal, they would fall into the status that's been described earlier.

DEPUTY SPEAKER ORANGE:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Madam Speaker.

I thank Representative Fox for his answers.

Ladies and gentlemen, it has been my privilege to serve in this chamber for the past 20 years. And during that period of time, we have had occasion to debate the death penalty, to my knowledge, six times in the last 20 years. It could be more. And each time I've participated in such a debate, I started off by saying to my colleagues at the time that regardless of what side of the issue you are, you are about to witness one of the most high level, decent, thoughtful, sincere level of debate. And I would say at that time that you will leave this chamber proud to

be a member thereof.

I remember, as a freshman legislator 20 years ago, sitting right about here, listening and watching with my mouth wide open in amazement and pride as I watched former State Representative, the late Richard Tulisano and former State Representative Bill Wollenberg. Representative Tulisano sitting where Representative Fox now sits. Representative Wollenberg sitting where Representative Backer now sits. You could have heard a pin drop, the high level, a principled debate.

I remember incredible emotion and oratory coming from former State Representative Bill Dyson. I remember participating in debates with former State Representative and now Under Secretary Michael Lawlor. They were one of my proudest moments to be part of this chamber because that debate was so principled. It was so personal on one level. And I have often said for my entire life, though I happen to be in favor of the Connecticut death penalty, I have every respect, every respect for those who are opposed because it's a principled position.

You've heard the arguments for and against. They usually fall into three categories; one is political,

many people believe that there are so many imperfections in our judicial system that there's a chance of getting it wrong, and if that chance were to come to pass, an innocent person could die. I respect that argument.

Some are moral arguments, whether they're based on religion or not. Some are a more practical arguments, legal arguments. Some are based on costs or deterrent, whether it is or it isn't. But they were principled debates. They were felt with all our heart and soul. And they weren't easy. They weren't easy for those of us to make a decision one way or the other that someone should die or live.

And sometimes the facts were so haunting, so haunting. You would hear of these heinous, deplorable, depraved crimes. You would conjure visions of, God forbid, if that happened to my family. What is your raw emotion? And yet, we realize that collectively, as government, we don't have the luxury to have that raw emotion. That's the way those debates were.

And I'm sorry to say that today is different, today is different. Because if you think about it, the bill that's before us says something that, at

least with due respect, to my mind is illogical and, in my opinion, impossible. How can you say in your heart and with your vote that it should no longer be the policy of the State of Connecticut to commit anyone to death? And yet, at the same time, say except for these 11 guys. How could you say that? How do you justify that? With all the principle that is there. The -- all those arguments and you've heard them all, how could you say that?

Now, myself and Representative Fox just had a back-and-forth with regard to some questions. I want to share with you why I am in favor of the death penalty and the Connecticut death penalty, and it is not an easy decision because of my faith, because of the way I was brought up. It is not an easy decision at all. It is a haunting one as so many other issues are for us.

A lot of people say that people are for the death penalty because of revenge. If you look up "revenge" in the dictionary, you'll see it has an emotional component. It is for vengeance. It's within the word vengeance. Vengeance is an emotion. Government does not have the luxury of having emotions, whether that be compassion or vengeance. Government has to seek

justice. Justice is the core definition behind retribution.

I am for the Connecticut death penalty because it is retribution which accomplishes justice. I am not for the Connecticut death penalty because it is revenge. Oh, we have those emotions. We hear details of these heinous crimes and our blood boils. Our thoughts sometimes get away with us of what we would do to those individuals, but we don't have that luxury collectively.

There's arguments made that death penalty is a deterrent. I don't believe it for a second. I truly don't believe that whether it was Todd Rizzo or Steven Hayes or Josh Komisarjevsky or Daniel Webb, that before they committed those heinous crimes, they stopped and said, Does Connecticut have a death penalty because if it does I won't commit that crime? I don't believe it's a deterrent.

I also don't believe the converse of that argument that if Connecticut did not have a death penalty that they would think twice before committing the crime. I think for whatever sick and depraved reason they committed the crime and there needs to be justice. A lot of people say, well, the Connecticut

death penalty doesn't work. Hey, we killed one guy in 40 years. That's only because he wanted to die. And as I've often said is, I did not measure whether a law works or not by how often we've employed it. In other words, I don't measure the success of the Connecticut death penalty based upon how many people we executed. What if we did three a week that would be a good law, now it's really kicking in, now it's working? No. I measure, as we all should, the workability of a death penalty by its constitutionality. Has it been deemed constitutional? The death penalty we have on the books today has been deemed over and over again constitutional; therefore, in my mind, it is workable. Can it be improved upon within the confines of constitutionality? Sure it can. But as it stands right, now it's constitutional.

The bill that we have before us has yet to be determined whether or not it's constitutional. But you see here is the rub. Many people are making their decision on whether or not to vote for this because they are trusting that even if they -- it passes, those 11 animals on death row will die -- to go to bed, rest easy, think about that.

We all heard the details of those crimes,

especially the Petit murders. But what if that's wrong? In fact, the likelihood is extremely high that it is wrong. Well, then, those people who were convicted to die by a jury of their peers, afforded every single opportunity for defense, would avoid their death sentence. Now, if you're a purist, as we've discussed before, as tough as that might be to swallow or tell to a constituent, you got your way. No one will ever die in the State of Connecticut again based on any crime no matter how heinous or deplorable.

But I think that's where this argument should go, back to the principles, because, otherwise, I find the arguments misleading at best.

It is no secret that what is weighing over all of us is the Petit murders. We heard through the summer and spring, the fall of 2010 and 2011 of these horrible, heinous, deplorable crimes. People in the jury box vomited for the pictures they saw and the descriptions they heard. In fact, it was widely reported that one of the reasons this General Assembly didn't take this bill up earlier was because of the freshness of those awful crimes. And yet, here's an irony, the last time we debated this bill was May --

in this chamber was May 13, 2009. It was a bill very similar to this in that it was prospective, but at that time, though the Petit home invasion case had taken place, nobody knew the details. See, there hadn't been a trial. People are -- thank God -- in this country presumed innocent until proven guilty. That bill, that prospective bill passed the Senate and then it passed the House, overwhelmingly. And it went to the Governor's desk -- at that time Governor Rell -- and she vetoed the bill so it never became law. Had the bill been signed by the Governor, that very bill, or allowed to come in to law by some other means, Steven Hayes and Mr. Komisarjevsky, the Petit murderers, would never have been able to be sentenced to death because, like this bill, it banned the death penalty prospectively and they had yet to have their trial or have been convicted.

Now is that the way to pass laws? If you're going to do it on principle, folks, let's do it on principle, because you know why, God forbid, a million times, but unfortunately the way life is there might be another Petit-type case and, God forbid, as gruesome, as horrible, as horrific, as deplorable as that very case, we can't conjure it in our minds now.

We don't know names, places or dates, but it can happen. And when it happens the folks that -- on the one hand, want to see justice by way of the death penalty happen for those in the Petit case, are voting to eliminate that similar penalty for anyone in the future. See that's the problem I'm having with this. Yes, I concede. I'm a proponent of the death penalty, the Connecticut death penalty, but let's be honest about that debate, folks. Let's be honest and pure about the debate, like we always were.

I asked some questions of Representative Fox with regard to those special conditions, those conditions which allow two hours a day of outdoor time, those conditions that allow social visits without physical contact. It might sound to those of us who are free and not have committed any crimes as tough stuff, but I have got to tell you, the mere fact of walking outside and looking up to the sky and feeling air on your face, the mere fact that even through maybe six inches of glass you could look at a loved one and watch them grow is a privilege. It's a privilege, and I'm not sure it's one people convicted of the kind of crimes we define are entitled to.

Currently on death row we have 11 men. There is

no question of their guilt. They've never even professed their innocence. They are slated to die. And under this bill that won't change. And yet through modern technology, the ways of the world, these gentlemen -- I take that back -- these male human beings are allowed to have social interaction. I brought it to the attention of this chamber before. I'll bring it again. They have web pages. They solicit pen pals, exchange music and ideas and have human discourse with people, people like Todd Rizzo.

He calls himself just a guy who's looking for some companionship. And if you read his story, sometimes you get sucked into it, well, hey, the guy can't get out of prison. Then you got to remind yourself why he is in prison. See, he lured a 13-year-old boy into the woods to hunt for snakes, and then he took a sledgehammer and crushed his skull because he said I wanted to see what it was like. And that 13-year-old boy never hunted for snakes that day. He'll never have human discourse or never have human interaction. He'll never be able to see his mom or dad again or his brother or sister.

And I would assume, maybe, some of his family are waiting for justice, and it might seem unfair to them

if the very person who did that to their son, whether it's two minutes or two hours a day, gets to breathe that fresh air and see that sky and interact with family that their 13-year-old boy never got to do again.

Now, I'm not saying you'll all agree with me, I understand that and I respect it. But if we're going to have that debate, let's have that debate. Let's not have this one. Let's not mislead the public. Let's not mislead ourselves. If it is the will of this Chamber that this State is no longer in the business of executing people, then let's say it and do it. You cannot have it both ways. It's not going to make anyone feel better for any length of time.

In the memory of people, like Richard Tulisano and our predecessors who had that debate on principle for all those years, I would ask you to think long and hard about your vote on this bill. If, in fact, it is the will of this Chamber to ban the death penalty, though I disagree, I respect it, but then let's do it the right way.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, Representative Cafero.

Will you care to remark further on the bill as amended?

Representative Terry Backer of the 121st, you have the floor, sir

REP. BACKER (121st):

Thank you, Madam Speaker, and thank you all.

I, too, remember the -- what I would call the battle of the titans between Richard Tulisano and, I believe now, his Honor Bill Wollenberg. It was really -- I came in with Larry and -- Representative Cafero was really something to see, and I think it honed my appreciation for thinking these things through.

Beyond that, I like, I think probably others in this -- in this chamber, am torn. Am torn on the decision I must make because of the horrendous deaths that some of these people have brought upon innocent people in the Petit murders or when we dealt with Ross and those types issues. I think if I had been there myself, I would have pulled the trigger myself on them. I mean, that's -- I'm being as honest as I can be -- if I think I was there, I would not have been able to contain myself. But now we sit here in time to deliberate on this, and I have to think -- and I

agree that this bill is imperfect as, I think, many of them that have gone out of this chamber many times have gone out of here with a specter of whether they were constitutional or not. And I think I've heard many times, Leave it up to the court. That's not what I'm doing here today.

I want to express to everyone here that there are 289 postconviction exonerations of people convicted of capital murder in this country who have been freed on DNA and other evidence that came to light after they were convicted, after they were already convicted and headed to -- well, the gallows or wherever you may be.

We have an imperfect system and many of the mistakes we make, as government -- and we can all look around this room who've been here for some time and well-meaning -- have created policies or have done things that haven't quite worked out the way we had hoped they had worked out. In retrospect, we might have been able to say, hey, we were wrong on that, but we were always able to go back and fix those things, start a new policy, put it on a new track.

Unfortunately, when we are wrong, in these cases, there is no way to put them back on track. I can't say that I can sit here and not listen to my friend,

Representative Cafero, the Honorable Minority Leader, and not feel that same anguish that he feels for the families, and so forth. But based on the fact that we do make mistakes, and we have 289 postconviction exonerations of people who were headed to the gallows in this country since the late 1970s -- it doesn't sound like a lot, but let's face it not a whole lot of people are going out trying to get people who have been convicted murderers exonerated. There's only a small group that does that -- so I'm going to going to vote for this bill, even though it's an imperfect bill, and I might question some of its constitutionality. We have processes to challenge constitutionality, so I will be supporting here today the bill.

And as Representative Cafero said, you can have nothing but respect for either side of this issue because I am torn in two on what's to be done here. It's my -- it's my innate feeling that government makes mistakes, and we make them from time to time. And the Judicial Branch is part of our government, and they can make mistakes in the -- in the trying of these people. And with those 289 postconviction exonerations have convinced me this time after voting

on this a number of times to vote for this bill, to repeal the death penalty.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, Representative Backer.

Would you care to remark further?

Representative Hetherington, you have the floor, sir.

REP. HETHERINGTON (125th):

Thank you, Madam Speaker, and good afternoon.

DEPUTY SPEAKER ORANGE:

Good afternoon.

REP. HETHERINGTON (125th):

I would offer, to begin with, several general observations. We have to remember that we are looking at the death penalty as it exists in Connecticut, as it is applied here. As has been noted in the last 50 years, there's been one execution. It is sparingly used. It is sparingly used, as indeed it should be. It seems to me that the fact that it is so sparingly used is good evidence of the fact that a great deal of scrutiny goes in, a great deal of deliberation is required before the extreme punishment is awarded.

The point is made that a number of people across

the United States have been exonerated based upon postconviction evidence. That's across the country. Here, in Connecticut, at least in modern times, there has not been one person executed where there was a claim, at least a substantial claim, of innocence, and in fact, as reported, no one currently on death row makes a claim of actual innocence. So -- and with -- and with the advance in science, with the advance in detection and investigation, such things as DNA, the likelihood that someone will be convicted of a serious crime that would require the death penalty diminishes, diminishes over and over again.

So, I guess, if you look at the country as a whole, maybe in theory it's possible that someone could be convicted and that person turn out to be innocent. But theory is refuted by fact, and the fact is we have never executed someone in Connecticut who was innocent. We do not face that possibility based upon the convictions that stand now. So I don't think that that argument is a very strong one when you consider it in light of Connecticut's experience and the way the capital felony law is applied here.

You can cite studies one way or the other on deterrence. Personally, I believe that in some

measure capital punishment is a deterrent. And, frankly, I've looked at a good many of these studies, and I don't know how -- how you come to a conclusion. Obviously, the people you talk to who are sitting on death row are not going to tell you they were deterred, because they obviously weren't. You can't question an unlimited sample of the general public to ask them if they've ever felt like committing a crime but didn't because they thought, well, we had -- we have capital punishment here in Connecticut. So I don't know how you resolved that. But I will tell you this, there is a great deal of what you might call anecdotal evidence from law enforcement authorities that someone who is about to commit a murder in the course of another felony may have a change of heart.

Someone who's committing a robbery decides whether or not to take a gun, someone who takes a gun decides whether or not to use it, someone who's going to participate in a robbery where someone's carrying a gun, those are where a difference is made. And the thing we have to worry about in just concluding easily that it's no deterrent. If we abolish the death penalty on the basis that it is no deterrent, we have to ask ourselves -- as we may take comfort in the

morality of that, question ourselves whether or not in sparing the life of a vicious felon, have we instead increased the likelihood that the life will be taken of an innocent person. So the line there is -- the belief that -- that if you eliminate the death penalty, you are sparing a life is not an absolute. The question is whose life you're sparing?

The -- the bill, however, as proposed, poses an impossible dilemma, because substantially supporting the bill is the belief that that the State taking a life of a human being is wrong, is wrong, based upon a religious philosophy, based upon ethical teachings, ethical reasonings, whatever, that belief. But the -- but this bill, of course, has this dilemma. It says that, prospectively, it operates to spare killers in the future but not a certain 11 who currently occupy death row. So it is a very curious moral position; that is, the morality changes depend upon when it's applied. It's sort of like saying, you know, we shall not kill, except as hereafter provided in Senate Bill 280 as amended. And that -- that gives us a peculiar moral dilemma, it seems to me.

I respect those, of course, who hold that capital punishment is immoral or unethical, but I think that

this -- this poses a very significant dilemma for that position.

And -- and a related dilemma is this, that if you believe that the death penalty is wrong, then I would suggest that -- that one must believe that either one is satisfied with prospective morality, or -- or one believes that, in fact, this bill will never operate prospectively only -- and that those on death row will ultimately be spared, as well. It seems to me to be consistent one has to believe this bill is not going to be effective in what it says it's going to do.

We also have a dilemma in that the bill promises life imprisonment, but it also -- it also permits modifications to be made in that sentence, but moreover, it -- it makes a promise that cannot really be made, because we don't give up the ability to legislate on capital felonies and on the consequences of capital felonies -- what's stands now as capital felonies -- so it's a promise to enforce a sentence that we cannot promise to keep. And since this bill hangs together on a peculiar bargain, a peculiar bargain between morality and politics, that is, that we will say there is to be no death penalty, except as provided by -- after the effective date of Senate Bill

280, as amended. It -- it provides the -- the dilemma that even what's in that bill cannot -- cannot be -- cannot be promised. And since it holds together on this odd bargain -- this bargain, I -- I suggest a bargain between politics and morality an impossible bargain, I would --

I would propose an amendment and, Madam Speaker, the Clerk has in his possession LCO Number 3120, and I ask that it be called and I be permitted to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO 3120, which will be designated as House Amendment Schedule "A."

THE CLERK:

LCO 3120, House "A" offered by Representatives Cafero and Hetherington.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the Chamber to summarize, without objection, so ordered.

REP. HETHERINGTON (125th):

Thank you. Thank you, Madam Speaker.

What this bill simply says that if the bargain is not kept, the death penalty will be restored. That is, if the sentence is modified, the punishment changed, if in any way the provisions, any provisions,

of this bill are not maintained, either because of legislative action or administrative action or if the courts find this bill to be unconstitutional in part. If the bargain crumbles in part, it must crumble in whole. And therefore, the -- upon any of those events, if the bill is not, as law, sustained in its entirety, then we go back to the death penalty as it exists in Connecticut, the law on capital felonies, as presently sustained, and I would move its adoption.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

The question before the Chamber is on adoption of House Amendment Schedule "A." Will you remark further on the amendment, sir?

REP. HETHERINGTON (125th):

Thank you, Madam Speaker.

I believe the concept is pretty straightforward. It simply says that the bill, Senate Bill 280, as amended, makes certain -- sets forth a certain bargain -- I use that term again -- sets forth a bargain. We eliminate the death penalty prospectively, but not -- not to the -- not as with respect to those on death row currently and that the -- the consequences of

conviction for what was a capital felony will have certain terms in confinement and punishment. And then if any of those terms change, if the bargain is broken, if the promise made to the people fails because any element -- and there are several essential elements -- if any element fails, then we -- then we go back to where we were before.

And I would ask, Madam Speaker, that when the vote is taken on this amendment, it be by roll call.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is when the vote be taken it be -- it be taken by roll call. All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

The 20 percent has been met. When the vote is taken, it will be taken by roll.

Will you remark further on the Amendment House "A"?

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

Through you, if I may ask a question of the proponent of the amendment.

DEPUTY SPEAKER ORANGE:

Please proceed, sir.

REP. FOX (146th):

Thank you, Madam Speaker.

And, first, I would like to state that I do appreciate the -- the comments of the distinguished ranking member of the Judiciary Committee and his -- his thoughtfulness on this issue and many other issues.

And, with respect to this amendment, my question would be would this kick in should a court find that those on death row should no longer be on death row?

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

That -- that is the way that I would interpret this amendment. I believe that is the intent of this amendment, because if that is -- if that is the finding of a court, then this bill and its stated intent would not be possible to be in effect.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

And that presents a question to me, and I'm thinking back to the early seventies when our United States Supreme Court had determined the death penalty was unconstitutional and many death sentences at that point were converted to -- to life sentences without the possibility of release. And -- and what happened there is that even though many states subsequently were able to reinstate the death penalty by amending their statutes to conform to the requirements of the United States Supreme Court, those death sentences were not reinstated.

And I don't believe that if a sentence of death is -- is converted to a life without the possibility of release that it can then be converted back again. So, I -- so, I do think there's -- there's a problem with the amendment, and I would urge opposition to the amendment.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Would you care to remark further?

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you.

Through you, Madam Speaker.

I thank Representative Fox for his question. As usual, he has a good deal of insight. However, I believe that the situation he poses is clearly distinguishable because, in this case, if the terms set forth in this bill -- if, in effect, the law, as created by this bill, fails, then it would simply revert -- our law would revert to the way it is. And then, if it were subject to constitutional challenge and if the reverter failed on constitutional challenge, which is the -- which is really the analogous situation that the good Representative suggests -- then, clearly it couldn't -- it would -- we would be unable to restore the status -- restore the law to where it was before.

However, that's a different situation. That's a different situation than simply saying if one part of the law -- of Senate Bill 280 as -- in its present form, if any form of that fails, then the whole thing fails. This is the opposite of a severability clause, if you will, think of it that way.

Through you, Madam Speaker.

REP. HETHERINGTON (125th):

Thank you, sir.

And a clarification here, I believe Representative Fox did not ask a question, so actually you were speaking for the second time on the amendment.

REP. HETHERINGTON (125th):

Okay.

DEPUTY SPEAKER ORANGE:

` So we will move on to --

REP. HETHERINGTON (125th):

Very well, Madam Speaker, thank you.

DEPUTY SPEAKER ORANGE:

My apologies to you, because I'm sure it's my mistake.

Will you remark further on House Amendment "A"? Will you remark further on House "A"?

Representative O'Neill.

Okay. We're on House Amendment "A," so if you have your lights on to speak on the bill itself, the underlying bill, please turn them off. We are on House "A."

Representative Adinolfi.

House "A."

REP. ADINOLFI (103rd):

This amendment, Madam Speaker, on House "A" here that we have here now is very appropriate. There are many people in this room that have changed in their mind their vote to abolish the death penalty rather than vote against abolishing the death penalty based on these 11 who are on death row being executed, especially, Komisarjevsky and Hayes -- who -- who I was very close to that and a few others.

And what I'm saying is that we will be misleading the people in this room that have changed their decision because the death penalty will still stay in place for those that are on death row if we do not pass this bill -- this amendment, I should say, we would be doing them a wrong. And I think those people would be -- have been misled by this coming out, because I believe that those who put in this bill, with the prospective in there, know that eventually this is going to go away, and they're misleading the rest of the Representatives that will be voting here today; therefore, I urge all my colleagues in this room to support this amendment.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will you care to remark further on House "A"?

Representative Sawyer of the 55th, you have the floor, madam.

REP. SAWYER (55th):

Thank you, Madam Speaker.

When we look at the courts and the expectations that we have of them, it is to evaluate a question of law. We do not -- and in this chamber, we particularly get rankled if we think that they are making law. So, when we look at this bill -- and I believe there will be constitutional questions with the underlying bill and is brought forward to the courts, we expect them to make an interpretation. But with this bill, if it passes, the underlying bill, that means 11 people are still on death row.

That's why this amendment is very important because it's very clear to the courts when they make their determination what will happen. It'll go back to -- if they feel it is unconstitutional, it will go back to existing law, and we'll start and make the clarifications that are necessary.

Madam Speaker, I think this is a very important, important piece of the puzzle that we're putting forth because of the separations of what the duties are of

our General Assembly and the duties are of our Judicial Branch.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, Madam.

Will you care to remark further on House Amendment Schedule "A." Will you care to remark further?

If not, staff and guests please come to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call members to the chamber. The House is voting on House Amendment Schedule "A" by roll call. Members to the chamber, please.

DEPUTY SPEAKER ORANGE:

Have all members voted? Have all members voted?

If the members have voted, please check the board to determine if your vote has been properly cast. If so, the machine will be locked, and the Clerk will take a tally.

And will the Clerk please announce the tally.

THE CLERK:

Senate Bill 280, House Amendment "A."

Total Number Voting	142
Necessary for Adoption	72
Those voting Yea	54
Those voting Nay	88
Those absent and not voting	9

DEPUTY SPEAKER ORANGE:

House Amendment "A" fails.

Will you remark further on the bill as amended?

Will you remark further on the bill as amended?

Representative O'Neill.

REP. O'NEILL (69th):

Yes, thank you, Madam Speaker.

It will come as no surprise to anyone who's been watching my votes on the death penalty that I arise to oppose the bill before us today.

Of all the various arguments that are made, I would like to focus my attention on the one that says that you really -- there is no deterrent effect for the death penalty; that we just don't know whether or not the death penalty has any effect or, in fact, that someone can -- has claimed, a couple of people presented evidence for the Judiciary Committee that

the death penalty does not have a deterrent effect.

Now, there have been, in fact, many studies and some of the earlier studies that were done by psychologists and criminologists. One inconclusive, couldn't find any correlation, that was in the 1970s early -- in the sixties and seventies. But starting in the later part -- the latter part of the 1970s and continuing to this very day, economists have studied the death penalty. They've used objective criteria. They've used elaborate mathematical analysis and what those studies have tended to show pretty clearly is that the death penalty does have a deterrent effect; that the death penalty when it was suspended by the United States Supreme Court in the mid 1970s -- from the late 60s to the mid 1970s, that the homicide rate in this country rose and that when the death penalty was re-imposed in the latter part of the 1970s and the 1980s, the homicide rate in this country went down.

And that these studies have been carefully reviewed and while some of them have been questioned -- and there are some studies that raise issues about the methodology or the purity of the data that was studied, that basically the bulk of the studies that have been done on the death penalty and its deterrent

effect conclude that it does, in fact, have a deterrent effect.

Now, we can never know for sure if someone was thinking about committing a murder or having committed one of the crimes that in combination with murder would have gotten them the death penalty. For example, someone who had committed a rape, decided not to kill the victim because they were aware that that would perhaps get them the death penalty; or perhaps, committing a murder and then being apprehended by a police officer, decided not to try to shoot it out with the police officer because he knew that the death penalty would be a potential that he would get if, in fact, he killed a police officer after having killed someone else and now he kills a police officer, he's likelier to get the death penalty put on the table for him if he gets finally tried. We don't know.

There's no way of knowing how many people in their heads made -- went through that calculation and came to the conclusion that they would not commit one more crime, one more murder, because they were afraid of that possibility of the death penalty, so that we have to do this by indirect evidence by looking at the statistics, the rise and fall of homicide coincident

with the imposition and withdrawal of the death penalty from our legal system, and we have that judicial experiment that occurred.

And, as I say, these studies, over and over again -- even the studies that try to refute those studies have to acknowledge that the earlier studies, the studies done in the early 2000s, pretty clearly show that there is a strong deterrent effect with the death penalty.

Now, if you think about it, if putting aside the issue of -- of justice. The notion that the death penalty is for some crimes the most appropriate -- and that's the thing I usually use as an explanation for my vote in support of it -- that there are some cases where the death penalty is the only appropriate response of our society. If you put that aside, the deterrent effect of the death penalty is something that we need to consider.

On the other side, I think the strongest argument that's made is we might make a mistake. The criminal justice system is imperfect. We might accidentally convict someone and then after that conviction of --

DEPUTY SPEAKER ORANGE:

Representative O'Neill.

If I could have the Chamber's attention, I do believe it's getting a little difficult to hear. We are debating on a serious issue and, Representative O'Neill, you have the floor.

REP. O'NEILL (69th):

Thank you, Madam Speaker.

We might accidentally convict someone, but on the other hand, by having the death penalty, we have the strong possibility that we are going to deter someone; that we are going to save a life rather than take a life or have a life taken because of the absence of the death penalty.

Now, we can try to perfect our criminal justice system further. We're already taking steps this year changing the way eyewitness identifications are done and that has been a major source of the incidence where people have been wrongly convicted because the victim or some other person incorrectly identified the perpetrator, who ultimately turned out to be the defendant, who ultimately turned out to be the wrong person. And so we're changing some of those procedures for doing eyewitness identification.

And we're talking about videotaping the whole interrogation process and other things that will be

done as we go along, new and improved techniques, completely separate and aside from the use of DNA, which is not always readily available but is increasingly available for use by the criminal justice system to determine whether someone could have been the individual who committed a crime.

So we're making steady improvements in our criminal justice system and has been said here several times, we don't have a criminal justice system where we have any doubt right now about whether the people sitting on death row are the right people, whether they committed the murders or whether the combination of their mitigating factors and the aggravating factors that were applied to them were somehow wrong; that the information was incorrect; that we got the data wrong.

We have a system that only selects very, very serious crimes, only the worst crimes that we can find to impose the death penalty to propose it, and then, finally, to have a jury impose it. So I think that we can do things to try to achieve a more perfect system of justice. We will never have completely perfect system of justice, but if we repeal the death penalty going forward, then we will not be able to

deter those people who could only be deterred by that threat. And I have to believe, based on the data and the studies, that there is a deterrent effect. That the evidence, the scientific evidence, the objective mathematical calculations, looking at the rise and fall of murders, looking at all the various factors that might contribute to it -- not just overall crime rates, not just the size of the population of juveniles who are likelier to get involved in violent crime or younger males that are more likely to get in violent crime. -- With various kinds of techniques of regression analysis and -- and mathematical analysis of the data, you can get to a point where you can say with confidence that the death penalty is a deterrent. It does cause people to refrain from committing homicides, and if we take it away, then all those people who would have been deterred won't be.

The other side we can make our criminal justice system steadily better, and we have been and I'm sure we will continue to do so going forward.

Now, there's another aspect that I just want to touch on briefly, which is that justice concept, that is the only appropriate punishment. I think, at least

for me, when people talk about justice what I think they're talking about is that you treat things equally that deserve to be treated equally. So if a person commits a murder that they should be treated as other people who've committed murders. If they commit shoplifting, we would not give them the same penalty, or if they commit a bank robbery, or if they commit an unintentional homicide, like a manslaughter, then we won't give them the same penalty that we'd give to someone who commits a horrible murder or two or three or four; that we distinguish between different kinds of murders, as well as different kinds of crimes, and that's what people think of as a big piece of justice; and that we treat things that are equal -- by the same token, that we treat things that are equal the same way. So that if a person who commits a horrible murder that it is much worse than other homicides that are committed that he shouldn't be treated the same as someone who committed a lesser kind of crime, and that people who commit those kinds of crimes should be treated equally.

And that goes to the point about keeping 11 people on death row for the next how many ever years it's going to be while letting everybody else who

commits the same level of crime have a lesser penalty. Because at the end of the day, I think, most people in this room would agree with the concept that if the guilty go unpunished, it is the innocent who suffer. And if the more guilty go less punished, then still, the innocent still suffer.

Now, the problem that some of us have with the proposed alternative to the death penalty, which is life without the possibility of parole, is that we don't know what a future legislature is going to do. We know, for example, that this Legislature changed the law to allow people who had been sentenced to relatively longer terms of imprisonment to get good time credits -- or not good time credits, to have these earned time off for participating in programs in prison system. This was done without public hearing. It was done rather quickly. I'm not sure everybody understood what we were doing when we did it last session, but this -- this is one example of how the laws, the criminal justice laws, the punishment, the availability of some type of release earlier from prison than was otherwise available, that these things can happen very easily in this Legislature.

And, in fact, with respect to people being

sentenced to long periods of time, life without possibility of parole, we have dozens of people who are convicted of that -- I believe they were convicted. They were juveniles at the time of their conviction. We had a bill this session. We had a bill within a week or so of our debate on the death penalty in the Judiciary Committee which proposed to change that so that these people could now be released from prison much earlier. They were sentenced to life without a parole. Now, they're going to be eligible for a parole after a certain number of years. That proposal was made this very year. This is not some theoretical possibility to change the law or imaginary thing. This is something that was pending in front of the Judiciary Committee at the very time we were being told when we say life without the possibility of parole, the Legislature means it and that will never change and you can rely on that with confidence that those horrible crimes will be punished with life without parole and that the criminals who've perpetrated them will stay in prison for the rest of their lives.

And here we have another law that said the same thing and we're talking very seriously about changing

that and making it easier for people to get out and making people who are not eligible to get out at all, eligible to get out, so that happens. This is not a theoretical imaginary possibility.

So, with that in mind and knowing that we can never completely stop a future legislature from taking action other than by way of some sort of constitutional amendment, I would like to call an amendment. It's LCO 3121. If the Clerk would please call, and I'd be allowed to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO Number 3121 designated as House Amendment Schedule "B."

THE CLERK:

LCO 3121 House "B" offered by Representatives Cafero and Hetherington.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the Chamber to summarize. Is there objection? Objections?

Seeing none, Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Madam Speaker.

What this amendment does is -- is very simply requires that if we're going to actually change the

penalty, such as life without possibility of parole or release, that it would require that change in law if it has that effect, would require a three-quarters vote by the General -- both houses or each house of the General Assembly. I would move adoption, Madam Speaker.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is on adoption.

REP. O'NEILL (69th):

Yes, Madam Speaker, if I may speak to the bill -- on the amendment rather?

DEPUTY SPEAKER ORANGE:

Please proceed, sir.

REP. O'NEILL (69th):

Thank you.

First, I would request that when the vote is taken that it be taken by roll.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is if when the vote is taken, it be taken by roll call. All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

Twenty percent has been met. When the vote is taken it will be taken by roll.

Thank you and please proceed, sir.

REP. O'NEILL (69th):

Thank you, Madam Speaker.

As I indicated earlier, there are many people who worry that even though we do not support to converting from the death penalty to life without parole that, in effect, the agreement, the bargain, if you will, as the -- as the ranking member of the Judiciary Committee termed it -- that death penalty would be traded for life without the possibility of release from prison that somehow that could change; that, in fact, many of the people who support getting rid of the death penalty also support, in other contexts, getting rid of long-term sentences, such as life without parole or life without the possibility of release.

And the purpose of this amendment is to strengthen that bargain. To be more certain that it will stay the way people think it is and that the proposal before us, if it becomes law, the underlying bill, will at least stay that way; that we will not find two or three years from now a proposal before the

Assembly that could pass with 51 percent in each house passing that changes that and starts making it possible for these mass murderers, these people who've killed police officers, these people who've committed these horrendous crimes, that they won't be able to be eligible for parole; that they will, in fact, spend their lives, all of their lives in prison.

And so if you support the amendment -- the bill, which is that these people are suppose to stay in jail, they're supposed to stay in prison forever; that death is being replaced by life without possibility of release; that these horrible crimes are going to be fully punished by incarceration for the lifetime of the prisoner, which is what this bill says it is the purpose of this Legislature to do, which is what the proponents say they want to see happen.

If you support that concept, you should have no trouble supporting this provision that requires a three-quarters majority of each house. All it really does is reinforce, buttress, strengthen, support the concept being advanced within the underlying bill, which is that these criminals should spend the rest of their lives in prison.

If you vote against this, then it suggests that

maybe this bargain is meant to only be for a single session or single year or, perhaps, two or three; that people want to retain the option of changing this once the death penalty is off the books and would also apply in the event, obviously, that the Supreme Court does what many of us suspect it is going to do and, that is, ultimately, convert the sentences of the 11 sitting on death row into life without parole.

It would be an enormous injustice if any of those, eventually, became eligible for an earlier release if they were ever able to get out of prison.

So, again, Madam Speaker, if you support the bill, if you actually support the idea of keeping people in prison for life this helps guarantee that that deal will be kept, that that bargain being made here today would be kept.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you.

Will you care to remark further on House "B"? House "B"?

Representative Fox.

REP. FOX (146th):

Thank you.

Thank you, Mr. Speaker -- or Madam Speaker, excuse me, sorry.

I do recall this question did arise during the public hearing, and I do recall asking the question myself of the Chief State's Attorney as to whether or not he was concerned that these individuals may somehow find their way out of -- out of prison at some point. And he -- he felt very confident that "natural life" means "natural life" and that the only way these individuals will come out of prison would be after they died.

Now, I do have some questions. Well, I do have one question of the -- for the proponent of the amendment, if I may proceed?

DEPUTY SPEAKER ORANGE:

Please proceed.

REP. FOX (146th):

Thank you.

When we require more than a majority vote -- and I think, actually this is the right representative to ask of this question, can we bind future legislators with that -- with that rule?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Madam Speaker.

Well, we can to the extent that the legislature will be limited to having to do a two-step process. First, it would have to be unchanging the underlying legislation that we're talking about, that is, making people eligible for parole. And then, they would have to be either a phrase, such as notwithstanding the provisions of the bill before us or, specifically, repealing the provisions of the bill before us. It would, yes, require -- it would be possible but, at least, there would be a highlighting of that possibility. People would have to be clearly aware that if they were going to try to do it, that is, reduce the sentences or make it possible for those sentences to be reduced that they have to get rid of the language that is being proposed in the amendment. But, yes, a future legislature could override any legislation that we pass here today.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146):

Thank you, Madam Speaker.

And the other question I have, and the Representative may be aware or may know the answer, does this sometimes -- does this require more than a majority vote, require a constitutional amendment?

DEPUTY SPEAKER ORANGE:

Representative O'Neill.

REP. O'NEILL (69th):

No, Madam Speaker. I do not believe it does. I'm pretty sure that back in 1991, when the legislative spending cap was imposed, a 60-percent requirement was attached to the legislative spending cap legislation and, in fact, I believe, of course, our rules require such things as a two-thirds vote in order to suspend the rules. So I believe that the legislature can limit its actions this way and that they would be not necessary to do a constitutional amendment to require the legislature to do something by a super majority.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

Because I am not sure of the answer myself, I do

recall and the Representative is correct in the time frame somewhere around that time, there was a requirement that a three-fifths vote be required on certain -- in order to change certain provisions but nonetheless, Madam Speaker. I rise to oppose the amendment.

I do feel confident that we -- we certainly have a number of people who are currently serving sentences of life without the possibility of release. None of them are seeking or -- or if there's any discussion of any of them getting out for any reason whatsoever. We also have in place a provision where -- it is not our governor who would commute these sentences, you would have to -- first of all, they're not even eligible to appear before a board of -- a board of parole, formally the Board of Pardon and Parole. So the kind of possibility where one may envision that a governor on the final days of -- or finals hours of a term might try to commute these sentences is one that would not -- would not be applicable here and is not one that could apply here in Connecticut.

So I urge opposition of the amendment.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will you care to remark further on House "B"?

Will you care to remark further on House "B"?

Representative Brendon Sharkey, the distinguished Majority Leader, you have the floor, sir.

REP. SHARKEY (88th):

Thank you, Madam Speaker.

Madam Speaker, just briefly, I would also rise in opposition of this amendment for what I believe to be the simple reason that this amendment, if adopted, I believe would be unconstitutional.

I don't think that we have the ability to bind a future legislatures to a three-fourths vote without there being a constitutional provision to allow for that. So, with that in mind, I would urge my colleagues to vote against this amendment.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will you care to remark further on House "B"?

Representative O'Neill for the second time, sir.

REP. O'NEILL (69th):

Thank you, Madam Speaker.

I normally would not rise after the Majority Leader, but I do believe that I have to refute what he

said.

The three-fifths majority requirement, which was imposed as part of a spending cap back in 1991, which is a super majority that is more than 51 percent of each house needing to take action, was actually litigated. It was considered by the United States Supreme Court -- I'm sorry -- by the State Supreme Court a number of years ago. And there was, to my knowledge, no question about the ability of the legislature to pass legislation that said that the legislature had to have a three-fifths majority in order to do this.

We can, as part of our plenary powers, put whatever rules we want on ourselves in our own statutes, but by the same token, we can change them. And the whole purpose of the amendment is to at least require a two-step process in the changing the possibility of parole or earlier release for the prisoners that we deem to be otherwise worthy of the death penalty, people who have committed the same kinds of horrendous crimes.

And, as I said before, if you support the underlying bill, you should be able to support this amendment because all it does is strengthen the notion

that we have made a decision and that we're going to stick with it to keep these people in prison for the rest of their lives and that we don't have any desire to see the laws changed to make it possible for them to get out while they're still alive.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you.

Will you care to remark further on House "B"?

If not, staff and guests please come to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting House Amendment Schedule "B" by roll call. Members to the chamber, please.

DEPUTY SPEAKER ORANGE:

Have all members voted? Have all members voted?

If all members have voted, please check the board to determine if your vote has been properly cast. If so, the machine will be locked and the Clerk will take a tally.

And will the Clerk please announce the tally.

THE CLERK:

Senate Bill 280, House Amendment "B."

Total Number Voting	142
Necessary for Adoption	72
Those voting Yea	57
Those voting Nay	85
Those absent and not voting	9

DEPUTY SPEAKER ORANGE:

House Amendment Schedule "B" fails.

Representative O'Neill, you still have the floor, sir. If you -- thank you, sir.

Will you care to remark further on Senate Bill 280 as amended?

Representative Mary Fritz of the 90th District, you have the floor, madam.

REP. FRITZ (90th):

Thank you, Madam Speaker.

I rise and I feel very strongly about the bill that is before us. I feel strongly against this bill. And I think what Representative O'Neill tried to do in his last amendment is one of the reasons why I feel so strongly that we should not do repeal of the death penalty.

We are called legislators, but we're also called lawmakers. We make law. We come to this General Assembly not only to make law but to change law. That is what we do; that is our job. So who's to say -- and as Representative O'Neill pointed out earlier -- that here we were in Judiciary talking about the death penalty, and then later on we're talking another -- about another bill to reduce penalties. That is what I fear will happen.

Today, the mindset of this General Assembly is to say life imprisonment without the chance of relief -- release, eliminate the death penalty, but who's to say ten years down the road, 15 years down the road, another group of legislators come in and they say, what was wrong with those people in 2012? They really must have been on some kind of a track where they really wanted revenge, punishment to the highest level. Imagine imprisoning somebody for the rest of their life without the chance of release.

And what would they do? Oh, let's see. Now, for a heinous crime, similar to the Petits, you might get 25 years.

Who's to say that mindset will not be there then, because look at the mindset today, after all the years

we've had the death penalty on the books. We are lawmakers; we make laws; we change laws. That is the reason I will not be supporting the repeal of the death penalty.

DEPUTY SPEAKER ORANGE:

Thank you, Representative Fritz.

Will you care to remark further?

Representative Mary Mushinsky, the Dean of the House. You have the floor, madam.

REP. MUSHINSKY (85th):

Thank you, Madam Speaker.

On September 3, 1986, a young mother of four, Barbara Pelkey was killed at her workplace in Wallingford in the course of a violent sexual assault. She was on the overnight shift. Her husband, Arthur, who I knew from the homeless shelter work was so traumatized that he later committed suicide, and he left four small children to grow up without either parent.

This was such a horrific crime that police and prosecutors were eager to solve the case. A young street person, Kenneth Ireland, was picked up, tried and convicted and spent the next 20 years in prison until the Connecticut's Innocence Project used DNA

evidence to show that Ireland could not have killed Mrs. Pelkey.

Kevin Benefield, who worked in a business two doors down, was the real killer as he was an exact DNA match. Benefield was convicted on January 18th of this year, and he will be in prison for the rest of his life.

The lesson of the wrongful conviction of Kenneth Ireland is this: the justice system occasionally makes mistakes. And if Ireland had been executed because of the horrific nature of the crime, there would be no way to correct this mistake.

I do believe the State has a duty to protect the community by removal and punishment of violent criminals. And, in my view, we should put greater effort into preventing psychopaths by early intervention to prevent child abuse that forms some of these killers, but we must always be aware that government does make mistakes and that the death penalty is irreversible. Please remember that and support this bill.

DEPUTY SPEAKER ORANGE:

Thank you, madam.

Will you care to remark further? Will you care

to remark?

Representative Richard Roy -- he's not here.

Okay.

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you, Madam Speaker.

If I may, through you, to the proponent a question or two?

DEPUTY SPEAKER ORANGE:

Please proceed, sir.

REP. HETHERINGTON (125th):

Thank you.

Through you, Madam Speaker.

Senate Bill 280, as amended by Amendment "A," places certain authority in the Commissioner of Corrections, and I wondered if -- if the Representative would kindly describe that authority.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

And, through you, is the Representative referring to lines 46 through 51, is that --

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

You know I -- I don't have the PDF of these -- of Senate "A" for some reason, so I'm having a little trouble with the lines but --

REP. FOX (146th):

Well, I'll try to answer that.

REP. HETHERINGTON (125th):

All right. Thank you.

REP. FOX (146th):

Through you, again, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Please proceed.

REP. FOX (146th):

It actually -- as I said, I believe when I brought out the amendment, it -- what it does do there are certain requirements that the Commissioner of Corrections must impose upon those who are convicted of this offense and then placed in this category. The -- there maybe requirements for the Commissioner to exercise certain -- for certain reasons, for example, as I mentioned earlier, if -- if the -- if they suffered cardiac arrest, they may need to be moved

into a hospital-type area. If they -- the example I gave was an epileptic seizure. If they were to go -- to go insane, they may need to be moved out of their -- their cell, which is pretty much where they would be spending 22 hours of their day.

Now, what the -- what the amendment allows is it allows them to, potentially, be moved, but it also says in the amendment that it is subject to the requirements that are placed on them in their cell. So they still would have the same limitations; that they would be placed on high circumstances -- or special circumstances high security status. They'd be housed away from any inmates who are not on special circumstances high security status, and inmates moved or escorted or monitored all the other requirements that I -- that I set out earlier.

So should such a situation occur, the Commissioner of Corrections would have some discretion to move them out of their cells, but beyond that, the discretion is limited.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you.

And through you, Madam Speaker.

I appreciate that. I realize that. I apologize for the general scope of that question. I realize it, and I appreciate Representative Fox's efforts to answer that, which he's done.

But I'm looking at the Reclassification Program in lines 22 through 30. The Reclassification Program would seem to contemplate that a prisoner serving under certain conditions, because of being classified for those conditions might -- might -- that might be reconsidered. The conditions of confinement might change; is that right?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

The way I would read it is that the conditions of confinement would be limited to either administrative segregation -- which we went through earlier, which is where they would first -- first be housed and where they would first be evaluated. And should they find that they can be removed from administrative segregation, they would then be placed into the

special placement high security status that was discussed earlier. So it's those two options.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you.

I appreciate the Representative's answers.

I think there's -- there's reason going forward in that amendment to be concerned, as well, about the status of the prisoner and the conditions of confinement. I'm looking at lines 46 and continuing. The annual review of the conditions of confinement and for compelling correctional management or safety reasons modify any condition of confinement.

My concern here is, Madam Speaker, that in passing Senate Bill 280, as amended, we have created, at least, two agreements, two bargains. I refer to one as a bargain before and that is a bargain between those who believe that morality prohibited the State from taking a human life under any circumstances. And -- and the fact that for whatever reason it was necessary to compromise that and say that it would be okay if the human life were taken for some event that

took place before the effective date of the legislation.

Well, there's another -- there's another agreement, another bargain, if you will, here. This is being put forth, Senate Bill 280, to the people of the State of Connecticut to understand what happens when someone commits a dreadful crime. And the people of the State of Connecticut, I believe, have a right to rely on what's in this bill.

In fact, when -- when this bill is being argued, when it's being promoted, when those who advocate for it are urging its adoption, they're saying, see, well, we're -- we're not going to have a death penalty, but we are going to have people confined for life on death row, or confined for life under restrictive -- special conditions. And Senate "A" attempts to add that -- that clarification, that additional restriction to say that it's not just going to be confined in prison for life, but it's going to be confined under -- under special conditions, merited by the horrendous quality of the act, the heinous nature of these people's offenses.

So we -- we make a promise. We make promise to -- to the people of the State. We make a promise to

those who are victims of these heinous crimes and saying -- by saying, Look, we're going to abolish prospectively the death penalty but don't worry, these people are going to suffer a dreadful punishment.

Well, I -- while I appreciate Representative Fox's explanation and I realize they're carefully offered. I don't know why there has to be any -- any wiggle room in this. I mean if we're going to promise people that -- that -- that those who commit the most heinous offenses are going to be confined in a certain way and they're going to be that way for the rest of their life, why do we leave the opportunity for a question to arise depending upon the administrative will of the -- of the Commissioner of Corrections?

So with that in mind, Madam Speaker, the Clerk has in his possession Calendar -- LCO Number 3122, and I would ask that it be called and that I be given leave to summarize.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will the Clerk please call LCO Number 3122 designated as House Amendment Schedule "C."

THE CLERK:

LCO 3122, House "C" offered by Representatives

Cafero and Hetherington.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the Chamber to summarize, without objection, Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you, Madam Speaker.

This amendment is very straightforward. It's simply -- simply sets forth that these persons, who are convicted and sentenced to life imprisonment under the terms of the underlying bill, will, in effect, remain in Level 5 confinement. They will continue to be held in a special status. A special status not just allowed to mingle with the rest of the prison population; that they will have their liberty restricted in an appropriate way. This bill, in effect -- this amendment, in effect, seeks to provide conditions that equate to those now represented by Level 5 confinement.

And I would move its adoption and, Madam Speaker, if -- when vote is taken, I would ask that it be taken by roll.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is on adoption of House Amendment Schedule "A" -- "C" -- excuse me -- House "C."

Representative Fox --

Representative Hetherington, did you ask for a roll call, sir?

REP. HETHERINGTON (125th):

Yes, I did, Madam Speaker.

Thank you.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is when the vote be taken, it be taken by roll call.

All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

The 20 percent has been met. When the vote is taken, it will be taken by roll call.

Will you remark further on the amendment before us?

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

Just a comment on the amendment, first, if -- if

-- if we turn to the Senate Amendment "A," the proponent of the amendment is correct when he states that the -- the lines that he referenced do provide the opportunity for correctional management -- for compelling correctional management or safety reasons that certain conditions of confinement could be modified. But the language does go on to read, subject to the requirements of subparagraph (a) to (c), inclusive of subdivision 1 of this subsection. And those are the -- the requirements that are set out and referenced earlier when we discussed the special circumstances high security status.

So even if, for example, the inmate did sustain -- was required to be moved, they would still be subject to all of the same requirements. They would be limited in the time that they're allowed to be outside of their cell; they would be limited in who they can come into contact with. All of the other conditions that were described earlier would also apply here.

And I do believe there aren't -- there may be some Supreme Court -- US Supreme Court decisions that do require us to provide emergency medical care, things along those lines if -- if it is so required.

So I respect the intention of the amendment, but I would argue that it's not necessary because the full reading of the bill does still require that those conditions be -- be set in place, and I would urge that the members oppose the amendment.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will you care to remark further on House "C," House "C"?

If not, will staff and guests please come to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting House Amendment Schedule "C" by roll call. Members to the chamber, please.

DEPUTY SPEAKER ORANGE:

Have all members voted? Have all members voted?

Please check the machine to see if your vote has been properly cast. If so, the machine will be locked, and the Clerk will take a tally.

Are you ready?

Will the Clerk please announce the tally.

THE CLERK:

Senate Bill 280, House Amendment "C."

Total Number Voting	142
Necessary for Adoption	72
Those voting Yea	53
Those voting Nay	89
Those absent and not voting	9

DEPUTY SPEAKER ORANGE:

House Amendment "C" fails.

Will you care to remark further on the bill as amended? Will you care to remark further?

Representative Berger, you have the floor, sir.

REP. BERGER (73rd):

Thank you, Madam Speaker, and good afternoon.

I've struggled somewhat to find what I feel would be the right words to describe what we're doing here today. And I've been a part, over the last 12 years, of several debates both here in the house and on the Judiciary Committee for abolition of the death penalty. Some of those arguments led in favor of abolition and some denied abolition in the debates both in the chamber and in the Judiciary Committee.

Today, I rise not in support of abolition, and I

just like to talk from a different perspective. For some of the members that don't know, in my previous life, I'm a retired police officer in the city of Waterbury, served 20 years from 1978 to 1998. I was elected to the House in 2000. And when we look at the death penalty in my city, it reaches across many different socioeconomic areas, and it is very diverse in its murder, rage, in our city.

And if you were to poll my district in the city, you would find that there's probably upwards of 80 percent of the people in the city of Waterbury and, certainly, in my district, that support the death penalty. And it by no -- by no way do I rise here and cast aspersions on anyone that wants to abolish the death penalty, and I understand that.

There's a diverse General Assembly here. There's people with many different opinions. Districts that are -- are diverse in -- and different and distinct, this city and in the state. So in no way do I mean to cast any negativity on any one, but I wanted to give a different perspective for those here.

And when we look at violent crime and murder, there's no socioeconomic background, there's no racial boundary. And when we look at just the city of

Waterbury, let's break down a little bit the four individuals that are on death row and currently serving on death row. And all of these individuals, and all these murders, these capital murders, happened during my time on the Waterbury Police Department.

In December 13th of 1987, Robert Breton broke into his girlfriend's house at a residential area in the City of Waterbury, took a five-inch knife to his ex-wife slashed her throat, severing her carotid artery where she bled to death. His 16-year-old son, who was in the house at the same time, was awoken by the commotion. He went to try to stop his father. He was slashed severely with the knife, fell down a flight of stairs. His father chased after him, Thomas Breton, and thrust a five-inch knife into the neck of his 16-year-old son, who died at the bottom of that stairwell.

In 1989, Sedrick Cobb, who is sitting on death row -- December 16th, a week before Christmas, decided that he would stalk an individual named Julia Ashe, who had parked to do Christmas shopping in a well lit, high visible commercial area in the City of Waterbury in the East End.

In his premeditation, he took the air out of the

tires of her car, watched her go into the store to shop, and when she came out, he approached her to assist in trying to change the tire and help her. And Julia Ashe, being the kind woman she was, accepted that, only to be forced into the car, strangled, raped, bound and taped, brought to a spillway dam, frigid temperatures, still alive. Sedrick Cobb dragged her out of the vehicle, threw her down the spillway of a dam to die by herself in the middle of the night in ice cold, frigid waters.

Todd Rizzo, September 30, 1997 -- and the Minority Leader spoke to this individual and others have spoke to this individual -- in the Bunker Hill section of Waterbury, several blocks from my house, in a residential area, Todd Rizzo lured Stanley Edwards, 15 years old, to look for snakes. He had a sledgehammer in his hand. And as was previously stated, he wanted to see what it felt like to murder somebody. He dragged Stanley Edwards into the garage, smashed his skull in with a sledgehammer. That's in the Bunker Hill section of Waterbury in a residential area with a person that didn't even have a criminal record before and was a former Marine.

And last, let's talk about an individual that was

murdered in the morning of 4 a.m., on December 18th of 1992, several days before Christmas, a fellow partner of mine on the Waterbury Police Department, who served -- who I served with not only as a partner but in an adjoining area.

And on that night, at 4 a.m., an individual named Richard Reynolds, who is serving capital felony charge on death row, was walking with another individual on the North End of Waterbury, who Officer Williams knew as a previous person involved in the crack trade -- which was very, very prevalent in the eighties, as everyone knows here, and into the nineties and really has decimated many of our neighborhoods.

So he stopped him. He was in a one-man car at the time and it was 4 a.m. It was cold that night, very, very cold that night on December 18th, 4 a.m., 1992. Richard Reynolds bumped up against Walter Williams to see if he had a bulletproof vest on, which he did. He then was -- distracted Officer Williams by his accomplice, Richard Reynolds' accomplice. Richard Reynolds then took a 9 millimeter, placed it behind the ear of Officer Williams and pulled the trigger and killed him in cold blood on a street in the North End of Waterbury, over bags of crack cocaine and $100 in

his pocket.

That destroyed and really brought sadness to, not only to the City of Waterbury, but the Waterbury Police Department, because, you know, when you're out there on patrol sometimes, sometimes you think you're invincible. And you want to do right for your city, and you want to do right for preventing crime. And Officer Williams was doing all the right things that night.

And all these individuals that I described here were just normal people doing what they liked to do. It was before Christmas, they're shopping, they're playing with their friends.

It's not premeditation. Sometimes it's spontaneous, but it happens. And at the time, we, in the State of Connecticut, have a capital felony charge -- capital felony charge, which deals with the most egregious of crimes and hands out punishment equal to that crime -- a preponderance of the evidence, a jury of their peers, a judge.

It could be clearly stated that no DNA evidence will ever exonerate anyone on death row and -- and in -- in deference to some of my colleagues, certainly, the State of Connecticut is not like Texas. It's not

like other states that -- it is true, people have been exonerated. But be clear that no one on death row that currently is on death row and that could potentially be charged with a capital felony charge, whatever it be, could potentially be exonerated by DNA evidence if there was a trial. But no one that currently is on death row will ever be exonerated by DNA evidence, because they're guilty and they know they're guilty and that's not the issue. It's the appeal process.

Now, Walter Williams, a police officer in the City of Waterbury was taken from us, the brothers and sisters of the Waterbury Police Department on that morning, and his family has grown up and he never got to see that family. And they're all in their twenties now, good kids. One's a Marine; one's off to college. His wife still lives in Wolcott, Connecticut.

It's important that we not abandon this tool that we have, and I understand that there are those that want to abolish, but this tool is so important for us and, I feel, really in deterring crime. I'm in opposition to repeal.

What my citizens in my city and in my district believe is that we should not abandon the death

penalty, but we should work together to form and -- and put so much energy into what we do to abolish it to try to make it stronger, to try to deal with the appeals, to limit those appeals, to have it workable. The strength and power that we put in, the intelligence that's in this chamber, on both sides of the aisle, is tremendous. Working together, we can come up with a plan that works, serves the people, gives us hope, give those families hope that cry out for that hope from us, as their legislators.

It's passionate on both sides, and I know that, but in my district and when we look at the state, as a whole, that they scream out to us for justice. Let's not abandon this tool we have.

And with all due respect to my colleagues on both sides of the aisle and my colleagues that are for repeal, think about these stories, think about these families, think about what we do today, and remember, that it's important for us to, at the end of the day, stay together.

Thank you.

DEPUTY SPEAKER ORANGE:

Thank you, Representative Berger.

Will you care to remark further?

Representative Morin of the 28th, you have the floor, sir.

No, okay.

Representative Jack Thompson, you have the floor, sir.

REP. THOMPSON (13th):

Thank you, Madam Speaker.

It is very difficult to follow the eloquent remarks by Representative Berger.

I have a son, my middle child, which means number three, came home from Manchester Community College one day, many years ago. And said, Dad -- where he's studying criminal justice -- he said, Dad, I just joined the Army. A recruiter came in and told us all about a future to us criminal justice students by going in the Army and getting experience in the military police.

So off he went, four years in the military police and, then, over 22 years now in the local police department. And he can, as I understand it, he can retire now. And he's still, you know, young man.

But every night, I think of Mike and his work, whenever we talk about his work and, like Jeff, he has seen many different sights, which concern him, and I'm

aware of the danger that is involved in his life. So I do not think that the discussion of repealing the death penalty is a waste of time, and I don't think Jeff thought of it as a waste of his time.

I just think it sends the wrong message, and there's a book by Scott Turow, the famous author. Several of his books were made into best-selling movies, and he was also an attorney in Chicago, and he was both a prosecutor and a defense attorney and involved quite heavily in police work. And at that time -- and this, I believe, this in early 2000, he was asked to be part of a commission that the governor was appointing to study the death penalty, and he joined that commission and he wrote a book, "The Ultimate Punishment, The Death Penalty."

And he described much of the background to the history of the death penalty and the different arguments, and he expressed with the same rage that Jeff did -- Representative Berger did, some of his outrage that some of the things that were brought to their attention.

At the same time, he was impressed by the arguments on both sides of, you know, repeal or retain. And the governor, at that time, who was from

the opposite side of our -- my party, a republican -- who convened that study commission on the basis of the hodgepodge of things that have happened in the criminal justice system not only to innocent people but also to people who were evil -- had evil designs on outlooks, and so on. And he was really struck by the whole issue. It was a quagmire, and I think the he called it a boondoggle in the justice system. And there were too many mistakes, which is hard to believe when the death penalty is so seldom used throughout the nation. There are extremes in certain areas of the country, I guess, but not -- for example, I think someone earlier mentioned we've executed one person in the last 50 years because of the appeals, and so on, and so forth.

So what this study commission did was they came up with a series of recommendations to reduce the error, the possible error and, eventually, however, they had to complete their study and submit it to the governor. The governor then took executive action and commuted the sentences of everyone on death row at that time, and I think there was over 160 people. That certainly was an extreme measure on his part.

However, Illinois also became -- if I read it

correctly -- a no death penalty in Illinois at this time. So, they -- they made that decision after a very careful study.

And I know, here in this Assembly, we have looked at the death penalty over a number of years. So we're at that point where we're making another decision, and the decision is to repeal it. And it has, as several people mentioned, and I, you know, can sympathize with it because my big argument is along a moral, religious -- from a moral, religious perspective. Thou shall not kill. And -- but, in any event, I think it -- I would join Representative Berger and others around the -- the House here tonight to look at this penalty further and look at -- look at what happens to force people to commit murders, is there something in our society missing?

I remember as an 18-year-old Marine, I had no idea about, you know, the death penalty but, yet, I was given a rifle, I was trained to be a rifleman, I went off to war. And I would have done my duty there and never have given it a second thought. I don't think, but it didn't happen. I did go to war, I did not, to my best to my knowledge, was not involved in hitting somebody from the other side, but it could

have happened and I was 18 years old.

And so I think that we're on the wrong side of this issue. We should be looking at how do we prevent. And I do not think, as Jeff described, some of the actions of people were well thought out. Some of them were spur of the moment.

I had a friend, a police officer, who also was a Marine -- a year older than I was -- had a brother in World War II, a hero in the South Pacific. And I remember him being -- coming home and going into a police force. And one night, he shot up a place. He was just -- Walter Trolley. Luckily he didn't kill anyone but that ended his career. And, you know, he, thank heavens, did not kill anyone, and hopefully he received the treatment and care he needed.

However, it's such a gamble even to live -- to lose one person that that governor in Illinois just said that's it, we've had too many mistakes, we're not going to have anymore with this group. And off they went, and he commuted their sentences and later the state changed its law.

So I speak in support of repeal with a great deal of empathy with what Representative Berger said, but it's too big a risk that we will execute the wrong

person, and that we should be doing more to prevent that. And we are doing more, as I see now. More and more, we're trying to reach children at the earliest age and help families and have programs that keep kids out of trouble.

I grew up in New York. I lived across the street from a playground, and I could have been a professional athlete when I was about six. I got so much training and experience, and so on, but in any event that wasn't meant for me.

So I do urge that House members give this careful consideration. I hope that if it does go through, we continue this discussion, but I think right at this time, we're able to make a decision that, I think, is following the lead of many other states, so I urge a yes vote on the bill, as amended.

DEPUTY SPEAKER ORANGE:

Thank you, Representative Thompson.

Will you care to remark further on the bill as amended?

Representative Debra Hovey, you have the floor, madam.

REP. HOVEY (112th):

Thank you, Madam Speaker.

Madam Speaker, we've heard a lot of very eloquent debate today. And part of the conversation around the argument for the abolishment of the death penalty is that, one, life and imprison -- life in prison is actually worse or even more punitive than being put to death.

But, for me, these individuals are the most vile in our society and because of their choices and their behaviors, they will have received Connecticut's maximum sentencing for prison -- my computer just died.

So, Madam Speaker, with regards to that, I believe they should have not enjoy any of the privileges or pleasures of our lives, and so these people who are Level 5 max security should have no opportunities to exert their will or their power in any way.

And with that I would ask, Madam Speaker, the Clerk has an amendment. It's LCO 3155. Would you please ask the Clerk to call it, and I'd be allowed to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO Number 3155, which will be designated as House Amendment Schedule "D."

THE CLERK:

LCO 3155, House "D," offered by Representatives Cafero and Hetherington.

DEPUTY SPEAKER ORANGE:

Representative seeks leave of the Chamber to summarize, is there objection? Is there objection?

Hearing none, seeing none, Representative Hovey, you have the floor, madam.

REP. HOVEY (112th):

Thank you, Madam Speaker.

Madam Speaker, this is a very simple amendment. What is does is it prohibits the use of the correspondence privileges for an inmate to reach out via the Internet to a group or an individual with a personal ad or to entice pen pals or to purchase goods and services.

I move the adoption of the amendment, madam, and ask that the roll -- that the vote be taken by roll call.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is on adoption and the second question before the Chamber is when the vote be taken, it be taken by roll call.

All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

The 20 percent has been met. When the vote is taken, it would be taken by roll call.

Will you care to remark?

Representative Hovey.

REP. HOVEY (112th):

Thank you, Madam Speaker.

You know, Madam Speaker, many of us look at this amendment and probably are thinking to ourselves why would anyone want to communicate with someone who is on death row, unless they might be clergy. Why would anyone want to have their -- their personal lives talked about via Internet? What about an individual would allow them to have any interest in somebody who's on death row? And what I would tell you, madam, is that there are many people out there who are lonely and vulnerable that it appears that these inmates are able to reach out.

And, Madam, if you would indulge me, I just want to read to you the personal ad from Todd Rizzo, whose name has come up here several times. And this is how he describes himself on the Internet.

DEPUTY SPEAKER ORANGE:

You may proceed.

REP. HOVEY (112th):

Thank you, madam.

Todd Joseph Rizzo, who is on death row says: I love tattoos, piercing, country and R&B music. I love animals and I love to work out. I will write back to whomever.

What he leaves out is that he also loves to murder children.

So, through you, Madam Speaker.

I believe that this amendment would prohibit individuals, like Todd Rizzo, from accessing the Internet and individuals who are vulnerable and lonely and also the goods and services that we all enjoy as pleasures of our lives.

Thank you, madam.

DEPUTY SPEAKER ORANGE:

Thank you.

Will you care to remark further on House "D"?

Representative Fox, you have the floor.

REP. FOX (146th):

Thank you, Madam Speaker.

I certainly appreciate the intent of the

amendment, none of us would support Internet postings or -- or things along those lines, but it is my understanding that those inmates that are being referred to do not have Internet access. And it's my understanding that all of their mail is carefully screened, and if it's not appropriate, it is held back whether it's coming in or if it's going out.

So, as I understand it, they're limited to the extent that the constitution allows. I don't know -- I certainly don't dispute the proponent's posting but I -- I would say it's done by somebody other than the inmate if that's -- if that's, in fact, what took place.

I would urge opposition to the amendment.

DEPUTY SPEAKER ORANGE:

Thank you, Representative.

The board is full, so if you want to remark on House Amendment Schedule "D," please, like, give me a wave. House "D."

Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you, Madam Chair.

Just a few comments regarding this amendment, I would encourage my colleagues to support this

amendment if, in fact, the representation is correct that these inmates do not have access to Internet, then there should be reason that this legislative body cannot support an amendment like this to make sure that if there is either improper monitoring or if there is any access, that it stops now.

Social media and the Internet access, the ability to use it, is a privilege one of which our inmates should have no access to under these circumstances. We have schools in the state of Connecticut that is unable to afford computers, other types of software, training for the software in computers, yet, there might even be the slight possibility that these inmates on death row have access to this social media? I don't think I need to go into the detail -- the explanation of also the risks that the social media provides in our society nowadays and this should not be anyone on death row having any access.

So, once again, if we're going to join forces here and if we all agree if they should not have it and even if they don't have it, let's make sure they never will have it, support this amendment.

Thank you, Madam Chair.

DEPUTY SPEAKER ORANGE:

Thank you, madam.

Will you care to remark on House Amendment Schedule "D"? Will you care to remark on House "D"?

If not, staff and guests, please come to the well of the House, members -- whoop --

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you, Madam Speaker.

I don't know what happened. I guess it was some failure in the message.

DEPUTY SPEAKER ORANGE:

You are on the board, but I asked for you to raise your hand, so I don't have to keep on erasing the board on amendments.

REP. HETHERINGTON (125th):

Oh, I see, I see thank you. I'm sorry --

DEPUTY SPEAKER ORANGE:

Per the request of Representative Piscopo.

REP. HETHERINGTON (125th):

Okay. In any event, I thank you.

And I rise in strong support of this amendment. As I understand it, these inmates are able to create these websites, as obviously they do, because Representative Hovey has brought in an example -- by

requesting through mail, through US postal mail, someone on the outside to create the website. Now, it may be -- I don't know the extent to which prison authorities can scrutinize mail -- but it may be that even if they do see this request going to someone on the outside, it may be that it is not clearly unlawful at this time. This would make it unlawful. So we really -- it's happening, and we ought to take steps to prevent it.

One reason that we impose these conditions of strict confinement and, to a degree, isolation, is that it is part of the penalty to be deprived of the normal social contact that is enjoyed by people who don't commit murders and who wander around free on the outside doing what they want to communicate with others. So if we allow this to go on, we are, in part, defeating exactly what we are trying to achieve in creating these, frankly, harsh conditions of life imprisonment. These harsh conditions which take the place, if this bill is passed, would take the place of death.

So I would very strongly urge this. I think that -- as I say, the indications are that this does go on and that engaging in this does -- it does destroy one

of the purposes of -- of elevated restriction -- conditions of restriction.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

By the show of hands, is there anyone else that would like to remark on House "D"?

If not, staff guests please come to the well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives in voting by roll call. Members to the chamber. The House is voting on House Amendment Schedule "D" by roll call. Members to the chamber please.

DEPUTY SPEAKER ORANGE:

Have all the members voted? Have all the members voted?

If all the members have voted, please check the board to determine if your vote has been properly cast. If so, the machine will be locked, and the Clerk will take a tally.

Will the Clerk please announce the tally.

THE CLERK:

Senate Bill 280, House Amendment "D."

Total Number Voting	143
Necessary for Adoption	72
Those voting Yea	60
Those voting Nay	83
Those absent and not voting	8

DEPUTY SPEAKER ORANGE:

House Amendment Schedule "D" fails.

Will you care to remark further on the bill as amended before us? Will you care to remark further on the bill as amended before us?

Representative Srinivasan, you have the floor, sir.

REP. SRINIVASAN (31st):

Thank you, Madam Speaker.

Many of us, if not all of us, are tone by the decision we will have to be making relatively soon. The prospective nature of this bill, I know, is a big concern for me.

And through you, Madam Speaker, to the proponent of the bill.

DEPUTY SPEAKER ORANGE:

Please proceed, sir.

REP. SRINIVASAN (31st):

Through you, Madam Speaker.

If the courts find this bill, because of its prospective nature, unconstitutional what will then happen to the 11 inmates who are on death row now?

Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

First, there are 11 -- as we know, there are 11 death row inmates. All of them have their own appeals that are being taken, and they're all are at various stages of appeal. Also, there is a -- a case that is pending that has been pending for several years. The last I heard, it was scheduled to go trial this year that involves, I believe, it's seven or eight of the defendants arguing that the death penalty and the imposition of the death penalty, due to certain disparities, is unfair, arbitrary and as a result that should not -- the death penalty should not be allowed. So all of these various cases have appeals pending.

The question about the constitutionality of this bill is one that may also -- it's because of the way these cases are so heavily litigated. I think you can

anticipate an appeal on just about anything. So should any of the appeals prove successful that are currently ongoing, then, at that point, the -- the inmate on death row would turn to the special circumstances high security status that is set out in Senate Amendment "A."

DEPUTY SPEAKER ORANGE:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Thank you, Madam Speaker.

Through you, Madam Speaker.

So that I'm clear in what I heard, that if the court's find it -- and I'm just going to restrict it the -- the constitutional part of it because the other component I do have a question for the proponent of the bill, as well. So if the courts alone -- not through the appeals, that's a difference -- in my mind a different situation but if the courts find this unconstitutional, regardless of the appeal process, which I know that all of them have and they'll be going on for quite some time -- but if the courts find it unconstitutional, what will happen to these 11 inmates and maybe to the other case that you just referred to.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

The reason I -- I say through the appeal process because that is the way that any of these issues would be addressed by the courts. And whether it be our state supreme court or -- or a federal court, should an appeal prove successful, then, at that point, an inmate would return to the special circumstances high security status. And -- and the reason for that to be in there is that appeals have been successful. Certain -- certain defendants, who have been convicted of capital murder, capital felony, and then had -- and then been sentenced to death, have had that sentence overturned. Sometimes they've to go back for a new trial. Sometimes the -- the sentence was then converted to life without the possibility of release. So it does happen, and it could happen in a number of different ways, potentially, just given the -- the various states of the individual cases.

REP. SRINIVASAN (31st):

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Srinivasan.

REP. SRINIVASAN (31st):

I'm sorry.

Through you, Madam Speaker.

So, as I understand it, if this bill were to pass today and to be signed into law soon, it is in a worst case scenario, these 11 inmates would have to be serving life without parole in -- in and that would be the worst case scenario?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

They -- not only would be -- it would life without the possibility of release and they would fall into the category of the special circumstances high security status where it would -- they would be subject to the conditions that have been addressed earlier.

DEPUTY SPEAKER ORANGE:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Thank you, Madam Speaker.

Through you, Madam Speaker.

The Chairman of the Judiciary Committee had already referred to this that in the unlikely event that the -- that an appeal is successful or one of the inmates -- more than one and the death penalty is then reversed or no longer -- that they no longer on death row. And in the event, in the very unlikely event -- I agree, in the very unlikely event that in a retrial if there were to be a retrial and these -- and I'm just referring or restricting myself to these 11 -- 11 members only -- if there was retrial, then what law would apply to those people? Would there be the new law that could be passed, or would they still be, you know, it would be the death row?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

And I think it's important to point out too that the -- the capital felony cases are -- are tried in two phases. You have first, the guilt or innocent phase. Once guilt is established by a jury, you then

move to the -- to the penalty phase. So I -- I don't think there's any real question that any of the current 11 would -- would have a new trial on the guilt or innocence phase. So I think any potential remand would then go to the penalty phase, and -- for the 11, a number of them have are way past that potential appeal anyway. It's only the newer cases where they could potentially have a new penalty phase. I'm not saying that would happen. And I don't know that I could discuss the merits of each potential appeal, but so that -- so having said that, because they have been convicted of capital felony and that was the law at the time they committed their crimes, that is -- that is the law that would apply. And the sentence for capital felony is either death or life without the possibility of release, so those would only be two options.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Through you, Madam Speaker, for one more time to the proponent of the bill.

If -- if the appeal for the -- for the -- for not

the trial phase but for the -- for the punishment phase as I might call it. Is it possible that the people who are on death row, if they will be retrial for that -- for that crime, for that component of the crime, that they will not be on death row? And they will only be getting this life without parole according to the new law that could be passed?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

That's actually current law. Those are the only options that would be available to them. What this amendment does it actually strengthens for those who want to restrict their -- their incarceration. And it would say that they would not -- it would be either if they were no longer on death row, it -- they would limited to special circumstances high security status. They would not be part of the general population.

DEPUTY SPEAKER ORANGE:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Through you, Madam Speaker.

I do want to thank the proponent for clarifying certain concerns that I had.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will you care to remark further? Will you care to remark further?

Representative Widlitz, you have the floor, madam.

REP. WIDLITZ (98th):

Thank you, Madam Speaker, good afternoon.

DEPUTY SPEAKER ORANGE:

Good afternoon.

REP. WIDLITZ (98th):

You know, Madam Speaker, I have struggled with this issue over the years, and I rise tonight in support of repeal of the Connecticut's death penalty.

I really had to -- to make a decision in the year 2000, when a horrific crime happened in Gilford. You may remember the case of Jonathan Mills, who was addicted to drugs, was living at the time with his aunt by marriage and her three children in Guilford. And two days after Christmas, December 27th, in the year 2000, he entered her home armed with two 8-inch

knives, while she and two of her three children were sleeping in the same bed. His intent was to look for money to buy drugs. He wanted to go through her purse to find her ATM card. Unfortunately, she woke up, confronted him. He stabbed her 20 -- 46 times. As her children woke up next to her screaming and stabbed them and killed them.

It was such a shock, such a horrific crime. I think almost the worst part was the next day her 10-year-old daughter, Alyssa, came home after an overnight sleepover and found her family slaughtered. It was a traumatic experience for the family, for our entire community.

Our police department was so traumatized by having to deal with the scene of this crime that some of them needed counseling following this. They had just celebrated Christmas with their own children and fully understood the impact of this horrific crime.

Some of the parents whose children -- of the children who went to school with these children who were murdered, wanted to do something in memory of these children, and they struggled. Our whole community struggled to try to explain to these friends what had happened and what the punishment should be.

In an effort to do something positive for the community, we all worked together. We raised money. With the help of a state grant, we built a playground on Jacob's Beach where these children used to play. And Alyssa actually, moved out of state after that to -- to live with an aunt.

The reason I bring this up is because in trying to explain to these children, the friends of the children who had been murdered, there were many, of course, mixed reactions in our community. Some thought immediately of the death penalty; others were opposed. And that's when I had to really face this head on. As a state legislator in my community, how did I feel about this? And I -- as I looked at the children who were helping to build the playground with their parents, trying to do something positive, I just can't reconcile telling them that it's, okay, for the government to kill. After what they -- trying to teach them that killing -- killing is wrong. It's unacceptable, it's immoral.

So how can you explain to them, but then it's all right for the government to kill the person who committed that horrendous crime, and I can't deal with that.

So meanwhile, in 2004, Jonathan Mills who had drug problems had a troubled childhood. There were mitigating factors. And I found that when the jury did not recommend the death penalty, I was relieved. I was relieved because I would not see this family go through torture every time there was an appeal, having to relive this, opening up this horrible wound in our community.

So that's my personal reaction, and that's why I stand today in support of repeal.

Jonathan Mills, at age 31, was put away in prison for the rest of his life without possibility of parole. There is no fanfare over him. There's no attention given to him. He just -- that's it. I think in many ways that -- for a person of that age, that is a death penalty to spend the rest of your life in a prison cell with no chance of parole, no chance of doing anything with the rest of your life.

So, it's a difficult issue. It's a very personal one, but I think, in balance, that's how I come down on this decision today.

Madam Speaker, and I thank you for the opportunity of sharing my thoughts.

Thank you.

DEPUTY SPEAKER ORANGE:

Thank you, madam.

Will you care to remark further?

Representative Wood of the 141st, you have the floor.

REP. WOOD (141st):

Thank you, Madam Speaker.

I, too, have been very tormented about making this decision. When we debated this three years ago, I did vote to repeal the death penalty after listening to a number of people talk about their family members being murdered and how they didn't favor the death penalty. And the emails that I had gotten were mostly in support of repealing the death penalty.

But I think, for me, this year, two things have changed. One, I did get a number of emails asking me to support repealing the death penalty. And it was interesting. I didn't get any emails, per se, from people asking me to support -- to continue to support the death penalty, but when I would ask people, overwhelmingly, those people would say, Absolutely, we should have the death penalty.

So I think the people who want the death penalty repealed are very well organized, and I get that. I

struggle with the government, as Representative Widlitz just mentioned, how can we tell our kids it's okay for the government to put people to death when -- it's a dichotomy there.

But two things that make me really rethink my decision three years ago. The Quinnipiac Poll, about a week ago, that came out and people in this state do favor the death penalty by, I think, 60/40 was -- were the numbers I saw. So that's -- that's the will of the people.

And the other one, certainly, is William Petit and his family. He supports this death penalty, and I -- I would have a hard time going against his wishes in this. I think what he and his remaining family have gone through words can never describe that. And I don't think we will ever know what that's like.

It's a tool in the toolbox. And I think, at the end of the day, too, what a number of people have mentioned is that we need to work on preventing these kinds of crimes in our social services and our Department of Children and Families, and that's what we're here for, as well.

So I -- I will be voting against this legislation. It's a very difficult decision, and I

don't think any of us have not put a lot of thought into this. And I thank you very much for the time to express these feelings today.

Thank you, Madam Chair.

DEPUTY SPEAKER ORANGE:

Thank you, madam.

Will you care to remark further?

Representative Butler.

No.

Will you care to remark further?

Representative Adinolfi.

REP. ADINOLFI (103rd):

Thank you, Madam Speaker.

Through you, Madam Speaker.

I have a few brief questions for the proponent of the bill.

DEPUTY SPEAKER ORANGE:

Please frame your question, sir.

REP. ADINOLFI (103rd):

Through you, Madam Speaker.

The way I understand this bill is what you attempted to do here was take away the word "capital punishment murder" and substitute special -- "murder under special circumstances" and without the death

penalty involved any longer, the incarceration would be the same as if they were -- just changed the name of "death row" and call it "maximum incarceration;" am I understanding that correctly?

Through you, Madam Speaker, that is what the amended bill is attempting to do?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

The Representative is correct in that the underlying bill does change the term "capital felony" to "murder with special circumstances." The Senate Amendment "A," does create a -- it's called "special circumstances high security status," which is a more restrictive status than the -- those who would potentially be out in the general population. So it's not -- I don't know if I can say it's death row, but it's a much more isolated term of imprisonment.

REP. ADINOLFI (103rd):

Madam Speaker, through you.

DEPUTY SPEAKER ORANGE:

Representative Adinolfi.

REP. ADINOLFI (103rd):

Through you, Madam Speaker.

I believe they call that incarceration in a Level 5 facility with circumstances that you're attempting to do with your bill.

One question I have, through you further, Madam Speaker, is right now, I believe there are 11 people charged with capital felony that are awaiting sentence, maybe 10, I think Komisarjevsky was sentenced. So I think there's about 10 or 9 that are awaiting sentencing or that they've been found guilty and awaiting sentence.

What situation would those convicted murderers be? Would they be under capital felony or special circumstances?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

There are 11 inmates on death row who are convicted of capital felony and sentenced to death. Those sentences would remain the same.

REP. ADINOLFI (103rd):

Madam Speaker, I'm sorry --

DEPUTY SPEAKER ORANGE:

Representative Adinolfi.

REP. ADINOLFI (103rd):

Through you, Madam Speaker.

My question was misunderstood. I know about the 11, according to the -- what I have here from the Office of Legislative Research, it's about 10 months old and I've reduced it a little bit. They are still waiting for capital felony to be sentenced. They're unsentenced. Eleven who have been found guilty but have not been sentenced yet, and that does not include the 11 on death row.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Okay. So, if I'm correct, the question -- the question that there's 11 defendants, who have been convicted of a capital felony. They are awaiting a sentencing phase of their trial, whether it is and if -- if the prosecutor is seeking to pursue a death penalty sentence that would be a trial by jury, and those sentences could still be carried or -- that is still an option for those -- for those defendants.

REP. ADINOLFI (103rd):

Through you, Madam Speaker.

Thank you for your answer --

DEPUTY SPEAKER ORANGE:

Representative Adinolfi.

REP. ADINOLFI (103rd):

That's good. I have some other questions for you because I have in front of me the conditions of those on death row, and I want to go through and ask you the questions.

A death row inmate is right now held in a single cell, through you, Madam Speaker, will that continue?

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

Yes, that would continue. All of the conditions on death row would continue.

DEPUTY SPEAKER ORANGE:

Representative Adinolfi.

REP. ADINOLFI (103rd):

Through you, Madam Speaker.

I'd still like to run through them because they don't seem to be in the bill. And I just want for

legislative intent that these questions be answered so we do have it on the record that this is the intent to keep them in the same conditions only change the name from "death row" to "special incarceration," whatever you want to call it.

REP. FOX (146th):

Madam Speaker, that's fine. If -- if the Representative wants to run through them, I'll respond.

REP. ADINOLFI (103rd):

Thank you very much.

Death row inmates have two hours of recreation outside their cells, six days a week. Through you, Madam Speaker, but I'm troubled with that, what happens on the seventh day?

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

On the seventh day, I think -- I don't know if they get out of their cells at all but I'm not sure.

Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Adinolfi.

REP. ADINOLFI (103rd):

Thank you. I'll just continue.

Death row -- not death row, special incarceration would also include that if they have commissary facilities available to them at a limited amount, much less than somebody who's in prison for at a Level 4.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker

Yes, that is -- that is correct. And I would like to point out -- I'm happy to answer the Representative's questions but these are all directives from the Department of Corrections, as I understand it, and it is in an Office of Legislative Research Report that I am also familiar with that was put together. I have no reason to question the -- the report, so I will say that that is my understanding, as well, for this question as well as all the other questions but that's the extent of my -- how far I can go on this.

REP. ADINOLFI (103rd):

All right.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Representative Adinolfi.

REP. ADINOLFI (103rd):

Through you, Madam Speaker.

Death row inmates eat meals alone in their cells.

Through you, Madam Speaker, is that still true?

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

Yes, that is true.

DEPUTY SPEAKER ORANGE:

Representative Adinolfi.

REP. ADINOLFI (103rd):

They will have access to special programs, which is mostly religious programs and -- and therapy and that type of stuff, which I don't have a problem, and I assume that's still in effect.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

Yes, I believe that is correct.

DEPUTY SPEAKER ORANGE:

Representative Adinolfi.

REP. ADINOLFI (103rd):

Death row -- through you Madam Speaker.

Death row inmates are allowed up to three noncontact visits per week that are limited to one hour each, and it's through a phone and the phone could actually be monitored by a correction officer?

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

Yes, I, also, believe that is correct.

DEPUTY SPEAKER ORANGE:

Representative Adinolfi.

REP. ADINOLFI (103rd):

Through you, Madam Speaker.

When leaving their cells are they still going to be handcuffed and have leg irons on them?

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

The inmates on death row will continue to have the same restraints that they currently have.

DEPUTY SPEAKER ORANGE:

Representative Adinolfi.

REP. ADINOLFI (103rd):

Thank you, Madam Speaker.

I'm not going to continue this because you seem to be agreeing with -- with everything here and that's basically what I wanted but now I'd like to speak to the basic bill.

Through my career and through my life, I've been very, very close to two major capital felony events: One, when my nephew of 23 years old was bludgeoned to death and murdered. And I hear people say how they don't want -- people that are against -- or for the abolishment of the death penalty, say they don't want to go through and hear this every time. Well, for the last 35 years, anytime a murder I hear on TV or my sister hears on TV, it brings all the memories back. Nothing's ever going to change that. The only thing that will bring it someday is the solution where it's finalized and the murderers are put to death.

The other second one I had was right down the

street from me. I was there the morning of the Petit murders. I saw the murderers in their car crash into the police car. And when I found out what happened, the police let me in behind the lines -- I guess because I was a state rep and they saw my license plate -- this was only five doors from my house. And when I was told what happened and learned what happened, how Dr. Petit was tied up, battered with a baseball bat, split his head open and then threw him down the cellar, considered him dead, and then went upstairs and tied a 17-year-old and 11-year-old to their bed, raped the 11-year-old. Then one of them went to the bank with the mother, drew money out, came back and when he got back, he strangled the mother and raped her after he strangled her and killed her.

And we want these type of people not to face the death penalty? We, in this chamber, are showing sympathy for the murderers and not sympathy for the victims' families. We're wrong.

Then what they did, they -- with the girls tied to the bed and the mother dead, they poured gasoline over them and lit them and they burnt. Hayley, the older one managed to get out of bed, made it to the top of the steps but died of smoke inhalation.

Michaela, the 11-year-old that was raped and tied to the bed, was ashes on the bed, a body badly burned and taken out.

And we say here that Komisarjevsky and Hayes don't deserve the death penalty? Shame on us. They do deserve the penalty and so do many of the others for just for killing a police officer or killing a correctional officer in there.

What do we do if somebody in prison who has nothing to lose now, he's in prison for life without the possibility of parole, kills a correction officer? What penalty does he face? And I can assure you it's probably going to happen, because they don't have any penalty to face. So I really wish that people would reconsider their vote and vote not to abolish the death penalty, as I will do.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, Representative Adinolfi.

Will you care to remark further?

Representative Marie Kirkley-Bey of the 5th, number five, you have the floor, madam.

REP. KIRKLEY-BEY (5th):

Thank you, Madam Speaker.

I would just like to put a different spin on this. I used to belong to a group of women called Mother's United Against Violence. And the women used to meet at my community center, and they made a quilt with all of their kids pictures on them. Their sons have been the victim of random acts of violence. They didn't care if the perpetrator got 20 years, 100 years, or the death penalty. They just wanted them to catch them. And none of these crimes have been caught. None of these gentlemen have I heard from the women say, Marie, they got the man who killed my son or my father, you know, who was working in the liquor store. They want closure. They want to be able to go to sleep at night and know that person's off the street. If they have other sons, they want to know they want to know there's not going to a vendetta against him. And they don't sleep for that.

And I mean the first meeting I went to, I cried through the entire meeting just listening to the heart wrenching stories that they told, but I don't think these women would care how much time they got, if they got life in prison or whatever.

The last person we killed was Ross, and he asked us to kill him and that's the only reason we killed

him because he asked to be killed because 18 years on death row was too much for him.

So I don't see where this heinous acts of crime. I don't know anybody that says I'm not going to kill today because they got the death penalty. We have people who are going around having domestic violence committed on them, and we're trying to find a way to stop it and we've done this bill twice. And I give the Representative applause for trying to do it again and making it tighter, but none of those people are saying I'm not going to do that because they have this.

There's not a person in Connecticut who committed a crime, a murder, who said I'm not going to do it because they have the death penalty. I don't believe that, and if you do, you're crazy.

DEPUTY SPEAKER ORANGE:

Thank you, Representative.

Will you care to remark further?

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Madam Speaker.

Madam Speaker, a few questions, through you, to the proponent of the bill, please.

DEPUTY SPEAKER ORANGE:

Please proceed.

REP. BACCHIOCHI (52nd):

Thank you.

I just want to pick up a little bit where Representative Adinolfi was going regarding the new conditions in which a death row inmate -- which I now understand will be called a life in prison inmate. I've toured Northern and I've seen death row, and I've seen the administrative segregation units, and I'm sure you have, as well. And the inmates who are on death row have much more comforts provided to them than those who are in administrative segregation.

So which avenue will our new death row inmates find themselves in, the current death row conditions or the administrative segregation situation?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

The Representative is correct in that the administrative segregation is a -- is even harsher than death row and the -- the amendment as described

earlier says that the inmates will start off in administrative segregation after a period of, I believe it's six to nine months at Northern in administrative segregation. They, then, could be eligible for the -- the special -- murder under special circumstances -- well, the special circumstances high security status housing and that is where they would be, so it is not administrative segregation. It would be a different standard.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you.

Through you, Madam Speaker.

So it seems that the 11 convicted murderers who are on death row now, will actually see an improvement in their living conditions because they will be going from locked up in a room by themselves -- even though they do have television and other comforts -- but under this new bill, they could possibly be moved into a more general housing unit based on the reclassification?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

Actually, I would disagree with that the 11 on death row would remain on death row.

DEPUTY SPEAKER ORANGE:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you.

I am confused and I do want to understand this. Death row is a name we give to the block of cells where those who are currently awaiting death. They stay there. So the new people who get life in prison, they won't go to the same block of cells, they will go to a different housing unit?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

There's currently nobody who would be on that -- that new classification, but they would go to a different section.

DEPUTY SPEAKER ORANGE:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Madam Speaker.

I just think it's important for us to realize that the people who are going to be classified and charged with murder and life in prison will not really be on the death row, nor will they be in administrative segregation permanently. The commissioner will have an opportunity to remove murderers out of segregation and move them into a more general population. I just want to -- to point this out to the chamber.

Through you, Madam Speaker.

I'd also like to ask a question that was brought up earlier, most of you know Northern is located in Somers. Many of my constituents are correction officers in Northern and in the surrounding prisons. What will happen -- and I don't think it's if, I think it's when a person who has been sentenced to life in prison murders a correction officer?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

First of all, I would -- Senate Amendment "A" does not allow those convicted of murder under special circumstances to go into the general population, so I would disagree with that.

With the respect to the claim about what would happen if a correction officer were -- were killed. There are -- they would, in all likelihood, go into administrative segregation for the rest of their lives. I would anticipate, but they would be charged with murder. They could be convicted of murder under special circumstances but given their inability to conform in any way to the -- to the prison, they would be in administrative segregation, but that is just my opinion.

DEPUTY SPEAKER ORANGE:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Madam Speaker.

I do want to point out to the Chamber that as recently as March 19th of this year, just a few weeks ago in Tallahassee. A 24-year-old sergeant, Ruben Thomas was killed by an inmate who was sentenced to

life in prison, and it was not a unique one-time experience.

In January of this year, just a few months ago, in Arkansas, a prison guard was killed by an inmate who had been sentenced to life in prison.

In 2008, in Florida, in the Tomoka Correction Facility, an inmate killed a guard. That inmate was sentenced to life in prison.

I have serious concerns that when you give someone the maximum penalty that they could ever get under our law, life in prison, I don't know what will prevent those people who, in my opinion, are evil, sociopathic people. They've already proven they have no respect for life. What protection will this legislative body give to the men and women who work in our correction facilities?

Madam Speaker, through you, the Clerk has an amendment in his possession. It is LCO 3175, I ask that it be called, and I'd be allowed to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO Number 3175, designated as House Amendment Schedule "E."

THE CLERK:

LCO 3175, House Amendment "E," offered by

Representative's Cafero, Hetherington, Bacchiochi and Alberts.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the Chamber to summarize. Is there objection?

Seeing no objection, Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Madam Speaker.

This amendment would allow the death penalty in a certain circumstance, and that circumstance would be when an inmate on death row or -- I'm sorry -- I keep on forgetting the new classification of life in prison without parole kills an employee or a contractor of the Department of Corrections.

Madam Speaker, I move adoption, and I ask when the vote be taken, it be taken by roll.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is on adoption of House Amendment Schedule "E."

And the question now before the Chamber is when the vote be taken, it be taken by roll.

I would ask all those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

The 20 percent has been met. When the vote is taken, it be taken by roll.

Representative Bacchiochi, you have the floor, madam.

REP. BACCHIOCHI (52nd):

Thank you, Madam Speaker.

And, Madam Speaker, I know this is a difficult, emotional issue and a difficult decision for many people in this chamber. And I understand that when we send convicted killers to prison, there could be a feeling of we've done our job; we have protected our society; we have locked them up for life; they will never have the ability to harm another human being.

But, unfortunately, Madam Speaker, that's not true because we have men and women and they are our parents, our brothers, our sisters, our cousins, our friends. We have men and women who are working with these killers every single day. Even killers, who are in administrative segregation, still require contact with a DOC employee when they're allowed to shower or when they're allowed to move from one location to another, and there have been instances recently,

within the Northern Correctional Facility where guards have been severely, severely assaulted. And it is not a leap to imagine that those assaults could have resulted in the death of a correction officer.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, madam.

Will you care to remark further on House "E"?

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

The Representative is correct when she says that there are instances, at times, when corrections officers are in danger. In my discussions with corrections officers, though, it's not necessarily those on death row. It can be those who are there serving a five-year sentence who are the most -- the most volatile and the most, most dangerous.

There are 16 other states who no longer have a death penalty. Our corrections officers, especially for these individuals who are the most serious offenders, those who are on death row or those who would be convicted in future of murder with special circumstances, they are watched extremely closely.

And our corrections officers do a -- an excellent job of protecting, not only themselves, but their colleagues, and I would urge opposition to this amendment.

DEPUTY SPEAKER ORANGE:

Thank you, Representative.

Would you care to remark further on House "E"?

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker.

If I may, a question to the proponent of the underlying bill?

DEPUTY SPEAKER ORANGE:

We're on an amendment, Amendment --

REP. ALBERTS (50th):

It's germane, I believe, Madam Speaker, as it pertains to the amendment that's before us. The --

DEPUTY SPEAKER ORANGE:

Please proceed.

REP. ALBERTS (50th):

Thank you.

As I understand, and I would like correction if I'm in -- erring here. There's nothing in the underlying bill that addresses, specifically, the

situation that is before us in this amendment in terms of a -- the commission of a capital felony after an individual has been convicted; is that not correct?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox, do you care to answer?

REP. FOX (146th):

Through you, Madam Speaker.

Actually, the underlying bill is analogous to our current capital felony statute, which does, I believe, include a provision that involves killing of a corrections officer. So if that were to take place, then an individual could be charged with murder under special circumstances.

DEPUTY SPEAKER ORANGE:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker.

So if that individual was charged and a trial ensued and the individual was convicted of that capital felony, what would -- what would be the options available for punishment for that individual?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Through you, Madam Speaker.

He would face the penalties that have been outlined under this bill, including conviction of murder under special circumstances, and housed either in administrative segregation or special circumstances high security status.

DEPUTY SPEAKER ORANGE:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker.

So my understanding then is he would be subject to the same terms or same potential penalties as he was eligible, he or she were eligible to for the commission of that first crime. Essentially, the maximum penalty would be life imprisonment without the possibility of release; is that not correct?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

But it also would be analogous to someone on

death row who is facing a death sentence. They would also still be subject to the same penalties that they're currently facing.

DEPUTY SPEAKER ORANGE:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker.

So then someone would be subject to the death penalty under the proposal -- I guess I missed that.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Fox.

REP. FOX (146th):

I'm sorry.

Thank you, Madam Speaker.

No. My analogy was just current -- under current law, those on death row, if they were to kill a corrections officer, they would still be only subject to the same penalty that they would currently face.

But back to the initial question, the answer is that yes, if you were to -- if someone were to murder a corrections officer, they would be subject to administrative segregation on an extremely strict regimen, I would presume.

DEPUTY SPEAKER ORANGE:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker.

And I thank the proponent for his responses because I understand the frustration that is here. Essentially, the bill that is before us and this amendment seeks to address is there is nothing in the bill that would levy any additional weight or of law on the -- on the incident if this individual were found guilty.

And what I heard earlier in response -- the proponent of the bill his remarks were, in all likelihood, there would be administrative segregation for the rest of their lives. Again, and it was paraphrased by just his opinion. So I think that there's a lot of frustration that in many parts of this state, particularly in my district, which has seen the situations that we're now discussing up close and personal. And I think that the scenario that's been outlined by my colleague is -- is not that all unlikely, unfortunately.

And for that reason, I believe that as we move forward, we should support the amendment to address

something we hope we don't see but, unfortunately, probably will see.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Would you care to remark further on House "E"?

Representative Adinolfi.

REP. ADINOLFI (103rd):

Yes. Okay. I'd like to speak in support of this amendment.

I live in Cheshire, I've talked to a lot of prison guards that live in the town, and they're concerned. We have many people forgetting death row or anything like that have plea bargained and are in jail right now, life without the possibility of parole. The only thing is they didn't have to go to death row.

Now what have these individuals got to lose by killing a guard or knifing a guard or even wounding a guard? The worse that's going to happen to them is that they'll go into special incarceration, but they're still in prison for life without the possibility of parole. So to be a hero and kill a guard might just justify that and they wouldn't care.

And we're -- we're not doing anything about that.

This amendment should go further than those on incarcerated under special circumstances. But should go back to anyone, any prisoner that kills a prison guard or even assaults a prison guard or knifes a prison guard or wounds a prison guard should be tried appropriately. And if he's in jail for life without the possibility of parole, he should face the death penalty because everything else is too easy. He's got nothing to lose.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will you care to remark further on House "E"?

Will you care to remark further on House "E"?

Representative Larry Miller of the 122nd, good afternoon, sir.

REP. MILLER (122nd):

Good afternoon. Thank you, Madam Speaker.

Just a comment on the amendment. I rise in strong support of the amendment.

I know we've had correction officers come here and tell us horrible stories of what happens when they're on duty at the prisons. They're spat upon.

They're food is thrown on them. They're cursed at. They're kicked, and some of these prisoners will make, I guess shivs -- I don't know what they call them -- knives out of a comb or whatever and they try to stab the officers. So, you know, we put them in harm's way, and the least we can do is protect them. And God Almighty, these are not saints in these prison cells these are the worst of the worst. Nobody wants them in their neighborhood or, you know, we just -- these are terrible people, and they will do anything to get at a corrections officer, especially, when they're in jail on a life sentence. They don't care.

And, you know, you got to remember, too, we have a death penalty law but it doesn't work. What -- we had one or two people put to death in the last 30 or 40 years. I can't remember what it was but if that doesn't deter them, obviously, life in prison is not going to deter them also. These guys are just bad people.

So I would hope that this assembly supports this amendment and supports the correction guards.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will you care to remark further on the amendment?

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

Madam Speaker, I rise in support of this amendment, and I think what this amendment does, for me, it sort of addresses the underlying issue that I struggle with on this death penalty vote. There are life issues, the decisions of whether a state should be allowed to take a life but what this amendment speaks to is whether or not we're willing to shift the risk and to weigh the risk of the life of a correction officer, even the life of a police officer.

And I think this amendment very importantly addresses that issue because if I was a corrections officer today, I wouldn't feel very comfortable with the fact that Connecticut may be abolishing the death penalty because that is a ceiling. That is one issue -- that is one part of the death penalty that it may act as a deterrent to protect our correction officers and may be a person with life in prison that has no social conscience will think twice before taking a life in prison because they would face the death penalty and that could scare those individuals. And

by completely eliminating this penalty and taking it away, we're willing now to shift that risk and to put a correction officer's life in jeopardy.

And so I have great difficulty, I respect the individuals that morally believe it's wrong for the state to take a human life. I understand that position, but I also have a hard time standing here and saying that I'm willing to put a police officer's life at risk or a correction officer's life at risk by taking away the death penalty.

And I think, while the death penalty may be broken in some areas, this is one area where it certainly works and so I strongly support this amendment.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will you care to remark further on the amendment?

If not, staff and guests please come to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting

House Amendment Schedule "E" by roll call. Members to the chamber please.

DEPUTY SPEAKER ORANGE:

Have all members voted? Have all members voted?

Please check the board to determine if your vote has been properly cast. If so, the machine will be locked, and the Clerk will take a tally please.

Will the Clerk please announce the tally.

THE CLERK:

Senate Bill 280, House Amendment "E."

Total number Voting	137
Necessary for Adoption	69
Those voting Yea	54
Those voting Nay	83
Those absent and not voting	14

DEPUTY SPEAKER ORANGE:

House Amendment Schedule "E" fails.

Will you care to remark further on the bill, as amended? Will you care to remark further on the bill?

Representative Pam Sawyer of the 55th, you have the floor, madam.

REP. SAWYER (55th):

Thank you, Madam Speaker.

You know those places you've been. You remember

exactly when there was important occurrence that happened. You remember those times when you heard that someone special had died. Well, I certainly remember exactly where I was when I found out who it was that had traumatized Eastern Connecticut in the early 1980s.

We heard Representative Berger describe the crimes in Waterbury. We heard Representative Widlitz describe what happened in her area, but let me describe a region of the state that knew fear because young women went missing.

In the early 1980s, from about the period of 1981 to 1984, there were seven Connecticut women and one New York woman that were murdered and all but one of them had been raped. And they didn't know who did it, and this murderer didn't stop with these single girls. At one point, he raped and murdered two girls who were only 14 years old.

Well, at the time, I was a young mother and one of things that I liked to do to honor my mother was to bring her something that she cherished very much and that was fresh eggs. She lived in the city in Providence so I would drive back and forth from my home, down Route 6, and I'd get to Brooklyn and I

would buy fresh eggs from the farm. And I had met the family. I had bought eggs there for a number of years at that point, almost a decade, and I had a young daughter of my own and then I had a second one. And the trauma that I felt, at the time, I just hoped those young girls that were being brutally murdered wasn't going to come up as far as my town.

It was terrifying, ladies and gentlemen, a serial murderer is like nothing else you can explain because there's such fear that goes along with mystery, which goes along with how appalled you are, how repulsed you are when you find out what's happened.

So I remember exactly to the day, to the hour, when they said it was Michael Ross, a fairly young man that I had been buying eggs from. And it gave me chills -- and in a moment I'll probably have them going down my arms again. And I thought I would never hear of a crime that was as horrid as that.

And I was elected here so I've had the other experiences, as Representative Cafero has said, to vote on the death penalty in the past and, in my conscience, I could not repeal the death penalty.

I followed the Michael Ross case very closely, and it came home again a second time when my husband

was working for the state police. And he was flying Trooper One, and he was brought in because it was going to be time for Michael to be executed.

It didn't happen on January 26th. It was delayed, the year was 2005. And he was to be on patrol that night in the helicopter when Michael Ross was to be executed. He would be in the helicopter. He would be flying over the prison.

It wasn't until May 13, 2005, that Michael Ross was executed. You never know how you're going to react to something like that, and I remember very clearly to this day again, that the following day I felt a moment of peace because it was over, a moment of peace.

I never thought that I would hear of another crime that was so heinous, and to my horror, when I read the paper and heard the news of what happened in Cheshire, it gave me such a fear. A young family, it happened to be two girls, again, a mother, a father, unspeakable crimes that we've all -- I think felt to our core was the worst that we have ever heard.

At that point, I knew that I would never vote to repeal the death penalty. I can't imagine in my heart that I can look forward and say that there will be

never again anything so horrible as those two, what happened in this small state. They made national and international news they were so horrible. I pray, though, that it doesn't happen, but I cannot support repealing the death penalty.

I looked at this legislation, and I listened very closely to the debate and watched the amendments in the Senate last week on Wednesday. And as a legislator with now almost 20 years of experience, I can tell you that my first impression was, this is some of the messiest legislation I've ever seen, messy. It didn't answer a lot of questions. It left so many things open and hanging.

So now we're going to leave some people on death but everybody else forward is going to be on death row, they're going to have special circumstances, and, oh, by the way, the warden can move them around, and they're going to be moved every 90 days. Really?

No, ladies and gentlemen, I can't support that and I won't. I know that most of you came in here with your minds made up. We sit, as brothers and sisters, in this chamber, and we all vote partially on what we know from our experiences. We vote what we know from when we've talked to our constituents, so I

take those two pieces very seriously. I have taken very -- to heart and spoken to religious people in my life about my experiences in this case. So, personally, I have my own comfort level with where I am, but I've also, in the past, polled my district and that, too, has said to me that it is the right vote to vote against repeal of the death penalty.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, Representative.

Will you care to remark further?

Representative Davis of the 57th, you have the floor, sir.

REP. DAVIS (57th):

Thank you, Madam Speaker.

Today is a most certainly an historic day, and I think it goes, you know, without saying. You know, this is potentially the last debate that we will ever have here in the General Assembly regarding the death penalty here in the State of Connecticut. And I understand the moral argument of us taking someone's life. I understand the argument against state executions and should the government be in the practice of killing people? I understand the

religious argument. I, myself, am Roman Catholic, and I understand how strongly it is that, perhaps, you know, we should really reconsider taking the lives of others. And I understand the argument that it is not a deterrent. It may be a deterrent, but it's certainly not an effective one.

But I stand here today to discuss why I oppose the repeal of the death penalty because I do it by putting myself in the shoes of the victim's family.

I can only think to myself that if my wife or my mother or any other family member or close friend was kidnapped or held hostage, secured to a bed, raped, sodomized and then left to die an agonizing death through inhalation of smoke, as the children of the Petits did that day. I'd say to myself I would want nothing less than the retribution of equal and swift death of that murderer.

And this debate shouldn't be about emotions as our fine leader -- Minority Leader mentioned earlier. It may not be about revenge. It's about retribution. It's about justice, and I think it's important for us to keep the death penalty as a tool for our justice system.

But before I finish, I'd like to bring attention

to one particular inmate on death row. And the Representative from Waterbury was very eloquent in his discussion of this particular case that of New York City crack dealer Richard Reynolds.

Richard Reynolds murdered a Waterbury police officer named Walter Williams in cold blood on the streets of Waterbury. Now, this is something that is very personal to me. As some of you may know, my brother is a police officer. My uncle is a police officer. My father-in-law was on the job, as well. Something that is very personal to me and to many of you in this chamber. As many -- some members even are on the job themselves, and many of you have family members that serve in law enforcement.

And with that said, Madam Speaker, the Clerk has an amendment. It is LCO 3179, would you please ask the Clerk to call it, and I'd be allowed to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO Number 3179, designated as House Amendment Schedule "F."

THE CLERK:

LCO 3179, House Amendment "F," offered by Representative Cafero, et al.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the Chamber to summarize.

Is there objection? Is there objection?

Seeing none, hearing none, Representative Davis, please proceed.

REP. DAVIS (57th):

Thank you, Madam Speaker.

This amendment simply says that the death -- that the death penalty will still apply if convicted of murder with special circumstances for the murder of a state or local police officer while serving in the line of duty. Something that is very important to us, Madam Speaker, and I move the adoption of the amendment.

And I ask that when the --

DEPUTY SPEAKER ORANGE:

The question --

REP. DAVIS (57th):

Go ahead -- I ask when the vote be taken that it be taken by roll.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is on adoption of House "F." And the second question before the Chamber is when the vote be taken, it be taken by roll call.

All those in favor of a roll call vote, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

The 20 percent, once again, has been met. When the vote is taken, it will be taken by roll call.

Representative Davis.

REP. DAVIS (57th):

Thank you, Madam Speaker.

And just to mention what -- why it's so important that we maintain this equal and swift retribution for this type of crime when killing a police officer in the line of duty is the case of Brian Hazelton from East Hartford, 1999, he was killed simply by responding to a noise complaint in an apartment complex. He didn't show up on the scene or wasn't aware of showing up on the scene of a potential murder taking place or a shootout or something of that serious nature. Instead, he thought he was responding to the scene of a noise complaint but, instead, lost his life that evening. And his killers chose to plead down so that they wouldn't have to face the death penalty.

Well, ladies and gentlemen, the death penalty is only applied when a jury of their peers convict them and then that same jury of their peers -- what our justice system is based on -- then decides that their crime was so heinous that it deserved the death penalty.

Madam Speaker, I believe with this amendment that the killing of a police officer in the line of duty deserves the death penalty, and I thank you very much.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will you care to remark on House "F"?

Representative D'Amelio.

REP. D'AMELIO (71st):

Thank you, Madam Speaker.

We finally got it working here.

You know, Madam Speaker, today -- today's a tough day for all of us. Representative Berger did a great job in -- in talking about Waterbury and the community in -- in all of the cases that we've gone through.

You know, I rise in strong support of the amendment that's before us, and I do so for one reason, Walter Williams. He was mentioned here several times today. I knew Woody very well. I knew

him personally. He was a close friend to my wife's family. You know, Woody had two children at the time, his third -- his wife was pregnant, actually, with their third child. I believe she was eight months pregnant when he was gunned down.

You know, he was doing his job. He was a very popular police officer in the City of Waterbury. He worked a lot of extra shifts doing traffic. And one particular shift that he had was in front of a Domino's Pizza place. He was directing traffic there for years, and he always directed it in such a humorous way that everybody in the city came to know him.

You know, when he was gunned down on that December evening, it was so close to Christmas. And -- and when you have a relationship with an individual, such as a police officer -- and he was a young man. He was an aspiring young man. The entire City of Waterbury fell to their knees. I'll never forget the emotional impact that the murder of Walter Williams had on our community, the entire city.

In fact, when Walter was waked he was waked in City Hall. I've never witnessed anyone being waked in City Hall but the line to his wake had to extend

almost a mile long. It went all the way down Grant Street, down Meadow Street, almost to Bank Street. That's how many people came out on a cold frigid evening to pay their last respects to an individual that was serving us.

You know, imagine your father being gunned down. Here's 20 years later, these young men are doing well, thank God, but one of them never knew their father. We need legislation like this. We need this amendment to pass because people have to know that if you gun down a police officer while he's protecting us, then you have consequences to pay. This is a deterrent.

I'll never forget the reaction of the Waterbury Police Department that morning when this happened. I owned a diner at the time, and I used to get up early in the morning, and I was open at 5 a.m. This occurred maybe 20 minutes prior to me opening my restaurant. And I just remember the fury of police officers everywhere that morning. You knew that something was up. I didn't know what had happened, but you knew that something was up. And shortly after that some of the police officers were coming into the restaurant and they told me. And when they told me it was Woody, I couldn't believe it.

To this day, every time we debate this issue here, it just rehashes all those memories for me. The anger still comes up -- I mean this was 20 years ago, and when Representative Berger mentioned the other murders that occurred. I remember following each and every one of those cases.

You know we need this death penalty in the state of Connecticut. People say it's not working. It is working because these people are placed on death row, and someday if we do fix this death penalty, they're going to pay the ultimate price. You know, it's a tough issue for each and every one of us.

Even for myself on a personal level, you know, I consider myself a very religious person so to come to this conclusion, it's very difficult, but when you live through these cases that were -- that were happening in Waterbury. I know that each and every one of us in Waterbury, like Representative Berger said, over 80 percent of the population of Waterbury embraces the death penalty because of what we've been through.

Matter of fact, I think the Q Poll even says that over 60 -- 65 percent state residents favor the death penalty. So, in my mind, I don't know why we're

debating this here tonight. I mean, if we're truly here to represent the constituency that put us here, the people of the State of Connecticut, we shouldn't be having this debate. But we are because the votes are there. Let's not kid ourselves.

But this amendment before you, ladies and gentlemen, I think needs to be passed. I think people need to know that if they harm one of our police officers while they're serving to protect us in the dead of night, in the cold winter days, when they're out there on the streets, and if somebody takes their life and ruins their families -- where their families don't have the opportunity to be with them anymore, we need to keep this on the book because that absolutely will be a deterrent, so I urge everyone in this chamber to please adopt this amendment.

Thank you.

DEPUTY SPEAKER ORANGE:

Thank you, Representative.

Will you care to remark further on House "F"?

Representative LeGeyt.

REP. LEGEYT (17th):

Thank you, Madam Speaker.

This is a very difficult day for all of us. We

have not faced questions, like this, in the normal course of business. There are many arguments that can be made on either side of this bill and also this amendment. It may come down to a matter of conscience or principle, or it may be decided on the basis of details that and circumstances that develop.

I have been searching my own heart, and I've also reached out to my constituents for input regarding this issue we're debating tonight. And irrespective of the leanings of my constituents and the feelings that I have, I believe that there is one circumstance that deserves and merits some extra protection and that would be the circumstance that involves a police officer on duty in the work, under his badge, her badge. And the fact that unlike corrections officers, unlike other workers, a police officer is out there right in front of what's going on, right in the middle of it. And because of the danger that's involved, because of the potential for an indiscriminate and thoughtless act, such as such as happened with Police Officer Williams and others, I feel that if there is to be a carve-out in this bill that this is place to do it; that we need to send a message that whatever happens on the final vote tonight -- and we've all

alluded to the fact that we may well know what that's going to be -- I think, absolutely, we need to carve-out an exception to that in favor of these public officials who put their life on the line, and it could be around the next corner or at the next intersection or at the next call to attend a domestic disturbance or by surprise, whatever. These people deserve some extra protection; and, therefore, I'm going to be voting for this amendment, and I would encourage my colleagues to do the same.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Representative Fox.

REP. FOX (146th):

Thank you, Madam Speaker.

I, too, have heard the very compelling words of Representative Berger and others. I understand why we've -- we would want to seek the highest penalties for those who would kill a police officer, to murder someone in law enforcement. That is -- this bill would still continue to make the highest penalty that we have, under our laws, murder with special circumstances, it would make defendants -- it would

charged defendants with that crime, should they murder a police officer.

I would point out, Mr. Speaker -- or, Madam Speaker, the former police chief from Hartford testified in favor of this bill. Just this week, the current Police Chief in New Haven, testified that the -- or stated that the death -- death penalty does not protect police officers. So, Madam Speaker, I would urge this amendment be voted down.

(Deputy Speaker Altobello in the Chair.)

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Fox.

Would you care to remark further on House "F"?

Representative Noujaim from the Brass City, you have the floor.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker, and good afternoon.

Mr. Speaker, normally when you are at the dais I greet you with pleasantries, but this afternoon is an exception. My colleagues from Waterbury, Representative Berger and Representative D'Amelio, spoke very eloquently about the topic that was very

important, that is still is very important and very emotional for all of us in Waterbury, which is the murder of one of our police officers, Officer Walter Williams.

It was a very sad day and I remember crystal clear the following morning, we were at our church, Saints Peter and Paul, and our Pastor Fr. Highland, not so much was talking about the officer who died. He talked about his children, and he talked about his wife who was expecting.

I'm not going to speak, again, on the circumstances that surround it, the murder of Officer Walter Williams, but I will talk about what happened after and before.

I knew his mother. I was a stock boy at Sears at the Naugatuck Valley Mall when she was a security officer, and we worked together hand-in-hand. I knew the pain in her eyes. I knew the feeling that she had. I know the agonies that the family had encountered and still encountered due to the loss of their son, who was on duty protecting us and protecting our lives and protecting the citizens of the City of Waterbury against a murderer whose name I would not ever mention because he does not deserve to

be mentioned.

Mr. Speaker, it was very difficult for me to speak about Officer Walter Williams, especially now, with the fact that many members of the Waterbury Police Department are my friends. And they are our friends and they protect us. I cannot even envision or imagine one of them be harmed in the line of duty. How can we not allow this amendment to pass, to protect the police officers, who are every day putting their lives on the line to protect the citizens of our state and the citizens of our city?

And in honor of the Waterbury police officers, the brave men and women who support us and support our privilege to live freely in this wonderful country and this wonderful state, I urge that we support this amendment because our police officers must be supported.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Noujaim.

Further on House "F"?

Representative Cafero, you have the floor, sir.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

Ladies and gentlemen of the chamber, I stand in support of House Amendment "F." In this amendment and the preceding amendment, frankly, draws attention to the flaw in this bill, because, as Representative LeGeyt accurately stated, this is a carve-out. This is an exception just as the previous amendment was. This says that we will ban the death penalty going forward, except in the case of the killing of a state police officer or a local police officer. It's carve-out. It's an exception.

Now, you see, the anti-death penalty purists should be able to say, as tough as a decision as that is, as tough as it is to say even if someone shoots a cop, even if someone shoots a corrections officer or kills a local policeman, I feel so strongly about the death penalty, and I'm such against it that I have to make that tough decision and vote no on this amendment. That's what a purist would say.

But I have to tell you something folks, there's carve-outs in the bill, the underlying bill, that were trying to amend, at least 11 of them. Because in the underlying bill, we are saying we will no longer impose the death penalty in the State of Connecticut, except for those guys on death row. So if you're

purist -- if you're purist, I would totally understand why you would vote against this bill, because you do not believe that the death penalty should be imposed on anyone. But if you're also a purist, then you might have difficulty voting for the underlying bill, because it makes those exceptions. You're either for or against it, you can't have it both ways. And, by God, if the underlying bill is going to make exceptions to those already on death row and we can't find in our hearts and in our souls to say that when someone intentionally kills a police officer -- after a trial by their peers, after every opportunity for appeal, after every availability of technology and science for their defense -- if they're found guilty of killing a police officer, they should be subject to the death penalty.

If we can make the exception, as were doing in this bill for those 11 on death row, by God, why can't we do it for a police officer. I would ask you to support this amendment. Thank you.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative.

Representative Dargan of the 115th, you have the floor, sir.

REP. DARGAN (115th):

Thank you very much, Mr. Speaker.

I rise in support of the amendment before us. Like the stories that have been told here, I have a story to tell, somewhat unique. You know, this Easter, you're home. There's not many of you who probably have an uncle priest, which I do, a Catholic priest. There's probably not many of you that have a Dominican nun, like I do, that's at Albertus Magnus. And that's probably not many of you who might have somebody that has law enforcement and their families. So, at the holidays, it makes for very interesting table talk and a lot of issues come up, specifically, the issue that we're debating here today.

But how I was framed by this issue was in the year 1988, Exit 42, northbound on 95. I can remember the 9-1-1 call like it was yesterday. Trooper Kucan, a routine stop, the person takes off, gets off Exit 42 in West Haven. Two minutes later, shots fired. We, as the fire service, responded not knowing what was going on. Trooper Kucan, as he was trying to put the gentleman in handcuffs, his gun was stolen, shot at point-blank range in the head.

Also responded, my dear friend, Detective Keith

Sweeney, West Haven, come to the assistance, as we do in the law enforcement community and the fire service community. Every day, it's a very unique family. Men and women that serve in law enforcement and fire service. And if you're not in it, it's hard to explain that closeness, the friendships that you have. Detective Keith Sweeney was shot. When I got called to the scene, I didn't know where he was shot. In service terminology, we "bagged" him, because I wasn't sure where he was shot because he was bleeding from all over.

And that is in my mind to this day. And it's very difficult to stand here as a good Uncle Fr. Peter Dargan, Sr. Mary Faith Dargan, and the arguments of they've given over the years to me that we're the only Western civilized country that has the death penalty. But that day when Trooper Kucan got shot and Detective Sweeney, the chief of the fire department had me go look for his wife, Cathy, it was a teacher because it happened mid afternoon. At that time, he had two daughters Erin and Shannon that were four and two years old. And it was the hardest thing that I had to do.

Luckily, Trooper Kucan retired, but with brain

problems that he had. Detective Sweeney could not work again in law enforcement, but he does work for the State in our criminal justice system now dealing with juvenile crime. And he's a dear friend. And this debate and this issue is a personal issue, and it's more personal for me, as I said, with having a Dominican nun and a Catholic priest. As my Uncle Father Pete would say, Can you once in your life listen to Mike Lawlor.

And I said, Fr. Pete, I can't. I'm sorry, but I can't listen to Mike.

Because I do believe in this amendment. I do believe that we should protect the people that protect us 24/7. They put their lives on the line each and every day and if I had it my way I'd go even farther to protect fire service personnel that are on calls when there's gunshots out there. And that's just the story that I wanted to share, like a number of other personal stories.

I, also, would like to acknowledge Representative Fox for his fine work on this and Representative Holder-Winfield and their deep passion to repeal this. I, also, would like to think Representative Dyson that used to speak eloquently on the floor. But there are

a lot of stories that are told and the story that I just told. I will vote in support of this and not for a repeal the death penalty.

Thank you very much, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Dargan.

Further on House "F"? Further on House "F"?

If not, staff and guests please retire to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. The House is voting House Amendment Schedule "F" by roll call. Members to the chamber, please.

DEPUTY SPEAKER ALTOBELLO:

Have all members voted? Have all members voted?

Please check the board to make sure your vote is properly cast.

If all members have voted, the machine will be locked.

Will the Clerk please take a tally.

Would the Clerk please announce the tally.

THE CLERK:

Senate Bill 280, House Amendment "F."

Total Number Voting	139
Necessary for Adoption	70
Those voting Yea	64
Those voting Nay	75
Those absent and not voting	12

DEPUTY SPEAKER ALTOBELLO:

House "F" fails.

Further on the bill as -- further on the bill as amended? Further on the bill as amended? Further on the bill as amended.

Representative Klarides, you have the floor, madam.

REP. KLARIDES (114th):

Thank you, Mr. Speaker.

Mr. Speaker, through you, a few questions for the Chairman of the Judiciary Committee?

DEPUTY SPEAKER ALTOBELLO:

Please proceed, madam.

REP. KLARIDES (114th):

Thank you, Mr. Speaker.

Just for a few points of clarification, in lines 22 through 30, where we talk about the job of the commissioner in establishing reclassification process, through you, is this solely within the discretion of

the Commissioner to set up this process, set up the parameters and the standards by which these decisions will be made?

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

First, through you, Mr. Speaker, we're referring to the -- Amendment "A"; is that correct?

REP. KLARIDES (114th):

Yes, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative --

REP. FOX (146th):

Okay, and then the question was --

DEPUTY SPEAKER ALTOBELLO:

Representative Fox, I believe you have your answer to your question.

REP. FOX (146th):

Okay. The commissioner, according to the amendment, is required to place the inmate in administrative segregation, during which time, the commissioner will perform the reclassification process.

After the administrative -- after that process is

completed, which I am told takes somewhere from six to nine months, the inmate will either remain in administrative segregation or the inmate will be allowed into the special circumstances high security status that has been discussed earlier, so those are the two options.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker.

And, through you, just to clarify, the administrative segregation is a higher security or lower security than the -- than the other security segregation that the Representative was talking about. I'm just a little confused, and I need clarification on that, through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

It can be a higher security where inmates who are behavioral problems, who have gotten into disciplinary issues would be -- would be forced to go, so it is a -- there are fewer -- for example, I think -- I think

it's one hour out of your cell that you are allowed while in administrative segregation, so it can be a punitive sanction.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker.

So this group of people that go into this reclassification process that the commissioner sets up, will he be -- does -- will he set up parameters for how this works, and is he the only one that makes the decisions on whether people fall into one category or the other? And it will be a written -- I mean, is it -- is it something more objective or more subjective to make this decision, through you?

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

I believe it's more objective. It would involve the warden of the prison. There would be interviews that would be conducted of the inmate while they're in administrative segregation to determine how much of a threat they are. I mean, obviously, these are the

people who have committed terrible crimes and have been convicted of terrible crimes, so they will be taken very seriously, and it will be a status that is looked at very seriously.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker.

A little further down in lines 31 through 45, when we contemplate what the commissioner shall do after making that risk assessment and that reclassification. We see in line 38, it talks about which "shall include but not limited to," and it talks about the conditions that this particular inmate can be subjected to. Will that also be an objective process to make those determinations on -- on what these inmates will be allowed to have or not have, through you?

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

The conditions that are spelled are ones that -- that would be required. The commissioner or the

warden of the prison could impose additional conditions, but the bare minimum would be the ones that are set out here.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker.

But in line 38, and in that section as a whole, it says "imposed conditions of confinement on such inmate which shall include," obviously, so they must include, "but not limited to." So all of these, plus any other ones they may come up with, is that what it's saying, through you?

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

Yes, these would be the bare minimum conditions, but additional conditions could be imposed.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker.

In 44 and 45 -- lines 44 and 45, we have

parameters of no more than two hours of recreational activity per day. What does that include, or what may it include, through you?

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker.

And I think the best comparison I can give is what's currently on death row. On death row, there is a small outdoor concrete area where inmates can go. It's my understanding they go for, approximately, one hour a day, if they choose to, but they have to at least be given that opportunity. They -- on death row, they don't get exercise equipment or any of those things. It's essentially an opportunity to stretch or two move their arms or to do something which has been determined to be required by, not our Supreme Court, but the United States Supreme Court. Also, the activity -- the time outside of their cell, which is what the two hours is, could also include -- which is included now on death row, sitting in an area, another concrete area, that has no outdoor visibility, but would -- there are several books there. There are some law books and that is the extent of what

currently exists on death row.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker.

So the two hours is what already exists on death row, I think, is what the Chairman is saying. And you see that the two hours came -- is a United States Supreme Court decision, through you?

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

Yes. The two hours are what they already get, and it's my understanding that they have to be allowed to have -- they can't be in their cell 24 hours a day, unless they've done something while incarcerated that would require that.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker.

Mr. Speaker, you know, I know we have been discussing this for many years. I -- in my career in

this legislature, I have had the opportunity to sit on the Judiciary Committee, and I've had the opportunity to discuss this and debate this more than people who do not sit on the Judiciary Committee. And I remember when the first conversation -- I got elected in 1998, my first term was 1999, and I remember in the first conversation about -- a real conversation about the death penalty and possibly repealing it came up, and it was when Michael Ross -- the Michael Ross case was in the forefront of our conversations in this state and in the press and in this building. And the big concern was trying to get him a stay because -- by repealing.

And I remember feeling like, you know, that's the kind of conversation we've all had with somebody in our social group: Who supports a death penalty, who doesn't support the death penalty. But it's a completely different thing, at least to me it was, when you are, actually, one of the people that are making that decision about whether somebody we put to death or not. And I remember it, feeling it in my core. Thinking to myself, well, you know what? I've always believed that I was somebody who supported the death penalty, but when you have to sit there and

press that button and affect somebody's life who's actually right there, it's kind of a big difference.

I mean I don't know if everybody felt that way, but it was a big difference to me. But I do remember when there was so much buzz in this building about whether there were enough votes to repeal the death penalty. Are we going into session? Are we not going to session? What will the governor do or not do? And I remember thinking -- and I'll be honest -- I hope we don't have to do that. Because it's -- you know, it's -- it's significant. It's a significant thing.

And the first time there weren't enough I guess, enough votes, or we would've voted on it. But I do remember one thing, I remember talking to some of my friends that are not involved in politics, and I remember saying, you know, there are a lot of people that are probably on the fence about the death penalty, but if you were on the fence, the one thing that may push you over is somebody like Michael Ross, who killed eight women and raped at least seven of them.

And I remember thinking at the time, gosh, he's a poster child for the death penalty. If you ever could find an example of when you might believe the death

penalty should be put into play, he's it. But we knew that because we talked about it every day. It was in this building. It was in the paper. It was on TV. It was everywhere. And it was kind of in our faces. And a lot of people would sit there, and I remember saying to me, look, how could somebody do that? Somebody like that should get the death penalty, somebody like him, who did what he did. So we all know what happened with that and he got executed, first time in 45 years in all of New England.

And then a few years later what happened? We had another tragedy in this state in Cheshire that we don't need to get into because we all know the details of that. And here we are, again, saying the same thing. Well, if anybody deserves the death penalty, those two guys deserve the death penalty because what they did is so bad. We don't really support it for anybody else going forward, but those guys, they're bad.

Now, you know, I feel terrible for the Petit family, and that was a tragedy, but there are nine other people on death row. And their families, the victims in those cases, I feel just as badly for. But I have to be honest with you. I will not be voting to

repeal the death penalty because I may not be able to explain or coerce or convince anybody in this chamber, because I understand we all have our feelings for the reason we have them and I respect that, but I don't get it.

I do not get how anybody can say, I believe killing is wrong. I get that part of it, okay? What I don't get is, how killing can be wrong for someone else, but these guys, they are bad, so we can kill them. Because you know what? We executed Michael Ross. Nobody anticipated that there would be another situation where we could say, No, these guys are really bad, too. But you know what? That's with the death penalty is about. It's about those people that you can't even imagine they would do something so bad that they need to be put in a different category. And that's the category people looked at for Michael Ross, and that's the category people look at for Hayes and Komisarjevsky.

So, as some of my colleagues have mentioned, you either support, as a state policy -- because that's what we are. We are policymakers. You either support the death penalty and taking somebody's life or you don't. You can't support it for these guys are not

for these guys or if somebody else -- because you know what? We can hope and wish and pray every night before we go to bed but whether it's tomorrow or next week or next year or 20 years from now, there will be another tragedy. And we won't have the ability to decide, do those people fit into that category?

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, madam.

Further on the bill as amended?

Representative Betts of the 78th, you have the floor, sir.

REP. BETTS (78th):

Thank you, Mr. Speaker.

I'm going to try and speak about something that does not divide us, and it's an event that affected each and every single person, not only in this room, but throughout our entire country, and it was September the 11th, 2001.

And I'm sure we all remember what we were doing at that particular time, but it's a day that transformed my life and will always transform my life, for the rest of my life because of the horror that I saw live on TV in the people who I knew had been

affected by the tragic, sick, devastating attack on innocent people on September 11, 2001. And I remember when we were all here, one thing that happened, whether we be Democrat, Republican, Independent, whether you are living in America or you were living abroad, we were all unified about one thing, terrorism is a crime against humanity.

It's callous, it's reckless, and it's wrong.

The world unified -- the world unified despite our different cultures, our different laws. They all said the same thing that we felt. This was wrong. We watched the Twin Towers in agony, gradually, and evolving, collapsed to the ground. We saw the firemen and policemen and everybody doing their very best to respond to this unimaginable catastrophe. And I remember driving to work and thinking, God, I just can't believe this. And I ended up turning on the TV, and I thought I was watching movie but I wasn't.

And then, to my horror, I learned that a very good friend I was working with, had her daughter going into the building that very day. And as the day unfolded, our worst nightmare happened, she died, just by accident, just because she happened to be there.

And we watched so many other people die and

nobody could understand this, nobody. There is no rationale for this, at all.

And then we saw the airplanes coming down in a suicide mission. And people on the plane were talking on their cell phones to their loved ones. I can remember it like it was yesterday. I have never been so affected by one singular event than what I was that particular day, and I know that each and every single person in here I'm sure had the same feeling and the same impact on that day. We had not anticipated it, but it happened.

And now we're looking at is we’re looking at a situation which we're always on the watch and, God forbid, it ever happens here or anywhere in the world, but we're always on guard against a random act of terrorism. And let me repeat, terrorism is a crime against humanity. It kills kids. It kills adults. It kills innocent people, and it destroys their lives and their future forever, forever.

And I remember very well the day when Bin Laden was found and he was killed. And I certainly didn't feel any joy that he was killed, but I certainly felt like justice had been served for so many thousands of people, thousands and thousands of people. And I

think it's a mistake to remove the death penalty as an option for crimes against humanity, for against people who commit terrorist attacks. And I want us all to remember what we felt like back on September the 11th, 2001, because we were all unified in wanting to bring to justice the people who had caused this heinous, callous crime.

Mr. Speaker, the Clerk has in his possession an amendment, LCO 3124, and I asked the Clerk to please call the amendment and may I be allowed to summarize.

DEPUTY SPEAKER ALTOBELLO:

May the Clerk please call LCO 3124, which shall be designated House Amendment, Schedule "G."

THE CLERK:

LCO 3124 House "G," offered by Representatives Cafero and Hetherington.

DEPUTY SPEAKER ALTOBELLO:

Representative Betts.

REP. BETTS (78th):

Thank you very much. I move for the adoption of the amendment.

(Deputy Speaker Aresimowicz in the Chair.)

DEPUTY SPEAKER ARESIMOWICZ:

Question before the Chamber is adoption of House "G."

Will you remark?

Representative Betts?

REP. BETTS (78th):

Thank you very much, Mr. Speaker.

What this amendment does is it has the death penalty still apply if convicted of murder with special circumstances for the death of two or more persons in the commission in the act of terrorism.

As I just explained to you, how would we all feel if something happened here in Hartford, Connecticut, New Haven, sub base, anywhere in the state of Connecticut? How would we all feel if an act of terror was committed in the state and we wanted justice brought to the people who made this happen? Do we really want to sit there and say, Okay, we captured the people, or the person responsible for this; there's no mitigating circumstances that led to it other than the fact it was simply premeditated and the crime that they will be given -- the punishment that they will be given will be life imprisonment without parole?

Much like the person -- I can't remember the terrorist's name that was over in Scotland -- who committed the crime of killing people -- or planning the plane that went down in the ocean. And he said, Oh, he has -- he's really no threat. He's sick. He has cancer. As an act of compassion, we should release the individual that committed the act of terrorism that killed so many people and ruined so many lives.

Do we really, really want to put ourselves in that kind of position? I never dreamed that that individual would ever, ever have the option -- the possibility of being released. And I can't imagine how hurt, how angry the families were that were killed by that terrorist. And when he returned to Libya, I think I would've just been so sick and mad. He committed a crime against humanity and, yet, he was released.

That is what we're looking at if we remove the death penalty. The person may still end up getting life imprisonment, but on the other hand, do we really want put ourselves in the position of eliminating the option of the death penalty? Something that would at least allow us to feel some type of justice has been

served and to be able to begin the process of allowing people in society to move forward. I really, really don't think we want to do that.

And think about -- what? Okay. And think about also Charles Manson, the serial killer. I did not realize until recently that he was eligible for parole and he has applied for it 11 times, 11. I would be absolutely horrified if I were any -- if I was related to any of the victims of that.

Mr. Speaker, I would like to ask for a roll call on this amendment.

(Speaker Donovan in the Chair.)

SPEAKER DONOVAN:

The question before the chamber is on a roll call vote.

Those in favorable of a roll call vote, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

The requisite 20 percent has been met and when the vote was taken, it shall be taken by roll.

Representative Betts, you still of the floor, sir.

REP. BETTS (78th):

Thank you very much, Mr. Speaker.

I just would ask and appeal to everybody to think about what we're voting on here. We're voting on trying to bring justice to terrorists who commit the worst of worst crimes. It may not deter them. It may not deter them, but it is a form of justice that seems fitting for the type of damage and human destruction that they create and that they wreak havoc on.

I thank you very much, Mr. Speaker.

SPEAKER DONOVAN:

Thank you very much, sir.

Will you remark further on House Amendment "G"?

Representative Fox, you have the floor, sir.

REP. FOX (146th):

Thank you, Mr. Speaker.

We all remember where we were on the tragedy day of September 11, 2001. And we all remember, you know, the horror, you know. Being from Stamford, it certainly was one in which a number of people that I know who work in the city were impacted and affected by the tragedy of that day. And we all want to see

anyone responsible for such an act to be -- to be prosecuted to the fullest extent of the law.

And -- but I do need to point out that acts of terrorism are, actually, currently not one of the eligible crimes that one -- that would fall under our current capital felony law, and I think that the reason for that is that the acts of terrorism are covered under the federal government. And the federal government is the -- the appropriate prosecutor and the enforcer of laws dealing with the act of terrorism. So it's -- we all are concerned by acts of terrorism. We all want to make sure that anyone who commits these acts is prosecuted to the fullest extent of the law, but these do fall under the purview of the federal government. And they have and do and will continue to prosecute individuals who are in the act of terrorism, as well as those who commit murder in the act of terrorism, so I would urge rejection of this amendment.

SPEAKER DONOVAN:

Thank you very much, sir.

The board is full of folks speaking on the underlying bill, so if you'd like to speak on the amendment, please raise your hand and I will recognize

you.

Representative Hetherington of the 125th, you have the floor, sir.

Representative Hetherington, please press your button, sir.

I apologize for that, sir, please proceed.

REP. HETHERINGTON (125th):

Mr. Speaker, I raise -- rise in strong support of this proposed amendment. I'd like to point out that I think this amendment actually goes to a very important point. The question was raised earlier, and it has occurred, I'm sure, to many of us. How do -- how do we explain to children how the government has the right to take a life of a human being? Well, when it comes to terrorism, I'm sure most of us support the actions of our government in taking lives in the pursuit of the suppression of terrorism.

I guess in a perfect world -- in a perfect world, we wouldn't have to deal with the question, but we seem to have less than a perfect world. We have people that commit atrocities; people that commit genocide. We have people who -- who disrupt peaceful civilian populations, and we go after those people who do that kind of things. You know, it's not only bin

Laden who we applied the death penalty to, and I'm sure we would all applaud that. But, you know, with some -- with some regularity, we drop drone missiles on people we can't count and whose names we don't know, and we take those lives because we do it the safeguards -- to safeguard Americans, to safeguard others who try to live in peace. So in this less-than-perfect world we have, we do. We do take lives. Our government takes lives. And we have to explain that the children as best we can because that's -- that's the challenge of the world we face.

So I think this amendment really calls that point to home that we understand that terrorism is a situation where we have already made the national policy decision that we will -- that we will execute those who commit terrorism, and I think that that is the right policy. It's one I would support. And I think this amendment is consistent with that and reflects and makes the point to us that we do regrettably have to take lives when it protects the innocent.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you very much, sir.

Will you remark further on the before us? Will you remark further on House Amendment "G"?

Representative Miller of the 122nd, you have the floor, sir.

REP. MILLER (122nd):

Thank you, Mr. Speaker.

I rise in support of the amendment. I know Representative Fox brought up the 9/11 incident. My daughter was in the lobby of the Twin Towers when the plane struck and all the jet fuel ran down the elevator shafts and whatever -- the mechanical shafts that were in the building. And everybody I was in the lobby at that point pretty much got incinerated. It was that quick. And my daughter was lucky to see the fire coming at her and she ran out the door that she came in, so she came within 60 seconds of being burned alive.

But in the Town of Trumbull, there was an Iranian couple, who had a lovely home, and they were friendly with their neighbors. And one gal said she was going to go into New York City that day, so the wife of this Iranian person told her not to go. So she heeded her advice and didn't go, and then the planes hit the towers.

The next day when she went over the see her neighbors, the Iranian couple, they were gone. So, you know, there's people in this country that are terrorists and they know what's going on -- and, you know, these people, they've been cutting off heads for centuries. This is nothing new. We find it -- you know, we are very squeamish about that, but they've been doing it for two or 300 years. That's just a way of life with those people. They have no concern about life or limb. They'll kill you as look at you. And we are the hated ones here in America, Christians especially.

So I think that we all should have a good look at this thing, because these people are in this country now. We don't know how many. There is these sleeper cells, and they will do us harm if given the opportunity, so we've got to protect the public. And one ways to make sure these guys don't do it again. If we catch him, we put them to death.

So I hope everybody will support this amendment. Thank you.

SPEAKER DONOVAN:

Thank you very much, sir.

Will you remark further on House Amendment "G"?

Again, I will remind you the board is lit up for folks to speak on the underlying bills so if you'd like to speak on the amendment, please raise your hand to be recognized.

Will you remark further on the amendment before us?

If not, staff and guests to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is taking a roll call vote. Members to the chamber, please.

SPEAKER DONOVAN:

Have all members voted? Have all members voted?

Please check the roll call board to make sure your votes have been properly cast.

If all members have voted, the machine will be locked. Clerk will you please take a tally?

Clerk, please announce the tally.

THE CLERK:

Senate Bill 280, House Amendment "G."

Total Number Voting 141

Necessary for Adoption 71

Those voting Yea 50

Those voting Nay 91

Those absent and not voting 10

SPEAKER DONOVAN:

House "G" fails.

Care to remark further?

Representative Butler.

REP. BUTLER (72nd):

Thank you, Mr. Speaker.

I rise to oppose the repeal of this death penalty here in the state of Connecticut. There are some crimes so heinous that it demands the death penalty. I'd like to share with you the fact that I've prepared some testimony to read in from of the Judicial Committee to voice my opposition. And as I was drafting my testimony, I appeared to the hearing room where people were testifying before me, and as I was listening, waiting to sign up, I was really overcome by some of the testimony that I heard. It brought forward so much emotion, so many flashbacks of the trials and tribulations of being a victim that I really had to take my testimony and literally walk out of the building. And I did that because I was afraid. I was afraid of the emotions within me taking over,

and somehow I might not be able to stay to the script that I had written and articulate my position without the overflow of emotion.

My brother, back in 1985, was murdered. And as many of you have heard before here in these chambers, it didn't qualify for the capital felony version that we're discussing tonight. But, nonetheless, a loss of a family member is still a very grave thing.

All of us here have to make a vote on this probably historic bill today. And we probably won't get a chance to vote on this again, as Representative Davis had mentioned earlier, because we wouldn't be here today probably if there weren't enough votes to pass this. But I heard the Senators debate this to the wee hours the other night. It was after two o'clock in the morning. I watched most of it. And I thought the Senators did a great job of framing the debate, whether it was for or against. I think that out of 36 Senators they really framed the debate really well from both sides. So a lot of what I say will probably come from some of that debate in many of the hours that I heard of debate and testimony in front of the judicial hearings.

Senator Musto mentioned that his vote would

probably be better reflected if he had a dial instead of these two buttons that said that, you know, he could dial it between, like, 49, 50, 51 percent. He's probably 51 percent for this bill, and it's too bad he couldn't just show just where he was with that percentage.

And I would say that probably a lot of people here today feel the same way. It's not like you're really 100 percent sold one way or another that somehow where you feel maybe 51 percent to 80, 90 percent. The core people in here may be somewhere in the middle of that range.

So it is to those people who are at that 51 percent or 52 percent that I hope to reach in these few words that I hope to share with you tonight. Hopefully, something I say may touch you in such a way that you realize that, you know, I might be a 51 or 52 percent, but it's time to dial that knob down to 49 percent, 45 percent. Just hit the "no" button. I hope that's the case.

Some senators and people speak of this vote being a matter of conscience. Some speak of it being a matter of a moral issue. Some argue from an intelligent point of view. I usually -- I even heard

humanity -- humanity come into this question, humanity. And I just heard, you know, reference to the terrorist attacks and talk about an act against humanity. Yes, these are attacks against humanity, whether it's capital felony murder or murder or manslaughter or whole range of crimes that happen in society. They are crimes against humanity, and while we will hold humanity forward somehow and say that's why we shouldn't do this, I hold humanity before you and say that it is our responsibility to protect our humanity, as well.

I, also, have heard testimony from a personal nature. Senator Hartley spoke of how close her family was to the Petit family. I've heard testimony today, Representative Widlitz talk about how it was a personal decision for her.

For me, there's a wide range of emotions. I am, basically, a very analytical person, so there's a conflict and struggle there against the emotions and being able to analyze this on a very intellectual basis. Reason this. There are those who make the argument that we shouldn't be in the business of state-sanctioned murder, but I argue to you that on levels, both local, state, federal, and militarily, we

sanction murder.

On a local level, a police officer that has to make a life-and-death decision has a gun, revolver, or a taser nowadays. People have been known to die from being tased. And they have to have a split-second decision on whether or not to use deadly force. And outside of this debate here tonight, it will not save a life from being taken, and we all sanctioned that. We give them the ability to use deadly force, because you know what, they protect us. We expect them to protect us so we give them the ability to use deadly force.

So I'm having a problem, kind of, how to reconcile that reasoning. Repeal the death penalty? But we sanction these people to protect us using deadly force. There are no appeals. When they use it, there are no appeals.

Same thing on a state police level, but let's not talk about the innocent people who may be hurt in this situation.

It's been brought up that the military going after terrorists, actually, use predator drones that kill people on a regular basis, on a regular basis. And they have a hit list that they go after people.

And they use missiles and missiles, blow up cars and houses and guess what? There are some innocent people who die from a result of that. But we say that that's okay because we're addressing that big threat of terrorism. And it's better that we do it there, than they come knocking on our door here. Nonetheless, we sanction murder. Okay? So let's not use that argument. That argument doesn't work for me, at all.

I -- please bear with me, I have to -- there are those -- there are those people -- there -- victims. Want to talk about -- I really want to focus strongly on the victims -- the victim's families.

Also, Representative Davis talked about it a little bit and offered an amendment, but all the other victim conversation was, before that, was centered around whether or not you're for or against this or reasons that that they're for or against this bill -- or the application of the death penalty.

And, you know, some of those victims -- even I've heard in the debates in a previous year that there's other members of these chambers who have lost loved ones to murder, and they may be on one side or the other side of this whole equation. And some of them have risen to the position where they can overcome

this application of the death penalty and say that they could vote for repeal for the various reasons. And I just say, I wish that our Heavenly Father would grace me and bless me in that manner, but he has not. I cannot get over the loss of my brother. I will not unless I receive some heavenly blessing to do so and have not been for 26 years. So while they have been, I'm happy for them. But, for me and other victim families who have not been blessed in that manner, I appeal to those people who are so close to voting for this or not voting for this, please step up for those families that -- that really -- really want justice. It boils down to one word, one word, "justice." Don't want revenge. It's not about vengeance. It's about justice.

In the very essence of this bill is about justice because vengeance -- if I, or people, victims, like me, were just interested in vengeance or revenge, you'd have a lot more people who just showed up at courthouses and wait for the first opportunity to kill the person who killed their loved ones. That's vengeance. That's revenge. But no, what do we subscribe to? We subscribe to being law-abiding citizens and we go to court and we expect justice to

be served. We depend on laws, in the very members of this chamber, in the Senate, and the Governor to enact laws so that we might live by the laws and become law-abiding citizens. Without that, we have nothing but anarchy and chaos. It's our laws that dictate how this citizenry and humanity conducts itself.

And I subscribe to you that there is a segment of our community that could care less. They're the ones out there who are creating and murdering people. And speaking for moment about whether or not it's a deterrent. Well, that's a very hard thing to measure, because by the very nature of being a deterrent, that means that somebody might have considered it and because of the death penalty, they may have to concede their own life, that they decided not to do it. Well, that means that if it was a deterrent to someone and they decided not to do it because of this death penalty, that's a statistic you will never be able to count, because it's something that didn't happen.

So while I believe that the death penalty is a deterrent to some extent -- I'm not saying that everyone says, oh, the death penalty, okay, I will or will not commit a murder, because we know that there are crimes of passion, you know. There's sometimes a

heat of the moment that something happens and people snap. And they don't stop to think. There is no thinking in that. And then there's those hardened criminals. Those hardened criminals who probably spent their lifetimes in jail. Started off as kids, teenagers, spent their lives in juvy, as, you know, in juvenile detention, grew up as adults and they spent most of their time in jail becoming better criminals, more hardened criminals, and I don't think they really stopped to think about a deterrent.

But there's some people, the average people, everyday people, who get caught up in life, who may think for moment, things might have gotten bad but they may considered this and that may serve as a deterrent and it may work for someone.

But I tell you that it's the -- it's -- it's the victims of this I want us to -- to really focus on because these are very heinous crimes. And you stop and you take -- just from the first notification you hear that -- and talk about remembering where you were. Let me tell you, if you ever had a loved one murdered, you remember where you were. And you remember how the call comes across. Your brother has been shot. Please get to the hospital right away.

And you go there -- you go there. From my family, they all arrived.

And while we get to decide and debate this building here in this grand house, this grand building in this very eloquent way, I can tell you when you get to the hospital and have to look in the face of a doctor that a loved one has been shot, and we are working as hard as we can to save them; that a bullet has gone through their lungs and entered their heart and we're trying all we can to save him. And when you look in their eyes you know that it's really evident that they don't hold out much hope. And then the words come, we don't know how much more we can do, but we're going to do everything we can. So you know at point you're really, really up against it.

And I remember looking at my mother, and I hope all of you will take this under -- under consideration because, really, were talking about this bill, but it's families, it's real lives. And I remember looking at my mother and I thought by this point, being in there and hearing what the doctor had to say that she would probably be falling apart and -- but no, it's -- it's that moment that I looked at her and she was the strongest person in the room, and she has

a very great religious foundation that I know she called on her heavenly father to help her through that moment. And looking at her it helped me, as a son, battle through all the anger and hurt and loss, to keep myself composed. And I used that moment all through my life now to remember no matter what you face, no matter how difficult the situation that you can pull yourself together and rise above a certain situation.

But I want to tell you that -- you know, you need to know about how this affects families -- and then you get the review the body of your loved one. Now, my brother -- younger brother, I had to say was a fine young man. And to see his lifeless body on a slab in the hospital morgue -- at a distance, I can tell you that it seemed like he was just asleep. But as you walk up and you get a little closer, you get to see the lifeless body of your loved one and you can see that their soul and their spirit is no longer there. It's very evident. That's the difference between looking at somebody like they're sleep. You look at them and you could tell that their soul and their spirit is no longer there. It is a lifeless body at that point, but we had the chance to see him, and in

his face, we -- he looked as fine as ever, but he's just a lifeless corpse.

And I want to bring that to your attention because in considering this death penalty, I want to bring up the other families that weren't so fortunate, the victims that have family members that were -- that were raped and thrown into a lake. A body left to compose for weeks, months. Imagine for that family that they had to go to the local morgue and identify that body. I know that it's something that they live with for the rest of their lives. They took that to their graves.

There's a lot of heinous crimes. All these people on death row -- all of those work heinous crimes. The individual who shot the eight-year-old boy and his mother, you know, Russell Peeler. Eight-year-old boy and his mother, you know, executed them. That's an act against humanity. That's tough. That's tough.

And being from Waterbury, my colleague Representative Berger has already eloquently spoke about some of the crimes in Waterbury. Todd Rizzo, who actually killed a 13-year-old boy with a sledgehammer, just smashed his skull in, time after

time and time again. Imagine the family who had to go to the hospital and identify his body. Imagine what they lived with for the rest of their lives.

And also, Walter Williams, I mean there was amendments about police officers, and I really feel for police officers and corrections officers that really -- that are out there in the frontline.

When my brother was murdered, we were told that this crime doesn't fit in the classification of capital murder so forget the death penalty. So there's, you know, other options. And I was offended at first. It's like my brother's life is as important as anyone else. And that's an emotional -- that's an emotional feeling in reaction to the situation. But I've come to learn that, you know, yes, there are certain classifications, so I know there's a rationale. As I said, I'm a very analytical person, too. I've come to realize that there is a certain criteria that -- certain criteria you should meet to have the ultimate death penalty. And that's why I can't get over some of the victims -- I don't understand some of the victims who came here to say that, you know, the death penalty doesn't work, that's why we should get rid of it.

Analytically, intellectually, that doesn't work for me. If it's not working, how about addressing the appeals process. Instead of getting rid of it, how about let's make it so it works? But to say doesn't work, so we should get rid of it. Those arguments don't work for me.

Again, for those that -- that had the argument, the moral argument, when this death penalty was very pure in nature and it was just to abolish the death penalty, I would've liked to have seen that come and grace this floor, and let's have a true test of where people stand. To actually tweak the bill and make it prospective, to go forward -- take a look forward and applied this going forward. How do you -- how do you reconcile, again, this is a debate on this issue. How do you reconcile anybody who does this in the future that they will not get the death penalty because we want to save lives. And on the other hand say, oh, but these 11 people, they shall remain on death row. That argument doesn't gibe either. That doesn't work for me. Analytically, I can't process that. That does not compute. It is not logical.

But some of the things we do, you can't really wrap your head around logically. We have ways of

proposing bills that overcome the difficulty of getting something passed. And that's what we have in front of us. And, you know, it's a lesson learned because, as a legislator, I guess, we need to know those kinds of things. How to overcome the opposition? How to overcome something that may stand in the way of your bill being passed? Well, today, I'm getting a very good lesson in that. We all are. Again, I'm going to focus on victims and victims' families.

And, Mr. Speaker, I have -- the Clerk has an amendment, LCO Number 3189. I would ask the Clerk to please call the amendment, and that I be granted leave of the Chambers to summarize.

SPEAKER DONOVAN:

The Clerk please call LCO 3189, which will be designated House "H."

THE CLERK:

LCO 3189, House "H," offered by Representative Butler.

SPEAKER DONOVAN:

Representative seeks leave of the Chamber summarize the amendment. Is there any objection?

Hearing none, Representative Butler, you may

proceed with summarization.

REP. BUTLER (72nd):

Thank you, Mr. Speaker.

What this amendment addresses is the follow-up from the capital felony murder. This amendment will establish a college fund for the children of the victims of capital felony murder to the tune of up to $4 million a year, and it will also establish a fund for bereavement counseling for the victims of capital felony murder. And the Office of Victim's Services will review this and coordinate that. So, in total, it's up to $5 million a year to both address the children of these kinds, these heinous crimes. Both their -- help them get counseling and to help them get a college education. Because one of the first things you hear about when people are murdered is people try to rally for the children, create -- you know, have fundraisers for the children, for their educations. Well, if we're going to pass a bill that's going to protect the murderers in this equation, this amendment is here to address the children that are affected by these heinous crimes.

But, Mr. Speaker, I just want to say that -- while I do have this -- this amendment, and I'm

talking about how to help the victims of these horrible crimes. I think that going forward -- going forward, this is how we need to address the fallout from this bill, this death penalty. But at this time I will withdraw this amendment because it has a fiscal note and what it would cause in terms of the budget, and otherwise, I don't want to place that burden upon my colleagues here. I don't want you to have to turn all the bills and the budget upside down to accommodate this so I will withdraw this amendment.

SPEAKER DONOVAN:

Without objection, the amendment is withdrawn.

REP. BUTLER (72nd):

But just to continue, I offer that amendment as a point. My point being if we are so concerned about the death penalty and the fallout from it, why aren't we doing things like -- like addressing the criminal justice system? And I'm took going to get to that for a second -- in a second but there's one other amendment, Mr. Speaker, that I'd like to call.

Mr. Speaker, the Clerk has Amendment LCO Number 3190. I would ask of the Clerk please call the amendment, and that I'd be granted leave of the Chamber to summarize.

SPEAKER DONOVAN:

Will the Clerk please call LCO Number 3190, which will be designated House "I."

THE CLERK:

LCO 3190, House "I," offered by Representative Butler.

SPEAKER DONOVAN:

Representative seeks leave of the Chamber to summarize.

Any objection?

Hearing none, Representative Butler, you may proceed.

REP. BUTLER (72nd):

Thank you, Mr. Chairman.

And in this amendment is being brought forward to address one of the inequities about this bill that would be considered here today to appeal abolition of the death penalty. We're going to go forward with something called, you know, life in prison without parole, which means that these people who -- create these murderers going forward, they're going to be in cells, whether it's 22 hours a day, or however the amendment outlines them being maintained for the rest of their lives.

And I offer this amendment which speaks to $1000 tax credit to the immediate families of capital felony murder. So they will be able to have a tax credit when they fill out their taxes that I -- they could check that box and say, no, I'm one of those family members who have had a loved one murdered. And, by the way, you had them incarcerated up at Northern or wherever else, and you know what? I want my tax dollars to go pay for their free health, their free dental, and to sustain them. It's offensive to me as a victim, a family member, to have my tax dollars support them for their natural the rest of their lives. It's offensive.

How can you ask people -- how can you ask people to have their tax dollars go support sustaining these people for life, when they murdered a loved one of theirs? So this bill simply says that any immediate family member will have the option to opt out of paying. They get $1000 tax credit. Now, the dollar amount was arbitrary. An amendment is symbolic. But, again, this is how I would want us to think about this going forward. We need to think about the victims' families. And, Mr. Speaker, seeing that I've made my point, I will respectfully withdraw this amendment.

SPEAKER DONOVAN:

Thank you, Representative.

Without objection, the amendment will be withdrawn.

REP. BUTLER (72nd):

But I want to continue my summarization of this bill and this problem because there is -- there's so much that we need to consider.

We talk about murder. We talk about murder and I could tell you that when we consider that, just think about how much murder is happening in our cities and our towns, especially our cities. How many murderers have there been over the last few years in New Haven? How many murders have we had in our cities, in Hartford? Stamford? Bridgeport? Waterbury? How many murders -- it's not just those -- those -- those heinous, heinous murders. How about those garden variety, somebody dead, murders? What are we doing about those? What are we offering? What is the General Assembly offering to reconcile those heinous murders that happen that just don't happen to be capital felony in nature? What are we doing? Did we hear about any bills bringing forth to address that? Shouldn't we be here addressing those things? And I

don't want go too far down that road because I know that's, you know, getting a little bit away from this, but the bill, as amended, that we're supposed to be talking about. But -- what are we doing?

This bill is going to affect all of how many people? Eleven people, eleven people in the whole state of Connecticut have an interesting capital felony murder. How about the people who live in New Haven, in Hartford, in Bridgeport, who just want to be able to live in a safe environment, to be able to go and walk from the house to their cars, to the store, to the schools, to work, and come home safely. What are we doing about that?

After this debate is over, it's late in the session, but the people come back here next session better be talking about that. There's people who just want to be safe in their home environments, no matter what town or city that is. And so, we are facing this death penalty being abolished and -- just bear with me because I'm getting to my -- I'm getting to the end of my time here because I'm really trying to reach out, as I said in my opening statements, to that 51 percentile, those people who just may be on the fence. Just a little over the fence who said that they --

they, okay, you know, some people made some arguments to -- to convince me that, yeah, I should abolish this, but I don't know if I'm really sold on it.

Well, hopefully, I've given you a perspective about the reasons why you should come back over on the other side of the fence. Why people and victims' families need us. They need us. Murderers have already chosen their path. It's the victims' families that need us.

So I appeal to those who may be on the fence or just a little bit over, please come back. Please come back to the law-abiding citizens that need us. And if my plea to those doesn't really pan out and -- and that this debate tonight proves that the death penalty is abolished, it will probably be the last debate on the death penalty here in the State of Connecticut because as those that brought forward this bill today knows, it took a lot of energy just to get to today to put this bill on the floor and to have the support to pass it.

And I'd like to say before I close that to anyone that my comments may have somehow touched the wrong way, that I'm sorry that -- that my being an advocate for victims' families, rubs you the wrong way, or your

position on this. But this will probably be my last time, as a legislator, to talk on this issue. And am so, so proud to be in this grand building to have the opportunity to debate this position and present it to you, my colleagues. And I just hope and pray that somehow we deal with this. But don't for a moment think that just because this goes away and people are locked up that they'll be closure. There's victims that said that, okay, now these people won't be glorified. Let me tell you, just knowing somebody is locked up in some facility somewhere isn't going to bring any closure for a lot of people. Some people may not think about it from time to time.

People said, Okay, they don't have to go through the appeals of the death penalty. Well, guess what? I beg to differ. I think we're going to be facing a lot more appeals. Okay? Just think about how many more trials will happen now. We're taking away the tool from the judicial system to bring to bring them to bear to solve crimes and to plea bargain to offenses. We are taking that away. And if you have nothing to lose, let's see, I'm going to court, guess what? I don't have anything to fear and more. Let's go to trial. Let's go to trial.

Somebody -- I heard the figure of $5 million what we may save. I beg to differ. I think that we're going to be paying a lot more money because there are going to be a lot more of these cases going to trial, you know, all those garden-variety murders, they're -- they're going to take a shot. Let's go for it. What am I going to lose? Being locked up? Guess what? I murdered somebody, probably going to be locked up anyways.

I'm telling you.

But in closing, at the end of this debate, I hope that we can move forward to address inequities in the judicial system. The same people who brought the fervor to bring this bill in front of us, for us and our consideration. I hope they bring the same fervor towards addressing the inequities of the judicial system. All the things that people talked about that don't work. All the -- I hear about all the inequities, but I don't see any one bill about how we addressed any of those inequities in our judicial system. Don't they go hand-in-hand? If you argue one thing, shouldn't there be bills out there to address the other thing? Not just the end result? I'm just saying.

But I hope that -- I hope that once this debate is over and tomorrow comes up that we can spend the rest of our time working on education reform, creating jobs, creating more affordable housing, putting an end to homelessness in our state of Connecticut, because some of those homeless, you know, some of these prisoners are going to be better off than our homeless. They're going to be fed every day. They're going to have heat and shelter, free medical, free dental. Much more than what our homeless people have, so I'd like to concentrate on those issues and, again, education reform, creating jobs, more affordable housing, ending homelessness in the State of Connecticut. Can we spend the rest of our time in the session working on those things and every other session?

Thank you, Mr. Speaker, and thank you for your patience, my colleagues, here in this chamber.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Roland Lemar.

Representative, just hit your button again.

REP. LEMAR (96th):

Thank you, Mr. Speaker.

I rise today to speak in favor of this bill before the Assembly. It would revise the penalty for capital penalties. I rise today with full appreciation for the complex and emotional testimony that we've heard. It's hard to follow Representative Butler. The experience he has as a colleague of mine. The experience that he's dealt with as a man that I truly respect and appreciate and the full consideration that he's given and we've all given to this issue. I've been genuinely moved by the testimony on each side.

I rise today, mostly though, as a husband and a father, and as a representative from a community that has seen more than its fair share of violence. I'd be lying to you if I were to tell you that I don't feel the anger or the pain that others feel when I hear about the cases we're told of today, or that as a husband and the father, I can't easily connect with that place inside of me that would personally seek the ultimate vengeance upon any individual who hurt someone that I love.

But the State of Connecticut should not act as I may act in those moments. Our policy should not be driven by the same emotions that may flow through me

or anyone of us in a tragic instance. And, well, I may fully understand the desires of many victims to seek an end as certain as their loved ones faced. I fully believe that regardless of the crime committed, the State should not give itself the right to kill one of its citizens, particularly, when that action, a state-sponsored execution of one of its residents, would provide no additional public safety to our state. When it would kill with full premeditation in the name of our people and when it would do so with an arbitrary and unjust system. Fallible in so many ways, and it's full of examples across our state and our nation of so many wrongful convictions.

While difficult, I know the raw emotions that I feel when I hear the tragic cases the State has seen that I've witnessed in my community. I know that should not determine our state policy to rely upon a highly visible state-sponsored act of public violence of a defenseless human being. While I have no sympathy for the guilty person who finds their self in a position, I know that no matter our desire for retribution nor desire to punish someone who is committed such an awful crime, state-sponsored execution should be unacceptable.

Now as states across the union begin to abolish the death penalty in either law or practice. I welcome Connecticut's addition to that list. And while I personally would have seen this bill go further in banning state-sponsored executions altogether, I will without hesitation accept this negotiated standing that ensures the state of Connecticut, in the name of all of its citizens, no longer has the authority to take the life of its residents.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative -- Representative Morin.

REP. MORIN (28th):

Good evening, Mr. Speaker -- excuse me -- and thank you.

Before I begin, I'd like to let Representative Fox and Representative Holder-Winfield know that I appreciate their diligence and hard work and passion for what they're doing, because I know that they believe that what they're doing is right and is the right thing to do, and I certainly can never fault anyone for that.

Three years ago, I stated in this building -- not in the same seat -- but in this building, how proud he was to be a part -- a part of this body and to be able to participate in this debate. Those words remain true today. I'm equally as proud.

Three years ago I had to follow my good friend, Larry Butler, and it's not an easy thing to do. You see, I don't have a personal story like many of the other speakers so eloquently stated and shared, but that doesn't mean that it don't have an opinion and I'm not passionate about what I think is the right thing to do.

You know, like -- like the families, victims of these heinous crimes, everyone has a story. Like them, I'm a husband, a father, a son. And when I sit and listen to -- and have listened to these folks come to me with their stories, many of them for repeal and many of them asking us not to repeal it. It really -- it really tears me apart.

I can tell you that I -- the feelings I have today are stronger than they were three years ago. I can't and I won't support repealing of this death penalty. I'm a man of faith, and I won't tell you that I haven't wrestled with my faith. But I'm going

to be clear. I am not torn on this matter, not one bit.

One of the things that really struck me, and I heard from one of our colleagues was, you know, how would I tell somebody, how I justify the taking of life, if sanctioned, by the state Connecticut -- something to that effect. I apologize if I didn't state it exactly right -- but you know what? I would state the same lesson that I taught my children when they were little. When you do something wrong, your actions have consequences. That's right. They have consequences and it's something we learn from when we're little kids. And as a parent that's one thing you have to constantly talk to your children because you want them to do the right thing and not have to suffer consequences.

I would say that the people -- the perpetrators of these types of heinous crimes have made their decisions of what they're going to, and what they've done, and the harm that they've caused. And it will never go away for these people, never. And I believe, saying that the decisions that they've made must have these consequences, and the consequences of the current death penalty that we have. And all I would

say is I fully agree with some of the others, especially Representative Butler. Let's not take this away. Let's take away the appeal processes. Let's make it easier.

It's just the way I feel. And I -- I've gone back and forth. People have told me I'm wrong. People have told me I'm right. Frankly, I don't care what any of these people have said that this point. I have to do ultimately what I think is right and that's going to be my vote, and I really appreciate you allowing me to speak, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Molgano.

REP. MOLGANO (144th):

Thank you, Mr. Speaker.

Mr. Speaker, I rise in support of Senate Bill 280, as amended, abolishing the death penalty in Connecticut leaving life imprisonment without the possibility of release as a penalty for capital felony.

Mr. Speaker, I would never attempt to put myself in the position of those who are living with the loss of a loved one or by the heinous act of an offender.

I can only offer my sincere condolences and prayers to these families. I can fully understand cries of outrage and a vehement petition for a sentence of execution. They are reasonable responses to such unspeakable cruelty. Under these circumstances, I would expect the demands of retribution; however, there are Connecticut families living with such a loss who express just the opposite. They tell me taking the life of the offender would never be consolation for the life of their loved one. They were certain no solace could come from it. And that's my vote in favor of abolishment.

Mr. Speaker, I, along with many I represent, do not support the death penalty but fully defend just punishment to redress offenders for the crimes they have committed. This is why I believe life imprisonment without the possibility of release is a severe and appropriate sentence for those deserving permanent exile from society. The permanence of lockup in my opinion is loss of life.

And I'm reminded of the late John Paul II words on cases deserving a sentence of death. He said, "Today, however, as a result of steady improvements in the organization of the penal system, such cases are

very rare, if not practically nonexistent."

Mr. Speaker, Connecticut does possess a strong penal system and life imprisonment allows our State to preserve life, while permitting justice to be served to the fullest extent of the law.

I do not agree with the prospective nature of the bill. It should equally apply today as well as the day it would become law. Nevertheless, Senate Bill 280, as amended, works towards measures that value life while upholding justice and it's why I'll be voting yes.

Thank you for the time, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Thank you, Mr. Speaker.

It comes as probably no surprise to anyone in this chamber that I rise to support this bill. I've listened all day long to people talk about why we're doing this bill. I can only tell you why I am doing this bill.

I came here in 2009 as a state legislator, having made a promise the people that I would always fight

for justice. And I've listened to the debate, and have heard this word "justice" talked about all day long. But I know the history of not only this country but this state.

And I know what the Supreme Court has said to us. In 1987, there was a case, McCleskey versus Kemp. And in this case, it was brought before the Supreme Court that there are disparities in our system, disparities based on race, where people who look like me would get a different type of justice from the majority population. And our Supreme Court didn't actually say that there weren't disparities. What our Supreme Court said was, we understand that there are disparities, but it's okay. And we call that justice were talking about life or death.

I don't call that justice. People said that we have come here and to total lie to the people of the state. I think from the beginning of my efforts to appear -- to abolish the death penalty, I have said that I am for full abolishment of the death penalty, and that if I had my way, we would have no death penalty for everyone, including the 11 that this bill will leave on death row. I've been absolutely clear about that.

But the reality is that I am in a room with 150 other people, and I am not so young that I believe that my opinion is the penultimate opinion and that I know everything. And so I recognize coming here that part of what we do here is we figure out how to make things happen. It's not a scheme. It's the way things operate here.

And in 2009 when I attempted to completely abolish the death penalty, I came to the realization that the only way to move forward was with the bill that was prospective. And I have to tell you that when I came to that realization, I did not like it. I did not want to do that because, as some have said earlier, I felt like I'm a purist and we should just move forward with complete abolition. But I realized something, there is nothing wrong with being opposed to the State executing people and saying if I can't get the State to stop executing people that are already on death row, at least, that I can stop the State from executing people that maybe on death row in the future. There's nothing wrong with that. It makes perfect sense. It's logical.

What is illogical is to say to a person who is opposed to the death penalty, you have the chance to

stop the State from moving forward, but because you can't stop the State from dealing with those who it has already put through its system, you do nothing.

Being a purist sometimes is not a good thing. I've heard that retribution moves us towards justice. But if I were to walk into here -- into this place and tell you that if someone stabbed another person, we should stab that person. You would think I was crazy. If I were to walk into this place and tell you if someone rapes someone, we should rape that person. You would think I was crazy. But when it comes to killing a person, who has committed a heinous crime, some of us are fine with that. And we wonder why our society views death the way that it does. I don't wonder. I know.

I want to talk to you about people who have committed heinous crimes, but that aren't on death row, because I hear people oftentimes talk about people who have committed heinous crimes, but they are the people on death row. And they talk to us about the crimes they have committed. But there are people who have committed capital felonies, who have been convicted of kidnapping, raping, and murdering people. There are people who have committed heinous crimes,

who murdered five-year-olds, their own children with a shotgun. There are people who have killed people with the children at the scene of the crime. The majority of people who've committed the worst of the worst crimes are not on death row. And we call that justice.

So you could, as Attorney Kane, when he came before the Judiciary Committee, tell us, well, there are different circumstances because these are different cases and maybe we can make the case and maybe we can't make the case.

So I looked at Attorney Kane I asked him a question. I said, I get that and I recognize that, but tell me how you can have an Ivo Colon, how you can seek the death penalty for Ivo Colon, and when you have an issue with the case and the case comes back around, you don't seek the death penalty and you call that justice. There's no difference in that case. There is no different set of facts. The death penalty is the death penalty, but the death penalty does not equal justice. Because if the death penalty equaled justice, then all of those other cases that we talk about, we would not have justice. Justice is not resident in the death penalty.

And let me just say another thing. If we truly understand the death penalty and how it works, we understand that there must be instances where someone has committed the worst of the worst and it's possible that someone could have committed the very worst crime and still not get the death penalty, because there is a penalty phase in which we must weigh mitigating factors. And in order for the penalty phase to be what it should be, in order for us to be doing what we should be doing, there must exist a possibility that even if it's the worst crime ever committed, that individual doesn't get the death penalty, and still that would be justice.

People have talked about the victims. I've spoken to a lot of victims. In 2009, I started off worried about the victims, I think, more than anything else, because I knew my position was to abolish the death penalty. And I knew that there were some, including Dr. Petit, who didn't agree with my position. And so before I said a word, I tried to figure out what you do about those people? And the night before the first hearing we had, I did not sleep. I went in and the first thing I talked about was Dr. Petit and his case. And people told me don't

mention Dr. Petit. But I think it is this responsibility of those of us here, whichever side we're on, to realize that there are people who agree with us and don't agree with us. And I think that is not only the responsibility of people on my side but people on the other side. We have heard the victims brought up over and over, but if you look up in the galley, there are people who had very terrible things happen to family members, who've come to this building asking us to repeal the death penalty. And the reality is, some of them have not had an audience.

If you're going to talk about talking to the victims, we have to talk to all of the victims, they are not a monolith. This is not about one -- the victims believe X or Y. They are all over the place just like the people in this chamber. This is not about the polls. This is about who we are and we believe -- I'm not going to be long.

We walked in here today. We walked through those doors. Men, women, for, against, black, white, all kinds of different things, we walked in. We walked in and talked to each other. We were together. And as every speaker has spoken today, the hour of our departure from being together has drawn closer. Some

of us will depart and vote green. Some of us will depart and vote red. All that I ask, is that you consider who we are; that you consider the facts; that you make a tough decision, based not on the opinion you walked in with, based not on your ideology, but based on justice, real justice, and based on the responsibility that we have to the people of the State.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Shaban.

REP. SHABAN (135th):

Thank you, Mr. Speaker.

This is obviously my first time on the floor speaking to this issue, unlike some of the folks who spoke before me who have done this before, and it's obviously a personal and compelling and important issue. And I'm proud to be in the room with everybody else here talking about it.

But it's not the first time I've considered it because last year, you may recall, we -- a similar bill came up in the Judiciary Committee. And I, along with members of the Judiciary Committee, folks in this

room, folks in the Senate, we sat in public hearings until -- I think it had to be three or four in the morning. And it was a lot of us there. I mean, it wasn't just the three chairs and ranking member. I mean a lot of us stuck around because the issue is that important. That it was important to me and important -- and I suspect, important to others to sit and listen to what everybody had to say. And we did it again this year, the hearings didn't go quite as long, but again, compelling stories, some anecdotal, some scientific, some personal experience, some opinions, some conscience-based, whatever, all important compelling things to listen to and all informed my opinion that I'm against repeal of the death penalty.

And it's funny, after doing those hearings twice, I'm more convinced than I was two years ago on this that I think the repeal of the death penalty is the wrong move; however, I'm in favor of repairing the current system we have. I think that a swift, certain, and rare form of capital punishment is what we need to do. And in fact, some would argue we're already doing that, but I think we can do better.

No one can deny, in this room -- no one can deny,

anyone who's even just a minor student of history, cannot deny that there have been historical inequities in the our criminal justice system and in the application of the death penalty. That is the absolute truth. No one can deny that and nobody should, because if they do, they're fooling themselves.

But by repealing the death penalty here today, are we really fixing that problem? Well, I understand they're saying, well, what we're doing is preventing a horrible mistake. I understand that rationale. It's a principled position. I'm not going to argue with it because that's a valid position. But we're not fixing the problem that is the -- the underpinning of -- of how we're getting here. A certain, swift, and rare death penalty, DNA evidence, a higher standard of proof, admitted guilt -- like 11 folks we have on death row now, there's no doubt of their guilt. They don't even profess innocence. There's no doubt of that. So by repairing and not repealing, I think, is the right way to move forward to achieve justice, to do -- to actually to promote public safety.

Now this bill, of course, this -- there's some internal inconsistencies. We've talked about it

before. I mean it's -- it's internally inconsistent to say, well, we're going to pass this prospective but everyone in the room realizes that more likely than not, way more likely than not, that a prospective ban is going to become a retroactive ban. That's the state of the law right now. I don't think people in good faith can argue that, oh, well, that we're going to be fine on the prospective ban. That's not -- that's not the way it's going to play out. I think everybody's aware of that. So let's be honest in the debate and, you know, Representative Cafero mentioned that before.

But more importantly, supporting this bill by saying, all right, you know the 11 guys that are on death row now? They can get the death penalty. But everyone going forward, they shouldn't. Well, just by wrapping yourself around the rationale and being willing to agree with it, you're tacitly admitting that there are crimes that deserve the death penalty. You're doing that. You have to be honest with yourself. You're saying those 11 guys can die, but everyone going forward, no. You are tacitly admitting that those 11 crimes deserve the death penalty, but similar crimes going forward, they don't. Let's be

honest about how that's going to play out.

You've heard about -- you know, the -- the removal of prosecutor's ability to plea bargain. That's important stuff. I mean it really is. We had the state's prosecutor. We've heard other testimony. There was a lot of written testimony on this point. Right now, if someone is confronted with being prosecuted with a capital crime, the prosecutor, sometimes, has the ability to say, I will not pursue the death penalty. You'll get life in prison, if you cooperate here, there, wherever, identify folks, you know, help capture more criminals, help solve more crimes. Well, right now, if this bill passes. What's the prosecutor left with? All right, the most I can give you is life in prison. I'm going to give you something less. So know what we've got folks, like the 11 who are already on death row and we're are willing to kill -- but if you have 11 new guys, who've done the exact same crime next year, we're going to look at them in the face, potentially, and say, I got a plea bargain for you, you're going to get something less than life in prison if you can help out on a on a different crime.

It's hypothetical, but it's a reality that I

think we have to face, because that's what the prosecutor told us and that's, frankly, just the way it plays out. We've heard about that, we won't belabor it.

The folks that I focus on and the reason that I have, on balance, decided to vote against repeal aren't necessarily the victims of the crime. I do focus on them. Their -- their stories are obviously compelling, the families of the victims, compelling stories. There are some folks in the galley -- the gallery, who say yes, some say no.

My focus is on the future victims, on the future innocent victims. They're not sitting in this room because they don't know they're going to be future innocent victims. The future, innocent victims of heinous, reckless, senseless murders that -- that's going to happen. It will happen. It's just the way human nature is. It's a shame. We all know it, but it is going to happen. So folks who say, well, there's argument in favor the death -- deterrence, there's arguments that rebut deterrence.

You know, it's funny, last year, I think it was probably two in the morning. I was sitting 15 feet from, I think, it was Barry Scheck from the Innocence

Project. And I asked him this very simple question, the same question I asked the Connecticut Criminal Defense Lawyers Association guys this year. I said, If one criminal decides, you know what? I'm not taking the gun to this liquor store holdup, or I'm not going to shoot it. I'm not going to get involved with because there could be a gunfight with the cop. If that just happens once, will that get caught in any of these statistics?

Mr. Scheck was honest. He said, Of course not.

I said, Well, how about if it happens five or 10 times.

No probably not.

Well, you know, then the question starts to turn to a how, in fact, do you measure the negative? Well, the way of the rationale goes -- well, if you measure the absence of a positive that establishes the negative. Will that, of course, anyone who -- who follows legal argument or logic, there's all kinds of flaws in that regardless.

On balance, for me, listening to all the testimony, reading all the testimony, talking to law enforcement and talking to victims, I think if a certain, swift, and rare death penalty can prevent the

death of one, one innocent future victim, I think the death penalty is serving its function. So that's why I'm going to vote against repeal

With the future victims in mind, I offer an amendment. The Clerk should have on his desk LCO Number 3129. I asked the Clerk to call it and that I be allowed to summarize.

SPEAKER DONOVAN:

Will the Clerk please call LCO 3129, which will be designated House "J."

THE CLERK:

LCO 3129, House "J," offered by Representatives Cafero and Hetherington.

SPEAKER DONOVAN:

Representative seeks leave of the Chamber to summarize.

Any objections to summarization?

Hearing none, Representative Shaban, you may proceed with summarization.

REP. SHABAN (135th):

Thank you, Mr. Chair.

The amendment is really quite simple. What the amendment does -- you may remember, I think it was back in 2008, this chamber -- this House, this General

Assembly, passed a home invasion amendment -- or a new act -- a new statute that created a specific crime for felonies committed during a home invasion. It's contained in Title 53a-100aa.

This amendment would seek to make the death penalty still available in the event of a home invasion -- as we have defined already in our statutes -- if a murder is perpetrated while committing a home invasion. That's the amendment. It's relatively simple.

With that, I move for adoption and if I could have a roll call vote.

SPEAKER DONOVAN:

The question is on adoption.

Representative asked for a roll call vote.

All those in favorable roll call, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

Twenty percent is met. When the vote is taken, it will be taken by roll.

Representative Shaban proceed.

REP. SHABAN (135th):

Thank you, Mr. Speaker.

You know, we've spent a fair amount of time here today and now this evening talking about possible carve-outs. Talking about whether or not the death penalty is a deterrent. The one thing -- and, frankly, we got close with a police officer because people -- it's funny, because people say it's not a deterrent, but maybe it is with police officer because of criminals go into a situation and they know, you don't want the police to get involved here. That could prevent one.

Here, a similar issue. If you're going -- if a criminal -- again, this may save one person, one family. This may prevent one innocent victim from having to die. If a criminal is going to break into your home, into my home, into your homes, where your children and your grandchildren sleep. They know they're breaking into that home. There is nothing more sacrosanct in our society than your home. It's protected under all kinds of constitutional amendments and rights. It's protected in statute. It's protected in common law. It is your home. If criminal is going to break into your home and violate our existing law for home invasion, under the home

invasion statute. And -- and it goes awry, and someone is killed and murdered. Well, I think the death penalty is definitely appropriate in that circumstance.

So it's -- it's a simple bill. It promotes public safety. It promotes certainty. It promotes deterrence. And -- and -- and with that, if anything, if it can stop -- again, stops one crime from happening, I think we've done our job here today.

With that I move adoption and thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Would you care to remark further on the amendment?

Representative Green.

REP. GREEN (105th):

Thank you, Mr. Speaker.

Mr. Speaker, I rise in support of the amendment.

As Representative Shaban just -- just -- just spoke earlier here, your home is your castle. It's a sanctuary from the rest of the world. When you step out your front door every single day, something bad could happen. You can get hit by a car. You can get

into a car accident. You can fall down your front steps and die. You can be shot in the street. All sorts of bad things can happen. All of us know this. It happens every single day, and we see it on the news every single day.

But when you come home -- and I'm sure this is true for almost everybody in the state of Connecticut, I truly hope it is and I know it's true for myself and my wife and my family -- when you walk through your front door, that is your sanctuary. You're safe there. You feel comfortable there. Earlier I took a look at the definition of home invasion as we defined in the General Assembly in 2008 and there were two sections of that law that indicated that a home invasion required the intent to commit a crime or that such a person is armed with a deadly weapon. In either case, an individual who is breaking into a home, during a home invasion has premeditated some type of a crime. It may not be a capital felony murder at that particular moment, but they have full intent of committing a crime, breaking into your house while you're home and doing something bad. That's intent.

I'm not an attorney, but I do know that, in the

court of law, intent is a very important factor when you're judging a crime. Home invasion is very, very deliberate. There is, as I said, intent established. And to make matters worse it's a crime committed against the people in the sanctity of their own home.

This crime does not only affect the individuals in the home, it also affects our community's psyche. I'm sure that all of us understand that the entire town of Cheshire and probably the surrounding areas -- I know my town of Seymour and Beacon Falls, people were locking their doors a lot more than they ever had before after what happened to the Petit family in those horrendous murders.

It's a crime not only against the victims, but it's a crime against our communities. In my opinion, home invasions constitute a different type of crime, and when you couple that with the capital felony murder in the process of a home invasion, it requires, in my opinion, a very different type of a penalty.

And with that in mind, Mr. Speaker, I am absolutely in support of this amendment, and I urge its adoption. Thank you.

SPEAKER DONOVAN:

Thank you, Representative.

Care to remark further on the amendment?

Representative Kupchik.

REP. KUPCHIK (132nd):

Thank you, Mr. Speaker.

I rise in support of this amendment. As it was -- as it was shared today regarding the votes -- that there's votes -- that there's enough votes to pass the repeal of the death penalty. And if, in fact, that's the case, I would hope that members in the chamber who do -- who are going to support repealing the death penalty would think twice about this amendment.

The Petit case did not only shake the entire state of Connecticut, it shook the entire nation. The entire country watched, as we did, this poor family and what they went through. It was mind-boggling what that family had to deal with, what Dr. Petit who is just in his home, laying on his couch, had to be subjected to, what his wife and two beautiful children had to be subjected to.

Our homes are our sanctuaries and if we're not safe there, then we're not safe anywhere. And if a criminal thinks twice -- just thinks twice before going into someone's home, then it's very important that we pass at least this amendment. I mean, for the

love of God, Connecticut is on the map for the worst home invasion in the history. I just can't imagine why we wouldn't think that at least for this -- for this kind of crime that the death penalty is warranted. I hope that you'll support this amendment.

SPEAKER DONOVAN:

Thank you, Representative.

Would you care to remark further on the amendment? On the amendment? The amendment?

If not, staff and guests please come to the well of the house. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. All members to the chamber. The House is voting House Amendment Schedule "J" by roll call. Members to the chamber, please.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted?

Please check the roll call board to make sure your votes were properly cast.

If all members have voted, the machine will be locked. The Clerk will please take a tally.

Will the Clerk please announce the tally.

THE CLERK:

Senate Bill 280, House Amendment "J."

Total Number Voting	146
Necessary for Adoption	74
Those voting Yea	51
Those voting Nay	95
Those absent and not voting	5

SPEAKER DONOVAN:

The amendment fails.

Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Speaker.

You know, I wasn't sure if I was going to say anything tonight, but I decided I would after hearing some of the comments made by my esteemed colleagues on this very difficult issue and why I've been voting the way I have been voting throughout these amendments.

In light of the inconsistencies with this particular bill, as is proposed, I acknowledge to you and everybody in the chamber that I think this bill is severely flawed in the way it's been presented with the prospective nature of it. And I was wondering as I've been sitting here listening how I was going to

explain my vote in support of the bill to repeal the death penalty. And then I listened to Representative Molgano and what he had to say and how he had to say it. And I almost pushed my button off to not even speak because I thought he was so eloquent in the way he justified the rationale behind voting in favor of this repeal.

It took me a while to come to the decision that I have tonight, but the first step along the way was when I met with somebody who had been on death row for eight years and was very close to execution. And fortunately through the grace of God, there was some DNA evidence that was discovered, and he was exonerated and taken off death row.

And I was thinking about what would've happened if, in fact, that DNA evidence was not found and he, in fact, was executed, an innocent person being put to death by a state, wrongfully?

And Representative Shaban made some significant comments about if this death penalty were to save one person, it would be worth keeping. And I say in response to that, if the repeal of the death penalty would save one person who was wrongfully charged, it's worth repealing.

So for those reasons, I'm here tonight to speak in favor of the repeal. And I know I do so, pretty much distinguishing myself -- probably greatly from my colleagues on this side of the aisle, and I do so with the understanding that -- that the prospective nature of this bill is flawed, but I think it -- going forward, it sets a principle for this State that I can stand behind. The principle that this State will no longer be in the business of taking life. So I'm okay with that, I think that's the purpose of what this State should be doing and how it should be responding to these horrific, horrific crimes.

And I, too, cannot imagine some of the feelings and emotions of those victims of those families, and I know if it was personally -- if that ever happened to me, whether I'd be still standing here stating the same thing. It would be hard. I don't know. I don't think we can put ourselves in the shoes of those persons.

But as a position and representative of the State of Connecticut, I don't think the State should be in the position of taking lives. So from that aspect, that portion of the bill, I can support wholeheartedly.

So I thank the Chamber for its incredible comments, impassioned pleas, the oratory here today and throughout the evening was very, very moving. And it's something that will stay with us, I believe, for the rest of our lives having heard what we heard tonight.

So I thank the Chamber, and I thank you, Mr. Speaker, for the opportunity for a few words.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Rovero.

REP. ROVERO (51st):

Good evening, Mr. Speaker, thank you

SPEAKER DONOVAN:

Good evening, sir.

REP. ROVERO (51st):

While this has been an interesting and a thoughtful debate today and tonight on the death penalty, I've come to believe in some way that it's -- it's almost an academic debate because I'm not sure that we really have the death penalty in Connecticut in the first place.

What I do know, through sitting on the Judiciary Committee for number of years and sitting through

hours and hours of public hearings and testimony, and debates in the Judiciary Committee, debates on the House floor, listening to the Senate debate, I do know that we have an impractical, an obtuse, an unworkable, and a highly flawed statutory scheme, which we tend to refer to as the death penalty.

We have a so-called death penalty under which in the last 52 years, we've executed one criminal. And by the way, we executed him only after we he begged us to. So, as we continue to talk about this death penalty that we have, let's remember that it's as much a paper tiger as anything else -- as is anything else in my judgment. We have this so-called death penalty under which few people really believe that the 11 men currently on death row will ever receive this ultimate justice.

Certainly, if this bill passes, they won't receive that justice. The bill, I think, in addition to other flaws it has, is quite intellectually dishonest and whether it was the political reality that it needed to include this provision that the 11 that have been convicted and are on death row will remain there. It's not intellectually honest, and few attorneys wouldn't salivate at the opportunity to

represent a death row inmate when the Legislature, the Governor has signed off on a bill which repeals the death penalty under which they were convicted.

So if Connecticut is to have the death penalty, we ought to have the death penalty. One that's workable. One that's fair. One that is just. I'm not sure that what we have now falls into any of those categories. It's not workable. I'm not sure it's fair. And I don't think it serves justice. The families of the victims -- I'm not sure that it's justice once the killer gets the death penalty for him sit there in near perpetuity. So again, we either ought to have a real death penalty or none at all.

And year after year after year, this Legislature goes to the exercise, whether it's on the committee level or the House floor, it's made it even to the Governor's office on one occasion and we debate it. We have the public hearings. We talk about nuances of the death penalty. We -- we talk about every word in the statute and we analyze it and over analyze it. And maybe that's not an unimportant exercise for us to do, but again, the backdrop of this is we're doing all this for a so-called paper tiger death penalty, under which one criminal was executed in the last over 50

years and under which it's highly doubtful that any of the 11 that are there now are going to receive the ultimate punishment.

So it's really consumed an inordinate amount of our time, and it strikes me as extraordinarily ironic. A sad irony but an extraordinary irony nonetheless, that the same legislature that can talk for hours and year after year devote so much of our energies to worrying about whether were going to put -- whether we're going to have the death penalty at all -- a death penalty doesn't work the first place. And yet, everyday in this state, everyday nearly 40 of the most innocent among us have their lives taken through abortion. So, it seems to me quite ironic, sadly ironic, that we would -- we would have so many efforts and work so tirelessly on the death penalty for the guiltiest, but Connecticut has such a strong death penalty for the most innocent.

We're talking about not one every 52 years, were talking about thousands a year. We can't have public hearings. We can't have debates on it. We can't run amendments on it. So this Legislature seems to hear the pleas of the guiltiest among us but willfully ignore the cries of the innocent.

Now, in part, in an effort to promote a culture of life, to perhaps help soften or open previously hardened hearts, maybe in this legislature but in the state more generally. I'm prepared to vote to repeal the death penalty, and I will be doing that later tonight. I hope that in some small way it helps to promote a culture of valuing human life, of recognizing the miracle that is human life, the dignity that is human life, even for the worst of the worst. But I would respectfully ask my colleagues, who have labored so tirelessly to have this vote tonight and have this bill passed and enacted. I would ask them to please open their hearts to the unborn, to the innocent and offer them the same protections that this bill is going to now be giving to the guilty. Thank you.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker.

Mr. Speaker, I rise in opposition to this bill. And as I listened to the debate tonight, I do have just a couple of questions to the proponent of the

bill to help clarify. As I understand the reading this, when somebody is convicted under these special circumstances, they're put into administrative segregation, and then in a certain period of time, the commissioner makes a determination whether the person is going to remain in administrative segregation or put into protective custody. And if the person is put into protective custody -- in Senate Amendment "A," that's now part of the bill, lines 34 through 45, we have some of the requirements that must be met. One of those requirements under (A) is they maintain the inmate -- the inmate on special circumstances high security status. Is there a definition of high security status or is it a term of art?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker.

I don't know that there is a specific definition that's used through the Department of Corrections. I believe it's -- this is a classification that is created for -- for these individuals who were convicted of murder -- murder with special

circumstances.

SPEAKER DONOVAN:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker.

And then, lines 35 through 37, in (B), it says that the inmate -- houses the inmate's separate from inmates who are not on special circumstances. Is the definition of house, does that refer to their cell?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker.

I know that it can be referred -- your house can be referred to as your cell. But also in this context, it's section of the prison that the inmates would be housed. They may be housed together, but the -- they would be in a section of the prison that is unique to them and not -- would not have access by the general population and they would not have access to the general population.

SPEAKER DONOVAN:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker.

And I appreciate the good Representative's answers to my questions and that is one of my concerns in the underlying bill. I want to make sure here that if these individuals are being put into protective custody, that we're not enabling the commissioner to essentially put them into a cell that might be with other prisoners with this same designation. But then for the purpose of their recreational activities or their meals, they're not commingled with the general public. So, as I understand that, then, that would not be the case that these individuals would not, for the purposes of their other activities that go on within a prison, wouldn't be commingled in the general population; that the term "housing" refers to the entire duration of their stay in prison?

SPEAKER DONOVAN:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, that is correct.

SPEAKER DONOVAN:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker.

And I don't have any other further questions. I guess, just briefly, I struggled with how I was going to vote on the death penalty. I struggled with it a couple of years ago when we had to take that vote, and as this debate was beginning in the committee process, you know, I prepared myself for that same struggle. And frankly, Senate Amendment "A" made it very clear to me that I could not support this bill going forward, because what we're essentially doing is giving the commissioner the discretion to move these prisoners around, not just only based on safety reasons, but also in lines 48 of the Amendment, for correctional management reasons, that a prisoner could be designated and removed from the administrative segregation to protective custody. And I certainly have a problem with the economics, with the budget reasons, factoring in to a decision that's dealing with human life, dealing with fellow inmates and dealing with the Department of Correction officers potentially being subject to a risk of their own life for budgetary purposes, as I read that language.

And tonight, as we sit here, you know, the Hartford Courant just recently posted an article where

one of our own Connecticut prisoners was released, went to North Carolina and allegedly just murdered three individuals. And as the story indicates, this prisoner had assaulted corrections officers, not once, not twice, not three times, but four times. And for whatever reason on the fourth assault, our corrections department decided not to prosecute this individual and put it in his record, which ultimately resulted in the release of this prisoner, and now we have three innocent lives removed from the face of this earth because of a discretionary decision by the Department.

And so, again, what we're now doing with Senate Amendment "A," is we're not just repealing this death penalty and making this a very clear decision, but we're are giving discretion over to the Department of Corrections to weigh the risk of other humans lives within that system, whether it be another prisoner or a correction officer. And I just find that very troubling, and therefore, I cannot support the bill.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Grogins.

REP. GROGINS (129th):

Thank you, Mr. Speaker.

I rise in support of this bill that will abolish the death penalty. I've listened to my colleagues tonight, and I've listened to all the remarks with respect and appreciation. I don't have a personal story and for those who do, who have spoken tonight, you have my sincerest sympathies. However, I do bring a different perspective.

Being a lawyer that has litigated cases involving capital punishment, I want to share with you some of my experiences -- experiences and my perspectives on the death penalty. I am personally, morally opposed to the death penalty, but today's vote is not just about whether capital punishment is morally wrong. Today's vote is about the fact that this law is broken and just does not work for the State of Connecticut. This law doesn't work for defendants and their families. This law doesn't work for victims and their families. The victims wait years for the resolution of these cases that rarely result in what they want, executions. Instead, these cases involve long and complex litigation, including years and years of postconviction appeals, and this is at the tremendous expense of the taxpayers and at the high price and

emotional price of all the parties involved. There's no justice in that.

Since 1960, as has been mentioned here, we have not -- we have only executed one person, Michael Ross, and that was that that defendant's request. Even that took years and we incurred the taxpayers tremendous expense for that action.

This law, the death penalty, is costly. It can be arbitrarily applied and does not produce accurate results. The legal representation involved in representing a defendant in a capital case requires extraordinary time, extraordinary expertise, and extraordinary expense. It is not unusual for the legal process, from beginning to end, to take upwards of 20 years.

Nationally, there are hundreds of inmates that are currently sitting on death row for crimes that are committed in the seventies and eighties. As I stated earlier, even after years of litigation, including the postconviction process, the vast majority of these cases do not result in execution. Certainly, this has been demonstrated here in Connecticut over the last 50 years.

Additionally, we have seen cases across the

country where individuals have served years and years of lengthy sentences and, eventually, it is determined that they have been wrongfully convicted. Think of those crimes and those instances if the sentence was the death penalty and those people were executed, obviously, this result would be a reversible and wrong. There is nobody here that would support the execution of an innocent person. That is not justice for anyone.

The bottom line is, the death penalty doesn't promote due process. The death penalty is not a deterrent and is not a viable form of crime control, nor does it promote justice for victims or their families. The bottom line is the death penalty law just does not work, period. And for these reasons, I urge the passage of this bill.

Thank you.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Jack Hennessy.

REP. HENNESSY (126th):

Thank you, Mr. Speaker.

I rise in support of repealing the death penalty bill. As parents, we know it's not so much what you

say but how you act. Actions speak louder than words. It's hoped, as parents, we take the high road and not give into the momentary compulsion of anger and frustration as all parents experience from time to time. But we restrain ourselves and act with compassion toward our children, as well as ourselves. Emotions run high in the moment, but we, as parents, try to keep an eye on the big picture. What are we teaching our children by our example? For it is by our actions our children will be shaped in how they approach their lives.

In a similar way, the State of Connecticut is like a parent. One would hope its actions reflect highest values as a people, demonstrating who and what we are as a people. By replacing the death penalty that does not work, with its endless and costly appeals, with a sentence of life imprisonment without the possibility of release, speaks to who we are as a people. It speaks to what we value.

The debate is not about the life or death of a person convicted of the most heinous murder. It's about us, as a people, our collective statement as who we are as a people.

By voting to repeal the death penalty, not only

are we removing a law that does not work, does not act as a deterrent, does not give closure to victims' families, does not put to death the murderer but puts to work lawyers for decades. But by voting for repeal of the death penalty, we will be putting to rest the inconsistencies of not practicing what we preach.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Perillo.

REP. PERILLO (113th):

Mr. Speaker, thank you very much.

It is an absolute privilege to be here today and be participating in such a really wonderful and thoughtful debate. And it gave me an opportunity to do quite a bit of research as we were listening.

And I came upon this. On the afternoon of August 24, 1989, Daniel Webb, while driving a car he borrowed from his girlfriend, kidnapped Diane Gellenbeck from a downtown parking garage right here in Hartford. He drove her to Keney Park in Hartford's North End. There he attempted to rape her, but she struggled, she fought back and she ran. She ran through the limbs and twigs of trees, the sharp

needles and leaves and berries of holly bushes. She tried to get away. While in the process of doing that, Daniel Webb shot her five times.

During the trial witnesses said that those last few bullets were at very close range and, in fact, the last bullet was at point-blank range into Diane Gellenbeck's face. In her final efforts to get away, her desperate efforts, she was murdered.

These are the kind of people we're talking about. Killers, rapists, like this. And this story, I think, speaks for itself, and I think it's very, very clear why Daniel Webb is one of the 11 on death row. This is the kind of crime were talking about.

So with that, Speaker, I have an amendment. The Clerk is in possession of LCO Number 3126. I ask that you please call the amendment and I be given leave of the Chamber to summarize.

SPEAKER DONOVAN:

Will the Clerk call LCO Number 3126, which will be designated House "K."

THE CLERK:

LCO 3126, House "K," offered by Representatives Cafero and Hetherington.

SPEAKER DONOVAN:

Representative seeks leave of the Chamber to summarize.

Any objection?

Hearing none, Representative, you may proceed.

REP. PERILLO (113th):

Mr. Speaker, thank you very much.

This amendment would allow the death sentence to be applied to any person convicted of murder with special circumstances for the murder of a person in the course of commission of sexual assault in the first degree.

I move adoption of the amendment, and I ask please that when the vote be taken, it be taken by roll.

SPEAKER DONOVAN:

The question is on adoption. Motion on the floor is for a roll call vote.

All those in favor of a roll call vote, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

The requisite 20 percent has been met. When the vote is taken, it will be taken by roll.

Please proceed, Representative.

REP. PERILLO (113th):

Mr. Speaker, thank you very much.

I believe that the amendment before us and the implementation of the death penalty as it lays out is appropriate given the circumstances of the crime that I just described. And I can imagine if it were a family member of mine or, quite frankly, a family member of any of ours, a mother, a wife, a daughter, a sister, we might be in a situation where we felt that the death penalty were appropriate. More important and, in fact, some of us might feel that that death should be cruel and unusual. Cruel and unusual not for revenge, cruel and unusual for retribution, because let's be honest with ourselves here, the crime itself was indeed cruel and unusual -- seeking retribution, not revenge.

These are the kinds of criminals that we're talking about. These are the kinds of crimes that we're speaking about. Yet, the bill before us does not provide for any death penalty. We know that. We've discussed it. We are here in hour eight or nine at this point. What it does provide for is sunlight and an opportunity for recreation. It provides for

that for criminals, like this. It provides for socialization for criminals, like this. And, in fact, I think it's -- it's that socialization that in many ways can give us an insight into the type of people we're talking about when we talk about crimes like I've described.

And in the course of my research, I actually stumbled upon some of that socialization -- that correspondence, in particular, of Daniel Webb. I actually did find his website and found his pen pal request on his website, the website of this rapist and murderer. It reads very, very simply: "I'm a lover of music, sports, travel, and culture and, of course, women. Women of all ages and races, and I will respond immediately to all those who write."

He concludes his pen pal request by stating that he is looking for peace and harmony. Peace and harmony for an individual who brought nothing but pain and horror to Diane Gellenbeck, her family. These are the kinds of people that we're talking about. And this amendment provides what I think is the type of retribution that many in the state of Connecticut believe is appropriate. That's all it does. This is kind of crime that we are talking about.

I urge adoption of the amendment before us. And I, again, ask the Chamber for its time.

SPEAKER DONOVAN:

Thank you, Representative.

Would you care to remark further on the amendment? Care to remark further on the amendment?

If not, staff and guests please come to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting House Amendment Schedule "K" by roll call. Members to the chamber please.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted?

Please check the roll call board to make sure your vote has been properly cast.

If all the members have voted, the machine will be locked, and the Clerk will please take a tally.

Clerk please announce the tally.

THE CLERK:

Senate Bill 280, House Amendment "K."

Total Number Voting	146
Necessary for Adoption	74
Those voting Yea	51
Those voting Nay	95
Those absent and not voting	5

SPEAKER DONOVAN:

Amendment fails.

Representative Hewett.

REPRESENTATIVE HEWETT (39th):

Good afternoon, Mr. Speaker.

(Deputy Speaker Aresimowicz in the Chair.)

DEPUTY SPEAKER ARESIMOWICZ:

Good evening, sir.

REPRESENTATIVE HEWETT (39th):

First of all, I want to say to everybody in the chamber, this is my forth debate on the death penalty. And I want everybody to know that from that side of the aisle to this side of the aisle, I respect everyone's opinion about how they feel about the death penalty. All I ask is that you respect mine.

When it comes to the victims' families that was noted that's sitting in the audience, my heart goes

out to you. It really does. But I also want everybody to know that who is sitting in the balcony does not reflect all the victims in the state of the Connecticut. Because there's a lot of victims that don't want to repeal the death penalty.

I've heard someone say earlier today about we don't want to, as a state, sanction killing people. We do this every day. We even invade other countries. We sanction our military to kill people, sometimes innocent people. Sometimes we get it right; sometimes we get it wrong. We sanction our police officers to do whatever is necessary to protect us, and sometimes it involves killing someone.

I look at this -- I look at justice also. I look at the justice of the promise that we made to the State of Connecticut and the victims' families that when these people were put on death row, and I rise today to vote against this bill to repeal the death penalty in the State of Connecticut.

And I have a list of people, victims, but I'm not going to read them all. And my heart goes out to all the victims' families.

But, to me, the one person that I cannot get past is the little eight-year-old boy named, B.J. Brown and

his mother Karen Clark in their own Bridgeport home. No matter how much I think about the death penalty, it always comes back to that little eight-year-old kid that had no voice of his own. He had no idea what was happening to him.

When individuals -- when an individual murders another individual, society must stand up and denounce the act. And if that act was so heinous, that it warrants the death, then that individual chose their fate by their actions.

The death penalty is not about an eye for an eye, or a tooth for a tooth. It's about holding that individual accountable for their actions and protecting and safeguarding innocent victims, men, women, children, and the elderly, from predators within society who do not have a moral compass and do not value life as the rest of the society does.

It is so -- is it so much to ask these victims' violent predators to forfeit their life, when they didn't give the victims a choice -- when they didn't give their victims a choice, I say no. It is not until some of these predators are faced with their own mortality that they fear the same sentence that they gave their innocent victims, death themselves.

Today, Mr. Speaker, we debate in Senate Bill 280, AN ACT REVISING THE PENALTIES FOR CAPITAL FELONY MURDERS. This bill also a prospective bill, meaning that upon passage, the inmates currently on death row will stay on death row, but any new capital felony cases would get life without possibility of parole.

Right here in this chamber -- I wasn't here to see it -- it happened a long time ago. We abolished slavery in the state of Connecticut. Just imagine if that bill would have been prospective. You take 5,000 slaves and say, We're not going to make any new ones, but you guys will stay slaves for the rest of your life. That's what prospective does.

The problem with doing this prospective bill, is that by doing this, we know that appeals will be filed. They will win and no one on death row will ever get the death penalty. It's not going to happen.

Now, for the members who are voting for a prospective bill so they can make sure that Hayes and Komisarjevsky get the death penalty, it's not going to happen. I believe that every person on death row is guilty of the crimes they are convicted of.

But for the members who are voting for repeal for fear that we may kill an innocent person, why are

voting on a prospective bill? Will you be able to live with the fact that one of these people is innocent?

Think about that before you cast your vote for this bill.

If you are serious about innocent people being put to death, then wait until you have the votes for a total repeal, as they did in Chicago. You will not have my vote, but at least you would have done it the right way.

As the Greek philosopher Aristotle says, "We become just by performing just actions, temperate by performing temperate actions, brave by performing brave actions." What is more just and brave than advocating for the innocent victims who did not have a choice and no longer have a voice?

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

Will you remark further?

Representative Hetherington of the 125th, you have the floor, sir.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker.

And I won't impose on you or my colleagues here by going over at length the arguments that have already been made, but I would like to state several points that I think are worth noting.

And I'm not -- there's no need to discuss again the fact that this is a conflicted bill, a badly conflicted bill. It attempts to operate prospectively. It condemns death going forward, but accepts it in the past. It's illogical; it is arguably immoral.

But the broader question, I think that every one of us here, whether more spiritual or you are humanist. We love life. We love it in ourselves. We love it in others. We want to protect it. We want to advance its possibilities, but the fact of the matter is we live in a world that it not perfect.

And it is become -- it has become necessary that government sometimes sanction death. And we, as the previous speaker mentioned, every day we carry out attacks as a way of protecting innocence against the acts of terrorists. We rain missiles on foreign lands and kill people whose names we don't know and numbers we cannot count. It's a fact of life we try to do that to protect the innocent.

And going from there and the fact that we do sometimes have to exercise the extreme punishment, to protect the innocent, I think we might just finally pay more heed to the matter of deterrents. I know we've been through study after study, and so forth, but we will not -- we do not know. We absolutely do not know how many robbers have -- how many criminals taking advantage of a robbery will not take a weapon -- or if they do, will in a split second before it's too late, not pull the trigger.

We do not know how many police officers are saved because it is well known that there is great fear of becoming a cop killer. We will not be able to tell how many people will suffer death because the deterrents of this is lost. And, you know, deterrents does not depend on actually carrying out the execution. There is a great deal of fear, simply winding up on death row.

I guess, you know, in a grim reminder of the words of Samuel Johnson or words attributed to him several centuries ago, Nothing quite focuses the mind like an appointment with the hangmen. Indeed that is true.

I think it's true. I'm sure you think it's true. So

just being on death row has a deterrent effect, has a punishment effect.

And so just concluding, if we carry out this repeal, when we go home and we think about these things in the quiet, small hours of the night, just reflect on what may be the consequences. The young women who was taken and assaulted and now murdered because there's no reason not to murder her, they've already kidnapped her. If it helps them preserve their freedom, why not kill her and they'll never be caught. We never know how many store clerks will die painfully and alone in the dark of night because the gunman, who came in, was not afraid to pull the trigger. We'll never know how many police officers might have gone on with their duties will not be able to -- will not even be able to go home to their families because someone was no longer afraid to be a cop killer.

So in those moments of quiet reflection, I just ask that we remember if we take away the threat of death from the brutal felon are we, in fact, just shifting that threat to the innocent victim? Are we really defeating death or are we simply changing the one who must suffer?

With that I conclude, Mr. Speaker. Thank you very much.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, Representative.

Will you remark further?

Representative Gentile of the 104th, you have the floor madam.

REP. GENTILE (104th):

Thank you, Mr. Speaker.

I had not intended to talk this evening, but after listening so carefully to the debate here, I must say a few things for the record.

First and foremost, I am extremely proud to be a member of this chamber. The debate and the discussion that has taken place here today has been extremely moving, and I'm very proud to be a part of that.

Now, with that, Mr. Speaker, I would also like to say that there are a few beliefs that I hold, and I hold very dearly. To me -- and again, I'm speaking personally, executing criminals does not make our state any safer, nor does it bring back loved ones lost.

The death penalty, to me, is about vengeance and retribution, and that, to me, is just not rational.

Killing is just plain wrong whether is it done by a criminal or the State in the name of justice.

Now, I've always voted against repeal, and I must tell you that I've struggled and struggled enormously with that vote, because it is a vote against my conscience. And when I came in here today, I truly was -- as Representative Butler said previously -- on the fence. I really did not know what I would do, and I was hoping for that one thing. Just that one thing that I would hear that would help me make my final decision.

And I have to tell you, Mr. Speaker, that I did hear that. And that was when we started talking about children. As everyone in this chamber knows, I am first and foremost a grandmother of five of the most beautiful grandchildren in the world. And some of you may have seen me here, yesterday, with my granddaughter Brighton, who is six years old. I like to take them with me whenever it is possible so that they can learn about legislative process and what it means to be free.

And as I think about that, Mr. Speaker, now that my grandchildren are starting school, and they are learning and absorbing things like a little sponge, I

have to say, that I try to teach them right from wrong, and I try to lead by example.

So with that, Mr. Speaker, I find it very difficult to explain that if I vote not to repeal this bill and I vote to kill. I find that very difficult. I don't know how I would explain that to them. Killing is wrong. But if the government does it, or you do it in the name of justice, that's okay.

And so for that reason, Mr. Speaker, I have finally come to terms, and I will be voting to repeal the death penalty tonight. And I don't take this lightly, but when I think of my five grandchildren and their five faces looking at me and maybe someday asking me, Momma, why did you vote to kill someone?

I don't want to have to answer that.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, madam.

Representative Miller of the 145th, you have the floor, madam.

REP. MILLER (145th):

Thank you, Mr. Speaker.

We've heard different arguments regarding the support of or opposition of SB 280.

But I would to share some facts with you. The US Supreme court requires two separate trial stages for every capital case. In the first stage, a jury decides if the person is guilty. And in the second stage, a jury decides what the appropriate punishment should be. Nationally, 95 percent of death row inmates could not afford their own attorney. Between 2010 and 2011, the State of Connecticut spent $3.8 million on defending capital cases for the Division of Public Defenders Services. That's over 7 percent of their budget.

According to 2012, the 2012 estimate by OFA, Connecticut spends 5 million. I repeat $5 million annually on death penalty related costs including the separate sentencing phase, postconviction appeals, and higher costs for death row facilities. Since every death penalty verdict is automatically appealed further costs are added.

A study at Columbia Law School found that nationally, 68 percent of death penalty cases are overturned on appeal. And a full 82 percent of those reversals end in a life sentence. The appeals process is important because the death penalty trials are found to be significantly flawed and must be repeated.

Nationally, 135 -- I repeat, 135 people have been wrongly sentenced to death since 1973, in which case the innocent person can sue the state and win massive damage awards.

We are only human. Police, judges, juries, witnesses, and defense attorneys make mistakes. Most of these innocent people have spent up to 33 years, 33 years, awaiting execution or come within hours of execution before being exonerated. Any attempt to streamline the death penalty process or cut the option of appeals would only increase the risk that Connecticut executes an innocent person.

Let me give you a few examples that hit home. In the last four years, James Tillman, Kenneth Ireland, Miguel Roman, George Gold, and Ronald Taylor, collectively spent 90 -- over 90 years in prison for crimes they did not commit.

Let me share Miguel Roman's story with you. Miguel Roman was arrested for the murder of 17-year-old ex-girlfriend Carmen Lopez. He was not fluent in English and was read his rights in Spanish, but the bulk of the interrogation was in the English. DNA from semen excluded Roman, but prosecutors told the jury that she may have had sex with someone else but

Roman killed her. Roman was convicted by a jury and sentenced to 60 years in prison.

In 2008, in Connecticut Innocence's Project was able to get DNA testing on several items from the crime scene, including the semen, the clothes used to bind the victim, as well as the electrical cord used to strangle the victim. Each of these items excluded Roman as the perpetrator and implemented -- implicated -- I'm sorry -- another man. After spending 20 years in prison Roman was exonerated.

Passage of SB 280 will save the State $850,000 in the next two fiscal years alone, and possibly the lives of other innocent people who would be wrongfully convicted, and that is why I strongly urge you to support the bill.

I just want to share a personal story with you. I've had families who -- members who have been victims of violent crimes, and it wasn't to death, but it still hit home because it is a violation of your personal space. I had a home invasion. It didn't dawn on me that it was home invasion until I heard it here tonight. Where we were asleep and someone came into our house and stole my purse, so I know how it feels to be violated upon.

And when my daughter was little, a customer came in and he was bragging about his three children and how successful they were, and I was a new mom and I said, So tell me, what is the secret?

He said, I teach them through example. I don't have them do anything that I -- I don't do anything that I would not do.

And I've used that principle to raise our daughter, who turned out to be a pretty good young lady, because I taught her how to love people, how to care for people, not to retaliate. And so when we look at this death penalty, would I tell her, you know, Britney, the State can kill someone, but you can't?

What message are we sending to our children? And as someone in the Senate stated, What are we saying to the future?

You know, when our forefathers stood up and they were writing the constitution, they thought about the future of this country. So I say to my colleagues, let's look at the future of this state, and what message we are sending to the future of this state.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, madam.

Will you remark further?

Representative Gibbons of the 150th, you have the floor, madam.

REP. GIBBONS (150th):

Thank you, Mr. Speaker.

Good evening, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Good evening, madam.

REP. GIBBONS (150th):

I think most of us in this chamber have been conflicted, if not by this bill, then, at least, by the enormous weight that surrounds the topic of the death penalty.

To me, the line in the sand is over justice versus punishment. Does current law provide justice? If we pass this bill, will we provide justice that's any better? Has retribution been exacted for the families of the victims or for society?

In the wake of the terrible Petit murders, it's very hard for any of us to want to vote to repeal the death penalty, yet, that is what we've been discussing all today. The reality, though, is that, as we've heard many times today, Connecticut does not have a

death penalty. We have executed only one person in the past 50 years.

If we retain the death penalty, we will continue a very lengthy appeal process that is expensive for the State, does not bring closure for the families and at the -- it also becomes a media circus for the criminals, which in some perverse way provides entertainment for them, at best, and a change in their dreary solitary lives, at worse. That is not something we should be continuing. Yet, if we repeal the death penalty, does that make our state a bit more civilized in what we all know is a rather uncivilized world.

I asked my neighbors, my friends, my family, what they all thought about this bill and to weigh in. And it's interesting that it has been my adult children who are in their thirties and forties and their spouses, who mostly said, Repeal the death penalty. They all felt it was not a deterrent; that it was a harmful, barbaric type of punishment; that we should not be talking about to their children, my grandchildren, and to the next generation. So I think that's an important part in my decision today. Although I am still weighing -- one minute, I'm

thinking one way, and the next minute, I'm thinking the next.

We've heard from many people say that the death penalty is the ultimate deterrent to their heinous crimes, but, you know, if the murderer is strung out on drugs, or if this murderer is something that is random and violent that he didn't intend to do, that is really not a deterrent. Because he's not even thinking is this the death penalty that I am going to be facing or not. I think that's a problem with having the death penalty on the books. I'm not sure if it really does what we're trying to make it do.

I think today's debate has been very long, but I think very eloquent. I think it's been both personal and, yet, it's been theoretical. And as several of the legislators have been so correct in saying we have imperfect laws, and we have imperfect justice, whichever way we end up voting on this bill.

But at the end of the day, I think that each one of us has been lucky to be here in this chamber. There have been very few votes that I've taken in the past 12 years that have been really meaningful for the State of Connecticut, and I think one of them will be today. And I think that whether we vote yes to

repeal, or no to repeal, whatever we do -- whatever we decide it's going to have a long-lasting impact on the justice for the State of Connecticut. And I think we can all be proud that we took part in this debate and that we have tried to answer it to the best of our conscience and to the best of the wills of our constituents.

So I'm still listening. I'm still in here and thank you, Mr. Speaker, for your time.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, madam.

Representative Bacchiochi of the 52nd, for the second time, madam, you have the floor.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker, for the opportunity to speak for the second time.

Like everyone in this chamber, I've been fairly glued to my seat. And as Representative Gibbons said, it is such an important debate, and it's such a heavy decision that we're making.

And after listening to our good colleagues speak earlier about his very close personal experience and how justice affects the victims' families, I continue to be hung up on the thought that this State made a

promise to the families of the 11 people on death row, and we made a promise to the victims' families that those villains would receive the death penalty, and I truly believe we are breaking that promise by the passage of this bill.

And we did something so similar last year when we offered a bill that passed with earned risk reduction credits to offenders, and we had made promises to the victims of those families of very serious crimes, and we broke it. We did exactly then, what we are doing today. We dole out an appropriate punishment, appropriate, deemed by a court in Connecticut and then the Legislature comes back and we change it.

Mr. Speaker, the Clerk has in his possession an amendment, LCO 3127. May he please call, and I be allowed to summarize.

DEPUTY SPEAKER ARESIMOWICZ:

Will the Clerk please call please LCO Number 3127.

Have it be designated House Amendment "L."

THE CLERK:

House LCO 3127, House "L," offered by Representatives Cafero and Hetherington.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Bacchiochi you have the floor, madam.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

Mr. Speaker, this amendment eliminates earned risk reduction credits for persons convicted of certain and specific crimes -- which I will go over. But, for now, I move adoption and when the vote be taken, Mr. Speaker, I ask that it be taken by roll call.

DEPUTY SPEAKER ARESIMOWICZ:

The question before the chamber is on a roll call vote.

Those interested in a roll call vote please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ARESIMOWICZ:

The request 20 percent has been met, and when the vote is taken, it shall be taken by roll.

Representative Bacchiochi, you still have the floor, madam.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

Mr. Speaker, on some level, I do see there is some difference between the underlying bill and the amendment. Not that the threat isn't there, I do see that, but I think this is an opportune time for us to look at what, I believe, is a mistake made in the passage of the bill last year for earned risk reduction credits.

I'm a firm believer for risk reduction credits for certain parts of the prison population. I think our prison is overly populated with people who are there for drug offenses and truly what they need is, is they need assistance and they need help, and the best place for them is definitely not in our prison system. I think our prison is populated with people who need attention and therapy, and they are in there for reasons that they didn't really harm anybody. They didn't kill anyone. They didn't beat anyone. These low level offenders, nonviolent offenders, should absolutely be beneficiaries or the earned risk reduction credit.

But, Mr. Speaker, let me tell you. There are inmates that I so strongly believe should not qualify for earned risk reduction credits, and I hope we can address that tonight in this chamber.

For example, manslaughter in the first degree; manslaughter in the first degree with a firearm; manslaughter in the second degree, with or without a firearm; assault in the first degree; assault of a elderly, blind, disabled, pregnant, or mentally retarded person.

Mr. Speaker, this is the just the beginning of the list of inmates who can apply and earn earned risk reduction credits. And what that is, Mr. Speaker, that is promises made to the victims' families and the Legislature breaking that promise, just like we are doing today, just like we are doing with the death penalty to the people who are victims from the 11 people on death row.

Let's look a little further in this list: assault of an elderly, blind, disable, pregnant, or mentally retarded person in the second degree with a firearm. Someone using a firearm on a pregnant or mentally disable person, being able to get out -- even if it is five days before the sentence that they were rendered -- is wrong. It's absolutely wrong.

Sexually assault in a spousal or cohabitating relationship; sexual assault in the third degree with a firearm; kidnapping; kidnapping with a firearm; and

then getting earned risk reduction credits for good behavior or for taking a class, unconscionable.

Unlawful restraint in the first degree; burglary first, second, third degree, with or without a firearm; arson in the first degree; robbery; assault of public safety emergency medical or public transit personnel; rioting at a correctional facility.

Mr. Speaker, that isn't even the end of the list, and I think we have the opportunity today to take those classifications and remove them from the list of inmates who can apply for risk reduction, and I believe we have a responsibility to do so.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, madam.

Will you remark on the amendment before us?

Representative Lavielle, you have the floor, madam.

REP. LAVIELLE (143rd):

Does it work? Yes.

Good evening. Thank you very much, Mr. Speaker.

I would like to speak in strong support of this amendment, which as Representative Bacchiochi said, is about fixing broken promises. It is also about

restoring respect and about ensuring public safety. Representative Bacchiochi spoke of broken promises in terms of the death penalty in the underlying bill.

There's another source of concern that many of us have spoken about today, which is the provision that delegates to the commissioner of Corrections, the authority to change the incarceration conditions of people who are convicted of murder with special circumstances. That is a type of broken promise, as well. And this amendment addresses those broken promises on another level to families and friends of victims of any type of violent crime for which the perpetrator has not been convicted of -- well, has not been sentenced to the death penalty or murder -- the -- the confinement for murder with special circumstances, and yet, the people who have been found guilty of these crimes have been awarded risk reduction credits through Public Act 11-51 that was passed last year.

I have a constituent, for example, who one summer had a 13-year-old son who was riding dirt bike in a field, rode straight into a trap that had been set for him by someone, was killed instantly. They were never, for various technical reasons, able to deal

with that and to actually pursue the lawsuit against the prime suspect. But about six months later, the same constituent woke up in the morning and the first thing he heard was that his best friend had been killed, had been riding his motorcycle and been killed by someone driving on the wrong side of the road, who was found to be not only drunk but also had a number of different intoxicants, drugs, in his system. He was convicted of manslaughter in the first degree while driving a vehicle under the influence of intoxicants and was given a sentence of ten years in jail, with a suspension of five years.

They were -- right after the passage of Public Act 11-51, they learned that through the retroactive award of risk reduction credits, the person who had been convicted of killing his best friend would probably get out of jail in two years and, in fact, has since been released.

Here's what they told me, they said, Well, we thought, at least, the judicial system was taking care of us. They did make us a promise. This early release thing has really added insult to injury for us, and frankly, we feel betrayed by the judicial system.

And we all know and really the reason why we've spent so much time here today, I think, is that, justice is allusive and controversial when death is involved. And we've been talking about the death of the person who was convicted -- of the criminal; that death is final. But it's also final for the victim, for the loved one and people who are left behind. And they know that although death is final for that person, the sentence of the person responsible for it, or responsible for harm to that person could be adjusted, and adjusted much more than it -- than we used to be able to adjust it.

Now our judicial system is based on principles that attempt to assign penalties commensurate with the seriousness of crimes they are meant to punish. Causing death or grave harm through recklessness is among the most serious of crimes. With intent to cause it is among the most serious of crimes. And reducing prison sentences for those convicted of such crimes, just on the basis of good behavior or participation in rehabilitation programs, really undermines our judicial system's role in imposing appropriate penalties and establishing deterrents, and frankly, its very credibility, as well. It also

demonstrates a lack of respect for the family and friends of the victims of these horrendous crimes.

This amendment would, therefore, at least preserve the prison sentences of those who have committed violent deaths and other violent crimes, preserving our notions of justice, consistency, and good faith, I urge everyone in the chamber to support it.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, madam.

Will you remark further on the amendment?

The distinguished gentleman from Watertown, Representative Williams, you have the floor, sir.

REP. WILLIAMS (68th):

Thank you, Mr. Speaker, and good evening.

In support of the amendment, you know, prior to my first taking office here in the State House. My predecessor in the House of Representatives, Representative Brian Flaherty used to tell me and still does remind me to this day that whenever you walk into this incredible chamber that you have to feel a sense of power. It has to be a natural thing, a sense of aura about what you're doing. And he said

that when you stop feeling that aura, it might be time to hit the road and try something else in life.

And here we are today 151 people, really truly believing in something, 151 people truly believing in a cause, whether your cause is that we should repeal the death penalty, or whether your cause is that we should maintain it.

I think the amendment can help us to send a message to the world that even if we are perceived in some regard as weakening our law, that this amendment helps us prove that we are tough on crime.

You know, your heart has to bleed for the people who have had personal stories that they've shared here tonight: Representative Butler with a familial situation; Representative Berger who had a close friend and a colleague, who was brutally murdered. Your heart has to bleed because as Representative Butler said earlier, we happen to do a lot of bills that are not particularly emotional bills here in this chamber. We pass bills dealing with funding issues, energy, things that aren't really driven by emotion. This is one of those bills here tonight that is driven by emotion. And it affects families; it affects people; it affects people's lives.

Tonight, we can send a message that we are righting a wrong; that we are fixing what many people believe to be a poor perception of Connecticut that we are not tough on crime.

I would urge adoption of the amendment.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

I will remind you that the board is lit up for folks to speak on the underlying bill. If you want to be recognized for the amendment, please do so by a show of hands.

Seeing none -- oh -- Representative Thompson of 13th you have the floor, sir.

Representative Thompson wants to speak on the underlying bill not the amendment.

Thank you very much, sir.

Will you remark further?

If not, staff and guests please come to the well of House. Members take your seat. The machine will be open.

THE CLERK:

The House of Representatives is voting by a roll call. Members to the chamber. The House is voting

House Amendment Schedule "L" by roll call. Members to the chamber please.

DEPUTY SPEAKER ARESIMOWICZ:

Have all the members voted? Have all the members voted?

If all the members have voted, the machine will be locked. The Clerk will take a tally.

The Clerk will announce tally.

THE CLERK:

Senate Bill 280, House Amendment "L."

Total Number Voting	147
Necessary for Adoption	74
Those voting Yea	58
Those voting Nay	89
Those absent and not voting	4

DEPUTY SPEAKER ARESIMOWICZ:

The amendment is rejected.

Will you remark further on the underlying bill as amended?

Representative Sampson of the 80th District, you have the floor, sir.

REP. SAMPSON (80th):

Good evening, Mr. Speaker.

We've heard a great deal of emotional testimony

tonight. And, in fact, I found it surprising that we had a lot of people say that they were on the fence, even up to tonight, how they were going to vote on this bill.

I was never on the fence. I guess that's because, to me, this is not so much an emotional argument as an understanding that the world we live in that actions have consequences. And we've learned a lot of things tonight. I mean, many of these arguments we have heard in the past, but I think it's about time we boil down some of the more prudent arguments.

Representative Rose sits right next to me, spoke a few minutes ago and mentioned that, in fact, the death penalty in Connecticut is really a paper tiger. We learned that we have only executed one person in the last 50 years in our state, and, in fact, his guilt was not in question and this person, more or less, demanded the death penalty for himself.

I think I've learned through a great deal of listening that the idea that we could actually have a workable prospective death penalty is more or less preposterous. The numerous attorneys that are among us have pointed out that this would be a field day for

attorneys to file -- Mr. Speaker --

DEPUTY SPEAKER ARESIMOWICZ:

Representative, can we please move our conversations out into the hallway?

Representative, I apologize. Please proceed.

REP. SAMPSON (80th):

Thank you, Mr. Speaker.

I was pointing out that the idea that we could have a workable prospective death penalty from the conversation that we have had in this chamber and from listening to the senate the other night, it seems to me that it would be very hard for any of us to believe that's actually going to be the case. Quite a few attorneys among us have spoken to us, ad nauseam, about how it's basically an invitation, a field day, for more appeals to be filed for those 11 members of the current death row panel.

We've also heard a lot of discussion about flaws in the death penalty. People that are convicted erroneously. And, in fact, people have been put to death in error.

The fact is that this is not a problem in our state. And as Representative Hetherington pointed out, almost from the top of the discussion tonight,

that's what we are talking about. We are talking about the death penalty in Connecticut, not somewhere else.

I've got a great deal of respect for people on both sides of this discussion. But as was pointed out right from the very beginning, we should be having an honest discussion about whether or not we should have the death penalty or not, and not whether we should have a death penalty for some people and not other people.

I think there are two very simple truths that we all have to deal with if we're going to vote on this bill effectively. And the first one is that the 11 inmates that are on death row right now are going to avoid the penalty that a jury awarded them. The second thing is that the horrendous crimes that those members of that death row group are responsible for are only examples of things that will happen again -- and in fact they will happen again. There will be other heinous crimes committed in our state in the future. You cannot get around this. It is the nature of mankind.

But I understand that some people still believe that to put another person to death is just

fundamentally wrong in their eyes, and I respect that. I just think that the argument should be honest about whether or not these people deserve to have the sentence that was given to them awarded or not. I get their reasoning. I truly do. I don't agree, but I do get it. It is an understanding. It's respect for life. It's a religious belief.

I also want to point out that there are those of us who support maintaining the death penalty, who still feel that same way. In fact, I'd say from my point of view, I had people write me, asking me to repeal the death penalty because of the sanctity of human life. And my response to them is that is precisely because of my respect for the sanctity of human life that I want the death penalty. I believe that because life is so precious and valuable, it deserves to have the ultimate penalty when someone takes it.

I just want to end by saying that the fact is that we are debating this issue despite the fact that we're talking about one execution in the last 50 years. And who knows when the next one would actually happen, regardless of this body does today. The simple truth is the people that are on death row are

guilty. There is very little doubt about the 11 people that are death row in Connecticut right now. They're all guilty. We've talked a lot tonight about the murders in Cheshire. The two people -- the two men that committed those acts of violence are not men at all. They are animals. And I don't want to let them off the hook, so I am going to vote against the repeal, Mr. Speaker.

Thank you.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

Will you remark further?

Representative Carter of the 2nd District, you have the floor.

REP. CARTER (2nd):

Thank you very much, Mr. Speaker.

You know, this is probably a lot more difficult than I thought it would be. You know, I thought in a way I came in here with a very common sense vote, but there are some things I know. One of the things I know is that the death penalty may not prevent a crime. I know the death penalty is expensive in Connecticut, because we make it expensive in Connecticut. And unfortunately, we use it as a way to

oppose the death penalty. I know that there's not one person on death row in Connecticut today that's innocent. I, also, know that in Connecticut, in Connecticut, we haven't executed somebody who's innocent. I know that there are victims here who want repeal of the death penalty, maybe showing forgiveness, compassion. They don't believe it's a deterrent. I, also, know there are plenty of victims out there who want to keep the death penalty for their sense of justice, for a lost loved one, daughter, son, mother, father.

Personally, I do believe there are cases where a death penalty is warranted. I think there is a difference between murder and justice. And today we've heard a lot of people talking about what I would tell my children. Well, what I will tell my children after what I believe is a historic vote, here in Connecticut. And I guess what I am going to tell my children is this. I'm going to say, you know, Whitney and Dillon, there are some things that people do in this lifetime that are so bad and that do so much damage on others, where they deserve to pay an ultimate price. But what's more important is that as a policymaker and a legislator that I leave the means

for those communities who are affected by that to handle it. To handle it in a way that's consistent across the state but gives them the ability to do what they need to do handle those kinds of horrible, horrific crimes.

And the last thing that I know that, I think, is probably the most important is that, honestly, in this debate, I don't know if my opinion matters one way or the other. It's not my conscience I'm worried about. I know overwhelmingly that, in my constituency, they want to keep the death penalty on the books. So with that, I am going to vote the conscience of my constituents, and I am going to vote against the repeal.

Thank you.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

Representative Miller of the 36th, you have the floor, sir.

REP. MILLER (36th):

Thank you, Mr. Speaker.

All afternoon and into the evening we've heard in detail about a lot of the heinous crimes that have so affected us. It got me thinking back 30 years ago to

the 1980s when we had this monster on the loose in the eastern half of our state. Not only did this person absolutely devastate a half dozen families, but he took away all of our innocence. We found that back then, things changed. Parents would not let their daughter ride their bike to their friend's house anymore. It changed everything about our innocence, if you will.

And I can't help but think that that killer was relieved of his misery because he was living a pretty sad and pathetic existence with no hope and unwilling to face on a daily basis the devastation that he had caused others. We have a lot to do to fix the issues of justice that we have here in Connecticut, and it goes beyond even what we're speaking of today. Many of you recognize, clearly, that we have a large problem in our state with domestic violence and maybe to get at this we have to do a better job of raising our young people and to teach them how to deal with disappointment and heartache and the vicissitudes of life and that you can't solve things with violence.

And yet, I can't get beyond, personally, that I can't believe and I can't agree with state-sanctioned killing. And I regret that this puts us apart from

each other. I don't know anyone who is more brave hearted, in my opinion, than our colleague and friend Larry Butler, who has to deal, like so many other people, with everyday the loss of a family member to senseless violence.

I'm emboldened, not only in my district, but beyond by our faith community who has had a say in this, and many of you have spoken, at length, to your own faith community about this issue. And many of us have spoken at length with our constituents, and it's a little difficult. Many of our constituents have pointed out -- I had one point out to me the other day that if I vote to repeal the death penalty that I could be voting against a majority of my own constituents, and I acknowledge that that may be true. And I believe that for a lot of people tonight, regardless of how they vote, it will be a courageous vote because they will risk alienating their own constituents who feel strongly as they do just as this body does on both sides of this issue.

It's been suggested to me that we should do what they would -- what the governor of New Jersey would do, take a controversial issue like this -- in their case, it's gay marriage -- and put that to a popular

vote. But I can't help but think that our founding fathers were a little more prescient than that and that's why they designed representation so that we would not have a mob rule.

So this is something that we have to vote on principle, and I know this is a difficult people for -- issue for so many people in our state, particularly, for all the victims. And -- but I -- I'm firm that I'm going to vote to repeal this, and I thank you for your consideration.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

Representative Labriola of the 131st, you have the floor, sir.

REP. LABRIOLA (131st):

Thank you, Mr. Speaker.

During the 10 years that I have had the honor of representing the people of my district, I have participated in several debates regarding the death penalty, and I have tremendous respect for all of my colleagues who intend to vote for this repeal bill. And I have great respect for anyone who is opposed to capital punishment on either moral or religious

grounds. As a matter of fact, I don't think there really is an argument against that position for somebody who just believes that the State should never, ever conduct an execution. However, a majority of the people of Connecticut -- certainly a majority of the people in my district and indeed the country -- do believe that some crimes are so heinous that the only just penalty is capital punishment.

To the notion that somehow this bill will be prospective in nature, I do believe that that is a complete and utter falsehood. That the operation of law, as experts have testified in public hearings in Judiciary Committee, this year and previous years, by operation of law the people who are now sentenced to death on our death row in Connecticut, their death penalties will be commuted to life in prison without parole, without question. It's -- it's a certainty. And so we must not seek refuge in the idea that this will, in fact, be a prospective bill because it won't be. The people who are on death row will immediately be serving a sentence of life without parole. Let's be clear about that.

And to those who say that somehow passing this bill we would save money in these tough economic

times, that, also, is a complete falsehood, because by definition life without parole means that the State will be housing these particular people sentenced to these horrific crimes -- for the commission of these horrific crimes, we will be housing them for the rest of their lives. So, of course, that's going to cost more money than if we were to carry out an execution. ,And also this idea that well they wouldn't be appealing their cases so we would save money there. That's not true either. Of course, that's not true. If we changed the maximum penalty to life without parole, well, the people who are facing that charge are going to defend themselves just as vigorously as they are defending the current capital punishment system. They're going to appeal just as vigorously. They're going to spend just as much money in their defense. It's going to cost the people of Connecticut the same amount of money. The only thing that's changing is the punishment. We're changing it from death penalty to life without parole. So we're not going to save any money by somehow getting rid of appeals or eliminating appeals or limiting appeals in this way by -- by getting rid of the death penalty. It's not going to save any money on the appeals

process. And it's certainly not going to save any money since we're going to have to keep them alive for the rest of their life in a jail cell.

The other thing that I think is often underestimated and overlooked is this notion of leverage that a prosecutor has by the mere existence of the death penalty. We've heard from the prosecutors throughout Connecticut that it is a tremendous tool that victims of crime -- that the families of the victims of crime have come here to tell us that, please don't get rid of the death penalty because its leverage has allowed defendants to plead guilty in cases where it might be a close call, where the witnesses might not be tremendously reliable, and so there might be some slight weakness in the case. And this is a tool that the prosecutors use. Many, many defendants plead guilty to life without parole because they want to avoid the death penalty.

If we got rid of the death penalty we would lose that leverage and that's -- that's a mistake. There's no reason to do it. The people on death row, they themselves don't even think that they're innocent; they don't even claim that they're innocent. They

know they're guilty, too. It's true that the Cheshire killers each blamed each other. But is there any doubt? Does anybody here think that there is any doubt that those two people committed the crime? Of course, they did. And the other nine on death row, they think that they are guilty; they're not even claiming that they're innocent.

So what lawyers call "actual innocence" is not even a claim in any of their appeals. So we're talking about the worst of the worst. These people -- these are bad guys, and they've committed horrific crimes. And if we pass this bill, make no mistake, it's not prospective. Automatically, they're going to get life without parole, and it's not right.

I don't -- I don't want to be party to it. I'm not going to be part of it. I'm going to vote against this bill because I believe there are some crimes that are so horrific that the only just punishment is the death penalty.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

Representative Thompson of the 13th, for the second time, sir, you have the floor.

REP. THOMPSON (13th):

Thank you, Mr. Speaker.

I just want to get everybody's attention. I -- I'm speaking for the second time. I'll try to be brief.

In my earlier remarks I mentioned the study done by the commission in Illinois, which resulted in a book. And as a result of that study, once the governor saw the study, he commuted the death sentences of every single prisoner in the Illinois prisons, and it wasn't eight. It was over 160. Now what happened to them, I'm not sure. But commuting a sentence means you reduce the penalty. In this case, you reduce the penalty. What the penalties were finally enacted, I am not sure. However, the -- his reaction to it was after months and months of debate and exchange of information, study statistics, studies of the issues that we're talking about here this evening. And as I mentioned, he had a reputation as being a conservative governor; however, he was so impressed with concern by the report that he immediately commuted the sentences. And I think that's going on all over the country, debates, like we're having here tonight. And we certainly are

having a high degree of debate.

Walking back here this evening going by a television, I caught the testimony of Representative Larry Butler. I stood there entranced for as long as he spoke. And he finally came to the conclusion, despite the great personal loss, that there are other victims and victims of the results of the death penalty, victim of the results of deaths, murders, and so on. And my concern not only the expense involved but the sensitivity that he showed for -- and compassion, he showed for the survivors, the victims. And perhaps, that's one area we really haven't looked at.

And I had the strangest thought. When I graduated from high school, I went into the service. A couple of years later I was a veteran and went to college. I met a young man there who came directly from high school to college. We were both city kids from New York. I was from Staten Island; he was from Brooklyn. He went into the Marines four years after I came out of there. He had a gift for languages. Irish kid from Brooklyn who spoke German fluently by the time he reached college, continued his study of languages in college, entered the Marines, became an

officer, was sent to the Language Institute in Monterey, California, where he became fluent in Chinese. He was assigned to an intelligence unit, which ended up in Hawaii, and he was interviewing Chinese people coming out from behind the Bamboo Curtain. He was married. He was very disappointed that I couldn't participate in his wedding after he had been my best man, but my first child was being born that weekend and I had to beg off so I couldn't attend, but we remained friends.

Finally, he wrote me a note -- or called me and said that he was on the way to the Middle East, and he would spend time in different places -- a month in each place -- and finally, wind up in Vietnam for another month. I assumed all of that was connected to his intelligence role. A while later -- I think it was New Year's Eve, 1964 -- he accompanied a South Vietnamese Marine group on a rescue mission. It was a trap. He was jumped and captured and wounded and dragged off into the jungle. He became an MIA. His wife contacted me through her brother who lived here in Connecticut and asked me to correspond with my Senator, Senator Tom Dodd and my Congressman Mim Daddario. They were considering legislation to take

care of those families in some improved tax way and that legislation was successful.

In the meantime, he remained missing in action. The Corps did not know his status and continued to promote him when he was captured -- I believe, he was a captain. Some years later, he was declared dead and he was by that time a colonel. According to one book on his life, he was the first Marine captured by the Viet Cong in Vietnam. All this time his widow -- now his widow -- was able to receive continued support from the Marine Corps, and I don't think anyone would begrudge that to he or his children, and they continued to live.

A short while later he was awarded the Medal of Honor. He was my roommate, a kid from Brooklyn -- Irish kid. His father was a truck driver. His brother was killed in an automobile accident. He had a sister who survived. But I don't think anyone would begrudge the kind of concern that society owed him or paid to him. His wife was the victim; the children became victims, too, and they were restored to some sense of civil life living through the help of the Marines and our government.

That -- from the way I understood, some of the

earlier testimony, that doesn't happen. And perhaps that's something that we should continue to look at -- how we service victims. Whether they're victims of the murderer or just plain victims, innocent bystanders, or whatever, we should certainly take a look at that. And even in some cases -- pardon me but -- in some cases some of the victims are children of the murderer and become often -- become cast aside, certainly take a step back.

So there are times when society must step in and help out those families, and perhaps, we're not doing enough. I think there's many different programs out there, but I'm not sure that we address this particular issue or have the same approach to it. So that would be something that I think Representative Butler would welcome to work with that type of review and many others who mentioned the subject of survivors.

In addition to that, Representative Rowe mentioned the issue of abortion. It is an issue; we all feel it. But at the same time, it's being argued, I think, at a very high level, we have different sects of the same religion who take a different view and see some merit in leaving that decision up to the woman.

I believe that may be morally correct if it's a rape and -- but some people don't believe that's morally correct. But I think it's being debated on another level and this may not be the level for this debate or it should not interfere with this debate. But I respect that position, and I respect the different religions for continuing to discuss this. And hopefully, there'll be a solution somewhere along the line. People will learn how to do things better, I guess.

So what I'm suggesting is that I believe the governor of Illinois was correct in commuting the death penalty for everybody who is sitting, waiting to be executed. And the state then went on to do away with the death penalty, and I think they're a better state for it.

I get concerned when I hear about our government involved in drone planes and the innocent lives that are sometimes lost in that. It seems to be at some level a justification for the good it does, but I don't think taking innocent life and it's -- it's a crime, and so that's another case.

And there are other issues. My friend who was wounded, carted away and became a hero, received the

Medal of Honor was still a Marine carrying out the duties. And what was interesting about his citation was that he was cited because of the -- his heroism in the prisoner of war camp where he took -- even though he was not the highest ranking officer -- took control and sacrificed his own medication, and so on, to save his -- his partners in that camp.

When I went to a boat launching named after him up in Bath, Maine, there was a foreign service officer there who had also been a prisoner in the same prisoner of war camp. He had been on a mission of mercy to some -- Vietnamese and he was captured and imprisoned. So I went over to him. I introduced myself to him and I told him that, Did you know that Don spoke Chinese.

Well, of course, he knew. And he smiled at me and said, Did you know that he spoke Vietnamese?

And I said, No, sir, I didn't, but I 'm not surprised.

So in my judgment he's a hero, he was carrying out the duties and responsibilities of his role as a Marine officer and he died. But yet some people would think -- I'm sure, some on the other side of those issues -- would think that he was a bad guy. Not me

and I don't think anyone here would think that, and I think anyone who had any sense, his heroism was based on his willingness to cover for his inmates or fellow prisoners to cover for those who were sicker than he was to cover for the reputation of our Corps and of our country.

So there's been a lot of different issues on this, and I think we should continue to explore some of these things, but certainly the survivors who have been victimized by the rash action of one of their kin, or have been harmed because they're surviving the dead. And we should take a look and that and make sure that that family does not suffer as a result for the rest of their lives.

So it's a thing -- a kind of discussion, I think, that could bring together many of us in the chamber who have argued from a different perspective. But I think the big deal right now is to remove the death penalty and remove it now. And it's truly a step -- it seems the consensus here that nobody on death row will now be executed, but we don't know that. But at this -- at this time, it is a step forward. It enables us to look at other issues surrounding it, and we should look at those. But we should vote for this

bill this evening and move on.

Thank you.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

Representative Adinolfi of the 103rd for the second time, sir, you have the floor.

REP. ADINOLFI (103rd):

Thank you. I'll be brief, Mr. Speaker.

You might recall when I spoke the first time, I mentioned about the -- the Petit murderers crashing into the police cars, but what I didn't mention was that they had done their escape in a Petit-owned vehicle and that the police cars were only parked, oh, probably less than 150 feet away across the road. And also, at the site of the murders, there was a SWAT team and the SWAT team was ready to put these people out. They were all sharpshooters -- this is what I've been told -- and had they not crashed into the police car and Komisarjevsky and Hayes had their head on the dashboard, these two men probably would have been dead now.

And what would have happened if the police were successful in that or in any other similar situation? The legislators from their town would have given them

a proclamation from the General Assembly honoring them. The Governor would give them a proclamation honoring them. We would have brought them up in front of this General Assembly, and we all would have stood up and applauded them. But then when they're tried by a jury of their peers and sentenced to death by a jury of their peers, we want to repeal the penalty. And this could be in any similar case, not only the Petit case. And that's why I find it so difficult to understand why we're even discussing this.

Had the police been successful -- I'll repeat that -- we would have applauded them. We would have honored them for killing those two murderers once we learned what they did. But here we are today saying, let's let them go.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

Representative O'Neill of the 69th District, for the second time you have the floor, sir.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

I, too, will try to be brief in light of the lateness of the hour.

But there were a number of things that have been said over the course of the evening since the last time I spoke that I feel it -- the urge, the need really, to respond to. One of them is the argument that if -- if it's wrong to kill, how can the State kill? And the use of language is interesting in this circumstance. The thing that the people did in Cheshire and the other people sitting on death row did was not merely kill. They committed murders, totally unjustified, without any rights, and they did it in a most cruel and vicious manner possible. That's one huge distinction. To say that the State is killing killers and that somehow the thing is an equal thing between the two, in my opinion, is just ignoring the facts of what happened in Cheshire compared to what would happen if, in fact, the death penalty were carried out on the two, now, convicted killers from the Cheshire case. But that question being put before us is how -- how can you explain that? How can justify the State killing?

Well, you can go back through philosophy and go back through Aristotle and Plato -- I started looking up things on the Internet and ran across Immanuel Kant and started running into things, like, trying to

reconcile the empiricist versus the pure rationalist approach to philosophy, but it's clear that that kind of an analysis is not what people are talking about because I've actually heard it said, How do you explain to a five-year-old the role of the state government in governing and in the possibility of the use of the ultimate penalty as part of its criminal justice system. How do you explain that to a five-year-old? And I'm not quite sure you can. I think the Representative from Bethel did a really good job, and I would only add that I'm not sure that the standard by which we should legislate is if you can explain it to a five-year-old, then you can pass the bill; but if you can't explain it to a five-year-old, then we might as well give it up and not have a law unless it can pass muster, be accepted, understood by a five-year-old.

We spent a lot of time recently talking about the need to raise the age because we concluded that 17-year-olds' brains are not sufficiently developed that they can appreciate the consequences of their actions. So I don't know how we use the five-year-old as the standard of measurement by which we decide whether or not we can pass a piece of legislation. We can

disagree about whether the death penalty is appropriate or whether it's an outmoded relic of the past or whether it's something we really need to have for our current criminal justice system. But I really think the "explain it a five-year-old" standard is -- is the wrong one to use.

But I'll take a stab at it for those of you who wish to and that is to say that just as if two children, a five-year-old and a four-year old, get into a fight with each other, we don't let them resolve it. Their parents intervene, and the parents are going to exercise powers that neither of the four- or the five-year-old are going to be able to have and is going to make a judgment about who's right and who's wrong and is going to mete out a punishment.

So if you're looking for an explanation of a five-year-old and you need to use the family parent-child relationship as the model to explain how the government relates to its citizens, I offer you that.

It was also said on any number of occasions during the course of this evening's debate that executing the killers -- executing the murderers in Cheshire, for example, will not bring the victims back. That's true. Putting them in jail for 50, 60,

70, 100 years won't bring them back either. By the same token, if someone beats someone else up, breaks their arms and legs, blinds them or commits a rape, putting the killer or the rapist, rather, or the assaulter in prison for 20 or 30 years, that's not going to undo the damage that's done. Someone's been blinded; someone's been raped. They're not going to get unraped because we put the person in jail for 25 years.

Our system is not designed to restore the victim back to the status they had before the crime occurred. That's not what justice is about. And, in fact, to look at it that way, it reminds me of the way things used to be done in England back around the year 7 or 800 when they started trying to develop the criminal justice system. Because what happened was if somebody attacked a member of my clan or family or tribe, then our group would go out and retaliate against the other assaulter or the person who committed the murder or whatever was done. And people would get into these feuds. And the effort by the kings to establish some sort of a system of justice and maintain a little bit of peace and quiet, law and order, was that he assumed the responsibility for settling those kinds of

disputes. Sounds a little bit like the parent and the five-year-old. But that's how this sort of thing seemed to get going so many years ago was that we were trying to move past pure simple vengeance.

And it's sort of a funny discussion that if we can't restore the victim back to the status quo before the -- the crimes were committed that we shouldn't do anything at all or do very little or do less because then it does seem to say, well, you victims if you want to achieve restoration, it's up to you. Seems like that's where we're sending people.

Now, one of the things that I heard somebody saying was that -- and several people actually said this -- and this is a very difficult issue. It's a struggle, people are conflicted, 51, 49, one way or the other. They go back and forth. And that somebody said that it was, perhaps, if we were in New Jersey, the governor would ship this off to a referendum. And that was dismissed having a popular vote by the citizens of the State of Connecticut on this issue was dismissed as mob rule. Now, since those are same citizens that elect us, I think that it doesn't say much for us if we were elected by the mob. In point of fact, I don't think that it is mob rule to have the

citizens vote. In my home town, we vote on budgets and all kinds of things by referendum, and we vote on the constitution of the state, the ultimate law. Not the law that we make here, but the law that we have to abide by the state constitution -- that's made by the people voting in a referendum. And I don't consider that to be mob rule. That's the ultimate law that we have to answer to. That's the organic law of the state.

So with that in mind, Mr. Speaker, I have an amendment. I would hope that the Clerk has in his possession LCO 3172. If it would be please called and I be allowed to summarize.

DEPUTY SPEAKER ARESIMOWICZ:

Will the Clerk please call LCO Number 3172, which will be designated House Amendment Schedule “M.”

THE CLERK:

LCO 3172, House “M” offered by Representative O'Neill.

DEPUTY SPEAKER ARESIMOWICZ:

The Representative seeks leave of the Chamber to summarize their amendment. Is there objection to summarization? Is there objection?

Hearing none, Representative O'Neill, please

proceed, sir.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

Before I -- well, let me just summarize what this amendment would do, would be to strike the underlying bill and require a referendum to be held at this upcoming election in November at which everyone in the State of Connecticut would have an opportunity to vote on the question of shall we have a death penalty in the State of Connecticut.

I would move adoption, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Please proceed, sir.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

If I could I would request that when the roll be -- the vote be taken, it be taken by roll.

DEPUTY SPEAKER ARESIMOWICZ:

The question before the Chamber is on a roll call vote. Those in favor of a roll call vote, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ARESIMOWICZ:

The requisite 20 percent has been met and when the vote is taken it shall be taken by roll.

Representative O'Neill, you still have the floor. Please proceed, sir.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

I think this amendment in the parlance of the other chamber is pretty much self-explanatory. I would hope that the members here who feel that this is a difficult duty, that this is something that they would like to consult their constituents on more fully and get a clear and concise answer from them, not just a random sample, not a poll by a university, not trying to weigh up the emails coming in one side or the other or count the phone calls coming in on one side or the other but have a real vote by the people of the state of Connecticut. And they could express themselves on this issue and provide us the kind of guidance that, I think, so many members of the chamber have been seeking. That it not be on our shoulders, perhaps, so much if we get a vote by the people of the state of Connecticut telling us what they want us to do.

And so with that, Mr. Speaker, I would urge

adoption.

Thank you.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

Will you remark further on the amendment before us?

Representative Smith of the 108th, you have the floor, sir.

REP. SMITH (108th):

Thank you -- thank you, Mr. Speaker.

Just a quick question to the proponent of the amendment, if I may, through you.

DEPUTY SPEAKER ARESIMOWICZ:

Representative O'Neill, please prepare yourself.

Representative Smith, please proceed.

REP. SMITH (108th):

Thank you, Mr. Speaker.

To the good Representative from Southbury, I'm looking at lines 22 and 23, and it says, The vote shall have -- the vote shall be of no legal effect.

Now, I'm just wondering what that means if -- if you could explain that.

Through you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Representative O'Neill.

REP. O'NEILL (69th):

Yes, Mr. Speaker. It's my understanding from the consultations we've had with LCO that because of the way the state constitution is written, we do not have the right to transfer the responsibility to actually pass the legislation to the voters; that our Constitution has been interpreted to set it up so that we can only have a nonbinding referendum, so this is an advisory, rather than a binding vote.

Through you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Will you remark further on the amendment?

Representative Rebimbas of the 70th -- 70th, you have the floor, madam.

REP. REBIMBAS (70th):

Thank you, Mr. Speaker.

Just briefly I want to stand in strong support of this amendment. I think it would be highly, highly educational for all of us to properly put this out to

the people of the state of Connecticut in a referendum form. Because as many of us have stood here today testifying that we have either met with certain individuals, groups, organizations, faith-based, victims, families, things of that nature, the only way to truly get a representation of what the residents and the people of the state of Connecticut want and not what we're representing here as what may or may not be our districts, what may or may not be our own morals and consciousness is to put the vote to the people.

You still have the opportunity, as it was confirmed earlier, that this is just an advisory vote that would be going on, but it's one that then we would be making a responsible decision here on the floor of the House. It may change the decisions for some of you and it may not change it for others. But what we would be doing is then making a decision based on actual facts -- actual voters taking the time to go to the polls and tell us exactly how they feel about this piece of legislation. Then, we can come back here together and then vote the way that we decide.

And I, too, Mr. Speaker, have to indicate that I did take a little offense to the term of "mob rule"

because, again, we do have the right to vote. We exercise that right to vote, and it is the people and the residents of Connecticut that vote for us up here, and I am honored to have that right and encourage others to do so. And hopefully, we can respect and allow the people of the state of Connecticut to vote their conscience, their thoughts, their beliefs on this piece of legislation without us doing it for other alternative motives.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, madam.

My good friend, Representative Noujaim of the 74th, you have the floor, sir.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. Good evening, sir.

DEPUTY SPEAKER ARESIMOWICZ:

Good evening.

REP. NOUJAIM (74th):

Thank you, sir, for allowing me an opportunity to speak about this amendment.

What a great idea. Mr. Speaker, as an immigrant myself, one of the things that I most treasure in this wonderful country of ours is the ability to vote and

express our opinions. That's what our forefathers have fought for. That's why they died for, and they wanted to give us the freedom that we live in this wonderful country. Voting is a privilege.

And this would be a great idea for our constituents to let us know how they feel exactly about this -- about this process. Come election time, let them tell us. In my district, I heard pro and I heard con. I heard people who want this to be repealed and people who do not want it to be repealed. Let them have the ability to come to the poll and express their point of view and let us know how exactly they feel about it.

And I really truly, truly urge support for this amendment.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

Representative Wood of the 141st, you have the floor, madam.

REP. WOOD (141st):

Thank you, Mr. Speaker.

I also stand in very strong support of this amendment. I think so many of us have been very

conflicted about this. And I think the debate has been heartfelt and very -- educational. I don't know what else to say.

But it's a very difficult subject, and I think this is something that should be put out to the people of this state and let them decide this. So I do stand in very strong support of this, and I hope you all will join me in supporting this amendment, as well.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, madam.

Representative Davis of the 57th District, you have the floor, sir.

REP. DAVIS (57th):

Thank you, Mr. Speaker.

It was discussed earlier that our representative form of government is in place to protect against the tyranny of the majority. But it was also installed by our founding fathers to protect the tyranny of the minority, to protect ourselves against the ruling class making decisions for the majority of the residents or the people contrary to their own beliefs.

And this is a perfect example of how, perhaps, the ruling class, here in the state legislature, is --

perhaps, a minority in this position and the opportunity now would be given to the majority of the people in the state of Connecticut to, ultimately, prove to us what is the true voice of the majority. So I stand in strong support of this amendment.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

Will you remark further on the amendment before us? Will you remark further on the amendment before us? If not, staff and guests come to the well of the House. Members take your seat. The machine will be opened.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting House Schedule on Amendment “M” by roll call. Members to the chamber, please.

DEPUTY SPEAKER ARESIMOWICZ:

Have all the members voted? Have all the members voted? If all the members have voted, please check the roll call board and make sure your votes were properly cast. If all members have voted, the machine will be locked.

Clerk, please take a tally.

(Speaker Donovan is in the Chair.)

SPEAKER DONOVAN:

Clerk, please announce the tally.

THE CLERK:

Senate Bill 280, House Amendment "M."

Total Number Voting	147
Necessary for Adoption	74
Those voting Yea	54
Those voting Nay	93
Those absent and not voting	4

SPEAKER DONOVAN:

Amendment fails.

Representative Mae Flexer.

REP. FLEXER (44th):

Thank you, Mr. Speaker.

I'm so honored to serve in this House of Representatives. And I'm deeply appreciative of the respectful debate we've had here on this issue today. I just want to take a moment to express gratitude to so many people who fought for this day for so long. Passing a vote tonight in favor of this bill is the

proudest moment of my career, and I know it will always be one of the proudest moments of my life.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Candelaria.

REP. CANDELARIA (95th):

Thank you, Mr. Speaker.

Thank you for -- thanks to the chamber for indulging me in my remarks, which I'll be brief.

Last time that we debated the bill, in 2009, I spoke about the tragic death of my grandmother and how that affected me deeply. This time around, I think I'm going to focus on being brief. We'll talk about the death penalty is not a deterrent to crime. You know, we -- our criminal system chooses to determine what crime deserves capital punishment. I think all crimes of murder deserve capital punishment, but that's not the case, so instead we choose who are we going to put to death. I think that abolishing the death penalty is the move that we need to go through.

I think that families that have gone through these heinous crimes of murders do not receive closure by knowing that their family is on death row. Because

appeal after appeal that individual still waiting to be put to death can be there for 20 years. Is that a deterrent? A lot of the crimes happen in the heat of passion, and who's going to think at that particular moment not to commit the crime?

Mr. Speaker, I urge my colleagues to support to repeal the death penalty. Thank you so much.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Dillon.

REP. DILLON (92nd):

Thank you, Mr. Speaker.

I rise in support of repealing the death penalty. I never thought in my years here that this would happen, and I'm very proud to be part of this.

When I was a little girl, I lived in my grandparents' house with my parents. And one of the people on our street whose home I was in all the time killed her mother. This was -- I lived on a street in Queens where our houses were so close everyone knew everybody's business. You thought you knew people, but we did not. And when we were in fourth grade, my friend came home and found his mother stabbing his grandmother to death in the same kitchen, where I

would go in and ask for cookies from the day that I was two-years-old, was covered with blood. She didn't go to prison. She went to a mental health facility called Creedmoor.

Years later, a woman was killed in an apartment building about a half a mile from where I had lived. We had moved. And her name was Kitty Genovese. And a lot of people -- no one went to help her. And a lot of people said that people in New York were apathetic. But I had a lot of relatives and friends in the police department, and I remember very clearly what everyone said at that time, We heard that all the time. We thought it was her husband.

And it never occurred to me, until I got older and I became involved with domestic violence as an advocate, that in our society because of changing times some victims are more sympathetic than others. So that my opposition to the death penalty began as a belief that government could not be trusted and knowing that I had seen violence -- I knew about violence. I wasn't a witness on behalf -- that was performed by somebody that I knew on my street.

I have home movies of us at Candlewood Lake where everyone rented cottages, and he's there. And I look

at them sometimes and think that was there any way to know that she was going to do that. And it made me wonder about -- really about my own certitude about everything.

From -- as times change, some people think that some victims are more sympathetic than others. Some survivors have the resources to tell their story. And it's not just money. It's emotional resources. Do you have the stamina to try to enforce your will? To me, that -- that puts a randomness into the machinery of government that's too difficult for me to accept.

I want to thank everybody here in the Senate and in the House. And I want to remember Richard Tulisano for the people who really led this fight for so many years, and thank you very much for your behavior today, all of you. I'm very proud to be a member of this chamber.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Butler, for the second time.

REP. BUTLER (72nd):

Thank you, Mr. Speaker, for the second time.

I just have some final thoughts and I'm going to be brief. The one thing I left out, speaking earlier,

was two years ago we debated this and afterwards I received an email from Dr. Petit. And he said -- he thanked me for my point of view and my advocating for victims, but he also said that you really get it. It's not about revenge or vengeance, and I keep -- I've heard that said a number of times tonight. It's not about revenge and vengeance. It's about justice. And that's what he said -- and he said that before the trials -- even the first trial came forward. And I led off tonight saying that this was about one word, "justice."

And just closing this gap about what we're about to do today whether you fall on one side of this issue or the other -- after we get the final results, we're still going to be left to deal with one issue and that's justice. So I hope that regardless of the outcome tonight that we're going to be facing how to handle the future events that happen in the call from our constituents that demand justice. And we need to think about that long and hard because I don't think the result of tonight is going to bring us to answering that question.

I would say that if I were to ask Dr. Petit again, right now, after the trials, what he thought

about this, I'm sure he would say, Larry, it's still about justice.

Thank you for your time, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

House Minority Leader Larry Cafero, you have the floor, sir.

REP. CAFERO (142nd):

Thank you, Mr. Speaker.

Ladies and gentlemen of the chamber, it is the custom and tradition of this chamber at the end of most debates, certainly ones of great import, that the Minority Leader and the Majority Leader do a summation. And in doing a summation the way that I approach that task is sort of to review for the benefit of the Chamber what we've learned, what we did or did not do, and what we are about to do because those summations come just before we're ready to take a final vote.

There was a lot of discussion about grandchildren today and explaining our actions to our kids. As I've often said in this chamber, my wife and I are blessed with three children who are now 26, 23 and 20 years old. But when I first came to this chamber, they

were seven and four and six months. So throughout my career here I tried my best. When you got home and got the typical questions of your kids, Daddy, what did you do today? To try, as best I could, to explain what we do here and why I might have missed dinner or a soccer game or a Little League game. And even though the kids are older, I still think it is always helpful to try to be able to explain what we do as if we are talking to that four-year-old.

So what would I say today if I had to explain what we did or are about to do or what we've learned today with regard to this bill? I'd first say that over the several hours of debate I heard my colleagues speak from the heart, share stories, personal, emotional, some with tears in their eyes, with voices cracked, with emotion -- on both sides of an issue. I would try to explain to that four-year-old that what we were talking about is punishment and, in particular, the death penalty. And what I would say to the four-year-old is we, as a legislature, debated and took a vote on whether or not our State would have a policy of capital punishment, the death penalty, whether or not, I would say to that four-year-old, would ever put to death someone no matter what they

did.

But I'd have to pause and say, Except. Because you see we've talked about banning the death penalty, about changing the policy of the State of Connecticut. We've talked about justice. We've talked about the mistakes that are made, the -- the moral issue when it comes to the State taking a life. And yet, by the very terms of the bill we are about to vote on, we allow the death penalty to continue for at least 11 people and maybe more.

Now, if you've ever talked to a four-year-old -- which I'm sure most of you had -- they say the darndest things. They have such honesty and sincerity. And they might say, I don't get it. I thought you said that you changed the policy so there would be no more death penalty, yet, you just told me in some cases there still may be State-executed deaths that take place. That's tough to explain. It's tough to explain to a four-year-old, and it's tough to explain to a 40-year-old or 94-year-old because to many it is illogical and does not make sense.

I know there are many faith-based organizations -- I certainly belong to one -- that have supported this bill because they believe that the taking of

human life is wrong. And if they are to preach or talk about this bill from the pulpit, they might have some difficulty because, as we've all admitted, and is allowed for in this bill, at least 11 men on death row may subsequently to the passage of this bill be put to death. And when that happens, what will we say? How do we explain that? How do we justify that? How could we say it is no longer the policy of the State of Connecticut to take a life, yet, we are allowing a life to be taken? So it's in conflict.

Unless -- unless maybe we're hoping -- or some may be hoping that those 11 people never really face the death penalty. We talked about that and we learned about it today. When I asked the question of Representative Fox what happens if this bill is ruled unconstitutional because of that duality of having capital punishment applied to those on death row but never apply in the future. And he is -- the honest man he is said what most likely will happen is all those on death row would no longer be subject to the death penalty.

We haven't only heard that from Representative Fox. The Division of Criminal Justice through Kevin Kane, who testified before the Judiciary Committee,

issued a statement that said that the notion that the death penalty could be repealed prospectively as envisioned by this bill is tenuous at best.

Prospective repeal of the death penalty will create two classes of people: one will be subject to execution and the other will not, not because of the nature of the crime or the existence or absence of any aggravating or mitigating factors, but because of the date on which the time was committed -- the crime was committed. Think about that, folks. Are we really changing the policy of the State of Connecticut? Yet we have that conflict in our law. That's a tough one.

You know I saw an old colleague here today, one that we all know and love. And I told him that in preparation of today's debate, I sort of reviewed the other debates we've had on this subject. And in particular, I remember -- and it's been referenced here today -- the debate we had in 2005. It was for the total repeal of the death penalty. And at that time you might recall it was all about Michael Ross, a death row inmate, murdered eight people brutally. As someone said he might have been the poster boy for the death penalty. And uniquely, he wanted to die. But

many people wanted to prevent his death from taking place because they believed with all their heart that the death penalty was wrong, and they brought that bill up -- and you want to talk about courage. This person who was reviled as one of the most heinous villains of our time in our State's history wanted to be put to death. And people had the courage to stand up and put forth a bill that said, We repeal the death penalty not only prospectively but to everyone, including Michael Ross. That's courage. That is a principled debate. That's the real deal.

With all due respect, ladies and gentlemen, this is not, this is not. At best, it's an unconstitutional law and, at worst, -- at worst, I would hope it's an unintentional but misleading law to the public. Had we passed the very same law two years ago when it was before us in 2009 -- as I indicated before -- Steven Hayes and Joshua Komisarjevsky would not be on death row. There's a lot of irony to that because in many respects it's because of those gentlemen that we have the bill that we have before us.

I am part of a democracy, and I am part of this chamber. I've indicated before my personal feelings

with regard to my support of the death penalty, but I will, as we all will, accept whatever this chamber decides in a few moments. But I've got to tell you it's going to be really, really difficult to explain this one to that four-year-old. It's going to be tough. And I hope, as Representative Butler said, in the end, we can all look that four-year-old -- or anyone for that matter -- in the eye and say what we did was about justice. I'm not sure we could say that with the passage of this bill.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

House Majority Leader Brendan Sharkey, you have the floor, sir.

REP. SHARKEY (88th):

Thank you, Mr. Speaker.

Mr. Speaker, we've been here quite a while and when -- but when we first began the session, we were greeted in this chamber by a prayer that was offered by Rabbi Craig Marantz, who on our -- on our behalf thanked God for what he described as the blessed opportunity to lead. I couldn't agree more.

Every so often we, as legislators, are offered

the opportunity on legislation that is so uniquely profound, legislation that encompasses moral questions, ethical questions, of such significance and such a significant new direction for our State that the usual boundaries of party affiliation are erased, and we are asked to search within ourselves for answers. Today is one of those days. And I, like many of my colleagues today, are privileged to be here, to be asked to cast this -- these votes that we are about to tonight. A day, today, when perhaps more than others, we have been given what Rabbi Marantz called that blessed opportunity to lead.

In my time in the Legislature I've had these moments from time to time. And when I do I tend to go back to my Jesuit training, and in particular, I go back to a piece of literature that I was introduced to in high school which many of you I'm sure, are familiar with. It's a play by Robert Bolt called "A Man for All Seasons." It's a very profound piece of work because it tells the true story of Sir Thomas More who was the archbishop of Canterbury in England at the time of Henry, the VIII. Sir Thomas More was asked to abdicate his beliefs, his ethics, his morals, his conscience in favor of the King of England. And

when he refused to abdicate his beliefs, his life was at risk. And in fact, if you know the true story of Thomas More, in fact, he was executed by the King of England for his beliefs. It's a very powerful story about the need in a public setting to follow your beliefs.

Now, there's a very famous scene in that play when a younger colleague of More's is urging him to just -- just pledge allegiance to the King and agree with the King, set aside your moral objections and your other philosophical objections, your legal objections to his position and save your life. And in pushing back to that young colleague, Thomas More drew a metaphor in which he described society as like a forest, and in that forest are trees and those trees are our laws. And the metaphor goes on, in the play, to tell the story of that forest where the man is standing in that forest and somewhere -- somewhere among the trees is the devil. And just to -- just to bait the younger colleague, Thomas More asks him, Well, what would you do to that forest if you knew that evil was there, if the devil was there? What would you do to eradicate? Would you tear down those laws? Would you tear down those trees that we have

established here in our society to go after it?

Of course, the young man said, Of course, I would. I would do anything I could to carve a path through that forest, cut down the laws, cut down the trees to get at that.

And Thomas More -- he fell into the trap because Thomas More says to him, Really -- really you would do that? And when all those laws are cut down and the field is laid bare and the trees are all at their -- laying down and there's nothing between you and the Satan on the other end, where will you go then? What will you do? What protections will you have from that evil that is in your midst?

There are many, I think, who believe that the death penalty serves as a protection of our society from that evil that we know exists in our society and that we have seen through the heinous examples that have been reiterated throughout the evening tonight. And there are many who believe that by creating a law that allows us to take a life in exchange for a heinous act of murder, of taking another life, is somehow protecting society and protecting ourselves. And with due respect to those who feel that way, I have to disagree.

First of all, I think there is general disagreement about the deterrent effect of the death penalty and we can -- we've had that debate tonight, and we've discussed that, and even those who either support or don't support this bill differ. We've heard that debate throughout the evening tonight. But there is one reality that I don't think anyone in this chamber can deny and that is that despite having the death penalty in our society, here, in Connecticut, for several hundred years that it has certainly not eradicated evil from our society and, in fact, since the beginning of civilized society, evil has always been present.

Personally, I believe that the death penalty from its inception is not one of those trees in the forest that protect us from evil. I believe -- and this is my belief -- that the death penalty has had the effect of what that young man was saying to Thomas More that we, by adopting a death penalty in this State, have cut down that forest, have taken out those protections by creating a law that is not protecting us from evil but actually exposing us to it. If we, as human beings, create laws that reciprocate the evil that is perpetrated against society, are those laws

really protecting us? Do we really believe we can stand upright in that field, as Thomas More described it, facing evil without the protection of the laws that we have created.

We all have as a -- all we have, as a civilized society, is our laws. We need these laws to protect ourselves from those darker elements in our midst. And of course, these are man's laws. These are human laws, not God's. God -- in whatever form that we believe -- has his/her own means of retribution against evil, but without the laws of our society, we are powerless against those forces. That is why our laws must reflect our better selves, our better angels, to protect all of us from the evil that we know is within our midst.

So today, a day which is an historic day, I would ask my colleagues to take on what the Rabbi referred to as when we began this day as that blessed opportunity to lead. I believe the step that we are taking today, metaphorically, is the long-awaited reestablishment of that forest that protects us from the elements that we most fear, which is evil itself.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Staff and guests, please come to the well of the House. Members take their seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is taking a roll call vote. Members to the chamber, please.

SPEAKER DONOVAN:

Have all members voted? Have all the members voted? Please check the roll call board to make sure your votes were properly cast. If all the members have voted, the machine will be locked.

The Clerk will please take a tally.

Clerk, please announce the tally.

THE CLERK:

Senate Bill 280, as amended by Senate A and Senate I, in concurrence with the Senate.

Total Number Voting	148
Necessary for Passage	75
Those voting Yea	86
Those voting Nay	62
Those absent and not voting	3

SPEAKER DONOVAN:

Bill, as amended, is passed.

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CONNECTICUT
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THE CHAIR:

Mr. Clerk.

THE CLERK:

On Page 14, Calendar 113, Substitute for Senate Bill Number 280 AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES, Favorable Report of the Committee on Judiciary, with amendments.

THE CHAIR:

Thank you. I'm going to take a point of personal privilege at this time to ask that all members, this is going to be a very sensitive subject. We know that everybody has a lot of deep feelings on this. We hope that the discussion will be only about the bill and not about anybody's motives.

At this time, I call Senator Coleman.

SENATOR COLEMAN:

Thank you very much, Madam President. Madam President, it is my honor to move the acceptance of the Joint Committee's Favorable Report and passage of this Bill.

THE CHAIR:

Acting on approval of the bill, will you remark, sir?

SENATOR COLEMAN:

Thank you again, Madam President. Madam President, the death penalty in the State of Connecticut has at various times been described as arbitrary, biased, capricious, random, haphazard, discriminatory and disparate, among other things.

It's always been curious to me, as well as I believe, others, how the state could conclude that violence is

a deterrent to violence and that it could make the point that killing is wrong by killing.

Today, Madam President, is a dramatic and potentially historic day because this Senate has something to do, or has an opportunity to do something to correct the arbitrariness', the discrimination, the random, haphazard approach to our death penalty in this state.

Madam President, the Clerk should be in possession of an Amendment, LCO 3027. I'd ask that the Clerk please call that amendment.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 3027, Senate Amendment Schedule "A", offered by Senators Williams, Looney, Coleman, Representatives Donovan, Sharkey and Fox.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I move adoption of the amendment, Madam President, and seek permission to summarize.

THE CHAIR:

Motion is on adoption. Will you continue, sir?

SENATOR COLEMAN:

Madam President, over the course of the years that this subject has been discussed, many people have talked and expressed concern about, if we were to repeal the death penalty, how those who might be convicted and sentenced to life imprisonment without the possibility of release would be housed, and this

amendment seeks to respond to that concern.

Among other things, those who were convicted and sentenced to life imprisonment without the possibility of release would be committed to the Commissioner of Corrections who would conduct a classification or an assessment of those individuals, and primarily be interested in what would be the likelihood of an assault committed by such an inmate on staff or an assault committed on another inmate.

The commitment, the reclassification process would take approximately six months to nine months, during which time the inmate would be confined in what would be described as administrative segregation.

After the assessment there would be an opportunity for the Commissioner of Corrections to place the inmate in a housing unit to reclassify the inmate as special circumstances, high security status, place that inmate in a housing unit for the maximum security population, and the confinement would be characterized by I think, six important things.

Number one, the movement of the inmate would be escorted or monitored. The inmate would have to change cells every 90 days. The inmate's cell would be subject to two searches per week or two shakedowns per week.

In terms of social visits, the inmate would have no contact with social visitors. Any work assignment that the inmate would be assigned to would have to be on that housing unit. There would be no opportunity for such an inmate classified in house to work in any other section or unit of the facility.

And lastly, the inmate would be entitled to only two hours of recreation per day.

The amendment also would require the Commissioner to report annually concerning the number of individuals who are classified and housed in this manner and the report should include other details regarding the

specific conditions of confinement.

I would urge adoption of the amendment, Madam President, and request that when the vote is taken, it be taken by roll. Thank you, Madam President.

THE CHAIR:

So ordered. There will be a roll call.

Senator McKinney.

SENATOR McKINNEY:

Madam President, if I could, I rise to make a point of order, but if I could, through you, ask a question to the distinguished Majority Leader before making the point of order.

THE CHAIR:

Senator Looney, will you prepare yourself, please. Please proceed, sir.

SENATOR McKINNEY:

Thank you. Madam President, through you to the Majority Leader, is it the intention of the Majority should this amendment be adopted, to refer the bill to the Appropriations Committee as required under our Joint Rules? Through you, Madam President.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Madam President, through you to the distinguished Republican leader. No, it's not our intent to refer the bill as amended, should the amendment be adopted because we would maintain that the nature of the amendment would not require a referral to the Appropriations Committee.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President. I will then let the debate on the amendment proceed, and should the amendment be adopted, would then seek leave to rise and make that point of order. Thank you.

THE CHAIR:

Thank you, Senator. Will you remark? Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President. I rise to speak in opposition to this amendment, and I just want to make some things very clear.

When we debated the death penalty in the Judiciary Committee, I had concerns that had been expressed to me by my constituents for the last several years, that if this Legislature moved forward with some sort of abolishment of the death penalty that there was this extreme likelihood a) that the eleven inmates on death row would then end up in the general population and b) that future criminals convicted of substantially similar crimes as capital offenses now what we're calling murder with special circumstances, would not end up in a similar situation as the folks sitting on death row right now

At the outset, I commend each and every one of my fellow Senators who have taken the time over the last few months to go and visit death row, but I think it's also important that those folks that were up in the air on this legislation also went and toured McDougall-Walker, which is a level 4 facility, general population.

There are individuals serving life without possibility of release in that facility and it is substantially less tough than doing your time on death row.

So when we had the debate in the Judiciary Committee on the underlying bill, I offered an amendment that said, if you are convicted of murder with special circumstances, which would supplant our capital felony statute, that you would have substantially the exact same kind of housing and rights as those on death row right now.

My colleagues that are in favor of repealing the death penalty called that the Kissel Amendment, and have an amendment here this afternoon that some, not all, but some have said is the same amendment that I offered. That is not accurate, and I'm going to tell you exactly why.

Despite the good intentions of my colleagues, this amendment has a huge, glaring, giant escape hatch. I would call my friends and colleagues to line 27, fourth word, if -- if -- if the Commissioner places an inmate in administrative segregation, what does that tell you that this amendment does?

It says that an inmate may not end up in administrative segregation. Let me explain what this amendment does. It takes these individuals, both the 11 inmates on death row right now, and those convicted in the future of murder with special circumstances, which is the worst of the worst of the worst, okay, similar to those folks on death row right now, similar to Mr. Hayes, similar to Mr. Komisarjevsky, similar to Todd Rizzo. I could go on. And once again, our friends say we're going to turn it over to the Department of Corrections. That's my first concern.

We don't take responsibility once again. Just like a year ago we turned over responsibility for the risk reduction credits, the good time credits to come up with a construct the Department of Corrections, the Commissioner.

I have no qualms with our Corrections Commissioner. I think he's fabulous. Commissioner Arnone is an excellent Corrections Commissioner. But there are some things that the voters elected us to do and crime and punishment is one of those things.

But two, let's continue reading the amendment. The Corrections Commissioner comes up with a formula of construct to assess risk. Assess risk.

My amendment said, you're convicted of these crimes, you go to special segregation, period. There is no risk assessment. Oh, gee, I'm sorry. This is an 86-year-old serial killer that killed children and women. He may not be a risk to other inmates and Corrections officers. What does that mean? It means he could end up at McDougall-Walker or even at level 3 facility, which is a dormitory facility. That is a distinct possibility.

It is a distinct possibility that one of the 11 or more of those folks on death row right now could end up in a lesser level facility.

I had a conversation with Commissioner Arnone last week, when we were talking about my amendment and he said, you know, I do have guys doing life without possibility of release for all intents and purposes, but I wouldn't really want to put him on death row. I said, who are you talking about? He said Mr. Kraft. Who's Mr. Kraft?

My friends here in the Senate, he's called the wood chipper murderer. He's the guy that killed his wife and fed her body into a wood chipper and but for the fact that they found pieces of her bones and teeth, he probably would never have been convicted of the crime.

He's an older guy now and the Commissioner related to me that he likes to just work. He's not a bother to anyone, and my guess is that he's over at McDougall-Walker. He might even be at a level, another

facility like McDougall-Walker, where you earn privileges, where you're out of your cell six hours a day, where you have a job.

And by the way, you want to hear an irony? This is an irony. My understanding is the wood chipper murderer works in the wood shop in Corrections and builds furniture for different facilities here in the State of Connecticut. True story.

But he's not in segregated housing. Why? Because the Commissioner felt, first of all, we don't have this law, but he used him as an example of someone who doesn't pose a threat to other inmates or Corrections officers.

For my friends here in the Senate who have gone and toured death row, maybe you saw the gentleman who killed his wife and son who's sitting on death row. He's an older guy. He's got a long beard. He's always pushing the library cart. Do you think he's going to be assessed as a risk to other Corrections officers or inmates? My guess is no.

Don't fool yourself into thinking this amendment is a get tough amendment. This amendment has an escape hatch.

Ladies and gentlemen of the Senate, we are a) devolving our authority over to the Corrections Commissioner once again. That's a profile in courage. And two, we are spelling out in statute that he's going to do a risk assessment. There is no guarantee, no guarantee that future heinous, diabolical criminals will end up with any kind of housing or punishment like this. None, whatsoever.

Second, because I think this amendment is not well drafted and is rife with problems, let's talk about Hayes and Komisarjevsky. Let's like really get right to it, because I've heard there's no political will to abolish the death penalty because of those two recent trials and those folks on death row right now.

Okay. We know, we know that inmates convicted of murdering children typically don't fare well with other inmates in correctional facilities. I think that would be a fair statement. Killing an 11 or 12-year-old girl, 17-year-old sister, maybe raped, strangled and murdered the mother, throw gasoline on the children and let them smell the smoke and die of carbon monoxide and all the other fumes while they're tired to a bed. Yeah, I'm thinking the other inmates aren't going to look really kindly on those guys.

This Amendment says they would be in protective custody. That whole paragraph about those other get tough measures doesn't apply to someone after the risk assessment if the Corrections Commissioner says you know what? Other inmates are going to prey on those guys.

My guess, if you're concerned about Hayes or Komisarjevsky, is that a) after the risk assessment that they could very well land in that protective custody, to which, by the language of your own amendment, subsection c. would not apply.

Don't kid yourself. I really, I take umbrage, not at any individual colleague of mine. For those of you who are motivated by religious philosophical, moral reasons, God bless you.

But we are establishing public policy for the people of the State of Connecticut and we need to be forthright with them. We can't tell them we're getting tough on crime if we're not getting tough in crime. We can't tell them we're taking two steps forward if we're taking three steps back.

This amendment, I posit really makes it difficult for any State's Attorney going forward to explain to a victim's family members and loved ones, where the defendant's eventually going to land if there's a plea agreement or a sentence, because after all is said and done, the Corrections Commissioner's going to do a risk assessment.

And if that particular individual is assessed not to pose a risk to other Corrections officers or other inmates, they're going into the general population. That's how I read it. This is a plain language. There's no other way to read this.

Again, line 27, if the Commissioner. Line 32, if after completion of such classification. If, if, not when they are sentenced this shall happen. And yes, I do take a little personal umbrage when people trot out my name and say that this is an amendment based upon what I brought out when it is not what I brought out, when it is not what some constituents in my district felt very passionately about.

I know that my colleagues on the Democratic side of the aisle had a press conference this morning. Well, some of my friends on the Republican side had one, too, and we've all heard from Dr. Petit and his sister-in-law, and sister and they've been out there working so hard.

But I have some people in my district, Anna Rossi from Windsor Locks, Enfield, north central Connecticut, one of the wives of one of the victims of the B & B Automotive Repair Shop triple homicide, and I'll go into that later on this afternoon or this evening when I address the whole underlying concept, because I absolutely disagree with and will refute to the best I can do, the notion that the death penalty has no purpose, is not helpful, does not deter crime. I think that's hogwash. It doesn't comport with what the facts are. It's twisting things to get to where you want to go.

But when it comes to this amendment, and I welcome questions. I had to decide this afternoon, did I want to ask my friend and colleague, Senator Coleman a million questions on this amendment or not, but I can read. I can read the plan language. I don't have to ask those questions.

It is wrong to hang your hat on lines 31 through 45 and say, well there's these fundamental areas where

we really get tough on prisoners. By the way, by the way, I'm sitting around doing life. Please move me around every 90 days. I think it will be way worse for me sitting in the same cell for 20, 30, 40 years watching a spider weave its web than knowing that every three months I'm going some place new. It may be the cell next to me. Hey, I may be moving from Osborn to Cheshire, who knows? But there's going to be a little excitement in my life.

That's tough? You're telling me that's tough? That's not tough. That's window dressing. You have to have monitoring if they move in the cellblock? We do that anyhow. That happens all the time. These guys are monitored. They have, they are shackled. They have Corrections officers before they move within a facility. Come on.

My Amendment in the Judiciary Committee said that if you're going to go down this path, which I think is a wholly misguided path, then you have to have housing and restrictions that are as tough, if not tougher, than the folks on death row. I fully acknowledge that those restrictions need to pass constitutional muster. I understand that.

But this. You guys that support the death penalty prospectively only, because the votes aren't there to do it across the board, please don't act holier than thou on that.

And now this amendment, with a huge escape hatch, which I daresay will inevitably result in individuals landing in the general population. Come on.

The last point I'll make is this. As we debate the bill going forward, I will make as many arguments as I can to show you that despite the fact that you're putting forward a bill that is prospective, that I have every belief in my heart, and I could take a lie detector test, that should that bill go forward, the appeal for those 11 men on death row will be successful and that those sentences will be commuted. I have no doubt in my mind.

And when that day happens, if you have this, then those 11 men will have a risk assessment and I'm guessing that Mr. Hayes will be in danger for his old life so he will have protective custody. Won't have any of these things.

Mr. Komisarjevsky, another child murderer, prior protective custody. Won't have any of these things. And that old guy that killed his family, that guy that putters around in the death row library every day, heck, send him to a different facility. He's too old to be a threat to Corrections officers or other inmates, so let's make his life a little easier.

And who knows? Maybe some of those other inmates won't have any tickets for assaulting a CO or pose no threat to another inmate. Eh! Send them to another facility, too.

And once they go, they don't have any of these restrictions. They're making license plates, scooping out sloppy Joe's, earning maybe a little cash in their bank account so they can buy some stuff from the commissary. They're out in the yard six hours a day, they're taking courses. They're bunked down with another inmate, maybe two. They're chit chatting away. Yeah. Death row inmates in Connecticut. Yeah, you're tough on crime.

You tell that to the victims' families in my district. You tell that to the people that support the death penalty in the State of Connecticut.

This does not get tough on crime. This does not get tough on sentencing, and if you were hanging your hat on this amendment, someone has pulled the wool over your eyes. Don't believe it for a second. The language speaks for itself. If the Commissioner assesses this. If the Commissioner sends an inmate this way. If. If. If.

My amendment said when, shell, it shall happen. This is not my amendment, and I do not support this watering

down of our sentencing policy for horrible murderers that have done horrible things to women, children, police officers, or any other circumstances or victims enumerated in our capital felony statutes or now transposed into murder with special circumstances.

And for that reason, Madam President, I strongly urge my colleagues in this Chamber to reject this amendment. Thank you.

THE CHAIR:

Will you remark further? Senator Coleman.

SENATOR COLEMAN:

Thank you very much, Madam President. Madam President, I will always admire Senator Kissel's opposition, passionate opposition to the concept of repeal of the death penalty.

Unfortunately, with all due respect to the good Senator, I think he's misreading, grossly misreading this particular amendment.

Firstly, he talked about administrative segregation. Administrative segregation is the worst confinement within our correctional system. Administrative segregation is primarily for disciplinary purposes and it is a fact that people who are confined to administrative segregation are confined to conditions that are worse than the conditions on death row in at least these respects.

First of all, people on death row will be entitled to two hours of recreation time outside of their cell. Those who are confined to administrative segregation are only entitled to one hour outside of their cell.

In other respects, people on death row are permitted to have television in their cell. People who are confined to administrative segregation are not permitted to have televisions in their cell.

Further confusion and misreading. Senator Kissel makes a big deal about the word if in certain lines of the amendment. The fact of the matter is that the Commissioner's discretion is limited to either placing the inmate in administrative segregation or in the housing unit reserved for those who are classified as special circumstances high security status.

And let me back up a little bit, because this amendment is prospective. It only applies to people who after the effective date of the amendment and the bill, are convicted of murder with special circumstances and sentenced to life imprisonment without the possibility of release. It only applies to them.

The whole reference to people on death row by the good Senator is inapplicable. People on death row are not affected at all by this amendment or the bill that underlies this amendment. People on death row will continue to be confined on death row under the same conditions that pertain today. There will be no change for them.

Similarly, it is a mistake to bring Richard Kraft into this discussion because neither this amendment or the underlying bill will apply to him. Richard Kraft's status will be unchanged, unaffected by this amendment. Richard Kraft's status will continue to be whatever it is today, it will be unchanged by anything we do here today.

There was some reference made to the amendment that was offered in Judiciary Committee, and I'm not sure who, it certainly wasn't me, that made any representation that this amendment was the Kissel Amendment that was offered in Judiciary. I had at least two problems with the amendment, the so-called Kissel Amendment in the Judiciary Committee.

The first was, I was aware, very much aware, that the Commissioner of the Department of Corrections was considering this issue and I was also aware that he had no opportunity at the time that the amendment was

presented in Judiciary, to review the import of that amendment.

Additionally, there were, I think significant questions concerning the amendment proposed in Judiciary because it did not provide for any change in the classification of the inmate and at the same time, attempted to put those who the amendment sought to address in isolation.

There were significant questions by myself and other members of the Committee concerning whether or not such an approach or such an amendment would pass constitutional muster. I thought that it would be at a minimum, advisable to have at least the Commissioner of the Department of Corrections if not a number of lawyers, review what was proposed in Committee before we actually took any action on it.

But the main point that I want to make is, I don't know who represented that this amendment, LCO 3027 was the Kissel Amendment. It is far from the Kissel Amendment. With all due respect to Senator Kissel, I think there was much more deliberation and much more thought and much more expertise put into the drafting of this amendment, with the input from people who know, namely, the Commissioner of the Department of Corrections and some of his staff as well as OPM.

The 90 day provision, the section of the amendment that provides for an inmate to be moved every 90 days is for security purposes of the Department, the staff of the Department of Corrections.

If, and believe me, at least based on my information, inmates want to feel some sense of stability. They don't like to be disrupted. They want to be able to call, be it ever so humble, the cell that they occupy they consider to be their home. They call it their house.

But when they're moved every 90 days, they don't enjoy that, but for security purposes, for the benefit of the staff of the Department of Corrections, they want

to move these inmates every 90 days because they feel that there is less mischief that can be accomplished within that cell if the inmate is moved regularly and periodically.

There was also some commentary concerning those people who are currently on death row, and the opportunity that the passage of this bill and this amendment might provide for them to appeal their situation, and that is one of the reasons why during the course of this debate I want to make very clear that the intent of this amendment and this bill is to very clearly be prospective in nature.

I want to make the declaration that this bill is intended to be prospective and to have no retroactive application at all.

And if you look into the history of our death penalty, there are at least two instances where such situations have occurred, and the courts have deferred to the determination of the Legislature because under the separation of powers doctrine, it is very clear that the Legislature has the authority to provide for sentences for criminal offenses and in connection with that sole authority that's granted to the Legislature, the Legislature also is entrusted with making a particular provision in connection with a criminal offense and sentence retroactive or prospective. That is the sole province of this Legislature.

When our declaration is clear, the Supreme Court will defer to our judgment and our determination. This has happened in Connecticut history on two occasions.

The first goes way back to 1846 when the death penalty was mandatory for a conviction for murder, and it was at that time determined by the Legislature that there should be some instances when the death penalty might not apply. And so the Legislature separated the offensive murder into murder in the first degree, murder in the second degree and made that change prospective.

The court, when the issue arrived at the court, deferred to the determination of the Legislature and the only application under those circumstances of that change was prospective. It did not apply, the court said, to anyone who was sentenced prior to the effective date of that change.

And then, more recently in 1951 when a conviction for murder, murder in the first degree, when there was a conviction under murder in the first degree, it was considered mandatory that the death penalty would occur.

The change that was made in 1951 was such that instead of making a conviction for murder in the first degree, the alternative of life imprisonment, the alternative life imprisonment was brought about and so that a jury had the choice of either sentencing a convicted individual on the offense of murder in the first degree to death or life imprisonment.

That change was also required to be prospective. When the issue arrived at the court, the court, because the intent and declaration of the Legislature was clear, deferred to the determination of the Legislature and did not provide any relief for anyone who was already sentenced to death and tried to take advantage of the change by arguing that it was a change in attitude of the state and the policy of the state and that they should not be subject to the death penalty.

And then I'm sure that all of you have heard about the circumstances in the State of New Mexico when New Mexico repealed its death --

(Microphone turned off.)

I think I'm back. Thank you, Madam President. In the State of New Mexico, an individual by the name of Michael Astorga committed a crime prior to the change in law in New Mexico that repealed the death penalty in that state.

When that change came about, he tried to take advantage

of that change and argued that the death penalty should not apply to him because his offense occurred prior to the repeal of the, because the state repealed the death penalty he should be spared from execution.

The Supreme Court in the State of New Mexico considered that and concluded that because the change, the repeal that is, occurred after his offense, that he should be subject to the death penalty and his trial is proceeding where a death penalty is a possibility.

In the State of Connecticut, if you read the case of State v. Rizzo, our Supreme Court makes reference to the New Mexico Supreme Court decision and concludes that there is no retroactive application. In the State v. Rizzo case, the court concluded that there is no cruel and unusual punishment to our death penalty but also in making reference to the New Mexico case, said there is no retroactive application from any changes in the death penalty that occurred subsequent to Mr. Rizzo's conviction and sentencing.

So the only thing I'm asking today is that when we address any amendment that is offered or the bill that is offered, that we be extremely clear about what the bill actually does or what the amendment actually does.

With all due respect, I submit to you the members of this Senate, that the reading of this amendment, LCO 3027 is a gross misreading. It doesn't do any of those things that Senator Kissel argued about during the course of this debate. Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark? Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President. If I could, through you, just a couple of questions to the proponent of the amendment, on the amendment.

THE CHAIR:

Please proceed, sir.

SENATOR McKINNEY:

Thank you, Madam President. Senator Coleman, starting with lines 12 running through line 18, there's reference there to an inmate in custody of the Department of Commissioner of Corrections for a capital felony committed prior to the effective date of this bill, and then it talks about for which a sentence of death has been imposed.

That references the 11 individuals on our death row, right now. Is that correct? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, that's correct.

SENATOR McKINNEY:

Okay.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

So one of the reasons why I asked that is you indicated the second time you rose that neither this amendment, nor the underlying bill affects the 11 people on death row, yet we've referenced those 11 people on death row in lines 12 and 18 and then we proceed to say that, and I'll read the language to you, an inmate sentenced that the inmates on death row is a) reduced to a sentence of life imprisonment without the possibility

of release by a court of competent jurisdiction or b) commuted to a sentence of life imprisonment without the possibility of release.

As I read that section, Senator Coleman, this says that these new tough confinement rules will apply to the 11 individuals on death row if, as it says, their sentence is commuted to life imprisonment without possibility of release or if their sentence is changed by a court of competent jurisdiction.

Is that a correct reading of that language? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

This is a very correct reading and it would only apply if, for some circumstance, an appeal may become successful on the issue of an ineffective assistance of counsel or some reason the entity in the State of Connecticut that can commute sentences, the Board of Pardons and Parole, actually Board of Parole, if either of those two things were happening.

We tried to draft the amendment so that there would be provision of what would occur under those two very narrow circumstances, and hopefully unlikely circumstances. Thank you, Madam President, through you.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you. And, Madam President, that confuses me, and I want to, I really want to see if I can get clarification.

Senator, as I heard you say that the 11 individuals who are now on death row will get this new special confinement if their sentences are changed, and as Senator Coleman said, the only way their sentences can be changed is through a habeas petition proving ineffective assistance of counsel or the commuting authority, which is, I believe, I don't know what we changed the name to, but the Parole Pardons Board.

Is that correct, that that's the only two ways the sentences of those 11 individuals according to this bill can be changed? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, as I'm sure the Senator knows and probably everyone around the circle knows, there are pending appeals for every single individual on death row. There are 11 people on death row. All of those cases are under appeal. Some of them have been under appeal for a considerable period of time, some going back to the late eighties. We don't know what the outcome of those actions, those appeals are going to be.

Additionally, there is an opportunity for anyone who is confined within the Department of Corrections of the State of Connecticut to file habeas petitions challenging their confinement. Those, there are some of those petitions pending as well and some of those petitions have actually delayed the appeal of individual inmates who are housed on death row.

There is also pending, an appeal which involves probably not all of the inmates on death row, but an appeal based on the proportionality of the application of the death penalty. That is still pending as well.

Not knowing what the outcome of all of these appeals and all of these habeas actions are going to be, the

only way that the line that Senator McKinney reads would apply to the people on death row is if any of those actions mainly the appeals or the habeas actions turn out to be successful. Through you, Madam President.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you. In, I think, I hope the Senator knows I have great respect for him and I was just going off of his words initially where the only way this could happen.

Madam President, I understand the number of habeas petitions that can be lodged and who can lodge them. I understand pending appeals and perhaps future appeals for various different arguments related to the constitutionality of our death penalty and how it's applied.

What I did not hear Senator Coleman suggest, and I would ask this question, is it possible that an appeal could be taken on behalf of one or more of the 11 inmates on death row if this Amendment and underlying bill were to become law, arguing that now that the death penalty has been repealed in the State of Connecticut, the sentences of death of the 11 people on death row can be commuted?

I'm not asking him for a legal interpretation. I'm not asking to give his opinion. I'm asking if it is possible that if this underlying amendment is passed and the bill becomes law, that there can be and will be an appeal on behalf of those 11 claiming that their sentence is unconstitutional and unjust given the fact that we have now repealed the death penalty? Through you.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, the question is, is it possible, and the response just about to any question that asks is it possible, is yes.

What this provision provides for is the safeguard in terms of, if any appeal, an appeal that Senator McKinney is describing or any other appeal that may be pending, if that appeal proves to be successful, or if such a habeas action proves to be successful, if it were not for this provision in this amendment, what would happen is that that inmate would move from death row to general population.

With the provision that we're discussing right now in this amendment, the safeguard is, even under the unlikely circumstance that those appeals would be successful, or the habeas action would be successful, it would be required that the inmate, if he's to move from death row, he would move only according to the provisions of this bill, namely, first to administrative segregation for classification and at some point from administrative segregation into the special housing unit reserved for inmates classified as special circumstances with high security status. Through you, Madam President.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you, and the Senator's point that anything is possible is well taken, so I'll be more specific.

Isn't it also true, through you, Madam President, that at a public hearing of the Judiciary Committee the Public Defender's Office testified or in response to questions, did assert that indeed they would file an appeal on behalf of death row inmates should the death

penalty repeal and indeed, I believe the Chief Public Defender even said it would be part of her oath of office and constitutional obligation to file such an appeal. So did they so testify? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

There was testimony from the Public Defender's as well as members of the Criminal Defense Lawyers Association to that effect, yes.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President. So we know, and this is not a fact in dispute, that if the repeal of our death penalty becomes law and when it becomes law, there will be an appeal filed on behalf of at least one or as a group, all death row inmates challenging their execution under our State Constitution now that we've appealed it. We've agreed that will happen.

What I think we can also agree upon is that none of us can predict with any accuracy what the court is going to do.

What we can also agree upon is that there is not one other state of the 50 states whose Supreme Court has looked at this issue and answered affirmatively under that state's constitution.

I've read the case that Senator Coleman refers regarding Mew Mexico. What I think all people in the circle and especially lawyers would agree, is that the Supreme Court did not reach the question of the constitutionality of the prospective application of

the death penalty.

What the Supreme Court in New Mexico allowed was argument to be made at the penalty phase that the death penalty nad been repealed. That is significant because I think as we all know, and we've all learned over the years, courts of the highest jurisdiction, supreme courts in states and the United States, oftentimes don't want to reach constitutional issues unless they are required to.

Therefore, in New Mexico with the case going back to the jury and the penalty phase, if the defendant was found not guilty or if the defendant was not convicted of the death penalty in their penalty phase, there would be no need for the New Mexico Supreme Court to reach the constitut8onal·argument that had been requested.

So it is a fallacy and a misreading of the New Mexico decision to argue that they reached the constitutional question posed, which is the exact same constitutional question that would be posed here in Connecticut.

An I guess, and I want to thank Senator Coleman for answering my questions. Senator Coleman made it very clear that the intent is that this repeal of our death penalty be prospective. Senator, that's something that you and I would agree upon. I believe your intent is to make this prospective.

I would hope we would also agree that whether we intended that or not, that is immaterial to the constitutional question that supreme courts deal with. Yes, courts interpret our statutes and hopefully they understand that we mean what they say.

But whether our intent is to make it prospective or really prospective or sure prospective or make it crystal clear that it's prospective, if it's unconstitutional, it's unconstitutional, and no matter what we say about the intent doesn't matter.

So our Supreme Court will be asked the question, can

you execute 11 individuals when you have as a government and society repealed the death penalty and taken it away as a punishment. Is it constitutional? It doesn't matter what our intent is.

So we get up here and we talk about what our intent is. Yes, it's prospective. Agreed. You must also agree that's irrelevant if the court finds it's unconstitutional to meet out that execution. That is why this amendment acknowledges that a court can commute the sentences of those on death row, and I would argue that the very acknowledgment sends a signal itself to the court.

If this amendment and the underlying bill as you said in your opening statement has no effect, quote, no effect, on the 11 people on death row, then why do we have this language at all? Because it does have an effect.

One effect is, it immediately triggers an appeal on their behalf. That is an effect. You can't dispute that. If we pass this law, we immediately trigger appeals that have not yet been filed and new grounds for appeals that do not now exist. That is an effect on those 11. Open and shut case on their no argument.

What the court will do, none of us know. We know it has not been addressed in any of the 50 states. It has not been addressed, and I've looked at the Rizzo case, and we had Harry Weller from the Chief State's Attorney's Office who argued the Rizzo case in our caucus room today and I hope you afforded yourself of his counsel in your caucus, because he told us what the Rizzo case and what the Supreme court did and didn't do and it did not reach this issue that the State's Attorney for the State of Connecticut who's argued death penalty cases since 1993. There is no better expert on the death penalty in the State of Connecticut and he's clearly one of the foremost experts in the country.

New Mexico did not do what you say it did. Rizzo case does not mean what it says it is, so says the foremost

expert in the State of Connecticut.

So let's not kid ourselves. This amendment says, if someone's convicted of a capital felony, we're going to treat them harshly in prison like we do now, but they're not going to face the penalty of death.

And this amendment further acknowledges that those death sentences of 11 inmates on death row may be commuted because of an appeal that will be brought. We acknowledge that.

I am not comfortable, I am not comfortable taking that risk.

The last thing I would suggest, and I've now read this amendment more times than I wish I had, is that I think it's subject to a number of different interpretations, and I certainly can see the interpretation that Senator Coleman reads into it.

But I also can read some other interpretations of the language as well, especially one section, which we haven't talked about yet, but in lines, in Section, in Subsection 2, lines 46 through 51 where it says the Commissioner may for compelling correctional management or safety reasons, modify any condition of a confinement.

Now, that's subject to interpretation as what that modification means. So maybe Senator Coleman's interpretation is correct. Maybe it's not. The very fact that a number of different people, many of whom are lawyers, can read something and come from different conclusions should give us less comfort as this case moves forward into the courts, which we all acknowledge it will.

And by the way, that's the history of this state. Every single time the State of Connecticut has changed our death penalty statute from when we went from aggravating and mitigating factors to weighing factors instead of finding any presence of a mitigating factor.

Immediately, when we made changes to the death penalty statute, appeals were brought on behalf of defendants testing the constitutionality of those changes. I know that because in 1994 I was a law clerk to the Connecticut Supreme Court, and one of the first opinions I helped draft with Justice Palmer was the appeal of Robert Breton, also on death row, who viciously murdered his wife and son, who is now getting on in years, who I would suggest to you if a risk assessment were done by the Commissioner, he probably wouldn't find Mr. Breton much of a risk to general population. That doesn't mean his heinous crimes deserve to be treated any less harshly, and yet we don't know that from the amendment because of the discretionary language that is in here.

Madam President, I didn't rise to cut off anyone in my caucus but I did, I do take issue with the definitive statements and interpretations of the statute of the Rizzo of the New Mexico law from the good Chairman of the Committee. I'm not saying he's not right to have his opinion that that's what they mean, but it is just an opinion, and I think in a couple of instances, an opinion that could be proven to be wrong. Thank you, Madam President.

For that reason, I stand in opposition to the amendment.

THE CHAIR:

Thank you, Senator. Senator Prague.

SENATOR PRAGUE:

Thank you, Madam President. Through you, Madam President, to the Chair of the Judiciary Committee.

THE CHAIR:

Please proceed.

SENATOR PRAGUE:

Thank you. Senator Coleman, I'm rising to ask you a question that I really want an answer to so we can document in our discussion the actual intent of the legislation that we're dealing with, the repeal of the death penalty, and the legislation that we're dealing with is not to change the sentence of the death penalty for those who are currently sitting on death row.

Senator Coleman, through you, Madam President, the intention of our legislation that we're debating today is for prospective capital felony cases and it is not our intention to allow this legislation to be applied to people who are currently on death row?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. Senator Prague, I'm so glad that you asked that question because I guess Senator McKinney and I will have to agree to disagree regarding the application of, or the interpretation of the Rizzo case and I would specifically direct his attention and the other members' attention and Chief State's Attorney Kane's attention to Footnote 88 of the Rizzo case, and in that footnote you will see that our court specifically says that the repeal of the death penalty as in the New Mexico case, has no retroactive application with respect to any case for which the defendant was sentenced to death prior to the change in the law.

The clearest intent that I can provide to you, Senator Prague, through you, Madam President, is that this amendment and the bill that it modifies is not at all intended to be retroactive.

The point that was discussed between myself and Senator McKinney is, any defense lawyer and you an I, Senator, have had this discussion as well, any defense lawyer is going to zealously represent his client. If

his client is sitting on death row, any change in the death penalty statute will occasion some sort of action on that defense lawyer's part.

The question is whether that action on behalf of the client has any potential for success and certainly, as lawyers were trained, not to guarantee a result or an outcome, but I think I can confidently state at least based upon the history of the actions that the Supreme court has taken in similar situations, that there will be no retroactive application of this change for anyone who's currently on death row. Through you, Madam President.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Thank you, Madam President. Through you, one more question if I may to Senator Coleman.

THE CHAIR:

Please proceed.

SENATOR PRAGUE:

Senator Coleman, would you explain how the constitutionality of something, how that is based. Is the intention of the Legislature in passing legislation considered when the constitutionality of an issue is being questioned?

I heard Senator McKinney say several times that the constitutionality will be questioned.

Wouldn't the intention of this Legislature in passing this legislation be part of that consideration as to whether it's constitutional or not?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. Madam President, through you to Senator Prague, the constitutionality, not constitutionality but the intent of this Legislature would be an extremely big factor in our Supreme Court or our Appellate Court determining whether or not in this instance any change in our death penalty statute would have retroactive effect.

In the Rizzo case there, some guidance provided by the court. They talk about the Geisler factor and there are six points under that doctrine that a court would consider in order to determine whether any change should be retroactive. They would look at the text of the law of the constitutional provision.

They would look at state cases. They would look at federal cases. They would look at cases from other states. In the Rizzo case they looked at the New Mexico case and I think the New Mexico case again, I'll agree to disagree with Senator McKinney.

The New Mexico case clearly says that what the New Mexico Legislature did has not retroactive effect on Mr. Astorga's case, and so the Geisler factors are listed. The intent of the Legislature I think would be one of the major factors that the court would rely upon on arriving at its decision, which I think would be that this change that we entertain today if it passes, would not have a retroactive effect. Through you, Madam President.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Through you, Madam President to Senator Coleman. Senator Coleman, thank you for your clear answers that clearly document the intention of this Legislature.

The other thing I wanted to bring to your attention that Senator McKinney referred to, and Senator Kissel, was the fact that they inferred that the Commissioner, you know, had all this discretion.

But I remember clearly in the presentation that the Commissioner gave us this morning in our caucus, that he intended for people who would be sentenced to life in prison without parole, would face the same kind of circumstances that people who are currently on death row face, solitary confinement and very limited time out of their cell.

He even indicated that there might be another facility just for these folks, that they would be living a very, solitary, restrictive existence. Was that your recollection, Senator? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

That is, in fact, my recollection of the discussion that occurred today. We've, if I may, Madam President, I think we've come in the discussion of this amendment from the allegation that the Commissioner has this broad discretion. In fact, the only discretion that the Commissioner has is to put the inmate who's convicted of murder with special circumstances and sentenced to life in prison without the possibility of release, the Commissioner has discretion to put him in administrative segregation or on the housing unit that is reserved for people who are so convicted and so sentenced, and it is the case that the conditions on that housing unit approximate the same conditions that exist on death row. Through you, Madam President.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Thank you, Madam President. Through you to Senator Coleman. Thank you for documenting that. Thank you.

THE CHAIR:

Thank you. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. Speaking in support of the amendment. I believe the discussion on the amendment has gone somewhat far afield to the content of the underlying bill in some ways but it was triggered by the discussion on the provisions, I believe in lines 18 to 21 of the amendment that dealt with the possibility of a reduced sentence to life imprisonment or a commuted sentence.

But the purpose of that provision of the amendment is not, is not included in anticipation of a change in the circumstance of the 11 people currently on death row as a result of this bill, or as a result of the underlying bill but as a result of any other change, perhaps, that might occur in their circumstances due to a successful appeal.

There have been from time to time, people who have been able to successfully move their sentence from the category of a death penalty to life without the possibility of release.

And what this language in this amendment provides for is that should that happen for those people, they will not be returned to the general prison population, but will in fact be subject to the new conditions that are being designated in this bill with the amendment for those who are serving life without the possibility of release.

It's important to remember that in addition to the 11

people who are on death row right now, there are 57 others who committed capital offenses, which if you look at the facts of the cases in some ways are almost indistinguishable from the 11 who wound up being given the death penalty, but those 57 are not in Northern. They are not in death row. They are for the most part, either in McDougall or in Cheshire or in some other facilities and not subject to the conditions of death row.

So we are providing for, in effect, a more restrictive set of circumstances for future people who would be sentenced to life without the possibility of parole beyond the circumstances and beyond the restrictions under which current people currently serving that sentence are held, and that's what we are trying to get at in this amendment and in particular, the language in lines 18 to 21, because again, there are people already serving that sentence whose conditions currently are less restrictive than what the conditions of future people sentenced to that sentence will be serving under this bill and this amendment.

And it's also important, Madam President, I think to keep in mind that the most restrictive conditions in the entire system are again not those imposed on people who are serving in Northern on death row, those 11, but the most restrictive conditions are those who are in administrative segregation.

That is, those people who are being disciplined for something, for an act of violence within the system or some other violation of rules. They are held in a condition of greater deprivation in Northern in administrative segregation under restrictions that are more severe than those imposed on those on death row.

So I think it's important to keep those distinctive categories in mind, and what we are trying to provide for in the bill and the amendment is a more restrictive set of circumstances for those in the future who will be serving the maximum sentence in Connecticut. Thank you, Madam President.

THE CHAIR:

Thank you. Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President for the second time. And I want to commend Senator Prague for following up regarding some of the questions made by Senator McKinney.

You know, sometimes we come out here and it's a little bit of a set piece as to how the votes are going to go, but I know Senator Prague is still doing some soul searching regarding this issue.

The first time I spoke was probably more out of passion because I feel so strongly about the issue and I appreciate the kind words offered to me by Senator Coleman.

This time I'm going to try to be a little bit more professorial and I want to really hit every single note because I think the issues raised by Senator Prague are really important.

First of all, let's get New Mexico out of the way, okay? I went and I took the time to get the very long decision by the New Mexico Superior, Supreme Court, rather, on their decision in the case of Michael Paul Astorga. It's right here. It's two pages. The first page is just a cover page listing the parties.

There's no lengthy decision regarding the retroactivity of the prospective death penalty repeal in New Mexico. It's right here. This is it. The only thing they say that's pertinent is Section 2 where they vacated any order that would preclude the parties from making arguments to the juries that they could take into account the repeal of the New Mexico death penalty in the process of deciding between a life or death sentence.

In other words, the New Mexico Supreme Court said that in the penalty phase regarding this murder in New Mexico, that the jurors could learn, if they didn't know already, that New Mexico had prospectively repealed the death penalty and that the New Mexico Supreme Court said, those jurors can take that into consideration. That's all they did.

Now, don't take it from me and don't take it from the one-page decision of the New Mexico Supreme Court. I have an e-mail that I received just ten minutes ago. Our staff has done research. It's been confirmed by the Attorney General of the State of New Mexico, today, that the Supreme Court there did not address the issue of the constitutionality of the prospective only appeal.

The Attorney General of New Mexico indicates that the Supreme Court raised the issue themselves but chose not to decide it if, and only if, and until, the defendant would be sentenced to death. That's documentation clear as can be regarding the initial statement made by Senator McKinney. There is no New Mexico case on point.

Senator McKinney is exactly correct. Our highest courts will not tackle constitutional issues unless they have to. Mr. Astorga, the horrible murder in New Mexico has not been sentenced yet. Now that the jury is going to know that there's a prospective repeal of the death penalty in New Mexico, I guess the Supreme Court is thinking there's a probably good chance that they won't even sentence him to death. But if they do, I'm sure that sentence will be appealed and then, and only then, will that court take that into consideration.

Much has been made of the footnote in the Rizzo case in a recent Connecticut Supreme Court decision. I've looked at that. We've got great public defenders. You sat in, Senator Prague, I know, to some of our Judiciary Committee hearings and heard the public defender's office. They are just adamant in the defense of their client.

And in the Rizzo case one of the arguments that they made was, hey, Connecticut actually did repeal the death penalty way back on 2009. You should take that into consideration when you're hearing these arguments we're making for Mr. Rizzo.

And my understanding of the footnote is this, that they set that aside. They set that aside because they said in effect, you really didn't, Connecticut really has not repealed its death penalty statute. Why? Because Governor Rell vetoed the bill. It is not enough for the Legislature to act to become indicia of an evolving societal standard of public decency. Now why do I say that?

Because that is the key consideration under an Eighth Amendment cruel and unusual punishment appeal, which will be taken as Senator McKinney said, and I can say, Sue Story, the Chief Public Defender and as Senator Coleman indicated, the Connecticut Defense Lawyer's Association indicated, that as soon as Governor Malloy signs this bill, they've got the papers ready to go for the 11 folks on death row.

We're talking about that now in light of this amendment because it's an important consideration, but also because I agree with Senator McKinney that despite the fact that there may be other appeals out there, it is quite clear that the lines in the first part --

THE CHAIR:

Senator, may I ask a question?

SENATOR KISSEL:

Sure.

THE CHAIR:

Are you speaking on the amendment or are you speaking on the bill?

SENATOR KISSEL:

Without a doubt, Madam President. I am speaking on the amendment, because the amendment speaks in terms of should this actually be overturned and we referenced that time and time again.

THE CHAIR:

Can you --

SENATOR KISSEL:

It's right in the first section, in the second pat of the first section, lines 12 where we talk about people on death row, capital felony through line 18.

My argument is simply that this amendment speaks directly to those currently on death row. That's what lines 12 and 18 specifically refer to.

THE CHAIR:

Fine. Then proceed.

SENATOR KISSEL:

Thank you, Madam President. So the underlying argument is that this amendment, despite the fact that there's these other appeals out there, and my guess, many other appeals being anticipated as well.

But this amendment also clearly anticipates through those lines, that there will be an appeal made based upon this law being passed that this law, and we've had testimony from Chief State's Attorney Kevin Kane, and in previous years and I see in the Chamber we have the Governor's own counsel, my friend and colleague, Attorney McDonald. We were there years ago when we had professors come before the Judiciary Committee and say that a prospective only law could form the ground for an appeal and it would be used as evidence as critical evidence of evolving societal norms of human decency.

That's why that's an important consideration here. That's why it's all tied together, this amendment, the underlying bill and the concern that many of us have that the folks on death row will use this to get off of death row.

To the other point that we have had regarding other points of this bill. Senator Coleman is correct that the Commissioner does have an ability to make a determination that an inmate would get administrative segregation and I would agree that administrative segregation may in some respects be a harder way of doing your time than folks on death row.

But let's continue with the amendment, again, the plain language of the amendment. I'm not reaching far and wide for my argument. It's in the four corners of the document.

And by the way, again, it's not just the initial determination of administrative segregation. Don't forget, right there in line 27, administrative segregation or protective custody.

I didn't hear one argument in opposition to my statement that child killers typically need protective custody. I think it's a matter of common knowledge that prior to his trial, Mr. Hayes was in protective custody. If you don't know that, I'm going to tell you.

Prior to their trial, given the nature of their crimes, even though they hadn't been found guilty, Mr. Hayes was held in protective custody and Mr. Komisarjevsky was held in protective custody. One was in isolation at McDougall-Walker and one was in isolation at Northern. That's where they were guys, ladies and gentlemen. It's already been determined, at least prior to their trial that they needed protective custody.

After this determination, and again, my argument that this, allowing the Corrections Commissioner to come

up with this construct is an abdication of our legislative authority, it's not an automatic determination should they not get administrative segregation, that they go into this new risk status where they get all this kind of tough treatment. I refer my colleagues in the Senate to line 34 where it says, if the Commissioner determines such placement is appropriate.

I don't want to get too impassioned about this. I want people to follow the language. The Commissioner has the authority to say if it's appropriate.

Now, I have no doubts when you state that Commissioner Arnone spoke to you this morning and Commissioner Arnone said that he felt this morning, that if he had these death row inmates or if he had folks convicted of similar crimes, and it's called murder with special circumstances, that Commissioner Arnone would say he felt it appropriate for those individuals to get this kind of specialized housing, but his opinion can change tomorrow. We can have a new Corrections Commissioner tomorrow.

We've heard in unrelated matters, that Commissioner Lantz had different views of risk reduction credits than Commissioner Arnone. These things change.

My argument is, I prefer them to be in the black letter law. I prefer them to be in statute. I prefer us to spell it out right here and now. That was the notion of my amendment in the Judiciary Committee.

But the plain language here, my colleagues here in the Senate, says that if, after completion of such reclassification process, the Commissioner determines such placement is appropriate.

I had referenced in my initial remarks that older gentleman that pushes around the cart with the library books on death row. I guess that was one of the first cases that Senator McKinney worked on prior to becoming a Senator when he was working in the State's Attorney's Office. That's Mr. Breton. That's the guy

with the long beard. That's the guy who killed his wife and brutally killed his 16-year-old son, I believe. You see, I toured death row any number of times.

So again, the safety hatches are in this document. I don't have any doubt that you've been given assurances. I understand when Senator Coleman says, I cannot give to any of my colleagues an assurance that this won't be appealed.

What I'm saying is, that using the brain that God gave me, and looking at prior State Supreme Court decisions, what I believe to be the footnote in Rizzo, which was, and let me get back to that. The footnote in Rizzo was because our repeal again, had not actually been signed into law, it didn't have the weight that this bill will have if Governor Malloy signs this into law.

You see, that's why this is much different as evidence of evolving societal standards of decency and why this in my view, will form a solid predicate for our State Supreme Court to let those 11 death row inmates get their sentences commuted.

There's no guarantee that it's going to go the way I think it's going to happen. But talk about a weighty decision that those folks across the street will have when that day comes.

The last part, which was, let me just say, because I know a lot of other folks want to weigh in on this, and it was only generally alluded to by Senator McKinney, but I think he hit something that's just as big of a safety hatch. Some of might want to call it a loophole. Despite all of this, the Commissioner may for compelling correctional management or safety reasons, modify any condition of confinement. Well there you go.

I mean, if that's not a catch all provision, I don't know what is. It's not even just for safety reasons. It's not even as if the Commissioner has to make this

safety decision. It could be a management decision, which in this building translates into a resource decision.

We don't have enough housing space to do this. We don't have enough Corrections officers to do this. We've decided that we want to re-deploy precious Corrections resources in a different manner, and thus, we have a compelling management reason to change all of this.

So I've got to say that over the years I've been blessed to work with some of the finest Legislators in the world. It was an honor for me to serve with Former Senator McDonald when he co-chaired the Judiciary Committee. It is a huge honor for me to serve with Senator Coleman as he co-chairs the Judiciary Committee.

And to the extent we all may disagree on certain issues now and again, and to the extent this is going to be a close vote, if not on this amendment, certainly on the underlying bill, I respect each and every person in this circle.

But I feel it incumbent upon me that we need to be forthright with our constituents and the people of the State of Connecticut. I do not critique or take umbrage with the intentions of any of the proponents of the Amendment and to the greatest extent possible they may have reassurances from folks in the administration that have the responsibility of implementing this, that they have been informed and feel reassured that it's going to go a certain direction.

My concern is that what we're putting in statute forms no basis of a guarantee and actually clearly affords several avenues when that may not occur.

And secondly, I think implicit if not explicit in the amendment is an acknowledgment that appeals will continue to be made for those individuals on death row and that passage of this bill has been acknowledged

far and wide as another predicate, as another basis for an appeal on behalf of the inmates on death row.

Clear as a bell. Chief Public Defender Story said, you betcha, you bet I'm going to file that appeal. I feel a legal responsibility to file that appeal, and I do believe that all of the folks in our criminal justice system at this level of handling these capital cases and other serious felony cases have been watching and waiting to see where this Legislature's actually going to land.

And so I think the process has slowed. People wonder why. How come people aren't getting executed in Connecticut? How come these appeals seem to be dragging on?

You know, it's not even just the fact that there's lots of appeals being made. There are appeals that are currently sitting in our courts where not a single piece of paper has been filed for over three years. Nothing's really happening. People are watching and waiting.

So should this amendment pass, and should this bill pass and be signed into law, now everything in Connecticut has changed. Everything. And I cannot imagine anyone ever being executed in this state or any actions being taken on any other appeal until this issue is resolved.

And to be quite frank, despite the dicta in Rizzo, and the fact in certain cases the Supreme Court has deferred to the legislative history and will of this branch of government, I will reiterate that I believe in my heart of hearts that if matters of life and death come before a Supreme Court and a prospective repeal of the death penalty is the law of the land in our state, I really can't imagine for a second that they would allow the execution of the 11 folks on death row while acknowledging that under any legal analysis, this law is the best and most recent indication of evolving standards in our society of human decency.

And that's why the debate on this amendment is inextricably tied into a debate on the underlying bill, and why rather than using an impassioned voice for my second time speaking on this amendment, I'm trying to appeal to your rational analysis and dispassionate observations of what the plain language of this amendment is.

For those reasons, Madam President, I once again strongly urge my colleagues to oppose this amendment, perhaps support other proposals that come before us but consider that this is an entire debate all tied together that will have an import far beyond what we vote on today and that will absolutely form a predicate and a basis for appeals going forward for those individuals sitting on death row here in the State of Connecticut. Thank you, Madam President.

THE CHAIR:

Thank you. Senator Suzio.

SENATOR SUZIO:

Thank you, Madam President. It's good to see you today. It wasn't my intention to rise and speak about this particular bill, but Senator Prague in her due diligence and in her attempts to clarify issues engaged in a dialogue or exchange with Senator Coleman, and I would like to get some clarification of what I think are some very critical issues that she raised in that dialogue between herself and Senator Coleman, especially since I'm not a lawyer. There are lawyers around here probably understand the technical matters.

But she raised an issue about legislative intent and passing the constitutional test and it's my understanding that legislative intent comes to play only within the statutory application of the law, that if a law is unconstitutional it doesn't matter what the intent of the law is, it's unconstitutional.

If a law has the effect of discriminating or denying

fundamental rights to one of Connecticut's citizens, whether the intent of the law is not irrelevant at all. It's only the effect, the impact on the citizen.

So I would like to clarify that if I may, and through you, Madam President, to the proponent if he could elaborate a little bit more about and corroborate whether my impression about legislative intent and its role in a constitutional decision is proper and that, but my understanding is we can take no solace in the fact that the court should this be the basis for a constitutional challenge to someone who's already been sentenced to the death penalty and they challenge that on the basis that their constitutional rights have been violated.

My understanding is legislative intent has no bearing whatsoever on the constitutionality of the law and therefore we shouldn't take solace in it. Would you, through you, Madam President, if you could pass --

THE CHAIR:

Senator Coleman, would you please respond?

SENATOR COLEMAN:

Thank you, Madam President. Through you to Senator Suzio, I'm not sure that there is any question about this amendment being constitutional. I'm not sure why it wouldn't be constitutional.

But it is clear to me on the issue of what factor legislative intent would play in the scenarios that are being discussed, if the Legislature were silent and didn't express a clear declaration that this amendment and this bill would be prospective only, if that declaration had not been made during the course of this debate, then I believe it would be a case where the Supreme Court would be free to make its own interpretation with respect to retroactivity or not.

Having made a very clear declaration of what we intend as a Legislature for this amendment to do, and I think

that there are 36 people or more in this Chamber that clearly intend that this amendment is to be prospective only, and the bill that this amendment attaches to is to be prospective only. I think that would be a factor in whatever determination the Supreme Court makes. Through you, Madam President.

THE CHAIR:

Senator Suzio.

SENATOR SUZIO:

Thank you. And through you, Madam President, so wouldn't the fact that we're distinguishing and saying, in effect, creating two totally separate rights and two separate classes of citizens by saying one group is entitled to protection from the death penalty going forward, but this group that preceded it is not? Isn't that itself the potential basis for a constitutional challenge? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. There's a constitutional analysis that has to occur, and so long as there's a rational basis for making a distinction, especially when there are no protected classes involved, this bill and any like it would be considered constitutional, so long as there is a rational basis for us to proceed in the way that the amendment proposes to proceed.

I would argue that the individuals who have been sentenced to death prior to the enactment of this law if it is to become a law, are not similarly situated to the people who may be convicted after the enactment of this law.

There's one class of individuals that have been convicted under a different set of circumstances and a different law, a totally different death penalty and there's another set of individuals who would be convicted and subject to sentence after the effective date of this law. That is distinction enough to say that we're dealing with two different sets of classes, and because we're dealing with two different set of classes there would be no equal protection infirmity with respect to this amendment or this bill. Through you, Madam President.

THE CHAIR:

Senator Suzio.

SENATOR SUZIO:

Thank you. And through you, Madam President, just want to make certain because I'm a layman. It's possible that the Legislature could pass law with the best of intentions but that law could be ruled unconstitutional because it violates some fundamental rights of a citizen and if that's true, then the intent of the Legislature is not relevant to the constitutionality of the law.

At least that's my understanding as a layman and I would like that confirmed if I could, by my good associate, Senator Coleman.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, if we're talking about what's presently before us in the course of this debate, I can only reiterate that there is no constitutional infirmity with respect to this bill.

Whether we're talking about cruel and unusual punishment under the Eighth Amendment or equal

protection under the Fourteenth Amendment, there is no constitutional infirmity with respect to this amendment.

We are not today making a choice between something that is unconstitutional and something that is constitutional. We're actually making a choice between a death penalty, which is in place, which our upper courts have said is constitutional as recently as the Rizzo case. There is no question about cruel and unusual punishment, and this amendment and the bill that it attaches to, which is also constitutional.

What we're doing here today, if we pass this bill as amended, or as we're seeking to amend it, is just making a clear expression of preference for a variety of reasons that we would prefer it to have the penalty for murder with special circumstances be life imprisonment without the possibility of release. Through you, Madam President.

THE CHAIR:

Senator Suzio.

SENATOR SUZIO:

Thank you. And through you, Madam President, I will not, I notice that the good Senator mentioned that about the constitution issue relevant to the amendment and I think the same question would have to apply to the underlying bill, which I will raise that question when we reach the underlying bill. I will ask the specific question pertinent to the bill itself as opposed to the amendment and to clarify and make certain that the answer is the same for the underlying bill.

But I thank you very much, Madam President. Thank you, Senator Coleman.

THE CHAIR:

Thank you. Senator Leone.

SENATOR LEONE:

Thank you, Madam President. If I may, a question to the proponent of the bill, through you.

THE CHAIR:

Please proceed, sir.

SENATOR LEONE:

Thank you. To the current Chairman of the Judiciary, who I applaud for all the great work that has been done on this amendment, and on the issue of the amendment, a few questions relative to the constitutionality and this notion of the discretion of the Commissioner.

If this amendment were to pass, the only discretion that I see that the Commissioner would have is that it would be within the scope of this new program that is harsher circumstances than current death row and these new convictions would not go to general population. Is that correct?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. And through you to Senator Leone, you are correct. The only discretion that the Commissioner would have with respect to this amendment would be to either place someone convicted, a murder with special circumstances and sentenced to life in prison without the possibility of release. The Commissioner's discretion would be to place that person in administrative segregation or on the housing unit that's described in that section of the bill. Through you, Madam President.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Thank you. So in my mind, that clarifies the fact that they will not be in general population, any so-called or perceived luxuries that they may get in terms of this discretion would not negate the fact that they are going to be serving extremely hard time. They will be in prison for the remainder of their life. In essence, it will be a life sentence in jail. Basically they are looking at passing away in prison because there would be no possibility of release. Is that correct?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, that is correct, and it is also correct that an inmate under this bill and this amendment would not be placed in general population in any facility. Through you, Madam President.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Thank you. And I think we've circled, you've said it numerous times, but just for my own purposes.

The current death penalty law as it stands is currently deemed constitutional. Correct?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, that is correct. Yes.

SENATOR LEONE:

And if this amendment were to pass, in my mind what it's providing is an alternative to the death penalty. It's not negating the fact that the State of Connecticut has deemed the death penalty constitutional.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Again, through you, Madam President, that is correct.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Thank you. And with that, the fact remains that for any conviction there'd always the possibility for any person to appeal their situation and I don't see whether we pass this amendment or the potential for the underlying bill, I don't see that if this were to pass, that would negate their ability to appeal whether this moves forward or not. Is that true?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. That is also true and we've taken some actions within recent periods of time that were not intended to be retroactive and the courts have not interpreted or applied them retroactively.

I suppose a good example might be the action taken by this Legislature to decriminalize small amounts of marijuana. Those persons what were convicted under the old statute for possession of small amounts of marijuana when it was a criminal offense cannot automatically do anything about that conviction. Through you, Madam President.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

Thank you. And for those on death row and for those who for the families and the victims, and my heart goes out to them, anyone who has had to experience that, in order to, the death penalty is there to meet out justice that they should pay for the crimes committed, but since the death penalty has been in effect, how many have been executed? Through you.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, to my knowledge there have been two executions in the State of Connecticut going from the period from about 1960 until the present. Through you, Madam President.

THE CHAIR:

Senator Leone.

SENATOR LEONE:

And given the nature of the fact that it doesn't seem to be carried out too often, if at all, and I believe in one of the cases, one of the defendant's had to plead, actually beg to be given the death penalty, it doesn't seem to acquire or actually complete the

intent of the task of the death penalty to completion, and having an alternative where there is going to be more restrictions for those who would be convicted, the fact that they would not become a celebrity, the fact that families would not have to relive the event over and over through the appeal process, I believe does have some merit.

So for the time being, I just wanted to thank the Chairman for answering my questions and I'll be listening intently to further debate. Thank you.

THE CHAIR:

Thank you. Senator Welch.

SENATOR WELCH:

Thank you, Madam President. I have a number of concerns with respect to this amendment, much of which have already been discussed, so I will not discuss them again.

With respect to the looseness in certain defined terms and the discretion that's given to the Commissioner, it bears pointing out one thing we haven't talked about and I think that is that administrative segregation is not defined legislatively, so that in and of itself is a term of which its conditions can change.

But beyond that, my biggest concern, and I think it's important and it's worth the circle's attention deals with lines 18, 19 and 20. We've heard a little bit from Senator Coleman how he felt that those lines did apply to the 11 people currently on death row. Senator Looney made a little bit of a different statement but the reality is, as that reads now, reduced to a sentence of life imprisonment without possibility of release by a court of competent jurisdiction, I think can only apply in one circumstance, because if there's a successful habeas appeal, if there's some other successful appeal, well the remedy is going to be a new hearing on a penalty phase or a new trial or something along those lines.

But the one case where it would apply would be if this statute is taken by the Supreme Court of the State of Connecticut and applied retroactively, because that would probably be the only case where a court would be changing an actual sentence to life in prison without the possibility of release.

Now, we've heard a lot about legislative intent, but I think the reality is that a court's going to be reading that, and they're not going to be reading the transcripts of what transpired here today because I think that's probably pretty clear, given the context with respect to how our courts view these cases.

So my concern here today with this amendment, although I appreciate its intent and I appreciate what we're trying to do with this amendment, is that it may actually backfire and it may actually do the one thing that we don't want it to do, which is allow this repeal to be applied retroactively. Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark? Will you remark? If not, Mr. Clerk, I'd call for a Roll Call Vote. The machine will be open.

THE CLERK:

An immediate Roll Call has been ordered in the Senate. Will Senators please report to the Chamber.

Immediate Roll Call ordered in the Senate.

THE CHAIR:

Have all members voted? If all members have voted, the machine will be locked. Mr. Clerk, will you call the tally.

THE CLERK:

Total number voting, 35; necessary for adoption, 18. Those voting "yea", 21; those voting "nay", 14. Those absent and not voting, 1.

THE CHAIR:

The amendment passes. Senator McKinney.

SENATOR McKINNEY:

Thank you. Madam President, I think now is probably the appropriate time, not earlier, I apologize, to rise and make a point of order that the legislation before us as amended has a required referral to the Appropriations Committee under Joint Rule 3. It states that any bills carrying or requiring appropriations shall be referred to the Committee unless such reference is dispensed with by at least two-thirds vote of each Chamber. That's our Joint Rules.

Madam President, as I read the fiscal note, the fiscal note clearly indicates that there is a cost in this bill. In fact, the amendment takes the bill from money saver to a cost to the state, Madam President, and so with that, I would so make that point of order.

THE CHAIR:

Senator Looney, why do you rise?

SENATOR LOONEY:

Madam President, if you would entertain some discussion on the point of order looking to speak in opposition to it.

THE CHAIR:

Please, just one rebuttal, sir.

SENATOR LOONEY:

Thank you, Madam President. Speaking in opposition

to the point of order, I believe that if we look at the, to get a true picture of this we have to look at the fiscal note on the amendment and the fiscal note on the underlying bill on concert.

The fiscal note anticipates some anticipated costs, potential future costs to the Department of Corrections should people come under this sentence in the future.

However, the underlying bill projects a very significant cost, or significant savings, to the overall system also projected into the future, and would argue that no referral to the Appropriations Committee is necessary or mandated as there is no present cost or effect on the current budget under Joint Rule 3B. It says the Appropriations Committee has cognizance only on any bills carrying or requiring appropriations, and this, neither the amendment or the underlying bill carries a specific cost to appropriation that would impact the budget.

What we're talking about here is potential, future economic impact, potential perhaps certain future costs to the Department of Corrections, but future overall savings to the entire criminal justice system in terms of the public defender services and the Criminal Justice Commission and other aspects.

So the underlying bill, I would argue that at the worst case scenario is that the amendment might somewhat reduce the overall projected future savings of the underlying bill, but would not have a net cost.

And also, in fact, all of it is to some extent speculative because there is no specific cost or savings anticipated in our current budget. It's all an attempt to speculate about what future impact might be, because again, for someone to come under the circumstance, he or she would necessarily have to be, commit a crime, be convicted, be sentenced and go through all of that in a relatively short period of time, so there is no anticipated impact in the, in Fiscal 12 or Fiscal 13 as a result of this.

So would argue that reference to the Appropriations Committee is not mandated by the amendment to the bill that's been adopted. Thank you, Madam President.

THE CHAIR:

Thank you. The Senate will stand at ease, please.

SENATOR McKINNEY:

Madam President.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Can I have an opportunity to rebut that argument, through you?

THE CHAIR:

Okay, Senator.

SENATOR McKINNEY:

Thank you. I obviously didn't anticipate what Senator Looney would say when I made my point of order. A clear reading of the fiscal note of the amendment said that the amendment has a net cost to the state. The underlying bill had savings to the state. The amendment has a net cost. That is not in dispute.

The fiscal note also says, and you can read it, the cost to the Department of Corrections with Fiscal 13 it says, see below, and Fiscal 14, it says the same.

There is no way to state with certainty that there will be no cost in Fiscal Year 13. What is certain, according to OFA is that with passage of this amendment there is a net cost to the state.

There is no way we can state with certainty that those costs will not begin in Fiscal Year 2013. The bill is effective upon passage and the law starts immediately and that requires referral to the Appropriations Committee.

Again, OFA has confirmed there is a net cost to the state because of the amendment. That is clear in the reading of the fiscal note, Madam President.

It is also clear that they anticipate that those costs could occur in 2013 because their analysis, if you look at the fiscal note, is the same for 2013 and 2014. If there were no costs to Fiscal Year 2013, OFA would say no cost. That's what all of our fiscal notes, and I know, Madam President, you served in the House. You're very familiar. That if the fiscal note according to OFA had no cost in 2013 they would say no cost. They do not say that.

With all due respect, and I understand this is a huge bill we're deciding here. I understand the position you're in, Madam President. I understand that this amendment was seen as significant to the votes of several members in this circle to provide a majority to pass the death penalty, but that does not and should not ignore the fiscal realities of what that amendment does and what the Office of Fiscal Analysis says. Thank you very much.

THE CHAIR:

Thank you. We will stand at ease now.

(Chamber at ease.)

The Senate will come back to order. Regarding the appeal, the point of order, Joint Rule 3B(1) requires that the bills carrying or requiring appropriations be referred to the Appropriations Committee.

The bill as amended does not require an appropriation in the current fiscal year, the current budget and the timing and amass of any future potential course is

indeterminate. Under Senate Precedent 227, the President of the Senate ruled that no referral to Appropriations is required when the course is indeterminate.

Additionally, the fiscal note on the amendment only predicts a reduction in the savings that will be realized in the underlying bill. The fiscal note taken as a whole indicated that the amended bill will still result in a net savings and do not indicate any additional appropriations will be necessary.

Under Senate Precedent 226, the President of the Senate ruled that no referral to Appropriations is required when the amended bill results in a net savings.

As a result, the point is not well taken and debate will proceed, the debate can proceed on the bill.

Senator Kissel, you stand for? I guess not. Okay. Senator McKinney.

SENATOR McKINNEY:

Madam President, it is with the utmost respect, and I hope you know that, but given my disagreement with the interpretation the fact that the Precedent cited had a fiscal note that said cost indeterminate and this fiscal note said cost, which I find is a significant difference, that I respectfully appeal the ruling of the Chair.

THE CHAIR:

Thank you. There's no debate on the ruling. I do apologize. As I'm learning this, never happened before, that at this point there is no debate on upholding, oops, Senator Looney.

SENATOR LOONEY:

Madam President, not for purposes of further debate, but just request that the Chair to clarify in the vote

what the red and what the green will mean.

THE CHAIR:

Yes, sir. I will do that. Thank you. We will open the machine. The question is on upholding the Chair's position. If you agree to uphold the Chair's position, the light will go green. If you're against the Chair's decision, the light will be red. Don't open it yet.

Because there had been some questions on what I had said, I'd like to repeat that. That if you agree to uphold the ruling of the Chair it will be green. If you want to overrule the ruling of the Chair, it will be red.

So now, the machine can be open, and Mr. Clerk, can you call a Roll Call Vote. Thank you.

THE CLERK:

An immediate Roll Call has been ordered in the Senate. Senators please report to the Chamber.

An immediate Roll Call is ordered in the Senate.

THE CHAIR:

The machine will be, if all members have voted, the machine will be locked. Mr. Clerk, will you please call the tally.

THE CLERK:

Total number voting, 34; necessary for adoption, 18. Those voting "yea", 21; those voting "nay", 13. Those absent and not voting, 2.

THE CHAIR:

The Chair's ruling was upheld. We'll go on now with the bill. Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. Madam President, with respect to the bill as amended, I would comment that Connecticut is with a death penalty, one of three industrialized nations in the world that still have a death penalty. A consequence of that is oftentimes when we are seeking to extradite individuals back to the United States, many of the countries without a death penalty --

THE CHAIR:

One moment. Can I ask that the volume stay down. It's hard hearing Senator Coleman. Excuse me, Senator Coleman.
Thank you, sir.

SENATOR COLEMAN:

Madam President, the bill as amended does four, I think, very important things and the first is that it eliminates the penalty of receiving, or eliminates the possibility of receiving the death penalty for a capital felony and it replaces that penalty with life in prison without the possibility of release.

It also renames the crime of capital felony to murder with special circumstances, and the fourth thing that it does is what we described and discussed and debated in connection with the amendment, and that is, it make the application of the bill prospective.

There are, in my opinion, plenty of reasons to support a change in our penalty with respect to capital felony and among those reasons is, we remain with New Hampshire, the only New England state that still carries a death penalty.

There are 16 states, plus the District of Columbia that have done away with their death penalty. I think Connecticut should join those 16 states plus the District of Columbia.

The repeal of the death penalty is a matter of conscience I think for me, for many people who support the repeal, as well as many of the people in this Chamber, whether they support or oppose the death penalty and I certainly respect every Senator, whatever their position is, with respect to this particular issue.

But beyond for me being a matter of conscience, the primary reason that I have concerns about the death penalty is because I'm very familiar with the fallibility of our criminal justice system and in recent years there have been some well publicized cases where the system has made a mistake.

In 1995 a gentleman by the name of Lawrence Miller was wrongfully convicted and incarcerated for about 16 years before he was exonerated. I think many of us are very familiar with the case of James Tillman who was wrongfully convicted and incarcerated for about 16 years before he was exonerated. Also Miguel Roman was wrongfully convicted and served about 20 years before he was exonerated.

Kenneth Ireland is a noteworthy case because he was wrongfully convicted at the age of 16 and he served about 20 years before he was exonerated.

But the significant thing about the Kenneth Ireland case is that his conviction very easily could have been for a capital felony. The only thing that prevented his being prosecuted as a potential capital case is the fact that he was 16 and there were prohibitions against prosecuting a 16-year-old and sentencing them to death. It was not a capital eligible offense because he was 16.

So let's just consider if Mr. Ireland had been 18, he would probably have been prosecuted and his case would probably have been treated as a capital offense and he served about 20 years. Now maybe appeals if current situations are any measure, maybe appeals would still be pending, or maybe we would have gotten to the point where appeals had been exhausted and Mr.

Ireland would have been wrongfully, having been wrongfully convicted would have been executed and we would have perhaps later discovered that we executed the wrong person.

That's my major concern about the death penalty. The punishment of death is so irreversible. In the case of Mr. Tillman and Mr. Roman, we are certainly able to compensate them for the 16 years or 20 years they lost as a result of being wrongfully incarcerated.

With Mr. Ireland, if the tragic and unspeakable thing would have happened, there would be little, if anything, that we could do for him. Maybe compensate his family.

The other concerns that I have about the death penalty as it works in the State of Connecticut or doesn't work in the State of Connecticut is the cost of it. The public defenders indicate that they spend about four million dollars a year in defense of people who are accused of capital felony offenses and I think with respect to the Cheshire defendant, I think they spent nearly, in the trial alone, close to a million dollars in defense of those individuals.

You think about that, and you think about all of the unmet needs with respect to our elderly, with our young people, with our education system. That money could certainly have been better allocated.

Another concern I have with the death penalty is its discriminatory application. It seems that if you are a minority, if you are poor, then there is a greater likelihood that you will be convicted and sentenced to death in the State of Connecticut.

There is as well a geographic bias. Up until the last two people were prosecuted and convicted, there were seven out of the nine people that were than in death row who were minority and poor.

Another concern is you hear very often people say that the death penalty in our state is unworkable. I would

agree with that, and the result of that is that there is no apparent finality to death penalty prosecutions, which in my view results in additional anguish for the survivors of the victim.

The trials are prolonged. The appeals are lengthy. Sometimes reversals occur and retrials have to take place. In my view, if the death penalty was substituted with life imprisonment without the possibility of release, some of those delays and some of that lengthy court activity would be reduced.

And finally, I know for some, it is believed that the death penalty serves as some sort of deterrent. Eighty-eight percent of the criminologists and sixty-four percent of Americans disagree with that proposition. They don't believe that the death penalty serves as any sort of deterrent.

There are a number of police chiefs who say that the death penalty is not effective and it is the least effective tool as far as law enforcement is concerned. They don't believe that it serves as any sort of deterrent.

In 16 states without the death penalty have a homicide rate that is 25 percent lower than that of the 34 states with death penalties. So it doesn't seem to be any sort of deterrent and it just seems to me that we in the State of Connecticut would be well justified in moving from a state or the position of having a death penalty to the position of substituting life in prison without the possibility of release.

We would be in good company. We could join most of our neighbors, neighboring states in New England, as well as with respect to the tri-state area. New York and New Jersey have recently repealed their death penalty.

And so, members of the Senate, with respect to this bill as amended, I think we would be well advised to pass the bill as amended. I urge you to do so. Thank you, Madam President.

THE CHAIR:

Thank you for your remarks. Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President. I rise for purposes of an amendment.

THE CHAIR:

Please proceed, sir.

SENATOR KISSEL:

Thank you, Madam President. If the Clerk could please call LCO Number 3051.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 3051, Senate "B", offered by Senators McKinney, Fasano and Kissel.

THE CHAIR:

Senator Kissel, would you like to speak?

SENATOR KISSEL:

Thank you very much, Madam President. I move for adoption of the amendment, waive the reading and ask leave to summarize.

THE CHAIR:

The question is on adoption. Please continue, sir.

SENATOR KISSEL:

Thank you very much. Well, we just spent an awful lot of time on the first amendment to the underlying bill, and in that amendment, I found that there were several concerns that I had, most notably the discretion that was afforded to the Commissioner of Corrections. Indeed, I view that as an abdication of our authority and also an abdication of the responsibility that we have when we run for office and we tell our constituents that we are the ones that will be responsible for delineating what will happen with our criminal justice system.

So what this amendment does is it actually, and by virtue of the fact that it would be a subsequent amendment to the underlying bill, it would be viewed to supplant that underlying amendment to the extent that there were any conflicts, and what this does is this.

It states that, and by way of background, whenever anybody is sentenced to any time, any time in our correctional facilities, a risk assessment is done. To the extent there was all this language in the previous amendment that had to do with risk assessments, I view that as pointless because every inmate has a risk assessment.

But above and beyond that, the underlying argument is, what do we do with individuals who are convicted of murder with special circumstances, essentially, those crimes where an individual could face the death penalty today.

And the amendment that I offered in the Judiciary Committee and the amendment that I'm offering my colleagues this evening, states that they should go into special segregation and that's it. That's where they stay. There really is no need for protective custody because they are in these cells the entire period of time.

We reviewed the amendment offered by our colleagues on the other side of the aisle primarily, primarily, not solely, and we took those elements that we felt

were justified, namely, that inmates movements would be escorted or monitored, that the inmate would be moved to a new cell every, at least every 90 days, that the inmate cell be searched at least twice a week and no contact be permitted during the inmate's social visits, that the inmate be assigned to work assignments in the holding area or the housing area of the unit and that the inmate be allowed no more than two hours of recreational activity per day.

But it takes away the Commissioner's discretion. The point being is, if we are going to be forthright with our constituents and say that life without possibility of release is to supplant the death penalty, then there is no reason why the Commissioner of Corrections should be afforded any latitude to modify those provisions.

If we as a Legislature find some reason years from now to modify those conditions, I would suggest that that is our right and responsibility. But to consistently devolve power over to the Executive Branch and have it reside with the sound discretion of the Corrections Commissioner, I think it's an unwise policy, especially for something as important as this.

I will note that not only does this amendment apply to those convicted of murder with special circumstances going forward, but it also contains the exact same language should anybody on death row at this time have their sentence commuted by a court that has appropriate jurisdiction.

It is a simple amendment. It is a straightforward amendment. It tells the public we mean what we say and we're going to do it.

It says that for those individuals that are prosecuted either through trial or through plea agreement and are found guilty of the horrific, horrific charges of murder with special circumstances, that they will serve the rest of their lives in appropriate housing in our Department of Corrections.

In my mind, it takes the best points in the previous amendment, merely takes away the discretion that is unnecessary and in my view in appropriate, and allows us to move forward to debate the underlying merits of the underlying bill.

I urge my colleagues to vote in favor of this amendment, and Madam President, when a vote is taken, I would ask that it be taken by Roll. Thank you.

THE CHAIR:

The vote will be taken by a Roll. Will you remark? Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. If I may, a question to the proponent.

THE CHAIR:

Please proceed, sir. Senator Kissel.

SENATOR COLEMAN:

Madam President, through you, it occurs to me that there is some considerable inflexibility with respect to this amendment and so I'm wondering, what would happen in your view, if one of the inmates who was sentenced, who was prosecuted for murder with special circumstances and sentenced to live without the possibility of parole, what if that inmate had a heart attack or some other medical condition?

Under your amendment, what flexibility would the Commissioner of Corrections or any staff have in order to act? Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. The inmate would be appropriately treated in his or her cell to the greatest extent possible and I'm sure that that could be done.

When the previous amendment was brought before us, assurances were made that inmates would serve out their time in those segregated confined cells. The exact same argument could be made with that amendment that heretofore has passed.

I don't believe that the Commissioner of the Department of Corrections needs any authority in statute to treat an inmate that suffered a heart attack. So while I understand where my friend and colleague is going with that question, I don't believe that the Commissioner of Corrections could not act appropriately in those circumstances.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Madam President, it occurs to me that there is considerable inflexibility in this particular amendment. Line 3 and 4 reads the Commissioner of Corrections shall place an inmate et cetera. I don't see any provision that would allow any discretion on the part of the Commissioner other than to place an inmate in administrative segregation or a special housing unit for maximum security population.

And under those circumstances, I'm not sure that the amendment would pass constitutional muster, and would probably be considered cruel and unusual punishment, especially if the interpretation is that it's deficient because there is not sufficient discretion or flexibility entrusted to the Commissioner in order to address emergency situations with respect to such inmate.

I would urge rejection of this amendment. I think the amendment that we just passed is much more suitable for what we're intending to do. Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark? Will you remark? Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President, and I listened to the questions that Senator Coleman posed to Senator Kissel and they seemed like reasonable questions and we're at the case that this amendment were to be redrawn, such that it took account of the circumstance where someone had a medical emergency, I'm not sure that it would necessarily meet with Senator Coleman's approval in that case, but it might be something that we could test by offering an amendment later this evening to that effect.

But I have a few questions on the amendment that's before us at this moment in time.

THE CHAIR:

Will you proceed, sir. Senator Kissel.

SENATOR RORABACK:

Thank you, Madam President, and for people watching on TV and for members of the public, the Senate speaks a language that's understood sometimes to those of us who are members and then the Department of Corrections speaks a language, which is understood presumably by the people in the Department of Corrections, but I don't think people in the Senate, unless they've taken a merging course in Correction language necessarily speak that language.

But for people who are listening or watching, I'm going to try English as a language to communicate in without

disparaging anyone. It's just these technical terms can befuddle the uninitiated.

So through you, first of all to Senator Kissel, the amendment which passed, Senator Coleman's amendment, made reference to three different statuses of housing as I read it.

One of them was administrative segregation, which sounded like a place where misbehaving inmates are sent. It didn't sound like a very pleasant place.

The other term that was referenced was protective custody, and that sounded like a place where people who are at risk of being harmed by their fellow inmates were sent, and I didn't have an ability to judge whether protective custody was a more or less comfortable place than administrative segregation, what the differences might be between those two statuses.

And the third thing that was referenced was a housing unit for the maximum security person, and that's what Senator Coleman's amendment, which passed, that's where people would end up if they passed the initial assessment.

And so through you to Senator Kissel, Senator Kissel's amendment as I understood it, would place all of these individuals in something called administrative segregation. Is that what Senator Kissel's amendment does? Through you, Madam President to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President. My understanding is that the amendment that is being offered that these inmates would have special status, probably tougher than administrative segregation in

some respects in that there are six criteria that would have to be followed.

So to my mind -- and -- and this is in comportment with Senator Coleman's amendment as well. With administrative segregation, while in some respects it's difficult, typically it's temporary and there's a program attached to it. And indeed, in Senator Coleman's amendment it said the administrative segregation would have programmat -- a program. In other words, someone would graduate out of that if they passed the program. This is permanent. This is long term and this has six criteria that have to be followed twice weekly for some of these instances. And so it's a form of administrative segregation, but it's specialized.

SENATOR RORABACK:

And, thank you -

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

-- Madam President. So it's a -- it's -- it's a subset of administration -- an administrative segregation that -- like permanent administrative segregation is the intent as I understand it. Through you to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

I mean we -- I -- I -- I agree so much with where Senator Roraback is going with this. Because essentially we're talking about a ceiling, a floor and four walls

where one individual is going to reside for the rest of their lives.

When you tour the facilities, as I have, if you're in administrative segregation, it's a ceiling, floor, four walls, a bed and that's about it. They have a certain time served and they have courses they have to take. And when they've proved that they can exist in the rest of the facility then they can go back into the general population.

This is a completely unique beast. This is a cell -- a ceiling, floor, four walls, certain criteria that will be imposed on these inmates on a daily, if not weekly basis forever. For the rest of their natural lifetime.

And so to that respect I would suggest that in many respects it's probably worse than administrative segregation because we -- even with administrative segregation, at some point, you're going to get out of there. You're never getting out of this housing.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President.

And through you to Senator Kissel, does this amendment intend to mimic the conditions under which the 11 individuals currently on death row are living, through you, Madam President? Or would it change those conditions for subsequent -- subsequently convicted individuals under the new category of capital felony under special circumstances?

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

In some respects, it absolutely mimics the folks that are on death row. The folks that are on death row only get out of their cells no more than two hours at a time. The folks on death row have to open -- open up -- their cells can be searched randomly at any given time. Whether Corrections currently is doing it twice a week or some variation thereof I don't really know.

I will say this. Currently the folks on death row stay on this -- within their cells on death row. The many years that I've toured death row they're not moving around every 90 days. So that's a distinction. And apparently the majority party feels that that comports with the Constitution and that that is an enhanced punishment, to move them around every 90 days. So that's a distinction.

I also don't believe that they would have privileges. For example, there are certain elements to the folks on death row where they can earn privileges to have a television set. It is anticipated that inmates in this kind of segregated unit would not have access to privileges like a television set.

And the rationale for that is when I've talked to the Commissioner of Corrections he said that even though they're on death row they have certain rights such as being in the general population. But people don't get too upset about that because they understand that these 11 inmates eventually are going to face the death penalty.

Supplanting the death penalty as an ultimate end of incarceration, this is now being replaced such that there are some exactly similar elements and there's some enhancements.

Through you, Madam President.

THE CHAIR:

Thank you.

Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President.

So the -- Senator Kissel's amendment, if it's different than the conditions which currently exist on death row, it's different in that it's harsher than what exists currently?

Through you, Madam President, to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you for that question, Senator Roraback.

Correct.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President.

And I guess the -- the question the amendment as drafted -- and Senator Coleman's points that if someone had a medical emergency, the amendment as drafted might not allow for that individual to be transported to a place for medical treatment. Is it -- is it your intent, Senator Kissel, that -- is that what you intend in this amendment? Or is your intent that there not be discretion to vary the terms for nonemergency situations?

Through you, Madam President, to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

No, it's not the intent of this amendment to undermine the Commissioner's authority, which I think, he has implicitly if not explicitly, to address medical emergencies. And in fact, the amendment that we just recently debated didn't speak about medical emergencies at all.

It did have a sort of a catchall that said for administrative purposes. Although I think a medical emergency might be a stretch to fall underneath the umbrella of administrative purposes. Certainly, a medical emergency wouldn't fall under the catchall of safety emergency.

So I'm guessing that in the amendment that recently was debated and passed that it's implicit in that amendment that the Commissioner would have this kind of authority. But as you had indicated, I think that we could probably take a few hours this evening and redraft this with the catchall that would address heart attack victims or any folks like that.

But I think that that's implicit in our system. And indeed, the University of Connecticut, through their staff and cooperation and -- and in agreement with the Department of Corrections has secure medical facilities where individuals with medical interests are kept in secure places. And so I -- I think it all can be done without any great problem.

Through you, Madam President.

THE CHAIR:

Thank you. Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President.

And I appreciate Senator Kissel's answer. The amendment which passed a few minutes ago vests in the Commissioner the discretion to change the conditions of confinement for what are called compelling, correctional management or safety reasons. And I don't see those as being defined terms. It's not clear to me what compelling, correctional management reasons might be. But, through you to Senator Kissel, does -- is Senator Kissel concerned that compelling correctional management reasons -- first of all, is he concerned that it's an undefined term?

Through you, Madam President, to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Well, thank you very much, Madam President. Through you to Senator Roraback.

Yeah, I -- yes, I was very much concerned what that very broad brush term meant. When we were debating the underlying previous amendment I was concerned that that could be driven just by dollars and cents. That if all of a sudden there were not as many corrections officers as necessary or that there were more fiscal pressures brought to bear on the State of Connecticut, such that a wing of an institution would have to be closed, that the Corrections Commissioner could unilaterally change the entire construct of what was being debated.

When it comes to an initial heart attack or the illness of a particular inmate I don't see that being an issue. And I think that the Commissioner probably has, if not in statute, in regulation, overriding authority to

address those issues as we speak.

Through you, Madam President.

THE CHAIR:

Thank you. Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President.

So, through you to Senator Kissel, the -- I believe it was Senator Kissel's view that the amendment which previously passed was over broad in terms of giving to the Commissioner without any legislative oversight, the opportunity to vary for undefined reasons what Senator Prague and others seem to want to make sure would be the case, that these individuals would be housed in conditions for the maximum security population housing units for the maximum security population that -- through you to Senator Kissel, the amendment which passed appears to not be limited to medical emergencies where someone could leave these circumstances, but it could be a whole host of reasons that could be sufficient -

THE CHAIR:

Senator Roraback, can I ask a question?

SENATOR RORABACK:

Of course, Madam President.

THE CHAIR:

Could you please -- could we stick to this amendment rather than the previous amendment?

SENATOR RORABACK:

Well, thank you and I -- it's important to understand this amendment, Madam President -- we can only

understand this amendment and what it intends to accomplish by comparing it the underlying bill as amended. And this -- this amendment would change the bill as amended. And my questions are going to the heart of the ways in which it would change the bill as amended. I can't adduce from Senator Kissel how his amendment differs from the underlying bill without focusing on what the underlying bill says.

But your point is well taken. I will -

THE CHAIR:

Thank you.

SENATOR RORABACK:

-- try to phrase my questions in a way that hit home with Senator Kissel's amendment.

THE CHAIR:

Thank you, Senator Roraback.

SENATOR RORABACK:

So, through you, Madam President, to Senator Kissel, your amendment would not give the Commissioner unfettered discretion to change the rules without legislative oversight? Is that a fair characterization of your amendment?

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

That is absolutely a fair characterization. Thank you.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

And your amendment in that respect, how would your amendment change the underlying bill as amended?

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

Well, in several respects, as I stated when I brought it forward. First of all, in several areas of the underlying amendment, the Commi -- the Commissioner of Corrections has discretion. He's going to do a risk assessment which happens with every inmate in any event. But at that point in time he has the ability to put someone in administrative segregation right off the bat.

Currently in Connecticut, we don't do that unless someone has assaulted a corrections officer or an inmate while incarcerated. If someone's just walking in the front doors, it is unprecedented that someone would go immediately into administrative segregation. So I really don't see him ever doing that as a practical matter.

So when you get down to whether he has discretion after an assessment to put someone in the special circumstances housing or into the general population, in the underlying amendment, he actually has that authority. Someone could end up at MacDougall-Walker at a level 4 in the general population.

But in this bill, if you are convicted of murder with special circumstance, you cannot in any circumstances end up in the general population. You will be in this special housing that is made directly for murderers

that are convicted of murder with special circumstances.

And as to the other unrelated matter regarding a health emergency, I do believe that there's probably other areas in our statutes or regulations regarding the Department of Corrections with -- that would address that.

But you know what, to my friends and colleagues on the other side of the aisle, if they would like, I'd be more than happy to redraft this with a -- with a specific carve out for that very narrow circumstance.

So that's it. In many respects this is a much harsher housing amendment proposal than the underlying amendment which is now part of the bill.

Through you, Madam President.

THE CHAIR:

Thank you.

Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President.

I -- I appreciate Senator Kissel's answers. I appreciated Senator Coleman's identification of a potential flaw in this amendment, that it didn't make provision for a medical emergency.

And so my intention, Madam President, in the expectation -- but not the hope -- but in the expectation, that there will be some time which passes between now and when this bill is finally acted upon. It's going to be my expectation and I'm going to ask Senator Kissel to join me to call in an amendment which essentially covers the entirety of what's before us, but includes a provision to allow the Commissioner to deal with medical emergencies in a responsible way.

When I offer that amendment or when Senator Kissel offers that amendment then I hope the debate will focus on the heart of the matter, which is the extent to which it's necessary or desirable for this Legislature to wink in the direction of the Corrections department and say, "We've got some pretty harsh rules here but feel free to vary them at your discretion. And no need to give us a ring. You've got full authority to do that."

So until that amendment comes back I'm going to support this amendment, believing that the flaws in this amendment are less -- less consequential or less severe than the flaws in the amendment that passed previously.

I appreciate the Chair's indulgence. Thank you, Madam President. And thanks to Senator Kissel as well.

THE CHAIR:

Thank you, Senator Roraback.

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Madam Chair.

Through you, some questions to the proponent of the amendment, please.

THE CHAIR:

Could you wait a moment, please?

Senator Kissel, prepare yourself.

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Madam President.

Thank you, Senator Kissel, for your hard work on this. I -- I sat with you in the Judiciary committee as you tried to clarify what your intentions were with the Kissel amendment, as it's been commonly referred to today.

I wonder, can you share with us -- because you have the benefit of having great exposure to the -- to the prison system in Connecticut, in close proximity to your district. Where I, frankly, don't have as much exposure to it, only having one correctional facility at Garner close to my district. I've visited Garner. That is a -- an unusual facility.

But could you share with us, if you would, what is your perception of the death row inmate's day currently? And what you perceive the underlying bill that we have before us today would be like for a person convicted of murder with special circumstances and without the ability of release? If you could sort of compare in your perception what the differences of that day.

I've heard stories about this very famous death row inmate in the State of Connecticut with a long beard who apparently is not in his cell a lot. He's always pushing a library cart around. So we have a librarian on death row is what I'm hearing. But I don't think that's really the case. I think that maybe you can clarify for us, again, what the difference is with the way it is today and what it will be for those convicted in the future.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

I very much appreciate that question from my friend and colleague, Senator McLachlan. And, indeed, I have enjoyed serving with you on the Judicial committee for these many years.

I do have six correctional facilities that house approximately 8,000 inmates in my district. And that's out of a total prison population as about a month ago of about 17,000. So it's almost half of the inmates in Connecticut are in my district. That includes MacDougall-Walker in Suffield, which is a level 4 maximum security facility. That includes Northern, which is the home -- home of administrative segregation for those that assault other inmates and other corrections officers. And it also has death row.

I will say this. There are certain privileges that are afforded the inmates on death row right now. As I had indicate they do have access to televisions. They are only allowed out of their cells for two hours every day. They eat in their cells.

But most importantly, they have the sword of Damocles hanging over their heads. They have a death sentence that was imposed after the most rigorous review in the United States.

Under the underlying bill, that sword of Damocles, that hammer of justice is removed because the specter of a death sentence is no longer there. I felt, as well as my constituents, that a form of harder time should be imposed on these individuals if they are not going to live each day of their life in fear of the death sentence.

So in this amendment it is made quite certain that their housing arrangements would be a form of hard time, harder than even death row, but not so hard as to be unconstitutional. The difference between this amendment and the amendment that just previously passed is that this amendment does not afford the Commissioner of Corrections wide ranging latitude to make a determination as to housing status.

This amendment says that we, the Legislature, are saying, "Should you be convicted of these crimes this will be how you are housed." I do acknowledge the issue raised by my friend and colleague, Senator Coleman, regarding medical emergencies. We'll try to address that. But other than that, I can't, for the life of me, justify any variation from this imposition. And I fe -- feel that the safety hatches are far too broad in the underlying amendment that was recently voted upon.

So as I had indicated to Senator Roraback, if we pass this amendment, not only do I believe that in some respects the confinement of these inmates will be a bit harsher, but that that is only fair if we're taking away the specter of a death sentence and supplanting it with life without possibility of release.

And my last point will be this. To the argument that inmates possibly fear life without release more than a death sentence, that goes against everything that we have seen in our justice system with the rigor with which people defend against the potentiality of a death sentence versus the rigor with which we are being told they will actually push back on a sentence of life without possibility of release.

Through you, Madam President.

THE CHAIR:

Thank you.

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Madam President.

Thank you, Senator Kissel, for your response.

I wonder when you talk about the housing for them could be more severe, could you perhaps elaborate a bit

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on -- on what your perception of that would be as being more severe? Two hours out of their cell sounds like they've got some degree of freedom for part of the day. Is this something different that you're proposing?

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

In some respects -- in -- in my proposal or this proposal -- Senator McKinney, Fasano and myself -- it's harsher. In some respects it's perhaps a little less harsh to comport with my understanding of constitutional prohibitions.

For example, it's my understanding that if you're on death row, you are allowed to have Corrections serve you your meals in your cell. If you're in administrative segregation you're allowed to have your meals in your cell. This amendment and the underlying amendment does not address that.

But in speaking to Commissioner Arnone, it's my understanding that there are some potential windows of appeal if you don't allow in this kind of housing, life without possibility of release, perhaps, meals in a -- a pod or the wing where your housing is. So this doesn't address that. So that could be viewed as a little less harsh than a life -- than life on death row.

As far as time out of your cell and you referred to he gentleman pushing the books in the cart in the library. As Senator McKinney brought to my attention, that's Mr. Breton, who murdered his wife and his 16-year-old son, who's getting on in age. He's probably in his mid-sixties. He's unkempt, has a long beard and he's very recognizable.

It's my understanding that in lieu of his two hours of recreation time, he has two hours working in the library and handing out the books and pushing the cart. I would be strongly surprised if upon investigation he has more than two hours doing that. But it seems like every time I've visited death row, that's what he's doing.

In some respects, for example, not having a television set, which it's my understanding that under this amendment they would not have access to, my guess is that that would be perceived to be less harsh than sitting on death row killing time watching television, which, having toured death row, many of those inmates are doing. But again, they -- the notion is that they always have in the back of their mind that they could be given the lethal injection that will terminate their life.

In this new status that they're in each day they wake up is a brand new day. They have none of that fear in the back of their mind. So in some respects this is harsher than their current confinement and in some respects it might be a tad easier. But when it comes to being outside their cell, it's exactly the same in -- in that respect.

Through you, miss -- Madam President.

THE CHAIR:

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Madam President.

Thank you, Senator Kissel, for your work on this.

I had some difficulty with the amendment offered by Senator Coleman that successfully passed. I didn't support that.

I will support this amendment because I do believe very strongly that this is, unfortunately, one of those cases where I'm afraid that this bill before us, the underlying bill, is going to pass. And I think it's wrongheaded for the State of Connecticut and I believe that we need to find a way to make a bad bill better. And I think that the -- Senator Kissel's amendment heads in that direction. And I'll listen carefully to the debate as it moves forward this evening, hopeful that others, including Senator Roraback, will have other ideas to -- to help this bad bill be better.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark?

Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President.

I -- I also have a few questions for the proponent of the amendment, Senator Kissel.

THE CHAIR:

Please proceed, sir.

SENATOR McKINNEY:

Thank you, Madam President.

Through you to Senator Kissel, as I was listening to the debate in my office, I heard you described one of the differences between this amendment and the underlying bill as amended by the previous amendment, that this amendment does away with the risk assessment by the Department of Corrections and automatically puts these individuals in that more serious

confinement. Is that correct?

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

Through you, Madam President, my understanding is that it's the current policy of the Department of Corrections that every single person given over to the Department of Corrections is immediately given a risk assessment.

So my first argument is that even though it was in the underlying statute that was just -- underlying amendment that just passed, it's being done already. So that one seems to me completely superfluous.

But secondly, there is no notion in this amendment that there's -- that there's any need for any kind of housing. That if you are convicted of murder with special circumstances we need to make a commitment to the people of Connecticut that this is the housing and this is the housing for the individual for the rest of their life.

So to the extent there's not a special carve out for a special assessment, yes, there's nothing like that in this amendment. But I also believe that every single individual sent to Corrections is given a very lengthy risk assessment test that they have to fill out.

Through you, Madam President.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President.

But, through you, Madam President, as I understand it, Senator Kissel, the -- the previous amendment that was adopted purported to essentially lead to the same position then that this amendment would be. In that all of the individuals convicted under these special circumstances would be confined in a newer, harsher confinement than they currently would be. I -- I'm not saying that's what the amendment did, but through you, wasn't that the representation about the amendment?

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

Through you to Senator McKinney, you're correct that that was the representation that was made to us, but a -- again, part of my concern with the underlying amendment was that it used this construct of a risk assessment.

But then after the risk assessment, they used that -- they sort of piggy backed on top of that, discretion to the Commissioner of Corrections to, if appropriate, place an inmate in these special housing circumstances. And the reason the amendment I'm offering took that out is I don't want the Commissioner of Corrections to have that discretion. I want it to be a certainty.

Through you, Madam President.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President.

And through you, Madam President, I also heard you explain the difference in the previous amendment that was adopted calling for the movement of prisoners every 90 days, I believe it was. This does not do that. But -- or if it does, Madam President, I'd like some clarification.

But, through you, Madam President, some of the confinement issues, the searching and the movement of prisoners, through you, is that something that would provide a cost to the Department of Corrections?

I know that, you know, I have not been to MacDougall-Walker. I had visited the old death row, Madam President, where we had the old electric chair there. And, you know, my understanding is that there would be a cost to the Department of Corrections through moving those prisoners. And that cost would not be borne in this bill. Is that Senator Kissel's understanding?

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

Well, through you, Madam President, to Senator McKinney. The six special criteria that are vested upon these inmates, things like checking the cells every -- twice every week, 90 days changing cells, all of those things that were in the first amendment that was adopted are present in this amendment.

All this amendment does is essentially take away the discretion. Essentially what this amendment does is it takes away the discretion from the Commissioner of Corrections to make a determination that inmates should not have this kind of housing.

If -- if I may. In the underlying amendment that passed my concern was that there were several catchall provisions that allowed the Commissioner of Corrections to take inmates and push them into other kinds of housing, general population housing or any other kind of housing. The -- the type -- if you ended up in this special circumstances housing, the six criterion are the same. So the difference here is that essentially I take -- this amendment takes away the discretion from the Commissioner of Corrections.

Through you, Madam President.

SENATOR McKINNEY:

Thank you.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President, and I thank Senator Kissel for answering my questions.

Madam President, the reason for my questions and some of my confusion is borne out in the fiscal note on Senator Kissel's amendment with res -- and -- and looking at that in comparison to the fiscal note on the amendment as adopted.

The fiscal note on this amendment is dramatically different. The fiscal note on this amendment says that the cor -- the cost to the Department of Corrections is 3.7 million dollars.

If the prior amendment that was adopted did what

was -- we were told it would do, which is essentially identical to what Senator Kissel's amendment would do, then they would have the same fiscal notes.

But because Senator Kissel takes away the discretion in his amendment, our Office of Fiscal Analysis has said this will cost a lot more, which can only lead to the conclusion, which can only lead to the conclusion that the prior amendment does not guarantee that everybody will be treated that way and this one does.

Now, you know, these things happen last minute, OFA does a fantastic job. It's possible that there could be a misinterpretations or even mistakes. We all make them. I've made my share. But I think that is the only conclusion that can be reached.

That the prior fiscal note, which we did challenge, the prior amendment with the fiscal note said no cost. That was the ruling from the Chair. And this says a cost of $3.7 million, dramatically higher cost, can only lead to the conclusion that while this amendment takes away discretion and guarantees that this will happen, the amendment that was adopted does not.

And I think, demonstrates beyond doubt that what was hoped to be achieved through the prior amendment cannot be achieved and can only be achieved through the adoption of this amendment. And that is why I rise in support of it.

Thank you, Madam Chair.

THE CHAIR:

Thank you, Senator McKinney.

Will you remark? Will you remark?

Senator Welch.

SENATOR WELCH:

Thank you, Madam Chair.

I appreciate this amendment. I appreciate the concerns that Senator Coleman raised with respect to the amendment. And I hope Senator Kissel isn't going too far because I -- I do have some questions for him.

But I think what -- what this underscores is we're essentially audiblling (sic) on some very important issues. And the first bill, the first amendment went too far in the opinion of some. And this amendment goes too far the other way in -- in the opinion of some.

And it -- it really highlights the fact that this is not the way we should be making changes to major policies in the State of Connecticut, last second, on the fly, as it were. And -- and I'm troubled by that.

I will be supporting this amendment. But I have a concern that I expressed during the last amendment and I will express again with respect to this amendment.

And that in particular has to do with lines 17, 18 and 19, where we are -- in the language it's almost verbatim what's in the bill now where we're looking to reduce to a sentence of life imprisonment without possibility of release by a court of competent jurisdiction as one of the triggers for which this act will -- will apply.

And -- and I think the point worth underscoring -- and I would like to ask a question or two of Senator Kissel -

THE CHAIR:

Senator Kissel. Senator Kissel, will you prepare yourself, please?

SENATOR WELCH:

But -- but I'm not quite ready to ask those questions -

THE CHAIR:

Slowly.

SENATOR WELCH:

And -- and that is -- it's my understanding and I'm not a criminal attorney, but my understanding is that when one files a -- an appeal for habeas, one usually is -- is filing based on a -- a claim of incompetent -- what's the term here -

SENATOR KISSEL:

Ineffective assistance of counsel.

SENATOR WELCH:

-- yes. Thank you. Inefficient (sic) assistance of counsel. And -- and if one were successful in -- in such an appeal the -- the remedy wouldn't be in any death penalty case an -- an actual changing of that sentence to life imprisonment without the possibility of -- of release.

And so if -- if I may, through you, Madam President, in -- in your experience, Senator Kissel, has -- is -- is there ever an instance where an -- an appeal has been taken, whatever the case may be in respect to a - a criminal matter and the court hearing the appeal actually changes the sentence rather than ordering a new trial or ordering a new sentencing phase of the hearing?

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

That is a great question, Senator Welch, and it -- and

it leads me to this conclusion.

On habeas matters and things like that if -- if the petitioner makes their case it -- it -- to my knowledge, it could only result in a couple of things. It could result in a new trial. In other words, the higher court or -- or the reviewing authority would send it back down for another trial or the individual could be released.

But never to my knowledge on a habeas matter or a similar kind of appeal would the reviewing authority supplant one kind of sentence for another. The only way that I can conceive of a court changing a sentence from execution to life without possibility of release is on an appeal predicated on an Eighth Amendment grounds of cruel and unusual punishment.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

And I was afraid that that was what Senator Kissel's answer was going to be.

And then if I may just, I think for the clarity of everybody else, engage in a dialogue with Senator Kissel with respect to this amendment, in -- in how courts in -- interpret legislative intent.

Now, my understanding as there's been some back and forth on this with respect to the years, but the first thing the court does is -- is they read the statute.

They're going to look at this language, the language in this amendment. And they're going to see that -- they're going to see lines 17, 18 and 19 or in -- in the underlying bill, if -- if that -- if that

passes what -- whatever the corresponding lines are there -- and I think they're going to draw one conclusion, which I think is the conclusion that we all want them not to draw.

And -- and that is this. There could only be one meaning to this language. The meaning of this language is that notwithstanding the statement that the repeal of the death penalty applies prospectively, the Legislature contemplated a situation where it might apply retrospectively.

And so if -- if this amendment goes -- goes forward and if my understanding of legislative intent is correct, I -- I would hope that Senator Kissel and I could sit down in a back room and try to adjust this language. Because that's the last conclusion, I think we want any court to draw having reviewed -- reviewed the bill.

So if I may, through you, Madam President, is that essentially how legislative intent works?

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

My understanding of legislative intent is that it can be gleaned by the courts in many different ways.

First of all, we implore the courts to read the plain language of the statutes.

Unfortunately, along the way, certain decisions do get handed down where the decision of the courts seem to run counter to what legislators thought they were passing.

For example, there have been occasions where "shall" has been interpreted to mean "may" and "may" has been

interpreted to mean "shall." It's my recollection that I believe there was a decision, the Corshane decision, a few years back where we actually had to pass a statute that said to the courts, read the plain language. We as a Legislature mean what we say when we use plain English verbiage.

That being said, if one goes through our Supreme Court decisions, for example, it is not uncommon for them to not only look at the plain language of the statute, but also to look at the dialogue that takes place between legislators not only on the floor of the Senate and the House, but also in committee.

That being said, a recent Supreme Court decision came down where it was brought to my attention that my comments were used by both the drafter or the writer of the majority decision -- this is a state Supreme Court decision -- the majority decision.

And then my exact same comments were used by the writer of the minority decision and interpreted in different ways to bolster different arguments, pro and con, regarding a particular nuance of the law.

So it's a -- it's -- it's really haphazard. There's no clear definition when it comes to legislative history.

That being the case, I'm happy to sit down with Senator Welch and -- and perhaps address this issue regarding this language. But I will say this. This language is in there because I have a strong concern, given how I have studied this issue, listened to the Chief State's Attorney and listened to professors of law, listened to the arguments by those in opposition to that theory that the courts will look at this prospective measure and essentially eviscerate the death sentences for those on death row. And even if you took this language out, the mere fact that this is the prospective repeal of the death sentence in Connecticut, of the death penalty, I think it's going to have the exact same import.

And so this goes in -- it anticipates that and addressed the housing core needs.

So I agree with you. This probably is one more arrow in that quiver. But I think the huge issue is that the prospective repeal of the death penalty is the largest, grandest manifestation of a -- and I've had issue with the term -- evolution, but that's the term of art that's used of society's perceptions of human decency in a state. And that that's what the courts hang their hat on when it comes to a cruel and unusual punishment analysis.

So I acknowledge the concerns raised by Senator Welch. I think they're well founded. But I think there's a bigger issue in the room than that -- than those -- those lines right there.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

And I do agree that there is a bigger issue in the room and I'm sure we'll be talking more about that later on this evening.

But I -- I am very concerned not just with the underlying bill, but with what we're trying to do and how fast we're trying to do it. And you know, some of this is a concept that I know that you raised in the Judiciary committee. And I appreciate that because it gave us some time to -- to do a little bit of vetting, but not sufficient, Madam President. And I -- I -- I don't think the gravity of what we're doing here should be lost on -- on any of us.

So, thank you, Madam President.

THE CHAIR:

Thank you, Senator.

Senator Boucher.

SENATOR BOUCHER:

Thank you, Madam President.

Madam President, I rise to support the amendment. I think the discussion that was just had -- I only wish everyone was in the room for that. Because the fiscal note raises a -- a great deal of concern and I wasn't planning to actually stand and speak on this until that discussion ensued.

The fact that there's such a large discrepancy raising the concern that the original amendment that was passed might, in fact, change some people's opinions about this. That, in fact, this amendment that we're discussing is almost critical to making what some find a very disturbing bill slightly better in providing some safeguards that can actually be quantified in the way of cost.

So I -- I am stand -- standing in strong support of this although I might say the underlying bill gives us great concern about the prospectiveness of it or the retroactivity of it, which is something I plan to talk about a little bit later when we get to the actual underlying bill.

But in this case I think the amendment is a good one. I thank Senator Kissel for spending the time, the diligence, as he always does, on a matter of great concern to all of our state.

But also, particularly to his unique district, where he, I think, has more day-to-day interaction with those affected, both inside a correctional facility or outside of it, whether they're working for it or they're inmates in it. And so I often pay attention to any evidence he brings forward or any testimony he

brings forward as well as this particular amendment. So I thank him for that.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark further?

Senator Kane. Oh. I'm sorry, I forgot to waive this. You stood up. Senator Kane.

SENATOR KANE:

You must have anticipated I was going to speak, Madam President.

Good evening.

THE CHAIR:

Good evening.

SENATOR KANE:

Through you and a couple of questions to the proponent of the amendment.

THE CHAIR:

Please proceed, sir.

SENATOR KANE:

Thank you, Madam President.

Senator Kissel, I've been trying to listen to the debate that's been taking place on this amendment versus the prior amendment. And I appreciate your knowledge on this issue as you do have a number of correctional facilities in your district and have -- have been on the Judiciary committee for as

long as you have. You seem to be very well versed.

So I guess my question is in regards to the history of this segregation policy, for lack of a better term, forgive me, of these particular individuals to begin with. If you could just speak to that for a moment here.

Through you, Madam President.

THE CHAIR:

Thank you.

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

Well, there's a couple things at work here. When I -- when I first started off here in the state Senate 20 years ago, they were just about concluding the construction of what's now called Northern. Prior to that there was no such facility.

And Northern was created in the town of Somers for a specific purpose. And that was to house inmates who were violent within the system, that essentially, assaulted other inmates or corrections officers.

The building's design, if you've never been to Northern, is actually designed to sort of humble you and bring you down a little bit. I'm not going to say it's to make you depressed. But it's certainly to rein in your desire to act out. Northern, while considered a maximum security facility, was meant to be temporary housing to try to rehabilitate that bad behavior so that you could get back into the general population and do your time.

There's other facilities, such as MacDougall-Walker in Suffield, that are a level 4 facilities. Those are permanent facilities. You don't go there because

you've assaulted someone, those are tough facilities, but because you've been sentence to some hard time. For example, Mr. Skakel is serving time there.

As I had indicated when Mr. Hayes was threatening to kill himself he couldn't be over in the Somers facility because that's where Mr. Komisarjevsky was. It's my understanding that they wanted to keep those two individuals far apart. So Mr. Hayes was in a special area of MacDougall-Walker.

Well, MacDougall-Walker is -- there's not cells where one person is in a cell. Generally it's two or more. Some of the areas -- and it's set up in pod formation where there's sort of several dozen cells in a certain area. They can all come out for certain periods of time around tables and chairs that are fastened to the floor and recreate there. They have yards that are completely fenced where they can recreate outside.

And so there's a lot more intermingling, a lot more time outside. There's an ability to do gainful employment. There's an ability to go have food together and things like that.

Now, it's moved down to a level 3 facility. Amazing. These are dormitory style facilities. You go in there and there's 60 to 90 people in a wing, bunk beds, they're all walking around together. You might have two corrections officers in that with 60 to 90 inmates. If they are -- don't do an appropriate risk assessment that can be a scary situation as the numbers would tell.

You also have other facilities such as Garner, where if you have inmates -- and there's other ones, too -- but if you have inmates that have mental health issues or things like that, they tend to be in more segregated housing.

So depending on the risk of the inmate, it could be anything from a dormitory style facility all the way up to very segregated housing.

Lastly, I will point this out as well. If you drive up and down our highways you will see vans and you will see people, in -- probably in orange jumpers or the like with the poles picking up the litter. Those are corrections inmates. They are the least violent, least dangerous. They don't even have guards out there guarding them, but they work in cooperation with the Department of Transportation to keep -- take care of our highways.

So inmates can be given any kind of appropriate supervision from very lenient, out there helping our neighborhoods, highways, all the way up to they are in a cell. They get out two hours a day. They get fed inside that cell. They have no interreaction (sic) and -- and it's everything in between.

Through you, Madam President.

THE CHAIR:

Thank you.

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

I think you said that the facility we're speaking of in regards to this amendment and this bill obviously, overall, was built 20 years ago. Yet our death penalty laws have been on the books for far longer. What did we do with these individuals or were there individuals on death row prior to the 20 years? Or are these 11 subsequent to that? Through you.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

I -- I'm sorry, I misunderstood the question previously so I probably gave you a bigger history of the corrections than -- than you wanted.

We've had death row ever since the United States Supreme Court has said it was lawful. And we had it prior thereto. There was a period from when the United States Supreme Court ruled it cruel and unusual. Then some changes were made and they allowed states to reinstate it.

For example, Mad Dog Taborsky was executed, I think, 1962 or early 60s, let's say. He was the gentleman that went around to package stores, summarily executed people in package stores. If you ever wonder why a package store only could open until 8 o'clock for a long period of time, it's because of him, because people were afraid for their lives to go in after dark.

Then a long period of time happened. We put death row on the books. And for a long period of time we had Osborn, which is an institute in Somers, which, when I first was elected, was still death row and I toured it.

And the way Osborn was set up was this. You had cells. They didn't have big metal doors. They were basically screened off. And there was a seniority system. And to the extent your sentence made you closer to the electric chair -- because it was the electric chair at that time -- you moved from cell to cell, getting closer to the electric chamber -- the electric chair where you would possibly be executed.

When Northern was created to address situations regarding inmates that acted out, a determination was made to shift sort of the old time facility at Osborn over to Northern since it was just about to be built.

And so they said, "Let's take a wing of Northern, have individualized cells that are smaller, big strong metal doors. We'll have more control over the situation. We're going to create a new death chamber

for lethal injections." Because there was a notion that they could see the writing on the wall, electric chair was not appropriate anymore.

And so they used that period of time to shift death row from Osborn, which is in the town of Somers as well, to Northern, which is in the same town, but a new facility. And ever since the early 1990s, death row has been at Northern in a certain wing.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

I guess my question -- and thank you for that -- because that's where I was going with this, trying to understand the history of this particular segment of the population. And I guess my question is in regards to that population that it was deemed constitutional, I guess -- I think you were saying and appropriate.

Did we create this death row for those inmates for their own protection or preparation for the ultimate sentence? You know, what is the reasoning for us segregating this population to begin with?

Through you, Madam President.

THE CHAIR:

Sorry. Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

For both. Through you, Madam President, for both. For their own protection, and also, to enhance security with corrections officers. These are individuals that have been found to have committed the

most diabolical crimes imaginable. Very callous, very heartless, no sense of remorse.

They can act out at any given moment with a corrections officer, but they also can get on each other's nerves cell to cell to cell to cell. And so this was set up specifically to enhance security. And the Department of Corrections at that time -- I believe the Commissioner was Larry Meachum -- felt that it was appropriate. The Legislature felt that it was appropriate as well. Through you, Madam President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

Through you to Senator Kissel, why do these individuals need special protection? Why do they get -- you know, maybe -- I've never visited death row so I -- I'm not imagining it as a Hilton, certainly. But at the same time, in -- in Senator Coleman's soliloquy earlier, he said they're given television and magazines and it doesn't sound like the rest of the inmate population gets some of these same things.

So is that a trade off for their protection? Is that a trade off for being on death row? I mean, why are they given this -- this -- I don't want to say special treatment -- but different treatment than the rest of the population?

Through you, Mr. President.

(Senator Duff in the Chair.)

THE CHAIR:

Thank you, Senator.

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

Great to see you there, Senator Duff. Through you, Mr. President, to Senator Kane.

Actually, the issue right now is even though they are on death row, there are some rulings indicating that certain privileges that are afforded the general population also have to be afforded death row inmates. So that's the televisions. You go in the dormitories, there's a television at the end of every bunk. It's amazing. Weight lifting. Things like that. Basketball courts. Lot of these facilities, all sorts of things.

The lack of privilege comes in when you act out. When you are either assessed to be a part of a gang because we've determine that if you're a part of a gang and you don't renounce that gang, you could pose a threat within the facility. Those folks go to Northern. Or if you assault a CO, corrections officer, or another inmate, you will get sent to Northern, do some segregated time programming to work your way back into the general population.

So the underlying amendment and what this amendment does is say, "Well, if we're going to take away the sword of Damocles hanging over your head, the notion that you can wake up at any given day and your appeals have run out and you're going to take a walk to the death chamber, in exchange for that, knowing that as long as God wills you to be alive you will exist on this earth, then your time in corrections is going to be a little harder as an appropriate punishment for the times that you are served."

So things like televisions, they're out the window. Things like eating in your cell, they have to have time under certain Supreme Court decisions to get out of their cells. So there's some things that we take away, some things we give, but that's the notion behind

the entire proposal.

The difference between the amendment that just passed and this amendment is this amendment makes this kind of housing a certainty. The other one is discretionary, and that's why, I guess, based upon the excellent questions proffered by Senator McKinney, there's such a huge disparity in the fiscal note.

Through you, Mr. President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Mr. President.

And -- and I -- I appreciate that answer as well. Because this has helped me understand the difference in the population and how they are treated or more importantly, how they are housed. And this is what I'm trying to discern through the original amendment or the first amendment that we did and this amendment.

So in -- in the first amendment that was passed an hour ago or so, what you're saying is there's some discretion that's involved. That individuals, although they may have been convicted as if it were a capital felony murder case and treated in that regard, there's still some discretion by the Commissioner or whomever that says, "Well, we know you were convicted by a jury of your peers and the court said this, but we're going to treat you this way." Is -- is -- is that my understanding?

Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

Absolutely. Through you, to Senator Kane, absolutely. There's huge -- a -- ability of the Department of Corrections through the Commissioner to do a risk assessment -- and --and as I indicated, you could have someone who's an elderly gentleman that's a serial killer that has been doing this quietly through dark of night, who's just diabolical. And yet the risk assessment would show that he is no threat to correction officers or other inmates.

The Corrections Commissioner could say, you know, "We're going to house you at MacDougall-Walker in the general population because I'm not really worried about you assaulting anyone." That could happen.

It's not to say that the Corrections Commissioner would do that or it's stated that he would -- would do that. And I believe Commissioner Arnone when he tells colleagues that he wouldn't do that. But it's completely at his discretion and his opinions could change and corrections commissioners could change.

There's also a provision in the underlying amendment that's not in this one that's sort of a -- even a bigger catchall that says that for administrative purposes at any given moment, administrative or safety reasons, but administration reasons, he can change the -- the -- the restrictions on an inmate at any given moment.

So we know with budget things and things that go on in this building, word could come down, we need to save two million dollars out of Corrections, all of a sudden all of this changes. And that's --that -- that was the reason why this was offered. Through you, Mr. President.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Mr. President.

So I guess what you're saying is that a person is convicted by a jury of their peers, 12 individuals and probably alternates, what have you. The prosecutors, the judge, the sentence, is sometimes worked out with the victims and their families in saying, well, we want to go for this type of case or we'll go for this type of case. So all of that can be usurped by one person.

Through you.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Through you, Mr. President, that is correct.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Okay. And your amendment clarifies that or takes away that discretion and says that if you are convicted by, again, the jury of your peers, by the prosecution, by the -- the workings out with the victim's families and all the like, no, that cannot happen.

Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Through you, Mr. President, yes, that is correct, Senator.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Mr. President.

I thank Senator Kissel for his answers. I -- I do appreciate the give and take that we've had. Because, you know, not being too familiar with the correctional system myself -- I did make one visit and I -- it was a fairly minimal security prison in Niantic. And it was what you talked about, a dormitory style residency.

And I'll tell you, I -- you know, I couldn't wait to get out of there myself. But -- because that's -- it's a scary situation when -- when you're put in that -- that type of situation. But I would anticipate that it is much different in some of the other facilities.

So I guess what my concern in voting in opposition to the original amendment -- and now I believe I can support this amendment -- is the reason that all of this -- you know, we -- we -- we talk about the families, we talk about the -- the trial. We talk about the jury of their peers. We talk about the prosecution who makes these cases. We talk about the police departments who have to put together these cases. We talk about all the witnesses that are involved and all the things that take place, that it seems that we should leave no stone unturned. We should leave nothing for one person to say, "Well, you know what, ah, to heck with all that, you know. I think they're all wrong. I think this person doesn't provide a risk to anyone else, that we should give them a different opportunity."

So I -- I can understand this amendment. And I thank you for this amendment because I think it makes a lot of sense. And I think we do need protection for the

families. We do need protection for our society in general from these type of things.

So I appreciate it, Mr. President, thank you. And I will be voting in favor of the amendment.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment? Will you remark further on the amendment?

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

Mr. President, I've listened to the discussion and I appreciate all the discussion regarding my amendment and its deficiencies and all of the meritorious comments regarding Senator Kissel's.

And I guess to be quite honest, if there was any thought on my part that passage of this amendment would mean that people who are publicly on record as opposing the underlying bill might entertain it -- I don't think that's the possibility -- but I guess I'd have a less cynical view about the amount of time that we've just discussed these two amendments.

I like my amendment just fine. And I would urge the members of the Senate to reject this amendment and to continue to support the amendment that was passed.

Thank you, Mr President.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment? Remark further on the amendment?

If not, Mr. Clerk, please announce the pendency of a roll call vote.

THE CLERK:

Immediate roll call has been ordered in the Senate. Senators, please report to the Chamber.
The -- there's an immediate roll call in the Senate.

THE CHAIR:

Senator Musto.

Have all members voted? Have all members voted? The machine will be locked and the Clerk will announce the tally.

THE CLERK:

Total Number voting		35
Necessary for adoption	19	
Those voting yea	14	
Those voting nay	21	
Those absent and not voting	1	

THE CHAIR:

The amendment fails.

Will you remark further on the bill as amended? Will you remark on the bill?

Senator McKinney.

SENATOR McKINNEY:

Thank you, Mr. President.

Mr. President, I rise for purposes of amendment.

THE CHAIR:

Please proceed, sir.

SENATOR McKINNEY:

Thank you, Mr. President.

I believe the Clerk is in possession of an amendment, LCO Number 3055. I ask that he call the amendment and seek leave to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 3065, Senate "C," offered by Senators McKinney and Fasano.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

I'm sorry, Mr. President. It -- did he say 3055?

THE CLERK:

3065.

THE CHAIR:

3065.

SENATOR McKINNEY:

I'm -- I'm sorry, Mr. President. I -- I apologize if I said that the first time. I would like to call Amendment LCO 3055.

THE CHAIR:

30 -- Mr. Clerk, please call LCO Amendment 3055.

Senator McKinney, the Clerk informs me that the amendment is not in their possession.

SENATOR McKINNEY:

Mr. President, I have a stamped copy of the amendment here. Can I have -- someone will bring it up to the Clerk.

THE CHAIR: Senate -- Senate will stand at ease.

(Chamber at ease.)

THE CHAIR:

Senate will come back to order.

Senator McKinney, LCO has -- I'm sorry. The Clerk has the amendment. Mr. Clerk.

THE CLERK:

LCO Number 3055, Senate Amendment Schedule "C," offered by Senators McKinney and Fasano.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you, Mr. President. Mr. President, I move adoption.

THE CHAIR:

On adoption, will you remark?

SENATOR McKINNEY:

Thank you, Mr. President. And I certainly apologize to the Clerk for the confusion.

Mr. President, we had a discussion at the outset that

was brought out and it -- it was something that Senator Coleman and I, I think, agreed upon. And that was that the intent of the Legislature in the intent of the legislation is to be prospective only.

Now, without getting into the debate of the constitutional argument, which is not relevant for this, certainly, if a court were to determine that the constitutional rights under the Eighth Amendment or any other amendment were violated by the 11 on death row with the repeal of the death penalty, those sentences would be commuted and there's nothing we could do about that legislatively. That's what courts do, interpret the Constitution.

However, if the court were to determine that a prospective application of the death penalty is constitutional, they would also have to reach the decision as to whether or not, in fact, what we're doing is prospective.

So in researching that -- and I wish I could say it was me, but some of our very good staff -- and in talking with the State's Attorneys office, we were led to two statutes. The one that I'm reading is Section 54-194. And it's the effect of the repeal of a criminal statute.

It's not lengthy and I'll just read it very briefly.

It says "The repeal of any statute defining or prescribing the punishment for any crime shall not affect any pending prosecution or any existing liability to prosecution and punishment therefore, unless expressly provided in the repealing statute that -- that such repeal shall that effect."

Now that statute as I understand it historically was first put in so you couldn't, after the fact, engage in what would be ex post facto, by saying that someone would get a harsher penalty than they had been convicted of and then changing the penalty that they had received. But our courts have interpreted it to -- to work both ways.

The reason for the amendment is this. We've been through the Corshane case where the court has said the Legislature says what it means and we look at the plain language.

We know that there is a statute which speaks to the repeal of a punishment for any crime that comes after. And we've excluded that statute from the underlying bill.

Now, I'm not saying that a court couldn't, based on our discussion here, reach the interpretation that this is prospective. What I am saying is that by including this language, which doesn't change the repeal of the death penalty in the underlying law in any way, but by including this section, we guarantee that the court understands that the intent, and in fact, the language, not the intent, but that the language of the bill says that it is prospective.

And I think that is a very important difference. I -- I want to restate it because I might have -- might not have stated it as clear as I need to.

It's been argued that the bill has the intent that it's prospective. This would make sure that the language of the bill says it's prospective. And therefore, regardless of the constitutional arguments that may be made in some future date before our Supreme Court, should the Constitution find that the -- should the court find that this law is -- comports with the Constitution, they also need to make that interpretation as to whether we meant to be prospective.

This puts in the language of the bill that it's prospective and I think guarantees that fact. I -- I don't view this as an unfriendly amendment. I hope it's not viewed as an unfriendly amendment.

It -- it's no doubt, Mr. President, that I stand in opposition to the underlying bill. I have been for years. I do this in some ways, you know, we've called

it making a bad bill a little bit better. But I do this with respect that it is my understanding that there is a majority to repeal the death penalty. It's also my understanding that there is a majority in the House and we know the Governor will sign that bill.

Therefore I do believe there will be a repeal of the death penalty signed into law and that issue will have to be dealt with the courts.

This guarantees that the -- the language in the bill says it's prospective. And I would urge adoption.

Thank you.

THE CHAIR:

Thank you, Senator.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

If we might stand at ease for just a moment?

THE CHAIR:

Senate will stand at ease.

(Chamber at ease.)

THE CHAIR:

Senate will come back to order.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

Just back on the bill, thank you very much and I -- I'll

yield to Senator McKinney.

THE CHAIR:

Senator McKinney, will you accept the yield?

SENATOR McKINNEY:

Thank you. I do, Mr. President. And I thank the good majority leader.

Mr. President, based on discussions we've had and in -- in an effort to continue debate on a very important bill, both with the hope that we can continue to discuss the amendment that I offered, I would like at this time to withdraw that amendment in the hopes that we can bring it back later during the debate.

THE CHAIR:

Okay. Thank you, Senator.

The amendment is withdrawn without prejudice.

SENATOR McKINNEY:

Thank you, Mr. President.

THE CHAIR:

Thank you.

Will you remark further on the bill as amended?

Senator Fasano.

SENATOR FASANO:

Thank -- thank you, Mr. President.

Mr. President, the amendment that was just withdrawn was an effort, as we said, make a bad bill better. And clearly the intent of the bill before us is to be prospective as we talked about.

The two issues that come about is, one, a court interpreting it to be retroactive. And the amendment that was before us was to look at that issue. And we're going to look at that further.

And the second issue is what if the bill is found to be unconstitutional. That is, on an equal protection argument the bill fails on a constitutional ground, then what would happen is the 11 who are currently on death row would have their sentences changed to life without the possibility of parole.

So with that, Mr. President, I would ask the Clerk to call LCO 3058.

THE CHAIR:

Mr. Clerk, will you please call LCO 3058.

THE CLERK:

LCO Number 3058, Senate "D," offered by Senators McKinney and Fasano.

THE CHAIR:

Senator Fasano.

SENATOR FASANO:

Mr. President, I move the amendment and request permission to summarize.

THE CHAIR:

On adoption, will you remark?

SENATOR FASANO:

Thank you.

Mr. President, so what this amendment does is hit the issue that I talked about. Basically, if the bill is

found to be unconstitutional and after the final rendering of that decision by a court of the jurisdiction, and it is deemed to be unconstitutional, this change, effectively, before us, getting rid of the death penalty, would cease to exist. It would -- it would end. And we go back to where we are today.

If the purpose of this is not to effect the 11, there's two ways in which the 11 could be effected. One, it's deemed retroactive, or, two, the law is deemed unconstitutional as it applies to the 11 and then their sentences would be reduced accordingly.

Therefore if it is found it's unconstitutional, rather than mandating that the sentences be reduced accordingly, the law would cease to exist.

Mr. President, I move this amendment and I look for support around the Circle. Thank you.

THE CHAIR:

Thank you, Senator.

Will you remark on the amendment? Remark further on the amendment?

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

Mr. President, I -- I had a brief opportunity to review the language of this amendment. And I appreciate that it's certainly offered with good intent. But I believe we have a severability statute in the state of Connecticut and the effect of that statute would say -- would mean if any portion of the bill that is passed is found to be unconstitutional, the remaining portions would remain in effect and remain valid.

And I think that would, in my estimation, suffice, and

would make this amendment unnecessary and probably duplicative.

So I would, I suppose, oppose, reluctantly, this amendment.

Through you, Mr. President -- to you, Mr. President.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment? Senator Roraback.

SENATOR RORABACK:

Thank you, Mr. President.

I -- through you, if I may, a couple of questions to Senator Fasano?

THE CHAIR:

Please proceed, sir.

SENATOR RORABACK:

Thank you, Mr. President.

Senator Fasano, this is kind of arcane legal terminology I think that this amendment is intending to get at. And can you, once again, help me to understand what this amendment would do?

SENATOR FASANO:

Sure.

SENATOR RORABACK:

Through you, Mr. President, to Senator Fasano.

THE CHAIR:

Senator Fasano.

SENATOR FASANO:

Thank you, Mr. President.

Mr. President, through you, essentially if we pass this bill the intent of many legislators around here is that the death sentence applying to the 11 will still be in effect.

If, in fact, the court finds that the bill that we passed today is unconstitutional in that on the equal protection clause you can't treat similarly situated people differently, the court may therefore say that since the death penalty is no longer on the books those who have the death penalty sentences would be reduced to imprisonment without the possibility of parole.

Since it seems to be somewhat of a feeling in this Chamber that we do not want to do that, the only remedy on the unconstitutional level would be if it is found to be unconstitutional, the bill or the law at that point is revoked or sunset or ends and we go back to where we were today.

Through you, Mr. President.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you, Mr. President.

And -- and through you, if I may, a question to Senator Coleman. Because when I -- when I listened to Senator Coleman responding to Senator Fasano's amendment, it wasn't clear to me -- through you, Mr. President, to Senator Coleman -- does Senator Coleman understand Senator Fasano's explanation of what this amendment hopes to do?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

I appreciate the question. And maybe I misunderstood Senator Fasano's import and his -- the explanation he just provided would seem to be based on equal protection argument or an equal protection analysis, hopefully, causing me to understand a little bit better.

But I would argue that people who are currently on death row are not similarly situated to people who might be convicted of murder with special circumstances subsequent to the passage of this act.

I think there -- there are two different classes, neither of which are protected. But the people who are currently convicted and on death row I don't believe could prevail under an equal protection argument, especially with the declaration of intent that has already incurred, indicating that the -- the bill that we're considering is to be prospective.

There's a distinction between the two classes of folks. One -- one class has been convicted prior to the passage of this act under a different statute. And the other class will be convicted subsequent to the passage of this act. And I think that's sufficient distinction between the two classes in order to survive an equal protection attack.

Through you, Mr. President.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you, Mr. President.

And I understand Senator Coleman's point. And he may well prove to be prescient in foreseeing what a court may or may not do.

But I don't think that Senator Fasano's amendment -- it goes to the question of whether a challenge to this law will or will not succeed. That -- that -- the answer to that question is beyond our control.

What is within our control is what Senator Fasano's amendment, I believe, attempts to get at. Which is -- if what in Senator Coleman's opinion is the unlikely event that a court concludes that the 11 people now on death row could not be executed because of the passage of the underlying bill -- I believe Senator Fasano's amendment says if that's the case then the law would be restored to as it is today such as to insure that those 11 individuals would in fact be subject to the death penalty.

And so through you, Mr. President, to Senator Coleman, does he understand the question that's being framed by Senator Fasano's amendment?

I -- I would -- well, I guess the first question is do I understand the question that's being framed by Senator Fasano's amendment? I believe I do. And does Senator Coleman share in the understanding of how I see the amendment, what its import is?

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

Mr. President, I believe I understand fully Senator

Fasano's amendment. I just don't believe that it is necessary and therefore, I will oppose the amendment.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Senator Roraback.

SENATOR RORABACK:

Thank you, Mr. President, through you, just a couple more questions to Senator Coleman, if I may.

This -- this is a confusing bill for members of the Legislature, let alone members of the public who are trying to follow what exactly it is we're doing here or trying to do here this evening.

My understanding of this bill -- well, through you to Senator Coleman, can Senator Coleman explain to me whether we could pass a bill if it were the desire of this Legislature, whether we have the power to pass a bill which would have the effect of commuting the sentences of those currently on death row? Would that be within our legislative power?

Through you, Mr. President, to Senator Coleman.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

That question I'm not sure I understand, Mr. President. Maybe if it's rephrased or repeated, I will grasp it.

THE CHAIR:

Senator Roraback, will you reframe your question?

SENATOR RORABACK:

Sure. The question, through you, Mr. President, to Senator Coleman, is is there any reason the Legislature couldn't pass a bill saying there will be no death penalty imposed on the 11 people who have been sent -- sentenced to death?

THE CHAIR:

Senator Coleman?

SENATOR RORABACK:

Do we -- do we have that power?

THE CHAIR:

Senator Coleman.

SENATOR RORABACK:

Through you, Mr. President, to -- to Senator Coleman.

SENATOR COLEMAN:

Through you, Mr. President, I believe that we could do that. I'm not sure why we would, but I think we could. Through you.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

And Senator Coleman is anticipating my next question.

Through you, Mr. President, to Senator Coleman, why is it that we wouldn't do that? If -- if it's the belief of the Body that the death penalty isn't an appropriate sanction in this state, why is it that we wouldn't repeal it for everyone and not just for people

that do horrible things in the future?

Through you, Mr. President, to Senator Coleman.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Well, I can only respond that it's my considered understanding that the consensus among this Chamber and, perhaps as well, the Chamber downstairs is to make whatever action we take with respect to the death penalty be prospective. So I'm not sure why we would do anything different than that.

Through you, Mr. President.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

And, thank you, Mr. President.

So through you to Senator Coleman, it's -- and Senator Coleman can only speak for himself, he can't speak for anybody else, but is it Senator Coleman's opinion that the right thing to do is to -- for the 11 people on death row to be executed?

Through you, Mr. President, to Senator Coleman.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

My I ask again for the gentleman to rephrase his question? Is he asking do I think it's the right thing to do for the people on death row to be executed?

THE CHAIR:

Senator Roraback, would you reframe the question, please?

SENATOR RORABACK:

Yes. Thank you, Mr. President.

Through you to Senator Coleman, that is the question that I'm asking.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Mr. President, I'm not -- I'll answer the question. I'm not sure what it has to do or how it's germane to this particular amendment.

But I have always been opposed to the death penalty. I -- as I said earlier, I don't see how we make the point that killing is wrong by killing. And I don't see how we say that violence is wrong by doing violence.

And I think there were some very appropriate comments made during the committee process by people who spoke on this particular bill. And one of those, I think, had to do with vengeance and retribution. And I think it went something to the effect that if we operate on the basis of an eye for an eye and a tooth for a tooth, we run the very great risk of ending up a blind and toothless society.

Through you, Mr. President.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

And I -- I appreciate very much Senator Coleman's perspective and his opinion on what's obviously a difficult question for all of us.

But my specific question, through you, Mr. President to Senator Coleman, is does he think it's the right thing to do to execute -- for the State to take the life of the 11 people who are currently on death row?

Through you, Mr. President to Senator Coleman.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I thought I was clear. I do not think it's the right thing to do.

Does Senator Roraback think it's the right thing to do?

Through you, Mr. President.

THE CHAIR:

Gentlemen, let me just remind those who are speaking to please stay on the amendment and limit the questions to the amendment, please.

SENATOR RORABACK:

Thank you, Mr. President.

And the reason I'm asking these questions is because I -- I have long believed that the State shouldn't be in the business of taking life. And as strongly as I believe that, I believe even more strongly that the State shouldn't be in the business of breaking its commitment to victims of crime. And we'll talk about that later.

What's happened in the recent past in the State of Connecticut, in my opinion, has been a breakdown in the integrity of our system of justice.

But Senator Fasano's amendment goes to the very vexing question of why it is if people don't think the state should be in the business of taking life that this bill is crafted to take the lives of 11 people.

If that's the objective, and I understand there's some people here who say they only want to support the repeal if the 11 people are execute. And they're entitled to that position.

But Senator Fasano's amendment says if, for any reason the passage of this bill operated to prevent those 11 people from being executed, if that's the objective of this Body then we would go back to the laws as -- as -- as it exists today to ensure that those 11 people are in fact executed.

It's -- it's a difficult intellectual proposition to wrap one's brain about it, that there's going to be some celebration that the death penalty has been repealed if this bill passes. And yet that celebration is accompanied by the commitment to the execution of 11 individuals when this Body has the power, if it had the will, to eliminate the death penalty for everyone in Connecticut. And so I think Senator Fasano's amendment is a perfectly fair amendment.

The motivations that the bill manifests that 11 people be killed are protected by Senator Fasano's amendment. If that's not a guiding principle, then people should vote against Senator Fasano's amendment. But if it is a guiding principle as evidenced by the content of the underlying bill, then people should support Senator Fasano's amendment.

And the question before this Body is do they want those 11 people to be executed. And if the answer to that question is yes, they should support Senator Fasano's

amendment because it will only come into play if the passage of this underlying bill has the effect of undoing that eventuality.

So I think this is at some level kind of a -- a moment of truth as to what the primary purpose of this bill is. Is the primary purpose of this bill to repeal the death penalty in the state of Connecticut? Or is the primary purpose of this bill to see to it that the 11 people on death row are executed? And -- and that -- that question has to be answered and this amendment provides an opportunity for it to be answered.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Mr. President. Nice to see you this evening.

THE CHAIR:

Thank you, sir.

SENATOR McLACHLAN:

And I stand in favor of this amendment.

I believe the points are well taken by Senator Fasano's initiative here. That it seems pretty clear to many of us that there are people in the Legislature who feel strongly about a prospective bill before us. Prospective, just to recap in my own mind, meaning that it is only effective to the people who are charged and convicted of murder going forward.

And that some, I believe, have stated publicly that

the only way that they could support the death penalty bill before us is if, in fact, they have assurances that those who are on death row are not affected by this prospective look in legislation.

I will say that in my short time here in the Legislature, I've enjoyed my time on the Judiciary committee. And I must say that I've very much enjoyed the leadership of Senator Coleman on the committee in this term.

And I've listened -- during my time here at the Legislature and in Judiciary -- I've listened to numerous hours, perhaps as many as 20 hours of testimony on the death penalty. And I must say that some of the testimony that is etched in my mind is that that came from our Chief State's Attorney and our Chief Public Defender, who both talked about the trouble with the prospective bill repealing the death penalty.

Now I know I'm repeating what's been said before. But I think it's very important as it relates to this amendment, that both of those dedicated professionals have stated that it is highly likely that appeals will occur immediately upon passage and signing by the Governor of this bill, if that happens.

Appeals will occur by those on death row and will call into question a number of constitutional challenges. And it seems to me, being a lay person in the -- in the legal realm, that this common sense amendment offered by Senator Fasano states very clearly to the court what the intention of this Legislature is. And frankly, what is the intention of those who were on the fence with repeal of the death penalty and feel very strongly that if it are (sic) to be prospective it must not interfere with those on death row. That this amendment draws a very clear, distinct line, without question, that in future appeals they must be denied by the court.

So, if among my fellow Senators here tonight, there are those who feel the way that I've heard they are on this underlying bill before us, that in fact, we

must not interfere with the tried, convicted and sentenced cases on death row, then I urge you to support this amendment tonight.

Thank you, Senator Fasano.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment?

Senator Frantz.

SENATOR FRANTZ:

Thank you, Mr. President.

I stand in favor the amendment and -- and I do particularly because with respect to the underlying bill so much of it goes out of our hands at the end of the day into the Judicial branch where any elements of it there could be considered unconstitutional, will be considered and therefore, we -- we lose control of it at some point.

And most of the bills that we pass in this Chamber and in -- in this Capitol go on to be bills that can be modified in the future through additional legislative action. This one probably never again because it's in the world of the Judiciary.

And -- and that's why this amendment is a particularly good one, because it assures an outcome that we collectively can agree on, hopefully, here tonight after carefully reviewing what it's all about.

I think Senator Roraback did a very good job of articulating why everybody should think about this, not just once, but two or three times to make sure their vote is appropriate.

But the beauty of this bill here and we don't see this too often in this Chamber and probably downstairs as

well is that this guarantees a certain legislative outcome. Because so much of the tail end of this issue will be decided by other folks in the Judiciary. And that's the beauty of this is that it sets out a plan for us to either review this in the future or to leave the death penalty in place. If, with respect to the 11 on death row right now, it is decided that it's unconstitutional, we go back to where we are today as opposed to where we might be tomorrow morning.

So I stand again strongly in favor of this and I want to thank Senator Fasano for introducing it.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment? Will you remark further on the amendment?

Senator Coleman.

SENATOR COLEMAN:

Mr. President, just to reiterate that I don't think there is an equal protection or any other constitutional issue or infirmity with respect to the bill as it's amended. And moreover, even assuming that there was for the sake of this debate and this discussion, I don't know what else would happen except that the people that are on death row would remain on death row and the bill as amended, if it were to become law, would be voided.

And consequently, I just don't think -- as much respect as I have for Senator Fasano and those who've spoken in support of the amendment -- I just don't think that it's something that's necessary to adopt. So I urge opposition to this amendment.

Thank you, Mr. President.

THE CHAIR:

Thank you.

Senator Fasano.

SENATOR FASANO:

Thank you, Mr. President.

Mr. President, my apologies to Senator Coleman. I was trying to get up before he so he could have the last word. So I apologize to the Chair of Judiciary.

But what I -- the intent is -- Senator Coleman had indicated that the bill he believes not to be unconstitutional. Therefore this amendment does not have to go forward. And I guess I look at it as a spare tire in your trunk. You may not need it. But if it is unconstitutional, you have it. And you've protected the intent of the Legislature, which is not, clearly not to let the 11 currently on death row to get a different sentence.

And if that's clearly what we want to do this amendment will ensure that takes place. And there's many of us around the Circle who, at least I understand, were debating whether to vote in favor of getting rid of the death penalty or not. But clearly an effort to change their mind was the relief or satisfaction that the 11 who are currently on death row would continue to be on death row absent -- even with this legislation.

All this does is say absolutely true. And if your wishes are not upheld, and if those 11 end up with a lesser sentence, which was not our intent, we will do away with getting rid of the death penalty. It's just protection that gets what we all wanted. And if that's a major factor, this is how you protect it.

Thank you, Ms. President.

(The President in the Chair.)

THE CHAIR:

Thank you.

Will you remark?

Senator Coleman.

SENATOR COLEMAN:

Madam President, I don't know if anyone's requested a roll call on this amendment. But if that request has not been made, I would make it now.

THE CHAIR:

There was an amendment -- there was somebody? The Clerk said there was. So a roll call will be called.

Will you remark further? Will you remark further?

If not, we will ask for the machine to be opened and Mr. Clerk, will you call for a roll call vote.

THE CLERK:

Immediate roll call has been ordered in the Senate. Senators, please return to the Chamber. Immediate roll call is ordered in the Senate.

THE CHAIR:

Have all members voted? Have all members voted? If so, the machine will be locked and, Mr. Clerk, will you call the roll call.

THE CLERK:

Total Number voting		35
Necessary for adoption	18	
Those voting yea	15	
Those voting nay	20	
Those absent and not voting	1	

THE CHAIR:

The amendment fails.

We'll proceed to Senator Meyer.

SENATOR MEYER:

Thank you, Madam President. Speaking on the underlying bill, I want to share some personal thoughts with you, which I've shared with some of you already.

When I was in my third year in law school we were required to do a senior essay. And I was so infatuated with the pros and cons of the death penalty that I decided to research that. And I decided that I was going to be a death penalty fan, supporter of the death penalty if it was indeed a deterrent. I -- I was not going to be a death penalty fan or supporter if the philosophy was an eye for and eye or a tooth for a tooth. I didn't think that worked in a civilized society.

So I -- I did my research. I looked at states in the United States that had had the death penalty and -- and repealed it. And I looked to see whether or not there were an increased number of murders after they got rid of the death penalty.

I then looked at countries. And I remember Sweden in particular, which had had the death penalty and then repealed it and looked to see whether or not there was an increase in murders in those -- in those countries which had repealed.

And surprisingly I found that there was no increase in the death penalty in those states and countries which had repealed the death penalty. In fact, in some of them, half of them, it was actually less murders being committed.

And so I -- I left law school with -- with a feeling

that the death penalty was really a paper tiger, it was nothing that was going to make a difference at least in my sense of values.

I became a federal prosecutor after that and I had three witnesses murdered. Three witnesses -- I was a chief prosecutor of the Vito Genovese family of the Mafia. And I had three witnesses murdered and that shook my view a bit. But I thought about it again. I thought back to my original purposes in law school and decided that -- that the death penalty had no point.

On this coming Sunday, Easter Sunday, let me tell you who's coming to my house so you'll see how -- how difficult this -- this experience is with the death penalty. I have a son, Jeff, who is counsel to the -- to the Petit family, Dr. Petit, and an advocate of the Connecticut death penalty. His wife, my daughter-in-law, Linda, is a fierce supporter of the repeal of the death penalty and has written a book recently called Justice is Mercy.

So Jeff and his wife are coming and now my brother is coming. He's coming up from South Carolina. And 15 years ago, his son was murdered on the island of Jamaica. And my brother is a great advocate for the death penalty. So I'm hopeful -- I'm hopeful that at least my brother won't read about what's happening here tonight and that we'll have a peaceful Easter.

But my po -- my point is that this is a -- an issue of great conscience. It's an issue that -- on which reasonable people can differ. It's -- it's an emotional issue. We feel that emotional issue in this Circle this afternoon and this evening.

We passed a death penalty repeal in 2009 and Governor Rell vetoed it. In one respect what we're doing today is, as Yogi Berra said, deja vu all over again. But it -- in other respects it's not deja vu all over again. It's a different bill at a different time with different circumstances.

And let me just point out those circumstances for those of you if you're still considering how you're going to vote.

In the first place, we have gone to great efforts to be sure that this bill is prospective only. And I refer you to lines 87 and 88 of the bill which says -- I'm quoting -- "A person shall be subjected to the penalty of death for a capital felony committed prior to the effective date of this section."

And right -- right there in our bill it says that.

Senator McKinney's amend -- McKinney's amendment would -- would make that even clearer if it needs to be clearer.

Secondly, this bill has -- has some brand new conditions of incarceration. And we've -- we've looked at them at great length here. These conditions which -- which we've looked at, that there will be a separate housing unit, there's going to be segregated housing for these inmates who commit these horrible murders. They're going to be continuously escorted and monitored in every movement they're going to make. There are going to be lots of cell searches, they're going to be changed -- having to change their cell regul -- regularly. They're not going to have work assignments. Any visitation they have will be noncontact visit -- visitation. They'll be in their prison cells for 22 hours a day.

I mean, we are in effect imposing what's close to solitary confinement for the rest of the lives of the men and women who commit these horrible crimes. And that is -- that is a new condition as well.

Senator Coleman spoke well about another -- another changing fact and that is the remarkable recent convictions in Connecticut of people who turn out to have been wrongfully convicted. I don't mean recent convictions, I mean recent exonerations. Old convictions, 20 years ago, of three men, two of them on capital murder charges, one of them on rape and it

turned out we made a mistake. We made a mistake.

So many mistakes were made in the state of Illinois that it recently repealed the death penalty. That is a major new factor in Connecticut with those three cases that have come about in the time that some of us have been here in this Circle.

So -- and then you also have the question of escalating costs. We have some new cost figures on our desks tonight from the Office of Fiscal Analysis that -- that indicates that with respect to the public defender and the costs of -- of appeals and habeas corpus petitions that it's costing about five -- it's costing the taxpayers of Connecticut about five million dollars a year. So that is -- that is also a new -- a new factor that's got to be taken in consideration.

I'll tell you what got me the most, reached me the most in the last two or three months, was the testimony of people who came up here who were families of people who had been murdered. I'm talking about victims -- murder victim's families. About 75 of them came up here. A whole lot of them testified before the Judiciary committee.

One woman whose mother had been murdered said -- I'm quoting, "We can't take away all the heartache and anguish victim's family members are forced to endure when plunged into the unfathomable situation of a murdered loved one. We can, however, urge you to get rid of the death penalty as it is a cumbersome process which only prolongs the pain and stalls the healing."

A bunch of people came up and testified to -- in that -- in that theme. And we had not heard that before in the committee. And you know, it forcefully reminds us that there's a significant link between -- between these current situations and makes it a very rational -- a rational bill today.

And I'm -- I'm saying some of this as part of trying to create a legislative intent, but also to show that there is a constitutional basis for this bill.

I -- I'd like to conclude with a -- a quote that our majority leader actually gave in -- in his testimony before the Judiciary committee. It was a quote from Justice Harry Blackmun. I had the pleasure of meeting him and going to -- he asked me to have breakfast and go to argument with him one day in 1992. And in the case called Cohens versus Collins, Justice Blackmun, after looking at the death penalty, considering the pros and cons of it, said this. "From this day forward, I no longer shall tinker with the machinery of death." And he had been a supporter of the death penalty and went through, in the United States Supreme Court, the problems with this penalty and rejected it in those terms.

So I'm asking you all to keep thinking about this, to recognize it's not working in Connecticut. We don't execute people in this state. And I urge every one of my colleagues in this Circle to support this bill tonight.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator.

Senator Boucher.

SENATOR BOUCHER:

Thank you, Madam President.

Madam President, I felt compelled to rise, after those very fine statements by my colleague on the other side of the aisle, to talk about why I may be opposing this bill. And I know that there are more discussions to be had and I will be listening to them intently. But right at this point in time, I rise in opposition to the underlying bill.

For me the fact remains that Connecticut's death penalty is rarely used. I understand maybe only once

in the last 52 years. The majority of Connecticut's residents have historically supported the death penalty and apparently they continue to do so even unto this day.

In weighing all of the issues surrounding this bill, I have to fall on the side of the public and law enforcement. Some who serve with us even in this Chamber, those who have to face the danger of losing their lives on a daily basis.

If it deters just one person from pulling a gun in their face and pulling that trigger, I can probably live with the vote that I'm probably about to take this evening or hopefully, not this morning.

Now, I've thought long and hard on this change in policy and have not come to this decision until very recently. There's been extensive discussion about when to eliminate the death penalty. And if some would vote to keep the death penalty for those currently on death row and have a bill that's prospective and not retroactive, removing it from going forward, for me, I can't understand the difference between going forward as surely there's going to be other crimes. Many of those much like the crimes that affected the Petit family, which I think is behind the whole rational for making this prospective.

It just, to me, doesn't make sense. If you agree that it should be enacted for those currently on death row but not going forward, for me, that just doesn't make sense.

I've also been speaking with law enforcement and correctional officers who feel that a change in the status quo will endanger their lives much more if we change this particular law. For them, the death penalty is a thought -- is a very powerful deterrent and a valuable tool in bringing criminals to justice.

The graphic details of their days on the job when you speak to them are convincing. In fact, I had a very

long conversation with a gentleman that drove me to an airport once when his day job was as a correctional officer for many, many years. And his experience, personal experience, was just astounding.

I've also recently heard from a law enforcement officer who said this to me. He said, "In my 32 year career in law enforcement, I've studied serial killers. When caught they -- they and their lawyers will give -- give up additional kills that they have committed and locations of where bodies are in order to bargain for the death penalty away from their cases."

This officer was deeply concerned about losing that leverage. And that family members of victims claim that it's vital to helping them receive information on the location of the bodies of their loved ones who have been brutally murdered and ultimately reclaim their bodies. I can imagine that none of us would ever want to be put in this situation and ever be grateful just to find the bodies of their loved ones.

I just shudder to think of it and hope it's not something that I will ever have to experience at my future. And I'm sure that you feel the same way.

Another point they make is the death penalty is a deterrent to premeditated murders by organized crime. Now there's no question that an act of passion and the actions of murderers under the influence of drugs or alcohol -- and we do not currently allow the use of the death penalty for those with mental illness or those under the age of 18 -- can never be deterred. That's not something that any kind of law can deter a person from doing.

However, law enforcement does feel strongly that the death penalty does play a significant factor in preventing premeditated murders committed by organized crime, and reducing fatalities within their own ranks, particularly in correctional facilities, as I'm sure Representative Kissel can tell us a great deal more about in depth and in detail.

We've heard that the Chief State's Attorneys office has noted that there is a deterrent effect to the death penalty. This leads many to believe that innocent lives may be saved in having a death penalty on our books going forward.

And I guess that is what was the tipping point for me and why I would oppose removing the death penalty from our laws here in Connecticut.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator.

Will you remark?

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

And I rise for the purposes of an amendment.

THE CHAIR:

Please proceed, sir.

SENATOR WELCH:

The Clerk is in possession of LCO Number 3065 and I ask that that be called.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 3065, Amendment "E," sponsored by Senators (sic) McKinney and Senator Fasano.

SENATOR WELCH:

Thank you.

THE CHAIR:

The question is on adoption. Will you remark, sir?

SENATOR WELCH:

Thank you, Madam President.

I do move adoption and seek leave to summarize.

THE CHAIR:

The motion is on adoption.

SENATOR WELCH:

The -- as -- as I've traveled around the 31st district and talked to people about the death penalty one of the things -- things that I've heard as a -- and I guess an argument for repeal would be that -- that the death penalty is broken. It doesn't work here in the state of Connecticut.

And that was one that always puzzled me. And it puzzled me because the death penalty is, obviously, a creature of the Legislature. And if it's broken then we the Legislature ought to be able to fix it.

Now, this amendment seeks to do that to -- to some degree with respect to the 11 people who will remain on death row should the repeal pass. A number of you had seen this concept before. Essentially, it is the habeas corpus reform that has been proposed by the State's Attorneys Office for all cases except for death penalty cases.

This amendment would apply to the death penalty matters that would still go forward. And instead of having the five year statute of limitations, as it

were, for a habeas appeal, we've made it 10 years, recognizing just the magnitude and severity of the penalty that -- that we are exacting.

So essentially, what this would do is it would elimit- -- it would eliminate the baseless appeals. So often, state appeals are filed on the same set of facts and on the same claim, that there was ineffective assistance of counsel. And so we're seeking to get rid of those.

If an appeal is filed past the time line set forth by this amendment, well, there would be a rebuttable pre -- presumption that it's late. So you could still give reason of good cause to rebut that presumption and have the -- the second habeas appeal go forward.

So with that brief summary of what this amendment seeks to do, Madam President, I urge my colleagues to support this. And I'd be happy to answer any questions.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark?

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

I do appreciate everybody that's participated in this debate. I have enormous respect for all of my colleagues. But I'm going to oppose this amendment as well.

And the reason that I would oppose this amendment is because there is a bill that has been passed out of Judiciary that would accomplish all of the things that

Senator Welch has described in his recitation regarding the amendment.

And I'm not sure concerning whether or not his amendment is identical in every respect to the bill, but I know that the bill was the subject of extensive negotiation between the public defenders and the State's Attorneys office as well as some of the judges who are very experienced in habeas corpus matters.

So at this point I guess it would be my decision, Madam President, to rely upon that bill that came out of the committee to accomplish those things that Senator Welch is seeking to do here. I urge rejection of the amendment.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark? If not -

SENATOR COLEMAN:

Madam President.

THE CHAIR:

Yes, Senator Coleman.

SENATOR COLEMAN:

Again, I wasn't listening to know certainly -- with certainty whether or not there was a request for a roll call. If there wasn't, I would make that request.

THE CHAIR:

Then a roll call will be had.

Will you remark?

If not, all guests and -- all -- all members, please be ready to vote. Mr. Clerk, will you open up the ma -- I will open the machine and you will call for a roll call vote.

THE CLERK:

Immediate roll call vote in the Senate. Immediate roll call vote in the Senate. All Senators to the Chamber.

Immediate roll call vote in the Senate. There's a call for an immediate roll call in the Senate.

THE CHAIR:

Have -- okay, never mind. Somebody's coming, okay.

Take your time, Senator Prague.

Have all members voted? If all members have voted the machine will be locked. And, Mr. Clerk, will you call the tally, please.

THE CLERK:

Total Number voting		35
Necessary for adoption	18	
Those voting yea	14	
Those voting nay	21	
Those absent and not voting	1	

THE CHAIR:

The amendment fails.

Will you remark further?

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

I rise again for the purpose of a motion.

THE CHAIR:

Please proceed, sir.

SENATOR WELCH:

The Clerk is in possession of LCO Number 3030. I ask that it be called.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 3030, Amendment "F," offered by Senator McKinney and Senator Fasano.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

I move adoption and seek leave to summarize.

THE CHAIR:

Please proceed, sir. The question is on adoption.

SENATOR WELCH:

Thank you, Madam President.

And it's -- it's essentially what -- what this amendment would do is to make any decision hereafter to change or alter a capital murder require a three-quarters vote of the Legislature to -- to accomplish.

One of the things that surprised me during the hearing process on the underlying bill was the assertion that once the death penalty was repealed there would be a movement afoot to also repeal the life sentence without a possibility of release. And -- and frankly, I was surprised to hear that.

Nonetheless the -- the sources were credible. And it's something that gave me great concern because if the death penalty is repealed tonight, well, that's -- that's what we have left. And I know that in other states this has indeed happened. And it's happened not so much from the side of the Legislature but from the side of the Judicial branch.

So a -- again, this amendment is -- is really to address that, and requiring a three-fourths -- three fourths vote for any reduction of a sentence for life imprisonment without possibility of release.

Thank you, Madam President.

And I -- if I may ask for a roll call vote.

THE CHAIR:

Thank you, Senator.

Will you remark? Will you remark?

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

Again, reluctantly, I oppose this amendment.

Thank you, Madam President.

THE CHAIR:

Thank you very much.

Will you remark? Come on, guys. Okay.

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

And I'll be brief. I stand in support of this.

We actually have proposals before the Judiciary committee this year. Granted that our Sentencing Commission asked for a little bit more time to figure it out, but it has to do with changing some of our sentences for minors that may be serving time for life without pos -- life without possibility of release. I understand that part of the impetus for those proposals is a Supreme Court review of similar sentencing patterns in other states.

But I will say this. On the one hand, while we do make this promise to our constituents that, well, these horrible, diabolical murderers are going to be treated for the rest of their days in prison, incarcerated, in the very next public hearing in the Judiciary committee we have public testimony from a variety of groups saying, "Well, for this particular group now, let's revisit their life sentences and maybe change it." And then when you talk to another group of people they say, "Well, what's next?"

I will tell you this. We have inmates in our correctional facilities at this time that the Department of Corrections has put out requests for bids to create a -- a nursing facility for 90 inmates saying that they really shouldn't be incarcerated anymore because they've gotten feeble and frail in their old age.

Well, that's something that's fairly subjective. And if all of a sudden, someone who has been convicted of a murder that's really horrific now is find -- now you find them in a nursing facility in your neighborhood,

that changes everything.

So there's a couple things at work here. We're changing a huge construct from the death sentence to life without possibility of release. But at the same time we have to be honest with our constituents and say there's a lot of other things in motion, too. And that don't be surprised if next year there is a proposal in the Judiciary committee being promoted by the Sentencing Commission saying that for certain individuals life without possibility of release is inappropriate.

Well, I think it's a good amendment to say you need three-quarters votes for we as a Legislature to change this particular rule because we're making a huge change in our criminal justice policy. And I think we at least owe them the added security that this is not going to be a slippery slope where this changes fairly rapidly.

And to set up hurdles that three-quarters votes in each Chamber is going to be needed to adjust this, I think would at least give some assurance to our constituents that, a, we don't consider this lightly by any stretch of the imagination, which I don't believe we do. But, b, they can have some reliance that this is going to be a long standing policy. And that it's not going to be changed any time soon.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator.

Will you remark? Will you remark?

If not, I will open the machines and Mr. Clerk, will you call for a vote, please.

THE CLERK:

There is an immediate roll call vote in the Senate.

All Senators to the Chamber, please. There is an immediate roll call vote in the Senate.

THE CHAIR:

Have all members voted? Have all members voted? The machine will be locked. Mr. Clerk, will you please call the roll.

THE CLERK:

Total Number voting		34
Necessary for adoption		18
Those voting yea	13	
Those voting nay	21	
Those absent and not voting	2	

THE CHAIR:

Amendment "F" fails.

Will you remark further? Will you remark further?

Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President. Good evening.

THE CHAIR:

Good evening, again.

SENATOR RORABACK:

Madam President, many people suggest that no issue could be more difficult for a legislative body to grapple with than the question that we're grappling with this evening.

And I think, Madam President, it's fair to say that people of good will, reasonable people, people of conscience, disagree on what the right answer to this public policy question is. That's why we are

experiencing such a spirited debate this evening.

And people ask me what issue could be more important than whether Connecticut has a death penalty. And the answer I give them, the issue which is more important than whether Connecticut has a death penalty is whether Connecticut has a criminal justice system with integrity.

Madam President, in my view, the integrity of our criminal justice system has broken down. And the Legislature has been complicit in the break down of our criminal justice system by enacting legislation last May, in the dark of night, without the benefit of a public hearing, which has upended the lives of countless victims of violent crime in this state.

By way of background, Madam President, when Governor Malloy was elected he wisely appointed working groups to make recommendations to him and his administration about what appropriate policy measures should be priorities for your administration, Madam President, and the Governor's administration. And one of those policy groups focused on criminal justice.

And appropriately, the very highly respected Commissioner of Corrections, Theresa Lance, participated in that process. One of the recommendations that Commissioner Lance came up with was that the con -- that the State consider instituting the use of earned credits, also known as meritorious good time for low risk, nonviolent offenders.

Commissioner Lance opined, and I'm reading from her report that was given to the Governor, "that instituting early release for low risk, nonviolent offenders could result in a significant cost savings with minimal risk to public safety if done appropriately." She said an early release program for nonviolent offenders could result in the reduction in the inmate populations with savings of millions of dollars annually.

How, Madam President, we went from a recommendation

from the Commissioner of Corrections in January of 2011 that we consider instituting a pilot program for nonviolent offenders to allow them to be released early from prison to a dark night in May of 2011 when this Senate saw fit to pass a bill which is awarding, retroactively, good time, early release credits to violent and heinous criminals?

Madam President, the action this Body took, in my view, represented a break down in the integrity of our system. And while that unsettles me, it unsettled a whole lot more the thousands of individuals in this state, victims of violent crime and their families who received a letter from the Department of Corrections, from the Commissioner, in September of this year saying, "Dear Victim, the Legislature passed a bill that is allowing the person who raped you, who killed your son or your daughter, the repeat drunk driver, to be released from prison much earlier than was promised to you at the time of sentencing."

The Commissioner said that "I know that for some, news of this public act is very unsettling." The Commissioner's letters to the victims, I think, is an understatement of all time.

When victims who -- many victims feel victimized a second time when they go through the prosecution of a violent criminal. Because the system doesn't seem to take much cognizance of what they've experienced. These are innocent victims of violent crimes, Madam President, and they go through years in search of justice.

And a moment of truth arrives. They work with our Victims Advocates, God bless them, our prosecutors, our judges. And in virtually every case a moment of truth arrives where the victim's families are counseled by the Victim's Advocate and the prosecutor and the judge, "Here's the deal. We can't prove murder, we're going to cop a plea to manslaughter and the person that killed your loved one, either through drunk driving or with a weapon, they're going away."

And hundreds and thousands of victims of crime have been told by prosecutors and victims advocates, "Sleep soundly. The violent offender is going away and there's no way they can be released before they've served 85 percent of their sentence. That's the law."

And so victims, many of them grudgingly, have accepted these plea bargains and gone home in the clear understanding that the offender would be in jail for a prescribed period of time.

Last May, in the dark of night, without the benefit of a public hearing, we passed a bill that turned those victim's worlds upside down.

Madam President, they don't know what's hit them. But scores of them, scores of them have reached out to our victim advocate in this state.

Back in the 90s -- I've been in the Legislature long enough to remember when we passed the Crime Victim's Bill of Rights and amended our constitution to contain provisions that ensured that victims would not be overlooked in the criminal justice system. And we created the Office of the Victim Advocate to ensure that victims would have a place to go when they felt violated.

Mas -- Madam President, the Office of the Victim Advocate is saying that their office has been overwhelmed with complaints from crime victims since the passage of the early release program. The victim advocate tells us that many violent, undeserving offenders are being granted risk reduction credits for reasons which defy logic and stand in stark contrast to public safety.

And, Madam President, if -- if Senator Looney is going to admonish me for reading I will stop reading before the admonition is issued.

THE CHAIR:

Sen -- Senator Looney.

SENATOR LOONEY:

Madam President, I believe that Senator Roraback seems to be addressing the substance of what we expect will be an amendment. But the amendment has not been -- been offered. Would -

THE CHAIR:

Senator.

SENATOR LOONEY:

-- I think this would better with the context of an amendment than have been -- that had been moved.

THE CHAIR:

Thank you, Senator Looney.

SENATOR RORABACK:

Fair enough. And -- and -

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you.

Senator Looney's point is well taken, Madam President.

It's a -- as you know, we all try to tee up our amendments and perhaps I have teed it up -- I should get -- I should get the club out and -- and -- and offer the amendment. So I'm happy to do that.

I was -- I was on the cusp of doing that, Senator Looney. And the Clerk does have an amendment, which is LCO 3048. If the Clerk would please call the amendment if I -- and I might be allowed to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 3048, Amendment "G," offered by Senator Roraback, Senator McKinney, Senator Fasano, Senator Guglielmo, Senator Kissel, Senator Kane, Senator Boucher, Senator Witkos, Senator Frantz, Senator McLachlan, Senator Markley, Senator Suzio and Senator Welch.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President.

I move adoption.

THE CHAIR:

And the question's on adoption. Will you remark, sir?

SENATOR RORABACK:

I will, Madam President.

THE CHAIR:

And the question is does everybody have that amendment? Okay. Please proceed, sir.

SENATOR RORABACK:

Thank you, Madam President.

What this amendment does or will do is restore integrity to our system of criminal justice, demonstrate to victims of crime that their voices do

not go unheard.

Madam President, passage of this amendment would repeal the good time early release credit program and its retroactive applicability.

Madam President, we can have a debate about the public policy benefits which might or might not flow from a risk reduction program. But that debate should take place in the context of keeping faith with victims whose offenders have been sentenced previously under the clear understanding that they would serve a prescribed sentence.

Madam President, I have met with many, many, many of these victims. What they're feeling is real. You can go on the website and every day or every month you can click on any offender in the Department of Corrections and you can watch their sentence being reduced. Each month, victims of crime go on and say, "Wait, the person that killed my daughter was supposed to be in until the year 2027. Now they're being released in the year 2025." There's nothing they can do about it.

Let me tell you about Patrick and Lee DeGrosse of New Fairfield whose daughter was killed by her husband. And who was convicted of manslaughter, copped a plea to manslaughter and the family was told he would serve 27 and half years. And now he will be released much sooner.

And these are people that have all provided testimony to the Judiciary committee, Madam President.

The grandmother of Treau Bemis, a 27-month old baby who was drowned because he was crying -- she was crying. The perpetrator of that crime is being released early because of good time credits and the grandmother of that child is not very pleased with us as a state.

Or Joan and Jack Foygan (sic). Their son, a father of five, killed by a four-time drunk driver who is now

being rewarded with early release credits.

And Maria Matero whose brother was killed and who calls the action of the Legislature a betrayal of her brother's memory.

Madam President, this is -- this is really serious and important stuff. And these victims and their families are looking to us to restore their confidence, that we care, that what was promised to them matters to us. That we understand when people are innocent victims of heinous, violent crimes, that they should be able to rightfully rely on prosecutors and judges and victim's advocates when they're told that someone's going away and not getting out.

What we did is allowing those people to get out. It's saving us millions of dollars. But I don't think there's any amount of savings that can justify our betrayal of their expectation.

Madam President, I urge support of the amendment. I appreciate the Chamber's indulgence. There is something which matters more to me than whether this underlying bill passes or doesn't pass. And that something is the integrity of our system as a whole.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator.

Will you remark?

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

Again, Senator Roraback and I probably have some difference of opinion regarding the risk reduction earned credit program.

And my recollection is that we did have a public hearing last session on this particular proposal. And it was a rather big public hearing. So I certainly understand and appreciate Senator Roraback's opposition to the program. And I respect, certainly, his advocacy on behalf of his constituents and the victims of crime in the State of Connecticut.

All of my experience with Senator Roraback has been that he is a person of great integrity and so I respect where he's coming from. I just have a difference of opinion regarding the whole objective of risk reduction, earned credits and how that program is operating in the state of Connecticut.

Some of the facts that I'd like to share are that this program or programs like it, they exist in 45 states. And in comparison to how the program operates in Connecticut, most, if not all of those 45 states, have a much liberal and generous system of credit for inmates than that which exists in the state of Connecticut.

In my discussions with the Commissioner of the Department of Corrections and the undersecretary of OPM they say that the risk reduction earned credit program is a necessary vehicle in order for them to properly and effectively manage the prison population.

And they say further that in their view the program has, in the short period of time that it's been in operation, has proven to be successful and there is some very documentable evidence of that.

It has been reported that since the inception of the program incidents in the correctional facilities of inmate assaults on staff have been reduced by 18 percent. Such incidents has the biggest reduction in the history of the Department of Corrections, there's never been a double digit decrease in inmate assaults on staff persons.

And I don't think and the Department of Corrections doesn't think, the Commissioner doesn't think, that it's any coincidence that that decline has come about in connection or during the period when the risk reduction earned credit system has been put in place.

Similarly, because of -- of risk reduction earned credits the incidence of assaults, inmate assaults on other inmates has been reduced by 12 percent.

This vehicle, the credits that inmates can earn have influenced or have been an incentive for inmates to try to improve themselves during the course of their incarceration and have obviously persuaded and influenced many of them to do the right thing in terms of compliance with rules and regulations and how they comport themselves during the course of their incarceration.

One of the things that we have to remember -- and why these credits are necessary as a vehicle -- is that the vast majority of inmates who are incarcerated in our Department of Corrections facilities will, at some point, return to the community.

I think it would be very unfortunate if they did not make the effort to improve themselves by taking advantage of the services and programs that are available to them during the course of their incarceration, and come out of our corrections system far better individuals than they were when they went in.

And that's what this system is all about. It's a -- a -- making an accountability plan for inmates. Making sure that they comply with it, with that accountability plan. And when they do to give them credits.

Now, the Commissioner of the Department of Corrections has further indicated that it would appear as if an inmate is eligible to earn 60 credits per year. That's not entirely true because the calculation does not permit the Commissioner to award credit for days

that they get off. And so if there are 30 days in a month in January, 31 days in January, the inmate can earn five days in the month of January. But the month of February will be based on 26 days because they've gotten five days worth of credit for the month of January.

And so if you go through the entire year and you assume that the inmate has behaved himself and has earned all of the credit that he's available -- that he's entitled to, at the end of the year those credits would amount to 51 days rather than 60.

And again, I -- I would reiterate that the program in Connecticut is far less generous than the programs in other states, and particularly a program in Rhode Island and the program in New York.

And as well, I would refresh the recollection of the Senators that when we passed the program last year these credits do not apply to murder or capital felony or felony murder or arson murder or first degree aggravated sexual assault or home invasion. An inmate who's convicted of those offenses would not be eligible to earn risk reduction credits.

Furthermore, it probably will seem somewhat counterintuitive, but the very inmates who are the hardest cases are the -- the primary reason that this system exists. Those are the inmates that are targeted. Those that have been problems, those that may be discipline problems or those who've had some history of problems in the community. That's -- those are the -- the population of inmates that you really want to reach and you get their in -- attention through the operation of the risk reduction program.

And apparently, the program has been in operation for too short a time in order to measure the recidivism rates or how inmates who have earned their credits go before the parole board and actually get released.

But this risk reduction program is modeled after programs, similar programs that already exist within

the Department of Corrections and exist in other states, 45 other states. And the assessment of the success of those programs, the programs in our probation department and in other states is that recidivism has declined significantly as a result of the risk reduction credit system.

And a lot of that is attributable to inmates being referred to certain programs that are going to help whatever their issues are, whether it's anger management, whether it's job training and employment skills to be developed, whatever it is. Whatever the significant issue that's causing the inmate to be a problem, there's a focused effort to address those issues. And the risk reduction credit system is used as a vehicle in order to provide some incentive for the inmate to cooperate and to comply with the provisions of his individual accountability plan.

So I understand why some may want to find fault and criticize the program. In my view, I think it's working as it's intended to work.

I should say that the Commissioner is very sensitive to some of the concerns that have been expressed by victims. And he has put in place committees and other systems to actually facilitate the input of victims, and has on a few occasions of literally stopped inmates at the door, as they're about to be released into the community and pulled them back because of communication by a victim who expressed very legitimate concerns and fears about the release of a particular inmate.

I think the Commissioner and the department are willing to work certainly with the victims advocate, any of us who are representing people who are victims of crime and crimes committed by particular inmates within the system.

I do believe that we need to give this program and this system a further opportunity to work, measure that success before we begin to tamper, modify and revise it.

So, Madam President, I'm going to urge my colleagues to oppose this amendment. Thank you.

THE CHAIR:

Will you remark?

Senator Kissel.

SENATOR KISSEL:

Thank you very match -- much, Madam President.

Just a quick question, through you, to the proponent of the amendment.

THE CHAIR:

Senator Roraback, prepare yourself.

Please proceed, sir.

SENATOR KISSEL:

Thank you.

Through you, Madam. President, does your -- does this particular amendment apply to violent offenses or all offenses regarding the release credits?

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President.

This particular amendment applies to violent offenses.

Madam President, Senator Coleman -- I -- I did not wish to engage Senator Coleman in a debate about the wisdom

of a program which provides incentives for inmates to engage in desirable behavior.

This amendment, Madam President, goes to the question of the appropriateness of a bill that was retroactive five years and awarded a year's worth -- 360 days worth of good time credits to people in the blink of an eye without victims having a moment to offer their perspective.

You know, Senator Coleman says there was a public hearing last year. The bill that the public hearing was held around didn't say anything about giving violent criminals early release credits.

Madam President, the Commissioner of Corrections herself recommended that this program be limited to nonviolent offenders. Rhode Island has a committee that was formed in the wake of someone who was released early committing a crime, a horrible crime, and that committee has recommended the repeal of their early release program.

We should -- and it's appropriate that we have a debate about whether this policy could be useful in our corrections system. But that debate should take place in the light of day with the participation of everyone and with a clear understanding of what the implications of our actions are.

So that's what this amendment goes to. Pass this amendment and then let's have a good faith, transparent, discussion about what the right thing to do it against the backdrop of promises having been made to victims about the duration of sentences.

And I'm sorry, Senator Kissel has questions and I'm going on and on. But I don't want Senator Coleman to think that -- that I wouldn't want to learn more about whether this program might be appropriate going forward. But nothing he says can convince me that it was appropriate for it to be applied retroactively.

THE CHAIR:

Thank you, Senator.

Senator Kissel -

SENATOR KISSEL:

Thank you.

THE CHAIR:

-- you have another question?

SENATOR KISSEL:

Well, actually that -- he -- he immediately answered my question and I'm standing to support his amendment. So thank you, Senator Roraback, for your answer to that question.

And I wanted to raise some the exact same points that Senator Roraback made. And I wanted to thank him for bringing this issue before us. My recollection is exactly the same as Senator Roraback's.

When the initial proposal was brought before the Judiciary committee last year it was amorphous. It was brought to us in the public hearing in the -- in the -- in the guise of this is a work in progress, we haven't really formulated it, we're working on this.

Now, you all know that I've done a lot of things when -- when it comes to corrections. And over the last four or five years, I've been lucky enough, not on the taxpayer dollar, but Pew charitable foundations and other sort of think tank kind of institutions to go out to Denver, Colorado; to New York City, to Philadelphia to study issues regarding corrections.

And whether you're a Democrat or Republican, it really doesn't matter. If you are going to move forward with risk reduction credits, the experts in the field, both Republican and Democrat and unaffiliated, professors and students of corrections state that there are some

things that a state should do.

A state should start off with a program that applies to nonviolent offenders. A state should start off having the risk reduction credits apply prospectively. And a state should work to make sure that that proposal's embraced in a bipartisan fashion. And fourth, a state should make sure that the Legislature and the Executive branch are on the same page going forward.

We didn't do that. Our public hearing on the proposal could not be in depth because at the time of the public hearing there were no concrete plans. We did, in this Chamber, have a very healthy and heartfelt debate on something that had already been created. So the public never had a chance to weigh in. So I would posit that the Legislature did not have ample opportunity through the proper public hearing process to listen to all stakeholders.

And by virtue of that there were stakeholders, such as the victim advocate, advocacy groups, states attorneys and others that could have given us insights as to how to better move forward with this kind of proposal.

Two, as Senator Roraback so aptly points out, it was retroactive. In speaking to Commissioner Arnone, Senator Coleman is correct. It's not exactly 60 days a year. It does turn out to be, I think, 51 per year when you do the computation. It's almost exponential. But let's face it, five years retroactive, that's 250 days at a minimum that would be granted.

The problem with moving forward with a program like this that's retroactive is that you cannot possibly state that that changed the behavior of the inmates. They did not react to a program in order to get the good time credits. It being retroactive, someone sat down there with a bunch a files and said, "Well, does this inmate fit? Yes. No. Does this inmate fit? Yes. No. Does this inmate fit? Yes. No." That

decision is made without the inmate's knowledge. You're just looking at a resume for five years behavior and it either fits or it doesn't fit.

The purpose of the program is to motivate behavior. You can't do that if you're awarding credit for past behavior when the inmate had no knowledge of what the rules of the game were. So we failed on that ground.

The proposal did carve out those offenses that had with it malice aforethought, in particular where there was death involved. But there are a slew of serious crimes that it did not carve out for these risk reduction credits or good time credits; kidnapping, rape of children, arson, manslaughter in the first degree, manslaughter with a firearm, manslaughter with a motor vehicle.

Now we did have a debate on these proposals in the Judiciary committee this year. And to Senator Coleman's great credit and Chairman Fox's great credit, that bill came up for a vote on Monday. And it was a close vote, but changing the policy on five manslaughter cases did not pass committee.

Nonetheless there are a slew of serious offenses still out there that have yet to be debated. And I would posit that the experts in the United States of American have stated -- and again, Republican, Democrat, unaffiliated, professors, law enforcement experts, they have said, "If you want this to work start with nonviolent and then proceed to the violent offenses."

What will happen is this. God forbid somebody gets out early, 200 days early, 300 days early, 400 days early and they go out and they commit another crime. The experts in the field have said that's when it blows up.

Because absent shareholder participation and buy in by everyone involved, the proponents who pushed that policy through will have to take ownership of the negative consequences. And that tears states apart. And these experts said "We don't want the policy to

fail, we want it to succeed."

God forbid, I hope that never happens in Connecticut. I don't want an innocent person harmed so that that policy blows up. I don't want that to happen.

But I will say this. We do not have the unanimity of spirit. We do not have an agreement on policy. We are fractured along generally partisan lines. We have issues with victims communities.

We have, as Senator Roraback so aptly put, broken faith with people who agreed at the time of sentencing, who had loved ones killed, who had loved ones maimed, who were told by State's Attorneys, "Under the state of the law right now this is what you can expect." And their expectations now are dashed.

That's not good public policy. There may be underlying merits to the policy, but you can't keep dictating things from the top down. You need to get stakeholders around a table, have buy in from everyone who has an interest, bridge partisan party lines and walk before you run. And I daresay I see this in other areas of this administration as well. I'm beginning to see a change.

But early on it was a lot of top down determination, got a handful of people together that think they know it all and boom, it gets pushed down and implemented. And that is a recipe for disaster.

So there are parts of the underlying risk reduction program that I admire and I respect. But as someone who has studied this very carefully over the last several years with experts that know way more about this than I do, they told us there's a right way to do it and a wrong way to do, and gosh darn it, our state's doing it the wrong way.

And I commend Senator Roraback for bringing attention to this issue. We need to establish policies where victims -- and by the way, we did pass a constitutional amendment not that long ago protecting victim's

rights. And we're still trying to put meat on those bones. But where victims and victim's families and loved ones and other participants in the criminal justice system have an ability to have reasonable expectations and that our state's attorneys have an ability to inform those individuals what can be reasonably expected out into the future.

And last, without speaking too much on this, but again, commending Senator Roraback for bringing this to our attention and supporting him on this amendment, we cannot abdicate our authority and our responsibility to the Commissioner of the Department of Corrections when it comes to these important matters of criminal justice policy. We -- we -- we're doing it with the underlying bill. We did it last spring with the risk reduction credit/good time credit program.

And at some point we need to take responsibility for crime and punishment in our state. That's why we go out and get reelected or not elected. We throw our hats in the ring, we talk to our constituents, we -- we get input from everyone.

It is a dangerous path to keep moving authority over to an unelected individual -- as nice and wonderful and how much I admire the Commissioner -- if you continue along that path by giving more and more power to the Executive branch and abdicating on our own responsibility, that undermines the balance of power to -- to -- to the Legislature, Judicial and Executive branches and what was set up from the beginning.

So for those reasons I commend Senator Roraback. I acknowledge the answers provided by Senator Coleman, but I do urge my colleagues to support the amendment.

Thank you.

THE CHAIR:

Thank you. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Speaking in -- in opposition to the amendment. Madam President, I believe it's important to keep in mind a few of the things that Senator Coleman emphasized as well. And to underscore that these credits that are at issue here are risk reduction earned credits. That phrase has been used somewhat interchangeably with good time credits but they are in fact not the same thing.

In many states, there are good time credits, meaning that the inmates earn time off without regard to any particular initiative that the inmate may have taken, just be virtue of existing within the system and passively following the rules and not making himself a nuisance or a problem.

We're not talking about that under this program. Under this program, the inmate has to take the imitative to participate in programs, to indicate that he is taken measures towards reform and self improvement within the system.

Also, it is important to recognize that these credits are not vested in the -- the inmate at any particular time. Any future misbehavior can result in the forfeiture of those credits. That -- that is an extra tool to control the inmates and give them greater motivation for -- for conformance (sic) and also, for self improvement within the system.

One of the things that we have seen in the cities of this state for years, Madam President, is that those offenders who were most likely to reoffend, most likely to be a danger in the communities when they come out of prison are those who are what are called end-of-sentence released offenders.

That is, those who did not participate in any program while they were in prison, are not out on any kind of early release program, have served the maximum sentence, walk out of prison without any further

control on them at all, walk out into the community, perhaps into a homeless shelter directly out of prison.

And they are, in effect, in many cases, like ticking time bombs. The ones who were most likely to cause mayhem and violence in the society once again. Because they have gone through prison and come out, they are perhaps even more hardened, unrehabilitated, and also, without any kind of support system or without any kind of approach towards assisting them and reintegration into the community while they were in prison.

And again, the reality of these credits recognizes that almost everyone who goes into prison does in fact come out again at some point. Whether it is in a short term or a long term, they are coming back into our community.

And it is a matter of public safety and a matter of enlightened public policy to try to do everything we can to prepare them for that reentry in a way that will make them at least having an opportunity to be productive when they come out, less self destructive and less dangerous to the community at large.

And in fact, some of the offenders who may have committed certain kinds of offenses involving violence are exactly the ones most in need of that kind of assistance, because they need to get anger management classes while they are in prison. They need to get the kind of counseling that would help them overcome the impulsive behavior perhaps that led them into trouble in the first place. These are exactly the kind of things that we need to be doing to try to make sure that when they do come back into the community as in fact they will that they are less at risk for causing harm to themselves and to others.

So what we're talking about again is a -- is a series of earned credits that may reduce some time off an offender's sentence. But again, what we're proposing in our -- what we have in our current law is far less

of a reduction than many other states provide for.

For instance, there's been some discussion of Rhode Island. In Rhode island in many cases, there is a good time credit of ten days a month and a risk reduction credit of another ten days a month. So what they've been talking about is -- is reducing or terminating the risk reduction program. But still even if that is ended they would still be eligible for a greater monthly number of days off their sentence than we're allowing for in Connecticut.

So we have to make sure that we're looking at comparing apples -- apples and apples here. And in this case, I think we need to make sure that our responsibility is to try to reduce the danger of offenders to themselves and others when they come out. This program is one that shows promise of doing that.

The Commissioner is confident that the risk of recidivism has been reduced by the incentives provided for this program. That now -- otherwise offenders would not have any incentive to necessarily participate in programs while they are incarcerated. To make that initiative.

And we all know that so many people come into prison with so many social problems, lack of education, psychological problems, mental health problems, substance abuse problems. These are all kinds of human tragedies and -- and disabilities that often manifest themselves by people coming into contact with the criminal justice system.

We know that there are -- at any given time there may be 20 percent of the people in prison have serious mental health problems. So that the Garner facility has been, in effect, restructured to be almost an -- a mental hospital within the prison system. That's a real problem. And to fact -- the fact that we can encourage inmates to get psychological help and counseling while they are there may make them less likely to be dangerous and troublesome and disruptive to themselves and the communities they will be

returning to.

So on all of these bases, this program is a good one. It is one that will actually enhance the safety of all of us in the community in dealing with people with whom we will be coming in contact, inevitably, once again.

So for this reason, I believe that this amendment is not a good one. It will return us to the day when we have more incorrigible inmates coming out onto the streets without supervision, without control and without having had the benefit of anything within the prison system to make them better than they were on the day they went in.

So I would urge rejection of the amendment.

Thank you, Mr. President. I would ask for a roll call if it hasn't been requested -

THE CHAIR:

A roll call vote -

SENATOR LOONEY:

-- up to now.

THE CHAIR:

-- will be ordered.

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Madam President.

I stand in support of this amendment. I'd like to share some observations that I had as a member of the Judiciary committee.

First, once again, I'd like to thank Senator Coleman for his leadership on that committee because he did

entertain with his cochair and the leadership of the committee a bill somewhat similar in ways to this amendment before us tonight. That was known as House Bill 5488 and Senator Kissel mentioned that that bill was brought before our committee for a vote, a very close vote, 20 to 23 was the vote.

During the public hearing for that bill two of my constituents participated in the public hearing by submitting testimony. And I believe that one of the names may have already been mentioned.

But Anthony Demattei from New Fairfield talked about how they got a phone call late at night from Danbury hospital regarding their daughter who'd been in an automobile crash and ultimately died as a result. The driver of the car that struck her had an alcohol level of 236 (sic).

And they were the recipients of a letter in September of last year that came from the Commissioner of the Department of Corrections that explained in the letter that this General Assembly had passed Public Act 1151, which is this program that Senator Looney just talked about.

I might add Senator Looney has been a -- a -- a good proponent of this program. And I honor his enthusiasm and support for what he believes is right. I just think that we disagree on the size of this program that he is so passionately defending.

But this letter must have been most alarming to the DeMattei family. And what it said, basically, is that "We know that you've been affected by a -- a violent crime" and that the Department of Correction is going to give credits to the felon and will possibly qualify for an early release.

Now, Mr. Demattei obviously was upset enough by that letter to submit testimony before the Judiciary committee that, in effect, would have directly affected his daughter's case. Because the bill before Judiciary was only for the most egregious

violent crimes of manslaughter and that -- also with a motor vehicle.

Now unfortunately I have another constituent, also from New Fairfield, who was mentioned briefly previously in the introduction to this amendment. The DeGrosse family talk about their daughter murdered by her husband. The murderer plead (sic) down to manslaughter. And the agreement was for 27 and a half years with no chance for parole.

At the sentencing Judge Patrick Carroll had the killer stand up before him and told him that he will spend 27 and a half years in prison with no chance for parole. And they got a letter in the mail from the Commissioner of Corrections that this killer might qualify for credits.

Once again, that case appears to be one that would have qualified under that bill before the Judiciary that lost by a very close vote of 20 to 23, and also would be affected by this amendment before us right now, to shut down early release for those violent criminals.

Now, also before the Judiciary committee at that public hearing was our state victim advocate. And the state victim advocate -- her testimony talked about former Commissioner of Corrections, Theresa Lance, had recommended implementation of meritorious good time and submitted a proposal to Governor Malloy.

But Commissioner Lance's proposal included implementation of the program targeted at nonviolent, low risk inmates, initially, and further recommended that the program should be implemented in stages to determine whether to maintain, expand or eliminate the program.

And if that wasn't enough for Governor Malloy, the consulting firm of Blum and Shapiro provided to the Connecticut Sentencing Commission in 2010 very similar recommendations. But this administration and this General Assembly chose to go all in on early release last May.

And I thank Senator Roraback for bringing this to our attention by way of an amendment tonight. This is an appropriate way for us to address a balance for the victims of violent crime in the state of Connecticut. Because we're already telling victims that the harshest penalty is being taken out from under them. And we've told them last May that we're granting early release to their family's killer.

And this is a balance. This General Assembly has got to think about the victims. The victims advocate's testimony was alarming to me that it just seems like we're not sincerely stopping and listening to the victims.

More than 95 percent of criminal cases are resolved by plea agreements. So one of the things that we're not seeing here -- and this is all sort of insider baseball -- it's got to be someone that's really paying attention. Because the voters, our constituents, don't really understand this.

And when I give you a list of some of those who've qualified for credits and you see the crime that they were convicted of, that's not necessarily the crime that they were first arrested for because of the plea bargain rules. 95 percent of criminal cases are resolved by plea bargains. That's an effective tool in the judicial process. I don't dispute that.

But if we're talking about risk reduction credits based upon a conviction, is that risk reduction credit considering what transpired in the judicial process? I'm not sure. I'm not sure that the victim's families know that either.

So the offenders are offered guilty plea -- guilty pleas to reduced charges in exchange for a more lenient sentence. So here in a report from the victim advocate are some highlights of risk reduction earned credits.

Inmate Kent Barron, convicted of manslaughter in the

second degree. Risk reduction credits earned, 326 days to date. This inmate has already been released to a halfway house.

Edison Santiago, convicted of manslaughter -- manslaughter in the second degree with a motor vehicle, 282 days credits to date.

Jason Osamonte (sic), manslaughter in the first degree, 314 days credit to date.

Joseph Prankiss (sic), manslaughter in the first degree, 256 days credit to date.

And I'm only highlighting some. There's a long, long list here.

Michael Artiaga (sic), assault in the first degree with serious physical injury, 350 days credit to date.

Richard Shenkman, kidnapping, first degree. I'm -- I'm hoping this is a typographical error. But our victim advocate's report says that there's 730 days credit to date. I'm assuming that's just -- just got to be a typographical error. Kidnapping.

Vincent Martone, robbery in the first degree with a dangerous instrument, 335 days credit to date.

So my point is, fellow Senators, how much clearer can the victims of violent crime in Connecticut and even our own victim advocate in the State of Connecticut, how much clear -- more clearer can they be?

Dr. Petit and his sister here this morning at a press conference, other victim family members here this morning telling us, slow down. You're going too fast here. This letter that came in the mail to families across the (sic) Connecticut last September must have been earth shattering, like an earthquake across the state.

This amendment is common sense legislation. If you're going to pull the rug out on the death penalty,

balance it. And let the victims of violent crime in Connecticut know that you understand their pain and -- and approve this amendment.

Once again, Senator Roraback, I want to thank you for your leadership on this amendment. And once again, I also want to thank Senator Coleman for your deliberations through this process, your patience, your passion. Though we disagree, I commend your spirit and your passion. Thank you, Mr. President.

(Senator Duff of the 25th in the Chair.)

THE CHAIR:

Thank you, Senator. Senator McKinney.

SENATOR McKINNEY:

Thank you, Mr. President.

I rise in support of the amendment. I -- I was not going to get up on the amendment and -- because I didn't feel the need to reengage the debate on the risk reduction credits. We've had that debate in this Legislature.

But it struck me with what Senator Looney talked about and his passion for the risk reduction credits. And his believe that we need to do something within the system to make sure that when people do get released from jail that they won't recommit crimes, that they will lead the lives that we all want them to lead. That may be a good public policy.

But we did more than that when we passed the risk reduction credits because we passed them retroactively. And so when Senator Looney talks about having incentives so inmates can earn credits and leave early, we could debate that as a matter of public policy. But we did more than that.

People have been released from prison early, not because they earned risk reductions credits, good time

credits, but because they were given those credits by the State of Connecticut in the retroactive application of the risk reduction credits.

Prisoners, inmates who did nothing pursuant to a program that they thought would provide incentive for them to get out early actually were awarded earlier release. That's the objection we have.

And -- and the reason why it struck me as important tonight is we've heard throughout the debate and throughout the years on the death penalty, we've heard from -- from victim's families who've been victimized by murder on both sides of the death penalty debate. We've heard from families whose loved ones have been murdered. Whose murderers are sitting on death row who have said that, "Please do not repeal the death penalty. We're victims of this crime and closure for us is that final judgment, is the promise made under our laws and the conviction that took place."

We've also heard from families and victims of crime who do not favor the death penalty, who've said that the continuing years of appeals and unknowing of what's going to happen actually further hurts them. And that for them, closure is repealing the death penalty and knowing that life in prison without the possibility of release is now the law in the State of Connecticut.

And although all of those families and people who have been victims reached different conclusions on the death penalty, they all reach it with the desire and the need and the plea from us that they get closure as best as they possibly can.

And I admit, I can't even -- I'm so blessed not to have had a loved one who's been a victim of one of those heinous crimes. I can't imagine even being in their place and what it is they go through. But it does strike me that they -- they both come from that need of justice and closure.

The risk reduction credits, which were retroactively

granted, not earned, but granted, does exactly the opposite of what the victims we've heard from on the death penalty on both sides of the issue have wanted. We've reopened old wounds. We've broken promises. We've done exactly the thing that Senator McLachlan said.

You know, our state, years ago passed a constitutional amendment providing rights in our constitution to victims of crimes because we understand how important that is. And here we passed a policy that allowed people, without even earning them, but gave them the ability to get out of jail early. And a family -- victims of a crime who exercised their constitutional rights to be heard at sentencing, who are then promised by our society and our laws that the person who was convicted of committing those crimes would serve a sentence in jail -- to get a letter like that. I can't even imagine what I would do if I received that letter, to know that we couldn't even keep our promise to the victims of those families.

So I just thought that was a sad irony of this debate. I would welcome a debate on prospective programs that can insure public safety when people are released -- released from prisons. But I cannot accept the fact that we retroactively granted people early release credits simply because they were in jail and simply because they didn't do anything egregiously bad or commit other crimes while in jail.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Senator Frantz.

SENATOR FRANTZ:

Thank you, Mr. President and I stand in strong support of the amendment. And I have to say that tonight, Mr. President, this, for me, has been the public hearing

on this whole concept of the risk reduction credit program, not being on the Judiciary committee or any other committee of cognizance that would deal with an issue such as that one.

This -- this debate tonight has been enlightening for me. And hearing from people like Senator Kissel and Senator Coleman and Senator McLachlan and Senator McKinney, I -- I've learned a lot more about this.

And I -- I suppose I bought the original concept that was suggested last session at face value, that there was value in doing this and -- and because I don't know that much about the -- the punitive system, maybe this wasn't such a bad idea. And I looked at as more of maybe a test to see how this works out and then maybe expand the program, not fully understanding that this was given in retrospect to the degree that it was.

And after hearing what I've heard tonight, I'm gravely concerned about it and I think this amendment is a very good one. And as Senator Roraback has pointed out, it's about the promise that we as legislators have made to our constituents, to the entire population of the State of Connecticut.

After all, what is the purpose of government? It's to provide the basics for us, transportation, infrastructure, education to a degree, and a sense of justice and a judicial system that is as bullet proof as is possible.

And promises, indeed, have been made to the people of Connecticut, not just the taxpayers, but to every single living human being in this state, that if there is a wrongful act against you, there will be a commensurate punishment. If it's a heinous act it will be a very strict and severe punishment and to adjust that going down the road is -- is as close to blasphemy as I can imagine.

And so, through you, Mr. President, I do have a question for the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR FRANTZ:

Thank you, Mr. President.

Through you, Senator Roraback, after becoming much more concerned than I ever have been before, I'm interested -- and I'm very happy that you brought up some of the anecdotes that you did tonight, because it shed a lot of light on this issue.

And believe me, I'm the first to give people the benefit of the doubt, even if they've crossed the line and created or committed a crime. I've done a little bit of work with a group called Family Reentry, which gives these prisoners who have been released, some early, the benefit of the doubt by getting them back into the work force and back into the community.

But my question for you, Senator Roraback, is this: Is do we have any statistics -- I know it's a younger program -- do we have any statistics in terms of how many of the violent criminals have been let out of the system, let out of prison?

(THE PRESIDENT IN THE CHAIR.)

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President.

Through you to Senator Frantz. I am not now in possession of hard data as to the number of individuals who have been released early, but I know it's a considerable number. And every day, more and more are released earlier than was expected by their victims.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

Thank you and through you, Madam President, that is of grave concern. I was hoping that you might say it's an infinitesimal number of people and you covered all the cases.

Obviously, you're not saying that. There are many, many others who have been released early since the inception of the program.

And my other question to you, Senator Roraback, through you, Madam President, is would it be fair to conjecture that once the system is learned by the inmates that it could be used to their advantage. And that this will probably -- probably be an expanding population of prisoners who will be eligible for early release, perhaps to an alarming degree?

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you, Madam President. Through you to Senator Frantz.

I -- I am not the Legislature's foremost authority on criminal justice issues. We have some very learned folks here, Senator Kissel, Senator Coleman, Senator Looney.

But I do consider myself a pretty good student of human nature. And I can tell you that the crime victims are not experts in criminal justice policy but for by necessity. There are very few crime victims who would desire to become experts in the criminal justice system. Their circumstances have put them in that place.

It blew me away, through you, Mr. President, to Senator Frantz, when I asked the victim advocate if I could learn more about this phenomenon. She said, "You want to learn more?" She said, "I have hundreds of individuals that are crying out for a member of this Legislature who might listen to them."

I think I asked her on a Thursday or a Friday if she might be able to identify some of these individuals who felt betrayed by what we did. We had a meeting on Monday, two days later, a room full of people who wanted desperately for me and all of you to know how they felt by what has happened.

Senator Coleman and Senator Looney shared with us some of the -- what they would categorize as the success of the system. And certainly we all want people to behave well in prison.

What they didn't share with the Body was the reality that people are earning good time/early release credits for putting themselves on waiting lists for a program. They don't have to participate in the program, they just put themselves on a waiting list and they get good time credits.

Senator McLachlan referred to the -- some of the -- the number of good time credit some of these people have referred to. But what he didn't tell you was the individual who's gotten 250 days of good time credits despite the fact that he hasn't completed any programs. And he's received several disciplinary tickets.

What about the individual who is denied parole due to no reasonable probability of remaining a law abiding citizen, but still has gotten 129 days of early release?

Don't take my word for it, Senator Frantz, I'm not the expert. But I think all of us owe it to our state's victim advocate, the professional. This Body, I think wisely, created the Office of the Child

Advocate. We wanted someone to bring us the unvarnished truth so that we could fashion our responses appropriately.

We created the Office of the Victim Advocate so that victims would know there was a place that would give the Legislature the truth. Whether we wanted to hear it or not we needed to know the truth. And what the victim advocate said in her testimony two weeks ago is that many violent, undeserving offenders are being granted risk reduction credits for reasons which defy logic and stand in stark contrast to public safety.

The victim advocate isn't making this up, Senator Frantz. She's doing her job and issuing to us a wake up call. And the crime victims who came here in droves to tell us how they felt revictimized couldn't have been more sincere or more genuine.

And I think we owe it to them, Madam President, the bill -- the -- the -- the repeal of the death penalty that's before us is prospective in nature. It says that the 11 people now on death row won't -- will -- will be executed. And the public policy that's being evidenced by this bill is that we want for them to be executed.

And I asked Senator Coleman why -- why that's the case and I didn't get an answer that was clear to me and -- but maybe I -- I could speculate that the reason we're doing that is because that sentence was handed down. That promise was made to those families. Those victims are expecting the perpetrator of the crime to be executed. And we're not going to up end that expectation.

Well, let's be consistent. If that's the deal, don't you think these victims of violent crime who were promised by the system that the offenders would serve a prescribed sentence deserve the same respect?

As I said when I brought out this amendment, what matters more to me than the repeal of the death penalty is the integrity of our system. And I feel like that

has broken down. This amendment would enable us to retrieve it and I hope that it passes.

Thank you, Madam President.

Through you to Senator Frantz who's still on his feet. He still has the floor.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

Thank you and through you, Madam President.

Thank you, Senator Roraback for those answers.

They're very compelling answers. There's clearly a practical consideration here as well as a principle consideration.

The practical one is fairly obvious. We may be endangering people by releasing prisoners early -- violent criminals early out of the system.

Then there's the principle end of it which is what your amendment really is centered around. And it's rare that I hear from either side as impassioned a plea for a really good solid concept in the form of this amendment here. Because I know you mean it. You were very, very sincere about this. And the reason is, I believe, because of the breaking of a promise to people who had been violated.

And when we do that multiple times and in a variety of different areas, but particularly in the area of criminal justice, I think we -- I think we do something to their confidence level in the state, in the system. We do something to their spirit. And at the end of the day it's a huge negative.

So I applaud you for raising this if for no other reason to have this debate here tonight. But hopefully this

amendment passes and I urge everybody to support it.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark further? Will you remark further?

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President. Just a few quick comments.

I think it is important for everyone to know that the risk reduction earned credit program was a program that's been thought about for more than just a couple of years. As a matter of fact, it was first conceived under the administration of Commissioner Theresa Lance. It was just acted upon last year, but it was deliberated on and given thought to in a couple years prior to that.

And I know that there has been a lot of discussion about the retroactivity of the plan. And I don't even pretend to think that people will accept the explanation for or be persuaded by it. But just so that all the information is out there.

In the year 2006, the Department of Corrections first implemented the inmate accountability plans. And those inmate accountability plans had really not as much significance as they needed to have because there was no incentive provided to them.

They were supposed to be done in conjunction with the risk reduction earned credit system. And when that finally came about the thought was that it should be tied to the activities and the actual participation of the inmate in response to whatever it is the accountability plan dictated.

That's the reason for the retroactivity that was connected to the -- to the system, the risk reduction earned credit system.

But the -- I guess I will conclude that people will think of the risk reduction earned credit system or program as they will. I don't think anybody's going to change their view or their perception of it today.

All I know is that the Commissioner seems to believe that it is having an effect. And as I indicated before, there are certain indications that indicate that it is having an effect, talking about the reduction in the incidents of assault on staff as well as the reduction in the incidents of inmate assaults on other inmates.

And so as well intended as I believe the amendment before us is, it would be my -- I'd like to say -- considered opinion, that it would be a mistake to tinker with the program at this stage and time.

And so consequently, I'll again urge the members of the Senate to reject this particular amendment.

Thank you, Madam President.

THE CHAIR:

Will you remark? Will you remark?

If not, I've asked -- that I will open the machines and I ask the Clerk to call for a roll vote, please.

THE CLERK:

There is an immediate roll call vote in the Senate. All Senators to the Chamber, please. An immediate roll call vote in the Senate.

THE CHAIR:

Have all members voted? All members voted? The

machine will be locked -- oh, hold on. It won't be locked. Why?

Yes, the machine will be locked.

And, Mr. Clerk, will you call the roll call.

THE CLERK:

Total Number voting		35
Necessary for adoption	18	
Those voting yea	15	
Those voting nay	20	
Those absent and not voting	1	

THE CHAIR:

Amendment -- amendment "G" fails.

Will you remark further? Will you remark further?

Senator Kane.

SENATOR KANE:

Good evening, Madam President.

THE CHAIR:

Good evening.

SENATOR KANE:

I rise for the purpose of an amendment.

THE CHAIR:

Please proceed, sir.

SENATOR KANE:

Thank you, Madam President.

If the Clerk is in possession of LCO 3034, I ask that

he call the amendment and I be allowed to summarize.

THE CHAIR:

Mr. Clerk, will you please call the amendment?

THE CLERK:

LCO Number 3034, Amendment "H."

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President. I move adoption.

THE CHAIR:

The motion is on adoption.

Will you remark, sir?

SENATOR KANE:

Thank you, Madam President.

The underlying bill, which was amended by Senate Amendment "A," if passes (sic) would repeal the current capital felony punishment or death penalty, if you will, upon passage of this legislation.

Well, there are -- with that amendment, Senate Amendment "A," the existing 11 individuals on death row according to this law would be exempt from that repeal or so we believe.

So I'm a bit confused by how we are able to make it okay for the existing 11 people on death row to be executed but not the future individuals who may commit some of those very same crimes.

This amendment, Madam President, talks or speaks to

some of those things that were committed by some of these individuals that are currently on death row.

When I bought my first house in 1995, my wife and I moved to the Bunker Hill section of Waterbury. And I remember down the street from us was a little video store. Because back in the day they didn't have Netflix and, you know, all the things we have today. You had to go to a video store.

And there was a little video store called Fun Stuff Video. And people would obviously go there to rent movies. But also they had candy and different little goodies. And they had an arcade, a few videos games, things like that. So it was a good hang out for kids, teenagers, you could -- you could imagine. It was near a park so it -- it would seem to be a good place to hang out.

Well, there was a little boy there who used to hang out there quite often. His name was Stanley Edwards. Stanley Edwards was thirteen years old. And riding his bicycle home one day, passed the house of a worker at that video store named Todd Rizzo.

Todd Rizzo, Madam President, according to his own confession, struck up a conversation with Stanley Edwards as the boy rode his bike by his house. Rizzo, 18 years old at the time, knew Stanley Edwards because he was working at the video store that the kids would congregate at.

He offered Stanley Edwards the ability to come to his backyard and look at snakes. So that was his ploy to get him to his yard. He then straddled Edwards like a horse and hit him 13 times with a three-pound sledgehammer until the boy begged him to stop. And Rizzo did this because he wanted to feel what it's like to kill someone.

So just think about that for one minute. He would watch this boy ride by his house. And he told reporters later on, years later, that he had an obsession to kill. And it continued through his high

school years. He joined the Marines thinking that would quell his obsession, but apparently it did not.

He told the reporter of smelling Stanley's blood for a whole month and gurgling sound (sic) the boy made when the first blow of the sledgehammer connected to his head.

He likened himself to Michael Ross and Jeffrey Dahmer and other serial killings (sic). He actually studied these things. And he said "It was like when I made my decision, I was going to do it. I knew I wasn't going to kill anyone I knew," but he knew Stanley because he hung around that video store.

Now, as I said, I live near that video store. I remember this like it was yesterday.

Stanley Edward's killer, Todd Rizzo, bragged about achieving his second goal in life. His first was to become a Marine, the second was to kill. And he wrote, "Let's say you might be reading about me one day. Just add me to the long list of favorite -- famous killers like Jeffrey Dahmer, John Wayne Gacy, Henry Lucas and so on."

Ivo Colon is on death row because of the beating he gave to his girlfriend's two-year-old daughter. When she wet herself, he picked her up by the arm and heard something pop. He then told the girlfriend, "Do not take the baby to the hospital" because of burn marks and abrasions and bruises the child already had.

He began beating little Keriana, two years old, kicking the poor baby and cutting her with his rings. When she threw up, he took her to the bathroom and began banging her head against the shower wall, holding her by the hair until she could no longer stand.

Russell Peeler was already in prison for the shooting of one of his accomplices in the drug trade. He hired his brother to kill eight-year-old B.J. Brown and his mother, Karen Clark, because they were the only witnesses to the shooting that Russell Peeler was

already serving time on.

He literally had a neighbor who was crack addicted offer her drugs in an effort to find out when they would be home. The neighbor then gave up the goods, if you will, told Russell Peeler's brother when they would be home. And he sent him there and killed both of them, the eight-year-old boy and his mother.

Robert Breton, who Senator Kissel spoke about before, is that old man on death row that killed his 16-year-old son.

So my amendment, Madam President, and to the members of this Chamber, is if this bill is going to pass -- and it seems like the votes are there for it to pass -- then I think there are -- if we are going to exempt 11 individuals from this bill, then added to that would be anyone who takes the life of a child under 16 years of age. So that's what this amendment does, Madam President. These individuals, Todd Rizzo, Ivo Colon, Russell Peeler, Robert Breton, killed children. I have two children. I know many of you have children, grandchildren, families. It's probably the most disgusting, horrific crime you could ever do.

And I remember that video store. It's no longer there and I every time I go by it, I think about Stanley Edwards and I think about him being lured into the backyard of Todd Rizzo's yard because he wanted to kill somebody and he hitting him the head. I think about that little boy laying there beaten 13 times with a sledgehammer. And whether you are for repeal of the death penalty or against repeal of the death penalty, you can't tell me that these individuals deserve special treatment than other person who commits those very same crimes.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

Madam President, in my view, any of the acts that have been described by Senator Kane are horrific and unspeakable. The bill before us, however, as it's amended, doesn't provide special treatment for anybody, and particularly, anybody who would commit as heinous an act as torturing to death or killing a child. As a matter fact, it is the view of some that life imprisonment -- life in prison without the possibility of release may be considered, by some, to be a more severe punishment than death. It, in my view, could be hardly be described as special treatment. It is a punishment. It is a severe punishment and if -- if our objective is to do away with the contradiction of trying to make the point that killing is wrong then we ought to stop killing ourselves as a state, as an apparatus of the state.

If our objective is to address the contradiction of having violence serve as a deterrent to violence. We need to stop killing and we can find an alternative, very effective, very harsh and very severe punishment, which in this case would be life in prison without the possibility of release and it should apply after the effective date of this act to anyone, and particularly anyone who kills a young person, a person under the age of the 16. I'm asking that members reject this particular amendment. Thank you, Madam President.

THE CHAIR:

Will you remark? Will you remark?

Senator Williams.

SENATOR WILLIAMS:

Thank you, Madam President.

If Senator Coleman didn't call for a roll call vote, I would ask for a roll call vote.

But I just wanted to rise very briefly to thank the maker of the amendment, but to oppose the amendment. And there -- every single murder in the state of Connecticut is a tragedy. It's a terrible tragedy and we can recount explicitly the facts of the terrible cases that resulted in the conviction of those who are on death row. Let me just -- I would like to just -- I'll continue with some details along the lines of Senator Kane. Here's a situation of a father who murdered his five-year-old with a shotgun; an individual who murdered a mother and two of her children by stabbing them repeatedly; a man who shot and killed two children aged 14- and 6-years-old, waited at their home to shoot and kill both parents. And the list goes on and on.

Madam President, these people that I just referred to are not on death row. Madam President, these individuals are not in a murder-with-special-circumstances situation that we have contemplated here in our legislation tonight. These individuals and many other are at MacDougall where they might have seven or eight hours outside their cell of either recreations, jobs at a wood shop or a commissary, et cetera. This, Madam President, to me underscores the madness of the death penalty, the randomness of the death penalty.

There was a study completed looking at 34 years in the state of Connecticut, over 4600 murders in that 34-year period ending in 2007, that the studied examined. Every single one of those 4600 murder cases was a tragedy that terribly hurt the family and friends of the person whose life was taken. Of those more than 4600 cases only 9 resulted in a death penalty conviction. The death penalty is a distraction. It is discriminatory for reasons that I will discuss later. For those reasons, I oppose this amendment, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

If not -- oh, Senator Gomes.

SENATOR GOMES:

Thank you, Madam President.

I rise in support of the repeal of the death penalty. But before I do, I want to just thank the Judiciary Committee Chairman Coleman --

THE CHAIR:

Senator Gomes, this is on Amendment H.

SENATOR GOMES:

Oh, I'm sorry.

THE CHAIR:

It's okay.

SENATOR GOMES:

I'm always doing something wrong.

THE CHAIR:

No, you're not doing it wrong. I just wanted to remind you, sir. That's all.

Will anybody else remark on Amendment H? If not, I would ask that the -- I will open the machines and will the Clerk please call for a roll call vote.

THE CLERK:

There is an immediate roll call vote in the Senate. All Senators to the Senate chamber. An immediate roll call vote in the Senate.

THE CHAIR:

Have all members voted? Have all members voted? The machine will be locked, and Mr. Clerk, will you call the tally.

THE CLERK:

Total number voting	35
Necessary for adoption	18
Those voting Yea	15
Those voting Nay	20
Those absent and not voting	1

THE CHAIR:

Amendment H has failed.

Will you remark? Will you remark?

Seeing no remarks -- oh, so sorry, Senator. Senator McKinney. I was getting excited. Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President.

If I -- I think we were -- I was just waiting for a copy of an amendment.

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)

SENATOR McKINNEY:

Thank you, Madam President. I apologize.

THE CHAIR:

No problem, sir.

SENATOR McKINNEY:

I thank the circle for that.

Madam President, I believe the Clerk is in possession of an amendment, LCO Number 3068.

THE CHAIR:

Mr. Clerk, will you please call the amendment, Amendment I.

THE CLERK:

LCO Number 3068, Amendment I.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President.

Madam President, I move adoption of the amendment and seek leave to summarize.

THE CHAIR:

The question is on adoption. Please proceed, sir.

SENATOR McKINNEY:

Thank you.

Madam President, this is a similar amendment than the one that I had brought out earlier and withdrawn after discussion and time to look at the issue. I want to thank the Majority's Senator Williams, Senator Looney and Senator Coleman for -- for their review and as my

colleagues in the circle will note, their names are on the amendment as well. This simply adds to the law that appears to be passed tonight that the provisions of Section 1-1 and 54-194 of our general statutes shall apply to this law. Those two statutes are what -- what are called "savings" statutes which specifically state that should you pass a penalty that penalty is -- does not change prior penalties given.

In other words, while I did agree with Senator Coleman earlier that it was clearly the intent of the makers of the bill before us that it would be applied prospectively, this states definitively that with respect to our "savings" statutes which deal with prospectivity of application of changing of our penalties that it is clearly embedded. At worst, this amendment is belts and suspenders, as I call it. It may add nothing to the underlying bill, but it certainly takes nothing away. At best, if a court were to look and have some question whether we really meant this to be prospective, this removes any doubt and I thank the leaders for agreeing to the amendment and urge adoption.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

Madam President, I want to thank Senator McKinney and Senator Fasano and others for coming forward with this particular amendment. I really would have felt bad if there was not an amendment proposed by the other side that I couldn't support this evening and thanks to this amendment, I am able to speak in support of it and urge others to also support it. Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark?

Senator Looney.

SENATOR LOONEY:

Yes, thank you, Madam President.

Also in support of the amendment. I wanted to thank Senator McKinney and Senator Fasano for bringing it forward. It is exactly as Senator McKinney said. This amendment adds reference to the savings statutes in relation to the prospective repeal of the death penalty. In addition to the narrative in the underlying bill that states the intent to be prospective, this also makes specific reference to the statutes by which in other cases we make it clear that an intent to change a penalty is not intended to affect prior cases. So again, it is a reaffirmation of the underlying intent of the bill.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark?

Senator Williams.

SENATOR WILLIAMS:

Yes, Madam President, very briefly. I want to thank Senator McKinney and his colleagues for bringing this forward. To the extent that it hasn't been absolutely 100 percent clear for the purpose of legislative intent that this bill is prospective in its effect than this amendment should underscore that that absolutely

is our intent.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

The question is on adoption of this amendment, all in favor please say aye.

Opposed?

The amendment passes.

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

It's my understanding that that was probably the last of the amendments that we're going to deal with so I'll just avail myself of this perhaps last opportunity to speak on this issue to my friends and colleagues here in the circle. Earlier today, one of my constituents, Ann Rossi came to speak at a press conference regarding the murder of her husband not that long ago in the town of Windsor Locks, a town that I have had the privilege of representing its good people for the last 20 years. Her husband happened to be a mechanic at B&B Automotive one afternoon when a gunman entered the premises. There were two other gentleman with him and what rarely, if ever, happens in our neck of the woods, they were executed at their place of employment by being shot in the head execution style.

It was a shock to the people of Windsor Locks. It was a shock to the people of north central Connecticut. The police did a fabulous job in hunting down the killer. The tale that unfolded thereafter was quite amazing. Apparently, an individual had been hired to

do the execution. From what I understand, he was hire to execute one individual, but you can't leave any witnesses so whoever was there at the time had to go too. Do you know how much that life was worth? How much the offer for that execution was? $2,000. Life is cheap. When the police finally arrested the gunman, a series of events too place because it became readily apparent that that gunman had no real business in that business establishment, didn't go there to steal or rob anything so why did he execute those three men? He was hired. Murder for hire.

And then a series of events took place, defense counsel talking to the state's attorney said if my client cooperates with you, can he face possibility with life without release in exchange for the state not pursuing a death sentence. Discussions took place over a period of days, if not week, and eventually there is an agreement. The gunman turns in the person who hired him, who wanted to have one of the men executed because he was having an affair with his wife. That individual -- and I really don't even want to name him, given him that kind of honor, but I will say this: After the murders went down, he fled the United States and went to Italy. He went to Italy, one of the western countries that does not have a death penalty.

And even though the Connecticut state's attorney had all the evidence against this individual, because of the situation in Italy not having a death sentence, in order to extradite this person to Connecticut, Connecticut had to waive its right to seek a death sentence against this individual. So we did. He was found guilty and he is now serving an enormous amount of time. What does that tell us? That one case in my neck of the woods. It tells us that even though State's Attorney Kane indicated at the public hearing that quite often state's attorney don't use the possibility of a death sentence in plea negotiations that it still comes up. That those discussions could possibly and probably occur by initiation of the defense attorney, as happened in that case where Ms. Rossi's husband was brutally murdered and two other men were brutally murdered in a murder-for-hire plot.

It also tells us that there are at least some people that consider the death sentence even after the commission of a crime because the individual Benedetto Cipriani -- there he is -- fled Connecticut and went to Italy knowing you can't get me back if you get the goods on me and sentence me to death. The death sentence has a role in our criminal justice system. Now, quite often, it's almost impossible to prove a negative, but I, a student of history, and one of the areas that I find fascinating is criminal law, the five families in New York, organized crime and how they behave, whether you catch a program on the History Channel or you get a good book and you study. Now, maybe someone that acts in the heat of passion pays no attention to what the criminal justice laws are, but from what I know those that engaged in premeditated murders on a grand scale like organized crime, they know where the death penalty states are and they know where they aren't.

There is actually econometric evidence that has been gathered to refute studies that were brought to our attention in the Judiciary Committee by experts that have been hired by the public defender's office that show that the death penalty actually does affect behavior. I know that detractors like to say it does not affect any behavior, but there is ample studies that prove it does. It only makes sense. We have tax policies that affect behavior. We have punishment policies that affect behavior. We hope that the punishment fits the crime and we hope that the punishment is severe enough to dissuade people from committing crime.

Another argument that I have heard is that we, as a state, should not set an example regarding death. I had a call this morning from an individual, left it on my answering machine very early in the morning, an individual who I'm sure cares passionately about this issue, saying, I know where you're coming from, Senator Kissel, but I just want you to go to Hartford thinking about this: How can we teach our children that killing is wrong if the state is a killer? Thank

you for listening. Click. By that logic, we may as disband the Army, the Navy, the Marine Corp, National Guard, any of our fighting forces because if killing is wrong in all instances, then we can't even kill to defend our national rights and liberties.

So we have already stated as a matter of public policy that in some instances the taking of a life is justified. Now, the argument comes back, well, John, that's the national defense. We're talking about within our country. We've made a determination regarding that as well. We allow law enforcement to carry side arms. There are strict rules and regulations regarding a police officer's utilization of deadly force but we've made that determination that in certain circumstances, very restricted circumstances, law enforcement can use deadly force. And no one in this circle is saying disarm our law enforcement. You're not. So in certain circumstances to protect the public safety out in the field in a shootout, a bank robbery, armed kidnapping, carjacking, police officer backed into an alley way with a bunch of thugs ready to shoot and kill that man or woman, he or she can use deadly force to protect themselves, and in certain circumstances, to protect and apprehend criminals -- protect the public and apprehend criminals.

We make distinctions. We make them each and every day. That's appropriate. It's appropriate to go off and fight people that despite the best of intentions we want everyone in the world to love us, we know not every nation is enamored with us. 9/11. 9/11. I dare say when Bin Laden was killed there were some people that rejoiced that feel that the death penalty is immoral. I accept the fact that some people for moral, religious and philosophical reasons do not support the death penalty. I accept that. But one of the things that I take to heart is the notion that this decision is a matter of conscious. As if -- if one supports the death penalty, one is not struggling with an issue that is a matter of conscious. I accept the death penalty as an important element of our criminal justice system, but that is not a knee-jerk

reaction. It is not because of the polls. I've thought it through and my matter of conscious has lead me to a certain spot. Please respect that because I respect the fact that your matter of conscious has led you to a different spot.

Is it fair? We have heard from victims of crimes that it is cumbersome and not fair. Let me offer you this: We could, if we had the will as a Legislature, I dare say, make some changes to our statutes to perhaps expedite the time frame for the imposition of the death penalty. I would also say that I have been lucky enough to serve in this Legislature for 20 years and the detractors of the death penalty are loathed to make any effort down that path. And indeed, when we change the statutes, it inevitably leads to appeals after appeals after appeals. I find it ironic that those who do not support the death penalty point to the fact that is cumbersome because of their constructs are a reason to do away with it. I love that. Congratulations. Clever. But how can one say because Connecticut has one of the most difficult statutes in the nation that we should now give up on the process. This is the process you created and now you point to it as a reason to throw out the ultimate punishment.

It's important to my constituents. I have six correctional facilities, as has been stated earlier this evening, holding 8,000 inmates out of a total prison population of probably around 17,000. I have correctional officers throughout north central Connecticut. They have difficult, difficult jobs. They get assaulted. They get shanked. If an inmate God forbid is serving life without possibility of release and kills one of those corrections officers, what more can you do that person? Nothing. Nothing. That's a concern. Life without the possibility of release: We've stated earlier today that at the same time we are promising the public that by changing the death penalty to life without possibility of release, we have this sacred bond with the public, trust us, we won't change it. At the same time, we had a bill that stated that for minors in Connecticut who are

serving life without possibility of release we may have to change that because of decisions coming down from the United States Supreme Court.

There is no guarantee that life without possibility of release today will remain life without possibility of release tomorrow. Indeed, in the amendment that was placed on the underlying bill, there is a carve-out that says for administrative or safety purposes, the corrections commissioner can waive any of the parameters of incarceration. We change the laws all the time.

One of the arguments that Senator Williams says that he will hammer on when he has an opportunity to speak and he spoke at our public hearing on the issue and I dare say others feel this way as well, detractors say that they feel that the death penalty is inherently unfair on the basis of race and ethnicity. I think it would be difficult to point to the race and ethnicity on those on death row to make that case, but the case that will be made is that it is disproportionately visited upon crimes where the victims are Caucasian. I would posit that an appeal based upon racial issues is about to be heard in our judicial system. State's attorneys have briefed it, have gotten their experts all lined up. Public defender's office has briefed it, gotten their experts all lined. We've spent hundreds of thousands of dollars on this process and the courts are about to hear it and review it and hand down some decisions. Wouldn't it behoove us to wait and find out what their thoughts are on that issue?

I think people can make arguments on both sides. People can go back 34 years and start looking at things and saying and well, look at this pattern and that pattern and this pattern and that pattern, but then you have to pull out population areas, population shifts, demographics, and you can really get into a battle of the experts. I don't think it's fair to say that the death penalty is racist. Turning to that issue with the utmost respect to our Governor, I couldn't understand why when the bill was being

debated in the Judiciary, he drew analogies to Jim Crow laws because I don't believe for a second that our Governor would even make any illusion to the fact that the majority of the people in the state of Connecticut because they support of the death penalty are racist. This is a fundamentally different issue.

My wife strongly supports the death penalty. My son does not. I know Democrats that strongly support the death penalty. I know Republicans that do not. It falls all over the place. And it is fundamentally unfair to cast dispersions on individuals that may not come to the same conclusions about the death penalty as you. I would not do that to the proponents of repeal and I would hope that they would not do that to proponents of keeping it on the books. What motivates the proponents, I believe, are the notions that, as I had indicated earlier, it does have a valuable function in our criminal justice system even if it is rarely actually carried out thus far. And I say "thus far" because I asked Sue Storey, our chief public defender, point blank, do you see a point in time where you're eventually run out of appeals? Answer: "Yes." Are we closer to the end than the beginning? Answer: "Yes." It won't last forever, but for the folks that hate the death penalty and would like to see it repealed, for them to say it's not being meated out fast enough doesn't make any sense to me. It make be a slow, pokey process, but let it work itself out.

But the other reason that people I've spoken to support the death penalty is more fundamental. You can set aside whether you feel it deters crime. You can set aside whether you feel that it's used to help solve crime. But for these individuals, you can't set aside the notion that they feel that it fits the crime. They feel that yes perhaps you can point, as Senator Williams did, to dozens, if not hundreds, if not thousands of crimes that are so horrible, so diabolic that they, too, could rise to the level of a death penalty case. But for the folks that I spoke to that say we still support the death penalty, they say can you really look at the cases where those 11 individuals

are death row and say they don't belong there and the answer is no. And the answer has been so emphatically no for the last few years because of the Cheshire triple homicide that really made this issue so vivid in people's minds.

That is not to say that the terrible, horrific murders that have taken place since then in Connecticut in urban areas, in suburban areas and in rural areas are not in many respects as bad or horrific or diabolical, but what it does put a very fine point on is there are some issues that really stir people's emotions and passions and feelings as to what is just and what is not just. Mr. Hayes and Mr. Komisarjevsky were not convicted of one or two crimes. Each one of them had more than 10 guilty convictions. Each one of them had multiple capital convictions. And that is why it's almost impossible to get a bill through this Legislature right now that would repeal the death penalty across the board. And that is why I understand the expediency of doing it prospectively. I understand that. Half a loaf is better than none. For the true believers in repeal of capital punishment, we'll got with prospective because that's all that we can get out of this building right now in light of how the state feels.

But at the same time, folks move forward in that direction I think it somewhat undermines the high-minded morality issue that says Connecticut is a brand new state and we're turning a corner and oh my heavens this is the worst thing in the world and you know what? Every argument that you make against the death penalty equally could be applied to the 11 folks on death row right now. But there is not the votes to do that. So how can one make those arguments? I stand in opposition to this bill because I've studied criminal law enough to feel very confident as I search my soul and make this decision of conscious that the death penalty in the state of Connecticut performs a valuable function albeit in a small number of matters, but in more matters than we give any credit for. It does, in my mind and based on statistics that I have looked at, deter a certain amount of crime and we've

all heard, if you save one life, it's worth it. It does without a doubt help solve crimes when coconspirators turn against one another because their own defense counsel goes up to the state's attorney and says can we make a deal.

And lastly, it does exact justice that fits the crime because unfortunately we still live in a state where there are individuals that will commit the worst most horrific, most diabolical crimes against innocent men, women and children. And for those reasons, Madam President, I oppose this measure. Thank you.

THE CHAIR:

Thank you.

Will you remark?

Senator Gerratana.

SENATOR GERRATANA:

Thank you, Madam President.

I know the hour is getting very late, but I feel compelled to stand up and speak in favor of the underlying bill. For the past two years, I've spent many, many hours listening to the testimony on the Judiciary Committee -- thank you, Senator Coleman, for your leadership on that committee -- and hearing people who have come to speak to us about this very issue. They ask should we keep the death penalty? Should we not keep the death penalty? What are the other choices? So I've heard the debate and I've literally pounds of testimony, literature, letters, e-mails and other communication to me from both my constituents and people inside this state and outside this state asking that question: Should the death penalty be repealed?
After all of that, after talking with my constituents and after searching my heart, my soul and my mind, I decided that it is appropriate that from this day forward, this very day forward we will have the

opportunity to vote tonight to vote in favor of this bill and also to start with what I call a clean state, because I have to share with you some of the testimony that I did read. It was compelling testimony and I understood that this policy has victimized many of the people who have been left behind.

A clinical psychologist testified and she lost a loved one, a family member to a murder, she said that "homicide grief is not assuaged by the quest for retribution. It is, in fact worsened. The death penalty sentences family members to decades of grief with never-ending publicity and court proceedings. This results in notoriety for the murderer and years of suffering and uncertainty for the families left behind." Also, interesting and what I thought was very important to share with this chamber today is the testimony of Attorney T.R. Paulding. He was the lawyer for Michael Ross who was executed in 2005. He states that, "I would ask you to consider this: When is the last time that anyone in this room discussed -- debated" -- he was referring, of course, to the public hearing he was testifying at -- "or even though about Michael Ross. I would venture to guess that for most of you it was the day he died and that is exactly point that I am leading up to today. If in 1987, Michael Ross had been sentenced to life in prison without the possibility of release, he would be nothing more than an afterthought, one of many names that disappear into the morass of court records from decades ago."

I am not just pleased to support the bill, but also I am assure that I can support this repeal because we did one thing also this evening when we amended it with Senate Amendment "A" and that is to address concerns that my constituents raised with me and that was, well, if don't have the death penalty, what will we have? And I said -- and I can say, rather, to them, we have the assurance that we will put people away for life with no possibility of release. You know, when I discussed this with many of the people here in the state and outside the state, they all said, ah, that's the alternative. That's a good alternative. And as

my mother would say to me, you've locked them up and thrown away the key and that's exactly how envision this and envision this law being promulgated.

I ask all my fellow Senators to make the choice today to vote for this bill. It will help us heal and move on from a policy that has failed us and to a final solution that gives peace and justice to us all. Thank you, Madam President.

THE CHAIR:

Thank you, Senator.

Will you remark?

Senator Suzio.

SENATOR SUZIO:

Thank you, Madam President.

The town of Cheshire resides in my Senate district and indeed the home where the Petit's did reside where this tragic, horrific crime occurred was within my district, as well. I think everyone in the state and certainly everyone in this chamber was touched by the horrific crime that was committed in the Petit home five years ago. Some of us in this chamber, some members actually changed their vote only a year ago in response to the horrible tragedy that occurred and to the eloquent testimony of Dr. Petit himself. And who in this chamber cannot say that they have been moved by Dr. Petit himself, his dignity and his graciousness under such a horrific tragedy for him.

I'm certainly impressed by the fact, too, that Dr. Petit I think has risen above the terrible evil that occur in his life. He formed something called the Petit Foundation. To me, that's proof in what I ultimately believe in, the triumph of good over evil and indeed Dr. Petit in spite of this horrendous evil that he has suffered personally has risen above it in my opinion by this action of forming the Petit

foundation and the good it does in the memory of this beloved wife and two daughters.

I've done a lot of thinking about this issue in the last year. I try to be a good, serious Catholic and when my church teaches up on an issue like this and the Bishops speak out, I listen. I listen carefully and I think, and in the last year, I've done more reflection and thinking about this issue that I've ever done in my life knowing that it might very well come to a vote in this chamber. I talked to many people, pro and con. I met some people who were family members of victims of horrible crimes like this and they -- they were very eloquent in their testimony. Some were supporting the death penalty and others were against the death penalty.

To me, the moral dimension of this issue trumps all the other considerations. In fact, the argument that distills this debate down to me is offensive and crass. Human life can't be measured in terms of dollars and cents and I think that's something that all of us in this chamber would agree on. So to me, it does boil down to an issue of morality. But I believe that the particular bill that's in front of us tonight fails the moral test and indeed if that's one of the major reasons for supporting this then I think you have consider it very carefully. It fails the moral test in my opinion in two ways. First, it's predicated on the idea that the death penalty is always and everywhere wrong under any and all circumstances. It's an absolute uncompromising position. Yet, at the same time, while this legislation is founded on that concept, it makes one big gaping exception for the 11 people who are currently on death row.

If you're going to say that taking human life in the form of a legal execution is wrong going forward, then it's wrong going backwards. The same crime that was committed in the Petit home five years ago will be just as horrific and just as offensive two years from now as it was five years ago and as it is today. If you can support the execution of the Petit family killers for what they did five years ago, why couldn't you

support it if it should occur two years from now or three years from now or 20 years from now? It strikes me as an ungravely inconsistent moral position to take. If that's the reason you're supporting this legislation, I think you ought to reconsider because this legislation fails the morality test in a big-time way.

One of the things that I was taught in my moral teaching, as a Catholic, is that the end doesn't justify the means. No matter what good you want to do in life, you can't achieve that good using morally illicit means. I bring that up because I suspect that one reason why there's this big gaping hole, moral hole in this law is because of the political consequences of making it an absolute both prospectively, as well as retrospectively. And again, that to me is a moral failure. The end does not justify the means, but if you're position is absolute, if you believe the death penalty is always morally offensive under any and all circumstances going forward then you really have to honor your commitment even to those on death row today.

I also believe though there's a second reason why I find this fails the moral test. I don't think anyone in this chamber would say that if it's necessary to kill a human being to protect another human being, while it's regrettable, it's justifiable. Ironically, last year, I was watching a documentary on TV and it was about people who were incarcerated and condemned for murder and it was -- one of the stories was about a crime family member, a member of the mob who had been put away in prison for life and while in prison, he ordered the execution of other people outside of prison. He actually murder people while he was incarcerated. In fact, my good colleague to the left here, Senator Meyer and I talked about this. He was a federal prosecutor in New York and I explained one of my concerns. I said, Senator Meyer, in those situations where someone is incarcerated and in a situation where you think they can't possibly kill another person, but you have evidence that they did do it, if the only way to prevent them from killing other people would be to execute them, and he said,

oh, I can tell you I know that occurred. It occurred in some of the crime families I was prosecuting down in New York.

So this is not just something theoretical. It's something that actually happens. And in fact, today I was talking with State's Attorney Kane. Mr. Kane said the they know of situations in Connecticut where people have ordered hits while incarcerated. And furthermore, what happens if someone is in prison for life for committing a horrible crime, capital punishment and they escape and they commit more murders as they've escaped. They've killed some prison guards on their way out and then they kill innocent people as they're on a wild rampage through the countryside. They have nothing to lose. There is nothing to dissuade them from committing the more horrific crimes because they can't be punished any further. The only thing that's going to happen to them is they're going to be put right back where they were in the first place. Don't we have an obligation to our society to offer at least some minimal protection? Aren't there at least some circumstances where the death penalty really is justified, where it's not only justified, it's mandatory to protect society? Isn't that our sworn sacred duty?

This legislation makes that impossible for any and all circumstances. I think that's a grave failure on our part one of our most fundamental duties to protect the public. I for one would like to hear some of the proponents explain to me, A, how they reconcile the moral inconsistency in this law and, B, what would they do in these circumstances where murders are being committed by somebody who has been put away for life. How would you protect people from that? For these reasons and out of my real respect for the Petit family, and Dr. Petit in particular -- in my opinion, that man is a hero -- I can't support this legislation. I think we should overwhelmingly reject it. I think it fails on the most important reason, morally it's deficient.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark?

Senator Gomes.

SENATOR GOMES:

Thank you, Madam President.

I rise to support the repeal of the death penalty. Some of things I will say here today won't even register in some other people's brains because of the simple reasons that I'm getting up to say some of these things. I live in the city of Bridgeport and in the city of Bridgeport back when they were having the drug wars, there was some horrible things done down there, as was done in other cities, but as I served as an alderman for 12 years there and 21 years as a rep for a union, which I had 3,000 members in Bridgeport alone, I got to know a lot of people there and I'm sad to say that about 15 to 20 families that I knew there were either the recipients of a murder in their family or somebody else in their family committed one. And this is not an easy thing to say because these were good families. A lot of their children got caught up in these drug wars and they wound up to be people you wouldn't want to be associated with.

While I'm standing here, the first thing I want to do is I want to thank the Chairman of the Judiciary Committee, Senator Coleman and Representative Fox, for the splendid they did for this year past. I've been on the Judiciary Committee since I came up here and that's almost seven years so I've been in the argument about the death penalty for the last few years. Some of the remarks that were made here came out of a report made Professor Donohue and here's the report that he had from 1973 to 2007. It's labeled "Capital Punishment in Connecticut 1973 to 2007: A Comprehensive Evaluation from 4686 Murders to One

Execution." The one execution they're talking about is Michael Ross. During that time, that 32 years, that's how many murders that were committed after the death penalty was put into effect and 40 percent of those murders were not even solved. So you had 60 percent of people who were convicted for one reason or another who were in jail and you only had 11 people on death row.

What this is proving is that there is no deterrent to crime associated with the death penalty.

I'm having a little trouble reading this.

"Both death sentences and executions have become dramatically rare since 1973, despite the larger population of the state and the larger number of murders committed. In other words, at first glance, the death penalty seem considerably more arbitrary in terms of rarity of implementation today than when it was struck down by the Supreme Court in 1973." Other people spoke of the people who lost people to murders, whether it was their friend or somebody in their family. Last year, at the public hearing, 81 of those people showed up on a document that they all signed. Although they had lost people, they said that the death penalty brought them nothing but grief over the years, coming to back to testify about it every year and that it had given them no closure. They said there was no such thing as closure.

The death penalty is a deeply flawed policy and I welcome tonight's vote to repeal it. Justice should be, but is not, blind to race and wealth. The death penalty is not issued equally to all people who commit the same types of crimes. The sad truth is when a victim is white and the accuser is not, the prosecutors are more likely to seek the death penalty and juries are more like to approve it. Years ago, I read a book. It was called the Soledad Brothers, and in that book, they mentioned death-orientated juries. As far back as that, if you were black in certain states, you were convicted and you were going to go to jail and you were going to go to the death penalty or you were going to

jail for life.

Some of the things that have happened associated with the death penalty are terrible and we all know it. I heard people mention the fact that if the death penalty serves one person getting convicted and being executed is worth it. Well, I go the opposite way. If it says one person from getting off death row that doesn't belong there, I'm for it. The Innocence Project has proven over the years that 140 people were on death row that did not belong there. It was proven through DNA and other processes. Tillman was on -- was in jail 18 years for a crime he didn't commit. It cost the state $5 million. But I've never seen a man more -- more of a person that you want to live next to than Tillman. He wasn't even bitter after 18 years. I can't imagine that.

Some of the things we're talking about, we're talking about people's lives. We're talking about how you live. I heard people mention the Army and so on and so forth. I sent five years in the Army over 50 years ago and I was not a conscientious objector so you know how I feel about that.

I rise against the death penalty for the simple reason -- and this will be closing comment here -- the death penalty is permanent and when mistakes are made, there is no bringing an executed person back to life. More 130 individuals on death row have been exonerated over the last 40 years. The death penalty is also not a deterrent to crime. The 16 states without the death penalty have a homicide rate 25 percent lower than we do so you tell me what the death penalty does for you. It brings no closure to people who are victims. It brings no deterrent to crime. It's a costly situation and the people that are -- they have people in jail now who are still serving sentences for crimes that they committed connected with murder. Today, it was mentioned that there are still 900 still in jail. Fifty-seven percent of them are in population. I heard people mention that they were scared that these people from death row would be put in population and they are killers. Well, ladies and gentleman, you

have some of them that are in population now and we're dealing with it. We have to deal with it without the death penalty.

Thank you very much.

THE CHAIR:

Thank you.

Senator Frantz.

SENATOR FRANTZ:

Thank you, Madam President.

It is indeed a very, very difficult subject to talk about, arguably, the most difficult one that the circle has to deal with and I wasn't planning say too much about this, but Senator Meyer told a story earlier about his nephew and it's tragic. What I found interesting was that your brother is a believer in the death penalty, if I heard you correctly. And it's for that reason that I do rise. It's morally a very, very difficult issue for all of us to grapple with no matter where we come down on this and it's not a binary decision. One way or the other you're somewhere on that scale of grey whether you're in favor of it or not and, you know, for me, it's a little bit of a foreign area. I don't sit on any of the committees that have any jurisdiction over these matters. I'm more on the transportation, finance, et cetera side of things under this dome up here. And so, for me, even though it's very difficult to listen to all of the arguments and all of the anecdotes and stories that go along with this -- this issue, I feel like I've learned a tremendous amount tonight.

Senator Coleman and Senator Kissel, in particular, have shed a whole new light on all of the circumstances and details are involved in this issue and so, for me, it's been a real education. But back to the point, which is this: There are people who are the survivors of family members who have been tragically murdered.

We're dealing with specific cases here, recent cases here in Connecticut and it's those people I am very, very concerned about. There are excellent arguments against the death penalty. There are great arguments in favor of it. Again, there's no right or wrong answer, but there's a logical answer somewhere there in the middle of it. No one here is interested in taking or supporting a policy that takes anybody else's life in any sense, I don't think; however, we are tasked with grappling with the most difficult of subjects, particularly in the case of this death penalty. Are there circumstances so extreme under which it is justified and I have to believe that even some of the people who are going to vote for the repeal here may think because of logic that this is something that shouldn't be completely eliminated, but I still have a tough time living with it.

So I think it pains all of us to have to come to a decision on this issue one way or another, but the one thing to keep in mind is this, as you cast your vote tonight, this death penalty is rarely used. I understand it's only been used once in just a hair over fifty years. As Senator Looney pointed out earlier that there are 55 other people, one notch down, guilty of crimes where murder was involved or negligent homicide or whatever the case might be and we know it's not going to be used on them regardless of what happens tonight or tomorrow morning. So when you talk to the state's attorney, when you talk to other prosecutors -- and Senator Meyer probably knows a lot about this from his experiences -- why do we give away one of the great elements in a prosecutorial case that can be used to bring about confessions, bring about a higher level of punishment if -- if, in fact, there are circumstances and facts that we can now find out from someone who has been accused of this kind of crime. And it should be -- it should be noted that courts even though they're not necessarily supposed to take into account the desires and the feelings of the surviving members of a family or loved ones or friends of someone who is tragically murdered. What their feelings are -- but I do believe this -- and I believe that the courts do pick that up. If they don't

have direct conversations about it, they can sense because these trials go on for a long time. They can sense what the right thing would be in the mind of the surviving people in a family. And I do believe that the worst of crimes should be dealt with with commensurate punishments. And in the case of some of the ones that have been discussed here tonight, I think it does rise to the case of -- it does rise to the level of the death penalty being enforced solely because it brings about closure for those surviving members of a family in the case of some of the cases we were talking about tonight.

It brings -- it brings -- it closes the circle. It brings closure to them, not to us, to them. And these are very rare cases, but they do exist, and unfortunately, we're probably going to see more of those in the future. So I asked myself, you know, who are we to take away that ability to either bring about more information in a case or to actually follow through on that if that's what the surviving members want. I don't see that as -- so barbaric as many people have classified the death penalty as being. Over the last decade or so and more recently over the last three or four years, the United States of America through its defense department has hunted down terrorists. They've hunted down the worst, most heinous of them all and essentially executed them and that's Bin Laden and I, for one, didn't see protests. I didn't see marches. I didn't see anybody -- to be honest with you, I'm sure there were, but I didn't see anybody just in a random sample speaking out against what we did so I know it's not apples to apples and I know that these people are typically outside of our jurisdiction and are subject to different laws than we have, but the concept is essentially the same and for many of the people in my district in the town I live in who lost their loved ones in that attack on September 11, 2001, it did, in fact, bring closure. I believe 100 percent of the people related to the people who were killed in the World Trade Center.

Those of you who are against the death penalty can rest at ease certainly until we vote on this bill because

it's so rarely used, I mean, extremely rarely used, once in the last 50-some-odd years and no law or system is perfect, but I think if you listen to the lawyers and you listen to the prosecutors, they'll tell you that the Connecticut death penalty statute -- set of statutes is really well-crafted. It's useful. And, in fact, it saves many cases that might ordinarily go down the tubes because they don't have sufficient information. So with that, Madam President, I stand against the bill to repeal the death penalty only for those very, very small numbers of people that need this to feel closure in their lives.

Thank you.

THE CHAIR:

Thank you, Senator Frantz.

Senator Harp.

SENATOR HARP:

Thank you, Madam President.

I rise to support repealing the crime of capital punishment prospectively and maybe for a very different reason. I guess I disagree with those of you who believe that the death penalty is the ultimate punishment. I don't believe that it is or it could be because death is something that is the common dominator. It is something that we all face in our lives one way or another. And if you look at our experience as a state, for the past 30 years, we've had one person whose been executed and that person chose to die. That person chose to die so I think those of us who think that life in the situation that you're in on death row, which is the way that it will be for those who are charged with murder with special circumstances will be punished, will live and have to live with their crimes. You know, none of us know what happens to people when they die. All we know is that we fear death.

So I would argue that since death is something that we all face one day or another in our life, it can't possibly be the ultimate punishment, but life with two hours a day of recreation is punishment that has some -- at least one person asking for death as a remedy. I urge your support of this bill.

THE CHAIR:

Thank you, Senator.

Senator Doyle.

SENATOR DOYLE:

Good evening, Madam President. Good evening, Madam President.

THE CHAIR:

Oh, good evening, sir. Sorry. I'm trying to keep the list going.

SENATOR DOYLE:

I'm just trying to make sure you're awake up there.

THE CHAIR:

Okay, sir.

SENATOR DOYLE:

I rise to -- I rise in opposition of the bill before us. Like others in the chamber, I voted on this many times through my career in the House and the Senate. I've heard, you know, many discussions. I've attended many public hearings through the years, many debates in both chambers, many debates in committee. And today, I -- as many have said, I consider this a vote of conscious for all of us. Each of us has to make their own decision. I personally have not lobbied any of our colleagues on this issue. I respect you too much. I am not specific -- I have

talked to people. I've had intellectual discussions, but I have not lobbied anyone because I honestly believe out of respect that each of us has to make our own decision in what your conscious says.

Throughout the past few days and the past many years, I've always considered the death penalty -- I've been on a search for the intellectual truth of it and really that's where intellectual truth or the legal truth. And tonight, we sat through many conversations and discussions and presentations by my colleagues in the chamber here and I just want to comment on a few of them and some people have commented -- we've already discussed some of the points, but I apologize for those of you if you've already heard it before. But some comments trouble me when one individual said our death penalty is not working in Connecticut. We don't execute people in Connecticut. To me, that is -- and that was presented to us as an argument to vote for repeal tonight. To me, if a sincere presentation of that should be if you truly want to execute people in Connecticut, this Legislature or probably a future governor with a future Legislature could seek to address and amend the current law to deal with the issue of habeas. And I -- I'm not going to, you know, speak to you and say that was an easy challenge, but I do admit down the road a new Legislature could consider it.

In 1995, I was part of -- I was a rookie, but I was part of the decision to try to amend it and down the road, we could -- rather than use as an argument for repeal, we could tonight or in the future amend the legislation to try to make it more effective if that's the wish of some of us in the chamber and the person the professed to use that as an argument tonight to vote for repeal. Others presented the argument that it can lead to wrongful convictions. Well, it's true in some -- in many states, there are -- in Texas and others, there have been people who are on death row that have been exonerated. You know, in Connecticut, we have had some individuals, Mr. Tillman was exonerated for lesser crimes than the death penalty; however, I think it's clearly -- sitting here tonight,

I don't think anyone can honestly that our Connecticut death penalty law is ineffective. It is a deliberate law that's clearly effective in screening the cases. No one -- whether you're a proponent or opponent, no one can sit here tonight and say the 11 currently on death row are not guilty. I've heard that from public defenders and prosecutors and I think most of us here agree with that.

So to me, to say tonight in our debate that another grounds to oppose and support repeal tonight is wrongful convictions. If we were in Texas, I would agree with you. And I also, as an aside, I'm frustrated with a lot of the testimony presented at different public hearings where people present arguments about all sorts of flaws with the law when they're not considering the Connecticut law. They're considering other states. Another presentation which I -- and without getting into merits, others have discussed -- presented the issue of cost and savings if we pass this tonight. You know, whether that's a legitimate argument or not, I would just like to sincerely say to you if, in fact -- and as it appears this death penalty -- our death penalty will be repealed, OFA says over time we should save $5 million dollars. I look forward to the day when we actually have significant cuts in the public defender's office, state's attorney's office and corrections. So I am skeptical if we will ever see those cuts. We may see some, but I look forward to the day where we actually have significant cuts in our budget. I'm skeptical and I do not think that day will ever come, but maybe that's because I'm jaded in many years of government, but I -- it's presented as an argument tonight and I -- down the road -- and I'm not an appropriations person, but I honestly will look forward to seeing those savings if, in fact, this -- the death penalty is eliminated tonight or down the road after House and the Governor get involved.

Another issue -- and just to -- I'm not going to get into the merits of the underlying law, but I do want to try to focus on -- I've spent the day reviewing many cases, speaking to many individuals with more

knowledge than me on this than individuals that actually spent time in court arguing these cases before our Supreme Court and of course we're all talking about today the legal future of the prospective-only provision of the law before us and the question is whether or not that will be upheld down the road. In many discussions today and many -- I've read other documents. I've read some testimony from the Judiciary Committee. People are saying -- they're citing the New Mexico Supreme Court has -- and it's been presented to me on several occasions that the New Mexico Supreme Court has come down firmly on this decision and said that prospective is legal under their law.

After spending much time in actually obtaining the quoted the decision, to me, when I think of a decision, I think of a well-reasoned decision with a holding and a long argument in it. The referenced document, the decision of the New Mexico Supreme Court is a two-page document with three paragraphs of writing. Rather than a decision, it's an order. It's a court order stemming from a pending -- a pending penalty phase of a case in New Mexico. A motion, I believe, was made to bring in the issues of the -- as the case was pending, there was a -- the Legislature passed a law similar to ours tonight so in the middle of a case, a motion was made. This decision that's been presented to us that it's a clear New Mexico Supreme Court decision is nothing more than an order. It's an order by the New Mexico Supreme Court to move forward with the penalty phase. It's not -- there's no -- I'll show my colleagues. It's a one-page document that just says move forward with the penalty phase of this pending action before the -- before the lower court in New Mexico.

As a result, at the end of the penalty phase of those Astoria -- Astorga case -- Paul Astorga -- Michael Paul Astorga in New Mexico, assuming if this person gets life or the death penalty, but if he gets the death penalty, he will have -- his first appeal I suspect will be an appeal directly on the merits of the prospective application only of the New Mexico. So

just to be clear, the New Mexico case that's been discussed in many -- many forums today and yesterday is not a true decisions as I have read in law school and many other of you have read. Even if you're not lawyers, you're reading cases because you're up here.

Others also referenced the recent Rizzo case from our -- from the Connecticut Supreme Court and referencing that as -- that the state of Connecticut -- our Supreme Court has focused on the prospective application and the decision of the New Mexico case. To be honest, the Rizzo case, that issue in a footnote, Footnote 88, this case is not about the prospective application of the death penalty because, of course, in the Rizzo case and when this was debated in the fall, this Legislature did not pass it. It was simply a passing reference in a footnote to the New Mexico statute in place. It doesn't even get to the merits of the constitutionality of the New Mexico statute. It simply says that statute exists so it's a reference in a footnote to case. I submit to you, this is not -- as some have written -- and I don't question the merits of anyone because in the world of legal, you always present arguments, but it was presented verbally and in writing that this is a reflection of our future Connecticut Supreme Court on how they will handle the prospective application of our death penalty. I submit to you it's nothing more than a reference to a statute in New Mexico.

The reality is that our Connecticut Supreme Court over the next few years -- you know, I'm not sure, maybe two or three years -- will -- there will be -- if this law is passed, there will be immediate new appeal by some -- one of the 11 on the -- on our death row to the test the question of the prospective application only of our death penalty. And our Supreme Court like all like minds can disagree but our Supreme Court will consider the facts of the case and then apply the law. They will apply the law of our statutes and I submit the intent of this chamber and the House and Governor will be crystal clear that we want it to be prospective. Of course, that is a clear legislative opinion that will be presented. They also will

consider the facts. They also will consider the U.S. Supreme Court -- I'm sorry -- the U.S. Constitution and the Connecticut Constitution. And I submit to you the Connecticut Constitution, which is a good thing, does give more rights and is broader interpreted than our U.S. Constitution. And with those laws and facts, our Supreme Court whoever is sitting up on it in three or four years will make this decision.

I personally am not confident that the prospective application of this law will uphold and stand through that decision. Other minds smarter than mine can get up and argue with me and disagree. It's my opinion that it will not hold. And there has been references to our Supreme Court has held the other prospective applications of the law, but I submit to you lesser charges are not the death penalty, are not the question of life and death. We are dealing with the case of life and death and is it equal protection under the law on the date January 1, 2008, a person murders somebody and gets the death penalty and then two year -- four years later, a person does the same act, and he does not get it. I question whether our Supreme Court down the road will support that. But again, I do respect people that disagree with me. I personally think I'm right. I do not want to be right. I'll be honest. I hope I can -- I am proven wrong down the road and I hope the people who disagree with me are correct that our prospective law will be held up by our Connecticut Supreme Court, but reasonable minds can disagree and I disagree with the position that our statute will -- a prospective application of our statute will hold.

Now, one of my -- it may surprise many, one of my mentors through the years is Richard Tulisano. He was a good friend of mine and I learned a lot from him in this process, especially when I was first elected. You know, I met him and he disagrees with my position today, of course. And he would -- I can hear him looking down at me, yelling at me now using his name in this debate, but I learned a lot from him. I respect him. And I think if you were ask him deep down, he might even respect me, but I think what we're

doing today like others have said, I've tried to focus on this bill before us on an intellectual level. I think what we're doing today is not intellectually honest. I think today and I think Richard Tulisano would agree that we should be having an absolute up-or-down vote on this piece of legislation, take the politics aside and it should be up or down, but this being the political world, that's what we're voting on today.

So again, I just want to thank all of you for listening and I just again ask all of you to continue to show the respect to each of us and vote your conscious. Thank you, Madam President.

THE CHAIR:

Thank you, Senator Doyle.

Senator Cassano.

SENATOR CASSANO:

Thank you, Madam President.

It's ironic that I'm going to talk on the death penalty and it's almost midnight. Two years ago, all of us around the circle ran for office. We all filled out questionaries. We went to public forums. There was no question asked more than where we were on the death penalty. We anticipated that we would probably be voting on this. I can remember having a discussion with my wife saying no matter what happens when it comes I can't imagine that we will ever make a more personal vote than this particular vote. Tonight, we're going to do that.

Many of you are attorneys. You understand the legal aspects. I never realized how legalese was until I sat in my first committee chair -- as a chair in a committee and I started to read the bills. I couldn't understand most of them because they written in a language I never saw before. "Legalese" I call it. I'm a sociologist. That's what I have done for a

career and it's helped me with this kind of decision. We're supposed to look at life and help shape lives. Senator Kissel talked about the prisons. Back in 1994, Alvin Penn sat in that chair right there. He was the chair -- Senate Chair of the gang task force that was put together to look at public safety. It was the Public Safety Committee and Judiciary Committee that asked for this and, in fact, many good things came out of that gang task force. I was on that as a sociologist. I felt I should do it right. So at that time, I went to every prison in the state of Connecticut including the women's prison in Niantic, the juvenile facilities and so on.

I saw -- I spent months, months seeing first hand what it's like because I had no idea. Ironically, while I was doing that, I was asked if I would teach one of the course up at Somers and so I go in there either five to nine or one to five. There is nothing more eerie than as you go in to teach a class knowing you're going to be out in four hours, the clang of those doors behind you as you go into the next set of doors into an area and then back out. Even though you know you're getting out, it is an intimidating feeling. And some of you who have taken tours, you know that. You know that. Maximum security was something to see. The recreation area was, in some case, not as big as this. Don't call it recreation. You get out and walk around. It's not like you're out there with a jungle gym and all these other kinds of things. It's a barren, empty space. It's very limited.

This bill wants to continue that and keep it very limited. We must remember as we debate this bill there are a lot of things that you might like to see, but we do have a constitution and we do have a Supreme Court and that Supreme Court says you have two recreation each year -- each day and you have to provide humane treatment. I've had constituents say throw them away and lock up the keys. They shouldn't get any recreation. They shouldn't get anything. It's unconstitutional.

Is it a deterrent? I don't know what kind of a

deterrent it can be if we can go 50 years with just one execution and he asked to be executed. He asked to be executed because waking up every day knowing that there is another day and another day and another day. For a lot of us, that's probably as stiff a penalty as you will every have and there are some of us that hope to live to 90 or 100 years old and go through that crime in their own minds day after day after day.

During the year, we had visits from many people; those who were for and those who were against the repeal of the death penalty. There is a group of more than 50 survivors. Survivors lost somebody, a loved one of their own family, many of those people visited us. I can remember a woman in a small group saying the bible tells us we shall not kill. There was never at tablet that said the government can. I've tried to learn from that and I've tried to do what's best. I don't know if I'll ever feel comfortable because I don't know if any of us can making this decision, but I'm going to do what I think is right and I think repealing it and I think making somebody spend day after day thinking about what they've done is as much a deterrent as anything that we have on the books.

Thank you.

THE CHAIR:

Thank you, Senator Cassano.

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

Obviously, I spoke earlier and offered an amendment so I think I know where each and every one of you -- or each and every one of you know where I stand on this issue. Because I mentioned Todd Risso and I mentioned Russell Peeler and Ivo Colon, but I didn't mentioned Sedrick Cobb who raped and murdered Julie Ash. I didn't mentioned Richard Reynolds who leaned up

against a Waterbury Police Officer named Walter Williams to see if he was wearing a bulletproof vest and then shot him in the head. Because these 11 individuals, according to this bill, will still get the death penalty or so we believe, but Senator Doyle mentioned and I tend to agree with him, that that may not necessarily be the case. But I only mention that because this morning on my way up, I said I would put a little Facebook post, just a little unofficial poll of my own, saying that we would be in session today debating the repeal of the death penalty. I didn't say where I stood. I just said that's it. Usually, I put a Facebook post, I get about three or four people. That was a joke, by the way.

But today, I had 85 people comment on my Facebook post and out of all of -- because some of you are my Facebook friends. You can certainly go check it out -- there were only 8 or 10 who actually said go for the repeal. The majority overwhelmingly said do not repeal and it got quite emotional at some times. But forget my poll, that was extremely unofficial and only on Facebook. Quinnipiac University -- which we all use all the time, because we are in politics and we look at these polls and they're on capitol report and we see them all the time -- came out with a poll on March 21st of this year, which is a couple weeks ago, that says a legislative proposal to abolish the death penalty is a bad idea. Connecticut voters say 62 to 31 percent do not repeal. Women say keep the death penalty 58 to 33 percent. Men support the death penalty 66 to 29 percent. As we've seen in past Connecticut polls, Connecticut voters still think abolishing the death penalty is a bad idea and no doubt the Cheshire murders have added to that.

In March of 2011, the same poll came out, Connecticut voters support 67 to 28 percent, inching to a new high, said the Quinnipiac poll. In October of 2010, 65 to 23 percent, as opposed to 2005, which was 49 to 37. In Connecticut, voters favor the death penalty of Steven Hayes by 74 to 21 percent and Joshua Komisarjevsky by 72 to 22 percent. So ladies and gentlemen, this is representative government. We

have to answer to our constituents for a whole host of votes and we all get the e-mails and I'm -- we all know we got the e-mails on education bills and the pheasant stocking and all the other issues that come about, but this is a big one. And Connecticut voters overwhelmingly do not believe in repeal so this is something that we will have to remember when we go to the polls in November.

But my last point is this, Madam President, because Dr. Petit was here today and I've been in his company many times, but he said something that really struck me today and you all know what he said and you all know what you spoke when you stood up, but Dr. Petit, the abolitionists never mention the victims. So think about that.

Thank you, Madam President.

THE CHAIR:

Thank you.

Senator Duff.

SENATOR DUFF:

Thank you, Madam President, and good evening.

First, I want to just thank Senator Coleman for -- and Senator Kissel for the debate tonight and for all members of the circle. Senator Coleman has showed quite a bit of stamina and obviously thoughtfulness in bringing out the bill. I'm not even sure if he even had dinner tonight. And Senator Kissel for his passion on the issue and really everybody's comments although I will take exception to those who would question my morals and my morality on this issue and others in the circle as well.

I will say that when I first came to the Legislature this was not an issue that I had a deep opinion about. I would say that -- I would think that maybe many others, maybe not in this building, and those who have

been in the gallery for a long time probably don't share that opinion, but I know that others may feel the same way when you ask them about the death penalty, there may have been a certain issue that provides a strong opinion, they may not that strong idea which way or another they want to go on this issue, but that's the great part about being in the Legislature. It provides us as members of the House and Senate the ability to really think and ask questions and think about our positions and how those positions can evolve and actually that's happened to me as somebody who really didn't have a strong opinion one way or the other when I came to the Legislature, I've been able to think about this over years and really come to a conclusion that I think has been good for me and hopefully for the rest of the debate.

If you think about some of the goals of the death penalty, and I believe that comes down to about three different goals, one is that we look at the death penalty to reduce crime, we hope that it provides victim's families with some closure and we also think that in some way that the death penalty may actually cut costs in our government by putting to death those who commit a crime and therefore they won't take up space in our prisons any longer. But again, back to really the good part about the Legislature, the fact that we're able to think about issues and to contemplate and talk to others and to take the time that we need and reflect before we vote I think provides us a great opportunity to not have a knee-jerk reaction or an ambivalence to certain issues. That -- for me, anyway, that part where I clicked on the death penalty for repeal was, as I mentioned a few years ago when we had this debate, was a book I read called Ultimate Punishment by Scott Turow and he talked about his position on the Illinois Commission where he was an attorney who like many others may not have had a strong opinion one way or the other on the death penalty except maybe when he saw a terrible crime and, you know, thought that those persons may be should be put to death, but other times maybe he didn't have a strong opinion.

But he really brought me and other reads of that book through that whole process of those who have been accused falsely, who have made false confessions, those who are innocent or maybe had been in jail for a long time and proven to be innocent, almost to what Senator Gomes had said and also the lack of closure for victim's families for the death penalty but maybe there had been better closure if somebody had been in prison for the rest of their lives and I thought that book was really a very telling story of how one person can go from almost an ambivalence on an issue to having a very strong opinion based on those three goals that I had mentioned. So when we look at the statistics and we look at the facts that we see that the death penalty, in fact, does not reduce crime; otherwise, we could probably argue that Texas and Florida will be crime free. We asked -- he had asked victim's families if they had closure -- better closure when somebody had life in prison -- the criminal had life in prison rather than going through the ups and downs of the appeals process in the 20 or 30 years in any state where somebody may actually put to death and they said we have better closure when somebody is put to death and we can hopefully try to find some solace and maybe move on.

And in fact, as we saw today in the bill that the state may actually save money by abolishing the death penalty. So I believe that here we are today on repealing and the fact that I've been able to not only listen to this debate, speak to my colleagues, be able to reflect on this issue for so many years that I feel very comfortable today in supporting repeal of the death penalty and urge my colleagues to do the same.

Thank you, Madam President.

THE CHAIR:

Thank you.

Senator Leone.

SENATOR LEONE:

Thank you, Madam President.

I wish to offer my thoughts on the bill, as amended, so that I can share how I've some to my decision making process on this very important debate, but first, I do want to acknowledge to all the families and all the families of the victims that were taken away in any manner especially in any heinous manner, they deserve our solace, our condolences, but they also deserve a vigorous debate to flush all aspects whether you're for the death penalty or against it for the bill as amended. I think anything less than that would not do true justice to what we're trying to accomplish here. I also want to thank the chairs, Senator Coleman and Representative Fox for doing their due diligence and also the ranking members and all the members of the Judiciary Committee and I had a chance to listen to a lot of the debates, not that I could attend each and every one, but like a political junky that most of us are, I would watch it on CT-N to make sure that I could catch it when I couldn't be here. And again, I think that goes to underscore the point that we should be listening to all aspects.

And I had to question myself because in the past I have voted to not repeal the death penalty, but coming up to the Senate chamber this year -- this past term, I should say, I wanted to really, truly understand why I felt that way and so I didn't declare that I was for or against it as this topic was being brought forth once again as to what we should or should not do. And again, I wanted to hear from both sides. I wanted to take the time to listen to everybody. I've listened to those who are adamantly for it as well as those that are passionately against it. All are valid. There should be no judgment made on how you feel about this issue. They're all real emotions. They're all real facts for people. Yes, it's only been done once in 50 years from a person who begged, who pleaded for it to happen. In that instance, we can even say that they should not have been given it so that that would have been a harsher crime, but at the same time, that same argument can be used to say that it's a tool. It's

a deterrent. It's something in the toolbox for prosecutors.

So while trying to thinking of what we should do from my perspective, I took the time to visit death row and other facilities to see for myself what it is and more importantly what it is not. I wanted to dispel any rumors of people who would say it's recreational. There's luxuries. There is privileges. And let me be clear, neither one is a happy place to be. Death row is dank. It's dreary. It's constrictive. The cells are very small. No window to really speak of. And pretty much no mobility even with the two hours of your own personal time, which in the personal time, it is smaller than this circle. And when we visited in order to see what a cell looked like, that -- that cell -- the person who was in that cell had to be removed and be in an area where they would have their recreation and they were in an enclosed area just walking around circles. For them, that was their recreation so it's not a walk in the park by any stretch of the imagination. Then we went to visit the general population, and yes, there is a lot of prisoners walking around in that area. That doesn't mean that they have freedom. It doesn't mean that they have luxuries, many privileges. And any little privilege that they do have, they don't want to lose it and that gives some measure of control for the correction officers to manage a crowd of so many inmates with so few guards so you also have to consider the guards doing their duty and not being overrun.

But at the same time, that wasn't enough to say why we need to repeal the death penalty because for heinous acts, extreme cases, there does need to be a level of distinction between a so-called normal crime and any other heinous crimes. And so then the notion of trying to bridge that discrepancy, the bill as amended has created a new classification, this life without possibility of release, which in essence is life on death row because there will be a whole new program. They will not be in general population. They will be in a more restricted area with less privileges than those on death row. And again, this is where the

concept of whether even those are on death row, will they ever truly be executed. The appeals are endless, 40, 50 years, only one. That's the part that I was struggling with because emotionally people that commit heinous crimes, crazy crimes they should be -- they should be executed, but we can't seem to do it. We can't seem to make it workable.

And if you do try and make it workable, then you have constitutionality issues that come into play, their rights. And then you have the mistakes that could have been made so by having the bill as amended with a harsher reality if you're going to be in prison for the rest of your life, the key thrown away, you will die in prison, period. That's a pretty harsh sentence. It is a distinction from general population. And if there were a mistake to be made, it could be corrected in 10, 20 years if DNA evidence comes into play and so forth. With the death penalty, that would -- that can't be true. In listening to testimony, you know I tried to -- you try and put yourself in the family's shoes and the surviving victim's shoes. I don't think you can really do that, but you try because you want to try to come to a decision that you hope is the best decision that you can live with, that you can support, that your voters and your constituents can at least understand. Even if they disagree with you, they can at least understand how you came to your decision and respect you for it. And if they don't, you know, they have -- they have the option to vote another way and that could be the case and I believe I would have to live with that and anybody else here would have to live with that.

But future convictions will not be in general population. It's going to be not a happy place to be. It is life on death row and I don't think it will ever eliminate the pain for any family or victim. Maybe, just maybe, it may ease the pain somewhat. It won't eliminate it. It's not going to fix the Cheshire murders or any other murders, but it does meat out justice. There will be no celebrity serial killer. We won't hear of them again. There won't be endless appeals. They have the luxury of getting out of their

cell to go to a courtroom and have victim's family members have to relive their nightmare over and over and over and nothing ever comes of it or nothing ever seems to come of it, I should say.

And so, in the end, that's kind of what did it for me. That we have -- we have a distinction. In the past when it was being proposed to abolish, it was a simple abolishing, no distinction and that's the part that I couldn't ever come to a decision to support, but now there is this distinction, a harsher reality. And it can be used as a tool in the toolbox for prosecutors and the appeals will not end. They will continue, but I suspect that they will hold up and they will remain where they are. And the fact that the family of victims, those are the ones that I listen to the most and I had some that said they still want the death penalty, but I had more that said they didn't see it as helping them. And I spoke to many people. I spoke to constituents. I spoke to church personnel. I've spoken to Republicans and Democrats. And this should not be a bipartisan issue. And -- so again, I think every person has to come to their own conclusion and I just want it to be clear that I tried my best to reason, to be methodical to come to a decision that I believe is the right one, that we have the ability to provide an alternative, but it is not one of lesser justice. It is justice. It is restrictive. It is an alternative to a death penalty that does not seem to come to the conclusion that was intended and it's for that reason that I'll be supporting the bill.

Thank you, Madam President.

THE CHAIR:

Thank you.

Senator Musto.

SENATOR MUSTO:

Thank you, Madam President.

I rise to support the bill somewhat reluctantly. I realize this is an emotional issue. I realize this is a very divisive issue. If I had a little chart or a little -- maybe a knob on my desk where I could vote 41 percent in favor of the death penalty, 59 percent against, something like that. I might do it. I have a red and a green button. It's 100 percent one way or the other and I have to come down on the side of repeal and therefore supporting the bill.

The arguments I've heard in favor of repeal I do not -- excuse me -- against repeal, in favor of the death penalty, I simply don't find persuasive enough that if we were voting today on whether to impose the death penalty that I would vote to impose it. We should really be starting with what we should be doing rather than where we are and trying to backtrack. Sometimes we get too far down a road. It's hard to turn around and realize why we're there in the first place. The death penalty, one of the reasons for it is apparently the deterrent effect. People cite the deterrent effect. There is no one on death row right now who was deterred by the death penalty. There is none of those 4,000-something murders in the -- in the period since we've had the death penalty, none of those were deterred by the death penalty. The people in Texas and Florida and other states that actually have and apparently impose the death penalty with some efficiency, those people were not deterred by the death penalty.

Even the people -- the people who went out and deliberately committed a murder, premeditated, thoughtful, planned murder like when we were talking about Russell Peeler who actually got his brother to go do it and his brother had to think about how he was going to do it and plan it. There was no deterrence there at all any more than there would be a deterrent I would think of spending the rest of your life in prison in your own cell without any possibility of getting out. Nobody wants that and if you look at some the laws in New York, some of the drug laws in New York and some of the federal laws about drugs, you realize that the reason that some of the mafia and the mob that

we were talking about earlier were also trying to killing each other was because when someone got caught with those, the deterrent was so strong not to go prison for the rest of your life for drugs. There was no death penalty. They were willing to kill each other to get around that. The deterrent is simply not there in the death penalty any more than spending the rest of your life in prison behind bars. Not even bars really these days, behind a wall with really no contact with another person.

The relationship of self-defense toward punishment has been made and they're two completely different things. Self-defense is just that, defense of your self, defense of others. We all agree that war is different from retribution from revenge and the death penalty doesn't protect people any more than having the person who has committed a heinous crime away, again, behind a wall for the rest of their life. The death penalty is somewhat unique. People say that the punishment should fit the crime, but it's the only one where we do that. We don't take from people who are thieves. We don't beat someone up if they commit assault. We don't rape rapists. But we want to kill killers and we don't even kill all killers. Some killers don't die. It's only certain ones that we consider very bad and even -- when we try these people -- we just had a case in Fairfield in Senator McKinney's district where someone walked into a jewelry store and shot two proprietors. That person was on trial and if had been able to plead out, he would have gotten life in prison. They tried him for the death penalty and were not successful. That person is going to spend the rest of his life in prison even though he had killed those two people.

The reality of the situation, as Senator McLachlan pointed out, is that most of the cases in the criminal justice system are handled by plea bargains and realistically life in prison without the possibility of parole, if you plea bargain that down to a certain extent to say murder -- life, what we call 60 years, even if you get the 15 percent reductions -- it's got nothing to do with the good-time credit, but the 15

percent reduction, you're still doing 51 years in prison. It's a serious thing to spend 51 years in prison. That's an entire lifetime. That's two generations. The death penalty is only even tried to be imposed when prosectors are so sure of it that they can have a conviction as in the Cheshire murders where they literally found them coming out of the house. There was no plea bargain there. It was simply to get the death penalty imposed that that trial was even held even though one of the defendants had wanted to plea bargain out. They had nothing to offer so the idea that plea bargains would be facilitated by this is also somewhat false.

As far as protecting corrections officers, I'm not sure, I don't know of any, perhaps there was one -- a corrections officer who was killed by someone who was then put on death row because of that murder. For the most part, I haven't heard that today and I've been listening carefully to the debate. I just don't know that. But all the people I've heard of on death row killed outside of prison and were then placed on death row. And as far as what we're going to ensure in the future, we can't ensure anything in the future. We can't ensure that these people will ever be put to death. We can't ensure, well, really anything. We can't even ensure the sun is going to rise tomorrow at this late date -- this late time. But we expect and we certainly plan that we will not just be letting people out of jail willy-nilly.

There are people here who are on the fence about the death penalty. They have to come down on one side or the other. I am -- I am firmly in that camp, but looking at where we start, looking at what the penalty should be for these crimes, what we should be doing as a society for these crimes, it seems that life in prison without parole is a -- is a proper societal reaction to these crimes. It protects those of us from these criminals because they are going in and they're not coming out. And what it does not do is bow to the worst emotions in its revenge, retribution, anger and hate and that's what I think drives a lot of the debate for the death penalty. And I will be

honest, if someone killed someone in my family, I would want them dead. I might want them tortured before hand, but that doesn't mean that as a society we should be doing that or as a state.

I do appreciate all the debate today and I'm proud to be serving in this body where we can have not only this kind of debate, but such well-informed and eloquent debate from the members. Thank you, Madam President.

THE CHAIR:

Thank you.

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Madam President.

I stand opposed to the underlying bill before. I won't repeat, frankly, what I said the last time we debated this issue. I came to the state Senate as a freshman in 2009 and I didn't know frankly that I would develop a friendship with someone who I had no inclination that I would get to know or frankly be friends with. But this man had a beautiful wife and two daughters. Jennifer Hawke-Petit and her beautiful daughters, Hayley and Michaela, part of a beautiful family and part of Connecticut's tragedy, Cheshire's tragedy. God forbid this ever happens in Connecticut again. I've been staring at a picture for the last hour or more of Joshua Komisarjevsky -- I always thought it was jevsky, it's jevsky -- scary picture, very scary picture. His partner in this partner in this violent crime, Steven Hayes, were both convicted and sentenced to death. That was an appropriate sentence and I believe that the state of Connecticut should continue the death penalty.

As I said, God forbid that this tragedy could ever happen again to someone else and what will those families think if the death penalty is not available so I'll vote no to repeal. Thank you.

THE CHAIR:

Thank you, Senator.

Senator Markley.

SENATOR MARKLEY:

Thank you, Madam President.

You know, I think more things than we want to admit are a matter of instinct or a matter of our gut and not so much a matter of our reasoning that we reason to explain what it is which we believe deep inside of us and I think that may well be true on an issue like this. I would say simply that all my life the death penalty has seemed like an appropriate response to certain kinds of crimes. I think that society has a right and a maybe an obligation to eradicate people that do certain things that are not to be tolerated, not simply to be prevented or to be punishment, but insofar as possible to be eliminated. We had some examples of that when Senator Kane was talking of crimes that were painful to hear about that make you feel that the proper response is the execution of the wrongdoer.

I had read the New York Times most of my life and there was a long period when executions started again where they ran every time someone was executed an article about it and I used to read them with a certain trepidation wondering if I was going to read something that would make me sorry that it had happened and it didn't happen. In fact, the descriptions of the crimes were often much like what we've heard today. Things in some cases that have stayed with my ever since that I can't put out of my mind because of the horror that was involved in them. And let me say, I also believe that the death penalty is a deterrent. Statistics are perhaps the most arguable thing. We try so hard to quantify things to get at the truth and yet we never do. It's -- and we use the ones that work for us at the time that they work so if we have polls

that show that the people are behind us, we're proud of it and when they go the other way, we defy them and we talk about how the death penalty doesn't work because it doesn't work -- because the states that have the death penalty have higher murder rates, I would say the same argument might be made about gun control, that it doesn't work because the cities that have the most gun control have more crime. Well, there are other factors involved in all cases.

If I were point to one thing to go back 80 years in history, I think I'd say that the application of the death penalty to kidnapping after Lindbergh's baby was taken brought that practice for profit to a complete end and if I had -- didn't cite any other statistic or any other historical example, I'd say that. How much of a deterrent it is, I don't know. How worthwhile it is as a deterrent, I don't know. But I would be -- it would difficult to convince me that it isn't.

The last thing I'd say about it is it has attracted particular opposition because of the fear that a mistake would be made and maybe I'm unique in finding that a rather curious concern when the alternative is what Senator Cassano described as something possibly worse than death to be in prison, to be imprisoned all your life. One of the reasons I suppose I'm conservative and suspicious of the powers of government is because it seems to me that the government has such power to make mistakes and it is bound to make mistakes. And I think the mistake of taking away someone's life by imprisonment whether it's for 10 years or 20 years or for the entire stretch of their life which can still happen by error and will happen and undoubtedly has happened is a tragedy on the same level as executing an innocent person. In either case, you've taken a person's life away from them. I think that -- I think that it's an appropriate punishment in certain circumstances.

I saw the sticker today "Repair, Not Repeal." It reminded me of -- I saw that slogan at the time of the income tax. This time I would support it. I think

that it should be changed. I do not think it should be eliminated. I thank you for your attention.

THE CHAIR:

Thank you.

Senator Prague.

SENATOR PRAGUE:

Thank you, Madam President.

Madam President, it's no secret that I have agonized over making a decision about this issue. I've agonized for months and I have spoken with people whom I had never met before, even James Tillman came to my office. Anyhow, Madam President, I'm going to give you a little history of my support of the death penalty. Way back when, Michael Ross' -- one of Micahel Ross' victims was my neighbor's granddaughter and the loss of that granddaughter devastated her. I was so angry at Michael Ross. I only wanted an eye for an eye and a tooth for a tooth and I thought the death penalty was very appropriate for him. And so for a long time, I supported the death penalty. And then along came James Tillman, where our justice system had made a mistake and sent him to prison where he spent years of life for something he did not do and I thought to myself, what if he had gotten the death penalty for something? You know, at that point, it's too late.

So I began to rethink the death penalty and voted for repeal last time it was before this chamber when then Governor Rell vetoed it and then last year I was also prepared to vote for repeal based on the fact that I did not want to live with the thought that I could be -- by not repealing it that I could involved in sending somebody to prison to the death penalty for something they did not do because mistakes are made in our judicial system. And recently, there was an article in the paper about Mr. Ireland who also was accused of killing Barbara Pelkey, I believe it was,

and sent to jail where he spent around 20 years of his life for something that he did not do. And not too long, on 60 Minutes, there was this horrible 60 Minutes program where a man was accused of bludgeoning his wife to death and there was a five-year -- they had a five-year old son and that little boy was asked by the grandmother if his father was there and the little boy said no it was a man with a long beard. And that information was given to the prosecutor and the prosecutor withheld that information. And this man was found guilty of that murder. I was so appalled to think that there were people in our judicial system, a prosecutor who would have done such a terrible thing.

You know, our justice system is anything but perfect. So last year I was prepared also to vote for repeal and then I did have a meeting with Dr. Petit and his sister and their attorney. And the attorney said if you vote for repeal now, it's going to be next to impossible for us to get the death penalty for these two monsters who were involved in the slaughter of the Petit family. And out of respect for Dr. Petit, I said -- I came back and told Don at that time that I could not vote for repeal. I couldn't because certainly Dr. Petit had suffered enough and I wasn't about to cause anymore problems. So here we are at this point in time and the realization that there are people who are falsely accused of doing something scares me when I think that that could possibly lead to someone's death. And on that basis, I am going to vote for repeal because I cannot stand the thought of being responsible for somebody being falsely accused and facing the death penalty, you know, based on the fact that I'm not voting for repeal.

So for me, this is a moral issue. And realizing that mistakes are obviously made, I don't want to be part of a system that sends innocent people to prison or innocent people to death row. I did go to Northern and saw death row and saw how horrible it is there and spending life in prison without the possibility of parole on death row in a situation that is just like death row is very, very, very severe punishment. So -- and that was our Amendment "A." So I am going

to support repeal because there are too many mistakes made in our justice system for me to risk doing anything else. Thank you, Madam President.

THE CHAIR:

Thank you, Senator.

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you, Madam President.

A few years ago, I was waiting for the train to New York and I sat down on a bench next to an elderly man and we started to chat. Elections were coming up in a few months and so our conversation, no surprise, turned to politics and to the state of our country and we ran through the usual topics and then he turned to me and he said something that I've thought about over and over again ever since that day. He said that between the tough economy, the rise of hate crimes, the vilification of this group or that group by otherwise good, moral people, and the seemingly chronic need to blame somebody for society's problems, he said he was afraid not for himself but for our children. It is only a short step from here to there he said to think of some people as less than human and once we think of people as less than human it becomes easy to kill them and then what kind of society do we really have.

For me, that's really the question of today's debate. What kind of society do we have and what kind of society do we want for our children? Like many of the other members of this circle, I've agonized over this issue. I've thought about it, debated it, researched it, talked to friends, family, strangers. I've listened to the debate here today and I greatly appreciate any respect all of the opinions and the views that I've heard. I've spent a lot of time soul searching and lying awake at night thinking about all of the facets of this issue and like Edith -- like Senator Prague,

it plagues me to think that we could put an innocent person to death. I've asked myself the question over and over again: Does a moral society execute people?

And as I've confronted this issue and advanced my understanding and thinking, I've come to the conclusion that both the realities of the death penalty, as it is applied, and the moral issues that it raises dictate that it be abolished. Benjamin Franklin said it is better 100 guilty persons should escape than that one innocent person should suffer. The goods is that by eliminating the death penalty we're not letting any guilty person go free, but we are making sure that we do not execute anyone who is innocent. As we know, the criminal justice system makes mistakes. It's been chronicled here. Everyone has talked about James Tillman in Connecticut. We know that hundreds of people have been released from death row with evidence of their innocence and while I think we'd like to believe that the criminal justice system is fair, that somehow all those appeals will actually prevent an error, we know that's not the truth.

In Florida, where there is the death penalty, former Florida Chief Justice Gerald Kogan stated after 45 years of working in that system, quote, there is no question in my mind that convinces me that we certainly have executed those not guilty of the crime for which they have been executed. Is that the society that we want where we execute innocent people? And if our society executes an innocent person, there's no possibility of fixing that error. There is no turning back. Haven't we then become the evil we are trying to eliminate?

People have talked about the death penalty whether it's a deterrent or not. With all the studies that have been done, I'm not convinced that criminals actually consider the death penalty when they are committing crimes. In fact, states without a death penalty statute have significant lower murder rates than their counterparts with the death penalty. If you look at regions, the disparity becomes quite

pronounced. The south implements 80 percent of all executions in the country and has the highest murder rate; whereas, the northeast implements less than 1 percent of all the executions and has the low -- excuse me -- the lowest murder rate in the nation. In order to have a just society, we have to have laws that apply equally to everyone and we know that the death penalty is meated out arbitrarily and if you don't think that is the case in Connecticut, I urge you to think again. Last month a number of us from the circle, as you know, visited death row and the maximum security prison that houses the criminals who are sentenced to life without the possibility of parole. On our way there, we were handed a listed of criminals and the crimes they had committed. They were heinous, horrible, unspeakable acts and I looked at that list and I thought surely each one of those people deserve to die.

And then I looked at the heading on the paper and I realized that those were the criminals who had gotten life without the possibility of parole. The people on death row had also committed heinous, horrible, unspeakable crimes, but there was virtually no way to predict who would get life and who would get death. It was completely arbitrary and it is completely arbitrary based on the luck of the draw, race, economic status, geography, ethnicity, a good lawyer, some unknown factor that made the jury more or less sympathetic. Is that justice? And the death penalty I don't believe is necessary for public safety. The criminal has already been caught and tried. He is removed from society and no longer a threat to anyone's safety. The death penalty doesn't bring back the victims of their crimes. And we certainly can punish criminals and protect the public safety without it. But people don't get me wrong, these people have committed horrible crimes and they deserve to be punished. And with the amendment that was offered at this beginning of this debate, we will have a very severe punishment, a punishment so horrible at least one person chose to die instead.

While these arguments alone call for the repeal of the death penalty, for me, the most compelling issue is

the one that lots of people don't want to talk about, the moral question. The question the old man on the train asked about: What kind of society do we have and what kind of society do we want to have? Last September, like many of you, I watched the Republican presidential primary debates. At one of the debates, the moderator asked Governor Rick Perry how had felt about the 234 executions that he had presided over in Texas, more executions than any other governor in modern times. And before the Governor even had a chance to respond, the crowd cheered. The crowd cheered. What kind of society cheers death? I understand people who believe that the death penalty is justice, but to cheer? And then to add insult to injury, Governor Perry was asked do you ever struggle to sleep at night? To which he answered, no struggle. I don't struggle to sleep at night. And then he talked about how he thought the system was fair. And again, the crowd cheered.

Even if the criminal justice system was without error, which we know it is not, has it really come to the point where criminals are executed without even a second thought? I think the death penalty calls to our basest instincts. You only need to think about the crowd cheering at the debate about executions to know that the death penalty degrades our society. Imposing the death penalty isn't really about the criminal. It's about how it makes us feel. Like Senator Musto, I can imagine that if somebody harmed by family, I would want to harm them back, but I want my public policy to be better than me. Like the old man at the train, I fear for our society when people can cheer execution or feel nothing or feel like it just doesn't matter if society kills. Even when that person is no longer a threat to our safety, when we go down that path, we lose something as a society. We lose our humanity.

Last month, I received an angry letter from a man suffering from a fatal disease. He wrote that he had never done anything wrong, yet, because of his illness, he was sentenced to death and no one could commute his sentence. Then he wrote it isn't fair

that he, an innocent man, should get a death sentence -- death sentence and the Legislature -- we would consider eliminating the death penalty for murderers. And I could understand his anger and his belief that repealing the death penalty somehow meant that we were showing compassion murdered; whereas, no one could really show the same compassion for him. I thought a long time about that letter until I realized that repealing the death penalty has nothing to do with compassion or even the criminal for that matter. It has everything to do with what the act of killing does to us, the law-abiding members of our society. Most people are good, moral people trying our best to abide by the laws and the rules of our society. We teach our children to be kind, to be honest, to reject violence so when we also say it's okay for us to kill even when there is no longer any threat, we erode the very morals to which we aspire.

It's a small step from here to there said the old man. It's like a smoldering ember that slowly burns a hole in all that is good in our society. So what kind of society do we want for our children? We know that the criminal justice system is broken. We know all the arguments that logically support repeal, but for me, the most compelling reason to reject the death penalty is to set ourselves on the path to the kind of society we really want for our future. I never did see that old man again, but if I did, I like to just tell him this: I want something better for our future, for our families. I want to know that in the face of terrible evil we will hold on tighter to our humanity, that when our faith in each other is challenged, we will work harder to fulfill our obligations to one another as human beings, that we will stand for justice for all, that we will raise each other up and not descend to the level of criminals. We cannot confront darkness with darkness and expect light.

I hope that one day when my children look back on this vote, they will view it with pride. I know that today we took a step towards being a more civilized and just society for all. I am proud to support the repeal of the death penalty. Thank you, Madam President.

THE CHAIR:

Thank you.

Senator Hartley.

SENATOR HARTLEY:

Thank you, Madam President.

And normally, I might start by saying good morning, Madam President, but I don't think it's actually a good morning. I think it's a somber morning for us here in the circle and in the capitol. Madam President, I've never served on the Judiciary Committee; however, for my tenure and many years here, serving the people of the city of Waterbury both in the House and the Senate, I have had this issue before me and had to make a decision. And like everyone here in this circle, I have no arrived at my position easily or quickly nor has anyone else here in this room.

I recognize and I applaud all the work that has gone in this session and last session on this legislation and I recognize the importance and all the work that was done to try to be very certain that this legislation for legislative intent is clear about it being prospective, but we all recognize and it has been said here numerous times this afternoon, this morning and now this evening and now this morning again that we cannot be certain that this is going to be clearly prospective. We cannot be certain that this is going to pass the constitutional muster, the test. And if it's ruled unconstitutional and all those who are on death row then are availed to the opportunity to have life without parole and now this new designation, murder with special circumstances, and what does that mean? Yeah, 22 hours of confinement, but yes, you can then leave and work in an confined area, the area in which you're housed, but nonetheless, it's not being confined, therefore it's really not 22 hours, and yes, you can receive a pay for doing that. Granted, it's a humble, meager pay, but nonetheless, it's pay. I

think many of the victims find that pretty offensive.

And yes, you can have a television and you can be entertained. I get it. It's only local cable or local television shows, but nonetheless, it's television and it's the outside world and it's entertainment. And yes, you can have visitors. I understand you can't have contact, but you can have visitors and then I think of all the victims because all those things quite frankly are gifts. It's a gift to be able to see what's going on in the outside world. It's a gift to be able to get up and to go to work even if you're in a confined space. It's a gift when you have pay and discretionary money. It could be very meager and it could only be enough to buy a Hershey bar, but nonetheless, it's personal discretion.

When those individuals are talking about -- have taken every discretion away from their victims, and for matter, their family, but, Madam President, I wasn't planning to speak tonight, but the reason I am is because despite the fact that I have an established record on this position, I stand here today with unfortunately another reason. I knew the Petits. My daughter was a close friend of Hayley Petit. We had sleepovers together. We had birthdays, celebrations, graduations, softball trips, basketball tournaments, college acceptance. I remember when Hayley got accepted to college, the college her father had gone to. And then I, you know, tried not to read all the accounts in the newspaper. I couldn't look at the pictures. I hid them from my daughter. She came one day with People's Magazine. They were on the front cover of People's Magazine. We couldn't talk about it for a long time and then we talked about it for a little bit and then we would talk about it but couldn't finish talking about it.

And I thought to myself after I had from -- of course, because the Waterbury PD was involved in the investigation -- you know, and I guess the rule in law enforcement is if you can get away from your attacker or the perpetrator, you get away and you run and you get away and try to get help. Well, Jennifer got away.

She went to the bank with Steven Hayes after hours of being tormented and her girls -- not even her -- but her girls, little Michaela -- so she went to the bank to get some money because -- and she believed that by withdrawing this money she was going to give it to these two individuals and then this nightmare would be over for her and her family. She probably, who knows, at that point believed that Dr. Petit was dead because he was in the cellar and he had been unconscious for hours having been brutally clubbed with a bat. So she at that point in her mind must have thought that she was the head of the family and was making the very best decision so she went to the bank when the bank opened. They waited in the parking lot and when the bank opened, they went in and she made the withdraw. And she went back in the car with Steven Hayes. She could have at that point ran. She could have ducked. She could have done anything. She could have gotten away from him, but she went back and I think over and over in my mind what would I have done?

Why did go back? And knowing Jennifer as I knew her, she was a mother first and foremost. She was also a nurse at Cheshire Academy so she was a nurturer her whole life, but she was a mother that was so involved and so dedicated to her kids and she thought that by going back that that would be the best thing, because she believed in what these folks to her, you know, give us the money. This is a robbery. We're going to leave. And she took the money out and she went back and the rest of the story is what you all read in the newspaper. But she went back because of the two girls, her two little girls.

And so I stand here before you tonight to say that for all the other victims, if for no other reason but for that reason that that not to allow Steven Hayes or Joshua Komisarjevsky to have the opportunity to have their sentence commuted to life imprisonment, if for no other reason it is for that reason I stand in opposition to this legislation, Madam President.

THE CHAIR:

Thank you, Senator.

Will you remark? Will you remark?

Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President.

Madam President, there's a saying that you're never too old to learn. And I believe in the past two years I've learned quite a bit.

As many of you know, my wife and I lost a grandson two years ago. And many of you who could came to the services in Rhode Island. And it's not a day or week goes by where you don't think about that loss. And it didn't become apparent to me about how other people feel until I met with victims' families during the whole evaluation of this issue.

And there was a young woman whose mother was murdered, strangled by her mother's boyfriend. There was a mother whose son was knifed to death and there was another mother from New Haven whose son was killed with a 357 magnum. And they met with me in the evening at the Woodbridge Town Hall to speak to me. And I was shocked by their appeal to me to repeal the death sentence.

And I tried to understand why this was such -- startling to me. And they explained that the appeal process time and time again made it very painful for them. And there were times when they go to the courthouse and the case would be continued and then they would go home and go back again.

And I finally realized that I could understand what they were going through, because even though the bill before us is very good legislation, it does eliminate for capital punishment that agony process of appeals. And as I talked to them and understood how they felt, I became educated and I understood that even though the bill as written could bring human closure, there is never closure when you lose a loved one -- because my wife and I think of our grandson Joseph just about every day.

And so as they talked to me and explained why they wanted

to us to vote for a repeal, I understood that, where they were coming from. And recently, like some of you in the circle, I visited Northern, which I found a very haunting experience. I am still troubled by the grayness of the concrete, not one speck of color; seeing Hayes in his cell through a little small windowpane. And I don't think I would ever get over that.

And I tried to compare that with my earlier convictions before Joseph's death about, gee, you know, people should be executed for their crimes. But then learning, becoming educated and receiving, I can't tell you how many hundreds of communications -- and I understand this is a process -- and speaking to bishops and rabbis and priests and ministers and other people, I became, in my mind, educated in regards for us as a society.

And while some would say doing this bill may be soft on crime, I'd just like to remind those, you know, those of you about Northern Prison, death row. To me, that is hell on earth. How one retains his sanity in an environment like that is incomprehensible.

And the amendment that we approve tonight along with Senator McKinney's amendment, you know, really presents to us, I believe, the right way to go. So I stand in support of the bill.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator.

Will you remark? Will you remark?

Senator Coleman.

SENATOR COLEMAN:

Thank you very much, Madam President.

Madam President, I said so at the inception of this debate, but I guess it bears repeating just so that it's clear. This was a matter of conscience for me and I think it's a matter of conscience for everyone in this body, proponents and opponents alike. I want to make that very

clear.

And I am very well aware that it's a matter of conscience because I think that there are some of you who are going to vote for this bill as amended and are very torn about that and have been very torn. I'm well aware of that and I appreciate how you feel and I sympathize with how you feel.

I suppose there are many occasions as we go about the business that we've chosen to be involved in when there comes a time to make emotional decisions, very difficult decisions, decisions that have a lot to do with matters of conscience. But I guess this is what we've signed up for. And so today, for many of us, is one of those days. And I just want to make the point that I appreciate each and every one of you who've -- who is going to make a decision and who's participated in this debate.

While I'm making my final remarks, I also want to say that to the extent that I exhibited any testiness or irritability or impatience during the course of this debate, I apologize for that. Let me make it very clear once again that I think it's a tremendous experience to be able to work with each and every one of you on issues of this nature and oftentimes on issues much easier than the issue that we're confronted with tonight.

With respect to Senator McKinney's amendment, I'm very, very gratified that that amendment came forward today for two reasons. First of all, because one of my objectives was, on the basis of some of the research that I've done, to make a declaration that our intent is to have this piece of legislation be prospective. And to incorporate that specifically into the bill I think goes a long way toward accomplishing that objective and giving some guidance to the court to allow them to differ to our determination.

But the second reason that I'm happy that that occurred is because, once again we've been able to collaborate on an issue of magnitude. And despite our sometimes very extreme differences on this kind of an issue, somehow or another we find a way to work it out and to work together, even if ultimately on the final vote we're not all in the same place.

As I indicated, my primary reason for supporting this bill,

yes, it's a matter of conscience, but I recognize the fallibility of our criminal justice system. And because the ultimate penalty, death is so you irreversible, like many of you, I don't want to be in a position to have contributed to the execution of some person that turns out to be innocent.

And we've gone through a list of those people who've recently been exonerated in this state after having been wrongly prosecuted and convicted and incarcerated, but another example of that has occurred just within the last month or two. A gentleman by the name of Hubert Thompson was serving time as it turned out for an offense that he did not commit. And he was recently exonerated and released from one of our correctional facilities.

On the issue of the New Mexico case, I suppose that it is -- I don't suppose. I know after having served so many years in this General Assembly that it is possible for reasonable minds to differ. What is clear to me about the New Mexico case is that the Defendant, Mr. Astorga evoked the jurisdiction of the supreme court and did so for the purpose of trying to use New Mexico's Legislature's repeal of their death penalty as a basis for avoiding prosecution and being subjected to the death penalty.

What is further clear is that in that situation the supreme court said, this case can go forward and he can be prosecuted and subjected to the death penalty.

So here we are and I believe we're poised to join 16 other states and the District of Columbia. It feels to me very much like the right thing to do. And in fact, it feels as if there is a trend that has started, continued here in Connecticut and spreading around the country. Because California, Maryland, Kansas and Oregon have similar initiatives which they are pursuing and I think there's some likelihood that they will end up where I perceive and actually hope that we'll end up by the conclusion of this early morning.

And finally, it occurs to me that, you know, there are a lot of, not just people, but organizations that need to be thanked because of their involvement in this issue. And certainly the advocacy organizations like the Connecticut Network to Abolish the Death Penalty has been very active on this issue.

There have been many victims or survivors of victims who've weighed in on this issue, many of whom were actually in support of repeal. I'm gratified that many of the people that served on the Judiciary Committee were complementary toward me and my cochair. I want you to know that that feeling is extremely mutual.

It's been a tremendously enjoyable experience working along with Senator Kissel and Senator McLachlan and Senator Welch, Senator Bye and Gerratana, Senator Gomes, Senator Meyer, Senator Doyle. And I suspect even after this we'll survive this and we'll have further opportunities to fight again.
Oh, and I can't leave out the Senator Roraback. Almost did, but I apologize. Senator Roraback has always been a very thoughtful contributor to the work of the Judiciary Committee.

And similarly, there's some folks in the House. My cochair is Gerry fox and he's a very conscientious, hard-working and humble individual. It's a pleasure to work with him as well as the Vice Chair, Representative Holder-Winfield and the ranking member, Representative Hetherington as well as all of the other members of the Judiciary Committee. It's been a great experience.

And finally, I'd certainly be remiss -- I think in large measure part of the reason we're here right this early morning on this bill is because of the leadership of Senator Williams and Senator Looney who, when discussions regarding this bill were stalled and there was some confusion as to what should be the next step or what could be the next step, the two of them intervened and came up with answers for questions or used their office to influence opportunities for people who were perhaps undecided and torn, to experience something that would contribute to their insight on this issue and perhaps reach some level of comfort concerning casting a vote on this issue.

So there are a lot of people to thank. And I'll just conclude by thanking each and every one of you for, number one, your graciousness and your willingness to weigh in on this issue. And hopefully Connecticut, as a result of the vote this evening, will join those 16 other states and the District of Columbia in the repeal of the death penalty

statute.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator Coleman.

Senator Fasano.

SENATOR FASANO:

Thank you, Madam President.

Madam President, I rise in opposition to the bill but before I do I'd just like to thank Senator Coleman and Senator Kissel for their outstanding work on judiciary on an issue that's very emotionally charged and has a lot of sides to it and a lot of different levels.

And I think it's also important to point out that when you have these types of issues -- we had people in the gallery up there who've been here throughout the entire proceeding today, which demonstrates that the interest that a lot of people have in what we're doing in here and the emotion that's charged with this, and we thank them for being part of the process.

The reason why I'm against the bill is a number of reasons. One and foremost -- and I just can't get over this hurdle -- in my view it is unconstitutional. You cannot treat similarly situated people differently under the context of the law. Now we tried to fix that by the saving clause and all that does is attack our local jurisdiction or statutory jurisdiction, but it doesn't talk about the constitutional jurisdiction. That's the first issue. I just can't get over that hurdle.

The second issue that I have difficulty with is the idea is that we don't want to make it retroactive. So those folks who want to repeal this, no matter what it is, in other words, repeal the death penalty and therefore it would be repealed period, with nobody subject to the death penalty clause knows that that can't make it through this Chamber. They know that that's an impossibility.

So we've now crafted something for political purposes in

order to carve out those eleven people so we can make it work. When I honestly believe and I think there are a number of legal scholars out there who believe that it is unconstitutional to carve them out and they're going to end up without being on execution.

And that may be okay for some of us in the Chamber who are going to vote in favor of this bill, but for those who are sitting here saying, I can vote in favor of this bill and still protect these eleven, it's not going to happen. But then you've got to look even further. Those who say, I don't want anybody to be killed, I don't want anybody to be subject to execution, I'm okay with it, excluding the eleven. I can't -- logically no matter which way I go I come to an illogical conclusion, which means it's crafted for another purpose. It's crafted to pass.

Now the eleven, the other issue I have is what we're saying is to the eleven who committed the crimes for which they're on death row and for those who are going to support the bill, say, okay, it's for them -- it's okay for them to be executed, you're never going to see a crime similar to the eleven who are on death row ever again in the state of Connecticut, ever ever ever ever ever ever.

If anything unfortunately our society is more violent than 20 years go. Just look out in California last week. And what we're saying is that's never going to happen again. That thing in Cheshire is never going to happen again. All the other crimes are never going to happen again. That's just illogical.

Or conversely we're going to say those victims of those eleven matter more because we sent those people to death -- than the victims who are going to come up who are going to have the same crimes against their families, but you know what? Yes, you had the home invasion very similar to Cheshire, but you know, you just came after this bill, so we don't care about your victim so much.

I can't follow the logic in this. There's not a parallel universe for which you can follow and say, I can go from A to Z and everything I'm thinking about is constant. So those three reasons get in my way.

I've also gone to death row, but I went to death row back when the first came up. And I went to two prisons, one

on death row. And I went to one of the cells and the inmate wasn't there. It's that guy Breton, I think his name is, who killed his ex-wife and his son. And he wasn't there. And we toured the whole facility and I came back and he wasn't there. Now he's supposed to be there 23 out of 24 hours.

So I finally asked the prison guard, where is he? And they said, well, number one, he abides by the rules. So he takes care of the library, does a great job with that. He takes care of cleaning around the cells and passes out the books to the inmates.

And I said, well, what's this 23 out of 24 hours that I'm hearing from other people? And they said, Senator, here's the issue. What they do in the outside to get them in here is your issue. Once they're inside our walls we have to have a society because if I kept them locked up 23 out of 24 hours, whether he's a good guy or a bad guy, whether he fights or doesn't fight, whether he obeys by the rules or not obey by the rules, there's no incentive for him to obey by the rules because he's locked up 23 out of 24 hours. There's no incentive.

So inside our jail we have our own society. And we reward those who listen to the guards. That's how we have to work our society in here. You came in clean slate and that's how you get it.

So we pass a bill that says, when we lock you up you know what? The amendment said, we're really locking you up. We don't mean we're going to half -- we're really going to lock you up. We don't know that. As a Legislature that's our intent. None of us is going to sit there and check this prison. Did that guy stay in 23 or (inaudible)?

Was he isolated? Was he followed with people. No. They have their own rules and that makes sense because if you're in the prison system to protect these guards and give them the best they can, you have to have these types of rules. It makes logical sense to me. That's why we have them in society. You've got to have them in a prison.

So these rules that we have, well intended, and I would suggest a feel-good measure, it's not the reality of what's happening, at least not what I saw. And from the time I was there, and I was there from 9 a.m. and I left at 4:30,

he was not in his cell one time. Not one time. I did see him towards the end when he was walking by, but that was really about it.

The other issue is the tools issue. If someone has a maximum sentence -- and we talked about this; I'll go through it very briefly -- of execution. And not to be executed they'll settle for life behind person without no possibility of release. And now you suggest that is the maximum. Why wouldn't the person go to trial? Why wouldn't you?

The worst you could get is what the offer is on the table without a -- with a trial. So the worst that you can get is the same offer that's in front of you. And you know what? For someone who said, well, if we take this away they get to go to appeals, they get to leave the jail -- well, when you get life in prison without the possibility of release you get to appeal that and get to do all those other appeals.

All you're doing is lessening the crime, but the same appeals go with the same maximum sentence because it's the maximum sentence. You can't do any worse. So roll the dice. Who knows? Witness doesn't show up, witness passes away, procedural motions, evidence issues, chain-of-evidence issues. There's a thousand things that could go wrong in a criminal trial, one, because the burden is so great, but number two which you could lay a whole slew of appeals.

The next thing, the New Mexico issue, it is a two-page decision. This is the entire Mexico decision that's been heralded as an analysis of the constitutionality of retroactivity of execution. And within that it say, you can proceed to trial and tell the jury to use those facts to determine if the person should be executed. Basically what they're saying here is, it was an interlocutory motion, which the court said, hey look, you don't even know if you're going to reach that issue yet. So proceed and if we reach that issue we'll talk about it later. Commonly done, kicking the can down the road when you don't have to decide an issue, especially of constitutional muster, until much later. You don't do it now. You kick it down on the road.

Also we found out about the attorney general's office of

New Mexico had e-mailed back and said that they never reached a constitutional issue. So they've never reached the constitutional issue, period, end of sentence. No matter what footnote appears, no matter who said in what pleading, it is clear and admitted they never reached the constitutional issue.

Before -- and I'll finish with this -- before the Cheshire murders I really was in between on whether I'd vote against the death penalty or not. I really, really was. And I didn't know what I would do if it came up. And I probably was naive enough to never envision that a Cheshire murder of the grotesque nature could take place, couldn't even envision that happening.

And I told the story one other time that after the Cheshire murders my daughter, who is now 17 -- obviously was younger than -- we went out to dinner. We came (inaudible) garage door open.
And she wouldn't go in the house until I checked the entire house attic to basement, everything. And had to come back and tell her it was safe. And she was just a kid.

And the impact on her because of what happened at Cheshire was remarkable to me. And it stuck in my mind. And I don't know if you want to call it emotion or not, but it stuck in me that that has changed my daughter's life forever of what happened. And she's nowhere -- we live in North Haven, nowhere close to Cheshire in terms of where the murders took place, but it had such an impact on her. That bothered me a lot.

And then I started thinking about it. Is it easier for me to look at Dr. Petit, or any victim, but let's use Dr. Petit, because that's the one we most owe, and say, they strangled and raped your wife, they tied your kids to the bed, they poured gasoline over them, they did unspeakable things to them, lit the gasoline and burned them on their bed alive; I don't think they should die for that crime?

Or is it easier to turn the two people and say, you did this, you deserve to die? Maybe it's me. I find it a lot easier talking to the two offenders who did this crime and telling them to die than to tell Dr. Petit that they don't die.

I don't put myself -- what it? And you're right. You

could never say, what it, because you can't put yourself in that position because you just don't understand the whole -- but I try. And if it happened to my family I think I would react that way. I think I would.

And it's good for me, and I represent my constituency, why would I say, yes, I would want it that way, but for everyone else, no, I don't want to it that way? And that's the way I kind of looked at it. Maybe it's too simple. I don't know.

But the way the bill is presented now, the constitutionality, the fact that it's illogical, the fact that it's crafted for political purposes to get through a chamber it would normally not get through if it was a total abolition of the death penalty tells me that's not the right thing to do.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. Madam President, rising to speak in support of the bill as amended.

First I wanted to commend Senator Coleman for his extraordinary work on this bill and so many other issues. This debate today and tonight is, I know for him in some ways, the culmination of 30 years of advocacy and leadership on this issue during his tenure in the General Assembly, House and Senate together. And it is something I think his excellence in so many ways we all celebrate.

Madam President, Senator Meyer, speaking earlier this evening quoted from Justice Blackmun's dissent in Callins Versus Collins, from this day forward I no longer shall tinker with the machinery of death, a 1994 case. Elsewhere in that decision Justice Blackmun elaborated on his reasons for that statement. And he said, it is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save

the death penalty from its inherent constitutional deficiencies.

The basic question, does the system accurately and consistently determine which defendants deserve to die, cannot be answered in the affirmative. It is not simply that this court has allowed vague aggravating circumstances to be employed, relevant mitigating evidence to be disregarded and vital judicial review to be blocked. The problem is that the inevitability of factual, legal and moral error gives us a system that we know most wrongly kill some defendants, a system that fails to deliver the fair consistent and reliable sentences of death required by the Constitution.

Madam President, there are so many flaws in our system that can erupt in ways that should be shocking to us. There are good-faith mistakes. We know that there have been instances of misidentification by victims and by eyewitnesses. We've heard discussion this evening and this afternoon of the case of Mr. James Tillman, of Kenneth Ireland, of Miguel Roman, most recently of Hubert Thompson, mentioned by Senator Coleman. All of these defendants were improperly convicted in some cases because of the mistaken testimony of victims who misidentified them, as in the Tillman case, and also the Thompson case.

Studies have consistently shown that victims and eyewitnesses are subject to error at alarming rates and this is something that is counterintuitive. Because conventional wisdom is that victims and eyewitnesses may be so focused on what they see in a shocking crime that all the details of that crime will be seared forever into their memory in an accurate way.

And the reality is very different from that. It is actually true that the trauma in so many ways causes mistaken recollections. And unfortunately their testimony is so often compelling to the jurors that the possibility of that mistake is often not recognized. Studies have especially shown that when a gun is used in the commission of a crime the victim is so often focused on the gun that his or her recollection of the person holding that gun is often vague and often mistaken.

So to say that we have not had egregious errors or mistakes in our death penalty cases is, to me, not a comforting

argument because we have the Tillman case, the Ireland case, the Roman case, the Thompson case. Just because we have not been able to identify an egregious error yet in a death penalty case is not a source of comfort.

It is almost as if we were in the situation of someone who finds a pistol, not knowing whether it is loaded or not, starts to spin the cylinder, pulls the trigger a couple of times and then assumes that it is safe to continue playing Russian roulette because the gun has not yet fired. That's the situation that we are in.

In addition to the good-faith mistakes that can occur, there are also the bad-faith things that can happen, the deliberate suppression of discovery by prosecutors, perjured testimony in some cases that may or may not ever be discovered, or may not be discovered in time to do something about it.

And also the vagaries of the trial process itself, that fact that there may be a much more compelling and persuasive prosecutor in a given case than a defense attorney. This is part of the reason why we have 1 people on death row, but 57 people who committed similar crimes in similar circumstances who were given life sentences and not the death penalty. There are so many ways in which subjectivity comes into this case.

In addition, Madam President, some have said, well, we have a good and we have a responsible death penalty statute. Actually our statute was, I think, hampered by a change that occurred some years ago. The original death penalty statute adopted in Connecticut to comply with the supreme court decisions in Furman Versus Georgia and Gregg versus Georgia after years of moratorium and states then altered their death penalty statutes, our revised death penalty statute first provided that if a mitigating factor is clearly determined, that fact would take the case out of the death penalty category and would result in a sentence of life imprisonment.

Unfortunately, in my view, this General Assembly later changed that statute and that standard to provide for a weighing and balancing of mitigating and aggravating factors. Meaning that in some cases the mitigating factors might slightly predominate, meaning that life would be the result. In other cases the aggravating

factors might slightly predominate, meaning death would be the result.

And all of this can be part of the subject balance of persuasiveness and subjective factors; how it strikes one jury, how compelling or persuasive a prosecutor is in a given case, as opposed to a defense counsel. That's why we have those 57 people, as opposed to the 11, fifty-seven, who in some cases perhaps entered a guilty plea. In some cases the prosecutor decided not to pursue the death penalty, and in other cases the jury decided that the mitigating factors slightly predominated, perhaps resulting in life.

So we have to take all of that into account, Madam President. We should recognize that this is an issue that we must approach with humility, recognizing that there is error and flaw even in the best system that we have been able to devise.

And Madam President, I've always felt that there was a considerable amount of irony and incongruity in the fact that many of those who are advocates for the death penalty are actually advocates of limited government in just about every other circumstance. But yet in this case they're advocating for giving government the ultimate power, the power to take a life in a situation where the degree of certainty required for that awesome decision will always elude us.

So Madam President, I believe that this bill is absolutely essential, that we must pass it this year because our system is too fallible to give the power of life and death.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator.

Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President.

Madam President, one of the things I wanted to address

starting out is, you know, there have been questions the last time we had this debate I believe in 2009, a debate that went on for some 11 to 12 hours. And some even inside the circle, but others outside say, you know, why are you debating this for so long? And especially when you know what the outcome is going to be. Well, we know where the votes are going to fall.

And my answer in 2009 and my answer now is because we all know that as elected officials whose very first act is to raise our right hands and be sworn into office to uphold our laws and our Constitution, we have an extraordinary responsibility. And I can think of very few, if any votes that evidence that extraordinary responsibility that we have than this one.

I remember saying in 2009 I knew then that my vote to maintain the death penalty and that my position in favor of the death penalty could one day lead to someone's life being terminated. That's an awesome responsibility and it's one that I and I know all of us in the circle take seriously.

So that's why it's a long debate and that's why I think almost everyone in this circle has spoken, which is not common in our debates. But I'm glad that people did choose to get up and talk about all of the various different reasons and histories we bring into this from personal to legal to other things in between.

This is in many ways a vote of conscience, a vote of where your moral compass leads you. And I don't stand in judgment of anyone's decision on this case. And I hope that others don't stand in judgment of where my moral compass takes me. I've tried to listen either here or in my office to most of the debate tonight, especially I guess what we would call our closing arguments on the underlying bill and passage.

And I listened to Senator Slossberg and I was at one point sitting here trying to put myself -- I guess it was a train car -- if I was listening to that older gentleman about what kind of society we wanted to live in. And I first thought I want to live in a society where there aren't people like Steven Hayes or Robert Breton or Mr. DiMeo. I want to live in a world where there aren't people who so willingly and heinously and purposely take the lives

of others. And I think we all want that.

I also think I remember watching, maybe on CNN or one of those shows, that debate that she referenced. And I guess I was surprised to hear the cheering, but I think you can see that maybe those people didn't cheer because they don't value human life, but maybe some cheered because they do. Maybe they cheered because they value those lives of the innocent people who are murdered and whose lives are taken. And that's where my moral compass takes me.

I view the ending of innocent life through a murder as the different -- as different, fundamentally different than the ending the life of someone who is not innocent, like Michael Ross or Steven Hayes or Robert Breton. That's where my moral compass takes the.

I admit, I cheered when I saw the radio -- not literally cheered, but inside, when I learned that Osama bin Laden had been captured and killed, executed by our government. And I think most Americans were happy about that, whether you lived in a state with the death penalty or without. He was never arrested, read his Miranda rights or tried by a jury of his peers and had appeals. But we took his life because we believed that was just and the right thing to do, to protect our country. And I don't feel bad about it.

My journey in looking at the death penalty from a public policy perspective or whether it was the right thing for our society, started a little bit later in life, but before I entered the State Senate. It really probably happened in my first year at law school in, you know, criminal law class.

And I remember our professor -- although I think Senator Slossberg referenced Ben Franklin -- she didn't reference Ben Franklin, but gave that theoretical question of, is it better to let a hundred guilty people go then put an innocent person in jail? And I remember answering that question, yes, it is. And I believe that to this day, because the very idea that someone has their freedoms and liberties taken from them who's innocent is perhaps one of the most dangerous things to our free democratic society.

But beyond law school I then went to the chief state's

attorney's office as an intern. I actually worked in part on a couple of murder cases that were on appeal, just doing legal research; nothing significant as a law school intern. And after law school I found myself as a law clerk for our State Supreme Court, perhaps the best year of my experience as a lawyer.

And there clerking for Justice Palmer he was issued to write the majority decision in the Robert Breton case. And we went through thousands of pages of documents and evidence that were brought out at trial. And I saw inside that appeal process that happens with our death penalty. I saw all of the work that went on by the prosecution and the defense in our system.

And despite all the flaws that people have talked about, we have a pretty amazing system of justice and I think perhaps is better than anywhere in the world. That led me a lot to think about the death penalty and whether it was constitutional, whether it was just. And my experience from that case helped inform my decision.

We've talked a lot about a lot of issues regarding the death penalty. We talk about whether it's a deterrent. Well, there are some studies that say it is and there are some who have studies that say it's not. I fall down on the line, I think as Senator Markley said, that in my gut I believe it is. To what degree? I don't know and whether or not that's worth having it, I also don't know. But I think we can agree to disagree as to whether it's a deterrent or not.

I've heard people argue that well, maybe this new crime of life in prison without the possibility of release and the new confinement is a harsher penalty. I don't know that. I do know that at every instance when someone is facing the penalty phase of a murder trial, a capitol murder trial, they fight the imposition of the death penalty.

They don't ask for life imprisonment -- I mean, they don't ask for the death penalty; they fight for life imprisonment. And I think that speaks to the one exception of Michael Ross, that the death penalty is feared as a harsher penalty by those who face it than life imprisonment.

I've heard people say -- I think Senator Gerratana mentioned that the idea for some this is closure by not having endless appeals. I think she's right. For some it is, but clearly for some it's not. And we've heard from families and victims and survivors of homicide and murder who are on both sides of that issue. The only thing I can speak to that is I know I can't put myself in their shoes. So I can't argue that what we're doing here today brings closure or doesn't, because I think that's up to each individual who's in that position.

I can speak, though, to the idea that there are endless appeals and that this ends this. That's not accurate. People who are on death row who are convicted of capital felony murders do not have more constitutional rights to appeal than those who are in prison for murder. There will be just as many habeas appeals by those who are imprisoned for life without possibility of release as those who are on death row.

There may be, and I would suggest probably will be some who will appeal this new penalty as being unconstitutional or cruel and unusual. Because as I understand it I don't know if there's any other state who has these confinement rules. And one of the standards used to determine whether something is constitutional under the 8th amendment is evolving standards of decency. And if we're doing something that is harsher with respect to confinement than any other state is doing, that might be stricken down as well.

So what I do know is that the appeals won't stop. What I do know is that the legal process will continue and be lengthily even after the death penalty is repealed. It will just be different arguments made in the appeal. So this will not shorten what's happening in our court system.

I've heard people talk about the application of the death penalty and whether it's arbitrary and discriminatory. Well, our supreme court has ruled on the death penalty in Connecticut and looked at many challenges regarding the application of the death penalty and whether it's arbitrary in its application, and has ruled that it is not. That's the decision of our courts.

There is a pending appeal, as I understand, as to whether or not the supreme -- the death penalty is applied

discriminatorily. And if the supreme court rules that it is, it will be struck down and a lot of this would have been moot. But I know you can't say that because there are 11 people on death row who face execution and 57 other people who did something similar who aren't, that therefore it is proven that it's arbitrary, is incomplete.

Senator Musto referenced the double murder in Fairfield, Mr. DiMeo; walked into a jewelry store, the Donnelly's. I don't know anyone who grew up in Fairfield, as I did, who didn't know the Donnellys. They were beloved in town, wonderful people. Walks in for what reason? Maybe to steal money -- I don't remember or know -- murders and kills a husband and wife.

He wasn't given the death penalty in Connecticut not because of some arbitrary decision or because of other reasons. He was not given the death penalty because he was somewhere outside of Connecticut and we could not bring him into our jurisdiction. And the only way they would agree to waive extradition and bring him into Connecticut was if the prosecution agreed not to try to sentence him to the death penalty, but to agree to life without parole.

I bring that case because it's a real example that none of us know those 57 other cases. None of us know. None of us know whether the prosecutor had to make a determination whether some of the evidence was perfect or not. None of us know what decisions led those prosecutors to reach a different conclusion.

We know that there's -- there are two gentlemen in our prison system right now, one, Mr. Cipriano who would not be there but for our death penalty. Why? Because as Senator Kissel spoke to earlier, a constituent of his I believe, it was, correct? Was murdered and executed with others and the murderer faced the death penalty. The murderer agreed to plea to life imprisonment in exchange for giving evidence that was necessary to convict Mr. Cipriano who hired him to commit the murder.

When we pass this repeal and there is no death penalty in the State of Connecticut, I want you to imagine that case happening again. Now what does the prosecutor have to bargain with that gentleman? He either has to give him something less than life imprisonment without parole, without release, which means he may someday get out of

prison, or he has to decide, I can't go after and convict the other murderer.

So it has been used as a tool and we know that there are people in jail today because of that tool. And we know that there's a murderer who's not free because of that tool.

We've talked about mistakes in our criminal justice system. I don't want to be part of a system that has innocent people incarcerated whose freedoms and liberties are taken away either. I listened intently to what Senator Looney said and I think quite frankly what Senator Looney's arguments were is that -- is in some ways a condemnation of all of our system.

I'm no more comfortable with the prospect that someone might be on death row who may be innocent than I am in theory with someone being put to jail for life. And yet I get beyond that theory to the facts of where we are in Connecticut and all of the cases that Senator Looney and others referenced did not involve the death penalty. Maybe those are the statutes we should worry about.

Senator Gomes referenced and others have referenced the work of the Innocence Project and they are to be applauded for their work. Not one of those cases happened in Connecticut. So unlike Senator Looney, I am comforted that in Connecticut under our death penalty statute with the exhaustive appeals process that we have, that there is no one on death row who is innocent and that there is nothing that could ultimately ever prove their innocence, and that we have a system that, unlike most other states, if not all other states, does as much as can be done to ensure that there isn't innocent life taken by execution.

So yes, in theory would anybody want to vote for something that could possibly lead to the execution of an innocent person? Absolutely not. But we're not dealing with theory. We're dealing with the facts that we have, not in Illinois and not in Texas and not in Florida, but here in Connecticut. And here in Connecticut it's not in dispute. There is no evidence that anyone currently on death row is innocent.

I started talking about the fact that I do respect and don't judge the decisions of any on this. But I do, a Senator

Fasano said, I do have difficulty and quite frankly can't get my head around the message we send that we think it's just to execute the eleven, but not just to execute the next eleven who may do the same thing. I don't think that's the right message to be sending.

I know there's been debate about the New Mexico case. And sitting next to Senator Williams, he usually goes last and it's trying to predict what he's going to say, but I actually saw him flipping through the briefs on the New Mexico case. Here's what I think we can all agree to, that even if the New Mexico Supreme Court reached the decision that prospective application of the death penalty is constitutional under the New Mexico Constitution, that decision is not precedent setting for the Connecticut supreme court.

They can choose to look to it. They can also choose to look to the fact that no other states have dealt with this issue. But it is the Connecticut justices of the supreme court who will look at the Connecticut Constitution and ultimately determine whether this law is constitutional or not.

So regardless of our agreement to disagree on the import of the decision in New Mexico, what I think we can all agree upon is that the constitutionality of the sentences of death of the eleven individuals on death row will be tested before our State's highest court and none of us can predict what they will do, but it is at least possible that they will overturn those eleven sentences and that is something I am not comfortable doing as well.

I guess at the end, Madam President, and to my colleagues in the Senate, I end in a way where I started, and perhaps we all could have just reached our own conclusions in a minute or two. I have to decide whether or not I believe that this is a just and fair and appropriate punishment. And in my opinion for the most heinous of crimes it is and that's why I will be voting no.

THE CHAIR:

Thank you, Senator McKinney.

Senator Williams.

SENATOR WILLIAMS:

Thank you, Madam President.

I rise to support the repeal of the death penalty and to replace it with life in prison without the possibility of release.

I'd like to start by complementing Senator Eric Coleman, the Chairman of the Judiciary Committee, for his leadership and all of his extremely hard work on this issue and his careful thought in his answer to many questions this evening.

I also want to thank our Majority Leader, Senator Looney for his leadership on this issue as well. And I want to thank my colleagues on both sides of the aisle, on both sides of this issue. It has been a long debate, but it has been a thoughtful debate and a respectful debate. And I thank my colleagues for the privilege of being able to engage in this type of dialogue on this critical issue.

You know, I started paying attention to the news, things in the world around me, not just what was going on in my household with my family, but sort of paying attention to the outside world in a significant way when I was ten years old. In large part because of my parents. They loved the news, whether it was newspapers, watching the news on television.

When I was ten years old it was 1968 and that was an unbelievable year. In 1968 I remember at the end of every week on Friday on the evening news there would be the death toll, the body count in terms of our troops in Vietnam. I remember it was a political year, it was a presidential campaign. My parents or very interested in that and following it very closely, so I did, too. Robert Kennedy was running for president. So was Eugene McCarthy and other candidates.

That was fascinating to me. And Robert Kennedy, as a ten year old, became my hero. As a ten year old I looked at that campaign and I thought there is somebody who is trying to take this country to a different level. And when he was assassinated I couldn't believe it and I couldn't understand it. And we were living in New Jersey, about an hour from New York City at that time. And asked my

father, I said, could we go? Could you take me to St. Patrick's Cathedral? And my father did.

And we got to New York City and we waited in line, walking through what seemed like the entire city for about eight hours. We got there around noon time. We didn't get to St. Patrick's Cathedral until the time when they were supposed to have cut off the folks going into pay their last respects. It was after eight o'clock. It's one of those powerful memories that I have and I'll always be grateful for my -- to my father.

And I remember other things about 1968. I remember Martin Luther King fighting for equality, fighting for those in the greatest need. I remember when he was assassinated. I couldn't believe that either. When we started discussing this bill on Wednesday, April 4th, it was the 44th anniversary of our losing Martin Luther King.

Martin Luther King said, capital punishment is against the better judgment of modern criminology and above all, against the highest expression of love in the nature of God. And I wondered about his widow, how would we feel. And many of us have expressed how we would feel if a loved one was taken from us.

Coretta Scott King said, as one whose husband died, the victim of murder and assassination, I stand firmly and unequivocally opposed to the death penalty. An evil deed is not redeemed by retaliation. Justice is never advanced in the taking of human life.

Now Madam President, I was prepared to speak at length about a number of different issues which I will touch on. The fact that in an imperfect system of justice, it is a human system of justice and therefore inherently inhuman and inherently fallible.

We've seen over 138 inmates on death row be found innocent and released. It's an imperfect system of justice. The death penalty demands perfection. It demands perfection. If we believe that it's better to let a hundred individuals go free rather than imprison wrongly one person, how do we answer the question of whether we can risk killing, taking the life of an innocent person in an imperfect system of justice?

Some believe that the death penalty is a deterrent. I do not. I believe -- and I've seen studies that would indicate that it's not. I've also seen surveys of police chiefs nationally where the police chiefs of America rank the death penalty as the least effective tool and deterrent to fight violent crime, the least effective tool.

Madam President, the death penalty is discriminatory. It is applied in a random way. I mentioned earlier the study that spanned 34 years in the state of Connecticut, looking at over 4600 murders in a state of Connecticut, only nine death penalty convictions out of those more than 4600. Upon what basis?

You look at those other defendants who did not receive the death penalty, you examine the fact patterns in case after case after case where they are indistinguishable from those on death row, it's discriminatory racially. Numerous studies in numerous jurisdictions have shown that a black defendant is almost twice as likely of receiving the death penalty as a white defendant. It is discriminatory economically, geographically.

Our system of justice tells us something about our society. We want a system of justice that is consistent, that is fair, that is as free from prejudice as humanly possible. The death penalty is not consistent. It's certainly not fair and it is absolutely not free from prejudice. Life in prison without the possibility of release is a severe sanction. It is certain. It is final.

Madam President, I'll close by going back to the words of Martin Luther King who said this, I mourn the loss of thousands of precious lives, but I will not rejoice in the death of one, not even an enemy. Returning hate for hate multiplies hate, adding deeper darkness to a night already devoid of stars. Darkness cannot drive out darkness. Only light can do that.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator.

At this time I wanted to first complement the Chamber on a very, very difficult discussion today. And that I would

hope that after the vote is cast that all people in the Chamber handle it the same way. Thank you.

At this time, Mr. Clerk I'm going to close the machines, and will you call for a roll call vote.

THE CLERK:

An immediate roll call vote in the Senate Chamber. Immediate roll call vote in the Senate Chamber. All Senators to the Chamber.

THE CHAIR:

Members also remember that we will be voting on the consent calendar.

Have all members voted? Have all members voted? If so the machine will be closed. And Mr. Clerk, will you call the tally.

THE CLERK:

Total Number voting	36	
Necessary for adoption	19	
Those voting Yea		20
Those voting Nay		16
Those absent and not voting	0	

THE CHAIR:

The bill passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

It may seem somewhat anticlimactic, but we do have our consent calendar. If the Clerk might call those items and that would be our final vote of the evening.

THE CHAIR:

Mr. Clerk, will you please call the consent calendar. And the machine will be opened. And call for a roll call vote,

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know many of you here to speak on Senate 280, AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES. The process, if you haven't been here before, is that we would -- a bell will go off after three minutes. If you do hear the bell, we would ask you to begin summarizing your testimony so that we can then begin to ask questions. If the members have questions -- and there's no limit to the number of questions -- and back and forth, that can take place.

The -- as I said, the list is fairly lengthy in terms of the sign-up list, but I'd ask you all to just be patient. We will get to you. And we look forward to hearing your testimony. So with that, I'll begin with -- the first name on the public official list to testify is State Senator Don Williams. Is Senator Williams here? Well, I expect he's somewhere else in the building and he'll be here shortly. The next name on the public official list is Chief Public Defender Susan Storey.

Also, when you begin your testimony, please make sure that you hit the light on the microphone in front of you, the red button so that way the red light will be on and your testimony -- the microphone will be on. So...

Good morning, Attorney Storey.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Good morning. Good morning. And thank you, Representative Fox, Representative Holder-Winfield, Senator Kissel for having this hearing on the prospective abolition of the death penalty. My name is Susan Storey. I'm the Chief Public Defender for the State of Connecticut, and I'm here to testify on Senate Bill 280, which calls for the prospective abolition of the death penalty in Connecticut. Of course, as

Chief Public Defender, our agency has always testified on behalf of total abolition, which we think is the best policy for the state of Connecticut, but we do support prospective abolition.

The Legislature has had extensive discussion on this issue. And back in 2009, they actually -- you actually voted to abolish the death penalty, which was vetoed, so there was a very large public debate about many of the issues at that time. I have submitted extensive written testimony, which I'm not going to read because we wouldn't get through it in the three minutes, but I just want to give you some indications of what is contained in that testimony.

I think if you look carefully at public opinion polls, if you look at the Quinnipiac polls, I think if you look at the way questions are phrased, especially the Quinnipiac poll, that there isn't a 50 percent majority in Connecticut that supports the death penalty. We've also seen that many other states are now rejecting the death penalty as an expensive policy that really doesn't deliver fair or just results. We also have a very complex legal framework dictated by the Supreme Court which requires extraordinary time and resources for our state, but it is nonetheless prone to a high-degree of legal problems and reverse decisions.

It's also true that nationally very few death sentences are actually carried out. Nationally, only 15 percent of all death sentences imposed between 1997 and 2010 actually resulted in executions in that period. Nationally, it is not unusual for death sentences for crimes committed over 25

years ago to still be in the process of court review. Also, states that attempt to truncate appeals or postconviction review of these cases risk executing individuals who are innocent, who are incompetently represented at trial, or whose death sentence were obtained through police and prosecutorial misconduct, or whose juries misunderstood how to consider the evidence in deciding whether to impose a death sentence.

Another interesting point is that the drugs for lethal injection are increasingly difficult to obtain because many of the country's pharmaceutical companies that produce these drugs will no longer allow them to be shipped to the United States because of opposition to the death penalty. It is also true -- and this is something we've talked about -- that you've talked about in other issues that have come before you in this session that Connecticut has no system in place to ensure that the few cases in which the death penalty is sought or imposed represent only the most culpable of the much larger number of individuals who have committed capital offenses and it's also true that we've seen that Connecticut has really not take adequate steps to eliminate the influence of the racial bias on not just the death penalty, but we've seen issues that have arisen this session regarding East Haven, also with the failure to collect data on police stops for motor vehicle offenses even in the most, you know, ordinary occurrences so -- because we don't have this data for the death penalty -- except that which the public defender's office has collected, would seem to me an issue for you to consider.

A prospective repeal does leave those on death row with -- for us to represent. Of course,

we will represent them. They are our clients. That continues to be a very expensive proposition even with prospective appeal and that's why we are asking for you to consider total abolition.

I realize that I have limited time before questions so I want to go to some of the heart of the matter here that I think is the most important for you to know. Other states that are rejecting the death penalty, Illinois in 2011; New Mexico in 2009 -- I'll go back to New Mexico because that's prospective -- New Jersey, 2007; New York, 2004; Oregon, the governor has halted all executions while he is in office; California, there is a ballot initiative to abolish; in Maryland, where they try to narrow the types of cases that were eligible for the death penalty, they realized that it created more problems even when they had tried to solve them and so the people that actually asked for that narrowing are actually now in support of abolition. In Kansas, a repeal bill is under consideration.

I think that what we've seen, especially this session, is the failure of Connecticut to accurately collect data on behalf of studying racial bias, arbitrariness, and those types of issues in our state. I think this is extremely critical to this issue. And I also want to say that the death penalty, there is no foolproof way to have a death penalty. This -- the death penalty is -- there are issues are inextricably entwined with the death penalty. Mistakes are made. There is arbitrariness from the very point of arrest that is pervasive in the system and any attempts to truncate review causes -- sacrifices accuracy and fairness.

I think what I want to go to first is the

folks that have been exonerated in this state where mistakes were made and some of whom who could have been subjected to the death penalty if they had been charged. We all know about James Tillman. That was not a death penalty offense, but even a -- even after a review of his case by the Connecticut Supreme Court, he spent 18.5 years in prison before he was exonerated. Kenneth Ireland, 20 years in prison, that could have been a death penalty offense. That was a sexual assault/murder. Miguel Roman, 21 years in prison, that was also a sexual assault/murder. Those folks in some states would have already been put to death if they had happened in Virginia or Texas, for example.

And just on Monday, Mr. Thompson left the Hartford Judicial District courthouse after being -- after having a test that excluded him as -- his DNA as a perpetrator of a case that he done five years out of a 12-year sentence. That was a case of mistaken identif -- mistaken identification where there was ample opportunity for the victim to be with him to identify him and even then, mistakes are made.

If you look at, for instance, the arbitrariness of the death penalty, if you go to -- is that my bell -- oh, it's somebody's phone. Okay.

REP. FOX: I think a bell went off, but we --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Okay.

REP. FOX: -- expected that you would continue testifying.

CHIEF PUBLIC DEFENDER SUSAN STOREY: I want to -- I want to highlight the problems of race which cannot be separated from the death penalty. I

think there's been insufficient attention to this issue. Before his trial in 1989, James Tillman told the judge that he was not getting a fair trial before a jury of his peers because he had to pick a jury from panels that included no black males and only one person from Hartford. On appeal, former Connecticut Supreme Court Justice Robert Berdon argued that Mr. Tillman's conviction be reversed for this reason "When a black man, as in this present case, is accused of serious crimes such as sexual assault of a white victim, the black defendant -- and indeed the black community -- cannot perceive that he has received a fair trial from a jury that is entirely composed white person, drawn from an array made up of very few blacks because of deliberate practices that resulted in their elimination."

He was dissenting from the case that he was outvoted by his colleagues and Mr. Tillman remained in prison for another 15 years for a crime he did not commit. A year later, Justice Berdon argued that Miguel Roman's confession should have been suppressed because the police gave him Miranda warnings in Spanish, but conducted their interrogation in English. Again, he was outvoted and Mr. Roman has to spend 17 more years in prison before establishing his innocence. In his dissenting opinion, Justice Berdon wrote of the broader implications of upholding a convictions based on untranslated interrogation. He asked and he said in his dissenting opinion, what is -- what is the perception of justice when a defendant's primary language is Spanish and the police officer insists on conducting the interrogation in English. The entire process smacks of unfairness that will result in the perception by the Hispanic community that the criminal justice system is titled against

them.

This just shows how pernicious the influence of racial bias whether it's deliberate or nondeliberate. It's not necessarily intentional but it is pervasive in our state as it is in other states nationally. I think we've also seen that proponents of death penalty forums such as the American Law Institute, which is the author of the Model Penal Code, decided in 2009 to disapprove the Model Penal Code capital sentencing provisions in part for this reason. No state over the past 30 years has successfully confined the death penalty to a narrow band of the most aggravated cases and it's extraordinarily difficult to disentangle race from the American death penalty.

I think you -- some of you have also read the study by Professor John Donohue. This study was really commissioned by our Public Defender Commission because it really was left to us -- our agency to look at this data and there is litigation ongoing now about racial bias in death penalty cases. That is a habeas case. It should be going to trial in June of this year. Now, Donahue's case, which came out in -- his study really found discrimination and arbitrariness throughout the death penalty schema, if you will, from the decision to charge and I think what's, you know, very important to realize that all the 13 state's attorneys had individual charging ability. There is no review or proportionality review to second guess or to review any of the decision -- charging decisions made by individual state's attorney.

And I think what we saw, especially in places like Waterbury, was that all the cases that came in that were death eligible were charged

in that manner and that was really not true. There is geographical arbitrariness. There is gender arbitrariness. There are a number of areas that Professor Donohue highlighted in this case that really have not been refuted by the state's expert witness in this particular case. Depositions have shown that this -- that he is actually in agreement with some of work that Professor Donohue did.

There are also issues of -- if you look at other states, they are wrestling with the same issues, as well. I think arbitrariness, the cost, that the cost of the death penalty not in of it by itself, but the cost in relation to -- what are -- if -- you have this extremely expensive process because that's what -- because of what the Supreme -- the U.S. Supreme Court requires, what -- if it still doesn't guarantee you the results you need, you know, what is the cost and benefit to your state if the money could be spend in better ways elsewhere. I think you also see that -- you do not see -- we have seen other states foregoing executions because they see that the death penalty cases are complex and prone to a high rate of legal error. I think that -- that they're also stepping in to stop the execution on inmates with serious mental illness and they've also decided that the gender-bias, the racial-bias and the arbitrariness is a reason for them to abolish the death penalty.

REP. FOX: Thank you, Attorney Storey.

Are there questions?

Senator Kissel.

SENATOR KISSEL: Thank you very much, Chairman Fox.

Attorney Storey, it's great to see you. You come each this bill or similar bills are before us. Just a few questions to clarify.

Regarding your arguments against the death penalty from a legal perspective, especially in light of your arguments regarding race, the entangled in race with the ultimate penalty, with the different state's attorneys having charging authority, what's to stop you from making all of those similar arguments if these individuals plead to life without possibility of release? It strikes me that the same arguments that you're using for people that are facing capital punishment could similarly be made regarding matters where the ultimate sanction now would become life without possibility of release.

CHIEF PUBLIC DEFENDER SUSAN STOREY: I think that -- you know, on a case-by-case basis you make arguments that you must make on behalf of a client given your investigation into the case and what legal arguments can be brought before the court. I really --

SENATOR KISSEL: I guess what I'm --

CHIEF PUBLIC DEFENDER SUSAN STOREY: I --

SENATOR KISSEL: I guess --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Are you asking me --

SENATOR KISSEL: For moral, philosophical or for whatever reason, the public defender's office throws everything including the kitchen sink at these cases, and the appeals are relentless. But I'm just wondering that if the state makes the switch, my first question is for the cases going forward, what is

prevent the state's attorney's office now -- I mean the public defender's office now from utilizing those resources and -- so if the worst punishment that can meted out for someone who commits a horrific crime is life without possibility of release, why would we expect that your office would not be just as rigorous in pursuing these claims in those matters?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, I think you -- this is a difficult -- of course, we have to bring claims as we see them for any particular client. I think what you see is that the issues in a life without possibility of release case are much more specific to the case. They're not as broad as a capital punishment case where you have a death sentence and you have to -- you have to brief the aggravating factors and mitigating factors so I think we bring what arguments we need to bring, but they're -- they're much more shortened if you don't have a death sentence together with that.

SENATOR KISSEL: Okay. My second question is this: I am of the firm belief that even though this bill is crafted as prospective only I think that's a specious argument and I think that in past testimony you have -- you have indicated that should this bill be signed into law, which I think there's a substantial chance that that's going to happen this year -- albeit with a very close vote in the Senate -- that your office would immediately file appeals on behalf of, I believe it's 11 folks currently on death row.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

SENATOR KISSEL: In my analysis of the law, that would be predicated on the cruel and unusual

punishment portion of the constitution and that the thing that the courts look to are things such as the passage of prospective abolition and I'm not sure I agree with this terminology, but I think the terminology or the term of art that they use is the evolving societal standards in effect in that state. The fact that they call it "evolving" I think sort of has implicit with it a certain perspective but that they've hung their hat on that to throw out death sentences against folks that are sitting on death row. So A, do you agree with that legal analysis? B, is it still your belief and communication to us that certainly that appeal would be filed very quickly after this bill is signed into law? And three, since you mentioned New Mexico, it -- New Mexico's passage of a prospective bill, can that inform us as to what's happening? In other words, is that -- is what you've sort of told us what's going to happen in Connecticut already in effect in New Mexico?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, what I can tell you is we certainly file, you know, whatever appeals would need to be filed on those folks sitting on death row. Of course, we would do that. It's incumbent upon us to do that and that's what we're sworn to do. I think if you look at New Mexico, which was prospective, I think we have to look to New Mexico, and I really -- that's what we -- the only state that has actually answered this question. They have upheld their prospective appeal. In fact, there is -- I think his name is Michael Astorga is on trial as we speak or it starts Friday and there was challenge to prospective appeal by this gentleman and the prospective appeal was upheld, and in his case, the death penalty is still part of the trial and he is proceeding now to a penalty phase.

So I think that if -- if we're looking at prospective repeal, there is a -- New Mexico so far upheld that and that's really the only state that we have to look at at this time.

SENATOR KISSEL: Right. But in my analysis of the United States Supreme Court decisions and other decisions that seem to be on point, while New Mexico may have veered off right at this moment, I think it's pretty much from the folks that have testified a sure bet that should Connecticut move in this direction that the folks that are currently sitting on death row that your appeals would successful. Are you stating this afternoon or this morning that you don't feel that such an appeal would be successful?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I think that the answer to that is that, you know, I am not going to second guess our Supreme Court about what they're going to decide in these cases and I really don't think we know. And I think that in New Mexico, you know, that's a state that they can look at in their analysis.

SENATOR KISSEL: And my last question is this: One of the things that some of my colleagues have raised as a concern is that when they've toured death row the individuals are single-celled, the cells aren't abnormally small. Many of the folks sitting on death row have televisions. It's not hard time the way people might envision it who see a lot of old-fashioned movies. Certainly, they're in isolation for vast amounts of time during the day. They're not allowed to exercise together in large groups. They do have access to a library and I've toured death row any number of times. To the extent people argue with the death penalty, at least from my perspective,

these individuals are in a form a segregation. Now, when Northern was built -- and again, this facility is in my district -- it was built primarily -- primarily to address inmates that commit acts of violence within the facility and it is has also been broadened to address gang violence and gang activities.

So in speaking to folks such as Commissioner Arnone who has to make sure that individuals are treated fairly within the Department of Corrections, along -- and there are certain rules and requirements regarding general population -- that if this bill passed, that those individuals who plead to life without possibility of release would, unless they committed some act of violence within the system, typically be housed in a facility such MacDougall-Walker in Suffield. In that facility, you could earn some credits. You could get rights and responsibilities just like the general population. Individuals are not singled-celled and also there is no isolation. From my perspective, and talking to many of my constituents, they feel that given the diabolical nature of some of the crimes that these individuals will have plead guilty to that if we, as a state, were serious about abolishing the death penalty -- we'll leave aside the 11 folks on death row -- that we should have some form of segregation for these individuals so they're not treated like the general population.

And I'm just wondering if -- if your office would fight that if there was a determination to allocate some funds so there would be perhaps a separate wing of MacDougall-Walker or a similar high-security facility so that while the commissioner would still have to adhere to certain rules regarding the facility that these people would at least be in some

form of isolation not given the same rights and responsibilities of other inmates, that security could be maintained on the highest level and then at least for the family members of the victims of the crimes, they could feel that some modicum of justice had been obtained even in a state that doesn't have the death penalty. I'm just wondering your perspective on that.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, my perspective on that is that that's not a policy decision for our office. Where inmates are housed is really a policy decision of the Department of Corrections and it's not something -- that's really for you to decide if you decide to have legislation. To me, that's between you and corrections. However, you know, in looking at this issue -- and I located an article from March 10th, actually of this year -- that some prisons are rethinking isolation because -- because what isolation causes is a higher degree of mental illness and violence among inmates. So it's not -- and I understand what you're saying about families of victims, you know, not wanting to see people in population because it doesn't seem to be harsh enough. But you know, in some states -- I think even in Mississippi, what they're doing is if some of the inmates are in general population and are working then the funds that they make from working goes into a fund for the victim's families. So it is, in some way, compensating the families that have lost a loved one.

And it also seems to reduce violence and is a, you know, safer climate for prison guards, which it seems like it should be the opposite, but this is what people are finding, but it's really not -- it's not really the province of the Public Defender's Office to fight

something that -- that DOC and you would agree on if you had a separate wing. I'm just saying I'm not sure. I think that some states have found that that's really not the best policy and, you know, that individual decisions by the Department of Correction actually works a lot better.

SENATOR KISSEL: Well, thank you, Attorney Storey. I appreciate your sincerity and coming to testify to here year and year out. There are eliminants in your testimony that do cause me concern. I think there's a far greater chance than appeal by your office regarding the applicability of the abolition of the death penalty would apply to the 11 folks on death row right now and I think that given what has transpired in New England and the northeast that people have a right to expect that. I'll elicit some testimony from some others getting ready to speak regarding their view of the chance of success of those kinds of appeals based on cruel and unusual punishment standards of analysis.

The fact that you site a study that's very recent that says, oh, well, gee, it might even be a better policy to have these individuals intermixed with the general population causes me concern, because at the base, I don't think it's fair. I just don't think it's a fair punishment. The fact that these individuals in a few years could be at the lunch line serving the other inmates food getting all the other rights and responsibilities, working day in and day out and maybe the money would go to a victims compensation fund. I can't look at people who have lost loved ones because someone hired a thug to go and execute them and say that that's any kind of justice.

So I think that as we sort of think this out

if we are -- and again, I don't share the perspective of prospective abolition -- but if we are going to move in that direction as a state, I would far prefer to have some area, if not isolation, creating a separate section for these individuals to serve out their time for the rest of their lives rather than being considered similar to someone who committed petty theft, a burglary or even some of the more serious crimes that are intermixed with the regular prison population that have programs available to them and have ability to work as if nothing had taken place in the outside world. We're just going to have disagree on that, but I appreciate your answers.

Thank you, Mr. Chairman.

REP. FOX: Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you, Mr. Chairman.

Good morning.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Good morning.

REP. HOLDER-WINFIELD: Am I correct in understanding that there are many people that have committed capital-eligible crimes who are currently serving life without the possibility of parole?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

REP. HOLDER-WINFIELD: And am I also correct in understanding that the state actually uses the death penalty to plea bargain to that sentence?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

REP. HOLDER-WINFIELD: Would be correct to assume that there are more than 11 people in those two groups? The groups that are --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

REP. HOLDER-WINFIELD: Yes? And have you ever come here to testify against a bill to put those people into the type of segregation that's often talked about when we talk about the death penalty?

CHIEF PUBLIC DEFENDER SUSAN STOREY: No, I haven't.

REP. HOLDER-WINFIELD: Thank you.

REP. FOX: Representative Hewett.

REP. HEWETT: Good morning, Attorney Storey.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Good morning.

REP. HEWETT: How are you doing?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Good. How are you?

REP. HEWETT: Earlier in your testimony you were responding to Senator Kissel's question and you said that -- that you did not want to second guess the Supreme Court's opinion if they were to rule in a certain case, but earlier in your -- earlier than that in your testimony, you were speculating that some of the cases that you mentioned that could have been death penalty cases and -- and my question to you is since we are -- we started off the testimony speculating, would it be speculating to say that if these cases that you did file an appeal and it went to the Supreme Court, what do you think your chances are of winning that appeal since we're in the

business of speculating?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, are you referring the persons who are currently on death row or are you referring to the cases that I spoke about earlier, Mr. Tillman and --

REP. HEWETT: The cases you spoke about earlier. You speculated that they could have been death penalty cases.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Oh, yes.

REP. HEWETT: And I do tend to agree with you. They could have been.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

REP. HEWETT: But we don't know that.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, they -- they -- no, if we're talking about -- if I've got this right -- if we're talking about Mr. Roman and we're talking about Mr. -- let me just look at my notes -- if we're talking about Miguel Roman and Kenneth Ireland, the crimes that they were accused of were -- were capital -- could of been, you know, eligible for the death penalty because if you look at Mr. Ireland, that was a sexual assault. It was a murder and it was a sexual assault. And Miguel Roman was similar. So I guess my point about them is that mistakes are made. It is not foolproof and that, you know, going forward, it is only a matter of time before you have -- you'll have mistakes because you're not always going to have like DNA in a capital case and that's when you have a misidentification or you have no DNA. That is a really risky case to have as a capital case because we know how often mistakes are made with misidentification.

REP. HEWETT: And I agree with you. I agree with you that they could have been --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

REP. HEWETT: They could have been. I agree with that.

CHIEF PUBLIC DEFENDER SUSAN STOREY: If they were in Texas or Virginia, they would be dead by now.

REP. HEWETT: Exactly.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

REP. HEWETT: But my point that I'm trying to make to you is if you file those and the day that this bill is signed into law, you will go and you will file an appeal, 11 appeals on those cases. I want to -- what do you think your chances are? You're not going to go into something -- you're not going to fight a battle you don't think you could win, are you?

CHIEF PUBLIC DEFENDER SUSAN STOREY: We fight a lot of battles we don't think we're going to win.

REP. HEWETT: No. No. No. I'm not talking about --

CHIEF PUBLIC DEFENDER SUSAN STOREY: That's what being a public defender is all about.

REP. HEWETT: I'm not talking about the end result.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Okay.

REP. HEWETT: We'll get to the end result later.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Okay.

REP. HEWETT: I'm saying what do you think your chances are of winning those 11 -- because this is a prospective bill. In --

CHIEF PUBLIC DEFENDER SUSAN STOREY: I understand that.

REP. HEWETT: In Chicago -- how did they do it in Chicago? I missed that part of it. Did they do a prospective bill or they did it across the board?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I don't know if it's prospective.

REP. HEWETT: It wasn't prospective?

CHIEF PUBLIC DEFENDER SUSAN STOREY: You know, I'm not sure.

REP. HEWETT: Anybody in the room sure? And I may be wrong, too --

CHIEF PUBLIC DEFENDER SUSAN STOREY: And they commuted everything. Right?

REP. HEWETT: They commuted everything across the board.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Right. Right.

REP. HEWETT: So what we're doing --

CHIEF PUBLIC DEFENDER SUSAN STOREY: But the governor had the ability to that.

REP. HEWETT: I understand that.

CHIEF PUBLIC DEFENDER SUSAN STOREY: We don't have that here.

REP. HEWETT: But the point I'm trying to make, if you're going -- if you're going to repeal the death penalty, then repeal the death penalty. You might even get my vote on it then, but to say that you're going to repeal the death penalty and leave 10 people on death row that you think they're going to see death. It's not going to happen. You know that and I know that.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, we're going to absolutely --

REP. HEWETT: Of course, you --

CHIEF PUBLIC DEFENDER SUSAN STOREY: -- pursue --

REP. HEWETT: That's your job. You must do that.

CHIEF PUBLIC DEFENDER SUSAN STOREY: But what's going to happen, I'm not going to second guess our Supreme Court. And what I'm saying is is that, you know, one of the things they'll look at is New Mexico because that's, you know, what's available to them at this point and I don't think it's either ethical or prudent of me to say what I think the Supreme Court is going to do in our client's cases or what kind of arguments we're going to make except that we will make every argument available to us for those folks sitting on death row.

REP. HEWETT: I get that. I've got that.

CHIEF PUBLIC DEFENDER SUSAN STOREY: But I'm not -- you know, I can't say --

REP. HEWETT: Of course, right. Right.

CHIEF PUBLIC DEFENDER SUSAN STOREY: I'm not going to say what I think our chances are.

REP. HEWETT: Right. Okay.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Because I really don't know.

REP. HEWETT: Okay. Pretty good, though, huh? 50/50?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I said I really don't know --

REP. HEWETT: Okay. Thank you.

CHIEF PUBLIC DEFENDER SUSAN STOREY: -- Representative Hewett.

REP. HEWETT: Thank you for your service.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Thank you.

REP. FOX: Representative Adinolfi.

REP. ADINOLFI: Thank you, Mr. Chairman.

Welcome.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Thank you.

REP. ADINOLFI: Just a few questions, you mentioned a Quinnipiac poll.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Right.

REP. ADINOLFI: Now, when the Quinnipiac poll -- Quinnipiac poll -- and I should know it's in my old district -- was taken they asked are you in favor of the death penalty and then I think it was something like 70 percent. And if you went to Cheshire, my hometown, it was like 77 percent, but then asked those people, well, what about life in prison.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Uh-huh.

REP. ADINOLFI: I think you mentioned that 50 percent of them -- but what Quinnipiac did not do is tell them on what conditions if the death penalty -- if they went to life what they would be living under.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Uh-huh.

REP. ADINOLFI: If Quinnipiac gave them and told them that they would be getting seven hours a day out of their cell, if they worked their way down from a Level 4 to a 3 to a 2 to a 1, all depends on their behavior. They have recreation. They have everything going for them. Now, had Quinnipiac told them when they did the poll what it would be like, I'm wondering if those numbers would have come out the same because I know had I voted and knew that they would be put in not in the general population but starting at Level 4, I definitely would not have voted that way.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, I think that you can't -- I mean, certain crimes do not go below a certain level no matter how well a prisoner performs so to say that somebody is going to go down to a Level 1 is really not going to happen in any of these cases. And I think if you look at the conditions in Northern, I think actually conditions on death row are better than some conditions of segregation at Northern because folks at Northern, I mean, some of them do not have television. They may have a radio. They exercise in what looks like dog kennels. They have -- they cannot see -- they have very tiny windows. They don't really see the outside very much.

And I think that if you really look at what --

how -- what Northern is like, I really think if folks saw Northern or toured Northern, they would have -- they would feel, I think, fairly secure about people placed in our supermax.

REP. ADINOLFI: I -- I visited Northern.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Uh-huh.

REP. ADINOLFI: And if you're on death row and you leave that cell, there's a steel door in the front and you stick your hands out and they put handcuffs on.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Uh-huh.

REP. ADINOLFI: There's a trapdoor on the bottom and they put leg irons on you and then they take you to the shower and you repeat the same thing in reverse. When you leave the shower, you repeat. That's same thing if you go to the cage to walk or the library for the two hours you have out of your cell. This does not happen to every prisoner in Level 4 once they're out there. I think if they were clear on that and I think if somehow if this law passed, it would have more support if they said just change the name of death row, of death penalty to maximum incarceration and leave them in solitary confinement for life. What's wrong with that? These people when they're sentenced to prison for a crime everybody here looks at it as if it's just a change in a way of life. I look at it as a punishment for their crime. And they have to punished accordingly for that crime. And that's not what we're doing here.

I -- I have here -- there's 11 people on death row. I have the cases of all of them. There's five of them that killed children. One of them killed a policeman. Komisarjevsky

and Hayes murdered my neighbors. They took an 11-year-old girl, raped her, tied her to a bed, pour gasoline on her and burned her. They set the place on fire. They did the same thing to her older sister, Hayley. The mother, when they came back from the bank, was raped -- and I'm sorry I've got that in the wrong sentence -- she was strangled to death and then raped after she was dead. Now, we're saying these people should be given a life for crimes similar to that better than what they have on death row. That's what we're saying here. And I don't buy that. And the public doesn't buy it.

And in the future, it will show as this is an election year coming up, it will be an issue, believe me. And I just don't think that we're being fair about it. We have to look at each case individually. Many of these people on death row, of the 11 on death row, they have had many appeals and some of the appeals have been reversed and again put back in. I just don't understand why under the conditions here. Five of them killed children. Murdered children. One of them shot a cop that's on death row. There were some others that shot cops that didn't go on to death row and we're saying have mercy on them. I don't buy it. I'm sorry.

CHIEF PUBLIC DEFENDER SUSAN STOREY: What I'm -- I believe this bill is prospective.

REP. ADINOLFI: Well, prospective, I've talked to dozens of attorneys and I haven't had one tell me that they couldn't win that case to get them out of death row once we abolish the death penalty. So I'll leave it at. I get a little disturbed because I was there that morning of those murders. I saw the car crash into the police cars and I know what happened.

And it's just awful that we're even thinking about letting somebody like that off. I think they should -- I think the needle is too good for them. Thank you.

REP. FOX: Senator Gomes.

SENATOR GOMES: Good morning, Ms. Storey.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Good morning, Senator Gomes.

SENATOR GOMES: Nice to see you here.

A little while ago a question came up on the death penalty about you plea bargaining down to life imprisonment. Wouldn't -- if the death penalty were off the book, if we would vote it down, how it would it affect plea bargaining in any sense? In the ultimate thing, how would affect -- would you use life imprisonment without chance of parole as a bargaining tool, too, in plea bargaining?

CHIEF PUBLIC DEFENDER SUSAN STOREY: It's difficult to say what state's attorneys would do. I think that in states where the death penalty has been abolished, it's not the case.

SENATOR GOMES: All right. I just -- I'd like to make another remark. I listened here about some of the -- some of the surveys that were taken at Quinnipiac and so on and so forth. One survey was taken by Quinnipiac and it said if you -- on the death penalty would you vote for the death penalty or not vote for the death penalty and it came out, I understand, it was like 67 percent of the people said that they would vote for the death penalty. What is not -- what Quinnipiac has done with one other survey that they took when you offer the death penalty against life imprisonment

without parole, figures came about even; therefore, the public is thinking about that issue, too, and it's not just the death penalty. If you -- if you put something out there and once somebody wants to vote on it and it has -- only one choice, it comes out much better -- much different than the choice if you gave them a choice between two things like death penalty or life imprisonment without parole and that is a legitimate poll that Quinnipiac took but that's not published. I just want -- just for information.

CHIEF PUBLIC DEFENDER SUSAN STOREY: You know, in my -- in my written testimony on page 2, what I've cited to is Quinnipiac poll of March 10, 2011, and specifically to Question 42, and you're correct, Senator Gomes, the total, if given the choice for life without possibility of release was -- the total was 43 percent and death penalty was 48 percent. So you're right, it was not -- it was much closer than, you know, that's been publicized as far as how many folks are in favor of the death penalty in Connecticut.

SENATOR GOMES: I just wanted to make that clear to people that there is another poll out there. Thank you.

REP. FOX: Senator Welch.

SENATOR WELCH: Thank you, Mr. Chair.

And thank you, Attorney Storey, for coming and thank you for your service to our state. The people of the state of Connecticut really appreciate that.

I'm hoping you can help me understand a little bit in re racial discrim -- disparity.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Uh-huh.

SENATOR WELCH: Where does that case stand now?

CHIEF PUBLIC DEFENDER SUSAN STOREY: That case is in Rockville at this point and is expected -- the last report was expected to go trial either -- I thought it was August of this year.

SENATOR WELCH: August 2012?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

SENATOR WELCH: Okay. Now, is Professor Donohue, is he your expert in that case?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

SENATOR WELCH: Okay. And that report that's been referenced here, is that -- let me back up -- has he testified yet in the case.

CHIEF PUBLIC DEFENDER SUSAN STOREY: I'm sorry.

SENATOR WELCH: Has he testified in the case yet?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I believe there has been depositions in that case. I'm not sure if he's given a deposition. I know the state's witness has.

SENATOR WELCH: Okay.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Their expert.

SENATOR WELCH: So then the state has an expert --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

SENATOR WELCH: -- as well.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Uh-huh.

SENATOR WELCH: And have they published a report?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I believe he's reported on his review of the findings that Professor Donohue made.

SENATOR WELCH: Okay. And just so I understand as far as your disclosures to date within that case, is Mr. Donohue the only expert that you've disclosed in that case?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes. He is -- he is -- we -- he has reviewed the compiled data and he would be our expert in that case.

SENATOR WELCH: Okay. So his -- so his report, his testimony is essentially your case in re --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

SENATOR WELCH: -- disparity. Now, how long has this case been going on?

CHIEF PUBLIC DEFENDER SUSAN STOREY: For a long time, there was a first report that came out, I believe, in 2003 that was inconclusive the sample of death-eligible folks was -- was a little bit too small for any kind of real analysis. The study that came out in 2007 was a little more able to talk about the arbitrariness that exists starting at the charging level and nearly a third -- what they found is nearly a third of death-eligible cases were not charged as capital offenses as they could have been, but as lesser crimes. So they really found geographic arbitrariness, racial disparities, gender disparities. So it really -- it was fairly comprehensive. Of course, now, that study is -- is somewhat dated so we have folks on death row now that

where the data has not been, you know, updated sufficiently for those cases even though they are included in this group of people because of court ruling that says they have to join or they could possibly be foreclosed for -- from -- from -- and could waive this claim.

So -- and I think, you know, what's emphasized is that, you know, Connecticut unlike some other states has really not undertaken any comprehensive data collection in order to sufficiently review this issue in Connecticut and that was -- the Connecticut Commission on the Death Penalty in 2003 recommended that Connecticut do this and I think we've seen this in other types of -- of issues where Connecticut was mandated to collected data in traffic stops for racial profiling and that has not been done to the level expected by, you know, that this Legislature expected. And neither has this, which you would consider one of the most critical issues in criminal justice in Connecticut, the Constitution State. It just seems incredible to me that it has not more fully been examined and was left really to our office to examine this data.

And I must say that we have no received funding from the Legislature or from OPM to sufficiently update this data even though I've requested it from OPM since the -- since the latest report has been completed.

SENATOR WELCH: And just so I can --

CHIEF PUBLIC DEFENDER SUSAN STOREY: And this is a real issue.

SENATOR WELCH: Just so I can understand things you said, so when you say this data in 2007, you're referring to the Donohue --

CHIEF PUBLIC DEFENDER SUSAN STOREY: I'm referring --

SENATOR WELCH: -- report.

CHIEF PUBLIC DEFENDER SUSAN STOREY: -- to data that we collected in other -- you know, we hired people to collected the data going through all these cases for Professor Donohue to review.

SENATOR WELCH: Okay. Got it. But then it also sounds like you said there was a Commission in 2003 and then there was a report that came out of that that was inconclusive at that time.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, no, that's two different things.

SENATOR WELCH: Okay.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Professor Donohue has done two reports. The first one was more inconclusive, although it seemed to identify a trend toward arbitrariness and race. And it really goes -- when we talk about race, it's really -- nationally, what is talked about as the race of the victim, I think there's some misunderstanding that we're talking -- looking at people on death row and say well, there's white people on death row, there's black people, there's -- what is this about race? It's really nationally and in Connecticut what seems to drive the -- the charging and the -- and the death penalty is the race of the victim and the race of the victim being white. So -- so Professor Donohue has done two studies, the second one is the one we're really putting forward at trial, the one that's really the most up to date. The one that shows more level of arbitrariness in certain areas.

Now, in 2003, there was a whole separate commission on the death penalty -- well, it started before that, but their report, you know, made a recommendation to the state of Connecticut that they really should be collecting comprehensive data that collected all this information so that it could be reviewed accurately to really determine, you know, it really should be the state that does this. It should be interested enough in the implications of the death penalty and arbitrariness to collect it itself, as some states do.

SENATOR WELCH: Okay. Got it.

CHIEF PUBLIC DEFENDER SUSAN STOREY: And that has not been done. So that's very -- very problematic, I think, for Connecticut, not to have done that.

SENATOR WELCH: Understood.

CHIEF PUBLIC DEFENDER SUSAN STOREY: (Inaudible.)

SENATOR WELCH: So just for me recap, so in re racial disparity --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

SENATOR WELCH: -- will probably go to trial this summer.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

SENATOR WELCH: Or at least scheduled to go to trial this summer. Donohue -- Professor Donohue is, in fact, the expert on behalf of that. You don't have a state's report -- report from the state but there has been some deposition testimony.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yeah. And what I can say about that deposition testimony is it is my understanding that the state's expert also -- I mean, he certainly refutes Donahue's findings and in some sense agrees with him.

SENATOR WELCH: Okay. I mean, conclusions or findings? I mean, I --

CHIEF PUBLIC DEFENDER SUSAN STOREY: I think they're -- there would be sufficient evidence to testify to them conclusively at trial.

SENATOR WELCH: I guess that's an unfair question for me to ask.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

SENATOR WELCH: I should probably ask the state's attorney when he comes.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, you can ask them.

SENATOR WELCH: All right. Now, just so I'm clear on this point, too, when the decision to seek the death penalty is made, who is it that makes that decision?

CHIEF PUBLIC DEFENDER SUSAN STOREY: It's a specific -- it's one of 13 state's attorney individually in the state. They have individual charging power.

SENATOR WELCH: Okay. So I mean, let's just assume, for instance, that there is racial bias within the system, is a solution -- possible solution then to change the state's attorneys that make the decision is repealing the death penalty the only solution?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I think under our -- our structure, the only real way to do that under our present structure is to abolish the death penalty.

SENATOR WELCH: And why -- I mean, why is that?

CHIEF PUBLIC DEFENDER SUSAN STOREY: There's really --

SENATOR WELCH: I mean, if it's discretionary within --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Because --

SENATOR WELCH: -- a department, within a person or two.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, the individual discretion is part of what causes the arbitrariness of the imposition of the death penalty so the structure we have now is those state's attorneys have individual charging power, they have discretion to charge or not charge in death-eligible offenses, whether they want to move forward under death or life without -- or noncapital. So that whole -- that set up is just -- there's no proportionality review. There's no -- there's no criteria that governs the decisions of the 13 state's attorneys. There is no review of their -- their charging decisions.

SENATOR WELCH: Now, are those things that we, as a Legislature, could address and change short of repealing the death penalty? I mean, are there nuances --

CHIEF PUBLIC DEFENDER SUSAN STOREY: I think that's a question that is better left to the chief state's attorney.

SENATOR WELCH: Okay. And that's fair. I think that's all I have. Thank you.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Thank you.

REP. FOX: Representative Berger.

REP. BERGER: Thank you, Mr. Chairman. I know there's many witnesses, many people that want to testify here today so I'll try to make a couple of questions brief here.

In your experience of defending individuals in the state of Connecticut, you know, certainly you and the whole division has -- has a lot of history and experience in this regard, what would you say to the fact that the death penalty could act as an investigative tool by a police department in an interrogation and/or witness or suspect testimony?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I'm not sure -- could you rephrase that for me. I'm not sure I understand your question.

REP. BERGER: During the course of an investigation by a law enforcement --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Right.

REP. BERGER: -- do you feel that the death penalty -- the fact that the state of Connecticut has a death penalty, do you feel that that could act as an investigative tool by -- that detective or that agency in its investigation of a crime and/or crimes committed by a suspect?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Do you mean like for instance saying to a suspect who is -- they're interrogating, you know, letting

them know that this could be a death penalty crime and that type of stuff? Is that what you mean? Well --

REP. BERGER: Similar and along those lines, yes.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Hmm, using the word "stuff."

Well, what I can say about that is what I am very concerned about is that can produce is a false confession. I think folks don't believe that somebody would confess something as horrific as, you know, a death penalty crime if they didn't do it. But, in fact, nationally and in Connecticut, it happens and so when police officers use certain techniques, and especially it's called the Reid Technique, they are -- they are trying to get a confession. And I think what happens is if they use that, at times, you can get a confession from somebody who is actually innocent or -- and there are many examples of that. I mean, whether they use it or not is really something that is challenged when somebody is arrested and goes into court with a defense attorney, but you know, we know that they use it.

I think the example that I cited earlier about Miguel Roman being Mirandized in Spanish but interrogated in English, you know, is something, you know, shouldn't be happening but still does in this day and age in Connecticut.

REP. BERGER: Well, I --

CHIEF PUBLIC DEFENDER SUSAN STOREY: I'm not sure I'm really answering your question.

REP. BERGER: Through the chair -- well, you have

kind of. But I think it's important in your testimony that when you talk about -- or I talk about -- an investigative tool of having the death penalty hanging someone's head, you made a statement that it leads to a confession -- can potentially lead to a confession, but I think it's also important for the committee to know and to people that are here know that it may not just be a confession. The use of the investigator in interviewing a suspect could also be used to determine an admission of other crimes or implicate other individuals not just a confession for that particular crime and I think it's important that we understand that it's not primarily a confession, but it could lead to admissions or implicate other individuals in additional crimes. And I'll leave it at that.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Can I --

REP. BERGER: And one just other thing on the racial disparity issue, and certainly I'll agree with my -- a lot of my -- many of my colleagues on this committee that -- that may, in fact, and potentially does exist in the state of Connecticut and when we deal with traffic stops by police officers and the recording of that information, it's very, very critical for the state to have as far as information, both information that can be used both at the state and the federal level. So I'm in agreement that we need to look at that and there is -- there is reasons, you know, where we -- there is actually ways we can address it.

But I think it's important for everyone to know that while that racial disparity and racial profiling may and could exist in the state of Connecticut and has been -- there has been studies both pro and con -- it's

important to understand that the 11 individuals that are on death row, we should not use racial profiling or racial disparity in viewing those 11 individuals because those 11 individuals have nothing to do with racial disparity or racial profiling. Those are individuals that committed the crime, were dully convicted by either judges or their peers in a court, evidence brought on both sides that those individuals there's no question that they committed the crime. There won't be DNA evidence that will exonerate them. We've had this discussion in the past and this is what I truly believe and I believe the vast majority of the people in the state of Connecticut believe that.

So when we talk about racial disparities and racial profiling, you know, I'm with you on that and I understand that we need to do more, as a state and as a General Assembly, but do not use that when we talk about 11 individuals that committed on death row. So thank you, Mr. Chairman.

REP. FOX: Are there other questions for Attorney Storey?

Senator Roraback.

SENATOR RORABACK: Thank you, Mr. Chairman. Good morning.

Good morning, Attorney Storey.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Good morning, Senator.

SENATOR RORABACK: I only have a couple of questions and the first question is a overarching question of a process in which if a judge and a prosecutor and a victim advocate

make a promise to a victim of a crime about the duration of a possible sentence for the offender which lies at the heart of the victim accepting the plea bargain, do you think the promise made by the prosecutor, the victim advocate and the judge should be an enforceable promise?

CHIEF PUBLIC DEFENDER SUSAN STOREY: You know, that's a difficult question because I think when promises are made -- this is -- sometimes we run across this with promises to our own clients that when a law changes impacts them just as it may impact families of crime victims. You know, I understand what you're saying and I -- and I thank, you know --

SENATOR RORABACK: Well, let me interrupt there. I don't think we can pass a law making the sentence of a convict longer. Can we do that? Once the process -- once --

CHIEF PUBLIC DEFENDER SUSAN STOREY: No, but --

SENATOR RORABACK: Once the process has concluded?

CHIEF PUBLIC DEFENDER SUSAN STOREY: But are you talking -- no.

SENATOR RORABACK: Okay. So you have to counsel your own clients about this issue --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, actually -- well, let me just say this. Sometimes when we counsel our own clients they say, you know, given -- you know, will I do 50 percent or will I do 80 percent for the crime, and sometimes, you know, then the law changes and, you know, we're careful not to do that because sometimes promises are made and then the law changes or you find new ways of doing things and sometimes, you know, it's not the best

route to take. You can give somebody --

SENATOR RORABACK: But let me -- let me understand, when we changed the law to require that violent criminals serve 85 percent of their sentence, that was applied prospectively.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Uh-huh.

SENATOR RORABACK: That wasn't applied retroactively. And so my question to you is do you think a promise should be enforceable when a victim has been told by a judge and a prosecutor and a victim advocate, at the time of sentencing, that there is no way the criminal will be released sooner than a particular date, do you think that as a matter of integrity for our state that promise should be enforceable?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I think -- well, I don't think promises -- I don't think promises made in those contexts are always enforceable.

SENATOR RORABACK: Well, I --

CHIEF PUBLIC DEFENDER SUSAN STOREY: I mean --

SENATOR RORABACK: Clearly, they're not always enforceable --

CHIEF PUBLIC DEFENDER SUSAN STOREY: If I --

REP. FOX: Why don't we do this? If we could just have one person answer and one person question and keep going that way. Thank you.

SENATOR RORABACK: Thank you.

And my question is not whether they're always enforceable, but do you think they should be

enforceable? Do you think victims ought to be entitled to rely on promises that made to them at the time of sentencing?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I think that victims -- that victims or families of victims of crimes need to be apprized of what in a prosecutor's determination, you know, will happen. I do think that circumstances change and that nobody, you know, necessarily has a crystal ball. I think that prosecutors always try to be, you know, fairly upfront with victims about what can happen. But for instance, if you change the death penalty, that is supposed to be prospective and people will understand that it is prospective. So if something is prospective, then people have notice and there is -- the promise is -- you know, there is no promise that's been made that's going to be broken if it's prospective legislation --

SENATOR RORABACK: And I --

CHIEF PUBLIC DEFENDER SUSAN STOREY: -- such as -- and you know, I know one of your issues that earned credit, but I think that, you know, people need to know that, you know, folks that had that -- got that now, anybody going forward will know that folks get that earned -- that earned credit and that will be taken into consideration, I think, by courts going forward for the sentence.

SENATOR RORABACK: Right. And the --

CHIEF PUBLIC DEFENDER SUSAN STOREY: And the families will understand how that will impact a particular sentence for an individual

SENATOR RORABACK: And I completely agree. I completely understand going forward

individuals will be apprized that that's the law of the land. My issue is not earned credits or early release. It's the issue of the victims of violent crime who feel violated by a state which is misrepresented to them the facts as to the duration of the sentence and these are victims of serial rapists, child predators, family members who have had loved ones killed who are promised by our system that a sentence would be a particular duration and we have upended that promise. And the reason I asked that question is because if we are to repeal the death penalty, I believe many people would only want that repeal if they could have confidence that it would be replaced by life prison without the possibility parole.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Correct.

SENATOR RORABACK: And if the Legislature can change the nature of sentences retroactively, if the Legislature can say to that rape victim, we promised you the criminal would serve 20 years, but now he's only going to serve 15, what's to stop a future Legislature to say we promised you that individual would get life in prison without parole, but now we've decided that -- for reasons sufficient to the Legislature, we're going to give them a reason to be released.

CHIEF PUBLIC DEFENDER SUSAN STOREY: I don't really see that happening with this Legislature.

SENATOR RORABACK: Well, you know, I was surprised that this Legislature saw it fit to release people that had committed pretty violent rapes and pretty violent killings of other human beings to be released early so I just think the integrity of our system ought to be paramount in our deliberations and I

appreciate your responses.

And I, thank you, Mr. Chairman.

REP. FOX: Thank you.

Are there other questions or comments for Attorney Storey?

Senator Meyer.

SENATOR MEYER: Attorney Storey, following up on Senator Roraback's questions, our law does provide for -- very clearly for sentence reduction, doesn't it? It provides at the initiation of a prosecutor there can now be an application for a sentence reduction. Isn't that true?

CHIEF PUBLIC DEFENDER SUSAN STOREY: For a sentence modification?

SENATOR MEYER: Sentence modification.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Right. For -- for anything, you know, above three years, the prosecutor -- you need a prosecutorial agreement, yes.

SENATOR MEYER: So at the initiative of the prosecutor, there can be a proceeding which can lead to a sentence reduction and that's engrained in our state law, isn't that correct?

CHIEF PUBLIC DEFENDER SUSAN STOREY: That's correct, but not for certain crimes that have a certain mandatory minimum or where the Legislature has said there shall be no release.

SENATOR MEYER: Okay. In addition, is it not true

that the Sentencing Commission, which we created, recently said that in the case of particularly sentences for juveniles, sentences of more than 10 years that there should be a procedure for a second look at that sentence. Are you familiar with that recommendation from the Sentencing Commission?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I'm not sure it was 10 years. I am familiar with it. In fact, there was a meeting earlier this morning. And that -- that second look is a result of the Graham Supreme Court case, Graham, which says that juveniles with exceeding long sentences and I think what we were looking at were juveniles who are doing, you know, very lengthy sentences now for crimes that they committed when they were 14, 15, 16 and 17 should have a second look and that is because of the Supreme -- U.S. Supreme Court case Graham, which says states should -- should provide some kid of scheme for doing that.

SENATOR MEYER: Okay. So that would be another -- another way in which there could be -- through a second look, a sentence reduction. And then further, is it not true that most states have a credit system in which an inmate can earn credits which could also reduce the sentence. And indeed, isn't Connecticut now in step with the great majority of other states in having a system of credits and those credits, of course, being based upon good conduct by inmates who have taken rehabilitation courses and have indicated rehabilitation but still in the discretion of the parole board.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes. Now, I think it's really important for the public to know that this is not an automatic, like a good-time credit that people in prison get.

It has to be earned and it's tailored to the individual inmate plan and inmates -- that is structured for an inmate when he comes into -- or she comes into prison what the expectations are, what the programming should be. You know, what -- what does a person have to do be like a model prisoner to comply with this plan. And only then are the eligible for this earned credit and this earned credit can also be taken away.

SENATOR MEYER: But the earned credit could have the effect or would have the effect of reducing the sentence from what it was originally -- the original sentence. Is that correct?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Uh-huh. Yes. And the other -- the other reason is it promotes good conduct and it reduces violence in the prison system.

SENATOR MEYER: Okay. So am I correct in understanding that under Connecticut's existing system there are a number of ways in which sentences that have bargained for can be reduce.

CHIEF PUBLIC DEFENDER SUSAN STOREY: You're absolutely correct.

SENATOR MEYER: Thank you.

SENATOR COLEMAN: Are there other members with questions?

Representative Smith.

REP. SMITH: Thank you, Mr. Chair.

And good afternoon, Attorney Storey.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Good afternoon.

REP. SMITH: Just to follow-up on what Senator Meyer just asked you, the earned credit would not apply in -- for this bill, would it?

CHIEF PUBLIC DEFENDER SUSAN STOREY: No.

REP. SMITH: And the case in New Mexico -- or the law in New Mexico that they just recently repealed the death penalty and there was an appeal for those who are on death row, can you elaborate a little more on that? What is the status of that appeal and what were the grounds for it?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, in New Mexico, the -- the persons name is Michael Astorga, and it says, "It is found that the jury can consider the death penalty for an Albuquerque man who is convicted of murdering a county sheriff's deputy in 2006 despite the state's 2009 repeal of capital punishment." So his case is going on now. He's on trial, I believe, as we speak. The only change that was made that the judge can apprize the jury of the repeal, but that does not mean -- but he did not fall under the repeal even though that was the argument he made. So they have upheld the prospective nature of their law.

REP. SMITH: And what was the basis of the appeal for the person who was on death row?

CHIEF PUBLIC DEFENDER SUSAN STOREY: You know, I don't have -- let me see if I have those -- State Supreme Court said Astorga can still face the death penalty in that case despite a later repeal of the state's death penalty law -- let me see -- you know, I don't have more -- I can you get more information on that

case, if you would like, but that's the -- that's the information that I have at the moment on New Mexico.

REP. SMITH: I would like it and I think it's important for many on this committee, and I'm sure throughout the Legislature, you know, if this bill is -- you know, as it is proposed as being prospective, that those who are death row remain on death row and those who commit crimes of that nature after if this bill were to become law be dealt with a different analysis. So I know it's consideration for a lot of members of this committee and a lot of members of the Legislature, especially in light of the recent, you know, murders here in Connecticut and how raw that still is to many of us. If you were take an appeal -- if this bill were to become law, what grounds would you use to take an appeal for those who remain on death row?

CHIEF PUBLIC DEFENDER SUSAN STOREY: You know, it's -- it wouldn't be entirely ethical for me, as the head of the agency, to tell you what arguments I would make on behalf of our clients. I think that's not something that I should really comment on. And -- as well as the fact that appeals would be done from folks in our office who are much more able to craft those arguments than I am.

REP. SMITH: Well, I think it's a fair question and I think it's not unethical. You're not representing any of these individuals at this time and I think an answer is -- is -- would be helpful in our deliberations in terms of -- because this is an issue, obviously, as to whether these individuals might be successful in appeal. You've heard many comments from our colleagues here this morning that are very concerned that, in fact, these people on death

row would be removed from death row in light of this bill. So I think it's an issue that we have to discuss and I would hope you would answer it.

CHIEF PUBLIC DEFENDER SUSAN STOREY: I do have more information on New Mexico, if you would like me to elaborate on that a little bit.

REP. SMITH: We have plenty of time so that's fine and then we can get back to this question.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Okay. Well, you know, I think I've answered that question the only way I can. I mean, I really do not know at this time what arguments would be set forth. Part of that is, I am not an appellate attorney. We do have attorneys on our staff that are, you know, qualified to make those arguments and I am not. And I really don't want to speculate about what arguments they're going to make. And those clients -- actually, they are our clients at this time so I do feel, as the head of the agency, that's not something that I should be speculating about.

REP. SMITH: Fair enough. But before we get to New Mexico, do you feel it's important to have as part of this bill some of the restrictions that have been mentioned by my colleagues that a person who may be convicted of a capital felony be restricted in terms of their abilities to engage with other prisoners while they're in prison. In other words, be in isolation and be treated a little differently in light of crime. Do you think it's something that should be as part -- be part of this bill?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I'm not saying that it should be. I think that it's your

decision on whether you want to make that or not. I really believe that the Department of Corrections, you know, has a system whereby persons who are dangerous to other inmates or to prison guards have, you know, a supermax prison to make sure that people are confined appropriately. I mean, I understand the issue but I really think that's, you know, a policy for you and the Department of Corrections.

REP. SMITH: And I think it's important for the committee to consider that because, you know, we have carved out a certain type of crime that if committed it falls into this category and somehow distinguish them from other types of murders and if we're going to have that carve-out, I think at least in my mind, we should have also some separation within the prison and treat them differently than the average prisoner who would otherwise have the rights to a TV and a library and freedom of access to walk around the courtroom -- court facility -- courtyard in prison. So I hope that committee will consider that in going forward with this bill.

But going to back New Mexico, you said you found some information.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes. This is a -- from the Quinnipiac Clinic, which I expect will also be testifying today. It's some helpful -- they have some expanded information on the New Mexico. And you know, what -- what they've said is that the New Mexico Supreme Court took up the issue of whether the prospective repeal of the death penalty in 2009 should apply retroactively to a man -- to Michael Astorga, as I said -- who committed his crime before the crime. And Astorga's lawyer argued that New Mexico's Legislature had spoken and although it had

repealed the death penalty prospectively, this repeal effectively set forth an evolved standard of decency which makes it cruel and unusual punishment to impose the death penalty on anyone. There should be no doubt and no question once the death penalty has been repealed. It is repealed for everyone.

And the New Mexico Supreme Court disagreed and dismissed the appeal and upheld prospective.

REP. SMITH: Okay. Thank you. So then -- that's on appeal to where now?

CHIEF PUBLIC DEFENDER SUSAN STOREY: That's on trial now. Astorga is on trial in the penalty phase, I believe, this week.

REP. SMITH: Oh, so the Supreme Court --

CHIEF PUBLIC DEFENDER SUSAN STOREY: It's allowed to go forward.

REP. SMITH: The -- I see. So the Supreme Court -- is the Supreme Court in New Mexico like the Supreme Court here in Connecticut, the highest court?

CHIEF PUBLIC DEFENDER SUSAN STOREY: You know, I believe so. I would imagine that would be -- they would take it to that particular venue, but I think it illustrates that at least one Supreme Court has upheld prospective.

REP. SMITH: And just so I'm clear in my mind, not to belabor the point, I know testimony is going on for awhile here, but -- so it was a motion made by the defense counsel to get out from under the death penalty. It wasn't a trial -- it's now on trial now and it's still waiting for a ruling from the court after a full hearing.

CHIEF PUBLIC DEFENDER SUSAN STOREY: He was convicted of the crime but the penalty has -- is now allowed to go forward because they said that the appeal was prospective and did not apply retroactively to him.

REP. SMITH: And from that decision, an appeal was taken. Is that correct?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, they appealed it but now they've denied -- they've dismissed the appeal. He's on trial. They set it -- you know, he has to go forward with his trial under death circumstances.

REP. SMITH: I guess because -- the reason I'm confused is typically, at least as far as I know, you have the trial, then there's the sentencing --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Right.

REP. SMITH: -- hearing.

CHIEF PUBLIC DEFENDER SUSAN STOREY: But I think it was -- I think it was sort of bifurcated because, you know, the conviction happened and then the repeal happened so then that's the new argument for counsel. The counsel makes that argument, you know, goes through the motions of trying to prevent from even going forward, you know, under -- you know, and saying my clients -- you know, there's a repeal, it should, you know, apply to him retroactively. They said no so now he has to continue on with -- with the second phase of the case. That's my understanding. Just like we have here, we have the guilt phase and the penalty phase.

REP. SMITH: Thank you so much for your answers and

for being here today.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Thank you.

SENATOR COLEMAN: Are there other members with questions?

Attorney Storey, I really have a simple question. Can you give me the spelling of the name -- last name of the defendant in the New Mexico case?

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes, A-s-t-o-r-g-a.

SENATOR COLEMAN: And secondly, my understanding is that in connection with death sentences, there are automatic appeals.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes.

SENATOR COLEMAN: And can you explain whatever appeals there may be with respect to death sentences and particularly how the automatic appeals are triggered.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Well, in Connecticut, it's a matter of law that you have an automatic appeal from a death sentence. Are you asking whether it would apply -- I mean, does it apply to the folks on death row because they already had their direct appeals and --

SENATOR COLEMAN: I'm asking in general.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Okay.

SENATOR COLEMAN: Whenever there's a death sentence handed --

CHIEF PUBLIC DEFENDER SUSAN STOREY: Yes, you have

to have --

SENATOR COLEMAN: -- down, what is the process of appealing?

CHIEF PUBLIC DEFENDER SUSAN STOREY: You must have an appeal, a direct appeal.

SENATOR COLEMAN: And is that state court appeals or federal court?

CHIEF PUBLIC DEFENDER SUSAN STOREY: State, we start with state court.

SENATOR COLEMAN: Is there --

CHIEF PUBLIC DEFENDER SUSAN STOREY: The Supreme Court.

SENATOR COLEMAN: Is there at some point in time where an appeal to federal court is either required or optional?

CHIEF PUBLIC DEFENDER SUSAN STOREY: I think after you -- after a defendant goes through all their appeals stages here, state habeas after they've foreclosed all those options, then there is federal habeas.

SENATOR COLEMAN: Okay. Thank you.

Are there any other questions or comments?

If not, thank you very much.

CHIEF PUBLIC DEFENDER SUSAN STOREY: Thank you very much.

SENATOR COLEMAN: Next on our list is Senator Donald Williams.

Good afternoon, Senator.

SENATOR WILLIAMS: Good afternoon, Senator Coleman and good afternoon, members of the Judiciary Committee. Thank you for allowing me to testify today on Senate Bill 280, AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES. I've always been opposed to the death penalty. I believe Connecticut's ultimate criminal penalty should be life in prison without the possibility of parole. Reasonable people can disagree about the death penalty and I respect the views of those who favor it. My view, however, is that there are many reasons it does not belong in Connecticut's system of justice.

First, it is a penalty that once exacted can never be visited. No system of justice is perfect and mistakes are made in our criminal courts. We've all read about cases where individuals are wrongly convicted based on false testimony or flawed evidence. When those wrongfully convicted are lucky enough to have witnesses recant or new technology prove their innocence, they are released. There is no way to give them back the time they lost in jail, but they may attempt to rebuilt their lives. Mistakes are made in death penalty cases. Last year, Illinois became the 16th state to repeal the death penalty after it was shown that a number of inmates on death row had been wrongfully convicted. One inmate was days away from execution when another person confessed to the crime and that particular mistake was not caught by the criminal justice system. It was not part of an appeal or court action. It was random luck. The confession came about because of a project conducted by law students.

Illinois is not alone. Similar concerns have been raised in almost every state that has the

death penalty and over the last years since the death penalty was affirmed by the Supreme Court in the 1970s, at least 138 individuals on death row have been exonerated and released. When the death penalty is carried out, there is no opportunity to correct mistakes. In a system of justice that is not perfect, we must not employ a penalty that requires perfection. There are many other reasons to change Connecticut's ultimate penalty from death to life in prison without the possibility of parole.

The death penalty is not a deterrent to crime. In recent polls, police chiefs ranked the death penalty as the least effective tool in reducing the rate of violent crime compared to other crime fighting tools such as curbing drug abuse and increasing the number of officers on the street. Economics plays a discriminatory role in who is charged and convicted of a capital offense. Individuals who can afford a dream team of defense lawyers are often not sentenced to death when they have committed crimes similar to others on death row. Prosecutors are often deterred from pursuing the death penalty when defendants have the financial means to employ costly experts and defense counsel.

Race often plays a role and when combined with economics is doubly discriminatory. Blacks and whites have been the victims of murders in also equal numbers in America, yet 80 percent of the people executed since 1977 were convicted murders involving white victims not black victims. Black defendants are more likely to be sentenced to death if their victim is white rather than black and murderers of black and Latino victims are treated less harshly than the murderers of white victims. There is simply an

unacceptable randomness to the death penalty. In a study of Connecticut death penalty cases over a 34 year period ending in 2007, Stanford Law Professor John Donohue found virtually no difference between the severity of crimes committed by defendants on Connecticut's death row compared to other violent offenders sentenced to life in prison or lesser terms.

During those same 34 years, there were 4,686 murders in Connecticut. Of those, only 92 cases resulted in a convicted of a capital felony. Of those 92 cases, just 9 defendants were sentenced to death. Professor Donohue concluded that, quote, the State's record of handling death-eligible cases represents a chaotic and unsound criminal justice policy the serves neither deterrents not retribution. Arbitrariness and discrimination and defining features of the State's capital punishment regime, end quote.

The punishment of life in prison without the possibility of parole makes more sense. It is a severe punishment. It does require those victimized by violence to relive the crime through multiple postconviction hearings and appeals that are required by the death penalty and often last many years. Life in prison without parole is a sentence that is certain and final. Here in Connecticut, we must strive to have a system of justice that is consistent, fair and free from prejudice as is humanly possible. That is why I support repealing the death penalty.

Thank you.

SENATOR COLEMAN: Thank you, Senator.

Are there questions for Senator Williams?

Senator Meyer.

SENATOR MEYER: Thank you for your leadership as our Senate President. I appreciate it.

I've noticed over the years including this year that a lot of people have come up here to Hartford who are families of men and women who have been murdered and instead of urging us on with respect to capital punishment, they have urged us to repeal the death penalty. Do you know why that is?

SENATOR WILLIAMS: You know, Senator Meyer, I can't put myself in the place of a family member, someone who has been victimized by a terrible violent act and -- but I'll -- let me say this, I think probably for folks who have been victimized in that way, there can never be complete and absolute closure. However, when you have life in prison without the chance of parole, that is a certain and final sentence. To the point there can be closure in the criminal justice system, the criminal justice system that provides it. The death penalty of necessity will entail numerous appeals spread over years with the hearings that I referred to where families relive the excruciating details of those crimes.

I can only surmise that when those families come and testify to that extent that what they are saying is give us that closure in the criminal justice system at least. They might not be able to find it ever in their lives, but at least give us that closure in the criminal justice system.

SENATOR COLEMAN: Are there other members with questions?

Representative Adinolfi.

REP. ADINOLFI: Thank you. Thank you.

Question for you, when you say life in prison without parole, can you clarify that? What type of life in prison? There is five different levels. Where would you want to put them.

SENATOR WILLIAMS: Well, I have toured Northern. I have been to death row. I have toured MacDougall, all maximum security facilities. They are all places that none of us would want to be. And I believe that life in prison without parole is just what it should mean. They go in and they never come out. They are in a maximum security facility for their life.

REP. ADINOLFI: Well, how would you feel in Level 4, they get seven hours of recreation a day that they can gather themselves and depending on which -- whether at MacDougall or Northern, what they have to offer them to do is a little bit different. Northern is worse than MacDougall on the Level 4. But how would you feel about just leaving them where they are? Just take the name "Death Row" away and let them get the adequate punishment that they deserve like somebody like Komisarjevsky and Hayes. And we also have -- there's a few others here, one fellow that killed a cop and so on. Why not just change the name and call it "Maximum Incarceration" and let them be tried on that and let them stay in solitary confinement for life.

SENATOR WILLIAMS: Well, we -- there are certain constitutional guidelines that we have to follow. I mean, we can't -- we can't have cruel and unusual punishment.

REP. ADINOLFI: They're there right now. Leaving

them in death row, just changing the name, that's all.

SENATOR WILLIAMS: I'll tell you when I went through MacDougall --

REP. ADINOLFI: I've been there, too.

SENATOR WILLIAMS: -- and it's not -- people aren't out for seven hours of recreation.

REP. ADINOLFI: That's what it says here in their report.

SENATOR WILLIAMS: They're out of their cells for about -- a little over four hours. There is some time when they're in their pod, which can contain approximately 80 inmates or thereabouts. Now, they can be out longer up to about seven hours, as your indicating, if they have a job. They have to earn that and when they have the job, they're doing things is repairing furniture, for example, for state offices, that type of thing. They are locked down for the vast majority of their time in a small tiger-like cage facility. I'm sure you took a look at the cell.

REP. ADINOLFI: Well, they're allowed two in the cell.

SENATOR WILLIAMS: Absolutely, two people in that tiny confined space. That is where they spend the vast majority of their time every single day. It is a maximum security punishment and it is a maximum security facility.

REP. ADINOLFI: Well, the way the -- the report I got from DOC is that they do get -- could get seven hours out. There is available work if they want it. They can either get their meals in their cell or they can go sit with the

crowd in the dining room.

SENATOR WILLIAMS: And what I have to say is at MacDougall right now, they're transitioning over to just meals in the cell.

REP. ADINOLFI: Okay.

SENATOR WILLIAMS: There is not going to be the cafeteria-type meals.

REP. ADINOLFI: Yeah, I visited there at meal time and I saw how they do that. I just feel that taking them out of death row for the crimes they committed, especially some of the cases that I'm personally familiar with that it's given -- it's given them relief. It's letting them off the hook for what they did. If somebody was to say, well, let's leave them in death row, let's leave them in solitary confinement for life. They can never talk to anyone else. Now, they're doing that now and it's not unconstitutional. They have a 9-inch TV in there, which I understand they sometimes get two channels, but it's usually one. And they're restricted on the type of visits they can have compared to if they were in a Level 4 where the visits from people are a little bit less controlled.

And all I'm saying is that this should be a punishment for the crime -- suitable for the crime. Now, there aren't many people -- I have the numbers here. I've got them. January of 2011, we had a total of 977 trials. Okay. 822 was sentenced. 155 was still unsentenced. Now, I hope since 2011 that has changed somewhat. You have 599 had prior convictions of murder. Then you had the capital felony, it was 45 and that doesn't include the 11 on death row now. And they wound up with life imprisonment without

parole, but not all of them. The number is really 57 because 12 of them haven't been sentenced as of date. And then arson/murder, there's two. And arson/murder, I remember when I visited the Cheshire prison and they were taking me a tour and they pointed out this fellow that killed six people. And I said well, what's he doing in this -- in this prison? And they said to me, he was arsonist. He wasn't a murderer so sometimes I wonder how the system works.

But I think I could bend, although I don't want to, if we gave them solitary confinement for life. That is, stay in death row just where they are and change the name. Don't give them all the recreation. Let's punish them for their crimes. I mean, we have two individuals here -- we won't even go there because we all know about that -- we have one here that kidnapped -- Daniel Webb, convicted of kidnapping, attempted rape and murder of Diane Gellenbeck. Another fellow, Sedrick Cobb convicted of rape and murder of Julia Ashe whom he kidnapped from a Waterbury department store parking lot. You have Richard Reynolds, who is convicting murdering Waterbury Police Office Walter T. Williams. They've all been going through their appeals. They've gone through one appeal after another. After while, half the appeals are thrown out before they even reach a judge when they're going through them. It's just the way.

What we should do is speed up the process and we save a lot of money and that's what we're not doing and I think we should, but I appreciate and I respect your opinion.

SENATOR WILLIAMS: Representative Adinolfi, just to add to that and to emphasize the randomness of the death penalty that we have here, there are

capital felony inmates at MacDougall -- MacDougall who committed crimes that you would not be able to differentiate from those on death row; an individual who is convicted of kidnapping, raping and murdering a social worker; an individual who murder a neighbor and her 87-year-old mother, stabbed them 26 times; an individual who murdered a mother and two of her children by stabbing them; an individual who shot and killed two children, waited at their home and then shot and killed their parents. These individuals were not convicted of the death penalty. These individuals are at MacDougall along with numerous other capital felony inmates. They're at MacDougall right now.

Our capital punishment system is completely random. Over 4,000 murders in that study that I talked about I suspect the victims, the family members who were affected by that, at some instance, even those who may oppose the death penalty, at some instance, they might have had that visceral human reaction that they would like to see that murderer put to death. But out of those 4,000 cases, only 92 capital convictions and of those 92, only 9 on death row. It makes no sense. It's completely arbitrary. And we owe it to the victims to provide a system that is more consistent and more certain and that provides closure within the criminal justice system.

REP. ADINOLFI: I agree with you. The only difference is that those people that you mentioned that did not get the death penalty I think should have and maybe the prosecutors should have appealed the case.

SENATOR WILLIAMS: And we can only speculate as to the factors that excluded those cases from becoming death penalty cases that resulted in

conviction.

REP. ADINOLFI: Thank you.

SENATOR WILLIAMS: Thank you.

SENATOR COLEMAN: Are there other questions?

Representative Hetherington.

REP. HETHERINGTON: Senator Williams, the arguments that you eloquently stated against the death penalty, wouldn't those arguments also apply to the people who are now on death row?

SENATOR WILLIAMS: They might.

REP. HETHERINGTON: I -- I'm trying to understand the -- with the force of the argument you brought against death row as a matter of principal, I'm wondering your support of a bill allows 11 people, who are currently sentenced to death, remain under that sentence.

SENATOR WILLIAMS: I am in favor of the repealing the death penalty and if we can find the votes to the repeal outright I would support that. I will support a prospective death penalty repeal and that is why I am here testifying in favor of this bill. I mean, as I said before, our criminal justice system is not perfect. The actions that we take here in the Legislature, we all know, are not always perfect, but we -- we try to do good even if we can't be perfect and so for that reason, I support this bill before us.

REP. HETHERINGTON: Do you think that distinction would be upheld if that were -- if that argument -- the argument based upon the difference in treatment were made on behalf of

those on death row currently?

SENATOR WILLIAMS: You'll have a chance to talk to legal scholars who will be more steeped in that knowledge than I. I can only refer you to the New Mexico example that was cited earlier today.

REP. HETHERINGTON: A couple of other things I wanted to ask you, Senator, if I may. You remarked on the difficulty for the family of victims to go through constant appeals and reviews. Well, those appeals and reviews aren't inherent in the death penalty. They are because of the way the system works here in Connecticut that we have chosen not to change. Isn't that correct?

SENATOR WILLIAMS: Well, no. When Governor Rowland was governor, we did modify the death penalty. At the time, it was thought that those modifications would, quote, speed up the death penalty process, but what we have found is that the death penalty being the ultimate penalty where the state kills the defendant requires maximum due process at every single level. I would think that most of us would agree that that would have to be the case when there is no going back. So the simple fact of it is is that we endure those frustrations because of the severity and the ultimate sanction of the death penalty.

REP. HETHERINGTON: We are somewhat unique, though, aren't we, in Connecticut, and perhaps rightly so, but in the -- in the degree of review and scrutiny that we give to convictions that carry that. Other states do not necessarily follow our model. I'm not suggesting we're wrong in doing that, but I'm just suggesting that that is -- that we have chosen a different route.

SENATOR WILLIAMS: States that have the death penalty certainly have different routes. Again, we modified our law in the 19 -- I believe it was in the late-1990s, when Governor Rowland was governor, and it was supposedly to help speed that process and we did change the criteria supposedly to that end.

REP. HETHERINGTON: One of the -- you have mentioned several times -- and I appreciate that -- the certainly and the degree to which we can be sure that anyone convicted of this -- of a capital offense that would now qualify for death penalty consideration, that they will spend the rest of their lives in prison. One of the -- one of the complaints that I hear, Senator, frankly, to me about abolishing the death penalty is we say that they will spend the rest of their life in prison, but how do we know that will be true? And as we've -- you know, in the colloquy we've had earlier -- not with you, Senator, but with others -- and I think it's just a reality that they will spend the rest of their life in prison until this Legislature decides that they'll receive some other treatment, that we will have risk reduction credits that applies to capital offenses or some approach.

So really we can afford victims very little -- their families very little assurance that that forever is forever. Isn't that right, Senator?

SENATOR WILLIAMS: Representative Hetherington, I believe that if we repeal the death penalty then there will be proper focus on those who are sentenced to life in prison without the chance of parole in a way that perhaps we don't do now because folks say, oh, well we

have this ultimate penalty, the death penalty. But it's a delusion if we think that that is a penalty that is applied in any systematic and consistent way. When we look at the evidence, when we know that during that 34-year period, there over 4,000 murders and yet only 92 capital felony convictions and then only 9 death penalty convictions and then we look at the fact patterns of the other cases and we see in so many of the cases they are indistinguishable from the facts -- terrible facts of these handful of capital cases.

And we might ask ourselves why is that? Was it less press coverage? Did it happen in a poor neighborhood? Did the facts and victims not fit the demographic of TV news? What were the reasons that we focused on these handful of cases and not these others? So I think by repealing the death penalty, we bring proper and appropriate scrutiny where it belongs, not in the handful of cases that really don't reflect our criminal justice system in the state of Connecticut. They reflect the randomness of that system. Bring it back to where it belongs. The focus on the penalties that the vast majority of violent criminals face in the state of Connecticut.

REP. HETHERINGTON: One more question, if I may, and that leads from your last comment. The randomness that you've referenced and you had some numbers there, the number of violent crimes, and so forth, to what extent is that due to the fact that a prosecutor does not seek the death penalty to what extent is it due to the jury system that applies at the penalty phase as well as in the fact phase and the fact that juries come up with different, sometimes unfathomable decisions. I mean, to what extent do we have that randomness as a matter of the -- of respecting the jury system

and carrying it out in the penalty system as well as at the trial session.

SENATOR WILLIAMS: Well, I think --

REP. HETHERINGTON: To what extent -- oh, I'm sorry. Go ahead.

SENATOR WILLIAMS: No. No. No.

REP. HETHERINGTON: I was just going to say to what extent is it prosecutorial discretion?

SENATOR WILLIAMS: You know, I think we're left to speculate about the randomness, and in my opinion, it has everything to do with economics. It has everything to do with race. It has maybe a little bit to do with press coverage. It has something to do very certainly about geography and the prosecutor's office in a particular judicial district. As to the jury system, I doubt that that's a factor. As a matter of fact, in death penalty cases, we have -- the death-qualified jury issue, which is something I didn't talk about in my -- my testimony, but we exclude folks who are against the death penalty in most cases from serving on death penalty cases in evaluating whether a person will receive the death penalty or not. And there has been some studies, as you might guess -- I mean, commonsense, if you think about that for a second, there have been studies that have been done to show that when you exclude folks who oppose the death penalty from the juries, you're more likely to have a jury that will convict.

REP. HETHERINGTON: So it's surprising it's as random as you report when you -- if you -- if the jury is prescreened to eliminate those who oppose the death penalty.

SENATOR WILLIAMS: I think for all of those -- those factors, the randomness is built into the system. It absolutely is and that is wrong in a system of justice that we want to be consistent and fair.

REP. HETHERINGTON: Okay. Thank you, Senator. You're certainly an eloquent spokesman for you position.

SENATOR WILLIAMS: Thank you.

REP. HETHERINGTON: Thank you, Mr. Chairman.

SENATOR COLEMAN: Representative O'Neill.

REP. O'NEILL: Thank you, Mr. Chairman.

Thank you, President Williams.

SENATOR WILLIAMS: Thanks.

REP. O'NEILL: During your testimony, you indicated that there were cases where the -- the defendants have been exonerated, obviously, in other states. Do you have any reason to believe that any of the defendants currently sitting on death row are not, in fact, guilty of the crimes they have been convicted of?

SENATOR WILLIAMS: I have no studied that so I can say that I have no reason to -- to make that case. No.

REP. O'NEILL: And of the 4,000 cases that were reviewed by the professor who did the study that you referenced, were any of those cases ones where the prosecutors declined to seek the death penalty because there was a legal dream team on the defense side where the prosecutor said we can't prosecute or won't

seek the death penalty because it will just be so expensive and difficult. That's what you were saying. It was an economics issue for the prosecutors. Were there any cases that you came across that showed that?

SENATOR WILLIAMS: I did not see that level of detail in the Connecticut study. I do know that is a factor across the country and we know it whether you're looking at studies or we know it whether you look at the O.J. Simpson or Claus Von Bulow case.

REP. O'NEILL: But here in Connecticut, given that the state's -- our chief public defender's resources are what they are to handle these kinds of cases versus what may exist in other states, I think that's a big difference between Connecticut and many other parts of the country, are you aware of -- have you ever been told by a prosecutor, I would have sought the death penalty in the case of X, but because the defendant had the resources to put up such a vigorous defense, I chose to plead it out.

SENATOR WILLIAMS: I know that prosecutors are deterred from seeking the death penalty if they know the defendant has the resources to employ experts and incur significant cost and time for the prosecution. The prosecution -- I mean, we all know in our criminal justice system, it is about justice, but it is also about trying cases and moving business and so to the extent that they realize that there is a going to be a lengthy and costly trial with an uncertain outcome because of the resources on the other side, they have to weigh that against seeking a lesser sentence of life in prison or some other sentence. That goes on every single day in our criminal justice system.

REP. O'NEILL: But when I've had the chief public defender discussing the death penalty issues, we had some budgetary discussions about this. And one of the points that she raised was that the private bar has very few people who actually do criminal defense work, death penalty work because of the difficulty of it in the private sector and that in effect, from the way she was describing it, she's about the only law firm, hers is about the only law firm in the state of Connecticut or even nearby that has the resources to wage effective defenses of death penalty cases. And -- so if the prosecutors were not going to prosecute because they were up against an equal opponent, someone with resources to match their own, then they're doing that every time they prosecute a death penalty case against the public defender's office, aren't they?

SENATOR WILLIAMS: Representative O'Neill, I can't imagine that all the other law firms in the state of Connecticut would concede that there's only one law firm in the state that could defend a death penalty case where the defendant had the resources to pay for the necessary costs.

REP. O'NEILL: Well, she could only find four firms, I think, or four attorneys who were willing to -- when they have conflict -- conflicted cases, such as we have two people being prosecuted for the same crime, involved in the same crime, where you have to split of the defense because you've got potential conflict of interest since two criminal defendants are probably going to point to the other guy as the one who probably was the real perpetrator of the crime and that's a natural thing for a defense attorney to do so she has to on a regular basis seek to have people who

will do death penalty cases and she was telling us that it's really hard to find anybody in the private sector who is willing to do those kinds of cases.

SENATOR WILLIAMS: And I suspect that -- because of the vast, vast majority, you're probably looking at cases where there -- there aren't those resources. We know that economics plays a role. We know that race plays a role. We know that geography plays a role. We know that other factors must play a role when you have over 4,000 murders, you have only 92 capital felony convictions, you have only 9 death penalty convictions.

REP. O'NEILL: With respect to the economic issue, as far as -- what I'm gathering, though, that there are no examples that you can cite where somebody who would have been prosecuted for the death penalty -- with the death penalty on the table was able to avoid that because they had a million dollars to spend on a criminal defense.

SENATOR WILLIAMS: O.J. Simpson, Claus Von Bulow --

REP. O'NEILL: No, I'm talking about Connecticut.

SENATOR WILLIAMS: Well, you know, the thing about it is is we have not had those kinds of studies in the state of Connecticut and that would involve candid admissions on the part of prosecutors in terms of what affects some of their decisions. We want business to move forward. We want to have justice in our system. So I'm not -- I'm not willing to concede that that has never been the case in the state of Connecticut.

REP. O'NEILL: But you don't have any evidence to support that it has been?

SENATOR WILLIAMS: I am telling you that we have not had the studies in the state of Connecticut looking at that issue. There have been studies nationwide and there are absolute cases that we can point to nationwide. We know in our gut that that's true. I know that. I can point to cases. I mean, to deny that, I think is to deny a basic fact that if you've got significant financial resources in the United States, you can bring to bear a dream team and you will have a different type of justice.

REP. O'NEILL: But, again, we haven't seen that in the state of Connecticut.

SENATOR WILLIAMS: I can't say that. What I can tell you is I have not -- I'm not aware of studies that have examined that question.

REP. O'NEILL: With respect to the -- using the penalty of life without possibility of parole as an alternative, one of the things you said would be a good thing about that is is that the victims family would not have to relive the experience of the case, the testifying and that sort of thing. The implication is that they would -- that these cases would be plead out -- the people would accept life without possibility of parole instead of demanding a jury trial and going for -- trying to get an acquittal or perhaps a lesser penalty with a lesser conviction.

SENATOR WILLIAMS: I was talking about postconviction appeals and hearings. I mean, I'm assuming that of course we would see at the jury level, at the trial level as cases go forward. That's what I was talking about, postconviction hearings and appeals.

REP. O'NEILL: Because one of the issues that the prosectors have raised in the past and I assume will do so again in this case, is that the death penalty itself is a bargaining chip to put on the table to, in fact, induce someone to plead to a lesser penalty so as to avoid some of the testimonial issues, putting the family through the horror of the event and that sort of thing. And that if you take it off the table, then it's going to be much more difficult to persuade a defendant to plead guilty either to live without parole or life with parole or some version of a long prison sentence instead of having to face the possibility of the death penalty being placed on the table.

If we take the death penalty off the table, how do we make up for that in terms of the ability of the prosecutors to negotiate in those kinds of circumstances?

SENATOR WILLIAMS: In the same way that we do in the vast majority of the murder cases in Connecticut, because the vast majority of the murder cases in Connecticut do not result in a defendant being charged with the death penalty.

REP. O'NEILL: But it's -- it's -- isn't it still there as potential possibility for the prosecutor to put it on the table for negotiation purposes?

SENATOR WILLIAMS: It's there in the same way that life in prison without the chance of parole is going to be a very severe punishment that defendants will face if we repeal the death penalty.

REP. O'NEILL: And finally, I would ask: My understanding is that this bill, as its last

couple of times around, has been -- is purported to be a prospective repeal of the death penalty. We have been told by both the prosecuting, Mr. Kane, the chief state's attorney, as well as I believe the public defender that in the case that this bill passes, they expect and are confident that there will be new appeals filed in all the existing cases of everyone whose previously been sentenced for the death penalty to challenge that conviction or that sentence since the state will have changed its policy on this issue. And there seems to be pretty much a consensus by both the prosecutor and the defense people here in Connecticut most familiar with death penalty issues that that's going to be a very difficult hill for the prosecutors to climb in terms of defending the existing sentences and that we should expect that if we repeal with so-called prospective only language, that as a practical matter, no one will have the death penalty imposed upon them in the state of Connecticut.

Do you agree or disagree that we can go this way and have it only be prospective?

SENATOR WILLIAMS: Well, I mentioned earlier, I can only point to the New Mexico example and I'm not going to claim to be an expert in terms of the legal ramifications that you're discussing. But in New Mexico, as was mentioned earlier, that issue was taken to the State Supreme Court and the State Supreme Court rejected the idea that a prospective repeal of the death penalty negated the death penalty for those already charged or convicted.

REP. O'NEILL: Okay. We don't what the consequence would be except that there would inevitably have to be years of additional appeals in each

one of those cases or at least one of them and probably all of the them would have appeals filed that would additionally delay the imposition of the death penalty if we make a change in this law. That is certainly what I was told back in the 1990s when we did make some changes to the death penalty in Connecticut, although my recollection is a little different from yours, I think, that one of the factors that was an issue there was the aggravating weighing -- the aggravating versus the mitigating factors; whereas, in the previous version of the death penalty that existed upon until the mid-'90s, if you had one mitigating factor, it didn't matter how many aggravating factors there were, that one mitigating factor was enough to cancel the death penalty.

Whereas, when the changes were made, I didn't think it was so much that they we were trying to get speeding up the process as to make it possible for a balancing test to be engaged in by the people who were trying to judge whether there was enough mitigation to outweigh all the aggravation that they had to deal with.

SENATOR WILLIAMS: That would -- I agree with almost everything you said, Representative O'Neill, that is absolutely right. So theoretically, that makes it easier to convict, but I would say, as well, that that probably means that there are fewer grounds upon which to appeal that conviction and that could conceivably short ten the time frame.

REP. O'NEILL: Thank you, Mr. Chairman.

REP. FOX: Thank you.

Are there other questions?

Representative Hewett.

REP. HEWETT: I've just got one question. How you doing, Senator?

SENATOR WILLIAMS: Good. Thank you.

REP. HEWETT: I've just got one question. First of all, I want to say that I believe O.J. did it. The question I have is I think we all can agree that there is a problem with the prosecuting system because -- because of economics, people that come from poor families, they can't afford -- because money can get you a not guilty verdict. I think a lot of us in this room agree with that. Knowing that and we -- for instance, say we get rid of the death penalty and -- and it's not on the table anymore and it's life without possibility of parole, if we don't do something about the prosecutorial system, do you think now that we have more people get life without possibility of parole because that system is still broken.

SENATOR WILLIAMS: That's a good question, Representative Hewett. I do know that this will put greater scrutiny on the penalties that are applied to the vast majority of violent criminals. Again, having a death penalty as part of our criminal justice system I believe diverts our attention to a penalty that is only applied in a microscopic number of cases and takes a lot of time and attention away from where it should be which is a fair sentencing process for those violent criminals who make up the vast majority of those prosecuted never facing the death penalty.

REP. HEWETT: So you do believe there is a problem with the system?

SENATOR WILLIAMS: Well, I think -- look, as I said before, no system is perfect and we're always in the process of revising and refining this process and I think this is a good opportunity to do that and to take that initiative.

REP. FOX: Representative Smith.

REP. SMITH: Thank you, Mr. Chair.

Good afternoon, Senator.

SENATOR WILLIAMS: Good afternoon.

REP. SMITH: You may have answered the question. I stepped out for a bit, but my question is and I asked the same question to Attorney Storey, if this bill were to become law, do you think there should be a provision in this particular bill that would restrict the movement of the prison? In other words, have them in isolation or restricted confinement. I heard you testify somewhat on that background about that before, one of the concerns I think some of the committee members including myself have is -- has is the ability of these prisoners who we have carved out an exception for in the statute who are deemed to be the most -- worst types of criminals and warrant a special type of treatment to be mixing with the normal prison population so I'm just wondering if you think there should be something in this bill that would address that.

SENATOR WILLIAMS: Well, as I mentioned to Representative Hewett, we don't have a perfect system and I think that we should look at all the alternative penalties other than the death penalty and this would be an opportunity to do that. As I pointed out earlier when Representative Adinolfi and I had a chance to have a good constructive dialogue, there are

many prisoners at MacDougall right now who have been convicted of murder, the circumstances of which are pretty much indistinguishable from those who are on death row. So because of the randomness in our system, I think this could be an opportunity for us to say, look, let's not have the death penalty have a distraction in our criminal justice system. Let's look at the vast majority of violent criminals who never face or are charged with the death penalty and -- and examine whether the penalties that they are facing are suitable.

REP. SMITH: I'm going to take that as a yes. So I -- and I agree with you I think it should not only be these criminals who have carved out as having a special exception who should be treated a little bit differently, because in my mind, it is very difficult to distinguish between some murderers and other murderers when they're so horrific that -- well, why is this one on death row and this one is not.

SENATOR WILLIAMS: I agree.

REP. SMITH: So I do think it's a --

SENATOR WILLIAMS: I agree.

REP. SMITH: -- a good opportunity for us to take a look at that and thank you for your answer.

SENATOR WILLIAMS: Thank you.

REP. FOX: Thank you.

Are there other questions for Senator Williams?

Representative Hetherington.

REP. HETHERINGTON: Thank you, Mr. Chair.

For the second time, Senator -- Senator, if I may, one more question, you cite the fact that there are a great many homicides, terrible crimes, but such a very small number of people actually wind up on death row. Why isn't that a valid argument for saying that it just shows you that the system is working perfectly? It discriminates so perfectly among the worst and those who are not the worst. Now, it seems to me if someone were arguing the opposite way, you would take that as -- as evidence that the system is working right. It discriminates between the worst and those who are not guilty of the worst.

SENATOR WILLIAMS: That's a good question, Representative Hetherington. And I think that we can answer that by saying look at the facts and the circumstances regarding those who were not convicted of the death penalty, some of those who are serving at MacDougall, not at Northern. The individual, who, as I mentioned before, shot and killed two young children and then waited at their home and then shot and killed their two parents. That person is not on death row and I'm not exactly sure I can tell you why, but it certainly speaks to the randomness of our death penalty system and there are many other individuals with similar fact patterns so I would say that the death penalty is not working perfectly well, that is completely random and arbitrary. And based on some of the studies that I cited, others certainly agree.

REP. HETHERINGTON: Thank you, Senator, very much.

SENATOR WILLIAMS: Thank you.

REP. HETHERINGTON: Mr. Chairman, thank you for

your indulgence.

REP. FOX: Are there other questions for Senator Williams?

Thank you for your testimony, Senator.

SENATOR WILLIAMS: Thank you, Representative Fox.

REP. FOX: We -- that's our second witness. We will now turn to -- we will go to members of the public and we'll alternate between members of the public and public officials. And the first name is Monica Fore.

Good afternoon.

MONICA FORE: Good afternoon. I hate that my subject is different from the death penalty, but it is a bill that's on the table.

Dear Legislators, I would like to oppose H.B. Number 5427 and support S.B. Number 310 and 5331. Particularly, I oppose H.B. Number 5427 regarding the notice of reporting to the attorney general's office due to the fact that state employees who have come forward in the past to report misconduct in state agencies to the attorney general's office and other state agencies, have been targeted for abuse by other government workers.

I personally can testify to the abuse. In 2004 and 2005, I reported to the Attorney General's office and the Commissioner on Human Rights and Opportunities, CHRO, breaches of state employees personal information which included documents with social security numbers, addresses, phone numbers and test scores, discrimination in the hiring process and housing issues in Bristol. Attached, you will find a copy of the letter from John

will be overlooked. This has occurred, but this is what civil rights and justice is really about. Civil rights is a process. There are many delays. It may take one, five, ten or 50 years to get the justice one deserves. I have staying power. I will not stop until me and my children get the justice that we deserve.

Monica Fore.

And just quickly, I wanted to say with Senator Welch, I've been speaking with him lately about what's been going on and he's asked me to put a proposal together to try to correct the, you know, injustice with individuals who were falsely arrested based upon a lot of stuff that occurred that I'm talking about. And I'm not going to hold much time because there's a lot of people here for the death penalty, but I have talked to the panel before.

REP. FOX: Thank you. It's good to see you, again. And thank you for your testimony.

Are there any questions?

All right. Thank you very much.

At this time, I'll return to the public officials list. Senator Martin Looney.

Good afternoon, Senator.

SENATOR LOONEY: Good afternoon, Mr. Chairman.

SB 280

Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee. My name is Martin Looney, State Senator from the 11th District representing New Haven and Hamden. I'm Senate Majority

Leader and I'm here to testify in support of Senate Bill 280, AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.

Mr. Chair and members of the committee, in 1994, Justice Harry Blackmun who at one time had been a proponent of the death penalty wrote in dissent in Callins versus Collins, quote, from this day forward, I no longer shall tinker with the machinery of death. After many years on the United States Supreme Court, Justice Blackmun recognized the reality that the death penalty cannot be applied in a fair and impartial manner and there can be no guarantee against error. The state as a fallible human institution should not have the power to take a human life and to act with uberous and arrogance when humility and restraint shall prevail.

Last year, the General Assembly chose not to address this issue because in Connecticut it was nearly impossible to consider the death penalty without reference to the shocking and horrific crimes in Cheshire committed in 2007 resulting in death penalty trials in 2011. It's important now to clearly separate objective reality from understandable human emotion. The bill before you is entirely prospective and thus will not alter the fate of the Cheshire defendants or, in fact, any person who has committed a capital felony prior to the passage of this legislation. Executing criminals who have committed the worst crimes does not restore lost or shattered lives. It does not make our state safer. It does not provide financial savings.

More importantly, though, our criminal justice system is simply not sufficiently immune from error to entrust with the ultimate penalty. We know that the system has convicted innocent

people. The death penalty will eventually execute an innocent person here as it has in other states. James Tillman, Miguel Roman and Kenneth Ireland, all served lengthy prison terms in our state before their exonerations. A wrongful conviction is tragic. A wrongful execution is tragic and unforgivable. It's also entirely avoidable by passing this legislation. Wrongful execution is simply not a risk we can accept.

To date, nationally since 1973, 140 people throughout the United States have been released from death row due to improper prosecution or outright innocence. During this time period, more than 1284 people nationally have been put to death. This ratio of 1 release from death row for every 9 executions is deeply troubling. It demonstrates what we all know, the government is not infallible. It makes errors and this kind of deadly error cannot be undone. Former U.S. Supreme Court Justice John Paul Stevens called his vote to reinstate the death penalty as, quote, the one vote I would change. Not only does the government make errors and put innocent people on death row, but as Justice Blackmun explained, the death penalty is not meted out fairly. Application to the death penalty has been shown to be racially biased; furthermore, a person is much more likely to receive a death sentence if he or she murders a white victim.

The death penalty is often unevenly applied, as was discussed earlier some of the cases in Connecticut where people were sentenced to life imprisonment are almost indistinguishable on the facts from cases where the death penalty was imposed. The difference is in the exercise of prosecutorial discretion have led to a disproportionate number of people being

sentenced to death in certain judicial districts. Such disparities are indicative of an arbitrary and capricious system. There is no consistent standard for the application of the death penalty because of those case that are very close on the facts, yet with differing results. Our own statute in allowing the weighing and balancing of mitigating and -- versus aggravating factors introduces the possibility of dangerous subjectivity producing different results in cases where the circumstances are virtually identical.

What is the prosecutor is more eloquent and persuasive than the defense counsel. Should life or death hang in the balance? What if the conviction is achieved by perjured or simply mistaken testimony? What if there is an undiscovered bias held by one of the jurors? The choice between life and death should not depend on the quality of legal representation and the vagaries of the trial process. Some would argue that in the cases of the most heinous crimes, the death penalty saves resources. This argument does not square with reality. The cost of capital felony cases are significantly higher than those of noncapital felony cases. Others argue that the death penalty will be a deterrent. The death penalty is not a deterrent to a violent crime. We must remember that the terrible Cheshire crime occurred after the execution of Michael Ross.

The south has the highest execution rate and the highest homicide rate, a rate that has risen as the rate of executions has risen. While in the Northeast, the homicide rate is the lowest in the country and there have no executions in the last decade other than Michael Ross. The 16 states without the death

penalty have a significantly lower homicide rate than the 34 states that do impose it. The death penalty is simply retribution and retribution solves nothing and is not a rational part of our criminal justice system. We must not, as a state and nation, take lives for the sake of vengeance. Killing human beings is wrong whether done by the state or by the criminal. Certainly, there are criminals who should never be at large in society. That is why we must have the option of life in prison without the possibility of release.

I, again, cite Justice Blackmun, quote, it is virtually self-evident to me now that no combination of procedural rules or substantive regulations even can save the death penalty from its inherent constitutional deficiencies. The basic question: Does the system accurately and consistently determine which defendants deserve to die cannot be answered in the affirmative. It is not simply that this Court has allowed vague aggravating circumstances to be employed, relevant, mitigating evidence to be disregarded and vital judicial review to be block. The problem is that the inevitability of factual, legal and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair consistent and reliable sentences of death requires by our constitution, end quote.

The death penalty offers no constructive contribution to society's efforts to defeat violent crime and, in fact, diverts resources and energies from such efforts. Finally, the death penalty undermines a civilized society by perpetuating the idea that life is disposable at the hands of our fellow human beings.

Thank you, Mr. Chairman.

REP. FOX: Thank you, Senator Looney.

Senator Kissel.

SENATOR KISSEL: Thank you very much, Chairman Fox.

Senator Looney, it's great to see you.

I believe you read that quote from Justice Blackmun every time you've come here.

SENATOR LOONEY: At least in the last couple of years.

SENATOR KISSEL: I guess one of the things that I really have a problem with is the whole notion -- and I don't believe you're in this column -- that this is prospective because I just in my heart of hearts believe that's intellectually a specious argument and I've only had about an hour or two to follow up on Attorney Storey's remarks regarding New Mexico. Okay. And this is what I discovered just very briefly looking into this Astorga case. And I just want you to comment on this because I do believe that if this bill goes forward that we have before us this afternoon that all the folks on death row, their convictions -- or the death penalty will be thrown out for them, which may be exactly where you feel that Connecticut should be.

But in Astorga -- first of all, in New Mexico, like Connecticut, they very rarely impose the death penalty. Since 1960, they've used it once a child killer in 2001. We had Taborsky in the 1960s, and we had, of course, Michael Ross. There's --- currently, in New Mexico, just one person sitting on death row. We have

eleven. And regarding this -- what I would consider an interlocutory motion, it was not an appeal for after a final judgment, but the defense counsel has this Astorga gentleman who killed a deputy sheriff in a county in New Mexico and had been found guilty beyond a reasonable doubt by the jury and they were going into the penalty phase. And this is a little different than the way I understood Attorney Storey saying it.

What the Court said in New Mexico in September was that defense counsel could not bring in legislators or experts to argue against the death penalty, but it would allow the trial judge to give the jury instructions and to be notified that lawmakers voted on the repeal. Now, I have to find out, because this is the only information that I've been able to -- or my counsel, Mike Cronin, was able to track down in the last couple of hours -- but the sentencing hearing was supposed to take place in September. I can see the high court saying, listen, we're going to present all this evidence or let the trial court present all this evidence to a jury and that may be the end of this because they could vote for -- they could determine life without possibility of release in New Mexico. The fact that this his high court said let that jury know that the law is repealed, to me, supports the notion that in the future, this is going to have a bearing on this one individual sitting on death row in New Mexico and probably this Astorga gentleman.

Every expert that I have asked whether in Connecticut or elsewhere has stated that the evolving societal standards evinced by a change in the law form a very solid grounds under the cruel and unusual punishment portion of the constitution to support repeal of a

death sentence for folks sitting on death row when a prospective bill is passed. And it's to my mind in New Mexico, they don't have a final judgment yet to make that kind of large scale appeal. We haven't found an actual written decision. This seems to be something that was quickly done so as that sentencing could move forward and the state's attorney in New Mexico seemed to indicate that they need a final judgment before they can start working on further appeals down the road.

In your heart of hearts, Attorney Looney, because you're a very bright lawyer, I mean, do you really feel that it's not likely that the folks sitting on death row will have their -- their sentences thrown out if we move forward with a prospective appeal bill? And that's not to say that that might be right or wrong, but given my perspective, what's your -- what's your legal opinion?

SENATOR LOONEY: Well, Senator Kissel, my view is that that -- that effort will certainly be made by -- by counsel for those -- those defendants on death row except perhaps if we have another volunteer like Michael Ross. But I would not speculate on the -- on the outcome. I think that New Mexico gives some basis for saying that "prospective" means "prospective" and that it should not -- should not already decided cases, but clearly, there will be an effort I'm sure by vigorous attorneys representing -- who continue to represent those inmates who are on death row to test this. That is certainly likely to happen, but I wouldn't speculate on the outcome.

SENATOR KISSEL: And one other quick question, I think people are a little bit confused as to our corrections systems and since I have six

correctional facilities in my district housing over 8,000 inmates including death row, Northern was designed and created to address inmates that act out violently within the corrections system. Its mission has subsequently been expanded to help turnaround individuals that are gang members in the correction system and then return them to the general population. If we went forward with this and an individual was sentenced to life without possibility of release, they don't go to Northern. They'll never go to Northern. They'll never go to segregation on death row. They'll go to MacDougall-Walker, which is also in my district in Suffield, where there is more than one inmate in a cell.

They have the right to be out in the general population for many hours at a time. They have the right to earn responsibilities and benefits. They could end up working throughout the day. I know that people have put forward the notion that what they would earn would go into a pool for victims, but there is a notion with many of my constituents that if we do away with the death penalty that's too good of a sentence for folks, that they need to be segregated away from others and they should not necessarily do hard time, but they shouldn't have access over the course of their incarceration for life to have an ability to earn back privileges and rights and responsibilities that other inmates, even Level 4 inmates, have a right to do.

And I'm just wondering what your perspective is on that.

SENATOR LOONEY: Well, on that, just -- I agree with what our President Pro Tem Senator Williams in the discussion earlier with Representative Smith, I believe, is that his

may be an appropriate time to look at conditions of incarceration for people in various -- various categories. Because I clearly I believe that -- that in many ways segregation of those under this sentence of life without release might be appropriate so that in many -- in some way could -- should very well be carved out from -- from the population in MacDougall and make -- and make more use of the more severe conditions in Northern. Currently, the death row inmates are in Northern, as you've correctly said.

Other inmates of Northern are people who have misbehaved so badly elsewhere in the system that they get sent to Northern as punishment. And, in fact, that's one of the disciplinary tools within the system is the threat of sending someone to Northern is often used for disciplinary purposes and, in fact, when people are sent there often their initial stay there is one of pretty extreme deprivation and then there's a gradual restoration of privileges to the point where they might be judged compliant enough to return to the general population at some other point, but -- but Northern is certainly -- certainly a harsh place and I think that someone serving a sentence without the possibility of release should be subject to the harshest possible constitutional conditions that could be imposed on someone.

SENATOR KISSEL: Well, I appreciate your candor and your passion on the subject. Certainly, you've been philosophically consistent. I believe, you, like Senator Williams, would probably vote for full outright repeal of the death penalty but I also think it's very important for my constituents to understand that right now in Connecticut should we do away with the death that the next person that

comes down the road that gets life without possibility of release will be in a general population setting, will be in a Level 4 facility. It will not be Northern unless they act out against a corrections officer or another inmate and that they may not be what people think life without possibility of release really is.

And we need to make sure that we know what the next steps are if we do proceed along this path and I think it's going to be very close vote in the Senate and people are putting a lot of thought into this particular issue.

Thank you, Mr. Chairman.

REP. FOX: Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you, Mr. Chair.

Good afternoon, Senator Looney.

SENATOR LOONEY: Good afternoon.

REP. HOLDER-WINFIELD: I just wanted to ask a question about the exchange that just happened. So when you agree that we may need to look at what we do currently, are you suggesting that this is to apply to the people who are currently on death row or to all of those who we have chosen thus far to leave in the conditions we're describing would apply to those who are on death row.

SENATOR LOONEY: Well, I think we have to, again, look at doing things prospectively that if we were to alter our maximum punishment to be life without the possibility of release, I think that those that were sentenced to that, we should at the same time concurrently undertake a review of the conditions under

which they are held.

REP. HOLDER-WINFIELD: Thank you.

REP. FOX: Representative Hetherington.

REP. HETHERINGTON: Thank you, Mr. Chairman.

Good afternoon, Senator.

SENATOR LOONEY: Good afternoon, Representative.

REP. HETHERINGTON: First, I -- I -- I was very happy to hear you make -- if I heard correctly, the conservative argument against the death penalty and that is that the state never has the right to take the life of an individual. So I applaud you for that. I applaud you for a lot of things, but I think that was encouraging development.

But in any event, what I wanted to ask you was I think we could agree that there is no one who has been put to death in Connecticut certainly in modern times for whom argument can be reasonably made that that person was innocent, perhaps you would disagree with that, but in looking at the history of the death penalty in Connecticut, it seems to me that that's pretty clear.

SENATOR LOONEY: Well, we have only executed two people in Connecticut since 1960, Joseph Taborsky in 1960 and then Michael Ross in 2005. And Ross' circumstance -- in fact, I understand that Taborsky was also in one sense a volunteer in that he --

REP. HETHERINGTON: Right.

SENATOR LOONEY: And they have also waived other appeals that might have been available to him

at the time he was executed.

REP. HETHERINGTON: So we have to go back probably a century and a half, maybe more, to find somebody who there is some doubt about the guilt, I think probably the colonial times. I haven't looked at this very recently, but that's my impression. So given that, how do you -- and I asked Senator Williams the same thing -- how would you answer the argument that doesn't that show that the death penalty, as administered in this state, really works very well, that it does filter out those who are not truly deserving of the death penalty under the law. Doesn't -- you know, we can speculate on many people who many have been sentenced to other penalties, perhaps in the face of their innocence, but certainly in regards to the death penalty, the fact is we haven't executed anybody who is arguably innocent and why isn't that an argument to support the notion that we have a system that works very well.

SENATOR LOONEY: I think, Representative, overall it is that we have been fortunate to this point not to have made a mistake, but given the fact that all systems created by human begins are subject to error, it's almost like saying -- with playing Russian roulette and spinning the cylinder next to one's brain and pulling the trigger and because it has not -- the bullet has not fired yet saying we're immune from being worried about the next time we pull that trigger. I think that's not the -- that's not the situation we're in. Now, we have -- just because we not had the kind of dramatic error that has occurred in other cases, that doesn't mean we won't.

As I mentioned earlier, we have had at least three cases recently that were not death

cases, but three people who were incarcerated for long periods of time and were later found -- their convictions were overturned; Mr. Tillman, Mr. Roman, Mr. Ireland. We were fortunate they were not death cases. Had they been, we even be in a more difficult position to trying to compensate their estates rather than trying to do something for them.

REP. HETHERINGTON: I suppose the argument on the other side is the reason they weren't death cases was because the system did exclude them from the death penalty, which I guess would support the way it works. But -- the second thing I wanted to ask you and I also asked Senator Williams is the objection to abolition of the death penalty that I hear most commonly from individuals is how do we really know that these people are going to go away for the rest of their lives. We assert that as part of the reason that supports abolition of the death penalty is that we know these people -- these convicted felons will go away to prison for the rest of their lives. They'll never be a threat to society again and that gives some comfort to the -- the families of the victims that at least justice has been in a measure achieved. But, in fact, that's only -- how do we give that assurance because the assurance is only good until this Legislature makes another determination with respect to people in prison? I mean, isn't that right, Senator?

SENATOR LOONEY: Well, I think that the death penalty in and of itself is many ways, I think, a false promise because in a number of states, not just in Connecticut where Ross was the only person executed and was a volunteer, in a number of other states including Idaho, New Mexico, South Dakota, Oregon, Pennsylvania even, which has quite a few people on death row, 100 percent of the people who have been

executed in those states since 1977 were volunteers like Michael Ross. And in a few other states including Nevada, Washington, Kentucky and Utah, anywhere between two-thirds and 90 percent of those executed were, in fact, volunteers. So in many cases, it turns out that the death penalty is not something that is actually imposed after it has been -- after it has been legally imposed.

So I think there is a real issue about what kind of representation is being made to the -- to the families under the current system and I think that to return Representative O'Neill's point earlier, I think we have reintroduced a dangerous subjectivity into our death penalty statute by changing the law in the mid-1990s to provide for the weighing and balancing of mitigating and aggravating factors rather than having the system as we had previously when the death penalty was first reinstituted in Connecticut to say that the establishment of a mitigating factor would take a case out of the possibility of the death penalty, I think that was more likely to be a -- more of a bright line objective standard than the current standard that weighs -- has that mitigating and that balancing, which means that on very close calls, you can have the death penalty imposed in one case and not in another so I think our -- our statute has been made even more problematic since that change.

REP. HETHERINGTON: With that change, would you feel differently about the death penalty, if we went back to the way it was before the mitigating aggravating factors were put in as a balance?

SENATOR LOONEY: Well, I'm philosophically opposed to it, but I would think that be a better, more objective statute.

REP. HETHERINGTON: Okay. Senator, thank you. Always nice to see you.

SENATOR LOONEY: Thank you, Representative.

REP. HETHERINGTON: Thank you, Mr. Chair.

REP. FOX: Thank you.

Are there any other questions?

Senator McLachlan.

SENATOR McLACHLAN: Thank you, Mr. Chairman.

Thank you, Senator Looney. It's nice to see you today.

I wonder if you could share with me your perspective on what happens with this bill being prospective. In your mind, what happens to those who reside on death row today?

SENATOR LOONEY: Well, legally, this bill would do nothing to affect those people on death row. Obviously, they -- their counsel might believe it occasions the possibility for litigation to challenge their sentence, but the bill in and of itself would not create any benefit for them.

SENATOR McLACHLAN: Thank you. And I would agree that there doesn't appear to be any language in the bill that has a direct effect, but what do you believe would be, in your opinion, if you would share with us -- what do you believe the effect would be of this bill as the chief state's attorney has indicated in past testimony that all of those cases would be subject to appeal? Would you agree with that?

SENATOR LOONEY: Well, I said in the discussion with Senator Kissel earlier, I believe that counsel representing all those defendants would -- would test their test by seeking to raise that issue, but I would not speculate on whether or not they might be successful or not because I don't think they would find anything in the statute itself that would give them hope for that success, as the specific language is indicating a prospective intent on the part of the Legislature.

SENATOR McLACHLAN: Thank you.

Thank you, Mr. Chairman.

REP. FOX: Are there other questions for Senator Looney?

Representative O'Neill.

REP. O'NEILL: Touching on a comment that Representative Hetherington made which was that you seem to be making essentially the argument that the state does not have the right to take the life of one of its citizens. Was that an accurate summary of your basic philosophical position on this?

SENATOR LOONEY: Yes, Representative, to the extent that I believe that unless you could guarantee that you would create a superhuman infallible system, we should not give the state the authority to take -- to impose the ultimate penalty when there is even the remote possibility of error. And I believe that it is a bit of an irony that in many cases advocates for the death penalty are often people who advocate small and limited government in other areas and yet advocate for giving the government the ultimate power in this circumstance. I believe this is an area

where we should be -- should have humility about governmental power and not aggregate to the power to take human life in this way.

REP. O'NEILL: I guess the question that I would ask is then how do you reconcile that notion that the state ought not have the power to kill its citizens with the decision that we make on a daily basis to send police officers, state troopers and so forth out armed and trained to use deadly force, not after years of litigation where expert witnesses have been called in and evidence has been carefully weighed and sifted and lots of time has been expended to figure out what's really happened or happening, but in a split second, they have to make a judgment as to whether or not to utilize deadly force upon the citizens of the state of Connecticut without the benefit of anything other than their own feeling or impression or sense of what's going on.

SENATOR LOONEY: Well, I see no conflict in that, Representative, because in that circumstance they are often acting in self-defense to protect themselves or protect other members of the public in situations where -- where they are confronted with a violent or potentially violent perpetrator so it is very much similar to the circumstance in which self-defense is used. That we authorize those police to protect us in just those -- those dangerous situations and every time that they use deadly force, obviously, there is most often an investigation of the circumstances as to do determine whether it was justifiable given the facts that existed at that -- at that time.

So I don't see any conflict between saying that in a deliberative atmosphere of a -- of a -- of a trial in which a defendant is in custody and is not in a position to -- to

impose harm on someone that that is the same as a situation that a police officer encountering a violent felon on the street.

REP. O'NEILL: It would seem to me that the police officer is far less well-equipped at that moment to make the kind of fine line judgment call that you're saying we can't guarantee will all of the courts and the expert witnesses and the forensic evidence having finally been gathered and carefully reviewed and we still can't know with any measure of certainty whether deadly force by the state is called for and yet we send a police officer out every day, hundreds of them to make that decision on the streets of Connecticut dealing with situations that are very murky, at best, in many cases, and yet, we say here's a gun, here are -- you know, here's ammunition and here's training on how to use it, and we've authorized you on behalf of the citizens of the state of Connecticut to use deadly force. And then we found that, you know, the person had a cell phone not a gun and the police mistook it.

SENATOR LOONEY: Well, that's right, Representative, but we have also have had changes and evolutions in the law regarding deadly force by police over time. Prior to the case of the Tennessee versus Garner in 1985, police were able to use deadly force against any fleeing felon. Because of that Supreme Court decision, the law changed so now there has to be a perceived threat that the officer or someone the officer has a duty to protect is facing at that point. But it is certainly -- it is -- that is one of the reasons why the responsibility that we entrusted police is so important and why their actions are under scrutiny and why they are -- we hope -- given the best possible training to

deal with these emergencies when they arise, but the reality is that this responsibility to protect has to be exercised in these split second decisions sometimes.

REP. O'NEILL: Well, I guess I just don't -- see, if the state doesn't have the power to do it after it's carefully deliberated for years on the subject, how it gets the power because its entrusted that authority to somebody who has been placed in a potentially dangerous situation at the request of the state to go to a dark alley somewhere to see what's going on and then have a reasonable probability of encountering someone who might tend to be violent and then say well under these circumstances, the state of Connecticut has the right through its agent, the police officer to use deadly force.

From a philosophical standpoint, I don't see how if the state doesn't have the right to do one, it has the right to the other.

SENATOR LOONEY: Well, I think in my view, philosophically, I think that the use of deadly force by the police is more closely analogous to the self-defense situation where a citizen may be authorized in certain circumstances to use deadly force to protect himself or another person. Obviously, we don't allow self-help in situations where citizens can avoid that responsibility, but -- but we do allow it in circumstances where it is necessary due to the exigencies of what's being experienced at that and I think that's analogous to what we allow the police to do.

REP. O'NEILL: I would just thank Representative Hetherington for reminding me that there are societies where the police do not carry guns. Britain is one where they generally don't and

there are other countries, as well, where the police are, in fact, not authorized to use deadly force as part of their routine police work. They're not armed on a daily basis. And, you know, I take it another level, if the state of Connecticut doesn't have the right to use deadly force, again, after all these careful deliberations, we can send young and women that belong to our National Guard units and they will be dispatched overseas to places like Afghanistan and then -- it is okay to use deadly force or even in this country if they see looters during a flood or a fire or something like that, they have the weapons that are issued to them by the state and paid for by the state and the training that's given to them by the state, all of which is built around the idea that the state must have the right to use deadly force.

And it seems like it has the right to use it except when it's very carefully consider what it's doing.

SENATOR LOONEY: Well, again, I don't see the connection between abolishing capital punishment and replacing it with life imprisonment without the possibility of parole and saying that that is the equivalent of necessarily adopting a philosophy of philosophical passivism in every other circumstance. And there is obviously the need for military defense, the need for the police to defend, but that is a very different situation than the considered punishment to be given to someone who is already in custody.

REP. O'NEILL: But the underlying philosophical issue I think -- what you're basically saying then is that the state has the -- individuals that we place in harm's way have the right to defend themselves, for example, police

officers in a dark alley facing an uncertain situation with someone they think might be armed, that's okay. We've sent them. We've armed them. We've equipped them and we said it's okay to use deadly force. And if they do it, they'll be an investigation perhaps by some sort of internal affairs organization by the police department, but it is extremely unlikely unless there is proof that they were doing something really wrong that they are ever going to be prosecuted for that use of deadly force because they doing it on behalf of the state and so it seems inherent that the state claims to have -- and you're not disagreeing that it has the right to all those things that put people in the situation where deadly force is apt to be used -- but except for this one circumstance where we've carefully considered what we're doing. We've given somebody every opportunity to show us that there's a reason to not do and they can't do that and then we go ahead and say okay then these very, very limited circumstances, we will use deadly force.

And it seems to me that if you're opposed to the use -- the notion -- the fundamental notion that the state doesn't have the right to use deadly force because it's inherently anti-libertarian kind of view or its the view that the government has a very limited amount of power and one of those limits is no deadly force then I don't see how you can authorize it in all those other circumstances and deny it to the state in this one particular circumstance. But I guess that's a perceptional thing on my part.

Thank you, Mr. Chairman.

SENATOR COLEMAN: Thank you, Representative.

Other questions?

Representative Smith.

REP. SMITH: Thank you, Mr. Chair.

Good afternoon, Senator. Just one question, I want to -- if we can speculate here and assume this law passes and the prospective nature of it is upheld after a court has heard it -- and I don't know if you know this, and I certainly do not, I'm wondering if you have the answer -- whether the Governor can then commute the death sentence under our current statute.

SENATOR LOONEY: I believe that the Governor does not have that power under our current statutes. There was a debate a number of years ago as to whether or not that power should be -- we have a sentence review system where there are appointed members that will review it, but we don't have -- we don't, I believe, empower the Governor with the direct power that other governors have in other states, although there is a limited opportunity to defer the death penalty, but I don't think our -- I don't think we grant our chief executive the same broad powers that are done in other states.

REP. SMITH: Thank you.

Thank you, Mr. Chair.

SENATOR COLEMAN: Thank you.

Are there other questions for Senator Looney?

Representative Adinolfi.

REP. ADINOLFI: Thank you.

Welcome, Senator Looney. I'll be brief.

There were two things that you mentioned in your statement about -- when you mentioned the Cheshire case that people there are using their emotions to be in favor of the death penalty, I don't feel that's correct. I personally am doing it because of the facts that happened that day. I was there that morning. Not exactly when it happened, but I was there when they crashed into the police cars and so on so the facts were there. I believe and I heard that the police were ready to take them out, but when they crashed into the police car, their heads were down on the dashboard and the police felt that they couldn't do because they were out. So I'm basing my feelings there on facts. And then you mentioned something that those in favor of the death penalty are looking for vengeance and I'm not looking for vengeance. I'm looking for punishment for a crime committed that's worthy of the penalty.

I'm willing to back off if they leave them in death row and change the name, but when they're going to put them in Level 4, which could be at any one of the institutions and they get all the privileges of visitors, of phone calls, seven hours a day out of their cell, I can't -- I can't -- I have to leave them where they are and as long as the death penalty is in effect, they're staying in that solitary confinement and I'm happy with that. I just wanted to make that point.

SENATOR COLEMAN: Is there anything else for Senator Looney?

Seeing none, thank you very much for your testimony, Senator.

SENATOR LOONEY: Thank you, Mr. Chair. It's always an honor and pleasure to appear before the Judiciary Committee, the most thoughtful and deliberative in the entire General Assembly. Thank you.

SENATOR COLEMAN: We appreciate that complement.

Karen Goodrow is next to be followed by Kevin Kane.

SB280

KAREN GOODROW: Good afternoon.

SENATOR COLEMAN: Good afternoon.

KAREN GOODROW: How are you?

SENATOR COLEMAN: I'm fine. How about yourself?

KAREN GOODROW: I'm fine. Thank you.

SENATOR COLEMAN: Good.

KAREN GOODROW: My name is Karen Goodrow. I have the pleasure and honor to know some of you and to serve on the Eye Witness Task Force with some of you.

Representative Hetherington, how are you?

I'm the director --

SENATOR COLEMAN: Well, you've done very good work I might add.

KAREN GOODROW: Well, I always try to get Kevin Kane to agree with me. I find that life is easier if that happens.

SENATOR COLEMAN: A lot of us have tried to do that. I think you've been more successful than most of us.

KAREN GOODROW: Thank you.

I'm the director of the Connecticut Innocence Project. We are actually part of the public defender system in Connecticut and I'm proud to say that we're only one of about three in the United States public defender offices and I, of course, always when I'm sitting here want to say thank you because you're the reason that I am the director. We were not fully funded when we first started, but back in 2007, this body did some miraculous things after Mr. Tillman was released in 2006, you passed a special act for him, for his compensation, you gave Susie Storey's office special funding for my office and you also did some other things that I appreciate in terms of the policy reforms that we're trying to do.

I think you already know what I'm going to say. I would like you to think about repeal of the death penalty with all due respect because of mistakes. My office had the pleasure to represent James and Miguel and Ken Ireland. Each of them, as you already know, spent around 20 years in prison for crimes that they did not commit. I'm happy to say that the state's attorney's office in each of those cases and Kevin's office has consistently assisted us in our endeavor.

And I also should say that it's never lost on me that I really shouldn't be sitting here. I did not come from a family of people who went to college and were liberals. Senator Kissel might be happy to hear that. My dad didn't like lawyers, and with all due respect, he didn't like politicians. I went to college just to kind of anger him a little and it worked so well I decided I would try law school and that just really annoyed him. He

was living in the same county in New London when my good buddy Barry Butler and I were trying the Ross case. Mr. Kane was prosecuting. We were trying to get a life sentence for Mr. Ross. We did not succeed.

As you can imagine, the newspapers carried my name next to Mr. Ross' name almost daily and I got a little extra mileage out of this with my dad because I hadn't thought about that. He would have to go down to the coffee shop and some of his buddies would say, you know, I see the name of this woman, Karen Goodrow, that's not your daughter, and he would say, oh, no, that's not my daughter. However, interestingly enough, some months later -- I think it was just right around that time when -- I was telling Kevin this story earlier today -- he arrived at my door, my mom had since passed away and my dad was not the kind the dad who would pick up the phone and call or arrive at my door and he had an unwrapped truck under his arm for, then, four-year-old son, whose birthday, by the way, had passed by at least two months, and he knocked on the door and he said, I have an apology and I sort of bit my tongue. I'm thinking is apologizing for my entire childhood or is there just something specific here.

And he said, I saw 60 Minutes last night. And I said yes -- and this was before we ever had an Innocence Project in Connecticut -- he said, I saw how those people are figuring out that some folks on death row are actually not guilty. What's that all about? I saw how they've been proofing that with DNA and then he said, I'm sorry for all the things I ever said about you and the work that you do. And now I understand why you're opposed to the death penalty. It was really remarkable.

And when we think about the death penalty and I'm hoping none of you will ask me this question, people will say, nobody on death row in Connecticut is innocent. Reasonable minds might make that conclusion. I'm here to tell you from my experience it just a matter of time before we have somebody on our death row who is innocent and I say that because contrary to what we see on television, most cases do not contain DNA. When you're home tonight -- well, you probably won't get home until about midnight or after, right -- the next you're feeling comfortable and you're having a cup of tea or a cup of coffee at your kitchen table, think of this number, think of 10 percent. Ten percent of anything. I see that Senator McLachlan a Pepsi or something, it probably has caffeine in it. Think if you were really thirsty and you could only, Senator, have 10 percent of that bottle.

Do I have to leave? No? Thank you.

Think if -- over the weekend, I was looking at a file I haven't had time to look at. If I had only six minutes of an hour to look at that file instead of one hour, I think I spent two. If I had only 12 minutes to look at that file, how much would I have gotten in. If I had ten dollars in my pocket and I was going to go get lunch, could I get lunch with ten dollars. Yes. If I had only one dollar, I've discovered -- and this is not an outrageous sum -- I couldn't get a cup of coffee -- although I do have to say, I choose the Starbucks and I understand it's a little bit more expensive -- but with only 10 percent, if my math is right -- you've heard a lot of numbers today -- I wouldn't be able to get a cup of coffee.

My son, the sophomore -- I'm glad he's not

here to give you his opinions because his and mine don't always coincide -- he has a summer vacation. All of -- you know, all of your with children, they have summer vacations. I think their what eight or nine weeks long. If he had only 10 percent of his summer vacation, he would get, I think, six and a half days.

My point is in 10 percent -- and that's being gracious -- of the criminal cases that we're looking at and all of the Innocence Projects are looking at, in only 10 percent of the cases is there DNA that's going to tell us whether or not somebody is innocent. Just across Bushnell Park is where my office is. It's stuffed full of these cases. Everyday I'm looking at them. Every day I have maybe 90 to 100 cases on a case list. These are not clients. These are people who want to be our clients. We don't take clients on until we've looked at the cases and we are determined that these people are innocent. Imagine how difficult it is to proof innocence when there isn't DNA.

Kevin has been listening to me for at least four or five years about a case that I've had for 10 years and my office has collectively been working on, we're convinced -- Kevin is not yet, but he will be -- we're convinced that these two gentlemen are innocent. So convinced that we've given his office an entire copy of our investigations. We've literally opened the prison door, had them come in and talk to our clients. Ten years, ten years, we've been working on this case. We've had tons of testing done, all of it excludes the clients, but it doesn't tell us who did it and so I implore you when you're home at your coffee table to think about that 10 percent rule because it is not easy to prove innocence.

When I say that James and Miguel and Kenny were some of the lucky few, they were the lucky few. And Miguel, it's worth pointing out in that case, horrible case, a pregnant 17-year-old girl was raped, bound, murdered, there was DNA back at the time of Miguel's trial that excluded him from the vaginal walls of the victim. It excluded him, but the state's attorneys -- of course, not Mr. Kane -- prosecuted the case for murder on the theory that well somebody else must have had sexual contact with her. So even if there is DNA, it doesn't always convince the powers at be that this is not a case to pursue.

I'd be happy to take any questions that you might have.

SENATOR COLEMAN: Thank you. You reminded me once again about how important the work you do is and you've expressed the hope that no one would ask you so I won't ask you.

KAREN GOODROW: Thank you.

SENATOR COLEMAN: But it is the case -- I don't know when it was -- you might be able to answer this, have any of the 11 people who reside on death confess to the offenses for which they are accused?

KAREN GOODROW: I'm sorry. Confessed?

SENATOR COLEMAN: Have they confessed?

KAREN GOODROW: I believe they have and I cannot -- I'm not versed well-enough in the cases.

SENATOR COLEMAN: Okay. I believe Senator Kissel has a question for you.

SENATOR KISSEL: Thank you very much, Chairman Coleman.

Attorney Goodrow, it's always nice to see and I think we all did good work on the Eye Witness Identification Task Force. It may make you feel better, but I think my dad doesn't like lawyers and politicians any more than your dad does.

Ninety-five cents.

KAREN GOODROW: Ah, thank you.

SENATOR KISSEL: But it's not Starbucks.

I appreciate where you're coming from. I really do. My high school sophomore son, if he could get a ride, would be here testifying in favor of the bill for repeal so you don't know --

KAREN GOODROW: Uh-huh. We try our best.

SENATOR KISSEL: You understand that once upon a time I was a special public defender.

KAREN GOODROW: Yeah.

SENATOR KISSEL: And yet I come at certain --

SENATOR COLEMAN: (Inaudible.)

SENATOR KISSEL: He just doesn't know how to drive. Luckily, I'm not getting that pressure just yet, although, he's certainly at the age where he could learn to drive.

Yeah, over the years, I mean, you know, once upon a time, Undersecretary Lawlor was a state's attorney. He would come at things from one angle. I'd come at them from another

angle. I appreciate where you're coming from. I'd like to believe that the construct that we have in the state of Connecticut would not land anybody innocent on death row. I really do believe that from way back when then former Chairman Richard Tulisano put it together who was not a big fan of the death penalty, put together a construct that is so cumbersome, so difficult that along the lines of what Representative Hetherington has been bringing out all day. There is the handful of people on death row because it's meant to -- to create so many hurdles that it is really difficult to get there.

And my concern is that whenever we tinker with the requirements such as under the Rowland administration, it forms the basis for a whole slew new appeals. If we are going to go in this direction, though, and it's not vengeance, but I do believe these individuals need to be treated much more strictly than the general population. To the extent, if that does engender a real honest discussion about the very heinous criminals that are in the general population at MacDougall-Walker and other Level 4 facilities, then maybe we need to have that discussion.

So I appreciate where you're coming from. Thank God we live in a state that's not like these other states where there clearly individuals on death row that did not belong -- did not belong there. I do applaud the work that you do. I think it's really important.

KAREN GOODROW: Thank you. I'm actually very, very fortunate to have had the opportunity to do it.

SENATOR KISSEL: And I think that's what sort of

tugs at a lot of folks is they would never want to see anybody innocent convicted and sit behind bars.

Let me just ask you this one question, though, because like your predecessors, you're a really smart lawyer. I do people notwithstanding what I've discovered just so far on this New Mexico case, which again not a final decision. The judge instruct -- told -- the Supreme Court told the judge, you are to instruct the jury that the death penalty has been repealed prospectively. I've got to do some more work, hopefully, this afternoon, if this sentencing hearing was in September, I think there was a decision on this guy somewhere between now and then and I'd love to know what the final disposition was. I can see the Supreme Court making that determination with the hopes that, hey, if he doesn't get the death sentence, we're probably not going to hear of this case any further and we don't have go into a 150-page appeal and everything else.

KAREN GOODROW: Uh-huh.

SENATOR KISSEL: So for the conservation of judicial resources, I can see why this is in the position that it was. That being the case -- and if you disagree with me that -- that the illusion to what took place recently in New Mexico is not dispositive -- but I just think if this bill goes forward given what I know about our public defender's office, they are relentless in filing appeals on behalf of their clients. But the 11 folks on death row, I can't see that -- that punishment will ever be visited upon them. And do you think that that's way out in left field or do you think that's a fair and rational legal opinion given what you know?

KAREN GOODROW: I know my boss is still behind me and I say this will all due respect and obviously I'm not speaking for Susie, I listened -- I was here other than bathroom breaks throughout and what I kept thinking about is our Supreme Court has already articulated over and over again that the death penalty is legal and so now we have that. We have precedent. Right? And now if we have a new statute, I think, Senator Kissel, you said this. You commented about the evolving standards of decency. Legally, really is the question then whether or not the Supreme Court is going to feel that its incumbent upon itself to reverse its prior decisions because from this moment forward it would be prospective. If you're asking me to speculate about that, I think that is something that they would not due, but I'm speculating.

Will there be appeals? Of course. And we all expect that. What would ultimately happen with that, I don't know, and I'm sorry to say I have not read the New Mexico case. I'm not familiar with it. I'm very happy to do any research that you would like me to do and try to provide some further information on, but that's the struggle. As I was listening, that was sort of the balance that was going on in my brain.

SENATOR KISSEL: I just -- I appreciate that and I appreciate the fact that Attorney Storey is still in the room and she is your boss. I just --

KAREN GOODROW: She's a very good boss, too.

SENATOR KISSEL: I just don't see it that gray. I really don't. I mean, there's been an awful lot of controversial decisions that the

Supreme Court has handled and they did not hesitate to step right in. I think that the folks that are opposed to the death penalty in this state are so relentless -- and I may disagree with them -- but I don't see that that -- you know, the argument is made that even if we leave everything alone, the folks on death row will never be executed. I mean, I hear that all the time. So any argument that can be twisted in any direction is used in opposition to the death penalty.

If we had 100 people on death row, it would be too many. If we have 11, it's too few. Oh, the person who murdered my family didn't get the death sentence so nobody should get the death sentence. I mean, whatever is the flavor of the day is going to be used in opposition to this and I don't see anything changing. But I do see that if this bill goes forward that even if there was a modest chance that these penalties would be carried out, I see that diminishing, certainly not getting enhanced. And so -- and that's really actually a bit of an homage to the public defender's office because you folks are so relentless.

So thank you for your testimony this afternoon.

KAREN GOODROW: Thank you, Senator.

SENATOR COLEMAN: Are there other questions for Attorney Goodrow?

Representative O'Neill and then Representative Albis.

REP. O'NEILL: Yes. You talked about two individuals that you've studied their cases very carefully and you believe that they are

innocent and you've tried to persuade Chief State's Attorney Kane to I'm not sure do exactly what, but of that fact, were either of those -- were those cases death penalty?

KAREN GOODROW: These cases -- and because they're ongoing, I would like to not identify them -- these are cases that could have been death eligible, were not. They're basically serving life in prison. And we have a collaborative -- and I think some of you aware of this -- DNA grant from the National Institute of Justice, which we share with our forensic lab, the chief state's attorney's office and my office. These gentleman are people that -- my office has represented from its inception and me, prior to that time, but they're also eligible under the DNA grant. So Deputy Chief Lenny Boyle has been working with me on that case and they've been, frankly, very gracious about it, assisting us and helping us with our investigation.

And they've been very frank that the information we've given them thus far has not convinced them that they're innocent and that is okay. I'm still moving forward with it. But my point is that is a case where there is lots of biological evidence in the crime scene, hundreds of pieces of evidence. We've had lots of testing done through the DNA grant, all of it has excluded the clients, but it hasn't given us sufficient evidence for the state's attorney to feel compelled that they innocent. And it certainly hasn't yet pointed to the true perpetrator. I know you all know by this point but it's always worth reminding us that in Mr. Roman's case the true perpetrator had not only murdered two other 17-year-old girls in Hartford that were cold cases in the 1980s, but went on to serve seven years in prison for another rape he committed

all while Mr. Roman was wrongfully incarcerated.

Same thing on, you know, Mr. Tillman's case, the true perpetrator was connected to the DNA that released Mr. Tillman. Same thing on Mr. Ireland's case, the true perpetrator was connected to the DNA that exonerated Mr. Ireland. Those are the lucky few and they're lucky for the victims. They're lucky for the state's attorneys. They're lucky for the wrongfully convicted, but they are no more and probably somewhat less than 10 percent. That's my point.

And when we thing, Senator Kissel, you know, we all would like to know -- we would like to believe in our hearts that if we put somebody on death row, especially in Connecticut, I don't know if it's clear yet, but I'm very proud of my state. I've lived here all of my life. I spent a year in Los Angeles, and other than that here. I'm very connected to this state and I'm very proud of it. And I'd like to think that if we do this, we only do it with the people who are guilty, but I can think of numerous scenarios, hypotheticals. Somebody who goes into -- goes into -- with a mask goes into a Wendy's and shoots seven or eight people, someone IDs that person and it's a wrongful ID. There is not generally in shooting cases -- trust me, I've looked at enough of them -- there is generally not DNA or forensic evidence that's going to point to the true perpetrator.

We could spin ideas all day long. My message is: Even here in Connecticut -- we never thought this before James Tillman's case -- but even here in Connecticut, we get things wrong. We don't have a full-proof system. We're only human and it's only a matter of

time. What do we want to stand for? What do we want to be in Connecticut?

REP. O'NEILL: But just to be clear, the two individuals you were talking about are not any of the 11 individuals --

KAREN GOODROW: No.

REP. O'NEILL: -- currently sentenced to death.

KAREN GOODROW: No, I'm sorry if that wasn't clear. They are not.

REP. O'NEILL: Thank you, Mr. Chairman.

SENATOR COLEMAN: Representative Albis.

REP. ALBIS: Thank you, Mr. Chairman.

And thank you, Ms. Goodrow, for your testimony today.

So you've said that 10 percent of cases that you look at involve DNA evidence. Can you talk about the 90 percent that don't involve DNA evidence?

KAREN GOODROW: Sure. They involve things -- and again, this is not unusual to me. So much so, I talked for a minute about the DNA grant we have. From the National Institute of Justice -- and I mentioned this in my brief written testimony -- has provided money to us under a non-DNA grant called a Wrongful Conviction's Grant because they recognize there is so many cases where there isn't going to be DNA so a classic case might be a shooting case, what I've just described. It might be a case of a sexual assault where a young women has reported late, you know, six months, nine months down the road so there

isn't any clothing. It may be misidentification. It may be tunnel vision meaning that the police officers hone in on somebody to the exclusion of all us.

Is there maybe junk science involve? There may be lab error involved. Even our lab -- our lab -- I say that with great ownership. Some of my defense lawyer friends get nervous when I call our forensic lab, our forensic lab. They did all that marvelous work that released our three exonerees, but they, as we all know, have had some problems. So those are the kinds of burdens and challenges that we're looking at in the vast majority of our cases.

REP. ALBIS: And what type of evidence will exonerate somebody in those circumstances?

KAREN GOODROW: Well, that's a good question. I would love for you to come volunteer at the office if you had some spare time. Sometimes a witness recants. We know from the Gould and Teller case that the Connecticut Supreme Court decided last summer that we need something more for new evidence than a recant. It could be the, as Justice Palmer said in his concurrent, something as minor, if you will, as the defendant saying, I did not do this, but it could be new evidence that was not on anybody's radar at the time. It could potentially a relook. That old case that I was discussing with Representative O'Neill, the fingerprint fellow from the lab -- from our lab has done a relook of all the fingerprints on that case and he has learned that some of the original conclusions were in error. So it's really -- it can be anything from soups to nuts and it really requires one to enjoy archeology because -- which I do -- you have to take that case and look back and

back and back and back.

REP. ALBIS: And I apologize if you mentioned this already, but how many -- what's the percentage of cases where you do have somebody that's exonerated?

KAREN GOODROW: Well, we have three only and we have the ones that if you promise not to tell Kevin, I think his office will come along in the near future, those are two -- he's laughing, isn't he? Representative, he's laughing at me -- he was, yeah.

And I have to tell you, I say this from my heart, you remind me of my father. Yes.

We have not litigated through a habeas or postconviction a non-DNA case yet. And again, my hope is that we go to the state with our evidence and they agree with us. That's how I think it should be done.

REP. ALBIS: Well, thank you. I appreciate your answers and I appreciate your work and anytime that there is any level of doubt in a case like this, it makes me pause and wonder if this system is something that works or not so thank you very much.

KAREN GOODROW: Thank you.

SENATOR COLEMAN: Representative Adinolfi.

REP. ADINOLFI: I really wasn't laughing at you. I was winking and laughing with somebody in the back of the room that you were referring to.

KAREN GOODROW: That's okay.

REP. ADINOLFI: My question is, I understand what you're trying to, but yet this Legislature

rejects opportunities to prove innocence of people like DNA evidence upon arrest of anyone that is arrested. That would bring forth maybe finding someone that's in jail innocent, but also at the same time, maybe help solve a crime. I have -- besides this Komisarjevsky and Hayes thing that I've been involved with with my neighbors -- I had a nephew murdered about 40 years ago and they never found the murderer. Now, had they been doing DNA evidence, I'm sure because of the type of murder that it was, that individual that did it were arrested at other times.

KAREN GOODROW: Uh-huh.

REP. ADINOLFI: And he might have been caught. But yet when we try and put stuff through -- when we try to put stuff through to help us catch murderers or perpetrators or whatever you want, this Legislature votes down us going after them. You get the ACLU saying we're violating their rights. If you arrest -- I think everybody a sample of DNA. One organization that I belong to, we call it CHAPS, we take children and they come we train them, they spit in a vile and the parents puts in the refrigerator in case that child is lost or mutilated and we actually taught them to spit. We had one girl up in Massachusetts who was kidnapped, put in a car and she started to spit all over the car leaving all that DNA evidence there. So what does the perpetrator do? He stopped the car and he said get out.

So I think we should do more to help crime prevention, proof our crimes more accurately and move along with this, but we don't do it so we just -- the left hand isn't talking to the right hand the way I say it.

KAREN GOODROW: If I could just briefly respond.

REP. ADINOLFI: Okay. Thank you.

KAREN GOODROW: And you raise a very, obviously, a critical point and I think it's what -- I'm glad I don't have your collective jobs -- it's what you have to do all the time. You're balancing. You're weighing. You're weighing human interests versus the interest in protecting society. Sometimes people misunderstand and they think that in order for my office to be able to prove that somebody is innocent, we must proof who did it. That is not, of course, what the law is and in Mr. Tillman's case the actual perpetrator was not identified until I think about nine months or a year after Mr. Tillman was released.

Now, back to the non-DNA cases, the one that I was discussing with Representative O'Neill, is it easier -- would it be easier for me t convince the state that my two clients are innocent if I had DNA that matched to a convicted murderer, of course, but it is important to see the distinction that is not -- it really doesn't matter how full the database is if it doesn't establish innocence then it's not going to get an innocent person out of prison. Just so that -- but I understand what you're saying. That tension and juggle of rights is what you do all the time.

SENATOR COLEMAN: Are there others with questions?

Seeing none, thank you very much, Attorney Goodrow.

KAREN GOODROW: Thank you, Senator Coleman.

SENATOR COLEMAN: Kevin Kane.

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CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you, Senator Coleman, Representative Fox, Senator Kissel, Representative Hetherington and all the members of the committee who are both here and watching this later, and also everybody in the General Assembly. I'm going to ask you to do something I've asked an awful lot of jurors to do over the years and I'm going to ask you just as seriously as I've asked them over the years -- there's one big difference, you're here voluntarily, they're here because they are compelled to come and serve -- this is a question that's a fundamental core question, maybe as important question as any of you will have to consider during your careers. I think it's one of the most important questions I've ever had to consider during my professional career at least with regard to a slightly simpler issue than you have. I had to decide what the law was and whether not I in good conscience could follow the law and carry it out.

You have to decide what the law should be. And that's the question. What the law should be in the state of Connecticut today? One of the things I'm going to ask you to do is don't lose sight of that issue. There are a lot of issues, subsidiary issues. I've listened to discussions today. Some of them I think are red herrings, some of them I think are worthy of your consideration if you get behind the principal core issue.

I've been here now -- I've been chief state's attorney for five and a half years. I think -- I think I've been here to testify about the death penalty before you for three years. I've watched and listened to death penalty debates over the years and had this go on. I see the state that we're in in the state of Connecticut. The victims, the public,

survivors are all in -- in certain ways there is an inertia because those actors in the system who have to make a very important decision that is an unpleasant decision and very, very, very hard decision to make think, gee, maybe the court will decide the racial disparity case and nullify the death penalty. Maybe the Legislature will repeal the death penalty and maybe we won't have to make this hard difficult decision.

Now, why is it such a hard decision? You've faced this before. You've thought about the decision before. The real reason it's a hard decision is because it's a fundamental policy core issue that involves questions of morality that at its base and root involve very real questions of morality, right and wrong, philosophy. Those fundamental questions which we have a hard, hard, hard time answering and deciding in our lives and it's so much easier to focus on other issues and decide them and we do that. This is the issue. There is a lot of people sitting behind me who are going to talk to you today.

Many of those people will have very good an strong insights as to what is right and wrong and what I'm asking each of you to do individually, as each juror must do individually, is recognize that this is your own individual decision. You represent communities. You were elected here to represent them. You can't know exactly what they really do want because a poll question helps a little at that, but it doesn't really answer the real question of what's right and wrong. Each one of you -- not just on the Judiciary Committee, but in the General Assembly -- has to think this out from the bottom of your hearts knowing that it's between you and the person looking back you in

the mirror when you look in the mirror and only you know and you have to figure out what is the right thing to do and what you can face with. And what you can walk away with saying I did something because I knew it was the right thing to do not just because of what other people wanted me to do. And don't worry about what other people think of you. It's what you think of yourself after you make this decision and what is the right thing to do today.

There are two issues about this. One is do we need the death penalty today -- maybe one issue -- do we need the death penalty in the state of Connecticut today? The issue of whether or not the state ever has the right to take a life. This is not whether not we -- we have to debate whether or not there can ever a just war or other issues about right to take a life. Do we need the death penalty today? What does -- what does it accomplish? Is it good? Is the result good? Is the result not good? I represented the state in the case against State v. Michael Ross. I was involved from the beginning. Bob Saddie had it at that beginning. I had the second penalty phase and represented the state right through the time he took his last breathe.

Ask yourselves what was the good of that? The result of that is that he's executed. Ask yourselves what was the good of that? What was the good of it? What did we gain in that process? Also ask yourselves the question that is maybe more important that you may hear somebody talk about that today, I don't know, but ask yourselves whether they do or not. What did we lose by that? Maybe the latter question is more important than the former question. We've had a long, long history that's kind of inherent in the way we think

and the way we feel and the way we believe in life, that the punishment ought to fit the crime.

When you see a horrendous crime -- and I've seen more over the years than I'd like to remember -- I've seen horrendous ones, but you think all the crimes -- well, I shouldn't say too many because it boils down to one in my career fortunately, where I thought if anybody deserves the maximum penalty, this person does, and if this person doesn't get it, nobody should. I made the decision under the law. That was the appropriate thing to do. Someday I'll be judged that decision I hope and who knows, I don't know the outcome. But each of you has to make that decision yourself. Listen and listen and think about that.

Now, if you -- and there are a lot of people on both sides of the issue. There are people who believe that the punishment should fit the crime and there are crimes that are so horrendous that the death penalty is reasonable and appropriate for the state to carry out. You've decided that in the past. Historically, you've had that in the past. Historically, you've executed people for a variety reasons, one of which is a deterrent. There was a time when -- to maximize that effect they executed people in public. Not only executed them but tortured them, disemboweled them, beheaded them, whatever, in public with crowds watching. I'm sure that was a terrific deterrent. And maybe that was necessary in those days -- and maybe that was necessary in those day.

We've certainly advanced. We've advanced a lot when -- in deciding whether or not to -- how to carry out the death penalty and we've

done it in a much more humane way. There's no torture. Is it good? Did it (inaudible) those crimes that they punished? You can understand why the victims of the families, the public, the people in the neighborhood thought that these crimes were horrendous. Michael Ross raped and murdered two -- two young women in Windham -- in Windham County, four in New London County. Raped three of them, murdered all four of them. Two in New York, one somewhere else and I'm not too sure how many others there were. There are a couple I wonder about to this day. We don't know, maybe somebody else did it, maybe he did. Those crimes were cruel, heinous.

We have what I think is the best death penalty statute in the whole state -- whole country, probably whole world. It's narrow. It's focused. It's focused on the worst crimes. People are saying -- or criticizing it by saying very few people are executed. Well, it was intended to be one in which very few people would be executed. It should be one in which results in very few executions and it has resulted in very few executions. We have to proof, as you know, not only a certain limited capitol felony -- what is a capital felony? There are certain murders that are capital felonies. We have to proof aggravating factors beyond a reasonable doubt, both beyond a reasonable doubt.

Our discretion to seek the death penalty is narrow, guided and focused and we have to proof certain elements beyond a reasonable doubt. On the other hand, our discretion to be lenient under the constitution has to be unlimited. We have to have unlimited discretion to seek -- to decide not to seek the death penalty. And have right now we're confronted with situations where people,

defense attorneys will come in and argue with us not to seek the death penalty. We know what's going to happen when we decide not to. They're going to use it against -- later on to say we're arbitrary. Nevertheless, I think the state's attorney have been very, very responsible in thinking this out and have not sought the death penalty in many cases.

There are certainly, as I said, subsidiary issues which I think are red herrings, which I don't think are worth considering. One of which is that the death penalty is arbitrary and racial disparate. That issue would be litigated. We've trying to get it litigated now since around 2003 when the public defenders first claimed they had a study proofing that. I think that if, in fact, they did have a study years ago, we would have had the trial long ago and the issue would have been decided. We're finally, finally going to try it soon. That's still not the most important issue. The court will decide that issue and I think the court will decide it -- and I know that the court will decide it rightly. We have evidence that certainly is very contrary to the evidence to the evidence that the defendants claim they have.

I think the people who have talked about the study haven't read it because there is no one study. The defense -- the -- the study by Professor Donohue has been revised and amended and finally revised to a final study, which was almost a whole new study very recently. We have another study that -- that I don't think is just contradictory of that study. I think it eviscerates. The court is going to decide that. Maybe I'm wrong. The court will decide that issue and the court will decide that issue after looking at it completely. I think the people who have discussed those

studies and concluded what those studies are have not read them. One is 400 -- some 400 pages long -- I think both of them are some 400 pages long. I don't think anybody should making judgments about that, but I think everybody should have faith that the court will look at that and decide it.

The issue comes back to the one I've said before, when a public policy is one of right and wrong and morality and what should we be doing in the state Connecticut today and only you people can decide that question. The public has elected you to decide that issue. We've been waiting and waiting years, you know, and it's so hard at times to say, should we litigate this now when the Legislature might repeal it. We -- the State Division of Criminal Justice spends surprisingly little money on death penalty cases. The same prosecutors who prosecute all the other crimes in the JD, the more experienced ones and the capable ones handle those, but they handle everything else, too. We would have to try those cases because whether the death penalty was there, they would be extremely serious murders, whether they be capital felonies or murder. We'd be looking for the maximum penalty on those cases then I imagine the defendant would say I have nothing to lose, let's go to trial. We would be trying those cases. We would appeal them also -- they would appeal them also. We would have to represent the appeal.

So the workload on the state will not be that much. I've -- I've mentioned some things in written testimony about it, which I hope you look at the written testimony and analyze if you want to compare expenses, start looking at why. The idea about the cost, ask how much of this cost is just driven up as a reason. And

the people who oppose the death penalty are opposing for legitimate reasons. Listen to those reasons on a principal and these are matters of consciences or matters of serious choice. Listen to each other and the one thing that I would -- I've asked you to do a couple of things already and I can't keep track of them, but I know you have.

When you decide this issue, don't decide it by one or two votes and then come back here next year and do it again and leave us like this. Don't do that. I watched Dr. Petit last -- and people's hearts genuinely went out to Dr. Petit last year. There's going to be somebody else in the future who is the victim of a crime that's as bad, maybe worse, hard to imagine, but there have been worse ones in the past worse ones in the future. They're going to be here again next year. We can't go -- we can't -- and they'll be here as long as there are human beings on the face of this Earth, we're going to have that. Don't leave us where this issue is being decided by one vote or two votes or passed and then vetoed by a governor and we know we're going to revisit it next year. We've got to decide this. And decide this right or wrong on the issue -- well, I shouldn't say right or wrong -- I'm not saying right or wrong. Decide it right on the issue of whether we should have the death penalty in the state of Connecticut today.

I'd taken an oath to uphold the law. I said these are moral and ethical and principal questions. You have to decide this in your own souls. You may -- I hope you ask me a lot of questions and the ultimate question you may ask me, I'm not going to give you the answer to. I'm not going to give you the answer to it because I've taken an oath to uphold the law as you pass it. You and the public are --

the people you represent are entitled to know that I'll do my best to follow the law as best as I possibly can and won't get wishy-washy on you. I've made that decision years ago that I'll follow the law so I'm not going to answer you if you ask me what's the right thing to do, what's the wrong thing to. Did he gain by executing Michael Ross or what did we lose by executing Michael Ross?

Partly, I know, maybe I don't know, but I haven't -- you have to decide that question and decide it right and please decide it strongly and don't say, well, I'll go along with the majority or do this. Each one of you decide that. Both of you who are here and not here decide it in your own heart and your own conscious what is the right thing to do. Juries have to do this all the time on big cases and they do it. And they do it remarkably right. I don't agree that there is a likelihood of sending somebody to the -- executing somebody by mistake in Connecticut today. Those cases -- one of the factors that we conclude in deciding whether or not to seek the death penalty is whether or not the evidence of guilt is overwhelming.

We've had a lot of close cases where you've noticed somebody could be eligible. We've talked about some this morning. Somebody could be eligible for the death penalty, but we didn't seek it. One of the reasons we didn't seek it is because the evidence -- the evidence was not overwhelming. We may have been absolutely convinced that the person was guilty, absolutely if there is ever an absolute. We're human beings. But we don't seek it when the results aren't sure. If you examine each one of those cases on death row today and examine the facts, there is no question about their guilt. There is no

question about their guilt.

One of the things we see when we talk about time and money we see in the cases that have been tried, those cases, the evidence of guilt is overwhelming. I've seen cases over the years that have some very good and courageous defense attorneys come in and ask me to bargain, agree to come off the death penalty if they plead guilty. I said no. They plead guilty. And we're planning to go trial and ask the jury to find a mitigating factors. And one of those mitigating factors was the evidence of their guilty plea, that it was a straight guilty plea where they admitted to all the facts of the crime and they admitted that they were guilty. It wasn't an Alford plea. It wasn't a nolo contendere plea. It was a straightforward, honest, open guilty plea in which they fully took responsibility for their actions, fully took it. And then argued that that should be a mitigating factor. You don't see that anymore.

One of the reasons I don't think you see that anymore is because the defense attorneys are hoping that they can somehow get the trial judge to make a mistake during the guilt phase and have an appeal. That's in those cases. You don't see that in other murder cases. You litigate -- we all assess the -- we all predict what the likelihood of a jury -- what the jury will do when they hear a given case, make that prediction and they advise their clients what to do and there are those cases where you disagree or the client just won't plead guilty and you go to trial on those. That's not happening in death penalty cases today.

The reason that is often given and I've heard it over the years and I've heard some

very good respectful representatives say this is that the death penalty is unworkable. Those people that say that tend to be opposed to the death penalty for a variety of reasons, but that the idea that the death penalty is unworkable is an excuse and it's not an excuse for which you accept or even think about because you can make it workable. Repeal it, as I said, have an honest debate. Have a good serious debate. Search your consciences and search your hearts and make the right decision but don't do because, for instance, it's unworkable, because you can make it workable. And if you're going to have it, we will really should make it workable.

And if we can't make it workable, that's not an excuse because if we should have it, make it workable. Other states do it. We've submitted bills to show how it could be down and made workable, but the fundamental question you cannot avoid should we have it today?

Thank you.

You may have a lot of other questions. I didn't mean to distract you from the other questions you may have. They're are legitimate, serious questions. I know they are well-intended, well-asked, but I want you to begin and end with that fundamental question that I've just put to you.

REP. FOX: Thank you, Chief State's Attorney Kane. I know there are -- will be questions and I'll begin with Chairman Coleman.

SENATOR COLEMAN: Good afternoon. Chief State's Attorney Kane, a lot of people seem to be interested in your view of --

CHIEF STATE'S ATTORNEY KEVIN KANE: Only when they talk about it. When I argue with them then they're not too --

SENATOR COLEMAN: We appreciate the work that you do even when we disagree or are on opposite sides of an issue. Your work is still appreciated.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you very much.

SENATOR COLEMAN: And so the question is what is the chance of an innocent person might be convicted for a capital offense in the State of Connecticut and be sent to death?

CHIEF STATE'S ATTORNEY KEVIN KANE: There is always a chance. I believe in Connecticut it's an extremely, extremely slim chance for a whole variety reasons. One is we're not elected DAs. We don't have to appeal to the public. We don't have to appeal to the clamor that occurs when a crime is committed. We're appointed by a very wise system.

Right now we have a panel, a commission that was appointed -- is appointed by the Governor who does its best -- which does its best to select good, honest, straightforward candidates for the job and I hope that's what we are.

More importantly if you look historically at this since we have a death penalty -- if you look at the people against whom the death penalty has been obtained, those cases as I said are cases of overwhelming guilt on the issues. And I believe that the chances are very slim. We -- we actually -- I'm not going to say agonize.

I don't know what that means. We make those decisions -- me make all decisions whether or not to prosecute extremely seriously. We make decisions whether or not to seek the death penalty extremely, extremely, extremely seriously. We consider it. We weigh it and we do it. And I honestly believe that that's not a likely outcome. Now there's human error. I mean we have made -- there have been three cases of actual innocence in this State. Highly disturbing. We're not perfect. We're not perfect.

I'm a partner right now with the public defender -- I -- the division and the public defenders are partners in an innocence project. We've gotten a federal grant and we've gone on to try to determine whether or not there are any people who have been wrongfully convicted where we can -- where there is DNA.

We are assisting, as Karen Goodrow testified in the investigation of cases in which they are claiming that there's actual innocence. We have a good process in place to deal with actual innocence. But we're not perfect. We are human beings. And I've never -- I'm not going to say it can never happen because I suppose it could. I believe that the way we scrutinize these cases -- cases it's extremely unlikely.

SENATOR COLEMAN: You may know this and may not but in the case of Mr. Tillman for example --

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

SENATOR COLEMAN: When he was convicted what was the question about his guilt? When you say that there was no question about the guilt of the people who are convicted --

CHIEF STATE'S ATTORNEY KEVIN KANE: On death row.

SENATOR COLEMAN: -- and on death row.

CHIEF STATE'S ATTORNEY KEVIN KANE: Well number one, Mr. Tillman didn't qualify for death row. He was charged with sexual assault.

SENATOR COLEMAN: No I understand that.

CHIEF STATE'S ATTORNEY KEVIN KANE: And that was it.

SENATOR COLEMAN: I understand that. But I'm really I guess interested in exploring your point. And I think we all agree that our system of criminal justice in the State of Connecticut is not fool proof. But I'm interested in the point there is no question about the guilt.

CHIEF STATE'S ATTORNEY KEVIN KANE: How did we get it wrong in Mr. Tillman. Is that --

SENATOR COLEMAN: Was there a question about his guilt or innocence after he was convicted?

CHIEF STATE'S ATTORNEY KEVIN KANE: No.

SENATOR COLEMAN: Okay. So I had asked this question earlier because I really don't know. And in your remarks it seemed to be that you were indicated that some people have pled guilty to capital offenses. Is that correct?

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes there have.

SENATOR COLEMAN: Okay. And of the 11 how many of -- how many of those were guilty pleas?

CHIEF STATE'S ATTORNEY KEVIN KANE: I -- somebody

else would know this. There was at least one of them I believe who pled guilty to capital felony and then -- and then went out and litigated the death penalty. I don't remember which case it was but I'm pretty sure there was one out of Waterbury.

SENATOR COLEMAN: Okay. And the other question I was interested in, again you may or may not have this information, were there confessions among the 11 who are currently on death row, have any of those people actually confessed?

CHIEF STATE'S ATTORNEY KEVIN KANE: I don't know.

SENATOR COLEMAN: Okay. And I don't know either. And I don't -- don't know if there have been any interviews of the 11 that are on death row but I continue to hear people this year and in previous years say that none of them are claiming that they're innocent or that they're not guilty.

And I guess I'd be interested I guess in finding out if I can actually interview anybody on death row to -- to pose that question. I don't know whether I'd get a straightforward answer or not but it just occurs to me as I hear people say that there's no question about the guilt of the folks on death row.

CHIEF STATE'S ATTORNEY KEVIN KANE: Well whether any one of them may have still maintained the innocence, I don't believe there is anybody -- I don't believe any defense attorney or anybody -- certainly nobody's filed an actual innocence claim. There's been no claim to my knowledge and I think my knowledge is pretty darn good on this subject. There's been no claim made in either court or to a State's attorney that any one of these people was

actually innocent.

SENATOR COLEMAN: Okay. Thank you.

CHIEF STATE'S ATTORNEY KEVIN KANE: Since the conviction. Since the sentencing -- since the death penalty was imposed I mean.

REP. FOX: Senator Kissel.

SENATOR KISSEL: Thank you very much, Mr. Chairman. State's Attorney Kane, thank you for that impassioned, eloquent speech to us as to searching our souls. Whether you'll get your wish that anything will be by a large majority vote I would not suggest that that's going to occur in the Senate by any stretch.

CHIEF STATE'S ATTORNEY KEVIN KANE: Just do it and get your way and let it be known that we're -- that we cannot expect to come back and do this every year and have -- have actors in the system want to withhold action because of the belief that you'll repeal the death penalty. That's not something that this -- people of the State of Connecticut should be put through.

SENATOR KISSEL: Yeah but I have this question. My first question is this.

CHIEF STATE'S ATTORNEY KEVIN KANE: And I'm not saying repeal it. Don't get me wrong. You could read me two ways here. And I -- don't read me either way as tempting as it might be to read me one way or the other, don't do that.

SENATOR KISSEL: Sure.

CHIEF STATE'S ATTORNEY KEVIN KANE: Please.

SENATOR KISSEL: Okay. My first question is this. One of the things that we've been graveling with and I believe that I heard your testimony in previous years quite clearly -- is the legal determination that if we move forward with this proposal that there will be appeals made for the 11 folks on death row.

They will do it under the cruel and unusual punishment section of the Constitution. They will cite the court language that says that such a bill signed into law is evidence of an evolving societal standard -- and I'm not so sure I that agree with the word evolving because implicit in that is something moving from negative to positive and I'm not so sure that if one supports the death penalty that repealing it is necessarily negative to positive.

But I do believe that in past years you had stated that you felt quite confident that should such a bill become law, that the chances of those appeals succeeding at some point in the process was very good. And one of the things that I've tried to articulate in discussions with my constituents is that should this bill become law I don't think there's any chance at all that the folks sitting on death row will ever be executed in the State of Connecticut.

And I'm just wondering if that's a correct interpretation of your previous statements and how you view that legal question today.

CHIEF STATE'S ATTORNEY KEVIN KANE: I wouldn't quite go far as saying any chance any more than I'd go so far as to say no innocent person would ever be executed. I'd say it's -- the reality is that I can't imagine how we would be executing somebody who's on death row

today.

One other thing too and I think each one of you can -- you'll know the answers to this yourself. If you were a State's attorney and somebody committed a crime -- let's say this bill goes into effect. Let's say its repealed prospectively, effective date is October 1.

If any of you were a state's attorney and somebody committed a crime for which they could get the death penalty and maybe should get het death penalty on September 30, would you seek it knowing that had it -- a day later if it had happened you wouldn't -- you couldn't get the death penalty? I don't think that's too hard a question for any of us to answer.

SENATOR KISSEL: Okay. Another thing is you had mentioned that primarily detractors of the death penalty say -- cite that it's unworkable. I've always thought that that was facetious too because those that don't support the death penalty are typically the ones that have put all the roadblocks in its -- in its path. And when as Representative Adinolfi has stated, when reasonable proposals are put forward to try to -- and I don't necessarily like the term workable but to make it far less cumbersome because I do believe -- and we'll get to this question in a little bit too -- that even as it stands it's working.

There's something going on out there that the defendants truly fear because they wouldn't litigate this the way they do unless they felt that at some point something might happen. But that -- that being the case, in fact that might in and of itself beg the question, does the death penalty even as it stands in Connecticut right now have any salutary

benefits for the criminal justice system?

I know how I feel. I think that in plea negotiations it's important, in bringing coconspirators to justice it's important. And the simple fact that there's folks sitting on death row with a sort of Damocles hanging over their head which is an appropriate place for those extraordinarily diabolical individuals to remain. I think that in certain instances it definitely performs a function even as perhaps dysfunctional as it may appear to be. But what's your read on that?

CHIEF STATE'S ATTORNEY KEVIN KANE: The days when people came in to court and pled guilty because they were guilty I've begun to think are long gone. There's some people who do come in and admit they're -- there are a lot of people actually who do come in and admit they're guilty when they're charged and they are.

But the days when people who were charged with a serious crime for which they can deserve an extremely serious penalty who are represented by attorneys as they should be then not to plead guilty unless they get a benefit out of it. They just won't. What do I have to lose if I go to trial? Maybe something will happen.

Maybe a witness will disappear. Maybe -- maybe lightening will strike and I'll get acquitted. If I have nothing to -- to gain I'll roll the dice and go to trial. Now should we have a death penalty in order to get people to plead guilty to a less serious crime? I don't think that's a good reason to have the death penalty. As tempting as it is to say yes because it would help us move business.

As it help us -- as tempting as it would be because it'll help us not to have to try those cases where the people are guilty of murder and should get maybe 60 years. On the one hand of the practical matter I'd be tempted to say sure leave the death penalty in place and let us use that -- let us have people be exposed to that.

That's another decision that you people will have to make practically. My feeling is I don't think that's a good reason to have the death penalty.

SENATOR KISSEL: Let me -- let me ask you this then, say the bill goes forward and I've got -- I'm a defense attorney and my client commits a horrible, diabolical crime October 1. What incentive is there in the world for my client to plead out to life without possibility of release?

Won't we see as a practical ramification -- and let's set aside why it's good to have the death penalty and why it's not. Because I actually think differently than you. I think that the fact that it helps with the plea situation has benefits. If one feels -- if one wants to get to the core fundamental belief as to its morality and the religion of it all, maybe that's not good enough.

But as I see the system, very few cases go to trial. There's no incentive -- well, unless in the most serious cases. And so I'm just wondering, how do you think it's going to play out should this bill go forward as far as the workings of the court because one of the arguments is oh we have all this litigation and all these appeals because so much is on the line.

My gut tells me that there's still going to be a lot on the line if we're talking about life without possibility of release.

CHIEF STATE'S ATTORNEY KEVIN KANE: Sure there will. We're going to have -- we're going to have more capital felony trials. I'm sure. I believe that.

And how many more I don't know but we'll have more, certainly more trials on capital felony cases where we'll not come off the capital felony because we think mandatory life -- no my prediction is is that natural life in prison is going to be the next movement, to challenge that if the death penalty is repealed. There are plenty of people who believe -- as they believe that it will -- will launch an effort to eliminate the natural life penalty for capital felonies.

SENATOR KISSEL: So would it be fair to say -- and I appreciate your -- I really very much appreciate the moral perspective that you want us to have regarding this. But what I'm hearing is just as a practical matter that it's a slippery slope and that once we knock out the death penalty then the natural life argument comes forward. And we already have a RFP out there by the Department of Corrections for a 95 bed unit for the frail elderly in our corrections system.

And I've enjoyed discussing this with Commissioner Arnone and there's been assurances that there's nothing dangerous about these individuals. But there's already a push to get them out of the Department of Corrections when they get to be a certain age --

CHIEF STATE'S ATTORNEY KEVIN KANE: Right.

SENATOR KISSEL: -- and they're considered not dangerous.

CHIEF STATE'S ATTORNEY KEVIN KANE: Right.

SENATOR KISSEL: And so what I'm hearing from you is that this is just another battle that we're facing but it's not the last battle by any stretch. Would that be fair?

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

SENATOR KISSEL: Okay. I know that you've asked us not to ask you whether the death penalty is right or wrong. In your role as Chief State's Attorney have you had an opportunity to discuss the death penalty with the other state's attorneys in Connecticut.

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes, I have.

SENATOR KISSEL: Without giving, you know, five to three or whatever the numbers are do they feel that the death penalty is appropriate in our criminal justice system? Are they split? Do they not have opinions? Do they feel it's a moral issue and it's only up to the legislature? What's your read on what you've discussed with them?

CHIEF STATE'S ATTORNEY KEVIN KANE: The feeling I've discussed with past State's Attorney, my predecessor, Bob Satti, who I think the world of and respect him hugely and taught me more than any lawyer's ever taught me anything was an avid supporter of the death penalty. There are -- there have been some -- right now my feeling about the -- the 13 State's attorney's right now is we have all -- and I've discussed my intention today and they've all agreed with

it.

That this is a public policy for the legislature to decide. They all want you to know and I -- I too, I include myself in that group. We all want you to know that we will do our best and live up to our obligations to carry out the law as you pass it.

It's not our issue -- it's not our issue to decide whether or not the death penalty should remain as law in Connecticut. That's for you to decide. We'll support it. We've taken a sworn oath to support the law and we will and the public should know that we will not be wishy washy on this. We'll carry out the law where we feel it's appropriate.

SENATOR KISSEL: Let me get back to something that you had mentioned. And I'm glad that you noted how many victims Michael Ross had.

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

SENATOR KISSEL: And some people in the State say, oh we should ignore him. He only wanted to be famous and let's -- let's disregard him and he waived his appeals. And I think that's a big mistake. My understanding -- see having toured death row on any number of times -- and maybe I'm a bit superstitious but as someone's who's searched his soul on a lot of occasions, I get really nervous about just making eye contact with those individuals because I'm not sure what's in their souls.

When you go over the transcripts and when you go over what acts they've committed to land themselves on death row these are very, very scary individuals --

CHIEF STATE'S ATTORNEY KEVIN KANE: Absolutely.

SENATOR KISSEL: -- that are completely untethered from what we're -- our notions of what morality is. With Mr. Ross he -- from everything that we know, just an extraordinarily dangerous serial killer, not a good person at all. And what you've indicated is at least six victims that we're aware of or eight if you include New York. How many?

CHIEF STATE'S ATTORNEY KEVIN KANE: Six that were killed. There were four in Connecticut, two in New York. There were numerous other victims who he sexually assaulted and did not kill. And my position was that he chose not to kill them because they didn't know who he was. They couldn't have caught him, that he made the decision to kill in order to -- as a matter of self protection.

So if there was anybody that deserved the death penalty I firmly believe that he did it. And even -- and for even reasons going beyond what he was convicted of. I think he was a true predator. I think he was stalking women constantly. His victims were victims of opportunity.

SENATOR KISSEL: And knowing the difficulties that it would mean I pursuing a death sentence with Mr. Ross and being the very thoughtful individual that you are and that you would never move forward in that direction unless you felt that there were grounds, why is it that you sought the death penalty for Mr. Ross?

CHIEF STATE'S ATTORNEY KEVIN KANE: Because the law provided that that was the maximum penalty and this was a crime that deserved the maximum penalty the law permitted. The victims, the families, the survivors had the right to have

me -- have me seek it -- to have us seek it as the State's attorney. They had a right to have us make the argument. And they had the right to have a jury make the honest -- an honest decision.

SENATOR KISSEL: My last --

CHIEF STATE'S ATTORNEY KEVIN KANE: And when I made that argument to the jury my recollection -- Karen Goodrow may disagree with me because she made a terrific argument on the other side. I said to the jury, this is your decision to make. The State's -- the State argues that we approve the capital felony beyond a reasonable doubt.

We proved the aggravating factor beyond a reasonable doubt. If you in your hearts find there's a mitigating factor come back and say so. And they didn't.

SENATOR KISSEL: I have to believe that having gone through that process you would be aware if not from statements made by them just from being a witness of the process that the jurors go through a tremendous struggle just like you did.

CHIEF STATE'S ATTORNEY KEVIN KANE: Absolutely.

SENATOR KISSEL: And so I've got to believe that even though there might be a feeling that oh, Komisarjevsky and Hayes, those trials are behind us, let's move on, that those jurors just went through one heck of a soul searching to get to the conclusion of where they're at.

And part of my concern is that if there's a substantial chance that those convictions will be thrown out, yeah we waited a year for those trials to conclude but think of what those

people went through to get to that conclusion.

CHIEF STATE'S ATTORNEY KEVIN KANE: You're right. Absolutely. That's a -- that's a -- to think hard about that. Those jurors made a decision for them which they'll never forget that decision and made it conscientiously just like the jurors in the Ross case. I have -- those are the only -- I mean the Ross case is the only jury I've seen directly and spoken with afterwards and I know what they went through. They did it. They -- they took an oath to follow the law, to carry out the law, to find the facts truly and honestly and they went through a very, very rough time when they did it. And they did it. And who knows the impact.

I've tried a lot of murder cases where I've seen jurors traumatized afterwards not just by the -- what we all think of, the horror, the crime scene photos and everything else but the trauma of making decisions like that. But jurors do. We really do have a wonderful world. I sound like Jimmy Stewart but I don't mean it.

I mean there are wonderful people in this world who do their best to do what the right thing and do the best to carry out the law and do it honestly and conscientiously. And I hear a lot of cynicisms and I hear a lot of things that you have to fix the system and yeah we indeed do need to make fixes to the system just like all of you.

All of you here are very, very good people and conscientious people. And we all go through a lot and think very hard about the things we have to make -- decisions we have to make and juries go through those decisions. I remember some -- one of those juries was very outspoken

and very, very frustrated, especially in those -- everybody thinks that because Michael Ross agreed to accept the death penalty that it was easy.

I've never seen litigation like we saw that last -- that first six months of 2005 for a whole variety of reasons I've never seen anything like that and would just as soon never see some of those things that I saw then. And hopefully I never see them happen again.

But some of those juries were extremely frustrated at what they perceived to be the motives of people who were trying to prevent the execution and about what they perceived as the -- as the inability of the system to carry out the law. The Supreme Court of Connecticut, several judges, other people were wonderful.

I mean the Supreme Court of the State of Connecticut, the United States Supreme Court did -- did their job of interpreting the law and carrying out in that case in a manner in the end that was terrific.

SENATOR KISSEL: Well I could ask you further questions but I think you've actually sketched out the racial disparity issue and it's going to go to trial finally after over a decade I guess. I think I'll just quite while I'm ahead being -- perceiving that I'm ahead but I really appreciate you adding a lot of highlights and color to a very complex and three dimensional issue that we're going to have to ground.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you.

REP. FOX: Representative O'Neill and then Senator

Gomes.

REP. O'NEILL: Thank you. One of the things that we've had submitted to us is an executive summary of the report by Professor Donohue. And it was relied rather heavily on by, I believe President Pro Temp Williams, depended on this -- recited this study as in effect proof of a number of points that he was making.

And I guess the first thing I'd like to ask is in the executive summary and the computer version of if that I've been reading, the full summary -- full document, one of the things that he cites is that the State has an expert witness, I believe a Stefan Michaelson. Is that --

CHIEF STATE'S ATTORNEY KEVIN KANE: Stefan Michaelson, yes.

REP. O'NEILL: Okay. Is his -- are his reports or his most recent report at least available to us somehow?

CHIEF STATE'S ATTORNEY KEVIN KANE: No, it's not and I'm surprised that the Donohue report is available to you. Both of those reports were obtained by litigants in a criminal case. The petitioners in that racial disparity case retained Professor Donohue to do a study which they hoped would result in -- in what they claim exists.

We, the State, have hired another expert to do a study, who as I said in my opinion eviscerates Donohue's study. But it's not my opinion that counts. It's the court's opinion. These are going to be litigated. I think it would be -- I don't see how anybody could be making conclusions right now about

either one of these studies.

And I think it was -- I really believe that that's a misuse of this study to cite it to the legislature and to the public. Let the court decide that.

REP. O'NEILL: Okay. Because unfortunately for better or for worse it is now part of a public record of this hearing and of the discussion about the death penalty. So the Donohue report is in front of us and I assume you've read it.

CHIEF STATE'S ATTORNEY KEVIN KANE: I sure have read it.

REP. O'NEILL: Okay.

CHIEF STATE'S ATTORNEY KEVIN KANE: I've read the various versions it's taken. I mean this report -- I trust you have one that was dated this winter.

REP. O'NEILL: October 15, 2011.

October -- that's the most recent report. That was made after depositions were taken in which Professor Donohue decided he had to revise his earlier report.

REP. O'NEILL: And there's extensive quotations of the State's -- Mr. Stefanson's citations or references and comments which look like they're extracted from some kind of testimony issued somewhere whether it's in a deposition or in open court it's not clear. The -- and I don't know since it's something that's still being litigated to what degree you feel free to discuss this. But you know, it's in front of us right now.

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

REP. O'NEILL: And people are going to look at this and it's got some fairly strong argument that it makes. And I mean by strong argument it tends to work very hard to discredit the State's witness as launching ad hominem attacks upon Professor Donohue's work and agreeing with him in its core function -- findings and so forth. And it's -- it's very argumentative I guess the best way of phrasing it.

CHIEF STATE'S ATTORNEY KEVIN KANE: Extremely so.

REP. O'NEILL: But it -- and I've looked at it and I haven't read all 466 pages of this thing nor have I fully read the executive summary but I've been searching for a bit of information. And one of the key features is to -- the Donohue report seems to cite is that there is an arbitrariness about seeking the death penalty that identical cases don't get the same treatment by prosecutors even within the same jurisdiction.

There were two cases happening in Waterbury that are identical, get treated disparately. I guess the first question I would ask is, is it your impression that there are identical cases of homicide that occur in the State of Connecticut where the same identical case occurs?

CHIEF STATE'S ATTORNEY KEVIN KANE: Absolutely not.

REP. O'NEILL: Because I had a hard time with the concept of identically or whatever you want to call it.

CHIEF STATE'S ATTORNEY KEVIN KANE: Absolutely not. Professor Donohue, who you decided to create

in his -- in his mind using some law students first from Yale and then later on from UConn I think, what he called an egregious -- a scale of egregiousness.

REP. O'NEILL: Right.

CHIEF STATE'S ATTORNEY KEVIN KANE: Whatever that means. And then scaled these cases according to his scale of egregiousness without considering critical factors that State's attorneys have to consider in weighing cases.

REP. O'NEILL: So in looking at this -- so that even if let's say a crime involved two people who were perpetrators or people -- defendants who let's say killed three people in the cases where they did it, those cases would inevitably involve maybe differences in age of the victims, differences in age of the -- of the defendants, differences in circumstances that occurred leading up to it or the perhaps relationships between the defendant and the -- the people who were the victims. I mean inevitably there are going to be some of those kinds of variations. Am I correct?

CHIEF STATE'S ATTORNEY KEVIN KANE: Absolutely. And not only those variations but more variations and some extremely important variations. One of the variations that I discussed earlier is the strength of the evidence on each and every element. How strong is the element -- evidence? How provable is the case? Not just how provable is the case but the overwhelming evidence.

So these cases are very different both with regard to the strength of evidence, the impact and nature of the crime, and the existence of mitigating factors or what a jury may perceive as mitigating factors.

REP. O'NEILL: And again without getting -- and you tell me if you want to stop at some point in answering the question. I'm sure you will. But does his egregiousness scale or his study take into account the amount of admissible evidence against the different defendants when he's saying that the two cases are identical?

CHIEF STATE'S ATTORNEY KEVIN KANE: No, it doesn't.

REP. O'NEILL: Okay.

CHIEF STATE'S ATTORNEY KEVIN KANE: If egregiousness -- that's one of the things we'll litigate is what if -- what if any -- and I'll emphasize the if any value is his egregiousness scale.

REP. O'NEILL: Okay. And he makes some amount of -- pays a certain -- makes a certain amount of effort in here to discredit the State's witness, mentioning that he's been paid and he's done studies and he's written several reports. Were those reports written in response to Professor Donohue's reports?

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes. And Professor Donohue was no less mild in his criticism. I mean -- Dr. Michaelson was extremely critical of Donohue's first study. And in no uncertain words. I mean he wasn't mild in his criticism.

It's understandable why Professor Donohue took umbrage and responded in this manner. That's sometimes one of the unfortunate things you get in -- when you have very intelligent experts on each side of a case. These -- both reports are more strongly worded than I would have preferred.

REP. O'NEILL: Okay. And both of them were paid for by the State of Connecticut.

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes. Yes.

REP. O'NEILL: And so -- and substantial amounts of money have been spent.

CHIEF STATE'S ATTORNEY KEVIN KANE: Sure. Very substantial.

REP. O'NEILL: Okay. And I mean I don't want to kind of walk through it one by one.

CHIEF STATE'S ATTORNEY KEVIN KANE: I don't mean to interrupt you, Representative O'Neill but I don't want to under -- under the nature of attacks shouldn't detract from the substance of the reports and unfortunately that's why I said it's unfortunate the effect are extreme. But the substance of the reports is extreme and it's -- when I said that we are going to litigate those it's on the substantive issues and I'm not going to engage in the ad hominem remarks.

REP. O'NEILL: Right. But one of the things that's at the very beginning here that I'd like to get your response to, I have -- I'm quoting, I evaluate whether the crimes that result in sustained death sentences are the most egregious relative to other death eligible murders. Any claim to properly punishing such a narrow and specific category of the most serious offenses can definitely be put to rest. This is Professor Donohue.

The Connecticut death penalty regime does not select from the class of death penalty defendants that are most -- the most deserving of execution. At best the Connecticut system haphazardly singles out a handful from

substantial array of horrible. And then it goes on to say that it's -- or earlier on says it's chaotic and unsound. So that's his -- the thrust of it.

What he seems to hinge on is -- one of his points is that Connecticut's death penalty regime is unconstitutional because it doesn't narrow things enough. It doesn't seem to explain exactly how getting at that point nine cases out of 4,000 plus cases is insufficient in the narrowing of the number.

But that seems to be the thrust of his -- his point is that we haven't narrowed the category of death eligible cases enough or that your office and the prosecutor's operating for the State haven't' done that. And I was wondering if you could respond to that point.

CHIEF STATE'S ATTORNEY KEVIN KANE: Well quite clearly we've narrowed it. We've narrowed it greatly for a variety of reasons and I don't see how anybody could make a sustainable claim that we have not narrowed it appropriately.

REP. O'NEILL: Thank you, Mr. Chairman. I'm sorry. I always council people with don't say start last -- a question with this will be my final question. One of the points that was made earlier was that this -- a lot of this has to do with economics. And that prosecutors don't necessarily seek the death penalty if on the other side of the table is a defendant who has substantial resources with which to defend themselves.

And I asked President Pro Tem Williams whether there was a case that he could think of where that was in fact something that happened here in Connecticut. Are there private attorneys -- I mean how often does it occur that a

private attorney shows up on the opposite side of the table in a -- a case that might possibly be a death penalty eligible case of homicide?

CHIEF STATE'S ATTORNEY KEVIN KANE: Well I'm very glad you asked me that question. When I heard that statement being made I disagreed with it totally. The -- the -- right now we have the best funded public defender system probably in the country. Very rarely -- well we do have private attorneys that were hired as special public defenders by the public defenders.

We have had a few cases in which paid private attorneys have taken them. I can think of one off the top of my head. I suspect there's -- I can't remember specifically any others. They are expensive cases to handle and they are cases in which most people couldn't afford private council to do it.

But the idea that we would somehow be influenced -- my feeling is I would rather have the best attorney in the world on another -- on the other side of the case than an attorney than an attorney who is not good. Those are the difficult ones to try and I'm very glad we have an adversary system. We need the best -- we need the defense -- the defendants are entitled to the best representation they can get.

And the fact that somebody's a good lawyer is not a factor that we can or should consider in deciding whether or not to try a case.

REP. O'NEILL: In terms of the cases -- and I'm just trying to get a sense of whether there's a case in there -- in the mix of these hundreds of cases or 1,000 -- 4,000 cases that have occurred in the last several decades of

where the State has been facing someone -- a multimillionaire type person which is what you'd have to be able to -- to duplicate the -- the OJ Simpson type of defense team, the dream team kind of team.

Are there any cases where someone was accused of a homicide and they showed up with those kinds of lawyers and the ability to bring in expert witnesses to -- forensic people or other kinds of expert witnesses on behalf of the defendant that were privately paid for?

CHIEF STATE'S ATTORNEY KEVIN KANE: That were privately paid for. I would say none that I know of.

REP. O'NEILL: Okay. So -- so that would be the environment out of which the kind of thing that President Pro Tem Williams was talking about which is that the State decides not to seek the death penalty because on the other side of the table is this vast array of resources backing up a criminal defendant whereas when it's just the public defender's office -- and when I say just -- when it's the public defender's office it's somehow a lesser capacity in terms of effective defense.

CHIEF STATE'S ATTORNEY KEVIN KANE: It never happens. The public defenders have the vast array of resources. I think they have a bottomless array of resources in so far as hiring the experts. And they'll do everything they possibly can.

And I think appropriately -- well they'll do everything they possibly can which is what they should do. They should -- they should do their best to be advocates and put on the best possible defense for the people they do and they do. And they do and the taxpayers are

funding it.

We should have a public defender. I'm not criticizing the public defender's system. Don't get me wrong. But the vast array of resources are already a raid against us and will be a raid against us.

REP. O'NEILL: Now, I think I'm done. Thank you, Mr. Chairman.

REP. HOLDER-WINFIELD: Thank you. Senator Gomes. Senator Gomes.

SENATOR GOMES: Good afternoon, Mr. Kane. I've heard a lot of reports about the Donohue report and I didn't know that what you mentioned that it shouldn't even be in the hands of the average person. I read the Donohue report. I have a copy of the Donohue report only as to 2007.

And I heard other remarks being made about the Donohue report as to specific questions. But I can understand why -- and the reasons why I'm saying this I'm going to lead up to answering one of the questions you asked us, does the death penalty deter anything? Deter murders.

The Donohue report said in 1972 when they put the death penalty in and up to 2007. And there's 4,000 plus, Representative O'Neill alluded to. I wanted the public hear there was 4,000 murders in that period of time. And the Donohue reports says that only 40 percent of them were actually solved. The thing of it is what they've said in essence in the report is that the death penalty did not deter anything because they claimed that the death penalty -- I mean rate of murders increased after -- after 1972 when the death penalty was

put in.

I also read it to the extent of the Donohue report just doesn't concern Connecticut because it has figures and death penalties and who was executed and so on and so forth. Names of all the people who were executed in different states. And then some comparisons were made.

And some comparisons were made about racial disparity and it's not attractive. And it doesn't even make Connecticut look good. When I was a -- when I was a kid -- when I was a teenager they had a thing in Connecticut where if one black man killed another black man you could get a year and a day in jail. There was no attention paid to that.

There were different things -- and everybody talks about the south all the time. But those things reach all the way up into Connecticut, those type of feelings. I have a district now. Within that district I know of -- I personally and you can doubt this if you want to.

I personally know about 20 families who were either -- someone in their family was involved in murdering somebody or somebody in their family got murdered. So the death penalty and everything that concerns murder in the State of Connecticut is right near the home to somebody like me. And I say that the death penalty is useless.

It deters nothing. Last year 81 people who had -- who had somebody in their family either murdered or a friend of some kid signed a petition, brought it to us and said they no longer are fighting for the death penalty. They figure that it should be gone too.

CHIEF STATE'S ATTORNEY KEVIN KANE: I haven't argued that the death penalty is a deterrent. It might be. I've seen some studies that have said when the death penalty actually is carried out the murder -- the homicide rate dropped after that, when it's actually carried out. There have been a lot of studies that say having it on the books doesn't have any impact. It might well be a deterrent or it might be a deterrent.

I don't know if I'd even go so far as to say it might well be a deterrent because the studies are mixed. I'm not ready that the study -- that that answer is clear enough to justify that as a reason for having the death penalty.

SENATOR GOMES: Some of the things I'm saying, I'm saying it for the public to hear because it's simple fact that they see other things that they would make a decision on. The Quinnipiac report about would you vote for the death penalty, 67 percent of the people that were in that study says yes, I would vote for the death penalty.

But they have -- the Quinnipiac report also has another report out and it was confirmed this morning when I mentioned it that says if you -- would you -- would you vote for the death penalty if the opposition to it was life in prison without the possibility of parole and you know what the figures came out even. So that's what the public's thinking about that now. The public isn't really -- they've soured on the death penalty.

They are looking at what we're looking at, the death penalty as opposed to life imprisonment without parole. Some of these things need to

be known by people around here -- that come here and I commend the people that come here and listen to what is happening and what we're discussing. It's not just the death penalty.

It's a lot of other things that are a concern that are attached to it. And it's people's lives. It does not bring any solace or any -- what did he call that for people who's had somebody murdered in their family -- closure. And these are the people that came here and testified to that fact. It doesn't bring anything.

CHIEF STATE'S ATTORNEY KEVIN KANE: There are some people who say it doesn't. There are some who say it does. There are some people who say it doesn't. There are some people who say it does.

SENATOR GOMES: Leading from last year say it does.

CHIEF STATE'S ATTORNEY KEVIN KANE: Now public opinion -- expressed public opinion in the polls is certainly a factor you should consider.

SENATOR GOMES: Well, I do.

CHIEF STATE'S ATTORNEY KEVIN KANE: You're representing the public.

SENATOR GOMES: I do.

CHIEF STATE'S ATTORNEY KEVIN KANE: Expressed -- expressed opinions like that are -- is certainly a factor you consider -- should consider.

SENATOR GOMES: I just -- I could go on and on about the Donohue report but I've mentioned the specifics of it which are very, very

damaging and I would -- I would imagine why nobody wants -- why they've challenged it.

CHIEF STATE'S ATTORNEY KEVIN KANE: There's another side to that issue, Senator Gomes. There's another report by another very good expert. Both of those reports will be, I expect -- not will be -- they will be considered by the court that will look greatly in depth at that issue.

SENATOR GOMES: Well it looks like since we're going to vote on the death penalty maybe we should see a copy of those reports. I thank you anyhow.

CHIEF STATE'S ATTORNEY KEVIN KANE: As a matter of who's going to determine the validity of that -- the trial, that is a decision that really ought to be made in court, in an adversary system where a court can focus on that report and the detail and the manner in which this legislature or the public could never focus on it. That is a matter really -- that's why we have courts to decide that kind of issue and that's why we have lawyers on both sides of cases.

SENATOR GOMES: And that's why we seek information so that we can convince the public that what we're doing and what we're voting on is in their stead rather than just my opinion. That's why we look for reports and we like to read them. I don't know. Every time me and you talk there's a bit of contentiousness on my hand anyhow.

CHIEF STATE'S ATTORNEY KEVIN KANE: I'm sorry. These are hard issues. I know. I didn't -- I didn't say that this is not a hard issue. That's why we're back here year after year.

REP. FOX: Representative Hewett.

REP. HEWETT: Good afternoon.

CHIEF STATE'S ATTORNEY KEVIN KANE: Good afternoon, Representative Hewett.

REP. HEWETT: My esteemed Senator to my left here talked about the -- the polls. And he's right about the polls. The first one was framed by the question that was asked and it came out 67 percent. I respect that poll.

And the second one was 50/50. But if you listen to the other side of this argument you'd think that the other 50 percent didn't count. I mean it was almost like it was 70/30. It was 50/50 so there are a lot of people in the State of Connecticut that want -- do not want to repeal the death penalty.

When it comes to your predecessor, Doc -- old Doc Satti, I remember him -- I wasn't in politics at the time but I know his family and his daughter is keeping this thing going about the death penalty because they believe in it wholeheartedly. When it comes to the people -- the jurors and you said you've talked to a lot of the jurors in the Michael Ross case.

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

REP. HEWETT: When it comes to the jurors do you think that if we repeal this today or whenever we vote, do you think they will wake up tomorrow morning and think wow I really feel a lot better about this now.

CHIEF STATE'S ATTORNEY KEVIN KANE: No, I don't think they would and I don't think that -- when I said it's a factor to think about -- about the seriousness with which they take it,

I don't think that's really an issue that should be decided on. The jurors did what they took an oath to do, was to follow the law and decide the facts and apply the law to those facts. The juries did that -- jury did that job.

It did that honestly, very conscientiously. In my opinion commendably. If this legislature were to choose to repeal the death penalty they could -- could go on their way happily knowing that they did -- carried out their responsibilities and carried out the oath that they took.

REP. HEWETT: And if you agree -- I personally don't believe that the death penalty was put in place to be a deterrent. I believe it was put in place to punish. And that's exactly -- and I'll use Michael Ross as an example. When you talk about what did we gain, well Michael Ross won't kill again.

He will never kill another soul in this world and I'm okay with that. We -- a lot of people bring up cost and time. I don't have no problem with the cost. I don't have no problem with the time. I like your testimony because it alluded to the facts that you'd done everything in your power not to bring death penalty -- in other words you look at all the factors. And I like that. And the public defender earlier talked about that only ten percent of their cases was -- have DNA involved. Do you think if we did arrestee DNA that there would be -- that ten percent would rise a little bit?

CHIEF STATE'S ATTORNEY KEVIN KANE: I've always been in favor of collecting DNA from people at the time or arrest. Yes I think that would help that -- help solve crimes and help get to

the truth both ways.

REP. HEWETT: Yeah. Like I said earlier this is not -- this is not something -- you have one side of this issue that thinks because you want to keep the death penalty in place that you're somehow this bad person. The same thing that you had to go through with or the people out there had to go through with to determine and come up with the bottom line how they're going to vote.

I had to do the same thing. I don't take it lightly. I'm not -- it's not an easy thing to just say to put someone to death but I also believe that there are crimes out there that are so horrendous that those people should be put to death. Thank you, sir.

CHIEF STATE'S ATTORNEY KEVIN KANE: That's the -- that's the side of the issue and that's a legitimate, that's understandable. That's why I alluded to it at the beginning.

REP. FOX: Representative Smith.

REP. SMITH: Thank you, Mr. Chair. Good afternoon, Attorney Kane. I think as you can hear from some of the representatives and senators who have spoken already that, you know, a lot of us have already reached down into our souls and looked in the mirror and tried to come to an answer on this, you know, whichever way you come out whether you're for repeal or you're for the death penalty.

I mean, I agree with you 100 percent. It is a in your gut, way down there somewhere in -- well within your soul to come to this conclusion just as your jurors had to do when you were trying those cases. And it's not an easy one. It's funny when I was running for

office, you know, this is only my second year here. While I was being interviewed by the News Times, the newspaper in Danbury, so I'm, you know, I'm happy go lucky answering all kinds of questions and then the question was posed to me well, Mr. Smith, what do you think about the death penalty.

And it kind of, you know, shook me a little bit because I really wasn't ready to answer the question. So I had some thoughts on it but in the succeeding two years now -- a year and a half I've had an opportunity to take a look at that issue and reach down, look at the literature, look at -- speak to someone who's been on death row, who was exonerated by DNA, look at to see in my mind whether it's a deterrent, look at some of the other murders that have occurred in this State where there is no -- they were not put on death row even though some of the horrific events of that murder were in my mind justifiable for the death penalty.

And, you know, I've come to the conclusion at least in my mind how I'm going to vote on this and I've stated it publicly so it's no secret but it is one of those decisions where I can listen to Representative Hewett, and some other colleagues and just completely understand, including yourself, where you're coming from.

You know Dr. Petit who testified here last year you could -- you could just feel the pain and just completely understand that if -- had but for the grace of God, you know, have been you that you certainly would have felt the same way. And yet you hear some other people who have had family members murdered and come to testify that the only true forgiveness -- the only way they felt closure is in

forgiveness.

And they did not seek nor wish for the death penalty. So it's -- it's one of those issues, and I'm rambling a little bit, but it's one of those issues that's all over the map and personally I can understand both sides of the -- of the argument. After that little dissertation, I do have a few questions for you.

I was given the brief in the New Mexico case about the motion to, you know, keep one of the gentlemen off the -- the death row and to get him out of there. And I'm looking at the testimony here and it looks like they quoted -- now you said you were here for five years in your position now?

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

REP. SMITH: Okay. So this testimony may have been from you and I'm -- it talks about the New Jersey's Chief State's Attorney but then it refers to the Connecticut House Bill 6578. And it talks about the Chief State's Attorney so I'm assuming it's you but anyway the testimony read and I'm quoting, the State could not seek the death penalty in any pending case that is -- that is presently eligible for the death penalty.

And any penalty that has been imposed and not carried out would effectively be nullified. So as I understand that statement in 2009 I'm assuming you would feel -- assuming this was you that if the death penalty is repealed today or by this legislature, is it your opinion then that the 11 inmates on death row would also never see the death chambers?

CHIEF STATE'S ATTORNEY KEVIN KANE: That was me

then. That's what I said then and I'll say it again today. Yes, it will. And I said that because I think it's honest.

I think it's very important that we all not only make our decisions honestly but do it for the right reasons and don't let the public think that it's not the way it really is. And the really way it is if you repeal it it's going to be repealed. That doesn't mean it shouldn't be or it should be as I said that's your decision. But don't -- don't make a decision -- make the right decision but don't make it for the wrong reasons.

REP. SMITH: And you -- and you made that comment and you make it again today in light of the Connecticut Supreme Court decision, the United States Supreme Court decision that has found the death penalty in Connecticut to be not cruel and unusual punishment. So -- so in light of that you still take that opinion that the court, knowing that it's not cruel and unusual punishment would still in your opinion at least to find this to be at this time if this bill were to pass to be cruel and unusual based on the evolving standard?

CHIEF STATE'S ATTORNEY KEVIN KANE: My prediction would be that the -- that would the decision of the Connecticut Supreme Court. Now that's a prediction. And by evolving the standard I agree with the -- with what Senator Kissel pointed out is evolving means changing. Maybe hopefully for -- you know hopefully we evolve towards the better but we don't always in life.

But the important thing there -- there is an issue with that as to State's attorneys. I'm not too sure -- and this is one of the things that led me to -- to pause a bit after I had

said that when I testified last year here. Is we may have an obligation to -- if this legislature were to pass a prospective death penalty. I'm not too sure whether our obligations as State's attorneys that might be that we have an obligation to -- where the legislature -- if that's what the legislature did clearly indicates that they want the death penalty to remain for cases that have already occurred.

If that's the legislature's wish we are wrestling -- we by meaning me and the other State's -- 13 State's attorneys are wrestling with whether or not we have an obligation to argue to the court that it should be prospective only. I'm not too sure what the right answer to that thing -- that that question is.

I tend to feel -- well I'm not -- you know, that we've got to think of is do we have an obligation as -- as attorneys -- State's attorneys who have taken an oath to uphold the law, do we have an obligation to argue and let the court decide whether or not it's -- it's prospective only. That's going to be a difficult decision for us to make but we'll weight it, whether it's composable, it's unethical and a legal decision.

REP. SMITH: Well you know I appreciate that answer because that's really one of the issues that a lot of the committee members and the legislators as a whole are grappling with that if it is prospective only the bill if it does pass very well may have been passed because it is prospective only with the idea that those who are on death row will remain on death row and actually face the ultimate consequence.

So, you know, obviously the legislative

testimony and history will -- if it gets that far will come out on the floor of the House and the Senate but I think if that does in fact occur and it does pass then it, you know, I would hope that would be an argument that would be made to the court.

CHIEF STATE'S ATTORNEY KEVIN KANE: Now don't think this though. Be careful. If it is passed in this form and it's prospective and a crime occurs the day before it becomes effective my feeling is is there's -- I know I wouldn't, I know I won't seek the death penalty for a crime that occurs the day before it becomes effective. I think that would be arbitrary. And I wouldn't -- just wouldn't plain feel right doing it. That's my opinion.

REP. SMITH: And that's similar to what the New Mexico case is too and I would agree with you but I think if we're talking about those who are on death row already then that may be a different analysis. And I'll just have one more question for you.

And I asked Senator Looney this question. He gave me his answer. And you may -- you may even know better than he. It looked like in New Jersey when they repealed it the Governor commuted, you know, whoever was on death row at that time, their sentences for death. Is that a situation that would occur -- could occur here in Connecticut?

CHIEF STATE'S ATTORNEY KEVIN KANE: The Governor in the State of Connecticut does not have the power to commute sentences. There is some -- I want to be careful how I say that. You can read the statute as giving the parole board -- the board of pardons the power to commute a sentence and perhaps they do. Although I can conceive of arguments that could be made

against that.

REP. SMITH: Well thank you again for being in here again this year to testify. It's always interesting to hear what you have to say. And thank you, Mr. Chairman.

CHIEF STATE'S ATTORNEY KEVIN KANE: And I'm not sure what the right argument is on that issue.

REP. FOX: Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you, Mr. Chairman. Good afternoon.

CHIEF STATE'S ATTORNEY KEVIN KANE: Good afternoon.

REP. HOLDER-WINFIELD: So first I want to say I really respect your testimony here today. I think it was -- I think it was useful. But I have a question that comes from the interaction you just had with Representative Smith.

You questioned whether or not you have an obligation if this bill should pass to continue to argue to the courts that those on death row should remain through death row and then completely go through your process. Part of what I've respected about your testimony was the notion that it doesn't really matter what your individual opinion, you have a job to do and you would carry it out.

So having started off testifying in that way, I wonder why there's even a question. I think the law would be -- and listen I'm completely on record as being opposed to the death penalty. I'm just trying to figure out why there's even a question as to what your job would be if those of us who are pushing this bill forward are pushing it forward in a

prospective manner.

CHIEF STATE'S ATTORNEY KEVIN KANE: There's two -- there's two issues here. One, is with regard to those where the death penalty's already been imposed and affirmed we cannot unilaterally -- we I mean the State's attorneys cannot unilaterally decide not to execute somebody. That's a court order. It has to be in place.

Only the Superior Court or the Supreme Court can make that decision. We would argue -- that is a question -- our question is what argument do we make in support of the argument that those people should be executed.

My prediction is that the arguments that I have so far, that we have discussed in thought I don't think are likely to prevail in the Supreme Court given the -- the prior language and several prior opinions about the death penalty. And I don't think anybody should be deluding themselves that it's likely that this can be prospective. I think that would be -- prospective only. I think that would be a big mistake.

REP. HOLDER-WINFIELD: Thank you. Are there individuals who have -- and this goes to your question -- your statement about how you seek the death -- how the State's attorneys seek the death penalty and the evidence that you see there and a number of aggravating versus mitigating factors and the process you use and why we don't have the issues with Connecticut's death penalty that perhaps exist in other states.

Having heard you say that I wonder are there individuals who have been on death and now are not currently on death row because we never

discussed that in this hearing -- this annual hearing that we're having.

CHIEF STATE'S ATTORNEY KEVIN KANE: By -- the only people I know who have been on -- who have been -- so what do you mean by have been on death row?

REP. HOLDER-WINFIELD: Are there people for who the State's attorneys sought the death penalty at some point they are no longer on death row?

CHIEF STATE'S ATTORNEY KEVIN KANE: No anybody we sought the death penalty for and who the jury has come back with a death penalty and has been affirmed on appeal -- there's nobody that I know of who's not on death row except Michael Ross who's been executed. Is there -- could corrections move somebody off death row and keep them incarcerated somewhere else other than on -- on what we call -- when you're referring to death row I assume you mean in Northern on the wing where -- where the people are waiting their death sentence are incarcerated.

REP. HOLDER-WINFIELD: Yeah and recognize that I'm going down the list of questions to I think clarify so it doesn't necessarily -- I'm not -- there's no angle to my questions necessarily.

CHIEF STATE'S ATTORNEY KEVIN KANE: I was just trying to understand it clearly.

REP. HOLDER-WINFIELD: We once before had a discussion about Ivo Colon. I think it was either last year or the year before. And I have a hard time understanding at least in the context of how you set up this argument in the past a situation like Ivo Colon's and I don't want to mischaracterize the manner in which

you -- you have indicated what the death penalty is and what it's value but I believe that in the past you have indicated -- particularly last year when I asked the question directly, what's the value of the death penalty.

You took a moment to pause and then you talked about the death penalty having its value coming out of -- and I'm a little not sure about exactly what you meant but coming out of a sense of justice and the actual ability as a tool to plea bargain. So if there is some value that is justice, whatever -- however we want to describe that, how does a situation like Ivo Colon happen?

CHIEF STATE'S ATTORNEY KEVIN KANE: I'm glad you remembered that question and the answer I gave because I remember walking away later on that afternoon thinking I didn't give a very good answer to that question at all. And at the moment I don't remember even Ivo Colon. I don't know.

REP. HOLDER-WINFIELD: So this was a case -- capital case that at one point the death penalty was sought. There were issues with the case. When it came back around --

CHIEF STATE'S ATTORNEY KEVIN KANE: Oh that was the one in Waterbury that was rescinded -- the death penalty was set aside by the Supreme Court and then John Connelly decided not to seek this -- the death penalty the second time around.

REP. HOLDER-WINFIELD: Right. So my question is really -- we're not even talking about as your exchange with Representative O'Neill indicated, two cases that may be very similar but perhaps they do have a different strength

of evidence. We're talking about the same case.

CHIEF STATE'S ATTORNEY KEVIN KANE: That's a good example. That's a good example of where the State's attorney decided not to seek it when it came around. I don't remember the exact reasons that he gave. My recollection is that there was some involvement with a codefendant who did not get the death penalty but it's clear that he made another decision after he came back and decided not to seek it. Now why, I don't know.

It could -- and I don't think this is the reason but it could be the witness had died or disappeared or something. I'm sure that -- I don't think that's the -- I don't know enough about that case to give you any opinion whatsoever which would be worth any -- of any value.

REP. HOLDER-WINFIELD: And I can appreciate that. I will say to you that I do remember that at the resolution it was stated that the manner in which the case was resolved was still justice. And so I guess this goes toward my question about justice and the death penalty at least in the State of Connecticut because quite frankly at the moment I'm only concerned about Connecticut.

If justice is served in that case and the death penalty which had been sought at one point was not required to obtain justice, I'm just trying to find out how justice is resident in the usage of the death penalty.

CHIEF STATE'S ATTORNEY KEVIN KANE: That's a good question. When you asked it before I didn't give a good answer because that gets back to the question that you have decide I think as a

legislature -- legislator should we have the death penalty or not. I remember making an answer at one time in the midst of a bunch of questions, well at least they wouldn't be filing anymore habeas corpus petitions.

I thought that was kind of -- you know I shouldn't have said that but there was -- the one thing that after the Ross case that was obviously and patently and was huge for the victims was the sense of relief the felt that it was finally over. I walked away that night having seen them and knowing that this huge sense of relief that they felt from the fact that it was finally over. And when somebody that night asked what was the -- what was the good about that I said that it was over for other victims.

REP. HOLDER-WINFIELD: Thank you.

CHIEF STATE'S ATTORNEY KEVIN KANE: And that was huge.

REP. HOLDER-WINFIELD: Thank you.

CHIEF STATE'S ATTORNEY KEVIN KANE: And it's tragic today that we're in a situation with regard not just to death penalty cases but a bunch of other cases where so many people are just haunted because it's not over.

REP. HOLDER-WINFIELD: On the issue of pleaing, if you are -- and I think we've had this discussion before. I have trouble with the concept of using the death penalty for a plea. And I recognize what we do in other criminal cases. But if the State's attorneys are using it in that manner if you can't get the plea is the intention to actually go forward with the usage of the death penalty and -- and if so this just kind of -- and I recognize you may

not answer this given the way that you've been speaking about what our job is here to do.

But if that's -- if the case is that if you can't get the plea you would go forward with the death penalty you indicated to us that you would use the death penalty when there was overwhelming evidence in all of that -- all of what you indicated earlier. Why would you in that case therefore bother with a plea?

CHIEF STATE'S ATTORNEY KEVIN KANE: We don't use the death penalty as leverage to get a guilty plea and we shouldn't use it and that's not a -- and I said earlier that that's not a reason to have a death penalty so we can use it as leverage to get a guilty plea.

REP. HOLDER-WINFIELD: Right.

CHIEF STATE'S ATTORNEY KEVIN KANE: That would be inappropriate.

REP. HOLDER-WINFIELD: Right. But in prior exchanges with me you actually talked about it and having benefit that derives from the fact that it is a tool that could be used for that very purpose.

CHIEF STATE'S ATTORNEY KEVIN KANE: A result of it is is that people who -- people who will not plead guilty unless they perceive a benefit in pleading guilty. There are people who will plead guilty in order to hopefully avoid the death penalty.

Now, there are also people who plead guilty because they truly -- I mean I have had one case where as I told you -- well not one case. I've had more than one where people have honestly plead guilty. Honestly --

REP. HOLDER-WINFIELD: Can I just make -- ask a point for clarification? Are you suggesting to me that people would plead guilty because they're worried about a death penalty that is not being held over their head?

CHIEF STATE'S ATTORNEY KEVIN KANE: No.

REP. HOLDER-WINFIELD: And I'm not being funny. Can you clarify what you're saying then because I'm having a hard time understanding. I suggested to you that the death penalty is hold -- held over an individual's head and that's why they might plea and I thought that was the discussion we had last year and the year before. You're suggesting to me that that's not how -- that's not how things work in -- that's not how things operate.

CHIEF STATE'S ATTORNEY KEVIN KANE: Well, I will tell you this, and this does happen. People -- the defense attorneys will come in and say look, I think -- I'm going to advise my client to plead guilty to capital felony if you won't call -- won't seek the death penalty. There are cases where that happens and there are that -- that cases where we will say okay we won't seek the death penalty.

Now one of the reasons is the reason I talked about, finality. We know what's going to happen if we seek the death penalty. It's going to go on, on, and on and on. It was 20 years -- 21 years between the time Michael Ross killed Wendy Baribeault and the time he was executed.

I watched what that family went through for 21 years. If somebody came in and said we'll plead guilty for capital felony and I would think -- and I -- and I remember very distinctly a case in which I really thought

hard. I said okay, I won't -- I won't seek the death penalty because it's over.

REP. HOLDER-WINFIELD: Are you suggesting to me that the individual's counsel is the one who puts this forward and you agree not to seek what you aren't going to seek anyway?

CHIEF STATE'S ATTORNEY KEVIN KANE: No I'm not suggesting that. I am not suggesting that. If we decide -- when we get a case in the first thing we decide -- we look at, A can we prove a capital felony, is the -- how strong is the evidence on each and every element of the capital felony? B, can we prove beyond a reasonable doubt an aggravating factor? If so, we decide to charge capital felony.

We will then listen to anything the defense has to -- attorney has to produce or the defense produces about whether not there's a mitigating factor or any other reason not to seek the death penalty. Part of that obviously is my client's willing to plead guilty and accept capital life -- or natural life. Of course we'll consider that and we should consider that.

REP. HOLDER-WINFIELD: Thank you.

CHIEF STATE'S ATTORNEY KEVIN KANE: We absolutely should consider that.

RPE. HOLDER-WINFIELD: Thank you.

REP. FOX: Representative Adinolfi.

REP. ADINOLFI: Hi. Nice to see you here again.

CHIEF STATE'S ATTORNEY KEVIN KANE: Hello.

REP. ADINOLFI: Just a couple of questions. One

for clarity, many of us here have mentioned this poll from Quinnipiac. And I believe the first part of the poll 66, 67 percent in favor of the death penalty, I believe that. With the 50, 50 I believe is inaccurate because they did not tell the people when they took this poll that they were given life imprisonment which seven hours a day mixing up with other prisoners, and have all the recreation facilities that are associated with it and so on.

I think people were under the impression that they would get something -- stiff sentence not just to be mingled in with the general population at the level four and maybe possibly years down even getting a level three or something. I don't know. But I just want to make that clear because any -- any constituent that I talked to about this says had they known the real facts about what life imprisonment would curtail for them, they would still have been in favor the death penalty.

So I want to make that clear that -- that the poll was inaccurate and maybe they'll do an accurate poll and then we'll -- we'll see what happens. You mentioned something that we are -- there is a racial disparity law case going on now.

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes there sure is. There's been one going on since approximately 2003 --

REP. ADINOLFI: With the result of this --

CHIEF STATE'S ATTORNEY KEVIN KANE: -- or earlier. I don't even remember.

REP. ADINOLFI: -- of this -- the result of this

racial disparity case, would it make any difference on the crime? I mean if somebody murdered somebody but it was proven that it was a racial disparity because they arrested him and are trying him for murder that he can get away with it?

CHIEF STATE'S ATTORNEY KEVIN KANE: If it were proven that -- and this is what is serious in litigation -- if it were proven that we applied the death penalty, that race was a factor in our choices to who to seek the death penalty for that would be the end of the death penalty.

REP. ADINOLFI: Okay.

CHIEF STATE'S ATTORNEY KEVIN KANE: At least with regard to -- I mean applied to --

REP. ADINOLFI: (Inaudible.)

CHIEF STATE'S ATTORNEY KEVIN KANE: I shouldn't say that. I went too far I think. If we could prove with regard to any particular defendant that the reason the death penalty was imposed because of race, that would be the end of the death penalty in that case and it should be and it should be the end of the death penalty in that case.

REP. ADINOLFI: Well shouldn't it be --

CHIEF STATE'S ATTORNEY KEVIN KANE: And if we were wrong that would be horrible.

REP. ADINOLFI: This case only applies to the death penalty then, not -- not to cases for other arrests for murder or anything. All right, I have another question this is dated January 2, 11 and I think it's dropped by one. We had a sentence, 45 capital felony cases in -- in

January 2011 which did not include the ten inmates on -- on there now. And we have 12 unsentenced.

Well, Komisarjevsky's been sentenced since so I would say we're down to 11 now. In the -- in the prospective area would these 11 -- approximately 11 that have not been sentenced which category would they fall into?

CHIEF STATE'S ATTORNEY KEVIN KANE: That have not -- have not been sentenced yet? You mean where they've been found guilty and--

REP. ADINOLFI: Found guilty but not sentenced. Yes, in capital felony. I got this list from the Department of Corrections.

CHIEF STATE'S ATTORNEY KEVIN KANE: So those cases are still in trial. I have no kind (inaudible).

REP. ADINOLFI: No they have -- the -- they are unsentenced. They are still in trial. That's correct.

CHIEF STATE'S ATTORNEY KEVIN KANE: But they've been found guilty of capital felony or just charged with capital felony in their --

REP. ADINOLFI: Well it doesn't make that clear --

CHIEF STATE'S ATTORNEY KEVIN KANE: Well what that must be --

REP. ADINOLFI: It just says that there's 12 that are going through for capital felony and I dropped one because of Komisarjevsky. What happened to those -- what would happen to anybody who has not yet been executed -- not been sentenced to -- say they get a sentence to the death penalty --

CHIEF STATE'S ATTORNEY KEVIN KANE: Okay.

REP. ADINOLFI: -- does this law, this bill stop them from receiving the death penalty?

CHIEF STATE'S ATTORNEY KEVIN KANE: The bill -- the wording of the bill itself does not but my prediction is is that as a result of that -- of this bill passing people won't be executed whether they've been sentenced or not.

REP. ADINOLFI: And the other thing that interested me a lot reading the report and I'll quote it, according to DOC spokesman, Brian Garnett, inmates sentenced to life without parole are allowed outside their cell six to seven hours a day, can spend that time with other inmates. Then it goes in parentheses, Hayes will face an isolated life -- life on death row. What do they mean by that?

In other words Hayes because if he's put in with the general population it's very likely that they will try and kill him, that they're going to keep him in the death row anyway under those facilities that -- and probably Komisarjevsky also?

CHIEF STATE'S ATTORNEY KEVIN KANE: As I understand it what -- what Brian Garnett was saying that because the death penalty has been imposed he's going to stay on death row while he's awaiting execution.

REP. ADINOLFI: Okay. But what I thought it meant was that even though the others would leave that (inaudible) if your prospective didn't work.

CHIEF STATE'S ATTORNEY KEVIN KANE: I don't --

REP. ADINOLFI: Then they still would do something special with Hayes.

CHIEF STATE'S ATTORNEY KEVIN KANE: I don't understand. I don't know why they would just single Hayes out. If the others -- if--

REP. ADINOLFI: My understanding is the code in the prison. We have five of the 12 on death row right now murdered children.

My understanding is that's a no no with the prisoners own code of conduct. And when they put him in with the prisoners that they might get the death penalty in another manner.

CHIEF STATE'S ATTORNEY KEVIN KANE: Well I hope we're not putting people in prison in the hopes that they'll be murdered by other prisoners.

REP. ADINOLFI: No I'm not. I'm not but that's -- that's what I've been told. That's all. Thank you very much for your time.

REP. FOX: Representative Morris.

REP. MORRIS: Thank you, Mr. Chairman. Good evening, Mr. Kane. How are you doing?

CHIEF STATE'S ATTORNEY KEVIN KANE: Very good thank you. How are you?

REP. MORRIS: Very good. Want to follow up -- had a question that was very similar to one that Representative Holder-Winfield posed to you and it had to do with the issue basically of justice as it relates to the imposition of -- of capital death -- of the death penalty. Earlier you stated your commitment for justice.

In this particular (inaudible) as it relates to the oath of office which you took and we all certainly appreciate that. And -- I need to clarify one thing from you before I go on my point though because I heard you say something to the effect that you don't mind doing the extra work and I thought you said involved with something referenced to a workable death penalty law. Can you just clarify that piece for me?

CHIEF STATE'S ATTORNEY KEVIN KANE: Okay. If I talked about justice I should have been more careful than possibly I was when I did. It's very clear and it's not hard to decide what our obligation is with regard to carrying out the law. And so what's justice? That's another question. And that's -- that's a question which you -- is not so easy and not so clear to decide.

Working hard to make the death penalty workable, yes, I am convinced that we could make -- if there was -- what I'm disturbed about and this would be agreed greatly about is the people who are saying we shouldn't have the death penalty because it's not workable.

The death penalty can be workable and I think that's almost a hypocritical argument to be making because often the people who are saying it don't want the death penalty and are using that for an excuse.

REP. MORRIS: If I could interrupt you for one moment, the point I'm trying to deal with is -- is what I perceive that you are -- you're talking about whichever way the law goes that you would have -- you and your department would have any problem taking on additional work.

CHIEF STATE'S ATTORNEY KEVIN KANE: No. We would take on the -- you mean additional work if the death penalty is repealed and my prediction that we'll have more trials --

REP. MORRIS: Right.

CHIEF STATE'S ATTORNEY KEVIN KANE: -- no capital felony cases? We'll do the work.

REP. MORRIS: And you'll do the work and gladly do it because that's part of your role as --

CHIEF STATE'S ATTORNEY KEVIN KANE: Gladly in relative terms. Sometimes this job is not fun and that's something I've never -- I've been glad about.

REP. MORRIS: Right.

CHIEF STATE'S ATTORNEY KEVIN KANE: It's a job we have to do and yes we will do it and we'll do it readily. And I won't promise you that we come -- I've always wanted not to ask for money until I know we need it and sometimes you don't know it until after the fact.

REP. MORRIS: Right.

CHIEF STATE'S ATTORNEY KEVIN KANE: I won't promise that we won't have more trials and will be coming back next year saying as a result we need more money.

REP. MORRIS: Well certainly we're -- I'm pretty sure all of my colleagues are happy that you'll take on the work and deal with the -- the bigger that is expected. But this then goes to my question and around justice.

And I say this in light of the Donohue report. And I'm going to preface my question with just

two statements from that summary. One of them was that said that as the U.S. Supreme Court highlighted in Furman. It was talking about the Furman versus Virginia case, the sheer infrequency of death sentences and executions given the number of murders creates a strong suspicion that the determination of who is to die is highly arbitrary.

And in another place it says, looking at the raw statistics -- no interpretation, just looking at the raw statistics in table 20 of section nine which is also reproduced in the executive summary, one sees that minority defendants who commit capital eligible murders of white victims are six times as likely to receive a death sentence as minority defendants who commit capital eligible murders of minority, 12 percent versus two percent.

So my question becomes this, given this disparity based on the raw data, given the fact that nationally and statewide it isn't a unique problem even related to just capital murder cases -- capital felonies. Nationally if we look at data there is a disparate treatment in terms of the charges that minorities are given particularly in cases if it's black on black or Hispanic on Hispanic crime versus a minority versus a majority race.

So the question is then because you're willing to take on your other work for this -- for this law whichever way it comes out. What work in your current position have you done to reduce the number of apparently racially disparate cases that have been charged?

CHIEF STATE'S ATTORNEY KEVIN KANE: You have to be very careful when you look at disparity and what -- disparity is very different from

disparate treatment. We've seen disparity. It's obvious. There's disparity in the number of -- in the percentages of people in prison. What causes that, why that is and what's the cause of it is something very different than -- than the justice system consciously discriminating or treating people differently because of their race or ethnicity or religion or any other reason.

There is no way that -- I shouldn't say there is no way. I've seen cases that I've thought there's no way I'm going to lose this case and I've lost it but I don't believe that a court -- that anybody who seriously looks at the Donohue -- and the court's going to have to look at the Donohue report.

I don't believe that the -- the petitioners can sustain -- can prove that the death penalty is carried out -- that there's disparity in the manner in which the death penalty process is carried out. I don't believe they'll prove that. Our expert contests that a little too hotly in the verb -- some of the verbiage he's used.

But I am confident that when the court looks at that it'll decide it and will decide that there is -- that the death penalty is not sought or -- or obtained because of any inappropriate -- and by inappropriate I mean going beyond on the law but for any inappropriate reasons.

REP. MORRIS: All right, but given -- what leads us to this conclusion if at all it is because of the subjectiveness which a prosecutor may determine because that's the person who ultimately determines whether to go forward with a -- with the death penalty or not.

That is the person who determines whether to plea bargain a case or not. And I know you're familiar with the vast discrepancies as to what was highlighted in the Donohue report in terms of Waterbury which I think is going to be very difficult for someone to explain.

CHIEF STATE'S ATTORNEY KEVIN KANE: Well --

REP. MORRIS: Because the numbers are so disparate.

CHIEF STATE'S ATTORNEY KEVIN KANE: Hold on.

REP. MORRIS: But the question then still goes, in light of this -- even as a national issue -- a national issue and certainly a State issue, I'm still curious what efforts if any have you taken in your department to address this as an issue among all of your prosecutors to make assurances that at least when they're charging people of color that there is some type of equity, some type of parity.

CHIEF STATE'S ATTORNEY KEVIN KANE: We -- when you say it's subjective I will disagree with you strongly there about how we make our charging decisions. And let's look at it with regard to the death penalty which is why we're here now. We have to focus initially on the facts and the law. We have to focus on what -- on A is there evidence by which we can prove a capital felony statute?

Can we prove it -- the elements of capital felony, can we prove those elements beyond a reasonable doubt? Is the evidence strong? We make that decision without sometimes -- well I can't say without knowing but oblivious to the race or ethnicity or gender of the defendant.

We look solely at the facts, the strength of the evidence, the nature of the evidence,

whether or not we believe it supports a conviction not only beyond a reasonable doubt but in the case of a death penalty case whether it's overwhelming. We look at that. Can we prove the capital felony? Number two, if we can, can we prove the existence of an aggravating factor?

Those aggravating factors are carefully set forth in this statute. You, the legislature have done a terrific job in defining that. We look to see whether or not we can prove again not only beyond a reasonable doubt but is the evidence of an aggravating factor overwhelming.

There are cases in which we can clearly prove capital felony but we are not sure that the evidence -- but the evidence of an aggravating factor is not overwhelming. If you look at any of those cases on death row and look at the facts, I don't see that anybody is coming forward and saying those cases don't fit.

REP. MORRIS: I'll conclude with this statement, that being this -- because it gets to the issue of disparity and what we do -- what our prosecutors do. You and I are very familiar with the perceived treatment of minorities in the Norwalk Courthouse back in 2007 and thankful to you for all the work that you worked with us to correct some of the injustices that the NAACP along with many of us in the legislature sought.

But it goes to the heart of this issue. This was a case where we had a prosecutor who was giving people of color very tough sentences for which they were innocent -- they were innocent and they were forced to plead guilty. People who did not have the finances to -- to protect themselves otherwise.

If this certainly happens and it did happen and I'm sure it happens in courthouses across the country. It goes to the heart of my question and just what I recommend, I suggest that all chief prosecutors in every state in the United States of America should look at, what are we doing at that level because it is subjective.

It is subjective. The prosecutor has an awful lot of authority. And if they take advantage -- and we do have history. We do know that it has happened. That is factual. If it's factual at that lower level there is no way that you're going to convince certainly me based on the kind of raw data that we have here, that it doesn't happen in capital cases as well.

And you know, we've -- nationally we all saw a young man, Troy Davis, lose his life. Nationally. This is a -- we've got -- we've got enough cases here where the Tillmans and others who've gone to -- gone to jail for things they didn't do. There's been prosecutorial -- I know there's a lot of fantastic prosecutors but all of them aren't.

A lot of fantastic police officers but some of them aren't and they're given the -- the opportunity to make some subjective decisions. And sometimes because of race or because of class because they're human beings they don't do that well. So that's why I wanted to go through the issue of justice because when it comes to the issue of the -- of the death penalty I believe in this country which is the greatest nation on the planet earth as far as I'm concerned, we should be concerned about justice for all.

And if we have a system that is failing in this regard and many other regards as it relates to justice for minorities, justice for people who do not have the financial wherewithal of others. We need to stop, take another look and find another way of doing things. And particularly if it may cost a person their life. So I want to leave with that on the records. And I thank you so much for all that you do, Mr. Kane.

CHIEF STATE'S ATTORNEY KEVIN KANE: You put it on the record very clearly. I would add -- say you should not draw conclusions from the Donohue report. There are seriously -- it's going to be litigated.

There's opposing evidence, strongly opposing evidence that I think if you were a judge my feeling is you'd agree with the evidence opposing the Donohue report if you really looked at it and heard the arguments on both sides. But that's for a court to decide and a court is going to decide it in the end, very soon I hope.

REP. FOX: Thank you. Are there any other questions for Attorney Kane. Well you've been up for a while.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you. I have.

REP. FOX: Actually -- actually I have not had a chance yet, so if I could just -- and I'll be -- I think you can answer just about everything so I will only say a few. And first before I ask any questions I would like to say that I very much appreciated your opening remarks as well as your candor during your testimony.

You're not trying to tell us what to do, you're just saying that it's our responsibility to do it and to -- your experience in dealing with the death penalty throughout your careers is something that's been valuable to me in terms of whether it's private discussions or -- or during the course of your testimony because there's not a lot of people who had to prosecute these cases and you're one of them.

And -- so your experience in what -- what you have to deal with during the course of that process, and as you said it was 21 years in the Michael Ross case and that's a long time. You had to deal with a lot and it's very valuable for all of us to hear, you know, what you -- what you did as a -- during the course of your job and your responsibilities so thank you for that.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you.

REP. FOX: The -- I just have a couple questions because there's a couple terms that are being used and I want to make sure that -- I think they're being used interchangeably and I'm being told that maybe they shouldn't be. And I'm not saying by you but by -- by others.

One is there's talk of if you get rid of the death penalty it'd be life without the possibility of parole however the wording is life without the possibility of release. And is there a -- is that a distinction to you or is there -- I just -- because the question is and some of the concern that's been raised is that if somebody is sentenced to life without the possibility of release that they could somehow get out some day.

CHIEF STATE'S ATTORNEY KEVIN KANE: If I said

parole in there I misspoke.

REP. FOX: No, no, no, not you. Actually it was something people said prior to your testimony. It's just I've heard them used interchangeably and I'm not sure they should be used interchangeably.

CHIEF STATE'S ATTORNEY KEVIN KANE: Under the law as it stands now if somebody is sentenced to -- to life without the possibility of release they cannot -- they will not get out.

Now, we're revisiting and I suspect the sentencing division is going to revisit the question of parole and that's going to be an issue down the line and the legislature could always change that.

REP. FOX: But could we change life without the possibility of release? I suppose --

CHIEF STATE'S ATTORNEY KEVIN KANE: The legislature certainly could.

REP. FOX: -- that we could. And -- but when you hear the term without possibility of release do you at least in your own mind or your own experience do you feel that that defendant has any opportunity -- or that convicted defendant at that point has any opportunity to ever get out of jail?

CHIEF STATE'S ATTORNEY KEVIN KANE: I feel they don't have any opportunity to get out of jail and on the cases where I -- where I've resolved in that fashion I've told the families that life without possibility of release means just exactly that and that's the law.

REP. FOX: Okay.

CHIEF STATE'S ATTORNEY KEVIN KANE: Now it would be unfortunate and in some cases to revisit that retroactively.

REP. FOX: And I'm not -- I guess what I'm saying is I -- it is a concern that's been raised that there might be a way for these individuals to somehow be released on parole or some sort of parole at some stage but --

CHIEF STATE'S ATTORNEY KEVIN KANE: Natural life means natural life.

REP. FOX: Okay. And --

CHIEF STATE'S ATTORNEY KEVIN KANE: There's only one end to that.

REP. FOX: There's only one end to that and that's not -- it's not on parole. The -- it's also been discussed the death penalty -- and I think you've answered this. That the death penalty -- or the existence of a death penalty can be used as a plea bargaining tool and I think you've rejected that as a tool.

CHIEF STATE'S ATTORNEY KEVIN KANE: It can be used it would be inappropriate for us to use the death penalty as a plea bargaining tool.

REP. FOX: Okay. And that's the policy throughout your --

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

REP. FOX: -- throughout the other offices. Because I agree with you --

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

REP. FOX: -- in that it should not be used as a

tool.

CHIEF STATE'S ATTORNEY KEVIN KANE: Now that's very different from saying we will choose not to seek it based on things that may happen. You don't use that as a tool to bring about guilty pleas.

REP. FOX: I mean, so if I can give you an example. If a prosecutor were to say plead guilty by the end of the week or we will not pursue the death penalty that would be the sort of thing that would not be inappropriate.

CHIEF STATE'S ATTORNEY KEVIN KANE: Well that would be inappropriate and I don't know that that's ever been done.

REP. FOX: But I'm not saying it has. I'm just saying I think it's a concern that some people have raised and that it's -- the prosecutors who handle these cases would be losing a tool but if I'm correct it's not an appropriate tool to use anyway.

CHIEF STATE'S ATTORNEY KEVIN KANE: That's correct.

REP. FOX: Okay. I think, you know, you have been very open and forthcoming not only today but in the past when this issues come up. I think you've answered just about any question anybody has unless there are -- are more questions. I'm looking around and seeing none, so -- so thanks again for your testimony.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you.

REP. FOX: Next is Daryl Roberts.

SB 280

DARYL ROBERTS: Good afternoon, to the chairs and all the distinguished legislators and

lawmakers before me and all the individuals who have been sitting patiently behind me. I am Daryl K. Roberts and I'm in support to repeal the death penalty. I have been a police officer for more than half of my life.

For 30 years I've served, starting as a patrolman and retiring as Chief of Police with the capital city. My goal as an officer is to serve our community, keep people safe, or to prevent crime and we need to solve crimes and apprehend offenders. There are lots of things that help police do their -- this work effectively, sufficient training and support of the department, as well as elements in the community like community policing. For serving our communities this definitely is irrelevant. The notion of the death penalty as a deterrent is absurd.

People argue about what the data says about deterrence but I can say based on over 30 years of experience dealing with the most hardened capital offenders the death penalty is not a deterrent. I have seen the worst of the worst. I know how they think and I can assure you they do not deserve the death penalty. Having the death penalty will have no effect on these individuals because they do not expect to get caught.

Men are immensely ill or acting in a moment of passion and are sociopaths with delusions of grandeur and never expect to get caught. The death penalty is the furthest thing from their minds. Police chiefs from around the country have agreed with me. In 2007 randomly selected police chiefs from around the country were asked to rank the death penalty as a tool for deterring crime.

The vast majority of the chiefs listed the

death penalty as the lowest priority because the death penalty does nothing to help with our work. In fact, from all I've experienced I think the death penalty is in fact a hindrance to law enforcement. I have devoted my career devoting programs -- I have devoted my career to developing programs that we know how to keep our community safe, education programs, programs for community involvement.

Some of these programs are suffering in these times due to tough budget cuts. If given the choice between our ineffective death penalty or effective community crime prevention programs, I would choose the latter every time. Finally, I see time and again how the death penalty does not do anything for the surviving victims. It only in my opinion extends their pain.

I say this as both a first responder and I have relatives who have been murder victims in our city. My cousin was murdered one day by a gang banger who shot eight people in a crowd in Hartford. The death penalty in Connecticut did nothing to prevent this murder, victims' families like law enforcement families want programs that will stop crimes from occurring in the first place.

This is our priority to prevent crime and keep people safe. Additionally I have seen how the death penalty process can ensure some families decades, a long wait in futility. This is wrong. Over the last three decades the law enforcement -- in law enforcement time and again I have seen what officers, victims and communities need, and I assume that's not the death penalty.

The death penalty is irrelevant at best, a tremendous distraction at worst. I have

worked with the best law enforcement officers in the world but none of us are perfect 100 percent of the time. Since we can't guarantee perfection it is too great a risk to take a punishment as severe an irreversible as the death penalty.

Thank you for allowing me to speak on this very, very important issue and I will entertain any questions at this time.

SENATOR COLEMAN: Chief -- I guess I've called you Chief before you were Chief so I might as well call you Chief after you're retired.

DARYL ROBERTS: Thank you, Senator Coleman.

SENATOR COLEMAN: We really appreciate you taking the time to be here and to address this subject with us. Any questions for Chief Roberts? Representative Adinolfi.

REP. ADINOLFI: Thank you. Thank you. Welcome, Chief. I'll still call you Chief.

DARYL ROBERTS: Thank you for that.

REP. ADINOLFI: A question for you, you mentioned that it is not a deterrent. That might be correct and it might be wrong but I'm not -- that's not my issue. My issue is that the penalty is a punishment for the -- for the person that committed the crime.

I'm not looking at it as a deterrent. It's a punishment. He was sentenced by -- went through a trial jury by his peers. He was sentenced by a jury of his peers. The judge approved the sentence. And he went to death row.

Now you have a case of Richard Reynolds,

convicted of murdering a Waterbury police officer back in December 18, 1992. He was sentenced in 1995, just about two and a half, three years later. He's had appeals to the Supreme Court. And the Supreme Court denied his petition to even to hear the case.

And now he's just rolling one habeas corpus after another. How do you feel -- to me a very offensive thing if somebody kills a police officer. I would think that every police officer in this State would want to see that person get the death penalty.

DARYL ROBERTS: That's a very good point, Representative Adinolfi. What's important to me is all life. I believe police officers take an oath of office to protect and serve and we know when we take that oath we may have to lay down our lives.

I believe police officers are important but all life is important. And when a police officer takes that oath he or she understands that in the performance of his or her duty they may have to lay down their life.

Now, do we say, okay, a police officer's life is more important than another individual's life? I don't know if I would make that statement. But being a law enforcement officer for 30 years and serving in our great city I've had my moments and I do understand what you're saying but all life is important. You're welcome.

SENATOR COLEMAN: Are there other questions? Seeing none, again thank you for your contribution to this public hearing.

DARYL ROBERTS: Thank you, Senator Coleman.

SENATOR COLEMAN: It strikes me, you must have had an incredible mentor somewhere along the line.

DARYL ROBERTS: Yes, I did.

SENATOR COLEMAN: Okay.

DARYL ROBERTS: Thank you, sir.

SENATOR COLEMAN: Let's see, who's next. Anne Stone. Anne Stone.

ANNE STONE: Chairman Coleman and members of the judiciary committee, my name is Anne Stone and I live in Farmington. And I'm here to support repeal of Senate Bill 280 to -- I'm here to support the bill to repeal Connecticut's death penalty.

I offer testimony as one of 179 murder victims' family members in Connecticut who are concerned about the death penalty and speaking out about repeal. Last year, there were 76 of us and because of the many reasons the death penalty has harmed us our numbers have more than doubled. Our son, Ralph, was brutally stabbed to death during a robbery in his condominium in Washington, D.C.

We learned of his murder shortly before midnight in July of 1997 and by morning we were on a flight to D.C. The police response was horrifyingly inadequate as we were directed to the wrong police station. When we found our way to the correct police station there was no one available to talk with us. Not until late in the evening did a detective come to where we were staying to give us details of the murder.

In the end, Ralph's murder was never solved and was labeled a cold case, one of those

cases all but forgotten by society but for us the case will always be remembered and it is very difficult not having more information about what happened to our son or some legal finality and accountability.

Right now in Connecticut, it is estimated that there are nearly 900 cold cases that could be investigated because there is living witness or suspect -- or suspect but there are only 16 to 20 cases being actively investigated by the prosecutor's cold case unit.

The State's Chief Prosecutor has said there simply are not enough resources to fully investigate all the cases. A year ago the cold case unit had 22 inspectors and now only has 13 with budget shortfalls threatening even fewer first personnel will be able to work on the many cold cases in Connecticut. It breaks my heart to know there are so many families like ours living with uncertainty and wishing that someone in authority would care enough to pay attention to our cases not to mention how alarming it is that there are maybe 900 murderers loose on the street.

Then I think about the death penalty. The notion of the death penalty never brought my family any solace. In fact, we were relieved to learn that Washington, D.C. doesn't even have the death penalty because we knew what a rollercoaster ride the process would be for our family. But we spend millions of dollars every year to keep the death penalty while 900 families like mine are left without answers.

This doesn't make any sense to me at all. Of course hard decisions have to be made when resources are finite. But to spend millions on a death penalty system that affects a handful of cases while hundreds of families

are desperate for answers seems like the wrong cherished choice for Connecticut victims. I hope the legislature will take the important step of repealing the death penalty so we stop squandering resources that could be put to much better use. Thank you.

SENATOR COLEMAN: Are there questions for Ms. Stone?

Senator Gomes.

SENATOR GOMES: Good afternoon. I'm over here.

ANNE STONE: Oh, okay.

SENATOR GOMES: I just wanted to thank you for coming and testifying. You're one of these people that I mentioned last year, the 81 people that -- that they don't find any solace in -- in the death penalty. I also -- you've sort of mentioned some things that backs up what some of the Donohue report says when I said there were 4,000 murders here, only 40 percent of them were -- were solved before -- before 2007.

And I guess -- and I feel really, really deeply for you because you are one of the cases where, like you said, somebody has done something to your family and he's running around on the streets. I don't blame the police for that or anything. I'm not laying any blame. But I'm saying that these things did happen.

They are part of the record and you have proven that because you know -- you know of 900 cases that are cold cases. I hope they do solve them but in the meanwhile I want to thank you for coming out and testifying. Thank you very much.

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ANNE STONE: Thank you very much.

SENATOR COLEMAN: Are there other questions for Ms. Stone?

Seeing none, thank you very much, ma'am.

Joette Katz is next.

COMMISSIONER JOETTE KATZ: Good afternoon.

SENATOR COLEMAN: Good afternoon.

COMMISSIONER JOETTE KATZ: Senator Coleman, and I'm sorry Representative Fox is not here and -- but other members of the Judiciary Committee. I am Joette Katz, Commissioner of the Department of Children and Families and I'm here to offer comments regarding two bills on your public hearing agenda.

HB 5363

Department of Children and Families supports Senate Bill Number 310, AN ACT CONCERNING THE REMOVAL OF INDIVIDUALS FROM THE STATE CHILD ABUSE AND NEGLECT REGISTRY. This bill establishes a removal procedure for individuals whose names have been placed on the child abuse and neglect registry by DCF for at least five years.

It permits these individuals to apply to have his or her name removed by showing good cause for removal. Under the proposal the burden is on the applicant to prove that one, the applicant has been rehabilitated, two, the person has accepted personal responsibility for the act or omissions that resulted in his or her being included in the registry in the first instance, and three, a bona fiding need to remove his or her name.

that too.

ROBERT ARMANDO: The other thing that definitely has got to be changed that you don't have to own the monument in order to be able to prosecute.

REP. ADINOLFI: Well that you have it right. But we have to look into the statute of limitations limit.

ROBERT ARMANDO: Right.

REP. ADINOLFI: And I think we ought to change that. All right. Thank you very much.

ROBERT ARMANDO: Thank you.

REP. ADINOLFI: I appreciate the problem.

SENATOR CASSANO: I would appreciate the effort to combine the two. I think we need to combine the two. Well, we're not going to find a 1942 penny. I heard you.

SENATOR COLEMAN: Are there others with questions or comments?

If not, thank you, Gentlemen.

SENATOR CASSANO: Thank you very much.

ROBERT ARMANDO: Thank you for your time.

SENATOR COLEMAN: Khalilah Brown. Ms. Brown will be followed by Charles Stallworth.

KHALILAH BROWN: Good evening.

SENATOR COLEMAN: Good evening.

KHALILAH BROWN: Thank you, Chairman Coleman and to

SB280

all of the distinguished members of this committee. I'm Dr. Khalilah Brown Dean and I'm an associate professor of political science at Quinnipiac University. I'm here to speak in support of S.B. 280, which would repeal Connecticut's death penalty. As a professor I've spent over ten years analyzing and quantifying crime and punishment.

We know that the death penalty does not keep us safer. The statistics make that abundantly clear. And yet we continue to hold onto this system in spite of its fatal flaws. I've long understood the death penalty from the detached perspective of a social scientist but last year I came to understand this issue in a much more personal way.

On February 20, 2011, my 21-year-old cousin, Brian Anthony Patterson was murdered by a 19 year old. That 19 year old stood over Brian pumped nine shots into his body as others scrambled for their safety. Brian was a star scholar athlete. He was a son. He was a beloved big brother and a cherished cousin. Brian's life mattered.

Last month, the man that took Brian's life was sentenced to 31 years in prison. At no point did the thought of losing his life keep him from taking Brian's life. There is no deterrent factor to the death penalty. There are those who say that the death penalty is about bringing closure for victim's families but the arbitrary way in which we decide which lives are more important leaves us with a system that is far from just.

There are disparities based on race, class and gender when it comes to who is more likely to receive a death sentence. To families whose innocence has been shattered in an instant

every loss is heinous, none less painful because of the circumstances. Some believe that the answer is to shorten the appeals process but we know that 140 people have been released from death row because of new evidence. Rushing an execution does not bring us peace. It only raises more questions.

This is not about being soft on crime and it's certainly not about coddling criminals. It's about being smart on crime and consistent in our values. As families we fight to honor and affirm the lives that were taken away from us. We will not be complicit in taking the life of another.

Who we are, as a State and as a nation, depends on our ability to extend humanity to others even as they deny it in themselves for when we fail to do so we become that which reject, that which we condemn and that which we despise. Whether at the hands of a brazen 19 year old driven by rage at a party or at the hands of the State there is no justice in taking a life. Thank you for this opportunity.

SENATOR COLEMAN: Thank you. Are there questions for Professor Brown?

Seeing none, thank you. Oh, sorry. Representative O'Neill.

REP. O'NEILL: Yes. First of all let me express my sympathy to you for the loss of your cousin.

KHALILAH BROWN: Thank you.

REP. O'NEILL: But you indicated the person who killed him -- the murderer was not deterred by the possibility of a death sentence. Did he say that in open court or communicate that to

you in some way?

KHALILAH BROWN: Brian was murdered in the State of Virginia, which as you've heard today has one of the most active death penalties. And so when the prosecutors asked him why did you do this? What were you thinking?

And he said it was about ego. When they asked him, did you know what you were facing? He said very clearly, in that moment it did not matter. So to hear from his own voice that it didn't matter what would happen to him or what would happen to Brian, I think it's clear that the death penalty was not a deterrent for him at all.

REP. O'NEILL: Thank you, Mr. Chairman.

KHALILAH BROWN: Thank you.

SENATOR COLEMAN: Are there other questions? Seeing none, thank you for your testimony.

KHALILAH BROWN: Thank you so much.

SENATOR COLEMAN: Representative Charles Stallworth.

REP. STALLWORTH: To Chair Coleman, ranking member and members of the Judiciary Committee. My name is Charlie Stallworth, State Representative serving the 126 District, Bridgeport. Thank you for the opportunity to come before you today. I'm here to speak in support of S.B. 280.

I believe the death penalty in the State of Connecticut should be repealed. Prior to serving our State and my district I have served and continue to serve as a pastor of a church in Bridgeport and as an ad junct

professor at Hartford Seminary.

I've been in ministry for the past 32 years and have taught on the seminary level for the past ten. Therefore one might believe that my approach to the matter and my appearance before you would strictly be religious and rested on the tenants of theology and morality.

Though I have strong theological and moral beliefs that guide my life and my beliefs about capital punishment, my purpose here today goes far beyond. In other words I did not come to preach, though tempting, to you today but to speak with just as much compassion and purpose.

The death penalty in Connecticut in flawed and should be repealed. We have seen over and over again the many mistakes made in the application of the death penalty. Sometimes we get the wrong person. Even more horrifying is when a person who has been executed has then been found to have been innocent. Across the country 140 innocent persons have been freed from the death rows.

There could be a number of reasons why someone would be wrongly convicted such as mistaken identity, bad police work and so forth. Over 20 years ago I attended seminary with a young man who had spent 27 years in prison before being freed for a crime he did not commit.

I talked with him daily and was often moved by his faith and determination, yet in the back of my mind I always struggled with the thought of how we could get it so wrong while being a thoughtful, intelligent and good willed society. Our society's better. We are better. But just getting it wrong is not the

only problem.

The way in which we select who lives and who dies in Connecticut is another flawed aspect of the death penalty's application. As others have stated when all of the factors are accounted for, the race of the defendant and the race of the victim are strong determinants as to whether or not the State will seek the death penalty.

Professor Donohue as has been so well quoted here today studied -- his study concluded that a defendant is six times more likely to be sentenced to death in Connecticut if the defendant is a minority and his victim was a Caucasian. This is a deadly, racial bias.

In other words, my brothers, my sons, and many of my friends are more likely to get the death penalty even if they were arrested for -- as the wrong person and the only reason is skin color. My father served this country in the military, retired and then made civil rights his issue.

I often attended meetings with him and because of that I've been fighting for civil rights my entire ministry. And I know the death penalty is an important civil rights issue in our time. One theologian has put methods of capital punishment a cross and the noose in the same category. And I believe he's on point.

I have no doubt that generations to come will look back at us and question how we could for so long condone a punishment so unfairly handed out. On August 30 of last year, my five year old granddaughter was killed in a car accident caused by a senseless person traveling at 80 miles an hour, hitting her

mother's car that had stopped for another accident.

I often wonder as I think about the death penalty if the circumstances of my granddaughter's death had been different and the context had been one in which the one that caused her death would be a potential death row inmate would my beliefs change. My answer each time I consider it is no. Dr. King interpreted a passage of religious text in his lifetime to suggest if we keep acting on an eye for an eye and a tooth for a tooth we will only become a visioned challenged and toothless society.

In closing I'm before you not just as a religious leader, seminary professor and colleague representing Bridgeport but also as an African American, a person who knows what it is to lose a precious life by someone else not appreciating life and as fellow human being asking you to do what is morally right.

I ask you to please do everything in your power to ensure that the death penalty in the State of Connecticut is repealed this year. Thank you for your time and consideration.

SENATOR COLEMAN: Thank you very much, Representative Stallworth.

Are there questions?

Senator Gomes.

SENATOR GOMES: I don't have a question, Charlie. I just -- as being a colleague from Bridgeport I just wanted to commend you on your testimony and I had read it before you -- you had read it out and it's very eloquent and very well put.

REP. STALLWORTH: Thank you, Senator Gomes.

SENATOR GOMES: And I wanted to tell you I didn't -- I didn't know about your granddaughter and I'm sorry to hear about that.

REP. STALLWORTH: Thank you.

SENATOR GOMES: Thanks for coming. All right.

REP. STALLWORTH: Thank you.

SENATOR COLEMAN: Others with questions or comments? Representative Morris.

REP. MORRIS: Thank you, Mr. Chair. I'd just to take the privilege of adding my comment to that of Senator Gomes. Certainly eloquently said and for a person who fills so many different roles as a cleric, as a State Representative, certainly as a grandparent, someone who's had a loss that could identify with our purpose here today. Thank you for something that is well said.

I am confident that people felt the nature of taking a look at what will the State of Connecticut do. I certainly appreciate the fact that you've stood with many other clergy who have been in the same position and certainly as a State Representative and again I can't say it loud enough as someone who can identify because you've had a personal experience. So again thank you very much.

REP. STALLWORTH: Thank you so much, Representative Morris.

SENATOR COLEMAN: Thank you. Are there others with questions? Seeing none, thank you very much, Representative.

REP. STALLWORTH: Thank you so much. Thank you, Senator Coleman.

SENATOR COLEMAN: And also thank you for your patience. I know that you were here for a good part of this day.

REP. STALLWORTH: No problem. Thank you.

SENATOR COLEMAN: Amanda Lovell.

AMANDA LOVELL: Thank you and good afternoon.

SENATOR COLEMAN: Good afternoon.

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AMANDA LOVELL: My name's Amanda Lovell and I'm a lawyer who prosecuted cases in Boston for more than 13 years. I did pretty much everything in the prosecutor's office that -- that can be done but what I -- what I focused on was doing criminal appeals. That means that when people -- I'm sorry it's been a long afternoon and I'm a little lost.

I did appeals for people who have been convicted of crime -- I opposed appeals for people who had been convicted of crimes from the most minor to first degree murders. Sixteen of my appeals were for homicides for -- for cases where one or more people had killed one or more people. I never lost a -- I never lost a homicide case on appeal including the one that I wish that I had.

Donnell Johnson was convicted of killing Jermaine Goffigan on Jermaine's ninth birthday. Johnson was 16. Under the Massachusetts system at that time juveniles like Johnson had two trials, first by a juvenile court judge and then if convicted by a full jury. Johnson was convicted of first

degree murder in both trials. Not quite a year after Jermaine was killed a 17 year old named Keema Braxton was stabbed to death at a party. Several people at the party testified that Dwayne Moore who was 19 and much bigger than Braxton had bullied Braxton into a fight and then killed him.

Even though Braxton ran from Moore in the fight and Moore chased him down and stabbed him, the jury convicted Moore only of manslaughter based on Moore's argument that he had acted in self defense because when Braxton was badly losing the fight he pulled a knife. Moore took the knife away from Braxton and used it to stab him to death. I was the lead attorney on Moore's appeal and I assisted the lead attorney on Johnson's. Both convictions were affirmed. Five years after he was convicted Donnell Johnson was exonerated.

A federal drug investigation led people who were charged with crimes, carrying long sentences to come forward in their own self interests and reveal who had actually shot Jermaine Goffigan. Johnson was in prison from the time he was 16 until he was 21 and he was not exonerated by DNA or any other tests that we hoped would be full proof. Moore finished his 15 year manslaughter sentence in early 2010. A jury in Boston today has heard closing arguments in Moore's trial for the first degree murder of four people including a two year old named Amani Smith. A witness has testified that Moore, that witness and the witnesses cousin went to rob one of the victims of drugs and the proceeds from selling them and after that the witness left, Moore shot the drug dealer and everyone else present which included Amani and his 21 year old mother who -- they happened to be visitors at the apartment.

Moore had been out of prison for about six months when Amani, his mother and the others were shot to death. Lawyers and judges have tremendous in and respect for the work of -- and wisdom of juries. But juries like every other part of the justice system are made up of people and people can make mistakes. I did when I believed based on what looked like very strong evidence that Donnell Johnson had killed Jermaine Goffigan and that he was guilty of first degree murder. My view of the evidence in Moore's trial for killing Keema Braxton was that he should have been convicted of first degree murder but the jury who actually heard the evidence and saw the witnesses testify found differently.

If Massachusetts had had the death penalty then Donnell Johnson, an innocent man -- an innocent man could have been eligible to have been sentenced to death. Dwayne Moore who admitted that he had killed Keema Braxton would not have been eligible because he was convicted only of manslaughter. I don't know what the jury is about -- that is about to deliberate on the question of Dwayne Moore's guilt in his new case will determine. I don't envy them their work. I do know that I'm very glad that Donnell Johnson was not executed.

I also know that a conviction for first degree murder in Massachusetts which requires a mandatory life sentence with no possibility of parole protects the public at least as well as the death penalty does. There are many reasons I believe the death penalty's wrong and I'm sure and I've seen this committee hear about many of them today. Each of those reasons by itself is sufficient reason to repeal the death penalty but since we know without any question that innocent people get

convicted of first degree murder, how can we possibly continue to support the chance of our government killing innocent people? Thank you.

SENATOR COLEMAN: Thank you. Are there questions?

Seeing none, thank you very much for your testimony.

AMANDA LOVELL: Thank you very much.

SENATOR COLEMAN: Meredith, can I see you for a minute up here?

Bishop Peter Rosazza.

BISHOP PETER ROSAZZA: Thank you, Senator Coleman. I apologize for my outfit. There was a white powder scare at St. Thomas Seminary, in Bloomfield where I live at a quarter to 11 this morning so I grabbed anything I could put on and ran out.

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Anyway, I thank you, Senator and also Representative Fox for this opportunity to testify on behalf of Connecticut's eight Roman Catholic Bishops in favor of repealing the death penalty in our State. The legal arguments in favor of abolition include the exoneration of prisoners on death row due to DNA evidence but you've heard enough of that.

Therefore it is becoming clear that an infallible system cannot produce certitude in all cases that involve the possible execution of a human being by the State. These arguments are supported in the moral domain by the teaching of the popes and bishops for us. Following the lead of Pope John Paul II, the Catholic bishops of our State and of our country have joined with other individuals and

groups to move towards the death -- the end of the death penalty. John Paul's vision was based on a consistent ethic of life.

This means that human life is sacred and deserves the utmost respect from conception until natural death. People do not lose that sacredness even though they have taken the life of another. In this regard Pope John Paul said in St. Louis, Missouri in January of 1999 a sign of hope is the increasing recognition that the dignity of human life must never be taken away even in the case of someone who has done great evil. Modern society has the means of protecting itself without definitively denying criminals the chance to reform.

I renew my appeal for a consensus to end the death penalty which is both cruel and unnecessary, end of quote. It was because he was so moved by the Pope's plea for mercy that Governor Mel Carnahan commuted Darryl Missa's death sentence to life in prison in that same year. It is encyclical the gospel of life the same Pope says that society has the right to protect itself from harm.

And I think going back to Representative O'Neill's dialogue with Senator Looney, that's the principle, that right protect itself from harm and can do so by incarcerating someone convicted of a capital offense. The chances in an advanced society like ours of such a felony escaping are practically impossible. An important point overlooked by those who want to keep the death penalty is that it does not give the convicted murderer time to repent and beg forgiveness of grieving family members. Continuing in the direction set by his predecessor Pope Benedict in November of last year received groups that have worked to

end the death penalty throughout the world.

Among them was a delegation from the State of Illinois that became the 16 state to do so under Governor Pat Quinn. At that time the Pope praised the work of the delegations in hope that they would in quote, encourage political and legislative initiatives being promoted in a number of countries to eliminate the death penalty and promote progress in penal law that speaks equally to the human dignity of prisoners and the effective maintenance of public order, end of the quote.

Following the Pope's leads the Catholic bishops of our country said the death penalty diminishes all of us. It's use ought to be abandoned not only for what it does to those who are executed but what it does to us as a society. We cannot teach respect for life by taking life. Finally, Connecticut was the last State in New England to abolish slavery. Hopefully we shall not have the shameful distinction as regards the death penalty. Thank you.

SENATOR COLEMAN: Thank you. Are there questions? Representative Adinolfi.

REP. ADINOLFI: Thank you. Welcome, Bishop.

BISHOP PETER ROSAZZA: Thank you.

REP. ADINOLFI: Just a couple of questions. I just finished reading the statement of Joanna Petit Chapman had a rich statement. They had to go to a funeral today. They couldn't be here. And her closing statement, the last paragraph it says Pope John Paul II declared in his March 25, 1995 encyclical the gospel of life --

BISHOP PETER ROSAZZA: Yes. Yes.

REP. ADINOLFI: -- quote, execution is appropriate to defend society, unquote. Please do the honorable thing to defend society, send the criminals the message that Connecticut's not soft on crime and so on. But that was -- is that quote correct?

BISHOP PETER ROSAZZA: It's incomplete.

REP. ADINOLFI: Okay. That's all I wanted to know.

BISHOP PETER ROSAZZA: John Paul said that the society has a right to protect itself from harm but he says it can do so by incarcerating someone convicted of capital offense. So he maintains the dignity of human life no matter who the person and no matter what the person does from conception to natural death.

And also that principle that the society has the right to protect itself from harm and it can do so by incarcerating someone convicted of a capital offense but the chances in an advanced society like ours of such a fellow -- felon escaping are practically impossible.

REP. ADINOLFI: Thank you for your clarification because I -- I've listened to you before and I'm reading this and I'm saying something ain't right, something ain't connecting over here.

BISHOP PETER ROSAZZA: I know we had quite a dialogue last year, Al.

REP. ADINOLFI: The other problem that I have as a legislator I feel that it's not my duty to vote my conscience but the conscience of my constituents. And my constituents especially within my district are overwhelming in favor

of the death penalty. And I'm faced with this problem. It is a problem for me --

BISHOP PETER ROSAZZA: It's hard for you.

REP. ADINOLFI: -- because of some of my background which you know.

BISHOP PETER ROSAZZA: Yeah.

REP. ADINOLFI: Working with us every day of the week and talking to people about it. And I still feel that as a legislator it's not -- even though I might not agree with it I must vote the conscience of my constituents and not my own conscience. And I think a lot of us are faced with that problem.

BISHOP PETER ROSAZZA: Yes. I can certainly sense the problem but you have conscience and you have to determine what is right and what is wrong. Augustine, Thomas Aquinas, Rousseau, so it's up to the individual to vote his or her conscience. So you don't -- unless you make theirs yours.

REP. ADINOLFI: Well as a legislator I think that's what we're -- a lot of us should be doing.

BISHOP PETER ROSAZZA: Well, we disagree.

REP. ADINOLFI: Okay.

BISHOP PETER ROSAZZA: Thank you.

REP. ADINOLFI: Thank you.

SENATOR COLEMAN: Senator Meyers.

SENATOR MEYER: Bishop, I just want to commend you on what you just said because I have -- I have been in politics both in New York and

Connecticut and have voted on the death penalty bill many, many times. And -- and I've voted on it with a constituency that basically supports the death penalty whether it be in Connecticut or in New York.

And I found that as I explained to my constituents that this was a matter of conscience for me, and they respected the integrity of that conscience. And I never felt that I was punished by my constituents at all. In fact I felt that even those who disagreed with me applauded the fact that I would have an integrity of conscience.

And I just want to say how important it is that what you just said. And I hope you give that message often.

BISHOP PETER ROSAZZA: Thank you, Senator.

SENATOR MEYER: Thank you.

SENATOR COLEMAN: Are there others with questions?

I have a very simple question.

BISHOP PETER ROSAZZA: Yes.

SENATOR COLEMAN: Is that a Michigan State windbreaker that you're wearing?

BISHOP PETER ROSAZZA: Dartmouth.

SENATOR COLEMAN: Dartmouth? Okay. Dartmouth. I don't think they made the tournament. If it was Michigan --

BISHOP PETER ROSAZZA: No, they didn't.

SENATOR COLEMAN: I was going to say if it was Michigan State I was prepared to adjust my

bracket. But yet you look very smart and you might be setting some sort of fashion trend.

BISHOP PETER ROSAZZA: You're my Senator I think.

SENATOR COLEMAN: I think I am.

BISHOP PETER ROSAZZA: Yeah, now that I live in Bloomfield.

SENATOR COLEMAN: And I'm honored to be that.

BISHOP PETER ROSAZZA: And the same, Sir.

SENATOR COLEMAN: In any event, any other questions for Bishop Rosazza?

Seeing none, thank you very much for your testimony.

BISHOP PETER ROSAZZA: Thank you.

SENATOR COLEMAN: Ed Gavin. Good afternoon.

EDWARD GAVIN: Good afternoon, Senator Coleman, Senator -- Representative Fox, distinguished members of the Judiciary Committee. My name is Edward Gavin. I'm the Task President of the Connecticut Criminal Defense Lawyers Association.

With me is Jennifer Zito, also immediate past President of CCDLA. We're here to support Raise Senate Bill 280, the act revising the penalty for capital felonies. We are representatives of 350 licensed criminal defense lawyers in the State. We practice in the courts each and every day. We're the ones -- there have been a lot of questions before this committee about what happens in defending capital -- capital defendants. We're the ones that do it. We're the ones that are in the

jails. We're the ones that are on death row. I spent more than a day at death row about two weeks ago with a client on death row. So we're here to support the legislation. CCDLA has been in support of abolition. We've been here for years. You know our efforts and we've submitted written testimony. Just a couple of quick points then I'm going to defer to Jennifer.

Capital punishment is not a deterrent. It just doesn't work. It's not uniformly applied. I can tell you many examples. I represent people that -- that have committed murders and are serving sentences for murders. There was a couple of questions and we put testimony in regarding the application of the Astorga case.

Michael Astorga in June 2010 was convicted of the shooting of Deputy James McGrane. In 2009 the death penalty was repealed in New Mexico. September 2011 the Supreme Court there ruled that the jury can consider the death penalty and last week about 3,000 jurors were summoned for jury duty in the case. So that -- that process is ongoing. We -- we believe the Supreme Court will uphold the prospective application of abolition. Jennifer Zito. Thank you.

JENNIFER ZITO: Chairmen, distinguished members of the Judiciary Committee, thank you for the time to address you. CNADP's here and they'll -- and several others who have testified eloquently about many of the technical aspects of capital punishment. I would like to talk to you about something a little different, things that I've observed while serving the defense bar during the trials of Komisarjevsky and Hayes.

And I wanted to talk to you not about the economic impact of capital punishment on this State which you're all well familiar with but I wanted to speak to the noneconomic impact on Connecticut's citizens that capital punishment has. It's not only the victims of the crime that suffer with this arduous process but I need to speak to you about the jurors, the judges, the lawyers, the clerks, the marshals, the jailers and the executioners. All of these people and their families are affected and impacted by the process of having to uphold the law and to apply the law under the capital punishment statute.

There's a burden with this statutory scheme. For the jurors as you heard from Kevin Kane, it's a very difficult time for them. They're long trials. The penalty phase goes on after the trial and although they've been death qualified some of them still have regrets as you've seen from one of the jurors in the most recent Komisarjevsky case who after the trial came out and said he regretted his decision.

People have to live with these decisions. They have to live with the decision of taking another human beings life because it's the law. Kevin Kane himself spoke as prosecutor and his testimony I do respect. He said someday I may be judged for making the decision to pursue a capital felony case. And I wonder why we have to put prosecutors in that position. Why do we have to put human beings in the position to uphold their oath of office -- to -- to in effect seek the death of another human being. I want to talk to you a little bit about criminal defense lawyers and what this law does to them. I watched the lawyers defend Hayes and Komisarjevsky. It is not an envious position.

It is not a position that most people ever want to be in. It's a very difficult place. Your families get threatened. You receive death threats. Your business gets harmed by the amount of time you have to devote to the case. There's an obsession that you have for two to three years in preparing the defense of those cases. And the burden on you is that the life of your client is at stake.

Tom Olman, and I hope you won't mind me quoting him, said very I think succinctly, lawyers are not trained in the business of saving lives, doctors are. We have never been educated to save a life. We are not given the tools to save a life. We are trained to select jurors. We are trained to cross examine witnesses.

We are trained to make strategy decisions in trials but we're not trained to save lives. And so lawyers are put to the test because of this law of having to say, did I make a mistake, did I use the wrong strategy, did I pick the wrong juror. And that stays with them for years and years.

Many, many people who work on these cases suffer from PTSD. They suffer from anxiety. They suffer from sleeplessness. The entire public is affected by this. The families of those lawyers are put through a great deal and most of them are public defenders who have no choice in assuming these cases.

And while we are bound and duty bound to uphold the Constitution of the United States and of Connecticut and while we do so with every bit of our being and we know that these -- these capital defendants deserve a defense, the burden of the loss of life is -- is just I think too much to bear for people. And I

don't think it's an imposition the State should make on lawyers, prosecutors, judges, clerks, or jurors.

I want to tell you I had the good fortune when I was President of CCCDLA to talk to a gentleman by the name of Ron McAndrew. He was a former warden of the Florida State Prison system and he was supervising death row inmates. He was carrying out executions and also supervising inmates who had come off of death row in overturned. He indicated to me that they executed less than one percent of the person's sentenced to death in Florida. And he told me a bit about the -- the burden of his job. He said that he's a conservative republican and that he had always been in favor of capital punishment. And after years and years of working on death row he determined that there was no legitimate basis for that penalty.

He stated that the officers on death row -- the guards on death row suffered so much post traumatic stress, there were suicides, there were divorces for these guards that -- as a result of their jobs. He said that these prisoners were, you know -- excuse me for a second. He told me that the life -- the prisoners who were being held on life without the possibility of parole were very good prisoners who could be adequately punished without the threat of a death sentence by taking away privileges that they had within the prison system. He said that this group of offenders knew they were there for life.

They knew that they had to be good if they wanted visitors or if they wanted dessert of if they wanted hot coffee or if they wanted a commissary, or if they wanted any type of small privilege that was afforded within the

prison system. It kept them in line because they didn't want to be in segregation. He said so there was never a threat that the lifers would kill another inmate which might be deterred by a capital penalty statute. He said that was not the situation. He said the most rogue offenders within the system are the 20 to 25 year olds who are in doing five year bids because they had something to prove. He said the lifers were not the problem to guard. And he didn't feel that there was a rational basis for capital punishment when prisoners could be held for life without the possibility of parole in Florida versus capital punishment.

He felt that the cost to society not only economically but noneconomically was too great. He said that he didn't feel that the State had the right to ask people to carry out this penalty for them. Finally, I wanted to tell you that in addition to meeting -- or speaking with him and I wish he could be here to speak to you because he's quite convincing. He -- we had a press conference back in 2009 before Jodi Rell vetoed Senate Bill -- I meant House Bill 6578 to overturn the death penalty.

And we had the opportunity to meet one of the 140 exonerees by the name of Randy Steidl. And he came and spoke here in this building about having been wrongfully incarcerated for a period of approximately 18 years, the majority of which he served on death row. At some point in time when it became apparent that there might be evidence that would exonerate him he was put -- he was taken off of death row and he served about two to three years as life without the possibility of parole and then eventually was exonerated. And one thing that stuck with me and I will never forget he said, while I was on death row

I prayed every day to live.

He said when I was serving life without the possibility of parole I prayed every day to die because that sentence was so much harder to serve than being on death row. He said that it was just a far more difficult place to serve his sentence than in the quiet segregation with the more I would say trained -- highly trained guards on death row. And that really stuck with me that if we're trying to punish people we can do it with life without the possibility of release. We can do it even more, I think, adeptly than we can with the death penalty threat that won't come for years and years and years.

The death penalty, there is no clear deterrent as Ed said. In the south where we have had the most executions, 1,056 executions, they have the highest murder rate in the country. I don't believe the death penalty deters. It's not appropriate to use as a plea bargaining tool as Kevin Kane said. There's really not a consensus that there's closure for victims. It's not less expensive. It doesn't encourage prison violence not to have a death penalty. It doesn't better protect society with life without the possibility of release. But it does cause anguish. It causes anguish -- it causes anguish for all of you in having to make this moral decision. It causes anguish in jurors in having to carry it out, in lawyers in having to defend life itself, in -- in prosecutors who have to make these decisions even though maybe it's not a decision they're comfortable with but they're upholding their oath. We are the lone dark horse in the northeast corridor.

I pride myself in Connecticut being out there in the front and being on the edge

legislatively. I attend a national legislative networking conference and I can tell you I'm very proud of the work you do here. But this has got to go. Should the State ask its citizens to kill in the name of justice. I would say it's a burden you put on people without a real, legitimate reason.

And laws in a civilized society need to be rooted in reason and they need to have a legitimate purpose. Lastly I'll just say that in Jodi Rell's veto she wrote -- she quoted Justice Deming, Master of the Roles of the Court of Appeals in the United Kingdom who said the truth is that some crimes are so outrageous that society insists on adequate punishment because the wrongdoer deserves irrespective of whether it is a deterrent or not. She quotes that in her -- in her veto.

She goes on to say she believes it's a deterrent but she does espouse this particular quote. And I would say to you I've also heard other senators say that we need some -- when crimes are so outrageous and so horrific we need a punishment that exemplifies our outrage. And I wanted to say that the law -- no penal code should be based on rage and it shouldn't be based on, you know, our fear or our vengeance or emotion. It -- the penal code needs to be above that. It needs to be rooted in a legitimate purpose. And I suggest to you that we cannot find a legitimate purpose for capital punishment and in fact its impact is very negative on our society and I think a black mark on the State of Connecticut. Thank you.

REP. FOX: Thank you, Attorney Zito, Attorney Gavin. You managed to get all of that in.

JENNIFER ZITO: Yeah. I'm sorry I went over the

time. I appreciate it.

REP. FOX: We'll do the appropriate discipline as to the hearing for going past the bell. Representative. Attorney -- excuse me, Representative Adinolfi, you have a question?

REP. ADINOLFI: Thank you. I listened to your testimony carefully and you showed in there a lot of concern about prosecutors, lawyers, jurors, and the convicted criminals.

But what you didn't mention once was how something -- somebody like the Komisarjevsky murder -- Komisarjevsky and Hayes raping and murdering an 11 year old, tying them to the bed, burning them. Nothing about sympathy for the victims.

JENNIFER ZITO: With all due respect, Representative, I did say you've heard about the victims.

REP. ADINOLFI: I heard one word.

JENNIFER ZITO: No. And I just -- I believe there's been testimony about victims and from victims and I think their testimony is firsthand and better stated and I apologize if I did not put enough emphasis on that.

I only did so to spare time but of course our concern is with them. And certainly the impact on them is -- unfortunately it's not clear if the death penalty is something that harms them or helps them.

REP. ADINOLFI: Well in the Komisarjevsky and Hayes case they have made it very clear to me that it does affect them. It affects their neighbors. It affects their family. They couldn't be here today unfortunately due to another reason.

JENNIFER ZITO: I understand. And those crimes were horrendous.

REP. ADINOLFI: And I don't mean to -- it just bothers me why we even had to -- well I guess we had to go to trial and give them their day. People that are caught red handed in the act, crashed into the police cars and we got to go spend millions of dollars defending them. There's something wrong.

JENNIFER ZITO: Well there could have been a plea for life without parole in both of those -- life without the possibility of release.

REP. ADINOLFI: They both agreed to do that with the prosecutor such (inaudible) said no.

JENNIFER ZITO: And I believe that you have to have a trial no matter what kind of case it is because of the Constitution. Right?

REP. ADINOLFI: No. I agree with that. But it just seems that when people are caught -- I was there when they crashed into the police car.

JENNIFER ZITO: I understand that, Sir. But we can't hang people in the square and we can't convict people without a trial --

REP. ADINOLFI: Well I don't want you to do that.

JENNIFER ZITO: -- because it affects everybody else. And what they did truly is the poster child for, you know, the most severe punishment you have available but I would suggest to you that this punishment is -- it has no legitimate purpose.

And I think that both of those gentlemen

deserve life without the possibility of release. And that that would serve equally well to punish them.

REP. ADINOLFI: I would agree with you if they'd leave them where they are and just call it maximum incarceration and not the death penalty but they won't do that.

JENNIFER ZITO: Well that's up to you folks.

REP. ADINOLFI: They -- they want to give them all the recreation and the seven hours a day out with mingling and all the good things in life.

EDWARD GALVIN: Can I respond to that? I have a client on death row. I just spent a week representing this fellow. I was up there and I sat there on death row. I never saw anybody out for seven hours.

REP. ADINOLFI: Not on level four. Once they're out of death row.

EDWARD GALVIN: Oh, once they're out of death row. I just -- Sir, I can represent to you. I mean I was there locked in. It takes a long time to get in and it takes a long time to get out.

REP. ADINOLFI: I've been in there too and I had -- in fact, I had to strip to get in.

EDWARD GALVIN: Sure. Absolutely. We go underground, walk down the tunnel. Right?

REP. ADINOLFI: Yeah. You're right.

EDWARD GALVIN: You know. You've been there. But it's -- it certainly is not a situation like it's a community correctional facility where everybody's out playing basketball for four hours a day. It really isn't.

REP. ADINOLFI: I agree with that. And that's where I'd like to leave them. But I don't want to bring them out because I don't -- I don't think that the 12 people on death row are going to stay there long if this bill goes through.

I don't believe that the courts will uphold them still subject to the death penalty or the others that are awaiting trial. I just can't believe that would happen. And so I believe that they'll be out, mingling in on the fourth -- level four, seven hours, all the recreation facilities and so on available to them.

I don't call that a punishment anymore. I call the punishments of staying on death row, just change the name would do it.

REP. FOX: Thank you.

REP. ADINOLFI: In other words, solitary confinement for life.

REP. FOX: Thank you.

Representative Hetherington.

REP. HETHERINGTON: Thank you, Mr. Chairman.

Ms. Zito, was it your testimony that life without parole is crueler than a death sentence?

JENNIFER ZITO: It was my testimony in quoting an exoneree that serving life without parole for him was more anguishing than serving on death row.

REP. HETHERINGTON: And would that -- would that accurately characterize your evaluation of the

comparison?

JENNIFER ZITO: I've never served either, Sir, so I have no personal opinion about that. I thought it was interesting that that was his experience and I thought that it was enlightening that it's possible that conditions of confinement with life without the possibility in release in Connecticut could be just as bad if not worse than sitting on death row where you have your own cell, where it's quiet, where the guards are highly trained, perhaps more sophisticated. I don't know. But that was one man's experience and certainly it stuck with me, Sir. And I thought it was interesting.

REP. HETHERINGTON: Wouldn't that make -- wouldn't that make it difficult to sustain life without parole as a penalty without incurring the problem of cruel and unusual punishment?

JENNIFER ZITO: I don't believe so, Sir. I think that the conditions of your confinement can be challenged if they are in fact cruel and unusual but if for murder with special circumstances as created under this bill has separate imprisonment conditions then those who are not serving life without the possibility of release may well be appropriate. I mean it's just the extent to which those conditions go.

REP. HETHERINGTON: Okay. Thank you. Thank you, Mr. Chairman.

REP. FOX: Senator Meyer then Representative Shaban.

SENATOR MEYER: Ms. Zito, I want to pick up on a couple of things you said, one is that the -- what you just were talking about with

Representative Hetherington and that is that to some inmates a sentence of life -- life without possibility of release is the worst thing. Indeed the last time we executed somebody was a man named Michael Ross and he pleaded to be executed instead of living his life out without possibility of release.

JENNIFER ZITO: That's correct.

SENATOR MEYER: And that was eventually followed. But that was a very good example of what you were saying. The other theme that I'm interested in is the theme that we can justify the death penalty for the worst of the worst murderers. There's a -- a mother who -- who said this on that subject, her son was shot and killed here in Hartford. She said, I'm quoting, sometimes when people talk about the death penalty they will say we need to keep the death penalty for the worst of the worst.

If this statement doesn't make me so mad I might be able to laugh at how absurd it is. It's like saying there are some murderers that aren't the worst of the worst. For me, a mother losing my child is the worst and I'm sure if you lost someone you loved it would be the worst. Don't judge based upon the worst of the worst.

JENNIFER ZITO: I would agree with that.

SENATOR MEYER: And I appreciate you hitting that theme.

JENNIFER ZITO: Thank you.

REP. FOX: Representative Shaban.

REP. SHABAN: Thank you, Mr. Chairman. I'm reading through your -- just sat and listened to your

testimony but also reading through it. Looking at retroactivity, it's the position of your organization that -- is it not that any abolition of the death penalty should be retroactive and prospective. Correct?

EDWARD GALVIN: Well in regard to this bill we think that the death penalty should be abolished across the board.

REP. SHABAN: Right.

EDWARD GALVIN: And that has been our position. However the bill that's before you today is obviously prospective in nature and it's -- it's in our opinion it's a baby step and we're -- we support it wholeheartedly. We'd like to have a bill that said that there is across the board abolition. But it's just not here.

REP. SHABAN: Well it's question slash comment because you go into the retroactivity argument somewhat and then again you kind of incorporate the -- the work by the Quinnipiac law students, their center. And it spent a great deal of time looking at Geissler, and Rizzo and, you know all the other factors. I mean my -- tell me if you agree with me that by at least trying to argue that hey, this -- this can't be held retroactive.

That's not a -- I mean it seems to me that's a task of omission or at least a task of recognition that there are some crimes, i.e. the Cheshire murders that are so heinous and so certain that, well maybe the death penalty's okay in some very, very, very limited circumstances. So it seems inconsistent -- that's too strong a word because I understand you've been on record for years saying abolish it soup to nuts. And so I don't mean to --

EDWARD GALVIN: And still are.

REP. SHABAN: And still are, right, that's why I asked the first question. But you agree me will you not that by trying to allay the fears of some kind of retroactive abolition through the court -- through our Supreme Court -- the State Supreme Court, that that is a task of recognition that well you know, maybe there are some crimes out there that might -- might justify the death penalty. Please, if you would.

EDWARD GALVIN: No crime justifies the death penalty. I want to be absolutely crystal clear with you. We don't support the death penalty. We don't support the killing of anyone. The -- the fact of the matter is the bill is prospective and -- and you saw former supreme court justice and Joette Katz come here today. Nobody knows what the Connecticut Supreme Court would do. We do know this, we know that it's been litigated in New Mexico.

That's the test case and that's how they indicated go ahead and prosecute them. It was not retroactive to him and they're going forward and they're in jury selection now. The Supreme Court has given some notes and footnote 88 and Rizzo and the Quinnipiac people will speak to that better than we can.

But I think it's a situation where if you look at it prospectively there is no doubt and no one whether it's us or Kevin Kane, either side of the aisle, is going to turn around to you and say that somebody is going to come forward and seek retroactivity. They absolutely are. I've no doubt that that's going to wind up happening. Where it comes out at the end of the day is guess work. If I had to guess -- I

lost three two on Ross to stop his execution.

So I have death penalty appellate experience at the Supreme Court. I was there. I lost three two. I will tell you that my cheap seat opinion is that they would uphold it prospectively and that you're going to have a dog fight in regard to retroactivity. That's just my guess.

REP. SHABAN: With respect to using the factors, of you know, the current state of the law, the current mores and values as expressed by the legislature, you know that factor. I mean the Quinnipiac folks -- and I'll ask them this too.

EDWARD GALVIN: Sure. They're --

REP. SHABAN: They're coming. I know.

EDWARD GALVIN: They're coming.

REP. SHABAN: Well -- I mean do you -- do you agree with the Quinnipiac folks' analysis that that's sort of -- that's a minor -- or not as significant of a factor in the analysis?

EDWARD GALVIN: I haven't read -- I haven't read their testimony so I -- I would be loathe- I would loathe to -- to render an opinion on something I haven't read because I don't know exactly what it is.

SENATOR COLEMAN: Are there others?

Representative O'Neill.

REP. O'NEILL: Thank you. You indicated that you thought -- I think you both did that you believe or more than that actually said the death penalty is not a deterrent.

EDWARD GALVIN: Yes.

REP. O'NEILL: Could you explain to me the basis of your conclusion?

EDWARD GALVIN: Sure. I've represented a lot of people that are serving time on murder cases. I've asked them why things have occurred and I have yet to have anybody remotely turn around to me and say well I only killed one teller because I was afraid of the death penalty if I killed another one. I just don't believe it works. I'll take it to a further extent and I know you've been here for a long time and you've heard a lot of this testimony.

I know, Representative O'Neill, that you pay attention. Let me give you a real life example. When I came out of law school I was in the State's Attorney's Office as an intern in part A in Bridgeport. We had Jason Day. Jason Day came in Bridgeport and put four people lined up on a couch including a five year old boy and put a bullet in the back of each one of their heads. Okay. Executed four people.

It wasn't a capital case because the State's attorney in that judicial district decided that he didn't want to go ahead and proceed with it. If he was ten miles up the road it certainly would have been a capital case. So there's disparity in regard to how it's applied. I've yet to have anyone -- anyone convince me that the fact that it's on the books is a deterrent in regard to the manner in which they commit crime. And I don't believe that it is.

And I don't believe any social scientist has been able to go ahead and say that people when

they go ahead and commit heinous offenses whether it's Cheshire, whether it's Jason Day, whether it's the death of a bank teller, that they sit down and the client goes ahead and says, you know, am I going to be exposed to the capital punishment. It just never happens.

REP. O'NEILL: Well I guess the problem with that is that we -- for example with respect to life without possibility of parole which has been described at least for some as -- excuse me as worse than the death penalty.

EDWARD GALVIN: Yes.

REP. O'NEILL: Have any of your clients said, you know, I thought about life without possibility of parole as a punishment before I pulled the trigger?

EDWARD GALVIN: Have I -- have I thought about life as -- most of them don't think what the punishment is when they go ahead and act. You asked whether it was a deterrent.

REP. O'NEILL: Right.

EDWARD GALVIN: Whether or not the penalty portion is a deterrent. Most of the heinous crime that occurs in this State and every other state is usually somebody that has mental health issues, has drug addiction or alcohol addictions. If you go ahead and look at the universe individuals that commit serious crimes that's where it -- the focus is.

So I don't honestly believe that it is a deterrent. It's -- it's not a situation where somebody's going to say I better not do this because I can -- I can face the death penalty. Now I will tell you Jennifer is right, I was

the one that brought Randy in here. He was one of the exonerees who was on death row.

He testified right in this building and he told us quite frankly the thought of sitting on -- on death row versus the thought of being a sentenced prisoner without the possibility of release not -- not parole drove him nuts.

REP. O'NEILL: I guess my question though is because you're saying it's not deterrent and I'm trying to figure out -- because you're saying based on the communication or noncommunication by your client saying I thought twice about this or didn't shoot two people instead of only one person because I thought about the death penalty and that's never occurred.

And it sounds like none of your clients ever say to you that they chose to commit a crime a particular or not to commit a particular -- go further and commit extra crimes because they were thinking about the penalties that were likely to occur. So it sounds to me like that nothing in our criminal code acts as an effective deterrent when you use the people that have committed these crimes and ask them, did you think about section 53A- something before you committed this crime.

And if you use that as the standard then all of Title 53 and 53A are meaningless as far as a deterrent effect because the fact that they committed the crime means that it didn't stop them.

EDWARD GALVIN: Well I'm going to defer. Let me -- let me just say this so that we're on the same -- we're on the same page here. Penalties are deterrents.

I'm not saying that they're not. But what I'm saying to you is that if you ask individuals that go out and commit serious crimes whether or not they had the foresight to consider where they fall under the penal code the answer universally will be no. That's true.

REP. O'NEILL: Maybe part of the problem is that we're asking the wrong people. We should be asking the people who had a gun in their pocket, thought about shooting their ex-wife or something and didn't because it crossed their mind that they would spend the rest of their life in jail and or face the death penalty.

EDWARD GALVIN: And that's why it is a deterrent under those circumstances. I agree with you.

REP. O'NEILL: And the problem is we can never really ascertain with certainty from talking to the people who actually committed crimes whether something was going to deter them from committing the crime because by definition they didn't.

It didn't -- I mean, you know it's like asking somebody did you think about contracting a sexually transmitted disease before you had sex with somebody? Well you've got -- you're talking to the people who already have the disease. You're not probably going to find too many people say yeah I thought about it and I didn't have more sex because I was thinking about not getting that disease.

EDWARD GALVIN: I just don't think it's a situation that you're going to be able to say that it's an absolute response that everybody does it one way or the other.

JENNIFER ZITO: I just don't think that our clients

think -- analyze the situation on the degree of the penalty. I think law abiding citizens give a great deal more thought to penalties than those who commit these kinds of crimes. And I'll say to you that relative to the Cheshire murders, everyone has described that at least in the defense bar as sort of a perfect storm where there was certainly planning that went into the offense. But was planned to be a capital offense?

It appeared from the evidence that things just got out of hand and I would suggest to you that a lot of times where you have like a convenience store robbery and you have two people going in to hold up the convenience store and the clerk gets shot. You know they're committing a murder in the commission of a felony.

Did the -- did they plan on killing the clerk? No. I mean, maybe not. You know it could have happened or did they plan on shooting the police officer that arrived and almost caught them? No. So in many situations these crimes evolve during the commission of the event rather than anyone giving it any forethought about what the penalty would be if -- oh boy, if I shoot this gun now it's a capital offense.

So I would suggest to you that the analysis gets too tricky when -- I mean I think people think about if I commit a crime I may go to jail but I'm not so sure that they even have the sophistication to know what constitutes a capital felony and what does not.

I mean several of those provisions probably if you asked the public they wouldn't know which offenses qualified as capital offenses. And I would say to you that many -- as Ed had said,

many of these defendants such as Jonathan Mills for instance, he was on such a cocktail of drugs and mind altering substances that, you know, his defense he actually avoided the death penalty at a -- at the penalty phase although he was tried as a capital felon -- that the drugs clouded his vision so much I don't think he could have a reasoned judgment at that point in time when he committed those crimes.

EDWARD GALVIN: Can I just say -- you're right. The penal code is a general deterrent to people committing crime. And I don't want to be disingenuous with you. It is. People know if they go in and rob the gas station, they get caught they're going to go to jail. That's deterrence. I agree with that. But specific deterrence in regard to capital cases, the death penalty or not. I don't believe that it's a specific deterrent. I honestly don't.

REP. O'NEILL: Let me ask a couple more questions. You indicated that -- I think it was Attorney Zito, that the south has the most executions and it's not deterrent -- obviously it's not a deterrent because they have a high crime rate. But I'm looking at some statistics and I think it's correct.

The south also has a much higher incarceration rate than the national average and certainly far higher than the northeastern part of the country. So again, it seems like incarceration is not an effective deterrent by that standard.

If you have the thing on the books, put people on death row, execute them still have crime, means that execution doesn't work. Put people in jail, keep them there for a long period of

time, obviously that's not working either because the crimes keep happening in the southern part of the country.

JENNIFER ZITO: Well Representative O'Neill, I don't know quite how to answer that except as of March 12 of this year there were ten -- 1,056 executions in the south and they had 5.6 murder rate per 100,000 persons. Whereas in the Midwest where we had 150 executions there was 4.4 murders per 100,000.

And every region was less than the murder rate in the south where they had the most executions. So it just seems to bely the deterrent theory that if you know that there -- that executions are prevalent in your state or in your county that you would be less -- you know the murder rates would be lower.

REP. O'NEILL: Yeah, but I guess what I'm -- I won't say responding but following along with our conversation a moment ago. People walk into gas stations planning to rob them not shoot the place up and end up with a shootout with police officers and kill one or two of them and then they're now facing the death penalty.

JENNIFER ZITO: Correct.

REP. O'NEILL: But they are in a state where there are a lot of people going to jail for robbing gas stations. And -- and maybe they've robbed a couple gas stations before because usually people don't start out at age 29 deciding I'm going to go out and rob gas stations, usually it starts earlier in life and then they've got a lot of contact with the criminal justice system.

So a person walks into a gas station at an

older age like that and they're not teenagers anymore, they live in a state, they know you can go to jail, gas station robbing is a crime and this state actually puts people in jail for doing things like that, they go ahead and do it.

If our objective is to use the criminal justice system as a deterrent or if we're going to measure the death penalty by the standard of is it deterrent or not and therefore should you have it or not, well if you use it -- apply that same standard to the rest of the criminal code it also fails that test at least when you compare New England with the south. They have more crime.

They have more people in jail. We have less crime. We have fewer people in jail. Maybe the solution is just not to put people in jail. That seems to correlate with lower crime rates.

JENNIFER ZITO: As I said I think the analysis does -- never goes that far. I think people say either I'm going to get caught and punished rather than I'm going to get caught and serve X amount of years versus being, you know, executed.

Perhaps, you know, I think you have a point that we don't know who it does deter because perhaps -- you know obviously they don't commit the crime. But it certainly didn't deter Cheshire and it didn't deter Jonathan Mills and it didn't deter several of the other folks that have been convicted as capital felons in -- in our state. And I would suggest to you that if you look at Texas and Florida they have very high crime rates and yet they are known to carry out executions more prevalently than we do. California as

well, and they have very high crime rates. So -- and Virginia.

So if you look at these other states and -- where capital punishment is sort of in your face because they -- they do it much more often than we do here in Connecticut and where it is a real threat rather than a threat 25 years from now I mean if you're caught. It doesn't seem to be curbing the tide. (Inaudible) solution.

REP. O'NEILL: One other thing that came up during the conversation that we've had the -- I don't know if you were here but at one point in time Senator Williams, the President Pro Tems of the Senate testified a little earlier today that one of the factors is economics in terms of who gets the death penalty and who doesn't and if you had a well healed defendant with lots of resources that the State's attorney is less likely to seek the death penalty. That that's a factor the State's attorney might choose.

If you have a poor person, presumably represented by the public defender's office is somehow more likely to get the death penalty brought against them than say a multimillionaire who is -- has been accused of committing, you know, multiple murders or shooting a police officer or one of the other things that's apt to catch you the death penalty.

Since you're both private defense attorneys I guess it would be unlikely to assume that the Chief State's Attorney is going to say oh yeah, we frequently drop cases when we see well healed defendants coming the other way. Had -- and in support of Senator Williams position since you're on the same side he is

of this issue, are there cases where you believe that because you or another member of the criminal defense bar facing a -- with a client who's facing the death penalty at least potentially, if they have substantial resources, millions of dollars, an OJ Simpson type person, was able to sort of intimidate the prosecutor to dropping to a lower thing, pleading out to 20 years or something besides the death penalty, not taking the death penalty off the table or something because you could hire the forensic experts and the State was sort of limited in what it could do?

EDWARD GALVIN: I've handled death penalty cases so --

REP. O'NEILL: Were they public defender assigned or were they private -- were you representing a private individual?

EDWARD GALVIN: No. I've never had a public defender client. It's all private. I think I'm -- there's not many of us that have done that. Let me just say this, the capital defenders unit here in Connecticut is much better situated at defending a criminal defendant than almost anybody else in the State because they're experienced, because they're the ones that can do it.

And as you just indicated which is 100 percent correct, they have the resources to go ahead and do it. The capital case that I had, I had an individual that was alleged to have murdered a baby on Christmas Day in a particularly heinous fashion, so the child was under ten. It was a death eligible case.

And I represented the young man and what I was able to do was I had substantial resources to go ahead and defend the case and I went out

and got -- I went out and got forensic pathologists in regard to the manner of the death and the cause of the death and there was an issue. And it took about two years and we wound up resolving the case and the client pled to the 30 years. But it wasn't a death case. It was a pretty good result.

The vast majority of the people that are death eligible are represented by either SPDs, special public defenders in the private bar that are paid for out of the public defender system or the capital defenders unit. It's very -- it's almost inconceivable to think that a private -- an everyday private lawyer could defend somebody on a -- on a capital case because as Jennifer had said, we shut your practice down for two, three years.

You have to have experts to counter the State's experts in every facet of the case because you know it's going to wind -- most likely wind up in a conviction and most likely wind up in review including appeals and then State appeals -- the automatic appeal to the Supreme Court, the habeas appeals on the State side and then the federal side of the case.

So it is not disingenuous to say that if you want to go out and hire the top private lawyers -- because it's not just one. It's not just Jennifer or Ed. It's a team that you would put together. You better have very deep pockets.

JENNIFER ZITO: But to that point, Representative, the public defender's office -- I mean we can't speak highly enough of them and how they handle the capital cases in this State but really the amount of their budget that they have to devote to doing so takes away from the defense of so many Connecticut citizens that

it's really unnecessary and unfortunate because defending those cases because somebody's life is on the line is so burdensome and it's so necessary to have the experts and to defend it to the (inaudible) because you're trying to save a life.

REP. O'NEILL: There was one point that you made during your testimony that -- and you've just reminded me of it with your last comments. When I sat down for my first day of law school the dean of the school came to address us and it was a room similar to this.

We were all sitting out where the audience was sitting and he said that you are going to be responsible for protecting other people's property, other people's liberty and -- this was in mid 1970s, other people's lives. And if you don't think you're up to doing that, any one of those three, then you have no business being in this room.

At that point three or four people actually got up and left because maybe for the first time in their -- you know, when they started the whole application or going into law school it dawned on them that this wasn't just another academic exercise where you would sit around shoveling papers from one side of the desk to the other, that you actually had a responsibility to the clients that were going to hire you.

And that -- and as you can see all these years later I still remember those words that that's what lawyers are ultimately all about. And I understand that it must be very stressful to handle a death penalty case. You know, but on the other hand just about -- you know and of all the people that are in the process the only ones who didn't volunteer were the

jurors.

Everybody else decided that they wanted -- you know somebody wants -- we get people who come here, they complain the salaries are too low, things like that but they want to be judges anyway. We don't see anybody when we tell them what the salary is, you understand you're only going to make 146,000 dollars a year get up and leave because nobody told them what the salary was going to be or all the other people in the system.

So I don't want to sound unsympathetic but the jurors I can understand. They're basically droned into this but everybody else volunteered to participate in the system and my guess is that if a judge really doesn't want to handle a death case or a clerk really can't hack it they can find someone else within the system who will do these things.

I mean if it's really that stressful to them. But it's the jurors I think that have a -- of all those people that you recited. But the lawyers should not be surprised if they are held responsible for very serious consequences whether it's losing someone's children or their home or their liberty for decades to come. Thank you, Mr. Chairman.

EDWARD GALVIN: Thank you.

SENATOR COLEMAN: Representative Shaban.

REP. SHABAN: Thank you, Mr. Chair. Second time. I think it was Representative Fox. Your discussion reminded me of a question I meant to ask you. Last year when we had this debate I was sitting over there and Barry Scheck was sitting where you are. You know, just project innocence. And you know a very compelling,

very informed testimony.

And I asked him a question. I said if the death -- if one, two, three people -- criminals decided you know what, I'm going to back out of this operation whether it's knocking off a liquor store, you know, a drive by shooting, something -- a handful -- a handful of people.

If a handful of innocent people were not killed because a handful of criminals decided you know I don't want to do this, would that show up in these deterrent stats that everyone floats around. He said you know what, it wouldn't. Do you agree with that?

EDWARD GALVIN: Yeah there'd be no crime because the -- the stats are all generated based on actual crimes. I absolutely agree with that.

REP.SHABAN: So that more or less goes to Representative O'Neill's point I think about you know, who we're asking the questions to and where we're counting. And it's obviously hard to quantify a negative.

JENNIFER ZITO: I think --

REP. SHABAN: And I -- and I raise that only because that's -- you know Representative O'Neill's question I think. And that's what Mr. Scheck said.

JENNIFER ZITO: We agree with that I think. And I think also, Representative, I think, you know Kevin Kane testified that, you know, the juries our respective to (inaudible). We don't know -- we don't know the answer.

So is that a good enough reason to have this statutory scheme when we really don't know the

answer. And he himself testified he didn't believe it justified capital punishment because we don't know the answer.

EDWARD GALVIN: You know what the neat -- not neat thing but the interesting thing to me is, if you go down the south and they execute 1,000 people over the last 20 years, there's about five and a half murders per 100,000 members of the population. Okay.

So 5.5 is the magic number. If you go to the northeast where we've executed four people over the last 20 years, it's 4.8. So crime's going to occur whether you execute everybody or you don't execute everybody. The reality is statistically crime is going to -- there's a baseline level of crime that's going to occur regardless of whether you execute people or not.

REP. O'NEILL: Yeah and I guess that's really where my question and Representative O'Neill's discussion is focusing on. What are you counting and whether it can be counted?

EDWARD GALVIN: It's hard.

REP. O'NEILL: It is hard. I mean I think everyone -- I think you just said it. Well the jury is kind of -- the jury is still out --

EDWARD GALVIN: Sure.

REP. O'NEILL: -- on whether it's a deterrent or not. Thank you. Thank you, Mr. Chair.

SENATOR COLEMAN: Are there other questions?

EDWARD GALVIN: Thank you very much.

SENATOR COLEMAN: While you were going through the

rigors of what is required for an attorney to represent a person that is facing capital prosecution, I guess it occurred to me, would you be able to project the or make a comparison between what would be required of a private attorney who's representing someone who's facing the potential of life imprisonment without the possibility of release as opposed to someone -- someone who's facing a capital felony or capital offense prosecution?

EDWARD GALVIN: -- a defendant that's 40 years old, 35, 25 years old and they're getting a 60 year bid, it's life. You know it's life. They're not going to get out unless they're on some medical furlough and they're in a wheelchair and -- you know. They're gone. They're gone for good. So that the difference -- personally me the difference between life without the benefit of release which is what the standard is in the State. It's not parole. It's without release. That's how the statute was amended very clearly put.

We don't want to consider parole. It's without release. Somebody goes in and commits a particularly heinous crime and gets that -- and gets that sentence, they have no indication they're ever going to get out, you know. And Barry -- Barry Butler was here before. He sat with Michael Ross for 15 years.

Michael Ross -- the thought of Michael sitting there in jail for -- you know this is a Cornell grad sitting in jail for decades and decades. He wanted to be executed. He couldn't stand the thought of it. So we -- we regularly defend people in murder cases that face, you know, 60 year sentences.

So I don't think the penalty is -- is off base. When you get to the level where somebody's life is at -- at stake. I mean if you ask my two children they'll tell you that the biggest regret of my life was losing three two at the Supreme Court. I talk to them about it all the time. I'll take it to my grave. It was a horrible experience for me personally and I represent people all the time that do bad things.

Jen, I know you have something to say.

JENNIFER ZITO: I'd say that the -- somebody's liberty's always a tremendous burden and a agree that when we went to law school we certainly knew in becoming criminal defense lawyers that we would be protecting and safeguarding liberty.

Somebody's life -- taking a human life is a different story I think. And I think it's a different burden. And while not all criminal defense lawyers are against capital punishment, in fact there are many that aren't. I'd say the majority of them are.

And certainly if you are put to the task of defending somebody who's life is at stake and you are morally opposed to capital punishment as well as trying to protect and safeguard your client it's a -- it's an additional burden. And I think that those cases are longer.

So to your point, how is it affect the lawyer? The cases go on much longer so you saw with the Cheshire cases it was about three years before he started. So it was a three -- you know two years of working solely on that case. That's what the public defenders did in that case. They worked solely on that case.

In other cases I know where Ed has represented people that would be effectively be doing life. I mean he has a case load as well. I mean his attention would be devoted to that case in large measure but not for a two year period consistently. And you also have to prepare for the penalty phase which is an additional -- an additional task that is very time consuming.

Picking the jury alone is much harder. And the, you know, the considerations that go into picking a death qualified jury is, you know, intense because you -- the law already sets us back. You already have to have people who are willing to impose the death penalty in order to have them sit on your jury. So that excludes a lot of Connecticut citizens who are morally opposed to the death penalty. They don't even sit on those cases.

I've always found that to be a very odd thing because you're already one step behind because you have people who are ready morally and ethically to impose that sanction. So I think that, the time consumption and then I think, you know, our biggest fear as criminal defense lawyers is representing the innocent client.

I mean that is the hardest task we have. And they -- that eats at you every day because you feel -- you know there are often times we represent people who are guilty but they're not guilty of everything they're accused of or we represent people who are guilty of what they're accused of. That is a much easier burden than representing an innocent party. That burden is enormous on us. But it's their liberty you're saving in most instances, not their life.

And I think that as Tom Wolman told me once he said you know by the time the capital defendant comes to the lawyer he or she -- and it's always he's in Connecticut but he is off drugs, usually stabilized on some meds that have been prescribed through the DOC.

And they sit there not as the crazy, drugged out psychopath but as this pathetic, fragile human being. And then you're put to the task of defending this person who is hated by the public for the vile things they've done. And you have to in order to defend this person get to know this person and spend a substantial amount of time with this person. And to defend them in a capital case you have to go beyond that.

You have to get into their psych history and their medical history and their childhood and their upbringing and mitigating factors. And you know as human beings there is compassion somewhere for even the most loathsome people. And so I think the distinction -- there is a distinction between savings someone's life and protecting someone's liberty even though that is a tremendous burden as well.

EDWARD GALVIN: Can I say one thing. We put it in our papers for you. You know we all know that James Tillman and the exoneration for murder. This week there's a fellow by the name of Hubert Thompson served five years of a 12 year sexual assault case; was just released this week on a promise to appear. He didn't do it. So the system makes mistakes. I mean real live you know it, you've seen it, you've seen people come -- it just happened this week. So nobody's infallible.

JENNIFER ZITO: And we would just ask lastly, Senator that -- that all of the legislators in

Connecticut consider not making a decision based on Cheshire because while we all sympathize with the Petits and we all are revolted by the conduct that occurred there in 2007 and we all are horrified and actually live in fear many of us still worry about people breaking into our homes or things like that that we never thought of before.

I think all of us have been affected by it. I don't think it's appropriate to adopt penal code or to alter a penal code based on a specific case. I think that that is our natural response but I think our higher duty and calling is to think about the larger picture and not think about two individuals who did something so heinous and so outrageous as to offend the -- all of us.

SENATOR COLEMAN: I guess my final inquiry is do you perceive there to be any danger in the substitution of life without the possibility of release becoming the ultimate punishment in replace of the death penalty? That the same emotional and perhaps psychological toll that you speak of impacting attorneys and jurors and judges and jailers and others, do you think there's any possibility that that same emotional and psychological impact would affect people who are involved in prosecutions for -- where the punishment might be life without the possibility of release?

EDWARD GALVIN: I don't think so because I think it -- we learned from you know the first grade, don't do the crime if you don't want to do the time and that's the reality. And if you're -- you have to be responsible for the consequences of your actions and I think that we all understand that if you commit crime that you're going to be incarcerated and that that's the penalty that society accepts.

The Supreme Court has said it's not cruel and unusual punishment. And I don't think it's going to have an adverse impact on anybody in the judicial system. That's my opinion.

JENNIFER ZITO: And there's a rational basis for that law.

EDWARD GALVIN: Sure. Absolutely.

JENNIFER ZITO: There's a reason to hold people without release. I don't believe that there's a good enough reason to kill people.

EDWARD GALVIN: Excellent.

SENATOR COLEMAN: Okay. Thank you.

REP. O'NEILL: Thank you, Mr. Chair.

SENATOR COLEMAN: Are there any other questions?

Thank you guys very much and you've appeared before us a number of times. Sometimes we take advantage of our familiarity with you as the chairs did when we switched you around.

JENNIFER ZITO: That's quite all right, Senator.

EDWARD GALVIN: Never a problem.

JENNIFER ZITO: It's a -- it's a -- we thank you for the opportunity to speak. We appreciate it.

EDWARD GALVIN: Thank you.

SENATOR COLEMAN: Robert Fromer.

SB280

ROBERT FROMER: Thank you, Mr. Chairman, Cochairman Fox, and other members of the Judiciary

Committee for the opportunity to speak to you today. If this is a democracy of the people, by the people and for the people I strongly urge the Judiciary Committee to give serious consideration of letting the public decide this issue in a public referendum. And let them decide on the prospective part and also the retroactive part.

Let's instead of the anguish that this committee members -- these committee members are trying to wrestle with the solution would seem to be let the public decide once and for all. Now Senator Looney testified earlier today that the death penalty is not immune to error and there's a reason the death penalty is not immune to error and my testimony's not support the repeal or continuation of the death penalty but to look at something else.

The immunity -- the fact that the death penalty is not immune to error is because of the standard that's used. It's called beyond a reasonable doubt. Beyond a reasonable doubt has no author. It appears in no statute. It appeared -- does not appear in the Constitution. It harkens back to the time eons ago around 500 A.D. when it was first introduced and has appeared as part of the common law.

My testimony that I submitted in writing seeks to attain a higher standard for the death penalty if the legislature decides it wants the death penalty. The higher standard is what I call absolute certainty and it has six basic elements which would have to be proved by the prosecutor.

The first is there has to be a body. And it has to be determined that a homicide was created. Means, mode and opportunity to

commit the crime would also have to meet the test of absolute certainty. Then forensic evidence would have to be introduced to definitively prove that the person committed the crime but it doesn't end there. The six element requires verification of the forensic science by an independent party.

If you recall watching on the TV the Amanda Knox case in Italy she was originally convicted on DNA evidence -- supposed DNA evidence. On appeal it was overturned because an independent party of three scientists had determined the DNA was an error. So my approach would be a new standard which would be codified in statute as to what had to be proven and it would be clearly defined so that the possibility of error would be close to if not actually zero. Thank you for the opportunity to speak before you.

SENATOR COLEMAN: Thank you. Are there questions for Mr. Fromer? Chairman Fox.

REP. FOX: Thank you, Mr. Chairman and thank you for being here all day and waiting to testify. And it's interesting, what you're proposing was proposed several years ago.

There was a retired judge of the Supreme Court who had handled death penalty cases and he also proposed something similar in changing the -- the burden of proof to one of absolute certainty. There was a lot of discussion that went back and forth with respect to that proposal. But I don't know if you were aware of that previous (inaudible) --

ROBERT FROMER: No I wasn't. I'm glad you told me that.

REP. FOX: Yeah. So you're in the company of

someone who actually presided over these cases and he thought that was a solution that might work. And -- so it's just interesting that you raise it again. But thank you again for being here.

ROBERT FROMER: I still think you should have a referendum and I -- and also one final point, a life sentence without the possibility of release is really a death sentence by 1,000 cuts or a slow death but it's still a death sentence.

REP. FOX: Well thanks again, Sir.

ROBERT FROMER: Thank you.

SENATOR COLEMAN: Carol Coburn.

CAROL COBURN: Mr. Chairman and committee, thank you for sitting all day and listening to the whole crowd of us talk. I'm here to support Raised Bill Number 310, AN ACT CONCERNING THE REMOVAL OF INDIVIDUALS FROM THE STATE CHILD ABUSE AND NEGLECT REGISTRY. My name's Carol Coburn.

I've lived in Connecticut all my life. And I worked as Executive Director of a Hartford nonprofit for eight and a half year. Early in my tenure there I met a young lady who was described to be a throwaway kid. Susan is not her real name. She was going to be taken by DCF that afternoon. We had a discussion and another with her mother and Susan came to stay with me at my home. I became Susan's guardian ad litem a few weeks later when neither of her parents were able to make it to the criminal court the day she had to appear on charges of assaulting a police officer.

The terms of her probation included that she

Okay, Ann Eicher. Andy Eicher. To be followed by Raphael Podolsky.

ANDREW EICHER: Good evening. Before I begin I'd like to thank the committee for allowing me to speak in support of Senate Bill 208, AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.

SB 280

I am Andrew Eicher -- I am Andre Eicher an I'm an 18-year-old senior at Conrad High School in West Hartford. I'm here to provide my -- the thoughts of my generation about the death penalty and our concern about executing someone who is innocent.

Since 1973, 140 people have been execute -- exonerated from death row across this nation due to their innocence. It is possible to make a horrible mistake like this in Connecticut.

In the past five years, four individuals have been found innocent after being convicted of rape and murder and sentenced to long prison terms. At the national level, the risk of executing an innocent person became clear to my generation after the execution of Troy Davis last September in Georgia. Even though Troy Davis was never proven innocent of the crime he committed, the evidence that he was convicted with was either clearly biased or flat out false.

When I talked to my classmates about the issue, not a single person was in opposition of either acquitting Davis of the crime or at least taking an even greater probe into the facts of the crime and the trial. Sadly the decision was not reversed in this case and Troy Davis was executed.

DNA has proven that we've made mistakes and

sentenced innocent people to death. But we can't rely on DNA to catch all of our mistakes because it's only available in a small percentage of murder cases. With all of the advances in technology, evidence rises that proves the innocence of the accused. But if this evidence is found after the accused has been executed it is too late and my generation is beginning to realize this sad fact. Because there is always the possibility of new evidence arising, then how can we as a people justify the execution of a person to whom this new evidence may pertain? Where if life imprisonment without the possibility of release was imposed, then there would be a opportunity for this new evidence to rise.

One of the greatest threats to innocence is the fact that convictions can be biased. This bias can stem from many things but overarching bias is race. According to Amnesty International about 50 percent of all murder victims are white, with other 50 being minorities. But 77 percent of the prisoners on death row are there because they are accused of killing a white victim. This percentage proves that the system is racially biased and we must ensure that this racial bias does not lead to -- to executions.

I am just starting to live my adult life and I want to ensure that I not only -- I want to assure that not only my right to innocence is upheld but the rights of all people that surround me. And I do not want to live in a state where my innocence may be impeded by the use of the death penalty. I do not live -- want to live in a state that risks taking innocent lives in my name. As a race, humans make mistakes and these mistakes can convict persons of crimes they did not commit. But as a society we must ensure that none of these

mistakes result in anybody losing their lives.

Thank you again for allowing me to speak and please pass Senate Bill No. 280. Thank you.

REP. FOX: Well thank you and thanks for being here all morning, afternoon and now evening. We appreciate your testimony.

Are there questions?

Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Yes, thank you Mr. Chair.

I always like to engage young people who come to testify. Have you testified before?

ANDREW EICHER: No, this is my first time.

REP. HOLDER-WINFIELD: Well then I really want to thank you for being able to do it in the time allotted. Thank you.

REP. FOX: You did time that very well. There's a lot of people who could -- look to this as an example.

Are there other comments or questions?

Thank you very much.

ANDREW EICHER: Thank you.

REP. FOX: Next is Raphie Podolsky.

SB 306

RAPHAEL PODOLSKY: Thank you, Mr. Chairman, members of the committee. My name is Raphael Podolsky, I'm with the -- I'm here both for my -- for myself as with Legal Assistance Resource Center of Connecticut and for Cheryl Feuerman from Connecticut Legal Services who

be happy to answer questions on this topic if you would like to ask any.

REP. FOX: Well, thank you and I know you've had an opportunity to discuss this bill with members over the course of the last several weeks.

Are there any questions?

Well, thank you and I'm sure we'll get an opportunity to talk to you further. Thank you.

RAPHAEL PODOLSKY: Thank you very much.

REP. FOX: Christine Gertsch. And she'll be followed by Elizabeth Brancato.

CHRISTINE GERTSCH: Good evening distinguished committee members. My name is Christine Gertsch, I'm a second-year law student in Quinnipiac Law School of Civil -- Justice Clinic. I'm joined by my fellow clinic student, Joshua Scollins, and our supervising attorney, Kevin Barry who's behind me.

The clinic strongly supports Raised Bill No. 280 which would abolish Connecticut's death penalty going forward and would leave Connecticut's current death row intact. While the clinic supports complete repeal, we thing that Raised Bill 280 is a reasonable compromise.

As we discuss in our detailed written testimony, some have argued over the years that your -- compromise is not a reasonable one. Specifically they argue that a prospective only death penalty will be interpreted by the Connecticut Supreme Court to nullify existing death sentences on constitutional grounds. But wince the hearing

before this committee last spring, two very important things have changed the legal landscape of a prospective repeal. The first took place in New Mexico, as we've heard throughout the day today, New Mexico is the only state in the country to have faced this exact issue. And the second thing that changed the landscape of this prospective repeal happened tight here in Connecticut. So we can start with New Mexico.

In 2009, New Mexico repealed its death penalty prospectively just as Raised Bill 280 proposes to do. A man named Michael Astorga who committed murder before the repeal argued all the way to the New Mexico Supreme Court that he shouldn't receive the death penalty. He made the same exact argument that Chief State's Attorney Kevin Kane makes that by repealing the death penalty prospectively the New Mexico Legislature had, in fact, repealed it for everyone. In his legal brief to the New Mexico Supreme Court, Michael Astorga's attorney actually cut and pasted two pages of Attorney Kevin Kane's written testimony to this committee in 2009 and the New Mexico Supreme Court flatly rejected those arguments in a four word order. Petition is hereby denied.

Senator Kissel was right earlier, the Court's decision lifted a stay and it allowed Astorga to face the death penalty but it did so after a full briefing of constitutional arguments from both sides. And Astorga's sentencing phase will begin next month but an even stronger support for this prospective only repeal comes right from the Connecticut Supreme Court itself.

Last November the Connecticut Supreme Court issued a decision in the case of State v.

Rizzo. That decision sends a very strong signal that existing death sentences will remain constitutional even after prospective repeal for two reasons. First, in ruling in on the constitutionality of the death penalty, the court tells you that your actions are only one small subpart of one single factor of an elaborate six-factor test known as the Geisler test.

Second, in a footnote of the Rizzo opinion the court goes out of its way to explain how New Mexico could abolish its death penalty prospectively on one hand and constitutionally maintain its death row intact in the other hand. And it cites none other than United States Supreme Court Justice Scalia in support of that reasoning.

In conclusion, if this Legislature believes that the death penalty should be maintain for those currently on death row and abolished prospectively, we submit that Raised Bill 280 will do just that.

REP. FOX: Thank you. And thank you for your testimony and for your well-prepared testimony because you did go right after one of the issues that we ourselves have to deal with. So thank you for addressing that.

Are there questions?

Representative Shaban.

REP. SHABAN: Thank you, Mr. Chair.

And thanks for your testimony. I saw you in the room, I was asking questions based on your testimony before so I thought it only fair that I ask you.

CHRISTINE GERTSCH: Sure.

REP. SHABAN: And not to sound like a moot court judge, but what was the issue in Rizzo? I can't remember. What was the issue in Rizzo?

Well, let me move past that. If -- if you have the answer, great, if not I'll look it up. I have the -- I was reading the case and I -- it escaped me.

The same question I asked the defense counsel lawyer association. The discussion both in their paperwork and your paperwork and other people's testimony that focuses a lot of attention on the possibility of a retroactive repeal based on the six-part test. Would you agree with me that that at least represents a tacit recognition, or tacit admission, maybe the patter being too strong, that there is a concern in light of the Cheshire murders and if so that that is also a tacit recognition that there may be some crimes and certain fact patterns, i.e. caught red handed, that may deserve the death penalty. Do you understand my question?

JOSHUA SCOLLINS: I believe I do, Representative. And I actually --

REP. FOX: I'm sorry, if you don't mind, could you just state your name because we --

JOSHUA SCOLLINS: Oh, sorry, my name is Joshua Scollins.

REP. FOX: Sure, just because with both of you up there I just wanted to make sure we -- we keep a record of the right person who's speaking.

JOSHUA SCOLLINS: I apologize.

REP. FOX: No, that's okay. Just thank you.

JOSHUA SCOLLINS: Respectfully, I'm not sure that it does. I think that it recognizes that idea might be out there and that if one of the members of the General Assembly would wish to continue to have the death penalty for these cases that have already been decided but in otherwise, other circumstances would like to abolish it prospectively, we just argue that that is the position of the bill that is in front of us. I'm not sure that it actually passes any judgment on whether or not those crimes, we personally believe those crimes are deserving of the death penalty.

CHRISTINE GERTSCH: And if I may, I know before your question about the Geisler test and how it would play a role if this bill was passed. So the Geisler test has been used by the Connecticut Supreme Court for -- for 20 years now and in its opinion the court makes it clear that when statutes are enacted validly the burden is very high to render them unconstitutional. So the Geisler test has six factors as we -- as we stated which include the text of the provisions, different precedents, persuasive precedents, et cetera.

The sixth factor of the Geisler test is policy considerations and that's where you, the Legislature, comes into play. Under that policy considerations factor, which again is one factor of this test, there are several subfactors including the number of inmates on death row nationwide, the number of executions in recent years, including the Legislature. So your decision here would be one subpart of one factor of a six-factor test which is why we thing that most likely that a Connecticut Supreme Court would uphold existing death

sentences and respect the fact that your bill in prospective only.

And also, no one factor of the six-factor test is dispositive. There was a case State v. Ledbetter where the sixth factor was actually found in favor of the defendant and the Connecticut Supreme Court balanced the factors and still found for the State and upheld the constitutionality of the statute that was in question.

REP. SHABAN: Did -- I saw someone scrambling around. Did you recall what the issue in Rizzo was?

State your name for the record.

KEVIN BARRY: Kevin Barry. I can only speak to -- to part nine of that decision that we've excerpted in our testimony that was a facial challenge to the constitutionality of the death penalty.

REP. SHABAN: Was Rizzo up -- is Rizzo on death row?

KEVIN BARRY: I can look again.

REP. SHABAN: No, I'll look at it. I'm going to be here a while, I'll read the case. Thank you.

REP. FOX: I should -- I should point out, you did submit some very extensive testimony which has been distributed to all the members, so thank you.

Senator Kissel.

SENATOR KISSEL: Thank you, thank you very much, Mr. Chairman.

Even though I wasn't in the room for the last hour or two, not two, just hour and a half maybe. Since the defense lawyers were here. I was in my office listening to every single word.

First of all, thanks for the nice shout-out regarding --

CHRISTINE GERTSCH: You're welcome.

SENATOR KISSEL: Since earlier today regarding Mr. Astorga, the question was where does this case go. Apparently after, I wouldn't say flat out losing everything in his motion to the Supreme Court in New Mexico, because again, I am perplexed that the Supreme Court said that the trial judge could instruct the jury in that case that the law had been changed. And one of my questions is going to be, if they've made a final -- pronouncement, why would they ever allow the trial judge to instruct the jury that indeed the law has changed and you may consider that in your deliberations. To me that's sort of an odd wrinkle out in New Mexico.

But also the reason for the delay because that happened in September was apparently the attorney then moved for a different venue citing that he couldn't get a good -- a fair trial and that as of I believe last Friday, March 9th, an article indicates that an unprecedented 3,100 questionnaires have gone out to potential jurors in New Mexico. They expect 2,000 questionnaires to be returned and potential jurors to be interviewed and that it is conservatively estimated that it will take at least two months to empanel a jury. So I think it's going to be a couple of months before we even see where that goes.

CHRISTINE GERTSCH: Yes, that's for the sentencing.

SENATOR KISSEL: So, I guess in your analysis, why, if this is being argued that this is a final determination, I don't read it that way. I read it that the court is letting this go forward, I think the court's hoping that it doesn't come back to them especially if the jury comes back with life without possibility of release. But why in the -- why in heaven's name would the Supreme Court instruct the trial judge that the trial judge could inform the jury that the law has changed?

JOSHUA SCOLLINS: Unfortunately, the New Mexico Supreme Court didn't actually publish an opinion when ruling on this case, they just put out the order denying the motion, but they did make the order after a full briefing from both sides on all constitutional arguments. So I can only speculate as to why they would allow the judge to instruct the jury as such, and I'm not sure if you'd like me to do that or not, I don't think so.

But, so whether or not this is dispositive of the New Mexico Supreme Court's opinion on the prospective element of their death penalty law, it is the only case that we have so far and the only state in the country that has done this. It's the only (inaudible) that's been let go so far and this is where it's come out is that the New Mexico Supreme Court has indicated that they will allow a jury to sentence Michael Astorga to death in this case next week.

SENATOR KISSEL: Okay. And what I'm saying is I appreciate your legal analysis. I cannot imagine any High Court in any state in our land to make a determination on something this serious and not have a written decision. I

can see them doing that because they want to move the matter along for a variety of reasons and I -- I didn't review the two briefs and maybe you folks have. But there's, you know, one of the things that is always needed is a final decision on the merits and that's what you need to review a case. And since this is, in my view in the nature of an interlocutory motion going all the way up, and of course it's appropriate to have the highest court in the land review this, but I didn't see anything in what took place to show me that this is a final determination as to the merits.

And we have the other person sitting on death row that certainly can bring a similar claim as well and that person's just sort of sitting there in limbo right now until this matter goes forward on Astorga. So I appreciate that. I definitely think it's an arrow in the quiver of your argument, but I don't see it as a final pronouncement and certainly I can't imagine that our High Court would ever just issue just a -- such a cursory four word opinion when they do show so much detail.

Now I did hear that you said that, sort of, the bigger, more important precedent is Rizzo. And for my colleagues, yes, Todd Rizzo's a bad person, he lured a little boy into the backyard promising to show him a snake and then he took a giant sledgehammer and he destroyed that kid's skull because he said he wanted to know what it was like to kill someone. Not a good person and our Supreme Court came out recently with a case regarding that particular matter. There is a rumor, I don't know if there's any substance to it but there's a rumor that Mr. Rizzo may be contemplating waiving any further appeal rights in talking to folks in Corrections who

have been gearing up for a possible execution here in Connecticut and in fact sending someone down to Texas to study what they do. We don't know if the rumor started first and Corrections started gearing up and then it's sort of a circle, we don't know where that all stands.

I think on the legal analysis you guys have made a pretty fair case. But I guess I come to this from 20 years of -- of being a member of this Legislature. We go forward with this bill, it's just a matter of time before the other shoe drops. And I believe the chief state's attorney when he says make no mistake about it, if this bill goes forward, no one's being executed in Connecticut. Now whether that will be because the Supreme Court makes a certain kind of decision, whether that means the state's attorneys fill feel that -- they feel they can't offer the -- the best defense of -- of -- against the appeals that are inevitably going to come from Sue Storey and her team on the 11 defendants on death row. Or whether -- and this takes years, whether five or six years from now as those appeals are sort of hanging out in the court system, this Legislature throws up its hands and says, you know, enough is enough.

So I really think that the real honest debate today is do we have a death penalty or don't we, and let's not play games with people's expectations. And I fully respect people, such as Senator Looney who came here and said, hey, if I had that bill in front of me I'd be supportive of it. I just think it's -- it's misleading to the public to say that passage of this bill does not jeopardize the cases, the individual death sentences for the individuals already on death row because we have folks that have been there for decades

anyhow, without this law being passed. This law, I mean, let me just ask you this one question. On balance, would passage of this law diminish the possibilities sitting on death row actually being executed or enhance that possibility? I'm not asking you to make a prediction. I'm saying justice being blind and we just put things in the scales of justice, I'm suggesting, while not being proof positive that passage of this law, if anything, adds to the scale that says these folks are -- are never going to be executed, these -- these punishments are going to be vacated in some way, shape or form. Doesn't mean it's 100 percent, but -- what do you guys say?

CHRISTINE GERTSCH: Senator, I would maintain it will not have an effect. As we state in our testimony, because of our analysis of the Geisler factors and the fact that the United -- I'm sorry, the Connecticut Supreme Court just ruled on the constitutionality of the death penalty this past November and found it upheld, you know, so that's the Eighth Amendment argument that -- that could be made on appeal under the Geisler factors would most likely -- they would not prevail. And then an equal protection argument we submit would be even weaker and therefore that's why we hold that a prospective only bill, when looking at the plain language and plain meaning of the bill, we submit to you that the Supreme Court will most likely respect that.

SENATOR KISSEL: But what about all the other analyses that I've read from other decisions throughout the United States that say that a prospective only bill is an indication of evolving societal standard and that that could form a basis for an argument under the cruel and unusual punishment clauses. And I will --

and I would ask you this, if it's found -- to have no impact on the State Supreme Court, could it at least be found to form a basis for an appeal to the -- to the federal jurisdiction? In other words, is this going to gum up the works for another 20, 30 years because everything we do in this building seems to do that. Everything.

KEVIN BARRY: Kevin Barry. I just want to handle your -- your points quickly and you can make sure I address both.

Something Attorney Kane had said and I really respected his testimony today, but that he said in prior hearings is that he, you know, couldn't come up with a good argument. With all due respect, we've attached to our testimony the arguments. They were made by the chief prosecutor in New Mexico, the equal protection argument, the Eighth Amendment argument. Something interesting we pulled, it's in footnote 39 of our testimony. It goes to whether your passage of a prospective only appeal -- repeal would indicate -- would be tipping your hat as to evolving standards. I think you have an argument that it doesn't. This was the very argument that the state made in New Mexico.

He -- he argued to the New Mexico Supreme Court the -- the Legislature's reason for prospectively repealing the death penalty was not necessarily to express an evolved standard of decency that rejects the death penalty as cruel and unusual punishment. Other reasons exist and in fact they were discussed during the process of passing the repeal. High on the list of those reasons is the perceived high cost of death penalty litigation. Given the ongoing state budget shortfalls and the fact that noneconomic concerns were not enough

to achieve repeal in the past, there is simply insufficient grounds to conclude that the prospective repeal signals a statewide consensus that the death penalty is contrary to an evolved standard of decency as opposed to a desire to eliminate the costs of death penalty litigation.

So what I can tell you, Senator Kissel, because you rightly say, you know, this -- doesn't this involve the lifting of a stay? And yes, it does. But I can tell you they've made this argument. The Supreme Court didn't snatch it up, didn't stop that train, Astorga is going to sentencing next month. The arguments are there. We feel that they are strong ones. As far as -- as far as the Federal Constitutional argument, we refer quickly in a footnote and we'll leave it to, I guess, the testimony of Barry Scheck and last -- the last hearing. The Supreme Court or Connecticut Supreme Court in Rizzo has said they defer to the Federal Supreme Court precedents so we don't -- we don't get to that in our testimony here.

SENATOR KISSEL: This is what I think. I don't think it's appropriate for us to make a bet. I am concerned -- and by the way, you sighted cost savings, this isn't being driven by cost savings. There are people, ample testimony, year in and year out, that say we for moral, philosophical, religious reasons, because it doesn't deter crime and all these other factors say that people stridently oppose this penalty in Connecticut. People will stand up on the floor of the House and the floor of the Senator and say if we had a bill in front of us with complete abolition, I'd support it, but for political reasons or expediency or for whatever reason, that's not the bill the Judiciary Committee gave us. But because this

gets us one step closer to full abolition, I'm going to support this at this time. That's what's going to be said.

And so, I just think it's inevitable given the liberal temper and tolerant nature of this state, despite the *Four Corners -- and I'm not saying you're necessarily wrong, I'm just saying my gut tells me this train leaves the station, that's it. Now whether that's right or wrong, that's a different question. I just wish that this Legislature would address it completely one way or another. Who is going to be the state's attorney that's going to take a -- a defendant and charge them with a capital felony for what could be crimes just as diabolical as what took place in Cheshire or what Todd Rizzo did to that little boy or any of these things. You know, the woman coming home with her Christmas presents that got pushed into the river and trying to climb out and the defendant just took his foot and pushed her under, pushed her under, pushed her under until any chance of her surviving was gone. I could go through what all of these individuals in death row did and if somebody commits a crime like that a month before this goes into effect, I don't see any state's attorney every bringing it forward because that would just seem to run contra to justice.

So -- so there's all these different powers that be that have to make the criminal justice system work, and what I'm saying is, theoretically, and on the plain black letter of the law, I'm saying you're making wonderful arguments but how this plays out in Connecticut, this is the endgame. I've just been here long enough to know how the drip, drip, drip process works. Oh, we don't like this policy so we're going to nibble at it here, nibble at it here, nibble at it here and

just wear down the opposition until they throw up their hands and say we give up. That's what this is all about. So I appreciate your -- I mean I really appreciate the scholarly nature of your -- of your address, you guys are awesome law students and you're going to be awesome attorneys to the extent some of you aren't even there yet. But this is Connecticut, this is New England, this is a debate that's not going away any time soon and I really do believe once this step is made, the other shoe's going to fall, inevitably, if not sooner than we all think. And whether it's driven by a Supreme Court decision, appeals, or whether a future legislature a few years from now says, wow, we can't have 11 people on death row and have everybody else -- or some horrible, horrific criminal commits a crime and because it's a few days after this goes into effect then the argument is we've got this individual here who can only face life without possibility of release, that is fundamentally unfair to these other individuals and that's -- that becomes much more difficult for folks such as myself who are advocates and proponents of the death penalty.

I'll leave with this too. I have the utmost respect for my friend from years back, Bishop Rosazza and I've been biting my tongue all day, to analogize folks that support this to people that supported slavery, that's so offensive. To analogize this to individuals that just act out of rage or vindictiveness, that's just not right. There are lots and lots of people in Connecticut that support the infrequent utilization of the death penalty on our books for those cases that seem to merit it. The majority of individuals when asked that question point blank and around 50 percent when they feel that there's an

alternative on the books for life without possibility of release. And I think that Representative Adinolfi has done a wonderful job of pointing out that most people probably don't realize that that means at this time, until we clarify that, going into the general population and earning rights and responsibilities and maybe working the food line in a few years and everything else like that. You ask the question that way, it's not going to be a 50/50 answer. So that's the other frustration that I have is that I think I'm advocating a majority position in the state of Connecticut. Is the majority of people in Connecticut troglodytes and just acting out of vindictiveness and that they're so old-timey that, you know, we're throwbacks to antebellum America? That's offensive.

And so I really hope that the folks that are pushing for abolition understand, the folks on the other side are just as thoughtful, just as torn about these issues and it really is a great concern. I've got six prisons, over 8,000 inmates, I've got death row, I've got another one in Somers with the death chamber, and I've got MacDougall-Walker where all those folks that are really, really tough criminals go if they're not sentenced to death. And so I -- I apologize for taking that out on you guys, you guys are sort of the innocent ones before me right now, but I had to say that because it's not as starkly black and white as some people are making it out to be and it's not a question of the angels versus the devils, that's not how it is. Good, wonderful, caring, loving people can have strong feelings on both sides of this issue and it's not an easy one and I think we need to respect both sides of this argument. Thank you.

REP. FOX: Representative O'Neill.

REP. O'NEILL: Yes, thank you.

I've looked at both the Rizzo case and the materials you sent us from New Mexico. And starting with -- with New Mexico because I think that's more easily disposed of, basically that was in interlocutory type of motion, tell me if I'm wrong, to stop the proceedings in sort of midstream and say the death penalty can't be imposed because the Legislature abolished it prospectively. And this is a case that happened before the effective date of the legislative action in New Mexico. All that's -- and I correctly understanding the factual circumstances?

CHRISTINE GERTSCH: The crime was committed before the repeal and the conviction was after the repeal.

REP. O'NEILL: Right. And so what -- what the defense attorneys were trying to do was to prevent a death penalty phase from occurring, the penalty phase from happening.

CHRISTINE GERTSCH: Correct.

REP. O'NEILL: And the Court said not any lengthy discussion, they simply said denied to this motion that was put forward and there were arguments back and forth. They didn't indicate one way or the other whether they -- what they thought of -- of any of the arguments or all of the arguments or any of that stuff. They just at that particular stage and without any explanation simply said no you can't stop the process at this stage. And that's all that they did at that stage.

KEVIN BARRY: That's correct, after full briefing

on the parts of both parties. So it happened at the district court level and then happened in February from the New Mexico Supreme Court and again in September, that would be February 2011 and September 2011, that's correct.

REP. O'NEILL: And there's a principle that, if this is being broadcast outside this building that the people at home should understand, and that is courts really try to avoid making decisions that they don't have to which is kind of consistent with most human beings. If they can, if they can kick the can down the road and somehow never have to make a difficult decision, that's what courts frequently, do. I mean they're not really -- it wasn't really necessary for them to make a decision at this stage when this was presented to them. They could have just do what they did which is just let it slide and if perchance there's no death penalty that's imposed, they never have to deal with that issue in New Mexico unless there's another case floating around out there that's liable to come up on appeal, until the person who's sitting on death row and I gather from Senator Kissel's comment that he's done the research to find that there's exactly one person --

A VOICE: There are two.

REP. O'NEILL: Tow people, okay. So unless one of those two people, and presumably they will, file some sort of an appeal, then the court will have to decide whether the prospective thing really vitiates the previous conviction or previous death penalty sentences. So I -- I mean I really think the New Mexico thing is -- is kind of a stretch. I understand that people are, you know, trying to find some straw in the wind to give a signal but seems to me that that is -- is just not very

indicative of certainly what's going to happen here in Connecticut if this were to happen.

Now looking at the Rizzo case, what I see is that it's a -- it's a as you say facial attack on the death penalty. They go through the Geisler analysis and then leading up to footnote 88 which is what this is all about, first we consider -- I'm on page 3 of the things that you gave us. First we consider developments in capital punishment jurisdiction in the United States Supreme Court, go through the recent cases since the last time they looked at this and say nothing much has changed. So on that score the defense is -- loses.

Next, we turn to our sister states and three states have stopped, have abolished the death penalty including New Mexico as mentioned here. Well, that's not enough, it hasn't really changed the national consensus on whether the death penalty and that's the -- that's what leads to footnote 88. And then just drops in and says as footnote 88, notably the New Mexico ban if prospective only and no clemency has been granted to convicted capital offenders leaving that state's existing death row intact. That's a simple statement of fact. Given that circumstance, it's unlikely the New Mexico Legislature was convinced the death penalty is intolerable under any and all circumstances, and then they cite the Atkins case which talks about I think the mental retardation, well developmental disability these days, condition. But they don't opine as to whether anything other -- they're just simply stating a fact what -- their conclusion as to what they think the New Mexico Legislature was thinking at the time as -- as it plugs into the whole idea of an emerging national consensus that's different from what

had been there previously.

And then when you go past footnote 88, it says although the clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's Legislatures. Well, they then look at some of those cases and they basically don't find within those changes a kind of drastic change that would need to say that there's something really big happening all across the country. But it seems to me that if we pass a piece of legislation that says there's no more death penalty in Connecticut and that that gets signed by the governor and that becomes law of the state of Connecticut that that is a pretty drastic change for Connecticut. I mean what happens in New Mexico is helpful to try to get some sense, I mean it's a little bit of guidance, it's persuasive authority, maybe, sort of, but on this -- but if we change it, that represents the clearest and most reliable objective evidence of contemporary values in the state of Connecticut.

KEVIN BARRY: And it doesn't change -- you wouldn't be saying it's unconstitutional, right, so it doesn't change the text of the Constitution and these other Geisler factors so you wouldn't dispute that. But your question is would this be significant.

REP. O'NEILL: I would think -- I think the answer is yes, what happens here, what we do as a Legislature is going to have infinitely greater impact than New Mexico or New Jersey or some other state's action whether it's, you know, in terms of impacting us because the only -- only has an impact here in this emerging national consensus, changing of the national value system or something. But if it happens here that we change the law, that's a

-- changes the way people are going to be treated in Connecticut from here on out with the death penalty if that happens. And, you know, I mean the equal protection argument, I just have to tell you, with somebody -- people were talking of here before about their gut, you know, you have this -- Senator Williams was talking about his gut feeling about different things. I remember a different context, a different, whole different issue where the Legislature passed a thing called civil unions. My gut was that the Supreme Court would never allow to have two institutions side by side, identical in terms of everything you could have by way of rights, benefits and obligations and call them two different things for two different classes of people. That that would not survive any kind of equal protection ultimately, equal protection kind of scrutiny and it didn't. And the Carrington case is the case that said that.

And you can make arguments on the other side but my gut tells me that, and it's not just my gut but the attorneys who do this for a living that it's hard to see the Supreme Court saying we're going to execute somebody or allow an execution to proceed five years, 10 years after the Legislature said there's no more death penalty in Connecticut because you were sitting on death row the day before or got there a few days or a year before the Legislature acted in this respect. And -- and I think that there's a -- I won't call it grasping at straws exactly but there certainly is, you know, tiny bits of lack of statement here that give rise to saying that well there's a case to be made for this. I don't know that it proves by any means conclusive that -- that there's no case to be made on the other side.

But to say that, well, we can comfortably and confidently go ahead and follow New Mexico because they ruled that it's okay to have prospective, we're a long way. This -- this fellow has to probably get convicted, then -- not convicted but get sentences, then he's going to appeal and it's going to be years before those appeals are exhausted. We won't know, probably for five years if the New Mexico courts are going to sustain an existing death penalty where the crime occurred and the conviction occurred and the death sentence occurred prior to the effective date of the repeal. I mean we just won't know that for a long, long time.

So I don't know how we could do what Senator Kissel said or put it another way, what we would be doing is taking a bet that that's how it's going to play out based on very, very, very thin evidence that that -- that that's going to happen in New Mexico and or that it would even happen here in Connecticut if it's prospective thing was done. I mean it -- am I missing something here?

KEVIN BARRY: I would begin with, to back you up to that footnote 88, so one question I had for my students, I get to ask these Socratic sort of questions, why would the -- the Supreme Court of Connecticut be engaging in this conversation in this -- in this footnote? They go out of their way to say given that circumstance of New Mexico it is unlikely that New Mexico -- the New Mexico Legislature was convinced that the death penalty is intolerable under any and all circumstances, and that intolerable under any and all circumstances, they then cite Justice Scalia for that proposition. That could be an argument that this Legislature would have and

here you have the -- the Connecticut Supreme Court using that language.

REP. O'NEILL: Because it -- I think because it's raised in the context, is there an emerging national consensus, someone cites New Mexico repealed, response, well, only prospectively, so it's not like the moral tenor of the country has shifted, but that's -- as part of this whole let's look at the nation and -- and evaluate what's going on. If we pass it, it's the moral tenor or Connecticut as expressed by what they state is the most conclusive evidence of all which is the Legislature's enactments on these subjects. I mean if we do it, it's not something that's just one little tile in a big mosaic of public perceptions or opinions or moral evolution. It's the official policy of the State of Connecticut, death penalty, no. And that's what -- that's what they're going to be confronted with. Very different from, well, gee, did New Mexico join Illinois and these other states? Well, no, they only went half way so that's -- that's not even a full repeal. So it's really two and a half states worth of repeal because New Mexico, NJ and Illinois were the three states, well, only one of them went -- one of them went half way so it's really only two and a half not three even. I mean I think that's the response -- what part of that footnote is all about is -- is saying that you can't even really, fully count New Mexico as a true abolition in the same sense that you could Illinois and New Jersey along with the other 13 states or whatever it is.

So I mean in terms of answer to your question, I think that's -- if you ever get a -- the ability to figure out, which is frequently hard, why the Supreme Court writes these opinions the way they do or what they mean by

them, I mean, I just think that it's a -- a slender reed upon which to base, for us, that decision. For someone to say, well, I -- you know, I read the -- the New Mexico case or read the Rizzo opinion and that footnote 88 and I thought for sure the Supreme Court was going to say it was okay to keep on executing people who'd been convicted prior to our repeal. I mean I just think that, you know, that footnote, that language just doesn't -- doesn't really -- doesn't give me the comfort level to think, oh, there's no problem.

Thank you, Mr. Chairman.

REP. FOX: Are there other questions or comments?

Representative Albis.

REP. ALBIS: Thank you, Mr. Chairman.

And thank you all for staying for this lengthy hearing and for your testimony.

One quick question for Christine. Do you still live in East Haven?

CHRISTINE GERTSCH: I do.

REP. ALBIS: All right. Well then I really appreciate you coming up here today.

A serious question now. There's been some doubt expressed by this committee that this would indeed hold up on court. Do you think there's something that you've come across through your studies that might strengthen the prospectivity of this proposed bill that might help us out.

CHRISTINE GERTSCH: I mean we've already -- I can reiterate some of the things we said. Based

on constitutional appeals that defendants currently on death row might have, the Geisler factor is kind of -- strikes down some of the constitutional arguments they would have especially in the Eighth Amendment claim and then for equal protection I know Representative O'Neill briefly mentioned it when he was speaking before. But as far as equal protection goes it's kind of like a three-tiered argument that we would have. First of all for an equal protection claim to survive you'd have to have two similarly-situated groups of people being treated differently. And so here we have the argument that somebody who commits a capital offense prior to a prospective repeal is different, is in a different group of people than someone who commits the same offense after because the person who committed it first was on notice of the possible punishment for their crime, the person after was on notice that the possible punishment was life without the possibility of parole. So that's one distinction.

Secondly for equal protection, if they were to find that these two groups of people were similarly-situated and being treated differently, based on our research we found that this would be a rational basis reasoning. So if you, the Legislature had a rational reason closely related to, you know, a legitimate government interest from making the repeal prospective only, it would hold up and survive a strict, I'm sorry, a equal protection claim because it wouldn't be strict scrutiny. So there's those two arguments.

And also, we submit that the Connecticut Supreme Court will respect the prospective only nature of your bill if it's drafted clearly, which it is, it clearly shows your

legislative intent, both in the text of the bill itself, and then in the legislative history that you're creating by having these hearings and when you have the vote on it, the plain meaning of the statute will establish that it is prospective only.

KEVIN BARRY: And I think your point if I'm catching your -- your drift, is there anything you can put into the text of the statute, is there anything you can put into the legislative history to make this thing bullet proof. Well, can't make it bullet proof, it would be malpractice if I said you could.

But you were saying is any -- my first response would be we can get back to you on that. My second would be look to what New Mexico has done. One thing I think deserves some clarity, this issue when we talk retroactivity, the court has stated with an issue of retroactivity, your bill would -- is clearly prospective. The Connecticut Supreme Court is not going to look at it and say, well, it must be retroactive. The issue we're dealing with here is by making this prospective only, and I think people get this, but making it prospective only, do you thereby render existing death sentences unconstitutional? So the point we keep coming back to, and we're just going to have to agree to disagree with several other members, we believe the court says prospective means prospective, it does not mean unconstitutional. Because if it means -- *means to mean unconstitutional, that's a big deal and that's a heavy burden. See the earlier Rizzo decision and the footnote in our testimony.

So as far as some specifics, I'd love to get back to you on that. I would tell you to look

to New Mexico, I don't know if they have certain particular kinds of findings if they have.

REP. ALBIS: Thank you very much.

Thank you, Mr. Chair.

REP. FOX: Thank you.

Are there other questions?

Representative O'Neill.

REP. O'NEILL: You mentioned one of the points being that there has to be a rational reason to distinguish between the two classes as the pre-repeal and the post-repeal people. And I think you mentioned we're going to save money. Besides that, is there some other rational reason that you could offer to say that you should distinguish between somebody who committed a Cheshire crime a month after repeal should be treated differently from the persons who committed the Cheshire crime when they did?

CHRISTINE GERTSCH: Yes, so, this actually came up in the New Mexico briefs. So the state could argue as New Mexico's attorney general successfully argued last year that a prospective only repeal furthers legitimate goals of retribution and deterrence. It's a legitimate public purpose of assuring that these laws will, you know, maintain their desired deterrent effect. So that could be a rational basis and a legitimate public purpose.

KEVIN BARRY: So what the -- and what the state said in New Mexico, the Legislature chose to hold first-degree murderers to the

consequences for their crimes as those consequences existed when they committed their crimes. The goal of deterrence is also met. Certainly with respect to an executed murderer's inability to commit future murders but also with respect to communication to all criminals that they will be held accountable for their crimes in the manner in which the law provides when they commit them.

It is perfectly proper for the Legislature to create a new sentencing procedure which operates prospectively only despite the disparity created by rendering different sentences after an admittedly arbitrarily chosen date prospective application of such a statute does not violate equal protection principles because of the legitimate public purpose of assuring that penal laws will maintain their desired deterrent effect by carrying out the original prescribed punishment as written.

You would be sending a message to those who are currently on death row that -- that you will carry out what you said you would do that there is deterrence in that, but that doesn't stop you from abolishing prospectively. Thank would be the argument, Representative O'Neill.

REP. O'NEILL: It's getting late and I don't want to pursue this too, too much longer but -- so by repealing the death penalty and leaving it in place for the ones who got sentenced beforehand, that sort of assures people that future penalties will in fact be implemented on the face the way they were originally written. That's the essence of it, it's to convince people that the government is really serious about carrying out its penalties.

KEVIN BARRY: That would be the argument, that's

correct.

REP. O'NEILL: That's the argument that the New Mexico attorney general made?

CHRISTINE GERTSCH: Correct.

REP. O'NEILL: For why it's a rational distinction.

KEVIN BARRY: Correct, we mean what we say. Retribution, deterrence.

REP. O'NEILL: Okay. And we haven't heard the argument but the record here and on the floor probably is going to be replete with people saying that, not that that's what the objective here is because no one has mentioned that until now, and this hearing is going to be part of the legislative record, but that we'd like to get rid of the death penalty in its entirety, lots of people have said that, but we can't do that today so we're going to do this because we think we've got the votes to get this part done. And/or that -- as many of the witnesses has testified against the death penalty and in favor of the bill have said, we don't really believe the death penalty has a deterrent effect and we had a couple of defense attorneys went on at some length about that point. Or it's fundamentally immoral for a society to take someone's life, we had a number of witnesses testify to that point.

So most of the testimony that's before this committee and much of the debate that's going to probably occur on the floor is going to center on those factors and unless someone makes a really big effort to try to lay out a lot of legislative history into this, to distinguish, or to say that but we want to make it prospective only for the purpose of

making sure that everybody's convinced that we're really serious about carrying out our sentences so that people don't get the idea that they might get sentenced to something, 20 years in prison for something, but we'll change all the laws and let people out sooner.

I mean that's -- in order for this to work the rational basis has to be expressed somewhere in the process because we're not going to make a finding, at least normally we don't do that in legislation in Connecticut saying that because we've -- we're making this finding with respect to deterrence or something that -- that somehow it's going to be more deterrent because the record here was replete with the proponents of getting rid of capital punishment saying it has no deterrent effect. In fact it's less deterrent than if you put people in jail with life without parole.

CHRISTINE GERTSCH: Right. And I think that's part of the rational basis argument is that having now the maximum sentence that can be imposed being life without the possibility of parole, that is the deterrent effect and so that is the rational basis for abolishing it prospectively because now we do have two separate groups. One group, they're already on death row, we don't need to deter them any further. Now we have no future offenders and it will be a deterrent because as we've heard several times today that life in prison without the possibility of parole can be worse and it's a sentence that can and will be carried out indefinitely. And I think that -- that goes directly to the rational basis for enacting a prospective repeal.

REP. O'NEILL: We're treating two -- two groups of people who, you know, the crimes were probably going to have some differences between them.

You're not going to get a duplicate Cheshire to occur next year. But they're all people who have been found guilty of a capital felony and sentenced, the ones coming after repeal get life without parole, and the ones who got the death sentence have the death sentence. And I think the burden's going to be to convince somebody that there is, when we're about to execute someone which is -- I think everybody realizes has to be taken very seriously, a very high level of scrutiny that's going to be imposed into haw that's done and what the basis of it and all that sort of thing. It's not going to be a low level of scrutiny for the death penalties that the issue of prospective verses retroactive is -- is going to -- what that says about our evaluation of the person's guilt and what society's appropriate response to it is -- that it's all -- that the basis of the justification for maintaining that distinction for executing one of the people on death row versus not executing anybody who committed a crime afterwards is we're trying to establish -- we want to prove that we really carry out our sentences and we mean what we say when we impose a criminal sentence. And that's kind of the hinge that this all turns on and I can see why Chief State's Attorney Kane is dubious about being able to win that argument. It would be nice if the attorney general in New Mexico had won that argument. All he got was a stay lifted.

Thank you, Mr. Chairman.

SENATOR COLEMAN: Senator Kissel.

SENATOR KISSEL: With the indulgence of the chair, for a second time.

Yes, I want to be associated with the remarks

of Representative O'Neill. We're serious about the death penalty? We're not. Every -- every party out there that has something to do with this mechanism is stuck in mud. It doesn't go forward. How we could ever sustain that kind of argument in a court, I don't think we ever could. In fact the one person, which I don't believe took place in New Mexico, that really wanted to waive all their rights, they -- they imposed their will on him and filed appeals on his behalf. I've looked at the cases, there are appeals where no papers have been filed on either side for five years. Chief State's Attorney Kane said please do something decisively otherwise we're all sort of waiting for one another to find out what's going on. Proponents of abolition have said that no matter what happens this year, whether they win this or not, they will be back in the next legislative session to move this forward. If this bill fails, for whatever reason, they'll put another prospective bill forward or they will have fill abolition.

I'll leave you with this, and I have the utmost respect for out State Supreme Court, a recent decision came down albeit not on criminal justice but on medical malpractice. I was quoted by the majority for legislative historical purposes, I was quoted by the decent for legislative history purposes. I'm almost sure that it's the exact same thing that I said on the floor of the Senate, it can go either way. I just view Connecticut and New England as a different environment for this matter than New Mexico and the southwest. The only time we move forward with any kind of free execution in the state was 1960 or the early '60s with Mr. Taborsky who by all accounts achieved that name Mad Dog because he went and summarily executed people in package

stores throughout the state of Connecticut and that's why for the longest time we had 8:00 closing because people were deathly afraid for decades of someone like that being out there doing things like that. But since then, we've dragged our feet, this state may have it on the books, but as proof that we're serious about having this? I'm sorry. I, again, I really respect your scholarship on this, but my gut tells me -- and I haven't asked you how you really feel about the death penalty, I'll leave that alone because you're making legal cases, but as Representative O'Neill so aptly put it, I feel in my gut this is the real debate whether it wants to be framed that way or not, and what we decide with this Legislation will chart our course for all future to come.

And if people feel that the 11 folks on death row shouldn't get death, okay, I'm okay with that, but I really do believe that what we do with this bill will chart their futures irrevocably. So I just want to throw that our there about the legislative history. Thank you.

SENATOR COLEMAN: Are there others with questions?

Seeing none, thank you very much for your testimony.

CHRISTINE GERTSCH: Thank you.

KEVIN BARRY: Thank you very much.

SENATOR COLEMAN: Elizabeth Brancatto is next.

Dr. John Donohue.

SB 280

JOHN J. DONOHUE III: Thank you. You may have heard me mention a few times today. I'm

someone who when I was at Yale Law School as the (inaudible) professor of law I began an extensive empirical evaluation of the issue of whether the issue of whether the death penalty has a deterrent effect on homicide and after an exhaustive, multi-year examination of that concluded that there was not a scintilla of credible empirical support for the claim of such deterrence.

Subsequently, I was asked to conduct an empirical evaluation of the operation of the operation of the Connecticut death penalty system and about five years ago, a little over five years ago, I undertook that endeavor and it was completed with the fulfillment of a study of about 500 pages on this issue. So that's my background.

You may have heard Kevin Kane address the -- the matter a little bit today and he did make a number of incorrect statements. He had said that that was a criminal case, it's actually a civil litigation, state habeas corpus, in which there's challenge to the Connecticut death penalty system on the grounds of potential racial bias and arbitrariness in implementation. They mentioned also that the state has hired an expert to respond to my report, and I think I might just take a very brief moment to mention some credentials because I did think there was rather significant difference with my background in criminal law and criminal justice matters.

I am an attorney, went to Harvard Law School, go my Ph.D. in economics at Yale. The opposing expert is an economist with no background in criminal justice matters of any kind, let alone the death penalty. I'm also the editor of the American Law and Economics Review, the president of the American Law and

Economics Association, copresident of the Society of Empirical Legal Studies, a member of the Committee on Law and Justice at the National Academy of Sciences and a member of the American Academy of Arts and Sciences and a research associate at the National Bureau of Economic Research.

So I did think that there were many statements made today to this committee unfortunately that were inaccurate. I'm here to answer any questions that you might have. But I do think that the Supreme Court's recent language in State versus Rizzo sets up the issue rather well in that decision which was just referred to shortly. Because the death penalty is exacted with great infrequency even for the most atrocious crimes, there must be a meaningful basis for distinguishing the few cases in which it is imposed from the many cases in which it is not.

Accordingly, if the state wishes to authorize capital punishment, it has a constitutional responsibility to tailor and apply its law in a manner that avoids the arbitrary and capricious infliction of the death penalty. And one thing is very evident from my examination of the operation of the Connecticut death penalty is that it -- it is applied with great infrequency even for the most atrocious crimes. And as I listen to some of the comments, I do think that that may not be quite fully understood. There are many, many atrocious cases that exist in the state unfortunately, but only 4.4 percent of all the death-eligible cases that occurred between the years 1973 and 2007 received the death sentence and that made Connecticut the lowest in the nation in that regard.

And to put that number in context, when the

Supreme Court struck down ever death penalty statute in the country in 1972 in the Furman versus Georgia case they noted the freakishly rare imposition of the death penalty and at that time 15 percent of the death-eligible cases were resulting in a death sentence in the state of Georgia.

So we are unusual in this regard and of course a tremendous amount of expense is directed towards sustaining the death penalty. Kevin Kane mentioned that, quote, very substantial amounts were paid for the two reports in the case, meaning my report and the report of the opposing expert. That's not quite right, $75,000 was paid to me and my coauthor five years ago for the report that I submitted. Many years ago the state's expert conceded, which at first he tried to cover up a little bit, that he had already billed the state for $634,000, and that was many years ago billing at a rate of $500 an hour.

So I do think it's important to note that one of the main findings of my criminal justice work as opposed to the Connecticut death penalty work is that there are many things that can be done to address the problem of crime. I would submit that spending $634,000 on the report that Stephan Michaelson did years ago and he's been working away since then so I'm not sure what the ultimate figure is, could have been spent much better, perhaps directed towards something that was mentioned earlier in the discussion the rather dramatic drop in the clearance rates for murders that has existed in Connecticut since the death penalty was adopted in 1973. And I do think if one is interested in addressing the problem of crime from the point of view of reducing the number of innocents being killed would be much better to solve crimes. And as I

indicated, in 1973, 93 percent of Connecticut homicides were solved. That number has dropped down to below 60 percent and has been on a rather steady downward decline since 1973.

So the death penalty is clearly costly. There is certainly evidence, some of it has been discussed already today, suggesting enormous geographic disparities. This is acknowledged by the state's expert in his deposition testimony in this case, very clearly as I indicated in my executive summary which I think you may have before you, very clear indication that the identical cases would be treated differently in two different juris dictions, that was the statement of the state's expert, not my expert. So I do think that Mr. Kane was incorrect when he suggested that the opposing expert had a different opinion on all issues than I did. He had some criticisms of my report, I think I effectively rebutted them, but on many of the central findings of disparities on gender and geography and even on race, the opposing expert reached a very similar indictment on many grounds that the Supreme Court will ultimately be asked to address.

SENATOR COLEMAN: Thank you, Doctor.

Senator Kissel.

SENATOR KISSEL: So is it correct to say, Doctor, that you're a paid expert for the public defender's office in fighting death penalty?

JOHN J. DONOHUE III: Well, I'm not -- I'm not fighting the death penalty. I'm telling you what I think based on years of study. And I got into this issue actually because in 1975 Isaac Ehrlich wrote a paper suggesting that

each execution would save eight lives. And I was amazed and impressed at the thought that perhaps econometrics could resolve what is one of the most vexing and difficult questions that Legislators and policy makers have debated for years, is there a deterrent effect to the death penalty.

And I was intrigued enough by that to go and get a Ph.D. in economics and examine this question thoroughly. I should say the National Academy of Sciences ultimately convened a panel to look at the Ehrlich work and concluded that it was not informative, that was a direct quote, on the issue of the deterrent effect of the death penalty and I've continued that work and have reached a similar conclusion.

SENATOR KISSEL: So would it be fair to state, Doctor, that you're a paid expert whose research will be used by the public defender's office in opposition to the death penalty.

JOHN J. DONOHUE III: Yes, that's different from what you said earlier.

SENATOR KISSEL: I'm sorry, I must not have been clear. Thank you.

I have no further questions, Mr. Chairman.

SENATOR COLEMAN: Any other questions from any other members?

Representative O'Neill.

REP. O'NEILL: Earlier on I had a conversation with chief state's attorney regarding the egregiousness standard that you have developed and it's hard to see how you can treat two crimes or looking at bunches of circumstances

say that they are identical to one another. One of the points that he raised was the amount of evidence available to the prosecutors in terms of making a decision about how to proceed with a case.

Does your egregious -- and looking at the material that you've supplied to us, I didn't see anything that really could answer this question. Does your -- scale take into account the amount of evidence or the quality or credibility of the witnesses that the prosecutors can use in one case versus another case?

JOHN J. DONOHUE III: No, my standard tried to identify the aspects of the crime, not the issue about proof or other matters that relate to the criminal justice processing of that crime. The fact that, you know, somebody's been hammered to death with a sledgehammer is a very serious crime regardless of whether there's proof or not of who did it. The crime itself is an extremely egregious one and that's what we based our assessments as to egregiousness.

But the -- the state's expert also addressed this same issue in his own assessment of what he considered the most awful cases as well. And he made that same assessment based on the facts of the crime, these are the most awful crimes that occurred, these are the less awful ones. And what we said in our report was that none of the disparities which exist on their face were eliminated by considering the degree of egregiousness of the crime.

Again, I can quote to you the state's expert on this, you would agree there is a statistically significant disparity in the state's administration of the death penalty

based on geography, correct? Yes, based on the geography that has been defined by judicial districts. But you do know that different state's attorneys in the state follow different courses with respect to charging decisions in capital cases because you refer to that in your report, do you not? Yes, I believe that to be true. And you know, for example, because you refer to it in your report that Prosecutor Connelly in Waterbury prosecutes more aggressively than other prosecutors in the state. Correct. And he goes on to emphasize this fact. And isn't it true on the compilation of the data as the state's retained expert you have concluded that offenders, similar offenders committing similar capital offenses in different parts of the state are prosecuted differently and received the death penalty differently for the same offense, I say they -- they get the death penalty differently. There is no question that Waterbury is different from New Haven. And New Britain, Waterbury is different than New Britain. Yes, that's right. New Britain would be similar to New Haven. So you concluded, as the state's expert, that in the state of Connecticut the death penalty is administered differently to similar offenders committing similar offenses depending upon where in the state the crime occurs. I did was the answer.

REP. O'NEILL: And it would probably be nice to have the full deposition to see just what the context of all of it is as well as this report which we don't have from the prosecution side of this discussion.

But that doesn't really change the fact that a decision by a prosecutor to prosecute based on the evidence that they have, I mean, that's going to be a very big factor in a

prosecutor's decision whether or not to prosecute a case. I mean we're talking about, I think 100, roughly 200 death penalty eligible based on the criteria of the crime stretched out over a period of approximately 30 years? On an annualized basis that gives us an *n of what per county, or judicial district?

JOHN J. DONOHUE III: Yes, I mean it's a relatively small number per county, but again --

REP. O'NEILL: Because you used a citation -- and one of the things you said is a statistically significant difference. And I guess if you agglomerate 30 years of data across a whole bunch of different prosecutors, across the entire state of Connecticut then you can get to where you've got a couple of hundred people to work with. But the number that you're going to look at, the treatment of let's say Hartford County versus the New Haven Judicial District versus the Bridgeport-Norwalk district or Stamford, I mean the numbers in any one district are going to be really small during the course of, say a four-year period or an eight-year period. And you have changing chief state's -- changing state's attorneys in different places, changing crime rates in different places, we have the drug wars that went on in the 1990s when you had a huge number of -- homicides being committed that were never solved by the police departments. I mean, things were very different at different points in time during your study.

JOHN J. DONOHUE III: Well, remember, the language I -- was just quoting was the state's expert, that was not my conclusion.

REP. O'NEILL: I understand that.

JOHN J. DONOHUE III: I agreed with him on that. But let me just continue. This is from his report, not from his deposition. Says the single best explainer accounting for 40 percent of the variation is that the sentencing occurs in Waterbury. It is undeniable that the prosecutor in Waterbury is more willing to pursue the death penalty at a sentencing hearing when it's available than the prosecutors in other jurisdictions. Whether there are constitutional implications to the finding are not my concern.

That's the state's expert. I agree with him it's an unmistakable difference and you can't make that go away by playing around with the numbers. The fact that -- that certain crimes were not being solved is irrelevant because all the 205 cases that we are discussing here were cases in which there was not only solving of the crime but there was a conviction for homicide in the case. And what we're saying is in the cases in which homicide convictions were secured there were dramatic differences based on factors that one would ordinarily nor consider relevant to the egregiousness of the crime that generated those disparities. And unless you're going to tell some story that somehow in Waterbury prosecutors have much better evidence of the crimes before them than they do elsewhere in the state, the fact that that particular factor might not have been entered into the statistical analysis would not change the basic conclusion that both the state's expert reached as well as I reached.

REP. O'NEILL: Thank you, Mr. Chairman.

REP. FOX: Thank you.

Are there other questions?

Representative Holder-Winfield.

REP. HOLDER-WINFIELD: I don't have a question. I just wanted to say hello to the professor and thank him for in the past having provided me with time to actually understand his research. Thank you.

JOHN J. DONOHUE III: It's my pleasure.

SENATOR COLEMAN: I have a quick question. You mentioned Furman versus Georgia. What was the -- refresh my recollection, the case that reinstituted the death penalty?

JOHN J. DONOHUE III: That was Gregg versus Georgia in 1976 in which they unfortunately cited the Isaac Ehrlich study which was taken to be a -- evidence of deterrence although later deemed by the National Academy of Sciences to be, you know, a terribly flawed study. But it was Gregg versus Georgia in 1976 that reinstated the death penalty.

SENATOR COLEMAN: Thank you.

REP. FOX: Are there other questions?

Seeing none, thank you very much.

JOHN J. DONOHUE III: Thank you.

REP. FOX: Next is Andrew Schneider.

Good evening.

ANDREW SCHNEIDER:

Good evening, Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee. My name is Andrew

SB 280

Schneider, I'm executive director of the ACLU of Connecticut and I'm here today to express our support for Senate Bill 280, AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.

The death penalty is the ultimate denial of civil liberties. It is an irreversible punishment used by a justice system that makes mistakes, thus creating the very real risk of executing an innocent person. The implementation of the death penalty is arbitrary, discriminatory and it does not deter crime.

Regardless of one's viewpoint about the morality or constitutionality of the death penalty, most people would agree that if we're going to continue executing people in the US we should be doing it fairly and rationally. However, three factors unrelated to the crime itself greatly influence who gets executed and who does not, race, geography and poverty.

Whether someone convicted of a capital crime received a death sentence depends not just on the state they live in but also the county in which the trial and conviction takes place. Some prosecutors are more zealous in seeking the death penalty than others. This pattern exists in Connecticut with the -- startling high representation of people on death row from the Waterbury area.

As you just heard from Professor John Donohue who reported last year that the vastly higher rate of death sentences handed down in Waterbury virtually leapt out of the raw aggregated data when he set out to study the application of the death penalty in Connecticut between 1973 and 2007. Also as part of his study, as you heard, found that the scale of -- to measure the egregiousness

of each capital case to test whether the state adhered to the US Supreme Court's directive that the death penalty be applied only in the worst of the worst cases that he found exactly the -- the opposite was true, the egregiousness of the crime appeared to be completely unrelated to the application of the death penalty.
He also found that, as you know, correlations that did exist were between the race of the defendant and the race of the victim and how it's applied in a discriminatory fashion.

But also, social science research has discredited the claim that execution deters murder. The majority of murders are committed in the heat of passion and or under the influence of alcohol or drugs with little thought give to the possible consequences. States that have death penalty laws do have lower murder rates than states without such laws and states that have abolished capital punishment or reinstitute it, show no significant changes in either crime or murder rates. The irreversibility of the death penalty is especially significant in light of the number of innocent people put on death row in recent times throughout the country. In the last 39 years, 140 people have been released from death row with evidence of their innocence and from 1973 to 1979 there was an average of 3.1 exonerations per year. From 2000 to 1007, there's been an average of five per year.

So it is with good reason that other states have abolished their death penalties, New Jersey, New Mexico and Illinois have done so in recent years and it's time for Connecticut to abolish it too. Thank you.

REP. FOX: Thank you, Andrew.

Are there questions?

I know you've been here all day and I know you get a chance to speak to us frequently so I'm sure if -- if we do have questions we'll follow up with you. So thank you though.

ANDREW SCHNEIDER: All right, thank you.

REP. FOX: William Tuthill, followed by Richard Holton.

WILLIAM TUTHILL: Good evening Senator Coleman, Representative Fox and other members of the Judiciary Committee. My name is William Tuthill, and by the way, I intend to keep to my three minutes so I'm going to speak quickly.

I live in Madison, I'm a former assistant deputy commissioner of the Connecticut Department of Correction where I was responsible for the central and northern region correctional facilities in Connecticut. I was the warden of both New Haven and Bridgeport correctional centers and worked at five different facilities during my 22 and a half years of service.

I support Senate Bill 280 which would repeal Connecticut's death penalty. The death penalty in Connecticut and across the nation is broken beyond repair. It is time to end the death penalty in Connecticut. The death penalty does not deter crime and it's -- you've heard lots of testimony here today, the murder rate in death penalty states has exceeded the rate in non death penalty states in the last two decades consistently, in some cases substantially exceeded.

I want to focus our attention on one death penalty issue, concern over the conditions of incarceration for those eligible for the death penalty but instead may be sentenced to life in prison without possibility of release. Life without release has been under fire as insufficient punishment, a country club, a walk in the park, three -- excuse me, three hots and a cot are terms flippantly used to describe prison life. That is not reality. It is widely accepted that severe restrictions and isolation increase mental illness and violence in institutions.

An article in New York Times as recently as March 10th cited the experience in Mississippi where the lessening of severe restrictions on segregated inmates actually significantly improved safety for staff and inmates. Commissioner Iannoni testified before your committee on March 21st last year requesting that you not restrict the discretion of the Department of Correction and inmate management options.

We have a legal and ethical obligation to keep all our correctional facilities safe for both staff and inmates. Keeping inmates occupied is one of the best tools towards reaching that end, even for murderers. Life in prison is an incredibly severe sentence. Imagine that your world was controlled in every aspect. Personally experience the deprivation that is inherent in incarceration for just one day, I am confident that your view of incarceration would be greatly impacted.

Connecticut must end state-sponsored murder and recognize that the death penalty is fundamentally wrong and is irreversible. We cannot allow the acts of a few depraved individuals to exert undue influence on our

public policy. Now is the time to end a critically flawed policy which represents our most primitive instincts of retribution and revenge. I hope and pray that you will do the right thing and repeal the death penalty now. Thank you.

REP. FOX: Are there any questions?

Thank you for your testimony.

While -- Senator Kissel is going to his seat, Mr. Tuthill, I may have a question. You stated that you previously were with Corrections and you worked at Northern?

WILLIAM TUTHILL: No, I didn't say that.

REP. FOX: I'm sorry.

WILLIAM TUTHILL: I was responsible for the northern tier of facilities when I was with -- when I worked in Corrections. Northern had not --

REP. FOX: Oh, I see.

WILLIAM TUTHILL: Northern had not been built at the time that I was there.

REP. FOX: Okay. Did you have experience then though with --

WILLIAM TUTHILL: At that time Osborn had death row. What was then called Somers is now called Osborn.

REP. FOX: And did you deal with inmates who were on death row and --

WILLIAM TUTHILL: Yes, I did. I had occasion to visit death row on numerous occasions.

REP. FOX: As well as inmates who were sentenced to life without the possibility of release?

WILLIAM TUTHILL: Oh, sure, there -- I can't recall what the statute said at that time, but there were a lot of long-term offenders, of course, at Somers at that time.

REP. FOX: And how long ago has it been since you --

WILLIAM TUTHILL: I retired on 1992. I have since worked in community corrections for the last 18 years.

REP. FOX: And to your knowledge have conditions changed significantly one way or another in terms of how --

WILLIAM TUTHILL: No, based on the testimony that I heard today the restrictions imposed in -- on death row are even more severe than what -- what were in existence 20 years ago.

REP. FOX: How about for those inmates who are sentenced for life -- to life without the possibility of release?

WILLIAM TUTHILL: Well, long-term -- at that time, and I believe currently still those -- the response of the Corrections Department or the conditions that are imposed on those individuals are a function of the length of confinement, the severity of the crime, and also their behavior while they're confined so all those factors are taken into account.

REP. FOX: And can you -- I think it would be helpful given your experience if you could give us some background in terms of how a inmate who has been convicted of a capital

felony would be -- what type of incarceration they could expect to experience.

WILLIAM TUTHILL: I can't tell you currently today exactly what would be done. I'm not prepared to respond to that, Representative Fox.

REP. FOX: Can you describe what you experienced back before 1992?

WILLIAM TUTHILL: Certainly, again, the circumstances are much less detailed during my experience. However all the factors were taken into account in terms of severity of the crime, most particularly specific characteristic that that individual would present. Mental illness, mental incapacity of whatever kind, those factors would be taken into account in terms of what kind of level of security would be imposed, and that's still the case today.

REP. FOX: Okay, well, I know there's other questions but thank you very much for being here and for your testimony.

Senator Kissel?

SENATOR KISSEL: Thank you, Chairman Fox, you actually asked most of my questions.

I'm just wondering since you're associated with New Opportunities, I guess you're the executive director, but New Opportunities, that's involved in what?

WILLIAM TUTHILL: New Opportunities is a community action agency. I'm not here representing New Opportunities. New Opportunities is a community action agency that runs all kinds of social services, programs, everything from child development programs to senior programs.

SENATOR KISSEL: So you're just here on your own?

WILLIAM TUTHILL: I'm here representing myself, that's right.

SENATOR KISSEL: Okay. The only reason I say that is because when I was watching in my office as I was having just a very quick bite to eat, that's what was scrolled on the bottom. That's why I asked.

WILLIAM TUTHILL: I'm sorry. I didn't know that. I did not -- I did not represent myself as representing New Opportunities.

SENATOR KISSEL: Somehow it's on the COLLEGE Network, just letting you know.

WILLIAM TUTHILL: All right.

SENATOR KISSEL: Thanks.

REP. FOX: Well, if it's any -- next to your name it does say self so I assume that's you.

WILLIAM TUTHILL: That's all right. That's been me as long as I can remember, yes.

REP. FOX: You're not alone in representing self, but okay.

Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you, Mr. Chairman, good evening.

Question for you about the information about how we treat prisoners as it relates to safety of everyone but in particular those who work within the prisons. At some point during the day and I don't remember exactly when, I think

it was suggested that this information that we currently -- as we currently understand it is new. But in the course of looking at the death penalty and that issue, I've seen that in literature going back quite a ways. As someone who has worked within the prisons, do you know how far back this goes? How far -- how far -- or do you know if whether it goes back a while, the notion the more humane we treat prisoners perhaps the safer the prisons themselves are?

WILLIAM TUTHILL: This is -- I would say that that's been a common understanding among corrections professionals for a long period of time. There are a lot of factors that impact how individuals get treated within a correctional setting as I alluded to. I couldn't say, you know, categorically that we've gotten more sophisticated or less sophisticated but certainly the experience in Mississippi is a common one across the country. I don't think it takes -- you don't have to be a corrections professional to understand that. A repressive response is going to get a hostile response from the individual that you're dealing with. That's not to say that you should pander or that you should pamper individuals in a correctional setting, but it is to say that you're going to respond to them the way they -- the way their -- the way they present. In other words that you're going to -- you're going to modify your reaction to them based upon how they're presenting themselves and if they're conducting themselves appropriately, within the confines of a particular security level of the correctional facility you're at, you're going to deal with them based on their behavior not based upon some foregone conclusion about how you expect them to behave based on some other criteria.

REP. HOLDER-WINFIELD: And I would agree with your point that you don't necessarily have to be a corrections professional, although I would say there's a certain level -- authority that derives from having been or being a professional in that sense currently. And I will leave it there.

WILLIAM TUTHILL: I would just add that you really are fortunate here in Connecticut and I'm long time out of the immediate system as a retiree, but you have the best corrections -- one of the best corrections systems in the country and you should be proud of the staff and the management that you have here.

REP. FOX: Thank you.

Are there questions?

Chairman Coleman.

SENATOR COLEMAN: Just out of curiosity, you indicated that you were -- you worked in the Department of Corrections at New Haven Correctional Center?

WILLIAM TUTHILL: Yes, I did.

SENATOR COLEMAN: What years were they?

WILLIAM TUTHILL: I was the warden in New Haven Correctional Center from 1982 to 1985.

SENATOR COLEMAN: I raise that because I worked at the New Haven Correctional Center -- your name is very familiar. I'm sure you were in the system when I was a state school teacher at the New Haven Correctional Facility, but this was back in 1974.

WILLIAM TUTHILL: You may have aged a bit. I think -- no, I wasn't there in '74.

SENATOR COLEMAN: No, okay, well your name is familiar to me. Maybe I've seen it in connection with work as a Legislator. Good to see you again.

REP. FOX: Thank you.

Are there other questions or comments?

Well, thank you very much for being here this evening.

WILLIAM TUTHILL: Thank you.

REP. FOX: Richard Holton? Followed by the Reverend Vance Cotton.

RICHARD HOLTON: Good evening. My name is Richard Holton, I am a sergeant with the Hartford Police Department and have been so employed for the past 16 years. I am also the president of the Hartford Police Union.

We are here to oppose Senate Bill 280, AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES. Over time we've evolved into a society that has been governed by laws and morality and throughout history we have learned that when an individual violates these laws, there are consequences. And those consequences must fit the crime and we as a society must be willing to impose those consequences to fit that crime.

When an individual murders another individual, society must stand up and denounce this act, that act is so heinous that it warrants death to that individual -- individual chose their fate. The death penalty's not about an eye

for an eye or a tooth for a tooth, it's about holding that individual accountable for their actions.

I believe and my members believe that it's not too much to ask these violent predators that don't belong in society to forfeit their life for the life of the victim that they took, who didn't have a choice or have a voice in that debate.

There's been a lot of arguments here today about, you know, is it economics, is it a deterrent, is it too lengthy? We've heard it all and I don't want to reiterate it again. A lot of eloquent people spoke here with more knowledge on the subjects than I have, but I do think that the issue needs to be fixed to make it a workable penalty. And w shouldn't be executing someone who has a shadow of a doubt or an inkling that they might be not guilty. With the advent of DNA and investigative techniques through technology I think we can eliminate those mistakes.

What I'd like to say is that, you know, any innocent victim could be a member of anyone's family here and we've heard representatives talking about their family members being killed and murdered in the past and instead of celebrating birthdays, anniversaries, graduations and other special occasions with them, they'll be marking these special occasions by placing flowers at a somber graveside remembrance.

I'd just like to add and end with a quote from a great philosopher Aristotle who said, we become just by performing just actions, temperate by performing temperate actions, and braved by performing brave actions. What is more just and brave than advocating for the

innocent victims that did not have a choice and no longer have a voice. I thank you and I'll take any questions.

REP. FOX: Thank you for your testimony.

Representative Adinolfi.

REP. ADINOLFI: Thank you for your testimony.

How many recent cases have there been where police officers murdered in the line of duty in Connecticut and how did they go?

RICHARD HOLTON: I can think if three cases, most recent cases. First case is Waterbury police officer, Walter Williams, who was murdered by Richard Reynolds back in 1992. Mr. Reynolds brushed up against the officer to find out if he was wearing a bulletproof vest and then proceeded to shoot him in the head. He's currently on death row and he has made an appeal.

State Trooper Russell Bagshaw was murdered by Dwayne and Terry Johnson back in 1991. Trooper Bagshaw was ambushed while on his routine patrol and Terry Johnson was the trigger man and he shot Trooper Bagshaw 17 times while he sat in his cruiser. His brother Dwayne was sentenced to life without parole, Terry was sentenced to death. They appealed it and it was reduced to life without parole. His attorney filed appeals, 28 -- appeal based on 28 issues to the United States -- to the State Supreme Court. And one of them was that the tragic -- that even though the killing was tragic and inexcusable, that it wasn't especially cruel, and I found that shocking.

The last one is most currently, East Hartford

police officer, Brian Aselton was murdered in 1999 when he responded to a -- a noise complaint on Main Street and he interrupted a felony in progress and was shot in the head by Alex Sostre. Alex Sostre pled to life in prison without parole and the reason he pled to life in prison without parole, because there was an issue with the case as far as a witness goes and that's why the prosecutor Jim Thomas didn't go for the death penalty because of that issue.

REP. ADINOLFI: With the -- with the advances in technology that we've made today, is there a lesser chance of making mistakes when we bring somebody up for trial for murder?

RICHARD HOLTON: I would say yes, with the advances of technology. We are human, people do make mistakes, but as testimony shows you, with those advances in technology, individuals have been taken off of death row and placed in different situations. And I think it's unlikely to happen with -- as technology keeps advancing.

Last year this -- this committee proposed a bill for DNA, taking DNA at arrest and it passes and was signed into law. I think that's a step in the right direction because it should help investigators eliminate individuals or point them in the right direction in their investigative techniques.

I think even Kevin Kane stated earlier today that, you know, guilt was not an issue for the 11 that are on death row now, it was about delays. So I think, yes, with advances in technology and investigative techniques, I think you'll find those numbers dwindle and more people come off of death row that in other states, not Connecticut, in other

states, which we've heard about other states all day about New Mexico, Arizona, Texas, that would come off death row because of those advances in technology.

REP. ADINOLFI: What about the -- you mentioned something about streamlining the process. Do you have any ideas in that respect?

RICHARD HOLTON: I think when you -- you look at streamlining the process, it's more about the appeals process. We've heard about unlimited habeases from -- from jail. I think -- my personal opinion, review on it is that you have to limit these to a certain point at some point in time, not to say within a year or something like that but give them their chance to appeal their cases. But when they keep appealing, appealing, appealing for frivolous things, it puts the victims of the family through this agonizing process to have to go to court every single time there's an appeal.

And this wasn't for a conviction but I remember back to the Petit trial where the defense attorney made a motion and it delayed the case for a couple days because of a lapel pin that Dr. Petit was wearing and those are things that we're talking about. You know, is that really necessary? I think even Judge Carl Schuman who spoke in an article from the Bulletin back in June. He was presiding over a case of convicted cop killer, Richard Reynolds, who was sentenced 16 years ago, he stated and I'll quote him, from the bench he said this, lethargic movement of this case is contrary to society's need for finality in convictions which conflicts with the all notions of sound judicial policy. And that's his quote from the bench.

I think if you look at life versus death, the

individuals still have access to the appeals process, that shouldn't be taken away, but you should look at it and say, when is enough enough? I don't think that if a person is sentenced to life without parole, it's not going to -- it's not going to deter an individual from committing that type of crime. I think what will happen is at some point in time, we've heard it earlier that, you know, someone said it was cruel and unusual to stay on life without parole and that will be the next step that will happen, they'll attack that and go after that aspect of the sentencing phase.

REP. ADINOLFI: Thank you. One more question, a short one. Would an investigator or prosecutor lose anything at his disposal in an investigation to help him in his prosecution of the individual?

RICHARD HOLTON: I can speak more from the law enforcement side than I can I the prosecutor's side, but we've heard Attorney Kane testify earlier that a prosecutor that wouldn't use that would be unethical. But I think if -- if the bill was to pass, what would happen is he wouldn't lose that tool, the defense attorney would lost that tool to come in and bargain for his client to get life in prison without parole. As an investigator, yes, that would hamper him because a lot of times that's leverage and they use it to flip the other individual. That's what happened in the Johnson case. They -- they caught up with Dwayne first and they told him, listen, you're facing capital felony murder charges in a death penalty and he told them where his brother was.

REP. ADINOLFI: I see. Thank you.

REP. FOX: Representative Hetherington.

REP. HETHERINGTON: Sergeant, thank you. I noticed you were here for quite a while. I guess you've been here all day.

RICHARD HOLTON: Yes.

REP. HETHERINGTON: So I appreciate you being here. I hope this hasn't caused a surge in crime in Hartford having you here all day.

RICHARD HOLTON: No, I don't think so.

REP. HETHERINGTON: I wanted to ask you about your experience, and I guess this goes to the question of deterrence, but I'll give you an example to illustrate the kind of information I'm looking for.

I was told a while ago by an officer, just anecdotal, and he said that they were questioning a suspect in connection with a robbery and the question came up with why the suspect didn't have a gun. And the suspect said because I was afraid it would get used and then I'd be in real trouble and face the death penalty or something like that.

Do you have any experiences like that that suggest that there is, if not a crime deterrent in itself, that maybe there is some second thoughts about whether or not you have a weapon present, things like that?

RICHARD HOLTON: Yes. Yes, I should say. We heard arguments about what -- if it's a deterrent or not a deterrent and I think Representative O'Neill with his discussion with the two attorneys before said it eloquently. And sometimes it depends who you ask, are you asking the right people or the wrong people or

people that are so defective that they don't understand right and wrong and they commit these crimes.

But yes, dealing with suspects in my line of work, I've seen suspects throw guns while they're running from the police because they don't want to get caught with it because they know that it's an additional charge. If they happen to be a convicted felon in possession of a firearm it's a more serious charge than if they're not a convicted felon. Or just running from the police, an interfering charge, from whatever crime they committed.

But yes, there are conscious thoughts by individuals out there that think about things while they're committing a crime or in possession of certain objects, it could be narcotics, it could be a controlled substance that they try to get rid of before they're taken into custody. And yes, certain laws are deterrents and people with a conscience that think about it will do that.

REP. HETHERINGTON: My concern is we've heard a lot about it not being a deterrent because those who commit a crime say they never thought about capital -- what we ought to be asking is what about this who didn't commit the crime, are they influenced by the fact that there is this more enhanced penalty out there.

RICHARD HOLTON: I would say yes. I think if you polled then and you said -- I think when you give people choices, death penalty or life in prison, they're going to think about it. If you just give them the one choice, like the Quinnipiac poll did in the beginning and just talked about are you in favor of the death penalty, yes or no, they're going to answer that question. When you give them other

questions and you add variables to them, they're going to think about it. And the numbers are going to be different. All honestly they're going to be different.

Some people, like I said, are so defective mentally that they don't think about things when they commit crimes, it could be a heat of passion, so enraged it could be under the influence, and they don't have that thought process to determine, you know, the -- the implication of their actions. But I think we as a society need to hold a spot for these individuals that create these type of or do these types of crimes so that people know that if you do commit these types of crimes, there is a spot for you separate from the person who is just arrested for a narcotics charge or a gun charge or an assault charge.

REP. HETHERINGTON: Thank you. I'd just conclude by saying that we realize that you're on the front line and we appreciate all you do.

RICHARD HOLTON: Thank you very much.

REP. HETHERINGTON: Thank you.

REP. FOX: Representative Shaban.

REP. SHABAN: Thank you, Mr. Chairman.

And thank you for your testimony. I wanted to make sure I highlighted something you said toward the beginning of your testimony about beyond a shadow of a doubt or something along those lines.

Is it the position of your association that, or you would favor raising the standard for capital punishment to some level of certainty where it's certain.

RICHARD HOLTON: Yes.

REP. SHABAN: You fix that part of the equation.

RICHARD HOLTON: Yes, we would. We would, and like we said, before anyone takes a life, other than this criminal other than this criminal who decided to arbitrarily take this -- the victim's life, I think we as a society need to make sure that it's more than what's beyond a reasonable doubt, it should be a higher standard set to make sure that there is no doubt or no question that this person deserves this penalty that we're about to mete out.

REP. SHABAN: Caught in the act, caught on film, DNA, all that kind of stuff.

RICHARD HOLTON: Yes.

REP. SHABAN: Thank you, Mr. Chairman.

REP. FOX: Thank you.

Are there other questions?

Senator Kissel.

SENATOR KISSEL: Thank you, Mr. Chairman.

Sergeant, thank you for being here.

RICHARD HOLTON: Thank you.

SENATOR KISSEL: I actually don't have a problem with reasonable doubt be once you get past that it's unreasonable doubt and I think setting a standard that you want to eliminate what's unreasonable, I think heads us down a slippery slope.

But I just have a couple really quick questions.

RICHARD HOLTON: Sure.

SENATOR KISSEL: How big is the Hartford Police Union?

RICHARD HOLTON: It's 465 officers.

SENATOR KISSEL: Wow, that's a lot of -- lot of folks.

RICHARD HOLTON: Yes.

SENATOR KISSEL: And I'm assuming you're here representing all of those folks?

RICHARD HOLTON: Yes.

SENATOR KISSEL: Would it be fair to say, because I have a ton of corrections officers up in my neck of the woods and similar circumstances to police officers and state troopers.

Should this bill go forward, would you and your membership feel more vulnerable or that when you go out to work every day that it's going to be just a little bit more dangerous from your perspective and that your wives and husbands and children and moms and dads that they might have that same concern as well?

RICHARD HOLTON: It's a tough question to ask. Tough one to answer. I can't speak for 465 individuals because I don't know what they're thinking, but I do represent the union and -- I can speak for myself right now and say yeah, I would be. There would be that thought in my -- in my mind that there are individuals out there that if they were to see a bill pass that says there's no more death penalty and

all you get for killing a police officer and we see that the three cases I cited there's only one on death row and he's appealing his conviction is that you'll get life in prison without a parole, and that's a badge of honor in some of these societies in prison to kill a police officer. And we are held to a higher standard. If a police officer steps out of line, the media, politicians are all over them because they're held to a higher standard. They're supposed to be the unsullied of the unsullied in society. And when someone attacks an officer or kills or murders a police officer who's charged with keeping society safe, I think we as a society need to say that's a line no one should cross. And by not having a penalty phase out there as the statute says, that's in the first line of the capital felony is police officers, fire fighters, you know, corrections officers and it goes down the list.

If you remove that, I think you lose a lot. And I think it puts a lot of police officers at jeopardy and I think the rippling effect will be unknown until you start talking to the families of these officers. So -- I know the Aselton's, I know John, Brian's brother wasn't happy with the plea deal, but he understood what happened. Would he have liked to have seen Al Sostre sentenced to death? I'm pretty sure he would, in my conversation with him he said yes. I don't -- he doesn't think that the criminal's life outweighs his brothers. And we heard Chief Roberts talk before about, you know, life is precious. Yeah, life is precious, but when you put someone's life in -- in position in society as -- protector, and people attack that, you have to give that a little more credibility.

Remember, we have black officers, white

officers, Asians, males, females, so it's not about issue of race here we're talking about when it's an officer killed in the line of duty, it's an issue about keeping that fine line in society from going over the edge.

SENATOR KISSEL: I really appreciate your candor and your really making this very tangible to us. I've often analogized -- these -- there's a handful of folks in almost so many areas of our criminal justice system, we hear arguments against mandatory minimums, against tying the hands of judges, against requiring state's attorneys to charge individuals with certain things. Yet when it comes to this particular issue, all of that seems turned on its head. We have folks that say well my loved one was good and they didn't -- the criminal didn't get charged with death so we should throw it all out. To me that makes no sense. We have no problem in this state and in this country, and justifiably so, from welcoming home the men and woman that go abroad and serve our -- in the military forces who get shot at, often are in terrible danger in places like Iraq and Afghanistan, could even be other places in the world and for these handful of perpetrators -- and I know that some people derided the term worst of the worst but it's hard, it's hard to get convicted of a crime in Connecticut let alone to get put on death row. But these are like terrorists in our midst. I can't imagine anybody from a foreign country doing more harm to a family than those two individuals did to the Petit family.

I can't imagine a more dangerous environment than what I see some of these gang members doing in some of our urban areas. I can't imagine something more scary than someone who's the victim of a home invasion. And we would not as a nation tolerate that if it was

a foreign aggressor, but because these folk live amongst us. I'm hearing testimony today that we should even contemplate letting them mix in the general population and earn credits because, you know what, they won't cause as much trouble. That's not justice. And at some point the Department of Corrections needs to be the department of punishment and justice too. I think it's a balance. And I believe in redemption and I believe in forgiveness, but I think that we also have to have justice too and that's why statutes of justice have her blind, to weigh the good and the bad and to be fair and to just say well, we don't want them to cause any trouble so they'll end up, you know, scooping out the sloppy Joes five years from now if they just don't cause any problems. And they can earn time to work on making things and all that money will go into a special pool and they can have television rights and they can have visitation rights. Come on, these are scary, scary people.

So, thank you. You have a hard job. It was about 18, 20 years ago and I just met a friend of mine, Sergeant John Nahovich of the state police, he's asking me, he says it's about time you did another ride-along, but I remember back when I did my first ride-along about 18 years ago, country roads in eastern Connecticut where you pull someone over and you don't know who's in that vehicle, that's scary and you guys are doing this all the time. So thank you for your service to our state and our -- and our cities and our towns.

RICHARD HOLTON: Thank you very much. I agree with you and your sentiment. I think some of the things I've heard today is disturbing to me as putting the life of this person on trial above and beyond the life of the victim that they took. Who speaks for that victim? Where are

their rights? It seems like they -- it's getting lost in the shuffle. And I think if this bill was to pass, what you would see next, and we've heard testimony here that life in prison without parole is considered cruel and unusual punishment by a couple of attorneys, that's the next step. This bill will be passed, they will attack that portion of the sentencing phase, then we'll end up with what Representative Adinolfi said earlier, general population, playing basketball, scooping food at the line, you know, for their fellow inmates. Is that what justice is about? No.

What does that family deal with on a daily basis, on their anniversaries, their birthdays? Those special occasions that are remembrances of the death of their loved one while this individual sits in prison and enjoys the quality of life that they shouldn't be entitled to based on their actions. That's why we have a correctional institution, that's why we have laws on the books, and that's why we as a society determine you need to have -- you need to have laws to keep society from falling apart. And to go ahead and say you can kill this person, this person, no matter how heinous it is and you can go get locked up for the rest of your life but you'll get privileges like if you were at home is absurd to me.

SENATOR COLEMAN: Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you, Mr. Chairman.

Good evening.

RICHARD HOLTON: Good evening.

REP. HOLDER-WINFIELD: You talked -- I believe you

started off talking about murders and what the punishment should be for murders. I suspect that you know that the punishment, generally, is not the death penalty. That this is why we talk about the worst of the worst. So we're not a society where we just hand out the death penalty for murder.

So the majority of murders are never even going to be subject to capital punishment. Then when you look at those which are subject to capital punishment, largely we don't even seek that sentence. We had that discussion earlier with Attorney Kane.

So I'm asking this question because I just want to get a sense of exactly where you are in terms of what you believe because you're testifying in front of us.

RICHARD HOLTON: Okay.

REP. HOLDER-WINFIELD: So according to your testimony, I might be led to believe that you would think that we should have the death penalty for murder, period. Is that correct?

RICHARD HOLTON: No. My testimony is that when I talk about murders or people murdering individuals depends on the circumstances. If they fit a certain crime or a statute that's developed by the lawmakers in this state and it says if it falls into this scenario one, two, three and four, this is what they get charged with. If it doesn't fall into those scenarios then this is what they get charged with over here.

I've dealt with guys that have been charged with manslaughter, they've killed someone and it's manslaughter not murder, it's not murder one, it's not murder two. What I'm saying is

that for individuals who commit the most heinous atrocities on society such as the Cheshire murders and -- and Daniel Webb in the Rizzo case, the guys who are on death row deserve to be there based on their actions. I'm not saying that someone got in a fight with someone and in defense of themselves shot someone and the guy died. That's not what I'm saying. There's laws on the books for that. That's -- there's a difference. There is a difference.

REP. HOLDER-WINFIELD: And I'm not asking you that. I'm -- saying a murder that is not that type. So for instance you have two guys, in my city, New Haven, they're gang members and one of them shoots the other. For a -- certain situation like that, do you think the death penalty should apply there?

RICHARD HOLTON: Depends on the circumstances. Like I said, I don't wrote the law, I just look at it, if there's probable cause to make the arrest based on the law and the statute, we do that. That's for the attorneys and the judges to figure that out on that aspect of it. If it fits the crime -- criteria of that crime and it fits within the capital felony then they should get what the law calls for. If it doesn't then it doesn't, then they get the lower penalty of murder, manslaughter or aggravated assault, whatever it drops down to.

REP. HOLDER-WINFIELD: On the issue of deterrence, I think you were suggesting to us that having the death penalty leads us towards a certain level of deterrence. And in your conversation with Representative Hetherington, I think you agreed with him about asking those who didn't commit the crime now I would say -- who didn't commit the crime why they didn't commit the crime, I would say that's pretty difficult to

do. But what makes you think that there is this deterrence? What -- what do you know that I don't know that makes you think that that's true?

RICHARD HOLTON: I think there is a segment of society that thinks about things and there's laws on the books for that reason. And I think that segment of society that knows these laws or is informed about these laws will -- will think about their actions. Like I said, you get individuals that commit acts that don't think based on circumstances, the mental capacity, their state of mind at the time whether it's drug induced, alcohol induced and they have no rational thought, they just react. Guys on PCP or heroine or any other cocktail that they make that we deal with on a daily basis out there, do they have a conscious thought what they were doing, probably not (inaudible) mitigating circumstances.

Deterrence, when I talk about deterrence is -- is more the fact that people who will think about what they're doing, the guy running from the police will throw the gun on the ground, the guy with the drugs on him will ditch the drugs, because they know the consequences of their actions if they get caught with those items. So there is an issue where law can be a deterrent in cases. I think if you asked a segment of society would you want death or life in prison, people are going to choose life in prison because it's not death. But if they knew that the only choice they had was death and they had a conscious thought not to do something they wouldn't do it.

REP. HOLDER-WINFIELD: You are a law enforcement officer, do you know when the death penalty applies?

RICHARD HOLTON: In a -- it's hard to say, depends on how the state and the case holds up. It applies in capital felony murders and there's an outline of it, of what outlines that. I don't know it verbatim. I'm not an attorney.

REP. HOLDER-WINFIELD: Right. Right. So this is what strikes me and take this in the way that I mean it. I'm just having this -- this is what strikes me as strange about this. I've often been confronted with people telling me that people think about where the death penalty applies and then I've talked to legislators, attorneys, law enforcement officers who can't tell me where the death penalty applies. So if I'm about to commit a crime, I don't know how I'm deterred by the statute I don't know. You get what I'm saying? And it just doesn't make a lot of sense to me because it's a complicated statute. It's not simply that you murder someone, there are different points to it. And then whether it actually is going to get applied even beyond that, if we just -- if we just left -- left it to the eight things that trigger this, right. That's complicated enough but then beyond that you have aggravating and mitigating factors we talked about. And it just seems to me that -- I don't get how that argument can be made and -- and it's to be believed because I think if you're in -- you're in this moment and you're going to commit the crime, the people who should best know it, us, you all, attorneys don't know it. So I appreciate you -- you talking about deterrence, but I'm just not so sure I'm convinced by that.

And then you talk about gang members and what they do to our society, how many gang members do you know for what -- in your conversation

with Senator Kissel, are -- do we have any gang members for what they've done on death row right now? I mean, it seems to me like part of this conversation -- I understand why we have it, but it seems to me like part of this conversation doesn't apply with the current statute we have. Doesn't apply with the current legal scheme we have. So I mean you can offer commentary if you want.

RICHARD HOLTON: As far as the gang member stuff, I'm not the one that prosecuted the cases, you've got to understand that. We are involved in -- in our job we go out, we react to certain things, we make arrests when there's probable cause to make the arrest. Obviously most of these cases, if it's a gang member -- it could be a gang member, it could not be a gang member, depends how you define what a gang member is. I'm just saying as an example, if two gang members shoot each other, there's not -- and the guy just runs away, that's probably not going to fall in the category of capital felony.

REP. HOLDER-WINFIELD: I recognize --

RICHARD HOLTON: (Inaudible) manslaughter or murder.

REP. HOLDER-WINFIELD: I recognize what you're saying but you did offer it to us as part of the reason we should not get rid of the death penalty. So what I'm suggesting to you is if you're talking about this and relating it to why we shouldn't get rid of the death penalty, at least for gang members under the current construction, there really is no connection.

RICHARD HOLTON: I don't think I ever said that.

REP. HOLDER-WINFIELD: In your conversation?

RICHARD HOLTON: I never said it should be applied to gang members. I never specifically said that. We talked about that and I think I used it as an example of, you know, the difference between -- the example I just gave you a minute ago. So I don't think I ever said that because they're a gang member should get a death penalty.

REP. HOLDER-WINFIELD: In the conversation you had earlier, did you talk about life without the possibility of parole and how the conversation talked about it being cruel and unusual and attorneys in the conversation with Senator Kissel?

RICHARD HOLTON: Yes.

REP. HOLDER-WINFIELD: And attorneys attempting to overturn it because it's cruel and unusual?

RICHARD HOLTON: Yes.

REP. HOLDER-WINFIELD: Why do you suspect because currently the majority of people who fall into the category of egregiousness' and we can talk about whether they're strength of evidence and all of the things that take us towards actually trying to get them convicted under the capital statute, but they've committed these egregious crimes and I even talked about cases where -- such as Ivo Colon where you may not actually stay -- continue to be tried under the capital statute. So the majority of people who've committed these types of crimes currently have LWPPs, right, they have life without the possibility of parole. Why would you, if you're putting that forward as what the attempt would be, why do you think that no one's done anything about that right now?

RICHARD HOLTON: I think my comment was that that -- I would see that as a next step. Because we've heard people talk about that here. I'm just repeating what people testified to and explained to you, this committee, as to what individuals who were there thought. And I see it going down the road at some point in time that that's the next step for a defense attorney to use. We're heard the chief state's defense attorney talk about that once, if this bill was to pass, she's going to file the appeals for those 11 on death row. We know that's going to happen. So what's going to stop her that if it gets prospective and it's like without parole that she's not going to file an appeal for someone who gets convicted under a capital felony murder charge that's now life without parole because they say it's a violation of the Eighth Amendment.

REP. HOLDER-WINFIELD: Thank you. I thank you for sitting here all day.

RICHARD HOLTON: Thank you.

SENATOR COLEMAN: Representative Hetherington.

Thank you, Mr. Chairman, indulging me for the second time.

Sergeant, the question came up as to whether or not suspects understand the difference in the elements that go into constituting a possible death penalty case. And I would ask you just this. In your experience, do most of those who are arrested understand the difference between murder and not murder? And taking a life and not taking a life?

RICHARD HOLTON: I think when you -- when someone shoots and kills someone, I don't think they understand the difference between a murder

charge and a manslaughter charge.

REP. HETHERINGTON: No, but they understand the difference between taking a life and not taking a life?

RICHARD HOLTON: Yes.

REP. HETHERINGTON: So trying to develop just a bit the point that we were discussing earlier. Would you say that even though in your experience, even though a perpetrator might not know the elements, that is the mitigating factors, aggravating factors and so forth that go into a death penalty sentence. They would understand that taking a life is more serious than not taking a life and that that might be a deterrent in terms of, for example, taking a weapon with them in the course of committing a crime?

RICHARD HOLTON: It could be, yes.

REP. HETHERINGTON: You cited some examples of people trying to get rid of guns, so to that extent, wouldn't you say that's deterrence?

RICHARD HOLTON: Based on that knowledge, in my experience with dealing with those individuals in those situations, yes.

REP. HETHERINGTON: Okay, thank you very much.

RICHARD HOLTON: You're welcome.

REP. HETHERINGTON: Thank, Mr. Chairman.

SENATOR COLEMAN: Others with questions?

Again, sir, I do want to thank you for your testimony before this committee and for being here most of the day and just being very

patient with the process.

RICHARD HOLTON: Thank you.

SENATOR COLEMAN: Vane Cotton, I'm sorry, Reverend Vance Cotton.

SB280

W. VANCE COTTON, SR.: Chairman Coleman and Judiciary Committee, I am -- I am W. Vance Cotton, Senior, pastor of the Shiloh Missionary Baptist Church, the largest one and one of the oldest predominant Black churches in Middletown. I have the distinction of being the third pastor since Shiloh inception. In April we will celebrate 61 years of ministry. I have led Shiloh for almost 25 years.

Additionally, I serve as the president of the New England Missionary Baptist Convention, the oldest Black convention in America. We will celebrate our 138th annual session in July. The New England convention has member churches from Maine to Virginia.

I am also president of New Haven Christian Leadership Bible College and I serve on several boards throughout Connecticut, including chair of the board of Hartford Behavioral Health, CEO of the board of Shiloh Manor Elderly Housing Complex in Middletown and a board member of the Middlesex County Substance Abuse Council.

My leadership position and my travel afford me the opportunity to meet and speak to people of all backgrounds and nationality around the country. A few months ago, just before the execution of -- Troy Davis, the death penalty was a topic that was often discussed and people were very passionate about it. Once again the death penalty is making the

headlines in Connecticut. Many people including myself held their breath and waited to see if the execution of Trot Davis would take place. Millions of people from around the globe including the Pope and former president cried out that we not execute Mr. Davis.

In 1989 Davis was convicted of murdering a police officer based upon the testimony of nine witnesses. Since then seven of the nine have recanted or changed their testimony. It was not Davis, they said. With so much doubt swirling around this case we thought surely the execution couldn't take place. However, we were wrong and Davis was executed. Since that night I have been haunted by the fact that human beings are fallible not infallible.

Davis' case was not the first time the death penalty system has shown us our limitations. Across the country, 138 men have been released from death row due to evidence of their innocence. In Connecticut we had seen several men serve 15 or 20 years of long sentence before we discover their innocence. I have preached before on the imperfections of man as compared to the Almighty. To err is human and there is nothing shameful about the fact that we have limitations, but it is shameful that we undertake something as permanent and serious as the death penalty when we know full well we can and do make mistakes. The death penalty system should demand, demand perfection.

There's another way that our human frailty makes us pure -- poor administers of the ultimate punishment. We are bias, sadly racial bias has ling played a part in determining who lives and who dies at the hands of the state. Seventy percent of those

on death row in Connecticut are people of color. Appallingly while people of color are the victims of homicide 50 percent of the time and 80 percent of cases deemed worthy of the death penalty the victim was Caucasian. What message are we sending to our community when we react with different outrage over the death of one of our poor or Black children than we do to the death of their Caucasian brothers and sister.

Troy Davis wasn't the only young Black man in prison or even executed despite legitimate fears he may be innocent. In Connecticut three of the four individual recently exonerated from long prison sentence were people of color. These men are stark reminders that Connecticut is not immune to having our own Troy Davis. Try as we will and should to keep error and bias from our courtrooms, we are all after all only human.

To ensure the important conversation about the death penalty continues, I have hosted several rallies to support the repeal of the death penalty with speakers such as Fernando Bermudez who is with us tonight who served 18 years for a murder he did not commit. And Victoria Coward whose son Jamal was murdered in New Haven in 2007. I urge you to keep this issue in the forefront and to support the Senate Bill 280 to repeal the death penalty in Connecticut. Thank you very much.

SENATOR COLEMAN: Thank you, Reverend.

Are there questions?

Seeing none, thank you for your patience and your testimony.

W. VANCE COTTON, SR.: Thank you.

SENATOR COLEMAN: Bishop Laura Ahrens.

LAURA J. AHRENS: Good evening, Chairman Coleman and distinguished members of the Judicial Committee. My name is Laura Ahrens and I'm one of the bishops of the Episcopal Diocese of Connecticut. I speak in support of Senate Bill 280. I speak for the three Episcopal bishops in Connecticut, the Right Reverend Ian T. Douglas, the Right Reverend James E. Curry and myself.

The Episcopal Church sets its public policy by the vote of laypersons, deacons, priests and bishops in its conventions. In 1976, the General Convention of the Episcopal Church reaffirmed its opposition to capital punishment and it called on the diocese and members of the churches to work actively to abolish the death penalty in their states.

The Episcopal Diocese of Connecticut has affirmed that position by vote of our 219th Annual Diocesan Convention on October 25th, 2003. The Episcopal Diocese of Connecticut where I serve represents 171 congregations throughout the entire state with 65,00 members in over 400 active and retired clergy.

In addition, the Bishops of the Worldwide Anglican Communion, a family of churches in 164 countries with 80 million members at a meeting of the Lambeth Conference in 1988 passed the following resolution. This conference urges the Church to speak out against all governments who practice capital punishment and encourages them to find alternative ways of sentencing offenders so that the divine dignity of every human being is respected and yet justice is pursued.

I wish to focus on two points. First, all capital crimes are heinous crimes and perpetrators deserve consistent and appropriate punishment. It is our society's response to such crimes that is the issue of this debate. I believe that society in its response to heinous crimes has the opportunity to act out of our best or worst instincts. The death penalty plays to our worst instincts of revenge. Beyond that, studies show that the imposition of the death penalty is arbitrary, racially biased and biased against the poor. And there will always be the possibility that the death penalty will be imposed on an innocent person. By abolishing the death penalty we have an opportunity to affirm and respect our dignity as a society.

Secondly, my heart breaks for the pain and the sufferings of victims and their families. We need to do much more to care for the needs of survivors. The death penalty is not the answer. I have learned that many members of victims' families feel that the death penalty has added additional pain to them by expending painful trials and appeals giving notoriety to the perpetrator and making a spectacle out of the legal process. Alternative ways of sentencing, including life imprisonment without the possibility of release can respect the needs of victims' families for closure and dignity.

On behalf of the Episcopal Church I urge the committee to recommend Senate Bill 280, AN ACT REVISING THE PENALTY FOR CAPITAL CRIMES.

SENATOR COLEMAN: Thank you very much.

Are there questions?

Seeing none, thank you for your testimony.

LAURA J. AHRENS: Thank you.

SENATOR COLEMAN: Dawn Mascarella, I'm sorry, Mancarella.

DAWN MANCARELLA: Mancarella, yes.

Good evening, Senator Coleman --

SENATOR COLEMAN: Good evening.

DAWN MANCARELLA: -- and the remaining Judiciary Committee members. Thank you for giving me this opportunity to speak tonight and for sticking around to hear the rest of our testimony.

My name is Dawn Mancarella. I am one of many murder victim family members who supports Senate Bill Number 280 to repeal the death penalty.

My mother, Joyce Masury was murdered January 13th, 1996. She was strangled to death in her home by a man she knew and trusted. Although I cannot possibly know how painful those final moments were for my mom, it was an odious deed inflicted on her in certainly the most heart wrenching and painful I've ever had.

Fortunately for my family, and me, the perpetrator was captured within a few days and so I thought I would be able to begin healing. However, soon after, I was thrown into the lengthy proceedings of a broken legal system where I as a victim family member felt powerless, voiceless and ultimately unable to continue my process of healing.

Navigating Connecticut's legal system was exasperating. Beyond the initial shock and

pain someone in such a monstrous way, there is a bureaucracy of the courtroom. My journey took nine months which may not seem like a long time to many but it felt like an eternity to me. Each month I'd return for an assigned hearing slash court date, just to hear the public defender ask for more time to build his case and then set up another date for the following month. It took all of two minutes each time he did this and when the final hour came, nine months later, without a leg to stand on, I was told the accused and the public defender wanted to plea bargain. I had no say in the matter.

Given that the justice system does not allow for victim family members to have the ultimate say about what happens with the case, the death penalty should be looked at with that in mind. How can laws best serve all victims? As long as we have capital punishment on the books, some cases will be deemed death worthy and others not. Large amounts of resources will be put towards a tiny number of cases where cold cases are ignored and crime prevention programs and services for victims are reduced. Victim family members have no final say on whether a case is capital or not and or stuck in a decades-long never-ending process if the case is deemed death worthy.

Although my experience with Connecticut's legal system was frustrating and ultimately delayed my healing, I am tremendously grateful that my mom's case wasn't a capital one. I don't know how I would have coped if the proceedings had gone on for years or ended in a death sentence. The expectation of closure with such an outcome would have been elusive and quite possibly to the extreme contrary forcing me back to the courtroom every few years for continual appeals to relive those

horrific events that robbed my mother of her life and stole a chunk of my heart.

I am in a much better place today because I didn't have to contend with the death penalty and had in tern I'd had the time and energy to heal. That is not to say that the pain completely goes away, but it eases with time. We can't take away all the heartache and anguish victims' family members are forced to endure when plunged into the unfathomable situation of a murdered loved one. We can however urge you to get rid of the death penalty as this cumbersome process only prolongs the pain and stalls healing. I believe time and energy would be better spent on refocusing resources on policies that are beneficial to the majority of victims. Thank you.

SENATOR COLEMAN: Thank you.

Are there questions?

Representative Adinolfi.

REP. ADINOLFI: Thank you.

We talk about healing. I had a nephew that was murdered many years ago. I used to babysit for him, used to take him to the playgrounds and everything. We never caught his murderer, they never found out who did it. I had -- was called down by the family, I went down and identified the body. Every time a murder case comes up on TV or on the radio those memories come back. And I wish that they had back 40 years ago when he was killed they did DNA testing and everything like that because I'm sure with some of the laws we recently passed on Connecticut that that individual that killed him was probably

arrested for something else at another time and they would have caught him.

But I think the -- what you're talking about, the healing process, I think your concern is more with the process than it is with the penalty. Maybe we have to change the process so that people aren't subjected to -- to all this horrible things we have to listen to and see and hear every day. I saw it on the Petit case, I mean it was on TV every night and pictures of the family and I knew the family, it was awful. So I think that maybe we need more cleanup on the process than abolishing the death penalty.

But I appreciate you coming and I know what you -- what you went through. Thank you very much.

DAWN MANCARELLA: Thank you.

SENATOR COLEMAN: Are there other question?

If not, very sorry for your loss.

DAWN MANCARELLA: Thank you.

SENATOR COLEMAN: Thank you for taking the time to speak with us.

DAWN MANCARELLA: Thank you for listening.

SENATOR COLEMAN: Jack Bryant.

JACK BRYANT: Good evening.

SENATOR COLEMAN: Good evening.

SB280

JACK BRYANT: I first of all want to read a statement from my state president, Scott Esdaile, from the Connecticut State Conference

of NAACP Branches.

Chairman Coleman, Chairman Fox, distinguished members of the Judiciary Committee, thank you for the opportunity to present testimony today. This is from Scott Esdaile, president of the Connecticut State Conference of NAACP and he's speaking on behalf of the 16 branches, eight college chapters and eight youth councils throughout the state.

We strongly support Senate Bill 280 which would repeal Connecticut's death penalty. Let me first be very clear. Repeal of the death penalty is one of the Connecticut NAACP's top priorities this Legislative Session. The Connecticut NAACP and its local branches actively have been working for repeal. In 2009 and 2011, NAACP national president Benjamin Jealous joined local NAACP officials in calling for passage of a repeal bill. We were deeply disappointed when Governor Jodi Rell, despite bipartisan support for repeal ignored our concerns with the racial bias in the state's death penalty and vetoed a bill to repeal it in 2009.

Since then, local NAACP chapters have held numerous forums and rallies across the state and collected hundreds of signatures in support of repealing the death penalty. The NAACP opposition to capital punishment should not come as a surprise. Throughout the death penalty's history in the United States it has been applied in a racist and biased manner. The death penalty in the Jim Crow south clearly targeted Blacks. Across the south after the Civil War, 80 percent of those executed were black, in particular interracial rape or murder when a defendant was black and the victim white virtually guaranteed a death sentence. When a white man raped a black

woman, usually nothing ever happened. Between 1930 and 1967, 455 individuals were executed for the crime of rape, 90 percent of those cases involved a black man raping a white woman. Jim Crow's message then was very clear, kill your own and we'll turn the other way, but touch a white man or woman and you're dead.

The death penalty systematically placed greater value on white victims over black victims. The Supreme Court understandably was troubled by this system and in 1972 struck down the death penalty as unconstitutional. States, including Connecticut, believed that they could eliminate the racism in the death penalty by revising their statutes. If only we provide more guidelines to juries in capital cases, they reasoned, we could eliminate the bias. So that's what they did and in 1976 the Supreme Court deemed these new statutes to be constitutional.

Yet after these reforms, the problems continued. Across the country, studies consistently find that prosecutors are more likely to seek the death penalty when the victim is white than if the victim is a minority and it would be foolish to believe that the problem is relegated to the south. It's also a problem in Connecticut. A comprehensive study by Professor John Donohue which looked at over 4,000 murders in Connecticut between 1973 and 2007 found that the -- the egregiousness of a crime plays little role in determining the handful of death sentences doles out. Rather race and geographic -- geographics played the biggest role in who received the death penalty.

Connecticut prosecutors are more likely to see the death penalty when the victim is white.

Also troubling, seven of the 11 men on death row are minorities. This is not just system. This is not a system that we can continue to tolerate. You have tinkered with the death penalty for decades and it fails. I'm here to say that enough is enough. The Black community knows how the criminal justice system works, how biased it can be. Obviously such bias should have no place at all in our justice system. But we simply cannot accept it when life hangs in the balance.

If you truly care about racial equality, the state of Connecticut must stop making promises to fix the death penalty that goes unfulfilled. Instead we much abolish the death penalty this year. Scott Esdaile, President, Connecticut NAACP.

Chairman Fox, Chairman Coleman, members of the Judiciary Committee. Thank you for this opportunity to testify today, tonight. My name is Jack Bryant and I am president of the Stamford NAACP. On behalf of my branch I am here testify in favor of Senate Bill 280. I urge the committee to pass this bill and finally end the death penalty in Connecticut. The national, state and local levels of the NAACP have opposed the death penalty for many years. A recent event, however, have galvanized our membership to make repeal of the death penalty a priority, the execution of Troy Davis.

This case gained national and international attention and raised grave doubts about the death penalty in the US. Davis was convicted of the 1989 murder of an off-duty police officer in Savannah, Georgia. No physical evidence connected him to the murder. His conviction rest entirely on the testimony of nine eyewitnesses. After his original

conviction, the case against him unraveled. Seven of the nine eyewitnesses recanted their testimony, some alleging police coercion and said they never saw Davis commit the murder. Only two eyewitnesses stood by their testimony, the person who many believed is the actual shooter and another eyewitness who was too far away from the crime to have seen the face of the shooter.

With all the doubt surrounding Davis' case, over a million people petitioned the State of Georgia to stop the execution yet these pleas fell on deaf ears. This past September 21st, the State of Georgia executed Davis. This was not justice. Georgia put finality above making sure innocent life is protected and never taken through an execution. I hope however that this case is a turning point for our country. The national president of the NAACP Ben Jealous summed up this hope best. Troy's execution, the expectational[sic] unfairness of it will only hasten the end of the death penalty in the United States. The world will remember the name of Troy Anthony Davis. In death he will live on as a symbol of a broken justice system that kills an innocent man while a murderer walks free.

This past fall I had the opportunity to meet Davis' sister, Kimberly Davis. She had come to Stamford to call for an end to the Connecticut death penalty. I was amazed by her strength and courage. After her brother's death, she continues to fight for an end to the death penalty. She knows that her brother will not be the last Troy Davis. As long as the death penalty remains in place, innocent individuals will continue to be executed. No matter how much we try to deny it, mistakes happen in the criminal justice system, including in Connecticut. End the death

penalty this year so that Connecticut never has its own Troy Davis. Thank you.

SENATOR COLEMAN: Thank you, Mr. Bryant.

Are there questions?

Chairman Fox?

REP. FOX: Thank you, Chairman Coleman.

And Mr. Bryant, I just wanted to say thank you for being here from Stamford. I know Reverend Tommy Jackson was also here earlier and I know you've been here from this morning through this afternoon and now this evening. But it is very important and helpful to have you here and your testimony. So thank you.

JACK BRYANT: I appreciate it.

SENATOR COLEMAN: Any other questions?

Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you, Mr. Chairman.

And Jack, thank you for sitting here all day. I just want to make a comment, I don't actually have a question.

I appreciate the work you're doing. I was at Stamford when Troy Davis' sister appeared to talk about the need to end the death penalty. And I wanted to say, you talked about the notion that she understands her brother is not the -- probably not the last Troy Davis. And talk about the issue raised by the NAACP for disparity and how the death penalty is applied. I think that is a critical issue for all of us to think about, regardless of how many studies are done.

I just quite frankly don't think in the minds of many it means that much, particularly in the minds of our courts. You know, we have a case in -- going back over a decade, going back quite a while actually where there was a study similar to Professor Donohue's study demonstrating that there's a different way that people of different colors have been treated and -- and very much a similar study. And the courts held that unless you could prove intention in your particular case, whether you could prove that there was a disparity in the system, it really didn't matter.

And so, you know, that says to me, not only that the momentum of the system is more important than whether or not the system actually functions correctly, but that we have a major problem we must endeavor against and in 2009 when we did this death penalty bill and the bill was vetoed, same issue was raised. And the governor of the state recognized that the issue had been raised and still, in line with what had been done, said to the people of this state that the penalty -- the death penalty scheme that we had was fine and it did not need fixing.

As a person who's on the wrong side of that potentially, the death penalty needs fixing and that fixing can't come because we've decided that this issue of disparity really doesn't mean that much. It can't come from fixing the system, it comes from abolishing the system. So I appreciate what you all are doing because this is something that we often don't talk about. That case McCleskey versus Kemp is I think critical to our understanding of what the death penalty really is in this country. And so thank you again for spending

your time here today and highlighting that issue.

JACK BRYANT: Thank you.

SENATOR COLEMAN: Are there others with questions?

Seeing none, thank you very much, Mr. Bryant, for your patience and your testimony.

JACK BRYANT: Thank you.

Dr. Gail Canzano.

SB 280

GAIL CANZANO: Good evening, Senator Coleman, Representative Fox and members of the committee. I thank you for your thoughtful attention to the matter of the death penalty and I thank you for staying here and doing your work.

I'm Dr. Gail Canzano, I'm a clinical psychologist and a family member of a murder victim. Some years ago, my brother-in-law was a victim of an especially savage and brutal murder. My family was immensely fortunate in that ours was not a capital case. On the eve of jury selection a plea bargain sent the murderer to prison for 30 years with a guarantee that he would serve every day of his sentence. He was put away and we have put him out of our minds. He'll be an old man by the time he's released.

Families deserve to focus on themselves and their healing after a homicide and they need all of their energies to do this. The death penalty maintains a focus on the murderer. The judicial system holds out a promise that it cannot keep. And the surviving family members are lured down a road that saps their energy and brings nothing but heartache as

they wait for an execution that never comes.

As a clinical psychologist, I have many years of experience treating individuals suffering from the effects of trauma. And from a professional standpoint, I can assure you that the death penalty is nothing but harmful to the families of murder victims. After the trauma of homicide the mental health needs of survivors are paramount. Unfortunately, the judicial process in capital cases exacerbates the vulnerability of homicide survivors. First and foremost, families of murder victims need help disengaging from the traumatic event. This is not possible as long as they are ensnared in the legal process with its focus on the offender.

I would like to note for the record that more than a decade ago the American Psychiatric Association called for an end for executions. They were soon joined by the American Psychological Association as well as the National Association of Social Workers. Please listen to the experts who would tell you that the harm done by the death penalty far outweighs any good that may come of it. There is nothing accomplished by the death penalty that is not better accomplished by life in prison without the possibility of release.

Capital punishment is an inherently destructive act. It perpetuates violence, wastes money on murders and impedes the healing of homicide survivors. All of this so that we might punish a handful of deviants. Murderers deserve to be put away and forgotten and the survivors of homicide deserve to be released from their grip. If legislators are sincere about supporting the families of murder victims they will replace the death

penalty with life in prison and no possibility of release and they will commit the millions of dollars that are now being squandered to provide real services for the survivors of homicide. Thank you.

SENATOR COLEMAN: Thank you, Doctor.

Are there questions?

Seeing none, thank you for your patience and your testimony.

GAIL CANZANO: Thank you.

SENATOR COLEMAN: Clare Hogenauer.

CLARE HOGENAUER: My first words were good afternoon but now I have to say good evening. My name is Clare Laura Hogenauer, I'm a lawyer from New York but I'm not here as a lawyer or as a New Yorker, I'm here as a human being. I was going to tell you that I'm here to speak about unspoken for victims, but based on a previous speaker, I have to say seldom spoken for victims. SB 280

I was nearly murdered myself in Manhattan in 1974 but I had already learned the importance of lowering negativity so I had a knife at my chest and I said to him, don't worry, I won't hurt you, and here I am to talk about it. We need to teach people how to handle negative situations, they might come out alive.

The Rosenberg execution was my first connection to this. I was about to celebrate my seventh birthday on the day in June when they were to be executed and they had a son exactly my age. Imagine what that was like to see a boy my age having his parents slaughtered, so that was my first experience

with it. Just for the record, my Connecticut connections were I went to camp in Lakeville for years in the 50s and I was with a man weekends for 30 years who lived in Westport, a lawyer like me.

My other connection is I went to the first -- my first execution vigil in Somers, Michael Ross on May 13th, 2005 at 2:00 a.m. I testified here in 2005, in January, and one hour before I testified his execution was put off for the fourth time that week and I began to be conscious of all the unspoken for victims of executions.

I'm not here to speak about Michael Ross. If his slaughter didn't reach you, I wish to reach you on the point I've developed over my nine years of extensive anti-death penalty activity.

I graduated Vassar College and Fordham Law School, practiced law, mostly criminal defense, defended some homicides, until 2000 when I had to retire because of an incurable bone marrow cancer which I still have. I've testified in five states, assisted informally on 12 death penalty trials in Connecticut and New York under the federal system and I've attended 10 execution vigils outside prisons throughout the country to get the media coverage and to have personal experiences which assist me when I testify. So I -- I'm here to speak from my soul, not from my brain.

I would normally be speaking to you, but because I have only three minutes I'll be speed reading.

Here are the unspoken victims of executions, multiply them by 50 to cover the family members, friends and coworkers of these people

who are impacted as well. United States Supreme Court Judge Ruth Bader Ginsberg two years ago in Manhattan at the 92nd Street Y was asked on the stage what's the most emotional memory you have. She said she was sobbing in the middle of the night after the first death penalty that led to an execution. Judges I've seen in court on death penalty trials come up to me at private events, bar associations, funerals, et cetera, they kiss me, hug me and whisper in my ear, keep up the -- good work, Clare. They didn't become judges to kill.

The Chief U.S. Attorney said keep up the good work, Clare, at the bar association when I asked her for her well being to stop asking for the death penalty. She could have said I have to do my job, Clare, but that's not what she said. A U.S. Attorney on the only death sentence which occurred in all those death penalty trials kissed me at the bar association and danced in front of me saying, I'm not doing them anymore, I'm doing corruption cases, have you got any? He didn't become a prosecutor to learn to kill.

Mitch Dinnerstein the defense attorney on the same case was sobbing when the judge sentenced his client to death. Legislators, how do they feel after executions where the law wasn't repealed? Doctors, I recently met the psychiatrist who testified at Michael Ross's trial saying he was suicidal and, you know, wasn't responsible and they -- I mean wasn't -- shouldn't be executed, but he was. The chaplain of Theresa Lewis was sobbing in her husband's arms outside the first execution of a woman in Virginia in September of 2010. A journalist came out of his first execution in Ohio and was a wreck trying to interview us.

I met a man at Fordham Law School that executed 62 men in Georgia and Virginia. I expected a tall, white military guy, instead he was a heavy-set African American man. I gave him a hug, he'd had a religious transformation and become against the death penalty, better late than never.

A court reporter on a death penalty case was out sick for two weeks after her role of reading the death sentence out loud many times. And the juror you heard about, he changed his mind after his death penalty verdict a couple of weeks after sentencing Joshua to death. Imagine the impact that will have on him.

In Utah, family and friends of Ronnie Lee Gardner who was executed by firing squad sent up balloons with loving messages when he was executed. I -- I produced a longer CD of my experiences which I'll be distributing to you, I hope you get to listen to it. Please send money sending -- helping youth go down the right path rather than on planning to kill them. The death penalty is the most preplanned murder on earth. Please make prisons more humane and there will be less crime. Please repeal the death penalty and in Connecticut and join the civilized world. Thank you for listening to me.

SENATOR COLEMAN: Thank you very much.

Are there questions?

Seeing none, we appreciate your testimony.

Henry Milner? Ellen McBride?

SB 280

ELLEN W. MCBRIDE: Good evening. My name is Ellen McBride and I'm the death penalty specialist

for the League of Women Voters of Connecticut, a statewide organization with over 1,800 members. Thank you for giving us the opportunity to comment on Senate Bill 280.

The League of Women Voters of Connecticut believes that capital punishment should not be a sentencing option for murder or any other crime. A sentence of life imprisonment without the possibility of release is punishment that ensures public safety without raising the many complex problems associated with the death penalty.

Until the death penalty in Connecticut is abolished, the League of Women Voters supports an immediate moratorium on executions. The League has studied the issue of capital punishment and has concluded the following. The death penalty costs more than life imprisonment without parole, the General Assembly Office of Fiscal Analysis estimated that the death penalty costs the state of Connecticut $4 million a year to maintain. The death penalty causes additional harm to murder victims' families by subjecting them to years of media attention and replaying of the crime while appeals are made. This is not swift justice. The needs of these families are not met.

Connecticut has convicted innocent people of murder. It takes years to undo such convictions if it can be done. The death penalty is not as a deterrent provable. The death penalty is not applied fairly and consistently without regard to race, gender and socioeconomics or geography.

The League strongly supports Senate Bill 280. Senate Bill 280 would abolish the death penalty and make life imprisonment without the

possibility of release the maximum -- sentence. Senate Bill 280 would amend the General Statutes to replace the death penalty with the penalty of life imprisonment without the possibility for certain murders committed on or after the effective date of the Act. This would provide for prospective abolition of the death penalty.

The League of Women Voters of Connecticut urges you to vote yes on this bill. Thank you.

SENATOR COLEMAN: Thank you.

Are there questions for Ms. McBride?

Thank you very much.

ELLEN W. MCBRIDE: Thank you.

SENATOR COLEMAN: Fernando Bermudez?

Representative O'Neill, Ms. McBride?

Mr. Bermudez, can you hold on one second?

FERNANDO BERMUDEZ: Sure.

SENATOR COLEMAN: Ms. McBride, there is a question for you.

REP. O'NEILL: You stated that the death penalty has no deterrent effect or can't be shown to have a deterrent effect and the League has done studies.

ELLEN W. MCBRIDE: Provable.

REP. O'NEILL: Provable. And in the course of your study, did you look at a study that was done by a Emory University professor, I'm going to

have a tough time pronouncing the name, Hashem Dezhbakhsh, the Deterrent Effect of Capital Punishment Evidenced from a Judicial Experiment?

ELLEN W. MCBRIDE: I can't really remember whether we -- we looked at a number of studies, but I don't remember particularly that one.

REP. O'NEILL: Because what it does is it purports to show that there is in fact a deterrent effect and the way they do that is by looking at the period prior to the moratorium in 1967, the period of the moratorium and then the period after the moratorium, and especially those states that in some cases abolished the death penalty before or after the moratorium and then the impact of murder rates in those states. And I, you know, I'm unable to determine whether someone's doing a regression analysis correctly or not, but I was just curious as to whether you folks had looked at this paper.

ELLEN W. MCBRIDE: I can't really recall that study. I do know we did look at a number of them and I know that it was -- some of them were mentioned during the course of today by other people who spoke.

REP. O'NEILL: Okay, thank you.

SENATOR COLEMAN: Ms. McBride.

ELLEN W. MCBRIDE: I'm sorry.

SENATOR COLEMAN: Representative Adinolfi.

REP. ADINOLFI: Thank you, I'm sorry. Your statement led me to a question. You said we looked at the study. Who's we?

ELLEN W. MCBRIDE: Oh, the League of Women -- the League of Women Voters in preparing a position, we take a position on an issue only after doing a study. So actually the study first started by our League of Women Voters in Cheshire brought it up. And this was in 2006 and a group was put together from all over the state of women from various leagues who studied it for almost a year. And after the study was completed, we then go to our total membership for consensus on an issue and we tell them what we -- we have found and they individually study it and then come to consensus.

REP. ADINOLFI: Okay.

ELLEN W. MCBRIDE: And that was later affirmed, the stance against the death penalty by the League of Women Voters of the United States.

REP. ADINOLFI: Thank you, I just was wondering what the procedure was because I'm from Cheshire and talking to members of the League of Women Voters in Cheshire, they are -- most of the ones I talk to are in favor of the death penalty so I was concerned how that came about.

ELLEN W. MCBRIDE: You have a particular situation --

REP. ADINOLFI: I understand. Thank you.

SENATOR COLEMAN: Okay, now Mr. Bermudez.

Good evening.

SB 280

FERNANDO BERMUDEZ: Good evening, distinguished Representatives and Senators. My name is Fernando Bermudez. Let me state clearly that I am in support of Senator Bill 208 to abolish

the death penalty.

I detest crime and its impact on society, however, I, too, am a victim because I spend over 18 years in New York State maximum security prisons for a crime I did not commit. I was proven actually innocent and apologized to by a judge based upon perjured testimony, illegal identification procedures and according to the judge that the prosecutor knew and should have known that my evidence was based upon false testimony.

I spend over 6,700 days in a six by nine foot cell in some of the worst prisons in New York. Attacked by other inmates, roach infested, subjected to men who were defecating right next to me, unbearable noise to the point where at times I -- considered committing suicide. It was the worst experience I ever had in my life and in the process it took my family with me who also became victims. All of us today suffer from post-traumatic stress disorder and are receiving therapy in one way or another. My wife as well has suffered greatly in the dire poverty that our legal battle undertook to prove my innocence.

The system isn't perfect. My greatest fear as a personal victim of this wrongful conviction is that an innocent person may be wrongfully executed. That is my first and foremost position and concern. In wrongful convictions, DNA is only available in 10 percent of all wrongful convictions to correct the problem. That in itself proves that it's inadequate as a remedy to correct all wrongful convictions. The law is a human instrument and therefore subject to mistakes because it is human made and I dare say that there is the possibility, the grave risk of an innocent person being executed.

I am an individual who today continues suffering and that worst experience that I experienced continues to haunt me today in my dreaming and waking hours. I urge you, ladies and gentlemen, to please consider passing the Senate Bill 280 in support to abolish the death penalty because what happened to me shouldn't happen to anyone else. Thank you.

SENATOR COLEMAN: Chairman Fox.

REP. FOX: Thank you, Mr. Chairman.

And thank you for being here, sir, for your testimony.

I have to ask, what were you initially charged with? What was your -- what was your sentence and if you can get into a little detail as to the circumstances under which it was reviewed and you were subsequently released.

FERNANDO BERMUDEZ: Yes, sir.

I was convicted in 1991 for a homicide I did not commit and I was arrested and subjected to illegal identification procedures stemming from a nightclub altercation in which an -- individual had been punched and therefore sought retaliation. He purposely misidentified me even though he told the police and prosecutor who was actually responsible. The police and prosecutor chose to believe this perjured testimony and he, in turn, cut a deal with the prosecution in order to escape the charges of being an accomplice.

I was able to prove my innocence because we conducted an investigation in which the police and prosecutor admitted to never investigating and we were able to demonstrate that the

individual who was actually responsible was actually roommates with the person who would become the state's star witness against me. I was sentenced to 23 years to life which meant that even after completing my 23-year sentence I still had a life sentence which meant that I could remain in prison for the rest of my life, particularly if I saw a parole board and did not admit guilt or express remorse.

REP. FOX: And were you -- I assume you were convicted at trial?

FERNANDO BERMUDEZ: I was convicted at trial. And I was able to prove my innocence as a result of a continuing investigation and pro bono assistance from lawyers from Washington, D.C., New York law forms and New Jersey law firms. A concerted effort which took so much energy our of human beings and it went beyond the billable hours because they all worked for free until we were finally able to prove my innocence. And the district attorney's office had conducted its own investigation which proves my innocence even more.

REP. FOX: And from what I'm gathering from your testimony, the reason for the turn of events surrounding your conviction was not based upon DNA evidence but more the investigation that took place. Because most of the time when we see these cases, they're often based on the reliance of new-found DNA evidence or something along those lines, but yours was not one of those situations. Is that correct?

FERNANDO BERMUDEZ: That's correct, sir. There was no physical or forensic evidence linking me to the crime. It basically took an investigation. What precipitated my wrongful conviction is the leading cause of all wrongful convictions in the United States and

abroad today which is mistaken eyewitness identification which accounts for 77 percent of all wrongful convictions. Out of the 289 DNA-based exonerations, 77 percent account for mistaken eyewitness identification, not to mention the non DNA-based cases like myself which are very, very difficult to resolve. Much harder than DNA-based --

REP. FOX: I recognize that and that's why I'm saying it's pretty remarkable that you're even here.

Well, thank you very much for being here.

And thank you, Mr. Chairman.

SENATOR COLEMAN: Other questions?

How many years did you end up serving?

FERNANDO BERMUDEZ: Over 18.

SENATOR COLEMAN: Well, if there are no further questions, we definitely appreciate your appearance here and the information that you've provided to the committee. Thank you very much.

FERNANDO BERMUDEZ: You're welcome.

SENATOR COLEMAN: Woody Anderson.

WOODY ANDERSON: Thank you. My name is Sherwood Anderson, I'm a member and past chair of the Human Rights Section of the Connecticut Bar Association. And this statement is on behalf of the Section, not the full Connecticut Bar, just the Human Rights Section.

This Section strongly supports Senator Bill 280, even though it would prefer a total ban.

Nevertheless we strongly support this as it would, at least prospectively, eliminate the death penalty.

The Human Rights Sections and many other opponents of the death penalty have long argued that the application of the death penalty in this state is random, arbitrary and discriminatory. In opposition to that, proponents of the death penalty argue that only the most shocking and heinous crimes result in the death penalty, the worst of the worst.

And this argument seems to us to have been completely refuted by Professor Donohue's study of the 205 death eligible cases over that period of time from '73 to 2007 and after this exhaustive study, which we've heard about from Professor Donohue himself and others, the level of egregiousness of the crime was found to bear little or no resemblance -- no relationship to the cases selected for prosecution as death eligible and also to bear no relationship to the cases where the death penalty was imposed.

Indeed, the 32 most egregious cases found in the study resulted in only one death sentence in this period of time. And the conclusion was, and I quote, our justice system operates in Connecticut with arbitrariness and discrimination.

And I think the -- that all of us would agree that there are one or two crimes we've heard about in the state, particularly the Petit case and Rizzo and others that are mentioned today as being the worst of the worst. But I think different people, including Professor Donohue and his study group and all of us would have a different list of the worst of

the worst. And they're all bad but nevertheless, we have to expect in Connecticut we will have a fair and reasonable system and we now learn that the system is not, according to this study, fair at all. It's based on subjective standards and there are no definite standards that we can adhere to to find who should and who should not be subjected to the death penalty.

Also Professor Donohue noted the racial bias which others have gone into and for these reasons and the others in my written -- in our written testimony the Human Rights Section respectfully requests the Judiciary Committee to act favorably on Senate Bill 280. Thank you.

SENATOR COLEMAN: Thank you.

Are there questions for Mr. Anderson?

Seeing none, thank you very much.

WOODY ANDERSON: Thank you.

SENATOR COLEMAN: Reverend Walter Everett.

WALTER H. EVERETT: Senator Coleman, Representative Fox, members of the committee, I commend those of you who have been here most of the day, several have left early, but I commend all of you who have stayed this long. SB 280

I'd like to address before I get to my specific prepared testimony some figures that were bounced out earlier. Reference was made to the Housatonic study that said when people were asked directly do you favor the death penalty, I believe the figure was 68 percent, but it dropped to 50 percent when they were asked do you favor the death penalty is the

alternative is life without parole.

Representative Adinolfi raised questions about that. He said he didn't believe that the 50 percent on that second study understood that life without parole would mean life without parole, or he said they -- that they might allow people to get out early.

Let me clarify that in a study that was made in Virginia a few years ago. Almost identical 68 percent of the people on the first question, do you favor the death penalty said yes. When asked a second question do you favor the death penalty if the alternative is life without parole, 49 percent said yes. A third question was asked, do you favor the death penalty if the alternative is life without the possibility of release for at least 25 years plus restitution for the victims and the figure dropped -- to 32 percent. They weren't as concerned with somebody who's been in prison for many, many years getting out as they were with some kind of restitution for the families of victims and I maintain that their main concern is the families of victims, not punishment so much of the offenders.

And when people say yes I believe in the death penalty they think this is going to do something for families of victims but that is not so. The death penalty is an exorbitant cost, especially the time when Legislatures around the country are trying to reduce expenditures. I won't go into the many reasons for that. I think they're well known.

But I wanted to say that my son Scott, age 24, was shot and killed in Bridgeport in 1987. That was almost 25 years ago yet the void in my life is just as real today. But I'm here

today to state my opposition to the death penalty based not only on its fiscal cost but its emotional cost. The cost to the secondary victims, families, close friends. The emotional cost of sitting through the initial trial plus a series of mandatory appeals amounts to cruel and unusual punishment for these secondary victims as they wait for 15, 20 or more years for an execution that they believe will give them peace.

Again and again, witnesses to an execution asked afterwards, why don't I feel better? The answer, of course, is that their lives are not changed. The execution of the offender had not brought back their loved ones. The Hartford Courant, the day after the execution of Timothy McVeigh, the Hartford Courant carried a special issue, the front page had banner headlines, it still hurts, and of course it still hurts. They had quotes all over the front page saying that people were saying I don't feel any better. It hasn't changed a thing.

People's lives are not changed, the execution offender has not brought back their loved ones. Now it is time for them to start the process of healing, a process that could have been started decades ago with the finality of a life sentence. We can no longer afford to put on hold the lives of these secondary victims while they wait for a promised closure which doesn't come. We need to allow them to find a way to begin as early as possible to live again.

As an additional plea, I would urge you to consider using the money saved through the elimination of the death penalty to provide -- additional services for the secondary victims, for the families of those who've been killed.

When my son Scott was killed, I determined very early that I would not let the offender take my life also, spiritually, emotionally and perhaps even physically. I determined that I was not going to spend the rest of my life focused on the person who killed my son but to honor my son in other ways. I urge you to give that possibility to all secondary victims by voting to abolish the death penalty in Connecticut this year. Thank you very much.

SENATOR COLEMAN: Thank you.

Are there questions for Reverend Everett?

Representative Carpino.

REP. CARPINO: Thank you, Mr. Chairman.

I'm sorry for your loss and I appreciate you waiting all day and night with us. I just had a question about the study from Virginia that you've studied. I think you mentioned that --

WALTER H. EVERETT: I'm sorry, the study what?

REP. CARPINO: The study I thought you said from Virginia?

WALTER H. EVERETT: Right.

REP. CARPINO: And one of the options in the, I believe you indicated was given to the -- the people who were polled was restitution. And I was just curious, after a loved one has savagely been taken from a family, what type of restitution was identified in this study?

WALTER H. EVERETT: They didn't identify restitution but clearly the people answering

the question thought in their minds that something would be done for the victims.

REP. CARPINO: But it was not -- I'm just trying to understand. But it was not identified in the study.

WALTER H. EVERETT: It was not identified and apparently they wanted something for the victims more than they were concerned with the death or a long-term imprisonment for the offender. And restitution, I don't know what that could be. You can't repay me for the death of my son.

REP. CARPINO: And that was where I was going which is why I was a little concerned about that question in the poll.

WALTER H. EVERETT: You can't give me any amount of money to pay me for the death of my son. But as I said, there are programs to support the families of victims, perhaps additional counseling. There is some counseling given in Connecticut, but it's not very extensive. Secondly, families who have lost a breadwinner particularly, may have small children who will not have the opportunity to go to college or do many other things because their income is drastically reduced. Is there some way that we can provide for them? I don't know what other options might be available, but the point is the people who voted for that were saying they wanted something for the victims and they really cared about the victims.

REP. CARPINO: No, and I appreciate that. In my mind I don't see any restitution for a loss of loved one in a murder and I was just wondering if somebody thought differently and itemized it in the poll. Thank you.

WALTER H. EVERETT: You can't pay me back for the death of my son.

REP. CARPINO: I agree, thank you.

WALTER H. EVERETT: Thank you.

SENATOR COLEMAN: Are there further questions?

Seeing none, thank you, Reverend.

WALTER H. EVERETT: Thank you.

SENATOR COLEMAN: Victoria Coward.

SB280

VICTORIA COWARD: Good evening. I'm Victoria Coward. I'm the mother of Tyler R. Coward who was shot and killed in the city of New Haven June 12th, 2007.

I want to give you just a brief summary about my son. He was six foot five and he was a big baby and he was my baby, my only son and my first child. He was shot and killed at Edgewood Avenue Park and since that time our family has never been the same.

I've heard a lot of speakers here tonight speaking about getting rid of the death penalty which I am for it. And my reasoning being that it makes me very hurt, very upset to see that we can be set aside -- there is a division as to what is the worst or the heinous kinds of homicides so it separates everybody. And any way that a person is killed, it doesn't matter, murder is murder. And from having somebody murdered in your family, you're never the same again.

January 2010 this year, I've been out of work for two years, as there was a speaker that spoke earlier, I was not able -- I'm not able

anymore to work. I have gone back to work since that -- my son's murder, couldn't deal with it. Came home, stayed home for a few months, went back and I worked for a while but under a doctor's care, seeing psychiatrists, sociologists, my children are still seeing people. We need help.

My two daughters, they were teenagers at the time of my son's death, and I can tell you what happens to a family like that. One of my daughters, the oldest, she now runs the street at times, she doesn't act the same. I have to search and find her at times. My other daughter, now she overeats a lot. She likes to stay up under me. I suffer from lupus, COPD and asthma and I try whatever I can do to take care of my family. And this is an ongoing thing. Just because the murderer is put into jail, that's one thing, but to have the responsibility of knowing that I had a hand in killing somebody, I can't see it and I refuse o have any part of it.

I'm asking that you repeal the death penalty. There are a lot of things that we can do with the money and to deter different things. Also to help people like my children to get into the workforce. My children were like I said teenagers and my daughter, my 21-year-old, just started work, her first job, a month ago. And it took a lot to keep her and to get her mind to get focused on knowing that there is life after death and that her brother would want that.

I thank you for your time and I hope I have reached you.

SENATOR COLEMAN: Thank you for your testimony. I think you have reached us. Sorry for your loss.

VICTORIA COWARD: Thank you.

Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you, Mr. Chairman. No questions, just a comment.

Victoria, it's good to see you. I appreciate your effort. You have been everywhere that we have endeavored to talk about the death penalty, to talk to people about the death penalty. You've been willing to tell your story, as painful as I know it is to you. So I appreciate that and I appreciate you being here at this late hour to do so. Thank you.

VICTORIA COWARD: Thank you.

SENATOR COLEMAN: Any other questions?

Seeing none, thank you, ma'am.

VICTORIA COWARD: Thank you.

SENATOR COLEMAN: Jane Caron.

JANE CARON: Hello, thank you for this opportunity.

My name is Jane Caron, I'm a lifelong resident of Connecticut and I'm here today to ask you to support Senate Bill 280.

I'm a clinical social worker with more than 30 years of professional experience. I'm also the niece of a murder victim.

In 1986, my Aunt Dorothy was brutally murdered by a young man seeking money for his cocaine addiction. What started out as a robbery ended with the stabbing of my aunt and leaving her to die. I have a difficult time coming to

terms with the fear she must have felt.

In my professional life and my personal experience, I understand how all-encompassing grief can be. What I know from my clients and for myself is the overwhelming need to seek a place of peace.

In the case of a violent death, the need is even greater to find that elusive peace. The justice system worked well in my aunt's case. Her murderer pled guilty and was given a life sentence. The quick resolution of the case allowed her family to try to make sense of the senseless and move closer to that place of peace. Justice is ultimately served when the needs of the victims' family members are met.

The fact that fewer than 2 percent of all murder victims or all murders committed in Connecticut are death penalty cases, adds to the confusion and the heartbreak for family members of murder victims. On the one hand, if your loved one's murder is not a capital case, family members might feel that their relative's violent death was not quite violent enough making more -- making for more intense grief.

On the other hand, if it does become a capital case and the sentence is death, the family will endure decades of court proceedings while that elusive peace remains a distant possibility. The existence of the death penalty in Connecticut clearly harms those who need and deserve society's care and concern, namely the murder victim's family. I myself do not want someone executed on my behalf. What I want is justice in the form with -- of life without release and support for healing.

My professional organization, the National

Association of Social workers, has a policy paper in support of abolishing the death penalty. The statement -- in the statement it is clear that social workers believe that capital punishment goes against their code of ethics and what social workers stand for. I believe both as a social worker and a murder victim's family member, helping me and others like me to heal and find peace will serve the greater good and support justice. And I thank you for listening.

SENATOR COLEMAN: We thank you for being here.

Representative Hetherington.

REP. HETHERINGTON: Chairman.

I'm sure we all are terribly sorry for what you've suffered. What I would like to ask you is this. How -- would your feeling be any different if it turned out that that life sentence was not really a life sentence?

JANE CARON: Well if -- I would assume and what I believe is that if we have -- a life sentence without release that in fact that's what it would be. I. you know, there's variations on what the sentencing structure is so if the sentence was not life without release I would have to accept that as a part of the justice system. But if the sentence was life without release, that would be my expectation that that would be fulfilled that way.

REP. HETHERINGTON: Okay, thank you.

SENATOR COLEMAN: Are there other questions?

Seeing none, thank you very much.

JANE CARON: Thank you.

SENATOR COLEMAN: Kimberly Sundquist.

KIMBERLY SUNDQUIST: Good evening, Representative Fox, Senator Coleman and distinguished members of the Judiciary Committee. My name is Kimberly Sundquist and I'm here today to testify in opposition to S.B. 280, AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.

For the record, I'm the former president for Survivors of Homicide, a position I held for three years following the tragic murder of my beloved Uncle Jerry Timmons Barnette on September 11th, 2003. My position regarding this bill in no way reflects the position of SOH since we as a whole do not take a position on the death penalty. My words today are of my own opinion regarding this matter.

Because my uncle's case ended without justice served, I've made it my mission to fight for those who should be considered yet are far more often forgotten throughout the process. Last year I sat in this room for 14 hours listening to both sides of this very issue testify as to why you should consider their position. Those who testified in support of this bill never convinced me as to why their beliefs were more valid than my own.

I agree with those advocating for repeal that death penalty does not work as written. I agree that our current system is very traumatic on victims, some of those speaking in support of the bill were indeed victims themselves and I do respect all of them for their beliefs. However not once did any of them say what I expected them to say regarding the *morals of the capital punishment. Their only argument is in regard to the impact it has on victims left behind, such as Dr. Petit.

You, our Senator and Legislature have the power in your hands to make one -- the one valid argument both sides share and eliminate it.

Streamlining the process and bringing finality of justice to victims would do just that. It's the only logical solution to letting victims heal faster and limiting the exposure to frequent revictimization.

The death penalty serves the process in more way than the simple -- simply carry out justice. As you're fully aware, many criminals facing trials will make plea agreements so as to have lesser sentences. If we repeal the death penalty the most severe sentence criminals will face is -- life in prison which in Connecticut is a mere 60 years.

With the risk reduction law that passed last year, they would likely receive up to -- could receive up to 10 years off their sentence, that's half the sentence that they are originally going to be handed down had the case gone to trial. How is this justice?

If we keep the death penalty we're able to use it to save taxpayers money and allow them to plea for 60 -- for a 60-year life sentence with no chance of being released. If you repeal the death penalty, then death row will not exist, this will mean criminals, even the most heinous ones, will have many more liberties while in jail. Death row requires inmates to remain in their cell for 23 hours per day. Until jail is treated as such, I will continue to oppose all bills that will allow them any sort of freedom.

One option you should consider would be to

limit the appeals lawyers for the convicted are allowed to file. This procedure is a tactic to delay the inevitable while making a mockery of our entire current injustice system.

This abuse of the appellate process can cause $100,000 or more before the case can even get to trial which most -- of which most are denied. The reason those advocating for appeal can say it costs more to execute a prisoner is because of the abuse of the system and because this allows the sentence to be delayed, thus costing more in food, medical supplies, doctor visits, staff and other resources. By limiting appeals it can be said that once criminals have exhausted their legal rights to appeal, the sentence will be carried out.

I'm not implying that all murder cases should be death penalty eligible. I'm asking you to consider that crimes involving domestic terrorism as still remaining death penalty eligible. The United States FBI Web site defines domestic terrorism as the unlawful use or threatened use of force or violence by a group or individual based and operating entirely within the United States or Puerto Rico within foreign direction committed against persons or property to intimidate or coerce a government, the civilian population or any segment thereof in furtherance of political or social objectives. There's no question based on this definition and common sense that terrorism was used -- terrorism was used in the case where three women, two of them children, were tortured and killed.

It is a fact that some of the very elected officials who claim that the death penalty should not be used by our state in the name of

justice claim that very victory when Osama Bin Laden was killed in reaction to the 2001 terrorist attacks. The difference in the cases are vast and I see that you cannot compare apples and oranges. However, if justice should never be followed by death of an offender with taxpayer dollars, then those same lawmakers should have condemned the actions by our brave military that day and would have preferred to see the terrorist brought to justice while he sits in a jail cell.

I'm asking you to -- to consider not repealing the death penalty for the perpetrators who conduct a crime with terroristic qualities that result in loss of life for multiple victims, police officers and/or when children or the elderly are affected. You would have the power to redefine terrorism in mater-of-fact terminology as to what limited qualifications a crime will have so as not to be left open to interpretation and as to when the death penalty can be issued. You would also be charged with making sure the death penalty is not only an option for these horrific cases but also enforceable.

This bill uses language suggesting that the repeal will be on prospective cases only. This language is there to trick the public into thinking it will never pertain to these individuals. With there being so many chances of appealing the decision since the law is on their side, all they need is one judge to oppose the death penalty and the sentence will be overturned. These criminals will most certainly someday have their sentences commuted to life in prison without the possibility of parole. Since life in prison means a mere 60 years, based on the fact that there were three victims who perished and

assuming they would receive a minimum of life in prison for each victim, the inmates would each be facing 180 years. It's obvious that they would never be released and even under current statute it's more likely that they and Dr. Petit will die of natural causes before the sentence would ever be carried out.

If you do repeal the death penalty, taking this case out of the equation, what happens to the next criminal who commits ungodly acts that involve terrorizing, kidnapping, sexually assaulting and lighting children on fire. They should be held accountable for those actions and sentenced to death just as these individuals were. It may not be a deterrent, which is in part because we don't use it, but at least it is a justice served and they will have little to no liberties in prison. What if the next time it's your family, what would you want to happen to such individuals.

In closing I would like to add that we are victims, we are not heard from enough in cases that surround our loved ones. We are fearful of the world around us. Our bodies may still be here but the act that took our loved ones away from us, it's as if we were also murdered because we are not the same people we were one hour before the act took place. We know our loved ones watch over us and it's us who suffer. This sort of loss is unbearable. You wonder if you could have changed the end result or wonder if in their dying moments they cried out for you. They stay with us for the rest of our lives. We don't look for revenge, we look for the justice promised to us. Rather than repealing the act of justice -- an act of justice, instead look at ways we can make it stronger and more effective. Look at the ways lawyers are allowed to abuse our system and put an end to those tactics. Allow

victims to voice opinions about how they would like to proceed. Don't allow terrorism to be accepted in any way, shape or form. I thank you for your time and consideration. Happy to answer any questions.

REP. FOX: Thank you and thank you for your testimony. Not quite 14 hours today, but still a long time.

KIMBERLY SUNDQUIST: Twelve.

REP. FOX: Yes, and we do appreciate your being here.

Are there any questions?

Representative Adinolfi.

REP. ADINOLFI: Thank you. Along with many of the others I know you were here before an 11:00 in the a.m. so.

KIMBERLY SUNDQUIST: I was here since 9:00 so yes.

REP. ADINOLFI: So thank you very much for coming and I appreciate your testimony. I think it was very, very accurate.

KIMBERLY SUNDQUIST: Thank you.

REP. FOX: Are there other questions?

Thanks again.

KIMBERLY SUNDQUIST: Great, thank you.

REP. FOX: Judy Meikle.

JUDY MEIKLE: Good evening.

REP. FOX: Good evening.

JUDY MEIKLE: It's Meikle.

REP. FOX: Meikle, sorry. I knew that after I saw you.

JUDY MEIKLE: Representative Fox, members of the committee, my name is Judy Meikle and I'm grateful for this opportunity to testify today on behalf of New York Yearly Meeting of the Religious Society of Friends in support of Senate Bill No. 280.

The New York Yearly Meeting is a gathering of Quaker meetings and worship groups in New York State, Northern and Central New Jersey and Southwestern Connecticut. I am a member of Wilton Monthly Meeting which is located in Wilton, Connecticut and I've also attended the worship group in Sing Sing Correctional Facility in Ossining, New York. I'm an active facilitator at the Alternatives to Violence Project, and international violence prevention program which is well known both in prisons in the community. As a Friend whose concerns for the criminal justice system run deep, I speak to you today on behalf of my Quaker Yearly Meeting about our beliefs and prayers concerning abolition of the death penalty.

Ours is a simple faith and a radical witness. Our guiding truth is that the divine is in every person. From this belief flow our historic testimony, our corporate witness to truth which we live out in our everyday activities as we let our lives speak. These core values of peace, simplicity, equality, community and integrity guide our decisions and form the foundation of all our endeavors.

Our position on the death penalty is set out in our book of Faith and Practice. We have

consistently opposed capital punishment. We are clear that each person is uniquely valuable and divine and none of us is totally beyond redemption. The death penalty rejects the message of forgiveness, in some cases it legally destroys innocent persons and in all cases it degrades the humanity of the executioners and of the society that endorses the act.

As Quakers, we place deep faith in love before fear and in the transforming power of peace. We recognize that murder is a terrible tragedy wreaking havoc and pain on everyone that it touches. We therefore recognize that murder is simply wrong no matter who perpetrates it, whether an individual or the state.

The decision before the Legislature is a weighty one. There have been many facts and opinions laid before you today. In January 2005, the presiding clerk of New York yearly Meeting stood before the State Assembly in Albany and reminded them that theirs was a moment in history. She asked them to think about the legacy that they were leaving future generations. She compared the antiquated and barbaric notion of justice that is capital punishment to slavery and child labor and Jim Crow, as practices once accepted by society but now deemed relics of a misguided past. She urged the Legislature in Albany to seize the opportunity to abolish capital punishment in the State of New York, and they did. Followed by the State of New Jersey in 2007 and the State of New Mexico in 2009 and the State of Illinois in 2011.

I appear before you today to fulfill a personal and religious obligation to urge this Legislative Body to seize this opportunity to be on the right side of history and abolish

the death penalty in the State of Connecticut in 2012. Thank you.

REP. FOX: Thank you. Thank you for your testimony this evening.

Are there any questions or comments?

Thank you for -- for being so patient.

JUDY MEIKLE: Thank you.

REP. FOX: Next is Martin Amdor.

Tom Swann.

Sharray Perry. Sharray, I'm sorry.

Good evening.

SHARRAY PERRY: Honorable Senators and Representatives, my name is Sharray Perry, I am a graduate student attending the University of Connecticut. I'm here to testify on Senate Bill No. 334, AN ACT CONCERNING DESECRATION OF PROPERTY. I'm in -- I am in support of this legislation and would hope that you will also support it.

The proposed amendment on Senate Bill 334 will strengthen the criminal penalties associated with desecration of property. Such crimes committed now are classified as class A misdemeanors. Acceptance of this amendment will allow such crimes committed to be classifies as class D felonies.

My primary interest of Senate Bill No. 334, section D, which states any person who places a noose or simulation thereof on any public property or on any private property without the written consent of the owner and with

seizure. I just passed out on the floor. And when I passed out on the floor, that was -- that was -- everything happening as far as -- my body was telling me -- I've absorbed all of the injury and now my body collapsed, so --

REP. O'NEILL: Thank you.

KELLY ANDERSON: -- everything that had happened, it physically just deteriorated. And --

REP. O'NEILL: Okay. Thank you. Glenn, thank you.

REP. HOLDER-WINFIELD: Thank you.

Any other -- any other questions?

Thank you very much.

GLENN ANDERSON: Thank you.

REP. HOLDER-WINFIELD: Mary Sanders.

MARY SANDERS: I'm actually glad to sit through that because I never understood these statutes of limitations. And maybe that could be extended to include lead poisoning, because I'm just finding out that my 13-year-old grandson is being diagnosed with special needs for lead-poisoning hazardous child. So I thank them for their testimony and sharing that story.

Good evening. Let me get back on track. Senator Coleman someplace may be in the building listening to me, and distinguished members of the committee that are still here.

I am here to support Senate Bill 280 in hopes of repealing the death penalty. And at this time of the night, I have nothing new to tell you because you've heard all. My -- my

testimony is so similar to so many of them that have already been told. I had to pass out a couple of copies so they'd know that I had written this before I listened to them.

So I was taking notes and listening to people so I'll make a couple comments on that and then I'll -- I'll read through my brief testimony. I just have to say that, you know, when I listen to Senator Kissel and the sergeant that was here from the Hartford police officers talking about taking a life is heinous crime and should be appropriately punished, and hearing Senator Kissel say a little earlier some cases are deemed appropriate for capital trial, well, according to the -- to the sergeant, if, you know, taking a life is heinous crime, it should -- should apply to all murderers. You know, anybody who kills anybody and is proven to have killed that person should receive the death penalty equally.

And I really feel for the representative from Cheshire having to wrestle with -- I watched your struggle all night, you know, wondering whether you're going to vote with your conscience or vote for your constituents and, you know, you're all in hard -- hard place, so I do not envy your position, but I am asking you to vote conscience. And now I'll read my one page.

I have always believed that killing of any kind is wrong. I am against war and believe that diplomacy and civilized negotiations can resolve most conflicts. I believe in a woman's right to choose, but I am morally against abortion. I believe in letting nature take its course when people are terminally ill, but I am against euthanasia or assisted suicide. I am also against using death as a

punishment no matter the crime.

I personally believe that only God has the right to end life. How dare public officials decide whose life should be ended and whose should be saved. How can we justify using violence as a deterrent to violence? Besides, how do you decide which cases are serious enough to warrant a capital punishment trial? Aren't all murders equally illegal and traumatic for the surviving family members?

Speaking of families, there are over 100 murder victims' families right here in Connecticut asking you to repeal the death penalty. They do -- they do not want -- want more blood spent. Their loved ones will not be returned to them with the killing of the accused. Permit me to just get through this quickly. Years of appeals and court dates only serve to prolong their suffering. They have stated repeatedly that a sentence of life in prison with no chance of parole would help them to get on with the healing. Shouldn't justice take into consideration what -- what most of the victims want?

Even if you do not have moral issues with the death penalty, what about the fact that the present system is racist and unjust? According to an article published in October, African Americans make up 13 percent of the U.S. population and more than 70 -- 42 percent of death row inmates. Over 75 percent of murder victims in cases resulting in the execution were white, even though nationally only 50 percent of the victims are white.

The disparities in sentencing are disturbing enough, but the fact that since 1973 a total of 138 men and women have been exonerated or have their sentences commuted based on

post-conviction findings that proved their innocence is even more alarming.

I have figures here from Project Innocence, which you've already heard. I won't get into that. All I'll say is that people serving time served 187 years on death row for crimes they did not commit. And some people did not get the chance to prove their innocence, although their guilt may have been questioned. In one case there was evidence quite to the contrary.

On September 21st, at 11:08, Troy Davis was administered a lethal injection that ended his life at the age of 42. Accused of killing a white off-duty police officer in 1989, he maintained his innocence with his dying breath, as he done for 20 years. No weapon was ever found, there was no physical evidence, and seven of nine witnesses recanted.

Anti-death penalty advocates here and around the world worked diligently in hopes of exoneration or further investigation. Troy Davis was even denied a polygraph test. The State of Georgia was relentless and took the chance of killing an innocent man just to close the books. The family of the murder victim will never know if they got the right man and another family is left to mourn.

Many of our hearts were broken as we -- and we lost more and more faith in our criminal justice system around the nation. We have a lot of work to do right here in Connecticut with our flawed system. Repealing the death penalty would be a bold statement that Connecticut lawmakers want true and equitable justice.

Please repeal.

SENATOR COLEMAN: Thank you, Ms. Sanders.

Any questions?

Seeing none, thank you.

Lucy LeBraun.

A VOICE: That's my daughter. She had to leave.

SENATOR COLEMAN: Okay. Gregg Pompei.

GREGG POMPEI: Good evening, ladies and gentlemen of the Judiciary Committee.

SENATOR COLEMAN: Good evening.

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GREGG POMPEI: My name is Gregg Pompei. I don't represent any group or have a relative who's a victim of a violent crime. I'm strictly a private citizen.

I don't believe the death penalty should be repealed. In fact, where the case -- where the facts of the case are undisputed and there's no doubt regarding guilt, I feel it should be streamlined. I wish to discuss three important purposed the death penalty serves.

First, it incapacitates. A person who is alive in prison has the potential to cause additional severe harm to society. He can return to the general community and perform further violent acts through a number of ways: escape; parole possibly granted despite stated ineligibility for such at sentencing; administrative legislative action due to, say, crowding; pardon, as was the recent case with former Missouri Governor Haley Barbour; or

later judicial or legislative elimination of the life-in-prison-without-parole penalty.

Even while in custody, a person still alive in prison, particularly one who has no expected possibility of release, has little incentive to refrain from violent acts against prison staff, especially in the course of an escape attempt.

Second, I believe the death penalty does act as a deterrent. A punishment is most effective in preventing undesirable behavior when it is swift, severe and certain. The simple behavioral principle is universal. It works with adults and children, with people of all intelligent levels, and even with animals.

In its current form, the perception, correctly, is that, in Connecticut, even if a person is sentenced to death, there is little likelihood the sentence will be actually carried out. As a result, that deterrent effect is horribly attenuated and criminals are emboldened.

We don't want people to, quote, make a mistake and spend years reforming and redeeming themselves and apologizing to victims' families. We want them to not commit heinous crimes to begin with. We want society -- society as a whole to know that a person who commits a capital act will be put to death. I want to emphasize that, for the acts for which the death penalty can be imposed in Connecticut, premeditation is required.

For these acts, it is a choice. So we especially want someone who is deciding whether or not to intentionally take another's life to know that if he or she makes the choice to follow through with that act, he

will face -- he or she will face the severe consequence of death with swiftness and with certainty.

As part of the severity of the punishment, is how the perpetrator's execution may effect his loved ones. The existence of dependent families should not be a mitigating factor. The person considering commission of a capital act should consider how his crime and subsequent execution will affect his family before committing the act. He should know that his beloved son or daughter will permanently lose a parental relationship when -- upon execution. I'm almost done.

With crimes, in general, repentance of a criminal may be helpful to assuage harm a victim has suffered. With the case of homicide, however, it does not resurrect the deceased. We want the killing to not take place to begin with.

Since the damage of a crime is unsurpassable and irreparable, the punishment meted out to someone who has performed such an act must be equally as extreme, which leads to the purpose of the -- to the last purpose I'll discuss, retribution.

Just real quick, a person who causes harm should have to pay back to society at least the amount of harm he or she caused. When a person commits a capital murder, he or she has taken a life. The victim will never again be able to enjoy the company of others. The victim will never be able to socialize with family of friends. The same should be exacted on the perpetrator.

A life-term prisoner can still read, look out the window, meditate, exercise, write, take a

nap, socialize with others, and enjoy other life joys, albeit restrictedly. The deliberate killer and those close to him or her should be irrevocably denied all the same enjoyments of life that the victim and his or her loved ones are forever denied because of the perpetrator's depraved actions.

These are reasons why I, as a citizen of Connecticut, request that, in the long term, the death penalty be expedited and strengthened. And with regard to the immediate matter at hand, that S -- Senate Bill 280 be rejected.

Thank you, ladies and gentlemen.

SENATOR COLEMAN: Thank you, sir.

Are there questions?

Seeing none, thank you very much for your patience and your testimony.

GREGG POMPEI: And likewise. Thank you.

SENATOR COLEMAN: John Kardaras.

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JOHN KARDARAS: Good evening, members of the committee. In all of New England in the last 52 years there's been one execution. And I would suggest it was probably a state-assisted suicide in the case of Michael Ross.

We talk often about evolving, and I've heard often tonight evolving standards -- standards of decency. And as a citizen of the State of Connecticut, I'm asking the leadership, through the Legislature, helping us evolve to be more decent. That -- as leaders, we're -- we look to you sometimes to bring along the people to show leadership and to help us be

more decent.

While Senator Kissel earlier indicated that he was offended by comparing legislatures using slavery and segregation and women suffrage, I would suggest that in legislators -- legislatures all over this country, there was a time when otherwise honorable, decent and moral people advocated for slavery. They advocated for subjugation of races. They -- legislators had talked about women not having the temperament and the ability to own property and to vote.

Those all, at one time, were moral and accepted standards of behavior in this country, although, today, nobody would suggest anything along those lines. I suggest to you, over time and history, that the death penalty and capital punishment will be viewed in much the same way.
I request that the Legislature and the Judiciary Committee be on the right side of history to abolish the death penalty. We can do better as a state. We can do better.

Given the fact that no New England state has executed anybody else in 52 years, and quite a bit longer -- I don't think Maine has executed anybody in over 100 years. That -- that it's now the time. If not now, when? If not you, who? If not where, here.

Not all murderers are taken -- are -- are the same. Not all heinous crimes are even viewed the same. I am a resident of Cheshire. The same week the two -- the same week of the -- of the -- of the Petit case, in Hartford, two teenage high school students were killed execution style. I have not heard their names mentioned. They -- the arrest -- nobody has been arrested in those cases, and there's no

outcry from the city of Hartford to execute the -- two high schools students who were -- who were killed execution style that week.

The only reason I even remembered it was one of them was a classmate of my daughter's. Not all murderers get the same attention. Not all cases get the same -- get -- get the same outcry. In the State of Connecticut, in the last 350 years, we've executed people for witchcraft, for burglary, for horse thievery, for robbery, and for bestiality.

And although many crimes in Connecticut were punishable by death, other -- other than murder, nobody in 150 years has been executed who was not white for a crime for -- I'm sorry -- who was white for a crime other than murder, although robbery and burglary were -- were, at one point, death penalty offenses. Not since the 1820s has anybody other than a nonwhite person been executed for a nonmurder offense.

The time is now in our history. It is -- it is a good place to be, as well as -- we have a death row in Connecticut for the last 27 years. And at $4 million per year, that equals $108 million spent on executing one person. Even by the standards of this body, that is a tremendous waste of time, effort, energy and money that our state's precious resources could go, could be spent better on other -- on other pursuits, particularly with victims of crimes.

Death penalty is not about the victims. It's not about the perpetrators. It's about who we are as a people. And as a people in the State of Connecticut, we can do better. And I'm asking the Legislature -- I'm asking this committee to do better, to -- to raise the

standards, and to be a place where I am, as a citizen, not participating in anybody's execution because that is -- that is an act of the state. And I don't want to be a killer and I don't want my family to be killers. And we need your assistance to abolish the death penalty.

SENATOR COLEMAN: Thank you, Attorney Kardaras.

Are there questions?

Senator Kissel.

SENATOR KISSEL: Just real quick. I guess, perhaps, I take umbrage at the whole slavery thing because, once upon a time, one of my relatives was a surgeon in the union side of the Civil War. Come on, man, it's, like, you know, to make that analogy, I think, is a stretch.

Nonetheless, I appreciate where you're coming from and the fact that you've been here as long as we have, which is, what, we're approaching 12 hours, maybe even close to 13, so --

JOHN KARDARAS: This is the fifth time I was one of the last people to testify (inaudible).

SENATOR KISSEL: Yeah. You have to get better luck in pulling your number.

JOHN KARDARAS: But -- and I don't mean offense to you, Senator Kissel. But the standards of the time, there were people who advocated for things who were at -- who -- today would -- at the time were considered moral, decent and honorable people. And I don't suggest that people who are in favor of the death penalty aren't decent, honorable people. However, it

is my suggestion that history will judge otherwise.

There are no countries in North America, other than the United States, South America or Europe that employ the capital punishment, as is a good part of Africa and parts of Asia. We are among the last places on earth that -- that -- that impose that punishment. Even Israel, in all of its existence, with all the problems they've had, they've executed one person, and that was Adolph Eichmann. And if all those countries that can go through that can do without the death penalty, we can. We can do better than that.

Thank you.

SENATOR KISSEL: Well, it's too late for me to get in a fight with you, but we've only executed two people since 1960, so we're -- we're right up there with Israel, I think.

SENATOR COLEMAN: Are there other questions?

Seeing none -- well, you weren't actually last this time. There's a couple more people after you. The first of those is Michael Kass. Maybe you were last.

MICHAEL ROSA: I think you might be referring to me but my --

SENATOR COLEMAN: K-a-s-s?

MICHAEL ROSA: No. R-o-s-a.

SENATOR COLEMAN: Michael, first name, Michael, K-a-s-s, last name.

MICHAEL ROSA: Rosa, R-o-s-a. I'd be second to last. I'd be before somebody named Whitmore.

A VOICE: Yeah.

SENATOR COLEMAN: My -- my eyes are pretty bad but it looks like K-a-s-s to me.

A VOICE: (Inaudible) that's what I've got. R-o-s-a.

SENATOR COLEMAN: Okay.

A VOICE: Yes.

A VOICE: Sorry. I'll (inaudible).

SENATOR COLEMAN: Your last name again?

MICHAEL ROSA: Rosa.

SENATOR COLEMAN: R-o-s-a?

MICHAEL ROSA: Yes.

SENATOR COLEMAN: Okay.

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MICHAEL ROSA: Members of the Judiciary Committee, thank you for staying so late. Thank you for listening to all of our testimonies.

My name, again, is Michael Rosa. And I am a private citizen with no personal stake in addressing you. Senator Kissel, it may interest you to know that I lost a day's worth of work today to be here, so I'm not being compensated for my time. So just -- thought you'd be interested in that.

A VOICE: (Inaudible) my question.

MICHAEL ROSA: Hopefully, my perspective, one as a -- a social worker with a master's degree in counseling psychology, also working on

doctorate in clinical psychological, so a mental health counselor who has worked with at-risk youth and adults who have been in and out of the system, but particularly at-risk youth who have been diagnosed with oppositional defiance disorder, conduct disorder -- and I mention those particularly because those are the precursors of the sociopathy so often referenced in relation to many of the capital offenses that have been committed, the depravity with which these heinous offenses are often -- consist.

I do support the repeal legislation before you. My objections are numerous, born of research and contemplation, not a predetermined agenda fraught with convoluted logic, as -- as was suggested by one member of the Judiciary Committee today and with which I take exception.

I believe that short shrift has been given to the concept of public safety in these hearings. And the reason for that is that it seems that any time we talk about protection of the public, which I believe that incarceration is designed to do as the first line of defense, protection of the public, it seems that we deftly -- some on the committee deftly moved the conversation to issues of justice, victims' rights -- victims' rights, and other issues.

And the point I want to make here is that I want to know if -- from the -- the committee -- cannot be interest of public safety, not be advanced without putting the state in an all-encompassing -- in an all-encompassing sense of the word through the trauma, and in particularly, the victims' right families, but the entire state that gets so worked up in matters, particularly the Cheshire case and

the Michael Ross case, and high-profile cases. Wouldn't our time be better served, in terms of reforming the process, so that we move cases through, we advance business, as was mentioned so often earlier today.

And I want to bring up my -- I'll be done in a moment -- but the main thrust of my objection has to do with the trauma. And that is the main thrust of my argument in supporting repeal of the death penalty. It is brought up in the context of the deterrence debate -- and I believe it was Senator O'Neill today but I could be wrong about that -- who asked, in essence, how is that those individuals who commit such heinous crimes fail to recognize the deterrence factor in preventing them from committing such horrible crimes in the first place.

And I'd like to advance a potential response to that. Because as someone said earlier, it's pretty much -- everything else has been said today. My answer to that is you could look to brain science and, particularly, the orbital frontal cortex. That is a small region between the eye sockets and the forehead so it's located in the cerebral cortex. And this region is critical to the development of judgment and impulse control that seems to escape those that commit these heinous crimes.

It is important to note that the -- the overall frontal cortex, or OFC, as I call it, is formed, to a great degree, in the first three years of life. And it's very much an experience and environment-dependent transformation. However, exposure to various traumata associated with abuse, violence and neglect is proposed to adversely effect the maturation of the OFC, in essence, creating a

toxic environment for brain development, since the consequence of such exposure so early in life is the oversecretion of cortisol, a so-called stress hormone -- I lost my way here -- I'm sorry -- the -- the secretion of cortisol, the stress hormone that has had such a deleterious effect on a host of brain systems. Here, I speak of Dopamine, Serotonin, Glutamate, many other neurotransmitters and brain chemicals.

Instead of putting our collective energies into maintaining the current systems, I would love to see us have an equally impassioned debate on the topic of increasing funding for inter -- early intervention programs, particularly for various at-risk populations that are relevant to disrupting the downward spiral, the regressive trajectories that often result in the violent senseless acts that preoccupy so much of our time and energy.

Thank you, gentleman and lady.

SENATOR COLEMAN: Thank you.

Are there questions for Mr. Rosa? Anybody?

Thank you for waiting and thank you for your testimony.

A VOICE: Just --

SENATOR COLEMAN: Oops. Representative O'Neill has a question for you.

REP. O'NEILL: Yeah. I was going to say that you had indicated -- or made a comment that I feel needs to be corrected, and one of the things is that I'm not a senator.

MICHAEL ROSA: Oh, sorry.

REP. O'NEILL: And -- but the other thing is that the -- relating to the -- the question I was putting really was since people kept saying that they talked to their clients who had committed crimes and asked them didn't you think about this, that or other thing, like the death penalty. And the answer coming back was, well, no, they didn't think about it.

Well, obviously, they didn't think about it or if they did, they didn't think about it much because they went ahead and committed the crimes.

MICHAEL ROSA: Uh-huh.

REP. O'NEILL: People who -- upon whom deterrence would have an effect, presumably, would be the people who didn't commit a crime. And we were interviewing, if you will, the wrong subjects to try to get some sense of the impact or effectiveness, if any, of deterrence.

I mean, that was the (inaudible) of what I was getting at. I find this interesting about the -- I'll have to ask my wife about this when I get home this evening -- about the orbital frontal cortex.

MICHAEL ROSA: Yes.

REP. O'NEILL: Okay. Yeah. She's --

A VOICE: (Inaudible.)

MICHAEL ROSA: Yeah. Right.

REP. O'NEILL: Oh, I'm sure she'll be up. But she's -- she -- she has a PhD in psychology and teaches it to lots of other people so she can give me a little bit of an update on the

orbital frontal cortex as a factor here and -- and what we're trying to accomplish.

But, of course, that does raise the interesting question of, you know, should we be focusing on -- I mean, I understand you're talking about trying to prevent it, but if we were able to brain scan and determine that my orbital frontal cortex was underdeveloped and Representative Hetherington's is fully developed, should action be taken to restrain me since that seems to be a correlating factor to committing violence.

I mean, you know, what you're doing is you're taking me in a very different direction, not so much as an excuse, because I don't think it constitutes a criminal defense, some form of diminished capacity because you have an undeveloped orbital frontal cortex, maybe it does. But may I suggest that, you know, the whole concept that we're applying here is -- is the wrong one. And there -- we're suggesting that these people can't make these decisions, at least that's what you seemed to be leading towards.

MICHAEL ROSA: No, sir. Actually -- and I apologize for calling you senator. You got a promotion, though, Representative O'Neill. What I meant to say, really was I'm actually -- largely -- I think we're largely in agreement, to the extent that when -- what the research shows is that when infants, both prenatally and postnatally, are given what we be considered a nurturing child or infant-centered environment, where there is the opportunity for socialization, this fosters an explosion in the maturation of the brain systems, not just the orbital frontal cortex but the limbic system and a whole range of systems related to cognition.

And I've worked in the schools in the area and it's (inaudible) and you can pretty much see the difference when you have a student coming in who, basically, you can tell by how they're acting if they are exposed to an early environment to which it is enriching, which there is -- there's positive discipline, when there is that socialization with nurturing parenting -- parents or other primary level caregivers versus what you have -- which I was talking about in the case of some many of individuals that are introduced to the criminal justice where their early life environments were, frankly, chaotic, to say the least, and maybe worse than that.

I'm not using that as an excuse to justify their -- their acts. What I'm saying is that I think there is correlation between what we see as those individuals who can plan ahead and know that actions have consequences and those that just seem to never get to that realization or think that it does not apply to them.

SENATOR COLEMAN: Thank you very much, Mr. Rosa.

MICHAEL ROSA: Thank you.

SENATOR COLEMAN: Larry Whitmore. Larry Whitmore. Could it be a spelling error? If not, Mr. Whitmore was the last person that signed up to testify before the committee this evening. I'm assuming that everybody in the audience who wanted to address the committee has had the opportunity to do that. And that being the case, if there are no more witnesses to address the committee, I will declare this public hearing closed.

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Office of Chief Public Defender
State of Connecticut

30 TRINITY STREET, 4TH FLOOR
HARTFORD, CONNECTICUT 06106
TEL (860)509-6429
FAX (860-509-6499
susan.storey@jud.ct.gov

ATTORNEY SUSAN O. STOREY
CHIEF PUBLIC DEFENDER

TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER

RAISED BILL NO. 280, *AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES*

JUDICIARY COMMITTEE PUBLIC HEARING

MARCH 14, 2012

The Office of Chief Public Defender strongly supports the abolition of the Death Penalty in Connecticut and therefore supports the passage of SB 280. We do continue to believe the death penalty should be abolished altogether and we therefore also urge that the bill be amended to abolish the death penalty retroactively as well as prospectively.

The Legislature previously made the policy choice to abolish the death penalty in 2009. The lengthy and thorough debates that preceded passage of Public Act 09-107 explored the many reasons the death penalty is not good criminal justice policy for our State. Those reasons are even more compelling today.

- Public opinion polls show that less than half of Connecticut residents prefer the death penalty when asked whether the punishment for people convicted of murder should be the death penalty or life in prison with no possibility of release.

- Other states continue to reject the death penalty as an expensive policy that does not deliver fair or accurate results.

- The complex legal framework governing death penalty cases is mandated by the United States Supreme Court and requires extraordinary time and resources but nonetheless is prone to a high rate of error.

- Few death sentences are actually carried out. Nationally, only 15% of all death sentences imposed between 1977 and 2010 resulted in executions in that period.

- Nationally, it is not unusual for death sentences imposed for crimes committed over 25 years ago to still be in the process of court review. There are hundreds of inmates on death row in other States for crimes committed in the 1970s and 1980s.

- States that attempt to truncate appeals or post conviction review risk executing individuals who are innocent, were incompetently represented at trial, whose death sentences were obtained through police or prosecutorial misconduct, or whose juries misunderstood how to consider the evidence in deciding whether to impose a death sentence.

- The drugs used for lethal injection are increasingly difficult to obtain because pharmaceutical companies refuse to allow drugs manufactured for medical treatment to be used in executions. The pharmaceutical companies are restricting distribution of those drugs, and the courts and the federal government are stepping in to prevent States from carrying out executions with illegally obtained drugs.

- Connecticut has no system in place to ensure that the few cases in which the death penalty is sought or imposed represent only the most culpable of the much larger number of individuals who have committed capital offenses.

- Connecticut has not taken adequate steps to eliminate the influence of racial bias on the death penalty.

- A prospective repeal would be an important advance, but leaving existing death sentences in place would not fully implement the policy goals of repealing the death penalty, and litigation of existing cases would continue to consume resources that could be put to better use elsewhere.

Less than half of Connecticut residents favor the death penalty as compared to life imprisonment without the possibility of release. Public opinion polls are often cited as a reason to retain the death penalty. However, the most recent Quinnipiac University poll shows less than 50% of Connecticut residents prefer the death penalty when asked if the punishment for murder should be the death penalty or life without any possibility of release.[1] Women, young people, and Democrats all prefer life without release over the death penalty.

	Total	Women	Age 18-34	Democrats
Life/no release	43%	49%	55%	57%
Death penalty	48%	42%	34%	37%

[1] See Quinnipiac University Poll, March 10, 2011. Response to Question 42.

Other states continue to reject the death penalty. States that take a hard look at the death penalty are deciding that it is an unfair and expensive policy that has no place in their criminal justice system.

- Illinois abolished the death penalty in 2011.
- New Mexico abolished the death penalty in 2009.
- New Jersey abolished the death penalty in 2007.
- New York ended the death penalty when its Court of Appeals held it was unconstitutional in 2004 and overturned the last remaining death sentence in 2007.
- In Oregon, the Governor has halted all executions in that state for as long as he remains in office. He concluded that the death penalty was not imposed fairly because some inmates serving life sentences had committed similar crimes to those committed by inmates on death row and that Oregon's system is arbitrary because it was only executing those who volunteered by giving up their legal appeals.
- In California, a ballot initiative to repeal the death penalty is underway with the support of the sponsor of the 1978 initiative that expanded California's death penalty.[2] The Chief Justice of the California Supreme Court, a former prosecutor, has called for a reevaluation of the state's death penalty system, asking whether the criminal justice system can make better use of the state's resources.[3]
- In Maryland, the legislature changed its law in 2009 to allow prosecutors to seek the death penalty only for cases with DNA evidence, videotaped evidence of the crime, or a voluntary videotaped confession.[4] In the two cases tried under the new law, the jury rejected the death penalty, including last month's life verdict in a case involving an inmate's murder of a correctional officer where the jury found that substantial mitigation evidence called for a sentence of life without release rather than death.[5] A full repeal bill is now under consideration.
- In Kansas, a repeal bill is under consideration.

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[2] Briggs, "California's death penalty law: It simply does not work. We believed the Briggs initiative – the death penalty measure we wrote in 1977 – would bring greater justice. We were wrong." *Los Angeles Times*, Feb. 12, 2012.

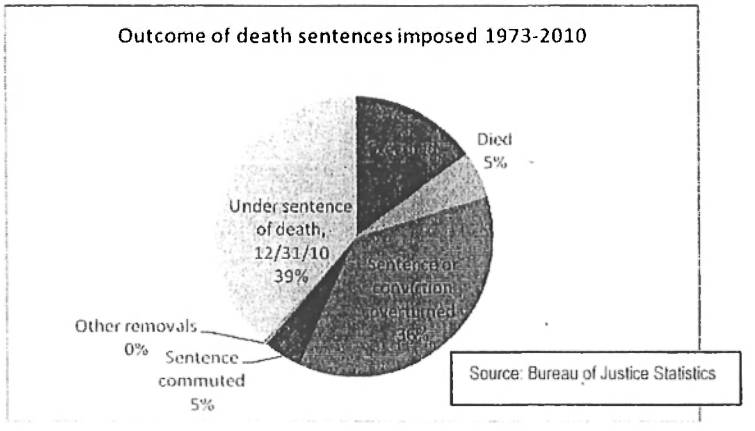
[3] Dolan, "California chief justice urges reevaluating death penalty," *Los Angeles Times*, Dec. 24, 2011.

[4] "O'Malley signs law restricting death penalty," *The Washington Times*, May 8, 2009.

[5] Rawlyk, "Inmate spared from death penalty: Stephens gets life without parole for guard killing," *Maryland Gazette*, Feb. 29, 2012; Siegel, "No death penalty for man convicted of killing prison officer," *The Baltimore Sun*, Feb. 29, 2012.

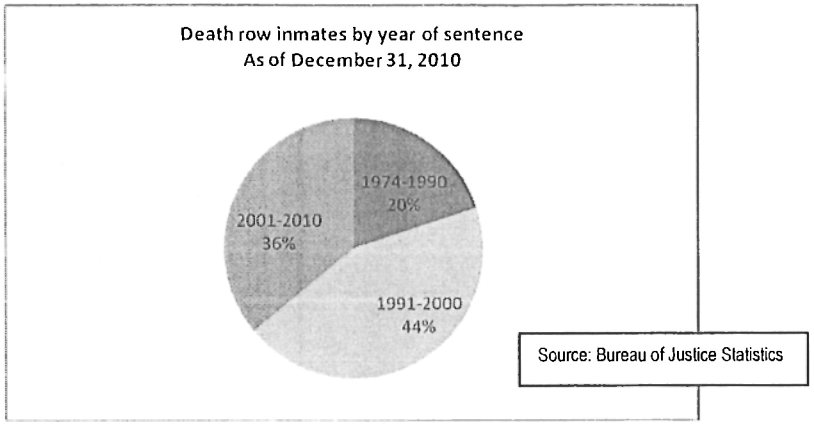
Death sentences are carried out rarely and in only a few states. There were only 43 executions in 2011, the lowest number in any year since capital punishment was reinstated in 1976. In states with death penalty laws, executions are exceedingly rare. Most occur in Texas and a handful of other states.

The vast majority of death sentences do not result in executions. The U.S Department of Justice Bureau of Justice Statistics (BJS) reports that only 15% of death sentences imposed between 1977 and 2010 in the United States resulted in executions during that period.[6] Almost half (44.3%) of inmates sentenced to death from 1977 through 2010 were subsequently removed from death row. Over a third (36%) were either overturned because of a court decision finding that the death sentence was unlawfully imposed or commuted because of questions about whether the death sentence was appropriate. Over a third (38%) remained under court review at the end of 2010, awaiting possible reversal or commutation.



[6] The Bureau of Justice Statistics collects data from the state departments of correction and the Federal Bureau of Prisons on persons held under sentence of death and persons executed during each calendar year. This information can be found at www.bjs.ojp.usdoj.gov/index.cfm?ty=pddetail&iid=2236.

In most states, it is not uncommon for death sentences imposed for crimes committed decades ago to still be in the process of court review. At the end of 2010, the BJS reported that 2022 of the 3158 inmates on death row (64%) were there for death sentences imposed prior to 2001. One in five of those (630) had death sentences imposed prior to 1991.



The few executions that are carried out occur long after the crime and the death sentence. For executions in 1973-2010, the average time between sentencing and execution was almost 15 years. For executions carried out in 2011, excluding two volunteers who gave up their appeals, the average time between sentencing and execution was 19 years. Half of the executions were for crimes committed between 20 and 33 years ago.[7]

Death penalty cases are complex and prone to a high rate of legal error. Conviction of a capital offense is only the first step in the process of seeking a death sentence. In a separate penalty phase, the prosecution must prove at least one aggravating factor. Then the jury considers the aggravating and mitigating factors to decide whether circumstances concerning the crime or aspects of the defendant's character and background suggest that a sentence of life without the possibility of release is the appropriate sentence rather than death. Those who call for the death penalty in particular cases based solely on the facts of the crime have no understanding of the more complex legal framework that governs how juries must decide whether one who has been found guilty of a capital offense should receive a death sentence.

The consideration of mitigation, sometimes criticized as focusing more on the defendant than the victims, is constitutionally mandated by the United States Supreme Court. Any State that chooses to authorize the death penalty must operate within this constitutional framework. Its purpose is to provide the sentencing process with some form of rational guidance. Because jurors in a capital case act as the conscience of the community in deciding whether or not the government may take the life of one of its citizens, they are constitutionally required to consider anything about the circumstances of the crime or the

[7] Death Penalty Information Center, Execution Database, available at www.deathpenaltyinfo.org; www.clarkprosecutor.org/html/death/usexecute.htm.

individual as a person in deciding whether death is the appropriate punishment. Any State that attempts to short circuit this process will have its death sentences overturned in federal court.

It is extraordinarily difficult for any State to get the process right. The complexity of the legal framework and the constantly evolving requirements announced by the United States Supreme Court mean that lengthy appellate and post conviction review and repeated retrials are the norm in any State that seeks to carry out the death penalty in a fair and constitutional manner. A chart attached to this written testimony gives summaries of a selection of court decisions reversing death sentences in other States in just the past year. These decisions provide a sense of the reasons for reversal that may arise in Connecticut cases, including on federal court review of cases in which the Connecticut Supreme Court has upheld a death sentence.

Attempting to truncate the appellate and post conviction review of death sentences sacrifices accuracy and fairness. Death penalty supporters sometimes suggest that we look to states like Virginia and Texas as models for how Connecticut might shorten the time between a death sentence and an execution. The rate of reversing death sentences in those states is far below the national average. This suggests that they may have a higher tolerance for error and are willing to sacrifice accuracy and fairness by moving cases more quickly so that executions are carried out without a full review of the legal errors in the case.

Connecticut's own history of wrongful convictions shows that a single appeal does not suffice to protect those who are innocent. Four individuals who served lengthy prison terms before being exonerated had their convictions upheld by the Connecticut Supreme Court years before they were released.

Name	Connecticut court decisions upholding conviction	Exonerated and released
Lawrence Miller	State v. Lawrence Miller, 202 Conn. 463 (1987)	1997, after 16 years in prison
James Tillman	State v. James Tillman, 220 Conn. 487 (1991) James Tillman v. Commissioner of Correction, 54 Conn. App. 749 (1999), cert. denied, 251 Conn. 913 (1999)	2006, after 16 years in prison
Kenneth Ireland	State v. Kenneth Ireland, 218 Conn. 447 (1991)	2009, after 20 years in prison
Miguel Roman	State v. Miguel Roman, 224 Conn. 63 (1992)	2009, after 21 years in prison

Had these men been sentenced to death, they may well have faced execution despite their innocence. In death penalty cases, where the results are irreversible, thorough and painstaking review of death sentences through direct appeal and state and federal habeas review is simply a necessary part of a system that even aspires to be fair and nondiscriminatory and to avoid the wrongful execution of innocent persons.

A person who is guilty of murder may be innocent of the death penalty. The State must prove more than the commission of a murder to obtain a death sentence. The State must also prove at least one aggravating factor and that the aggravating factor outweighs mitigating evidence that tends to support a sentence of life imprisonment without the possibility of release rather than death. Connecticut's statute also prohibits a death sentence if mental illness played a significant role in the commission of the

capital offense. If any one of these legal requirements is not satisfied, then the individual is as "innocent" of the death penalty as one who has not committed a crime is "innocent" of the crime. The attached chart of recent court decisions reversing death sentences gives examples of such cases where the State's evidence did not prove the elements required to obtain a death sentence. Those cases reinforce the need for thorough appellate and post conviction review to ensure that the State does not overstep the legal boundaries of the death penalty to seek and obtain death sentences when not warranted by the evidence.

Controversies over execution protocols and the source of drugs used for lethal injection prevent States from carrying out executions. Questions about States' execution protocols and how they obtain the drugs used for lethal injection increasingly prevent executions from going forward. Courts have put executions on hold because of questions about the lethal injection protocols in Arkansas, California, Colorado, Maryland, Nevada and North Carolina.[8] Last year, the federal Drug Enforcement Administration confiscated unlawfully obtained execution drugs from state corrections officials in Alabama, Georgia, Kentucky, South Carolina and Tennessee, and the U.S. Department of Justice has forbidden their use elsewhere.[9] Drug companies are ceasing production of drugs used in executions or creating distribution checkpoints to ensure that their drugs intended for medical use are not used for executions.[10]

Courts are stepping in to stop the execution of inmates with serious mental illness. Courts are also increasingly stopping executions when they question whether the inmate is mentally competent to be executed. A 2007 United States Supreme Court decision prohibits the execution of an individual who lacks a rational understanding of the reason he is being punished by death rather than a prison sentence.[11] A large portion of those who are sentenced to death suffer from serious mental illness, which is only exacerbated by confinement on death row. Even after years of court review that upholds a death sentence as legally valid, it is becoming increasingly common for courts to stop the execution from going forward because the person does not meet the Supreme Court's competency standard.[12]

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[8] Death Penalty Information Center, "State by State Lethal Injection Information" (available at www.deathpenaltyinfo.org).

[9] Bluestein, "Emails Show States Didn't Register Execution Drug," abcnews.go.com, May 19, 2011; Associated Press, "Tennessee, Kentucky turn over lethal injection drugs to DEA," *USA Today*, April 1, 2011; World News with Diane Sawyer, "DOJ Tells Arizona it Illegally Obtained Death Penalty Drug," abcnews.com, May 25, 2011.

[10] News Release, "Hospira Statement Regarding Pentothal (sodium thiopental) Market Exit," Jan. 21, 2011; News Release, "Lundbeck overhauls pentobarbital distribution program to restrict misuse; New specialty pharmacy drop ship program will deny distribution of pentobarbital to prisons in U.S. States currently carrying out the death penalty by lethal injection," Jan. 7, 2011.

[11] *Panetti v. Quarterman*, 551 U.S. 930 (2007).

[12] For example, in *Eldridge v. Thaler*, 2009 U.S. Dist. LEXIS 106991 (S.D. Tex. Nov. 17, 2009), a Texas federal court issued a stay on the day of the inmate's scheduled execution because of evidence of his deteriorating mental health, including his belief that prison guards were poisoning his food, his refusal to eat, and his loss of approximately 60 pounds. Other courts have halted executions in Tennessee, Pennsylvania and Mississippi due to the inmate's mental condition see*Thompson v. Bell*, 580 F.3d 423, 429 (6th Cir. 2009), *Commonwealth v. Banks*, 29 A.3d 1129 (Pa. 2011), *Billiot v. Epps*, 671 F. Supp. 2d 840 (S.D. Miss. 2009). In the Mississippi case, the court issued an indefinite stay of execution after staff at the Mississippi State Hospital refused to treat the inmate for the purpose of rendering him mentally competent to be executed.

The death penalty in Connecticut and elsewhere is imposed in an arbitrary and discriminatory manner. In the 2009 debate, many legislators said they could not support the death penalty as a legitimate policy for our State because they could not say it was free of the influence of racial bias or that it was not being randomly imposed. These irremediable flaws are only more apparent today.

Professor John Donahue addressed this issue in his study of how the death penalty is implemented in Connecticut, "Capital Punishment in Connecticut, 1973-2007: A Comprehensive Evaluation from 4686 Murders to One Execution" (2011) ("Donahue Report"). The Donahue Report provides a wealth of valuable and disturbing information for the legislature to consider in deciding whether the death penalty is an acceptable policy in our State.[13]

At the outset, Professor Donahue describes how his study of possible racial disparity and other arbitrariness was made more difficult and time-consuming because of Connecticut's failure to maintain even the most basic data on its capital punishment system.

> Unfortunately, this is a daunting task given the failure of the State to maintain comprehensive records about the treatment of cases that could be prosecuted as capital felonies. Whereas some other states – New York, for example, during its restoration of the death penalty from 1995-2004 – maintain comprehensive records on all felony arrests and the subsequent disposition of death-eligible cases, Connecticut has no central repository for the relevant data needed to undertake a study such as this one.

Donahue Report, pp. 24-25.[14]

Based on the available data, Professor Donahue identifies five main points about Connecticut's capital charging and sentencing process on which he and the State's expert witness agree:

1. There are enormous and unexplained geographic disparities.

2. Death sentences are not confined to the worst murders.

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[13] Professor Donahue' complete report is available at http://works.bepress.com/john_donohue/87/.

[14] Professor Donahue notes that the State failed to undertake any data collection even after the specific recommendation of remedial action in this regard by the Connecticut Commission on the Death Penalty in 2003. Donahue Report, p. 25. The State's continuing failure to mandate the necessary data collection means that any effort to report on the implementation of our death penalty system must be preceded by a time-consuming and labor-intensive data collection process. The responsibility for that process fell to the Office of the Chief Public Defender in connection with the racial disparity litigation ordered by the Connecticut Supreme Court. However, that data does not come close to the Commission's recommendation of requiring all agencies involved in capital felony cases to collect and maintain comprehensive data concerning all cases qualifying for capital felony prosecution, to be maintained at every stage of the prosecution, from arrest through imposition of sentence. For a complete picture of how our death penalty operates, more complete data collection and evaluation should be mandated from all agencies involved in implementing the death penalty, including the court system and the State's Attorneys.

3. There is gender bias in death sentencing.

4. There is racial bias in capital outcomes.

5. There is arbitrariness in the key charging and sentencing decisions of the Connecticut death penalty system.

See Donahue Report, p. 12. Professor Donahue explains that such results are not surprising given the complete discretion of the State's Attorneys as to charging decisions and the absence of any mechanism to ensure that decision-making at every stage of capital prosecutions is rational and fair rather than arbitrary and discriminatory.

> The pattern of arbitrary, capricious, and discriminatory decisions is not surprising to those who understand how Connecticut's death penalty works. Leaving so much discretion in the hands of thirteen different State's Attorneys invites this arbitrariness. In one judicial district a prosecutor can seek a death sentence for any case construed to fit within the contours of Connecticut's capital sentencing statute. Elsewhere, prosecutors believe that the death penalty should truly be limited – as the U.S. Supreme Court has instructed – to the "worst of the worst" murder cases. Still other Connecticut prosecutors no doubt feel considerable ambivalence about the death penalty in light of the increasing evidence concerning its lack of deterrent benefit, high cost of imposition, the frequency of errors in murder convictions across the nation (as well as in Connecticut, just in the recent past), the ever-present concerns of racial discrimination, and the fact of its infrequent application. The end result is that identical murders within Connecticut will be treated very differently depending on illegitimate factors, such as race or judicial district.
>
> Of course, the legislature initially made an effort to control the arbitrary implementation of the death penalty through proportionality review, but that device was narrow in scope and ultimately repealed. Nothing in Connecticut's current death penalty system examines whether similar crimes are treated in similar fashion – from charging decision to sentencing. There is no ongoing means to determine whether these decisions are marred by discriminatory or arbitrary patterns of capital sentencing. Indeed, since Connecticut doesn't even collect – let alone analyze – this information, the State has not been in a position to address these problems.

Donahue Report, pp. 399-400.

Unfortunately, the death penalty is not the only aspect of our criminal justice system that suffers from a lack of vigilance in collecting data and investigating and eradicating the influence of racial bias. In December 2011, the U.S. Department of Justice found a pattern or practice of biased policing against Latinos by the East Haven Police Department.[15] In February 2012, the Hartford Courant reported on its analysis of more than 100,000 traffic stops statewide in 2011 found that black and Hispanic drivers are

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[15] Letter dated December 19, 2011 from Thomas E. Perez, Asst. Attorney General to the Honorable Joseph Maturo, Jr. (available at www.justice.gov/crt/about/spl/easthavenpd.php).

significantly more likely to receive a ticket or a court date than white drivers stopped for the same offense.[16] These practices might have been uncovered and prevented earlier had the Legislature insisted upon compliance with the data collection called for by the racial profiling law passed in 1999, rather than leaving that task to journalists or federal law enforcement authorities.

Insufficient attention to the influence of race is not only unfair but can lead to wrongful convictions. Before his trial in 1989, James Tillman told the judge that he was not getting a fair trial before a jury of his peers because he had to pick a jury from panels that included no black males and only one person from Hartford. On appeal, former Connecticut Supreme Court Justice Robert Berdon urged that Mr. Tillman's conviction be reversed for this reason.

> When a black man, as in the present case, is accused of serious crimes such as the sexual assault of a white victim, that black defendant – and, indeed, the black community – cannot perceive that he has received a fair trial from a jury that is entirely composed of white persons, drawn from an array made up of very few blacks because of deliberate practices that resulted in their elimination.

State v. Tillman, 220 Conn. 487, 515 (1991) (Berdon, J., dissenting). Unfortunately, Justice Berdon was outvoted by his colleagues, and Mr. Tillman remained in prison for another 15 years for a crime he did not commit.

A year later, Justice Berdon argued that Miguel Roman's "confession" should have been suppressed because the police gave him Miranda warnings in Spanish but conducted their interrogation in English. Again, he was outvoted and Mr. Roman had to spend 17 more years in prison before establishing his innocence. In his dissenting opinion, Justice Berdon wrote of the broader implications of upholding a conviction based on untranslated interrogation.

> The issue in this case boils down to an even more fundamental question – that is, the perception of justice. When the defendant's primary language is Spanish, and the police officers insist on conducting the interrogation in English, the entire process smacks of unfairness that will result in the perception by the Hispanic community that the criminal justice system is tilted against them. This is especially true in the present case in which a police officer, fluent in English and Spanish, was available and could have provided word-for-word translation for the defendant or could have conducted the interrogation in Spanish.

State v. Roman, 224 Conn. 63, 80 (1992) (Berdon, J., dissenting).

The cases show how the pernicious influence of racial bias can affect the outcome of a case even when it is not necessarily the product of intentional racial bias. The subjective decision-making at every stage of a capital case provides many opportunities for conscious or unconscious racial bias to influence whether the defendant is charged with a capital offense, whether the death penalty is sought, and whether a jury decides to impose it. Connecticut is not alone in grappling with the problem of racial disparity and

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[16] Kaufmann, "Unequal Enforcement: Black, Hispanic Drivers Face Tougher Treatment from Police," *Hartford Courant*, Feb. 25, 2012; Editorial, "Ticketing Disparities Reveal Specter of Racism," *Hartford Courant*, Feb. 21, 2012.

arbitrariness in its death penalty system. The American Law Institute (ALI), the author of the Model Penal Code, decided in 2009 to disapprove the Model Penal Code capital sentencing provisions in part for this very reason. The ALI concluded that the framework of aggravating and mitigating factors on which most state death penalty laws are based had failed to accomplish its objective of ensuring that the death penalty is rationally imposed and not based is based arbitrary factors, including race. Two key findings of the ALI were:

- No state over the past thirty years "has successfully confined the death penalty to a narrow band of the most aggravated cases."
- It is "extraordinarily difficult to disentangle race from the American death penalty."

Report of the Council to the Membership of the American Law Institute on the Matter of the Death Penalty (April 15, 2009) at 31, 30 (available at http://www.ali.org/doc/Capital%20Punishment_web.pdf).

Other states continue to find racial disparities in their own death penalty schemes.

- In North Carolina, the legislature passed the Racial Justice Act in 2009 to give death row inmates a chance to have their sentences changed to life without parole if they proved that race played a significant role in determining punishment. In the first state court hearing under that law, the judge is considering whether a 1994 death sentence must be reduced to life without parole because of evidence of a statewide pattern of excluding black jurors from death penalty cases.[17]
- In Maryland, the Maryland Commission on Capital Punishment recommended abolition in 2008 upon finding racial and jurisdictional disparities in the death penalty and substantially higher costs in death penalty cases than those in which life without parole is sought. Former U.S. Attorney General Benjamin Civiletti, who chaired the Commission, said, "There are so many flaws within the system that we could not imagine . . . ways in which to cure it . . . It's haphazard in how it's applied, and that's terribly unfair."[18] As noted earlier, Maryland is currently considering repeal.

The Donahue Report provides important information for the Legislature to consider in deciding whether to retain the death penalty. However, the State's failure to collect the type of data being examine in other States means that there remain important aspects of the death penalty decision-making process that have not yet been explored. A full picture of the possible influence of race would need to consider whether mitigation in capital charging and sentencing decisions is considered in a racially neutral manner

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[17] Editorial, "Race and Death Penalty Juries," *New York Times*, Feb. 5, 2012. The evidence includes a study of jury selection in capital cases in North Carolina finding race to be a factor in jury selection: "We have documented the strike decisions and race for more than 7,400 capital jurors in 173 cases from 1990 to 2010. In every analysis that we performed, race was a significant factor in prosecutorial decisions to exercise peremptory challenges in jury selection in these capital cases." O'Brien & Grosso, Report on Jury Selection Study (2011) (available at http://digitalcommons.law.msu.edu/facpubs/331/).

[18] Rein, "Panel Calls for Abolition of Death Penalty; System Is Open to Error, Costs Too Much and Fails to Deter Crime, Members Say," *The Washington Post*, Nov. 12, 2008.

and the racial makeup of the juries that decide death penalty cases, including whether minority members of our communities are disproportionately excluded from participation as capital jurors.

In assessing the influence of race on our death penalty, legislators should consider not only formal reports and statistical analyses but also a far broader range of information that includes their own everyday experiences and those of their constituents. We have no safeguards in place to ensure that death penalty decision-making is immune from the influence of conscious or unconscious racial bias that continues to infect other aspects of our criminal justice system. The State's Attorneys' unreviewable charging discretion, without any guidelines or screening mechanism to provide criteria to decide when the death penalty is sought and when it is not means that we have no assurance it is being sought in an evenhanded and racially neutral manner. Nor do we have any demographic data to evaluate whether or not the juries that decide death penalty cases are truly representative of our communities.

In making policy on an issue that says so much about who we are as a State, the legislature must ask whether it can assure the citizens of Connecticut that the death penalty rationally selects the most culpable offenders and that race plays no role in that process. Based on the system as it exists today, it is simply not possible to give that assurance. That is reason enough to end the death penalty in our State.

The death penalty continues to divert needed resources away from the Division's core mission of providing effective representation to all criminal defendants. Annual costs for capital defense now require over 8% of the total Public Defender Budget for only .04% of total Public Defender caseload. The expenditures required in capital cases have doubled over the past six years.

FY 05	$ 1,990,224	5.0%
FY 06	$ 2,586,177	6.1%
FY 07	$ 2,336,315	5.4%
FY 08	$ 2,383,334	5.0%
FY 09	$ 2,497,065	5.2%
FY 10	$ 3,400,000	7.0%
FY 11	$ 3,813,443	8.19%

Allocating such a significant portion of our resources to such a small number of cases diverts resources from providing effective representation to all of our clients. Thorough investigation and skilled advocacy are crucial to prevent the wrongful conviction of innocent persons and to ensure just results for those who are properly convicted. The resources we currently must devote to capital cases would be far better utilized in support of this core mission of the Division of Public Defender Services. Furthermore, I have requested that the Appropriations Committee provide us with additional funding for five additional positions for our Capital Defense Unit if the death penalty is not repealed prospectively. The Division is unable to provide sufficient resources to remain in compliance with ABA and Public Defender Commission standards for representation in the most serious of cases.

A prospective repeal will retain the remnants of a costly and unjust system. After New Mexico abolished the death penalty prospectively in 2009 without taking action to commute existing death sentences, the New Mexico Supreme Court refused to halt the capital prosecution of Michael Astorga pending at the time of the repeal from going forward. The Court instead held that the trial judge could instruct the jury that they could consider the prospective repeal in their deliberations. That case is now in

the process of jury selection, with over 2500 potential jurors being called for possible service.[19] This case and the two other remaining death sentences are expected to be litigated for years to come.

The Office of the Chief Public Defender continues to support complete abolition of the death penalty. The prospective repeal in SB 280 will still require us to continue to devote extraordinary resources to litigating the cases of clients with death sentences or those who remain subject to capital prosecution. At some point, it will be necessary for the state and federal courts to decide the effect of the prospective repeal on these individuals. While we certainly believe there are valid constitutional arguments against carrying out their death sentences, there is simply no way to predict what the courts will do. Our Office has apprised the Governor's Office and the Appropriations Committee that should this legislative session not result in prospective abolition of the death penalty at the very least, our Agency will require five additional staff for the Capital Defense Unit in order to comply with ABA Standards for Representation in Death Penalty Cases and Public Defender Commission Guidelines.

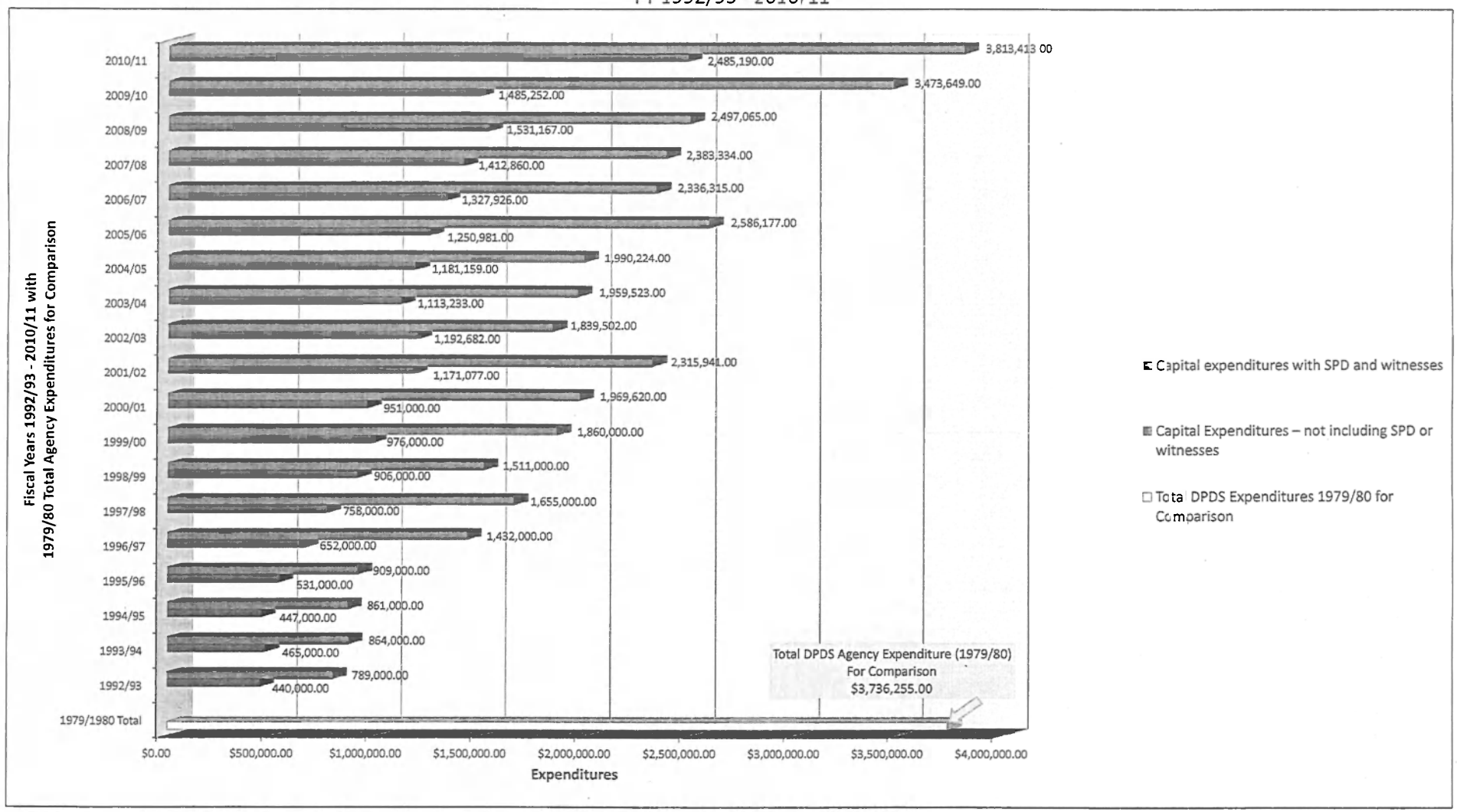
Position	Number Requested	Cost Per Position	Total Cost
Attorney	3	$ 111,882	$ 335,646
Mitigation Specialist	1	$ 77,753	$ 77,753
Investigator	1	$ 72,009	$ 72,009
Total	5	$ -	$ 485,408

In conclusion, the Office of Chief Public Defender supports this bill, but we would ask this Committee to also seriously consider abolition of the death penalty in all cases.

[19] Contreras, "N.M. high court: Death penalty trial to go on," www.santafenewmexican.com, Sept. 1, 2011; Associated Press, "Santa Fe residents to receive 2,500 jury summons for death penalty case," www.santafenewmexican.com, Feb. 10, 2012.

Connecticut Division of Public Defender Services

Capital Defense and Trial Services Unit Expenditures
FY 1992/93 - 2010/11



002926

Legislative Office Building
Room 3300
Hartford, Connecticut 06106-1591

State of Connecticut
Senator Donald E. Williams, Jr.
President Pro Tempore

860-240-8600
Williams@senatedems.ct.gov
www.senatedems.ct.gov

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Testimony of

Senator Donald E. Williams, Jr.
Senate President Pro Tempore

Wednesday March 14, 2012

Judiciary Committee

Senator Coleman, Representative Fox, members of the Judiciary Committee, thank you for allowing me to testify today on ***S.B. 280, An Act Revising the Penalty for Capital Felonies***.

I have always been opposed to the death penalty. I believe Connecticut's ultimate criminal penalty should be life in prison without the possibility of parole.

Reasonable people can disagree about the death penalty, and I respect the views of those who favor it. My view, however, is that there are many reasons it does not belong in Connecticut's system of justice.

First, it is a penalty that once exacted can never be revisited. No system of justice is perfect, and mistakes are made in our criminal courts. We have all read about cases where individuals are wrongfully convicted based on false testimony or flawed evidence. When those wrongfully convicted are lucky enough to have witnesses recant, or new technology proves their innocence, they are released. There is no way to give them back the time they lost in jail, but they may attempt to rebuild their lives.

Mistakes are made in death penalty cases. Last year, Illinois became the sixteenth state to repeal the death penalty after it was shown that a number of inmates on death row had been wrongfully convicted; one inmate was days away from execution when another person confessed to the crime. That particular mistake was not caught by the criminal justice system. It was not part of an appeal or court action. It was random luck. The confession came about because of a project conducted by law students. Illinois is not alone; similar concerns have been raised in almost every state that has the death penalty, and over the years at least 138 individuals on death row have been exonerated and released.

When the death penalty is carried out, there is no opportunity to correct mistakes. In a system of justice that is not perfect, we must not employ a penalty that requires perfection.

There are many other reasons to change Connecticut's ultimate penalty from death to life in prison without the possibility of parole.

The death penalty is not a deterrent to crime. In recent polls, police chiefs ranked the death penalty as the least effective tool in reducing the rate of violent crime, compared to other crime fighting tools such as curbing drug abuse and increasing the number of officers on the street.

Economics plays a discriminatory role in who is charged with and convicted of a capital offense. Individuals who can afford a "dream team" of defense lawyers are not often sentenced to death when they have committed crimes similar to others on death row. Prosecutors are deterred from pursuing the death penalty when defendants have the financial means to employ costly experts and defense counsel.

Race often plays a role, and when combined with economics is doubly discriminatory. Blacks and whites have been the victims of murders in almost equal numbers in America, yet eighty percent of the people executed since 1977 were convicted of murders involving white victims. Black defendants are more likely to be sentenced to death if their victim is white rather than black, and murderers of Black and Latino victims are treated less harshly than murderers of white victims.

There is simply an unacceptable randomness to the death penalty. In a study of all Connecticut death penalty cases over a thirty-four year period ending in 2007, Stanford law professor John Donohue found virtually no difference between the severity of crimes committed by defendants on Connecticut's death row, compared to other violent offenders sentenced to life in prison or lesser terms. During those thirty-four years there were 4,686 murders in Connecticut. Of those, only ninety-two cases resulted in a conviction of a capital felony. And of those ninety-two cases, just nine defendants were sentenced to death. Professor Donohue concluded that "the state's record of handling death-eligible cases represents a chaotic and unsound criminal justice policy that serves neither deterrence nor retribution.... arbitrariness and discrimination are defining features of the state's capital punishment regime."

The punishment of life in prison without the possibility of parole makes more sense. It is a severe punishment. It does not require those victimized by violence to relive the crime through multiple post-conviction hearings and appeals that are required by the death penalty, and often last many years. Life in prison without parole is a sentence that is certain and final.

Here in Connecticut, it is important that we strive to have a system of justice that is consistent, fair, and free from prejudice as is humanly possible. That is why I support repealing the death penalty. Thank you.

SENATOR MARTIN M. LOONEY
MAJORITY LEADER

Eleventh District
New Haven & Hamden

State of Connecticut
SENATE

State Capitol
Hartford, Connecticut 06106-1591
132 Fort Hale Road
New Haven, Connecticut 06512
Home: 203-468-8829
Capitol: 860-240-8600
Toll-free: 1-800-842-1420
www.SenatorLooney.cga.ct.gov

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March 14, 2012

Good Afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee. I am here to testify in support of SB 280, An Act Revising the Penalty for Capital Felonies.

In 1994 Justice Harry Blackmun, who at one time had been a proponent of the death penalty wrote in dissent in Callins v. Collins, "From this day forward, I no longer shall tinker with the machinery of death." After many years on the United States Supreme Court, Justice Blackmun recognized the reality that the death penalty cannot be applied in a fair and impartial manner and there can be no guarantee against error. The State, as a fallible human institution, should not have the power to take a human life and to act with hubris and arrogance when humility and restraint should prevail.

Last year, we chose not to address this issue because, in Connecticut, it was nearly impossible to consider the death penalty without reference to the shocking and horrific crimes in Cheshire committed in 2007 and resulting in death penalty trials in 2011. It is important now to clearly separate objective reality from understandable human emotion. The bill before you is entirely prospective and thus will not alter the fate

of the Cheshire defendants or in fact any person who commits a capital felony prior to the passage of this legislation.

Executing criminals who have committed the worst crimes does not restore lost or shattered lives, it does not make our state safer, and it does not provide financial savings. More importantly though, our criminal justice system is simply not sufficiently immune from error to entrust with the ultimate penalty. We know that the system has convicted innocent people; the death penalty will eventually execute an innocent person here as it has in other states. James Tillman, Miguel Roman and Kenneth Ireland all served lengthy prison terms in our state before their exonerations. A wrongful conviction is tragic; a wrongful execution is tragic and unforgiveable. It is also entirely avoidable by passing this legislation. Wrongful execution is simply not a risk that we can accept.

To date, since 1973, 140 people throughout the United States have been released from death row due to improper prosecution or outright innocence. During the same period, more than 1,284 people have been put to death. This ratio of 1 release from death row for every 9 executions is deeply troubling. It demonstrates what we all know: the government is not infallible. It makes errors and this kind of deadly error cannot be undone. Former U.S. Supreme Court Justice John Paul Stevens called his vote to reinstate the death penalty as "the one vote I would change."

Not only does the government make errors and put innocent people on death row, but as Justice Blackmun explained, the death penalty is not meted out fairly. Application of the death penalty has been shown to be racially biased. Furthermore, a person is much

more likely to receive a death sentence if he or she murders a white victim. The death penalty is often unevenly applied. Differences in the exercise of prosecutorial discretion have led to a disproportionate number of people being sentenced to death in certain judicial districts. Such disparities are indicative of an arbitrary and capricious system. There is no consistent standard for the application of the death penalty. Our own statute in allowing the weighing and balancing of mitigating vs. aggravating factors introduces the possibility of dangerous subjectivity producing different results in cases where the circumstances are virtually identical. What if the prosecutor is more eloquent and persuasive than the defense counsel? Should life or death hang in the balance? What if the conviction is achieved by perjured or simply mistaken testimony? What if there is an undiscovered bias held by one or more jurors? The choice between life and death should not depend on the quality of legal representation and the vagaries of the trial process.

Some argue that in cases of the most heinous crimes, the death penalty saves resources. This argument does not square with reality: the costs of capital felony cases are significantly higher than the costs of non-capital felony cases. Others argue that the death penalty will be a deterrent. The death penalty is not a deterrent to violent crime. We must remember that the terrible Cheshire crime occurred after the execution of Michael Ross.

The south has the highest execution rate and the highest homicide rate – a rate that has risen as the rates of executions have risen, while in the northeast, the homicide rate is the lowest in the country and there have been no executions in the last decade other than Michael Ross. The 16 states without the death penalty have a significantly

lower (25%) homicide rate than the 34 states that have it. The death penalty is simply retribution and retribution solves nothing and is not a rational part of our criminal justice system. We must not as a state and nation take lives for the sake of vengeance. Killing human beings is wrong whether done by the state or by a criminal. Certainly there are criminals who should never be at large in society; that is why we must have the option of life in prison without parole.

I again cite Justice Blackmun: "It is virtually self evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question--does the system accurately and consistently determine which defendants "deserve" to die?--cannot be answered in the affirmative. It is not simply that this Court has allowed vague aggravating circumstances to be employed, relevant mitigating evidence to be disregarded, and vital judicial review to be blocked, The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution."

The death penalty offers no constructive contribution to society's efforts to defeat violent crime, and in fact diverts resources and energies from such efforts. Finally, the death penalty undermines a civilized society by perpetuating the idea that life is disposable at the hands of our fellow human beings.

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CONNECTICUT INNOCENCE PROJECT

State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

c/o McCarter & English
CityPlace 1, 36th Floor
185 Asylum Street
Hartford, CT 06103
e-mail: Karen.A.Goodrow@jud.ct.gov
(860) 275-6140 Telephone
(860) 275-6141 Fax

KAREN A. GOODROW, ESQ.
DIRECTOR

TESTIMONY OF
KAREN A. GOODROW, DIRECTOR,
CONNECTICUT INNOCENCE PROJECT

Raised Bill No. 280
An Act Revising the Penalty for Capital Felonies

Judiciary Committee Public Hearing
March 14, 2012

My name is Karen Goodrow and I am the Director of the Connecticut Innocence Project, which is a part of the Division of Public Defender Services. **We support Raised Bill No. 280, An Act Revising the Penalty for Capital Felonies** which would repeal the death penalty prospectively, and impose a sentence of life without the possibility of release for all capital felonies.

I. Mistakes are made.

As has been demonstrated by the recent exonerations of James Calvin Tillman, Miguel Roman and Kenneth Ireland, mistakes are sometimes made in our criminal justice system, even here in the State of Connecticut. Both Mr. Roman and Mr. Ireland were facing potential capital offenses and death penalties based upon the facts of the cases for which they were wrongly convicted. Both individuals spent over twenty years in prison before new DNA evidence proved their innocence. Had the State of Connecticut pursued a death sentence against them, and had no DNA evidence existed to prove innocence, it is likely that each would have received a death sentence and been erroneously executed. Additionally, had the victim in Mr. Tillman's case lost her life in the course of the brutal attack, Mr. Tillman would likely have been convicted of capital felony and received a death sentence.

II. Cases of innocence are extremely difficult to prove.

The Innocence Project estimates that less than ten percent of all criminal cases contain evidence of DNA. See www.innocenceproject.org. Proving someone's innocence is extremely difficult, particularly since these cases often come to the attention of the Innocence Project years after the conviction. Often, the causes of wrongful convictions involve mis-identifications, informant testimony, unreliable confessions, credibility of witnesses, and circumstantial evidence. In the vast majority of the cases reviewed by the Connecticut Innocence Project, and by other projects which review non-DNA cases, no DNA evidence exists to prove innocence. Indeed, the fact that there existed DNA evidence to prove the Innocence of Mr. Tillman, Mr. Roman and Mr. Ireland is highly unusual; they are considered among the "lucky" few whose cases and demonstrations of innocence turned on DNA evidence. However, approximately ninety percent of the cases of claimed innocence either consist of no DNA evidence, or the DNA evidence that exists is insufficient to prove innocence. In recognition of the daunting task of proving innocence in non-DNA cases, the Department of Justice created a Wrongful Conviction Grant for the purpose of funding such cases. In 2011, the Connecticut Innocence Project was awarded funding from the Grant to further its work on non-DNA cases.

III. There exists a risk of executing an innocent person.

There exists a very real risk that a death penalty will be imposed on an innocent citizen of the State of Connecticut. DNA is not a magic bullet which can ensure that innocent people will not be wrongfully convicted and executed. The vast majority of criminal cases do not contain DNA evidence. The irreversible imposition of a death sentence simply cannot be remedied by the mistaken belief that DNA will set the innocent free. It is difficult to quantify the level of risk of a wrongful execution due to the fact-specific nature of criminal cases. However, the FBI estimates that in 24% of all cases where an individual was arrested or indicted based on non-DNA evidence, subsequent DNA testing excluded the defendant as the perpetrator. See Testimony of Barry C. Scheck, Commission to Study the Death Penalty in New Hampshire, May 14, 2010, citing Office of Justice Programs, National Institute of Justice, Department of Justice, *Convicted by Juries, Exonerated by Science: Case Studies in the use of DNA Evidence to Establish Innocence after Trial*, 20 (June, 1996).

IV. Repeal of the death penalty is consistent with protecting the innocent and ensuring that our justice system functions in a fair and reliable manner.

In the past several years, Connecticut has been in the process of adopting reforms to protect the innocent, and to insure fairness and reliability in our justice system. In 2007, in the wake of our first DNA exoneration, the Legislature passed a Special Act to compensate Mr. Tillman for his wrongful conviction and incarceration. That same year, the Legislature enacted a compensation statute for the wrongfully convicted, and ensured that the Office of the Chief Public Defender receive designated funding for the Connecticut Innocence Project. In 2011, the Legislature established the Eyewitness Identification Task Force, charged with the duty of examining the procedure by which law enforcement administer photographic arrays to eye-witnesses for purposes of obtaining identifications. At the same time, the Legislature mandated the use of "double blind" administration of identification procedures. The recommendations of the Task Force are the bases for proposed statutory changes, and training protocols, in eye-witness identification procedures. Also, in 2011, Gov. Malloy created the Governor's Forensic Lab Working Group to address various concerns and challenges existing at the State of Connecticut Forensic Laboratory. All of these efforts by the State of Connecticut exist in large measure to insure that the innocent are protected, and that our criminal justice system functions in a fair and reliable manner.

It is said that "death is different." The death penalty *is* different; it is finite and it is irretrievable. We, as stake-holders in the criminal justice system, are incapable of knowing with certainty that an innocent person will not be executed. Repeal of the death penalty is consistent with protecting the innocent and insuring that our justice system functions in a fair and reliable manner. A fair and reliable justice system is one in which mistakes can and will be corrected. Execution of an innocent person can never be corrected. In order to fully protect the innocent, repeal of the death penalty is necessary.

KEVIN KANE

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State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary
March 14, 2012

S.B. No. 280: An Act Revising the Penalties for Capital Felonies

The Division of Criminal Justice expresses its appreciation to the Committee for affording this opportunity to present testimony concerning S.B. No. 280, An Act Revising the Penalties for Capital Felonies. The Division would again reiterate our testimony from previous years: the question of whether there should or should not be a death penalty is a fundamental question of public policy that depends on the evolving standards of the people of the State of Connecticut. It is the elected members of the General Assembly who must act in accord with their perception of these standards. Notably, however, if polls are an indicator, Connecticut's citizens strongly support the death penalty. We must reiterate that we as prosecutors have a sworn, constitutional responsibility to enforce the law as established by the General Assembly and Governor and interpreted by the courts.

Regarding this policy debate the argument that the death penalty should be repealed because it is unworkable ignores the fact that the federal government and other states have made their death penalty process workable, reliable and relatively timely, through legislation and rules of court. The Connecticut General Assembly and Judicial Branch have the same power and authority to do so. To use the argument that the death penalty is unworkable as an excuse to abolish it is deceptive.

Whether repeal of the death penalty will result in substantial cost savings is another matter that that needs to be examined closely, not superficially. At least through the trial and sentencing stage the costs of prosecution will not be reduced substantially. Even in appellate and post-conviction proceedings the amount of savings are difficult to determine because of the likely increase in habeas petitions that will be filed if there is no habeas reform. Many of the costs and the accompanying delays are caused by the extremes to which those opposed to the death penalty will go to prevent an execution. While some of these costs are legitimate to ensure a strong defense, many are not. An examination of the costs incurred prior to the execution of Michael Ross, if it is possible, would shed some light on this issue.

Given the complexity of the legal issues and extensive deliberation that must be undertaken at all stages of a capital prosecution, the Division must urge the Committee to proceed with the utmost of caution as you consider S.B. No. 280 and to fully and thoroughly consider all of the potential implications that even the slightest change to the capital felony statutes could have

both in terms of policy and practice. Such considerations must include, but not necessarily be limited to:

• The notion that the death penalty can be repealed prospectively, as envisioned by S.B. No. 280 is tenuous at best. Prospective repeal of the death penalty will create two classes of people: one will be subject to execution and the other will not, not because of the nature of the crime or the existence or absence of any aggravating or mitigating factor, but because of the date on which the crime was committed. While the Division would not presume how the courts would rule, there is an extensive body of existing law that suggests the obvious argument that it would be untenable as a matter of constitutional law or public policy to execute someone today who could not be executed for committing the same conduct at a date in the future. Again, the Division will perform its sworn duty to enforce death sentences but that will be all the more difficult once this body adopts a policy eliminating that punishment.

• The repeal of the death penalty, whether prospectively or retroactively, will result in little if any financial savings to the state in the long term. In fact, the Division of Criminal Justice may actually realize greater demands with life in prison without the possibility of release as the sole penalty for a capital felony. Death penalty litigation will go away only to be replaced by as much and possibly more litigation challenging convictions and/or sentences of life without release. And as our experience with habeas matters clearly shows, such litigation will likely continue unabated throughout the entire lifetime of the inmates so sentenced. The state is no longer litigating the Michael Ross case but it is litigating numerous successive complaints brought by petitioners with long sentences who clog the system.

• The prosecution of death penalty cases in Connecticut today is not a matter of delaying the inevitable but rather one of inevitable delay. Any question of the actual guilt of those convicted in the oldest cases still pending was resolved many years, if not, decades ago. The cases have been tried – and in some cases retried – and then affirmed on appeal by the highest court of this state. Yet the duly ordered sentence of the court has not been carried out. These oldest cases are not cases where the inmate will be exonerated through DNA technology. Guilt is not at issue; it is delay and delay solely for the sake of delay.

The processes for trial and direct appeal in death penalty cases are rigorous and thorough – as they should be. The post-conviction process, however, has become a wasteland into which excessive amounts of money are dumped and through which the families and friends of victims are forced to wander as these proceedings drag on for years. It is inhumane that the innocent families of innocent victims of violent and unspeakable crimes should be subjected to the terror of decades of legal maneuvering before the punishment lawfully ordered by our judicial system can be carried out. Rather than requiring all parties to work for the lawful and efficient resolution of claims, our lack of legal and procedural boundaries on post-conviction proceedings permits and even encourages the defense bar to prolong death penalty cases for as long as possible and to spend as much as possible to prevent a final resolution. The sole reason for the reported high cost of capital litigation is delay for the sake of delay and not incompetent counsel or overzealous prosecutors. In effect, the argument has become that it costs too much to execute a guilty person but that it can never cost too much to spare that same person from duly and rightfully ordered execution.

In conclusion, the Division of Criminal Justice strongly recommends that the Committee carefully examine all of these issues in your deliberations on S.B. No. 280. Connecticut should not abolish the death penalty solely because those who oppose it have been so successful at achieving delay for the sake of delay rather than allowing the facts of each case to be finally adjudicated and the law rightfully applied. To allow delay for the sake of delay to effectively remain the law of the land is a grave injustice to the victims of these heinous crimes, their families and a disservice to jurors, ordinary citizens who gave of their time, energy and emotions, evaluated the evidence and decided that a fellow citizen should be executed. It is not possible to provide true closure to for the loss of a loved one. The best that we can and must strive for is finality to the process.

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Daryl K. Roberts, Retired Chief of Police, Hartford PD

In Support of SB 280 to Repeal the Death Penalty

I have been a police officer for more than half of my life. For thirty years I served as everything from a line officer to the Chief of police. For the last 5 years I had the honor of serving as the Chief of Police for the Hartford PD.

I can tell you with professional certainty: the death penalty does nothing for law enforcement. My goal as an officer is to serve our communities, keep them safe, work to prevent crime, and when needed, solve crimes and apprehend offenders. There are lots of things that help police do this work effectively – sufficient training and support in the department, as well as elements in the communities like

For serving our communities, the death penalty is irrelevant. The notion that the death penalty is a deterrent is absurd. People argue about what the data says about deterrence, but I can say based on over thirty years of dealing with the most hardened and calculated offenders: the death penalty is not a deterrent. I have seen the "worst of the worst" that you read about. I know how they think and I can assure you they do not consider the death penalty. Having the death penalty or not will have no effect on these individuals because they do not expect to get caught. Many are mentally ill, or acting in a moment of passion, or are sociopaths with delusions of grandeur and never expect to be caught. The death penalty is the farthest thing from their minds.

Police chiefs from around the country have agreed with me on this. In a 2009 survey, randomly selected police chiefs from around the country were asked to rank the death penalty as a tool for deterring violent crime. The vast majority of Chiefs listed the death penalty as the lowest priority. Of course they did, because the death penalty does nothing to help us with our work.

In fact, from all I've experienced, I think the death penalty is in fact a hindrance to law enforcement. I have devoted my career to developing programs that we know would help keep our communities safe: educational programs and programs for community involvement. Some of these programs are suffering in these times of tough budget cuts. If given the choice between our ineffective death penalty or effective community crime prevention programs, I would choose the latter every time.

Finally, I see time and again how the death penalty does nothing to help surviving victims. I say this as both a first responder and the cousin of a murder victim. My cousin was murdered one day when a gang-banger shot 8 people in a crowd in Hartford. The death penalty in CT did nothing to prevent this murder, victims' families like law enforcement, want programs that will stop crimes from occurring in the first place – this is our priority. Additionally, I've seen how the death penalty process can ensnare some families in a decades long wait for finality. This is wrong.

Over the last three decades working in law enforcement time and again I have seen what officers, victims, and communities need, and I assure you it is not the death penalty. It death penalty is irrelevant at best, a tremendous distraction at worst. Please repeal the death penalty this year.

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Anne Stone, Murder Victims' Family Member, speaking in support of SB 280

I offer testimony as one of 179 murder victims' family members in Connecticut who are concerned about the death penalty and speaking out for repeal. Last year there were 76 of us and because of the many reasons the death penalty has harmed us, our numbers have more than doubled.

Our son, Ralph, was brutally stabbed to death during a robbery in his condominium in Washington, D.C.

We learned of his murder shortly before midnight in July of 1997, and by morning we were on a flight to D.C. The police response was horrifyingly inadequate as we were directed to the wrong police station, and when we found our way to the correct police station, there was no one available to talk with us. Not until late in the evening did a detective come to where we were staying to give us details of the murder.

In the end, Ralph's murder was never solved, and was labeled a "cold case" – one of those cases all but forgotten by society. But for us, the case will always be remembered and it is very difficult not having more information about what happened to our son, or some legal finality and accountability.

Right now in Connecticut it is estimated that there are nearly 900 cold cases that could be investigated because there is a living witness or suspect. But there are only 16-20 cases being actively investigated by the Prosecutors cold case unit and they've said that they aren't going to take any more cases. The state's Chief Prosecutor has said there simply aren't the resources to fully investigate all the cases. A year ago the cold case unit had 22 inspectors, and now only has 13, with budget shortfalls threatening even fewer personnel will be able to work on the many cold cases in Connecticut.

It breaks my heart to know there are so many families like ours living with uncertainty and wishing that someone in authority would care enough to pay attention to our cases. Not to mention how alarming it is that there are maybe 900 murderers loose on the streets.

Then I think about the death penalty. The notion of the death penalty never brought my family any solace. In fact, we were relieved to learn that Washington D.C doesn't even have the death penalty, because we knew what a roller coaster ride the process would be for our family. But we spend millions of dollars ever year to keep the death penalty, while 900 families like mine are left without answers.

This doesn't make any sense to me at all. Of course hard decisions have to be made when resources are finite. But to spend millions on a death penalty system that affects a handful of cases, while hundreds of families are desperate for answers seems like the wrong choice for Connecticut victims.

I hope the legislature will take the important step of repealing the death penalty so we stop squandering resources that could be put to much better use.

Testimony before the Judiciary Committee
March 14, 2012

In SUPPORT of SB 280
An Act Revising the Penalty for Capital Felonies

Dr. Khalilah Brown-Dean

Chairman Coleman, Chairman Fox, distinguished members of the Judiciary Committee, thank you for the opportunity to address you today. My name is Dr. Khalilah Brown-Dean. I am an Associate Professor of Political Science at Quinnipiac University. And the Second Vice President of the Theta Epsilon Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated.

Today I am here to speak in support of SB 280, which would repeal Connecticut's death penalty. As a professor, I have spent 10 years analyzing and quantifying the impact of crime and punishment on community. The death penalty does nothing to keep us safer – the statistics on crime rates and deterrence make that point abundantly clear. Yet we hold on to this system, and turn a blind eye as it continues to be applied in a biased manner.

I long have understood the death penalty's flaws from the detached perspective of a social scientist. But last year, I came to understand this issue in a much more personal way.

On February 20, 2011, my 21 year-old cousin, Brian Anthony Patterson, was gunned down while attending a party. A 19 year old stood over Brian, and pumped 9 shots into his body as others scrambled for safety.

Brian was a star scholar athlete. He was a son. A beloved big brother. And a cherished cousin. Brian's life mattered.

Last month, the young man who murdered Brian was sentenced to 31 years in prison. At no point did the thought of possibly losing his own life, prevent that young man from taking Brian's. There is simply no deterrent factor to the death penalty.

There are those who say that the death penalty is about bringing closure for victims' families. For us, there is no closure. No sense of peace.

Because the arbitrary way in which we decide which lives are more important, leaves us with a system that is far from just. We know that there are disparities based on class, race, and gender when it comes to who is more likely to receive a death sentence.

To families whose innocence has been shattered in an instant, every loss is heinous. None less painful than another regardless of the circumstances.

Some believe that the answer is to shorten the appeals process. But we know that 140 people have been released from death row due to new evidence. Rushing an execution doesn't bring justice. Instead, it only raises more doubt.

This is not about being soft on crime or coddling criminals. It's about being *smart* on crime and consistent in our values.

As families who fight to honor and affirm the beautiful lives that were taken away from us, we cannot be complicit in taking the life of another.

Who we are as a state, and as a nation, depends on our ability to extend humanity to others. *Even* as they deny it, in themselves.

For when we fail to do so, we become that which we despise. That which we reject. That which we condemn.

Whether at the hands of a brazen 19 year old at a party driven by rage, or at the hands of the state, there is simply no justice in taking the life of another.

Thank you.

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State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591

REPRESENTATIVE CHARLIE L. STALLWORTH
ONE HUNDRED TWENTY SIXTH ASSEMBLY DISTRICT

LEGISLATIVE OFFICE BUILDING
ROOM 4050
HARTFORD, CT 06106-1591

HOME: 203-345-3416
CAPITOL: 860-240-8585
TOLL FREE: 1-800-842-8267
FAX: 860-240-0206
E-MAIL: Charlie.Stallworth@cga.ct.gov

MEMBER
FINANCE, REVENUE AND BONDING COMMITTEE
HIGHER EDUCATION AND EMPLOYMENT
ADVANCEMENT COMMITTEE
PUBLIC HEALTH COMMITTEE

March 14, 2012

To Chairs Coleman and Fox, ranking members, and members of the Judiciary Committee

My name is Charlie Stallworth, state representative, serving the 126th District, Bridgeport.

Thank you for the opportunity to come before you today. I am here to speak in support of SB 280. I believe the death penalty in the State of Connecticut should be repealed.

Prior to serving our state and my district, I have served as a pastor of a church in Bridgeport and as an adjunct professor at Hartford Seminary. I have been in ministry for the past 32 years and have taught on the seminary level for the past ten years. Therefore, one might believe my approach to this matter and my appearance before you would be strictly religious, resting on the tenants of theology and morality. Though I have strong theological and moral beliefs that guide my life and my capital punishment, my purpose here today goes far beyond In other words, I did not come to preach to you today but speak with just as much passion and purpose.

The death penalty in Connecticut is an inherently flawed law that should be repealed.

We have seen over and over again the many mistakes made in the application of the death penalty. Sometimes we get the wrong person. Even more horrifying is when a person who has been executed has subsequently been found to have been innocent. Across the country 140 innocent persons have been freed from death rows. There could be a number of reasons why someone was wrongly convicted, such as, mistaken identification, bad police work, and so forth. Over twenty years ago, I attended a seminary with a young man who had spent 27 years in prison, before being freed for a crime he did not commit. I talked with him daily and was often moved by his faith and determination. Yet, in the back of my mind I always struggled with the thought of how we could get it so wrong, while being a thoughtful, intelligent, and good willed society. Our society is better. We are better!

But just getting it wrong is not the only problem. The way in which we select who lives and who dies in Connecticut is another flawed aspect of the death penalty's application. An extremely thorough report by Professor John Donohue of Stanford Law School examined all the murders in Connecticut over the last thirty years and concluded that our state's death penalty is applied in a racist manner.

When all other factors are accounted for, the race of the defendant and the race of the victim are strong determinants as to whether or not the state will seek the death penalty. Professor Donohue's study concluded that a defendant is 6 times more likely to be sentenced to death in Connecticut if the defendant is a minority and his victim was Caucasian. This is a deadly racial bias. In other words, my brothers, my sons, and many of my friends are more likely to get the death penalty, even if they arrested the wrong person, than many of you. And the reason is skin color!

My father served this country in the military, retired and then made Civil Rights his issue. I often attended meetings with him and because of that I have been fighting for civil rights my entire ministry and I know the death penalty is an important civil rights issue in our time. One theologian has put methods of capital punishment, the cross, and the noose in the same category and I believe he is on point!

I have no doubt that generations to come will look back at us and question how we could for so long condone a punishment so unfairly handed out.

On August 30th of last year my five year old granddaughter was killed in a car accident caused by a senseless person travelling at 80 miles an hour, hitting her mother's car that had stopped for another accident. I often wonder as I think about the death penalty that if the circumstances of my granddaughter's death had been different and the context had been one in which the one that caused her death would be a potential death row inmate would my beliefs change. My answer each time I consider it is no. Dr. King interpreted a passage of religious text in his life-time to suggest if we keep acting on an eye for an eye and a tooth for a tooth, we will only become a blind and toothless society.

In closing, I am before you not just as a religious leader, seminary professor and colleague representing Bridgeport, but also as an African American, a person who knows what it is to lose a precious life by someone else not appreciating life, and as a fellow human being asking you to do what is morally right.

I ask you to please do everything in your power to ensure that the death penalty in the State of Connecticut is repealed this year. Thank you for your time and consideration.

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To the honorable members of the Judiciary Committee:

I am a lawyer who prosecuted cases in Boston for more than 13 years. I did pretty much every kind of work a prosecutor can do in a state without the death penalty. What I did the most was oppose the appeals of people who had been convicted of crimes, from the most minor to first degree murders. Sixteen of my appeals were for homicides – for cases where one or more people killed one or more people. I never lost a homicide case, including the one I wish I had.

Donnell Johnson was convicted of killing Germaine Goffigan, on Germaine's ninth birthday. Johnson was 16. Under the Massachusetts system at that time, juveniles, like Johnson, had two trials: first, by a juvenile court judge, and then, if convicted, by a full jury. Johnson was convicted of first degree murder in both cases. Not quite a year after Germaine was killed, a 17 year old named Keema Braxton, was stabbed to death at a party. Several people at the party testified that Dwayne Moore, who was 19 and much bigger than Braxton, had bullied Braxton into a fight, and then killed him. Even though Braxton ran from Moore and the fight, and Moore chased him down and stabbed him, the jury convicted Moore only of manslaughter, based on Moore's argument that he had acted in self defense – because, when Braxton was badly losing the fight, he pulled a knife. Moore took the knife away from Braxton, and used it to stab him to death. I was the lead attorney on Moore's appeal, and I assisted the lead attorney on Johnson's. Both convictions were affirmed.

Five years after he was convicted, Donnell Johnson was exonerated. A federal drug investigation led people who were charged with crimes carrying long sentences to come forward in their own self interests and reveal who had actually shot Germaine Goffigan. Johnson was in prison from the time he was 16 until he was 21, and he was **not** exonerated by DNA or any other test that we hope will be foolproof. Moore finished his 15 year manslaughter sentence in early 2010. A jury in Boston today is hearing closing arguments in Moore's trial for the first degree murder of 4 people, including a two year old named Amani Smith. Another man has testified that Moore, that witness, and the witness's cousin went to rob one of the victims of drugs and the proceeds from selling them, and, after the witness left, Moore shot the drug dealer and everyone else present, which included Amani and his 21 year old mother, who happened to be visitors at the apartment. Moore had been out of prison for about 6 months when Amani, his mother, and the others were shot to death.

Lawyers and judges have tremendous trust in, and respect for, the work and wisdom of juries. But juries, like every other part of the justice system, are made up of people, and people can make mistakes. I did, when I believed – based on what looked like very strong evidence – that Donnell Johnson had killed Germaine Goffigan, and that he was guilty of first degree murder. My view of the evidence in Moore's trial for killing Keema Braxton was that he should have been convicted of first degree murder, but the jury who actually heard the evidence, and saw the witnesses testify, found differently. If Massachusetts had had the death penalty then, Donnell Johnson, an innocent man, could have been eligible to have been sentenced to death. Dwayne Moore, who admitted that he had killed Keema Braxton, would not have been eligible, because he was convicted only of manslaughter.

I don't know what the jury that is about to deliberate on the question of Dwayne Moore's guilt will determine. I don't envy them their work. I do know that I am very glad that Donnell Johnson was not executed. I also know that a conviction for first degree murder in Massachusetts, which requires a mandatory life sentence, with no possibility of parole, protects the public at least as well as the death penalty does.

There are many reasons that I believe the death penalty is wrong, and I'm sure this committee will hear about all of them today. Each of those reasons by itself is sufficient reason to repeal the death penalty. But since we know, without any question, that innocent people get convicted of first degree murder, how can we possibly continue to support our government taking the chance of killing innocent people?

Thank you very much for listening to my views,

Amanda Lovell
Pomfret, CT 06259 860-974-1928

March 14, 2012

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CCDLA
"Ready in the Defense of Liberty"
Founded 1988

Connecticut Criminal Defense Lawyers Association
P.O. Box 1766
Waterbury, CT 07621-1776
(860) 283-5070 Phone/Fax
www.ccdla.com

RAISED SENATE BILL 280
AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES
MARCH 13, 2012

TESTIMONY OF EDWARD J. GAVIN and JENNIFER L. ZITO, PAST PRESIDENTS OF THE CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF RAISED SENATE BILL 280

Hon. Eric Coleman, Senator
Hon. Gerald Fox, House Representative
Co-Chairmen, Judiciary Committee
Room 2500, Legislative Office Building
Hartford, CT 06106

Chairman Coleman, Chairman Fox, and Distinguished Members of the Judiciary Committee:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of approximately 350 licensed lawyers, in both public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not abridged.

CCDLA OPPOSES CAPITAL PUNISHMENT AND SUPPORTS RAISED SENATE BILL 280

CCDLA is firmly committed to the abolition of the death penalty in Connecticut and nationwide. We believe that capital punishment is never appropriate and that a penalty of life imprisonment without the possibility of release is more than adequate to protect Connecticut citizens and punish those who commit the most heinous homicides. We believe that capital punishment is morally wrong, that it is unconstitutional, per se and as applied, that it risks executing an innocent person, that it fails to deter crime, that it seldom provides closure to victims' families, and that it wastes scarce taxpayer dollars.

In 2005, we passed a resolution (Attached) denouncing capital punishment and joined a diverse coalition of organizations that called upon the Legislature and Governor M. Jodi Rell to repeal the death penalty and halt the execution of Michael Ross. In 2009, we were part of a broad group of organizations that persuaded the House and Senate to put an end to this barbaric and needless penalty and nearly persuaded Governor Rell to do the same. Today, we invite this Honorable Committee and ultimately the General Assembly and Governor Dannel P. Malloy to again examine capital punishment in Connecticut and to find, as we and many others have found, that it serves no useful or necessary purpose and that it must be eliminated.

RECENT DEVELOPMENTS (RETROACTIVITY):

The Connecticut Criminal Defense Lawyers (CCDLA) join the position of the Connecticut Network to Abolish the Death Penalty (CNADP) in that we support full repeal of the death penalty. We do support Raised Bill 280 as it is prospective in nature. We believe the passage of this bill is a step in the right direction towards complete abolition.

The existing case law is not clear on the issue of whether prospective abolition will inevitably lead to retroactive abolition. The New Mexico Supreme Court last year approved the capital prosecution of a pre-repeal death penalty inmate who challenged his death penalty prosecution after abolition was passed.

Moreover, in ***People v. LaValle***, 3 N.Y.3d 88, 120, 817 N.E.2d 341, 783 N.Y.S.2d 485 (2004), the New York Court of Appeals held that a jury deadlock instruction prescribed by New York's death penalty statute violated that state's constitution. Due to the fact that New York State legislators have not cured the statutory defect, New York effectively has been without a death penalty since 2004.

Notably, the New Mexico ban is prospective only and no clemency has been granted to convicted capital offenders, leaving that state's existing death row intact. Given that circumstance, it is unlikely that the New Mexico legislature was convinced that the death penalty is intolerable under any and all circumstances. See ***Atkins v. Virginia***, supra, 536 U.S. 342 (Scalia, J., dissenting) (legislation that abolished death penalty for persons with mental retardation prospectively only "is not a statement of absolute moral repugnance, but one of current preference between two [constitutionally] tolerable approaches").

It is our understanding that the Quinnipiac Law School clinic will be presenting testimony on the issue of retroactivity. CCDLA will defer to their exhaustive analysis.

Raised Senate Bill 280 is an opportunity to act. Nationally, death sentences are at a historic low, having fallen from a peak of 328 in 1994 to 112 in 2010. The steady decline appears to be the product of prosecutors' less frequent pursuit of the death penalty (often because of the high cost) and the growing uneasiness of juries to impose it (often because of the constant media drumbeat about executing the innocent). Regionally, Connecticut is the only state in the northeast corridor to have the death penalty on its books or to actually use it. And although its use is relatively infrequent (10 condemned men and one execution since 1973), Connecticut is still viewed as standing alone among the so-called "enlightened states." The death penalty, for its part, does not make Connecticut any safer than New York, New Jersey or Massachusetts. Thus, it no longer is a question of whether the punishment fits the crime, but rather whether, under evolving standards, the punishment fits the times.

Undoubtedly, Connecticut's economic woes have played a part in Raised Senate Bill 280 coming before this committee. But in the effort to save taxpayer dollars by scrapping the penalty, sight should not be lost of the penalty's real, modern day problems and eroding basis.

First, taking a life in order to prove how much we value another life does not strengthen society. The belief that some crimes are so atrocious that nothing less than the death penalty is warranted, is nothing more than vengeance. It may be wrapped in the mantle of retribution, but it is still vengeance. As the late Justice Thurgood Marshal stated, "vengeance and retaliation is an intolerable aspiration for a government in a free society."

Second, the death penalty cannot, and never will, adequately compensate family members for the loss they have suffered. More importantly, it rarely provides closure to the survivors who have sometimes been forced to wait (because of necessary procedural safeguards) twenty years for the execution. In effect, these people go from being a victim of the criminal to a victim of the criminal justice system. Our experience with the Ross execution is telling. When

interviewed by various media after the execution, many family members were heard to say that Ross' death did not bring the relief they anticipated or were promised. In fact, the stress and anxiety in the days leading up to the execution only added to the emotional strain.

Third, though Connecticut does not yet have a statistically significant sample or pool, there are early warning signs that the death penalty suffers from geographic disparity (Waterbury leads the prosecutions), racial disparity (most of the victims have been white) and economic disparity (most of the defendants have been poor). There also are early warning signs that the system has been infected with arbitrariness in that similar defendants have been treated dissimilarly. By design or not, such a system cannot stand.

Fourth, the death penalty risks the execution of an innocent person. The fact that jurors are concerned about this possibility does not lessen the risk, for such concern will not cure eyewitness misidentifications, false confessions, forensic errors and police and prosecutorial misconduct. James Tillman, Miguel Roman, Ron Taylor and George Gould are men who have been exonerated of murder.

Just this week Mr. Hubert Thompson was released from prison after serving 5 years of a 12 year sentence for a sexual assault that he did not commit. New testing of DNA material that was not previously available eliminated Hubert Thompson as the source of semen found on the victim. We all know that mistaken convictions do happen. Tillman, Roman, Taylor, Gould and Thompson are real – life examples of wrongful convictions.

Fifth, there is no reliable statistical evidence that capital punishment deters potential offenders. (The evidence shows that death penalty states have about a 40 percent higher murder rate than non-death penalty states.) The death penalty certainly did not prevent the Cheshire homicides. Further, even if statistical evidence did exist, one must seriously question whether Connecticut's penalty has any utility at all given how infrequently it is pursued, imposed and carried out.

Thus, in the end, the death penalty has not made a single town or city in Connecticut more safe.

Finally, there is the cost factor. Though various state agencies and public interest groups are better suited to provide the precise numbers. it is generally agreed that elimination of the death penalty will save Connecticut five to ten million dollars per year. Some of the savings could be redirected to police departments, probation offices, mental health programs and violence prevention programs, particularly in at-risk communities. And it could be done without sacrificing community safety.

Thus, for these reasons we respectfully urge this Honorable Committee, the General Assembly and Governor Malloy to abolish capital punishment and enact Raised Senate Bill 280.

The Connecticut Criminal Defense Lawyers Association,

By_____
Attorney Edward J. Gavin, Past President

_____
Attorney Jennifer L. Zito, President

CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION

RESOLUTION

January 13, 2005

WHEREAS, the Connecticut Criminal Defense Lawyers Association is a statewide organization of three hundred lawyers dedicated to defending persons accused of criminal offenses:

WHEREAS, the Connecticut Criminal Defense Lawyers Association works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished;

WHEREAS, the Connecticut Criminal Defense Lawyers Association has steadfastly called for the abolition of the death penalty;

WHEREAS, the death penalty does not comport with human dignity and our evolving standards of decency;

WHEREAS, the death penalty is excessive and serves no valid legislative purpose;

WHEREAS, the death penalty has been applied in an arbitrary, capricious and racially discriminatory manner;

WHEREAS, the death penalty risks the execution of the innocent; and

WHEREAS, the death penalty is unconstitutional.

NOW THEREFORE BE IT RESOLVED that the Connecticut Criminal Defense Lawyers Association renews its call for the abolition of capital punishment in Connecticut.

Dated at Hartford, Connecticut, and adopted by the Connecticut Criminal Defense Lawyers Association on January 13, 2005.

MICHAEL A. FITZPATRICK
President

TARA L. KNIGHT President-Elect
JON L. SCHOENHORN President-Elect

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ROBERT FROMER
EJD, M.S.E.E., P.C., P.E., R.E.P.
P.O. Box 71, Windsor, Connecticut 06095 ~ USA
E-mail: saintrobert@comcast.net

March 14, 2012

Co-Chairmen and Members
Judiciary Committee
Room 2100, Legislative Office Building
Hartford, CT 06106

Re: **S.B. No. 280. An Act Revising the Penalty for Capital Felonies.**

Dear Co-Chairmen and Committee Members:

My name is Robert Fromer, and I am neither testifying for nor against replacing the death penalty with a penalty of life imprisonment without the possibility of release for certain murders committed on or after the effective date of this act.

My testimony recommends that the Judiciary Committee and Legislature consider making it harder to impose the ultimate penalty by requiring prosecutors to prove the criminal defendant's guilt with "absolute certainty" rather than the lesser standard of "beyond a reasonable doubt."

We have all heard the phrase: "Beyond a Reasonable Doubt."[1] Anyone who has served on an American jury or even watched a police drama on television is familiar with this concept under which a criminal defendant may be found guilty only if the prosecution meets this legal standard of proof.

in "The Origins of Reasonable Doubt," author James Whitman, a lawyer and historian, upends our common thoughts about the "reasonable doubt" standard by taking readers on a historical journey to its origins. Strikingly, Whitman locates those origins before the very birth of modern law - in Christian moral theology. The demand to prove guilt beyond a "reasonable doubt," was arguably driven originally by the goal not to protect the legal rights of defendants, but rather to assuage the powerful moral anxieties of jurors in convicting an innocent person.

First, there is no point in trying to be faithful to the original intent of a phrase like reasonable doubt because the phrase has no original drafter. Not only does the phrase not appear in the United States and Connecticut constitutions, it was never crafted by anybody in particular. It emerged in a process of collective European rehashing of the precepts of

[1] Whitman James Q., *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial,* Yale University Press, New Haven, Connecticut

S.B. No. 280
AA Revising the Penalty for Capital Felonies
Testimony of Robert Fromer
March 14, 2012

Christian moral theology that date back to Pope Gregory I (c. 540 - 12 March 604), and beyond. It was created not only by English jurists but also by English moralist and by Italian and Spanish and French moralists and lawyers as well. There is no original intent to interpret.

Reasonable doubt as a standard of proof means that a defendant could theoretically be convicted and sentenced to death on purely circumstantial evidence in the absence of bodily proof. Eye witness accounts have a spotty history, at best. In the modern era of forensic science and technology such definitive proof is necessary and sufficient to establish guilt. In the Cheshire cases, the prosecution could prove that both Joshua Komisarjevsky and Steven Hayes committed capitol murder with absolute certainty.

To prove that a defendant is criminally liable for murder under such a new standard, the first element for proving the crime would be proof that a homicide was committed on a custodial body. Means, motive and opportunity would serve as the second, third, and fourth elements of proof. The fifth element would require that forensic evidence definitively prove that the defendant committed the crime as charged. This last element would require independent verification by a certified third party. However, verification of the forensic evidence provides the quality assurance critical to the proof. The "absolute certainty" standard would apply to all elements.

Only if prepared to meet the burden of proving "absolute certainty" would a prosecutor present a death-penalty case to the jury. Otherwise the charge would be murder, with life imprisonment based on the traditional standard of "beyond a reasonable doubt."

Robert Fromer

Robert Fromer

Andy Eicher, West Hartford resident and student at Conard High School
March 14, 2012 Judiciary Committee Public Hearing
Testimony in favor of SB 280, An Act Revising the Penalty for Capital Felonies:

Before I begin I would like to thank the committee for allowing me to speak in support of Senate Bill 280, An Act Revising the Penalty for Capital Felonies.

I am Andrew Eichar, and I am an 18 year old Senior at Conard High School in West Hartford. I am here to provide the thoughts of my generation about the death penalty and our concern about executing someone who is innocent.

Since 1973, 140 people have been exonerated from death row across this nation, due to their innocence. It is possible to make a horrible mistake like this in Connecticut. In the past 5 years, four individuals have been found innocent after being convicted of rape and murder and sentenced to long prison terms. At the national level, the risk of executing an innocent person became clear to my generation after the execution of Troy Davis last September in Georgia. Even though Troy Davis was never proven innocent of the crime he committed, the evidence that he was convicted with was clearly either biased or flat out false. When I talked to my classmates about the issue not a single person was in opposition of either acquitting Davis of the crime, or at least taking an even greater probe into the facts of the crime and the trial. Sadly, the decision was not reversed in this case and Troy Davis was executed.

DNA has proven that we've made mistakes and sentenced innocent people to death, but we can't rely on DNA to catch all of our mistakes because it's only available in a small percentage of murder cases. With all of the advances in technology, evidence rises that proves the innocence of the accused, but if this evidence is found after the accused has been executed it is too late, and my generation is beginning to realize this sad fact. Because there is always the possibility of new evidence rising, then how can we as a people justify the execution of a person to whom this new evidence may pertain, where if life imprisonment without the possibility of release was imposed, then their would be an opportunity for new evidence to arise.

One of the greatest threats to innocence is the fact that the convictions can be biased, this bias can stem from many things but the overarching bias is race. According to Amnesty International, about 50% of murder victims are white, with the other 50% being a minority, but 77% of the prisoners on death row are there because of being accused of killing a white victim. This percentage proves that the system is racially biased, and we must ensure that this racial bias does not lead to executions.

I am just starting to live my adult life and I want to ensure that not only my right to innocence is upheld, but also the rights of all the people that surround me; and I do not want to live in a state where my innocence may be impeded by the use of the death penalty. I do not want to live in a state that risks taking innocent lives in my name.

As a race, humans make mistakes, and these mistakes can convict persons of crimes they did not commit, but as a society we must ensure that none of these mistakes result in anyone losing their life. Thank you again for allowing me to speak, and please pass Senate Bill 280.

Thank you.

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Testimony of
Quinnipiac University School of Law Civil Justice Clinic

In Support of Raised Bill No. 280

Judiciary Committee
March 14, 2012

Good afternoon distinguished committee members. My name is Christine Gertsch and I am a second-year law student at Quinnipiac University School of Law in Hamden. I am also a student in the Law School's Civil Justice Clinic, which strongly supports Raised Bill No. 280, An Act Revising the Penalty for Capital Felonies.

The Clinic's testimony will address a legal argument that was made repeatedly at hearings before this Committee in both 2009 and 2011—that a prospective-only death penalty will be interpreted by the Connecticut Supreme Court to retroactively nullify existing death sentences.[1] We will explain why this argument is most likely wrong, as demonstrated by our own Connecticut Supreme Court's decision from last November, in which it upheld the constitutionality of the death penalty and strongly signaled the death's penalty continued constitutionality in light of prospective-only repeal. And if the Connecticut Supreme Court's November decision were not enough, we now have not one but two decisions from the Supreme Court of New Mexico—the only court to have directly addressed this critical issue—which refused to give retroactive effect to New Mexico's 2009 prospective repeal. Those on New Mexico's death row remain on death row despite New Mexico's prospective repeal of the death penalty. In this testimony, we will show why the result would likely be no different for prospective repeal in Connecticut.

Before we turn to the legal case for prospective repeal, we want to briefly address its merits from a moral standpoint. While others in attendance, including the families of murder victims, church groups, and members of the ACLU, Amnesty International, and other human rights organizations, will make a far more eloquent case than we will, we wish to say this: the moral case for the death penalty is thin at best and, in our view, far outweighed by the festival of cruelty it incites and the arbitrariness it entails. As a result, support for the death penalty is receding—everywhere around us. Although Connecticut shares its borders with Rhode Island, Massachusetts, and New York, Connecticut is a virtual island when it comes to the death penalty in the northeast. As Connecticut Supreme Court Justice Flemming Norcott asked rhetorically in a dissenting opinion last November, how long must "we, the people of Connecticut, continue down this increasingly lonesome road?"[2] By repealing the death penalty, you will be doing something that is right—and long overdue.

But we are here today to discuss the law. While the Civil Justice Clinic supports complete repeal, we want to address the legal merits of a prospective-only repeal; that is, a bill that leaves in place the sentences of those currently on death row, but abolishes the death penalty going forward.

Prospective repeal sounds like a reasonable compromise—it preserves the finality interests of victims and their families, while allowing Connecticut courts to impose a maximum sentence of

life in prison without the possibility of parole for future offenders. But we heard from various people at hearings last spring and in 2009 that a prospective-only death penalty is not a reasonable compromise because the Connecticut Supreme Court will use that repeal to strike down the death sentences of those currently on death row on constitutional grounds.[3] Specifically, the Chief State's Attorney, Kevin Kane, told you that, if you repeal the death penalty prospectively, he has no good constitutional argument for why the Court should not completely disregard your words and extend your repeal to existing death sentences.[4] Attorney Temmy Pieszak, the Chief of Habeas Corpus Services for the Office of the Chief Public Defender, on the other hand, said with "95 percent" certainty, that the Connecticut Supreme Court would respect a prospective-only repeal and not reduce the death sentences of those currently on death row.[5] Several legal scholars came down some place in the middle.

What is striking is that, during that entire back and forth debate, no one cited a single case—either in Connecticut or elsewhere—that squarely addressed the critical issue of what happens to a prisoner currently on death row after the legislature passes a prospective-only bill. And that is because there was virtually no legal authority out there—then. That is not true any longer. Since the hearing last spring, two very important things have changed the legal landscape. The first took place in New Mexico; the second happened right here in Connecticut.

I. New Mexico Experience's with Prospective Repeal

In a decision last September, the New Mexico Supreme Court took up the issue of whether New Mexico's prospective repeal of its death penalty in 2009 should apply retroactively to a man named Michael Astorga who committed his crime before the repeal.[6] Astorga's lawyer argued that New Mexico's legislature had spoken—although it had repealed the death penalty prospectively, this repeal effectively "set forth an evolved standard of decency which makes it cruel and unusual punishment . . . to impose the death penalty" on *anyone*.[7] "There should be no doubt and no question," Astorga's lawyer argued, "once the death penalty has been repealed it is repealed for everyone."[8]

The New Mexico Supreme Court disagreed and dismissed Astorga's appeal.[9] Because Astorga committed his crime before the effective date of the repeal, the New Mexico Supreme Court held that the death penalty remains on the table. Astorga's death sentencing phase is set to begin next month.[10] If this Legislature passes a prospective repeal, we submit to you that the Connecticut Supreme Court would most likely follow New Mexico's lead and refuse to give your repeal retroactive effect.

There are a few other points worth noting about New Mexico's experience with prospective repeal. First, as previously noted, the New Mexico Supreme Court is the *only* state that has directly addressed the retroactivity issue that this Committee now faces.[11] For that reason, it will be very persuasive authority if and when the Connecticut Supreme Court takes up this issue. We will return to this point momentarily.

Second, New Mexico's death penalty repeal was passed by its legislature and signed by Governor Bill Richardson against the backdrop of a very public murder trial.[12] At the time of repeal in 2009, state prosecutors were seeking the death penalty against Michael Astorga for

fatally shooting a police officer, and lawmakers took note. After signing New Mexico's prospective repeal into law, the governor went out of his way to say that, "[m]y position as a human being is I support the death penalty in the most heinous of cases. . . . I think Astorga should go to the death penalty. But I think for the future, life in prison without parole is a huge punishment."[13] In short, New Mexico's lawmakers made sure that their repeal, as written, would not apply retroactively to Astorga,[14] and the court respected their intent.

Third, the New Mexico Supreme Court's September decision was, in fact, the second time that it upheld the constitutionality of New Mexico's prospective repeal.[15] Six months earlier, in February 2011, Astorga's attorney had argued that "repeal of the death penalty in New Mexico precludes and prohibits either execution of the death penalty or the seeking of the penalty of death for [Astorga] and others likewise situated whose alleged acts of first degree murder and aggravating circumstances occurred prior to [repeal]."[16] Significantly, Astorga's attorney attached to his legal brief an excerpt of the written testimony that the Connecticut Chief State's Attorney submitted to *this* Committee in 2009. In that testimony, the Chief State's Attorney made the same argument he makes now: a prospective-only death penalty will effectively nullify existing death sentences.[17]

The New Mexico Supreme Court was not persuaded. It disposed of Astorga's (and the Chief State's Attorney) retroactivity argument in a pithy four-word order: "Petition hereby is denied."[18] The New Mexico Supreme Court's decision, completely devoid of analysis, is unequivocal: a death penalty repeal that is intended to be prospective-only will be treated as such.

Lastly, the procedural posture of Mr. Astorga's case shows just how strongly the New Mexico Supreme Court believes in the constitutionality of prospective-only repeal. Mr. Astorga committed his crime in 2006 and was convicted in 2010—a year after the death penalty was repealed. He still has not been sentenced. Despite the fact that he was convicted *after* repeal, and will be sentenced *well after* repeal, the New Mexico Supreme Court still says that it is constitutional for him to receive the death penalty. With this holding, the fate of New Mexico's two current death row inmates, Mr. Allen and Mr. Fry—both of whom were convicted and sentenced *prior* to the 2009 repeal—is most likely sealed. After all, if the New Mexico Supreme Court found no constitutional violation in allowing a death sentence for a man who was convicted after repeal, it is safe to say that the Court would most likely uphold the death penalty for two men who were convicted and sentenced years before the death penalty repeal became effective.[19]

As New Mexico's experience teaches, when it comes to prospective repeal, those already on death row stay on death row.[20] And, as for the "Astorgas" who committed capital-worthy crimes before repeal but have not yet been convicted or sentenced[21]—they, too, fall outside the protection of prospective repeal.

II. The Connecticut Supreme Court Opinion in *State v. Rizzo* (2011)

New Mexico's experience strongly supports the constitutionality of a prospective-only repeal. But even stronger support comes from within our state—from our own Connecticut Supreme Court.

If this Legislature passes a prospective-only death penalty repeal, those on Connecticut's death row may challenge their sentences on constitutional grounds, and the Connecticut Supreme Court will have to respond to those arguments. Legal scholars will tell you that your prospective-only repeal will impact the Supreme Court's analysis. And they are right—your prospective repeal *will* factor into the Court's analysis, but its likely impact will be negligible. The Connecticut Supreme Court's recent decision in *State v. Rizzo* from last November makes this clear.[22]

The Geisler Factors

Your prospective repeal is unlikely to impact the constitutionality of existing death sentences because it is only one small subpart of one single factor in an elaborate six-factor test that the Connecticut Supreme Court uses to determine whether the death penalty is constitutional. Furthermore, none of these six factors is dispositive—no one factor rules the day. The Connecticut Supreme Court has characterized these factors, which were first enumerated in the case of *State v. Geisler*,[23] as "inextricably interwoven."[24] This six-factor test is what we call a "totality" test,[25] and the Connecticut Supreme Court has used it for twenty years, and has upheld the constitutionality of the death penalty *every single time* it has used it.[26]

In applying the *Geisler* factors, the Connecticut Supreme Court reminds us that the burden of proving that a statute is unconstitutional is an extraordinarily high one:

> In our assessment of whether the statute passes constitutional muster, we proceed from the well recognized jurisprudential principle that "[t]he party attacking a validly enacted statute . . . bears *the heavy burden* of proving its unconstitutionality *beyond a reasonable doubt* and *we indulge in every presumption in favor of the statute's constitutionality*. . . . In choosing between two constructions of a statute, one valid and one constitutionally precarious, *we will search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent*. . . . We undertake this search for a constitutionally valid construction when confronted with criminal statutes as well as with civil statutes. The burden of proving unconstitutionality is *especially heavy* when, as at this juncture, a statute is challenged as being unconstitutional on its face."[27]

The first five factors the Court will look at are: "(1) the text of the constitutional provisions; (2) related Connecticut [court] precedents; (3) persuasive federal [court] precedents; (4) persuasive precedents of other state courts; and (5) historical insights into the intent of our constitutional forbearers."[28] The Connecticut Supreme Court has repeatedly told us that none of these five factors supports the conclusion that the death penalty is unconstitutional. Quite the opposite—in

case after case, the Court has upheld the death penalty based on these five factors. This past November, in the case of *State v. Rizzo*, the Connecticut Supreme Court reiterated its conclusion that these factors "do not support the . . . claim that the death penalty should be declared unconstitutionally unacceptable on its face."[29] So, under five of the six *Geisler* factors, a prospective-death penalty will survive constitutional challenge.

Now that leaves the sixth factor. The Connecticut Supreme Court tells us that this factor is about "policy considerations,"[30] namely, "contemporary understandings of applicable economic and sociological norms."[31] While the Legislature is a reliable indicator of contemporary values,[32] the Connecticut Supreme Court reminds us that you are not the only indicator. Not by a long shot. "[I]t is also appropriate," the Court tells us, "to consider what is occurring in actual practice."[33] In addition to the actions of the Legislature, the Court looks at still more indicators, including: (i) the number of inmates on death row nationwide,[34] (ii) the number of executions in recent years,[35] (iii) the imposition of new death sentences,[36] (iv) public opinion concerning the death penalty,[37] and (v) death penalty practices in other countries.[38]

So under the sixth factor, the Court will look at *six separate subparts*, of which the actions of the Legislature are but one. This means that your prospective-only repeal will affect only one-sixth of one factor in *Geisler*'s six-factor test.[39] This is not a sea-change, and it will not turn the tide. Your prospective-only repeal will be a drop in the bucket for Connecticut's Supreme Court to mention and move on.[40]

The Connecticut Supreme Court's application of the six-factor *Geisler* test over the past twenty years, and most recently in *State v. Rizzo*, shows how existing death row sentences will withstand constitutional scrutiny after a prospective repeal. And if that were not enough, the Court did something else in its *Rizzo* opinion from last November—it included a footnote citing federal and state authority supporting the constitutionality of existing death sentences after prospective repeal.

State v. Rizzo's *Footnote 88*

In footnote 88 of the *Rizzo* opinion, the Connecticut Supreme Court strongly signals that existing death sentences will remain constitutional after prospective repeal, and it does so in two very significant ways. First, the Court goes out of its way to note that New Mexico's legislature recently repealed its death penalty prospectively, and that its repeal has not been given retroactive effect.[41] Significantly, the Court then attempts to reconcile how New Mexico could abolish its death penalty prospectively while constitutionally maintaining its existing death row intact. "Given the circumstances," the Connecticut Supreme Court explains, "it is unlikely that the New Mexico legislature was convinced that the death penalty is intolerable under any and all circumstances."[42]

The Court's discussion of New Mexico's prospective repeal is significant. Remember that the persuasive precedents of other state courts are something that the Court is very interested in under *Geisler*, and New Mexico could not be more persuasive. New Mexico is, after all, the *only* state that has prospectively repealed its death penalty while keeping its existing death row intact—exactly as Connecticut is contemplating doing.

And the Connecticut Supreme Court does not stop there. In that same footnote, the Connecticut Supreme Court does something else significant—it cites U.S. Supreme Court Justice Antonin Scalia for the proposition that prospective repeal of a statute does not mean that the statute is unconstitutional. According to Justice Scalia,"[prospective abolition] is not a statement of absolute moral repugnance, but one of current preference between two [constitutionally] tolerable approaches."[43]

Now why would the Connecticut Supreme Court go out of its way to reconcile New Mexico's prospective repeal and the constitutionality of its existing death row? And why would the Court go to the further trouble of citing Justice Scalia in support of New Mexico's prospective repeal (when the New Mexico Supreme Court decision, itself, nowhere cites Justice Scalia or any other case precedent)?

The answer, we believe, is that the Connecticut Supreme Court finds no constitutional problem with abolishing the death penalty prospectively and maintaining an existing death row intact. If this Legislature wants to know how the Court will rule on the constitutionality of existing death sentences following a prospective repeal, footnote 88 provides the answer.

Prospective repeal, the Connecticut Supreme Court tells us, does not mean unconstitutional. You, the Legislature, are a reliable indicator of contemporary values.[44] Through a prospective-only bill, you would not be telling the Court that you believe the death penalty is unconstitutional. Rather, you would be telling the Court that you are choosing between two perfectly constitutional choices: to keep the death penalty or to abolish it prospectively. And if you choose the latter, we submit that the Connecticut Supreme Court will most likely respect your decision. Footnote 88 makes this clear.[45]

III. Conclusion

In conclusion, the Connecticut Supreme Court has shown you how it will most likely rule on constitutional challenges brought by those currently on death row. It will dismiss those appeals. The Court's six-factor *Geisler* test tells you that. And the Court's footnote 88—which cites both federal and state precedent in support of the constitutionality of existing death sentences after prospective repeal—tells you that.

Refusing to act on a prospective-only bill based on a specious legal argument that the New Mexico Supreme Court—the only court to have addressed this issue—explicitly rejected, and that the Connecticut Supreme Court would most likely reject as well, is not the way to make policy. It is a self-serving means of maintaining the status quo in perpetuity. The better route, we think, is for this Legislature to say exactly what it means in the statute and in the legislative history that you create, and trust that the Court will follow its own precedent and New Mexico's lead.

If this Legislature believes that the death penalty should be maintained for those currently on death row and abolished prospectively, we submit that Raised Bill No. 280 will do just that. We urge this Committee to do justice and approve Raised Bill No. 280.

Thank you very much for your time and for the opportunity to present this testimony.

Quinnipiac University School of Law Civil Justice Clinic

By: Christine Gertsch, Law Student
Josh Scollins, Law Student
Marissa Vicario, Law Student
Celeste Maynard, Law Student
Kevin Barry, Supervising Attorney

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[1] *See, e.g.*, Connecticut Judiciary Committee Hearing Transcript (Mar. 7, 2011) [hereinafter "2011 Judiciary Committee Hearing Transcript"] (comments of Chief State's Attorney Kevin Kane); Testimony of State of Connecticut Division of Criminal Justice, [S.B. No. 1035, An Act Repealing the Death Penalty; H.B. 6425, An Act Revising the Penalty for Capital Felonies], Judiciary Comm., at 2 (Mar. 7, 2011); Testimony of State of Connecticut Division of Criminal Justice, S.B. No. 1027, An Act Concerning Legal Standards in Capital Cases; H.B. No. 6578, An Act Concerning the Penalty for a Capital Felony, Judiciary Comm., at 1 (Mar. 2, 2009).
[2] State v. Rizzo, 303 Conn. 71, 203 (2011) (Norcott, J., dissenting).
[3] 2011 Judiciary Committee Hearing Transcript.
[4] 2011 Judiciary Committee Hearing Transcript ("[W]hen [prospective-only repeal] first came up a couple of years ago, I couldn't think of an argument that could be made on behalf of the state which would likely result in a finding that the death penalties that have been—that are in effect can be carried out. And through and through the years, I've talked to a lot of people who are smarter than I am and I'm still at a loss as to the nature of the argument that we'd make.") (comments of Connecticut Chief State's Attorney Kevin Kane).
[5] 2011 Judiciary Committee Hearing Transcript (comments of Chief of Habeas Corpus Services Temmy Pieszak).
[6] The text of New Mexico's law prospectively repealing the death penalty mirrors that of Raised Bill No. 280 insofar as both repeal the death penalty only for *crimes committed* on or after the effective date of the law. *See* An Act Revising the Penalty for Capital Felonies, S.B. 280, Feb. Sess. (Ct. 2012); An Act Relating to Capital Felony Sentencing, Abolishing the Death Penalty, Providing for Life Imprisonment Without the Possibility of Release or Parole, H.B. 285, 49th Leg., 1st Sess. (N.M. 2009).
[7] Petitioner's Brief at 9, Astorga v. State of New Mexico (August 26, 2011) (No. 33,152).
[8] Petitioner's Emergency Petition for Writ of Superintending Control and Request for Stay of Proceedings. at 6, Astorga v. State of New Mexico (December 10, 2010) (No. 33,152) [hereinafter "Petitioner's Emergency Petition"].
[9] Order of New Mexico Supreme Court, Astorga v. State of New Mexico (September 1, 2011) (No. 33,152) [hereinafter "September 2011 Order of New Mexico Supreme Court"].
[10] Chris Ramirez, *More than 2,500 Jury Summons Sent for Astorga Death Penalty Trial, KOB.com* (Feb. 9, 2012), http://www.kob.com/article/stories/s2490676.shtml.
[11] Alex Tomlin, *Death Penalty Ban Raises New Argument*, KRQE.com (Mar. 10, 2011), http://www.krqe.com/dpp/news/crime/death-penalty-ban-raises-new-argument ("New Mexico stands as the only state in our nation's history to have repealed the death penalty and/or have the death penalty declared unconstitutional and still try to execute one or more of its citizens.") (quoting Michael Astorga's attorney, Gary Mitchell).
[12] Defendant's Motion to Dismiss the Death Penalty with Memorandum of Law at 3, State of New Mexico v. Astorga (Nov. 1, 2010) (No. CR-2006-1670) [hereinafter "Defendant's Motion to Dismiss"] (stating that "[Astorga] case has received massive publicity and has been the subject of debate in the 2010 gubernatorial race").
[13] Crystal Gutierrez, *Gov Subpoenaed in Death-Penalty Case*, KRQE News 13 (Nov. 23, 2010, 7:13 PM), http://www.krqe.com/dpp/news/crime/gov-subpoenaed-in-death-penalty-case.
[14] Defendant's Motion to Dismiss at 3 ("Legislative debate, according to some involved, on the repeal of the death penalty include a compromise, 'no repeal for Michael Astorga.' This appears to have been the compromise the governor and certain legislators requested/demanded in order to support and/or sign the repeal bill.").
[15] Order of New Mexico Supreme Court, Astorga v. State of New Mexico (Feb. 4, 2011) [hereinafter "February 2011 Order of New Mexico Supreme Court"].
[16] Petitioner's Emergency Petition at 3.
[17] Defendant's Motion to Dismiss at18-19.

[18] February 2011 Order of New Mexico Supreme Court.
[19] Defendant's Motion to Dismiss at 20 ("Mr. Astorga's classification is even more pronounced than that of [current death row inmates] Mr. Allen and Mr. Fry because he was not convicted prior to the repeal nor has he been sentenced to death prior to repeal.").
[20] There are currently eleven people on Connecticut's death row. *See* Chistopher Reinhart, *Death Row Inmates*, OLR RESEARCH REPORT (April 11, 2011), http://www.cga.ct.gov/2011/rpt/2011-R-0170.htm (listing only ten death row inmates because report was published before Komisarjevsky was sentenced to death).
[21] According to Connecticut Chief Public Defender, Susan O. Storey, there were "61 capital cases . . . pending at various stages of pretrial, trial, appeal or habeas corpus" as of March 2, 2009. Testimony of Susan O. Storey, Chief Public Defender, Raised Bill No. 6578, An Act Concerning the Penalty for Capital Felony, Judiciary Comm., at 1 (Mar. 2, 2009).
[22] *See Rizzo*, 303 Conn. at 184-201. An excerpt of the *Rizzo* decision is attached to this testimony as Attachment B. As a general matter, courts respect laws that are explicitly prospective. *See Meade v. Comm'r of Correction*, 282 Conn. 317, 321 (2007) ("When considering the retroactivity of a penal statute, it is axiomatic that, whether to apply a statute retroactively or prospectively depends upon the intent of the legislature. . . . [S]tatutes that affect substantive rights are presumed to apply prospectively only."). Raised Bill No. 280 is clearly prospective. If this bill becomes law, the critical legal question for the Connecticut Supreme Court will *not* be whether the Legislature intended the law to apply retroactively, but rather whether this clearly prospective law renders the sentences of people already on death row cruel and unusual in violation of the state and federal constitutions. Because the Connecticut Supreme Court is "bound by precedents of the United States Supreme Court holding [that the death penalty does not violate the eighth amendment to the United States constitution]," this testimony focuses on the state constitution. *Rizzo*, 303 Conn. 184 n.82 ("It is the prerogative of [the U.S. Supreme Court] alone to overrule its own precedents, even if subsequent decisions or developments may appear to have significantly undermined the rationale for an earlier holding."). Specifically, the body of this testimony focuses on the "cruel and unusual" argument; the equal protection argument is addressed in footnote 45 of this testimony.
[23] State v. Geisler, 222 Conn. 672 (1992).
[24] State v. Morales, 232 Conn. 707, 716 (1995).
[25] *See, e.g.*, State v. Ledbetter, 566 Conn. 534, 569 (2005) ("In light of the [*Geisler*] factors that weigh in favor of the state," the fact that the sixth *Geisler* factor "favors the defendant . . . is insufficient to tilt the balance of the *Geisler* analysis in favor of the defendant.").
[26] *See, e.g.*, *Rizzo*, 303 Conn. at 201; State v. Webb, 238 Conn. 389, 401-12 (1996); State v. Ross, 230 Conn. 183, 249-52 (1994); *see also* State v. Lockhart, 298 Conn. 537 (2010) (relying on *Geisler* factors to uphold constitutionality of unrecorded confessions); State v. Jenkins, 298 Conn. 209 (2010) (relying on *Geisler* factors to uphold constitutionality of consent search procedures during traffic stops); State v. Wade, 297 Conn. 262 (2010) (relying on *Geisler* factors to uphold constitutionality of "aggregate package theory" in resentencing).
[27] State v. Ross, 230 Conn. at 249-52 (emphasis added).
[28] *Rizzo*, 303 Conn. at 185.
[29] *Id.* at 185; *see id.* at 188 (stating that "[Connecticut's] constitution contains explicit references to capital punishment . . . and, therefore, expressly sustains the constitutional validity of such a penalty in appropriate circumstances," and that challenges to the constitutionality of Connecticut's death penalty "must be evaluated against this clear textual backdrop").
[30] *Id.* at 143.
[31] *Id.* at 186.
[32] *Id.* at191.
[33] *Id.*
[34] *Id.* at191-92.
[35] *Id.* at 192.
[36] *Id.* at 193.
[37] *Id.* at 194.
[38] *Id.* at 195.
[39] While this Legislature's passage of a prospective-only appeal would undoubtedly enter into the Connecticut Supreme Court's analysis of the sixth *Geisler* factor, it is not at all clear that the Court would interpret your prospective repeal as "embod[ying] a moral judgment" against the death penalty. *Rizzo*, 303 Conn. at 188. On the contrary, the Connecticut Supreme Court in *Rizzo* recognized that the decision of other states to abandon the death penalty was "based on *a variety* of public policy determinations made by legislators and governors"—many of

which have nothing to do with evolving standards of decency. *Id.* at 190 (emphasis added); *see also* State of New Mexico's Response to Petition for Writ of Superintending Control at 11, Astorga v. State of New Mexico (Jan. 27, 2011) (No. 32,744) (successfully arguing before New Mexico Supreme Court that Legislature's reason for prospectively repealing death penalty was not necessarily to "express an evolved standard of decency that rejects the death penalty as cruel and unusual punishment. . . . [O]ther reasons exist and, in fact, were discussed during the process of passing the repeal. High on the list of those reasons is the perceived *high cost of death penalty litigation.* Given the ongoing state budget shortfalls, and the fact that [non-economic] concerns were not enough to achieve repeal in the past, there is simply insufficient grounds to conclude that the prospective repeal signals a statewide consensus that the death penalty is contrary to an evolved standard of decency, as opposed to *a desire to eliminate the costs of death penalty litigation.*") (emphasis added) (internal citations omitted) [hereinafter "State's Response"]. An excerpt of the State's Response is attached to this testimony as Attachment A.

[40] *Cf.* Ledbetter, 566 Conn. at 569 (upholding constitutionality of eyewitness identification procedures based on *Geisler* factors, despite fact that sixth *Geisler* factor favored defendant).

[41] *Rizzo*, 303 Conn. at 190 ("Notably, the New Mexico ban is prospective only and no clemency has been granted to convicted capital offenders, leaving that state's existing death row intact.").

[42] *Id.* at 190 n.88.

[43] *Id.* (citing *Atkins v. Virginia*, 536 U.S. at 342) (Scalia, J., dissenting).

[44] *Id.* at 191.

[45] Although the claim that the death penalty is cruel and unusual in violation of the state constitution would most likely fail, we note that an equal protection claim is even weaker. To show an equal protection violation, one first must show that similarly situated parties are treated differently. For example, a prisoner on death row who committed first degree murder before repeal might argue that it is a violation of the state's equal protection clause to impose the death penalty because he is similarly situated to a person who committed first degree murder after repeal and was sentenced to life without the possibility for parole. This argument likely fails for three reasons.

First, as Attorney Pieszak stated at the hearing before this Legislature last spring, the person on death row and the person not on death row are not similarly situated—each committed a crime under a different statutory scheme. *See* 2011 Judiciary Committee Hearing Transcript (comments of Chief of Habeas Corpus Services Temmy Pieszak); *see also* State's Response at 13 ("[The prisoner on death row] is not similarly situated to . . . individuals [not on death row] because he was on notice at the time he committed his crime that the maximum possible sentence . . . was death.").

Second, even if the Connecticut Supreme Court were to find that the parties are similarly situated, an equal protection claim would most likely still fail. As Attorney Pieszak noted at the hearing last spring, all the State would need to show to overcome this claim is that the Legislature had some "rational basis" for treating similarly situated individuals differently. This would not be a difficult test to meet. *See* 2011 Judiciary Committee Hearing Transcript (comments of Chief of Habeas Corpus Services Temmy Pieszak); *see also* Rayhall v. Akim Co., Inc., 263 Conn. 328, 342 (2003) ("[T]he Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational."). For example, the State could argue, as New Mexico's Attorney General successfully argued last year, that prospective-only repeal furthers the legitimate penological goals of retribution and deterrence:

> The Legislature chose to hold first degree murderers to the consequences for their crimes, as those consequences existed when they committed their crimes. The goal of deterrence is also met, certainly with respect to an executed murderer's inability to commit future murders, but also with respect to communicating to all criminals that they will be held accountable for their crimes in the manner in which the law provides when they commit them.
>
> . . .
>
> It is perfectly proper for the Legislature to create a new sentencing procedure which operates prospectively only. Despite the disparity created by rendering different sentences after an admittedly arbitrarily chosen date, prospective application of such a statute does not violate equal protection principles, because of the

> legitimate public purpose of assuring that penal laws will maintain their desired deterrent effect by carrying out the original prescribed punishment as written.

State's Response at 10, 20 (internal quotation marks omitted).

Importantly, the Connecticut Supreme Court would most likely not apply "strict scrutiny"—which requires a far more searching inquiry than the deferential "rational basis" test—because prospective-only repeal does not "invidiously discriminate[] against a suspect class or affect[] a fundamental right." Rayhall, 263 Conn. at 343; *see* Kerrigan v. Comm'r of Pub. Health, 289 Conn. 135, 159 (2008) (stating that classifications based on "religion, race, color, ancestry, national origin, sex, physical disability and mental disability" trigger strict scrutiny); State's Response at page 16-18 ("[C]ourts uniformly apply the rational basis test to sentencing disparities that result from prospective application of newly enacted penal statutes, or amendment or repeal of existing penal statutes.") (citing U.S. Supreme Court precedent in support of rational basis review); *see id.* at 19 (stating that if strict scrutiny were applied to prospective repeal, "strict scrutiny would necessarily apply to every penal statute, newly enacted, amended, or repealed," which ignores both the "Legislature's policy making authority" and the furtherance of the "penological goals of retribution and deterrence.").

Third, the New Mexico Supreme Court—the only state court to have addressed an equal protection claim in the context of a prospective death penalty repeal—squarely rejected this claim. Michael Astorga's attorney argued that it was a violation of equal protection for the State to pursue the death penalty against Astorga while at the same time refusing to pursue the death penalty against those who committed similar crimes after passage of the 2009 prospective-only repeal. The New Mexico Supreme Court disagreed. *See* February 2011 Order of New Mexico Supreme Court; September 2011 Order of New Mexico Supreme Court.

Attachment A

Excerpt of State of New Mexico's
Response to Petition for Writ of Superintending Control
&
February 4, 2011 Order of New Mexico Supreme Court

RECEIVED JAN 2 7 2011

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL PAUL ASTORGA,

Petitioner,

vs. No. 32,744

HON. NEIL C. CANDELARIA, District Court Judge, Second Judicial District, Bernalillo County, New Mexico,

Respondent,

and

STATE OF NEW MEXICO, by and through its Second Judicial District Attorney, KARI E. BRANDENBURG,

Real Party in Interest.

RESPONSE TO PETITION FOR WRIT OF SUPERINTENDING CONTROL

SUPREME COURT OF NEW MEXICO
FILED
JAN 26 2011
Kathleen Jo Gibson

GARY K. KING
Attorney General

M. VICTORIA WILSON
Assistant Attorney General
Attorneys for Respondent and
Real Party in Interest
111 Lomas Blvd. N.W.
Albuquerque, New Mexico 87102
(505) 222-9000

[Pages 1-3 omitted]

and adequate remedy other than by issuance of the writ. *See* Albuquerque Gas & Elec. Co., 43 N.M. at 240-41; Martinez, 2001-NMSC-009, ¶¶ 12-17.

Respondent and the State assert that Petitioner has failed to establish grounds for this Court to grant a writ of superintending control to require Respondent to dismiss the death penalty and impose a life sentence for Petitioner's conviction for first degree murder of a peace officer. Respondent's denial of Petitioner's motion was not erroneous or arbitrary. In addition, because Petitioner will have the right to a mandatory appeal if the death penalty is imposed, Respondent's decision does not result in irreparable harm to Petitioner for which Petitioner has no adequate remedy at law.

II. RESPONDENT DID NOT ERR IN CONCLUDING THAT THE PROSPECTIVE REPEAL OF THE DEATH PENALTY DOES NOT RENDER THE DEATH PENALTY, AS APPLIED TO PETITIONER, UNCONSTITUTIONAL.

A. The prospective repeal of the death penalty does not establish a consensus that contemporary standards of decency have evolved to reject the death penalty as cruel and unusual punishment for the intentional killing of a police officer.

The death penalty has been an available punishment for capital felonies in New Mexico since before statehood. *See* Territory v. Ketchum, 10 N.M. 718, 65 p.169 (1901). This Court has rejected every attempt to have the death penalty declared *per se* unconstitutional as cruel and unusual punishment. *See* Id. at 719-724, 65 P. at 169-171; State v. Pace, 80 N.M. 364, 371-372, 465 P.2d 197, 205

(1969); State ex rel. Serna v. Hodges, 89 N.M. 351, 354-367, 552 P.2d 787, 790-793 (1976); State v. Garcia, 99 N.M. 771, 777, 975, 664 P.2d 969 (1983); State v. Cheadle, 101 N.M. 282, 289-290, 681 P.2d 708, 715-716 (1984); State v. Finell, 101 N.M. 732, 736, 688 P.2d 769, 773 (1984); State v. Compton, 104 N.M. 683, 695, 726 P.2d 837, 849 (1986); State v. Clark, 1999-NMSC-035, ¶¶ 60-61, 128 N.M. 119.

However, over the decades, the statutes implementing the death penalty have been modified to narrow the class of offenses for which the death penalty may be imposed. For example, in 1969 the then-existing death penalty statute was amended to limit the death penalty to first degree murders committed under three aggravating circumstances: (1) killing a police officer, (2) killing a jail or prison guard, and (3) committing a second first degree murder "after time for due deliberation following commission of a capital felony." State v. Rondeau, 89 N.M. 408, 413, 553 P.2d 688, 693 (1976) (quoting NMSA 1953 § 40A-29-2.1 (1969)); State v. Trivitt, 89 N.M. 162, 166-167, 548 P.2d 442, 445 (1976) (noting that the 1969 amendments limited the death penalty to first degree murder).

The statutes have also been modified to comply with the requirements of the Eighth Amendment as determined by the United States Supreme Court. For example, in 1973, the 1969 statute was replaced with a provision making the death penalty mandatory for any person convicted of a capital felony. *See* Hodges, 89

N.M. at 352, 552 P.2d at 788. This change was a direct response to the United States Supreme Court's decision in Furman v. Georgia, 408 U.S. 238 (1972), in which a plurality struck down the Georgia death penalty statute for failing to provide sufficient protections against the imposition of the death penalty in an arbitrary and capricious manner. Id. Like the Georgia statute, the 1969 New Mexico statute established the jury's role in determining whether a life or death sentence would be imposed without providing procedures to ensure that the jury did not exercise its discretion in an arbitrary or capricious manner. *See* NMSA 1953 § 40A-29-2 (1969). The Legislature's solution to this problem was to eliminate all discretion in determining whether the death penalty should be imposed.

The Supreme Court subsequently invalidated that solution in Woodson v. North Carolina, 428 U.S. 280 (1976) by holding that a statute making the death penalty mandatory violates the Eighth Amendment. *See* Rondeau, 89 N.M. at 411, 553 P.2d at 691. The Legislature responded by enacting the CFSA, which made the death penalty optional, increased the list of aggravating circumstances, and provided specific procedures to guide the decision maker's choice of sentence and minimize the risk that the choice is made in an arbitrary and capricious manner. The CFSA has survived numerous attacks challenging its constitutionality under

the Eighth Amendment. *See* Garcia, supra.; Cheadle, supra.; Finell, supra.; Compton, supra.; Clark, supra.

In addition, the CFSA survived repeated attempts at legislative repeal, until 2009 when the bill proposing repeal included a provision to replace the death penalty with a mandatory sentence of life without the possibility of parole for first degree murder committed under an aggravating circumstance. NMSA 1978, §§ 31-20A-1 through 6 (2009). That bill also included a savings clause providing that the repeal was prospective and, therefore, did not apply to first degree murders committed before July 1, 2009. *See* Petition for Writ of Superintending Control and Request for Stay (Petition), Exhibit A (Motion to Dismiss and Exhibit A (House Bill 285, Section 6, stating the provisions of the repeal act "apply to crimes committed on or after July 1, 2009.").

Petitioner argues the repeal of the death penalty establishes "an evolved standard of decency which makes it cruel and unusual punishment as a violation of due process to impose the death penalty." Petition, p. 4. In determining whether a state-imposed punishment is "so disproportionate as to be cruel and unusual punishment," the Supreme Court "refer[s] to 'the evolving standards of decency that mark the progress of a maturing society.'" Roper v. Simmons, 543 U.S. 551, 561 (2005) (quoting Trop v. Dulles, 356 U.S. 86, 110-101 (1958)). In so doing, the Court compares the number of states prohibiting a particular punishment with

the number of states imposing it to discern whether "a national consensus has developed against it.'" Roper, 543 U.S. at 562 (quoting Atkins v. Virginia, 536 U.S. 304, 316 (2002)). In addition, the Court will exercise its own judgment and examine the extent to which the punishment serves the penological interests that justify it. *See* Roper, 543 U.S. at 563, 571.

The New Mexico Legislature's prospective repeal of the death penalty does not establish a national consensus that the death penalty is so disproportionate to the first degree murder of a police officer that it exceeds contemporaneous standards of decency. Petitioner attempts to bolster his claim with reference to the prospective repeal of the death penalty by the New Jersey legislature. Even taking that legislation into account, however, the repeal of the death penalty by two states does not establish a national consensus against the death penalty when thirty-six states continue to authorize the death penalty for aggravated first degree murder.[1]

Nor can Petitioner support a claim that the repeal of the death penalty by two states evinces a trend toward abolishing the death penalty. Not only is two far short of a trend, it appears the two decisions are far from final. In both New Mexico and New Jersey, efforts to reinstate the death penalty are underway. *See Archbishop: Keep Ban On Death Penalty*, Albuquerque Journal, January 20, 2011, at A1, A4;

[1] *See* United States Department of Justice, Bureau of Justice Statistics, Capital Punishment, 2009 – Statistical Tables (found at http://ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2215).

http://www.app.com/article/20110119/NEWS03/101190388/Lawmaker-drafts-bill-to-OK-death-penalty-for-cop-killers. Prospective repeal of the death penalty that has since been highly controversial, and even the subject of political debate in the recent gubernatorial election[2] (in which the candidate in favor of the death penalty won) can hardly be described as an indicator of the citizenry's evolved standard of decency rejecting the death penalty as immoral or so disproportionate as to be cruel and unusual punishment.

Furthermore, prospective repeal by two states does not establish grounds for concluding that the death penalty is no longer justified by the penological goals of deterrence and retribution. Even in recent cases in which the Supreme Court invalidated imposition of the death penalty on juveniles (Roper) and on mentally retarded persons (Atkins), the Court continued to recognize that the death penalty in general serves both penological goals of retribution and deterrence. *See* Atkins, 536 U.S. at 319 (quoting Gregg v. Georgia, 428 U.S. 153, 183 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.)); Roper, 543 U.S. at 571 (quoting Atkins, 536 U.S. at 319). The Court concluded, however, that those justifications apply with less force to juveniles and mentally retarded persons who are, by their youth and mental condition, less culpable than other first degree murderers. Id

[2] *See Dueling Over Death Penalty,* Albuquerque Journal Online Edition, June 8, 2010 (found at http://www.abqjournal.com/news/state/082335485340news state06-08-10.htm).

Here, the prospective repeal leaves the death penalty available as punishment for first degree murders committed before July 1, 2009. In other words, the Legislature chose to hold first degree murderers to the consequences for their crimes, as those consequences existed when they committed their crimes. That choice is clearly justified by the penological goal of retribution. The goal of deterrence is also met, certainly with respect to an executed murderer's inability to commit future murders, but also with respect to communicating to all criminals that they will be held to account for their crimes in the manner in which the law provides when they commit them. *See* People v. Gilchrist, 133 Cal. App. 3d 38, 45, 183 Cal.Rptr. 709 (1982) (recognizing "the legitimate public purpose of assuring that penal laws will maintain their desired deterrent effect by carrying out the original prescribed punishment as written" (internal quotation marks omitted)).

In an effort to avoid the obvious conclusion that the prospective repeal of the death penalty by the New Mexico Legislature does not establish a national consensus against the death penalty, Petitioner argues that the repeal establishes a statewide consensus to reject the death penalty as cruel and unusual punishment. However, Petitioner fails to explain how a prospective repeal of the death penalty – repeal that leaves the death penalty available as punishment for first degree murders committed before July 1, 2009 – signals rejection of the death penalty on moral grounds. If a clear consensus existed among the citizens of New Mexico

that the death penalty offends our standards of decency, then the citizens' representatives would have eliminated the death penalty as punishment for any murderer, including those already under a sentence of death and those who killed at a time when the death penalty was the maximum punishment.

Moreover, Petitioner's argument suggests that the only possible reason for repealing the death penalty is to express an evolved standard of decency that rejects the death penalty as cruel and unusual punishment. Yet, other reasons exist and, in fact, were discussed during the process of passing the repeal. *See Death Penalty Repeal Passes House*, Albuquerque Journal Online, February 11, 2009 (found at http://www.abqjournal.com/abqunews/index.php?option= com_content&view=article&Id.=10740:death-penalty-repeal-passes-house& catid=1:latest&Itemid=39). High on the list of those reasons is the perceived high cost of death penalty litigation. Given the ongoing state budget shortfalls,[3] and the fact that other concerns were not enough to achieve repeal in the past,[4] there is simply insufficient grounds to conclude that the prospective repeal signals a statewide consensus that the death penalty is contrary to an evolved standard of decency, as opposed to a desire to eliminate the costs of death penalty litigation.

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[3] *See Richardson Drops Bomb*, Albuquerque Journal Online, November 12, 2010 (found at http:www.abqjournal.com/newsstate/122349494548newsstate11-12-10.htm).

[4] *Death Penalty Repeal Passes House*, supra.

The citizens of this state do not elect judges to resolve highly contested debates over the difficult policy choices that must be made with respect to crime and punishment. We elect legislators to resolve those debates, with the understanding that we can return to our legislators and demand correction if we are not satisfied with their decisions. We elect judges to "ascertain and declare the intention of the legislature, and to give effect to the legislative will as expressed in the laws." State v. Thompson, 57 N.M. 459, 465, 260 P.2d 370, 374 (1953). Therefore, "[i]t is no part of the duty of the courts to inquire into the wisdom, the policy, or the justness of an act of the legislature." Id. A decision by this Court resolving the debate over the death penalty at this time in history, when the debate is strong and ongoing, would violate our trust that the judiciary and the Legislature will keep to their separate roles, a separation that is vital to the proper functioning of our government. *See* Id. at 466 ("The courts are by the constitution not made critics of the legislature, but rather guardians of the Constitution; and, though the courts might have a doubt as to the constitutionality of the legislative act, all such doubts must be resolved in favor of the law.").

B. The prospective repeal of the death penalty does not result in the denial of equal protection to Petitioner and others who committed aggravated first degree murder before July 1, 2009.

Petitioner argues that prospective application of the repeal statute violates his rights to equal protection of the laws under the state and federal constitutions.

"The threshold question in analyzing all equal protection challenges is whether the legislation creates a class of similarly situated individuals who are treated dissimilarly." Breen v. Carlsbad Municipal Schools, 2005-NMSC-028, ¶ 10, 138 N.M. 331, 120 P.3d 413. According to Petitioner, the repeal statute treats him differently from other individuals similarly situated. It does not. The repeal statute creates a class of individuals who are not similarly situated to Petitioner – persons who commit first degree murder under an aggravating circumstance after July 1, 2009. Petitioner is not similarly situated to those individuals because he was on notice at the time he committed his crime that the maximum possible sentence for killing a police officer was death. *See* Nestell v. State, 954 P.2d 143, 145 (Okla.Cr.App. 1998) (rejecting an equal protection claim because the defendant was not similarly situated to persons who committed their crimes after the effective date of the Oklahoma Truth in Sentencing Act and noting the defendant's choice to commit his crime on a date prior to the effective date).

Petitioner is similarly situated to all persons who chose to commit first degree murder under an aggravating circumstance before July 1, 2009. Like Petitioner, each of those persons was on notice that they would be eligible for the death penalty for their crimes. The repeal statute does not treat Petitioner differently from those persons. Instead, the repeal statute creates a new class of

individuals who can never be eligible for the death penalty,[5] but who are eligible to be sentenced to life without the possibility of parole. The repeal statute treats those persons the same, as well.

Even if the repeal statute creates a class of similarly situated individuals from which it singles out individuals for different treatment, such treatment bears a rational relationship to a legitimate public purpose. As discussed above, the decision to apply the repeal statute prospectively furthers the penological goals of retribution and deterrence.

In addition, because the repeal statute replaces the death penalty with a mandatory sentence of life without the possibility of parole, the Legislature "could have been concerned with avoiding *ex post facto* claims." Hunt v. Nuth, 57 F.3d 1327, 1335 (4th Cir. 1995) (in federal habeas review of state court sentence, rejecting claim that equal protection clause required retroactive application of statute creating option of life without the possibility of parole as alternative to death sentence). Under the repeal statute, a person who commits aggravated first degree murder is no longer entitled to present mitigation evidence to convince the jury to impose a life sentence with the possibility of parole. *See* NMSA 1978, 31-20A-2 (2009). As a result, "if the statute applied retroactively, a defendant who

[5] Even if the repeal statute is itself repealed and the death penalty is reinstated, persons who commit aggravated first degree murder while the repeal statute is in effect cannot be sentenced to death. *See* N.M.Const. Art. II, § 19.

committed a crime before the statute's effective date and received a sentence of life without parole could argue that he received a greater sentence than if he had received only a life sentence with the possibility of parole." Hunt, 57 F.3d at 1335. Avoiding such claims is a rational basis, sufficient to overcome an equal protection claim, for making the repeal prospective instead of retroactive. Id.

Petitioner argues that his equal protection claim should be analyzed under the strict scrutiny standard rather than the rational basis standard. Determination of which level of scrutiny applies to a given case is based on "either the right or the nature of the group affected by the legislation." Breen, 2005-NMSC-028, ¶ 6. Strict scrutiny applies to legislative classifications that involve a "suspect class" such as race and national origin. State v. Rotherham, 1996-NMSC-048, 122 N.M. 246, 254, 923 P.2d 1131, 1139. Petitioner correctly does not argue that the repeal statute creates classifications that involve a suspect class. *See* Id. (A suspect class is "a discrete group saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." (internal quotations and citations omitted)).

Strict scrutiny also applies when the classification creates "inequalities bearing on fundamental rights." Id. "'[A] fundamental right is that which the Constitution explicitly or implicitly guarantees.'" Id. (quoting San Antonio Indep.

Sch. Dist. v. Rodriguez, 411 U.S. 1, 33-34 (1973). Based on the explicit constitutional guarantee to the right not to be "deprived of life, liberty, or property without due process of law," U.S.Const. amend V., this Court has found an implicit fundamental right to life and liberty. Rotherham, 122 N.M. at 254, 923 P.2d at 1139. According to Petitioner, the repeal statute bears on his fundamental right to life and, therefore, requires strict scrutiny, under which the State must establish that the statute's classification "serves a compelling governmental interest and is suitably tailored to serve that interest." Id. at 255, 923 P.2d at 1140.

Petitioner applies the fundamental right component of equal protection analysis too broadly. "A State has wide latitude in fixing the punishment for state crimes." Williams v. Illinois, 399 U.S. 235, 241 (1970). In exercising that latitude, the Legislature "may choose to differentiate between crimes based on aggravating conduct of the accused, and it may impose differing degrees of punishment based on the severity of the crime." State v. Padilla, 2008-NMSC-006, ¶ 13, 143 N.M. 310, 176 P.3d 299. Doing so, however, does not implicate a fundamental right to liberty that justifies strict scrutiny of the Legislature's sentencing classifications. Chapman v. United States, 500 U.S. 453, 464-465 (1991).

> Every person has a fundamental right to liberty in the sense that the Government may not punish him unless and until it proves his guilt beyond a reasonable doubt at a criminal trial conducted in accordance with the relevant constitutional guarantees. But a person who *has*

> been so convicted is eligible for, and the court may impose, whatever punishment is authorized by statute for his offense, so long as that penalty is not cruel and unusual, and so long as the penalty is not based on an arbitrary distinction that would violate the Due Process Clause of the Fifth Amendment. In this context . . . an argument based on equal protection essentially duplicates an argument based on due process.

Id. (internal citations omitted). Applying the reasoning of Chapman, state courts employ the rational basis test in reviewing equal protection challenges to state penal statutes. *See* State v. Harper, 111 P.3d 482, 484 (Colo.App. 2004); State v. Wright, 246 Conn. 132, 140, 716 A.2d 870, 875 (1998); State v. Smith, 48 S.W. 3d 159, 170 n. 7 (Tenn.Crim.App. 2000); State v. DeJesus, 947 A.2d 873, 885 (Rhode Island 2008); State v. Smart, 2001 WI App. 240, ¶¶ 4-5, 257 Wis. 2d 713, 652 N.W.2d 429.

Indeed, the rational basis test is uniformly applied to challenges based on disparate sentencing. For example, applying rational basis analysis, federal courts have rejected equal protection challenges to the sentencing disparity created by Federal Sentencing Guidelines treating crack cocaine and powder cocaine differently. *See* United States v. Burgos, 94 F.3d 849, 8760877 (4th Cir. 1996) (en banc); united States v. Bvse, 28 F.3d 1165, 1168-1171 (11th Cir. 1994); United States v. Singleterry, 29 F.3d 733, 740 (1st Cir. 1994); United States v. Angulo-Lopez, 7 F.3d 1506, 1508-1509 (10th Cir. 1993); and United States v. Lawrence, 951 F.2d 751, 753-756 (7ty Cir. 1991).

The rational basis test is applied to other sentencing disparities resulting from the application of state and federal penal statutes as well. For example, the First Circuit applied the rational basis test to the defendant's claim that a federal statute imposing a mandatory minimum based on the defendant's prior state-court conviction of cocaine possession. United States v. Fink, 499 F.3d 81, 87 (1st Cir. 2007). The defendant argued that the statute resulted in disparate sentences based on the state in which the prior conviction occurred and, therefore, violated equal protection guarantees. Rejecting that claim, the First Circuit concluded that "'[i]t was entirely rational' for Congress to structure the sentence-enhancement statute as it did." Id. Other courts have reached the same conclusion with respect to similar claims. *See* United States v. Houston, 547 F.2d 104, 107 (9th Cirs. 1976); United States v. Burton, 475 F.2d 469, 470 (8th Cir. 1973).

More importantly, courts uniformly apply the rational basis test to sentencing disparities that result from prospective application of newly enacted penal statutes, or amendment or repeal of existing penal statutes. *See* Hunt, 57 F.3d at 1335 (prospective application of statute creating life without parole as a sentencing alternative to the death penalty); Frazier v. Manson, 703 F.2d 30 (2nd Cir. 1983) (prospective application of statute providing for more good time credits per year); McQueary v. Blodgett, 924 F.2d 829 (9th Cir. 1990) (prospective application of Washington Sentencing Reform Act). For example, in Virginia, the

repeal of parts of a DWI habitual offender statute created disparate sentencing of habitual DWI offenders based solely on whether the offense was committed before or after the effective date of the repeal. Lilly v. Commonwealth, 50 Va.App. 173, 181-183, 647 S.E. 2d 517, 521-522 (Ct.App. 2007). In finding no equal protection violation, the Virginia court applied the rational basis test. Id. The court observed that the underlying premise of the defendant's equal protection claim was that "no substantive amendments could ever be enacted to recidivism statutes because such amendments would, of necessity, divide offenders into before and after categories." Id. at 182, 647 S.E.2d at 522. The court further observed that the logical extension of the defendant's claim was that "all statutory changes are irrational because they treat people differently on no other basis than the fortuity of time." Even the defendant recognized the absurdity of such an extension of logic and disavowed any such claim. Id.

Here, however, that is exactly the claim Petitioner makes. Yet, if strict scrutiny applies because the repeal statute affects Petitioner's interests in life and liberty, then strict scrutiny would necessarily apply to every penal statute, newly enacted, amended or repealed. Such an analysis ignores the Legislature's policy making authority, as well as the State's compelling interest in furthering the penological goals of retribution and deterrence. It would essentially transform the courts into super-legislative bodies with the power to override the Legislature's

policy choices. This Court, as the Supreme Court and every federal and state court to address this issue have done, should reject such an approach and, instead, apply the rational basis test in reviewing equal protection challenges to penal statues.

As discussed above, the Legislature's decision to apply the repeal statute prospectively to aggravated first degree murders committed after July 1, 2009, bears a rational relation to legitimate state interests.

> It is perfectly proper for the Legislature to create a new sentencing procedure which operates prospectively only. Despite the disparity created by rendering different sentences after an admittedly arbitrarily chosen date, prospective application of such a statute does not violate equal protection principles, because of the legitimate public purpose of assuring that penal laws will maintain their desired deterrent effect by carrying out the original prescribed punishment as written.

Gilchrist, 133 Cal.App. 3d at 45 (internal quotation and citation omitted).

Petitioner claims that "New Mexico's Equal Protection Clause, being Article II, Section 18 of the Constitution of New Mexico, provides something beyond that already afforded by the general language of the Equal Protection Clause of the United States Constitution." Pet. at 7. In so doing, Petitioner relies on the decision in New Mexico Right to Choose/NARAL v. Johnson, 1999-NMSC-005, 126 N.M. 788, 975 P.2d 841. However, Johnson does not hold that Article II, § 18 provides broader protection in all contexts than the equal protection clause of the Fourteenth Amendment. Rather, in Johnson the Court simply recognized that the Equal Rights Amendment to Article II, § 18 establishes distinct state characteristics

justifying broader protection against gender-based discrimination than is provided under the Fourteenth Amendment. Johnson, 1999-NMSC-005, at ¶ 29. Petitioner's equal protection claim does not involve a claim of gender-based discrimination and, therefore, does not benefit from the Equal Rights Amendment and the broader protection it provides. *See* State v. Lynch, 2003-NMSC-020, ¶ 13, 134 N.M. 139, 74 P.3d 73.

Therefore, under the interstitial approach to state constitutional claims, Petitioner must establish reasons for departing from the federal analysis. Id. Petitioner has not met that burden. Indeed, no such reason exists. In New Mexico, as in every other state, "the Legislature is invested with plenary legislative power, and the defining of crime and prescribing punishment therefor are legislative functions." Thompson, 57 N.M. at 465, 260 P.2d at 374. It is that power, and the legitimate penological interests the Legislature addresses through its exercise of that power, that forms the basis for application of the rational basis test to equal protection claims based on sentencing disparities created by penal statutes. Therefore, no reason exists for recognizing broader protection from sentencing disparities created by penal statutes under Article II, § 18 than is provided by the Fourteenth Amendment.

C. The statute prospectively repealing the death penalty is not a bill of attainder prohibited under the federal and state constitutions nor a special law prohibited under the state constitution.

 [Pages 22-33 omitted]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
February 4, 2011

NO. 32,744

MICHAEL PAUL ASTORGA,

Petitioner,

v.

HON. NEIL C. CANDELARIA, District Judge, Second Judicial District, County of Bernalillo, State of New Mexico,

and

STATE OF NEW MEXICO, by and through its Second Judicial District Attorney, KARI E. BRANDENBURG,

Real Party in Interest.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of superintending control, and the Court having considered said petition and response, and being sufficiently advised, Chief Justice Charles W. Daniels, Justice Patricio M. Serna, Justice Petra Jimenez Maes, Justice Richard C. Bosson, and Justice Edward L. Chávez concurring;

NOW, THEREFORE, IT IS ORDERED that the petition hereby is **denied**; and

IT IS FURTHER ORDERED that the Stay issued on December 10, 2010 hereby is lifted.

IT IS SO ORDERED.

WITNESS, The Hon. Charles W. Daniels, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 4th day of February, 2011.

(SEAL)

Madeline Garcia, Chief Deputy Clerk

ATTEST: A TRUE COPY
Madeline Garcia
Clerk of the Supreme Court
of the State of New Mexico

Attachment B

Excerpt of *State v. Rizzo,* 303 Conn. 71 (2011)

JOINT
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JUDICIARY
PART 10
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defendant's claim that the death penalty should be declared unconstitutionally unacceptable on its face. Id., at 249, 646 A.2d 1318. We explained: "In article first, § 8, and article first, § 19, our state constitution makes repeated textual references to capital offenses and thus expressly sustains the constitutional validity of such a penalty in appropriate circumstances. Connecticut case law has recognized the facial constitutionality of the death penalty under the eighth and fourteenth amendments to the federal constitution. See, e.g., *State v. Davis*, 158 Conn. 341, 358, 260 A.2d 587 (1969), vacated and remanded on other grounds, *186*[Davis v. Connecticut]* 408 U.S. 935, 92 S.Ct. 2856, 33 L.Ed.2d 750 (1972). Federal constitutional law does not forbid such a statute outright. *Gregg v. Georgia*, supra, 428 U.S. 153 [96 S.Ct. 2909]. Courts in the overwhelming majority of our sister states have rejected facial challenges to the death penalty under their state constitutions. Finally, Connecticut's history has included a death penalty since 1650, when it was incorporated into Ludlow's Code ... and such a penalty was considered constitutional at the time of the adoption of the constitution of 1818." (Citation omitted.) *State v. Ross*, supra, 230 Conn. at 249–50, 646 A.2d 1318.

We thereafter considered the sixth *Geisler* factor, contemporary understandings of applicable economic and sociological norms, and we disagreed with the defendant's argument "that the death penalty is so inherently cruel and so lacking in moral and sociological justification that it is unconstitutional on its face because it is fundamentally offensive to evolving standards of human decency." Id., at 251, 646 A.2d 1318. We reasoned that community standards of acceptable legislative policy choices necessarily were reflected in our constitutional text, our history and the teachings of the jurisprudence of other state and federal courts. Id. We found particularly compelling the fact that, in the ten years following the United States Supreme Court's invalidation of all of the states' capital punishment schemes due to their failure to channel properly the sentencer's discretion, thirty-seven states had passed new death penalty legislation designed to comply with the court's constitutional directives. Id. We concluded that, given that circumstance, "the probability that the legislature of each state accurately reflects its community's standards approaches certainty." (Internal quotation marks omitted.) Id.

We then emphasized that, although the death penalty itself is not cruel and unusual punishment contrary to the state constitution, the imposition of the penalty *187 must conform to constitutional constraints. Specifically, we held that "the due process clauses of our state constitution incorporate the principles underlying a constitutionally permissible death penalty statute that the United States Supreme Court has articulated in [its capital punishment jurisprudence].... These principles **1166 require, as a constitutional minimum, that a death penalty statute, on the one hand, must channel the discretion of the sentencing judge or jury so as to assure that the death penalty is being imposed consistently and reliably and, on the other hand, must permit the sentencing judge or jury to consider, as a mitigating factor, any aspect of the individual defendant's character or record as well as the circumstances of the particular offense." (Citations omitted.) Id., at 252, 646 A.2d 1318. We concluded that "[o]ur death penalty statute, § 53a–46a, meets these minimum state constitutional law requirements." Id.

Two years later, in *State v. Webb*, supra, 238 Conn. at 406, 680 A.2d 147, an en banc panel comprised entirely of members of this court [FN84] reaffirmed the holding of *Ross* recited herein,[FN85] and we since have repeated the holding on several occasions without elaboration. See *State v. Colon*, supra, 272 Conn. at 382–83, 864 A.2d 666; *State v. Breton*, supra, 264 Conn. at 417–18, 824 A.2d 778; *State v. Reynolds*, supra, 264 Conn. at 236–37, 836 A.2d 224; *State v. Cobb*, supra, 251 Conn. at 496–97, 743 A.2d 1. The defendant asks that we reconsider these holdings in light of the current legal and sociological landscape.

FN84. In contrast, in *State v. Ross*, supra, 230 Conn. at 183, 646 A.2d 1318, the five judge panel that decided the appeal had been comprised of three members of this court and two Appellate Court judges sitting by designation.

FN85. In *State v. Webb*, supra, 238 Conn. at 551, 680 A.2d 147, the vote sustaining the constitutionality of the death penalty was four to three, with Justices Berdon, Norcott and Katz in dissent.

[77] We agree with the defendant that, in determining whether a particular punishment is cruel and

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unusual in violation of constitutional standards, we must "look beyond historical conceptions to the evolving standards *188 of decency that mark the progress of a maturing society.... This is because [t]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change." (Citations omitted; internal quotation marks omitted.) *Graham v. Florida*, —— U.S. ——, 130 S.Ct. 2011, 2021, 176 L.Ed.2d 825 (2010). Thus, it is appropriate to revisit our earlier holdings to examine what since has transpired. In so doing, however, we remain cognizant that our constitution contains explicit references to capital punishment; see Conn. Const., art. I, §§ 8 and 19; and, therefore, "expressly sustains the constitutional validity of such a penalty in appropriate circumstances." *State v. Ross*, supra, 230 Conn. at 249–50, 646 A.2d 1318. The defendant's claim must be evaluated against this clear textual backdrop.

We first consider developments in the capital punishment jurisprudence of the United States Supreme Court.[FN86] In the years since *Ross* and *Webb* were decided, the United States Supreme Court has held that the death penalty is constitutionally impermissible for nonhomicide crimes against individuals; see *Kennedy v. Louisiana*, 554 U.S. 407, 413, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); and it has adopted categorical rules prohibiting the imposition of the death penalty for defendants who committed their crimes prior to the age of eighteen; see *Roper v. Simmons*, 543 U.S. 551, 568–71, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); or whose intellectual functioning is **1167 in a low range. See *Atkins v. Virginia*, 536 U.S. 304, 318–21, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). It remains settled federal law, however, that the *189 death penalty in general is constitutionally permissible. *Baze v. Rees*, 553 U.S. 35, 47, 61, 62 n. 7, 128 S.Ct. 1520, 170 L.Ed.2d 420 (2008); see also *Gregg v. Georgia*, supra, 428 U.S. at 177–78, 96 S.Ct. 2909.

FN86. We undertake, in essence, a partial *Geisler* analysis regarding what has occurred since 1994, because our constitutional text and history remain the same, and this court repeatedly has sustained the constitutionality of the death penalty generally and our death penalty statutes in particular. Accordingly, our focus is on recent federal and state jurisprudence and contemporary economic and sociological norms.

Notably, these federal constitutional developments did not change the law in Connecticut, because our legislature had acted ahead of the United States Supreme Court to prohibit executions of persons with mental retardation. See General Statutes § 53a–46a (h)(2), as amended by Public Acts 2001, No. 01–151, § 2. Moreover, from the time they were adopted in 1973, our modern death penalty statutes barred executions of those who committed their capital crimes when they were under eighteen years old; see Public Acts 1973, No. 73–137, § 4; and did not authorize the death penalty for any crime not involving the death of a victim.[FN87] See Public Act 73–137, § 3. We are not convinced, therefore, that the recent jurisprudence of the United States Supreme Court suggests that Connecticut, by retaining the death penalty, is out of step with national societal mores. To the contrary, over time, the national landscape has become more closely aligned with Connecticut. Additionally, we do not discern a fundamental disapproval of the death penalty in general from that court's ongoing shaping of the categories of offenses or offenders to which it should apply. Rather, such refinements are consistent with the long-standing principle espoused by the United States Supreme Court that society's ultimate sanction ought to be reserved for the most egregious and culpable of offenders.

FN87. When originally enacted, § 53a–54b authorized a capital felony conviction for a nonhomicide offense that, nevertheless, contributed to the death of a person. See Public Act 73–137, § 3(6) (identifying as capital felony illegal sale, for economic gain, of cocaine, heroin or methadone to person who dies as direct result of use of such cocaine, heroin or methadone). This provision was eliminated in 2001. See Public Act No. 01–151, § 3. Since then, Connecticut's statutorily enumerated capital felonies have included only various types of murders.

*190 We turn to our sister states. It is true that, in the intervening years since our decisions in *Ross* and *Webb*, the number of states in which the death penalty is an available punishment has declined slightly from the thirty-seven that authorized it in

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1994. Specifically, the legislatures of three states—Illinois, New Jersey and New Mexico—have voted to abolish the death penalty.[FN88] Although it is significant that these states have chosen to abandon capital punishment, the decision to do so in each instance was based on a variety of public policy determinations made by legislators and governors, and did not result from the constitutional command of a court. See, e.g., *State v. Ramseur*, 106 N.J. 123, 167–97, 524 A.2d 188 (1987) (rejecting claim that death penalty per se was **1168 violative of state constitution); *State v. Rondeau*, 89 N.M. 408, 412, 553 P.2d 688 (1976) (same).

FN88. Moreover, in *People v. LaValle*, 3 N.Y.3d 88, 120, 817 N.E.2d 341, 783 N.Y.S.2d 485 (2004), the New York Court of Appeals held that a jury deadlock instruction prescribed by New York's death penalty statute violated that state's constitution. Because state legislators have not cured the statutory defect, New York effectively has been without a death penalty since 2004.

Notably, the New Mexico ban is prospective only and no clemency has been granted to convicted capital offenders, leaving that state's existing death row intact. Given that circumstance, it is unlikely that the New Mexico legislature was convinced that the death penalty is intolerable under any and all circumstances. See *Atkins v. Virginia*, supra, 536 U.S. at 342, 122 S.Ct. 2242 (Scalia, J., dissenting) (legislation that abolished death penalty for persons with mental retardation prospectively only "is not a statement of absolute moral repugnance, but one of current preference between two [constitutionally] tolerable approaches").

More importantly, at this point in time, a strong majority of jurisdictions—thirty-four states, the federal government and the military—still authorize the death penalty, while only sixteen states do not. See Death Penalty Information Center, "Facts about the Death Penalty," (updated November 17, 2011), p. 1, available at http:// www. deathpenalty info. org/ documents/ Fact Sheet. pdf (last visited November 18, 2011) (copy contained in the file of this case in the Supreme Court *191 clerk's office). Simply put, the recent actions of a handful of states cannot reasonably be characterized as the type of "dramatic shift in the state legislative landscape"; *Atkins v. Virginia*, supra, 536 U.S. at 310, 122 S.Ct. 2242; that would call our decisions in *Ross* and *Webb* into question. Compare id., at 313–15, 122 S.Ct. 2242 (holding unconstitutional executions of persons with mental retardation, when thirty states had disallowed them); *Kennedy v. Louisiana*, supra, 554 U.S. at 423, 128 S.Ct. 2641 (same, for crime of child rape, when forty-four states had disallowed them); *Roper v. Simmons*, supra, 543 U.S. at 564–65, 125 S.Ct. 1183 (same, as to executions of juveniles, when thirty states, including five over prior fifteen years, had disallowed them); *Enmund v. Florida*, 458 U.S. 782, 788–92, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982) (same, as to executions of codefendants who did not kill, attempt to kill or intend to kill, when forty-two states had disallowed them); *Coker v. Georgia*, 433 U.S. 584, 595–96, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (same, for rape of adult woman, where forty-nine jurisdictions had disallowed them).

Although "the clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures"; (internal quotation marks omitted) *Atkins v. Virginia*, supra, 536 U.S. at 312, 122 S.Ct. 2242; in assessing whether a punishment is constitutionally sound, it also is appropriate for us to consider what is occurring in actual practice. For example, in *Graham v. Florida*, supra, 130 S.Ct. at 2024, in holding that the sentence of life imprisonment without the possibility of parole was cruel and unusual punishment for a juvenile who had committed a nonhomicide offense, the United States Supreme Court considered, inter alia, that nationwide, only 123 people were serving such sentences in only eleven jurisdictions. In contrast, as to the death penalty generally, as of January 1, 2011, there were 3251 inmates held on death row nationwide by thirty-six *192 states,[FN89] the federal government and the military. See Death Penalty Information Center, "Facts about the Death Penalty," supra, p. 2. Unlike the United States Supreme Court in *Graham*, therefore, we cannot conclude that the punishment of death has become a rarity imposed only in limited portions of the nation.

FN89. This statistic includes two inmates in New Mexico who remain on death row despite that state's repeal of the death penalty

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because the repeal, by its terms, is prospective only. It also includes sixteen Illinois inmates who were on death row in January of 2011, but were subsequently granted clemency by that state's governor when the repeal of the death penalty in Illinois took effect on July 1, 2011, bringing the number of inmates held on death row nationwide to 3235 in thirty-five states.

The defendant directs us to the fact that, despite the large number of inmates on death row, the number of executions actually carried out over the past decade generally has declined gradually, hitting a low point in 2008 before rising again.[FN90] The numbers remain substantially higher, however, than those in the ten years preceding**1169 our decision in *Ross*.[FN91] In addition, the decrease in 2007 and 2008 likely was attributable in part to moratoria imposed in 2007 following the United States Supreme Court's grant of certification in *Baze v. Rees*, supra, 553 U.S. at 41, 128 S.Ct. 1520, an appeal in which it was argued, unsuccessfully, that the risk of error in administration of lethal injection, the method of execution utilized by most death penalty states, rendered that form of capital punishment unconstitutional. Also a factor impeding executions in recent years is a shortage of thiopental sodium, which is used in lethal injections, as well as *193 moratoria imposed in various states while new lethal injection procedures are promulgated and challenged. See Death Penalty Information Center, "Death Penalty in Flux," available at http:// www. deathpenalty info. org/ death- penalty- flux (last visited November 18, 2011) (copy contained in the file of this case in the Supreme Court clerk's office); Death Penalty Information Center, "Lethal Injection," (2011), available at http:// www. deathpenalty info. org/ lethal- injection- moratorium- executions- ends- after- supreme- court- decision (last visited November 18, 2011) (copy contained in the file of this case in the Supreme Court clerk's office). In light of the foregoing, we are hesitant to assume, as the defendant invites us to do, that declines in actual execution rates are attributable to decreased public support for the death penalty.[FN92]

FN90. The numbers of executions carried out, nationwide, over the previous sixteen years, are as follows: 1994–31; 1995–56; 1996–45; 1997–74; 1998–68; 1999–98; 2000–85; 2001–66; 2002–71; 2003–65; 2004–59; 2005–60; 2006–53; 2007–42; 2008–37; 2009–52; 2010–46. See Death Penalty Information Center, "Facts about the Death Penalty," supra, p. 1. As of October 21, 2011, 38 executions have taken place. See id.

FN91. The numbers of executions carried out, nationwide, in the decade preceding *Ross* were, as follows: 1983–5; 1984–21; 1985–18; 1986–18; 1987–25; 1988–11; 1989–16; 1990–23; 1991–14; 1992–31; 1993–38. See Death Penalty Information Center, "Facts about the Death Penalty," supra, p. 1.

FN92. Moreover, although the pace of executions has slowed in recent years, they still occur at a rate substantially higher than that typically considered by the United States Supreme Court to evidence a dearth of public support for a particular punishment. See, e.g., *Kennedy v. Louisiana*, supra, 554 U.S. at 433, 128 S.Ct. 2641 (no executions of child rapists since 1964, or for any nonhomicide offense since 1963); *Roper v. Simmons*, supra, 543 U.S. at 564-65, 125 S.Ct. 1183 (only three executions of juvenile offenders in ten year period); *Atkins v. Virginia*, supra, 536 U.S. at 316, 122 S.Ct. 2242 (only five executions of defendants with mental retardation in thirteen year period); *Enmund v. Florida*, supra, 458 U.S. at 794, 102 S.Ct. 3368 (only six executions of nontriggerman felony murderers between 1954 and 1982).

We recognize that imposition of new death sentences also has declined substantially over the past decade, from 224 in 2000 to 112 in 2010. Death Penalty Information Center, "Facts about the Death Penalty," supra, at p. 3. Various reasons have been posited for the decline, however, including: the high costs of the death penalty at a time when state budgets are strained from a weak economy; publicity about convictions overturned due to DNA evidence; a significant drop in rates of violent crime and murder; improved legal representation for capital defendants, including the greater use of mitigation specialists; and the increasingly available option *194 for prosecutors to seek life sentences without the possibility of

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parole.[FN93] Although some of these explanations**1170 suggest declining public support for the death penalty because it offends contemporary standards of decency and morality, others decidedly do not. Because of the ambiguity underlying the decline in new death sentences, that circumstance does not provide compelling support for abandoning our decisions in *Ross* and *Webb*.[FN94]

FN93. See Death Penalty Information Center, "The Death Penalty in 2010: Year End Report," (December, 2010), available at http:// www. deathpenalty info. org/ documents/ 2010 Year End– Final. pdf (last visited November 18, 2011) (copy contained in the file of this case in the Supreme Court clerk's office); N. Lewis, "Death Sentences Decline, And Experts Offer Reasons," N.Y. Times, December 15, 2006, p. A28.

FN94. Indeed, declining imposition of capital punishment may indicate that the death penalty is being employed precisely as was intended, to punish only the very worst of society's criminals, and only after a vigorous legal process has ensured that the defendant has been found guilty after a fair trial with demanding procedural safeguards. As the United States Supreme Court has observed, "the relative infrequency of jury verdicts imposing the death sentence does not indicate rejection of capital punishment per se. Rather, [it] ... may well reflect the humane feeling that this most irrevocable of sanctions should be reserved for a small number of extreme cases." *Gregg v. Georgia*, supra, 428 U.S. at 182, 96 S.Ct. 2909.

The defendant points to public opinion polls as support for his claim of waning societal support for the death penalty. The most recent polling data indicate, however, that public support for the death penalty in Connecticut remains strong.[FN95] According to a Quinnipiac University poll released in March, 2011, 67 percent of Connecticut voters supported the death penalty, while only 28 percent were opposed to it.[FN96] D. Schwartz, Quinnipiac*195 University Poll (March 10, 2011), available at http:// www. quinnipiac. edu/ images/ polling/ ct/ ct 03102011. doc (last visited November 18, 2011) (copy contained in the file of this case in the Supreme Court clerk's office). When asked to choose between alternative penalties for first degree murder, 48 percent opted for the death penalty, while 43 percent chose life in prison with no chance for parole. Id. On both measures, the percentages favoring the death penalty have increased each year since 2007. Id. Although we recognize the weaknesses inherent in public opinion polls as objective measures of the popular psyche, we mention this data to refute the defendant's contention that it lends support to his constitutional claim.

FN95. The defendant filed his initial brief in this appeal in 2008, when support for the penalty appeared somewhat weaker, and he referred to an earlier Quinnipiac poll reflecting that circumstance.

FN96. The views of Connecticut residents are consistent with those held nationally. A 2010 Gallup poll showed 64 percent of Americans in favor of the death penalty and 29 percent in opposition to it. See Gallup, "In U.S., 64% Support Death Penalty in Cases of Murder," (November 8, 2010), available at http:// www. gallup. com/ poll/ 144284/ Support– Death– Penalty– Cases Murder. aspx (last visited November 18, 2011) (copy contained in the file of this case in the Supreme Court clerk's office).

The defendant also argues that this court should look to practices in some other nations, or to a resolution of the United Nations calling for the abolition of capital punishment, to determine whether the death penalty offends contemporary sociological norms in Connecticut. In its eighth amendment jurisprudence, the United States Supreme Court at times has referenced international norms as support for its own determinations, while at the same time making clear that the opinions prevalent in other nations could never control over a domestic legislative climate running decidedly counter to such opinions. See *Graham v. Florida*, supra, 130 S.Ct. at 2033, (noting that punishment at issue had been rejected in all other nations, but emphasizing that "[t]his observation does not control our decision [and that] judgments of other nations and the international community are not dispositive as to the meaning of the [e]ighth [a]mendment"); *Roper v. Simmons*, supra, 543 U.S. at 578, 125 S.Ct. 1183 ("[t]he opinion of the world **1171 community [which universally [FN97] had

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ceased to give official sanction to the *196 juvenile death penalty], while not controlling our outcome, does provide respected and significant *confirmation for our own conclusions* " [emphasis added]).

FN97. Unlike the punishments at issue in *Graham* and *Roper*, capital punishment in general has not lost the support of the entire world community. According to Amnesty International, ninety-six countries have abolished the death penalty for all crimes and nine have abolished it for all but "exceptional crimes," thirty-four countries retain the death penalty but have not executed anyone in the last ten years, and fifty-eight countries retain the death penalty and, apparently, have employed it recently. See Amnesty International, "Abolitionist and Retentionist Countries," available at http:// www. amnesty. org/ en/ death- penalty/ abolitionist- and-retentionist- countries (last visited November 18, 2011) (copy contained in the file of this case in the Supreme Court clerk's office).

In *State v. Allen*, 289 Conn. 550, 585, 958 A.2d 1214 (2008), we took a similar view of the relevance of international norms in a case involving a claim of an unconstitutional sentence. In rejecting the defendant's argument that life in prison with no possibility of release for a juvenile convicted of capital felony and murder was cruel and unusual punishment in violation of the eighth amendment, we recognized that the overwhelming majority of countries around the world had rejected that approach and that that circumstance was constitutionally relevant. We agreed, moreover, that the large number of juveniles serving life sentences in the United States raised troubling questions. Id. We ultimately concluded, however, that the overwhelming weight of authority from courts in this country that the practice was constitutionally sound, strong indications of approval from the United States Supreme Court and no evident trend away from imposing serious adult criminal liability upon juvenile offenders compelled us to defer to the legislative process on what ultimately is a public policy determination. Id., at 585–86, 958 A.2d 1214. We conclude similarly today that international norms cannot take precedence over a domestic legal climate in which capital punishment retains strong legislative and judicial support.

As part of his constitutional claim, the defendant argues that capital punishment is not serving legitimate penological goals of deterrence, incapacitation or rehabilitation.*197 9998FN;B10099FN;B101100

FN98. The defendant deemphasizes retribution, which is recognized as a constitutionally legitimate purpose of punishment. *Graham v. Florida*, supra, 130 S.Ct. at 2028. In explaining her veto of legislation intended to repeal the death penalty, then Governor M. Jodi Rell relied expressly on this justification, among others. See Governor's Veto Message for Public Act 09–107 Bill Notification Release No. 19 (June 5, 2009), available at http:// www. ct. gov/ governor rell/ cwp/ view. asp? A= 1716& Q= 441210 (last visited November 18, 2011) (copy contained in the file of this case in the Supreme Court clerk's office).

FN99. The defendant also includes lengthy quotes from the opinions of dissenting justices in capital cases, which express views similar to those reflected in the commission and interest group reports. He further observes that death row inmates have been exonerated in other jurisdictions, but makes no suggestion that any person on Connecticut's death row, presently or previously, was convicted wrongfully.

FN100. As the Supreme Court of New Jersey observed when upholding that state's death penalty against a general constitutional challenge, "[t]he 'contemporary standard of decency' against which the death penalty must be tested ... is that of the community, not that of its scientists, penologists, or jurists." *State v. Ramseur*, supra, 106 N.J. at 171, 524 A.2d 188.

One final matter raised by the defendant merits our consideration. In May, 2009, following the filing of the defendant's initial brief, the General Assembly passed No. 09–107 of the 2009 Public Acts (P.A. 09–107), which was intended to repeal the death penalty for crimes committed after the passage of the act. On June 5, 2009, however, P.A. 09–107 was vetoed by the governor, and the legislature did not thereafter

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muster the two-thirds vote necessary to override the governor's veto.[FN101] *199 Accordingly, P.A. 09–107 failed to become law. Similar legislation was introduced in 2011 and voted out of the judiciary committee, but died before making it to **1173 the floor for a full vote in either chamber. Revised Senate Bill No. 1035, 2011 Sess.

FN101. The repeal legislation originally had passed in the House of Representatives with ninety members voting in favor of it, fifty-six members voting against it and five members abstaining. The vote had been closer in the Senate, with nineteen members voting in favor of the legislation and seventeen voting against it.

In support of this claim, the defendant cites extensively, but selectively, to the portions of the legislative history of P.A. 09–107 in which some supporters of repeal expressed their beliefs that the death penalty is morally wrong, arbitrarily imposed or penologically ineffective. He ignores or discounts other portions of the legislative history that suggest that the attempted repeal was motivated by practical rather than moral concerns, as well as the portions reflecting substantial opposition to the repeal.

Following the aborted passage of P.A. 09–107, the defendant submitted his reply brief. He argues that the legislative repeal of the death penalty, although subsequently vetoed by the governor, evidences a powerful societal repudiation of capital punishment in Connecticut that should compel this court to conclude that such punishment violates the state constitution. We are not persuaded.[FN102]

FN102. The defendant also argues that the unsuccessful repeal attempt deprives the death penalty of the legislative authorization necessary for its constitutionality, and that "[t]he state constitution does not empower the [g]overnor to authorize the death penalty after its repudiation by the General Assembly...." Obviously, all of our current death penalty legislation was enacted via the process specified in our constitution, which requires both legislative and gubernatorial approval, and subsequently has been upheld by this court against numerous constitutional challenges. The defendant provides no direct support for the proposition that a legislature's unsuccessful repeal attempt somehow vitiates a law that was enacted constitutionally by a previous legislature and governor, and we are not aware of any. Moreover, to the extent the defendant raises a new claim as to purported constitutional limitations on the governor's authority to veto death penalty legislation, a claim to which the state has had no opportunity to reply, we need not address his arguments. *SS–II, LLC v. Bridge Street Associates*, 293 Conn. 287, 302, 977 A.2d 189 (2009) (parties may not raise new claims in reply brief). In any event, the defendant's arguments in this regard are meritless.

The governor, like our legislators, is an elected representative of the people of the state. Additionally, executive approval or veto of legislation is an integral part of the legislative process; see Conn. Const., art. IV, § 15; *200 and it is axiomatic that when the governor exercises this power, he or she is acting in a substantive legislative role. See *Bogan v. Scott–Harris*, 523 U.S. 44, 55, 118 S.Ct. 966, 140 L.Ed.2d 79 (1998); *Bagley v. Blagojevich*, 646 F.3d 378 (7th Cir.2011); *Baraka v. McGreevey*, 481 F.3d 187, 197 (3d Cir.), cert. denied, 552 U.S. 1021, 128 S.Ct. 612, 169 L.Ed.2d 393 (2007); *Torres–Rivera v. Calderon–Serra*, 412 F.3d 205, 213 (1st Cir.2005); *Butts v. Dept. of Housing Preservation & Development*, 990 F.2d 1397, 1406 (2d Cir.1993); see also 1 N. Singer & J. Singer, Sutherland Statutes and Statutory Construction (7th Ed. 2010) § 16:1, p. 729 ("All American [c]onstitutions give to the chief executive a formal and official role in the legislative process, in addition to the important influence he or she usually wields over the legislative process by reason of political power and leadership. The [c]onstitutions of the United States and of nearly every state require as *an essential step in enactment* that bills which have passed both houses shall be presented to the executive." [Emphasis added.]); 73 Am.Jur.2d 254, Statutes § 32 (2001) ("[i]n passing on laws that are submitted for approval, the executive is regarded as *a component part of the lawmaking body*, and as engaged in the performance of a legislative, rather than an executive duty" [emphasis added]). Thus, just as a governor's approval of legislation may provide evi-

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dence of the motivations underlying that legislation; *Perez v. Rent A-Center, Inc.*, 186 N.J. 188, 215, 892 A.2d 1255 (2006) (crediting governor's signing statement as evidence of statute's meaning), cert. denied, 549 U.S. 1115, 127 S.Ct. 984, 166 L.Ed.2d 710 (2007); *Rangolan v. Nassau*, 96 N.Y.2d 42, 49, 749 N.E.2d 178, 725 N.Y.S.2d 611 (2001) (same); the absence of approval, which the legislature thereafter is unable to override, signifies that public support for the failed legislation was tenuous.

Accordingly, we are unable to accept the premise underlying all of the defendant's various arguments as ***201** to the import of ****1174** P.A. 09-107, which, generally stated, is that the legislature's vote establishes definitively a lack of public support for the death penalty and, therefore, the governor's veto of that act thwarted the public will. Rather, a more plausible view is that "[t]he [governor] is a representative of the people just as the members of the Senate and of the House are, and it may be, at some times, on some subjects, that the [governor] elected by all the people is rather more representative of them all than are the members of either body of the [l]egislature whose constituencies are local and not [statewide]...." (Internal quotation marks omitted.) *Immigration & Naturalization Service v. Chadha*, 462 U.S. 919, 948, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983).

In light of the foregoing, we disagree that we properly may discern contemporary community standards on the basis of a "truncated [product] of the legislative process"; (internal quotation marks omitted) *Wilson v. Eu*, 1 Cal.4th 707, 727, 823 P.2d 545, 4 Cal.Rptr.2d 379 (1992); that ultimately failed to gain *all* of the constitutional approvals necessary to become the binding law of this state. Cf. *Kennedy v. Louisiana*, supra, 554 U.S. at 431, 128 S.Ct. 2641 (declining to discern contemporary norms based on proposed legislation). Simply put, "[t]he [g]overnor is a part of the legislative process and a veto renders a legislative action as if it had not occurred." *Washington State Legislature v. Lowry*, 131 Wash.2d 309, 330, 931 P.2d 885 (1997).

We conclude that the death penalty, as a general matter, does not violate the state constitution. Accordingly, we reaffirm our earlier holdings to that effect in *State v. Ross*, supra, 230 Conn. at 249-52, 646 A.2d 1318, and *State v. Webb*, supra, 238 Conn. at 406, 680 A.2d 147.

The judgment is affirmed.

[Concurring and Dissenting Opinions Omitted]

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Connecticut General Assembly Joint Committee of the Judiciary
Testimony in Support of SB 280
Professor John J. Donohue III
March 14, 2010

CAPITAL PUNISHMENT IN CONNECTICUT, 1973-2007:

A COMPREHENSIVE EVALUATION FROM 4686 MURDERS TO ONE EXECUTION

Professor John J. Donohue III

October 15, 2011

I. EXECUTIVE SUMMARY

A. THE THREE MAIN COMPONENTS OF THE REPORT

This study explores and evaluates the application of the death penalty in Connecticut from 1973 until 2007, a period during which 4686 murders were committed in the state.[1] The objective is to assess whether the system operates lawfully and reasonably or is marred by arbitrariness, caprice, or discrimination. My empirical approach has three components. First, I provide background information on the overall numbers of murders, death sentences, and executions in Connecticut. The extreme infrequency with which the death penalty is administered in Connecticut raises a serious question as to whether the state's death penalty regime is serving *any* legitimate social purpose.

Specifically, of the 4686 murders committed during the sample period, 205 are death-eligible cases that resulted in a homicide conviction, and 138 of these were charged with a

[1] Table 1 in Section VII of the report notes that there were 4578 criminal, non-negligent homicides in Connecticut between 1973 and 2006, and "Crime in Connecticut 2007" lists an additional 108 such homicides for that year, bringing the total for the period from 1973-2007 to 4686. For ease of reference, the FBI Uniform Crime Reports refer to such crimes as "murders," and I follow that practice unless further refinement is needed.

capital felony. Of the 92 convicted of a capital felony, 29 then went to a death penalty sentencing hearing, resulting in 9 sustained death sentences, and one execution (in 2005). A comprehensive assessment of this process of winnowing reveals a troubling picture. Overall, the state's record of handling death-eligible cases represents a chaotic and unsound criminal justice policy that serves neither deterrence nor retribution.[2]

Second, mindful of the Supreme Court's mandate that "[c]apital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution,'"[3] I evaluate whether the crimes that result in sustained death sentences are the most egregious relative to other death-eligible murders. Any claim to properly punishing such a narrow and specific category of the most serious offenses can definitively be put to rest. The Connecticut death penalty regime does not select from the class of death-eligible defendants those most deserving of execution. At best, the Connecticut system haphazardly singles out a handful for execution from a substantial array of horrible murders.

Third, I conduct a multiple regression to test more formally for the presence of arbitrariness or discrimination in implementing the death penalty. Specifically, I examine the impact on capital charging and sentencing decisions of legitimate factors that bear on the deathworthiness of 205 death-eligible cases, as well as legally suspect variables—such as race and gender of the defendant, race of victim, or judicial district in which the murder occurred.

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[2] The lack of any deterrence effect of the death penalty in Connecticut is widely acknowledged by knowledgeable researchers. Donohue and Wolfers, "Estimating the Impact of the Death Penalty on Murder," 11 American Law and Economics Review 249 (Fall 2009); . Donohue and Wolfers, "Uses and Abuses of Empirical Evidence in the Death Penalty Debate," 58 Stanford Law Review 791 (2005); Kovandzic, T. V., Vieraitis, L. M. and Boots, D. P. (2009), Does the death penalty save lives? Criminology & Public Policy, 8: 803–843.

Even the famously pro-death penalty (former) Waterbury State's Attorney John Connelly conceded that the death penalty in Connecticut is not a deterrent to murder. *The Death of Capital Punishment?* on *Morning Edition: Where We Live* (WNPR Connecticut radio broadcast, March 10, 2008).

[3] *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (quoting *Atkins v. Virginia*, 536 U.S. 304, 319 (2002)).

The Connecticut death penalty system decidedly fails this inquiry; arbitrariness and discrimination are defining features of the state's capital punishment regime.[4]

B. THE SEVEN MAIN FINDINGS OF THE REPORT

This section briefly summarizes the seven specific findings I present in this report. First, Connecticut's death penalty regime today is assailable for producing results similar to the Georgia regime indicted by the Supreme Court's 1972 decision, *Furman v. Georgia*.[5] There the Supreme Court denounced an arbitrary and capricious capital punishment system that led to wantonly freakish and rare applications of the death penalty. As the U.S. Supreme Court highlighted in *Furman*, the sheer infrequency of death sentences and executions, given the number of murders, creates a strong suspicion that the determination of who is to die is highly arbitrary. The system could only be saved if it could be shown that those few death sentences and even fewer executions are reserved for the defendants who, because of the nature of their crimes, are most deserving of death.

Connecticut has executed one criminal defendant over a period during which there were 4686 murders. Efforts at sharpening the definition of death-eligible cases have not changed the Connecticut system's essential flaw: once the system has operated through the enormous discretionary decisions of prosecutors and juries, there is no meaningful basis for distinguishing

[4] This report supersedes the earlier version of my report and underscores how robust the initial findings have proven to be. Specifically, the core findings of arbitrariness and discrimination along racial and geographic lines have remained strong even as I have refined the sample of death-eligible cases, doubled the number of coders (from 9 to 18) used to assess the egregiousness of 205 cases (University of Connecticut coders have been added to supplement the initial group of Yale coders), and altered the specification of the regressions in various robustness checks. In addition, I have been able to respond to the various criticisms raised by the professional expert witness Stephan Michelson hired by the State in his seven reports reports (each roughly of 500 pages) and his various other memoranda and submissions. These reports are filled both with much irrelevant and hyperbolic commentary and criticisms that are often misleading, incorrect, or inconsequential. I highlight some of the most arresting errors in Michelson's reports, although largely ignore the uniformly inaccurate and unprofessional ad hominem attacks that populate his reports.

[5] 408 U.S. 238 (1972).

the very few who receive sentences of death from the many capital-eligible murderers who do not.

As Justice Brennan observed, "Evidence that a penalty is imposed only infrequently suggests not only that jurisdictions are reluctant to apply it but also that, when it is applied, its imposition is arbitrary and therefore unconstitutional. *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726 (1972)."[6] 15 percent of death-eligible murder trial convictions resulted in a death sentence in pre-*Furman* Georgia, a level that was deemed to be freakishly rare and therefore arbitrary and unconstitutional in the *Furman* case itself.[7] But this study reveals that Connecticut imposes sustained death sentences at a rate of 4.4 percent (9 of 205) that is among the lowest in the nation and more than two-thirds lower than the 15 percent pre-*Furman* Georgia rate that gave rise to the finding of a freakishly rare imposition of a penalty.[8] This evidence provides a factual basis for the claim that the Connecticut death penalty regime is unconstitutional because it fails to comply with the Eighth Amendment's "narrowing" requirements recognized by the United States Supreme Court in *Furman*.

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[6] Justice Brennan, dissenting in *Tison v. Arizona*, 481 U.S. 137, 107 S.Ct. 1676 (1987).

[7] David C. Baldus, George G. Woodward & Charles A. Pulaski Jr., Equal Justice and the Death Penalty: A Legal and Empirical Analysis at 80 (1990): "In *Furman v. Georgia*, the infrequency with which juries actually imposed death sentences in death-eligible cases concerned each of the concurring justices. The *Furman* opinions suggest that the justices estimated that the national death-sentencing rate among convicted murderers was less than 0.20. Our pre-*Furman* data from Georgia indicated an unadjusted death-sentencing rate of 0.15 (44/294) in cases that resulted in murder convictions after trial, all of whose defendants were death eligible under Georgia law. This figure is quite consistent with the Court's estimate of the national rate."

[8] In an affidavit recently submitted in another case, David Baldus stated that "the post-Furman California death sentencing rate of 4.6% among all death-eligible cases is among the lowest in the nation and over two-thirds lower than the death sentencing rate in pre-Furman Georgia" (p.36). Connecticut's rate is smaller still than California's. The considerably higher rates of death sentencing that were still condemned in *Furman* and the low rates in California are identified in a recent empirical study of the California system conducted by George Woodworth, Michael Laurence, Robin Glenn, Richard Newell, and David Baldus that is based on a 1,900 case sample drawn from a universe of 27,453 California homicide convictions with offense dates between 1978 and 2002. Decl. of David C. Baldus on November 18th, 2010 (Exhibit 219), *Ashmus v. Wong* No. 3:93-cv-00594-TEH, U.S. District Court, ND Calif, page 4, and Table 5 on page 29.

Second, there is no meaningful difference between capital-eligible murders in which prosecutors pursue capital charges and those in which prosecutors do not. To assess whether the death penalty is being applied to the worst cases, I evaluated the egregiousness of 205 capital-eligible murders using two different egregiousness measures. I found that cases prosecutors charge as capital are virtually indistinguishable in these measures of deathworthiness from cases where prosecutors choose not to bring capital charges. This finding is difficult to square with the U.S. Supreme Court's Court's command that "[c]apital punishment must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'"[9]

Third, this command that within the class of death-eligible murders, the death penalty must be limited to the worst of the worst is also violated by the highly arbitrary sentences that capital-eligible defendants receive. For any given sentence, I found wide variations in the degree of egregiousness of the murders that can lead to that sentence. Similarly, at every level of egregiousness, I observed a wide range of sentences. In other words, Connecticut has not limited its use of the death penalty to the "worst of the worst," since many equally egregious or more egregious cases result in non-death sentences. Eight of Connecticut's nine affirmed death sentences were *not* among the 15 most egregious cases. For some cases resulting in a death sentence, literally 60 to well over one hundred cases in the sample of 205 are more egregious yet did not get the death penalty (see Table 9 in Section VII below). For the 8 defendants in our sample that are currently on death row in Connecticut, the median number of equally or more egregious death-eligible cases receiving non-death sentences is forty-six under the Composite egregiousness measure and thirty-five under the Overall egregiousness score. While this is what

[9] *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (quoting *Atkins*, 536 U.S. at 319).

one would expect from an arbitrary and capricious process,[10] it is not consistent with the idea of a fair and consistent criminal justice system that limits the death penalty to the worst of the worst within the class of death-eligible cases.

Fourth, while the data analyzed in this report comes from 205 death-eligible cases that end with a conviction, the focus on this limited sample *understates* the degree of arbitrariness in the system. If one widens the lens to focus on *all* death-eligible murders, the system is even less predictable than the above results indicate. Just prior to the adoption of the state's new death penalty statute in 1973, only 7 percent of murder cases were not cleared by arrest or extraordinary means. Since that time, there has been a steady erosion in the fraction of murders that are cleared. Today, roughly 40 percent of all Connecticut murderers go unsolved. If this current rate of clearances and death sentencing were to persist, then for every murderer who receives a sustained death sentence, at least fifteen death-eligible murderers would not be punished at all![11] Thus the wide sentencing disparities I describe above substantially <u>understate</u> the huge disparities in outcomes that are found within the larger class of death-eligible murders. Any retributive justification for the death penalty is severely compromised in a system that would execute nine while 137 comparable killers were able literally to get away with murder.

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[10] An enormous degree of unreviewable (or not effectively reviewable) discretion at many junctures in the criminal justice system—a hallmark of the Connecticut death penalty system—is the breeding ground for the operation of prejudice. *See* IAN AYRES, PERVASIVE PREJUDICE? UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION (2001). Discriminatory patterns have been identified even in systems that take far greater care to avoid racially discriminatory decisions than are made in the operation of the Connecticut death penalty regime. *See, e.g.*, Joseph Price & Justin Wolfers, *Racial Discrimination Among NBA Referees* (Nat'l Bureau of Econ. Research, Working Paper No. 13206, 2007) (noting substantial evidence of racial discrimination among NBA referees despite the claim that they are among the mostly highly reviewed of employees in the world).

[11] If nine of 205 is the rate of death sentencing among capital-eligible murders, then we would expect a similar number of sustained death sentences in the next 205 death-eligible murders that make it into the criminal justice system. Yet at the current clearance rate of 60%, catching 205 murderers means that 342 death-eligible crimes would have been committed and 137 murderers would never be caught. 137 is more than fifteen times the nine we assume will be ultimately sentenced to death. Moreover, not all cases that are cleared lead to a conviction (recall the arrest of OJ Simpson cleared the double-murder he was charged with but did not lead to a conviction). The above numbers do not capture this other avenue in which death-eligible murderers go free.

Fifth, the Connecticut death penalty system results in disparate racial outcomes in the imposition of sustained death sentences that cannot be explained by the type of murder or the egregiousness and other aggravating factors of the crimes involved. Looking at the raw statistics (in Table 20 of Section IX, which is also reproduced in this Executive Summary), one sees that minority defendants who commit capital-eligible murders of white victims are six times as likely to receive a death sentence as minority defendants who commit capital-eligible murders of minority victims (12 percent versus 2 percent).[12] Minority defendants who murder white victims are three times as likely to receive a death sentence as white defendants who murder white victims (12 percent versus 4 percent).

If we control for the factors of the crime through regression analysis, these disparities become even larger outside the Waterbury judicial district, as shown in Tables 24-26 of Section IX. For example, for the most common type of capital felony -- multiple victims cases, which comprise 38 percent of the 205 death-eligible cases -- a minority killing a white victim outside Waterbury is 11 to 13 times as likely to be sentenced to death as a minority killing a minority or a white killing a white. Of course, it is a clear violation of Equal Protection when "members of [one] race [are] being singled out for more severe punishment than others charged with the same offense." Gregg v. Georgia, 408 U.S. at 449 (Powell, J. dissenting).

Sixth, the regression analysis of capital felony charging decisions provides further evidence of the arbitrariness and racial bias in Connecticut's capital punishment regime. Specifically, controlling for the type of murder as well as the egregiousness and the number of special aggravating factors in a case, minority killers of whites are treated most harshly, experiencing a charging rate that is roughly 20-22 percentage points higher than those who kill minority victims (see Table 22).

[12] "Minority" refers to Hispanics and non-whites. "White" therefore refers to non-Hispanic whites.

These findings for the Connecticut death penalty system parallel those of recent studies of the application of the death penalty in other states: defendants who murder white victims are more likely to receive death sentences and are more likely to be executed subsequent to a death sentence than are defendants who murder non-white victims, particularly if the defendants are members of a racial or ethnic minority.[13]

Seventh, regression analysis also confirms that there are dramatically different standards of death sentencing across Connecticut. Capital-eligible defendants in Waterbury are sentenced to death at enormously higher rates than are capital-eligible defendants elsewhere in the state (see Tables 22 and 24-26). The arbitrariness of geography in determining criminal justice outcomes is a dominant factor in the Connecticut death penalty regime, despite the fact that, as a small state with no judicial election of judges or prosecutors, there is no articulated rationale for tolerating such immense geographic variation in capital sentencing. Moreover, race of both defendant and victim is strongly and statistically significantly related to whether or not the state pursues and obtains a death sentence – an indication that the death penalty system in Connecticut is not only arbitrary but is also impermissibly discriminatory.

An essential message from the regression analysis across an array of murder categories is that the likelihood that a death-eligible murder will result in a death sentence is at least an order of magnitude higher for minority on white murders (Tables 24-26). Minority on white murders will also have an order of magnitude higher probability of receiving the death sentence in Waterbury versus elsewhere in the state, and all other murders will have roughly two

[13] *See, e.g.*, David C. Baldus & George Woodworth, *Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception*, 53 DePaul L. Rev. 1411, 1425 (2004) (reviewing race of victim data within states and concluding that "[t]hese data strongly suggest that defendants with white victims are at a significantly higher risk of being sentenced to death and executed than are defendants whose victims are black, Asian, or Hispanic"); David C. Baldus & George Woodworth, *Race Discrimination in the Administration of the Death Penalty: An Overview of the Empirical Evidence with Special Emphasis on the Post-1990 Research*, 41 No. 2 CRIM. L. BULL. 6 (2005) ("on the issue of race-of-victim discrimination, there is a consistent pattern of white-victim disparities across the systems for which we have data").

orders of magnitude higher rates of death sentencing in Waterbury versus elsewhere. These are prodigious race and geographic effects on who is sentenced to die in Connecticut.

Table 20: Capital Charging and Death Sentencing Rates in Connecticut for 205 Death-Eligible Cases by Race of Defendant/Victim

	1. Total - 205	2. Minority/White – 34	3. Minority/ Minority - 92	4. White/White - 74	5. White/ Minority - 5
Means for 4-12 and 1-5 Egregiousness & Special Aggr. Fac	(8.4, 3.6, 3.7)	(8.2, 3.6, 3.9)	(8.2, 3.4, 3.5)	(8.6, 3.8, 4.0)	(9.0, 3.8, 2.8)
1. Rate of Capital Felony Charging (% and ratio)	67.3 (=138/205)	79.4 (=27/34)	60.9 (=56/92)	70.3 (=52/74)	60.0 (=3/5)
	(8.4, 3.6, 4.0) (8.3, 3.5, 3.3)	(8.2, 3.6, 4.1) (8.3, 3.7, 3.3)	(8.2, 3.4, 3.7) (8.2, 3.4, 3.1)	(8.7, 3.9, 4.3) (8.3, 3.6, 3.4)	(8.7, 3.8, 1.3) (9.4, 3.9, 5.0)
a. Male Defendants	68.1 (=130/191)	78.8 (=26/33)	59.8 (=52/87)	73.1 (=49/67)	75.0 (=3/4)
	(8.4, 3.6, 4.0) (8.2, 3.5, 3.4)	(8.2, 3.6, 4.1) (8.3, 3.7, 3.3)	(8.1, 3.3, 3.9) (8.2, 3.4, 3.2)	(8.8, 3.9, 4.3) (8.3, 3.6, 3.6)	(8.7, 3.8, 1.3) (8.0, 3.8 6.0)
b. Female Defendants	57.1 (=8/14)	100 (=1/1)	80.0 (=4/5)	42.9 (=3/7)	0 (=0/1)
	(8.3, 3.8, 2.8) (8.8, 3.7, 2.2)	(7.1, 3.5, 4.0) (no cases)	(9.0, 4.0, 1.8) (8.6, 3.8, 0)	(7.9, 3.5, 3.7) (8.4, 3.5, 2.3)	(no cases) (10.7, 4.1, 4.0)
c. Waterbury	75.0 (=9/12)	100 (=2/2)	60.0 (=3/5)	75.0 (=3/4)	100 (=1/1)
	(8.9, 4.0, 3.2) (10.3, 4.3, 2.7)	(8.4, 4.3, 4.0) (no cases)	(8.5, 3.8, 2.0) (11.0, 4.4, 3.5)	(9.2, 4.0, 4.3) (9, 3.9, 1)	(9.7, 4.2, 2.0) (no cases)
d. Non-Waterbury	66.8 (=129/193)	78.1 (=25/32)	60.9 (=53/87)	70.0 (=49/70)	50.0 (=2/4)
	(8.4, 3.6, 4.0) (8.2, 3.5, 3.3)	(8.1, 3.6, 4.1) (8.3, 3.7, 3.3)	(8.2, 3.4, 3.8) (8.0, 3.4, 3.1)	(8.7, 3.9, 4.3) (8.3, 3.6, 3.5)	(8.2, 3.5, 1.0) (9.4, 3.9, 5.0)
2. Rate of Death Sentencing (Sustained) (% and ratio)	4.4 (=9/205)	11.8 (=4/34)	2.2 (=2/92)	4.1 (=3/74)	0 (=0/5)
	(9.0, 4.2, 4.9) (8.3, 3.6, 3.7)	(8.2, 4.1, 3.8) (8.2, 3.6, 4.0)	(9.1, 4.2, 5.0) (8.2, 3.4, 3.5)	(10.1, 4.3, 6.3) (8.5, 3.8, 3.9)	(no cases) (9.0, 3.8, 2.8)
a. Male Defendants	4.7 (=9/191)	12.1 (=4/33)	2.3 (=2/87)	4.5 (=3/67)	0 (=0/4)
	(9.0, 4.2, 4.9) (8.3, 3.5, 3.8)	(8.2, 4.1, 3.8) (8.2, 3.6, 4.0)	(9.1, 4.2, 5.0) (8.1, 3.4, 3.6)	(10.1, 4.3, 6.3) (8.6, 3.8, 4.0)	(no cases) (8.5, 3.8, 2.5)
b. Female Defendants	0 (=0/14)	0 (=0/1)	0 (=0/5)	0 (=0/7)	0 (=0/1)
	(no cases) (8.6, 3.7, 2.5)	(no cases) (7.0, 3.5, 4.0)	(no cases) (8.9, 4.0, 1.4)	(no cases) (8.2, 3.5, 2.9)	(no cases) (10.7, 4.1, 4.0)
c. Waterbury	33.3 (=4/12)	100 (=2/2)	0 (=0/5)	50.0 (=2/4)	0 (=0/1)
	(9.0, 4.2, 5.0) (9.3, 4.0, 2.1)	(8.4, 4.3, 4.0) (no cases)	(no cases) (9.5, 4.0, 2.6)	(9.5, 4.1, 6.0) (8.8, 3.9, 1)	(no cases) (9.7, 4.2, 2.0)
d. Non-Waterbury	2.6 (=5/193)	6.3(=2/32)	2.3(=2/87)	1.4 (=1/70)	0 (=0/4)
	(9.1, 4.2, 4.8) (8.3, 3.5, 3.8)	(8.0, 3.9, 3.5) (8.2, 3.6, 4.0)	(9.1, 4.2, 5.0) (8.1, 3.3, 3.5)	(11.2, 4.8, 7.0) (8.5, 3.7, 4.0)	(no cases) (8.8, 3.7, 3.0)
Column Totals for Most "Egregious/Aggravated"	0	6	6	27	22

The darkened boxes identify the highest rate of charging or sentencing for any given row. In every case, the harshest treatment is accorded to the minority on white murders. The shaded individual numbers show the highest levels in each row for my two measures of egregiousness and for special aggravating factors. Note that minority defendant cases tend not to be the most egregious or aggravated (as seen in the last row of the table).

These regression findings—that race and geography are powerful determinants of capital sentencing decisions in Connecticut—are extremely robust to changes in the sample and in specifying the regression models. Within the class of capital-eligible crimes, these impermissible factors are far more consistent and stronger predictors of capital-charging and sentencing outcomes than are legitimate factors—such as the egregiousness of the crime or the presence of special aggravating factors, which of necessity means that Connecticut's death penalty regime fails to single out "the worst of the worst" for execution.

The findings documenting the harsher treatment that the Connecticut death penalty system inflicts on cases with minority defendants and white victims, and the vastly higher pattern of death sentencing in Waterbury virtually leapt out of the raw aggregated data, as highlighted visually in Table 20. The more sophisticated regression results overwhelmingly confirm what we saw in the simple tables and figures: race and geography substantially influence capital outcomes in Connecticut. These results emerge from regression models that control for the types of murders involved, the number of victims, the egregiousness of the crime (measured in two primary distinct ways based on the evaluation of 18 coders, as well as with many variations in specification and disaggregation into component elements), various aggravating factors that might attend the crime, the gender of the defendant, whether the crime is a stranger murder, the record of prior prison sentences of the defendant, or whether we drop out cases that Michelson argues should be omitted. These findings are statistically significant and robust.

Moreover, the arbitrariness and caprice of who is punished for capital-eligible murders is even more drastic than the data on those who are convicted show because a large and growing proportion of the murders in Connecticut remain unsolved. A system designed to promote deterrence and retribution would not waste enormous amounts of resources seeking

capital punishment -- given the widely accepted lack of deterrence conferred by the Connecticut death penalty -- when those resources could be used to help catch the growing number of Connecticut murderers that go scot free.

C. FIVE CONCLUSIONS FROM THE STATE'S EXPERT

One might assume from the prodigious length and strident tone of the (seven!) highly reports submitted on behalf of the state by Dr. Stephan Michelson that the state's expert disagrees with my conclusions on the most central findings of my report. In fact, if one can get past the rhetoric and unfounded speculations of the Michelson report, five main conclusions can be distilled from Michelson's analysis and his deposition testimony about the capital charging and sentencing process in Connecticut:

1. There are enormous and unexplained geographic disparities.
2. Death sentences are not confined to the worst murders.
3. There is gender bias in death sentencing.
4. There is racial bias in capital outcomes.
5. There is arbitrariness in the key charging and sentencing decisions of the Connecticut death penalty system.

Michelson's deposition testimony substantially corroborates the substance of all five of these indictments of the Connecticut death penalty system. First, on the issue of geographic disparities, Michelson concedes, as he must, that "there are certain crimes that will be prosecuted to the death penalty in Waterbury that won't be in New Haven."[14] Indeed, the evidence is unmistakable and irrefutable that capital sentencing is not uniform across Connecticut, but rather far more prone to death sentencing in Waterbury than in the rest of the state, even though there is no principled basis for the harsher treatment of cases in Waterbury.

[14] Michelson Dep. Sep. 17 2010 960:4 – 960:6.

Michelson recognized this geographic dependence at several points in his depositions and in his latest October 15, 2010 report.[15] For example, he conceded, as the evidence clearly mandated, that there is a statistically significant disparity in the administration of the death penalty based on geography:

> Q ...you would agree that there is a statistically significant disparity in the State of Connecticut's administration of the death penalty based on geography, correct? That's what you said yesterday, correct?
> A Yes, based on the geography that has been defined by judicial districts.[16]

He further acknowledged some of the factors that generated these large geographic disparities:

> Q But you do know that different state's attorneys in the state follow different courses with respect to charging decisions in capital cases because you refer to that in your report, do you not?
> A Well, yes, I believe that to be true.
> Q And you know, for example, because you refer to it in your report, that Prosecutor Connelly in Waterbury prosecutes more aggressively than other prosecutors in the state, correct?
> A Correct.[17]

And just to be clear that Michelson acknowledges that there is "no question" that capital cases will be treated differently across the state's judicial district, consider this exchange:

> Q. And isn't it true that based on your compilation of the data, as the state's retained expert, you have concluded that offenders, similar offenders committing similar capital offenses in different parts of the state are prosecuted differently and receive the death penalty differently for the same offense?
> A. ... I say they get the death penalty differently. ...
> There is no question that Waterbury is different from New Haven.
> Q. And New Britain. Waterbury is different than New Britain?
> A. Yes, that's right, New Britain would be similar to New Haven.
> Q. So you concluded, as the state's expert, that in the state of Connecticut, the death penalty is administered differently to similar offenders committing similar offenses depending upon where in the state the crime occurs?
> A. I did....

Indeed, in Michelson's regression designed to explain who gets the death sentence, he concludes that being in Waterbury is the most potent predictor -- more powerful than any of my egregiousness measures or even Michelson's own egregiousness measure (**awful**). He writes:

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[15] Michelson Dep. Sep. 17 2010 937:8 – 937:20; Michelson Dep. Sep. 17 2010 956:5 – 956:14; Michelson Dep. Sep. 17 2010 956:20 – 957:3; Michelson Dep. Sep. 17 2010 958:10 – 958:21; Michelson Report, October 15, 2010 at 309 (Michelson describes his regression findings as follows: "That trial in Waterbury leads to the death sentence more than in other districts is no surprise.")
[16] Michelson Dep. Sep. 17 2010 958:10 – 958:21.
[17] Michelson Dep. Sep. 17 2010 956:5 – 956:14.

> The single best explainer (accounting for 40 percent of the variation explained in Figure B23), is that the sentencing occurs in Waterbury. It is undeniable that the prosecutor in Waterbury is more willing to pursue the death penalty at a sentencing hearing, when it is available, than prosecutors in other jurisdictions. Whether there are constitutional implications for the finding is not my concern.[18]

Second, Michelson acknowledges that capital punishment is not reserved for the worst possible criminals. When asked how one Waterbury's District Attorney decides to pursue a capital sentence, Michelson responded: "he says that if it's death eligible, he will ask for the death penalty."[19] Since crimes committed in Waterbury are treated more harshly than *identical* crimes committed elsewhere in the state, as Michelson acknowledged, this necessarily implies that the Connecticut death penalty regimes does not limit the death penalty to the worst possible offenders. Needless to say, nothing about a murder in Waterbury makes it more egregious than a similar crime committed elsewhere in Connecticut.

Indeed, Michelson attempted to test whether capital punishment in Connecticut is limited to the worst of the worst crimes and he found that it was not. In particular, the **awful** variable that he coded to indicate his intuitive ratings of the awfulness of a crime did not relate to whether a crime was charged as a capital offense, as he explains in his deposition:

> Q. To the extent that you tested whether the worst of the worst crimes are charged with the death penalty, you found that there was no statistical correlation that was significant between the awfulness of the crime and the charging decision, correct?
>
> A. I could only say the awfulness of the crime as I see it.
>
> Q. Yes.
>
> A. Then I agree. I developed that measure, and it didn't relate very strongly, strong enough to be in the equation, but not strong enough to convince you.
>
> Q. So you developed a measure of egregiousness, and you found that the measure of egregiousness that you developed and put into your study did not have a statistically significant relationship to the charging decision, as that phrase is used by the majority of econometricians and courts in this country?

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[18] Michelson Report, Part B, p. 146 (August 20, 2010).
[19] Michelson Dep. Sep. 17 2010 956:23 – 956:24.

A. Right.[20]

Third, Michelson was emphatic about the impact of sex on the administration of the death penalty, saying it's "certainly true" that gender impacts who gets sentenced to death in Connecticut:

> Q. So that the death penalty in Connecticut is, both in terms of charging and in terms of actually having it imposed, there's a stat -- if you were applying the majority test, there's a statistically significant impact of gender on who gets the death penalty in Connecticut, correct?
>
> A. Well, I don't remember if that's true about charging, but after charging it's certainly true.[21]

And Michelson even indicated that he thought females were virtually immune from the death penalty on the basis of past cases.

> Q. And it's also correct in terms of your evaluation as an expert econometrician, your evaluation of the death penalty in Connecticut is that there is a bias based on gender in who gets the death penalty, correct?
>
> A. I don't think I use the word bias, but I don't know that that's inapplicable. Females do not get the death penalty.[22]

Fourth, although Michelson stumbled badly on the issue of the impact of race on capital outcomes in Connecticut, he conceded several times that his own regressions generated statistically significant findings that race influences outcomes under the Connecticut death penalty.[23] For example in Figure B17 on page 121 of his August 2010 report, Michelson presented a regression analysis of the factors that influence Connecticut capital felony murder charging decisions. The table included a number of variables, including one to measure whether

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[20] Michelson Dep. Sep. 16 2010 804:9 - 805:1. The truth is a bit worse than Michelson reports in his deposition. In fact, his measure of the worst cases, which he claims on page 309 of the August 20, 2010 report to have built on even more complete details of the facts of the crimes than was available in my data set was not only *not* statistically significant, but it was also too weak to be included in his equation (under Michelson's inclusion standards), as he clearly states in his report: "My assessment of the awfulness of the crime was not informative enough to be included as an explainer of the capital charge." Michelson Report, Part B, p. 123 (August 20, 2010). Nor was it included in Michelson's assessment of who gets the death penalty versus life sentences: "my variable **awful** is not related to the death sentence, in this analysis, even enough to be displayed." Id. at 148.

[21] Michelson Dep. Sep. 16 2010 716:21 - 717:3

[22] Michelson Dep. Sep. 16 2010 717:13 - 717:20.

[23] Michelson Dep. Sep. 16 2010 687:13 - 687:25; Michelson Dep. Sep. 16 2010 692:25 - 693:7; Michelson Dep. Sep. 16 2010 700:12 – 700:18; Michelson Dep. Sep. 17 2010 927:17 – 927:23; Michelson Dep. Sep. 17 2010 935:4 – 935:10; Michelson Dep. Sep. 17 2010 973:5 – 973:10.

the murder victim was white (regardless of the race of the defendant). Michelson's regression shows that there is a statistically significant *higher* capital charging rate at the .05 level when the victim is white:

> Q. Okay. Now, in your August 20th, 2010, the right-hand side, is the victim being white a significant – is the victim being white significant for the capital charging decision?
>
> A. I think most people would say yes, even though the T statistic is 1.97.[24]

As I did, Michelson also tested in his Figure B17 whether a black defendant who killed a white victim would be charged more harshly. As Michelson admitted at his deposition, this variable was highly significant in his own regression, with a notably high t-statistic of 3.07:

> Q. Well, what does this table with the 3.07 [t-statistic] show about whether a black defendant and a white victim has an effect on the capital charging decision in Connecticut?
>
> A. Well, I believe it shows very little.
>
> Q. You do?
>
> A. Yes.
>
> Q. If you were one of the experts in the field who used the phrase statistically significant, what would someone say about the 3.07?
>
> A. They would say it's significant at whatever level you want, practically.[25]

Describing the findings of this capital charging equation, Michelson notes in his report that "petitioner's [sic] will be pleased with these results ... [since] it does appear that black defendants with white victims are charged with capital felonies more easily than anyone else."[26]

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[24] Michelson Dep. Sep. 16 2010 705:7 – 705:12. Michelson's answer is somewhat confused. *Everyone* would say that this evidence is statistically significant *because* the t-statistic is 1.97, which exceeds the threshold level of 1.96 defining statistical significance at the .05 level.

Michelson acknowledged the race of victim impact on capital charging even more explicitly later in the same deposition with respect to a prior version of Figure B17 on page 111 of his September 2009 report. He indicated that this table was the same, except that the regressions had been run with two data points that he deleted in his August 2010 report (Michelson Dep. Sep. 16 2010 702:11 – 702:25):

Q. And whether you use the phrase statistically significant or not, you agree that the data in B-17 in September 1, 2009, that you generated, from the database as you were given, shows that the race of the victim has an impact that is significant on the capital charging decision in Connecticut, correct?

A. Correct. (Michelson Dep. Sep. 16 2010 700:12 – 700:18.)

[25] Michelson Dep. Sep. 16 2010 687:13 - 687:25.

[26] Michelson August 20, 2010 Report at 124.

While I certainly don't speak for petitioners, I, for one, was not particularly pleased to learn of the racial bias in capital charging in Connecticut, but that is what both my report and Michelson's regression results clearly establish.

Astonishingly, Michelson tries to explain away his (and my) finding by arguing that minority on white murders are treated worst because (apart from race) they are more egregious according to my egregiousness measures.[27] Michelson commits two gross errors in making this last claim. First, the evidence shows that minority on white murders are clearly *not* more egregious (see Table 20), so he gets his factual predicate wrong.[28] Table 20, above, clearly shows that on average white on white murders are more egregious under all three measures than black on white cases. Second, even if these murders were on average more egregious (though they are not), it would not matter since his (and my) regressions *control* for these egregiousness measures and yet we both still find that black on white crimes are treated more harshly. This is exactly what regression is for: to see whether the harsher treatment of minority defendants who murder whites exists *even controlling for the egregiousness of the crimes.* Michelson's own regression confirms that these defendants are treated most harshly, and his effort to refute his own regression is nonsensical. Indeed, as noted above, Michelson's regression controls for

[27] Michelson Report, August 20, 2010, app. at B 44.

[28] How did Michelson wrongly come to the conclusion that minority on white murders are more egregious? This is yet another gross error on his part, as I describe in detail in Section X.F of this report. Essentially, Michelson takes my two egregiousness measures and regresses my Overall measure on my Composite measure, while including a control for minority on white murders, which he finds to be statistically significant. He thinks this means minority on white murders are more egregious, which it certainly does not. One can see this by flipping the regressions (to regress the Composite measure on the Overall measure) in which case minority on white murders would come out as *less* egregious.

Michelson's error can be revealed by the following analogy: assume you had two sets of estimates (A and B) of the heights of individuals and you put in a control for Pygmies when you regressed the values of estimate A on the value of estimate B. If the Pygmie coefficient is positive, it means that height estimate A tends to be higher than height estimate B for Pygmies (and hence that height estimate B is lower than height estimate A for Pygmies). It does *not* mean that Pygmies are taller than everyone else, which is the analogous erroneous conclusion to the one that Michelson draws in assessing my two estimates of egregiousness.

egregiousness not only using my measures but his own measure as well (his **awful** variable). Nonetheless, the race effect does not go away.

The bottom line, then, is that if Michelson had done his analysis correctly, he would presumably have fully accepted the conclusion that minority on white murders are treated more harshly in the Connecticut death penalty system, and that there is no legitimate explanation for this treatment since the race effect remains strong even with a set of controls for the egregiousness of each case.

In fact, Michelson did articulate one mechanism by which black defendants would end up with harsher treatment in capital cases, noting that "among those charged with a capital felony, blacks are particularly unlikely to plead guilty—other than by Alford—even to a reduced charge."[29] Of course, since prosecutors govern the reduction of charges pursuant to a plea, the fact that black defendants would be "particularly unlikely" to secure these reduced charges is highly problematic in light of the findings that minority murders are *not* more egregious or deathworthy than murders committed by whites. Michelson, however, tries to blame the lower rate of pleas observed among this class of defendants on their own poor choices, claiming that "The defendant [in a capital case] can plead to whatever he wants, whenever he wants."[30] Any knowledgeable observer of the criminal justice system knows that claim to be entirely false.

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[29] Michelson, August, 20, 2010 report. at 164.

[30] This sentence appears on page 165 of Michelson's July 1, 2009 report and then again on page 150 of his September 1, 2009 report. When David Golub asked Michelson about this statement at Michelson's August 27, 2009 deposition, the following exchange occurred (at the bottom of pg 0390, beginning at line 119):

Q It's a nonsense statement; isn't it, sir?

A No.

But Michelson clearly realized it was nonsense and later changed the statement. By Michelson's November 30, 2009 version, this language became (page 177): "The defendant can initiate a plea to whatever he wants, essentially whenever he wants. The court may not be interested in a plea to anything but this current charge, but the defendant and prosecutor surely discuss such matters, which is why the DCI asks about such discussions." This is still nonsense.

Fifth, Michelson's (both explicit and inadvertent) concessions that the Connecticut death penalty system is marred by race, sex, and geographic disparities that cannot be explained by the nature of the crimes, and that the system does not limit its harshness to the worst of the worst offenders effectively establish that the system operates in a substantially arbitrary fashion.

Moreover, Michelson acknowledged multiple times that – according to his own findings - the number of victims did not correlate in a sensible way with capital punishment.[31]

> Q: You found that the more people that are killed, the lower the probability of the death sentence in Connecticut?
>
> A: As a characteristic of Connecticut's history, that is true.
>
> Q: That's bizarre, isn't it, sir?
>
> A: Absolutely.[32]

Indeed, Michelson's deposition testimony provides a rather concise description of some of the most obvious constitutional infirmities with the Connecticut death penalty system:

> Q: So what we now know about Connecticut that we agree on is that there's statistically significant disparity by gender, there's a statistically significant disparity by geography, there is an inverse relationship that is surprising between the number of victims and the likelihood of the death penalty in that it's less the more people you kill, and that there is data that shows in [your report] there is a statistically significant disparity ... based upon the defendant being black, the victim being white, and who gets charged with the death penalty, those are all –
>
> A: No, who gets charged with a capital felony.
>
> Q: Okay. You agree with everything I've just said, correct?
>
> A: Yes.[33]

This is the testimony of the *state's* expert witness: the Connecticut death penalty system is marred by statistically significant racial, gender, and geographic disparities, and renders arbitrary decisions that do not limit the application of the death penalty to the worst of the worst offenders. Such a capital punishment regime that selects a small handful of cases from a vast number of

[31] Michelson Dep. Sep. 16 2010 865:8 – 865:22; Michelson Dep. Sep. 16 2010 867:1 - 867:16; Michelson Dep. Sep. 16 2010 866:20 – 866:25.
[32] Michelson Dep. Sep. 16 2010 865:10 – 865:16.
[33] Michelson Dep. Sep. 16 2010 867:1 - 867:16.

murders in such a capricious way cannot advance any legitimate goal of deterrence or retribution. As the Supreme Court stated in *Atkins v. Virginia*, 536 U.S. 304, 318-19 (2002):

> Unless the imposition of the death penalty "measurably contributes to one or both of these goals, it 'is nothing more than the purposeless and needless imposition of pain and suffering,' and hence an unconstitutional punishment."

D. THE PROBLEMATIC STREAM OF MICHELSON'S ERROR-FILLED REPORTS

Somewhat paradoxically, the State of Connecticut hired as an expert in this litigation someone with no experience in any matter relating to the criminal justice system in general or the death penalty in particular. Michelson's lack of knowledge in this realm was evidenced by his inability to understand the difference between homicide and murder; his insistence—even after being coached by the prosecutors over multiple breaks and bringing his own hand-written notes into the deposition to aid him in correcting his early mis-statements—that murder was the broader of the two categories; his failure to understand that murder was a crime in the state of Connecticut, and his afore-mentioned claim that "The defendant can plead to whatever he wants, whenever he wants."

Michelson's ignorance of the substance of this litigation is compounded by his eccentric and wrong-headed attitudes on an array of fundamental issues of econometrics (which he also noted was a subject about which he was not an expert). He starts off his report endlessly assailing aspects of the creation of my final data set in a way that might lead the reader into believing that I presented some erroneous data because I could not line up data fields or owing to some other perceived shortcoming. This is completely untrue. In contrast with Michelson, who produced report after report of error-filled tables—every regression I ran did exactly what I said it did, as he himself conceded during his deposition:

> Q: Okay. Now, you had an opportunity because you were given Professor Donohue's tables and figures, you were given his DO files, you were given his equations. Did any of

the figures and tables in his report, were any of those not supported by the equations? Do you understand my question, sir?

A: I do. His tables – I replicated them. I said so in B.

Q: So every table and figure in Professor Donohue's report was supported by the underlying DO file and equation, correct?

A: Correct.[34]

Yet, on the third day of a scheduled four-day deposition, Michelson admitted that **he** messed up all of his data, rendering all of his tables worthless:

Q. So it's useless right now to try to question you on the accuracy of the data in your tables; isn't that right?
A. That's your decision.
Q. Well, we can question you about whether you performed -- you did what you said you did, but you are not standing behind any of the data in your tables right now; are you?
A. That's correct.[35]

Q. You agree that the data in your tables, all of your tables, the data is invalid; correct?
A. Is invalid? No.
Q. Yes. Incorrect? How about that, incorrect?
A. I would take, there are data elements that are incorrect and they need to be corrected.
Q. And you have no idea what element in the table is correct and what element in the table is incorrect; correct?
A. Well, that's because these tables are not data.[36]

...
Q. ...You have no idea as you sit here today whether any of the conclusions you drew from information in your tables will still be the same conclusion after you fix the tables?
A. That's correct.[37]

Q. Okay, I'll rephrase the question.
A. Every one of these numbers will change.
Q. ...You have no idea as you sit here today whether any of the conclusions you drew from information in your tables will still be the same conclusion after you fix the tables?
A. That's correct.[38]

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[34] Michelson Dep., Sep. 17 2010 901:5 - 901:16.
[35] Michelson, Stephan - Deposition transcript. Vol. III 9-30-09 P. 531: 2 - 10.
[36] Michelson, Stephan - Deposition transcript. Vol. III 9-30-09 P. 531: 11-21.
[37] Michelson, Stephan - Deposition transcript. Vol. III 9-30-09 P. 532: 1-5.
[38] Michelson, Stephan - Deposition transcript. Vol. III 9-30-09 P. 531: 22 – P. 532: 5.

Those statements were made back in September of 2009, and two years later, the endless stream of erroneous tables keeps pouring forth. He has already turned over *seven* different reports trying to correct past errors with the last appearing in August of 2010. Since then he has issued revisions in October and November of 2010, and he is still churning out tables that completely contradict the relevant tables he presented in his earlier reports. Apparently, Michelson would now like to clean up the latest mess by submitting report eight, which he claims to be working on.

Michelson follows up his inaccurate and misleading attack on my data set, with a misguided denunciation of my report for using an entirely appropriate measurement scale to capture the egregiousness of death penalty cases in my regression analysis. While any aspect of a regression analysis is fair game for investigation, the hyperbolic charges of my alleged "incompetence" coupled with Michelson's complete ignorance of the published literature on this issue are troubling. I show in this report that my egregiousness measures are the type of measurement scales that are frequently and profitably used throughout the social sciences and medicine, using examples from work by Nobel economist Daniel Kahneman, top psychologist Robyn Dawes, and eminent statistician and long-time and first Chair of the Harvard Statistics Department Fred Mosteller, as well as numerous other authors including those cited by Michelson approvingly ("one of the most impressive academic books I have ever read") and even by those who Michelson sought to cite *against* me.

The Court will have to decide whether to believe Michelson who says that I have made the type of error that is not worthy of a high school student or to believe the collected product of some of the most eminent and highly regarded academics working over the last fifty years. I should add that Michelson's very position on measurement scales was mocked by the towering

statistician John Tukey who termed it a "dangerous view" and added that "if generally adopted it would not only lead to inefficient analysis of data, but it would also lead to failure to give any answer at all to questions whose answers are perfectly good, though slightly approximate. All this loss for essentially no gain."[39]

At the same time, Michelson embarks on a string of serious statistical errors, including his complete violation of standard econometric protocol by engaging in the type of flawed data mining exercise that the eminent MIT econometrician Frank Fisher appropriately called "a recipe for spurious results," his common practice of running nonsensical or flawed regressions or wildly misinterpreting the regressions he does run, his flagrant violation of standard statistical protocols while assailing me for my unwillingness to engage in similar violations, all coupled with his admitted and demonstrated ignorance of the peer-reviewed literature on the very issues about which he so vociferously and wrongly expounds, and his lack of knowledge of modern empirical research or best empirical methodology.

While Michelson purports to show in his Figure D03 that race does not influence capital charging, my Table 53 in Section X.H.1 reveals a highly significant higher charging rate for black on white murders, mimicking Michelson's list of explanatory variables and using his exact sample of 214 death-eligible cases. Table 53 simply re-defines the racial categories in Michelson's regressions to reflect what his own Table suggests it is doing (but doesn't do).

Similarly, while Michelson purports to show in his Figure D12 that race does not influence capital sentencing, my Table 56 in Section X.H.2 reveals a highly significant higher capital sentencing rate for minority on white murders, again mimicking Michelson's list of explanatory variables and using his exact sample of 126 death-eligible cases. The only

[39] JOHN W. TUKEY, *Data Analysis and Behavioral Science or Learning to Bear the Quantitative Man's Burden by Shunning Badmandments*, *in* 3 THE COLLECTED WORKS OF JOHN W. TUKEY 187, 243 (Lyle V. Jones ed., 1986).

difference between Michelson's Figure D12 and my Table 56 is that I again (as in Table 53) use more illuminating racial categories, I correct Michelson's errors in incorrectly indicating who received a death sentence, and I use the more appropriate logit estimation approach (rather than Michelson's sub-optimal OLS estimation).

These minor improvements to Michelson's capital charging and sentencing equations show that race does indeed infect capital outcomes in Connecticut in exactly the way that my report has emphasized. Moreover, none of Michelson's criticisms about my egregiousness measures, my lack of controls for guilty pleas or other factors, or problems with the data has any bearing on these findings in my Tables 53 and 56 for a simple reason. Those tables use Michelson's exact sample, use Michelson's list of explanatory variables except for the corrected racial identifiers, and use Michelson's measure of egregiousness. Michelson has essentially conceded every major finding from my report, except racial bias. Correcting his own regression models confirms the existence of this racial bias in both capital charging and sentencing.

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330 Main St., First Floor
Hartford, CT 06106
860-523-9146

Good afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee. My name is Andrew Schneider and I'm Executive Director of the ACLU of Connecticut. I am here today to express our support for SB 280, An Act Revising the Penalty for Capital Felonies.

The death penalty is the ultimate denial of civil liberties. It's an irreversible punishment used by a justice system that makes mistakes, thus creating the very real risk of executing an innocent person. The implementation of the death penalty is arbitrary, discriminatory and it does not deter crime.

Regardless of one's viewpoint about the morality or constitutionality of the death penalty, most people would agree that if we are going to continue executing people in the U.S., we should be doing it fairly and rationally. However, three factors, unrelated to the crime itself greatly influence who gets executed and who does not: race, geography, and poverty.

Whether someone convicted of a capital crime receives a death sentence depends not just on the state they live in but also the county in which the trial and conviction takes place. Some prosecutors are more zealous in seeking the death penalty than others. This pattern exists in Connecticut with a startlingly high representation of people on death row from the Waterbury area.

Stanford law professor John J. Donohue reported last year that the "vastly higher" rate of death sentences handed out in Waterbury "virtually leapt out of the raw aggregated data" when he set out to study the application of the death penalty in Connecticut between 1973 and 2007. His scientific and irrefutable study confirmed in Connecticut what less exhaustive analyses across the nation had long suggested: that the death penalty has been imposed here in a completely arbitrary and capricious manner.

As part of his study, Professor Donohue composed a scale to measure the egregiousness of each capital case to test whether the state adhered to the U.S. Supreme Court's directive that the death penalty be applied only to the worst of the worst cases. He found exactly the opposite – the egregiousness of the crime appeared to be completely unrelated to the application of the death penalty.

The correlations he did find, and which have been found over and over in other studies, concern race. Minority defendants who murdered white victims were six times more likely to receive the death penalty than minority defendants who murdered minority victims. Minority defendants who murdered white victims were three times more likely to receive the death penalty than were white defendants who murdered white victims.

Professor Donohue concluded that "Overall, the state's record of handling death-eligible cases represents a chaotic and unsound criminal justice policy that serves neither deterrence nor retribution."

Most capital-crime defendants are indigent when arrested and cannot hire their own counsel. Wealthy people who can afford a private attorney are generally spared the death penalty, no matter how heinous their crimes. Poor people do not have the same opportunity to buy their lives.

Social Science research has discredited the claim that execution deters murder. The majority of murders are committed in the heat of passion, and/or under the influence of alcohol or drugs, with little thought given to the possible consequences. States that have death penalty laws do not have lower murder rates than states without such laws. And states that have abolished capital punishment or reinstituted it show no significant changes in either crime or murder rates.

The irreversibility of the death penalty is especially significant in light of the number of innocent people put on death row in recent times throughout the country. In the last 39 years, 140 people have been released from death row with evidence of their innocence. From 1973 to 1999, there was an average of 3.1 exonerations per year. From 2000-2007 there has been an average of 5 per year.

Capital punishment costs our state lots of money we cannot afford - much more than keeping someone in prison for life without parole – and Connecticut has carried out only one death sentence in the last four decades, it seems like a high price for a system we rarely use.

So it is with good reason that other states have abolished their death penalties. New Jersey, New Mexico and Illinois have done so in recent years. It's time for Connecticut to abolish it, too.

Thank you.

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LINE 13

Testimony of William Tuthill in SUPPORT of SB 280 March 14, 2012

Good Afternoon Senator Coleman, Representative Fox and other distinguished members of the Judiciary Committee. My name is William Tuthill. I live in Madison and I am a former Assistant Deputy Commissioner of the Connecticut Department of Correction where I was responsible for the central and northern region correctional facilities in Connecticut. I was the Warden of both New Haven and Bridgeport Correctional Centers and worked at five correctional facilities during my 22 ½ years of service.

I support SB 280, which would repeal Connecticut's death penalty. The death penalty in Connecticut and across the country is broken beyond repair. It is time to end the death penalty in Connecticut.

The death penalty does not deter crime. The murder rate in death penalty states has exceeded the rate in non-death penalty states in the last two decades - in some cases by as much as 44%.

I want to focus our attention on one death penalty issue: concern over the conditions of incarceration for those eligible for the death penalty, but instead sentenced to life in prison without the possibility of release.

Life Without Release has been under fire as insufficient punishment.

"A Country Club", "A Walk in the Park" and "Three Hots and a Cot" are terms flippantly used to describe prison life. That is NOT reality.

It is widely accepted that severe restrictions and isolation increase mental illness and violence.

An article in the New York Times on March 10, 2012 cited the experience of Mississippi where the lessening of severe restrictions on segregated inmates actually significantly improved safety for staff and inmates.

Commissioner Arnone testified before your Committee on March 21, 2011 requesting that you not restrict the discretion of the Department of Correction in inmate management options.

We have a legal and ethical obligation to keep all our correctional facilities safe for both staff and inmates. Keeping inmates occupied is one of the best tools toward reaching this end – even for murderers.

Life in prison is an incredibly severe sentence. Imagine that your world was controlled in every aspect. Personally experience the deprivation that is inherent in incarceration for just one day. I am confident that your view of incarceration would be greatly impacted.

Connecticut must end state sponsored murder and recognize that the death penalty is fundamentally wrong and it is irreversible.

We allow the acts of a few depraved individuals to exert undue influence on our public policy. Now is the time to end a critically flawed policy which represents our most primitive instincts of retribution and revenge.

I hope and pray that you do the right thing and repeal the death penalty NOW.

Thank you.

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LINE 15

HARTFORD POLICE UNION
20-28 Sargeant Street Hartford, CT 06105
Tel. 860-548-1435 Fax 860-548-1329 E-mail: hartford.union@att.net
PRESIDENT RICHARD HOLTON
Office of The President

Statement of

THE HARTFORD POLICE UNION

To the

JUDICIARY COMMITTEE

CO-Chairman, Senator Coleman and CO-Chairman, Representative Fox, and members of the Judiciary Committee. My name is Richard Holton, a Sergeant in the Hartford Police Department with 16 years of policing experience. I am also the President of the Hartford Police Union, the largest independent municipal police union in the state. On behalf of all the members of the Hartford Police Union, which is comprised of Patrolmen, Detectives, Sergeants, Lieutenants and Captains, we are opposed to ***Senate Bill #280 An Act Revising the Penalty for Capital Felonies.***

Over time we have evolved into a civilized society that has become governed by laws and morality, and throughout history we have learned that when an individual violates those laws there are consequences, and that those consequences must fit the crime. When individuals believe that society is unwilling to impose upon criminals the punishment they deserve then they have sown the seeds of anarchy and chaos which results in individuals seeking justice by other means.

When an individual murders another individual, society must stand up and denounce this act, and if that act was so heinous that it warrants death then that individual chose their fate by their actions. The death penalty is not about "an eye for an eye or a tooth for a tooth" it's about holding that individual accountable for their actions and protecting /safeguarding innocent victims (men, women, children and the elderly) from predators within society who do not have a moral compass and do not value life as the rest of society does.

Is it so much to ask these violent predators to forfeit their life when they didn't give their victim(s) a choice, I say no. It's not until some of these predators are faced with their own mortality that they fear (the same sentence they gave their innocent victims) DEATH themselves. My members and I, along with two thirds of the American public are in favor of the death penalty.

Death penalty opponents argue two points, the economics of the death penalty and the deterrent effect of the death penalty.

As a deterrent the death penalty does work. Several recent studies from Emory University, The University of Colorado, The University of Houston and Clemson University show that it does. An economics professor from the University of Colorado, Professor Naci Mocan, who is opposed to the death penalty, stated that his research

HARTFORD POLICE UNION
20-28 Sargeant Street Hartford, CT 06105
Tel. 860-548-1435 Fax 860-548-1329 E-mail: hartford.union@att.net

shows that each execution results in five fewer homicides, and commuting a death sentence means five more homicides.[1] A nationwide study done by professors at Emory University concluded that each execution deters an average of 18 murders.[2]

The economics of death penalty, opponents say it's cheaper to give these most violent and sadistic members of society life in prison. They talk about the trial and the extensive appeals process and how costly they both are but it's these very individuals that make a profit from the system itself. They say the appeals process is too lengthy and costly. *Then let's streamline the process*. It's these very same individuals that cause these delays by appealing every little decision made by the court costing the tax payers money and delaying justice for the victim's families. There is a cost to seeking justice and to say that cost is too expensive, especially in these types of cases is absurd.

There is no threat of a swift and speedy trial these days, it's just delays and more delays, and the process has to be streamlined. By streamlining the process it would strengthen the deterrent effect of the death penalty. The longer an individual sits on death row the less effect it has as a deterrent. According to a 2004 study done by a professor from Emory University, for every 2.75 years cut from time spent on death row, one murder would be prevented.[3] That's one innocent victim's life, which would be spared.

That innocent victim could be a member of your family, and instead of celebrating birthdays, anniversaries, graduations and other special occasions with them you could be marking these special occasions by placing flowers at a somber graveside remembrance.

Life in prison is not a deterrent, the death penalty is.

The Greek philosopher ARISTOTLE said:
"We become just by performing just actions, temperate by performing temperate actions, brave by performing brave actions" what is more just and brave than advocating for the innocent victims that did not have a choice and no longer have a voice.

Sergeant Rich Holton
Hartford Police Union President

[1] The Deterrent Effect of the Death Penalty (2003), *carmical.net electronic reference*. Retrieved April 11, 2011 from http://www.carmical.net/resources/deteff.htm by Dudley Sharp
[2] The Deterrent Effect of the Death Penalty (2003), *carmical.net electronic reference*. Retrieved April 11, 2011 from http://www.carmical.net/resources/deteff.htm by Dudley Sharp

[3] Death Penalty Deters Murders,(2007) *cbsnews.com electronic reference*, Retrieved April 5,2011 from http:/www.cbsnews.com/stories/2007/06/11/national/main2911428.shtml by Sean Alfano

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LINE 9

Rev. Dr. W. Vance Cotten, Sr.
Pastor of Shiloh Missionary Baptist Church, Middletown
In Support of Repeal of the Death Penalty, SB -280

I am Rev. Dr. W. Vance Cotten, Sr., Pastor of Shiloh Missionary Baptist Church, the largest and one of the oldest predominantly black churches in Middletown. I have the distinction of being the third pastor since Shiloh's inception. In April, we will celebrate 61 years of ministry. I have led Shiloh for almost twenty-five years.

Additionally, I serve as the President of the New England Missionary Baptist Convention, the oldest Black convention in America. We will celebrate our 138th annual session in July. The New England Convention has member churches from Maine to Virginia. I am also President of New Haven's Christian Leadership Bible College and I serve on several boards throughout Connecticut, including Chair of the Board of Hartford Behavioral Health, CEO of the Board of Shiloh Manor Elderly Housing Complex in Middletown and a board member of the Middlesex County Substance Abuse Council.

My leadership positions and my travels afford me the opportunity to meet and speak to people of all backgrounds and nationalities around the country. A few months ago, just before the execution of Troy Davis, the death penalty was a topic that was often discussed and people were very passionate about it.

Once again, the death penalty is making headlines in Connecticut.

Many people, including myself, held their breath and waited to see if the execution of Troy Davis would take place. Millions of people from around the globe, including the Pope and former Presidents, cried out that we not execute Mr. Davis. In 1989, Davis was convicted of murdering a police officer, based upon the testimony of 9 witnesses. Since then, 7 of the 9 have recanted or changed their testimony. "It was not Davis", they said. With so much doubt swirling around this case, we thought surely the execution couldn't take place. However, we were wrong, and Davis was executed.

Since that night, I have been haunted by the fact that human beings are fallible. Davis' case was not the first time the death penalty system has shown us our limitations. Across the country, 138 men have been released from death rows due to evidence of their innocence. In Connecticut, we have seen several men serve 15 or 20 years of long sentences before we've discovered their innocence. I have preached before on the imperfections of man as compared to the Almighty. To err is human, and there's nothing shameful about the fact that we have limitations. But it is shameful that we undertake something as permanent and serious as the death penalty when we know full well we can, and do, make mistakes. The death penalty system should demand perfection.

There is another way that our human frailties make us poor administers of the ultimate punishment: we are biased. Sadly, racial bias has long played a part in determining who lives and who dies at the hand of the state. 70% of those on death row in Connecticut are people of color.

Appallingly, while people of color are the victims of homicide 50% of the time, in 80% of cases deemed "worthy" of the death penalty – the victim was Caucasian. What message are we sending to our communities when we react with different outrage over the death of one of our poor or Black children, than we do to the deaths of their Caucasian brothers and sisters?

Troy Davis wasn't the only young black man imprisoned, or even executed, despite legitimate fears he may be innocent. In Connecticut, 3 of the 4 individuals recently exonerated from long prison sentences were people of color. These men are a stark reminder that Connecticut is not immune to having our own "Troy Davis". Try as we will (and should) to keep error and bias from our courtrooms, we are, after all, only human.

To ensure the important conversation about the death penalty continues, I have hosted several rallies to support the repeal of the death penalty, with speakers such as Fernando Bermudez who served 18 years for a murder he did not commit, and Victoria Coward, whose son Tyler was murdered in New Haven in 2007.

I urge you to keep this issue in the forefront and to support a bill to repeal the death penalty in Connecticut.

Thank you.

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LINE 13

Testimony of the Right Reverend Laura J. Ahrens, Bishop Suffragan of the Episcopal Diocese of Connecticut.

In Support of SB-280, An Act Revising the Penalty for Capital Felonies

Chairman Coleman, Chairman Fox, distinguished members of the Judiciary Committee: My name is Laura Ahrens, and I am one of the bishops of the Episcopal Diocese of Connecticut. I speak in support of Senate Bill No. 280. I stand here speaking for the three Episcopal Bishops of Connecticut: The Rt. Rev. Ian T. Douglas, the Rt. Rev. James E. Curry and myself.

The Episcopal Church sets its public policy by the vote of lay persons, deacons, priests and bishops in convention. In 1976, the General Convention of the Episcopal Church reaffirmed its opposition to capital punishment and called on the Dioceses and Members of the Church to work actively to abolish the death penalty in their States. The Episcopal Diocese of Connecticut has affirmed that position by vote of our 219th Annual Diocesan Convention on October 25, 2003. The Episcopal Diocese of Connecticut, where I serve, represents 171 congregations throughout the entire state with 65,000 members and over 400 active and retired clergy.

In addition, the bishops of the worldwide Anglican Communion, (a family of churches in 164 countries with 80 million members) meeting in the Lambeth Conference of 1988 passed the following resolution: This Conference urges the Church to speak out against all governments who practice capital punishment, and encourages them to find alternative ways of sentencing offenders so that the divine dignity of every human being is respected and yet justice is pursued.

I wish to focus on two points:

First: All capital crimes are heinous crimes and perpetrators deserve consistent, appropriate punishment. It is our society's response to such crimes that is the issue of this debate. I believe that society in its response to heinous crimes has the opportunity to act out of our best or worst instincts. The death penalty plays to our worst instincts of revenge. Beyond that studies show that the imposition of the death penalty is arbitrary, racially biased, and biased against the poor. There will always be the possibility that the death penalty will be imposed on an innocent person. By abolishing the death penalty we have an opportunity to affirm and respect our dignity as a society.

Secondly: My heart breaks for the pain and suffering of victims and their families. We need to do much more to care for the needs of survivors. The death penalty is not the answer. I have learned that many members of victims' families feel that the death penalty has added additional pain to them by extending painful trials and appeals, giving notoriety to the perpetrator, and making a spectacle out of the legal process. Alternative ways of sentencing, including life imprisonment without the possibility of release, can respect the needs of victims' families for closure and dignity.

On behalf of the Episcopal Church, I urge the committee to recommend Senate Bill No. 280, An Act Revising the Penalty for Capital Crimes.

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LINE 17

Statement in Support of SB 280
Dawn Mancarella, daughter of a murder victim
31 Morehouse Avenue
Milford, CT 06460

My mother, Joyce Masury was murdered January 13, 1996. She was strangled to death in her home by a man she knew and trusted. Although I cannot possibly know how painful those final moments were for my mom, it was an odious deed inflicted on her and certainly the most heart wrenching, painful incident I've ever experienced. Fortunately for my family and me, the perpetrator was captured within a few days, and so I thought I would be able to begin healing. However, soon after, I was thrown into the lengthy proceedings of a broken legal system where I, as a victim family member, felt powerless, voiceless and ultimately unable to continue my process of healing.

Navigating CT's legal system was exasperating. Beyond the initial shock and pang of losing someone in such a monstrous way, there is the bureaucracy of the courtroom. My journey took nine months, which may not seem like a long time to many, but it felt like an eternity to me. Each month I'd return for an assigned hearing/court date just to hear the Public Defender ask for more time to build his case and then set up another date for the following month. It took all of two minutes each time he did this and when the final hour came – 9 months later – without a leg to stand on, I was told the accused and Public Defender wanted to plea bargain. I had no say in the matter.

Given that the justice system does not allow for victim family members to have the ultimate say about what happens with a case, the death penalty should be looked at with that in mind. How can laws best serve all victims? As long as we have capital punishment on the books, some cases will be deemed death worthy and others not. Large amounts of resources will be put towards a tiny number of cases where cold cases are ignored and crime prevention programs and services for victims are reduced. Victim family members who have no final say on whether a case is capital or not are stuck in a decades-long, never ending process if the case is deemed death worthy.

Although my experience with CT's legal system was frustrating and ultimately delayed my healing, I am tremendously grateful that my mom's case wasn't a capital one. I don't know how I would have coped if the proceedings had gone on for years or ended in a death sentence. The expectation of closure with such an outcome would have been elusive and quite possibly to the extreme contrary – forcing me back to the courtroom every few years for continual appeals to relive those horrific events that robbed my mother of her life and stole a chunk of my heart. I am in a much better place today because I didn't have to contend with the death penalty and in turn have had the time and energy to heal. That is not to say that the pain completely goes away, but it eases with time.

We can't take away all the heartache and anguish victims' family members are forced to endure when plunged into the unfathomable situation of a murdered loved one. WE CAN, however, urge YOU to get rid of the death penalty, as its cumbersome process only prolongs the pain and stalls healing. I believe time and energy would be better spent on refocusing resources on policies that are beneficial to the majority of victims.

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LINE 6

Testimony by Jack Bryant, President of the Stamford NAACP

In Support of SB 280

March 14, 2012

Chairman Fox, Chairman Coleman, members of the Judiciary Committee, thank you for the opportunity today to testify. My name is Jack Bryant and I am the President of the Stamford NAACP. On behalf of my branch, I am here to testify in favor of SB 280. I urge the committee to pass this bill and finally end the death penalty in Connecticut.

The NAACP and our local chapter have opposed the death penalty for many years. A recent event, however, has galvanized our membership to make repeal of the death penalty a priority: the execution of Troy Davis.

This case gained national and international attention, and raised grave doubts about the death penalty in the US. Davis was convicted of the 1989 murder of an off-duty police officer in Savannah, Georgia. No physical evidence connected him to the murder. His conviction rested entirely on the testimony of nine eyewitnesses. After his original conviction, the case against him unraveled. Seven of the nine eyewitnesses recanted their testimony – some alleging police coercion – and said they never saw Davis commit the murder. Only two eyewitnesses stood by their testimony: the person who many believe is the actual shooter and another eyewitness who was too far away from the crime to have seen the face of the shooter.

With all the doubt surrounding Davis' case, over a million people petitioned the state of Georgia to stop the execution. Yet these pleas fell on deaf ears. This past September 21, the state of Georgia executed Davis.

This was not justice. Georgia put finality above making sure innocent life is protected and never taken through an execution. I hope, however, that this case is a turning point for our country. The National President of the NAACP, Ben Jealous, summed up this hope best:

"Troy's execution, the exceptional unfairness of it, will only hasten the end of the death penalty in the United States. The world will remember the name of Troy Anthony Davis. In death he will live on as a symbol of a broken justice system that kills an innocent man while a murderer walks free."

This past fall I had the opportunity to meet Davis' sister, Kimberly Davis. She had come to Stamford to call for an end to Connecticut's death penalty. I was amazed by her strength and courage. After her brother's death, she continues to fight for an end to the death penalty. She knows that her brother will not be the last Troy Davis – as long as the death penalty remains in place, innocent individuals will continue to be executed.

No matter how much we try to deny it, mistakes happen in the criminal justice system, including in Connecticut. End the death penalty this year so that Connecticut never has its own Troy Davis.

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LINE 12

Testimony to Senate Judiciary Committee, In support of SB -280

Gail Southard Canzano, PhD
81 South Main St.
West Hartford, CT 06107

March 14, 2012

I'm Dr. Gail Canzano. I'm a clinical psychologist and a family member of a murder victim.

Some years ago my brother-in-law was the victim of an especially savage and brutal murder. My family was immensely fortunate in that ours was not a capital case. On the eve of jury selection, a plea bargain sent the murderer to prison for 30 years with a guarantee that he would serve every day of his sentence. He was put away and we have put him out of our minds. He'll be an old man by the time he's released.

Families deserve to focus on themselves and their healing after a homicide and they need all of their energies to do this. The death penalty maintains a focus on the murderer, the judicial system holds out a promise that it cannot keep and the surviving family members are lured down a road that saps their energy and brings nothing but heartache as they wait for an execution that never comes.

As a clinical psychologist, I have many years of experience treating individuals suffering from the effects of trauma. And from a professional standpoint I can assure you that the death penalty is nothing but harmful to the families of murder victims. After the trauma of homicide, the mental health needs of survivors are paramount. Unfortunately, the judicial process in capital cases exacerbates the vulnerability of homicide survivors. First and foremost the families of murder victims need help disengaging from the traumatic event. This is not possible so long as they are ensnared in the legal process with its focus on the offender.
I would like to note for the record that more than a decade ago, the American Psychiatric Association called for an end to executions. They were soon joined by the American Psychological Association as well as the National Association of Social Workers. Please listen to the experts who would tell you that the harm done by the death penalty far outweighs any good that might come of it. There is nothing accomplished by the death penalty that is not better accomplished by Life in Prison Without the Possibility of Release.

Capital punishment is an inherently destructive act. It perpetuates violence, wastes money on murderers and impedes the healing of homicide survivors. All of this so that we might punish a handful of deviants? Murderers deserve to be put away and forgotten and the survivors of homicide deserve to be released from their grip.

If legislators are serious about supporting the families of murder victims, they will replace the death penalty with Life in Prison Without the Possibility of Release. And they will commit the millions of dollars that are now being squandered to provide real services for the survivors of homicide.

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LINE 14

CGA JUDICIARY COMMITTEE
PUBLIC HEARING March 14, 2012
Support for: SB 280 AA REVISING THE PENALTY FOR CAPITAL FELONIES
Comments submitted by Ellen W. McBride, Death Penalty Specialist, LWVCT

The League of Women Voters of Connecticut, (LWVCT) a statewide organization with over 1800 members appreciates the opportunity to comment upon the bills that are before the Committee. The League ***strongly supports*** SB 280.

The League believes that capital punishment should not be a sentencing option for murder or any other crime. A sentence of life imprisonment without the possibility of release is punishment that ensures public safety without raising the many complex problems associated with the death penalty. Until the death penalty in Connecticut is abolished, the League of Women Voters of Connecticut supports an immediate moratorium on executions.

The League has studied the issue of capital punishment and has concluded the following:

-The death penalty costs more than life imprisonment without parole. The General Assembly's Office of Fiscal Analysis estimated that the death penalty cost the state of Connecticut four million dollars a year to maintain.

- The death penalty causes additional harm to murder victim's families by subjecting them to years of media attention and replaying of the crime while appeals are made. This is not swift justice. The needs of these families are not met.

- - Connecticut has convicted innocent people of murder. It takes years to undo such convictions if it can be done.

- - The death penalty as a deterrent is not provable.

- The death penalty is not applied fairly and consistently without regard to race, gender, socio-economics or geography.

SB280 would abolish the death penalty and make life in prison without the possibility of release the maximum sentence. SB 280 would amend the general statutes to replace the death penalty with a penalty of life imprisonment without the possibility of release for certain murders committed on or after the effective date of the act. This would provide for prospective abolition of the death penalty. The League of Women Voters of Connecticut urges you to vote "YES" on this bill.

Thank you for the opportunity to comment on this important bill.

League of Women Voters of Connecticut · 1890 Dixwell Avenue Hamden, CT 06514 · 203/288-7996 Fax: 203-288-7998

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LINE 9

Fernando Bermudez, innocent and exonerated after serving 18 years for murder
Testimony in support of SB 280.

I am writing in support of repealing Connecticut's death penalty as a Connecticut citizen as well as someone who spent 18 years in prison for a murder I didn't commit. Mistakes happen, I am living proof of that. I am convinced if we do not repeal the death penalty in Connecticut it is only a matter of time before we commit the unthinkable and execute an innocent person.

In August of 1991 I was arrested in front of my parent's home in Washington Heights New York. As my mother screamed, detectives pointed guns at my head and shoved me into their squad car. I didn't know why I was arrested, but hours into my interrogation I was told I was being charged with the murder of a young man, Raymond Blount. This was shocking to me as I'd never been involved in any sort of violence.

I was convicted based solely on mistaken or coerced eyewitness testimony from five teenagers. One witness, a 17 year old girl, picked my photo as the perpetrator (after first selecting two different men), and then she shared my photo with other witnesses, which tainted their ability to independently identify the perpetrator.

These were not reliable witnesses. The prosecution's star witness cut a deal to avoid jail time for his offenses, and other witnesses had criminal records that were cleared after they testified against me.

Speaking against these questionable witnesses were 3 friends of the deceased who said that I was not the one who shot their friend. And the facts didn't add up. The description of the perpetrator was someone who was 5'10" and 165 pounds, I am 6'2" 215 pounds. I was asked to sit down during the line up to hide this height and weight difference.

Despite all of this, in February of 1992 a jury declared me guilty. I'll never forget the sound of the gasp me mother made when that guilty verdict was read.

I can not begin to describe how terrible prison is, the closest I can come is to say is that it is a living hell. For 18 years I was surrounded by violent criminals, delusional and insane men who would urinate, defecate, vomit, on themselves, and threaten violence to others.

The noise is unbearable. The experience was so horrible that I considered killing myself. I had delusions that in the corner of my 6 x 9 foot cell there was a noose that could put me out of my misery. There were others who weren't as strong as me and did kill themselves as the only escape from the hell of prison.

When not battling horrible depression, I committed myself to learning about my case and doing all I could to prove my innocence. I wrote letter after letter to anyone who would possibly take an interest in my case.

I lost ten appeals – despite the complete lack of evidence against me. Once a person has been convicted it is nearly impossible to free them, especially if there is not DNA evidence, as there wasn't in my case. DNA only exists in about 10% of all homicides. The potential for error is very real – across the country nearly 300 individuals have been exonerated due to evidence of their innocence, 140 of these men have been on death row.

Still, I kept making noise about my case.

And I was incredibly fortunate to have a tenacious attorney who had a creative idea about how we might earn a new trial. After ten lost appeals, I was dubious. But my attorney was extremely committed and developed an impressive team: a law professor, an attorney and his firm from Washington DC, and a New York former U.S. attorney and chief prosecutor for Southern District Courts of the United States. We also had the help of the non-profits the Innocence Project in New York and Centurion Ministries in New Jersey.

Very few innocent people are as lucky as I was to have this dream team and the public outcry my case was able to generate. By 2006 my case was receiving national attention with my story covered on Court TV, MSNBC, and the New York Times.

Eventually, the prosecution admitted, for the first time in the state's history, that their star witnesses had committed perjury. I was offered the opportunity to plea guilty to manslaughter and the charges would be dismissed, I could go home and my case would be resolved. But I said no. After 18 years of suffering for a crime I didn't commit, I remained committed to the truth and went forward with the proceedings.

Finally, after 18 years and ten failed appeals, I received justice. Eleven witnesses from across the country came forward to tell the truth. The judge declared me "actually innocent" and chastised the prosecution for knowingly moving forward with perjured testimony and for the horrible identification procedure that went forward. I couldn't believe it, I was a free man.

I left prison with Post Traumatic Stress Disorder after experiencing 18 years of the hell that is living in the general population of a maximum-security prison. I learned to sleep with one eye open, because you never know what's going to happen when you share a cell with a violent killer.

If I can be thrown into prison for a murder I had nothing to do with, it can happen to anyone. However, I don't believe everyone is as fortunate as I was to be able to eventually prove their innocence. Despite an incredible team of attorneys, national recognition and absolutely no evidence against me, it took 18 years for me to prove my innocence.

If we keep the death penalty in Connecticut, I believe it is absolutely inevitable that an innocent man will some day be executed.

Fernando Bermudez
Danbury, CT

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LINE 3

Joint Judiciary Committee – Legislature, State of Connecticut In Support of SB 280

Meeting on March 14, 2012

Testimony of Rev. Walter H. Everett

My son, Scott, age 24, was shot and killed in Bridgeport in 1987. Although that was almost 25 years ago, the void in my life is just as real today. However, I am here today to state my opposition to the death penalty, based on its fiscal and emotional cost.

The death penalty has never proven to be a deterrent to potential murderers. There is no sound reason to continue to sentence people to death when there are alternatives.

The cost of the death penalty is exorbitant, especially at a time when legislatures around the country are trying to reduce expenditures. These costs include the following:

1. It costs far more to conduct a capital trial, than it does to try a person when the death penalty is not a factor.
2. It costs far more to keep a person in relative isolation on death row due in part to the necessity of 24-hour-a-day supervision of that one individual.
3. Execution, with its additional cost of security, adds even more to the cost.
4. Overall, studies have shown that it costs the state at least four times the amount of money to sentence a person to death, and then carry out that sentence as it does to sentence a person to life imprisonment.

Even more important is the cost to the secondary victims (families, close friends). The emotional cost of sitting through the initial trial, plus a series of mandatory appeals amounts to cruel and unusual punishment for these secondary victims, as they wait for fifteen, twenty, or more years for an execution that they believe will give them peace. Again and again, witnesses to an execution ask afterwards, "Why don't I feel any better?" The answer, of course, is that their lives are not changed. The execution of the offender has not brought back their loved ones. Now it is time for them to *start* the process of healing, a process that could have been started decades earlier with the finality of a life sentence. We can no longer afford to put on hold the lives of these secondary victims. We need to allow them to find a way to begin as early as possible to live again.

As an additional plea I would urge you to consider using the money saved to provide additional services for the secondary victims.

When my son, Scott, was killed, I determined very early that I would not let the offender take my life also – spiritually, emotionally, and possibly physically. I urge you to give that possibility to all secondary victims by voting to abolish the death penalty in Connecticut this year.

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LINE 18

Jane Caron, MSW, murder victim family member
9 Terrace Rd, Thomaston, CT 06787
In Support of SB 280

My name is Jane Caron. I am a life-long resident of Connecticut and am here today to ask for your support of SB 280.

I am a clinical social worker with more than 30 years of professional experience. I am also a niece of a homicide victim. In 1986 my Aunt Dorothy was brutally murdered by a young man seeking money for his cocaine addiction. What started out as robbery, ended with the stabbing of my aunt and leaving her to die. I have a difficult time coming to terms with the fear she must have felt.

In my professional life and my personal experience, I understand how all encompassing grief can be. What I know from my clients and myself is the overwhelming need to seek a place of peace. In the case of a violent death, the need is even greater to find that elusive peace.

The justice system worked well in my Aunt's case. Her murderer pled guilty and was given a life sentence. The quick resolution of the case allowed her family to try to make sense of the senseless and move closer to that place of peace. Justice is ultimately served when the needs of the victim's family members are met.

The fact that fewer than two percent of all murders committed in Connecticut are death penalty cases, adds to the confusion and heartbreak for family members of murder victims. On the one hand, if your loved one's murder is not a capital case, family member might feel that their relative's violent death was not quite violent enough, making for more intense grief. On the other hand, if it does become a capital case and the sentence is death; the family will endure decades of court proceedings while that elusive peace remains a distant possibility. The existence of the death penalty in Connecticut clearly harms those who need and deserve society's care and concern; namely, family members of homicide. I, myself, do not want someone executed on my behalf. What I want is justice in the form of life without parole and support for healing.

My professional organization, National Association of Social Workers, has a policy paper in support of abolishing the death penalty in the United States. In the statement, it is clear that social workers believe that capital punishment goes against their Code of Ethics and what social workers stand for. I believe, both as a social worker and a murder victim's family member, helping me and others like me to heal and find peace will serve the greater good and support justice.

I thank you for listening to me and I implore you to support the passage of SB 280.

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S.B. No. 280 (RAISED) AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES

Testimony of Kimberly Sundquist

March 14, 2012

Representative Fox, Senator Coleman and distinguished members of the Judiciary Committee, My name is Kimberly Sundquist and I am here today to testify in opposition to S.B 280, An Act Revising the Penalty for Capitol Felonies.

For the record, I am the former president for Survivors of Homicide, a position I held for 3 years following the tragic murder of my beloved Uncle Jerry Timmons Barnette on September 11, 2003. My position regarding this bill in no way reflects the position of SOH since we, as a whole, do not take a position on the death penalty. My words today are of my own opinion regarding this matter. Because my uncle's case ended without justice served, I have made it my mission to fight for those who should be considered, yet are far more often forgotten about through the process.

Last year I sat in this room for 14 hours listening to both sides of this very issue testify and as to why you should consider their position. Those who testified in support of this bill never convinced me as to why their beliefs were more valid than my own. I agree with those advocating for repeal that the death penalty does not work as written. I agree that our current system is very traumatic on victims. Some of those speaking in support of the bill were indeed victims themselves and I respect all of them and their beliefs. However, not once did any of them say what I expected them to say regarding the morals of the act of Capital Punishment. Their only argument is in regard to the impact it has on the victims left behind such as Dr. Petit. You, our Senate and Legislature, have the power in your hands to make the one valid argument both sides share less pertinent. Streamlining the process and getting victims to the ends of justice would do just that. It is the only logical solution to letting victims heal faster and limiting the exposure to frequent re-victimization.

The death penalty serves the process in more ways than to simply carry out justice. As you are fully aware, many criminals facing trials will make plea agreements so as to have a lesser sentence. If we repeal the death penalty, and the most severe sentence they can face is live in prison which is a mere 60 years in Connecticut, what would they pleas down to? Would they plea to 40 years? Then with the "Risk Reduction" law that passed last year they would likely get out at 30 years. That is half of the sentence they were originally going to be handed had they allowed the case to go to trial. If we keep the death penalty, we are able to use it to save tax payers money and allow them to plea for the full 60 year life sentence with no chance of being released. If you repeal the Death Penalty, then Death Row will not exist. This will mean criminals, even the most heinous ones, will have many more liberties while in jail. Death row requires inmates to remain in their cell for 23 hours per day, while non-death row inmates get more freedom. Until jail treated as such I will continue to oppose all bills that will allow them to any sort of freedom.

One option you should consider would be to limit the appeals lawyers for the convicted are allowed to file. This procedure is a tactic to delay the inevitable while making a mockery out of our current "injustice system". This abuse of the appellate process can cost $100,000 or

more before the case even gets to trial of which most are denied. The reason those advocating for repeal can say it costs more to execute a prisoner is because of this abuse of the system and because this allows the sentence to be delayed thus costing more in food, medical supplies, doctor visits, staff and other resources. By limiting appeals, it can be said that once criminals have exhausted their legal rights to appeal, the sentence will be carried out.

I am not implying that all murder cases should be death penalty eligible. I am asking you to consider that crimes involving domestic terrorism which can be defined as is on the United States FBI Web Site as **"the unlawful use, or threatened use, of force or violence by a group or individual based and operating entirely within the United States or Puerto Rico without foreign direction committed against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives"** as still remaining Death Penalty eligible. There is no question, based on this definition and common sense that terrorism was used in the case where 3 women, 2 of them children, was used. It is a fact, that some of the very elected officials who claim the Death Penalty should not be used by our state in the name of justice claimed that very Victory when Osama Bin Laden was killed in reaction to the 2001 terrorist attacks. The differences in the 2 cases are vast and I see that you cannot compare apples to oranges. However, if justice should never be followed by death of the offender with tax payer dollars, then those same lawmakers should have condemned the actions by our brave military that day and would have preferred to see the terrorist brought to justice while he sits in a jail cell. I am asking you to consider NOT REPEALING the death penalty for the perpetrators who conduct a crime with terroristic qualities that result in loss of life for multiple victims and/or when children are affected. You would have the power to redefine terrorism in matter of fact terminology as to what limited qualifications a crime will have, so as not to be left open to interpretation, and as to when the Death Penalty can be issued. You would also be charged with making sure the Death Penalty is not only an option for these horrific cases, but also enforceable.

This bill uses language suggesting that the repeal will be on prospective cases only. This language is only there to trick the public into thinking it will never pertain to these individuals. With there being so many chances of appealing the decision since the law is on their side, all they need is one judge to oppose the death penalty and the sentence will be overturned. These criminals will most certainly, someday, have their sentences commuted to life in prison without the possibility of parole. Since life in prison means a mere 60 years, based on the fact that there were 3 victims who perished and assuming they would receive a minimum of life in prison for each victim, the inmates would each be facing 180 years. It is obvious that they will never be released and even under current statute it is much more likely they and Dr. Petit will die of natural causes before the sentence would ever be carried out. If you do repeal the death penalty, taking this case out of the equation, what happens to the next criminal who commits ungodly acts that involve terrorizing, kidnapping, sexual assaulting and lighting children on fire? They should be held accountable for those actions and sentenced to death as just as these individuals were. It may not be a deterrent, which is in part because we don't use it, but at least it is justice served and they will have little to no liberties in prison. What if the next time it is your family? What would you want to happen to such individuals?

It is fact that 66% of Connecticut residents believe that this bill should not pass. These are your constituents. These are the very people who elected you to be their voice. Don't allow

your party affiliation to tell you what to believe. Listen to the people who you represent. Allow your vote to come from your constituents and not your party.

In closing, I would like to add that we are victims. We are not heard from enough in cases that surround our loved ones. We are fearful of the world around us. Our bodies may still be here, but in the act that took our loved ones away from us, it is as if we were also murdered because we are not the same people we were one hour before the act took place. We know our loved ones watch over us and it is us who suffer. This sort of loss is unbearable. You wonder if you could have changed the end result or wonder if in their dying moments they cried out for you. They stay with us for the rest of our lives. We don't look for revenge; we look for the justice promised to us. Rather than repealing an act of justice, instead look at ways we can make it stronger and more effective. Look at ways lawyers are allowed to abuse our system and put an end to those tactics. Allow victims to voice opinions about how they would like to proceed. Don't allow terrorism to be accepted in any way, shape or form.

I thank you for your time and consideration. I would be happy to answer any questions the committee may have.

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LINE 9

Testimony at Public Hearing on the Death Penalty

SB No 280 An Act Revising the Penalty for Capital Felonies

March 14, 2012, Hartford, CT.

My name is Judy Meikle and I am grateful for this opportunity to testify today on behalf of New York Yearly Meeting (NYYM) of the Religious Society of Friends regarding Senate Bill No 280. The NYYM is a gathering of Quaker meetings and worship groups in New York State, northern and central New Jersey, and **southwestern Connecticut.**

I am a member of Wilton Monthly Meeting, which is located in Wilton, Connecticut and I have also attended the worship group in Sing Sing Correctional Facility in Ossining, New York. I am an active facilitator of the Alternatives to Violence Project, an international violence prevention program which is well known both in prisons and in the community. As a Friend whose concerns for the criminal justice system run deep, I speak to you today on behalf of my Yearly Meeting about our beliefs and prayers concerning abolition of the death penalty.

Ours is a simple faith and a radical witness. Our guiding truth is that the Divine is in every person. From this belief flow our historic testimonies – our corporate witnesses to truth, which we live out in our every day activities as we "let our lives speak". These core values of peace, simplicity, equality, community and integrity guide our decisions and form the foundation of all our endeavors.

Our position on the death penalty is set out in our book of **Faith and Practice -**

> *"We have consistently opposed capital punishment. We are clear that each person is uniquely valuable and divine, and none is totally beyond redemption. The death penalty rejects the message of forgiveness. In some cases, it legally destroys*

innocent persons, and in all cases it degrades the humanity of the executioners and of the society that endorses the act."

As Quakers, we place deep faith in love before fear and in the transforming power of peace. We recognize that murder is a terrible tragedy, wreaking havoc and pain on everyone that it touches. We therefore recognize that murder is simply wrong no matter who perpetrates it – whether an individual or the State.

The decision before the legislature is a weighty one. There will be many facts and opinions laid before you today. In January 2005, the presiding Clerk of NYYM stood before the State Assembly in Albany and reminded them that theirs was a moment in history. She asked them to think about the legacy that they were leaving future generations. She compared the antiquated and barbaric notion of justice that is capital punishment to slavery and child labor and Jim Crow – as practices once accepted by society but now deemed relics of a misguided past. She urged the legislature in Albany to seize the opportunity to abolish capital punishment in the State of New York.

And they did. Followed by the State of New Jersey in 2007, and the State of New Mexico in 2009, and the State of Illinois in 2011.

I stand before you today to fulfill a personal and religious obligation to urge ***this*** legislative body to seize ***this*** opportunity to be on the right side of history and abolish the death penalty in the State of Connecticut in 2012.

Thank you.

Judy Meikle, Darien, CT

On behalf of New York Yearly Meeting of the Religious Society of Friends

March 14, 2012

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Mary L Sanders - Testimony for the Judiciary Committee - March 14, 2012
S.B.280 - An Act to Repeal the Death Penalty

I have always believed that killing of any kind is wrong. I am against war and believe that diplomacy and civilized negotiations can resolve most conflicts. I believe in a woman's right to choose but am morally against abortion. I believe in letting nature take its course when people are terminally ill, but am against euthanasia or assisted suicide. I am also against using death as a punishment no matter the crime. I personally believe that only God has the right to end life. How dare public officials decide whose life should be ended and whose should be saved? How can we justify using violence as a deterrent to violence? Besides how do you decide which cases are serious enough to warrant a capital punishment trial? Aren't all murders equally illegal and traumatic for the surviving family members?

Speaking of families; there are over 100 murder victims' families right here in CT asking you to repeal the death penalty. They do not want more blood spent; their loved ones will not be returned to them with the killing of the accused. Years and years of appeals and court dates only serve to prolong their suffering. They have stated repeatedly that a sentence of life in prison, with no chance of parole, would help them to get on with the healing. Shouldn't justice take into consideration what the victims want?

Even if you do not have moral issues with the Death Penalty what about the fact that the present system of capital punishment is racist and unjust. According to an article published in October of 2011 by Marc Morial, President of the National Urban League, "African Americans make up about 13% of the U.S. population; more than 42 percent of death row inmates are black. Over 75% of the murder victims in cases resulting in an execution were white, even though nationally only 50% of murder victims are white." The disparities in sentencing are disturbing but the fact that since 1973, a total of 138 men and women have been exonerated or had their death sentences commuted based on post-conviction findings that proved their innocence is even more alarming. According to the Innocence Project, a national litigation and public policy organization dedicated to exonerating wrongfully convicted people, "seventeen people have been proven innocent and exonerated by DNA testing in the U.S. after serving time on death row. They served 187 years on death row for crimes they did not commit". Some people did not get the chance to prove their innocence although their guilt may have been questioned. In one case there was evidence quite to the contrary.

On September 21st at 11:08 pm Troy Davis was administered a lethal injection that ended his life, at the age of 42. Accused of killing a white off-duty police officer in 1989, he maintained his innocence with his dying breath, as he had done for more than 20 years. No weapon was ever found, there was no physical evidence linking him to the crime and 7 of 9 witnesses had recanted their testimony. Anti-death penalty advocates here and around the world worked diligently in hopes of exoneration or further investigation to no avail. Troy Davis was even denied a polygraph test. The state of Georgia was relentless and took the chance of killing an innocent man just to close the books. The family of the murder victim will never know if they got the right man and another family is left to mourn. Many of our hearts were broken as we lost more and more faith in our criminal justice system around the nation. We have a lot of work to do right here on our flawed system; repealing the death penalty would be a bold statement that CT lawmakers want true and equitable justice.

Respectfully submitted:

Mary L. Sanders

184 Preston Street Hartford, CT

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LINE 5

Testimony in opposition to S.B. 280

Hearing before Judiciary Committee

Wednesday, March 14, 2012

My name is Gregg Pompei. I don't represent any group. I don't have a relative who was the victim of a violent crime. I am strictly a private citizen.

I don't believe the death penalty should be repealed. In fact, where the facts of the case are undisputed and there is no doubt regarding guilt, I think it should be streamlined.

I wish to discuss three important purposes the death penalty serves.

Incapacitation

First, it incapacitates. A person who is alive in prison has the potential to cause additional severe harm to society. He could return to the general community and perform further violent acts through a number of ways:

1) escape
2) parole (possibly granted notwithstanding stated ineligibility for such at sentencing)
3) administrative legislative action (*e.g.* due to crowding)
4) pardon (as in the recent case of former Missouri governor Haley Barbour)
5) later judicial or legislative elimination of life in prison without parole penalty

Even while in custody, a person still alive in prison, particularly one with no expected possibility of release, has little incentive to refrain from violent acts against prison staff, especially in the course of an escape attempt.

Deterrence

Secondly, I believe it acts as a deterrent. A punishment is most effective in preventing undesirable behavior when it is swift, severe, and certain. This simple behavioral principal is universal. It works with adults and children, with people of all intelligence levels, and even with animals. In its current form, it's currently the perception, correctly, that in Connecticut, even if a person is sentenced to death the sentence will not be carried out. As a result, the deterrent effect is horribly attenuated.

We don't want people to "make a mistake" and spend years reforming and redeeming themselves and apologizing to victims' families. We want them to not kill to begin with. We want society as a whole to know that a person who commits a capital act will be put to death. I want to emphasize that, for the acts for which the death penalty can be imposed in Connecticut, premeditation is required. For these acts it is a choice. So we especially want someone who is deciding whether or not to intentionally take another's life, to know that if he makes the choice to follow through with that act he will face the severe consequence of death.

With swiftness.

And with certainty.

As part of the severity of the punishment is how the perpetrator's execution may his loved ones. The existence of dependent family should not be a mitigating factor. The person considering commission of a capital act should consider how his crime and subsequent execution will affect his family before committing the act. He should know that his beloved son or daughter will permanently lose a parental relationship when he is executed.

With crimes in general, repentance of a criminal may be helpful to assuage harm a victim has suffered. With the case of a homicide, however, it does not resurrect the deceased. We want the killing to not take place to begin with. Since the damage of the crime is unsurpassable and irreparable the punishment meted out to someone who has performed such an act must be equally as extreme, which leads into the last purpose of the death penalty....

Retribution

Last is retribution. A person who causes harm should have to pay back to society at least the amount of harm he caused. When a person commits a capital murder he has taken a life. The victim will never again be able to enjoy the company of others. The victim will never be able to socialize with family or friends. The same should be exacted on the perpetrator. A life-term prisoner can still read, look out the window, meditate, exercise, write, take a nap, and socialize with others (albeit restrictedly). The deliberate killer and those close to him should be irrevocably denied all the same enjoyments of life that the victim and his loved ones are forever denied because of the perpetrator's depraved actions.

These are reasons why I, as a citizen of Connecticut, request that in the long term the death penalty be expedited, and with regard to the immediate matter at hand, that S.B. 280 be rejected.

Thank you.

Representative Fox, Senator Coleman, and Distinguished Members of the Judiciary Committee,

My name is Shanna York and I am writing to you today to express my opposition to S.B. 280 (RAISED) AN ACT REPEALING THE PENALTY FOR CAPITAL FELONIES.

Last year I sat in the Legislative Office Building for some 14 hours awaiting my turn to testify before your committee listening to many testimonies both for and against death penalty repeal. I'm sure many of those same people will appear before you today. Among those people will be victims. I want you all to know that I feel for each and every one of them whether they are for or against repeal. A common theme among them seems to be the re-victimization that occurs in a courtroom during a capital trial. While I strongly agree that there is re-victimization I strongly disagree with this argument as a means to repeal the death penalty. Our courts exist for the sole purpose of punishing those people who have broken laws. Many victims speak about the need to heal and find peace stating that capital trials prevent this from occurring. No victim is ever going to find healing or peace in any courtroom anywhere regardless of what sentence might be found appropriate by a jury.

A question that I heard over and over last year from the defense team for Joshua Komisarjevsky was: Do you think the state should reserve the right to kill a fellow citizen? My answer is yes. We grant the state the authority to make laws on our behalf. We have certain laws that are deemed to be more serious than others, i.e. capital felonies. If we're going to have laws that are considered more serious than others I think that we absolutely need to have punishments that fit those crimes accordingly. Pro death penalty repeal folks will argue that granting the state the authority to kill as a punishment allows them the opportunity to play God. I find this argument to be quite flawed. It is not the state who plays God when a sentence of death is imposed or carried out. The person who is playing God is the one who is out on the streets doing whatever they what to whomever they choose.

Many times other states that still have the death penalty on their books are cited as examples of why this punishment is wrong, flawed, or in ill taste. I'm tired of this argument. I don't live in Texas so therefore I do not care if their death penalty is flawed. Let Texas worry about Texas. I am concerned with Connecticut and not one of the eleven men on death row here are or ever have claimed innocence. Each of them was found guilty by a jury of their peers, their sentences were determined by those same people, and their punishments should be carried out accordingly. I think it is completely naïve for anyone in this state to believe that the prospective language you have put into this repeal bill will actually hold up in court should our eleven death row inmates seek to have their sentences overturned. I find it insulting that what we have before us is basically a lie to appease the masses based on the fact that you all know that 67% of people in Connecticut support the death penalty. Yet once again we find ourselves faced with the fact that voice of the majority may very well be ignored and trumped by the voice of the few who happen to have the luxury of being well funded by deep pockets. We all know that the death penalty was brought front and center during the recent Petit case. Senators flipped their votes based on that case. If you are going to repeal the death penalty have the decency to come out and be honest with your constituents and call it

what it really is, total repeal not prospective repeal. While you're at it remind the people who voted for you that you completely ignored them while casting your vote to do the exact opposite of what they wanted.

For the record I would like you to know that I am not a victim of violent crime. No one in my family has ever been a victim of violent crime. I also want you to know that I am fully aware that this may not always be the case. Crime strikes without rhyme or reason. It happens every day, in every neighborhood, and hits people from all walks of life. Today it may be a complete stranger who suffers at the hands of another but tomorrow it may be me or you. No one is exempt. Should something ever happen to me or a member of my family I want to know that this state will seek justice. Every time a repeal bill is introduced you make it quite clear that you have no intention of seeking justice. The death penalty is justice and not revenge as I'm sure many before you today will argue. Revenge is retaliation as oneself in kind or to degree. Twelve people who are not connected to victims and who have no emotional attachments to them in capital trials are the ones who decide the sentence that should be imposed. I truly fail to see where that is revenge solely based on the definition of the word itself. That is what makes the death penalty qualify as justice. Should you go forward with repeal, none of you should ever let the word justice leave your lips. You should not be using words that you clearly don't understand.

I've heard two men sentenced to death in my lifetime. I was there in person when both Steven Hayes and Joshua Komisarjevsky received the death penalty for brutally and heinously murdering Jennifer, Hayley, and Michaela Petit. I listened as the judge imposed 6 death sentences on each man. I'll be honest with you all. Listening to a human being be sentenced to death was a bit nauseating among other feelings. But as I sat there in that courtroom I thought about what those two men did to those three innocent women. Not one thing that I felt for Hayes or Komisarjevsky negated or trumped what I felt when I thought of Jennifer, Hayley, or Michaela Petit.

To finish, I would absolutely love to live in a world where there was no death penalty. I would also like to live in a world where we didn't kill each other. The latter will never come to fruition. The death penalty, however evil some may see it, is absolutely needed, warranted where applied, and should never be taken off the books.

Testimony by Lisa Wilson Foley

Senate Bill 280 – An Act Revising the Penalty for Capital Felonies

Judiciary Committee

Legislative Office Building, Hartford, CT

March 14, 2012

My name is Lisa Wilson Foley and I live at 76 Hartford Road in Simsbury, and I am offering testimony to oppose Senate Bill 280 – An Act Revising the Penalty for Capital Felonies.

There are few matters that stir the emotions more than the application of justice. In a free society, those who are elected to represent our interests at the local, state and federal levels, must do their best to promote laws that are fair, predictable and carried out with consistency.

The people who are served by these leaders are duty bound to weigh what they feel is good and just while responding and following the will of the people. The issue of the Death Penalty for serious and heinous crimes has now become a matter of renewed debate – led by some who wish to repeal and replace it with alternative punishment.

I would urge the committee and legislators to oppose any attempt to weaken or eliminate the application of the Death Penalty statutes to those who are convicted of the eligible crimes that fall under the law.

The Death Penalty serves the public needs on many levels. The Death Penalty can be used effectively to sometimes spare witnesses and survivors of needless pain and suffering.

But most importantly, the application of the Death Penalty for heinous crimes is an effective form of justice. All too often, some focus on the rights of the convicted and often forget those who must live on as survivors of those who have been the receivers of such horrible actions.

The current Death Penalty statute provides an almost endless ability by criminals sentenced for capitol felonies to appeal their conviction. If anything, legislators who support the Death Penalty should use this debate to argue for reforms in the Death Penalty statutes to tighten the timelines for direct appeals.

Efforts by Republicans and Democrats in 2009 and most recently in 2011 by House Republican leaders were responsible attempts to impose just sentences.

All of those currently residing as Death Row inmates have little fear of receiving true justice. But to use that as an excuse to repeal the law is a disservice to those who have been victims or survivors of those crimes.

There has also been some discussion that repeal of the Death Penalty would not affect the current class of Death Row inmates. Most legal experts that I have read believe the moment the Death Penalty is repealed, lawyers or other legal interest groups would file motions to have those convictions vacated and these actions would be successful.

That would be an act of injustice worse than the outright repeal of this important lever of justice.

I again urge you to oppose passage of Senate Bill 280 and focus on reforms that would ensure that any Death Penalty conviction is not merely an exercise, but a sentence that can be carried out in the public interest.

Judiciary Committee

March 14, 2012

Testimony in Favor of
SB 280 AA Revising the Penalty for Capital Felonies

I am Martin Mador, 130 Highland Ave., Hamden, CT. I appear before this committee today as a private citizen.

I served on the national staff of the NAACP Legal Defense and Education Fund, Inc. for 17 years. While I worked mostly on employment discrimination litigation, I had numerous opportunities to observe the work of staff attorneys working on death penalty cases, and I was appalled at what I saw.

It is my strong belief that the death penalty across the country has been inflicted most often on black defendants, especially where the victim was white. It is not applied uniformly by race. In Connecticut, evidence shows that there is also a geographical disparity by judicial district.

It is my strong belief that the extended appeals process is necessary to ensure that a death sentence is properly and justly applied, insofar as that is possible. Given the absolute nature of the sentence, this process cannot be shortened without risking the taking of an innocent life.

It is my strong belief that the extended appeals process deprives a victim's family of closure and finality, which would happen much sooner with a sentence of life without release.

In the case of the horrendous Cheshire home invasion murders, the tragedy of the crime was revisited time and time again as the two defendants fought the death penalty. It will go on for years to come as appeals are processed.

It is my strong belief that the costs to the state of imposing a death sentence far exceed the costs of lifetime incarceration.

It is my strong belief that the judicial system cannot be made flawless, as it depends on people serving as judges, prosecutors, and juries. Since 1973, at least 138 people have been released from death rows throughout the country.

It is my strong belief that the death penalty is not a deterrent. Statistics from states with and without the death penalty confirm this.

It is my strong belief that imposition of a death sentence is in direct correlation with the poverty of the defendant.

It is my strong belief that the individual states of the United States which still impose a death sentence stand alone with only a few counties of the world. In 2008, 93% of all known executions took place in only five countries - China, Iran, Saudi Arabia, Pakistan and the USA.

Therefore, given these reasons, I do not want the state of Connecticut executing people in my name. I want the death penalty abolished, to be replaced with life without release.

Testimony of Tom Swan

Executive Director of the Connecticut Citizen Action Group (CCAG)

Judiciary Committee

March 14, 2012

In Support of SB 280

Good Afternoon Representative Fox, Senator Coleman and members of the Judiciary Committee my name is Tom Swan and I am the Executive Director of the CT Citizen Action Group (CCAG). I am here today in support of SB 280: AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.

This is the first time in CCAG's 40 years that we have taken a position on this issue. Our Board voted overwhelmingly earlier this year to support the repeal of the death penalty and to have Connecticut stand on the side of civilized societies.

Before I get further into why we chose to weigh in this year, I want to acknowledge and validate the emotional reasons that some of the proponents of the death penalty argue. My daughter turns one year old today. If she was ever put through anything like what the victims in the Cheshire murders were put through, the death penalty wouldn't be harsh enough and I would want to strangle those that would perpetuate such heinous acts with my own hands.

But, that would not be the right thing to do and neither is having our government being in the business of killing people.

In addition to believing that it is wrong for our state to kill people, there were several facts that helped us decide to weigh in this year.

- Innocent people are too often sentenced to death. According to the ACLU since 1973, over 138 people have been released from death rows in 26 states because of innocence. How many other innocent people were not exonerated before they were put to death? One is too many and we all know that the number is higher than that.

- The death penalty system in the United States is not applied in a fair and just manner. It is dependent on how much money they have, the skill of their attorneys, the race of the victim and the location where the crime took place. Connecticut is considered a leader in anti-discrimination legislation – abolishing the death penalty will further prove that we deserve to be considered such.

- The death penalty is not a deterrent to criminal acts. Resources spent administering the death penalty could be better spent helping victims or on successful crime prevention strategies.

In closing I want to thank you for raising the bill today and to let you know that we are looking forward to working with you to make history by bringing Connecticut into the 21st Century and abolishing the death penalty this year.

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Elizabeth M. Brancato
Testimony for the Connecticut Judiciary Committee
March 14, 2012

My name is Elizabeth Brancato. Some of you may know me, as I've testified before this committee several times on various forms of this bill, for many years now. By now you probably know that my mother, Barbara McKitis was brutally murdered in her home, in Bantam on May 9, 1979.

I've spoken to you before of some of the ways that having a death penalty in CT hurts victim family members, and how having the death penalty has hurt, not helped me. You have heard from dozens of other victim family members, for years, and they have told you how the death penalty has hurt them and their families.

The numbers of victim family members who support the repeal of the death penalty continue to grow. The number of victim family members who spoke to you through signing a letter to tell you that they want the death penalty repealed in Connecticut has more than doubled since we were here discussing the repeal of the death penalty last year. As politicians, you know that for every constituent who speaks out to you, there are many more, right behind that speaker who feel the same way. Specifically, that is to say, for each one of us from whom you hear, asking you to vote to repeal Connecticut's death penalty, there are many more behind us—silent maybe, but thinking and feeling as we do about this. You know this is true. As elected officials you use the awareness of this fact to guide your actions as representatives of the citizens of Connecticut.

Year after year, you hear testimony that refutes all of the hard-held myths that are used to justify our having a death penalty.

Knowledgeable people tell you that the death penalty is not a deterrent. They prove this with statistics showing that states and countries that have the death penalty have higher murder rates than those who do not have the death penalty.

Knowledgeable people tell you that the costs of imprisoning a murderer for life are far less than the cost of the almost endless appeals that accompany a capital case, and then the cost of an actual execution.

Knowledgeable people tell you that mistakes are made in capital cases. More than 100 people have been exonerated and released from death row since the national moratorium on the death penalty ended in 1976. Some of those exonerated have spoken to you.

Knowledgeable people have told you that the death penalty is against their religious and moral beliefs. You have heard from bishops, nuns, and priests, from ministers, rabbis and mullahs. You have heard from people with no particular religious beliefs who have told you that they believe it is against their personal moral code for the death penalty to exist in Connecticut.

You have heard testimony, year after year that has made it clear that the death penalty is poor

public policy, that is discriminately applied, that it is against the moral beliefs of many of Connecticut's citizens, and that it hurts, rather than helps the families and friends of the murder victims.

This is the third hearing on the repeal of the death penalty at which I've testified. At every hearing, the majority of those whom have testified, from diverse points of view, have asked you to repeal the death penalty. Year after year, more and more people give you more and more reasons to repeal the death penalty. Year after year, more and more people tell you that repealing the death penalty in Connecticut is the right thing to do. They tell you that Connecticut needs to join the rest of the civilized world and abolish the death penalty.

It is my understanding that this event is called a 'hearing' to indicate it is a time for you, our elected representatives in Connecticut government, to hear what we have to say on this most important matter being discussed today. We have spoken, many times. I don't think we were heard. I hope that you will finally hear us today, and pass this bill from the committee, then work to have it passed in the legislature in a form the Governor can sign.

Thank you for your attention to my testimony.

AFRICAN-AMERICAN AFFAIRS COMMISSION
STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591
(860) 240-8555
FAX (860) 240-8444

Testimony before the Judiciary Committee

Monday, March 14th, 2011

11:00 AM in Room 2C of the LOB

Good morning/afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee. My name is Frank Sykes the Legislative Analyst of the African-American Affairs Commission (AAAC) a non-partisan state agency. This Commission is an advocate for the African-American community and accomplishes its mission primarily through research, policy analysis and advocacy. I am here today to speak in support of ***Senate Bill. (SB) 280*** – *An act revising the penalty for capital felonies*. The Commission supports this bill for a number of reasons.

Firstly African-Americans make up the vast majority of the incarcerated population at both the juvenile and adult levels of the criminal justice system. Roughly 44 percent of the children represented in detention centers in the state are African-American[1] and at least 42 percent of African-Americans make up the

[1] Connecticut Voices for the Children, Reforming Connecticut's Juvenile Justice System. *Racial and Ethnic Biases*

state's prison population.[2] The lifetime likelihood of incarceration for African Americans is 16.2 percent almost twice that of Hispanics at 9.4 percent and more than six times that of whites at 2.5 percent. Among men, African Americans have a 28.5 percent chance of incarceration over their lifetime, while Hispanics have a 16.2 percent chance and whites have a 4.4 percent chance.[3] Furthermore 98 percent of the Chief districts attorney's in state's like Connecticut that have a death penalty are white, Abundant research substantiates that race, class, cultural affiliation etc. are all factors that influence juror's decisions in serving justice. As we can see, the statistics are heavily stacked against African-Americans in all areas of criminal justice. We know that at least 5 of the inmates currently on death row are black.[4] We must emphasize that we support rehabilitation and treatment but not capital punishment.

Secondly there is no such thing as a perfect justice system. Since 1973, over 130 people in the nation have been released from death row with evidence of their innocence.[5] Here in Connecticut as recently as 2006 the case of James Tillman served as a wake up call. James Tillman served 16.5 years in prison before being exonerated by DNA testing on July 11th, 2006 for crimes it was learnt he didn't commit. How many more innocent souls are out there waiting to be executed?

Thirdly from a cost perspective it costs at least $40,000 annually to house an inmate in Connecticut's prison system.[6] Its difficult to ascertain the exact costs of housing death row inmates from point of incarceration to the execution chamber and beyond but most estimates rate capital punishment significantly higher than life imprisonment. Furthermore there is strong evidence that the death penalty reduces resources available for crime prevention, mental health treatment, education and rehabilitation, meaningful victims' services, and drug treatment

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[2] Connecticut Inmate Population by Race and Ethnicity
[3] Joint Center Databank, African-Americans, Crime and Criminal Justice
[4] Connecticut Office of Legislative Research, Connecticut Death Row Inmates
[5] Death Penalty Information Center, Facts About the Death Penalty
[6] Connecticut Office of Legislative Research, Costs of Death Row

programs. These are programs the state should be investing in instead of capital punishment or even incarceration.

In conclusion some of us will never know how we would react in the loss of a relative/loved ones as a result of homicide, or as the relative of the individual on death row. However what we can all agree on is that taking another person's life is never a pleasant experience.

Thank you for the opportunity to testify.

30 Bank Street
PO Box 350
New Britain
CT 06050-0350
06051 for 30 Bank Street

P: (860) 223-4400
F: (860) 223-4488

Woody

Testimony of Sherwood Anderson, Member and Past Chair
Human Rights and Responsibilities Section
Connecticut Bar Association

In SUPPORT of

SB 280 AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES
Judiciary Committee
March 14, 2012

The Connecticut Bar Association has authorized its Human Rights and Responsibilities (HRR) Section to take the following position in connection with all bills before the General Assembly concerning the death penalty. It should be noted that the Connecticut Bar Association as a whole has not taken a position on these bills.

The position is the following: "To support abolition of the death penalty in Connecticut for those presently awaiting execution and those who are presently charged or in the future may be charged with capital felonies; and to support a maximum penalty for capital felonies in all cases to be life imprisonment or confinement without the possibility of release."

The Section strongly supports S. B. No. 280, as it eliminates the death penalty and replaces a punishment of "life imprisonment without the possibility of release for certain murders committed on or after the effective date of this act." It is assumed that this bill would apply to all murders presently classified as capital crimes and allowing the death penalty as the ultimate punishment.

HRR supports this bill to abolish the death penalty because execution is irreversible and it is always possible that an innocent defendant will be put to death by this state. Since 1973, about 139 people in the United States have been released from death row with evidence of their innocence. In Connecticut, in 2009 and 2010 alone, DNA evidence helped four prisoners previously convicted of murder to be released; these prisoners spent a total of over 70 years in prison for murders they did not commit.

The HRR Section and other opponents of the death penalty have long argued that the application of the death penalty in this state is arbitrary, random, and discriminatory. Proponents of the death penalty argue that only the most shocking and heinous crimes result in the death penalty. This argument has now been completely refuted.

Professor John Donohue of Stanford Law School recently conducted a detailed study of all 4,686 murders in Connecticut from 1973 to 2007. Of these, 205 were eligible for the death penalty but only two-thirds of these were actually prosecuted as capital crimes. Only 66 were convicted of capital murder and of these 29 were presented for the death

penalty. Nine of the 29 received death sentences and only one person has been executed. Professor Donohue then rated all 205 death-eligible cases for "egregiousness," that is, for factors such as number of victims, victim suffering, victim characteristics (like age, vulnerability), and defendant's culpability (motive, premeditation, intoxication). After an exhaustive study, the level of egregiousness was found to bear little or no relationship to the cases selected for prosecution as death-eligible, and also was found to bear no relationship to the cases where the death penalty was imposed (versus those given life imprisonment or a lesser sentence). In fact, in the 32 most "egregious" cases found in the study, only one received the death sentence. Professor Donohue concluded that our justice system operates with "arbitrariness and discrimination."

Recent studies show that the death penalty is not a deterrent to homicide. While the South has by far the highest number of executions, it also has the highest rates of murder in the United States. The Northeast has by far the lowest rate of executions but also has the lowest murder rate of any area in the country.

At a recent press conference in the State Capitol on February 29, a large number of family members of murder victims testified that the use of the death penalty caused untold additional anguish to them by greatly increasing the length of judicial proceedings and requiring numerous appearances. Many defendants would plead guilty if they were assured of a life sentence, even one without possibility of release. Also, some family members testified that the stated policy of only seeking the death penalty in the most heinous cases resulted in some families being told that their relative's murder was not heinous enough; this comparison of evil of the defendant and relative worth of the victim caused additional anguish. They also made clear that "closure" after a murder never occurs, regardless of the outcome of the criminal trial.

Connecticut and New Hampshire are now the only states in New England that allow the death penalty. Maine, Vermont, Massachusetts, and Rhode Island have abolished the death penalty. In recent years, New York, New Jersey, Illinois, and New Mexico have also abolished the death penalty.

The costs of capital felony murder cases are significantly higher than the costs of non-capital felony murder cases. According to the General Assembly Office of Fiscal Analysis in 2009, the cost of the death penalty in Connecticut is $4,000,000 annually. The annual cost per inmate on death row is about $100,000 compared to $44,000 for those not on death row. Estimates for the eventual cost of the Steven Hayes case with many years of appeals range up to $8,000,000.

The death penalty disproportionately affects the poor and minorities. Those wealthy enough to afford private defense attorneys rarely are sentenced to death. In Connecticut, Professor Donohue found that seven of the eleven on death row are minorities. He also found that minority defendants with white victims are far more likely to receive the death penalty than minority or white defendants with minority victims. In 96% of the states where race and the death penalty have been studied, there was a pattern of race-of-victim or race-of defendant discrimination, or both.

For all of the above reasons, the HRR Section respectfully requests that the Judiciary Committee act favorably on S. B. No. 280 prospectively to eliminate the death penalty with a replacement of life imprisonment or confinement without the possibility of release for capital crimes.

RESPONSE TO REPEAL OF THE DEATH PENALTY IN CT, BILL#280

Dear Judicial Committee Members,

Thank you for allowing us this time to respond to the proposed repeal of the death penalty. I appreciate the opportunity to speak truthfully about my opinion based on my experience.

I uphold the death penalty because it is a standard of justice that cannot be replaced by any other form of criminal punishment. Research shows that the death penalty deters murderers from committing capital felonies and that there is an increase in these crimes when the death penalty is withheld. From the perspective of the victim, the death penalty is an exacting standard that offers protection and demands a moral compass by which all members of society are held accountable. In my opinion, our society is not consciously capable of living at the moral standard necessary for survival without the death penalty. Though our society is full of wonderfully nurturing people who do not require such a law, there are the members of society who do, and when appropriate limits are not placed up on them, they victimize the all of society by the very nature of what they are; predators.

The predatory nature does not consider the needs or wants of another individual, other than to use such information against the victim. They do not grow in moral aptitude. They consider all members, as well as institutions, potential victims. It is my opinion that this is at the very foundation of why we have not stopped capital felons. It is because we cater to their belief that they will never be held accountable to the full extent that the law

demands. We have succeeded in allowing them to believe that the system will fail and they will be allowed less punishment then they even know they deserve. They are like the child who never learns what "No", means. They end up lacking the emotional maturity and the conscientious maturity, to think for themselves and it becomes society's burden to think and act for them. It is this dynamic that has allowed them to become so powerful in our society that even the death penalty means little and stands weak and ineffective. We have not demanded that they take responsibility for their actions and we have allowed them to become more important than the victims. We have flip flopped the order of emotional priority. The victim has no voice and the law has catered to the felon who has committed the crime. What must be understood, is that the predatory nature of such criminals, does not feel punishment by prison, even life long prison without the possibility of parole. They have, what no one can take away from them, their consciousness, their lack of moral regard. What prison does, is give them life.

Our society is made up of approximately 70% of sociopathic individuals. This means that about 3/4 of our society does not emotionally respond appropriately to another person and, feels entitlement. This inability to be empathetic, coupled with the competitive drive to make one's self more important than another, has created a tremendous amount of inappropriate relationship values, and, at the bottom of this, the inability to respect the very sanctity of life. We have raised the narcissistic sociopath and now have no means to control him. What is needed, is the "NO" that demands respect for life, and a new moral foundation from our laws. Yes, we need to change more than that, but we must start with having a limit that is not negotiable. We must demand that life be respected. We must demand that life be protected.

I was a victim of child abuse. I was terrorized by my father and threatened with death on a regular basis. His behavior was so extreme that he should have been put in prison, for life. He was evil. He bordered on the potential to kill me and I have lived with the knowing of that terror my entire life. I cannot help but think of the experiences of the victims who have been murdered. What were their experiences, knowing how horrible and horrific mine were, and I lived? Who will speak for the victims, who will speak loudly enough, and be heard? We have all heard, in every trial, the difficulties and past histories of the defendants at trial, but what about the victims, who cannot speak? Of those murdered(?).. and those who just can't tell anyone...held in silence by the terror they know in their lives. I speak, for all of those who cannot, because they are afraid. The death penalty must stand! It may be the only boundary that keeps victims alive. I know, with my father, it was only this fear that kept him from stepping further, into that darkness where it did not matter if I was alive or dead.

I, like so many other individuals who have dealt with child abuse, earned an education. I became a Marriage and Family Therapist and then a physician. I worked for Child Protective Services as well as with veterans recovering from PTSD, severe addicts and homicidal patients. I have been around dying patients and have been witness to the power that death brings to the consciousness of humans and their struggle to deal with immortality. I believe, that in the case of the criminal felon, who would commit such heinous acts, that death is the only form of response that will cause him, or her, to recognize the depth of their aberrant and unacceptable behavior. What is needed, is an empowered Death Penalty. Please, let it do its job. Do not repeal the Death Penalty, empower it.

Scot X. Esdaile, President of the Connecticut NAACP

Testimony in SUPPORT of SB 280

An Act Revising the Penalty for Capital Felonies

Chairman Coleman, Chairman Fox, distinguished members of the Judiciary Committee, thank you for the opportunity to present testimony today. My name is Scot X. Esdaile and I am the President of the Connecticut NAACP, and am speaking on behalf of our 16 Branches, 8 College Chapters, and 8 Youth Councils throughout the state. We strongly support SB 280, which would repeal Connecticut's death penalty.

Let me first be very clear: repeal of the death penalty is one of the Connecticut NAACP's top priorities this legislative session. The Connecticut NAACP and its local branches actively have been working for repeal. In 2009 and 2011, NAACP national President Benjamin Jealous joined local NAACP officials in calling for passage of a repeal bill. We were deeply disappointed when Governor Jodi Rell, despite bi-partisan support for repeal, ignored our concerns with the racial bias in the state's death penalty and vetoed a bill to repeal it in 2009. Since then, local NAACP chapters have held numerous forums and rallies across the state and collected hundreds of signatures in support of repealing the death penalty.

The NAACP's opposition to capital punishment should not come as a surprise. Throughout the death penalty's history in the United States, it has been applied in a racist and biased manner. The death penalty in the Jim Crow South clearly targeted Blacks. Across the South after the Civil War, 80% of those executed were Black. In particular, interracial rape or murder, when the defendant was Black and the victim White, virtually guaranteed a death sentence. When a Whiteman raped a Black Woman usually nothing ever happened! Between 1930 and 1967, 455 individuals were executed for the crime of rape – 90% of those cases involved a Black man raping a White woman. Jim Crow's message then was very clear: kill your own and we'll turn the other way, but touch a White man or woman and you're dead.

The death penalty systemically placed greater value on White victims over Black victims. The Supreme Court understandably was troubled by this system, and in 1972 struck down the death penalty as unconstitutional. States, including Connecticut, believed that they could eliminate the racism in the death penalty by revising their statutes. If only we provide more guidelines to juries in capital cases, they reasoned, we could eliminate the bias. So that's what they did, and in 1976 the Supreme Court deemed these new statutes to be constitutional.

Yet after these reforms, the problems continue. Across the country, studies consistently find that prosecutors are more likely to seek the death penalty when the victim is White than if the victim is a minority. And it would be foolish to believe that the problem is relegated to the South. It's also a problem in Connecticut. A comprehensive study by Professor John Donohue, which looked at over 4,000 murders in Connecticut between 1973 and 2007, found that the egregiousness of a crime plays little role in determining the handful of death sentences doled out. Rather, race and geography play the biggest role in who receives the death penalty. Connecticut prosecutors are more likely to seek the death penalty when the victim is White. Also troubling, seven of the 11 men on death row are minorities. This is not a just system. This is not a system that we can continue to tolerate.

You have tinkered with the death penalty for decades and failed. I'm here to say that enough is enough. The Black community knows how the criminal justice system works, how biased it can be. Obviously such bias should have no place at all in our justice system, but we simply cannot accept it when life hangs in the balance. If you truly care about racial equality, the State of Connecticut must stop making promises to fix the death penalty that goes unfulfilled. Instead, we must abolish the Death Penalty this year.

Thank you for your time.

Scot X Esdaile, President

CT NAACP State Conference

S.B. No. 280 (RAISED) AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES
March 14, 2012

Senator Coleman, Representative Fox and members of the Judiciary:

My name is Johanna Petit Chapman and I am here today to voice my opposition to S.B 280, An Act Revising the Penalty for Capitol Felonies. I very much appreciate the opportunity to testify before you today.

As a result of this proposed bill, those who are currently on death row, including the two defendants who savagely murdered my sister-in law and two nieces, will still be executed. Before he was elected, I listened with interest to Governor Malloy when he spoke on this subject. He said that he was in favor of the death penalty for the two defendants in our case, if that was the penalty given. He also said that he is not in favor of the death penalty and would sign a bill abolishing the death penalty if the bill passed. I find this line of reasoning to be...at the very minimum...flawed. Actually, I find it to be disingenuous.

Therein, lies a major problem with this bill. It is a lie. If this body truly wants to abolish the death penalty even though it is not what the majority of the citizens of Connecticut wants, at least be honest about it and change the language. There is no such thing as the prospective abolition of the death penalty. I spoke directly with many of you last year and that was one of the common threads in our conversations. In private conversation many of you admitted that a prospective bill made no sense and would only create a slew of appeals from those inmates currently on death row and that the outcome would essentially void their death sentences.

Connecticut needs to keep the death penalty on the books for the most heinous of murders. Because we have the death penalty in Connecticut, just last month, Leslie Williams plead guilty to capitol felony, assault, attempted escape from custody and other charges in return for a sentence of life in prison without the possibility of release. Back in 2008, Mr. Williams invaded a home, left one woman for dead and raped and murdered another and then dumped her body. This all occurred just four short weeks after he had served eight years for the rape of a five year old girl. Williams would never had plead to a sentence with no release had the other option not been death. You see, vicious murderers such as Williams, Komisarjevsky and Hayes are bold when they are taunting and murdering their victims, yet, afraid when facing death themselves.

The argument that we must abolish the death penalty because of the risk of executing an innocent does not hold truth, particularly in Connecticut. No knowledgeable and honest party questions that the death penalty

has the most extensive due process protections in the United States criminal law. Therefore, actual innocents are more likely to be sentenced to life imprisonment and more likely to die in prison serving under that sentence, that it is that an actual innocent will be executed. None of the men currently on death row are innocent nor have we ever executed an innocent man in Connecticut.

The argument that life imprisonment is a worse fate than death is also flawed. What percentage of capital murderers seek a plea deal for death? It doesn't happen because death is feared and life is preferred. The high cost of life imprisonment and geriatric care is just one justification for reducing sentences. Other examples that prove life in prison does not necessarily mean life in prison are commutation and pardon. Surely, we are all aware of Haley Barbour's recent pardons. He granted full pardons or clemency to about 200 people, including convicted shoplifters, rapists, burglars, and embezzlers---plus fourteen murderers. Mr. Barbour said that he did this out of mercy. "The pardons were intended to allow them to find gainful employment or acquire professional licenses as well as hunt and vote," Barbour said. Where is the mercy and justice for the victims? Similarly, here in Connecticut, a vote for repeal is a vote for criminals and a vote against victims.

Pope John Paul II declared in his March 25, 1995 encyclical, The Gospel of Life, that "execution is appropriate to defend society". Please do the honorable thing and defend society. Send the criminals the message that Connecticut is not soft on crime. Repair Connecticut's death penalty, do not repeal it.

Connecticut Conference
United Church of Christ

125 Sherman Street
Hartford, CT 06105-2281

March 2012

Testimony in support of SB 280 An Act Revising the Penalty for Capital Felonies
Submitted by the Rev. Charles L. Wildman
Interim Conference Minister, Connecticut Conference United Church of Christ

Throughout my forty years in pastoral ministry, I have argued against the death penalty. In that long period, hundreds of people have been executed. In Connecticut, the debate rages on. The 2010 state legislative session voted to repeal the death penalty only to have their decision vetoed by then Governor M. Jodi Rell. New repeal legislation will be debated this session. So, another opportunity to consider the issue is offered. Few concerns are more worthy of review by people of faith. I urge study groups and programs in our congregations.

What justifies the taking of the life of someone accused of a heinous crime? I cannot find a faithful rationale. Granted, some crimes are unspeakably horrible. My heart goes out to the Cheshire family whose lives were brutally taken in an afternoon of pure evil. But how does the taking of the lives of the perpetrators atone for the damage done? "An eye for an eye, a tooth for a tooth, a life for a life" only leaves everyone maimed or dead.

This conclusion may have influenced Jesus' new teachings. Considering the commandment, "Thou shalt not kill," in the context of his society, he likely saw that killing only made things worse. Gandhi adopted a pure pacifist position against all war and violence, no matter how well justified by context. Jesus extended the prohibition against murder to prohibition against anger. God's forgiveness and grace are available to everyone who sincerely repents. Jesus did not promise that discipleship would be easy.

Capital punishment presents a justice issue. It is no accident that the majority of those who have been executed are from minority communities where poverty and substance abuse are rampant. Economic injustice is an incubator for violence. Recent media reports assert that one in three Black young men will be incarcerated sometime during late adolescence or early adulthood. And these are the very people who cannot afford quality legal representation, leading to often ill-trained and overburdened public defenders taking their cases. New DNA testing has revealed that false convictions and executions are not uncommon. We will never know how many innocent lives have been taken.

It is commonly assumed that capital punishment deters violent crime. This belief has long been discredited by the facts. Study after study has shown that, in states with the death penalty, there is no correlation between the death penalty and the number of capital crimes.

Human life is cheapened for all of us when we turn our backs on Jesus' teaching and the sociological facts concerning the death penalty. Fear and emotional reactions to ugly crimes must not lead us to lash out in anger. For the well-being of our families, communities and ourselves, prayer and clear thinking must finally govern our decision on the death penalty- and hopefully lead us to express our views to elected officials and work with the growing effort in our state to influence the outcome of the next votes.

And if we are tempted to sit this one out, two questions plead for consideration. The first is, What would Jesus say? And the second, What protections would we want if we were falsely accused of a capital crime?

56 Arbor St.
Suite 213
Hartford, CT 06106
www.cnadp.org

Ben Jones
Executive Director
ben.jones@cnadp.org
614-390-8417

Judiciary Committee Public Hearing
Wednesday, March 14, 2012

Testimony on Behalf of the Connecticut Network to Abolish the Death Penalty

In SUPPORT of SB-280

Dear Chairman Coleman, Chairman Fox, and members of the Judiciary Committee:

My name is Ben Jones and I am the executive director of the Connecticut Network to Abolish the Death Penalty or CNADP. The CNADP is a statewide, grassroots organization committed to ending Connecticut's death penalty through public education and citizen advocacy. On behalf of the CNADP and its members across the state, I am submitting testimony in support of SB-280.

Because of the death penalty's history of flaws, the CNADP opposes the death penalty in all cases. The CNADP prefers complete repeal of the death penalty, but we still support SB-280. Though this bill only repeals the death penalty prospectively, it still makes important progress toward ending capital punishment in our state.

The CNADP has a diverse membership, which includes murder victims' family members, law enforcement officials, religious leaders, students, and educators. What unifies them is the shared belief that Connecticut's death penalty is a public policy broken beyond repair. Capital punishment has existed in Connecticut and the United States for centuries, and time and again it has proven ineffective and prone to error. For decades, courts and legislatures have tried to fix the death penalty but without success. In 1995, Connecticut legislators claimed that passage of a death penalty reform bill would render the state's death penalty "workable." Now, over 15 years later, the public is as frustrated as ever with the state's death penalty. Capital cases drag on for decades in the media and the courts, often inflicting additional pain on victims' families as they wait for the end to the legal process that never seems to come.

Legislators' and judges' inability to fix the death penalty stems from an irresolvable tension in capital punishment. On the one hand, victims' families want a system that brings finality to the legal process in a timely manner. On the other hand, because the death penalty is an irrevocable penalty, safeguards and appeals must be in place to protect the rights of the wrongfully convicted and provide them opportunities to prove their innocence. Shorten the legal process, the risk of executing the innocent goes up. Strengthen legal safeguards, victims' families face a prolonged legal process. Connecticut's commitment to the death penalty in the face of this catch-22 has resulted in a frustrating system that is neither foolproof nor swift in delivering justice.

This tension in capital punishment leads not only to a broken public policy but one immune to solutions. In short, the only way to fix the death penalty is to repeal it. As long as this failed policy remains in place, it negatively impacts society in a number of avoidable ways. Specifically, the death penalty (1) puts innocent lives at risk, (2) suffers from bias and

discrimination, (3) fails to deter crime, (4) wastes millions of dollars, (5) can inflict additional harm on victims' families, and (6) can cause secondary trauma to corrections officials. Let me address each of these issues.

(1) Innocence

Evidence uncovered in recent years has made clear that mistakes in capital cases occur at a troubling rate. Eyewitness error, junk science, snitch testimony, false confessions, and government misconduct are all factors that lead to wrongful convictions. Since 1973, 140 individuals sentenced to death row later have been exonerated due to evidence of innocence. In these cases, individuals have spent an average of 9.8 years imprisoned before their release.[1] In other cases, individuals sentenced to death were not so fortunate, as their executions went forward despite evidence of innocence. A September 2009 *New Yorker* article presented compelling evidence that Texas executed an innocent man in 2004. The man put to death, Cameron Todd Willingham, allegedly killed his three children in an arson fire. Leading arson experts now say, however, that all evidence suggests that the fire was accidental.[2]

The problem of wrongful convictions is not foreign to Connecticut. In recent years, DNA has helped to demonstrate the innocence of individuals convicted of rape, murder, or both – James Tillman, Miguel Roman, and Kenneth Ireland. Collectively, they spent over 55 years in prison for murders they did not commit. The case of Kenneth Ireland in particular should make us pause. Ireland, convicted of rape and murder, ***would have been eligible for the death penalty*** had he been two years older. What saved Ireland was being 16-years old at the time of the crime, which made him ineligible for the death penalty. In this instance, luck kept Connecticut from sending an innocent person to death row. If Connecticut holds on to the death penalty, there is no guarantee that it will be so lucky 10 or 20 years down the road.

(2) Fairness

Throughout the death penalty's history in the US, racial discrimination and other forms of bias have plagued its application. Before a nationwide moratorium of the death penalty in 1972, the majority of individuals executed were minorities. Racial bias in the system was impossible to deny. For example, of the 455 men executed for rape between 1930 and 1967, 90% were African-American.[3] The biased and arbitrary application of capital punishment led the Supreme Court to declare it unconstitutional in *Furman v. Georgia*. In response, states rewrote their death penalty statutes with the aim of providing more guidance and consistency to sentencing in capital cases. Despite these attempts to eliminate bias from the death penalty, it continues. After the *Gregg v. Georgia* decision brought the death penalty back in 1976, we find that the race of the victim significantly impacts who receives the death penalty. Nationally, 50% of murder victims

[1] Death Penalty Information Center (hereafter DPIC), <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row>.
[2] David Grann, "Trial by Fire: Did Texas execute an innocent man?" *The New Yorker*, September 7, 2009, <http://www.newyorker.com/reporting/2009/09/07/090907fa_fact_grann>.
[3] David Oshinsky, *Capital Punishment on Trial: Furman v. Georgia and the Death Penalty in Modern America* (Lawrence: University of Kansas Press, 2010).

are white. In death penalty cases, however, the murder victim is white 76% of the time.[4] Clearly, prosecutors are more likely to seek the death penalty when the victim is white.

To claim that Connecticut's death penalty is free from bias ignores compelling evidence to the contrary. Seven of the 11 individuals on death row are minorities. A study by former Yale Law Professor John Donhue found that, as in other states, the race of the victim significantly impacts sentencing patterns in capital cases in Connecticut. Beyond race, geography plays a critical role in who receives the death penalty.[5]

(3) Deterrence

The issue of deterrence has long been part of debates on the death penalty. Most econometric studies fail to find that the death penalty has a deterrent effect. Every so often a study finds a deterrent effect and it receives a great deal of attention, until the study's results fail to hold up to peer review. Professors John Donohue and Justin Wolfers sum up the body of research on deterrence: "The view that the death penalty deters is still the product of belief, not evidence.... The data are simply too noisy, and the conclusions from any study too fragile. On balance, the evidence suggests that the death penalty may increase the murder rate.... In light of this evidence, is it wise to spend millions on a process with no demonstrated value that creates at least some risk of executing innocents when other proven crime-fighting measures exist?"[6] A simple comparison between states supports Donohue's and Wolfers's point: the murder rate in states with the death penalty (5.0 per 100,000 people) is actually higher than the rate in states without the death penalty (4.0 per 100,000 people).[7]

Criminologists, police chiefs, and the general public all agree – the death penalty fails as a deterrent. A 2009 study found that 88% of the nation's top criminologists believe the death penalty is not a deterrent.[8] This is not surprising: to the extent that someone with a deadly weapon in a rage is going to be deterred from anything, the real prospect of spending a lifetime in prison is at least as persuasive as the small chance of being executed. Hart Research Polls from 1995 and 2009 found that police chiefs ranked the death penalty *last* among effective ways to reduce violent crime. A full 99% said that other measures such as reducing drug abuse or improving the economy were more important than expanding the death penalty in reducing violent crime.[9] A 2011 Gallup poll showed that 64% of Americans believe the death penalty has no deterrent effect. This number has risen steadily since the 1980s.[10]

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[4] DPIC, <http://www.deathpenaltyinfo.org/arbitrariness>.

[5] John Donohue, *Capital Punishment in Connecticut, 1973-2007: A Comprehensive Evaluation From 4686 Murders to One Execution*, 2011, <http://works.bepress.com/john_donohue/87/>.

[6] John Donohue and Justin Wolfers, "The Death Penalty: No Evidence for Deterrence," *The Economists' Voice*, April 2006, <bpp.wharton.upenn.edu/jwolfers/Press/DeathPenalty(BEPress).pdf>.

[7] DPIC, "Murder Rates Nationally and by State," <http://www.deathpenaltyinfo.org/murder-rates-nationally-and-state>.

[8] Michael Radelet and Traci Lacock, "Do Executions Lower Murder Rates?: The Views of Leading Criminologists," *The Journal of Criminal Law and Criminology* 99 (2009): 489-508.

[9] DPIC, "Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis," October 20, 2009, <http://www.deathpenaltyinfo.org/documents/CostsRptFinal.pdf>.

[10] Gallup Polling, <http://www.gallup.com/poll/1606/death-penalty.aspx>.

(4) Cost

Because of the additional resources and preparation required in death penalty cases, the separate sentencing phase, post-conviction appeals, and the added costs of death row facilities, studies over the past 25 years consistently have found the death penalty to be more costly to implement than life in prison without release. An Urban Institute study estimated that it costs Maryland taxpayers $1.9 million more on average in cases where prosecutors seek the death penalty.[11] The death penalty costs California taxpayers over $125 million a year.[12] The state of New Jersey spent over $250 million on a death penalty despite never carrying out an execution.[13] The Office of Fiscal Analysis estimates that ***Connecticut's death penalty costs the state $4 million annually.***[14] In a time of budget shortfall with so many pressing needs, it is difficult to justify spending millions of dollars on a death penalty that fails to keep us any safer.

(5) Victims' Families

Like the general public, victims' families have different opinions on the death penalty and no one can speak for all of them. It is important, then, to look at the death penalty system and evaluate its overall effects. Given the prolonged trials, lengthy appeals, and reversals common in capital cases, many victims' families, victims' advocates, and trauma experts are concluding that the death penalty harms surviving family members.

The legal process in all murder cases, with its focus on the offender, is especially trying on surviving family members. But the media attention and endless legal process in capital cases exacerbates the trauma families suffer. Dr. Gail Canzano, a clinical psychologist whose brother-in-law was murdered, speaks to this problem: "I have many years of experience treating individuals suffering from the effects of trauma. ***From a professional standpoint, there is simply no doubt that the death penalty is injurious to the family members of murder victims.*** It forces people to continually re-live the murder of their loved one for years. In keeping the traumatic event 'front and center' the judicial system re-traumatizes and re-victimizes the very people it seeks to assist."[15]

Due to the death penalty's harmful effects on victims' families, many have spoken out in favor of its repeal. ***A group of 179 Connecticut murder victims' families joined a letter urging the General Assembly to end the death penalty***, which they presented at a press conference on February 29, 2012. In the letter they made clear that the death penalty fails them: "In Connecticut, the death penalty is a false promise that goes unfulfilled, leaving victims' families frustrated and angry after years of fighting the legal system."

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[11] John Roman et al., *The Cost of the Death Penalty in Maryland*, Urban Institute, 2008, <http://www.urban.org/url.cfm?ID=411625>.

[12] The California Commission on the Fair Administration of Justice, *Fair Administration of the Death Penalty*, June 30, 2008, <http://www.ccfaj.org/rr-dp-official.html>.

[13] Mary E. Forsberg, *Money for Nothing? The Financial Cost of New Jersey's Death Penalty*, 2005, <http://www.njadp.org/forms/cost/MoneyforNothingNovember18.html>.

[14] Connecticut General Assembly's Office of Fiscal Analysis (CGA's OFA), "Fiscal Note for HB-6578," <http://www.cga.ct.gov/2009/FN/2009HB-06578-R000726-FN.htm>.

[15] Gail Canzano, *Voices: Connecticut Murder Victims' Families Speak Out Against the Death Penalty*, Murder Victims' Families for Reconciliation, February 2011, p. 6.

(6) Secondary Trauma

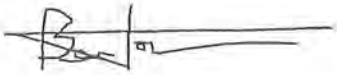
Abstract debates about capital punishment can sometimes lose sight of the sobering reality of an execution. If the state chooses to have the death penalty, it also must train individuals to plan and carry out the execution of another human being. It is a task that can inflict stress and lasting trauma on corrections officials. Despite attempts to make executions more humane, the reality is that they remain incredibly stressful events that can go horribly awry. Corrections officials who used to be silent about executions' effects are now sharing the pain that has stayed with them. Jim Willet, who oversaw 89 executions in Texas, described what he endured: "Sometimes I wonder whether people really understand what goes on down here and the effect it has on us. ***Killing people, even people you know are heinous criminals, is a gruesome business, and it takes a harsh toll...*** I have no doubt it's disturbing for all of us. You don't ever get used to it."[16]

The harms inflicted by the death penalty are real – and also avoidable. The power to execute, we have discovered, is a power beyond the proper scope of government, given the inevitability of error and abuse in any human system. An irrevocable punishment such as the death penalty demands perfection, which is simply too much to ask.

In closing, I wish to draw your attention to comments made by former Supreme Court Justice John Paul Stevens. Upon retiring, Stevens said that one vote he particularly regretted was his 1976 vote in favor of keeping the death penalty in *Gregg v. Georgia.*[17] He was not alone. Two other justices in the majority, Harry Blackmun and Lewis Powell, also regretted their votes to reinstate the death penalty. Had the justices voted according to the positions at which they ultimately arrived, they would have reaffirmed abolition of the death penalty. And, in all likelihood, we would not be having this debate today in Connecticut about the death penalty.

But we are here today having this debate. This committee and the broader General Assembly have before them the unique opportunity to end the state's penalty. I urge you to seize this opportunity. The evidence is clear that the death penalty does not work. If we opt for reform, as in 1995, in 15 years we again will be frustrated and regret the reforms implemented. True reform of the death penalty means one thing – ending it. Other states are recognizing this point. In the past decade, New York, New Jersey, New Mexico, and Illinois have repealed the death penalty. It is Connecticut's turn to join their ranks. The death penalty has failed the state for too long, caused too much pain, to let it continue. ***Now is the time to repeal Connecticut's death penalty.***

Respectfully submitted,



Ben Jones
CNADP Executive Director

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[16] Jim Willet, "Eighty-Nine Executions," *Washington Post*, May 13, 2001, <http://www.washingtonpost.com/wp-srv/articles/o_warden_512.htm>.

[17] Nina Totenberg, "Justice Stevens: An Open Mind on a Changed Court," NPR, October 4, 2010, <http://www.npr.org/templates/story/story.php?storyId=130198344>.

CONNECTICUT CATHOLIC PUBLIC AFFAIRS CONFERENCE, INC.
134 FARMINGTON AVENUE
HARTFORD, CONNECTICUT 06105-3784

MICHAEL C. CULHANE
EXECUTIVE DIRECTOR

DEACON DAVID W. REYNOLDS
LEGISLATIVE LIAISON

JUDICIARY COMMITTEE

PUBLIC HEARING

S.B. 280 *An Act Revising the Penalty for Capital Felonies*

Wednesday March 14, 2012

Testimony of the Roman Catholic Bishops of Connecticut
By The Most Rev. Peter A. Rosazza, Retired Auxiliary Bishop of Hartford

I thank the co-chairmen of the Judiciary Committee for this opportunity to testify on behalf of Connecticut's seven Roman Catholic Bishops in favor of repealing the death penalty in our state.

The legal arguments in favor of abolition include the exoneration of prisoners on death row due to DNA evidence. In a recent case, a conviction was overturned when it was shown that an eye-witness pointed out the wrong man. Moreover, it is becoming clearer that an infallible system cannot produce certitude in all cases that involve the possible execution of a human being by the state.

These arguments are supported in the moral domain by the teaching of the popes and the bishops. Following the lead of Pope John Paul II, the Catholic Bishops of our state – and our country – have joined with other individuals and groups to end the death penalty.

The pope's vision was based on a consistent ethic of life. This means that human life is sacred and deserves the utmost respect from conception until natural death. People do not lose that sacredness even though they have taken the life of another.

In this regard, Pope John Paul said, in St. Louis, MO, on January 27th, 1999: "A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself, without definitively denying criminals the chance to reform. I renew my appeal for a consensus to end the death penalty, which is both cruel and unnecessary."

It was because he was so moved by the pope's plea for mercy that Governor Mel Carnahan commuted Darryl Mease's death sentence to *life in prison* in 1999.

In his encyclical "The Gospel of Life," Pope John Paul II says that society has the right to protect itself from harm and can do so by incarcerating someone convicted of a capital offense. The chances in and advanced society like ours of such a felon escaping are practically

REPRESENTING THE ARCHDIOCESE OF HARTFORD, DIOCESE OF BRIDGEPORT, DIOCESE OF NORWICH AND UKRAINIAN CATHOLIC DIOCESE OF STAMFORD
TELEPHONE: (860) 524-7882 • FAX (860) 525-0750 • EMAIL: CCC@CTCATHOLIC.ORG • WEBSITE: WWW.CTCATHOLIC.ORG

impossible. (My brother, Tom, who has spent 46 years as a correctional justice consultant, corroborates this.)

An important point overlooked by those who want to keep the death penalty is that it doesn't give the convicted murderer time to repent and to beg forgiveness of grieving family members.

Continuing in the direction set by his predecessor, Pope Benedict XVI in November of last year received groups that have worked to end the death penalty throughout the world. Among them was a delegation from the State of Illinois that became the 16th state to do so under Governor Pat Quinn. At that time the pope praised the work of the delegations and hoped that they would "encourage political and legislative initiatives being promoted in a number of countries to eliminate the death penalty and promote progress in penal law that speaks equally to the human dignity of prisoners and the effective maintenance of public order."

Following the popes' leads, the Catholic bishops of our country stated that, "The death penalty diminishes all of us. Its use ought to be abandoned, not only for what it does to those who are executed, but what it does to us as a society. We cannot teach respect for life by taking life."

Finally, Connecticut was the last state in New England to abolish slavery. Hopefully, we shall not have this shameful distinction as regards the death penalty.

Testimony for Repeal of the Death Penalty in Support of SB 280

Black Student Alliance at Yale
Nia Holston, Political Action Chair
46 Aberdeen Dr, New Haven, 06520

I am Nia Holston, sophomore at Yale University, representing the Black Student Alliance at Yale as their Political Action Chair. We express our voice in support of the abolition of the death penalty in Connecticut.

We do so out of a strong conviction that the death penalty in its current practice does not provide for the fair and just treatment of all individuals under the law of the United States. The death penalty does not provide for equal protection under the law, and African-Americans are often overrepresented in cases where the death penalty is used. In fact, more than half of the 3300 people in the United States on death row are people of color. Even more striking, African Americans make up 42% of the defendants on death row. Despite the decades of research that displays that the death penalty is unequally administered to people of color, the courts' and legislature's refusal to deal with racial bias in a concrete way is demonstrative of the fundamental flaws in the American criminal justice system.

Furthermore, the defendants selected to receive the death penalty often receive inadequate counsel. Whether or not an individual is sentenced to the death penalty depends heavily on the competency of his or her legal team. This is noted as one of the defining factors of whether or not a death sentence is handed down. Few defendants can afford to hire a skilled lawyer, and are forced to rely on lawyers with heavy caseloads.

Finally, when there is much doubt surrounding a person's guilt or innocence, a death penalty sentence should never be handed down. We are reminded of the Troy Davis case, and the persistent doubt surrounding his guilt. Until his final breath, he maintained his innocence, and inspired millions around the world to act on his behalf. We cannot consciously sit by and allow this to continue. We reiterate our support for death penalty repeal in Connecticut, and hope that its repeal comes swiftly.

Judiciary Committee Public Hearing: March 14, 2012
Testimony of Molly Majewicz, Jualiann Marino, Patricia Socarras, Erica Naumann,
Maria Torelli, and Nichole Pitruzzello
Students at Mercy High School, Middletown, CT

In Support of SB-280, An Act Revising the Penalty for Capital Felonies

Our names are Molly Majewicz, Patricia Socarras, Erica Naumann, Maria Torelli, and Nichole Pitruzzello, and we are submitting testimony in support of the bill to repeal the death penalty, Senate Bill Number 280. We are students at Mercy High School, a Catholic diocesan high school in Middletown, and we have been closely studying capital punishment along with other life issues in our social justice class. After extensive thought and consideration, we have come to agree with the Catholic Church and its stance on Capital Punishment.

The Catholic Church is opposed the use of the death penalty because it goes against the Culture of Life that the Church is trying to spread in our world. The United States Conference of Catholic Bishops, 2005 stated that "the death penalty diminishes all of us. Its use ought to be abandoned not only for what it does to those who are executed, but what it does to us as a society. We cannot teach respect for life by taking life". All humans have the right to life whether they have done horrific actions or not. We define life as conception to natural death and believe that reform and deterrence are more appropriate purposes for the criminal justice system than Capital Punishment. As Pope John Paul II stated in 1999, "Modern society has the means of protecting itself, without definitively denying criminals the chance to reform." We believe that we have the ability as a society to encourage reform for everyone while also deterring future crime. Studies continue to show that the death penalty is not a deterrent.

In our social justice class, we heard from Mr. Juan Melendez. Mr. Melendez was one of the 140 people exonerated from death row. Today we consider him one of the lucky people in this statistic, considering that there are many more that may be innocent, but were not able to prove their innocence in time. Even with his luck, Mr. Melendez still spent almost eighteen years on Florida's death row. His story also shows us that there will always be a possibility of executing an innocent person due to regular flaws in human nature. Our assurance of the guilt of each of these people on death row will never be a complete one hundred percent.

There are many arguments to the death penalty itself seeing that it is a controversial subject. The facts are hard to dispute—such as the fact that 140 people have been wrongly convicted and sentenced to death—but the moral aspect is less clear to some . Some people complain that the death penalty is only broken because it takes too long. If it hadn't taken so long with Mr. Melendez, then Florida would have executed an innocent person. The only way to make certain that innocent people will not be victimized is to repeal it all together. The death of an innocent person is always immoral.

The Church's teaching states that non-lethal means "better correspond to the concrete condition of the common good and are more in conformity to the dignity of the human person". (CCC, 2267)The eye for an eye system worked in different times but has shown to be unnecessary and only contributes to the cycle of violence in modern day America.

Please vote in favor of Senate Bill Number 280. By doing so you may save the lives of innocent people and make our community a more peaceful place for us to live.
Thank you.

March 14, 2012
Judiciary Committee Public Hearing

Testimony in SUPPORT of SB 280

Chairman Coleman, Chairman Fox, members of the Judiciary Committee:

My name is Peter Tsimbidaros and I am a criminal attorney from Bridgeport. I am here to urge repeal of the death penalty and passage of SB 280.

You may have seen in the news the story of two of my clients, George Gould and Ronald Taylor. They were wrongfully convicted of murdering a bodega owner, Eugenio DeLeon Vega, in New Haven in 1993.

George and Ronald spent more than 16 years in prison for a crime they did not commit.

They were finally exonerated and set free in 2010. At the hearing, Superior Court Judge Stanley Fuger Jr. said – and I quote – "a manifest injustice has been done to these two men. These cases, in fact, go way beyond 'actual innocence.' The criminal cases never should have been initiated in the first place!"

To Judge Fuger, it was clear from the new evidence presented that my clients were innocent:

- DNA evidence from an electrical cord used to bind the victim did not match George, Ronald, or the murdered bodega owner.
- Fingerprints found on the door handle of the safe did not match George, Ronald, or the murdered bodega owner.
- The state's two key witnesses recanted their testimony and said they never saw George or Ronald commit the murder, but were coerced by police to fabricate testimony.
- In an audiotaped confession, a witness said that the real killer is the victim's son, a registered sex offender with six guns, including possibly the murder weapon.

George, Ronald, and their families were elated: we believed that their tragic odyssey through the criminal justice system was over. We were wrong.

After the exoneration, prosecutors should have investigated the errors and misconduct that led to George's and Ronald's wrongful conviction. For instance, the prosecution's star witness was a drug-addicted prostitute who later testified that it was all a lie, that she never was at the scene of the murder, and that police gave her money for heroin, among other gifts, in exchange for her testimony.

Instead of investigating such misconduct, prosecutors dedicated themselves to overturning Judge Fuger's decision, while refusing to investigate an alternative suspect.

Unfortunately, they succeeded. The Connecticut Supreme Court overturned Judge Fuger's decision and ordered a new trial. I then had to do the most difficult thing in my life: tell George that he had to return to prison as we waited for a new trial. Ronald avoided a return to prison because he was weak from battling colon cancer, which took his life on October 25, 2011.

This case shows how the criminal justice system can fail us. We live under the mistaken impression that, with DNA and other advances in technology, wrongful convictions will be uncovered and the innocent released. That is not always the case.

In many cases there is no physical evidence available to test, leaving the wrongfully convicted with no way to prove their innocence. DNA evidence is available in only 10% of criminal cases. And even when physical evidence shows someone to be innocent – as in my clients' case – prosecutors often challenge new evidence and refuse to test it, so they can avoid admitting that they made a mistake.

Our criminal justice system makes mistakes, and in such a system the death penalty has no place. We may have DNA technology, but that cannot always solve the old-fashioned problem of police and prosecutorial misconduct. Connecticut needs to end the death penalty and make sure it never makes the tragic mistake of sending an innocent person to death row.

Thank you.

Peter Tsimbidaros

Bridgeport, CT

Testimony of Timothy Anderson
4 Garden St. 2nd Floor
New Haven CT, 06511

Regarding SB-280: An Act Revising the Penalty for Capital Felonies
Judiciary Committee
March 14, 2012

My name is Timothy Anderson and I support SB 280, An Act Revising the Penalty for Capital Felonies. The death penalty has touched me in a number of ways.

I am also a son, parent and victim! My aunt Antoinette Joyner was murdered several years ago in New Haven, CT. As a licensed social worker, I presently work with sex offenders and homeless individuals. I have also worked with adults with disabilities and mentally challenged individuals. Having a great deal of knowledge and experience, I'm writing this letter truthfully, however an undying love for my people will always continue inside my soul.

The one thing I can tell you about the death penalty, it's a barbaric method to deprive human life and furthermore it's corrosive. It infects everything it touches especially humanity. Putting a human being to death must not continue under the death penalty. We must return to the blessing of our shores and continue not to drift in a sea of blood.

I did my civic duty; I sentenced a man to death. And I was one of the jurors who sentenced Joshua Komisarjevsky to death.

Looking back on my decision, what I did was ethically and morally wrong, not under the law, but for humanity. Cut no life short of its own life line, but let it fade by natural existence.

I did what you asked me to do, I am asking you the legislation committee to abolish the death penalty. Make sure that no juror has to do what I did. It is wrong for humanity!

Abolish the death penalty; we must work toward a better future. A social change for humanity, it's what I know to be morally right deep inside my soul, please change the path for humanity.

Thank you.

Sincerely;
Timothy V. Anderson

JUDICIARY COMMITTEE
TESTIMONY OF RABBI MICHAEL PINCUS

IN SUPPORT OF SB 280: AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES

March 14, 2012

My name is Rabbi Michael Pincus. I am the Rabbi of Congregation Beth Israel, a Reform synagogue in West Hartford, Connecticut. I submit this testimony in support of *SB 280: An Act Revising the Penalty for Capital Felonies* in my personal capacity, not on behalf of the Congregation.

Since 1958, the Union of Reform Judaism has formally opposed the death penalty. Resolutions adopted by the Movement since then, have affirmed that "there is no crime for which the taking of human life by society is justified, and that it is the obligation of society to evolve other methods in dealing with crime."

Though Biblical law mandates the death penalty for 36 offenses, over 2,000 years of rabbinic wisdom teach us to reject an ultimate punishment that removes even the possibility of redemption and rehabilitation. Rabbinic interpretations effectively abolished the death penalty centuries ago and, with the rarest of exceptions, Jewish courts have refused to punish criminals by depriving them of their lives.

Jewish teachers have taught that the repetition of the word *tzedek*/justice in the biblical injunction *Tzedek, tzedek, tirdof*, "Justice, justice you shall pursue," (Deuteronomy 16:20), is repeated to teach us that we must be just in our pursuit of justice, that our means must be as just as our ends. In an op-ed addressing this issue, Rabbi Marc Gruber of Rockville Centre, New York posed the question, "How will we respond when our children ask, Why do we kill people who kill people?"

The suffering of victims of violence and their families is profound, and each of them deserves to know that the perpetrators of such violence are held accountable. But I believe, that Justice, not vengeance, is what we should aim to dispense in our state's criminal justice system. Capital Punishment is unethical and falls short of our highest ideals to which we aspire.

I urge the Connecticut legislature to resist the entreaties of those who call for vengeance, retribution and death and to seek instead repentance and rehabilitation from our state's wrongdoers.

Respectfully submitted,

Rabbi Michael Pincus

Dr. George Kain, Police Commissioner Ridgefield

In Support of SB 280 to repeal the death penalty

My name is Dr. George Kain. I am an Associate Professor in the Division of Justice and Law Administration at Western Connecticut State University. Prior to my teaching at Western CT, I was a CT Adult Probation Officer and a Judicial Branch administrator for 12 years. I am currently a Police Commissioner in the Town of Ridgefield, and have been for 13 years.

My personal view of the death penalty has changed significantly over the years, and I have come to find through discussing this issue with my Law Enforcement (LE) colleagues that many of them share the exact same concerns that I have, and they too support abolition.

Recent debate in opposition to the death penalty has focused on wrongful conviction and on the risk of innocent people being put to death- these are certainly strong, valid arguments. Wrongful convictions for any offense are a black eye for all of us in the Criminal Justice System (CJS) because our credibility suffers- and has suffered- as a result.

One of the main concerns shared by many of my law enforcement colleagues focuses on the economic side of this debate. Not only are precious financial resources wasted on a death penalty process which leads to a punishment infrequently applied and even less frequently carried out- but the death penalty also takes away time and resources from the effective prevention and intervention programs that we know work in our law enforcement efforts.

Additionally, the millions of dollars that we could divert to these effective programs could also be used to provide additional training for our LE officers and for increased victim services; two areas in our CJS that we know could use strengthening. We need to do more for surviving family members of violent crime, and we can do more. In fact, it was the focus on increased funding for officer training as well as for increased funding for victim services that led the Illinois legislature to pass their anti-death penalty bill last year.

Two weeks ago, we heard from 179 surviving family members who were victims of murder in their families, and who made it strikingly clear that the entirety of the capital punishment process did not bring them any closure concerning the loss of their loved ones and that time only exacerbated the pain that they felt. There is an ever-growing body of evidence that testifies to this reality. Additionally, those murder cases not chosen for capital punishment cause more distress to those who are victims because it creates two categories of murders: those that are "the worst" and those "not as bad". How can we continue to do this?

My fear is that, given our current financial crisis, not only will we continue to waste money on a punishment that isn't cost effective; we could continue to see further reductions in our LE workforce that have actually already begun through recent layoffs of police officers, and also have less money available for victim services. I don't have to wave a flag of concern over the validity of these issues; they are clearly before us for all to see.

If we knew that the Death Penalty worked, we'd be having a totally different discussion right now, but in the 36 years since it's reinstatement in the country in 1976, we have seen again and again that it doesn't work, and further, that we don't need it. In the words of former US Supreme Court Justice Harry Blackmun, "the death penalty experiment has failed". Law enforcement doesn't need the death penalty, the State of CT doesn't need the DP, and our country doesn't need the death penalty. The death penalty has failed all of us. CT can join the other states in this great country that are currently abolishing the capital punishment. You can make that happen this legislative term and I hope that you will.

George F. Kain, Ph.D.
Police Commissioner, Town of Ridgefield, CT
Associate Professor
Division of Justice and Law Administration
Western CT State University
Danbury, CT

Cindy Siclari, murder victims' family member
Testimony in Support of SB 280

Murder victims' families are regular people. So, even before we experience murder in our lives, many of us already had strong feelings about the death penalty.

For me, there was no question. The death penalty is against my religious principles that all life is sacred. Being "pro-life" from natural conception to natural death is a guiding principle in my life. Given that we can still protect society through lifetime incarceration, I see no possible justification for the taking of a human life – be it an innocent unborn baby, or the most horrendous murderer.

When my sister in law was raped and murdered, in my rage and sadness my beliefs were tested. I am very proud that I stood by my pro-life principles even when it was most difficult. What good are convictions that aren't put to use?

After I lost my sister in law, I was still opposed to the death penalty as a pro-life Catholic. But now, I am also opposed to the death penalty as a murder victim family member. And for me, these are very different things. While I could never support a system that doesn't respect life, I know personally know what a foolish endeavor the death penalty is. When my sister was taken from us, there were many things we needed – answers about the crime, help with the legal system, counseling for our children. So many things would have helped us. But the death penalty wouldn't have, it would have only been a costly distraction.

Sunny Khadjavi, daughter of a murder victim
Testifying in support of SB 280 to repeal the death penalty

It's been almost forty years since my father was murdered. While no one can *understand* why a loved one is murdered, the mystery surrounding my father's death has weighed heavily on me these many years. My father's case is a "cold case", meaning it hasn't been solved. In my father's case, and most cold cases, the police are no longer actively investigating the crime.

It is very difficult having a "cold case". Having some context as to how and why my father was taken from us would have helped me to process the horrifying loss. I'm left frustrated that when my father was murdered there were not enough resources and investigators available to sufficiently delve into my father's case. I'm not alone as a "cold case" survivor.

Recently, attention has been given to the nearly 900 cold cases in Connecticut that will not be actively investigated. There simply aren't the resources to ensure that each of these cases will be solved so the State's Prosecutor's office will not be taking on any more cases than the estimated 16-20 they are currently investigating. This breaks my heart for every one of these families. It frustrates me that we continue to spend millions of dollars every year on a death penalty system that affects so few families, while there are hundreds of people desperate for answers to very basic questions about their case.

There are clearly much better ways to use our finite resources than the death penalty.

While I still want to know more about why my father was killed, I have never imagined that finding the perpetrator and pursuing the death penalty would help me with my healing. The death penalty could not bring back my father.

What has helped, after all these years, is being able to share my story with others who really know what it means to lose a loved one to murder. Finding a safe place to remember my father, share my heartache, be supported, and provide support has been wonderful.

It has helped to surround myself with others who recognize that the death penalty fails murder victims' survivors by highlighting a few cases while so many have been stamped "cold", and are then all but forgotten.

ACLU Chapter at Yale University
In Support of SB 280

The ACLU Chapter at Yale University opposes the continued use of the death penalty in Connecticut and urges this committee to support Senate 280.

The death penalty is an antiquated, unconstitutional practice that violates the fundamental rights of American citizens. Since the lifting of the moratorium on the death penalty in 1976, over 133 people have been released from death row by means external to the typical appeals process: new developments in scientific testing, investigative journalism, and the dedicated work of skilled attorneys. This raises deeply troubling questions about the possible execution of innocent people by the state – a possibility that cannot be discounted.

Further, the death penalty is racially and economically discriminatory. The Constitution guarantees each and every citizen equal protection under the law, protecting insular and political minorities from the uses and abuses of an impersonal, arbitrary, and often biased legal system. But overwhelming statistical evidence suggests that the imposition of the death penalty penalizes black and poor defendants simply for being a political minority. This discrimination is particularly appalling given that the punishment is irreversible.

Moreover, the death penalty is unconstitutional because it violates our Eighth Amendment guarantee against cruel and unusual punishment. The death penalty belongs to a barbaric tradition of punishment established in a time where slavery and branding were commonplace. The United States is the last Western industrialized nation to retain this practice, which by definition, makes it unusual – as does its arbitrary and uncommon application in cases where it is pursued. The death penalty finally violates the Constitution's guarantee of due process by robbing executed defendants of their right to an appeal when new evidence is uncovered.

In addition, the vast majority of the country's criminological societies reject the deterrent effect of the death penalty. In the context of deterrence, no meaningful difference exists between life imprisonment and imposition of the death penalty, and any societal benefit derived from this difference is marginal or nonexistent.

Finally, the death penalty is an unnecessary and unconscionable waste of money. Studies have shown that the cost of capital cases are 70% more expensive than non-capital cases – including the cost of life imprisonment. The most comprehensive study done in the country found that the cost of a capital case was more than $2 million more than a non-capital case. Our already strained and overburdened legal system cannot bear the strain that additional capital cases would produce.

Statement to the members of the Connecticut Joint Committee on Judiciary in Support of SB 280

The Yale Chapter of Amnesty International
Katharine Naples-Mitchell, Co-Coordinator
Yale University 2013

My name is Katharine Naples-Mitchell, and I am a junior at Yale majoring in political science and the Co-Coordinator of Yale's Amnesty International chapter. Amnesty International campaigns against the death penalty worldwide because the death penalty is a fundamental, irreversible denial of human rights. It is an affront to human dignity and perpetuates a cycle of violence that constitutes state affirmation of the expendability of human life. It is also an affront to American values. This country was founded on soaring aspirations, on the inherent truth that we are all created equal and endowed with inalienable rights. One of these is the right to life, and as a *right*, it cannot be abridged, it cannot be undermined, it cannot be revoked. Our founding documents exist to affirm our individual rights and to protect us from abuse by the state. The death penalty is in undeniable tension with these documents, with the right to life and the basic tenets of our system of government.

Three years ago the Connecticut state legislature voted to abolish the death penalty, but could not override then-Governor Rell's veto. In her veto message, Governor Rell described the death penalty as being reserved for those who "committed crimes that are revolting to our humanity and civilized society." What she failed to realize is that the death penalty—a system of state execution reserved for, yes, only the most heinous and despicable criminals—is also revolting to our humanity.

The belief that the death penalty ultimately and unequivocally violates human rights is not only a deeply held passion, as Governor Rell acknowledged. The death penalty is an attack on our foundational and universal human dignity—our common humanity. Governor Rell steadfastly rebuked those who "killed for the sake of killing," highlighting intent as the greater contributor to the egregiousness of such crimes. The effect, though—the elimination of a human life—is not to be diminished. The death penalty also has this cruel and inhuman result.

This is not to say that those who engage easily or frivolously in capital offenses, in acts that shock the conscience of humankind, should be given any reprieve. The Connecticut justice system has valid alternatives to the death penalty, such as life imprisonment without parole, that constitute adequate punishment even for the most repugnant crimes. Moreover, it is dangerous to engage in ethical equivalencies and hierarchically rank human beings; in discussions about the death penalty, the point should not be to judge whether one life has greater worth than another, but rather to affirm that all human life must be valued. A systemic process that ends a human existence cannot stand in a righteous and just society.

Supporters of the death penalty have argued that it serves as a valid deterrent for potential criminals, and that it is an application of firm but due justice. They assert the need to avoid being soft on crime and to instead uphold a system of retributive criminal justice. Yet our justice system is supposed to provide remedy to victims, not vengeance. Moreover, this view fails to give due credence to the reality that the death penalty system has not been and cannot be proven to be a successful deterrent, is more expensive than relevant alternatives because of state expenditures required for the appellate process, is subject to human error, and is often riddled with economic and racial bias in its application, as Governor Rell briefly acknowledged in her veto message. The risk of executing innocents is simply too high. Moreover, in general there is a dire lack of representation available to death row inmates, and therefore their due process rights

often go unsatisfied. This furthers the potential for executing an innocent. The irrevocable nature of the death penalty renders it an unsustainable and indefensible remedy in an imperfect justice system.

As a Yale student who has been campaigning for abolition for the past year and a half, I have seen firsthand the New Haven community's response to the death penalty. There is no doubt that the issue's complexity is braced with deep thought and emotional resonance from both sides—supporters and opponents of repeal. As a believer in human rights, the question for me comes down to a fundamental belief in human dignity and the value of every human life. However, for those who do not weigh this moral component of the issue so strongly, the question then must come down to what baseline should be considered when developing policy.

There are two extreme cases which comprise opposite poles on a spectrum of rationale behind the law. One side argues for enshrining in law a baseline that establishes necessary punishment for the most egregious violators. Proponents of this line of thinking point to the recent Petit case and the unimaginable horror that the Petit family endured at the hands of severe criminals. How can these murderers be permitted to live? The alternative pole, however, is one that considers a baseline of innocence. Think of the case of Troy Davis, executed September 21, 2011 in Georgia. Mr. Davis continued to claim his innocence until the day he died, and seven of the nine original witnesses in his case recanted their testimony. His case was a miscarriage of justice and a testament to the catastrophic flaws of the U.S. death penalty system.

To this day, 140 people have been exonerated from death sentences in this country. I met one of them in November—an inspiring man named Juan Melendez, the 99th exoneree from this country's death row. Mr. Melendez had 17 years of his life taken from him by an imperfect criminal justice system in Florida and a wrongful conviction. This was compounded by the constant duress because of the threat of execution. His trial was a perversion of justice, in which vital testimony was excluded. Moreover, at the time of the trail Mr. Melendez was unable to read or write in English and could barely speak the language—factors which inevitably contributed to his wrongful conviction. Somehow he has miraculously channeled his anger and pain from this gross injustice into activism, and has become a public speaker working to abolish the arbitrary system that almost took his life. There easily could have been a world, however, in which this important voice was forever silenced.

How can we risk putting innocent people to death? Shouldn't a baseline be established not just to punish the horrendous but to successfully protect the innocent? There is no going back with a death sentence. Execution is final. Thus the baseline in the law must consider innocence. Because our justice system is subject to racial bias, arbitrariness, and human error, the death penalty cannot stand because it will be used erroneously. Please vote to repeal the death penalty.

Sr. Mary Healy, DSW, sister of a murder victim
89 Woodmere Rd., Hartford CT 06119

Testimony in Support of SB 280 to repeal the death penalty

My beloved brother and dearest friend, Joe Healy, was a former priest, a preacher, a teacher, a grief counselor, and a story teller. In the town of Wilkinsburg, Pennsylvania, he was the Dean of professional story tellers, whose wonderfully fashioned parables and folktales brought laughter, good news, or just plain joy to all, children and adults alike.

On March 1st, 2000, he sat in the local Burger King, as he did every morning, to await the school bus, where he would share parables and character building stories with the children on their long ride to school--.Suddenly, he was shot in the back of the head, one of five victims of a senseless, random, multiple shooting. Two men were badly wounded and three were dead--- including our Joe.

Joe left behind his wife, 7 step-children and 20 grandchildren, for whom he was the "in house" story teller. Our families, like most family members of capital case murder victims, have seen firsthand the destructive effects that the death penalty system has on family members like me and mine...

I have found no solace in the death sentence imposed upon my brother's killer.

Grieving the loss of a loved one is, already, a very slow and complicated work. Yet, following the most traumatic event of our life, and before we could even begin to process what had happened to us, we were thrown into a long and complicated capital process; a process that invites mourners to postpone the work of dealing with grief; counseling, support groups, any of the usual emotional, psychological or spiritual helps. "Only the death sentence" will allow them to heal.

The penalty trial itself further sidetracks grief. The victim impact statement invited us to focus on the horrors of the crime and on our pain and suffering. It encouraged us—even if only implicitly—to seek retribution, thus capitalizing on family pain to turn the hearts of the jurors. I will never forget returning to PA after two years, for the sentencing phase of the trial, and seeing family members of each of the victims of this homicide, still stalled in a waiting pattern. There was no time to consider together the death penalty, or whether we wanted it. Instead, we were sucked into a process that left no oxygen in the room for us to think about, less discuss, anything else. The system focused, not on healing or other needs of victim families, but on the case and the trial- all else was put on hold. As the process unfolded, it continued to short circuit our grieving process. We were promised, not healing, but revenge, under the deceptive name of justice.

This process has the potential for making family members active participants in the call for the death penalty, strengthening bonds against a mutual enemy rather than allowing the natural formation of a mutual support group.

One grieving widow sat immobilized, having "merely existed" for two years. Her 18 year old son had had to leave school in order to be with her in limbo. After the death penalty was assigned, she said, "NOW I have to pull myself together". But now, ten years later, the killer remains on death row, and it saddens me greatly to realize that she is likely, still, tying her healing to the execution of that man.

Only now, am I beginning to learn about how my own family was reeling in the wake of Joe's death.

Instead of supporting the natural grief journey, the death penalty system traps people in an extended process that stalls grief and offers a false promise of "closure" to come with the execution of the perpetrator. Anyone who has lost a loved one to violence will tell you there is no such thing as closure. A sentence of life without the possibility of release, on the other hand, does complete the criminal justice process, opening the door for victim's families to focus on the hard work of grieving and healing, instead of waiting for a magic solution.

In the end, the entire death penalty process forces victims' families into a fight that can't be won. It is an outrageously long and expensive process, particularly unjustifiable in the light of so many unmet family needs.

Better that we take all the money we waste on the death penalty process to help victims of crime receive the support they really need. Couldn't some of that money be better spent on crime prevention programs, like the one my brother Joe actually worked in as a volunteer at his local police department? We could invest in more programs like this in Connecticut. Even that would be a better legacy to my brother and a better way to support all victims in Connecticut.
Simply put...

The death penalty does not benefit victims.

Testimony in Support of SB 280

Terrence Dwyer

Western Connecticut State University

181 White St., Danbury, CT 06810

My name is Terrence Dwyer. I am an Assistant Professor of Legal Studies at Western Connecticut State University. I am also an attorney admitted in New York, Connecticut and the federal courts and a retired Investigator from the New York State Police Violent Crimes Investigative Team. I am here to address the issue of deterrence and the death penalty from a law enforcement perspective.

First I would like to point out that a recent study of chiefs of police across the U.S. revealed overwhelmingly their assessment of the death penalty was that it was a low priority for them. Even those who theoretically supported the death penalty placed it at the bottom of their concerns for an effective criminal justice process. If there is anything that my 24 years of law enforcement experience has taught me it is that there is no analysis, contemplation or rationalization when it comes to offenders and violent crime. Crimes such as intentional murder occur under such varying circumstances that it is too simple a solution to claim there is a deterrent effect with the death penalty.

I have investigated numerous homicides and violent crimes in my career and interviewed countless of those defendants. In retrospect there is no doubt in my mind, now or then, that the threat of any punishment, let alone the ultimate sanction of death, has a deterrent effect. Similarly I believe the presence of the death penalty as a punishment for certain murders is, aside from not being a deterrent, impractical from an enforcement point of view. I rely on the New York State experience as an example of this last statement. In 1995 New York's then-Governor George Pataki reinstated the death penalty to much political fanfare and press coverage. Ten years later with the *Lavalle* decision the New York Court of Appeals ruled a part of the statute unconstitutional. Rather than rush to legislative session to repair the statute the New York State Assembly deliberated over the effect of the death penalty over the prior decade and held public hearings on the matter. In sum New York abandoned its more recent experiment with the death penalty.

Yet, the aftermath was a cost to New York State in excess of $170 million for 58 potential capital cases of which only 19 were tried as capital cases and 7 resulted in actual death sentences. And of the 7 death sentences 5 were eventually reduced to life without possibility of parole. During the 10 year period wherein New York had capital punishment it was an expensive fiction.

Here in Connecticut that fiction is also present. As a police officer I worked in New York prior to the death penalty being re-enacted, during the death penalty years and post-*Lavalle* when there was no death penalty. If you are truly interested in effective criminal justice and truly interested in protecting law enforcement you will take the resources which are now being wasted on the death penalty in Connecticut and divert them to officer training and resources. Additionally, the same resources can be used for murder victim family services.

Rae Giesing, mother of a murder victim
Testimony in support of SB 280 to repeal the death penalty

In 2006, my son Gregory was murdered in his home, and a hole was torn in my universe. It is absolutely impossible to describe what it feels like to lose a child, much less to lose a child to violence. I wouldn't wish it on my worst enemy. Now that I have been thrown into a world where murder and trials are no longer distant or abstract notions, I have paid close attention to the efforts in Connecticut to repeal the death penalty. My personal experience as a victims' family member have provided me with many reasons why I think we'll be better off without the death penalty.

For starters, I wouldn't wish the death penalty process on any grieving family. I'm incredibly grateful my family wasn't put through the ordeal that comes with the death penalty. Capital cases nearly always take longer to go to trial and then last longer. Then when the trial was over, with its separate guilt and sentencing phases, our journey would just be beginning.

In Connecticut, only one person has been executed in the last 50 years. When someone is sentenced to death, a slough of constitutionally mandated safeguards go into effect and the actual execution is a distant blip on the horizon. So the family members wait vigilantly for the day when the offender's punishment will finally be carried out. In our case, prison was the punishment and we were able to see that punishment carried out immediately. We know that young man is suffering dearly for taking the life of my son and won't be a threat to anyone else. I can't imagine how my life would be stuck on pause if I were still waiting for the "real" punishment of an execution to take place.

I also don't trust the finality of the death penalty. In my son's case, I have lingering questions about what actually happened the night he was killed and if everyone responsible has been held accountable. I believe that the police and prosecutors in our case did the best that they could, but questions remain, as they so often do in homicide cases.

We simply cannot presume absolute certainty, which is what we must demand if lives are at stake. Obviously, no one should ever sentence someone to death without complete certainty, but that simply is not the case in this country. There have been 140 death row exonerations across the country, plus numerous wrongful convictions in Connecticut for serious crimes, such as rape and murder. Mistakes happen far too often to ever trust our government with the death penalty.

The reality is, there are things that could help victims' families move forward in the aftermath of violent crime. My grandchildren have seen their grandma sad far too often. It would be incredible if there were state funding to provide counseling for them to process the murder of their uncle and the devastation it has wreaked on our entire family. We currently spend upwards of $4 million each year to try capital cases – this is above and beyond what we would spend if life without the possibility of release were the maximum punishment. $4 million each year for what? 1 execution in 50 years. It would make a lot more sense to use that money to help the thousands of siblings, parents, nieces and nephews left behind in the wake of murder.

I stand with my living sons, and in the memory of their lost brother. We are asking for an end to the death penalty in Connecticut. It simply doesn't do us any good.

Catherine Ednie, Stamford CT, sister of a murder victim
Testimony in Support of SB 280

This is me and my little brother, David. This was taken a long time ago, in 1977, when we both still imagined a bright future ahead for us. Little did I know that my brother would be taken from my family by a shocking and horrible crime. My 22-year-old brother and four of his friends were murdered by their landlord in Georgetown, CT, on April 18, 1995. I really hate remembering the details of that April day, and the aftermath--the funerals, the trauma of the families and community, the difficult process of trial and sentencing, the long years of trying to recover a sense of sanity. I'd rather remember my brother in happier times like the picture shows here.

So why am I here today? I'm here because I feel so much responsibility as a family member of a murder victim to speak up about the realities of the death penalty system in Connecticut. So many times I hear people arguing for the death penalty say "What if it happened in your family?," like the answer would be obvious. Well, it did happen in my family. And I'm here to tell you I don't want the death penalty. The death penalty harmed and continues to harm families of murder victims in a multitude of ways.

I'd like to highlight one of the harmful effects of the death penalty that's painfully obvious in my brother's case. It's the often-heard argument that "We need the death penalty for crimes that are the worst of the worst."

First of all, the term "worst of the worst" is insulting and hurtful to family members of murder victims. It divides murders into two classes, the worst and the not so bad. One class--the worst--deserves the hugely disproportionate resources of a death penalty case. The other class--the not so bad--does not. All the families here today feel that their experience qualifies as the worst of the worst. All the families here would benefit from a more equitable distribution of resources to all victims of violent crime.

Second the "worst of the worst" argument is also just not true. Connecticut does not apply the death penalty to the worst of the worst. My brother's case is a prime example. In the Donohue report mentioned earlier, Professor Donohue called my brother's case "a clear illustration of the arbitrary and capricious nature of the Connecticut death penalty system." Professor Donohue wrote:

...most would find a case where the killer drives all the way from North Carolina to kill five tenants with whom he had been feuding, shoots them all, and lights the house on fire...to be an unusually egregious crime.

The prosecution did pursue the death penalty for two years in my brother's case and then suddenly, in what was called "a stunning reversal" dropped it. To this day, I'm not really sure why. Now, there were a lot of people affected by this mass murder: five families, not to mention countless friends and community members, and they had a range of different views. Some of them really wanted the killers to die; others didn't want to go there. However, none of them wanted to be put through the brutal ordeal that is a capital case in Connecticut, and all of them found a way to come to terms with the eventual sentence of life in prison without possibility of release.

So this is the system we have in Connecticut. It's a system of smoke and mirrors, a system where the state tells a grieving family sorry, the murder that destroyed your family was not egregious enough for the death penalty. A system where the prosecution first finds a case of mass murder egregious enough, and then wakes up one morning to find that it's not egregious enough. A system where even if there is a death penalty conviction, it is most likely not followed through with an execution.

I would feel a tremendous sense of relief if Connecticut dropped the arbitrary and hurtful illusion that the death penalty is needed for the worst of the worst. All families of murder victims would be better served by having a maximum penalty of life in prison without possibility of parole.

Pamela Joiner, mother of a homicide victim
In Support of SB 280

I am writing as the mother of a murder victim in support of SB 280 to repeal the death penalty.

In 2008 my son Jumar was shot and killed. There is no way to describe the pain of losing a child to murder.

Sometimes when people talk about the death penalty they will say that we need to keep the death penalty for "the worst of the worst". If this statement didn't make me so mad, I might be able to laugh at how absurd it is. It's like saying that there are some murders that aren't the worst of the worst. For me, as a mother, losing my child is the worst. And I'm sure if you lost someone you loved, it would be the worst.

So why do we try to classify? If we're going to have the death penalty and use it so infrequently, we have to try to explain this crap shoot. I hate that the death penalty forces us to distinguish between losses. For someone to tell me that the death of my son wasn't the worst of the worst is like a slap in the face. I've already taken too many hits, I don't need that as well.

The year Jumar was killed there were 112 homicides in Connecticut. That's 112 mothers. Each of us deserves to be heard and helped. Not brushed under the rug because our cases weren't the "worst of the worst".

Our stories are rarely heard and far too often our needs go unaddressed. It is shameful that we spent millions of dollars and countless hours on a few capital cases when there are so many of us with so many needs unmet. The death penalty is used in less than 2% of all homicides, but 100% of us have real needs. Murder is the worst of the worst.

Pamela Joiner
149 Kensington St
Hartford, CT 06120-1718

March 14, 2012

Statement to the members of the
Connecticut Joint Committee on Judiciary
by Alexander Emmons
Yale College, Class of 2015
Coordinator, Yale University Amnesty International Chapter
Testifying in favor of SB-280

My name is Alexander Emmons. I am an undergraduate at Yale University, and a member of Amnesty International, USA. A number of Yale students have traveled here this week to show our support for the death penalty's abolition. In past years, nine undergraduate student organizations, six on-campus religious ministries and two Yale Law School groups have worked together for Connecticut to abolish the death penalty. Through discussion panels, phone-banking, canvassing, and lobbying Yale students have continued to show their passion for an end to the death penalty.

As a coordinator of Yale's Amnesty International Chapter, I am not only representing student views, but also those of the five thousand dues-paying Amnesty International Members in the state of Connecticut.

Amnesty International firmly opposes the death penalty, without heed to the gravity of the crime. Amnesty International also identifies the United States as one of the very few countries in the developed world still using the death penalty. The United States ranks fifth in the world for number of prisoners executed annually, behind Yemen and North Korea. And why should it continue to do so, when 139 nations have abolished the practice completely?

Amnesty International believes that the death penalty is the ultimate human rights violation. The death penalty denies a prisoner's right to life, and their chances of reintegration into society. It does so in an impractical, costly, and often discriminatory way. Studies have repeatedly shown that the death penalty is not a deterrent to crime. Instead it is a society's vengeful statement of retribution. Abolishing the death penalty in Connecticut is not being soft on crime. It is an assertive stance for both justice and progress.

John Caron, murder victim family member
859 Beaumont Highway
Lebanon, CT 06249
Testimony in Support of SB 280

My name is John Caron and I am a Connecticut horse farmer. Previously, I had my own software development company servicing the life insurance industry. In 1969, I was a Captain in the United States Marine Corp and a pilot of a CH46 helicopter serving in the Republic of Vietnam.

While in Vietnam my duties included flying my aircraft on a variety of missions including medivac and emergency extracts of US personnel. During my time in Vietnam, I flew 512 missions and consequently received twenty five awards of the Flight/Strike Medal. But the reason for this letter has much more to do with my secondary tasks.

In addition to flying, I was required to teach the enlisted personnel in my charge about the Geneva Convention and the concept of "Just War". I was expected to convey the idea of "minimum force" to accomplish the mission. In addition, my charges were expected to accept and implement the idea that the moment they gain control of the "enemy", lethal force, or for that matter, any unnecessary force was unacceptable. This was not always easy for my troops, who could have just witnessed their friends being wounded or killed. Nevertheless, this was what was required and I am proud and relieved to say we managed to rise to that standard.

I was presented with a problem when a young Marine asked me to explain how executing a prisoner back home was different from executing a prisoner in the field. If I applied the "minimum force" doctrine that I was expected to teach, I could not make a distinction. The question is "is the situation under control?" and if the answer is "Yes" then lethal force is not an option. There is no question that the situation IS under control when the prisoner is incarcerated.

This realization is sickening. It leaves me with the same feeling I had about the My Lai massacre. All of the true military professionals were appalled by the failure of character of this event. Unfortunately, I get to relive the My Lai failure every time the state accepts the "emotional" need to execute a prisoner. It is my hope that The State of Connecticut will hold itself to the same standard that we expect of our young military personnel and of our police.

When I have explained my position I have often gotten the response that "I would feel differently if it was my family". This is not the case! My Aunt Dorothy was brutally murdered while she was in a store, by a young man was looking for money to feed his cocaine addiction. In addition, my spouse of 39 years lost her Uncle Clint to murder. He was killed during a home invasion and extortion attempt. The perpetrators were apprehended and sentenced to life without parole. In both cases the process was measured in months, not decades. We were and are relieved by this outcome and feel that justice has been done. Furthermore, the perpetrators will have ample time to consider their actions.

I ask you to support SB 280.

6 Hunters Ridge
Woodbridge, Connecticut 06525
(203) 389-6434
eheller999@aol.com

March 14, 2012

Testimony in SUPPORT of SB 280

Dear Senator Coleman, Representative Fox and other distinguished members of the Judiciary Committee:

My name is Beth Heller and I am a resident of Woodbridge. I am unable to attend the Public Hearing regarding ***SB 280, An Act Revising the Penalty for Capital Felonies***, due to a prior commitment, but I wish to voice my comments in support of repeal.

- The death penalty may cause additional pain, by extending the legal process, and it makes the false promise of finality, which in truth only lengthens years and perhaps decades of painful trials and appeals.
- Many families of victims find the death penalty to be disrespectful to their lost loved ones.
- The death penalty is supposed to be reserved for the most heinous murders ~ I believe these cannot be defined, and that every murder is heinous.
- Additional resources and preparation required in death penalty cases makes these cases more costly to implement than life in prison.
- Life in prison without chance of parole effectively protects society.
- Virtually all civilized countries have abolished state-sponsored violence.
- The death penalty is not applied equally across races and ethnic groups.
- I do not believe that the death penalty is a deterrent. States with the death penalty tend to have higher murder rates than states without it.
- I believe that the death penalty is a form of cruel and unusual punishment.
- Most importantly to me, as long as Connecticut has a Death Penalty Act, there remains the possibility that we will execute an innocent person.

The Woodbridge Democratic Town Committee recently passed a resolution – almost unanimously – calling on the CT General Assembly to repeal the death penalty this year. Please do the right thing – vote to support repeal of the Death Penalty in the State of Connecticut. We cannot be murderers. Thank you for this opportunity to address you.

Sincerely,
Beth Heller

Testimony in support of SB280
March 14, 2012

HONOR KILLING IN MY NAME?

I lost three female members of my family—my mother, my sister, and my great-aunt—in an arson killing. While no murder can be compared to any other murder, I feel, as all murder victims' families feel, that my losses were tragic.

I felt as if a knife had suddenly been plunged into my stomach and twisted—and twisted. For months I would experience that physical pain. For close to thirty years, I was unable to cry. I choked back tears; only total body sobs came. I'd press a clenched fist tightly against my stomach as I shook convulsively, and, almost breathless, I'd pant. That pain never totally goes away. You just learn to live with it.

Through it all, though, I would never have wished the death of the perpetrator. In fact, I feel sorry for some of his family members. The scales of justice could never have balanced my sense of loss. Nor would they have brought me solace, comfort, or closure by asking for his death. I can't even conceive of calling for the premeditated killing of the person who took those lives. Doctors won't do it; it's against their oath to "do no harm." Would I ask the state to do it? Not in my name—ever! Not in my honor.

In some tribal areas of the world, there still exists "honor killings." Some member of the victims' family is obligated to retaliate—a life for a life—to ward off the shame that falls upon the victims' family when one is raped or murdered. How far have we progressed? A culture of violence begets more violence. It's no surprise that states with the highest murder rates are, in many cases, the same states that carry out their executions. How effective, then, is the death sentence as a deterrent? Stop the CYCLE of VIOLENCE!

As Gandhi said in effect, "An eye for an eye, and the whole world is blind." At the recent press conference by Connecticut Murder Victims' Families Speaking Out Against the Death Penalty. I met a number of victims' family members who share these same feelings. If you haven't seen the tape, I'd ask that you assign at least one member of your staff to view it and give you a reaction. I think you'll punish the crime with life imprisonment with no chance for release. Don't punish the victims' families. We want to abolish the death penalty.

Submitted by Robert J. O'Connell
28 Patriot Rd
Windham, CT 06280-1424
860-456-0775

Testimony in Support of SB 280 for Repealing the Death Penalty

Nathaniel Rubin, Yale class of 2015

The death penalty gives prosecution unfair advantage. We know that the death penalty is not perfect. No aspect of the justice system is. The accused know it too. They know that if faced with the death penalty, the potential cost of an improper conviction is too high. That knowledge is powerful enough on its own that it is only compounded by the perception that one could be improperly convicted.

About ninety percent of criminal cases never go to trial. Plea bargains are incredibly common in the justice system, and there are very real situations where one can be faced with a choice between accepting life in prison and going to trial with the death penalty if convicted. When a person is falsely accused, these are two terrible options. We all know the dangers of sentencing an innocent person to death. The death penalty extends this to life in prison.

-Nathaniel Rubin

Igor Mitschka, Yale College Democrats
Testimony in Support of the Abolition of the Death Penalty in Connecticut, SB 280

March 14, 2012

Members of the Judiciary Committee:

I, Igor Mitschka, hereby urge the Connecticut State Legislature to support the abolition of the death penalty in the State of Connecticut.

The Universal Declaration of Human Rights grants every human being the right to life, as does the US Constitution. The death penalty violates this intrinsic human right.

In addition, the application of the death penalty in the United States has turned out to be inconsistent, racially and social-economically biased and thus unjust.

In my opinion, a democratic state must live by the same principles it expects and requires its citizens to live by. The principle not to kill, except in cases involving self defense, must not be violated neither by an individual person nor by the state.

Democracies around the world have decided with good reason to abolish the death penalty. The United States and the State of Connecticut need to join and abolish this inhumane practice once and for all.

Igor Mitschka
Yale College Democrats

Collaborative Center for Justice, Inc.

40 Clifford Street
Hartford, CT 06114-1717

Phone: 860-692-3066
Fax: 860-692-3068
E-mail: advocacy@ccfj.org
Web site: www.ccfj.org

Testimony before the Connecticut General Assembly Judiciary Committee
March 14, 2012

In Support of Raised Bill SB 280 - An Act Revising the Penalty for Capital Felonies.

We are writing in support of SB 280. For too long, this legislative body has discussed this topic. For too long the debates have centered on the emotional nightmare of a few prominent and affluent families who sought the death penalty as punishment for the accused in their particular situation. Now is the time for a rational and objective discussion on the "merits" of the death penalty.

Since the reinstatement of the death penalty in 1973, Connecticut has experienced almost 5,000 violent murders, 15 individuals sentenced to death and one executed. To entertain the argument that the death penalty is a deterrent to violent crime seems absurd in the fact of these statistics. Who among us believes that the thought of the death penalty crosses the mind of a person committing a violent act? It is time to honestly admit that the death penalty is nothing more than state sanctioned execution. It continues only to appease a minority in our State. Have you, our elected representatives, listened to the families of the victims who have asked that the death penalty be abolished? These are the courageous families speaking out and asking that you not kill in their name. These are the families that do not want to keep re-living the violence over and over with every court appearance and appeal that is filed. These are the families that are asking to move on with their lives, and let their grieving and healing process begin.

Nationally, since 1973, 138 individuals on death row have been exonerated. Proponents of the death penalty may argue that 138 individuals may not sound like an alarming number of mistakes, but even one (1) innocent person sitting on death row, or incarcerated, is an injustice. We cannot afford to continue using a broken system.

Perhaps we have never executed an innocent person, but we have incarcerated innocent individuals in Connecticut – James Tillman, Miguel Roman, Kenneth Ireland, George Gould, and Ronald Taylor. Collectively, they spent over 90 years in prison. 90 years because of eye witness misrepresentation, prosecutorial misconduct, police coercion, and/or inadequate representation. Geography, ethnicity and socio-economic status also play critical roles in determining who receives the death penalty. Four of Connecticut's death row inmates are from Waterbury, a city that makes up only 3% of the state's population.

Annually, the State spends approximately $4 million dollars to maintain the death penalty. At the end of the year, what have we to show for this expenditure? We have not provided services to the families of violent crime, we have not addressed the root causes for violence, nor have we used the money to improve law enforcement. There is a less expensive and better alternative, i.e., incarceration without the possibility of parole. We support SB 280 and encourage our legislators to do the same.

Sister Mary Alice Synkewecz, RSM - Director
Sister Linda Pepe, CSJ – Associate Director

State of Connecticut

HOUSE OF REPRESENTATIVES
STATE CAPITOL

REPRESENTATIVE MICHAEL L. MOLGANO
ONE HUNDRED FORTY-FOURTH ASSEMBLY DISTRICT

LEGISLATIVE OFFICE BUILDING
ROOM 4200
HARTFORD, CT 06106-1591
HOME: (203) 461-8551
CAPITOL: (860) 240-8700
TOLL FREE: (800) 842-1423
EMAIL: Michael.Molgano@housegop.ct.gov

MEMBER
EDUCATION COMMITTEE
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TRANSPORTATION COMMITTEE

Testimony

In Support of Raised Senate Bill 280
An Act Revising the Penalty for Capital Felonies

Judiciary Committee
March 14, 2012

Honorable Chairs, Senator Coleman and Representative Fox, Honorable Vice-Chairs, Senator Doyle and Representative Holder-Winfield, Ranking Members, Senator Kissel and Representative Hetherington, and Members of the Judiciary Committee,

Thank you for the opportunity to submit testimony on Raised Bill No. 280, AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.

I support Raised Bill 280 which will make a class A felony of murder with special circumstances a crime punishable by life imprisonment without the possibility of release and not a crime punishable by death.

The 2010 Death Penalty Information Center's annual report states, "executions declined by 12 percent compared to 2009" across the country, with a national drop in death sentences of 50 percent from the 1990s to the first decade of the 21st century (DPIC, 2010). A May, 2010 Lake Research Partners national poll canvassed 1,500 registered voters of which 61 percent chose alternative punishments over the death penalty, such as life imprisonment without the possibility of release. Seventy-one percent were opposed to the death penalty to prevent executing innocent people (DPIC, 2010). The very thought of an innocent person put to death because of errors in a case should be a clarion call to abolish a penalty of death.

I would never attempt to put myself in the position of those who lost loved ones to a heinous crime. I can understand their outrage and petition for retribution. However, in meeting with Connecticut residents who lost a member of their family to a violent crime and who oppose putting to death the person responsible, the common sentiment expressed was that taking the life of the murderer would never be compensation for the life of their loved one. They are certain no solace would ever come of this extreme action.

Life imprisonment without the possibility of release should not be thought of as an alternative to the death penalty. The sentence holds severe consequences when one considers the magnitude of time a person will serve, life. A person permanently remanded in prison under this penalty is forever removed from free society, a loss of life in my opinion. Moreover, if by chance anyone serving a life sentence is later found innocent due to errors in a case, the risk of a wrongful death is removed; the State of Connecticut is able to err on the side of life and therefore allow justice to be truly served.

Please pass Raised Bill 280.

Thank you for your time and attention.

Sincerely,

Michael L. Molgano

Michael L. Molgano
State Representative, District 144
Stamford

Death Penalty Information Center. (2010, December). *The Death Penalty in 2010: Year End Report*. Retrieved from http://www.deathpenaltyinfo.org/documents/2010YearEnd-Final.pdf

Testimony by David Vita of the Unitarian Church in Westport

In Support of SB-280
Judiciary Committee Public Hearing March 14, 2012

My name is David Vita, and I am the Director of Social Justice at the Unitarian Church in Westport, CT. I am submitting testimony in support of SB-280, An Act Revising the Penalty for Capital Felonies. As a resident of Connecticut, a leader in a Connecticut faith community, and a member of the Unitarian Universalist Association, I strongly support repeal of the death penalty and urge you to pass Senate Bill 280.

The Unitarian Universalist Association has been working for an end to capital punishment since 1961. Our opposition to the death penalty was reaffirmed repeatedly over the years. Of main concern is the risk of executing an innocent person. We believe in the inherent worth and dignity of each human being. The Unitarian Universalist Association's 2005 Statement of Conscience states, "Experience shows that judges and juries wrongly convict defendants. Given the number of death row inmates released on account of innocence, it is highly likely that we have executed innocent people and will do so again in the future unless we abolish the death penalty." The death penalty is unlike any other punishment. It is the ultimate punishment with no margin for error.

I believe that the arbitrary, random application of the death penalty is also cause for its replacement by life without release. A recent 34 year study of murder cases in Connecticut showed that, far from being used in the most heinous of crimes (a common misconception), race, class and geography were the real determinants of who winds up on death row and who does not.

Members of our congregation in Westport have been advocating for repeal in Connecticut as a priority issue in our social justice work. We have written hundreds of letters to our state representatives. Four states, including our neighbor New York, have abolished the death penalty in the past few years, and we are working to make sure that Connecticut is next.

We are also concerned that our state is spending so much money on a death penalty system that harms family members of murder victims. Two weeks ago, a group of our church members attended a press conference at the Capitol with speakers who represented 179 family members of murder victims who want to see Connecticut repeal the death penalty this year. Their stories were incredibly powerful, and speak to how harmful the death penalty can be for victims' family members. I personally know two family members of murder victims who are opposed to the death penalty and I know the pain that they live with. I hope for their sakes that the legislature passes.the repeal bill this year.

The death penalty is arbitrary, error-prone, costly, and needs to be abolished. Now is the time.

Thank you.

David Vita
Director of Social Justice
The Unitarian Churchin Westport
(Resident of Stamford, CT)