

Legislative History for Connecticut Act

PA 14-120

SB456

House	6730-6731, 6733-6736	6
Senate	1796-1814, 1885-1886	21
Judiciary	2716-2724, 2765-2768, <u>(5112-5115)</u>	17
		44

H – 1200

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2014**

**VOL.57
PART 20
6540 – 6911**

DEPUTY SPEAKER GODFREY:

The question is on moving this to the Consent Calendar. Is there objection?

Hearing none, so ordered.

Mr. Clerk, 458.

THE CLERK:

House Calendar 458, Favorable Report of the joint standing Committee on Judiciary, Substitute Senate Bill 262, AN ACT CONCERNING APPLICATIONS FOR THE PRETRIAL ALCOHOL EDUCATION PROGRAM.

DEPUTY SPEAKER GODFREY:

Representative Aresimowicz.

REP. ARESIMOWICZ (30th):

Mr. Speaker, I'd like to move the following item to the Consent Calendar.

DEPUTY SPEAKER GODFREY:

The question is on moving this on the Consent Calendar. Is there any objection?

Hearing none, so ordered.

Mr. Clerk, 491.

THE CLERK:

House Calendar 491, Favorable Report of the joint standing Committee on Judiciary, Substitute Senate Bill 456, AN ACT CONCERNING THE ADOPTION OF THE

mhr/md/ch/cd/gm
HOUSE OF REPRESENTATIVES

220
May 7, 2014

CONNECTICUT CODE OF EVIDENCE BY THE SUPREME COURT.

DEPUTY SPEAKER GODFREY:

Representative Aresimowicz.

REP. ARESIMOWICZ (30th):

Mr. Speaker, I'd also like to move this -- this item to the Consent Calendar.

DEPUTY SPEAKER GODFREY:

The question is on putting this on the Consent Calendar. Is there any objection?

Hearing none, so ordered.

Four-six-seven, Mr. Clerk.

THE CLERK:

House Calendar 467, Favorable Report of the joint standing Committee on Judiciary, Substitute Senate Bill 463, AN ACT CONCERNING THE APPOINTMENT OF A CONSERVATOR FOR A PERSON WITH INTELLECTUAL DISABILITIES.

DEPUTY SPEAKER GODFREY:

Representative Aresimowicz.

REP. ARESIMOWICZ (30th):

Mr. Speaker, I'd like to move this item to the Consent Calendar.

DEPUTY SPEAKER GODFREY:

The question is on moving this to Consent

506 from the Consent Calendar, please.

DEPUTY SPEAKER GODFREY:

506 is removed from the Consent Calendar.

Representative Aresimowicz.

REP. ARESIMOWICZ (30th):

Mr. Speaker, I'd like to remove Calendar 508 from the Consent Calendar, please.

DEPUTY SPEAKER GODFREY:

Calendar 508 is removed from the Consent Calendar.

SB72

Mr. Clerk, would you kindly call the Consent Calendar.

THE CLERK:

Mr. Speaker, Consent Calendar Number 1, consisting of Calendar Numbers 548; 512, as amended by Senate "A"; 450, as amended by Senate "C"; 236, as amended by Senate "A"; Calendar 425; Calendar 518, as amended by Senate "A"; Calendar 452; Calendar 511; Calendar 5 -- excuse me -- 458; Calendar 491; Calendar 467; Calendar 468; item under suspension, 535; Senate Bill 00114, as considered under suspension; Senate Bill 417, suspension; Calendar Number 537, as amended by Senate "A"; Calendar 498; Calendar 499, as amended by Senate "A"; Calendar 508; and, House Bill -- what

SB176
SB179
SB70
SB247
SB271
SB426
SB154
SB155
SB262
SB456
SB463
SB493
SB114
SB417
SB269
SB309
HB5312

is it? Is off -- excuse me -- and House Bill 5312,
which was done under suspension with Senate "A" and
"B."

DEPUTY SPEAKER GODFREY:

Thank you, Mr. Clerk.

Just -- just for my own clarification, was --
that was 326 not 236?

THE CLERK:

Three-two-six.

DEPUTY SPEAKER GODFREY:

Thank you, sir.

Representative Aresimowicz, what's your pleasure
on today's Consent Calendar?

REP. ARESIMOWICZ (30th):

Thank you very much, Mr. Speaker.

Mr. Speaker, I move passage of the bills on
today's Consent.

DEPUTY SPEAKER GODFREY:

Question is on passage of the bills on the
Consent Calendar.

Staff and guests please come to the well of the
House. Members take their seat. The machine will be
open.

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll, by --
on today's first Consent Calendar. Will members
please report to the Chamber immediately.

DEPUTY SPEAKER GODFREY:

Have all the members voted?

Ladies and gentlemen, before I call for the
machine being locked, I need to note that the board is
not completely in line with the motion. Calendar 520
"A," which unfortunately is up on the board, was --
there was no motion to put that on the Consent
Calendar. Unless there's objection, we'll just fix it
ministerially and proceed on. Is there any objection
to that solution?

Thank you all.

If all the -- if everyone has voted, the machine
will be locked. Clerk will take a tally.

And the Clerk will announce the tally.

THE CLERK:

Consent Calendar Number 1.

Total Number Voting	148
Necessary for Passage	75
Those voting Yea	148
Those voting Nay	0

Those absent and not voting 3

DEPUTY SPEAKER GODFREY:

The Consent Calendar as moved, the bills on it
are passed.

And now, Mr. Clerk, we will do Calendar 528.

THE CLERK:

House Calendar 528, Favorable Report of the joint
standing Committee on Insurance and Real Estate,
Senate Bill 480, AN ACT CONCERNING LIFE INSURANCE
PROCEDURE LICENSES AND REGISTRATIONS OF BROKER-
DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT
ADVISER AGENTS.

DEPUTY SPEAKER GODFREY:

The distinguished Chairman of the Insurance and
Real Estate Committee, Representative Megna.

REP. MEGNA (97th):

Thank -- thank you, Mr. Speaker.

Mr. Speaker, I move acceptance of the joint
committee's Favorable Report and passage of the bill,
in concurrence with the Senate.

DEPUTY SPEAKER GODFREY:

The question is on passage and concurrence.
Would you explain the bill, please, Representative --

REP. MEGNA (97th):

S - 674

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2014**

**VOL. 57
PART 6
1656 - 1970**

THE CLERK:

On page 13, Calendar 404, substitute for Senate Bill 456, AN CONCERNING ADOPTION OF THE CONNECTICUT CODE OF EVIDENCE BY THE SUPREME COURT, Favorable Report of the Committee on Judiciary. Senator Looney.

SENATOR LOONEY:

Mr. President, if we might stand at least for just a moment.

(Chamber at ease.)

(Senator Duff of the 25th in the Chair.)

THE CHAIR:

The Senate will come back to order. Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

Mr. President, I move acceptance and passage -- acceptance of the Joint Committee Favorable Report and passage of the bill.

THE CHAIR:

On acceptance of passage. Will you remark?

SENATOR COLEMAN:

Thank you again, Mr. President.

Mr. President, this bill would authorize the Connecticut Supreme Court to adopt the Connecticut Code of Evidence. And it also provides for the establishment of a Committee appointed by the Chief Justice of the Supreme Court to serve as an evidence -
- Code of Evidence Advisory Committee.

The necessity for the bill comes about by the recognition that while the Supreme Court can make rulings and issue decisions that impact upon the Code of Evidence, there is no obligation on the part of the Superior Court to follow the decisions and the rulings that are issued by the Supreme Court with respect to decisions that impact upon the Code of Evidence.

So I would ask the support of the membership for this bill. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

A few questions through you to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR KISSEL:

First off, when I was in law school, we were taught, you know, there was what's called stare decisis, that the lower courts would look to the rulings of the higher courts for guidance in making their own determinations. Why is it that in Connecticut, it's deemed that the Superior Courts do not have an obligation to look at the decisions of either the Appellate Court or the Supreme Court regarding determinations regarding evidence? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

And through you to Senator Kissel, I believe it was about 1999 or 2000, where the authority to adopt the Code of Evidence was entrusted to the Superior Court. And the Code of Evidence was actually proposed -- or amendments to the Code of Evidence were proposed through a Committee that was established in the Superior Court.

And the Code of Evidence is not statutory. It is a matter of the rules of practice. And so to make it clear that the decisions of the Supreme Court should be followed by the Superior Court, this bill is recommended and that's why I'm urging passage of the bill. Through you, Mr. President to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. In 1999 or 2000, along the lines of Chairman Coleman's answer to my previous question, what individual or group of individuals, what body, determined that the Superior Court would be in charge of making the rules of evidence? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

That was a collaboration of the Judicial Branch and the Legislative Branch that entrusted the authority to the Superior Court. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And so was that change in, let's call it 1999, done through the passage of legislation? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Mr. President, through you to Senator Kissel, I'm not entirely certain whether or not that was done through legislation. I don't -- I would not be able to point to a specific statute that authorized the Superior Court to act in this manner.

So I'm pretty certain it was not done through legislation, but rather through an informal arrangement or an informal agreement between the branches. Through you, Mr. President, to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And through you, Mr. President, well, if that initial change took place in 1999, through an informal agreement between the Judicial Branch and the Legislative Branch, why is it necessary to pass legislation at this time regarding this change? Through you, Mr. President.

THE CHAIR:

Senator Kissel -- Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

And through you to Senator Kissel, because of the -- the interplay of the different branches, Legislative Branch, the Judicial Branch, it was thought necessary in order to pass -- to pass legislation in order to

make it clear to all the entities involved that the Supreme Court, which had common law authority, now has the official authority, legislative and otherwise, in order to affect this responsibility. Through you, Mr. President, to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

And through you, so exactly how would this work mechanically going forward? I understand that the goal is to re-acknowledge the penultimate authority of the State Supreme Court, but it's my understanding that there's some kind of committee being created by this legislation and I'm just wondering how that actually would play out in a -- in a very practical sense. Through you, Madam President.

(The President in the Chair)

THE CHAIR:

Senator Coleman. Good evening, sir.

SENATOR COLEMAN:

Thank you, Madam President. Good to see you.

THE CHAIR:

Thank you.

SENATOR COLEMAN:

And through you to Senator Kissel, the Chief Justice of the Supreme Court would be authorized to appoint members to an advisory committee and to be probably a bit more concrete about why this is necessary.

There was a case, State versus DeJesus, that went up to the Supreme Court and upon its arrival at the Supreme Court, the case had to do with the use of past misconduct to be evidence of a propensity to commit the crime that was a subject of the case.

And in the DeJesus case, the crime in question had to do with a sexually abhorrent act. And in that case, although the current state of evidence law at that point in time was that evidence of past misconduct could not be used to prove the propensity to commit the present crime, because of the science behind sexual conduct, the Supreme Court ruled that, in this case, evidence of past misconduct of similar sexual abhorrent behavior could be used to establish the propensity of the defendant to commit the crime in question, that represented the basis of the case.

And so although the Supreme Court made this ruling, it was not necessarily the case that the Superior Court had to abide by this ruling. And it is thought that if we establish in legislation the authority -- the ultimate authority of the Supreme Court to have the responsibility to adopt and amend the Code of Evidence, it would make it clear for all of the parties involved, including the Superior Court judges, that that ruling or those decisions of the Supreme Court would be binding upon them.

Through you, Mr. President, to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President. So just to be clear, in the DeJesus case, was the Supreme Court's determination in the form of dicta or did they actually make an evidentiary ruling and send the matter down to the Superior Court and the Superior Court made a determination that they did not -- it did not have to follow the evidentiary ruling of the Supreme Court? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I don't have an accurate answer for Senator Kissel. My suspicion would be, and I hesitate to offer my suspicion, that the case was remanded. And in this case, it was probably -- the DeJesus case was probably an appeal by the state to an upper court and I would guess that the case was remanded for some sort of a -- a retrial and an opportunity to address the issue, that main issue in question concerning whether or not past misconduct would be used in order to establish a propensity to commit the current crime. Through you, Mr. President -- Madam President. I'm sorry.

THE CHAIR:

That's okay. Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President.

And again, through you, Madam President, to Senator Coleman, regarding the ability of the Chief Justice to form this Committee, is there any language in the legislation -- proposed legislation that would delineate who can be on there? And I guess one of my major questions is is just going to be judges or would members of the bar participate? What is contemplated by this Committee? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

Madam President, through you to Senator Kissel, the authority to appoint the members of the Committee would be entrusted to the Chief Justice and it is contemplated that the Chief Justice could appoint members of the Supreme Court, the Appellate Court, the

Superior Court, as well as members of the bar who may have some expertise on diverse matters and particularly as concerns the use of the rules of evidence in the trial courts. Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. In the legislation, is there a number of members of the Committee so that we could maybe make it as part of the legislative history, that if there is, for example, a dozen folks, that maybe about eight could be members of the Judicial Branch in some capacity as Judges or Justices and that maybe four could be attorneys that are not Judges, but that have expertise or perhaps three attorneys that have expertise and a professor. Is there any way to sort of nail that down? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, the language of the bill does not specify the number of members to be appointed, nor the allocation of members to be appointed to the Committee. Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And through you, Madam President, is there a date whereby the Chief Justice has to make these recommendations by? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

Through you to Senator Kissel, there is no date specified concerning the timing of the appointments to this Committee.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And through you, Madam President, one of the things that I thought was very important in the public hearing regarding the particular proposal was that I believe that it was contemplated that the Legislature, as a separate and important branch of government, reserved to itself rights to weigh in on evidentiary matters should it so see fit.

And so is there a language specific to the underlying proposed bill where the Legislature clearly asserts its rights regarding weighing, regarding matters, regarding evidence? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, I would cite for the good Senator Lines 23 through 25, which preserves the right of the General Assembly to assert itself regarding matters of evidence. And I think the arrangement that was reached in 1999, the Legislature essentially conceded that the Judiciary Branch probably had greater expertise in the specific rules of evidence.

But certainly there are some aspects of evidentiary matters and trial courts that the General Assembly would and should weigh in on, and particularly matters of policy. For exactly the rate -- rape shield law that this Legislature passed some years ago would be a matter of public policy, although it has evidentiary aspects to.

Similarly, the different privileges, the doctor-patient privilege, the spousal privilege, our matters of public policy that certainly are related to evidentiary aspects of trials in the State of Connecticut. And those certainly -- I think all branches acknowledge that those are matters that the Legislature should and will intervene upon. Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And through you, Madam President, going forward, and I agree with the sentiments expressed by Senator Coleman regarding the Legislature's not only ability to weigh in on these matters, but desirability to weigh in on matters that have dramatic impact on public policy.

In future years, if the Legislature wanted to weigh in, would it have to go through this Committee being established by the Chief Justice or could the Legislature has -- as has been done many times in the past, simply have bill proposals brought before relevant committee, the Judiciary Committee, have public hearings, and then move forward and pass proposed bills affecting matters such as this? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

And through you to Senator Kissel, the Legislature's authority to pass laws is not inhibited in any respect by the passage of this bill. In fact, the Legislature could weigh in on any aspect that has to do with evidence rules.

And in the past, there have been, as Senator Kissel is well aware, differences of opinion between the Legislative Branch and the Judicial Branch. And oftentimes, the case -- those differences of opinion or conflicts are resolved by informal negotiations between the branch.

The last thing that anyone, whether they're members of the Legislative Branch or the Judicial Branch, the last thing that any of us would want to see is a conflict that spirals out of control because it would certainly have constitutional related consequences.

And it has always been thought by both branches that negotiation and resolution through negotiation, when such conflicts arise, is the better course of action to pursue. Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Madam President. And I agree wholeheartedly with the sentiments expressed by Senator Coleman regarding the -- actually all three branches of government working cooperatively together and avoiding any potential constitutional crises or anything similar thereto.

When this Committee is formed by the selections by the Chief Justice, when they make their determinations, do these evidentiary recommendations have to go any further? And what I am getting at through this question is, as Senator Coleman is aware, we've got a very cooperative arrangement between the Judicial Branch and the Legislative Branch.

Quite often, we meet together regarding recommendations of the Judicial Branch's Rules Committee and I don't know whether these evidentiary matters would then have to go for a full body of the Superior Court Judges, would they be passed along to us along with the recommendations of the Rules Committee, or would they simply be voted upon by this Evidentiary Committee and then would have the full force, in effect, of -- of law that would have to be followed by Judges of the Superior Court and Appellate and Superior -- Supreme Court? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

My understanding of the way that things would proceed is similar to the way things proceed currently. I was sort of surprised to learn that we have a Code of Evidence in existence now and it is not a Code of Evidence in statute. It is rather a Code of Evidence that is -- that is adopted as other rules of practice are adopted.

And the procedure was that for the Committee in the Superior Court to make proposals to the court and those proposals would be either adopted or rejected by the Superior Court, in the instance that we're talking about with the Supreme Court adopting the Code of Evidence, similarly the Advisory Committee would make proposals for amendments to the Code of Evidence and those proposals would be presented to the Supreme Court for its consideration to either adopt or reject those proposals.

And if, obviously, the Supreme Court adopts the proposals, those proposals would be incorporated into the Code of Evidence. Through you, Madam President, to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. Is there any limitation regarding what the Committee can contemplate? And I remember -- I had an opportunity to speak to Judge Bishop regarding this matter. He took a very keen interest, has been involved in evidentiary issues for a number of years, highly respected within the Judicial Branch.

He related to me a case where an individual was on probation, I believe for a DWI matter, and it was brought to the court's attention by a party. And I don't believe an attorney, but by perhaps maybe a relative or a friend of someone victimized by the underlying driving under the influence conviction, and it was in the nature of a Facebook posting of this individual at a party.

And by being alcoholic liquor and part of the probationary terms were that these -- this individual would not drink at all and that the Superior Court Judge made a determination in looking at that Facebook post to find the individual in violation of their probation and that individual actually did further time incarcerated.

The question then was, upon appeal, but Judge Bishop had indicated that that really raised some questions. There was actually some questions as to why the defense attorney for the individual did not raise objections to the offering of that evidence.

But the -- the point that Judge Bishop was making to me was that given the advances regarding social media, that things that may or may not be admissible as evidence are as quickly changing as the media that's out there.

And so is it contemplated that his Committee could look at things such as that to try to be addressing things before the fact as opposed to the typical role our Supreme Court, that they could only actually act upon matters brought before them in a -- in litigation? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

And through you to Senator Kissel, first of all, I'm very happy that he brought up the name of Judge Bishop because Judge Bishop has been extremely informative -- an extremely informative resource regarding this bill and I appreciate his willingness to act as such.

Secondly, Senator Kissel has seized upon something that I guess the Supreme Court and Judge Bishop and those that are interested in the evolution of our Code of Evidence have cited.

One of the other reasons for this bill is because the advances that we make technologically and socially and how things have changed. And the Supreme Court on the matter that Senator Kissel has used as an example, without this bill, would be powerful to act unless a case actually reached the Supreme Court, presenting the very issue that Senator Kissel has described.

With the bill, the Supreme Court would be in a position to be a bit more proactive and through its committee, the Advisory Committee, could make a proposal to amend our rules of evidence so that Facebook postings could be deemed not to have sufficient prohibitive value in order to be admissible in trial court in the State of Connecticut. Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. Madam President, that concludes the questions that I have for Senator Coleman. I would like to commend for his hard work, as well as Chairman Fox on this particular matter, as well as

Judge Bishop, who has been keenly aware of these issues and offered tremendous testimony as well as insights regarding this legislation.

I think it was important to create a record since we're dealing with the interplay between different branches of government. I think it's important for attorneys out there that are in practice to understand how the rules of evidence are going to evolve should this legislation pass, as I have no doubt it will.

And I also think it's important for the public to be aware that we're mindful of the fact that social media, in particular, but technology in general is moving at such a rapid pace that it's difficult for the courts to keep up if we're simply waiting for cases to bring it to the attention on the Appellate level. Again, going -- circling all the way back to my initial question regarding stare decisis, where there's determinations made at the Appellate or Supreme Court level, and then the underlying courts have to follow those.

That being said, the -- the final point that I wish to stress is that the thing that I find critically important to the underlying bill is the fact that we, as the Legislative Branch, reserve until ourselves all the rights that we have had heretofore in weighing in on rules of evidence should we feel that it's in the best interest regarding public policy.

And that that is specifically delineated in language in this bill to make it very clear that we are not bypassing this legislation, giving up any authority whatsoever, but merely creating a means where we can be more proactive in the State of Connecticut to better serve the people whom are our constituents.

So for those reasons, Madam President, I am happy to support this legislation. Thank you.

THE CHAIR:

Thank you. Will you remark? Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President.

I stand for a purpose of questions to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR MCLACHLAN:

Thank you, Madam President.

Senator Coleman, thank you for bringing this bill forward. It's fascinating discussion, even for someone who is not a lawyer, to especially hear your comment of surprise that the Code of Evidence doesn't reside in state statute. And that leads me to a question to you on this proposal before us.

Is it the intention of this legislation or of perhaps future legislation to codify an ultimate Code of Evidence that will be created? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

Through you to Senator McLachlan, a Code of Evidence does exist today. It is more so rules of practice than it is a statute or law. Through you, Madam President.

THE CHAIR:

Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President.

Thank you, Senator Coleman. So would -- that current practice Code of Evidence, would that ultimately be codified in state statute? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, to Senator McLachlan, that is not the intention of this bill and I don't foresee the Code of Evidence being put into statute. The intention of this bill is merely to make it clear that the Supreme Court has the authority and can assert the authority to amend the Code of Evidence. Through you, Madam President.

THE CHAIR:

Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President.

And of course, the -- the point that Senator Kissel made about the Legislature asserting its responsibility and your affirmative response, this Legislature retains the ability to codify the Code of Evidence or make changes to a Code of Evidence should they choose to. Is that correct? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, that is correct. If the Legislature, in its wisdom, decided to pass a law that affected the rules of evidence, it certainly could do that. If there was such an intention on the part of the -- the Legislature and it was in conflict with the Judicial Branch, I'm hopeful and almost certain that

the kinds of discussions between the two branches would occur and that the resolution of the conflict would be accomplished through those discussions. Through you, Madam President.

THE CHAIR:

Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President.

Thank you, Senator Coleman. The testimony from Judge Bishop on this proposal I thought raised a interesting point about the DeJesus decision in the Supreme Court. Seemed to call into question the Superior Court may not honor the Code of Evidence as a result of the Supreme Court decision that basically over ruled it or carved out an exception.

Will this proposal before us now eliminate that concern that existed with the DeJesus decision? Through you, Madam President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Madam President, yes. That is exactly the purpose of the bill. Through you, Madam President, to Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President.

Thank you, Senator Coleman for your answers and I stand in support of the bill.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

If not, Senator Coleman.

SENATOR COLEMAN:

Madam President, if there are no further remarks to be made, and if there's no objection, I would ask this bill be placed on our Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir. Mr. Clerk.

THE CLERK:

On page 14, Calendar 408, substitute for Senate Bill Number 489, AN ACT CONCERNING THE UNLAWFUL DISSEMINATION OF AN INTIMATE IMAGE OF ANOTHER PERSON.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

I move adoption of the Joint -- acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Motion is on acceptance and passage. Will you remark, sir?

SENATOR COLEMAN:

Madam President, could the Chamber stand at ease just for a couple of seconds?

THE CHAIR:

Absolutely. The -- the Chamber will stand at ease.

Senator Looney.

On page five, Calendar 295, Senate Bill 445.

On page nine, Calendar 342, House Bill 5098.

And on page 10, Calendar 343, House Bill 5259.

On page 13, Calendar 404, Senate Bill 456.

Page 14, Calendar 408, Senate Bill 489.

On page 16, Calendar 430, House Bill 5285.

On page 18, Calendar 439, House Bill 5540.

On page 26, Calendar 497, House Bill 5081.

And on page 29, Calendar 511, House Bill 5146.

Page 30, Calendar 53, Senate Bill 203, and Calendar 95, Senate Bill 176.

On page 31, Calendar 116, Senate Bill 430.

Page 38, Calendar 280, Senate Bill 312.

And on page 41, Calendar 395, Senate 104.

THE CHAIR:

I guess that's all it. Okay.

Mr. Clerk, will you please open the machines and -- I'll open the machines. You call for a roll call vote.

THE CLERK:

Immediate roll call is ordered in the Senate on today's Consent Calendar. Immediate roll call ordered in the Senate.

THE CHAIR:

If all members have voted, if all members have voted, the machine will be closed.

Mr. Clerk, will you call the tally.

THE CLERK:

On today's Consent Calendar.
Total number voting 35
Those voting Yea 35
Those voting Nay 0
Absent and not voting 1

THE CHAIR:

The Consent Calendar passes. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, before concluding today's session, would yield the floor to members who may wish to announce Committee meetings or for other points of personal privilege.

THE CHAIR:

Are there points of personal privilege? Senator Fasano.

SENATOR FASANO:

Thank you, Madam President.

Madam President, while I enjoyed being at the circle today, I'd like to take this opportunity to wish my wife a very happy birthday today.

THE CHAIR:

Oh my goodness.

SENATOR FASANO:

I missed the birthday dinner, but it -- I can't think of another group to spend it with other than my wife. So happy birthday to my wife.

THE CHAIR:

**JOINT
STANDING
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REP. FOX: Thank you. Are there other questions or comments? Representative Smith.

REP. SMITH: Mr. Chair, thanks.

I just wondered whether you feel there's a -- whether you'd rather have a straight statute of limitations such it's fixed at ten years, seven years, five years, whatever. Or tied into the particular type of claim, contract claim, tort claim, et cetera. Could you expound on that a little bit?

DON SHUBERT: From my viewpoint and I haven't looked into the legal aspects of it deeply. I consider this more of a policy argument at this point.

But I imagine that just consistency with what is in the statutes, consistency with what the industry has operated under for all these years, that the statutes of limitations that exist now apply against the State.

REP. SMITH: Thank you, Mr. Chair. Thank you.

REP. FOX: Thank you, are there other questions or comments? Thank you, gentleman.

Again Mr. Chairman, thank you very much for your consideration today.

REP. FOX: You're welcome.

Judge Thomas Bishop. Good afternoon, your Honor.

JUDGE THOMAS BISHOP: Good afternoon, Chairman Fox, Senator Kissel -- he was here a moment ago -- Representative Rebimbas, members of the committee. As I indicated, my name is Tom,

SB456

Thomas Bishop. For ten years I was honored to be a judge for the appellate court and for seven years before that a judge of the Superior Court.

By statute and leave of the Chief Justice I still have the opportunity to hear appeals and I work in the Norwich Courthouse also to help litigants with cases pending there, either in the trial court or the appellate court to resolve their pending issues by agreement. I'm here today to address Raised Bill 456, AN ACT CONCERNING ADOPTION OF THE CONNECTICUT CODE OF EVIDENCE BY THE SUPREME COURT. I'll briefly explain the genesis of the bill and to express my support of it as well as that of the Chief Justice and members of the Supreme Court.

By way of background in the early 1990s this Judiciary Committee and the leadership of the judicial branch discussed the feasibility of situating evidence law developed by the court in one place. At first it was the thinking of this committee's leadership that such a project could be undertaken by legislation. But over time your leadership decided it would be better for a code to be adopted by the judicial branch because it would be easier for the court to develop and amend such code.

Accordingly the Chief Justice appointed a committee chaired by then Justice David Borden and that committee ultimately recommended a code which was adopted by the judges of the Superior Court in 2000. In conjunction with the adoption of a code the Chief Justice appointed an evidence oversight committee chaired by then Justice Joette Katz and comprised of judges and lawyers chosen by the Chief Justice. I served on that committee from its inception and since 2008 have chaired the committee. I speak today however as an

individual and not in that official capacity.

In 2008 the Supreme Court issued its opinion in the criminal case of State versus DeJesus. There the Supreme Court was confronted with the rule contained in the code concerning the admissibility of past misconduct alleged to have been committed by the defendant DeJesus.

The rule then in existence was that evidence of such conduct could only be admitted at trial to show intent, motive, identity or common scheme, but not to show that a defendant had a propensity to commit such criminal acts. In DeJesus the Supreme Court carved out an exception to this rule and stated that in crimes involving aberrant sexual behavior evidence of similar past misconduct by the defendant could be admitted to show the defendant's propensity to commit such misconduct.

As a consequence of DeJesus there was concern in some quarters regarding the continuing viability of the code. If the Supreme Court could modify the code through a decision are trial judges really bound by it? At that time I was teaching a seminar at the University of Connecticut law school on judicial independence and I became interested on looking more deeply into the question of the role of courts and rulemaking. Following my research I was fortunate to have an article published in the Connecticut Law Tribute in November of 2010 on this general topic. I learned in the course of my study that in the vast number of states, evidence codes are adopted by the state's highest courts. I also began conversations with the Chief Justice about the notion of our Supreme Court adopting the code as a way to make clear that the code is indeed binding on lower courts and that the Supreme Court and the

Legislature retain their authority over the law of evidence.

We agree that the court has the inherent authority to adopt the code, but that it would be preferable in light of the joint authority of the court and the General Assembly with respect to evidentiary rules for the court to act in conjunction with legislation authorized and the court to adopt a code. The Chief Justice fully agrees with this approach, thus this legislation has been proposed. The Chief Justice and the Supreme Court will adopt this code only through the collaborative role of enabling legislation.

As you will see, the legislation requires the Chief Justice to appoint a committee of lawyers and judges and to confer with the Judiciary Committee on an annual basis. This idea stems from the notion that evidence lawmaking is a shared responsibility of the judiciary and the Legislature. Because there are some areas of overlap it's a good idea that the evidence code oversight committee and this committee have a vehicle to periodically discuss developments and initiatives in evidenced lawmaking.

Finally, while we support this bill we would also suggest an additional sentence to be added to the bill to make it clear that by acting in this way neither the Supreme Court nor this body yields it's ongoing authority regarding evidence law.

Specifically that sentence would read as follows -- and I've submitted this separately to you -- nothing in this provision is intended to limit the common law authority of the Supreme Court or the legislative authority of the General Assembly with respect to the law of evidence. The proposed amendment to add this

language is attached to my testimony today.

Thank you for this opportunity to speak with you. I will be happy to attempt to answer any questions that you may have.

REP. FOX: Thank you, Judge Bishop. Thanks for your testimony today.

Are there questions? Representative O'Neill.

REP. O'NEILL: Good morning -- or afternoon, I'm sorry.

JUDGE THOMAS BISHOP: Good afternoon, Representative O'Neill.

REP. O'NEILL: When you started your testimony by saying that the Supreme Court in the DeJesus case changed the evidence code or amended it a little bit. Interpreted it at least.

JUDGE THOMAS BISHOP: No, they actually changed the rule, they did.

REP. O'NEILL: And is the notion that if the Supreme Court were to adopt it, that they would not be able to change it?

JUDGE THOMAS BISHOP: That is not the notion. I was very interested in that question when I began researching this. And when I learned that the codes of evidence are by and large adopted by Supreme Courts around the country, what do the supreme courts do if they adopt them in an administrative or legislative capacity? What they do then when confronted with rule on appeal?

There are half a dozen or so cases that address this issue and in each of these cases the courts have declined as a prudential matter

from utilizing the litigation process as the vehicle to change the rule, but rather have deferred to their rulemaking authority.' But some of those courts have quite explicitly expressed their authority, if they chose to do so, to adopt, to actually change the rule and the context of the case.

And in one case, a Texas case that involves spousal privilege and a murder case, the Supreme Court stayed to the rule, which affected a certain result in the case. But then in the case itself prospectively adopted a rule which did not affect that case, but that's the only case I saw like that. So the short answer to your question is, it would not, in my opinion, prevent the Supreme Court from in fact taking argument and deciding perhaps the application of this rule would be unconstitutional in this context or for some other reason. But by and large I think if the Supreme Court followed the norm on this the court historically has, as a matter of prudence, referred to its rulemaking process. It would of course be absolutely binding on any lower court.

REP. O'NEILL: All right. Okay. Because just I was wondering how that would work and I guess you -- so it would be a matter of the court sort of, as you say, exercising prudence in using one process pretty exclusive -- close to exclusively as a mechanism to change the rules rather than jumping back and forth.

JUDGE THOMAS BISHOP: I shouldn't presume on the court, but that seems to be the norm across the country is now the highest courts have dealt with it.

REP. O'NEILL: Okay. This is about a conundrum. I was on the law revision commission -- well, I'm

still under the law revision -- but I mean, when I first got on the law revision commission 20 years ago there was evidence code discussion going on then. And it was during the course of those discussions that the idea about, should the Legislature be the entity that changes, creates the evidence code, was being discussed and that was sort of the basis of the law revision commission doing it.

And then as time went on more and more people sort of felt uncomfortable with trying to put a bill through this assembly that was the evidence code with someone -- and maybe it was just fear whoever was going to have to bring out the bill was going to have to answer every question about every rule of evidence that had taken five years for judges and experts in the law of evidence to try to hammer out, but also a sense that, did you really want to have it subject to an amendment that might go flying through one of the chambers?

Whereas in Congress I think they have a much more controlled system. They don't allow amendments in the same way that we allow them and that sort of thing. But it's been an ongoing kind of, who really gets to decide the basic question of what's the code is going to say?

JUDGE THOMAS BISHOP: I had a number of conversations with former Chief Justice Ellen Peters on this topic and has shared some of that history with me. My understanding of the ultimate decision about that was that the court perhaps could be more nimble in dealing with it and subject to less broader pressure in terms of what a rule should or should not speak to. And because the courts sort of operate in that milieu you on a day-to-day basis, those are some of the reasons I think it was ultimately

decided.

But I think it's a very important idea that this committee meet with the Judiciary Committee because the areas of overlap. When the code was first put together, under the tutelage of Justice Borden, the people putting the code together were very careful to try to not speak to areas in which there was legislation, and there is overlap. A perfect example of the overlap, the rape shield statute.

In some states that statute has been challenged as unconstitutional invasion of the judicial authority. Because it really talks about what's admissible and what's not admissible, but the way that the U.S. Supreme Court has looked at rules that affect admissibility is, what's its primary purpose? If its primary purpose is policy, to give life to or to give breath to policy and the policy there obviously is to protect privacy, to encourage victims to be willing to come forward, that's a public policy that has an incidental effect on court procedure.

So clearly that's an area of legislative -- because it's public policy. I think what I can envision is this evidence oversight committee meeting with this, with the Judiciary Committee on an annual basis to talk about things that the evidence oversight committee might be interested in doing and to get your reaction and get your reaction. You know, that's really something that we think we want to work on as a matter of legislation or however that conversation takes place, that's a good collaboration between the branches and I envision that being part of the process.

REP. O'NEILL: Well, thank you very much and thank

you, Mr. Chairman.

JUDGE THOMAS BISHOP: Thank you, Representative O'Neill.

REP. FOX: Thank you.

Are there other questions for Judge Bishop? Okay. Well, I think we may, as we go further along in the process, have some questions for you. And I know you've always made yourself available for that purpose. And I expect that that may happen in the coming weeks. Thanks a lot.

JUDGE THOMAS BISHOP: Thank you, Mr. Chairman.

REP. FOX: Judge Nicholas Kepple. Good afternoon.

JUDGE NICHOLAS KEPPLER: Good afternoon, Mr. Chairman. Chairman Fox and members of the committee; my name is Nicholas Kepple. I serve as probate judge for the Southeastern Connecticut Regional Probate District, including the towns of Stonington, North Stonington, Groton and Ledyard, approximately 80,000 people. I'm also an avid viewer of CT-N. I'd like to thank you for your service and commend you for how well you're doing an exceptionally difficult job here at the Legislature.

I'm here to express my strong support for House Bill 5488, which would equalize dependent healthcare costs for probate court employees and I'd like to encourage its passage. The best measure of my commitment to this bill is that I gave up a combination of St. Patrick's Day court clerk birthday party, a luncheon in order to speak here today. And my wife of 40 years would testify that what a rare event it is that I give up a meal for anything, but this

TESTIMONY OF THE HONORABLE THOMAS A. BISHOP
IN SUPPORT OF
RAISED BILL 456. AN ACT CONCERNING ADOPTION OF THE CONNECTICUT
CODE OF EVIDENCE BY THE SUPREME COURT

JUDICIARY COMMITTEE PUBLIC HEARING
MARCH 17, 2014

Good Morning, Senator Coleman, Representative Fox, Senator Kissel, Representative Rebimbas and members of the Committee. My name is Thomas Bishop. For ten years I was honored to be a judge of the Appellate Court and, for seven years earlier, a judge of the Superior Court. By statute and leave of the Chief Justice, I still have the opportunity to hear appeals and I work from the Norwich courthouse to help litigants with cases pending in either the trial or appellate court resolve their pending issues by agreement. I am here today to address Raised Bill 456, *An Act Concerning Adoption of the Connecticut Code of Evidence by the Supreme Court*. I will briefly explain the genesis of this bill and to express my support of it, as well as that of the Chief Justice and members of the Supreme Court.

By way of background, in the early 1990s this Judiciary Committee and the leadership of the Judicial Branch discussed the feasibility of situating evidence law developed by the Court in one place. At first, it was the thinking of this Committee's leadership that such a project could be undertaken by legislation, but over time your leadership decided it would be better for a Code to be adopted by the Judicial Branch because it would be easier for the Court to develop and amend such a Code. Accordingly, the Chief Justice appointed a committee chaired by Justice David Borden and that committee ultimately recommended a Code which was adopted by the judges

of the Superior Court in 2000. In conjunction with the adoption of a Code, the Chief Justice appointed an Evidence Oversight Committee, chaired by Justice Joette Katz and comprised of judges and lawyers chosen by the Chief Justice. I served on that committee from its inception, and, since 2008, have chaired it. I speak today, however, as an individual and not in that official capacity.

In 2008, the Supreme Court issued its opinion in the criminal case of *State v. DeJesus*. There, the Supreme Court was confronted with a rule contained in the Code concerning the admissibility of past misconduct alleged to have been committed by the defendant, DeJesus. The rule then in existence was that evidence of such conduct could only be admitted to show intent, motive, identity, or common scheme but not to show a defendant had a propensity to commit criminal acts. In *DeJesus*, the Supreme Court carved out an exception to this rule and stated that in crimes involving abhorrent sexual behavior, evidence of similar past conduct by the defendant could be admitted to show the defendant's propensity to commit such misconduct. As a consequence of *DeJesus*, there was concern in some quarters regarding the continuing viability of the Code. If the Supreme Court could modify the Code through a decision, are trial judges really bound by it? At the time, I was teaching a seminar at UConn Law School on judicial independence and I became interested in looking more deeply into the question of the role of courts in rulemaking. Following my research, I was fortunate to have an article published in the Connecticut Law Review in November 2012 on this general topic. I learned, in the course of my study, that in the vast number of states, evidence codes are adopted by the state's highest courts. I also began conversations with the Chief Justice about the notion of our Supreme Court adopting the Code as a way to

make clear that the Code is, indeed, binding on lower courts, and that the Supreme Court and the legislature retain their authority over the law of evidence. We agreed that the Court has the inherent authority to adopt such a Code, but that it would be preferable, in light of the joint authority of the Court and the legislature with respect to evidentiary rules, for the Court to act in conjunction with legislation authorizing the Court to adopt a Code. The Chief Justice agrees fully with this approach. Thus, this legislation has been proposed. The Chief Justice, and indeed the Supreme Court, will adopt the Code only through the collaborative route of enabling legislation.

As you will see, the legislation requires the Chief Justice to appoint a committee of lawyers and judges and to confer with the Judiciary Committee on an annual basis. This idea stems from the notion that evidence lawmaking is a shared responsibility of the judiciary and the legislature. Because there are some areas of overlap, it is a good idea that the Evidence Code Oversight Committee and this Committee have a vehicle to periodically discuss developments and initiatives in evidence lawmaking.

Finally, while we support this bill, we would also suggest an additional sentence be added to the bill to make it clear that by acting in this way neither the Supreme Court nor this body yields its ongoing authority regarding evidence law. Specifically, that sentence would read as follows: "Nothing in this provision is intended to limit the common law authority of the Supreme Court or the legislative authority of the General Assembly with respect to the law of evidence." A proposed amendment to add this language is attached to my testimony.

Thank you for this opportunity to speak with you. I'd be happy to answer any questions you may have.

Proposed amendment to Raised Bill No. 456, *An Act Concerning Adoption of the Connecticut Code of Evidence by the Supreme Court*:

Insert the following after the word "committee." in line 21:

"Nothing in this provision is intended to limit the common law authority of the Supreme Court or the legislative authority of the General Assembly with respect to the law of evidence."

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HONORABLE ELIOTT PRESCOTT: It was.

REP. O'NEILL: Did you give any thought to, gee, is there a potential conflict of interest to this when -- when you -- after you became a judge, as -- as to continuing with the adjunct professor role?

HONORABLE ELIOTT PRESCOTT: You know, it's never really occurred to me. We're required to fill out a form. I think it's called a dual employment form, which basically explains when you're going to be at one position performing that work and then in another position performing that work. But I -- I -- my experience is it's done regularly.

(SB456)
REP. O'NEILL: Okay. The next thing I was going to ask about is we're in the throes of -- and I -- dealing with the issue of, I believe, the Code of Evidence and the idea of having the Code of Evidence adopted. We just reported a bill out, having it to be done by the Supreme Court, and we had some -- some questions. There's -- it seems like it's something that's debatable, so we had a debate.

You've done some extensive work in the area of evidence and reviewed and I guess co-wrote on that subject, as well as procedural things. Just wondering, do you have an opinion as to where the right place for a Code of Evidence to be adopted and promulgated, and so forth?

Is it -- should it have been with the Superior Court judges? Should it be with the Supreme Court? Should it be with the Legislature?

HONORABLE ELIOTT PRESCOTT: If I can back into that question a little bit, let me -- let me try it this way. I think that you're probably --

you're undoubtedly aware of the Connecticut Supreme Court's decision in State versus DeJesus, which said that the Supreme Court is not bound by the rules of evidence, by the Code of Evidence that the judges passed.

And if you go back to when the Code of Evidence was initially adopted by the Superior Court judges, it was done so under a somewhat informal delegation of, I -- I hate to say power, because there's some separation of powers issues that are raised in this context, but the co-chairs of the Judiciary Committee at the time decline a suggestion that the Legislature adopt a code of evidence and instead sent a letter to the Chief Justice, I believe it was Chief Justice Peters at the time, saying that we're telling you that it's okay if you do it.

Now, whether or not that's required for the judges to adopt a code, whether the power in the first instance lays in this -- this body, is a difficult question of -- under the separation of powers doctrine. And I've written about it a little bit in the book.

What I think the most important thing to do is to clarify the existing circumstances so that if the -- if the -- the Legislature wants to delegate whatever power it has in the area to the Judicial Branch, it should clearly do so, not by a letter from the Committee, but by a bill that's adopted by the Legislature and signed by the Governor.

And then, if that happens, then there can't be any question about whether or not the power properly rests in the Judicial Branch to adopt a code because it either rested there initially, under the state constitution, or if the Legislature had it, they properly delegated it to the Judicial Branch. I hope that answers

your question.

REP. O'NEILL: Yeah. I was a member, still am a member of the Law Revision Commission, which spent it seemed like a thousand years trying to work out all the details of the Code of Evidence to come up with something, only to get to the end of the process and the people who had initiated it weren't in around anymore and didn't really want the Legislature to go ahead and do it or thought that it was a -- a project fraught with serious problems, dangers.

And so, yeah. There was a kind of -- I don't know what you'd call it, an acquiescence, sort of a formal acquiescence of responsibility, something like that.

With respect to the constitutional provision, the notion of where -- where did this start, do you think that -- that it did belong properly to the Legislature originally or do you think it was in the courts or you just -- one can't really tell, the constitution's murky on the subject?

HONORABLE ELIOTT PRESCOTT: I'm hesitant in answering the question because that's a question that could come up in a case. And so, where I -- how I might ultimately decide that case, although it would be unlikely it would be decided by the Appellate Court, you know, I -- I don't think it would be appropriate for me to testify about.

I -- I would say that historically, there are certain core aspects of the Judicial function that the Code of -- the rules of evidence have been traditionally developed on a case by case basis under the common law by the courts.

That is not to say that it's inappropriate or unlawful for the Legislature to adopt a statute

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that impacts the admission of evidence in Judicial proceeding. And what our separation of powers cases have recognized, have come to recognize, since after State versus Clemente was decided, that -- that really there's overlapping power. There's shared power between the Legislative Branch and the Judicial Branch.

The only difficulty comes is what happens when the Legislature passes a rule that says, A, and the -- and the Judicial Branch has a -- a code or -- or decides in a case that the rule should be something different, that they conflict directly. That's the thorny constitutional question.

REP. O'NEILL: And there was one other thing that I was going to ask on this subject, which is if it was in the -- originally residing with the Legislature, is -- is there a -- sort of a doctrine that would say there are some things you can just delegate by statutory decision and say this now belongs to the Judicial Branch and/or maybe in the -- an Executive Branch?

I mean, it could be some other power, but there's certain kinds of powers that we simply cannot delegate that are intrinsic to being a Legislature, and that -- that you would, if you saw one, you might have to declare it -- I'm not saying -- this one specifically, but that there are things that the Legislature just cannot give away as a power?

HONORABLE ELIOTT PRESCOTT: There are primarily federal court cases and U.S. Supreme Court cases that talk about the very issue that you just raised, and that is to what extend, and it's -- and it typically arises in the administrative law context where the Legislature passes a statute delegating a great deal of authority to an administrative agency.