PRESIDING CHAIRMEN: Representative Lawlor

Senator McDonald

COMMITTEE MEMBERS PRESENT:

SENATORS: Handley, Kissel, Coleman, Meyer, Newton

REPRESENTATIVES: Spallone, Farr, Berger, Cafero, Cappiello, Currey, Doyle, Dyson, Fox, Fritz, Geragosian, Giegler, Godfrey, Gonzalez, Hamm, Hamzy, Klarides, Labriola, McMahon, Michele, Newton, Olson, O'Neill, Powers, Roraback, Rowe, Stone, Walker, Winkler

REPRESENTATIVE LAWLOR: In light of the fact, at least according to press reports, the pending execution will be postponed until some future date, I think it appropriate to point out that a number of members of the General Assembly feel that it would be important that whatever date assigned allow for enough time to conduct its deliberations and conclude its deliberations on the proposals before us today.

I point out that one of the proposals, in one of the bills, would grant the commutation of sentence, which is a power uniquely held by the General Assembly, to those persons currently sentenced to death in our state. If need be, that could be done by a separate resolution. So in order for us to complete our deliberations on that issue, I think a number of members of the Assembly and Senate feel it's important that whatever date is ultimately set allow for enough time for that to be concluded.

Second, I think I speak for everyone who is a member of the General Assembly when I say that as we consider all these things, first and foremost in our mind is the plight of all the family members of the victims of this case. It must be unimaginable agony to have to experience what has taken place over the past few months. People, I think, draw different conclusions about what that says about our public policy, but I think I speak on behalf of everyone who is a member of the Legislature, who feels that the greatest tragedy of them all, is that family members of the victims have been subjected to this.

It is not our intent in any way to make that situation worse. It is just our obligation to consider the public policy of this state, and that is what we are aiming to do in as respectful and timely way as possible. Thank you, Mr. Chairman.

SEN. MCDONALD: Thank you. With that I would ask that, Representative Cafero?

REP. CAFERO: Thank you, Mr. Chairman. I just have a point of inquiry, with regard made to the statement made by Chairman Lawlor. In the statement, he mentioned there are a group of legislators, both in the House and the Senate, that feel it important that whatever date is set, if set at all for Michael Ross' execution, that it take into consideration the fact that we should be given an opportunity to deliberate. Was that a message going out to someone because there are those that don't agree with that position, obviously? I don't know what the purpose of that statement was.

SEN. MCDONALD: Representative Lawlor?

REP. LAWLOR: I understand that, and I think I made it clear in my statement, that not everyone feels that way, but many people feel strongly about it, certainly I do. I think it is important to at least say there are people who would like an opportunity to allow the General Assembly to conclude its deliberations over this initiative.

It seems as though the normal course would put an execution date well beyond the time it would be necessary for us to conclude our activities, but since a number of people have approached me and made that request, I thought it appropriate to convey that there are people who would like the opportunity to have a full debate about this prior to getting up to the brink, as we were the past few days.

REP. CAFERO: I guess my question was, for you, Mr. Chairman, to whom are we making that request?

REP. LAWLOR: I don't know who will ultimately make that decision, whether a stay will be issued by a Federal Court preventing any State Judge from setting a date until those deliberations are concluded or whether there will be an attempt immediately to seek a new date from the State Judge involved. I am not sure how this would work.

My understanding is, at the moment, no decision has been made to postpone the scheduled execution for tonight, but I am only saying that, whomever would be making that decision, I want that person to know that there are members of the Assembly who would like to conclude the deliberations in this prior to that date being set. It's not binding. It's just conveying a message from some members of the Legislature.

SEN. MCDONALD: Thank you. I understand that members of the committee do have strong opinions on this subject, as do most members of the community at large. However, we do have to hear from the invited guests, and I would ask that members be mindful of that and consider if they need to speak now or whether we can proceed with the invited guests. Having said that, Senator Kissel, being mindful of it, still has a comment.

SEN. KISSEL: And your remarks were definitely telegraphed to me, Mr. Chairman, but by way of an explanation and a follow up to Representative Cafero, I think that I probably remain in that camp where I think that justice delayed is justice denied, and indeed this is a terrible situation for the families of the victims.

Nonetheless, it is my understanding right now, and this is directed at Chairman Lawlor, that through his attorney, Michael Ross has asked for a hearing on his competency by way of a habeas, I believe, and that under the terms of the execution warrant that had been issued, if it doesn't come to pass today, which it appears to me it will not come to pass today, that the Attorney General has been reported as stating that the state must honor this request.

Under the statutes then, a re-issuance of an execution warrant would have to be no less than 30 days, nor more than 6 months. And if indeed that is the timeframe, wouldn't you, under just the facts as it's going forward, without a statement from the Legislature, the worst case scenario for folks who want to have time to deliberate would be 30 days. Wouldn't you feel that 30 days would give this committee ample time to debate this issue, vote something? Certainly it's enough time for the House or the Senate to act.

SEN. MCDONALD: Representative Lawlor?

REP. LAWLOR: Thank you, Mr. Chairman. I guess I am not an expert on

the exact number of days which would have to be allotted, assuming everything happened as quickly as possible. Obviously, factoring in the Governor's statement about a possible veto would add, as a matter of course, a certain number of days. I don't know if Attorney Tepfer or anyone from LCO knows what the number of days between a veto and it's reconsideration would be.

I mean, the normal course would involve a certain amount of time. I think 30 days would be kind of short. Speaking on behalf of a number of Legislators who feel this is important, I hope that anyone would take that into consideration. It is certainly not binding. I am just conveying information. I just wanted to point that out for the record.

SEN. MCDONALD: Thank you. Senator Newton?

SEN. NEWTON: Thank you, Mr. Chairman. So the public hearing we are having today, we are going to deliberate this until we are ready to actually vote on it or is the public hearing today the final issue for today?

SEN. MCDONALD: The scope of our responsibility today is to hear from members of the public, to receive testimony, and to hear the positions of members of the State's Attorneys Offices and the Chief Public Defenders Office, as well as members of the public. We are not going to be debating the bills today. I should also mention, obviously, because of the nature of this subject and the timing of it, this is clearly brought up in the context of the pending execution of Michael Ross, but this is not a public hearing about Michael Ross.

If members of the public need to address their points, with respect to the death penalty, and want to reference Michael Ross, obviously that is appropriate, but this is not a public hearing about Michael Ross.

It is whether or not we are going to make any modifications to our existing statutory structure with respect to the death penalty in general. Representative Dyson had his hand up first, and then Senator Cappiello, and then we are going to move on, folks.

REP. DYSON: Thank you, Mr. Chair. Just a couple of questions, and I think some of it was covered already. I just want to get some clarity on the three-minute rule. Does it apply to the individuals who are coming before us soon, which is the Officer Chief Public Defender and the Officer of Chief State's Attorney, does the three-minute rule apply to them or what?

SEN. MCDONALD: It does not.

REP. DYSON: Fine. Now, the next thing is that there has been some discussion by Representative Cafero and Senator Kissel and Senator Newton that begs the question about what is the extent of our schedule? Have we planned a schedule by which we would deal with this issue in a timely fashion or is there a schedule at all?

SEN. MCDONALD: The date for the Committee Hearing for consideration for these two bills has not yet been set, but given the timeliness of the subject, it would not be long delayed.

REP. DYSON: Is it fair, Mr. Chair, for me to pose the question of would that schedule be something that would take place with the intent of a bill getting to the floor, assuming it is successful here, that would allow for debate? Would that take place within the

30 days?

SEN. MCDONALD: It would be our expectation that this is going to be the subject of a committee meeting in very short order, and with the intention of allowing, if a bill comes out of this committee, allowing that to be done in a timeframe to allow for the Senate and the House to debate it on the floor before any official action was taken in respect to Mr. Ross.

REP. DYSON: Thank you.

SEN. MCDONALD: Finally, Senator Cappiello?

SEN. CAPPIELLO: Thank you, Mr. Chairman. I would just like to say that I appreciate your comments that this is not about Michael Ross, but it is hard to take those words, I don't want to say seriously, but when the House Chairman, just a few minutes ago, made his comments regarding the issue of Michael Ross and what we do here, hoping that certain things would be held off, depending on what we do here, and this committee, and this Legislature, regardless about how one feels about this issue, I would say this is about Michael Ross and others like him. Whether someone like Michael Ross will be allowed to live life in prison or whether he would be put to death under our death penalty laws. So even though we try to separate, in my opinion, this is really about Michael Ross. Thank you.

SEN. MCDONALD: Thank you, Senator Cappiello. Seeing nothing further, I would invite our guests, Chief Public Defender Gerard Smyth, Attorney Patrick Culligan, State's Attorney John Connelly, and State's Attorney Patricia Froehlich to please come forward.

CHIEF PUBLIC DEFENDER GERARD SMYTH: [inaudible-no microphone]

SEN. MCDONALD: Is the microphone on?

CHIEF PUBLIC DEFENDER GERARD SMYTH: Thank you, Mr. Chairman. I am joined today by Senior Assistant Public Defender Ronald Gold from the Capital Defense and Child Services Unit. Mr. Culligan is unavailable.

SEN. MCDONALD: Thank you. Welcome, all. Obviously, we have questions for each of you, but if any of you wish to make any brief introductory remarks, we would be happy to have them from any of you. It is not necessary, mindful of the time.

CHIEF PUBLIC DEFENDER GERARD SMYTH: I came prepared to give testimony and to give a statement, and I would be happy to do that, unless you would prefer to proceed by questioning.

SEN. MCDONALD: Please, make your statement.

CHIEF PUBLIC DEFENDER GERARD SMYTH: I am here in support of Raised H.B. 6012, which would abolish the death penalty and replace it with life imprisonment without the possibility of parole. And I would just like to urge upon you, whether you are for the death penalty or against it, that there are serious policy considerations that really weigh in favor of abolition.

You are familiar with policy arguments, such as the fact that there is the risk of executing an innocent person, that there is considerable cost to the death penalty, that the death penalty is not a deterrent, but I would like to briefly focus on three other reasons, which I believe are reasons, in and of themselves, to abolish the death penalty.

The first is the arbitrariness of the death penalty, not only around the country, but specifically in the State of Connecticut. The question for those who are convicted of capital felony, as to who lives and who dies, is totally subjective and controlled by a variety of arbitrary factors.

The outcome in individual cases can vary on the basis of what judicial district the case is pending in, who the State's Attorney is, who is on the jury, who the judge or judges are, who the attorneys are, and even who sits on the Supreme Court when the case is heard because of various disqualifications, even in the Michael Ross case. The seven members of the Supreme Court have not been able to sit, and others have sat by designation.

I have heard Mr. Connelly recently, and Mr. Morano this morning, say that the death penalty is reserved for the worst of the worst. And while I would not suggest in any way that the people on death row have not committed highly egregious crimes, in reality, that statement that they are the worst of the worst is simply not true.

For example, we have had 33 convictions of multiple murders since the early 1980's, when prosecutions began under this statute. Of those 33 people convicted of multiple murders, only 2 have been sentenced to death, Robert Breton and Robert Corshain, both out of the Waterbury Judicial District. All the others, the 31 others, have been sentenced to life imprisonment without the possibility of release or some lesser sentence.

We are talking about people who have killed, in some instances three or four or even five people at the same time. Quite frankly, there are many people who are doing life sentences who are worse than the people on death row.

And when I say that, what I mean is that they are worse in terms of their prior record, they are worse in terms of mitigating evidence they had available to present, they are worse in terms of their degree of remorse, and they are worse in terms of the number of persons they killed and the amount of damage and harm they have caused to their victims.

And so, when you look at what differentiated those 2 people who got death from the other 31 who didn't, I would point out that both came from the Waterbury Judicial District.

In other cases, there is the ability to plead guilty for a sentence of life imprisonment with the agreement of the State's Attorney. And in some instances, for people who went to trial, it is a function of who sentenced them, who was on the jury or who was on the three-judge panel.

Only 10% of persons convicted of capital felony are sentenced to death. There are 7 people currently on death row, including Mr. Santiago, who I believe is being sentenced today, and that is out of 69 people convicted of capital felony. Fifty-seven percent of the convictions were by plea of guilty for life imprisonment. That was 39 cases, and 43% of the convictions were after trial. Of the 30 people who went to trial and were convicted, 7 have been sentenced to death sentences that are currently in effect.

SEN. MCDONALD: Mr. Smyth, excuse me one second. Ma'am, we have asked that no signs be displayed in the hearing room. Please, remove the sign. I am sorry, Sir.

CHIEF PUBLIC DEFENDER GERARD SMYTH: Thank you. So of those cases that

go to the penalty phase, one out of four, 25%, result in the death sentence. As I say, there are seven people on death row. There are two people who were sentenced to death, Ivo Colon and Todd Rizzo, who have been remanded for new penalty hearing, so their cases aren't completely resolved.

The point is that there is a lot of money and a lot of effort expended on everyone's part for a very small of number of death sentences that are actually imposed. And in terms of arbitrariness, of the ten death sentences that have been imposed under our statutes, one was reduced to life imprisonment by the Supreme Court. So there are then a total of nine death sentences. And of the nine, six were in the Waterbury Judicial District, two were in the Hartford Judicial district, and one, the Ross case, was in the New London Judicial District.

And so there are no death sentences in the remaining ten judicial districts throughout the state. So I think it is clear that there is no consistency in which the manner the death penalty is administered. The law is not being applied evenly around the state, and it is indisputable that it is arbitrary factors that determine who it is that is actually sentenced to death.

The next reason that I would suggest to you for abolishing the death penalty is related to jurors. In my view, it is absolutely unfair for us, as a society, to ask private-citizen jurors to make the decision between who lives and who dies.

Recently, in the Mills case, in New Haven, the jury, after long deliberations, sentenced Jonathon Mills to life imprisonment for a triple murder. I recently, after his sentencing, saw it quoted in the newspaper, one of the jurors said she was very disappointed that the state didn't provide the jurors with post-traumatic stress counseling following their experience.

In the Santiago case, two jurors, after the verdicts, came forward and informed the judge that they had misgivings about the decision they made. We know from the numerous post-trial interviews of the Scott Peterson jurors in California that these people have indicated that it was a life-altering experience, and they themselves are forever changed.

I would submit that it is not fair to ask people to make that decision, and that the death penalty could be abolished as a way of eliminating that problem.

Another corollary of that particular problem, involving jurors, is that the jurors that are eventually picked are not a cross-section of the community. People who don't believe in the death penalty are excluded from the jury, so it doesn't represent all the community values when those decisions are being made.

And finally, I would just point you to the process that you are all very familiar with, from the developments of the last several weeks. The proceedings in death penalty cases are interminable. It is impossible to change that. It will never change. It is inherent in the system that these proceedings must take place, and of their very nature, they take a long period of time. They will always take 15 to 20 years or more to execute someone in the State of Connecticut. In fact, it may be more difficult to execute someone than to sentence them to death.

In the past, prosecutors would come before the General Assembly and talk about the fact that the death penalty in Connecticut is

unworkable, and would ask you to change the law to make it easier to impose the death penalty.

Well, the death penalty is unworkable, and the tortured process of post-conviction appeals, and habeas-corpus petitions, and stays of execution, and all of the other various things that are necessary in the process, can't be streamlined. They can't be eliminated. They can't be fixed. The system is broken, and if you want to fix it, you should abolish the death penalty.

SEN. MCDONALD: Thank you very much. I should mention to members of the committee that Chief State's Attorney Morano was invited, but because of other proceedings that may be transpiring today, he is not here, and State's Attorney Connelly and State's Attorney Froehlich were nice enough to be here. I appreciate that, Sir.

STATE'S ATTORNEY JOHN CONNELLY: Thank you, Senator.

UNIDENTIFIED SPEAKER: Excuse me, I do see some signs and stickers.

SEN. MCDONALD: We are taking care of that, Senator.

STATE'S ATTORNEY JOHN CONNELLY: Thank you, Senator McDonald. My name is John Connelly. I am the guy that Mr. Smyth referenced a few minutes ago. I am the State's Attorney from the Judicial District of Waterbury. I have been the State's Attorney for over 20 years there.

I am here on behalf of State's Attorney Froehlich, on behalf of the Division of Criminal Justice, and the Division of Criminal Justice opposes both bills before the committee.

I am not really here to argue the merits of the death penalty, per se. I think there is a lot of misinformation out there about the death penalty and the death penalty in this state.

I will first address Mr. Smyth's first argument, about geographical disparity. We in Waterbury, I should say myself, we have not pursued as many capital felony prosecutions as other judicial districts. In fact, we are nowhere near the top.

The figures provided to the Death Penalty Commission a few years ago, were figures provided by Mr. Gold from the Chief Public Defender's Office. Those figures show that, since mid-1970, 66 capital felony prosecutions were brought in Hartford, 13 in Fairfield County, 17 in New London, 12 in New Haven, 11 from Waterbury, and 10 from Windham.

So Waterbury, although we have more people on death row, of the six penalty-phase hearings we have pursued, either three-judge panels or juries imposed the death sentence. We have only brought six penalty-phase hearings, and we are six for six.

So it's not like in Waterbury we charge everybody with capital felony, and we are batting 128. We have brought six cases, and in six cases, either three-judge panels or juries agreed with us and sentenced the defendants to death.

I think it is also important to point out, again, that Mr. Smyth talks about juries. In two of the cases in Waterbury, Robert Breton and Sedrick Cobb, it was two different three-judge panels who sentenced Mr. Breton and Mr. Cobb to death. So it wasn't juries.

And also, I have heard the comments over the years, well, the Waterbury juries must have something in the water down there.

Waterbury juries are zealots in returning death sentences. In fact, one of the jury panels who sentenced Richard Reynolds to death, that is in the murder of Waterbury police officer Walter Williams, was a jury from Middletown.

There was a change-of-venue motion made, it was granted, and the penalty phase was heard in Middletown. And that jury was made up of people from the Middletown Judicial District.

In the other cases, they were Waterbury juries, but it has been a variety of three-judge panels and juries from jurisdictions other than Waterbury. Why are we so successful? Why six for six? I think the reason is that we take these cases very seriously. We work very closely with the police in the investigation of these cases. Our office works as a team, with both the police and the forensic lab, and the Chief Medical Examiner's Office in preparing these cases.

These are not easy cases. These are very complex cases. We come up against the Public Defender's Office, the Capital Litigation Unit. All those people in that unit do is try capital cases. There is probably no one more knowledgeable about the death penalty, specifically the death penalty in this state, than members of the Public Defender's Office.

So the reason we bring these cases, we look at the facts, we look at the law, if the facts fit the law, the law fits the facts, then we pursue these.

Now, the Public Defender's Office doesn't like that because we don't plea bargain these cases. I will never, ever, ever plea bargain the case where it involves the death of a police officer. I will never plea bargain the case where it involves the brutal stabbing of a woman who was nine months pregnant, stabbed multiple times, thrown out of the car.

The first person who found the body said he thought it was a bundle of trash in the roadway. She was alive. She was taken to Waterbury Hospital, a cesarean section was performed on her, her baby was born alive, she died, and the baby died three weeks later as a result of the stabbing. I will not plea bargain a case like that.

It would be very easy for me to say, okay, we will accept a penalty of life in prison without the possibility of release, and that would be the end of it for me. These cases are complex.

The one thing I also want to point out, you hear how expensive these cases are to prosecute. They are not. Of the six cases in Waterbury, I will tell you our office expended no more money on these cases than any other prosecution, so the expenses are negligible. All these costs are fixed costs. I don't get paid any more, my assistants don't get paid any more, judges don't get paid any more, if we try these cases or some other cases.

One other thing, you know when we talk about the death penalty, I know Representative Lawlor and I have discussed this in the past in different venues, when we talk about the death penalty, one of the things you are going to hear is that it doesn't act as a deterrent for murder. The reason is that it's not the punishment for murder. The punishment for murder in Connecticut is a maximum of 60 imprisonment, a minimum of 25.

The death penalty only applies to eight limited types of murders, and those are the types of incidents you have to look at if you are arguing deterrents. I always point out that one of the types of

murders that you get the death penalty for is the murder of a correction's officer.

And I will ask you, when was the last time a correction's officer was murdered in the State of Connecticut? I can't recall. So I can sit here and argue that it acts like a deterrent because people know if they kill a correction's officer, they are going to get the death penalty.

So I think the purpose of the death penalty is this. It is not deterrence. It's retribution, and retribution is not revenge. The question about retribution is what is a just punishment? What is a just punishment for the nature of the crimes committed?

What is a just punishment for Michael Ross? What is a just punishment for Richard Reynolds, who murdered that Waterbury police officer and left a widow and three orphans? What is a just punishment for Robert Corshain, who stabbed to death that pregnant woman, and left her and her baby to die? What is the just punishment for Sedrick Cobb?

I think we have all heard or know the facts about Sedrick Cobb and what he did to Julia Ashe. The way Robert Breton slaughtered, slaughtered, butchered his estranged wife and 16-year old son, when he stood over them and said, thanks for the birthday card, and then plunged a knife into his throat. The question becomes we as a community, we as a society, what do we feel the appropriate penalty is for these types of cases?

Another thing, here in Connecticut, we have a good death penalty. We have perhaps the strictest death penalty in the entire country. The death penalty here has been debated as far as I can recall for the last 25 years, and, if anything, this General Assembly has strengthened the death penalty.

Just two or three years ago, you had this commission on the death penalty, and they didn't suggest it should be abolished. They didn't suggest any obvious flaws in the death penalty. Just a year or two ago, I was in front of here, and we were talking about correcting the decision in the Johnson case, about the murder of police officer Russell Bagshaw, where the General Assembly made it an aggravating factor to murder a police officer or correction officer.

So this Legislature has strengthened the death penalty every time it has been debated, and I think that reflects your constituents.

You know, it was interesting that 59% of the people of Connecticut favored the death penalty, but the question was, do you favor the death penalty for murder? And that is the wrong question because the death penalty is not the punishment for murder. When they ask a specific murder, the crime committed by Michael Ross, the approval rating shot up over 70%.

So I think if you asked your constituents or if they took a poll saying, do you believe the death penalty is an appropriate sentence for someone who murders two or more people during the course of a single transaction or someone who brutally murders a baby, like what happened in Waterbury, whose head was smashed repeatedly against the shower wall by Ivo Colon because she wasn't potty trained? If you ask your constituents whether or not they think the appropriate sentence, in those cases, is death or life imprisonment, I think the answer death would be overwhelming.

One other thing, and then I will end. We hear a lot about this Callahan litigation. What happened is, in the Sedrick Cobb case, many

years ago, one of the issues raised by Cobb many years ago was whether or not the death penalty was applied in Connecticut in a racially or geographically discriminatory manner. And what the Supreme Court said is, if you want to raise that issue, you have to raise it through a petition of habeas corpus.

And as more death penalty cases came along, the Public Defender's Office kept raising that. What the Supreme Court said, is that anyone who is under a sentence of death, and who wants to raise this issue, should raise it in a consolidated habeas petition. And that was sent to former Chief Justice Callahan down in Stamford.

We met with Chief Justice Callahan over a year ago, and the only people, at that time, who wished to participate in that habeas corpus petition was Sedrick Cobb and Daniel Webb. No other person who was under the sentence of death indicated that they wanted to participate in it.

The interesting issue that came up was that this whole concept of geographical and racial disparity was going to be based on the public defender's study. That study has been in the works for ten years. We have not seen it yet. The public defender has it. They had it over a year ago.

The defense attorney that was representing Sedrick Cobb, in front of Justice Callahan and myself, said they got the study. The study has not showed what they alleged it was going to show, and they wanted to do a new study. There is no litigation in front of Justice Callahan. The question was, anyone under sentence of death who wanted to participate was supposed to contact Justice Callahan. Only two defendants have done that.

The other thing, is the commutation. If this bill passes, to commutate the death sentences of Robert Breton, Sedrick Cobb, Richard Reynolds, and Robert Corshain, it would be a terrible injustice to the victims' families.

I have been contacted by the victims' families in these cases, and when they heard there was a possibility that the General Assembly could commute the death sentences of these individuals, individuals who have been given fair trials, who have been given excellent representation, and whose cases have been heard by our Supreme Court and the U.S. Supreme Court, for them to think that the General Assembly, not knowing all the facts of these cases or any of the facts, could commute those death sentences would be devastating for them. Thank you.

SEN. MCDONALD: Thank you. Representative Lawlor?

REP. LAWLOR: Thank you, Mr. Chairman. I just had a couple of questions. First, a comment on the issue of expenses. We will get the final figures shortly, but my understanding is the Department of Corrections, in the last two weeks, has spent more money on overtime and attendant costs than it would have cost to incarcerate Michael Ross for the rest of his natural life.

I think the figure is over $1 million at this point, but we are going to get the final figures. So before we even get to the question of courts, I think there is an extraordinary expense there.

I have a more general question on the issue of the death penalty, and I certainly agree, the impact on victims of crime is actually one of the foremost concerns in my mind.

With that in mind, in light of the fact that, with Michael Ross, it has been 22 years. For 10 years he has been asking, if not begging, to be put to death, and here we are not even able to carry out an execution at this point when everyone, I think, acknowledges that if ever there was a person who was the ideal candidate for the death penalty, it is Michael Ross.

If that is the reality in our state, how can we, and explain it to me, if you don't mind, how can we hold out the possibility that this is a real penalty, that this is going to be delivered, in particular on someone who does not want to be executed, who would, in effect, be dragged kicking and screaming down that hallway? If we can't execute this guy by now, how are we going to execute anybody in this state?

STATE'S ATTORNEY JOHN CONNELLY: Well, I think one of the things you can do, as a Legislature, is to set deadlines for the filing of these various motions and these various appeals, especially in the area of habeas corpus. Set deadlines where the courts have to act on these petitions and act on these motions in a timely manner.

I agree with you, Representative Lawlor, the public defender in the Sedrick Cobb case, it took them six years to file their brief in that case. That is why it takes so long, because the courts have allowed this delay to go on.

And believe me, Mr. Smyth and the public defenders and defense attorneys, they want delay, they want these cases delayed. Delay for them is a victory. Believe me, they are not in a hurry.

So I think what has to happen is some guidance has to come from the Legislature to the courts, saying there has to be time limit on these. If a habeas petition is filed, you have to have a hearing within three months or six months, that type of thing. That would move the process along.

REP. LAWLOR: In the current matter that has received all the press attention, it seems to me the real issue has been contested in Federal Court, not in State Court. And as I understand it, under the Federal Court system, there is quite a bit of restriction on filing habeas corpus. So what, if anything, could we do to affect the Federal Court habeas process?

STATE'S ATTORNEY JOHN CONNELLY: Well, I don't think it is the Federal Court that held us up. It is one judge who held it up. The—-

REP. LAWLOR: Am I not correct that Judge Chatigny is the Chief Federal—-

STATE'S ATTORNEY JOHN CONNELLY: Right, but Judge Droney, who is also the Federal Judge, handled this matter and dismissed the claims made regarding Mr. Ross' competency. In talking about the people on death row, and what this bill would do as far as commuting the sentences, I don't know if you read Judge Chatigny's transcript of that meeting, but there is one very interesting thing that Judge Chatigny said.

Let me quote, it's from page 24, and this is his conversation with Mr. Pawling. He says, I suggest to you that Michael Ross may be the least culpable of the people on death row. That is Judge Chatigny.

So if Michael Ross is the least culpable person on death row, and I think that 70% of the public is convinced he deserves the death penalty, what does that say about the other people on death row? Obviously, according to Judge Chatigny, they are more culpable than Michael Ross, and yet this bill would commute those sentences, people

more culpable than Michael Ross.

REP. LAWLOR: My final question is that the second bill contains five specific technical changes to the current death penalty statutes, one of which got a lot of attention recently as people watched the death penalty trial in California of Scott Peterson.

In that case, under California Law, the victim was allowed to address the jury in the penalty phase, in that case ask for the jury to impose the sentence of death. So part of the second bill would contain the provision that would allow the victim's family to do that, and another would allow the defendant the so-called right of allocution. So I was wondering your positions, both offices, on those two proposals, and, in general, on the second technical bill.

UNIDENTIFIED SPEAKER: Could Mr. Gold respond on behalf of the Office of Public Defense?

SEN. MCDONALD: Mr. Gold?

ATTORNEY RONALD GOLD: Thank you, members of the Committee, Senator McDonald, and Representative Lawlor. Regarding those two provisions, first, I would speak regarding the right of allocution of the defendant, and we certainly support that.

That was a claim by the defendant in a case called State v. Ivo Colon, prosecuted by Mr. Connelly and another member of our office. When that went to the State Supreme Court, they found no right, even though there are many states that do in fact allow that.

And that puts the defendant in the position that in any criminal case in the state, if he is going to be sentenced, the person sentencing him will hear from him. He has a right to say his peace to the judge before the judge imposes his sentence.

However, the sentencing body in a capital case is a jury or could be a three-judge panel, but most likely a jury. If you go before the jury when your life is on the line, you do not have the right, according to our Supreme Court, to address the body that is going to decide whether you live or die. And that is quite an anomaly in the law.

In any crime, it could be shoplifting, where you might get a fine, you can speak to the judge. But if your life is on the line, you can't speak to the sentencing body. That is why we think it's an important right for a defendant.

If you compare the Mills case in New Haven, where Mr. Mills had an opportunity to apologize and speak to the jury, granted to him by the trial court, he got a life sentence. The Golarza case in Bridgeport, where the defendant was allowed to speak to the jury, he got a life sentence. That was in a double murder, the Mills case was a triple murder.

In the Colon case, Mr. Colon wanted to speak to the jury, in the baby killing that Mr. Connelly just described. He did not get that right, and he was sentenced to death. In the Corshain case, which I tried against Mr. Connelly, Mr. Corshain wanted to present a letter to the jury that he wrote or speak to the jury. He was denied that right, and he got a death sentence.

So it is a significant right for a defendant, to be able to stand up and speak to the jury, and to do it free of the concerns of cross-examination. So we would ask the committee to approve that amendment

to the statute and to send it on to the full General Assembly.

Regarding the right for the victims to have the same, as I understand it, at the close of evidence, between the period of time of the conclusion of evidence and the time for closing arguments for both sides, that is when the defendant and/or the victim will have the opportunity to address the sentencing body, I would say we certainly oppose the victims speaking.

The Death Penalty Commission that rendered its report in January of 2003 studied this at fairly great depth and did not recommend any change.

Certainly the victims do have the opportunity to make a presentation to the judge before he imposes the sentence. That would be after the jury verdict of whether the aggravating factors outweigh the mitigating factors. So because the Commission, Mr. Smyth was a member of the Commission, opposed it, we would also oppose it.

SEN. MCDONALD: Thank you, Mr. Gold. I would like to remind members of the public that we are not allowing the demonstration of your position with the use of signs. If you have your signs, I would ask you to please remove them.

STATE'S ATTORNEY JOHN CONNELLY: I refer to Attorney Froehlich.

STATE'S ATTORNEY PATRICIA FROEHLICH: Thank you.

SEN. MCDONALD: Can you move a little closer to the microphone?

STATE'S ATTORNEY PATRICIA FROEHLICH: By way of introduction, may I make a few comments first? Before I respond to that particular question, I should point out that, although I have charged seven defendants with capital felony, as a result of four different factual situations, I have never sought the death penalty in any of those cases. Indeed, one of the cases to which Attorney Smyth referred involved the murder of five young men. I was lead counsel in that case.

We withdrew notice of intent to seek death not because of any geographical disparity, not because at the time I was in the Judicial District of Danbury, but because in that case, like in any other case, we reached our decision based on a thorough study of the facts, the law, discussion with State's Attorneys for other Judicial District, discussions with the Assistant State's Attorneys of our Appellate Bureau, who are the experts in capital litigation jurisprudence, and only then do I make a decision to seek a death sentence or life in prison without the possibility of release.

So I have not gone through a penalty-phase hearing, and I hope you will consider my comments in that context.

With respect, however, to the defendant's right of allocution during a penalty phase, I would point out that one of the purposes of the penalty phase is that very right of allocution. What is the purpose of allocution? To allow a defendant to speak on his behalf and to seek mercy.

Now, if we look at our penalty-phase statute, the defendant is allowed to put on evidence in mitigation. That is allocution. Not only-- [Changing from Tape 2A to 2B.]

--with respect to the disparity between the defendant and the victim-impact statement, as addressed by Attorney Gold, I think it is

important that we consider that this proposed language would give the defendant the right to make that statement without being sworn and without being subject to cross-examination.

As lawyers, and throughout the case law, we read repeatedly the great engine of truth seeking, the chief engine of truth seeking is cross-examination. Without being sworn and without being subject to cross-examination, the defendant's statement, expression of allocution, is inherently unreliable. Judges and juries who have to make a determination as to life or death must do so based on reliable evidence.

I am sure it is an oversight and an apparent effort to establish equity, but if we look at the language, giving a defendant the right of allocution, and then giving the victim the right to make the victim-impact statement, there are grave differences.

For example, victims who get to make a victim-impact statement after the determination as to whether the sentence is life without the possibility of release or death is really being given a meaningless opportunity.

REP. LAWLOR: Excuse me, I don't mean to interrupt, but the bill before us repeals the existing statute and allows the victim the right to address the jury during the penalty phase without any restrictions. So it is, in effect, the right of allocution, unsworn, no cross-examination statement by the victim.

STATE'S ATTORNEY PATRICIA FROEHLICH: But it doesn't say that, Representative Lawlor. If we look at the language of Raised H.B. 6488, Subsection L talks about giving the defendant the right of allocution without, and I will try to quote the exact language, without being sworn and not subject to cross-examination.

If we look at Raised H.B. 6488, with respect to the victim and the victim-impact statement, it makes no reference as to whether that victim will be subject to cross-examination or sworn. And that is what I mean when I say it might be an oversight. It appears to be an effort to create equity, to create equality, but it doesn't.

REP. LAWLOR: Well, let me ask the precise question, since this is simply a public hearing on a proposal which we can obviously amend if we choose to. What would your position, or if you could speak on behalf of the Division of Criminal Justice, what would be its position, if the proposal was to give victims the simple right of allocution, to stand before the jury prior to the deliberation by the jury in the penalty phase, or the three-court panel for that matter, the three-judge panel, and simply, as was the case in California in the Scott Peterson trial, simply say what they thought about the impact on their lives of this murder and allow that to be factored into the ultimate decision on life or death?

STATE'S ATTORNEY PATRICIA FROEHLICH: I think, practically speaking, if the statute is silent on whether that person is sworn or subject to cross-examination, the reality is that the issue will be raised.

REP. LAWLOR: Right. I am saying let's assume we would make it specific that they will not be sworn, and there is simply a statement on the part of the victim. I think that is the intent behind it. In fact, I am sure of that, and so we can certainly write it to say that. And so my question is, assuming it is written in that fashion, so it is clear they won't be cross-examined and they wont be sworn, they can simply make a statement at sentencing, what would your position be on that?

STATE'S ATTORNEY PATRICIA FROEHLICH: That would depend on the language in respect to the defendant. I would rather see a victim sworn and subject to cross-examination, with respect to victim impact, than see a defendant be allowed to make an unsworn statement and not be subjected to cross-examination.

So if the two are required, one and the other, I would not want to see a defendant be allowed to stand there, unsworn, and make statements to the jury, after the presentation of evidence, before closing arguments. What would stop that defendant from addressing issues with respect to third-party culpability?

Our law is clear, very clear, that there has to be specific evidence. Practically speaking, what would stop that defendant from raising issues in respect to innocence, although that had already been litigated in the guilt phase? These situations, with respect to the defendant's unsworn testimony, are just too vast.

REP. LAWLOR: Well, Judge Blue was here just last week as part of his reconfirmation, as you probably know. He and several other judges have allowed this allocution right, and he explained that he imposed the zone boundaries as to what was allowed during that allocution. So to answer your question as to what would prevent them, that's what prevented it in that case.

STATE'S ATTORNEY PATRICIA FROEHLICH: But in that case, I believe it was shortly after Judge Blue allowed that, that the Supreme Court handed down its decision in Colon saying there is no right of allocution. Indeed, the purpose of the mitigation phase, the penalty phase, addresses the right of allocution.

And with respect to counsel's comment, that we have to compare this right of allocution to any other criminal case, we are talking about apples and oranges because in any other criminal case, there is no penalty phase, and there is no opportunity to put on evidence with respect to mitigation and to put it on without being subject to the rules of evidence. So I don't think, for those purposes, we can't compare the right of allocution in a capital case to that in a non-capital case.

SEN. MCDONALD: Thank you. Senator, actually, Representative Farr?

REP. FARR: Just to clarify, right now, the defendant can always testify under oath, is that correct?

STATE'S ATTORNEY PATRICIA FROEHLICH: That is correct.

REP. FARR: And is remorse a mitigating factor? I have to go back and look, I mean.

STATE'S ATTORNEY PATRICIA FROEHLICH: It is a mitigating factor.

REP. FARR: So the only thing the defendant can't do, the problem now is if he testifies, he can be cross-examined, but presumably the scope of that cross-examination is to the mitigating and aggravating factors or as to his testimony. They can't then ask him whether or not, other questions about the crime, is that correct?

STATE'S ATTORNEY PATRICIA FROEHLICH: Presumably. But the statutory scheme, both as it exists and in the proposal, also says that each party shall have the opportunity to rebut the other's evidence. So if we are to allow a defendant to make a statement, unsworn and not subject to cross-examination, we have just eliminated the state's

right to rebut whatever it is the defendant says.

REP. FARR: Okay. Thank you.

SEN. MCDONALD: Thank you. Senator Kissel?

SEN. KISSEL: Thank you very much, Mr. Chairman. Just sort of an overriding concern that I have, in relationship to the fact that there are just so many appellate issues that seem to be raised that make the process interminable.

Aside from your concerns regarding the proposals here, let's set aside the proposal regarding abolishing the death penalty and having life without possibility of parole. But the other one, the one that encompasses the minor changes, it has always been my concern that when we tinker with these laws, that that sets up new grounds for future appeals.

And if we did something, and even if the law said it is prospective, I mean, does that form the basis for the Public Defender's Office to march in and say, well, you know, now the state has evinced the policy and these new laws, where this is how the penalty phase is going to be addressed?

So my concern is that they are fairly innocuous, and, yet, I think any time we tinker with the death penalty law, that it prolongs this interminable process of forming appeals. So I would rather just leave it alone for a decade and let it work itself out because there are going to be appeals.

But why do we just want to keep adding more minor changes to maybe thwart its intent of being a workable construct? I would like to hear from both sides, if I could.

ATTORNEY RONALD GOLD: If I may respond, Senator. Sometimes, a change may have the effect that you are talking about, but sometimes a change can prevent future litigation. And addressing some of the changes in 6448, I believe, or 6488, there is, let's find the right subsection here, the amendment for Subsection F that appears on page two that talks about what the standard is for weighing proof beyond a reasonable doubt, it's an appropriate sentence, and that the aggravators outweigh the mitigators.

That is just the codification of a Supreme Court decision, State v. Rizzo, so that change wouldn't cause any litigation unless, of course, the Supreme Court decides it wants to reverse itself, which we can't control.

The change that, if proposed in Subsection C at the very end, that talks about what the standards of proof are for the prosecution to prove an aggravating factor and for the defense to prove a mitigating factor, that is existing law. Again, that is a codification. Though it adds something new to the statute, it's not going to give you any fertile ground for litigation by either side.

The Subsection D, that is the language, this is a change that would remove language that says that when a defendant is proving a non-statutory mitigating factor, that he or she has to prove that that mitigating factor is mitigating in nature, considering all the facts and circumstances in the case.

And that is a very problematic provision in the law. Prior to 1995, the life or death question is, has a mitigating factor been proven? And if one mitigating factor was proven, it was a life sentence.

At that time, this language that is in the statute says that the defendant has to prove the mitigating factor and has to prove it is mitigating in nature, considering all the facts and circumstances in the case. That was significant because we did not have a weighing statute at the time, and that was the life or death question.

Now that we have a weighing statute, contrary to what Mr. Connelly said, we have the most restrictive statute in the country because of that language. So let me give you an example. Under our existing law since 1995, when we went to weighing, there are what we call statutory mitigating factors that the Legislature has determined are in the statute, but the vast majority of mitigating factors that are presented are non-statutory.

The U.S. Supreme Court, for example, has recognized that good prison behavior is of constitutionally significant mitigating value. The case is called Skipper v. South Carolina.

If, under the existing law, we prove on behalf of a defendant, the jury is satisfied that this person has a great prison record, he is a model prisoner, you have correction officers and wardens coming in to testify that he is a good prisoner, we proved those facts, the jury then has to consider those facts, considering all the facts and circumstances in the case, and they can say, uh, that is not mitigating in nature.

So when you get to the life or death question, when you have the aggravating factor on this part of the scale and the mitigating factor on this part of the scale, we don't get to put the good prison behavior, even though the Supreme Court says it is constitutionally relevant material, we don't get to put that on the scale because the jury says, in light of the facts and circumstances of the case, it's not mitigating in nature. That makes it extremely restrictive.

We are the only state that has a statute like that in the country. Our Supreme Court did in fact review that issue and ruled against us. However, this spring, the U.S. Supreme Court decided a case that strengthens our claim considerably, a case called Tennard v. Dretke at 124 Supreme Court 2562. So that is a significant change that will prevent litigation in the future.

SEN. MCDONALD: Thank you.

SEN. KISSEL: I would like to hear the other side, Mr. Chairman.

SEN. MCDONALD: That is what I was going to do, Senator.

STATE'S ATTORNEY PATRICIA FROEHLICH: With respect to Representative Kissel's concerns, the language in Subsection J of Raised H.B. 6488, is one of those subjects I think where we will have confusion, litigation, interpretation.

That subsection proposes to allow a judge, if a jury says they are deadlocked after a reasonable period of time, to discharge that jury and to impose a sentence of life without the possibility of release.

Anytime we have in statutes a reasonable period of time, reasonable minds will differ. There will be argument over what is a reasonable time. Who is to decide that? Is it defense counsel? Is it the prosecution? Is it the judge? Is it three days? Is it three weeks?

SEN. KISSEL: On the three points that Attorney Gold spoke to, do you have objections to the statements that they are more in the nature of

clarification, and that they wouldn't be fertile grounds for future appeals, that they might actually have because part of it is codification of court?

STATE'S ATTORNEY PATRICIA FROEHLICH: I agree that some of these issues are the codification of Supreme Court rulings, and specifically with respect to Subsection J, the one I was just talking about, the Bridgeport Court involving the murder of the little boy and his mother. The Supreme Court just reversed that and remanded for a new penalty phase because the Trial Court inappropriately discharged that jury and decided it will impose a sentence of life without the possibility of release.

SEN. KISSEL: I know we are pushing on time, and we have a committee meeting scheduled. What would be very helpful to me is if representatives of both the Public Defender's Office and State's Attorneys, specifically in regards to 6488, which is the umbrella bill with minor changes, if I could learn from you folks what you have no objections to in that proposal, if anything. Then I can make a decision based on that.

SEN. MCDONALD: Thank you. And let me say I am going to be able to push this for another ten minutes and then we are going to adjourn this portion of it. So I apologize and appreciate the courtesy of my colleagues, but please keep any questions very short. And, Representative Dyson, you were next.

REP. DYSON: Thank you very much. Pleased to have you here, and it's good to hear this exchange between the two, and, obviously, each of you have a strong opinion about, you take what you do in a strong kind of way. I thought I heard that, from Mr. Connelly, you know, if I didn't know better, I would say he was about to get on the soapbox. But I just wanted to preface my remarks, so I wanted to make sure I am not offending anyone.

There were a few things here that kind of haven't been answered. Mr. Smyth pointed them out, and yet I haven't heard rebuts on them. The issue of representation, somebody could have good representation, and others may not. And I would not care to use the present situation today, but that issue does manifest itself.

The issue of a fair trial, and whether or not any arbitrariness that may be there, is a factor that may be worthy of consideration in terms of removing the death penalty, if there is enough of that there. The issue was raised earlier about whether you would be in a rush or not, in a hurry to get things done or not, really speaks to the potential for a mistake. And so the arbitrariness of all of this, I haven't heard anyone respond to that.

So I am not about to ask a question. I am just pointing out some things that have not been answered, and it speaks to, I think, something that is worthy of a whole lot of consideration, representation, whether or not it is fair, arbitrary, whether or not mistakes are involved, and how someone decides you are going to do something in a given point in time or not. Thank you very much, Sir.

SEN. MCDONALD: Thank you. We will have an opportunity to debate that in our committee meetings. Senator Newton?

SEN. NEWTON: Thank you. To Mr. Connelly, and I echo what Representative Dyson said, the question I have is what institutes, if a person is arrested, they come in competent, you know they are competent to go to jail and stay, when do they become incompetent, such as in some of the incidents we have seen?

STATE'S ATTORNEY JOHN CONNELLY: There is a standard for competency to stand trial, and we have competency hearings on a fairly regular basis to make sure that someone understands the charges against them, someone knows the nature of the proceedings.

If you are talking about the competency in the Ross matter, I think that is a different type of competency. It is not the competency to understand the nature of the charges. We have those hearings. If someone raises it at the trial court level, the question of competency, the judge will conduct a hearing to determine whether or not the person is competent.

SEN. MCDONALD: Thank you. Senator Meyer?

SEN. MEYER: Mrs. Froehlich, hi. I would like to get your reaction to the question as to whether or not the entire criminal justice system in Connecticut hasn't been shown to be conflicted over the death penalty, taking into account the following facts.

Number one, and most interesting, I think, I heard your statement that you have not asked for the death penalty in the cases that you have tried.

STATE'S ATTORNEY PATRICIA FROEHLICH: In the capital cases that I have tried.

SEN. MEYER: In the capital cases you have tried, you have not asked for the death penalty.

STATE'S ATTORNEY PATRICIA FROEHLICH: I couldn't prove an aggravated factor, so I couldn't ask for it.

SEN. MEYER: Secondly, that this state has not imposed a death penalty for over 40 years. Third, that it has somehow taken us 20 years, in the current Michael Ross case, to get to the point of execution. Fourth, when we execute in Connecticut, we seem to do it in the middle of the night. And fifth, that the cost to the state of executing somebody appears to be over $2 million.

I just ask you your reaction as a prosecutor to those facts, and whether or not it wouldn't be a reasonable conclusion that under those facts, in the state of Connecticut, the death penalty has just proven unacceptable?

STATE'S ATTORNEY PATRICIA FROEHLICH: With respect to the fact that I have not sought the death penalty, I should share with you, in greater detail, the fact that in each case, with respect to the seven defendants that I have charged with capital felony, I have had extensive discussions with the experts.

For example, in the mass murder, the five-victim case, I could not prove an aggravating factor because each of those victims, after having been shot in the head at close range, execution style, and after having four of their bodies lit on fire, they were dead before the house was lit on fire.

How did we know that? The experts told us. The medical examiners told us there was no soot in their lungs. I could not ethically pursue the death penalty knowing I couldn't prove that the crime had been committed in an especially cruel, heinous, or depraved manner.

In more recent cases, I have met with 5 of the most senior of the 13 State's Attorneys to discuss the facts, the law, the reality. Indeed,

it was the State's Attorney for the Judicial District of Waterbury, Mr. Connelly, who pointed out in one of my most horrible crimes, where it was clear to me that the murder was committed in an especially cruel, heinous, or depraved fashion, that while that was true, we may be putting the cart before the horse because I probably couldn't prove the predicate crime of capital felony. I could prove felony murder.

So I think, with respect to the fact that I haven't asked for it, it's not because where I am geographically located, either in Danbury or now out in Windham. We don't choose the crimes that are committed in our judicial districts, nor do we choose the manner in which they are committed.

With respect to the fact that the state hasn't imposed it in over 40 years, and it has taken Michael Ross 20 for us to reach this point, you are correct. There is appeal after appeal, habeas after habeas, and it goes to one of Mr. Dyson's concerns on the issue of representation. Habeas corpus for ineffective assistance, it's studied carefully. Is it a fair trial? The appellate process reviews that.

I hope I have addressed his concerns in respect to arbitrariness. I can't answer you in your concern that, if we ever do execute someone, it will be carried out in the middle of the night because I have not participated in that policy making decision.

But with respect to the cost of execution, Mr. Connelly is correct. We are paid the same whether we are trying non-capital cases, capital cases, or performing our administrative duties. In each of our cases, our experts usually come from the State Forensic Lab. They are paid their state salary.

Where we have brought in witnesses from out of state, as we have done, we also do that in non-capital cases, so I have no specific knowledge that a capital case or a death penalty case would cost most than a non-capital or non-death case.

SEN. MCDONALD: Thank you very much. Senator Roraback, quickly, please.

SEN. RORABACK: Thank you, Mr. Chairman. Just one question for Mr. Smyth, which is on my mind. If someone has been sentenced to death row, and makes the determination that they choose, that they would wish to be executed, is that in and of itself evidence that they are incompetent?

CHIEF PUBLIC DEFENDER GERARD SMYTH: No.

SEN. RORABACK: Is the making of that decision prima fascia evidence of incompetence?

CHIEF PUBLIC DEFENDER GERARD SMYTH: No. Someone who is mentally competent does have a right to waive their appeals and volunteer to be executed, but there has to be a proper determination of whether or not they are, in fact, mentally competent before they can be executed.

SEN. RORABACK: So what kind of showing would they make to satisfy that standard, and to whom should that showing be made?

CHIEF PUBLIC DEFENDER GERARD SMYTH: Well, there has to be a full and fair and adversarial competency hearing, so that evidence on both sides of the question can be presented to the court and the court can

make a reliable determination of their competency.

The problem that exists in the Ross case up until now is that both sides, both the prosecution and the defense, were advocating for a finding that Michael Ross was mentally competent.

It would sort of be like having a trial where the prosecutor and the defense counsel both get up and argue to the jury that the defendant is guilty, and you conceal from the jury evidence that might suggest otherwise, and you ask them to make a decision. It is inevitable that the finding would be as the party's request.

SEN. RORABACK: So are you suggesting we should have a guardian ad litem appointed?

CHIEF PUBLIC DEFENDER GERARD SMYTH: Well, we attempted in the Ross case to act as next friend of Michael Ross, based upon the information we have, which we believe will demonstrate that he is mentally incompetent.

Now, finally, the psychiatrist who the state relied upon to make its finding of competency has reviewed the evidence that we presented in our offer of proof, and has said, in a affidavit that was filed in Federal District Court this morning, that given the content of these writings of Michael Ross, he can now not be certain that his conclusion is correct and that he needs to further interview Mr. Ross in order to make that decision. Fortunately, Mr. Ross is still alive and can be interviewed.

SEN. RORABACK: Thank you.

SEN. MCDONALD: Thank you. And I do want to thank each of you for your testimony today. And I want to apologize to members of the committee that we didn't have more time to have with these folks, but I am sure that each and every one of them will make themselves available to members of the committee to answer any questions in respect to these two bills. So thank you very much.

Whereupon the informational hearing was adjourned.