

STATE OF CONNECTICUT

NEW HAVEN J.D.
SUPERIOR COURT
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DOCKET NO.: CR07-0241860 : SUPERIOR COURT, PART A ^{2011 MAY 16 P 4: 12}

STATE OF CONNECTICUT : JUDICIAL DISTRICT OF NEW HAVEN

v. : AT NEW HAVEN

JOSHUA KOMISARJEVSKY : May 16, 2011

**MEMORANDUM IN SUPPORT OF
DEFENDANT JOSHUA KOMISARJEVSKY'S
MOTION TO CONTINUE JURY SELECTION**

The defendant Joshua Komisarjevsky has requested that the jury selection presently proceeding in his case be continued for a period of approximately three months. This memorandum is submitted in support.

The reason for this request is as follows. On May 12, 2011, Senator Edith Prague, the Assistant President Pro Tempore of the Connecticut State Senate, the Chair of the Senate's Aging, Labor, and Public Employees Committees, and a longtime opponent of the death penalty, announced that she had been visited by Dr. William Petit, told that the abolition of the death penalty in the state would have a devastating effect upon the present trial, and requested to change her affirmative vote with respect to abolition.

She accommodated Dr. Petit. In announcing her decision to change her long-held position, however, Senator Prague also observed of Mr. Komisarjevsky:

They should bypass the trial and take that second animal and hang him by his penis from a tree out in the middle of Main Street.¹

The Senator's withdrawal of support for the abolition bill doomed the bill's passage. It therefore received significant publicity. So, of course, did her call for a lynching by penis (a rather cruel and unusual punishment, to say the least), being reported in all the major newspapers of the state and on each of the local television newscasts.

In order to make certain that no one thought that her call for genital lynching was

¹See <http://hartfordcourant.tumblr.com/>

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an emotional outburst, made in the heat of passion after a talk with the survivor of a horrid crime, or a political hyperbole, not intended for serious consideration, or a misquote, the Senator repeated her call for a lynching the next day in an interview with NBC news² and she continued her call for a lynching throughout the course of the next day:

No, I'm not going to take it back. That man is a monster, and I don't feel anything for him is bad enough.

— CT state Sen. Edith Prague again, when asked Thursday afternoon whether she regretted her comments about Joshua Komisarjevsky and the death penalty.³

And again:

As for Komisarjevsky, Prague said, "What he did to that family is beyond sick. It's just evil. I just think he's a monster."⁴

And again

Sen. Edith Prague, D-Columbia, told NBC Connecticut on Thursday that she has no regrets regarding her statement this week that she'd like to see accused Cheshire murder suspect Joshua Komisarjevsky hung by his "penis" from a tree without a trial.⁵

We, of course, have no idea what Dr. Petit told the Senator concerning the crime itself and who may have informed him that the repeal of the death penalty may have made a death-penalty verdict in this case less likely. While Dr. Petit's advocacy for maintaining the death penalty is quite understandable, Senator Prague's comments are quite incomprehensible and patently crude. Her public comments were clearly reckless

²See www.nbcconnecticut.com/.../Prague-Hang-the-Animal-by-His-121670559.html - Cached

³See <http://hartfordcourant.tumblr.com/>

⁴"Prague's 'crude' comment prompts call for trial delay in Cheshire killings," *New Haven Register*, May 12, 2011.

⁵ See www.ctnewsjunkie.com/.../prague_not_backing_off_p-word_statement_on_komisarjevsky/ -

and undignified for an individual who is a member of the Connecticut legislature and her comments only serve to contribute to the mob mentality. If the senator truly did not care what people think of her reversal, she could have simply announced her reversal in a more responsible manner without need for anatomical reference. It is outrageous that an elected official of the senator's stature would publicly advocate for public torture and attempt to subvert the judicial process with such sensational remarks.

The *Hartford Courant* and *New Haven Register* and, we believe, other newspapers, allow reader comments following each news story about Joshua Komisarjevsky and those comments are frequently very similar to the Senator's call for Mr. Komisarjevsky's lynching. Prior to the Senator's stirring call for a lynching, those comments could be considered the views of fringe characters, maddened by the horrendous details of the murders, driven by rage to advocate mob execution without any of the careful, reasoned, dignified, judicial consideration which our law demands before it allows the state to take the life of one of its citizens.

Unfortunately, our history is blackened by instances of mob violence inflicted upon the unconvicted, almost always by hanging. The Senator's choice of lynching as punishment (rather than, say, burning at the stake or facing a firing squad) is a conscious reference to that sad history, giving the views of the would-be Komisarjevsky-lynchers a historical as well as a legislative legitimacy.

This clarion call for a lynching by a respected senior state senator lends respectability to those desiring to join her lynch mob. Those whom we had previously viewed as fringe have, with the senator's assistance, joined the mainstream. We, of course, fear that the senator's call for a lynching may gain recruits among venire persons.⁶

We are vividly aware that we cannot always ascertain whether a juror has or has

⁶ We also fear that the Senator's call for a lynching may have influenced jurors already selected, and will request that the Court question each juror individually in order to ascertain whether the Senator may have influenced them.

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not been recruited, at least mentally, for the senator's lynch mob. If someone is determined to execute Mr. Komisarjevsky, it is an easy matter to answer the voir dire questions in a way that suggests fairness, impartiality, and a willingness to follow the court's instructions. Our fear is that the senator's call for a lynching may induce venire persons who would formerly truthfully respond that they could not be fair and impartial to abandon veracity in order to advance Senator Pragues's view that "[Mr. Komisarjevsky]'s a monster and I don't feel that anything for him is bad enough." We are constantly aware of the example of venire person, Jenny Medina-Morris, who appeared fully fair and impartial, but against whom the defense exercised a peremptory challenge because her ability to comprehend the nuances of capital instructions appeared limited, and who, on being excused, screamed "Murderer! Asshole" at Mr. Komisarjevsky – and she served as a venire person *before* the Senator's incendiary remarks.

Because the senator's call for the genital lynching of Mr. Komisarjevsky, following soon after her conversation with Dr. Petit, is so inflammatory and comes from such an authoritative source, we respectfully suggest that some period during which the senator's remarks may be forgotten should be allowed. We respectfully request that jury selection be continued for three months so that the Senator's call for a lynching may slip from the mind of potential jurors.

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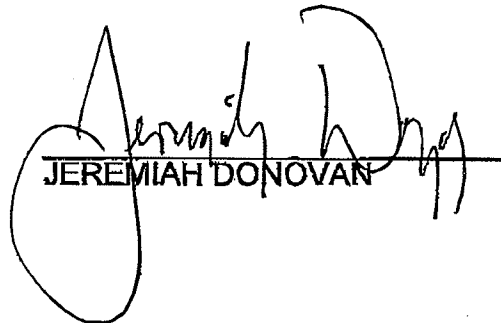
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CERTIFICATION OF SERVICE

This is to certify that the above and foregoing was hand delivered on May 16, 2011, to the State's Attorney, State's Attorney, New Haven County, 235 Church Street New Haven, CT 06510.



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