only to murder not punishable by death (as, for example, in a case where the State charges only second degree murder or specifically disavows any intention to seek the death penalty for a first degree murder charge) that should create no significant problem with respect to prosecutions where the death penalty may or will be sought. 7

As we have already noted, even if the inadvertent failure to amend §412 in the appropriate manner is held to have rendered that section altogether meaningless and of no application whatsoever, we do not perceive any substantial problems since its provisions are largely, if not entirely, unnecessary to the procedural conduct of murder trials in Maryland.

Having expressed the view that the inadvertent failure to amend §412 will not create any constitutional or other substantial problems, we must hasten to add that it is extremely unfortunate that such an error has been made in a bill of such importance. Notwithstanding our opinion that the error is not of major dimension, we are confident that defense counsel in capital cases will argue to the contrary and will use the error in their inevitable efforts to litigate the validity of Maryland's capital punishment law vel non and to contest the imposition of a death sentence on their particular client. Making this additional issue available to them can only prolong the litigation which is certain to occur over any such statute and further postpone the time when the penalties provided for therein can be carried out.

3. You have next directed our attention to a potential inconsistency in the portion of §413(b) dealing with the type of evidence which may be admitted at the sentencing proceeding. The statute provides that:

> "In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, and may include matters relating to any of the aggravating or mitigating circumstances enumerated in this section. Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence." (Emphasis supplied.)

You have correctly pointed out that the concepts of "relevance" and "probative value" have been used somewhat interchangeably in determining the admissibility of evidence, citing as an example the Court of Appeals opinion in Haile v. Dinnis, 184 Md. 144, 152 (1944).

The language employed in Senate Bill 106 is taken directly from the Florida statute upheld in Proffitt v.