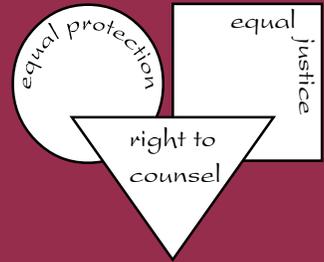


DISCOVERY

Newsletter of the Connecticut Division of Public Defender Services



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Photo by Spencer Sloan, reprinted with permission

The 25th Annual National Organization of Forensic Social Workers Conference



(from left) Megan Shortall, Elizabeth Cortese, Rebecca Kieran and Daphne Mills at the National Organization of Forensic Social Workers Conference in Hartford, CT May 29 - May 31, 2008

The Chief's Perspective

Welcome to the first edition of Discovery "Online" Newsletter. We hope that the new electronic format will allow us to reach a wider audience in a more timely fashion while conserving state funds. We encourage input from the field to inform colleagues, national indigent defense organizations, Connecticut legislators, and the public about the fine work undertaken by the Connecticut Public Defender Division.

At this writing, the Division is beginning to see the impact of the more stringent persistent offender legislation passed in the last special

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News From the Field

The 25th Annual National Organization of Forensic Social Workers Conference was held in Hartford from May 29 through May 31, 2008. The conference was held at the Marriott Hotel in Hartford, next door to the Convention Center. A conference planning committee, chaired by New Haven Public Defender Social Worker, Katie Heffernan, met for about a year to prepare the program. Several public defender and Department of Mental Health & Addiction Services social workers were on the committee. The keynote

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and regular sessions including PA 08-01 and PA 08-51. Prosecutors are filing more Part B informations and, as a result, we expect that many of our clients will face more enhanced sentencing penalties. Finalization of funding from the Office of Policy and Management for positions gained as a result of this legislation is also underway. In early summer, funding for these positions was in question due to the projection of a significant state deficiency. We are expecting to be back “on-track” for hiring new deputy assistant public defenders beginning in December of 2008.

The new positions will be very helpful to many public defender offices around the state that require more attorneys to effectively represent clients. Fourth quarter caseload reports indicate that several GA public defender offices are close to or over the Commission’s caseload goals. These include GA 14/Hartford, GA 23/New Haven, GA 7/Meriden, GA 21/Norwich, GA 4/Waterbury, GA 2/Bridgeport, and GA 3/JD Danbury. Several other GA offices are overburdened and require additional staff due to numerous specialized dockets that often operate simultaneously, including Youthful Offender, Domestic Violence, Gun, and Motor Vehicle Dockets. GA 15/New Britain, GA 20/Norwalk, and GA 10/New London are examples of the latter.

Escalating gun violence in major cities and increasing numbers of capital felony cases are also cause for concern about caseloads in several Judicial District Courts where public defender staff are consistently and greatly outnumbered by their prosecutorial counterparts. As of August 15, 2008, the total number of capital cases pending in Connecticut was forty-one (41). This includes twenty-five (25) cases where the state is seeking the death

penalty as opposed to a life sentence without the possibility of release. Public defenders and Special Public Defenders represent clients in all but three (3) of the forty-one (41) cases.

The Public Defender Commission has consistently held monthly meetings over the summer to address the needs of the Division.

In July 2008, the Public Defender Commission discussed the Governor’s imposition of a hiring freeze on the state’s Executive Branch and passed a resolution to review public defender vacancies on a case by cases basis. It was decided that the Commission will continue to fill positions if they are constitutionally necessary for adequate representation of clients as required by the settlement agreement in the class action lawsuit, *Rivera v. Rowland, et al.*, or critical to the administrative operation of the Division.

The biennial budget process for 2009-2011 begins anew in September and will include our request for additional juvenile positions in anticipation of final implementation of P.A.07-4. This legislation will raise the age of juvenile jurisdiction in Connecticut from sixteen to eighteen years of age as of 2010. Also expected in the next legislative session are renewed efforts by law enforcement and the Division of Criminal Justice to expand the use of the investigative grand jury process, investigative subpoenas, and to limit habeas corpus. Our Office will also be reviewing other outstanding needs of the Division and clients in order to propose additional legislation and budget options to the Legislature and the Office of Policy and Management.

Susan O. Storey
Chief Public Defender

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Raise the Age of Juvenile Jurisdiction: Planning for 2010

The planning for the change in the age of juvenile court jurisdiction is well underway. On January 1, 2010, P.A. 07-4 changes the jurisdiction of the juvenile court to include 16 and 17 year olds. The legislation established a Juvenile Jurisdiction Planning and Operations Coordinating Council (JJPOCC), chaired by Representative Toni Walker of New Haven and OPM Secretary Robert Gennario. The group includes all stakeholder agencies, juvenile justice advocates, law enforcement and community members working in three subcommittees.

The Prevention Subcommittee has been working with the Juvenile Justice Advisory Committee to propose funding for programs aimed at young people who are not yet involved in the system. These programs would be targeted at older youth who are not currently able to access juvenile services. The Services Subcommittee has done a survey of available programs in the state and has applied Results Based Accountability to make recommendations on expanding and adding programs for the new population. Finally, the Interagency Subcommittee has focused on drafting legislation and monitoring the procurement of new facilities for the juvenile courts. A bill that would have begun the changes necessary for implementation was proposed in the last legislative session. That bill would have allowed police the discretion to release a juvenile with a summons without having a parent present. It also tightened the criteria for admitting a child in to detention and made failure to appear a delinquency offense. It made significant changes in the definition of a Serious Juvenile Offense (SJO), eliminating the catch all section of C.G.S. Sec. 53- 21 Risk of Injury to a Minor and other offenses that the police often added to force children into detention centers. Unfortunately, in spite of wide bipartisan support, the bill got tied to the controversy around the operations of the Connecticut Juvenile Training School and did not come up for a vote. The JJPOCC plans to have this bill reintroduced when the new session begins in January 2009.

Facilities is a hot topic of discussion for everyone involved in the juvenile justice system. Although most of the current juvenile court buildings would be adequate to handle the increased case flow, there is no room to house the essential new staff. We estimate that the total intake of the juvenile courts will double once 16 and 17-year-olds

are added to the system. The Judicial Branch, which is responsible for the facilities, plans a combination of new obtained lease space and renovation to accommodate the expanded staffing and increased caseloads.

In many jurisdictions, there will be a regional “youth court” that will handle most of the 16 and 17-year-olds. These will be regular juvenile courts in session at remote locations. For example, the Kendrick Avenue Courthouse in Waterbury has no room for additional staff and does not have lock up space to accommodate more juvenile detainees. The “youth court” will be held in the old juvenile court building on Prospect Street. This creates a significant staffing challenge, since there will be two courthouses in session at the same time. We are working to ensure that there are enough lawyers and support staff to appropriately staff all the new facilities. The Judicial Branch’s plans have been in constant flux, as they attempt to secure leases and money to effectuate these changes. However, it’s hard to move forward when the plans keep changing! Hopefully, there will be a final plan in place before OCPD submits the budget requests to implement Raise the Age.

There are additional issues to resolve. Under the current version of the law, some motor vehicle cases will remain in adult court. This will maintain the revenue from fines and avoid the scrutiny and evaluation of the juvenile court. One proposal would give judges the discretion to transfer these cases to the juvenile docket if there was a possibility of jail time. A better plan would be to handle all finable offenses in infractions court and keep criminal offenses in juvenile court.

Another hot issue involves the debate over the rules of custodial interrogation. C.G.S. Sec.46b-137 requires that a parent be present before any statement taken from a child can be used in court. The police and the prosecutors are not in favor of this rule. They disagree with raising the age of juvenile jurisdiction and are motivated to prosecute 16 and 17 year-olds without the same protections as the younger juveniles. Law enforcement departments have also argued that they should be permitted to question all children, regardless of age, without parents present, subject to normal criteria for having statements suppressed. The law, as written, requires parents to be present for all juveniles of any age. We expect a contrary proposal before the legislature this session and are prepared to argue against law

enforcement's efforts. Our laws appropriately prohibit a 16-year-old from buying cigarettes and disallow him from getting a tattoo without a parent's consent. Logic and sense would follow that the same child is too immature to decide whether to waive his/her constitutional rights!

This past June at the LOB several legislators attended an OCPD sponsored seminar on Competency to Stand Trial for Children and Youth. We were fortunate to host Dr. Thomas Grisso, one of the nation's leading experts, as a presenter for the day. He included suggestions for model statutes and polices. Hopefully, all the powerbrokers were listening! While this is important for the juvenile age change, it also has immediate relevance. A judge in Waterbury Juvenile Court has ruled that C.G.S. Sec. 54-56b does not apply to juveniles. The state has appealed this ruling, which is being defended by

Attorney Jennifer Leavitt. A multi-agency committee is drafting a juvenile competency proposal for this legislative session.

Raising the juvenile age will not fix all the problems youth face in the criminal courts. The Youthful Offender law is still interpreted as giving the prosecutors discretion over eligibility. The juvenile transfer law is not affected by the age change, making 14 and 15-year-olds eligible for the adult criminal docket at the will of the state. Proper implementation of the change is an important step but there is still plenty of work to be done!

**Christine Rapillo,
Director of Juvenile Delinquency Defense**

Special Public Defender News

Training Events for SPDs

A full calendar is on tap for the 2007-2008 Special Public Defender Training Program. This year's Training Program will kicked-off on September 23 with the latest edition of *Collateral Consequences of Arrest, Incarceration & Conviction*. This seminar is being offered by the Director of Training, KK Meyer, to public defenders and contract Special Public Defenders. It was an all-day session, during which the expanding realm of collateral consequences that victimize criminal defendants, were explored and discussed.

An advanced awareness of this seminar's subject matter is an absolute must for today's criminal defense practitioner. The effect of many executive, legislative and judicial initiatives upon significant numbers of criminal defendants has been draconian. Intended and unintended consequences have often permanently devastated the lives of persons and the families of those persons, who have become entangled in the criminal justice system. To a greater and greater degree, the negative impact of America's criminal justice system on many members of society has begun to resemble the relentless victimization that was dramatized in *Les Miserables*. This seminar will equip attendees with the necessary insight to develop strategies that can negate many of the collateral consequences, which accompany arrest, incarceration and conviction.

On October 16, Legal Services Unit former chief, G. Douglas Nash and the current chief, Martin Zeldis, will, once again, present the Training Program's Appellate Seminar for SPDs. Veteran presenters and a dynamic keynote speaker will cover critical areas of concern for appellate attorneys.

A November 20 Trial Advocacy seminar has also been scheduled. Ira Mickenberg, Director of the National Defender Training Project, will return to headline a stellar faculty that will include some of the most accomplished members of Connecticut's criminal defense bar.

The semi-annual Basic Orientation Course for Special Public Defenders will take place in January and in June. Since the course's inception, KK Meyer has lectured on Alternative Dispositions and OCPD Legal Counsel, Deborah Del Prete Sullivan has covered the topic of ethics. Also, staff of the Special Public Defender Unit, Karma Daigle and Kelly Gray will guide the attendees through the administrative process.

During 2007-2008, SPD seminars and workshops will also cover Habeas Corpus Matters and Juvenile Matters. Director of Juvenile Delinquency Defense, Christine Rapillo and Acting Chief of the Habeas Corpus Unit, Adele Patterson, will lead those sessions. As in the past, scholarships have been planned for CLE offerings outside of the Division of Public Defender Services. Presentations such as the annual *Criminal Litigation Seminar*, sponsored by the Connecticut Trial

Lawyers Association, the Henry C. Lee Institute's annual *Arnold Markle Symposium* and a Connecticut Criminal Defense Lawyers Association seminar have been targeted for scholarships.

Additional joint trainings for public defenders and Special Public Defenders will also be sponsored by the Director of Training. In addition to the previously mentioned *Collateral Consequences of Arrest, Incarceration and Conviction*, this list of trainings will include the noteworthy *Calculations of Sentences & Eligibility for Release* seminar.

The goal is to accommodate all SPDs, who desire to attend the sessions. However, seating capacities are limited and registrations are generally accepted on a first-come, first-serve basis. Special Public Defenders are urged to stay tuned and to register as soon after seminar and workshop postings as possible.

Preston Tisdale,
Director of Special Public Defenders

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Capital Defense and Trial Services

The CDTs Unit: New Staff and Pending Cases

At the present time the agency is representing seventeen (17) clients accused in capital felony prosecutions. The Unit is representing eight (8) clients, our courthouse colleagues are representing four (4) clients and Special Public Defenders are representing five (5) clients as well. Additionally, private counsel are representing clients in three capital felony prosecutions. In one of the SPD cases, *State v. Erik Martinez*, (Hartford JD) the defendant accepted a plea offer in a triple homicide "for hire" capital prosecution. In return for pleading guilty to three counts of murder and agreeing to be a cooperating witness, Mr. Martinez faces a sentence of 25 to 40 years imprisonment. He is awaiting sentencing. *State v. Allen James* is scheduled to begin trial in September, 2008 in the New London JD. Also, in the Bridgeport JD *State v. Richard Roszkowski* is scheduled for trial in September/October, 2008. The agency is appealing (or preparing to appeal) the death sentences

imposed on clients in five (5) cases: *State v. Lazale Ashby*, (Hartford JD); *State v. Jessie Campbell*, (Hartford JD); *State v. Russell Peeler*, (Fairfield JD); *State v. Eduardo Santiago*, (Hartford JD) and *State v. Todd Rizzo*, (Waterbury JD). The appellate briefs have been recently filed on behalf of Eduardo Santiago and Todd Rizzo seeking the reversal of their death sentences, and in *State v. Robert Courchesne*, (Waterbury JD) the appeal was argued several months ago and we are awaiting the Supreme Court's decision.

There are several agency clients on death row whose death sentences are being challenged in post-conviction in state habeas corpus petitions. They are: Daniel Webb, Sedrick Cobb; Robert Breton and Richard Reynolds. Their habeas corpus petitions are presently still being litigated in the habeas trial court. They are all represented by Special Public Defenders attorneys. Additionally, there is a consolidated habeas corpus action being litigated in anticipation of trial on behalf of eight (8) death row inmates. This post-conviction action is *In Re: Claims of Racial Disparity v. Commissioner of Correction*. All of the inmates are represented by Special Public Defender attorneys. The litigation is presently at the stage of the exchange of discovery and the taking of depositions of expert witnesses.

Finally, I am happy to report that the Unit has a new investigator, Mark Masse. Mark has replaced Peter Palmer who left the Unit after eight years to work with Karen Goodrow, Michael Lefebvre and Joan O'Rourke at the Innocence Project. They got themselves one of the best investigators in the agency. Pete is dedicated, tireless and very much the client's best friend. It came as no surprise when Karen chose him to be their investigator. Having worked together at the Unit, she knew that he is a first class person who goes all out for the clients. We, too, got lucky having Mark join us. Like Pete he has tireless enthusiasm and great concern for the clients. He is a former Meriden police officer who previously spent five years working with Tom Ullmann and the New Haven JD office staff. It was with great reluctance and the highest praise that Tom and the office said goodbye to Mark.

Patrick Culligan,
Chief of Capital Defense and Trial Services



Outgoing President William Holt of the National Organization of Forensic Social Workers Conference, welcomes incoming President Stacey Hardy-Desmond
 Photo on right: Stacey Hardy-Desmond congratulates Ina Dorman



speaker for the opening day was James Calvin Tillman, who was officially exonerated by DNA testing on July 11, 2006. With the assistance of the public defender Connecticut Innocence Project, Tillman walked out of prison after serving 18 years on a rape and kidnapping conviction. The keynote for the second day, Dr. Abigail Baird, Assistant Professor of Psychology at Vassar College, presented research on neural development during adolescence and how it influences emotional and cognitive information to inform decision-making. Both speakers received rave reviews.

Mary Hoban, Chief Social Worker, along with Norma Wassel, Director, Social Services Advocates,

Committee for Public Counsel in Boston Massachusetts, presented a workshop on the role of social work in public defender systems. In Connecticut, the social work staff has been reaching out to other state agencies in an effort to more effectively coordinate services for their clients. Last fall the social work staff meeting featured, Ombudsmen, Deborah Collins and Karen Keatley, based at Manson Youth and York Correctional Institutions of the Department of Children and Families (DCF). They discussed their role with youth in DCF custody in ensuring that services are provided and their special needs continue to be addressed when they are incarcerated in an adult facility. As a result of that meeting, we were invited to

tour both York and Manson correctional facilities. Those tours occurred in November 2007 and May and June 2008. It was important to see inside the facility, beyond the confines of where we interview our clients. We were able to view their housing units, school and other service units. We also met with discharge planners from the UConn Health Center Correctional Managed Health Care. These mental health professionals, based at several of the correctional facilities, assist in discharge planning for clients being released from corrections in addition to assisting pretrial clients. It is advantageous for public defender social workers to collaborate with DOC professionals when clients are discharged to oversee questions about medication and referrals to local mental health agencies. Joseph O’Keefe, Director of Reentry Services for Department of Corrections, spoke at a social work staff meeting in the spring. He outlined the services available to clients when they are preparing for discharge in a flow chart with the DOC counselors’ names and the types of services provided.

Another informative speaker was Jim Tackett from the Military Support Program at DMHAS. This

program was established by the Connecticut General Assembly to address the mental health needs of National Guard and Reserve personnel affected by the deployment in Operation Enduring Freedom and Operation Iraqi Freedom. The program is unique in that Connecticut is the first state to provide mental health counseling to its soldiers and their families. The central feature of the program is a statewide panel of over 225 licensed clinicians who are ready to provide confidential counseling services. This panel of clinicians was trained specifically to deal with the stress related to deployment, service in a war zone and homecoming. Collaboration with these specialized mental health providers will prove to be most beneficial to the veterans we represent. Our social workers are now familiar with the referral process, and are available to answer questions and better assist veterans involved in the criminal justice system.

**Mary Hoban,
Chief Social Worker**

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Training Department

Update on Division Training

On September 16 we had a meeting for new mentors designed to encourage and enlist people to join the Mentor Program. The plan is that every new attorney in the Division will be assigned a mentor who does not work in his/her office and is available to meet, answer questions and offer advice. The program has been very beneficial forming many long lasting relationships. While we haven’t had a mentor meeting in ten years, we have successfully established mentor/mentee relationships. It would be great to expand our list of mentors. If you haven’t signed up, or if you missed the meeting and are interested, please contact either KK or me (Sue). We would be happy to talk to you about the program.

This summer we sent six people to trial schools. Three attended the National Criminal Defense College in Macon, Georgia and three went to the Western Trial School in Wyoming. We received truly positive feedback: “I can’t believe how hard I worked and how much I learned, I finally get it;” “getting feedback was

extraordinarily helpful;” “spending time with public defenders from around the country was great.” NCDC is two weeks and Western is one week. Both schools are designed to assist lawyers of varying skill levels work on their craft and become more confident trial lawyers. Our fingers are crossed that the budget will allow us to send more attorneys to trial schools next year.

The first week of June is devoted to our own trial school for new lawyers. The success of this program is dependent upon a true group effort. The twelve participants, were taught by several attorneys. Some instructors shared their expertise with lectures on different aspects of a trial, while others led small group exercises providing feedback to the participants as they practiced their individual questioning styles. Additional employees generously gave their time to act as jurors, defendants and witnesses. Everyone worked hard to help our new lawyers gain experience in trial preparation and presentation.

We presently have fifteen people actively engaged in new lawyer training. We often need additional participants to role-play specific characters. Volunteers have appreciated the opportunity to be questioned by an

attorney and have found it to be an enlightening experience. We also need lawyers to lead small group sessions, providing feedback and guidance. If you are interested in becoming involved with training, please let KK or me know as we are always looking to add to our list of volunteers.

New Case News is alive and well. To date we have summarized over 1,000 Connecticut Appellate and Supreme Court cases. We have a schedule that provides for new cases to be summarized within a week and a half of the on-line publication. Our goal is to give you fast and current information; we are doing our best to live up to that time frame. We are also sending out notices when the updates have been posted, as a gentle and not so subtle way of getting you to check out the site. Remember the site is password protected. If you have any questions, concerns or feedback regarding *New Case News* please contact Sue. She is more than happy to help anyone navigate the site, free of charge!

New trainings are in the works; at the end of November and beginning of December we are planning a two-day training (not consecutive days) on defending sexual assault cases. On the first day we will discuss issues pertaining to sexual assault cases when the complainant is young, use of videotaped interviews and objection strategies. The second day is designed to explore negotiation strategies and how to deal with issues relating to probation and sex offender registration.

On September 23 we had a day-long training on the issues of the many collateral consequences of arrest, incarceration and conviction. We will be discussing how certain convictions interfere with public benefits, federal criminal charges, immigration and more. Public Defender staff are welcome to these training sessions, please call to register.

Susan Brown,
Assistant Director of Training

Legislative Update

Highlights of the 2008 Legislative Session

Although the 2008 session was labeled as a “short session”, sweeping changes to the criminal laws in Connecticut were adopted. Overall criminal justice reform was sought by legislators advocating for their constituents in the aftermath of the arrests in Cheshire. Although Connecticut did not adopt a 3 Strikes law, it radically rewrote the persistent offender statutes and created greatly enhanced penalties. Other legislation passed was in regard to hate crimes, sex offenders and family violence.

The state did not adopt a new budget. As a result, the Division of Public Defender Services was required to live within the biennial budget passed in the 2007 session. However, persistent offender legislation provided additional funding to both public defender and prosecutor offices. Funding for ten (10) new deputy assistant public defenders was provided as a result of the passage of *Public Act No. 08-51, An Act Concerning Persistent Dangerous Felony Offenders and Providing Additional Resources to the Criminal Justice System.*

The 2008 legislative session was also the final session that Special Deputy Assistant Public Defender **DANA CLARK** would be advocating on behalf of the Division. Attorney Clark came to the Office of Chief Public Defender in 2003 as a participant in the Quinnipiac School of Law Externship program conducted by Professor Cindy Slane. After graduation from law school, Attorney Clark began working with this office at the 2004 legislative session. Her information gathering skills and good will assisted this office in advocating for public defender issues. Attorney Clark will be missed. We all wish her well in her future.

This article will highlight only some of the legislation passed during the 2008 Legislative Session in Connecticut. For a more detailed summary, please go to: www.ocpd.state.ct.us/ and click on “Legislature 2008”. Once there, click on “OCPD Legislative Summary”.

January Special Session:

January Special Session, Public Act No. 08-1, An Act Concerning Criminal Justice Reform

creates a new offense of Home Invasion, a class A felony for which a mandatory minimum sentence of ten years imprisonment is required to be imposed, enhances a burglary in the first degree statute to a B felony whenever a person “enters or remains unlawfully in a dwelling at night with intent to commit a crime therein” and prohibits a person convicted of home invasion or burglary in the 2nd degree from parole eligibility until he/she has served 85% of his/her sentence of imprisonment.

The legislation also increases the number of members of the Board of Pardons and Paroles and creates additional background criteria and formal training for Board members, requires the Board to employ at least 1 psychologist, requires the Office of Victim Services of the Judicial Department to assign two (2) victim advocates to assist the Board on a full-time basis and requires Corrections to provide videoconferencing between the Board of Pardons and Paroles and each of the correctional facilities by January 1, 2009.

The legislation also adds numerous charges to the mission of the Criminal Justice Policy Advisory Commission (CJPAC) in areas including reentry, programs education, employment, health care and general support for persons who are released from incarceration.

Also created is a supervised diversionary program for persons with psychiatric disabilities accused of a motor vehicle offense or a crime for which a term of imprisonment can be imposed. Upon satisfactory completion of the program, the defendant can apply for dismissal of the charges.

2008 Regular Session:

Public Act No. 08-51, An Act Concerning Persistent Dangerous Felony Offenders and Providing Additional Resources to the Criminal Justice System provides sentence enhancements to the persistent offender statutes. It requires the court to sentence a person found to be a *persistent dangerous felony offender* to “(1) . . . a term of imprisonment that is **not (A) less than twice** the minimum term of imprisonment authorized for such crime **or (B) more than twice** the maximum term of imprisonment authorized for such crime **or forty years, whichever is greater**, provided, if a mandatory minimum term of imprisonment is authorized for such crime, such sentence shall include a mandatory

minimum term of imprisonment that is **twice** such authorized mandatory minimum term of imprisonment.”

If a person has been found to be a persistent dangerous felony offender **and twice convicted** previously “at separate times prior to the commission of the present crime” **and “imprisoned** for any of the crimes enumerated in subsection (a) of this section, as amended, the court is now required to sentence such person to a term of imprisonment that is **not less than three times** the minimum term of imprisonment authorized for such crime **or more than life**, provided, if a mandatory minimum term of imprisonment is authorized for such crime, such sentence shall include a mandatory minimum term of imprisonment that is three times such authorized mandatory minimum term of imprisonment.”

The legislation also provides additional resources to various agencies to implement this legislation including \$512,000 to the Division of Public Defender Services for FY 08-09 for 10 new deputy assistant public defenders.

Public Act No. 08-102, An Act Concerning Probation amends the maximum period of time a person may be ordered supervised on probation, permits the court to terminate probation sooner after consideration of a progress report from the probation officer, orders a person charged with violating probation to comply with the same conditions throughout the pendency of the violation of probation proceeding and requires that a violation of probation charge be scheduled for a hearing or be disposed of not later than 120 days after the date of arraignment, unless good cause is shown.

Public Act No. 08-54, An Act Concerning Sexual Offender Name Changes prohibits a Superior or Probate Court from ordering or allowing a person who is required to register as a sex offender from changing his/her name unless he/she provides the required notice and swears that the name change is not requested in order to avoid the consequences of a criminal conviction.

Public Act No. 08-143, An Act Concerning The Compensation of Wrongfully Convicted and Incarcerated Persons, the Duties and Duration of the Sentencing Task Force and the Preparations of Racial and Ethnic Impact Statements defines the criteria for eligibility, statute of limitations and procedure to present a claim for wrongful conviction compensation to the Connecticut Office of Claims Commission. Once a person has established by a preponderance of the evidence that he/she is eligible to receive wrongful conviction compensation, the Claims Commissioner is required to

order “immediate payment” of a sum as determined by the Commissioner which can include damages suffered and the cost to assist the person’s re-entry into the community.

The legislation also requires the Connecticut Advisory Commission on Wrongful Convictions to “*monitor and evaluate the implementation of (1) the procedure for the compensation of wrongfully incarcerated persons established under section 1 of this act, (2) the pilot program to electronically record the interrogations of arrested persons, and (3) eyewitness identification procedures that, when practicable, use a double-blind administration wherein the person conducting the identification procedure is not aware of which person in the photo lineup or live lineup is suspected as being the perpetrator of the crime.*” Lastly, it requires a recommendation of whether the Sentencing Task Force should be made permanent and an articulation of the goals, procedures and membership should the Sentencing Task Force be made permanent and requires a racial and ethnic impact statement for all legislation which impacts on the population of the Department of Correction (DOC).

Public Act No. 08-32, An Act Concerning Teenage Drivers places restrictions on persons operating with a learner’s permit in regard to carrying certain passengers, increases from 20 to 40 hours of “behind-the-wheel” training required for 16 or 17 year-olds issued a learner’s permit on or after August 1, 2008 and requires a parent or guardian to attend 2 hours of driving instruction with his/her 16 or 17 year-old.

The legislation also removes from Youthful Offender status (ages 16 or 17) anyone charged with (1) negligent homicide with a motor vehicle; (2) evading; (3) operating under the influence; and/or (4) operating by a person under 21 with blood alcohol content exceeding two-hundredths of one per cent.

Public Act No. 08-47, An Act Waiving Court Fees for Criminal Records Provided to Federal Public Defenders exempts Federal Public Defender offices from paying a fee for a certified criminal record.

Public Act No. 08-49, An Act Concerning Hate Crimes creates a new crime for a person to place a noose or a noose simulation on public property or private property without the owner’s written permission, if done with the intent to “intimidate or harass any other person on account of religion, national origin, alienage, color, race, sex, sexual orientation, blindness or physical disability”.

Public Act No. 08-67, An Act Concerning the Protection of Family Violence Victims in Family Relations Matters and the Notification of a Family or Household Member After a Motor Vehicle Fatality permits testimony to be taken through the use of videoconferencing or outside the presence of a party in another room located in the courthouse, outside of the courthouse or out of state in certain cases where a protective, restraining or standing criminal restraining order is in effect on behalf of a child or party and the *other party* is subject to such order.

June 11 Special Session:

June 11 Special Session, Public Act No. 08-3, An Act Concerning Comprehensive Ethics Reforms permits the court to order a reduction of a “public official’s” pension if he/she is convicted of certain criminal offenses while a public official.

The 2009 Legislative session will begin on January 7, 2009 and end on June 3, 2009. The session, being an odd numbered year, is a budget session in which a biennial budget will be adopted. As to substantive law changes, this office has already received information that there will be attempts to reform habeas corpus and the grand jury system and to give prosecutors the power to issue investigative subpoenas. As in the past, this office will be testifying in opposition to proposals which would violate the current state and federal constitutional protections afforded to the people of Connecticut.

**Deborah Del Prete Sullivan,
Legal Counsel**

Human Resources

Appointments

Since the last issue, the following individuals have been appointed to new positions within the Division:

11/09/07 **JENNIFER CARLSON** GA 20 (Norwalk)
Investigator I

Jennifer started in the Division as a temporary investigator in GA 10 New London.

11/14/07 **JOHANNA CANNING** GA 2 (Bridgeport)
Deputy Assistant Public Defender

Johanna comes to us from private practice and also served as a temporary assistant clerk with the Judicial Branch. She worked the majority of 2007 as a temporary attorney in the Habeas Corpus Unit.

11/16/07 **WENDY MORISANO** Hartford JD
Investigator II

Wendy worked as a Newington Police Officer and as a private investigator before beginning her service with the Division as a temporary investigator in the Hartford JD.

12/03/07 **JOHN CIZIK, JR.** Hartford J.D
Assistant Public Defender

John came to us in 1996 after serving as a temporary assistant clerk with the Judicial Branch. He has worked in the Middletown, Bantam and the Waterbury JD public defender offices.

12/03/07 **MICHAEL ISKO** New Haven JD
Senior Assistant Public Defender

Mike began his career with the Division in 1987 with the Appellate Unit. He has served in the Waterbury Juvenile, GA and JD offices and spent the last twelve years with the Hartford JD. He is an accomplished trial attorney and a DNA resource for other Division attorneys.

12/21/07 **MICHAEL LEFEBVRE** OCPD (Hartford)
Assistant Public Defender Connecticut Innocence Project

Michael came to us from private practice. He has also taught as an Adjunct Professor at UCONN Law, served as a Police Instructor, a Victim Compensation Commissioner and spent ten years as an East Hartford Police Officer.

12/28/07 **LESLIE CAVANAGH** Waterbury JD
Assistant Public Defender

Leslie has been with the Division since 1998 and has served in New Haven, Waterbury and Milford.

01/04/08 **JOSEPH BIONDI** Fairfield JD
Investigator II

Joseph came to us after a twenty-three year career with the West Haven Police Department. He was assigned as a Crime Scene Unit Detective for thirteen years.

01/11/08 **CHARLENE MCBRIDE** New Haven JD
Public Defender Secretary

Charlene was promoted to Public Defender Secretary after serving as a clerk in the New Haven J.D. office since 1987.

02/01/08 **PETER PALMER** OCPD (Hartford)
Investigator III Connecticut Innocence Project

Pete has been an investigator with the Division since 1992. He has served in New Britain, Windham and the Capital Defense Unit.

03/14/08 **KELLY GRAY** OCPD (Hartford)
Part-Time Public Defender Secretary

Kelly comes from the private sector and most recently worked for the Community Renewal Team before starting as a per diem in 2007.

04/11/08 **MARK MASSE** OCPD (Hartford)
Investigator III Capital Defense and
Trial Services Unit

Mark has been with the Division since 2003. He has worked at Middletown Juvenile and the New Haven JD. Before joining the Division, he served with the Meriden Police Department.

05/01/08 **BARRY BUTLER** Stamford/Norwalk JD
Public Defender

Barry has been with the Division since 1987. He has worked in the Bridgeport G.A 2., Bridgeport JD and the Capital Defense Unit. Barry is one of the Division's most experienced trial attorneys.

05/23/08 **MICHAEL CARBINE** New Haven JD
Investigator II

Michael worked with the Community Renewal Team in Derby before starting with the Division. He has worked in Danbury and in both the Waterford and Willimantic Juvenile offices.

05/23/08 **FILOMENA SULLIVAN** Waterford/Willimantic
Investigator I Juvenile Matters

Filomena started with the Division as a per diem investigator in the New London GA before receiving a permanent appointment to Waterford/Willimantic Juvenile.

08/01/08 **CLORESSA GOLDSON** GA 23 (New Haven)
Public Defender Clerk

Cloressa was most recently employed by the City of Bridgeport where she was a clerical assistant for seven years.

08/15/08 **LINDSEY GUERRERO** OCPD (Hartford)
Deputy Assistant Public Defender Juvenile Re-Entry Unit

After graduating from Quinnipiac Law School, where she volunteered in New Haven Juvenile, Lindsey worked as a Juvenile Rights practitioner with the Legal Aid Society in the Bronx.

08/21/08 **AMY BAEZ** OCPD Hartford
Financial Assistant

Amy comes to us from the Commission on Child Protection where she spent two years as an Accounting Assistant.

08/29/08 **MICHAEL RILEY** Windham JD/GA 11
Deputy Assistant Public Defender

Michael comes to us from private practice and received his law degree from Roger Williams Law School in Rhode Island.

Resignations

Since the last issue, the following individuals have resigned from the Division:

06/20/08 **FOYE SMITH** OCPD Hartford
Assistant Public Defender Juvenile Re-Entry Unit

Foye left the Division to join the Department of Corrections as a Parole Release Panel Member.

08/29/08 **MATTHEW DYER** GA 17 Bristol
Assistant Public Defender

Matt resigned his position to enter private practice.

Retirements

Since the last issue, the following individuals have retired from the Division:

01/01/08 **VALERIE PROTO** New Haven JD
Public Defender Secretary

Valerie retired after more than twenty-three years of state service, including the New Haven JD, New Britain JD offices and New Haven GA 6.

07/01/08 **SUSAN HANKINS** Stamford/Norwalk JD
Public Defender

Sue retired after serving over thirty-two years with the Division. She served in the Hartford GA, the New Haven JD and the Appellate Unit. While with the Appellate Unit, she supervised the Quinnipiac Law Appellate Clinic. She served as the Public Defender for the Stamford/Norwalk JD since 1999.

Courtroom Victories

State v Carleton Smith

MARGARET LEVY

Special Public Defender

JAMES STREETO

Public Defender Legal Services Unit

Mr. Smith and two co-defendants were arrested for the gang rape of a 13 year-old girl in an East Hartford motel in January, 1999. Three years later, he was brought to trial as the sole defendant. One co-defendant was killed on the street; the other's case was nolle while the alleged victim was homeless and couldn't be located. Unfortunately, Smith was out-of-state when called to court for entry of the nolle. When he was located, after a traffic accident in North Carolina, he was charged with failure to appear.

Attorney Margaret Levy was appointed after he was returned to Connecticut. Following months of pretrial discussions, the case against him remained very strong and, if convicted at trial, Attorney Levy predicted his sentence would be 35 to 40 years. Despite these warnings, the defendant chose to proceed to trial and the jury returned guilty verdicts on 3 counts of sexual assault 1, one count of accessory to sexual assault 1, two counts of sexual assault 2, three counts of risk of injury and a failure to appear charge. He was sentenced to 38 years to serve.

Luckily for her client, reversible error was apparent when Judge Levine denied her the right to cross-examine Dr. Michael Adamowicz of the Connecticut State Forensic Laboratory about critical evidence. Dr. Adamowicz testified that DNA testing excluded Mr. Smith and the two co-defendants. However, during questioning outside the presence of the jury, he testified that semen from two unknown men was found on the girl's clothing. Citing the rape shield law, C.G.S. Sec 54-86f, the judge ruled that Attorney Levy could not cross examine about the DNA which had been found. The judge refused to acknowledge that one of the statutorily enumerated exceptions to the rape shield law applied. "...no evidence of the sexual conduct of the victim may be admissible unless such evidence is (1) offered by the defendant on the issue of whether the defendant was... the source of semen..."

With persistent help from James Streeto of the Appellate Unit in Hamden, the verdict was reversed by the Appellate Court, and after the State appealed, the Supreme Court upheld the decision. It remanded the case to the trial court where the State's Attorney's Office decided against a retrial of the case. Including pretrial time, Mr. Smith had served nearly six years from arrest to

reversal. Five years was credited to the failure to appear charge. The additional eleven months was used in plea bargaining. In February 2008, Attorneys Streeto and Levy, and eventually the defendant *pro se*, negotiated a sentence of a brief period of conditional discharge, with no additional incarceration, a net saving of 32 years.

State v. Garland Porter

AARON ROMANO

Special Public Defender

Garland Porter spent nearly three years in prison and is now a free man. In June 2005, police charged Porter with the murder of his former girlfriend. Police said he shot, burned and buried Valerie Brown in a shallow grave in Keney Park in Hartford in 2003.

Bloomfield and Hartford police based their case primarily on statements made by Brown's friends and on conflicting statements made by Porter. There was little or no physical evidence linking him to the crime.

In December, a jury acquitted Porter on the murder charge, however, he remained in prison on charges that he tried to hire a hit man to kill a key prosecution witness and a Bloomfield police officer in the case.

He was charged with two counts of attempted murder and two counts of inciting injuries to persons. Porter was alleged to have asked Gary Simms, an inmate awaiting trial on murder charges, to find a hit man to kill a close friend of Brown's who was one of the last people to see her alive.

Porter's alleged motivation in having the Bloomfield officer killed was that he felt the officer had betrayed him in his efforts to obtain custody of a child Porter had with Brown.

After a seven-week trial, a jury acquitted him having deliberated just over a day.

Attorney Aaron Romano, said that key factors in the acquittal were Simms' lack of credibility and recordings of phone conversations between his client and a state trooper posing as a hit man.

The recordings demonstrated that Porter didn't want to go through with the plot. Romano also said the prosecution failed to prove that his client wrote a note containing information about the intended victims that Simms said Porter wrote. Romano questioned why the prosecutor didn't hire a handwriting expert and explained that the note was never logged in at the evidence room.

State v. McNabney
LINDA SULLIVAN
Special Public Defender

In a prosecution for Operating Under the Influence as a second offender there was a hung jury. In this case the client refused a breathalyzer test and the state's case depended on erratic operation and the field sobriety tests, particularly the Horizontal Haze Nystagmus (HGN) Test.

Cross-examination of the State Trooper revealed that he had no knowledge of any of the causes of HGN except alcohol intoxication, and that he had only very sketchy knowledge of the phenomenon itself.

Interviews with jurors revealed a 5-1 split in favor of the defendant. According to post-trial interviews many of the jurors distrusted the police officer's testimony because they or their family members had negative experiences with aggressive and high-handed police behavior.

If you know more about the topic than the officer, particularly in the area of scientific or quasi-scientific issues, it would appear that the usual authoritative testimony elicited from police officers on direct can be turned to the defendant's advantage.

State v. Michael Bunker
KIRSTIN COFFIN
Special Public Defender

Attorney Coffin represented Michael Bunker at a sentence review hearing. After a trial with other counsel Mr. Bunker received a sentence of 30 years suspended after 20 years with 5 years parole for sale of narcotics. After an argument before the Sentence Review Division, Mr. Bunker's sentence was reduced to 20 years suspended after 12 years with 5 years parole. Mr. Bunker is now eligible for parole and is obviously ecstatic.

State v. Scott Winer, A.C. 26554.
DEBORAH STEVENSON
Special Public Defender

Attorney Stevenson won an appeal in *State v. Winer*. In fact, a quote was taken from that case and used as the quote of the day on the *New Case News* site for a while. Unfortunately, success was snatched away by defeat when the state Supreme Court accepted cert petitioned by the state and reversed the Appellate Court on the main issue. Other issues in the case were remanded to the Appellate Court for a decision.

State v. H. Thomas
MORTON N. KATZ
Special Public Defender

Mr. Thomas was charged in one case with larceny 5 in a vehicle that was allegedly stolen. In the other case he was charged with violation of probation on grounds both related to the arrest for larceny and failure to comply with terms of his probation.

Thomas stated that he had rented the vehicle from a "light-skinned Jamaican with dreadlocks who used the street name Lion." He also reported that there was a call received on a cell phone in the vehicle from the vehicle's owner asking for the "dude who let him (defendant) borrow the truck." He insisted that an analysis of the phone would provide information that the vehicle had not been stolen.

Although the prosecution resisted all attempts to obtain the telephone, Attorney Katz had the phone released to him through the defendant's signed authorization. Investigation disclosed that the vehicle's owner had been drinking with two other males, one of whom known as "Devon", matched the description of "Lion" who had rented the vehicle to Mr. Thomas.

There was a reasonable conclusion that the owner of the vehicle had "passed out" and "Devon"/"Lion" had taken the keys and rented the car to the defendant. An analysis of calls to and from the phone showed that the owner of the vehicle knew more about how "Devon"/"Lion" acquired the vehicle and the rental to Mr. Thomas than he had shared with the police. A call made to the phone using the speed dial contacted a female who did not know Mr. Thomas.

The state's attorney agreed to nolle the larceny charge and negotiated a satisfactory plea bargain for the violation of probation charge.

The outstanding work of Investigator **JUSTINO SAMPAIO** in his overall investigation and electronic analysis of the cell phone in question played a major role in resolving this case.

State v. William McElveen
GLENN FALK
Special Public Defender

Mr. McElveen was caught on a surveillance tape taking cosmetics from a college bookstore and stuffing them into a bag. The security manager chased the defendant and caught up with him. He claimed that Mr. McElveen threatened to cut him if he did not let him

go. Mr. McElveen had a box cutter in his pocket when he was apprehended by the police. The state charged the defendant with robbery in the second degree under Sec. 53a-135(a)(2) and robbery in the third degree. The defendant had many previous burglary and larceny convictions.

Things looked bleak, but after jury selection, the state was finally forced to disclose a tape of a 911 call from a young woman at a restaurant in an alleyway near the bookstore. She gave her name but no home address. By the time of trial, the restaurant was out of business. The woman on the 911 call reported “a heavysset white male choking a thin black male.” The defendant is black.

In the short time before evidence began, private investigator John Hoda was able to locate the woman, a former restaurant employee and still a college student. At trial she demonstrated the severe chokehold she witnessed on defense counsel, whose neck still hurts from the realistic demonstration. The security manager’s credibility was called into question. He claimed he did not use excessive force against the defendant. The witness helped to establish that the bag was dropped immediately outside the bookstore, before any struggle with the security manager. The trial court granted a motion for a judgment of acquittal on robbery second, and the jury acquitted the defendant of robbery third. He was convicted of the more appropriate larceny charges. Thanks again to **JOHN HODA**, and to co-counsel **JANE GROSSMAN**.

State v. Scott L.
GLENN FALK
Special Public Defender

The state charged Mr. L. with violation of a protective order. The offer was three years to serve for calling up his ex-wife shortly before Christmas, saying “Can I see my kids?” The ex-wife said, “You shouldn’t be calling me, Scott,” and hung up. The ex-wife took the stand, but was not cross-examined. The state’s main witness was the ex-wife’s divorce lawyer, who said that the civil court had ordered no contact whatsoever. Mr. L. was pro se in the dissolution proceedings. The protective order that was allegedly violated stated that all previous orders would remain in effect. An order during the course of the civil case had said that the defendant could contact the mother for purposes of arranging supervised visitation. Defense counsel on cross asked the divorce lawyer to tell the jury where the court had made clear that no contact whatsoever was ordered. The divorce lawyer said, “It’s right here,” pointing to the transcript provided by defense counsel. Defense counsel: “That’s *your* interpretation of

what the court meant, isn’t it?” Witness (angrily): “No it’s not.” Jury: “Not guilty.”

State v. Marco G.
HEATHER ABEL
Senior Assistant Public Defender, GA 2 tried in
Fairfield JD

Not guilty verdict on Part A case. Defendant was charged with sexual assault 1 and unlawful restraint. The jury deliberated for 2 1/2 hours. Heather thanks **DONNA HENRY** and **EDWIN ROSADO** (investigators), **JOE BRUCKMANN**, **SUSAN COCOCCIA** for all of their help and even **MILES GERETY** for passing the case to her to try.

In Re Patrick M.
STEPHEN HANCHURUCK
Assistant Public Defender, New Haven, Juvenile Matters

In a classic case of mistaken identity, Patrick M. was acquitted of all charges in *In Re Patrick M.* Patrick was identified by a member of the New Haven Board of Aldermen as the person who struck the alderman as he was walking near the Wooster Square Park in New Haven. Two other youths were accused of spitting on the victim. The victim said there was “no doubt” that Patrick was his attacker and that he had seen Patrick twenty times previously in the neighborhood.

The victim was attacked by a group of boys on bicycles, at sundown on a Wednesday in June, 2007. Two days later the victim saw a group of boys playing basketball near the crime scene. He called the police and had three of them arrested, allowing the police to release the others as not having been involved. The prosecuting attorney would not nolle the charges against Patrick because of the victim’s confidence in his assertion that Patrick was his attacker. This was despite the fact that one of the “spitters” signed a statement indicating that Patrick was not there. That witness refused to name the real attacker, refused to come to court and testify when subpoenaed and twice eluded the marshal armed with a capias.

The other youth arrested with Patrick received AR in the adult court testifying that Patrick was not involved in the attack on the alderman and didn’t know why he was being arrested. Patrick’s alibi was that he played basketball with his cousin earlier that day and was home with his grandmother at the time of the incident. In addition, neither Patrick nor his cousin own bicycles.

The arresting officer who received training in eyewitness identification, admitted that a witness’ memory

can be fragile and that even honest and well-meaning people can make mistakes. The court (Brown, J.) said in his decision that the grandmother’s unrefuted, credible alibi testimony was the reason he found Patrick not guilty.

Thanks to Investigator **MEGHAN JENNETTE** for her valuable assistance, and to all those people wrongfully accused of a crime who gave us the inspiration to find the truth.

In Re T.S.
MELANIE FRANK
Supervisory Assistant Public Defender
Rockville Juvenile Matters

Not guilty on all six counts in sex assault trial. The defendant was charged with sex assault 1, sex assault 3, risk of injury, kidnapping 2, unlawful restraint 1 and

breach of peace. Thanks to **ROBERT MEREDITH, GEORGE FLORES, SARA BERNSTEIN, JOHN CIZIK** and **KEITH FOREN** for all their help.

State v. Michael B.
NICOLE DONZELLO
Assistant Pubic Defender
Bridgeport, GA 2

Not guilty verdict in Attorney Donzello’s first trial. Mr. B. was charged with two counts of risk of injury, threatening and false statement. He was incarcerated from February through mid April. The jury deliberated for fifteen minutes! **HEATHER ABEL** did a wonderful job helping Nicole get ready for the trial and **MEREDITH SPICER** did a great investigation.

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Review

Public Defender Bob Field’s CD “Real Lawyer” is required listening material for students of Professor Mark DeAngelis of the University of Connecticut Law School. A Business Law student completed an assignment to write a reaction to four songs from the “Real Lawyer” soundtrack.

“Real Lawyer” is a fantastic album. I’m a huge fan of musicals, and this one definitely did not fail to deliver. The album describes the hardships of litigation, noting along the way that there are tons of things that have to be sacrificed in order to be successful. The album starts off with a relative cheery song about people getting lawyers and how those lawyers are going to deliver them to “the promised land”. As you continue through the album you realize that this is not the case.

Pretty soon after that song you come across “What About Me”. “What About Me” is the first song that I’ll talk about. It speaks about the hardships a lawyer experiences throughout the course of their career. The most striking lyrics were “Time can be so cold, soon we’ll all be old, let go today, you’ll give your life away. There are battles to be won; there are causes you will choose but turn look behind you, there are loved ones you will lose.” I don’t know personally what it takes to be a lawyer, but I feel like this sums it up adequately. In order to be a good lawyer, you have to sacrifice quite a bit, whether it’s money, holidays, or just time with friends and family. This also reflects the book, *Class Action*.

The next song that really stuck out to me is “Society’s Crimes”. This song reflects the type of people that [criminal defense] lawyers have to deal with on a daily

basis. They have to work with people who are troubled and may deviate from the norm in one way or another. One lyric that was really powerful was, “A sister cries out in the summer night, her man has gone from yet another fight, under the clothes, her belly grows, she’s only just 14.” A lawyer has to deal with the personal problems of others.

Finally, after a series of relatively depressing songs, there is some comic relief in “Gonna Be A Judge”. First off, any song that features a harpsichord and a harp is a pretty slammin’ one. The song essentially talks about judicial abuse of power, but at the same time about their responsibilities. “The lawyers will object, their pleas I will reject, they’ll stammer and they’ll cower, as I demonstrate my power.” I found this lyric particularly entertaining. It’s true to a point, because no matter how good a lawyer is, a judge is still unpredictable. “We could let them all eat cake, as we burn him at the stake” sums up “A Thousand Ways To Die”. It is a song about capital punishment and the numerous ways that the death penalty has been carried out over the years. It’s a pretty disturbing song, but it proves a point. Overall, this was a very informative, powerful, and entertaining album.

Professionally Speaking

DEBORAH STEVENSON

Special Public Defender

As Executive Director of National Home Education Legal Defense, LLC, a group that helps protect the rights of parents regarding educational issues, we are pleased to sponsor Connecticut's First Annual Liberty Forum on September 27 and 28 at the Bristol Clarion. We have gathered together top people in their field to discuss how and why many of our Constitutional rights are being eroded, and to provide ways the public can help stop the erosion. Some of those who will be speaking include: Martin Margulies, Constitutional Law Professor, Quinnipiac University School of Law, Robert Levy, Senior Fellow in Constitutional Studies at the CATO Institute, Bert Gall, Senior Attorney at the Institute for Justice, Suzette Kelo and Michael Christofaro, plaintiffs in the United States Supreme Court eminent domain case, *Kelo v. New London*, Jim Gilchrist, founder of the Minuteman Project Jim Babka, President of Downsize DC Foundation, Bob Shultz, President of We The People Foundation, Alan Schaeffer, Executive Director of Separation of School and State, Laurence D. Cohen, Columnist for the Hartford Courant, Dr. Robban Sica, Vice President of CT Health Freedom Coalition, Dr. Katherine Albrecht, Director of CASPIAN (Consumers Against Supermarket Privacy Invasion and Numbering) and co-author of the book, *Spychips* and Susan Kniep, President of Federation of Connecticut Taxpayers Organizations

We hope that **PRESTON TISDALE** will speak at this event about Fourth Amendment Rights issues.

LINDA J. SULLIVAN

Special Public Defender

Linda J. Sullivan is legal advisor to the Connecticut Pardon Team, Inc., a nonprofit organization founded by her former client Jacqueline Caron, to educate and inform the public about the pardon process in Connecticut. The team also provides support and assistance to people who are applying for a pardon.

The Connecticut Pardon Team, Inc. (www.connecticutpardonteam.org) is a non-profit

organization headquartered in Norwich that provides the information people need to change their lives if they were formerly convicted of a crime, have successfully completed their parole or probation, have made significant steps toward rebuilding their lives, are taking a proactive role in giving back to their communities, and who have remained conviction-free for the term as prescribed by law (3 years for a misdemeanor, 5 years for a felony).

The Connecticut Pardon Team has provided information and education to thousands of individuals since 2004 which has helped them determine their eligibility to apply for a non-inmate pardon.

On July 8, 2008, at a meeting with State Sen. Edwin A. Gomes (D-Bridgeport), Pardon Team founder Jackie Caron and her husband, Pardon Team Executive Director Richard A. Caron. Sr., Pardon Team Legal Advisor Attorney Linda J. Sullivan said "What we have seen in recent years is a whole shifting away in the criminal justice system from rehabilitation to incarceration and retribution," "What the Pardon Team does is shift the focus back toward the rehabilitation aspect, and that has the possibility of transforming people's lives."

WILLIAM O'CONNOR

Assistant Public Defender, Hartford JD

Usually the news that a client has written to the Grievance Committee is not good news for an attorney. Not so for Bill O'Connor of the Hartford JD. His client's father wrote the Grievance Committee because there is no site for sending letters of appreciation.

The father wrote, "This letter is not really a grievance, but you didn't have a site for appreciation so could you please pass this on to the appropriate person. This letter is to thank Attorney O'Connor for the outstanding work he has done on behalf of my son. He has always been there to answer questions that we had and really was a class A lawyer. If I had went out and spent a million dollars on a lawyer, I would not have got any better representation."

Public Defender Wins FOI Challenge: Yale University Police are Subject to Open Records Law

In May 2007 public defender Janet Perrotti was assigned to a case involving a black teenager charged with breach of peace for riding a bicycle on the sidewalk outside the Cooperative High School in New Haven.

When questions arose about how the officers treated her client during questioning, Attorney Janet Perrotti of the GA 23 office asked the Yale Police Department for access to the arresting officers personnel files. Yale

Police refused on the grounds that the Yale Police Department is a private entity not subject to Freedom of Information laws.

Perrotti filed a complaint with the FOI in June and in late December, three months after a hearing before the Commission, Attorney Perrotti received the news that the FOI hearing officer agreed with her position.

The following is Attorney Perrotti's complaint and the decision of Colleen Murphy, Executive Director of the FOI Commission.

In the Matter of a Complaint by Janet R. Perrotti and the
State of Connecticut
Office of the Public Defender
Complainant

v.

Chief, Police Department
Yale University
Respondents

Complainant's Memorandum Of Law In Support Of Yale University Police Department's Classification As The Functional Equivalent Of A Public Agency.

STATEMENT OF THE FACTS

On May 23, 2007, officers B. Donnelly and A. Rivera, who are both members of the Yale University Police Department, stopped Youthful Offender for riding a bicycle on a public sidewalk in New Haven. Shortly thereafter, he was placed under arrest by the officers and transported to New Haven Police Department's detention facility. Following the arrest, YO was appointed a Public Defender to represent him. During the initial interview with YO, questions arose as to the conduct of the arresting police officers. Thus, prompting the Public Defender to file a request pursuant to Conn. Gen. Stat. § 1-206 for the personnel file of the arresting officers. Shortly thereafter, the Chief of the Yale University Police Department denied this request claiming that the Yale University Police Department is a private entity, and thus not subject to the Freedom Of Information Act.

QUESTION PRESENTED

Is the Yale University Police Department, whose officers have full arrest power that is conferred by the City of New Haven, subject to the Freedom of Information Act?

ARGUMENT

I. THE YALE UNIVERSITY POLICE DEPARTMENT IS THE FUNCTIONAL EQUIVALENT OF A PUBLIC AGENCY.

The Yale University Police Department (hereinafter YUPD) is a fully functioning police department that serves the people of New Haven. In light of the unique circumstances and an analysis of the “functional equivalent” test, the YUPD should be held to be subject to the Freedom of Information Act.

The court in *Board of Trustees of Woodstock Academy v. Freedom of Information Commission*, 436 A.2d 266 (Conn. 1980), held that a private entity that serves as the “functional equivalent” of a public agency would be subject to the Freedom Of Information Act, Conn. Gen. Stat. 1-206 (hereinafter FOIA). See also, *Humane Society v. Freedom of Information Commission*, 591 A.2d 395 (Conn. 1991). In determining whether an entity is the functional equivalent of a public agency, the court has considered four factors: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; (4) whether the entity was created by the government. See e.g., *Board of Trustees*, 436 A.2d 266; *Humane Society*, 591 A.2d 395.

The court explained its application of this four-factor test by stating that “all four factors are to be considered cumulatively, with no single factor being essential or conclusive.” *Humane Society*, 591 A.2d at 761. Additionally, the court held that a “case by case application of the factors noted above is best suited to ensure that the general rule of disclosure underlying this state’s FOIA is not undermined by nominal appellations which obscure functional realities.” *Board of Trustees*, 436 A.2d at 271.

Furthermore, the court has noted that “the Freedom of Information Act expressed a strong legislative policy in favor of the open conduct of government and free access to government records” *Wilson v. Freedom of Information Commission*, 435 A.2d 353 (Conn. 1980). In the words of Representative Martin B. Burke, the intent of the FOIA “is to make every public record and every public meeting open to the public at all times with certain specified exclusions” 18H.R.Proc., Pt.8, 1975 Sess., p.3907. Based upon the legislative intent, the term public record has been construed broadly. See *Board of Trustees*, 436 A.2d at 269. Similarly, the court has held that this intent would be “thwarted if ‘public agencies’ were given a narrow construction...”*Id.* With this in mind, and through the application of the four-factor, “functional equivalent” test, it is clear that the YUPD is subject to FOIA.

1. The Yale University Police Department performs a governmental function.

The court has stated that “law enforcement is traditionally a function of the government.” *Humane Society*, 591 A.2d at 399. YUPD’s officers have arrest power throughout the city of New Haven, and as police officers have felony arrest powers throughout the entire state of Connecticut. YUPD enforces the laws of Connecticut just as any other police force does: they patrol the streets of New Haven, investigate crimes, arrest individuals, and carry guns. Even if YUPD provides some private services for Yale University, once they arrest an individual on the public streets of New Haven, through the power conferred by the State of Connecticut, the YUPD has acted beyond the scope of an action that could possibly be construed as private.

Furthermore, Yale University highlights the governmental function of its police force by having a second organization solely for campus security, The Yale Security Department¹. What distinguished these two entities is YUPD’s ability to arrest individuals throughout New Haven.

Finally, the application of common sense and an individual’s expectations are in accord with the fact that YUPD performs a government function. When an individual is arrested, he assumes that the officer who is wearing a badge issued by the City of New Haven is acting on behalf of the government.

¹ See <http://www.yalesecurity.yale.edu/all.html>

2. Yale University receives millions of dollars in federal and state funding.

In 2005-2006 Yale University received \$430 million of federal funding as well as funds from the State of Connecticut. See Yale University Financial Report at 13.² The YUPD has claimed that they are private because they are a part of a private entity, Yale University. Thus, the inquiry is not whether YUPD received funding but whether Yale University receives public funding. It is clear that Yale University does receive substantial government funding. These federal funds make up 82% of Yale University's grant and contract income. See *id.* The total grant and contract income makes up 27% of Yale University's operating revenue. See *id.* at 12.

Furthermore, the City of New Haven subsidizes and thereby funds, the YUPD. The YUPD's headquarters on 101 Ashmun St. is tax exempt. The headquarters is appraised at \$5,650,000 and this property is exempt from property taxes. Similarly, the New Haven Tax Assessor's Office confirmed that the YUPD's squad cars are exempt from property taxes as well. It is suggested by Stanley Surrey, who was highly respected in his field, (see 98 H.V.L.R. 343), that these subsidies are in fact a form of government funding, See Stanley Surrey, et al., *The Tax Expenditure Concept: Current Developments and Emerging Issues*, 20 B.C. L. Rev. 225 (1979). In his article, he writes that subsidies "essentially represent government spending..." *Id.* At 228. "Put differently, whenever government decides to favor an activity or group through monetary assistance, it may elect from a wide range of methods in delivering that assistance." *Id.* As a result of Surrey's view, and the general acceptance that subsidies are a form of government funding, the Treasury Department has published the Tax Expenditure Budget since 1968.

Finally, in the alternative, receiving government funding is not a determinative factor and will not always be a requirement to meet the functional equivalent test. The court in *Humane Society*, held that "the trial court improperly concluded that simply because the society does not receive government funding, it cannot be considered a public agency." *Humane Society*, 591 A.2d at 398. In response to this alternative position, it is likely that the opposing counsel will argue that *Domestic Violence Servs. V. Freedom of Info. Comm'n*, 47 A.2d 827, 834 (1998), requires governmental funding. However, this is not the case. In *Telford v. Thurston County Board of Commissioners*, 974 2d. 886 (Ct. App. Wash. 1999), the court notes that "[t]his application of the test may have been in error. The Attorney General opinion cites *Board of Trustees*, 436 A.2d at 270-71, for the proposition that all four factors must be met. The *Board of Trustees* case merely states that all of the factors *were* met in that particular case and goes on to note that a case-by-case "application of the factors" is most appropriate. *Telford*, P.2d at 894.

3. The Yale University Police Department is regulated by, and involved with the State of Connecticut on a daily basis.

The government regulation of, and involvement with, the YUPD is extensive and detailed. For example, the Yale University Police Officers must be duly sworn in under the same statute as any other police officer; this is pursuant to Public Act 83-466 § 3. Similarly, the YUPD officers must meet the requirements set out by the state in order to be a police officer. See *Id.* And Conn. Gen. Stat. 7-294d. Additionally, the City of New Haven stipulates the amount of insurance that YUPD must carry. See Memorandum of Understanding § 5. Furthermore, the government regulates the laws that YUPD enforces. The government defines the criminal code that YUPD must enforce, operates the court system in which legal actions of the YUPD are adjudicated, and regulates the standard that applies to the YUPD, such as the standards that permit a YUPD police officer to stop or arrest an individual.

Similarly, the government is deeply involved in the daily activities of the YUPD in accordance with the terms of the Memorandum of Understanding between the YUPD and the New Haven Police Department. For example, the New Haven Police Department will assign the case numbers, and provide record processing, crime scene investigation, crime scene services, evidence services, prisoner transportation and detention, supervision of major cases, juvenile offender services, joint patrols and other specialized police services. See Memorandum of Understanding; APPENDIX A. Additionally, in emergency situations, the Chief of the New Haven Police Department may summons Yale University police officers. See Memorandum of Understanding § 2.

² <http://www.yale.edu/finance/fr/>

Opposing counsel has argued that this government regulation and involvement is identical to the government regulation and involvement with the Humane Society, where the court held that there was not sufficient regulation or involvement to classify as a public agency. See *Humane Society*, 591 A.2d at 399. The court explained that the Humane Society was “not required to perform any of the activities authorized by statute. Furthermore, performance of the activities is not subject to governmental review” *Id.* In contrast to *Humane Society*, the YUPD officers have a duty to act as police officer. They must uphold and enforce the same laws as any other police officer. Furthermore, every arrest made by the YUPD is subject to government oversight.

In summary, the YUPD is subject to numerous government regulations and is involved with the New Haven Police Department on a daily basis. Without the government regulation and daily involvement, the YUPD would be unable to function as a police force.

4. The Yale University Police Department was created by the State of Connecticut.

The State of Connecticut through Public Act 83-466 § 3 created the jurisdiction and authority of the YUPD; without this jurisdiction and authority, YUPD would not be able to arrest individuals. The YUPD relies on this 83-466 § 3 to establish their jurisdiction and authority. See *Mahon v. Commissioner of Department of Motor Vehicles*, 29 Conn. L. Rptr. 710 (Conn. Super. 2001). Furthermore, it is the City of New Haven who appoints individuals to the YUPD. See 83-466 § 3.

Opposing counsel has argued that the YUPD was established in 1864, and therefore the government did not create the YUPD through 83-466 § 3. The fact that there were police officers paid by Yale University on the Yale University campus in 1864 is not disputed. However, it was not Yale University who created that patrol; rather, in 1864 a committee of townspeople and Yale officials recommended that two New Haven police officers be assigned to the Yale Campus.³ Pursuant to this recommendation, the Chief of the New Haven police assigned two New Haven police officers, Bill Wisner and Jim Donnelly, to the Yale campus. The New Haven police, not Yale University, created this new patrol.

5. Conclusion

In summary, the YUPD is the functional equivalent of a public agency. Not only is this conclusion reached when YUPD is examined using the four-prong test laid out by the courts, but it is also reached when common sense is applied. The YUPD acts to enforce the laws, it serves the community, and there is very little to distinguish between the YUPD and the New Haven Police Department.

On its website, the YUPD claims that it seeks to maintain “the highest level of trust and honesty with those we serve by holding ourselves to the highest standards of performance.”⁴ By refusing to comply with the FOIA, YUPD is not only creating an environment filled with secrecy, but is not even holding themselves to the standards of every other police force. In light of YUPD’s own statements and the recent dismissal of several New Haven police officers in connection with the narcotics squad scandal⁵, every effort should be made by the YUPD to build the trust of the community. The YUPD should not become one of Yale University’s secret societies.

As the court has held, the FOIA “should not be undermined by nominal appellations which obscure the functional realities.” *Board of Trustees*, 436 A.2d at 271. The YUPD is a fully functioning police force; to exempt such a police force is both unprecedented and undermines the intent of the FOIA.

Therefore, for the foregoing reasons the Complaint asks that the Commission rule in their favor.

³ See <http://www.yale.edu/police/overview.html#History>

⁴ <http://www.yale.edu/police/overview.html>

⁵ See William Kaempffer, *Third city cop fired in scandal*, New Haven Register, Oct. 16, 2007, at A1.

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Janet R. Perrotti and
State of Connecticut
Office of the Public Defender,

Report of Hearing Office

Complainants
against,

Docket #FIC2007-370

Chief, Police Department
Yale University,

Respondent

December 21, 2007

The above-captioned matter was heard as a contested case on September 27, 2007, at which time the complainants and the respondent appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that by letter dated June 25, 2007, the complainants requested completed copies of the personnel files of two officers of the Yale University Police Department ("YUPD").
2. It is found that by letter dated July 13, 2007, the respondent denied the complainants' request, stating "Yale University and its police department are private entities and are not subject to the Freedom of Information ('FOI') Act."
3. It is found that by letter dated June 25, 2007, and filed June 27, 2007, the complainants appealed to this Commission, alleging that the respondent violated the FOI Act by failing to provide copies of the records described in paragraph 1, above. It is found that the complainants renewed their appeal with the filing of a supplemental letter to the Commission on July 27, 2007.
4. It is found that the first issue before the Commission is whether the respondent police department is a public agency, within the meaning of §1-200(1)(B), G.S.
5. Section §1-200 (1), G.S., provides in relevant part:

"Public agency" or "agency" means: (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, and department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district,

regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official...; (B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law...”

6. The test for determining whether an entity such as the respondent is the functional equivalent of a public agency within the meaning of §1-200(1)(B), G.S., is set forth in *Board of Trustees of Woodstock Academy v. FOI Commission*, 181 Conn. 544 (1980), and consists of the following four criteria:

- a. whether the entity performs a governmental function;
- b. whether the entity was created by government;
- c. the extent of government involvement or regulation; and
- d. the level of government funding.

7. The Supreme Court in *Connecticut Humane Society v. FOI Commission*, 218 Conn. 757, 761 (1991), advocated a case-by-case application of the Woodstock criteria, and established that all four of the foregoing criteria are not necessary for a finding of “functional equivalence.” Rather “[a]ll relevant factors are to be considered cumulatively, with no single factor being essential or conclusive.”

8. With respect to whether the YUPD performs a government function, it is found that P.A. 83-466, §3*, gives to the YUPD “*all* the powers conferred upon municipal police officers for the City of New Haven (emphasis added).” By contrast, it is found that Yale University Department of Security, which is a different organization than the YUPD, is comprised of security officers and management personnel whose duties are limited to providing safety and security services to Yale University facilities and the university community.

9. It is found that the YUPD’s police powers extend beyond the boundaries of Yale University to the borders of the City of New Haven. It is found that officers of the YUPD, like New Haven police officers and all other Connecticut police officers, have the power to make felony arrests anywhere within Connecticut. It is further found that the arrest of the complainants’ client that precipitated the request for records described in paragraph 1, above, did not occur on Yale University property.

10. It is found that the legislative history of P.A. 83-466, §3, reveals lawmakers’ assumption that permitting the YUPD to take on the duties of the New Haven police department would permit the municipal police department to function more effectively.

*Section 3 of P.A. 83-466 is uncodified in the Connecticut General Statutes. It provides: “The city of New Haven, acting through its board of police commissioners may appoint persons designated by Yale University to act as Yale University police officers. Such officers having duly qualified under section 7-294d of the general statutes, and having been sworn, shall have all the powers conferred upon municipal police officers for the city of New Haven. They shall be deemed for all purposes to be agents and employees of Yale University, subject to such conditions as may be mutually agreed upon by the city of New Haven, acting through its board of police commissioners, and Yale University.”

11. It is found the YUPD's performance of law enforcement activities is subject to governmental review. It is found that Yale University police officers' power to detain and arrest is subject to constitutional protections. It is found that Yale University police officers investigate and testify about their enforcement actions in court. It is found that Yale University police officers must be re-certified on a schedule set by the state, according to state standards. It is found that the City of New Haven has the right to terminate its agreement with the YUPD.

12. It is found that Connecticut Humane Society, *supra* at 764, concluded that law enforcement is traditionally a function of the government.

13. The respondent analogizes the YUPD to the organization under consideration in Connecticut Humane Society, which held that the organization was not a public agency despite its performance of the governmental function of law enforcement.

14. It is found, however, that the Humane Society played a small role in the state's overall law enforcement activities directed at preventing the cruel treatment of animals. Connecticut Humane Society, *supra* at 765. In contrast, the YUPD, by the express terms of P.A. 83-466, §3, exercises full police powers, co-extensive with those of the police department of the City of New Haven.

15. It is concluded, therefore, that the police power given to the YUPD, with its accompanying power to detain and arrest, is a fundamental governmental function that is capable of having a profound impact on private individuals.

16. With respect to whether the YUPD was created by government, it is found that the origin of the YUPD dates to 1894, when the New Haven Police Department, a public agency within the meaning of §1-200(1)(A), G.S., agreed to assign two of its police officers to patrol the Yale university campus to quell sometimes violent disturbances between city residents and university students. It is found that the two New Haven police officers eventually resigned from the city force and were appointed as special constables.

17. The Commission takes administrative notice of the YUPD website, which implies that Special constables were appointed to patrol Yale University until the enactment, in 1983, of §3 of P.A. 83-466. It is unclear from the record in this matter what the exact nature was of the relationship between the YUPD and the New Haven Police Department in the intervening years.

18. It is found that the Connecticut legislature formalized the relationship between the New Haven Police Department and Yale University in 1983 by enacting §3 of P.A. 83-466, which permitted the City of New Haven to "appoint persons designated by Yale University to act as Yale University police officers." It is found that the City of New Haven is a public agency, within the meaning of §1-200(1)(A), G.S.

19. Accordingly, it is found that the YUPD was effectively created by the City of New Haven in 1894, when the New Haven Police Department assigned two police officers exclusively to patrol the Yale University campus. It is further found that the subsequent appointment of special constables assigned exclusively to patrol Yale University reinforced YUPD's status as a law enforcement agency distinct from, but dependent upon, the City of New Haven. It is also found that the YUPD's current jurisdiction and authority was enabled by the State of Connecticut in 1983, through §3 of P.A. 83-466.

20. With respect to the extent of government involvement or regulation, it is found that Yale University is not required by state statute to have a police force. It is also found that Yale University is not required by state statute to perform any of the activities to which it agreed in a Memorandum of Understanding between YUPD and the City of New Haven.

21. It is found that officers of the YUPD are employees of Yale University. It is further found that the YUPD handles all disciplinary matters concerning its employees and Yale University pays all compensation. It is further found that YUPD officers are not members of a “paid police department” for government retirement benefits or for purposes of receiving workers’ compensation survivor benefits pursuant to §7-433b, G.S.
22. Nevertheless, it is found that YUPD’s disciplinary authority is derived from the Memorandum of Understanding between the City of New Haven and YUPD. It is further found that YUPD has control over disciplinary matters only by agreement with the City of New Haven.
23. P.A., 83-466, §3, states that YUPD officers “shall be deemed for all purposes to be employees and agents of Yale.” It is found that the status of YUPD officers as employees and agents of Yale concerns personnel matters and questions of immunity to suit. It is found that the status of YUPD officers as employees and agents of Yale University for purposes of private employment and liability issues does not determine, alone, whether YUPD officers are employees of an entity that is the functional equivalent of a public agency, within the meaning of the FOI Act and *Woodstock* supra. “The purpose of the FOIA is to provide public access to governmental information while the purpose of the doctrine of sovereign immunity is to protect the state from liability for private litigation that may interfere with the functioning of state government and may impose fiscal burdens on the state.” *Gordon v. HNS Management Co.*, 272 Conn. 81, 106 fn. 15 (2004).
24. It is found that P.A. 83-466, §3, also requires all police officers of Yale University to be appointed by the City of New Haven, acting through its board of police commissioners.
25. It is found that P.A. 83-466, §3, requires that any such officer appointed by the City of New Haven to have qualified under §7-294d, G.S., which specifies certification and training requirements of municipal police officers.
26. It is found that the legislative history of P.A. 83-466, §3, indicates lawmakers’ intention not to relinquish control over Yale University police officers’ training and certification.
27. It is found that P.A. 83-466, §3, expressly states that the YUPD is “subject to such conditions as may be mutually agreed upon by the city of New Haven, acting through its board of police commissioners, and Yale University.” It is found that P.A. 83-466, §3, permits the City of New Haven to exercise as much regulatory control or involvement as it deems appropriate. It is found that if YUPD did not agree to the regulation or involvement demanded by the City of New Haven, then the City of New Haven would have the option, under P.A. 83-466, §3, to withdraw its regulated delegation of police powers to the Yale University police force.
28. It is found that the City of New Haven, through its police department, is involved in the “day-to-day” activities of the YUPD. *Domestic Violence Services v. FOI Commission*, 47 Conn.App. 466, 478 (1998). It is found that Appendix A of the Memorandum of Understanding details such day-to-day involvement. The New Haven Police Department provides criminal investigation follow-up and supervision of major cases; arrest and case file processing; crime scene services; assignment of case numbers; prisoner transportation and detention; prisoner processing; tracking and recordkeeping of court dispositions; property and evidence services; juvenile offender services; joint patrols and other specialized police services.
29. It is further found that the YUPD must adhere to federal and state constitutional protections and civil rights laws in exercising its delegated duties.
30. It is found, therefore, that the extent of government involvement and regulation in the YUPD is significant.

31. With respect to the level of government funding, it is found that the YUPD receives minimal direct government funding. It is found that its annual operating budget of approximately \$10.3 million is drawn almost entirely from Yale University funds.

32. It is found, however, that the YUPD receives significant in-kind law enforcement services and assistance from the City of New Haven and the city's police force.

33. It is also found that the YUPD benefits financially from its property tax exempt status. It is found that the YUPD's headquarters was assessed at over \$5.6 million in 2007.

34. It is found that, for at least the past three years, Yale University has made annual payments of approximately \$4.2 million to the City of New Haven in lieu of taxes. It is found, however, that those payments are wholly voluntary and within Yale University's total discretion and control.

35. In his post-hearing brief, the respondent cites *Connecticut Humane Society* to support his argument that federal tax-exempt status is not the equivalent of government funding. It is found, however, that *Connecticut Humane Society* did not address the organization's tax status in concluding that the group did not address the organization's tax status in concluding that the group did not receive public funds.

36. It is found, moreover, that in *William and the Manchester Journal Inquirer v. Enfield Fire Chiefs Association*, Docket # FIC2005-164, the respondent's federal tax-exempt status as a private charity was a factor in the Commission's finding that the respondent received government funding.

37. The respondent cites two other cases in support of his argument that tax-exempt status is not the equivalent of government funding. It is found, however, that only one of those cases concerns tax-exempt status. Contrary to the respondent's assertion, that case states, "In most respects such financial support [from government funds,] can be viewed the same as a tax exemption." *Greenya v. George Washington University*, 512 F. 2d 556, 560 (D.C. Cir. 1975). The issue in *Greenya* was whether tax-exempt status was sufficient government involvement to make an otherwise private entity into a state actor for constitutional purposes. It is found that in *Greenya*, the court found no difference in analysis between tax-exempt status and financial support in concluding that those factors, alone, are not substantial enough government involvement to demonstrate state action to support the plaintiff's constitutional claims.

38. It is concluded that the level of government funding of the YUPD is significant, although the level of private funding is also significant.

39. Based on all the factors, especially the YUPD's exercise of full police powers throughout the City of New Haven, it is concluded that the YUPD is a public agency within the meaning of §1-200(1)(B), G.S.

40. With respect to whether the records described in paragraph 1, above, are subject to disclosure, §1-200(5), G.S., defined "public records or files" as:

Any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency,...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

41. Section 1-210(a), G.S., provides in relevant part that:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to...receive a copy of such records in accordance with section 1-212.

42. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive promptly upon request, a plain or certified copy of any public record.”

43. It is found that the records described in paragraph 1, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

44. It is found that the respondent does not dispute that the copies of the records described in paragraph 1, above, would not be exempt from disclosure under the FOI Act, were the Commission to conclude that the respondent police department is a public agency within the meaning of §1-200(1)(B), G.S.

45. Accordingly, it is concluded that the respondent violated the FOI Act by failing to disclose the records described in paragraph 1, above.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

1. The respondent shall forthwith provide a copy of the records described in paragraph 1, above, to the complainants, free of charge.

Colleen M. Murphy
As Hearing Officer