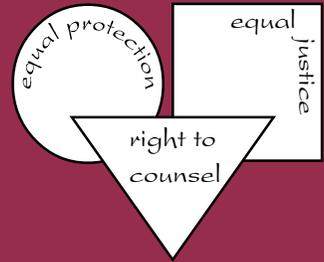


DISCOVERY

Newsletter of the Connecticut Division of Public Defender Services



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A. Arthur Giddon: The 100 Year-Old Bat Boy



A. Arthur Giddon, meets David Ortiz at Fenway Park on April 25. Giddon was honorary bat boy with the Red Sox to celebrate his 100th birthday. (Left) Giddon holds bat with Ortiz's autograph.

The Chief's Perspective

A Time of Crisis and Evolution for Indigent Defense

As you can see from this "retirement" edition of **DISCOVERY** we, like many other state agencies, are restructuring due to the recent departure of many of our colleagues. The Chief Public Defender's Office experienced a significant loss of many managers who had a wealth of experience and institutional knowledge. Similarly, field offices lost highly experienced supervisors, attorneys, investigators, social

continued on page 2

On June 1, Irma Grimes, Chief Investigator and I visited with former Public Defender, Arthur Giddon who is now known throughout the country as "the 100 year-old Bat Boy". The media frenzy leading up to his celebration at Fenway Park on April 25 reached Toronto, Vermont, Milwaukee and Mississippi according to Giddon. Several national news stations broadcast the story including CBS Nightly and NBC Evening News. Jay Leno invited him on the show but Arthur didn't feel up to traveling to Los Angeles. "If they want to tape the show in New York I'll be happy to do it," replied Giddon. The *New York Times* and *Boston Globe* covered the story with numerous photos of Giddon who sat in the President's box and had a

continued on page 3

IN THIS ISSUE

- A. Arthur Giddon: The 100 Year-Old Bat Boy
- Juvenile Advocacy: Recent Cases Expand Due Process for Children
- Hospice and Bereavement Services in Connecticut prisons
- A Division of Change
- Caritas Conference St. Joseph College
- Human Resources Notes
- Honoring the 2009 Retirees
- Courtroom Victories
- Professionally Speaking

workers and secretaries who had literally dedicated decades of their lives to providing equal justice to public defender clients.

At this time we are slowly rehiring due to the lack of a state budget. Earlier in the year we filed a detailed cost savings plan with our Legislative Appropriations Subcommittee and with the Office of Policy and Management which required that we designate priorities and a schedule for rehiring. We are “on track” with our plan under this directive.

It is also very apparent that individual attorney caseloads, especially in our GA courts, have increased in this time of fiscal crisis, and that Connecticut will face an indigent defense crisis if personnel vacancies are not or cannot be filled due to budgetary constraints. We need only to survey other indigent defense organizations to know that this is a problem of national proportions. In other states, indigent defense providers are initiating litigation to limit excessive caseloads and refusing to accept new case appointments from the court in order to maintain their ability to provide constitutionally required assistance of competent counsel.

There is reason for cautious optimism, however, that even in these times of economic emergency—the tide is turning. In August, recognizing the pervasiveness of the increased demands for indigent defense, the ABA Standing Committee of Legal Aid and Indigent Defendants adopted a detailed action plan for those providing indigent defense services entitled, ***Eight Guidelines of Public Defense Related to Excessive Workloads***. The ABA has declared that the goal of providing quality indigent defense services is not achievable when lawyers

representing indigent defendants have excessive caseloads. These guidelines therefore bring national attention and more definite delineation to the importance of indigent defense representation as it relates to the fairness and reliability of the administration of justice in our criminal court system.

Furthermore, in addressing the ABA House of Delegates, Attorney General Eric Holder expressed the Obama Administration’s intention to focus on improving indigent defense. He emphasized the government’s constitutional duty to ensure the right to competent counsel and the high cost, financial and human, of making mistakes. He has also promised the American Council of Chief Defenders that he will host a national conference on indigent defense with the goal of developing best practices and solutions to revive the integrity of indigent defense.

Hopefully, such ABA attention and Administration assurances will lead to increased federal financial support for indigent defense organizations, including our Division which has served as a model for emerging defense systems in other states. We appreciate the commitment and assistance of our very dedicated Commission, employees, Appropriations Committee, and the Office of Policy and Management while this evolution continues.

Susan O. Storey
Chief Public Defender



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continued from page 1



Randall Pinkston of CBS Evening News along with Paul the cameraman, interviews Arthur Giddon at his home at Duncaster in Bloomfield, CT as he prepares for his honorary role as Bat Boy for the Red Sox.

Arthur Giddon, Bat Boy for the Boston Braves in the 1920's meets Jared Pinko, Bat Boy for the Red Sox on April 25, 2009

Arthur Giddon talks with Red Sox President, Larry Lucchino. Lucchino along with Michael O'Brien, CEO of Duncaster, made Giddon's birthday wish come true.



chance to meet all of the Red Sox players and see the Yankees. Giddon adds, "the manager of the Yankees came to congratulate me, the umpire gave me a ball, people were cheering and waving and they all wanted my autograph." Giddon reprised his role as Bat Boy on an honorary basis as he had done from 1922-1923 when he was an official Bat Boy for the Boston Braves. Congressman Joe Courtney, a former law intern in Arthur's office, recognized Arthur's 100th birthday before the House of Representatives.

A few weeks later Giddon attended a Pops concert at Tufts University days before the 2009 Commencement ceremony with his wife, Harriet of 61 years and daughter Pamela. Giddon smiles, "They announced me with a spotlight and the place went up in a roaring applause." Giddon graduated from Tufts 77 years ago. Harriet proudly remarked that she graduated from Smith College 70 years ago. To top it off, when the Duncaster Retirement Community commemorated their 25th anniversary, Arthur Giddon participated in a parade riding in an open convertible waving to a celebratory crowd.





A. Arthur Giddon joins his friends and colleagues (from left) Judge Joe Shortall, Attorneys Gerry Smyth, Richard Kelly, and (standing) Vinnie Giedraitis

LEGAL CAREER

A. Arthur Giddon (the “A” stands for Aaron) did not become a Public Defender until he was in his fifties. Giddon graduated from Harvard Law School and was admitted to the Massachusetts bar in 1935. Like most young men of this time, World War II caused him to shift gears; he served in the U.S. Navy with tours of duty in England and the European Theater of Operation, attaining the rank of Lieutenant Commander. He began his legal career in 1948 joining a large Hartford firm that specialized in negligence and worker’s compensation cases. In a 1985 article published in **DISCOVERY**, Giddon, at the age of 73 writes, “On several occasions while ensconced in my comfortable armchair at home I would receive telephone calls from people about their criminal cases. Naturally I did not know what they were talking about...”

After making some contacts with part-time public defenders Reinhart Gideon, Edward Daly and Arnold Schwolsky, Giddon became interested in criminal law. He was appointed to a part-time Assistant Public Defender position on July 1, 1966 working under the late Jim Cosgrove, who later became the first Chief Public Defender. He left private practice and became a full time Public Defender in October, 1971, and was promoted to head the office in January 1973.

REFLECTIONS ON EARLY DAYS AS A PUBLIC DEFENDER

Giddon continues to recall that in the early days, “*there were no criminal sessions on Mondays. There was no court either in July or August, although this did not last very long...The Judges increased court from four to five days per week...*”

“Upon reflection I would like to reminisce about the early days of the Hartford Superior Court Public Defender office. Some of this may seem incomprehensible to younger members of the public defender system.

Our offices lacked any support personnel in the sixties. We did not have any secretary nor did we have any investigators. The attorneys would go into the field, take their photographs and interview their witnesses....There was no one to type our letters, briefs or many motions. All this had to be accomplished by our secretaries in our private practice. It must be understood that in the early days every one had a part-time position. We did not even have a law library in the office....”

After the Commission took charge (October 1, 1975) our destiny changed for the better. Joe Shortall was instrumental in providing us with the opportunity to acquire efficient and competent secretarial staff and investigators... We used to take in 80 to 90 cases per month, sometimes over 100. As the Commission became more knowledgeable and familiar with the situation, Joe Shortall was able to increase our legal staff from 3½ attorneys to 6½ attorneys.”



A. Arthur Giddon celebrates his 100th Birthday



A. Arthur Giddon with his wife, Harriet of sixty-one years

LAST DAYS IN COURT AS PUBLIC DEFENDER AND FUTURE PLANS

On August 1, 1985, after nineteen years as a public defender and following his official retirement date of July 31, Attorney Giddon took his place behind the defense table to strongly urge the judge to reassess the 60-year sentence he had given one of his clients. “It’s funny this should be my last day,” Giddon told Judge Barall. “In all the years I’ve been a public defender, I never saw a person receive the maximum penalty when he pleaded guilty to an offense and saved the state the time and expense of going through a trial... Assistant State’s Attorney Herbert Carlson prefaced his admiration for Giddon, “still fighting for his clients on his last day.” Judge Barall ruled that Mr. Arnott’s sentence was legal and the case would be more properly brought before the Sentence Review Division. Giddon said he would represent Arnott during the sentence review. “I think I’m in the best position to handle it. I’m his lawyer.”

Attorney Giddon continued to practice law upon his retirement as a magistrate. “I’m a lawyer. I don’t want to forget my law. I read all the cases that come down.”

It was apropos that at his retirement dinner on July 25, 1985 A. Arthur Giddon was presented with among other gifts, an official T-shirt of the Boston Braves, the former National League baseball team for which Giddon was a bat boy when he was thirteen. Now at age 100, A. Arthur Giddon sports the Red Sox shirt from his daughter which reads, “Big Pappy – 100” and poses with his autographed bat from David Ortiz, the other “Big Papi”.

This article is based on articles published in **DISCOVERY** Vol. 1 No. 4 , September, 1985, by Carl Eisenmann, Esq. and **DISCOVERY** Vol. 1 No. 7, December, 1985 by A. Arthur Giddon, Esq. Special thanks to Pamela Freedman, Arthur’s daughter and Gerry Smyth for providing photos of his memorable day at Fenway Park and his 100th Birthday Party.

Pamela Bower Simon
Managing Editor

See proclamation on page 6

SPEECH OF
HON. JOE COURTNEY
OF CONNECTICUT
IN THE HOUSE OF REPRESENTATIVES
MONDAY, APRIL 27, 2009

Mr. COURTNEY. Madame Speaker, I rise today to recognize Arthur Giddon of Bloomfield, Connecticut. Over the past century, Art has cultivated a distinguished law career, serving as a notable trial lawyer as well as a Chief Public Defender. He has a wonderful and devoted wife, Harriet, to whom he has been married to for over 60 years. Together they have raised a beautiful family. On April, 26, 2009, Art will celebrate his 100th birthday with friends and family in Connecticut.

In 1922, at the age of 13, Art joined the Boston Braves as a batboy. He fetched pop bottles, ran errands for players, polished equipment and conversed with baseball legends. First baseman, Walter Holke, often walked him home after games and taught him how to make kites, a skill that he would pass on to grandchildren. His chance meeting with baseball's commissioner, Kenesaw Mountain Landis and a suggestion to become a lawyer would portend a legal profession matched by few. Decades later after Mr. Landis' suggestion, he would study at Harvard Law and become a notable lawyer in Connecticut. In 1985, he retired as the Chief Public Defender of the Hartford Judicial District, after decades of public service.

This past week, Art's unique experience as a batboy has gained national media attention. On Saturday, Art will join the Boston Red Sox, the team he passionately cheers for, as an honorary batboy, in recognition of his experience as a young boy decades ago. He will make his debut in a jersey crafted by his daughter, adorned with "No. 100, Big Pappy".

Few individuals experience as much and contribute as much as over the course of their lifetime as Arthur has. Madame Speaker, I can personally attest to this. As a young law student, I worked in Art's office for two years as a legal intern and learned a lifelong lesson in the law, as well as a balanced passion for justice. He has lived an extraordinary life, filled with personal and professional vigor, and I ask my colleagues to join with me and my constituents in celebrating his 100th birthday.

Juvenile Advocacy: Recent Cases Expand Due Process for Children

It has been an exciting few months in the development of juvenile law in Connecticut. Three significant appellate decisions have helped to establish the defense of children as an independent area of the law. These decisions are particularly welcome, as they clarify and expand due process rights for children accused of a crime.

In Re: Kevin K 109 Conn. App. 206 (2008) deals with the admissibility of statements taken from an accused child. Connecticut General Statutes (C.G.S.) Sec. 46b-137 requires that a parent be present during questioning in order for any statement from a child to be admissible against him or her at trial. This per se rule is one of the most protective in the nation. Most states use a totality of the circumstances test to determine the admissibility of statements of accused children. Some states apply additional criteria to the general adult standard, recognizing that children are more likely to be unduly influenced by adult law enforcement officers or are developmentally unable to make reasoned decisions in a stressful situation.

In *Kevin K.*, although the accused child and mother were advised of their right to remain silent, the child gave an initial statement to the police in the presence of his mother. The child was reinterviewed several days later, also in the presence of the mother, but without having been readvised of his right to remain silent. The purpose of C.G.S. § 46b-137 is to help ensure that the child's decision to make a statement is actually voluntary. The court concluded that the initial advisement of rights was not sufficient to insure that the parent and child were making a knowing and voluntary decision to continue to cooperate with the police. The court held that the totality of the circumstances in this case did not support a conclusion that the child and parent were sufficiently aware of their rights and found that the second statement should have been suppressed. The Connecticut Supreme Court has granted *cert* in this case.

In Re: Juan L. concerned the application to juvenile matters of C.G.S. §54-56d, which sets the procedure for determining competency to stand trial for adults. Juan L. was charged with two separate sexual offenses and was twice found to be not competent and not restorable. The trial court attempted to mediate a

resolution to the matter but was unable to compel cooperation from either the Department of Children and Families (DCF) or the Department of Developmental Services (DDS) to provide services for the client. The trial court *sua sponte* found that C.G.S. §54-56d did not apply to juvenile matters and dismissed the case, using its inherent powers under C.G.S. §. 46b-121. This is a law that essentially allows juvenile court judges to make any ruling they want "in the best interest of the child". Generally this approach does not work in favor of the defense however, in this instance, it benefited the client. Not surprisingly, the State appealed.

This was a difficult case to defend, as a ruling that C.G.S. §54-56d did not apply would leave accused juveniles without a procedure for competency determinations. In the end, the defense, led by Deputy Assistant Public Defender Jennifer Leavitt, lost the battle but won the war. The court found that the adult law did apply to juvenile matters and returned the matter to juvenile court for more proceedings. The court made clear, however, that accused juveniles have a right to be competent to stand trial. The court also found that accused juveniles are included in the definition of "defendant" as it is used in the adult criminal code. This is significant, since the word "defendant" never appears in the juvenile code. Case law has not given juveniles all the due process rights accorded to adults. For years, courts have followed *McKeiver v. Pennsylvania*, 403 U.S. 528; 91 S. Ct. 1976; 29 L. Ed. 2d 647; 1971, which held that the civil nature of the juvenile courts prevented children from being entitled to all the constitutional rights given adult "defendants". "The juvenile court proceeding has not yet been held to be a 'criminal prosecution,' within the meaning and reach of the *Sixth Amendment*, and also has not yet been regarded as devoid of criminal aspects merely because it usually has been given the civil label." *McKeiver* at 541. In Connecticut this means that juveniles are not entitled to jury trials and hearsay is more readily admissible in juvenile proceedings. By acknowledging that children are defendants, the court in *Juan L.* opens the door for arguments to obtain these principal rights for children.

Other jurisdictions have found that the criminalization of the juvenile justice system implicates the right to a jury trial. Kansas in *In re: L.M.* 286 Kan. 460

continued on page 8

continued

(2008) held “Based on our conclusion that the Kansas juvenile justice system has become more akin to an adult criminal prosecution, we hold that juveniles have a constitutional right to a jury trial under the *Sixth* and *Fourteenth Amendments*.”

Juvenile Court in Connecticut has increasingly become a mirror of the adult GA courts and it appears that an argument for jury trials and stricter hearsay regulation would pass muster. Jury trials won’t be advisable for most juvenile trials but it could be an important tool for the right client and the right case. It will be up to individual lawyers to decide how to use this ruling to obtain good results for their clients.

The “Big Daddy” decision this term was *State v. David Fernandes Jr.* (A.C.28925). The Appellate Court found that C.G.S. §46b-127(b), the discretionary juvenile transfer statute, failed to provide due process to children who were being transferred to the adult court docket. C.G.S. §46b-127(b) allows a prosecutor to move any felony from the juvenile docket to the adult docket, provided the child is 14 or older and a judge has made an *ex parte* finding of probable cause.

In *Fernandes*, a judge who appeared reluctant to transfer a case out of juvenile court ruled that he had no discretion and was bound to grant the prosecutor’s request. This has been the generally accepted interpretation of 46b-127 and is supported by the legislative history. It is quite clear that the legislature expressly intended to give all authority for transfers to the State. The procedures for the mandatory transfer were held to pass constitutional muster in *State v. Angel C.* 245 Conn. 93; 715 A.2d 652 (1998). In that case, the court found juvenile status was legislatively granted, not

constitutionally mandated. The rationale being that once the legislature grants a right or authority, they may modify, limit or take it away. The *Angel C.* court concluded that no liberty interest vested in the defendant’s prior to the automatic transfer since the juvenile court never had jurisdiction. The court ruled as such, despite the fact that the child was granted a hearing in juvenile court, with a court-appointed lawyer!

The court in *Fernandes* held that the discretionary transfer statute did give original jurisdiction to the juvenile courts and the accused juvenile had a liberty interest in the protections offered by the juvenile court: confidentiality, access to erasure and a limit on sentencing. Once jurisdiction vested, these liberty interests attached and could not be taken away without due process. The court found that due process requires both a hearing before a judge with a lawyer. The State has petitioned for review at the Connecticut Supreme Court.

This ruling should impact the application of the Youthful Offender (YO) law, which allows prosecutors to move felony cases off the YO docket. The most recent revision to the YO statute granted the right to be automatically considered a Youthful Offender except for those defendants charged with the most serious enumerated offenses. This establishes original jurisdiction in YO status and would appear to implicate the same liberty interests recognized in juvenile matters. Frank Halloran and Marty Zeldis are litigating this issue in Milford and have written a comprehensive brief. Please contact one of them for a copy.

Christine Perra Rapillo
Director of Juvenile Delinquency Defense

Contribute to **DISCOVERY** 2009

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Hospice and Bereavement Services Behind Prison Walls

Hospice and bereavement services in prison were once considered a novel idea and fostering compassion toward a condemned population behind bars seems paradoxical. Training inmates to provide prison hospice services also seems unlikely in a highly structured, secure and punitive environment. It is typical to think of the incarcerated as hopeless, lacking insight and ability to care for others, however, prison hospice has dispelled many myths about the incarcerated, especially their capacity to demonstrate love and compassion for fellow inmates.

My interest in prison hospice began two years ago when I was an invited guest at the Prison Hospice and Bereavement Luncheon at MacDougall Correctional Center. The luncheon honors prison inmates who work as bereavement and hospice volunteers to assist their peers.

It was an awakening for me to realize and consider the helplessness, grief, loss and trauma that the bunkmates and “prison families” experience surrounding a sick and dying inmate. It is difficult to face, but also comforting to know that Connecticut Corrections developed a model hospice program to provide compassionate and palliative care for those who are incarcerated and terminally ill.

The prison hospice luncheon was the impetus to learn more about the program, the staff and the volunteers. The journey has been fruitful; I have learned about the benefits of prison hospice and gained a deeper understanding of the impact death and grief has on our incarcerated clients.

The goal of prison hospice programs is to provide the terminally ill inmate with effective pain management during the dying process (palliative care), while also meeting the individual’s physical, emotional, social and spiritual needs (Wright & Bronstein, 2007). The goal of prison hospice is paradoxical; as it is difficult giving the same institution responsibility for both care and the punishment of its inmates (Zimmerman, Wald & Thompson, 2002). Despite the dichotomy in mission, the numbers of prison hospice programs are growing nationwide.

Connecticut is one of many states that have a prison hospice program. Connecticut’s program is widely accepted and has been honored by the Yale School of Nursing for “excellence in caring for the chronically ill”. The program is now operating in two men’s prisons

(MacDougall and Osbourn) and the only female prison, York Correctional (CT Department of Corrections, retrieved at www.ct.org on February 12, 2009).

The following is the philosophy of the Connecticut Department of Correction Hospice Program; “*Through an Interdisciplinary Team approach, to provide twenty-four hour compassionate, quality, end-of-life care to the terminally ill inmates remanded to the Department of Correction and to view their families and or those emotionally connected to them as part of the “unit of care”.* This shall be accomplished in a safe, secure manner (CT Department of Correction, 2008, www.ct.gov).

While the interdisciplinary team is similar to a community hospice team, a prison setting has additional requirements. A typical prison hospice program includes a hospice coordinator, a chaplain or someone in spiritual care, a bereavement coordinator, correctional officers, the volunteer coordinator and inmate volunteers (National Prison Hospice Association (NPHA), p.9). The use of correctional officers is obviously necessary to ensure security; the correctional officers are given hospice training to enhance their understanding of the aims of the program, creating a secure, yet sympathetic environment (NPHA, p.7). The bereavement coordinator provides post-mortem bereavement services for the staff, family members and inmate volunteers (NPHA, p.7). The social worker serves as a liaison between the medical team and the patient to facilitate discussions regarding treatment options and help the inmate to process his/her feelings about death. The social worker acts as an advocate and as a broker to the family, prison staff and the outside world (2004, p. 621). Some institutions may offer support groups, individual counseling, and reading material and may hold services open to inmates.

Prison Hospice programming has allowed many of the dying inmate’s hopes to come true. Many do not want to die alone; they would like to die with dignity, to die with less physical pain, to have a chance to reconcile with family, spend time with loved ones and to find inner spiritual peace (Maull, 1998). It is significant to note that in talking with volunteers and researching the topic that both the dying inmate and the inmate volunteer gain reciprocal benefits from the experience.

The unanticipated collateral accomplishment of hospice programs in prison is the life-changing, positive

continued on page 10

continued

effects on the inmate volunteers. The rigors to become an inmate hospice volunteer are purposeful to assure that the individual is willing and able to make such a generous commitment. Each applicant must meet initial criteria substantiated by the Classifications Department, as well as security staff and prison administration. The inmate must meet a high standard of qualifications, which includes a level of commitment and competence, as well as the ability to adapt and apply the hospice philosophy. The inmate must also possess emotional stamina to cope with the stresses of caring for the dying (NPHA, p. 10).

The evaluation may include group interviews, individual interviews, and passing approval of the security staff, the warden, medical services, as well as the chaplain and interdisciplinary team. Once a volunteer has been accepted, the next step is hospice training.

Cheryl Price (1998) stated in a presentation at the American Correctional Association's 128th Congress of Correction, *"The inmate's responses in class, his attitude, and his demeanor will help to confirm what his intentions really are. Some of the interactions during training also assist the inmate in questioning himself, finding out what is hard for him, probing his own inner experiences, knowing how those experiences will influence his caring. The leaders will later make parings of volunteer and patient based on these strengths and weaknesses."*

The inmate volunteer's responsibilities are threefold: to the patient, the clinical staff and the security staff. Responsibilities to the patient include companionship, conversation, reading, feeding, caring for hygiene and personal grooming, writing letters, providing spiritual support, making telephone calls and helping with movement. They may also help the nursing staff with routine care such as turning, lifting, bathing, changing linens, and dressing (Maull, 1991.). Volunteers are also expected to attend group meetings, and may need to keep a volunteer logbook (1991).

Wright and Bronstein (2007) discuss the "transformational" impact that serving as a volunteer has on prisoners. Transformation occurs on several levels. It is common for someone spending time in jail to feel as if his/her life is a waste, or meaningless. People in prison may have hurt someone else either physically or emotionally and start to see themselves as morally corrupt. The research indicates that inmate volunteers describe an increased sense of self-worth, self-esteem and empowerment (2007). The most common response regarding the impact on prisoner volunteers was that serving as a hospice volunteer enhances prisoners'

capacity to feel compassion for others. As one inmate stated in the Wright and Bronstein article (2007), *"It is against policy to give "things" to other inmates, what we do have is "time" and through the hospice program, they can give some of their "time" in helping others"*.

Nealy Zimmerman, one of the founders of the Connecticut Prison Hospice program talks about the reciprocal relationship between the dying and the volunteers. She states *"There is an added dimension to one inmate helping another to die. There is a depth of remorse, anger, and bitterness that these individuals have to process before and during their training as hospice volunteers. They also share the loss of freedom with the patients. The strength of their commonality allows a deep connection and in the face of death the usual aggression and violence that is more common in the general population can often melt away."* (Zimmerman, n.d. found at www.npha.org).

I did not know some of the details about prison hospice until I talked with the volunteers. My understanding is that the inmate will enter hospice at a point where he/she is at the end of a terminal illness, however, unlike the free world, the insurance companies do not dictate the length of stay. The patient may reside there up to six months prior to dying. This is significant because it allows there to be a process -- a time to work through issues with staff, develop relationships with the volunteers and to reunite with family from the outside.

The program encourages family visits in the hospice unit allowing them to bring food from "the outside". This is a big deal, considering the typical prison fare. The room resembles a hospital room, with a warm decor, including pictures on the walls, a hospital bed and the comfort of pillows and blankets. This environment provides calmness in contrast to the stark prison cells. The hospice recipient may choose one inmate to be the main volunteer; this volunteer may stand vigil, around the clock at the time of imminent death.

An inmate volunteer described some of the challenging duties, such as cleaning up vomit, helping to bathe, lift and shift the patient. The assistance of an inmate volunteer is not only valuable to the patient, but also supports the limited nursing staff. When an inmate is assigned a patient, he/she goes to the unit approximately three days a week from morning until afternoon, until vigil begins. The volunteers are expected to be discreet and respect confidentiality.

In a final act of closure, the volunteer washes the body from head to toe, attaches a toe-tag, and wraps the body in a special paper before the body is taken to the

continued on page 11

continued

morgue. This process allows the volunteers to send the deceased to their final destination in a dignified manner. Since there are no memorial services, this is truly their way to pay respect. The hospice unit has a tree drawn on a bulletin board. The deceased inmate's name is written on a leaf and hung on the tree as a memorial to the inmate and in recognition of the hospice program.

In closing, the prison hospice movement has been successful in providing comprehensive, palliative care to the dying in approximately five federal and fifty-nine state prison hospice programs in twenty-six states around the country (Zimmerman, n.d. retrieved at www.npha.org). The movement has grown since its inception in 1987 and has been a light at the end of a dark tunnel for the men and women that enter prison expecting to die a lonely, painful death. Noteworthy reciprocal effects occurred in prisons that were once the most notoriously violent, such as Angola State Prison in Louisiana. Research indicates that the use of prison hospice has created an atmosphere of redemption, compassion and peace. It has helped to lessen crime within prison walls and has given a sense of purpose to those that society has discarded. I feel that my research and involvement with the prison hospice has also transformed me. I now understand that emotional and spiritual growth can continue in prison and in the dying process.

**Suzanne Lucas-Deneen, MSW
Social Worker, GA 13 Enfield**

Editor's Notes: Discussions for a prison hospice in Connecticut began in June, 1995. On December 5, 2000, 19 inmate volunteers began training at MacDougall Correctional Center. On February 2, 2001 the first graduation of inmate volunteers was held. See page 12, Zimmerman, N., Starting a Prison Hospice: New Program Launched in Connecticut DOC.

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Training Department

A Division of Change: “Old Timers Wanted -- Must Have Experience”

Change is in the air. As part of training, we tell our new employees that life with the public defender division is fluid, and ever changing. Regardless of our job title, we adapt our conversations to the situation, at times becoming a chameleon. This ability to adjust is part of what keeps us sane and effective. If you replay a workday in your mind, you will clearly see that we vary our demeanor when we talk to clients or prosecutors; we modify our manner at a judicial pretrial and take on a more formal style when we present our clients in court. If we did not change our “approach” to fit the person or circumstance, we would not be successful.

As an agency and individually we are all experiencing a transformation. Even our perception of ourselves as individuals in the Division is evolving. Twenty-three of our veteran staff retired this summer. Twenty-three people who ran offices and units, answered phones and counseled clients. Many of our role models have retired. These people shared their wisdom, knowledge and time; no matter what the need, they were always there.

Although it seems devastating to lose this invaluable group, and staggering to think about the knowledge they take with them, we must now become the people who provide guidance and encouragement. If we fill in the blanks, we will create a new and stronger institution. We must do our best to ensure that we provide support to our clients and office mates. We must share our time and our knowledge; otherwise, we dishonor the people who helped us when we were new public defender employees. In order to fill their big shoes we must adjust and adapt: “Old Timers Wanted – Must Have Experience.”

Attorney Susan Brown
Assistant Director, Training Division

Caritas Conference St. Joseph College First Class of the Latino Community Practice Program

The Caritas Conference of the St. Joseph College Department of Social Work and Latino Community Practice was held on June 12, 2009. It is an endowed community outreach initiative that incorporated presentations of the graduate candidates in the Latino Community Practice program. The St. Joseph College Graduate Certificate in Latino Community Practice is the only specialized credential for bilingual professionals in health, education, management and human services. Three colleagues of the Division, Irma Grimes, Ligia Werner and Suzanne Andreyev, presented their final project entitled “*Latino Veterans’ Use of Stand Down*” (see article in **DISCOVERY** spring 2009, Vol. 7, No. 1) In addition, public defender Social Worker, Isabel Logan, served as the Latino Community Practice Assistant Coordinator. Isabel presented a program entitled, “*Bilingual Professional: Asset or Liability?*”

Irma, Ligia and Suzanne articulated much of their research that was outlined in Irma’s **DISCOVERY** article. The most powerful segment of their presentation included footage of homeless persons in a “tent community” in Manchester, Connecticut, many of whom were veterans.



Isabel Logan, MSW served as the Latino Community Practice Assistant Coordinator as well as a presenter at the Caritas Conference. Isabel works in the Hartford Juvenile Matters public defender office.

Bilingual Professional: Asset or Liability?

Language is at the core of working effectively with clients. The rapid rise of the Latino population in the U.S. has created an urgent need for Spanish speaking professionals and culturally appropriate services. Agencies and organizations face challenges in delivering services in Spanish when there are limited bilingual resources. In an effort to provide services to Spanish speaking clients, bilingual professionals often find themselves becoming in-house interpreters. This creates tension in the workplace for both the bilingual and monolingual professionals and affects service to the clients.

This workshop outlines the challenges that bilingual professionals face when they are expected to translate for Limited English Proficiency Clients (clients who speak very little English or no English). It also raises awareness of the conflicts a bilingual professional experiences when the “interpreter role” interferes with his/her role in a specific profession. This workshop will provide answers to the following questions; If using bilingual professionals as interpreters is an asset or liability? What are the challenges that bilingual professionals are facing? How can agencies and organizations better utilize their bilingual employees to serve Limited English Proficiency clients.



As members of the First Class of Latino Community Fellows, (From left) Irma Grimes, former Chief Investigator, Suzanne Andreyev, LPC, Mitigation Specialist, Capital Defense and Trial Services Unit and Ligia Werner, Investigator, Capital Defense and Trial Services Unit received graduate certificates on June 12, 2009.



Latino Community Practice Fellows: Class of 2009
(From left) First row: Eroilda Castillo, Ligia Werner, Reina Cabrera, Irma Grimes, Janet Tarallo
Second row: Sol Rivera, Sonia Contreras, Maria Roman, Michaelangelo Palmieri
Third row: Suzanne Andreyev, Dakibu Muléy, Enitzaida Rodriguez

Human Resources Notes

Appointments

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

02/06/09 **CHARITY HEMINGWAY**
OCPD (Hartford)
Deputy Asst. Public Defender

02/06/09 **JENNIFER MELLON**
GA 23 (New Haven)
Deputy Asst. Public Defender

03/02/09 **TEJAS BHATT**
New Haven JD
Assistant Public Defender

03/27/09 **NICHOLAS FANIS**
OCPD (Hartford)
P-T Public Defender Secretary

07/27/09 **MILES GERETY**
Danbury JD/GA 3
Public Defender

07/31/09 **NANCY ROBERTS**
OCPD (Hartford)
Director, Human Resources

08/14/09 **HILDA COREY**
GA 2 (Bridgeport)
Public Defender Clerk

08/20/09 **JOHN DAY**
OCPD (Hartford)
Director, Special Public Defenders

08/28/09 **JENNIFER LIGHT**
GA 1 (Stamford)
Investigator I

08/28/09 **JEN LOO**
OCPD (Hartford)
Mgr. Administrative Services

08/28/09 **STEPHEN SUCHY**
GA 2 (Bridgeport)
Investigator I

08/28/09 **ANNE C. CARVALHO**
GA 2 (Bridgeport)
Public Defender Secretary

09/11/09 **WILLIAM BIRNEY**
GA 2 (Bridgeport)
Investigator I

09/11/09 **ANN PARRENT**
OCPD (Hartford)
Assistant Public Defender
CD/TS Unit

Resignations

Since the last issue the following employees resigned from the Division:

05/01/09 **PATRICK MCLAUGHLIN**
GA 14 (Hartford)
Assistant Public Defender

Retirements

Since the last issue the following employees retired from the Division:

04/01/09 **INDIA CRUZ**
GA 7 (Meriden)
Public Defender Secretary

06/01/09 **ERIC J. BENGSTON**
OCPD (Hartford)
Director of Human Resources

07/01/09 **KAREN AUBIN**
OCPD (Hartford)
Mgr. Administrative Services

continued on page 16

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07/01/09	RONALD GOLD OCPD (Hartford) Senior Assistant Public Defender CD/TS Unit	07/01/09	ROBERT FIELD Danbury JD/GA 3 Public Defender
07/01/09	IRMA GRIMES OCPD (Hartford) Chief Investigator	07/01/09	MARIA GARCIA GA 2 (Bridgeport) Public Defender Clerk
07/01/09	CATHERINE MEYER OCPD (Hartford) Director of Training	07/01/09	EVELYN GOMBOS GA 1 (Stamford) Investigator II
07/01/09	PAMELA BOWER SIMON OCPD (Hartford) Mgr. Information Services	07/01/09	DEBORAH IANNUZZI GA 2 (Bridgeport) Public Defender Secretary
07/01/09	DEBORAH P. SULLIVAN OCPD (Hartford) Exec. Asst. to Chief Public Defender	07/01/09	NANCY KEKAC GA 1 (Stamford) Supr. Asst. Public Defender
07/01/09	PRESTON TISDALE OCPD (Hartford) Director of Special Public Defenders	07/01/09	JOAN A. LEONARD GA 23 (New Haven) Supr. Asst. Public Defender
07/01/09	JOHN F. BARRY GA 14 (Hartford) Supr. Asst. Public Defender	07/01/09	D'ARCY LOVETERE GA 18 (Bantam) Social Worker III
07/01/09	SARA BERNSTEIN Hartford JD Public Defender	07/01/09	LESTER ANN NORRIS GA 2 (Bridgeport) Investigator II
07/01/09	RAYMOND CUATTO GA 14 (Hartford) Senior Asst. Public Defender Hartford Community Court	07/01/09	THOMAS RUSSELL GA 2 (Bridgeport) Investigator II
07/01/09	SUZANNE CURTIS OCPD Legal Services Unit Senior Asst. Public Defender	07/01/09	LORENZO SMITH, JR. GA 15 (New Britain) Supr. Asst. Public Defender
07/01/09	ZENIA ERRICO Stamford/Norwalk J.D. Public Defender Secretary	08/01/09	LINDA PELOSKI OCPD Legal Services Unit Public Defender Secretary

To Our Retirees – 2009

**Some, brand new to the work force, joined
The Division of Public Defender Services.
Others, more experienced, did the same -
it was a time ago.**

**They danced the dance of 9 to 5
filling their time with learning and passing
along their knowledge, their wisdom.
Dealing with daily life from sordid to sublime -
they showed us how it's done.**

**We look back and see that they gained
experience through polishing their talents.
We look back and see that they gave of their
experience – they taught, they mentored,
they led by example.
We look back and see that they shared their
stories, their time, and their hearts.**

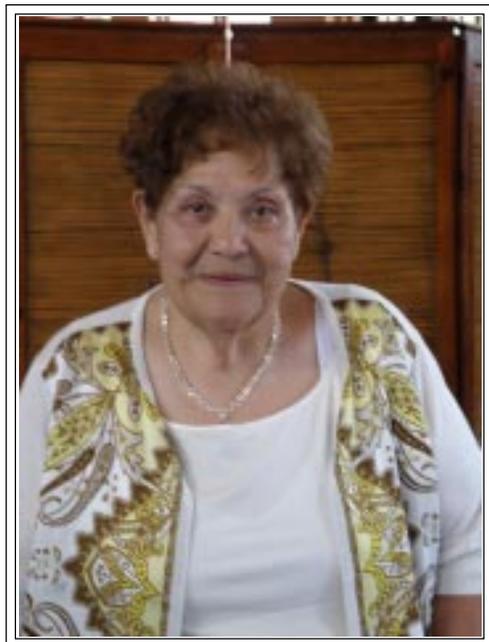
**And now we struggle to fill the places they left;
they thrill as they step into a new journey.
We say, “Good luck to you all!”
They say, “Thanks for the adventure; time to go!”**

We send all our best wishes to the recent retirees.

**Training Division
Division of Public Defender Services**

Division Retirees 2009

Years of Service Reflects Only Those Years Affiliated With the Division



JOSEPHINE JOHNSON
Accounts Payable Specialist, OCPD
21 Years of Service



INDIA CRUZ
Public Defender Secretary
GA 7 Meriden
33 Years of Service

Twenty-three Participated in the Retirement Incentive Program

Eric J. Bengston	6-1-2009	Deborah Iannuzzi	7-1-2009
Karen Aubin	7-1-2009	Nancy Kekac	
John F. Barry		Joan A. Leonard	
Sara L. Bernstein		D'Arcy N. Lovetere	
Raymond Cuatto		Catherine Meyer	
Suzanne Zitser Curtis		Lester Ann Porter	
Zenia Errico		Thomas Russell	
Robert F. Field		Lorenzo Smith Jr.	
Maria A. Garcia		Pamela Bower Simon	
Ronald Gold		Deborah P. Sullivan	
Evelyn Gombos		Preston Tisdale	
Irma B. Grimes			



JOHN F. BARRY
Supervisory Assistant Public Defender
GA 14 Hartford
41 Years of Service

John Barry signs in with Noreen Moberg at the retirement dinner for A. Arthur Giddon July 1985

(From left) Ray Cuatto, Paul Melocowsky, Dennis O'Toole, Carlos Candal, John Barry, Jim Winslow, Amparo Baena and Linda Babcock



RAYMOND CUATTO
Senior Assistant Public Defender
GA 14 Hartford, Community Court
23 Years of Service



On their last day, Ray Cuatto and State's Attorney Glenn Kaas dressed for the occasion. Ray handed out roses to the women who work in Community Court and Glenn gave them chocolates. (From left) Ray Cuatto, Judge Norko, and Glenn Kaas

ROBERT F. FIELD

Public Defender
Danbury JD/GA 3
33 Years of Service



Robert Field (seated) as head of the Norwalk GA 20 office in 1985
(From left) Jim Ginocchio, Ron Williams and Walter Finch



The Danbury public defender office honors Robert Field at a party on July 2, 2009
(From left) Front row: Al Almeida, Stephanie Cinque, Dawn Bradanini, Bob Field, Donna Wekerle
Middle row: David Nanavaty, Rory Chapdelaine, Bob Tvardzik, Matt Popilowski
Back row: Jeff Hutcoe, Rich Stook, Sandy Ward (Missing from photo Kristie Begnoche and Maya Sparks)



LORENZO SMITH, JR.
Supervisory Assistant Public Defender
New Britain GA 15
32 Years of Service



ZENIA ERRICO
Public Defender Secretary
Stamford-Norwalk JD
18 Years of Service

NANCY KEKAC
Supervisory Assistant Public Defender
Stamford GA 1
27 Years of Service



From left (standing) Rob Skovgaard, Nancy Kekac, Vasco Willis and Gloria Piserchia (seated) Lu Miller and Ray Cushing in 1985

Nancy Kekac and Judge Bingham at a party
honoring Nancy in June, 2009

DEBORAH IANNUZZI
Public Defender Secretary
Bridgeport GA 2
33 Years of Service

LESTER ANN NORRIS
Investigator
Bridgeport GA 2
32 Years of Service



First row (from left) Law intern David Marantz (now SPD) and Felix Vargas (retired to FL)
Back row: Deborah Iannuzzi, John Forbes, Lester Ann (Porter) Norris,
Gerry Frauirth and Carmen Perez (1986)

MARIA A. GARCIA
Public Defender Clerk
Bridgeport GA 2
21 Years of Service

THOMAS RUSSELL
Investigator I
Bridgeport GA 2
11 Years of Service
(not pictured)



(From left) Carmen Perez, Deborah Iannuzzi, Dorrie Justus and Maria Garcia
cruise on the Connecticut River in Hartford aboard the Lady Fenwick, July 20, 1992

SARA L. BERNSTEIN

Public Defender
Hartford JD
23 Years of Service

Arthur Giddon, Sara Bernstein and Joe Shortall
celebrating Arthur's 100th Birthday in June 2009



GA 12 Manchester office circa 1987
Michael Handler, Sara Bernstein,
Laura Westland, Karen (Scata) Aubin
and (seated) Deborah Pushkarewicz

KAREN AUBIN

Manager of Administrative Services
OCPD
30 Years of Service

Eric Bengston and Karen Aubin in 1997
at a farewell party for Alexandra Taylor



ERIC J. BENGSTON
Executive Assistant Public Defender
Director of Human Resources
OCPD
28 Years of Service



CATHERINE (“KK”) MEYER
Executive Assistant Public Defender
Director of Training
OCPD
32 Years of Service

The Middletown office in 1986 (From left) Ray Carey and Eric Bengston
(Front row) Deborah Marquardt, Karen Goodrow and Roberta Edwards



Karen Aubin, KK Meyer and Mary Hoban in 1997



Susan Storey and KK Meyer at a celebration for the eight
retirees from the Office of Chief Public Defender

D'ARCY LOVETERE

Social Worker
Bantam GA 18
15 Years of Service



(From left) Social Workers Sue Lucas-Deneen and D'Arcy Lovetere standing in front of the Supreme Court of Louisiana in April 2005

EVELYN GOMBOS

Investigator I
Stamford GA 1
25 Years of Service
(not pictured)

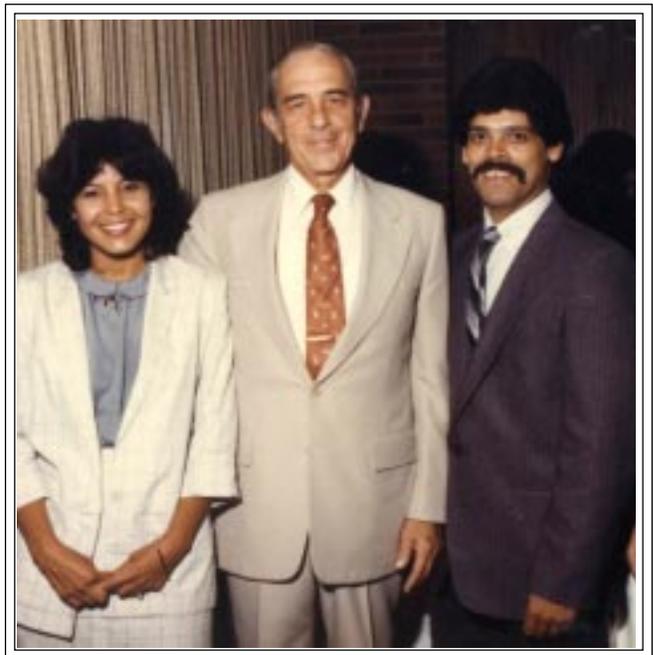


DEBORAH P. SULLIVAN

Executive Assistant to the Chief Public Defender
OCPD
25 Years of Service

IRMA B. GRIMES

Chief Investigator
OCPD
37 Years of Service



Arthur Giddon flanked by two of his investigators, Irma Grimes and Arnie Nieves in July 1985 at Arthur's retirement party



(Left photo) Patrick Culligan, Ron Gold, Barry Butler and Jay McKay at an OCPD birthday celebration



(Right photo) Ron Gold and Miles Gerety at a 2006 seminar

RONALD GOLD

Senior Assistant Public Defender
 Capital Defense and Trial Services Unit
 23 Years of Service

SUZANNE ZITSER CURTIS

Senior Assistant Public Defender
 Legal Services Appellate Unit
 30 Years of Service



(Photo above from left) 1988 Steve Dorfman, Suzanne Zitser, John Watson and Marty Zeldis on a bicycle trip



(From left) Back row: Michelle Allen, Jim Streeto, Elizabeth Inkster, Sandy Massey, Kent Drager, Marty Zeldis,
 (From left) Front row: Linda Ruggiero, Lauren Weisfeld, Alice Osedach-Powers and Suzanne (Zitser) Curtis



1986 (from left) Ron Curtis, Andy Liskov and Preston Tisdale

PRESTON TISDALE

Director of Special Public Defenders
OCPD

28 Years of Service

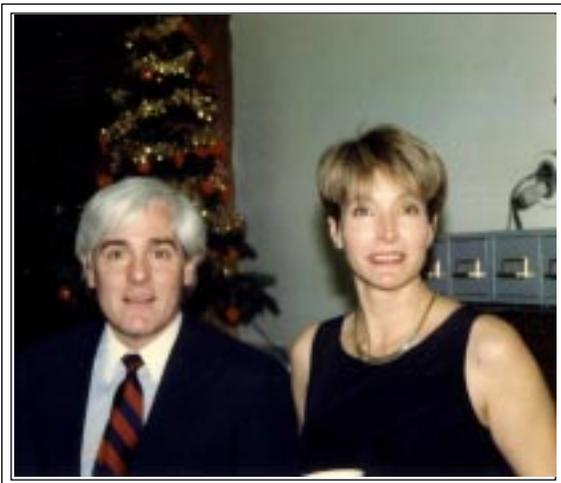
PAMELA BOWER SIMON
Manager of Information Services
OCPD
32 Years of Service



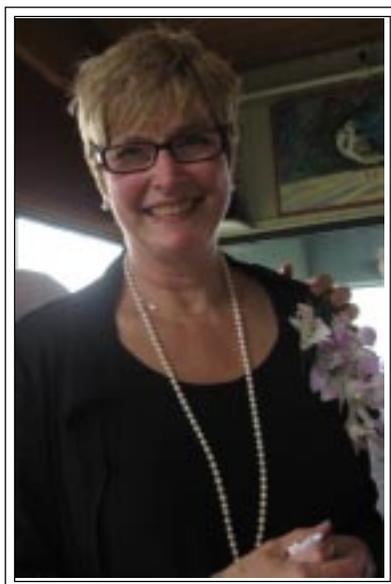
Photo 1980



Retirees of OCPD (From left) Back row: Eric Bengston, Karen Aubin
Front row: Ronald Gold, KK Meyer, Deborah Sullivan, Irma Grimes, Preston Tisdale, Pamela Simon



Miles Gerety and Joan Leonard
at a GA 6 Holiday party circa 1990



Office party to honor Joan Leonard in July 2009
Joan Leonard, Shep Sherwood, Heidi Boettger and Robyn Smith



(From left) Back row: Omar Williams, David Warner, Trey Bruce, Michael Richards, Shep Sherwood, Heidi Boettger, Susan Chetwin, Robyn Smith, Bevin Salmon, Michael Alevy and Jim Chase (Middle row): Cloressa Goldson, Renee Cimino, Margaret Moreau, Jennifer Mellon, Amalia Horton (Front row): Abra Rice, Chris Ososki, Joan Leonard and Janet Perrotti

Unpublished Decision

Attorney Michael Richards of the New Haven GA 23 office filed a Motion to Dismiss which was granted by Vitale J. Judge Vitale's decision follows. See Courtroom Victories page 34.

DOCKET NO. CR 08-0081038 S : SUPERIOR COURT
STATE : JUDICIAL DISTRICT OF NEW HAVEN
V. : AT NEW HAVEN
KEITH GRANATEK : MARCH 4, 2009

MEMORANDUM OF DECISION

Nature of the Proceedings

On January 6, 2009, pursuant to Practice Book § 41-8, as well as the fourth, fifth, sixth and fourteenth amendments to the constitution of the United States, and Article 1, §§ 7 and 8 of the constitution of the State of Connecticut, the defendant Keith Granatek filed a Motion to Dismiss the information against him claiming *inter alia* that “his arrest was not founded upon probable cause existing in the circumstances at the time of arrest, or was otherwise illegal, unconstitutional or unlawfully executed.” The information filed against the defendant is the result of conduct alleged to have occurred on June 13, 2008 at approximately 11:30 p.m. in the Town of Madison. According to the official court file, the information alleges violations of C.G.S. § 14-227a (Operation while under the influence of liquor or drug); and 53a-167a. (Interfering with an officer).

An evidentiary hearing on the defendant's Motion to Dismiss was held on January 13, 2009, and the court heard argument thereafter. The defendant was afforded two weeks to submit a post argument brief, and did so on January 30, 2009, in a document entitled “Motion to Suppress Evidence.” The state submitted a reply brief on February 13, 2009.

The court has carefully considered the testimony of the sole witness, Lt. Michael O'Connor of the Madison Police Department, and has reviewed the exhibits submitted into evidence, State's exhibit 1 and 2. As a result, the following findings of fact, and conclusions of law are made: On June 13, 2008, at approximately 11:30 p.m., Lt. Michael O'Connor was operating a marked police vehicle in the Town of Madison. At that time, police were dispatched to the Stop and Shop parking lot located at Samson Rock Drive. O'Connor was working that evening on “D.U.I.” enforcement. Although the dispatch was directed to another Madison Officer, Lt. O'Connor also responded based on his close proximity to the Stop and Shop parking lot. O'Connor testified that the broadcast “was for a suspicious vehicle” located within the parking lot. According to State's exhibit 2, which the court credits, police dispatch told Lt. O'Connor that the Stop and Shop manager stated to police headquarters that “[the vehicle] was sitting in the lot for about two hours.” Further, according to State's exhibit 2, Wendy Mitchell, an employee of Stop and Shop, requested a [police] car by stating the following:

“I have a...there's a car in the parking lot. It's been here since 9:00...the guy seems...**he wasn't passed out**, (emphasis added) but my associate couldn't make contact with him. He wouldn't acknowledge him.”

The vehicle was described as a red, four-door Grand Am, CT registration 483-WVH. Other than the Grand Am's presence in the Stop and Shop parking lot for approximately two and one-half hours, no other factual basis was elicited at the hearing to further articulate the basis for the suspicion that the vehicle was involved with any criminal activity. Although State's exhibit 2 contains the language “the engine's been running,” no evidence was presented as to any movement of the vehicle within the parking lot prior to the call to police. In addition, there was no clear evidence elicited as to the actual presence of the defendant, or any other occupants, in the motor vehicle at any time other than the moment the store employee apparently went to check on the vehicle. There was no evidence as to how long the engine was running. At the time of the dispatch to Lt. O'Connor, Stop and Shop was still open for business. It did not close for business until midnight. No evidence was presented as to the presence of signs posted in the Stop and Shop parking lot indicating “no parking,” “no loitering,” or “no trespassing.” See e.g., *State v. Mounds*, 110 Conn. App. 10, 17 (2008), cert. denied 289

Unpublished Decision

Conn. 938. While Madison police had investigated other criminal complaints at the location in the past, no evidence was presented that any crime was reported in the area that night, or that the vehicle in question or the defendant, had been linked to any crime in the area in the recent past. *State v. Oquendo*, 223 Conn. 635, 655 (1992).

Following the store employee's observation of the Grand Am, the vehicle drove out of the Stop and Shop parking lot slowly. No evidence was elicited regarding excessive speed, erratic or reckless operation. No motor vehicle violations were noted. In summary, no evidence of criminal activity related to this vehicle while located in the parking lot was presented. The only "activity" described was the vehicle's presence in the store parking lot (while it was still open for business) for approximately two and one-half hours. The defendant's actual presence in the motor vehicle was only clearly noted immediately prior to the vehicle's departure from the scene. There was no evidence presented that the defendant was at any point asleep, or unconscious while in the motor vehicle. In fact, State's exhibit 2 reflects that "he wasn't passed out."

Lt. O'Connor eventually located the defendant's vehicle in a bank parking lot in close proximity to Stop and Shop. No evidence was presented as to the time said encounter occurred or how much time had elapsed following the defendant's departure from Stop and Shop. When Lt. O'Connor first observed the vehicle, it was stationary. The parking lot contained an ATM machine associated with Citizens Bank. The ATM machine was open 24 hours, and was of the "drive-up" variety.

Lt. O'Connor "blocked" the defendant's vehicle and prevented it from exiting the Citizens Bank parking lot. At oral argument, the State conceded that the defendant was not free to leave by virtue of the police use of physical force, or show of authority, in blocking the defendant's vehicle. O'Connor believed that the defendant had been "reconnoitering" the Stop and Shop parking lot. However, the evidence presented does not contain any factual basis to distinguish benign, non-criminal activity from the characterization of "reconnoitering." The phrase "reconnoitering" was not further defined. No evidence was elicited as to the Grand Am's location in relation to the ATM. The vehicle's registration was valid. No evidence was presented as to any criminal activity associated with the defendant, or the vehicle, while it was located in the Citizens Bank parking lot. No evidence was presented that the Citizens Bank parking lot was a "high crime area." As noted previously, the bank was open for business by virtue of the 24 hour drive-up ATM located therein. No evidence of erratic operation of the vehicle was presented while the vehicle was in the Citizen Bank parking lot.

As a result of the State's concession that once the defendant's vehicle was "blocked" from exiting the Citizens Bank parking lot, the defendant was not free to leave, the court finds that the defendant was seized for purposes of an investigatory detention pursuant to the fourth amendment to the United States constitution and article first, §§ 7, 8, and 9 of the constitution of Connecticut. Therefore, the issue presented is whether the seizure was based on a reasonable and articulable suspicion criminal activity.

LAW:

"Under the fourth amendment to the United States constitution and article first, §§ 7 and 9 of our State constitution, a police officer is permitted in appropriate circumstances and in an appropriate manner to detain an individual for investigative purposes if the officer believes, based on a reasonable and articulable suspicion that the individual is engaged in criminal activity, even if there is no probable cause to make an arrest." (Internal quotation marks omitted.) *State v. Lipscomb*, 258 Conn. 68, 75, 779 A.2d 88 (2001); see also *Alabama v. White*, 496 U.S. 325, 330-31, 110 S. Ct. 2412, 1101. Ed. 2d 301 (1990); *Terry v. Ohio*, 392 U.S. 22 (1968).

"[I]n justifying [a] particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion" (Internal quotation marks omitted) *State v. Lipscomb*, supra, 258 Conn. 75; see also *Terry v. Ohio*, supra, 392 U.S. 21; *State v. Januszewski*, 182 Conn. 142, 148-49, 438 A.2d 679 (1980). "In determining whether a detention is justified in a given case, a court must consider if, relying on the whole picture, the detaining officers had a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Lipscomb* supra, 76. An investigatory stop must be justified by some objective manifestation of criminal activity. *United States v. Cortez*, 449 U.S. 411, 417 (1981). "Appellate Courts have long said that a particularized and articulable reason to conduct an investigatory stop must be based on more than a hunch" *State v. Milotte*, 9 Conn. App. 616, 624 (2006), cert. denied 281 Conn. 612 (2007).

Unpublished Decision

After a careful review of the evidence, the court finds that Lt. O'Connor lacked a particularized and objective factual basis to warrant an investigatory stop. An officer's suspicion grounded in a speculative belief that the defendant may have been "reconnoitering the area" lacks the specific and objective basis necessary to conclude reasonably that the investigatory detention was justified. *State v. Milotte*, supra at 617. Although Madison police had investigated criminal activity in the past at Stop and Shop, the evidence is bereft of anything linking the defendant, or his vehicle, to any criminal activity in the area that night, or for that matter, any criminal activity in the area in the recent past. The court is persuaded that Lt. O'Connor's suspicion that the defendant had been or was about to be engaged in criminal activity was not constitutionally sound. *State v. Oquendo*, 223 Conn. 635, 653-657 (1992). "A history of past criminal activity in a locality does not justify the suspension of the constitutional rights of everyone, or anyone, who may subsequently be in that locality"..." *State v. Cofield*, 220 Conn. 38, 50-51 (1991). When reviewing the legality of a stop, the court must examine the specific information available to the police officer at the time of the initial intrusion and any rational inferences to be derived therefrom. *Milotte*, supra at 522.

The essential facts of this case are not in dispute. As previously noted there was no evidence presented with regard to the presence of signs posted "no parking," "no loitering," or "no trespassing." *Moulds*, supra. Other than the evidence that the defendant's vehicle was present for approximately two and one-half hours in a parking lot associated with Stop and Shop, while Stop and Shop was open for business, Lt. O'Connor had no particular reason founded in fact to suspect that the defendant had committed, or was about to commit, any motor vehicle or criminal offense. Further, the record is not entirely clear as to whether the defendant was actually present in said motor vehicle the entire time it was present in the parking lot. No evidence was presented as to any motor vehicle violations committed by the defendant at any relevant time that evening. As the court noted in *State v. Santos*, 257 Conn. 495 (2004), "[a]lthough we have stated that an investigative stop can be appropriate even where the police have not observed a violation because a reasonable and articulable suspicion can arise from conduct that alone is not criminal...the stop is justified only if the officer has a reasonable and articulable suspicion that criminal activity is afoot. The issue is not whether the particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts." *Santos*, supra at 510-511. The non-criminal conduct that prompted the stop, as previously described herein, reasonably could not give rise to the belief that the defendant was engaged in criminal activity, or that criminal activity was afoot. For example, in *State v. Donahue*, 251 Conn. 636 (1999), our Supreme Court found that a seizure was not based on reasonable and articulable suspicion in a situation in which the defendant was driving in a deserted, high crime area late at night and made an abrupt turn into an empty parking of an establishment that was closed. The facts in this case do not even approach those deemed constitutionally infirm in *Donahue*, supra or *Oquendo*, supra.

The court recognizes that "...[P]olice on patrol perform a variety of functions...a police officer, in carrying out his duties, may stop and speak to an individual on the street without necessarily implicating the individual's constitutional rights...the police must enjoy a certain degree of latitude in making investigatory stops." *Oquendo*, supra at 656. Nevertheless, whatever visceral or intuitive feeling Lt. O'Connor had about the presence of the defendant's vehicle, and the defendant, in the Stop and Shop parking lot, "when all is said and done, it was nothing more than a hunch." *Milotte*, supra at 624. The record contains no specific facts to indicate that the defendant was engaged in, or about to engage in, criminal behavior.¹ For the foregoing reasons, the stop of the defendant's vehicle was not justified, and the defendant's Motion to Dismiss is granted.

Vitale, J

¹ The State's claim that *State v. Bulanos*, 58 Conn. App 365 (2000) supports the position that the stop was not constitutionally infirm has been considered and rejected. The facts in *Bulanos*, are inapposite to those in the present case. The police in *Bulanos*, had received specific information that the defendant had just left a nightclub, and an employee called to report that the defendant was intoxicated and driving a car. Thus, police had received information that Bulanos was engaged in criminal activity, or that criminal activity was afoot. The police were provided with specific and verifiable information about the defendant and the vehicle's make, model, and color. The defendant was stopped three miles from the nightclub. Leaving a nightclub when intoxicated, and then operating a vehicle, presents a different factual scenario than merely sitting in a vehicle while parked in the parking lot of an establishment that is open for business.

Courtroom Victories

State v. Michael L.

CLAUD CHONG

Assistant Public Defender
New Britain JD

On the afternoon of June 26, 2008, the complainant went to the New Britain Police Department to complain that her husband of 14 years, Michael L attempted to rape her the previous night and that she was able to fight him off. The complainant gave a written statement alleging that at approximately 11:00 pm, while she was in bed with her husband watching a movie, he forcibly removed her clothing and tried to sexually assault her; she repeatedly told him to stop.

Two days later Michael was arrested by warrant, and although he had no criminal record and had lived in New Britain his entire life, he was held on a \$250,000 bond. Nine months later counsel filled a motion for a speedy trial.

In preparation for trial, investigator **CARMEN BAEZ** discovered that the complainant had filed a harassment complaint with police against a man with whom she was having an affair around the time she decided to end the relationship. Ms. Baez was able to locate him for an interview. The complainant filed for divorce shortly after Michael was taken into custody.

At trial Michael L was charged with sexual assault in a spousal relationship, a class B felony. Michael testified that on the night in question he did initiate sexual advances towards his wife while they were in bed together. When his wife rejected his advances he immediately stopped, and then an argument ensued. This argument went on during the night until they both went to sleep in the same bed. The following morning the argument continued and the defendant suggested that they get divorced. Later that afternoon Michael's wife, after discussing it with her aunt, went to the police.

The theory of defense was that the allegations were false. The motive was to gain an advantage in a divorce proceeding. The complainant had been told months before that she would be required to pay her husband alimony in a divorce settlement. The couple have a 12 year-old daughter and Michael had been a stay-at-home dad for a number of years. The complainant had repeatedly told Michael that she would do anything to avoid giving him any money in the event of a divorce. The trial Judge allowed counsel on cross-examination to ask the complainant if she makes false allegations of misconduct when she wants to end relationships.

On April 13, 2009 the jury returned a not guilty verdict in about 30 minutes.

State v. John Capuano

CLAUD CHONG

New Britain JD

On June 16, 2009, Mr. Capuano was found not guilty by reason of insanity in a case tried to the Court D'Addabbo, J. The defendant was charged with assault 1 in an incident in which he attacked his father while the defendant was in a psychotic state. Counsel relied on the testimony of Doctor Christine Naungayan who diagnosed John with chronic paranoid schizophrenia. Special thanks to Social Worker, **ELIZABETH CORTESE** for her hard work on this case.

State v. John P.

HOWARD EHRING

Assistant Public Defender
Stamford GA 1

Mr. P. was charged with criminal mischief, larceny, violation of a home improvement contract. This case was dismissed during jury selection when the first responding police officer who had not filled out a police incident report came to court to talk to the states' attorney and me. This police officer substantiated the client's version of the incident. An incident report was not filed because two Greenwich detectives came upon the scene and took the alleged victim's statement after she had time to change her version of the events. The detectives report was used as the basis for probable cause.

State v David L.

HOWARD EHRING

Stamford GA 1

Mr. L, who had substantial psychiatric difficulties, stabbed his sister in the throat twice because he thought she had poisoned him when she fixed his lunch. After stabbing his sister he fled and was picked up by two young girls in their car. He then took the car to make his escape. Mr. L was found not guilty of carjacking after a court trial. In addition, the testimony of the psychiatrist who evaluated Mr. L resulted in a judgment of not guilty by reason of mental disease or defect to assault 1 and robbery 3.

Courtroom Victories

State v Amos B. Jr.

HOWARD EHRING

Stamford-Norwalk JD

Mr. B. was charged with murder, manslaughter 1, manslaughter 2, and criminally negligent homicide. Amos B. attended a party with a few friends that became a melee after the party was advertised on MYSPACE; members of various gangs from as far away as Bridgeport attended the party at a residence in Norwalk. When the police were called to break up the party a number of young people were stabbed. A member of the *Money Green* gang threatened our client with a gun, our client then picked up a knife and stabbed the decedent in the heart. He subsequently died and his body was left in the parking lot of McDonalds. Mr B. prevailed on the theory of self-defense and was found not guilty of all charges. He was then granted youthful offender status for the other five felony arrests he had pending and was released from Manson Youth. Investigator **JOE MCCLURE** did an excellent job tracking down leads, witnesses and talking to investigating detectives to substantiate the self-defense claim.

State v Joel M.

MICHAEL RICHARDS

Assistant Public Defender

DANIEL ERWIN

Intern

New Haven, GA 23

The defendant was arrested based on an anonymous complaint of narcotic activity taking place in a legally parked white Acura Integra. There were two occupants and the doors on the vehicle were said to be opening and closing. Upon seeing the vehicle the officer activated his overhead lights and pulled behind the suspect. The defendant lowered his window to speak to the officer and the smell of burnt marijuana flowed out of the car. The defendant was charged with weapon in MV, possession of a controlled substance, possession within 1500' of a school, conspiracy to possession, and conspiracy possession within 1500' of a school.

During pretrial the defense requested that this case be dropped based upon the actions of the police in making the stop and arrest. The state said they would get the CAD report and told him to file for Accelerated Rehabilitation. The client refused to accept the diversionary program and Attorney Richards filed a motion to suppress. A prosecutor was assigned and the case was

set for a hearing. For the second time defense provided the State's Attorney with supporting case law and urged him to drop the charges. On the day of the hearing day the State's Attorney called Tim Segrue in their appellate division and finally understood the bad news- YOU LOSE.

In addition, the police officer told the State's Attorney on the day of the hearing that there may be a problem with this stop. He had recently taken a class for police and prosecutors with Judge Patrick Clifford and Attorney Ron Gold. Case Dismissed!

State v. George C.

MICHAEL RICHARDS

Assistant Public Defender

New Haven, GA 23

George C. was charged with possession of PCP, and possession with intent to sell PCP, and possession within 1500' from a school on each charge. The state also charged 53a-40b, new charges while out on bond. George C was mid street of a dead end standing near 30 doses of PCP in the leaves. Cops testified that he was repeatedly going to that spot in the leaves and making transactions. He had \$294 on his person. The officers had binoculars and were in an undercover unit but could not see what he was exchanging. They both testified that George reeked of PCP.

The defense allowed one of the officers to testify at length about his experiences and his opinions without objection. My cross-exam focused on his lack of detail to the license plate of a buyer prior to their take-down and that they were working overtime and needed to produce for the City of New Haven. The officers could not agree on how high the leaves were that day.

At trial, the prosecutor also moved to join a possession of PCP case where the defendant was arrested three days after the initial arrest. That motion was denied at trial. The state then tried to introduce "charged misconduct" to prove knowledge and intent. That motion was denied. The state tried to introduce two anonymous calls prior to the arrest that said George C was selling drugs on their street. This evidence was excluded.

The jury deliberated for 50 minutes and returned a verdict of not guilty on all counts. Big thanks to **DANIEL RODRIGUEZ**, with help from **OMAR WILLIAMS, TREY BRUCE, BEVIN SALMON AND DAVID WARNER**.

Courtroom Victories

State v Keith Granatek

MICHAEL RICHARDS

Assistant Public Defender

New Haven, GA 23

Motion to Dismiss *granted, Vitale, J.* Mr.

Granatek was charged with operating under the influence and interfering with a police officer. Mr. Granatek was sitting in a parked car at Stop and Shop during business hours and later in a Citizens Bank parking lot. Eventually he was detained and arrested. See Memorandum of Decision on page 29.

State v. Juan B.

DAVE CHANNING

Public Defender

Tolland JD/Rockville GA 19

Mr. B was driving home on Route 195 in Mansfield one dark, March night in 2008, when his car slid on black ice and crashed into a utility pole. The State Trooper who responded, claimed that Mr. B was uninjured but “stunk of booze.” The trooper also found in Mr. B’s car several bottles of beer, which he neglected to seize, and he claimed that Mr. B. admitted drinking as much as six beers at a local tavern prior to driving. The trooper administered the field sobriety tests, and after Mr. B could not perform the tests to standard, the trooper arrested him on charges of DUI and improper marker. At the police barracks, Mr. B refused the breath test but made numerous admissions regarding his intoxication. The trooper testified three times: at the per-se hearing, at a suppression hearing and at trial, and in each instance he testified that Mr. B was not injured in the accident.

However, Public Defender Investigator

ARMAND MARIANO found a civilian (whose existence the trooper omitted from his police report) who witnessed the accident as well as the field sobriety tests. The civilian, a mild mannered graphic designer, father of two named David L testified that the area was known for black ice and that people had been sliding off the road all night that night, including a sober man who hit a tree thirty feet from the utility pole not ten minutes before Mr. B’s accident. He also testified that Mr. B’s accident was impressive; both air bags deployed, there was smoke and fire, none of the doors would open and Mr. B was slumped over unconscious. Mr. L testified that the trooper had to wrench one of the doors open and revive Mr. B. When the Mr. L objected to the trooper administering the field

sobriety tests, the trooper told him to go back in his house. The defense reserved Mr. L’s testimony for last.

For his part, Mr. B did not testify. He had a prior DUI and several other arrests as well as a questionable immigration status. Staples produced beautiful, four foot, laminated, digital blow ups of the accident location and the totaled car, and there were numerous other witnesses, including experts for both sides. The trial dragged on for two weeks to accommodate the schedules of the state’s witnesses and the the judge. Mr. B won a judgment of acquittal on the improper marker at the close of the state’s case, and the jury acquitted him of the DUI after listening to an hour’s readback the following day.

State v. Shawn K.

BRUCE LORENZEN

Assistant Public Defender

Hartford JD

Mr. K’s otherwise distracted guardian angel (like those credit card commercials) decided to show up in a big way. Shawn had allegedly dragged a female acquaintance into the woods and assaulted her. There were aspects of the complainant’s story that did not make much sense. The incident supposedly occurred in late afternoon, in good weather, at a public park in close proximity to ball fields where little league games were scheduled.

On the other hand, Mr. K talked to the police, and after originally denying even knowing the complainant, had confessed. This occurred in three phases: the denial, which was videotaped; a polygraph, likewise videotaped, where he said it was consensual; and the confession, not videotaped, but featuring a signed statement. The state lab was prepared to testify that it was highly likely that the two had sex. For good measure Mr. K was on probation with five years suspended, and just because you can never have enough bad facts, the young lady suffers from a mild case of cerebral palsy. Mr. K was charged with sexual assault 1 and a VOP. The offer of 8 years and 7 years special parole seemed eminently reasonable.

As we were set to begin the questioning of the first venire person, the state’s attorney requested that proceedings be suspended because her inspector had just been informed by the investigating police department that the complainant had been subsequently charged with making a false complaint. She had apparently made a substantially similar claim about another individual but had

Courtroom Victories

later admitted to the police that the incident had involved consensual sex. After meeting with the complainant to discuss the ramifications the state's attorney nulled the substantive charges and withdrew the violation of probation. The only thing I'm mildly proud of was the inspector's prediction of what I would have done on cross. Investigators **ED CHASE** and **FORTE RUSCITO** did a great job of assembling photos, maps and witnesses to challenge the details of the complainant's story.

State v. Eduardo V.

ANN M. GUILLET

Senior Assistant Public Defender

JEFFREY KESTENBAND Esq.

Special Public Defender

Hartford Judicial District

In July, 2007, and again in November, 2007, Mr. V was charged by warrant with several counts of sexual assault and risk of injury to a minor for allegedly sexually assaulting his former step-daughter. The State charged that these incidents occurred on different dates between 1995 and 2001 when the victim was between the ages of four and ten. The incidents allegedly occurred in the town of East Hartford, when the defendant was married to the victim's mother, and later in the town of Granby after the couple had divorced, yet the defendant was still allowed to have the victim visit with his biological daughter. The defendant was held in lieu of bond from July, 2007, until the time of trial in March, 2009.

The victim made these allegations after reporting that she had had several "dreams" about the assaults. After revealing them to her mother and having an extensive conversation about them in which the mother also revealed to the daughter that she had been a "victim" also, the complainant then "realized" that these dreams were of true incidents. The victim, who was 15 at the time of the complaint, was evaluated at the St. Francis Children's Center and a videotaped recording was made of the interview.

The cases were consolidated for trial in GA 12 and then sent to the Hartford Judicial District for trial before the Hon. Julia Dewey. In the State's case-in chief, the state's attorney only called the "victim" and the ex-wife to testify as well as a few other non-essential witnesses. The defense then called the Detective from East Hartford, the State Trooper from Granby, and the forensic evaluator from St. Francis Children's Center

through whom the defense offered the videotape of the forensic evaluation. The defendant's wife, a Department of Social Services supervisor in Massachusetts and the defendant's daughter also testified that the Granby incidents could not have occurred as the defendant was never alone with the victim on the date that the victim believed the incident to have occurred. Finally the defense called Dr. David Mantell, psychologist, as an expert who testified as to his opinion regarding the forensic evaluation. Mr. V did not testify, despite having no previous criminal history.

The defense argued that the investigation into the incident was less than sufficient. Through Dr. Mantell the defense presented evidence that once the victim had revealed that her memory had essentially come to her through dreams, there should have been a more thorough evaluation by a forensic evaluator who specialized in dream analysis and recovered memory. Dr. Mantell spent more than a day testifying that although the forensic evaluation conducted at St. Francis Hospital had complied with the American Prosecutors' Research Institute regarding the protocol when interviewing child sexual assault victims, it was extremely lacking in the area of dream analysis. Dr. Mantell, as well as the forensic evaluator, testified that the St. Francis forensic specialist was not qualified to analyze the dream information or to determine whether the information was indicative that an actual event had taken place. Moreover, Dr. Mantell testified that the evaluation should have been the first of many more evaluations to follow and not the sole piece of forensic data upon which the warrants were signed.

The jury deliberated less than two hours returning not guilty verdicts to all twelve counts including sexual assault 1. Mr. V was released immediately to return to his wife and five-year-old daughter after having spent almost two years in the Hartford Correctional Center.

Investigator, **ED NIEZGORSKI** was instrumental in the investigation of these cases.

State v. John M.

RICHARD PERRY

Senior Assistant Public Defender

Norwich, GA 21

Not guilty verdicts on unlawful restraint 1 and threatening 2. The matter involved an inmate who allegedly entered his counselor's office without permission, threatened her and then blocked her attempt to leave.

Courtroom Victories

State v. Richard W.

OMAR WILLIAMS

Assistant Public Defender

New Haven, GA 23

Richard W. stood charged with an escape 1 based upon allegations that he failed to report to parole, failed to attend addiction services groups, and escaped from his authorized residence. Mr. W acknowledged his violations and admitted via a signed parole document that he skipped addiction groups. Parole alleged that Mr. W's approved sponsor (his mother) called to ask whether Mr. W was in custody and to note that she had not seen him and did not know where he was residing. Forty-two days after his alleged escape and 158 days after his release from jail, Mr. W surrendered himself on the escape charge and ultimately elected to pursue a trial though his underlying sentence was set to expire exactly one month from the start of jury selection.

At trial, Mr. W conceded the element of custody and waived his right to testify. The defense successfully excluded as hearsay the statement from Mr. W's mother, objected to the state's calling what it termed a "rebuttal witness," prevented the state from reopening its case-in-chief, objected to the state's closing argument in that it cited and heavily relied upon testimony not in evidence, and drafted a page-long handwritten curative instruction that was read to the jury by the Court (Holden, J.).

In its request to charge, the defense cited *State v. Woods* (234 Conn. 301) for the proposition that merely failing to report to a parole officer, even on multiple occasions, is not enough to prove an escape. In its closing argument, the defense urged jurors to apply the normal meaning of the term "escape" to the statute that leaves it undefined. See Conn. Gen. Stat. §1-1, *Woods at 309*, and *State v. Lubus* (216 Conn. 402). As such, it was analogized that the parent of a college student who had not called home in a few weeks would be deemed crazy for suggesting that the child had "escaped." The closing argument in support of Mr. W further distinguished parole's conditions of release from the law of escape 1 in arguing that it was beyond the concern of the jurors whether there were other available penalties via Department of Corrections or parole aside from prosecution on the escape charge. After several reminders of the burden of proof it was argued that it was reasonable to believe Mr. W simply was not at home when parole attempted to visit him without warning and that if the state's lack of evidence (i.e., that parole waited for Mr. W's return or requested entry into the residence for

evidence of Mr. W's "escape") left the jury with a reasonable doubt as to whether Mr. W had escaped, the jury must give him the benefit of that doubt and find him not guilty. See Connecticut Criminal Jury Instructions, § 2.2-3. After less than an hour, the jury rendered a verdict of not guilty.

The jurors shared that they took a secret ballot at the close of evidence the results of which were only published when deliberations began. The vote before the case was in their hands had been 6-0 to convict.

Omar thanks his client for his quiet patience at trial, his colleagues for their support and feedback, and everyone in the Division serving our clients with distinction. Our judges have openly commented on the research, preparedness for trial, and resultant victories of the attorneys in New Haven's public defender offices.

State v. Kenneth Ireland

KAREN GOODROW

Director of Connecticut Innocence Project with

**MICHAEL LEFEBVRE, PETER PALMER AND
JOAN O'ROURKE**

OF THE CONNECTICUT INNOCENCE PROJECT

On August 5, 2009 Judge Damiani in New Haven granted Kenneth Ireland a PTA. After spending 21 years in prison for a sexual assault and murder that he did not commit, Mr. Ireland was granted a new trial and was exonerated on April 19 when prosecutors dropped the charges and the judge dismissed the case. This is the third exoneration for the Connecticut Innocence Project in three years.

State v. Reginald Joseph

MATT POPILOWSKI

Per diem Attorney, Danbury

ELIZABETH INKSTER, Senior Assistant Public Defender and Professor of the Quinnipiac University Appellate Clinic reports that Matt continues to impress. He won his first appeal last week, a Quinnipiac University Defense Appellate Clinic case that is reported in the August 11, 2009 CLJ. See *State v. Reginald Joseph*, 116 Conn. App. 339 (2009). It's a solid win. In addition to being a big win for Matt, it's good timing for the Clinic. It's great to be able to start classes next week with a study of a Clinic win.

Courtroom Victories

State v. Theo G.

WILLIAM SCHIPUL

Senior Assistant Public Defender
Fairfield Judicial District

In *State v. Theo G* the client was found not guilty of sexual assault 1, sexual assault 2 and risk of injury. Mr. G was charged with sexually assaulting a thirteen year-old girl in the bathroom of a Stratford apartment. Mr. G was 21 years-old at the time of the incident. Approximately twelve people attended a going away party for Mr. G to celebrate his acceptance into the AmeriCorps program. Although the alleged victim was uninvited, she attended as the guest of Mr. G's girlfriend's sister; the girlfriend did not attend as she had to work. Mr. G and the alleged victim had never met prior to the party. The alleged victim claimed that Mr. G had dragged her into the apartment's only bathroom and forced her to give and receive oral sex.

Mr. G testified and denied any aggressive behavior or sexual encounter with the "victim". He testified that, following a "beer pong" competition, he became sick as a result of drinking schnapps called 99 Apples. He testified that when he went to the bathroom to vomit, the girl followed him. He testified that although he tried to avoid the girl during the party, she was persistent. Mr. G. wore jewelry in his earlobes and had intricate tattoos on his forearms that had a raised pattern similar to a sculpted carpet. The young girl showed a particular interest in the tattoos; several times she came up to Mr. G and started rubbing his tattoos with her hand.

The complaint was not initiated until the Monday after the Friday party, when the girl spoke to a counselor at her school. As a result, both the police and the girl's mother were contacted. She conceded that she did not tell her mother about the incident but insisted that she told her friend's mother when she spent the weekend at the friend's home. This prearranged sleepover was not canceled even though the girl claimed she was raped on the same evening that the sleepover began. The friend's mother did not testify. The "victim's" mother testified that she was not contacted by the friend's mother and the police were not involved until the school notification. There were no physical injuries.

At the detective bureau, the officer in charge of the case took a statement from the complaining witness. At first, he asked her to hand write a field statement but interrupted her before it was completed. He then began the statement procedure again, this time using a computer

to type her answers to his questions. The handwritten field statement was never disclosed to the defense, and at trial, the detective admitted that he had destroyed ("shredded") the field statement prior to turning the case file over to the prosecutor. After denying a Motion to Dismiss, the court gave an adverse inference instruction against the state for the destruction of the field statement.

The detective subsequently visited the woman who hosted the party and obtained a sworn field statement indicating that Mr. G admitted to her that he had oral sex with the complainant. At trial the same woman testified that she told the detective what she thought he wanted to hear because of her family's involvement with the Department of Children and Families and her fear of losing custody of her infant son. This witness further testified that Mr. G. did not tell her that he had sex with the complainant. The state was then able to have her sworn field statement admitted under the *State v. Whelan* rule.

It appears that the jury found it hard to believe that the friend's mother would take no action to notify the complainant's mother or the police if she had been told about the assault. The jury took 45 minutes to return not guilty verdicts on all counts. Special thanks to Investigator **DONNA HENRY** for her work on this case.

State v. Santos N.

WILLIAM SCHIPUL

Senior Assistant Public Defender
Fairfield Judicial District

Santos N. was found not guilty of robbery 1, attempted aggravated sexual assault 1, unlawful restraint in the first degree, sexual assault in the third degree and assault in the third degree. Mr. N was charged with attacking a group facilitator/therapist at a local counseling center as it was opening for business. The "victim" testified that she was approached as she was opening the office on the second floor.

The complainant testified that she saw the assailant while unlocking the door and turned toward him to see if he needed help. The assailant then allegedly grabbed her by the hair and forced her to go inside the outer office. She told the police that he was armed with a knife during the confrontation.

Courtroom Victories

The complainant claimed to the police that she knew the suspect as an ex-inmate who was taking a class that she and a male coworker were teaching. When the “victim” screamed for help, the coworker ran downstairs from his office on the third floor. According to the complainant, the suspect fled the building prior to the coworker reaching the second floor.

The description given to the police was of a Hispanic male, 6’0’ tall, skinny with a short beard, black sweat shirt and white sneakers with a tattoo of a scorpion on the right side of his neck. A photo array was put together of Hispanic males with tattoos on their necks. The “victim” selected the photograph of Mr. N which showed a double headed dragon tattoo on the right side of his neck. The defense produced evidence that the defendant was never a client of the program where the alleged victim worked. The defense also produced evidence that, at the time of the alleged incident, Mr. N was at a gas station on the other side of Bridgeport. Mr. N’s testimony was supported by the manager of the gas station who was also Mr. N’s employer. Mr. N wasn’t working on the day of the incident but was at the station to change the oil and spark plugs in his son’s car prior to their trip to Newburgh, New York that same day. The state did not present any rebuttal to the alibi evidence.

Mr. N conceded that he was a Hispanic male with a tattoo on his neck, that he was a convicted felon and lived in the same drug infested neighborhood as the office where the program was located. He denied, however, that he had ever been a client of the program and was not present when anything happened to the alleged victim. The defense argued that the complainant might have seen him on the street or at the small convenience store located nearby that he and she both acknowledged patronizing. The erroneous identification may thus, have resulted from inadvertent contact; it may have been bolstered by the presence of a tattoo on the suspect’s neck.

Interestingly, one of the jurors had tattoos on both sides of his neck. Toward the end of their deliberations, the jury asked for a second view of the defendant’s tattoo. Less than ten minutes after the view (deliberations lasted less than one hour total) the jury returned a verdict of not guilty of all charges. The jury believed that the defense satisfactorily established that the defendant had never been a client of the program and was, in fact, at his place of business at the time of the incident. The defendant’s tattoo, its design and color were less important facts in establishing reasonable doubt.

It appears that the increasing use of tattoos in our society is conditioning our juror pools to expect more from the prosecution than simply proving that the defendant had a tattoo in a particular location.

Special thanks to investigators, **JOSEPH BIONDI** and **GARY MECOZZI**.

State v. James Nahas
LINDA SULLIVAN
Special Public Defender
New London, CT

It was reported in *The Day*, a New London newspaper, that in 2006, James Nahas was charged with sexual assault after a 16 year old girl told her doctor that Nahas made inappropriate advances when she was between 8 and 12 years-old.

After jury selection was complete, the prosecutor announced that the alleged victim, who now lives in Florida, decided not to testify. Upon the prosecution’s entering the nolle, Judge Susan Handy granted a dismissal.

The defense subpoenaed the girl’s medical records which noted that she had made prior unsubstantiated claims and that she had a history of psychological problems. The records released under seal to another judge, included information that questioned the complainant’s credibility.

Attorney Sullivan said, “the problem with these cases is that merely being accused of something like this is devastating...most people assume the veracity of the complaint.”

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Professionally speaking...

Three Public Defender Social Workers earned their MSW degrees graduating in May, 2009. **MIRIAM WHOLEAN**, Southern Connecticut State University, **KARA SICKINGER**, Southern Connecticut State University and **SUE LUCAS-DENEEN**, University of Connecticut School of Social Work. We congratulate our colleagues on their accomplishments.

CHRISTINE RAPILLO, Director of Juvenile Delinquency Defense, spoke at the National League of Cities event in Hartford on July 25. The theme of the event was “Cradle to Prison or Cradle to President”. She spoke about reentry and diversion programs and received positive feedback on our public defender social worker program.

Professionally speaking...

ABRA RICE, a GA 23 lawyer knew she wanted to be a public defender in her early days of law school. She shared this over drinks with her new friend Betty Anne Waters shortly after meeting at Roger Williams University law school. "I always planned to be a Public Defender -- to help the innocent and not so innocent."

An article by Betsy Yagla in *The New Haven Advocate* (August 18, 2009) describes how Rice's meeting and subsequent friendship with Betty Anne Waters will soon become a Hollywood movie starring Minnie Driver playing Rice and Hillary Swank as Betty Anne Waters.



Abra Rice (center) with colleagues Margaret Moreau (left) and Renee Cimino celebrate at an office party to honor Joan Leonard on her recent retirement

Waters also shared a personal story that day. A story that changed Rice's life and confirmed her choice of a legal career. Waters confided that her brother, Kenny was serving a life sentence for a brutal murder and robbery from a 1980 incident in Ayers, Massachusetts. He was accused of stabbing a woman and stealing her jewelry and money.

It was Kenny Waters' conviction that drove Betty Anne to law school. Betty Anne dropped out of high school and was working at a pub. After her brother went to prison she pursued her GED, put herself through college and began law school in order to help him get out of prison.

Although Kenny Waters had a solid alibi -- that he was at work, three women, including an ex-girlfriend testified against him. One woman testified that he confessed while drunk and another claimed he tried to sell her jewelry belonging to the victim. A police finger print analysis cleared his name, however, that evidence was never turned over to prosecutors or defense attorneys.

As a law student, Waters wrote a paper on DNA evidence and learned about the Innocence Project using DNA to free those wrongfully convicted of murder or rape.

Rice and Waters began their own investigation locating a box of evidence in the courthouse basement containing the bloody nightgown of the victim and the knife. The Innocence Project assisted them in finding a DNA sample of someone other than the victim or Kenny Waters. Rice and Waters traveled across the country to locate and interview witnesses who recanted their story.

While in prison, Kenny Waters attempted suicide many times and often suffered panic attacks.

After serving 18 years in prison, new evidence and testimony led to Kenny Waters' exoneration in March 2001. Sadly, six months later he fell, hit his head and died. Betty Anne Waters sued the town of Ayers, Massachusetts for wrongful imprisonment and withholding evidence. In July 2009 the town settled the case for \$3.4 million dollars. Waters left legal practice after her success in freeing her brother. In addition to owning pubs and real estate, Waters works as a volunteer with the New England Innocence Project.

The film about the Rice and Waters collaboration to free Kenny Waters, entitled *Betty Anne Waters* is scheduled to open this winter.

Abra Rice has been a public defender in Connecticut for four years. She currently works in the GA 23 New Haven office on Elm Street.

My Retrospective of the Division

In 1977, the public defender's office in GA 12 was like the "little red school house"—one room. The courthouse, with one judge and one courtroom, was incorporated into the East Hartford Police Station. Our little room had two walls of windows, one desk, one phone, one file cabinet, one bookcase, a typewriter stand, two office chairs with wheels and two chairs for clients or visitors. Eventually we had a second phone installed on the wall; it was red and had a long cord that could extend outside the office. There was a small storage closet for supplies and old files. This room, no bigger than my current office of 12' x 12', was frequently occupied by two attorneys, (Michael Handler and Harriet Rosen) myself, a client and his/her family member

The Annual Report 1977-78 relates that the Division's expenditures of \$2,586,659 supported a staff of 125 persons, 75 of whom were attorneys and other staff consisted of investigative and clerical personnel. In this Annual Report, Chief Public Defender Joseph Shortall also mentions that "in evaluating the need for additional clerical assistance, it should be pointed out that the women holding these positions are responsible for far more than typing and filing. They interview clients, assist in determining financial eligibility, arrange for bail and other services for clients and schedule appointments."

During the fiscal year 1977-1978, our GA 12 office was appointed to 1177 new cases and disposed of 924 cases; in addition we handled twenty-eight evidentiary hearings, one jury trial and three court trials. We accomplished this with one full time and one part-time attorney (Harriet worked in New Britain GA 15 two days a week) and me, as a clerical assistant. On reflection, I wonder how we managed this caseload. Although we borrowed the photocopier in the Clerk's office, supplying our own paper to copy police reports, we were not permitted to use it for other projects. When the judge was on the bench, I had clearance to use the mimeograph machine to spin out sheets of interview forms. The preparation of a mimeograph stencil took extreme care and concentration because a mistake or tear would render the form defunct. I was appreciative of the ranch style building that made it convenient to visit the lockup to take applications.

Thirty-two years later the Division has 408 staff, comprised of over 200 attorneys, 61 clerical, 62 investigators, 42 social workers and 21 administrative staff and a budget appropriation of \$50,300,000. Our modern technological tools such as fax machines, computers, cell phones and e-mail messages have provided means to communicate with each other quickly and from great distances. In 2008-09 the GA 12 office, with six attorneys, two investigators, one clerk, one secretary and one social worker, was appointed to 3172 new cases and disposed of 2717.

As I retire, preparation of my final issue of **DISCOVERY** has provided me with an opportunity to think about how the Division has changed. I have also pondered how the Division has remained the same. From 1975 to the present, our mission has never varied. That mission is to provide legal representation in accordance with both the United States and Connecticut constitutions to any person charged with the commission of a crime in Connecticut who does not have the financial ability to hire an attorney.

Our front-page feature on Arthur Giddon, at age 100, shows him to be an inspiration; his public defender career began when he was in his early 50s and spanned nineteen years. Our agency still attracts people who are dedicated to our mission. As a young law student, Abra Rice of New Haven GA 23 investigated a murder case in an effort to free her colleague's brother. The two women realized their goal when Kenny Waters was exonerated after serving 18 years in a Massachusetts prison. This story is the subject of a soon to be released Hollywood film, *Betty Anne Waters*.

continued on page 41

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Sue Lucas-Deneen, a recent MSW graduate, shares her account of the hospice and bereavement program available to Connecticut inmates. It is heart-warming and impressive to learn about the courage and compassion that some of our clients demonstrate as hospice volunteers in the prison.

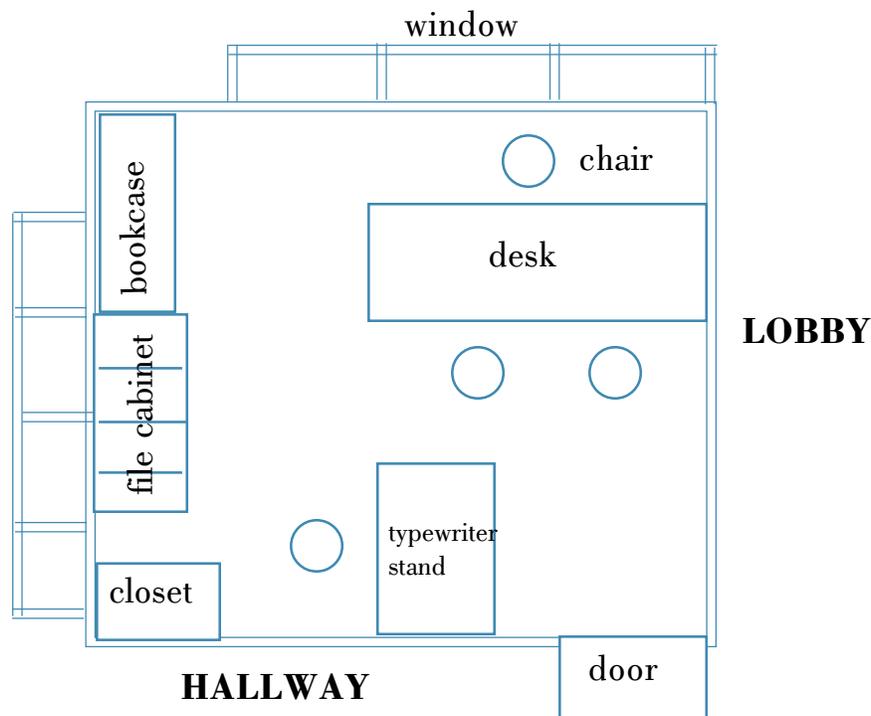
As members of the first Class of Latino Community Fellows, Irma Grimes, Ligia Werner and Suzanne Andreyev have studied for two years in a bilingual environment and committed themselves to finding ways to reach out to Latino veterans to encourage them to avail themselves of the services of Stand Down. Isabel Logan developed and presented a program entitled *Bilingual Professional: Asset or Liability* to illustrate the challenging issues that bilingual professionals confront when asked to serve as interpreters in their workplace.

Susan Brown applauds the recent retirees and urges the now veteran public defender staff to become mentors to new employees. Christine Rapillo outlines three significant juvenile matters decisions that expand due process rights to children. A long list of courtroom victories highlights the persistence and ingenuity of Division staff. Finally, **DISCOVERY** honors twenty-three recent retirees who have devoted numerous years of their careers to furthering justice.

As I say au revoir to my colleagues and friends in the Division, I realize that despite the growth in staff since 1977 and the acquisition of technological tools, effective representation of our clients still demands that we build supportive relationships with our colleagues and relies upon our abilities to work face-to-face to achieve our mission.

P.S. I will always have fond memories of the one room public defender's office and my red wall phone with the extra long cord.

**Pamela Bower Simon,
Managing Editor**



Drawing of GA 12 Public Defender Office in 1977