

State of Connecticut Criminal Justice Policy Advisory Commission



**Connecticut Criminal Justice
Cross-Training Conference
Thursday, March 25, 2010**

State of Connecticut OFFICE OF THE ATTORNEY GENERAL



Workshop K: LIABILITY ISSUES – THE ROLE OF THE ATTORNEY GENERAL'S OFFICE

**Presented once (10:40 – 12:00) in
Meeting Room 326**

Steven R. Strom, Esq.

Assistant Attorney General, Office of
the Attorney General

State of Connecticut *OFFICE OF THE* *ATTORNEY GENERAL*



- The role of the Public Safety Department at the Office of the Attorney General
- representing state employees, including representing public defenders, prosecutors, probation officers, parole officers and employees of the Department of Correction, and UCONN Correctional Managed Health Care.



AGENDA and OBJECTIVES

- Role of the Attorney General's Office
- Indemnification of State Employees
- Personal Liability
- How to Protect Yourself and Avoid Liability
- 2009-2010 Update of Legal Issues / Cases
- Questions

Attorney General's Office

Department 7 – Public Safety



Dep't. Head –

- Terrence O'Neill
 - Ann Lynch
 - Lynn Wittenbrink
 - Richard Biggar
 - Robert Fiske
 - Matthew Beizer
 - Steven Strom
 - Neil Parille
 - Carmel Motherway
 - Madeline Melchionne
 - James Caley
 - DeAnn Varunes
 - Stephen Sarnoski
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Conn. Gen. Stat. §3-125

- ❑ The Attorney General shall have general supervision over all legal matters in which the state is an interested party, except those legal matters over which prosecuting officers have direction.
 - ❑ He shall appear for the state, the Governor, ...and for all heads of departments and state boards, commissioners, agents, in all suits and other civil proceedings, ... in which the official acts and doings of said officers are called in question, ...
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Civil v. Criminal Authority

State Civil Authority



Attorney General

State Criminal Authority



Chief State's Attorney
and State's Attorneys

OFFICE OF THE ATTORNEY GENERAL

Public Safety & Special Revenue Unit

Agencies, Boards & Commissions Represented



- Dept. of Public Safety
 - Dept. of Homeland Security & Emergency Management
 - Police Officer Standards & Training Council
 - Board of Pardons & Paroles
 - Liquor Control Commission
 - Office of the Public Defender
 - Board of Firearms Permit Examiners
 - Dept. of Correction
 - Office of Adult Probation
 - State Military Dept.
 - Division of Criminal Justice
 - Judicial Marshals
 - State Marshal Commission
 - Juvenile Justice Division
 - Court Support Services Division (Probation, Juvenile Detention)
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Indemnification

Connecticut General Statutes § 5-141d

State officers/employees to be indemnified for losses suffered as a result of official acts or omissions not wanton, reckless or malicious in nature

Attorney General required to provide for employee's defense unless he determines it to be inappropriate to do so

The State will pay any \$\$\$ damages if you acted "within the scope of employment" in the lawful discharge of your duties



Statutory Immunity

Connecticut General Statutes 4-165

- ❑ Individual state officer/employee immune from personal liability for official conduct not wanton, reckless or malicious
 - ❑ Injured claimant must obtain permission to sue the State of Connecticut directly from Claims Commissioner
 - ❑ The State, not the individual, becomes liable for any wrongdoing found
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Denial of Representation

- Trooper requesting sexual favors in lieu of traffic citation
 - Trooper secretly videotaping female while changing clothes
 - Employee destroying legal papers which should have been stored in inmate property in retaliation for lawsuit
 - Officer assaulted inmate while restrained for no legitimate purpose
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Types of Lawsuits Offenders Can File

- Civil Rights Actions – 42 U.S.C. §1983
 - Habeas Corpus Petitions
 - Claims in the Claims Commission
 - State Court Tort Actions
 - FOI Complaints
 - CHRO Complaints
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Civil Rights Lawsuits

Plaintiff (prisoner, parolee, probationer, criminal defendant) Sues State Employee in his/her Individual capacity

- \$\$\$\$ Individual money damages
 - Compensatory or nominal damages
+ punitive damages
 - Jury trial
 - Court Order (injunction) to Prohibit Certain Conduct or Requires certain conduct
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Individual Capacity

Service of Process

1. In-Hand
2. At Your "Abode" or Residence
3. By Mail

Waiver of Service

Notify the Office of the Attorney General explaining that you received the complaint and include a copy of the complaint and Waiver. All correspondence shall be mailed to: Office of the Attorney General, MacKenzie Hall, 110 Sherman Street, Hartford, CT 06105-2294.

Personal Liability and Individual Capacity Lawsuit



- ❑ **Sullins v. Rodriguez**, 281 Conn. 128 (2007)
 - ❑ State employees may be held personally liable when sued as individuals for actions taken in their official capacities and thus,
 - ❑ under color of law.
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HABEAS CORPUS PETITIONS

Inmate Petitioner
sues the Warden

- No money damages
- Court Order to Do Something
- Court Order to Prohibit Certain Conduct

- Sentence Calculations
 - Parole eligibility
 - Medical care
 - Mental Health Care
 - Personal Safety
 - Special Diets
 - Disciplinary Reports
 - Segregation
 - Vacate Plea Bargain
 - Inadequate Assistance of Counsel
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Freedom of Information Commission (FOIC)



- Any and all records “maintained” are “public records”
 - Exemptions are narrowly construed
 - Burden is on party claiming the exemption to prove the document is not a “public record” and should be exempt from disclosure
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PUBLIC DEFENDER LAWSUITS



- Rodriguez v. Moscowitz
CV-07-5012304S
JUDICIAL DISTRICT OF NEW HAVEN
2008 Conn. Super. LEXIS 525
(March 6, 2008)
 - Moscowitz was appointed as a special public defender
 - motion to dismiss is granted
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Public Defender Lawsuits

- General Statute §4-165 provides in pertinent part: "(a) No state officer or employee shall be personally liable... (b) For the purposes of this section, (1) 'scope of employment' includes but is not limited to, (A) representation by an attorney . . . appointed by the court as a special assistant public defender . . ."
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Public Defender – No State Action



- The requirement that the defendant act under color of state law is a "jurisdictional requisite for a [§1983](#) action." [Polk County v. Dodson, 454 U.S. 312, 315, 102 S.Ct 445, 70 L.Ed.2d 509 \(1981\)](#).

"[A] public defender does not act under color of state law [for [42 U.S.C. §1983](#) purposes] when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." [Polk County v. Dodson, supra, 454 U.S. 325](#).

Ineffective Assistance of Counsel (IAC) Claims – Habeas Petitions

- ❑ **Handled by State's Attorneys' Office – Not the AAG's**
 - ❑ claims of ineffective counsel implicate the validity of the original conviction, such claims must be introduced through a habeas corpus action or a petition for new trial." State v. Leecan, 198 Conn. 517, 541, 504 A.2d 480, cert. denied 476 U.S. 1184, 106 S. Ct. 2922, 91 L.Ed. 2d 550 (1986);
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PROBATION OFFICER LAWSUITS



- ❑ KERPEN v. WILLIAM DELUCA, MICHAEL SANTESE, AND THOMAS CANNY
 - ❑ state probation officers, “manufactured victim impact statements” in his presentence report.
 - ❑ absolute immunity “from claims for damages in the preparation and furnishing of presentence reports to trial courts.” Peary v. Ajello, 470 F. 3d 65, 68 (2d Cir. 2006)
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Probation Officer Lawsuits/ Liability



- Failure to Supervise – Failure to Enforce Conditions of Probation
 - ESTATE OF LESLIE KARP – Claim
 - While on suspended prosecution – used/tested positive for cocaine
 - No VOP – probationer drove/killed Dr. Karp - discretionary – not foreseeable
 - Claim was denied
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Probation Officer Lawsuits/ Liability



- Claim of Kelly Lombard
 - Murdered by inmate residing in halfway house
 - Protective orders / No Contact w. victim condition
 - Victim's father contacted DOC & HWH
 - Victim continued to visit I/M
 - HWH allowed contact and settled \$\$\$
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Prosecutor Lawsuits / Liability



- ❑ In Seri v. ASA Bochicchio, the plaintiff was wrongfully convicted for exposing himself in a Newtown library. The pertinent allegation remaining is that post-conviction, the defendant withheld exculpatory fingerprint evidence.
 - ❑ Prosecutorial immunity, while extensive, it is not all-encompassing, particularly when prosecutors act in an investigatory capacity.
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Prosecutor Liability

We are awaiting a decision from the 2nd Circuit in *Seri v. Bochicchio* to the extent of prosecutorial immunity in a post-conviction activity. The lesson for prosecutors (particularly in light of DNA advancements, The Innocence Project, etc.) is to be cautious that investigatory activity may not be fully immunized.

OUR OFFICE WILL DEFEND YOU, ... even if



- ❑ In Rogers v. ASA DeJoseph, the defendant prosecutor punched the plaintiff, in open court, after the plaintiff had some cross words with the criminal judge.
 - ❑ not a typical case and immunity would not apply.
 - ❑ Nevertheless, it may be encouraging to prosecutors to know that, provided they act in good faith, our office will defend cases such as this.
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How to Protect Yourself and the State



- ❑ ALWAYS BE PROFESSIONAL
 - ❑ FOLLOW ALL AGENCY POLICIES
 - ❑ COMPLY WITH PROCEDURES
 - ❑ RESPECT INMATE'S RIGHTS
 - ❑ KEEP CAREFUL DETAILED RECORDS
 - ❑ KNOW YOUR DIRECTIVES, POLICIES AND PROCEDURES
 - ❑ BE AWARE OF CLEARLY ESTABLISHED CONSTITUTIONAL LAW
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How to Protect Yourself and the State



- Perform all duties in "good faith," in keeping with the Constitution of the United States, the State of Connecticut, existing statutes, and DOC policies and procedures
 - Avoid any omissions of duties that are wanton, willful, malicious, or negligent
 - Implement and enforce court orders
 - When in doubt, obtain direction from your Supervisor, and/or legal counsel
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CONTACT INFORMATION

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