A black and white photograph of a grand, classical building with a portico supported by several tall, fluted columns. An American flag is flying on a pole in the foreground on the left. The building has a pediment with a central relief sculpture. The sky is bright, and there are some dark, leafy branches in the upper left corner.

Connecticut Courts

*An Interactive Curriculum
for
High School Students*

Developed by the *Connecticut Judicial Branch*

Coordinated By
The Justice Education Center

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to the
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Connecticut Department of Education

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Preface

“...freedom often depends upon the fearless judge. Judicial independence has a long history in Connecticut, where the British colonists rebelled because judges were beholden to King George III. The evils done by puppet judges directed by tyrants such as Hitler and Stalin resulted in the wholesale slaughter of countless innocent people. History teaches that we must resist that evil.”

Hon. Francis M. McDonald, Jr.
Chief Justice, Connecticut Supreme Court
June 5, 2000

The Connecticut Judicial Branch, a third and separate branch of our state government, is responsible for maintaining the rule of law in our society through the courts. This means that we ask our courts to determine whether persons accused of crimes by the state are guilty or not guilty and we ask our courts to resolve the private disputes of citizens, such as those between landlords and tenants, husbands and wives, and buyers and sellers. Most importantly, our courts are responsible for reviewing laws enacted and approved by the legislative and executive branches of the government to ensure that they comply with our highest laws -- the constitutions of the United States and the State of Connecticut.

Maintaining the rule of law requires that the judges of our courts be able to decide cases strictly in accordance with the law, uninfluenced by changing public opinion or pressure from other sources. As the *Amistad* case illustrates, even the President of the United States is subject to the rule of law and may not direct a judge to depart from it. This principle is embedded in the process by which our judges are selected and appointed. Attorney Joseph A. Mengacci, the chairman of Connecticut's Judicial Selection Commission recently stated, "What we all want and need in Connecticut's courts are judges who will make decisions based not on public opinion, but on sound legal principles."

The authority of our courts to make and enforce decisions in the thousands of cases that come before them rests ultimately on the public's trust and confidence in the judicial system as a whole. In 1998, the Connecticut Judicial Branch conducted a survey to determine the level of public trust and confidence in our judicial system and to recommend strategies to improve the public's knowledge of that system. The survey indicated that confidence levels are highest among people who have had some experience with the system and that many people do not know enough about the system to form an opinion. This curriculum project was initiated in response to the need for effective and dynamic ways to provide information on our court system.

INTRODUCTION

Purpose of Curriculum

The purpose of this curriculum, entitled, *Connecticut Courts*, is to provide high school students with a thorough understanding of the rule of law, the role of the courts and the structure and function of the Connecticut Judicial Branch as it relates to the two other independent branches of government. This curriculum project was developed by the Connecticut Judicial Branch, and coordinated by the Justice Education Center, a private, non-profit organization which provides research and information on issues related to criminal justice. The design team consisted of three Connecticut high school social studies/history teachers, a history professor from the University of Connecticut, a Superior Court judge, two professional staff members of the Judicial Branch, and an education consultant from the Justice Education Center. The team met regularly from April to September of 2000 to develop the finished product.

Recognizing the challenges that high school teachers face in meeting existing district curriculum goals, *Connecticut Courts* was developed to be easily incorporated into high school government or United States history classes in seven, 40-minute segments or three 90-minute blocks, with the option of unlimited expansion and exploration. *Connecticut Courts* includes recommendations for activities, extensive resources and an extended bibliography to support additional study and investigation of this critical subject matter.

Included in this curriculum is information published by the Connecticut Judicial Branch which includes descriptions of the Branch's Speaker's Bureau and Court Visitation Program as well as a factual booklet entitled, *Connecticut Court Process*.

Compliance with the Connecticut State Social Studies Curriculum Framework

This curriculum fulfills critical components of the Connecticut State Social Studies Curriculum Framework. In terms of program goals, *Connecticut Courts* encourages students to "demonstrate knowledge of how people create rules and laws to regulate the dynamic relationships of individual rights and societal needs." *Connecticut Courts* seeks to develop civic knowledge of the court system in all students, including those who may feel alienated or intimidated by the judicial structure.

Among the fifteen K–12 Content Standards in the Social Studies Framework, *Connecticut Courts* directly addresses the first seven goals. Under the subject of "History," the goals addressed include: (1) historical thinking; (2) local, U.S., and world history; (3) historical themes; and (4) applying history. Under the topic of "Civics and Government," the goals addressed include: (5) United States Constitution and government; (6) rights and responsibilities of citizens; and (7) political systems.

Introduction

FOCUS OF SUBJECT AREA

- The rule of law and the role of the courts;
- The role and responsibilities of the Connecticut Judicial Branch as it relates to the two other independent branches of government;
- The structure and function of the Judicial Branch in Connecticut;
- The functions of the critical personnel involved in the court process.

INSTRUCTIONAL OBJECTIVES

- Define law, the rule of law, justice and courts;
- Identify the three branches of government in the State of Connecticut and explain how the Judicial Branch differs from the other two independent branches of government;
- Describe the components of the Judicial Branch including the roles and responsibilities of the judge, jury and attorneys;
- Explain the Connecticut court structure and its various components;
- Identify court personnel;
- Analyze court cases that illustrate major concepts and the court process.

STRATEGIES

Students will learn about the Connecticut court system by:

- Reading required materials;
- Participating in class discussion, activities and optional field trips related to the subject areas;
- Viewing video presentations.

OVERVIEW OF LESSON ACTIVITIES

Length of Individual Segments: Segments One and Three require a minimum of two 40-minute periods of time or one 90-minute block. Segment Two requires three 40-minute periods of time or one and one half 90-minute blocks. These segments or block periods can be expanded to accommodate individual school district goals with additional activities, readings, research and field trips. The expansion of these lessons beyond the minimum class periods is strongly recommended.

ACTIVITIES FOR MINIMUM USE OF SEGMENTS

Students will:

- Read required written text;
- Study three Connecticut court cases that reflect how the judicial system works;
- Participate in discussions related to the content of the reading material and/or viewing of video presentations;
- Complete segment homework assignments;
- Complete a final assessment activity on material studied.

OPTIONAL EXPANDED OBJECTIVES

- Research and synthesize findings of court cases;
- Prepare and conduct a debate or a mock trial.

ASSESSMENT

Students will demonstrate their comprehension of minimal vocabulary, basic concepts and the role of the judiciary in Connecticut government by (1) constructing an essay; (2) creating a poster; (3) conducting or participating in a debate; or (4) conducting or participating in a mock trial. The essay, poster, debate or mock trial should reflect an understanding of class discussion, required reading and/or video content.

Introduction

EXPANDED ACTIVITIES BEYOND 40-MINUTE SEGMENTS

- Visit a court session through the Court Visitation Program sponsored by the Connecticut Bar Association, the Consortium for Law and Citizenship Education, and the Judicial Branch. For more information contact the Connecticut Bar Association at (860) 223-4400. (Appropriate for Segment 3)
- Engage in a discussion with outside visiting speakers (judges and representatives of the Judicial Branch). For more information about the Judicial Branch's Speaker's Bureau, contact the External Affairs Division of the Judicial Branch at (860) 757-2270. (Appropriate for Segment 3)
- Explore career possibilities through job shadowing. For more information, contact the Judicial Branch External Affairs Division at (860) 757-2270. (Appropriate for Segment 3)
- Complete extended research activities on subjects such as biographies of famous judicial figures and famous court cases. (Appropriate for Segment 1, 2 or 3)
- Follow a piece of legislation affecting the courts through the legislative process. For more information, access the Connecticut General Assembly's website at www.cga.state.ct.us. (Appropriate for Segment 2)
- Compare Connecticut's judicial system with other judicial systems throughout the United States and the world including tribal justice systems. (Appropriate for Segment 1, 2 or 3)
- Visit sites of historical significance to Connecticut court history, such as, The Old State House, Old Newgate Prison, The Prudence Crandall House, the Supreme Court and the replica of the Amistad vessel. (Appropriate for Segment 1)

For more information contact:

<u>Old State House</u>	800 Main Street, Hartford (860) 522-6766
<u>Old Newgate Prison</u>	Newgate Road, East Granby (860) 653-3563 or (860) 566-3005
<u>Prudence Crandall House</u>	Junctions of Routes 14 and 169, Canterbury (860) 546-9916 or (860) 566-3005
<u>The Supreme Court</u>	231 Capitol Avenue, Hartford (860) 757-2270
<u>Amistad Legacy</u>	www.Amistadamerica.org

- View additional videos and read/view supplementary texts of court cases, novels, short stories, and other related material. (Appropriate for Segment 1, 2 or 3)
- Maintain a journal of newspaper articles, editorials and/or current radio and television news coverage of a current court issue. (Appropriate for Segment 1, 2 or 3)

SEGMENT OVERVIEW & TIME ALLOCATION

Segment One: The Rule of Law and the *Amistad* case

Day One

- Class Discussion: Basic Facts of the *Amistad* case 40 minutes

Day Two

- Group Activity: Creating Definitions 20 minutes
- Class Analysis of Group Definitions 20 minutes

Homework: Essay on the *Amistad* case

Segment Two: The Role of the Courts and the Case of *Mary Jones*

Day One

- Class Discussion: Fundamental Questions 40 minutes

Day Two

- Group Activity: Determining Outcome of Case 40 minutes

Day Three

- Individual Group Presentations 15 minutes
- Class Analysis of Case Outcome 15 minutes
- Class Discussion: Resulting CT legislation 10 minutes

Homework: Written analysis of *Griswold v. Connecticut* or *Packer v. Board of Education*

Segment Three: The Connecticut Court Process and the *Michael T.* Case

Day One

- Video Presentation of “Pursuit of Justice” 20 minutes
- Class Discussion: Video Presentation 20 minutes

Day Two

- Video Presentation of “The Case of *Michael T.*” 20 minutes
- Class Activity: Determining Sentence for *Michael T.* 20 minutes

Homework: Assessment Project

Assessment Project: Essay, Poster, Debate or Mock Trial

Note: This overview provides suggested minimum allotment of time periods for the three segments in this curriculum. It does not include time allocations for *expanded* course activities. The outline is designed as a helpful reference only. Please modify the suggested minimum time allotments to address your individual course needs and objectives.

Segment One

1

Segment One: The Rule of Law and the *Amistad* case

PREVIEW OF MAIN IDEA

By analyzing the *Amistad* case, students will gain an understanding of the principle of the rule of law and the role of the courts in achieving justice. Even though the law sanctioned the existence of slavery in antebellum America, the courts, in applying the facts to the case, ultimately determined that the *Amistad* captives had been illegally enslaved and should, therefore, be freed on that basis.

Note to Teachers: This case was chosen to show how the rule of law affected the captives on the *Amistad* slave ship. Teachers should ensure that students understand that this case was not decided based on the fundamental rights of liberty and freedom but on more narrowly defined issues of property and contract law. (For additional rulings on slavery, please see *Quock Walker, Celia A Slave and Dred Scott* in *Great American Trials from Salem Witchcraft to Rodney King* listed on page 9 of this curriculum.)

TIME ALLOTMENT

Two (2), forty (40) minute time periods.

QUESTIONS ADDRESSED

- What do we mean by law?
- What do we mean by the rule of law?
- What is justice?
- Is the law always fair?

MATERIALS

1. Multiple copies of the synopsis of the *Amistad* case from *Crusaders & Criminals, Victims & Visionaries: Historic Encounters Between Connecticut Citizens and the United States Supreme Court* by David Bollier. (reading level 9.8)
2. Overhead transparencies and pens.
3. Multiple copies of the terms introduced in Segment One.

OBJECTIVES

Students are expected to:

- Define law, the rule of law, justice and courts;
 - Understand that social pressures have impacted the judicial process and that some ethical dilemmas can arise in the pursuit of justice.
-

TERMS FOR SEGMENT ONE

Abolitionist: a person who advocates doing away with slavery. ***

Admiralty Law: the branch of law concerning maritime disputes. ***

Chattel Property: the Common Law term in the 18th and 19th Centuries, which referred to land and other forms of property. ***

Chattels Real: the Common Law term in the 18th and 19th Centuries used to refer to slaves. ***

Civil Law: the branch of the law dealing with private rights of individuals, groups or businesses including, but not limited to, contracts, personal injury and dissolution of marriages.

Courts: institutions that (a) determine whether a person accused of breaking the law is guilty or not guilty; (b) resolve disputes involving civil or personal rights; (c) interpret provisions of laws enacted by the legislature; (d) decide what is to be the law when none exists for certain situations, and (e) determine whether a law violates the Constitution of the state or of the United States.

Criminal Law: the branch of the law dealing with crimes and their punishment.

Judicial Review: the court's power to void any law passed by Congress or a state legislature that conflicts with the nation's highest law, the United States Constitution.

Justice: the principal or ideal of moral rightness. The upholding of what is right and fair. In our country, justice also includes the concept that every person is entitled to fair and impartial treatment under the law without regard to race, gender, ethnicity, age or religion. Due process requires that no law or government procedure be arbitrary or unfair.

Law: the rules and regulations made and enforced by government that regulates the conduct of people within a society.

Salvage Rights: the right to claim goods or property that remain after a casualty. ***

The Rule of Law: the notion that all members of society – average citizens and government officials such as senators, judges, the police and even the president – are required to obey the laws. No one is above the law.

Treaty: a formal agreement between two or more countries. ***

Note: The Constitution does not use the words “slaves” or “Negroes” or “Africans.” It uses the term “other persons” or “such persons.” Chattels Real and Chattel Property were the terms used in the trial to decide the disposition of the individuals on the *Amistad*.

***Definitions are from *Teacher's Guide to Crusaders & Criminals, Victims & Visionaries: Historic Encounters Between Connecticut Citizens, and the United States Supreme Court*.

OPENING THE SEGMENT

Begin the segment by explaining to the students that they are going to be studying the rule of law in society and that the vehicle for this study will be the *Amistad* case, which originated in the State of Connecticut and utilized the Connecticut and federal court systems.

PROCEDURE

Day One

- I. Have students read the synopsis of the *Amistad case* prior to class as homework.
- II. Discuss in class the basic facts of the *Amistad* case. Suggested time: approximately **40 minutes**.
- III. Teacher should emphasize the following points:
 - A. The facts of the case:
 - In 1817 Spain signed a treaty with Britain agreeing to abolish the slave trade in 1820, but slavery continued in the Spanish colonies until 1880. Puerto Rico abolished slavery in 1873 and Cuba in 1880.
 - The international law that the U.S. was required to follow stated that all those born before 1820 could be enslaved. If they were born after 1820, they could not be enslaved. The captives on board the *Amistad* had been given false papers certifying birth before 1820 and therefore were fraudulently enslaved.

Timeline:

- August, 1839: The *Amistad* Ship is sited off Long Island; U.S. Navy boards ship and escorts to New London;
Africans are sent to jail in New Haven; Spanish government demands return of the *Amistad* ship, the Africans and its cargo to Spain; Slave traders demand return of the ship Africans and cargo, as well; Navy commanders demand salvage rights of the *Amistad* ship and property;

Abolitionists take up the cause in defense of the African slaves and their freedom by raising funds and providing legal counsel;

- September, 1839: U.S. Circuit Court in Hartford dismisses piracy and murder charges against captives; U.S. Circuit Court instructs Federal District Court to take up competing claims in a *second* trial over what should be done with the Amistad ship, the African captives and its cargo;
- January, 1840: Trial held in Federal District Court in New Haven where the judge rules that the Africans were not slaves, even under Spanish law, and should be released; Judge Andrew T. Judson awards 1/3 of the salvage rights of the Amistad and its cargo to Lieutenant Commander Gedney and Lieutenant Meade;

U.S. government appeals the case on the issue of the release of the African captives to the Circuit Court in New Haven; Circuit Court affirms the district court's ruling; U.S. government appeals the Circuit Court ruling to the United States Supreme Court;

- March, 1841: Supreme Court upholds the Circuit Courts ruling that the Africans had been illegally pressed into slavery and, therefore, the Spanish treaty could not be enforced. The Supreme Court also upheld the right to rebel against unlawful slavery;
 - November, 1841: 35 survivors of the original 53 African captives return to Sierra Leone.
- B. The cause of the Mutiny on board the Amistad: *The mutiny was caused by a reduction of the daily food rations given to the African captives and a fear that they would be killed in order to conserve food due to a voyage that was longer than anticipated.*
- C. How the Amistad ship and its crew arrived off the coast of Connecticut: *For two months after the mutiny, the Amistad sailed through the Bahamas and up the North American Coastline into United States waters and eventually to Long Island. The ship was discovered by Lieutenant Commander Gedney and Lieutenant Meade of the United States Navy and escorted to New London.*
- D. Why the case was tried in Connecticut: *Upon discovering the Amistad and its crew members, the captives were arrested and sent to New Haven, where they were jailed pending a trial at the New Haven Courthouse on charges of piracy and murder.*

- E. Why the case became an international incident: *The United States and Spain raised competing claims for ownership rights to the ship, its crew and cargo. The Spanish government cited a 1795 treaty that stated that if a vessel of either nation was forced to enter the other's port "under urgent necessity", that ship would be released immediately. Conversely, the United States asked the court to give them salvage rights to the ship, the crew and its cargo because they had found the broken down vessel at sea, and therefore were entitled to whatever price the ship and its contents could bring.*
- F. The decision of the first trial by the U.S. Circuit Court in Hartford on the charges of piracy and murder: *The court dismissed the piracy and murder charges and instructed the lower district court to take up the issue of competing claims in a second trial over what should be done with the Amistad ship, the African captives and its cargo.*
- G. The decision of the district court on the second trial concerning the rights to the ship, its crew and cargo: *In January 1840 the district court Judge, Andrew T. Judson, ruled that the Africans were not slaves, even under Spanish law, and therefore had to be released. Judge Judson also awarded 1/3 of the salvage rights of the Amistad and its cargo to Lieutenant Commander Gedney and Lieutenant Meade. The government appealed the judge's ruling on the issue of the release of the African captives. The appeal was brought before the Circuit Court in New Haven, which affirmed the district court's ruling and was eventually brought before the United States Supreme Court in Washington, D.C. for a final determination on the matter.*
- H. The final ruling by the Supreme Court. *The Supreme Court upheld the district court's ruling that the Africans had been illegally pressed into slavery and, therefore, the Spanish treaty could not be enforced. The captives were entitled to their freedom. The Supreme Court also upheld the right to rebel against unlawful slavery.*

NOTES

Day Two

- I. Divide the class into groups of no more than four students. Have students in their groups come up with definitions based on the *Amistad* case for the following terms. Teachers should instruct students to use personal knowledge of the terms as well as information acquired through the reading of the case and the general class discussion. Suggested time: approximately **20 minutes**.
 - Law
 - Rule of Law
 - Justice
 - Courts

- II. Give each group a clean overhead transparency and marker on which to write the definitions reached by consensus. Have one student from each group present and defend the group's definitions.

- III. Discuss the merits of each group's definitions and then pass out to the class the definitions provided with this curriculum packet. Discuss with the entire class how each group's definitions compared with those provided in the packet. Suggested time: approximately **20 minutes**

NOTES

HOMEWORK ASSIGNMENT

Students will complete an essay with a minimum length of five paragraphs on the following questions:

1. What laws or laws did the courts use to determine whether the captives should be considered slaves or whether they should be declared free people?
2. How did the court apply these laws to the facts of the case and how did they rule?
3. Was justice achieved?

Teachers should look for:

1. A clear statement that the courts applied: *two laws in determining whether the captives should be considered free individuals or slaves:*
 - a. *An international law between the United States and Spain that stated all those born before 1820 could be enslaved. If they were born after 1820, they could not be enslaved.*
 - b. *A 1795 treaty that stated if a vessel of either nation were forced to enter the other's port's "Under urgent necessity," that ship would be released immediately.*
2. A clear statement indicating:
The courts determined that the slaves were given false birth certificates and that they were born before 1820. Thus, under the international law they could not be enslaved. Also, the court determined that the 1795 treaty was not applicable to the facts of this case and awarded 1/3 of the salvage rights to Lieutenant Commander Gedney and Lieutenant Meade of the United States Navy.
3. A clear statement that:
This case is an example of a just outcome resulting from an unjust law. Justice was achieved for the African captives because they were freed. The international law, which stated that all those persons born before 1820 could be enslaved and if they were born after 1820, could not be enslaved, was unjust in that it sanctioned slavery. However the law provided the judges with a framework to determine that the African captives were illegally enslaved and that they were not subject to Spanish rule. Thus, the African captives were freed.

At the time that this case was decided there was strong public sentiment in both favor and opposed to slavery. The decisions of the judges to uphold the freedom of the African captives throughout the appellate process reaffirmed the importance and need of interpreting and obeying the law without fear of reaching a conclusion that might seem unpopular to the general public.

EXPANDED ACTIVITIES

Additional Questions beyond Minimum Use of Segments for Research and Discussion.

1. It is sometimes said that controversy outside the courtroom interferes with the judicial process and puts justice at risk. Yet for landmark cases like the Amistad, public interest and debate might also be considered a vital part of the proceedings, the means by which the social significance of a court proceeding is illuminated. How does the controversy both serve and threaten the cause of justice?

Public interest in the outcome of a particular case may threaten justice. The media have a great deal of influence on the political attitudes of the populace, as the media filter the events that become part of the news. Oftentimes, the media portray courtroom activities in a sensational fashion that stresses the negative aspects of the proceedings to attract the greatest number of viewers or readers. The media, unfortunately may lack a thorough understanding of the law. Their failure to inform the public about all of the intricacies of a particular case may diminish the public's trust and confidence in our system of justice.

Public interest in the outcome of particular cases may serve the cause of justice in cases where members of the public believe that the outcome was not fair. Perhaps the law that was applied in the case was unjust. By bringing information about the case to the public at large through the use of headlines, editorials, news programs and other outlets, it is possible that legislators may decide to alter the law to ensure that it produces justice.

2. What makes a case a landmark or precedent for future cases?

"A landmark decision is a decision of the Supreme Court that significantly changes existing law. Courts attempt to decide cases on the basis of principles established in prior cases. Prior cases which are close in facts or legal principles to the case under consideration are called precedents" Blacks Law Dictionary

Resources on Law, Rule of Law, Justice and Courts

Arbetman, Lee P. et. al. *Great Trials in American History: Civil War to the Present*. (St. Paul: West Publishing Company, 1985)

Knappman, Edward W., editor. *Great American Trials from Salem Witchcraft to Rodney King*. (Detroit: A New England Publishing Associates Book, 1994)

Lockard, Duane and Murphy, Walter F. *Basic Cases in Constitutional Law*. (Washington D.C., Congressional Quarterly, 1987.)

When Justice is Up to You; Celebrating America's Guarantee of Trial by Jury. (National Institute for Citizen Education in the Law, 1992.)

Additional Resources on *Amistad* **

Websites

Amistad (www.Amistad-thefilm.com) companion site to the Steven Spielberg film.

Amistad America (www.Amistadamerica.org) project to build a replica of the *Amistad* vessel.

The *Amistad* Research Center (www.arc.tulane.edu) major archival repository for the study of African American history.

The Anacostia Museum (www.si.edu/organiza/museums/anacost/anachome.htm) home to the Center for African American History and Culture of the Smithsonian Institution.

Exploring *Amistad* (www.Amistad.mysticseaport.org) online educational site.

NetNoir Online (www.netnoir.com) gateway to African American culture.

The Smithsonian Institution (www.si.edu) America's national museum.

Secondary Sources

James Warner Barber, *A History of the Amistad Captives* (1840; reprinted 1969)

Joyce Annette Barnes, *Amistad* (Junior novel based on the screenplay, 1997)

Lawrence Goodheart and Hugh Hawkins; editors, *The Abolitionists* (1995)

Howard Jones, *Mutiny on the Amistad* (1987; rev.ed. 1997)

Helen Kramer, *The Amistad Revolt, 1839* (1973)

B. Edmond Martin, *All We Want Is Make Us Free* (1986)

Walter Dean Myers, *Amistad: A Long Road to Freedom* (1997)

William A. Owens, *Black Mutiny* (1968; reprinted 1997)

Alexs Pate, *Amistad* (novel based on the screenplay, 1997)

Steven Spielberg, *Amistad – "Give Us Free": A Celebration of the Film* (1997)

Karen Zeinert, *The Amistad Slave Revolt and American Abolition* (1997)

** Resources taken from *Amistad* Learning Kit prepared by Lifetime Learning Systems, Inc., Stamford, Connecticut to accompany the Steven Spielberg film, *Amistad*

Segment Two

2

Segment Two: The Role of The Courts and The *Mary Jones* case

PREVIEW OF MAIN IDEA

By analyzing the case of *Mary Jones* (which is derived from an actual Connecticut Supreme Court case), students will gain an understanding of the separate roles of the three independent branches of government and how they interrelate in a free, democratic society.

Students should also come away with the knowledge that judges are required to apply the law to a particular set of facts in an unbiased and even-handed manner. Judges may not take into consideration the public's opinions pertaining to particular issues related to the case. Rather, they are charged with upholding the law, interpreting constitutional questions and establishing the law when none exists.

In contrast, students will become aware of the importance of public opinion to the Legislative and Executive Branches of government. Members of the General Assembly and the Governor must be cognizant of the public's view on important issues since they are elected by the citizens of the state.

TIME ALLOTMENT

Three (3), forty (40) minute time segments.

QUESTIONS ADDRESSED

1. What are the responsibilities of the courts?
2. What is the difference between civil and criminal law?
3. What are the three branches of government and what do they do?
4. Are the executive and legislative branches of government influenced by what people in the community think and want (i.e. by public opinion)?
5. Should the courts be influenced by what people in the community think and want?

MATERIALS

1. Multiple copies of *The Case of Mary Jones*;
2. Multiple copies of The Judge's Think Sheet;
3. Multiple copies of the summary of the judge's ruling in *Starr v. Department of Environmental Protection*, the actual case from which *The Case of Mary Jones* is derived;

4. Multiple copies of the Connecticut legislation that resulted from *Starr v. Department of Environmental Protection*;
5. Multiple copies of *Griswold v. Connecticut*;
6. Multiple copies of newspaper articles pertaining to the case of *Packer v. Board of Education of the Town of Thomaston*.

OBJECTIVES

Students should be able to:

- *Explain* how the courts resolve disputes;
- *Illustrate* how the courts interpret the law;
- *Explain* the different roles of the three branches of government;
- *Understand* how the two branches of government interrelate with the courts.

TERMS FOR SEGMENT TWO

Civil Law: the branch of the law dealing with private rights of individuals, groups or businesses such as contracts, personal injury and dissolution of marriage.

Courts: institutions that (a) determine whether a person accused of breaking the law is guilty or not guilty; (b) resolve disputes involving civil or personal rights; (c) interpret provisions of laws enacted by the legislature; (d) decide what is to be the law when none exists for certain situations; and (e) determine whether a law violates the Constitution of the state or of the United States.

Criminal Law: the branch of the law dealing with crimes and their punishment.

Public Opinion: Cluster of views and attitudes held by a number of people on a significant issue.

OPENING THE SEGMENT

Begin the segment by explaining to the students that they will be studying the role and responsibilities of the courts by analyzing The Case of Mary Jones. Students will be asked to form a consensus in small groups and render a decision in the case. The basic question to be determined by the case is: should the landholder, Mary Jones, be held responsible for the costs associated with the clean-up of environmental contamination that occurred before she inherited the land?

PROCEDURE

Day One

- I. Conduct a class discussion on the following questions: ***
 - A. What are the responsibilities of the courts?
 - B. What is the difference between civil and criminal law?
 - C. What are the three branches of government and what do they do?
 - D. Are the Executive and Legislative Branches of government influenced by what people in the community think and want (i.e. by public opinion)?
 - E. Should the courts be influenced by what people in the community think and want?

***The answers to these questions follow.

SUGGESTED ANSWERS for use by teachers

A. What are the responsibilities of the courts?

The courts serve a vital role in our society. They are charged with upholding the law, interpreting constitutional questions, and establishing the law when none exists. Men and women who are appointed judges carry out these functions. Every day, judges are called upon to make difficult decisions. These decisions often affect one's liberty, property, children, spousal relationships, and business relationships. In all, judges across this state make thousands of decisions each year affecting the citizens of Connecticut.

B. What is the difference between civil and criminal law?

Civil Cases

Cases involving the private rights of individuals, groups or businesses, including contracts, personal injury cases or dissolution of marriages, are civil cases. In a civil case, the plaintiff (the party bringing the action) sues the defendant seeking monetary damage and/or an injunction (a court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury) for violation of a duty or obligation. If the plaintiff can establish by the preponderance of the evidence (more than 50% certainty) that the defendant has breached his or her duty, the plaintiff will prevail.

Criminal Cases

Criminal cases deal with crimes and their punishment. Criminal cases are cases brought by the state against an individual for an alleged violation of its criminal code. Therefore, even though there is often a victim of the crime, the legal action is not between the victim and the accused (or defendant) but is between the state and the accused. Criminal cases are readily identifiable by their case names which include the state and the accused, such as "State of Connecticut v. Smith" or "The People of California v. Jones."

Crimes

Crimes are defined in laws enacted by the legislature. The state, through a prosecuting attorney, seeks to punish the accused for committing a crime. In order to prove his or her case, the prosecuting attorney must show that a crime has been committed, and that the defendant committed the crime. If the prosecution can prove the case beyond a reasonable doubt, the defendant is found guilty. If guilty, the defendant will receive a sentence for the crime committed. Sentencing is a formal pronouncement of judgment by the court or judge on the defendant after conviction in a criminal proceeding, imposing the punishment to be imposed. This punishment is also established by the law enacted by the legislature. It can include probation, incarceration or, in extreme cases, death.

C. What are the three branches of government and what do they do?

Three Branches within Federal Government

The framers of the United States Constitution created three distinct branches of government: the legislative branch, the executive branch and the judicial branch. Each branch was given a distinct and specific role in the new government.

The Legislative Branch was created in Article I of the Constitution. Section I of this article created the Congress of the United States, which consists of the Senate and the House of Representatives. The citizens of each state elect members to Congress. Two senators are elected from each state, while the number of representatives varies depending upon the population of the state.

Congress' power is specifically enumerated in the Constitution. Examples of the powers given to Congress include the ability to create laws. New laws are created when a bill passes both the Senate and the House and is subsequently signed by the President. Other powers of Congress include the right to lay and collect taxes, the right to regulate commerce with foreign nations and the right to declare war.

The Executive Branch was created in Article II of the Constitution. Section I of Article II established the office of the President. The entire citizenry of the nation elects the President for a term of four years. The President's power is vast; while checks exist to ensure that the President does not assume the powers assigned to Congress or the Courts, it is his or her responsibility to sign legislation into law, serve as the Commander in Chief of the Army and Navy, make treaties, and nominate federal judges and ambassadors.

The Judicial Branch was created in Article III of the Constitution. Section I of Article III defined one Supreme Court and other lower courts as the Congress may from time to time establish. The role of the court is to interpret laws passed by the Congress and the President and to ensure that they are constitutionally sound.

Three Branches within State Government

Each state also has three branches of government.

In Connecticut, the Legislative Branch consists of the General Assembly. The General Assembly is a bicameral legislature (two houses) consisting of the House of Representatives and the Senate. The role of the General Assembly is similar to that of the Congress of the United States. It is their responsibility to make laws applicable to the citizens of the state.

The Governor heads the Executive Branch of Connecticut. He or she is responsible for approving and signing newly enacted legislation into law. A bill will become law if (1) the Governor signs the bill, (2) during the legislative session, the Governor does not sign it within five days after it is received, or (3) after adjournment of the session, the Governor does not sign it within 15 days after receipt.

The Governor may veto a bill, (a) during the legislative session, by returning it to the house in which it originated with a statement of objections or (b) after adjournment, by returning it to the Secretary of the State. The General Assembly then will reconvene to consider whether to override his veto by passing it by a two-thirds vote in each house.

The Governor is also responsible for the operation of various state agencies designed to serve the citizenry. Examples include the Department of Consumer Protection, the Department of Children and Families and the Department of Motor Vehicles.

- D. Are the Executive and Legislative branches of government influenced by what people in the community think and want (i.e. by public opinion)?

What people in the community think and want increasingly influence actions taken by the Executive and Legislative Branches of government. The formation of public policy is often dictated by public opinion. Indeed, a new phrase has been coined to mark this transformation: “governing by poll.” “Governing by poll” refers to the practice of elected officials consulting the daily opinion poll before forming an opinion on a particular issue. This practice has come under fire from those who believe that leaders should lead, not follow. On the other hand, “governing by poll” is hailed by others who believe it is appropriate for our leaders to gauge the opinion of the American people before acting.

An example of “governing by poll” can be seen when a political leader contemplating a new idea, a tax cut, for instance, sends out a “trial balloon” to see if the public will be receptive. Polling is then conducted on behalf of the politician. Following the polling, the politician will analyze the numbers and decide whether or not to go forward with his or her new plan.

Regardless of whether or not one believes that this practice is beneficial, the underlying fact remains that the wishes of the American people are generally taken into account when important decisions are to be made.

- E. Should the courts be influenced by what people in the community think and want?

Judges in the Judicial Branch, as opposed to members of the Legislative Branch and the leader of the Executive Branch, are not elected. The framers of the Constitution believed that representatives of the court should be isolated from the general populace so that their decisions would be rendered solely on the law and not on the emotions of the day. Our state court system is designed similarly. Judges are appointed to the bench and may not be removed solely because of an unpopular decision. Such a mechanism allows for consistency in the judiciary and gives the judges the protection they need to render at times unpopular – but legally correct – decisions.

Day Two

- I. Distribute *The Case of Mary Jones* and the Judge’s Think Sheet handouts. (The reading of the case may be completed for homework prior to the class.)
- II. Discuss briefly whether this is a civil or criminal case. (*This is a civil case because it concerns the branch of law dealing with private rights of individuals.* See list of definitions.)
- III. Divide the class into groups of no more than four students each for the purpose of reaching a consensus ruling on the case. Suggested time for consensus segment: approximately **40 minutes**.
 - A. Have each team determine the facts of the case by answering the following questions from the Judge’s Think Sheet:
 1. When was the land contaminated? *Before Mary acquired the land.*
 2. Does Mary own the land according to Connecticut law? *Yes, by virtue of the laws of inheritance.*
 3. What is the law in this case? *The state statute.*
 4. Review the definition of “rule of law.” How does the rule of law apply in this case? *The rule of law requires that the court adhere to the particular law (state statute) that is applied in this case. The statute seems to indicate that Mary would be responsible for the cost of cleaning, as she is the legal owner of the land.*
 5. As a group, if you were deciding the case, is Mary responsible for paying the clean-up costs? Explain. *Remind students who say that Mary is not responsible that ultimately Mary legally owns the property, and the law makes owners responsible.*
 6. Take into consideration the following: Would your answer be different, if instead of Mary, the landowner were Micro Tec Company, a multi-billion dollar corporation? Why or why not? *No, the rule of law applies equally to all.*
 7. To what extent, if any, should you as the judge(s) be influenced in your decision by the obviously strong public opinion in support of Mary? *To no extent; judges cannot be influenced by public opinion but must adhere to the law. That is what we mean when we say that our society is governed by the rule of law and not by public opinion or public sympathy for one side or another.*

Day Three

- I. Have each group present its decision. (Suggested time for presentations: approximately **15 minutes**).
- II. Hand out copies of the synopsis of the actual decisions reached by the Connecticut Superior Court and the Connecticut Supreme Court for students to read. (Teachers of some classes may have to provide help with vocabulary and concepts.)
- III. Discuss the following questions with the class as a whole: (Suggested time: approximately **15 minutes**).

A. Is the law fair in this case?

*Answer One: The law is **fair** in this case, as it was designed to protect the health and welfare of the citizens of the state. It is not the obligation of taxpayers to pay for cleanup costs associated with private property. It is the responsibility of the individual landowner to pay these costs. In addition, the statute provides that the property owner may sue and recover the costs associated with cleaning up the property from any person or company that is proved to have caused the pollution.*

*Answer Two: The law in this case is **unfair**, as it makes Mary responsible for the costs of cleaning the polluted property, although she had no knowledge and no involvement in the pollution. In addition, in this particular case, the cleanup costs far exceed the value of the land which means that Mary is obligated to use her own funds to clean up the property. Unfortunately, she is unable to sue the company that caused the pollution, as the company no longer exists.*

- B. Can you think of a way that society, acting through one or more of the different branches of government, might resolve the conflict between what the statute provides and what the majority of people now seem to want? That is, can the conflict be resolved by (a) the Judicial Branch (you, the judge); (b) the Executive Branch (Department of Environmental Protection); or (c) the Legislative Branch (the state legislature)?

Citizens could contact their local legislators to express their opposition to this statute and how it adversely affected Mary.

Legislators (Legislative Branch) could amend (modify) the existing law to limit the amount of money that innocent landowners would need to pay to fund the cleanup costs of the polluted property, to the value of the property.

The Governor (Executive Branch) could sign the bill and, if so, it would become the law. Judges, (Judicial Branch) then, would be required to apply the new statute in similar cases and the innocent landowners would not be excessively burdened with the costs of cleaning up polluted property.

- IV. Hand out summaries of the legislation that followed the court case and discuss how in this case the role of the Legislative Branch of government interrelates with the Judicial Branch of government. Suggested time for this activity: approximately 10 minutes.

Talking Points

- The case of Mary Jones illustrates the inter-relation between the Legislative Branch of government and the Judicial Branch of government.
- The Judicial Branch was required to apply the law in the case of Mary Jones. This law required Mary to pay the clean up costs for the property, even though the costs far exceeded the value of the land and even though Mary had no knowledge of or participation in the contamination.
- The Legislature, believing that the application of the law to the facts in this case, produced an injustice, altered the law to provide that innocent landowners would not be required to pay the full clean-up costs, if, among other things, the owner had no knowledge of the contamination.
- The Judicial Branch was then required to apply the new statute to the facts of the Mary Jones case and to similar cases in the future.

NOTES

HOMEWORK ASSIGNMENT

Students will analyze one of the two following Connecticut court cases not covered in class: (1) *Griswold v. Connecticut*; or (2) *Packer v. Board of Education of the Town of Thomaston*. (Teachers are encouraged to have students research additional court cases. For a readily available source for Connecticut court cases, see the website of the Connecticut Judicial Branch: www.jud.state.ct.us and click on the button that says “Advance Release Opinions”) Students should answer the following questions in writing:

1. What are the basic facts of the case?
2. What was the law in the case?
3. Was justice achieved? Explain.
4. If you were the judge, how would you have decided the case?

SUGGESTED ANSWERS for use by teachers

Griswold v. Connecticut (1965)

1. What are the basic facts of the case?
 - *Mrs. Estelle Griswold, executive director of the Planned Parenthood League in Connecticut, and Dr. C. Lee Buxton, chairman of the Yale Department of Gynecology and Obstetrics, were arrested, convicted and fined \$100 for dispensing contraceptives in violation of Connecticut law.*
 - *They appealed to the U. S. Supreme Court.*

2. What was the law in this case?
 - *Connecticut law prohibited the distribution of birth control information and devices.*
 - *Section 53-32 stated: “Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned.”*
 - *Section 54-196 stated: “Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender.*

- *The Supreme Court ruled that the Connecticut law unconstitutionally invaded the privacy of married couples and was therefore void.*

3. Was justice achieved?

Answer One:

- *Justice embodies the concept of fairness. Many citizens believe that women should be free to determine if they should bear children and therefore that women should have access to birth control. Therefore, justice was achieved in this case.*

Answer Two:

- *Other citizens believe that justice embodies the concept of moral rightness and that it is morally wrong to alter nature by using contraceptives. They may argue that individuals need to control their passion and that morally acceptable means of birth control are available such as the rhythm method, withdrawal and abstinence.*

4. If you were the judge, how would you have decided the case?

Answer One:

- *Some students may say that if they were the judge, they would have ruled similarly to Justices Stewart and Black that the law, while “unwise or even asinine” is a matter for the legislature – those individuals who are elected by the general public.*
- *The Connecticut General Assembly, whose members were elected by the voters in the state, enacted a law that regulated birth control devices and information about such items.*
- *These legislators believed that they were meeting a public policy objective, namely, to deter sexual intercourse outside of marriage and to promote morality.*
- *The U.S. Constitution does not explicitly include in the list of individual rights the right to privacy.*

Answer Two:

- *Other students may say that they would have ruled similarly to the majority opinion written by Justice William O. Douglas who created a new constitutional right to privacy.*

The means by which this new right was created was by reviewing the rights afforded to individuals in the Constitution and determining that many of these individual rights

included an inherent right to privacy. For example, the First Amendment includes the right to free association, the Third Amendment includes a ban on the quartering of soldiers in homes, the Fourth Amendment protects individuals against unreasonable search and seizure, the Fifth Amendment bans compulsory self-incrimination and the Ninth Amendment reserves all these rights in the Bill of Rights to the people. Since all of these rights have penumbras, which create privacy, the Constitution contains a fundamental right to privacy.

Packer v. Board of Education of the Town of Thomaston

1. What are the basic facts of the case?

- *On September 24, 1997, high school student, Kyle Packer, was pulled over by the Connecticut State Police in the town of Morris for operating a motor vehicle without a seatbelt.*
- *At the stop, the trooper observed a marijuana cigarette in the ashtray of the car.*
- *A subsequent search of the vehicle revealed approximately two ounces of marijuana hidden in the trunk.*
- *Mr. Packer was arrested.*
- *Mr. Packer's arrest was reported to the superintendent of the Thomaston school system.*
- *On October 8, 1997, school board officials determined that Mr. Packer's conduct off of school grounds seriously disrupted the educational process at Thomaston High School and expelled him for the remainder of the first semester of the school year.*
- *Superior Court Judge Walter M. Pickett issued a temporary injunction ordering Mr. Packer to return to school. He ruled that the expulsion law was unconstitutionally vague.*
- *The school board appealed the Superior Court's ruling.*

2. What was the law in this case?

Section 10-233d (a) (1) provides: "Any local or regional board of education, at a meeting at which three or more members of such board are present, or the impartial hearing board established pursuant to subsection (b) of this section, may expel, subject to the provisions of this subsection, any pupil whose conduct on school grounds or at a school-sponsored activity is violative of a publicized policy of such board or is seriously disruptive of the educational process, provided a majority of the board members sitting in the expulsion hearing vote to expel and that at least three affirmative votes are cast."

3. Was justice achieved?

- *The Connecticut Supreme Court ruled that the defendant (Board of Education of the Town of Thomaston) lacked the authority to expel Kyle Packer because he was not given constitutionally adequate notice that possession of two ounces of marijuana in the trunk of his car, off school grounds, without any connection to the high school, would subject him to expulsion.*

Answer One:

- *Justice requires that individuals be able to ascertain what is unlawful conduct. In that regard, justice was achieved in this particular case because Mr. Packer was not on notice that his actions off school grounds could lead to his expulsion. Therefore, justice was served.*

Answer Two

- *Justice was not achieved in this case because Packer should have known what constituted seriously disruptive behavior. The Thomaston student handbook makes it clear that students may be expelled for conduct that is seriously disruptive of the educational process, even if the conduct occurs off school property and during non-school hours. Thus, he was on notice that his behavior could result in expulsion. He had received a hearing before the school board on the issue of his expulsion and he was able to argue his case before a superior court judge and the Supreme Court.*

4. If you were the judge, how would you have decided the case?

Answer One

- *Kyle Packer’s conduct in no way could be construed to be “seriously disruptive of the educational process.” His actions occurred far from school, had no discernable impact on his classmates or teachers, nor was he aware of the school-based ramifications of his illegal conduct.*

Answer Two

- *It is in the best interest of society as a whole to discourage citizens, particularly young people, from engaging in illicit activity. Mr. Packer’s conduct was clearly illegal and set a bad example for his fellow classmates. As Mr. Packer was over the age of 16, his arrest was public knowledge and readily known in his small town and high school. The school board – elected members of the community – are best able to determine what is “seriously disruptive of the educational process.”*

EXPANDED ACTIVITIES

Additional Question beyond Minimum Use of Segments for Research and Discussion

1. John Locke was a late 17th Century English political theorist who analyzed the relationship between the individual, society and law. Examine John Locke's *Second Treatise on Government* (1690) and his discussion of the question, "What is the social contract between the citizenry and government?"

Key Points To Be Considered in Expanded Activity Essay or Discussion:On John Locke's *Second Treatise of Government*

Locke states that people are, by nature, able to make their own decisions and are not subject to the control or domination of others. People have the choice as to how to manage their possessions and their affairs, as long as they do not harm others.

Of the State of Nature: "To understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man." (Section 4)

Locke maintains that all individuals are equal.

"A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another." (Section 4)

Locke states that individuals choose to submit themselves to rules to protect their lives, liberty and property.

"If man in the state of nature be so free, as has been said, if he be absolute lord of his own person and possessions, equal to the greatest, and subject to no body, why will he part with his freedom? Why will he give up this empire, and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others." (Section 123)

The social contract is in agreement by free, equal and independent individuals to submit themselves to a rule of law created by the community to ensure the safe and peaceable enjoyment of life, liberty and property.

"And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation, to every one of that society, to submit to the determination of the majority, and to be concluded by it." (Section 97)

Segment Three

3

Segment Three: The Connecticut Court Process and The State of Connecticut v. *Michael T.*

PREVIEW OF MAIN IDEA

Students will view two videos. The first video examines what is involved in being an effective judge and juror and stresses the important role that juries play. The second video depicts a Connecticut Superior Court case on the topic of domestic violence. In addition to addressing this important and relevant subject, the second video illustrates how the existing adversarial system built into the court process seeks to discover the truth in a particular court case.

TIME ALLOTMENT

Two (2), forty (40) minute time segments.

QUESTIONS ADDRESSED

1. Who are the primary players in a court case? (*Judge, jurors, lawyers, defendants, victims*)
2. Who else is involved in the court process? (*clerks, reporters, interpreters, family relations counselors, bail commissioners and probation officers*)

MATERIALS

1. Multiple copies of *Connecticut Court Process*.
2. Video: *The Pursuit of Justice: Judges and Juries*.
3. Video: *State of Connecticut v. Michael T.*
4. Video Viewing Guide: *The Pursuit of Justice*
5. Video Viewing Guide: *The State of Connecticut v. Michael T.*

OBJECTIVES

Students are expected to:

- Understand the court structure and its various components;
- Identify the roles and functions of the personnel involved in court cases;
- Describe the various types of decisions that judges and juries must make;
- Recognize the importance of jury service in the American system of justice.

TERMS FOR SEGMENT THREE

Adversarial System: The system upon which American justice is based. In such a system, each party in a case presents his or her point of view as persuasively as possible to a neutral party – usually a judge.

Arraignment: The first court appearance and possible settlement of a person accused of a crime. The person is advised of his or her rights by a judge and may respond to the criminal charges by entering a plea. Usually happens the morning after a person is arrested.

Pre-Trial: In a civil case, a conference with a judge or trial referee to discuss discovery and settlement. In a criminal case, a conference with the prosecutor, defense attorney and judge to discuss the case status and what will happen next.

Pre-Trial Diversionary Program: A system by which certain defendants in criminal cases are referred to community agencies prior to trial while their criminal complaints or indictments are held in abeyance. The defendant may be given job training, counseling and education. If he/she responds successfully within a specified period (*e.g.* 90 days, more or less), the charges against him/her are commonly dismissed.

Voir Dire: “To speak the truth.” In a courtroom, the *voir dire* process is designed to reveal any prejudices and biases prospective jurors may have about a particular case. To determine this, attorneys will ask questions of the prospective juror to determine whether he or she can be fair or impartial.

KEY PLAYERS IN CONNECTICUT'S COURT SYSTEM

Bail Commissioner: The public official in the courtroom who recommends to the judge the amount of the bail to be set for each defendant.

Clerk: The officer of the court whose primary duty is to maintain court records. He or she also administers oaths. Court clerks are appointed by the judges.

Court Interpreter: The interpreter translates each word that is said during a court proceeding into the native language of a non-English speaking defendant.

Court Monitor: The monitor is the official who makes a trial record or transcript by using a tape recorder.

Court Reporter: The court reporter is the court official who sits directly in front of the judge's bench. Using a special typewriter, the reporter takes down every word said during a trial. This becomes the official record or transcript of the trial.

Defendant: The individual accused of committing a crime. He or she may present a defense either with the assistance of an attorney or by him/herself. The defendant may or may not testify on his or her own behalf and may waive rights as outlined by the judge. The defendant is always considered innocent until proven guilty beyond reasonable doubt. A defendant may not be forced to testify against him/herself. (Amendment V to the U.S. Constitution.)

Defense Counsel: As the lawyer representing the defendant, his or her responsibility is to present evidence and arguments on behalf of the defendant. The lawyer may be either a private attorney hired by the defendant to help in the trial or may be a public defender.

Judge: An elected or appointed official with the authority to hear and decide cases in a court of law. Judges preside over preliminary hearings and trials. Superior Court judges in Connecticut are appointed for eight-year terms. They are nominated by the Governor and are confirmed by both the House of Representatives and the Senate.

Marshal: (Formerly called sheriff), The person who maintains order in the courtroom and who is responsible for all prisoners in the courthouse.

Probation Officer: The officer who provides information to the judge about a defendant and supervises an offender in the community to ensure compliance with court orders.

Public Defender: The public defender is an attorney appointed by the judge and paid by the state to assist a defendant who does not have enough money to hire a private attorney. Every person charged with a crime has the constitutional right to the advice of an attorney. (Amendment VI to the U.S. Constitution.)

State's Attorney: An attorney who represents the state and is responsible for prosecuting individuals accused of committing crimes.

OPENING THE SEGMENT

Begin the segment by explaining that students will be viewing two video segments entitled, *The Pursuit of Justice: Judges and Juries*, and *State of Connecticut v. Michael T.*, for the purpose of understanding the Connecticut Court process. Prior to viewing the videos, students should read the booklet, *Connecticut Court Process*.

PROCEDURE

Day One

- I. Pass out a video-viewing guide for *The Pursuit of Justice: Judges and Juries* to students so that they can answer the questions as they watch the video. Review the questions to ensure that students are clear as to what they are being asked. Tell the students that the questions will be discussed after the video.
- II. View video I, *The Pursuit of Justice: Judges and Juries*. Viewing time: **17 minutes**.
- III. Discuss the students' responses to the questions contained in the video-viewing guide. The guided discussion should take approximately **20 minutes**.

VIEWING GUIDE QUESTIONS AND ANSWERS FOR VIDEO I

1. What rights are established by the Constitution for people who have been arrested?
The right to remain silent; the right to a lawyer; the right to have a lawyer appointed if you cannot afford one; the right to know the charges made against you; the right to a speedy trial by an impartial jury.
2. What is the mission of the Connecticut Superior Court?
To serve the people, to resolve legal cases in a fair, timely and cost effective manner.
3. True or False – judges have considerable power and discretion when handling legal matters, but laws and rulings of higher courts limit their powers. *True.*
4. What three courts comprise the Judicial Branch in Connecticut?
Superior Court, Appellate Court and Supreme Court.
5. The Appellate Court reviews decisions, called judgments of the Superior Court. In conducting the review, the Appellate Court looks to see if a mistake was made on the basis of the _____. *Law.*

6. The highest court in Connecticut and the court of last resort is the Connecticut _____ . *Supreme Court.*
7. How does one become a judge in Connecticut?
An attorney wishing to become a judge, must submit an application to the Judicial Selection Commission which is comprised of members appointed by the Governor and legislative leaders. The names of all approved candidates from the Judicial Selection Commission are submitted to the Governor who then nominates individuals he or she would like to see become a judge from that list. The Governor's nominees are sent to the Judiciary Committee of the General Assembly, which holds public hearings and further investigates the nominees. The approved candidates from the Judiciary Committee are sent to the House of Representatives and Senate for approval.
8. True or false? Judges must be re-elected in Connecticut every eight years. *False – they must be re-appointed every 8 years.*
9. There are approximately _____ cases per year that are decided by a jury in Connecticut. *700.*
10. Prospective jurors are chosen from 4 lists. What are they? *Department of Motor Vehicle Drivers License Records; Department of Revenue Services List of Income Tax Filers; Department of Labor Unemployment List; List of Registered Voters.*
11. True or False? The attorneys in the jury selection process, called *voir dire*, may individually interview each prospective juror? *True.*

NOTES

Day Two

- I. Pass out a video-viewing guide for *State of Connecticut v. Michael T.* to students so that they can answer the questions as they watch the video. Review the questions to insure that they are clear.
- II. View video II, *State of Connecticut v. Michael T.* Viewing time: **20 minutes**. Suggested time for class activity: **20 minutes**.
- III. After viewing the video, have each student 'vote' as to whether Michael should be allowed to participate in the pre-trial diversionary program. Ask students to explain the rationale for their decisions. (Students can use responses to the Video-Viewing Guide Questions in formulating their decision.) Collect and tally the votes for a class discussion on the final outcome determined by the class. The teacher or designated students should list the reasons that the students identify for their decisions on a blackboard or overhead.

One reason to vote that Michael should be allowed to participate in the program is that he is a first time offender and the Family Violence Education Program is designed specifically to assist first time offenders in managing their anger in an appropriate manner.

One reason to vote that Michael should not be allowed to participate in the program is that his attitude indicates that he would not benefit from the program because he would be unwilling to learn the techniques suggested in the program to manage anger effectively.

- IV. Discuss the results of the class decision by asking the following questions:
 - Since attitude generally plays a large role in convincing the judge that the defendant could benefit from the Family Violence Education Program, how much should the judge take into consideration Michael's attitude and demeanor in reaching his or her decision?
 - Does the court process as outlined in the video ensure justice? (If students respond no to this question, they should be asked to give reasons and suggest any changes that would improve the system.)

THE CASE OF MICHAEL T. VIEWING GUIDE QUESTIONS AND SUGGESTED ANSWERS FOR USE BY TEACHERS

1. What was Michael's attitude throughout the whole arrest and court appearance?
Arrogant, angry, possessive of Sarah, non-repentant, disrespectful.
2. What did the Victim Advocate tell Sarah and her father?
The Victim Advocate explained the different types of protective orders. The victim advocate said that she would recommend to the judge that a No Contact order be issued, which is a court order directing Michael not to have any contact at all with her.

3. What did the Family Relations Counselor do? *The Family Relations Counselor interviewed Michael regarding the arrest and the incident in question; inquired about his background; advised him of the No Contact Protective Order and advised him to change his attitude in order for him to receive the Family Violence Education Program.*
4. Who are the major players in this court case?
Judge, Prosecutor, Public Defender, Bail Commissioner, Family Relations Counselor and Victim's Advocate.
5. Who are the support staff in this court case? *Marshal, Clerk of the Court, Court Reporter.*

CONCLUSION TO VIDEO II

The way the police and the courts handled the case of Michael T. in the video, *State of Connecticut v. Michael T.* (although the case itself was fictional) was a direct result of a real case in Connecticut that occurred in 1983, entitled *Thurman v. City of Torrington*. In that case, the police failed to respond to repeated requests for assistance on the part of the victim of domestic violence. Ultimately the victim was seriously injured. The legislature responded with Public Act 86-337, An Act Concerning Family Violence Prevention and Response, which established directives and guidelines for the police and courts as to how they handle domestic violence cases. It also established The Family Violence Education Program for which *Michael T.* applied. Below is an expanded activity based on the Thurman case.

SEGMENT THREE EXPANDED ACTIVITY

Hand out the *Hartford Courant* article on *Thurman v. City of Torrington*. Have students answer the following questions in writing:

1. What are the facts of the case?
2. If the current mandatory arrest law had been in affect at the time that Tracy Thurman requested assistance from the Torrington Police Department, do you believe the outcome would have been different?
3. Is spousal abuse a private matter in which the police ought not be involved?

SUGGESTED ANSWERS FOR USE BY TEACHER

1. What are the facts of the case?

On November 9, 1982, Charles Thurman, after screaming threats at his estranged wife, Tracy Thurman, broke her car windshield while a police officer watched the entire incident. Following that occurrence, a court ordered Charles to have no contact with his wife. Tracy made many attempts to obtain protection from the Torrington Police Department. Her requests were not answered. On June 10, 1983, Tracy was stabbed ten times by Charles with a knife in the chest, neck and throat. The police officer who arrived at the scene did not immediately arrest Charles, but rather, allowed him to further injure Tracy. Charles had previously boasted to the customers, including police officers, of a local restaurant that he intended to kill his wife. Tracy sued the Torrington Police Department alleging that her federal civil rights were violated.

Following the Tracy Thurman case, the Connecticut General Assembly enacted a mandatory arrest statute for family violence crimes. Mandatory arrest means that a police officer must make an arrest if s/he believes that it is more likely than not that a family violence crime was committed. A family violence crime is one of the crimes that involve physical harm or threat of physical harm against a family or household member. Verbal abuse or argument is not considered family violence unless there is a present danger and likelihood that physical violence will occur.

2. If the current mandatory arrest law had been in affect at the time that Tracy Thurman requested assistance from the Torrington Police Department, do you believe the outcome would have been different?

Answer One:

- *Yes, the Torrington Police would have been required to arrest Charles Thurman because of the threats of physical harm made by Charles to Tracy. In addition, Charles violated a protective order, which is a crime and also is contempt of court. Charles would have been arrested each time that he had any contact with Tracy.*

Answer Two:

- *No. Although the mandatory arrest law has been helpful in assisting and protecting victims of domestic violence, it is not a cure-all. Charles wanted to harm his wife. Without a full-time police officer assigned to Tracy for protection, Charles would have the opportunity to harm Tracy, even though it is a violation of the protective order and the law. I believe that Charles would have found the opportunity to harm his wife, even if this new law had been in place.*

3. Is spousal abuse a private matter in which the police ought not be involved?

Answer One:

- *The state legislature has determined that domestic violence is a complex problem that adversely affects the society at large. Oftentimes, the victim is afraid to seek assistance to stop the violence for fear of increased violence, lack of financial resources and lack of alternative housing. Domestic violence oftentimes follows a cycle in which there is a period of escalation of violence followed by a honeymoon period during which the abuser seeks reconciliation and forgiveness. For these reasons, the police have an affirmative duty to ensure that individuals are protected whenever they determine that domestic violence is occurring.*

Answer Two:

- *Although some people may believe that making an arrest in these cases will serve to exacerbate the level of tension in the family and will result in future episodes of domestic violence, most professionals in the field believe that intervention by the police is in the best interest of all concerned.*

Final Assessment

FINAL ASSESSMENT

- I. **Essay:** In a minimum of five paragraphs, write an essay on one of the following:
1. Explain how the judge's role is different from that of the Governor or state legislator.
 2. Using specific details from the following three court cases discussed in this unit (*Amistad*, *Mary Jones* and *Michael T.*), describe how the rule of law determined the outcome.
- II. **Advanced Alternative Questions:** For advanced classes, teachers should consider the following alternative questions:
1. Do you think that courts effectively perform their role of ensuring justice in America? Include details from four of the five cases studied. (*Amistad*, *Mary Jones*, *Michael T.*, *Griswold v. Connecticut*, *Packer v. Board of Education*)
 2. English political theorist John Locke stated that individuals give up some freedoms in order to form a government that will protect the life, liberty and property of all members of society. Do you agree with this idea? Consider existing contemporary laws such as: mandatory vaccinations for school aged children, mandatory use of seatbelts, mandatory speed limits, and mandatory school attendance. Why were these laws enacted? Are such laws necessary for a just society?
- III. **Alternative Assessment Options**
1. Create a poster in which you demonstrate an understanding of one of the above topics. The poster must be explained verbally to the teacher and class. (Suggested length of activity: one class period)
 2. Students conduct a classroom debate. Excellent topics for debate are the death penalty, physician-assisted suicide, or legal sanctioning of "gay" marriages. (Suggested length of activity: 3-4 days)
- For information pertaining to the death penalty, see the following websites:
- (a) Death Penalty Information Center: www.essential.org/dpic/ (Includes reports with analysis and information on issues concerning capital punishment.)
 - (b) Human Rights – Death Penalty: www.derechos.org/dp/ (List of death penalty links by subject.)
3. For a more extended assessment, it is suggested that the class conduct a mock trial. The Consortium and The Connecticut Bar Association jointly sponsor an annual Mock Trial Competition in Connecticut for middle and high school students. For detailed instructions on conducting a mock trial, teachers may use *Street Law* (see bibliography) or contact the Connecticut Consortium for Law and Citizenship Education, 30 Trinity Street in Hartford or call 860-509-6184. (Allow a minimum of two weeks for this activity.)

SUGGESTED RESEARCH TOPICS FOR EXTENDED EXPLORATION

1. Is there a disparity within the criminal justice system for minorities?
2. Is the death penalty an effective deterrent to crime? How do states handle the issue of the death penalty differently?
3. There are many attitudes towards lawyers prevalent in America. On one extreme, they are perceived as opportunists willing to twist the law in any direction for a fee. At the other extreme, they are hailed as heroes in the fight for justice. Weigh your own attitude towards lawyers.

HANDOUTS

Handouts

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Crusaders and Criminals, Victims & Visionaries
Historic Encounter between Connecticut Citizens and the United States Supreme Court
David Bollier

The Amistad Case

Major 19th Century Cases. 1986

In re Amistad (1842)

The Amistad mutineers: slaves or free men?

For weeks, newspapers along the East Coast in 1839 reported sightings of a strange ship with tattered sails, a hull coated with barnacles and seaweed, and a crew of Negroes. Was the ship friend or foe? Where did it come from? And what was its purpose?

The mystery began to unravel in late August when a dilapidated 120-ton clipper-ship known as the *Amistad* (Spanish for "friendship") was found anchored in the Long Island Sound, near Montauk. Its crew consisted of 49 black men, three girls, and a captain's boy, none of whom spoke English. As it happened, a United States naval brig, the *Washington*, was in the area making a survey of the waters. Upon investigating the strange ship, Lieutenant Commander Thomas Gedney and Lieutenant Richard Meade discovered that the Negroes on the *Amistad* were Africans who had staged a mutiny at sea after being bought by Spanish slave-traders in Cuba.

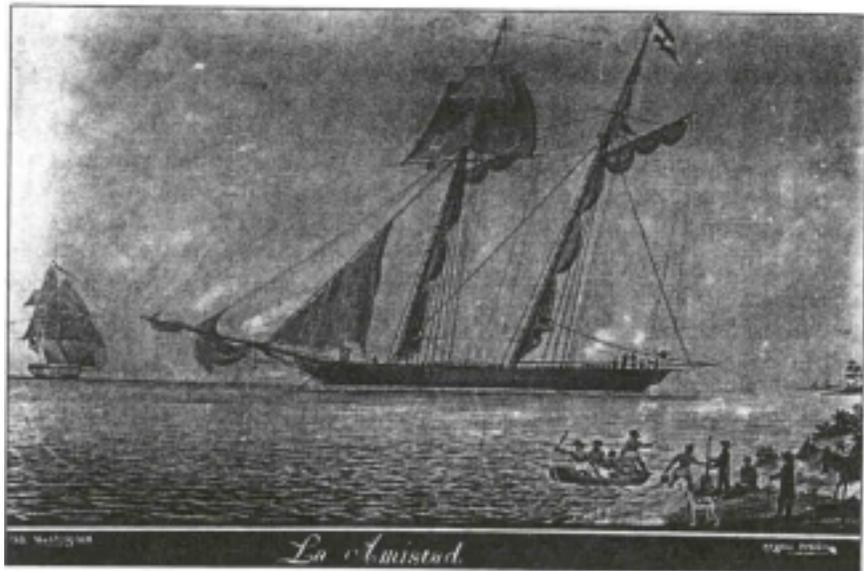
While Spain had outlawed slavery and slave-trading years earlier, there were still men who made fortunes by capturing Africans and illegally selling them into slavery in America. Many slave-traders first took their kidnap victims to Cuba - a Spanish colony -where they were given false papers certifying that the captives had been born before 1820. A loophole in the law made it legal to keep people in slavery if they had been born before 1820. By bribing Cuban officials, the slave-traders bought fraudulent papers making captured Africans "legal" slaves.

In Cuba, two slave-traders, Don Pedro Montez and Don Ruiz, bought 53 such "legal" slaves for \$22,000. Most of them were Mendi tribesmen who had been kidnapped from Sierra Leone in Africa. Montez and Ruiz bought cargo space on the *Amistad*, a trading ship, and set sail for the United States to sell the slaves for \$44,000.

Once at sea, there was not enough food and water for the Mendi tribesmen. Under the leadership of Cinque, the strong, natural leader of the group, the captives revolted and took control of the *Amistad*. Using sugar cane knives, they killed the captain and the cook, while other crewmembers fled by rowboat.

The mutineers spared the lives of Montez and Ruiz because they were the only people on board who knew how to navigate the ship. Cinque ordered them to sail the ship back to Africa. As Ruiz later testified, "We were compelled to steer east in the day; but sometimes the wind would not allow us to steer east; then they would threaten us with death. In the night we steered west and kept to the northward as much as possible." Two months later, after following a zigzag course, the *Amistad* limped into the Long Island Sound.

It was at this point that the Navy's Lieutenant Commander Gedney and Lieutenant Meade stumbled across the *Amistad*. After boarding it, they immediately took charge and towed the vessel to New London. From there, they sent the Africans to New Haven, where they were jailed pending a court trial for piracy and murder.



Aftermath of a mutiny.

The discovery of *La Amistad* in the Long Island Sound triggered a national debate in 1839 over the fate of the 53 African tribesmen aboard. Should they be freed or enslaved?

The situation quickly exploded into an international controversy. Montez and Ruiz, now rescued from their ordeal, demanded that the ship and the "slaves" be returned to them. The Spanish Government, citing a 1795 treaty with the United States, demanded that President Martin Van Buren return the *Amistad* to Spain. The treaty stated that if a vessel of either nation were forced to enter the other's ports "under urgent necessity," that ship would be released immediately.

But there were other claims on the *Amistad* as well. Gedney and Meade, the naval commanders who "captured" the *Amistad*, asked the courts to give them salvage rights to the ship and its property which they said should include the 53 Mendi tribesmen. Gedney and Meade claimed they had found the broken-down vessel at sea, and therefore were entitled to whatever price the ship and its contents could bring.

When word of the *Amistad* capture reached the abolitionists (the activists seeking to outlaw slavery in the United States), they insisted that the Africans be set free at once and returned to Sierra Leone. They argued that it would be an outrage for the U.S. Government to consider the Negroes as property - even though, of course, slaves were then recognized as property in the South and also in Connecticut until 1848. (After 1808, it became illegal to import slaves into the United States. While slavery remained legal in Connecticut until 1848, slaves could only be brought into the state for short stays.) Abolitionists argued that the Mendi were free men who had been kidnapped and fraudulently pressed into slav-

ery by a nation that itself had outlawed slavery.

Anti-slavery forces raised funds to defend the Africans and shrewdly used the case to advance their cause. The chief lawyer for the *Amistad* captives was Roger Sherman Baldwin, the grandson of Roger Sherman, a prominent Connecticut attorney and later a distinguished Governor. Lewis Tappan, a leading abolitionist from New York, who happened to have a summer home in New Haven, helped fund much of the litigation and public agitation to free the captives.

While waiting for trial, the Mendi were held in the New Haven county jail, then located across from the green. The captives soon became celebrities. As historian Gene Gleason writes:

When they were let out to exercise on the New Haven village green, they somersaulted and leaped about with exuberance that astonished the reserved New Englanders. Over 5,000 persons paid 12-1/2 cents each to view the Africans, and the jailer kept his own account of the proceeds. Phrenologists studied the bumps on their heads, a wax museum entrepreneur made life-masks of them, and Nathaniel Jocelyn, a local artist, painted Cinque's portrait.

Newspapers around the country quickly sensationalized the controversy and melodramatically dubbed the *Amistad* "the long, low, black schooner." A play based on the events of the *Amistad* later opened in New York and successfully toured other cities. A Boston artist painted an enormous 135-square-foot dramatic painting entitled, "The Massacre," which portrayed the killing of the *Amistad* captain and cook. The painting drew large, paying crowds and favorable reviews.

In September 1839, the U.S. Circuit Court in Hartford dismissed the piracy- murder charges on the grounds that the alleged crimes had occurred in Spanish territory. But the Court instructed the federal district court to take up the competing claims over what should be done with the *Amistad* itself and its human "cargo."

Under the law and customs of the time, the court faced many perplexing dilemmas. Should the *Amistad* and the Africans be released to Spain under the terms of the 1795 treaty - even though Spain or Cuba would probably put the Africans into slavery, or would execute them? Or should Spain's treaty claims be ignored since the *Amistad* captives had been kidnapped in violation of Spain's own anti-slave trade laws?

Then there was the question of what should happen to the *Amistad* itself and its \$40,000 cargo of cottons, silks, and luxury goods. Should the U.S. naval commanders receive salvage rights? Or should the ship be returned to the Havana shippers who argued that the *Amistad* belonged to them? Or should the ship be given to the Spanish Government?

The most important question of the *Amistad* trial, of course, was whether the court should consider the Africans property or human beings. If the *Amistad* captives were to be considered slaves, then the court should return the 53 Africans to the slave-traders Montez and Ruiz. But if they were free men, then the court

Stranger in a strange land.
Cinque, the leader of the Mendi Tribesmen kidnapped from their home in Sierra Leone, Africa. New Haven painter Nathaniel Jocelyn painted this portrait in 1839 as Cinque and his fellow captives awaited trial



should immediately set them free. But what then? How would they, return to Africa?

The *Amistad* case provoked such enormous public controversy because it forced a definitive ruling on issues that had smoldered, unresolved, for years. In 1836, Congress had refused to deal with any slavery issues by passing its infamous "Gag Resolution," which automatically tabled (indefinitely delayed) any proposals regarding slavery. President Martin Van Buren was a northerner who did not want to inflame the South - so he, too, steered clear of any slavery issues.

So the *Amistad* case forced the courts to deal squarely with a question that the President and Congress had sidestepped - and which ultimately would require a civil war to resolve: What *is* the legal status of black people in a nation that is divided on the question of slavery?

In January 1840, after a weeklong trial in the New Haven Courthouse, District Court Judge Andrew T. Judson, a Van Buren appointee who had shut down Prudence Crandall's boarding school for Negro girls in 1833, rendered a judgment that surprised the abolitionists. He ruled that the Africans were not slaves even under Spanish law and thus should be released. Gedney and Meade received one-third of the salvage of the *Amistad* property - which would not include the Mendi.

The Government appealed the case, first to the Circuit Court and then to the U.S. Supreme Court. To bring added prestige to their case, the abolitionists enlisted Ex-President John Quincy Adams to argue the case. Adams, known as Old Man Eloquent to abolitionists and as the Madman of Massachusetts to southerners, was serving as a Representative in the House at the time. Although he was 74 years

old, in poor health and filled with self-doubts, Adams threw himself into the case. He spoke for 4 1/2 hours in a stirring defense that Justice Joseph Story later described as "extraordinary for its power, for its bitter sarcasm, and its dealing with topics far beyond the record and points of discussion."

On March 9, 1841, Story, one of the most accomplished Justices in our history, delivered the Supreme Court opinion which upheld the district court ruling: the Africans had been illegally pressed into slavery and thus the Spanish treaty could not be enforced. The ruling was explosive in the sense that it upheld the right to rebel against unlawful enslavement - a holding that surely made southern slaveholders uneasy.

The abolitionists took the Africans to Farmington while taking Cinque and a few other Mendi on tour to major U.S. cities. At churches and meeting halls, the tribesmen were exhibited and used to raise funds to finance their return to Africa. In November 1841, three years after their kidnapping by slave-traders, the Mendi tribesmen returned to Sierra Leone. Only 35 of the original 53 had survived their three years of captivity.

They were accompanied by American missionaries who set up a mission there. The American Missionary Association, which had backed the *Amistad* captives, went on to become a major force in Negro education in America. Spain continued to ask later Presidents to pay for the seizure of the *Amistad*. But Congress rejected any payments, and finally, in 1884, four decades later, Spain renounced its claims to the *Amistad* and its human "property."

Segment One Terms

Abolitionist - a person who advocates doing away with slavery.

Admiralty Law - the branch of law concerning maritime disputes.

Chattels Real - the Common Law term in the 18th and 19th Centuries used to refer to slaves.

Chattel Property - the Common Law term in the 18th and 19th Centuries, which referred to land and other forms of property.

Criminal Law - the branch of the law dealing with crimes and their punishment.

Civil Law - the branch of the law dealing with private rights of individuals, groups or businesses such as contracts, personal injury cases and dissolution of marriages.

Courts - institution that (a) determines whether a person accused of breaking the law is guilty or not guilty; (b) resolves disputes involving civil or personal rights; (c) interprets provisions of laws enacted by the legislature; (d) decides what is to be the law when none exists for certain situations; (e) determines whether a law violates the Constitution of the state or the United States.

Judicial Review - the court's power to void any law passed by Congress or a state legislature that conflicts with the nation's highest law, the Constitution.

Justice - The principle or ideal of moral rightness. The upholding of what is right and fair. In our country, justice also includes the concept that every person is entitled to fair and impartial treatment under the law without regard to race, gender, ethnicity, age or religion. Due process requires that no law or government procedure be arbitrary or unfair.

Law - the rules and regulations made and enforced by government that regulate the conduct of people within a society.

Salvage Rights - the right to claim goods or property that remain after casualty.

The Rule of Law - the notion that all members of society – average citizens and government officials such as senators, judges and even the President – are required to support the legal system and obey its laws. No one is above the law.

Treaty - a formal agreement between two or more countries.

The Case of Mary Jones - Justice and the Rule of Law

A state statute provides as follows:

"In order to protect the health and welfare of the people of this state, all persons owning land in this state are required to maintain their land free of pollution that might endanger the public water supply. If the Department of Environmental Protection, after investigation, determines that any land is polluted so that it poses a danger to the public water supply, the Department shall order the landowner to remove the cause of the pollution, and the landowner shall promptly do so at his or her own expense. Any landowner who incurs expenses in removing pollution may sue and recover the amount of such expenses from any other person or company that is proved to have caused such pollution. "

Another state statute provides that any landowner who receives a cleanup order from the Department may appeal to the Superior Court, and the Court must reverse the order if the Court finds that the order is "not in accordance with the statute."

Mary Jones is a single mother of two small children. She works as a computer programmer for an insurance company. Until her father died last year, Mary had been struggling to support her family, but then she inherited the sum of \$50,000, and this greatly relieved her financial problems. Her father also bequeathed her a parcel of undeveloped land, about 20 acres in another part of the state, which he had purchased shortly before he died as an investment. Mary is now the owner of this land, although she has never seen it.

After Mary had become the owner of the land, she received a letter from the Department of Environmental Protection informing her that its investigation revealed that the land was polluted and that the pollution was endangering the public water supply in the area. Specifically, the Department said it found that the soil is contaminated by some dangerous chemicals which are seeping into a stream on the property. This stream flows directly into the local public water reservoir. Pursuant to the state statute, the Department ordered Mary, as the landowner, to remove the cause of the pollution.

Upon receiving the Department's order, Mary did a little investigating of her own. First, she consulted some experts in pollution removal, and they verified that her land is seriously polluted and endangers the reservoir. Mary also learned, to her dismay, that cleaning up chemical pollution is extremely expensive. She was told that it would cost at least \$175,000 and possibly even more, depending upon the results of some scientific tests that would have to be performed to clean up her property. As to the cause of the problem, a little good detective work revealed that the pollution occurred sometime around 1965 (before Mary was born), when a private rubbish removal company, TrashAway, Inc., illegally dumped the chemicals on the property without the knowledge of the person who then owned the property. Official records showed, however, that TrashAway, Inc. has been out of business since 1972, when its owner died leaving

only a few hundred dollars in his estate. Finally, real estate experts advised her that the property, even unpolluted, would be worth only about \$25,000. Mary decided that her only choice was to appeal the Department's order to the court.

In court, Mary argued that neither she nor her father was in any way responsible for the pollution, nor did either of them have any knowledge of it before acquiring the property. She pointed out that it would be futile to try to collect anything from TrashAway, Inc., which is defunct and without funds. But if she, the innocent landowner, were compelled to pay for the clean up, she would be wiped out financially and be in debt for many years into the future. She argued that the legislature could not have intended that the statute it enacted would have such an "unjust" result. Under these circumstances, she argued, the only just decision would be to require the Department to pay for the clean up.

The Department argued that Mary is required to follow the provisions of the state statute, which was duly enacted by the legislature to protect all the people of the state. It pointed out that if the Department were ordered to pay, the Court would essentially be shifting the responsibility from the landowner to the taxpayers, in violation of the statute, and that would be unjust. The Department argued that all citizens are subject to the "rule of law," and the Court may not make exceptions in individual cases unless authorized by the law to do so.

Before the judge made a decision, the judge became aware that people in the community as well as the media overwhelmingly supported Mary in the case. As an editorial in the most influential newspaper put it, "This is about a good, hardworking, innocent citizen caught up in a situation not of her own making, but in danger of being financially destroyed by it. As applied here, this is a cruel and destructive law that nobody wants. The outcome is in the judge's hands. The citizens of the state, voters, are watching. Do the right thing, judge!"

The Judge's Think Sheet

The Case of Mary Jones

1) When was the land contaminated?

2) Does Mary own the land according to Connecticut law?

3) What is the law in this case?

4) How does the rule of law apply in this case?

5) Is Mary responsible for paying the clean-up costs?

6) Would your answer be different, if instead of Mary, the landowner were Micro Tec Company, a multi-billion dollar corporation? Why or why not?

7) To what extent, if any, should you as the judge be influenced in your decision by the obviously strong public opinion in support of Mary?

Synopsis of Starr Case

Susan Starr v. Commissioner, Department of Environmental Protection
Supreme Court, State of Connecticut
226 Conn. 358 (1993)

Superior Court, State of Connecticut
Judicial District of Hartford/New Britain
Docket No. CV91-0398162 (Feb. 10, 1992, Maloney, J.)

Synopsis

The Case of Mary Jones was presented to illustrate the complexities and ambiguities that often confront judges as they attempt to ensure justice for our citizens while adhering to the rule of law. Although the *Mary Jones* case is fictional, it was derived from an actual case in Connecticut that arose as the result of efforts by the Connecticut Department of Environmental Protection to enforce state anti-pollution laws against an individual landowner. The case ultimately involved all three branches of government - the Judicial Branch (the Superior and Supreme Courts), the Executive Branch (the Department of Environmental Protection), and the Legislative Branch (the state House of Representatives and Senate) - each of which struggled in its own way to ensure that the rule of law would result in justice.

If you read the two court decisions, you will see that the facts in the actual case were very similar to those in the fictional case that you read for your class. In 1987, Susan Starr inherited from her deceased husband a 44-acre plot of vacant land in Enfield. Many years before her husband acquired the land, a now defunct trucking company used it as a dumping ground for polluted waste material that it was hauling for a gas company in Massachusetts, which is also now out of business.

Mrs. Starr had very little to do with the land either during her husband's lifetime or after she inherited it. In fact, she was denied access to the land from the time she inherited it until the summer of 1989, when the pollution was first noticed. This circumstance came about because the town of Enfield had closed the road leading into the land.

In the summer of 1989, the State Department of Environmental Protection commenced an investigation of complaints of noxious odors coming from the property. The investigation took about a year. The Department discovered that the polluted waste material that had been dumped on the property many years ago had begun to contaminate the public water supply. Accordingly, on July 9, 1990, the Commissioner of Environmental Protection issued an enforcement order to

Mrs. Starr directing her to clean up the pollution. The Commissioner is the head of the Department, and orders are issued in his or her name.

Mrs. Starr requested a hearing before the Department in order to protest the order. The Department held a hearing, which is very much like a court trial and allows an individual who objects to an order of the Commissioner to present evidence and legal arguments in opposition. After hearing Mrs. Starr's side of the story, the Commissioner issued a final decision ordering her to eliminate the pollution at her own expense.

The Commissioner based the decision primarily on a state statute enacted by the legislature in 1967. This became General Statute 22a-432. One of the state senators who sponsored the law in the legislature called it a "declaration of war against water pollution." The statute provides that if the Commissioner of Environmental Protection finds that any person "is maintaining a condition which reasonably can be expected to create a source of pollution to the waters of the state," the Commissioner may issue an order to such person to eliminate the pollution.

It was estimated that the cost of the cleanup would be about \$700,000, far in excess of what the land was worth, estimated at perhaps \$40,000. Instead of inheriting an asset, Mrs. Starr was handed a harsh financial liability.

Superior Court Proceedings

Mrs. Starr appealed the Commissioner's cleanup order to the Connecticut Superior Court, which is authorized to decide such appeals and to reverse the Commissioner's decision if the court finds that it was based on an error in interpreting the law. She thus became the plaintiff in the Superior Court case, and the Commissioner became the defendant. In the court proceeding, the attorneys for both sides submitted "briefs," which are written legal arguments in support of their respective positions, and the attorneys also appeared in court and presented oral arguments to the judge.

The Superior Court judge decided the appeal in favor of the plaintiff, Mrs. Starr. The judge ruled that the defendant Commissioner had misinterpreted the law in holding the plaintiff responsible for cleaning up the pollution on her property. The judge reasoned that she could not be found to be "maintaining" the pollution, as prohibited by the statute, because the word "maintaining" includes the concept of some positive conduct or effort designed to preserve a particular condition.

In the absence of any definition of the term "maintaining" in the statute itself, the judge turned to the definitions included in different dictionaries as an aid in interpreting the law. In effect, the judge ruled that the clean-up statute as enacted by the legislature applies only to those owners of property who have had some active role in causing or continuing the pollution of the water supply. But in this case, the judge noted, all the evidence indicated that the plaintiff had never had any active involvement of any kind in the property and knew nothing of the pollution.

The law in question read, "In order to protect the health and welfare of the people of this state, all persons owning land in this state are required to maintain their land free of pollution that might endanger the public water supply."

Since the plaintiff was essentially "innocent" of any involvement in the pollution, the judge held that the statute does not apply to her, and the Commissioner's order was in error. The judge did point out that other statutes could be employed to require even an innocent landowner to bear some of the cost of clean-up in some cases, but he noted that the department had not followed the procedures set forth in those laws in this case.

Supreme Court Proceedings

Now it was the Commissioner's turn to appeal, and he did so by appealing to the Connecticut Supreme Court. The Supreme Court is empowered to hear and decide appeals of judgments of the Superior Court and to reverse those judgments if they are found to be based on errors in interpreting or applying the law.

As in the Superior Court proceedings, attorneys for both the plaintiff and the defendant submitted briefs in support of their respective positions. In addition, several other organizations were permitted by the Supreme Court to submit briefs on issues in the case of importance to them. These organizations were allowed to participate as "amicus curiae," or friends of the court, in the interest of providing diverse viewpoints that might be helpful to the Supreme Court in deciding the appeal. The attorneys also appeared in court and presented oral arguments on the legal issues.

The Supreme Court decided the case in favor of the defendant Commissioner, reversing the judgment of the Superior Court. In essence, the Supreme Court decided that the Superior Court judge had erroneously interpreted the relevant statute. It held that the term "maintaining," as used in the statute, does not necessarily require any affirmative action or conduct on the part of the landowner.

In reaching its ruling, the Supreme Court declined to follow the dictionary definitions of the term "maintaining" that the Superior Court judge had used and instead turned to prior Supreme Court decisions which had considered the use of the term in the context of the law relating to public nuisances. This method of reasoning in the law, relying on other cases previously decided, is known as "following precedent." The Court noted that in a preamble to the statute in question, the legislature had declared pollution of the water supply to be a "public nuisance." In prior public nuisance cases, the Court stated, the concept of "maintaining" a nuisance does not necessarily include any fault on the part of the owner of the land where the nuisance exists, and the landowner can be ordered to eliminate the nuisance and compensate anyone harmed by it regardless of the landowner's innocence in causing or continuing the nuisance.

Since the term "maintaining" (a source of pollution), as defined by the Supreme Court in interpreting the statute, can include totally passive ownership of the land where the pollution exists, the Supreme Court ruled that the Commissioner correctly applied the law in ordering the plaintiff to eliminate the pollution, regardless of her lack of fault and regardless of the expense to her.

In rendering its decision, the Supreme Court acknowledged the difficulty of reconciling the rule of law, as determined by the Court, with ordinary notions of fair play and the idea that a person who is not at fault should not be held responsible for damages or harm to others or the public. The Supreme Court stated:

"We realize that our resolution of this appeal may result in the imposition of liability on the plaintiff for abating the pollution on her land, the cost of which may be in excess of the value of the land. That appears to be a draconian result that violates notions of fairness... Our perception, however, is that the legislature in 1967 saw the state's water pollution problem as being so grave that its concern for the public welfare outweighed any sympathy for individual property owners."

In concluding its decision holding the plaintiff financially responsible for cleaning up the pollution on her property, even though she was completely innocent of causing it, the Supreme Court made this observation about the roles of the different branches of government: "If the result is unduly harsh, the remedy properly lies with the legislature and not this court." That is to say, the judicial branch of the government is obligated to apply the law as set forth in statutes enacted by the legislature, and it is up to the legislature, not the Court, to modify the law if that is what the citizens of the state deem to be appropriate.

Legislative Activity

While the appeal to the Supreme Court was pending, the Legislature became aware of the issue surrounding innocent landowners and quickly passed a law that relieved these landowners from liability. The law did not automatically excuse Mrs. Starr from her liability, as the law set up a procedure for the landowner to establish innocence.

Summary: Starr Case Legislation

OLR AMENDED BILL ANALYSIS

SB 820 (File 690, as amended by House "A")*

AN ACT ESTABLISHING AN INNOCENT LANDOWNER DEFENSE IN POLLUTION CASES

SUMMARY: This bill limits innocent landowners with polluted property from liability to the state for assessments, fines, and other costs imposed for cleanup. Liability is limited to reimbursing the state for cleanup costs incurred to the extent of the landowner's interest in the property if the amount of the state's expenditure is a lien on the property handled in accordance with a procedure available under existing law. The limitation on liability applies to spills or discharges whether they occurred before or after passage of the bill, but does not affect actions that are final and no longer appealable after that date.

The landowner must establish his innocence by a preponderance of the evidence. In determining innocence, a court may take into account a person's specialized knowledge or experience; the amount paid for the property as it relates to the value if it were not polluted; commonly known or readily available information; the obviousness of the presence or likely presence of the pollution; and the ability to detect pollution by inspection.

The bill makes any person who sells an interest in contaminated real estate, regardless of whether the state has spent money to clean the site, liable up to the net sale proceeds for the cost of cleanup. Net proceeds are the amount received by a person after paying reasonable expenses and satisfying security interests.

Under current law, unchanged by the bill, secured lenders acquiring title by foreclosure or tender of a deed in lieu of foreclosure have liability limited to the value of the real estate if the spill occurred before acquisition of title.

Current law allows the Department of Environmental Protection (DEP) to issue an order to abate water pollution or correct a hazardous waste violation to a landowner whenever the department is also issuing an order to the person who caused the pollution. The bill exempts innocent landowners from liability for any assessment, fine, or other costs imposed by the state under this law, except through imposition of a lien on the property for reimbursement of state cleanup costs.

*House Amendment "A" eliminates a landowner's innocence if he had reason to know of the act or omission of a third party (the unamended bill excluded only those who actually knew of such act or omission) or if there was a reasonably foreseeable threat of pollution; eliminates fiduciaries as innocent landowner's; makes certain executors, trustees, and administrators of decedent's estates innocent landowners; limits an innocent landowner's liability to that obtained by the imposition of a lien on the property; specifies that the limitation on landowner

liability does not affect actions that are final and no longer appealable on passage of the bill; and makes the bill effective on passage.

EFFECTIVE DATE: Upon passage

FURTHER EXPLANATION

Innocent Landowner

Innocent landowners under the bill are of two types. First, those with an interest in property which is contaminated while owned by them. Second, those who acquire property after the contamination and who have not caused the pollution. The term does not apply to secured lenders.

In the first case, a landowner is innocent if the pollution is caused by: (1) an act of God; (2) an act of war; (3) an act or omission of a third party who is not an employee, agent, lessee, or in a direct or indirect contractual relationship with the landowner; or (4) an act or omission occurring in connection with a contract arising from a published rail transportation tariff. In the case of an act or omission of a third party the landowner is not innocent if he had knowledge, or had reason to know, and failed to take reasonable steps to prevent the pollution, or there was a reasonably foreseeable threat of pollution. But in the case of an act or omission of a third party occurring in connection with a rail transportation contact, the landowner is not innocent if he had knowledge and failed to take reasonable steps.

A person who acquires land after contamination is considered innocent if he (1) has no knowledge of the contamination and inquires into previous uses of the property consistent with good commercial or customary practice, (2) is a government entity, (3) acquires the property by inheritance or bequest, or (4) acquires the interest as executor or administrator of a decedent's estate or as trustee receiving the real estate interest from a decedent's estate if the decedent had held the interest in the real estate.

BACKGROUND

Related Case

In *Starr v. Commissioner* (CV91 039 81 62, February 10, 1992) the Superior Court ruled that an innocent landowner cannot be held primarily liable for cleanup of his land unless the DEP also orders the person responsible for causing the pollution.

Legislative History

The Senate referred the bill to the Appropriations Committee on May 18. That committee

favorably reported the bill, with no changes, on May 20.

The Senate adopted Senate Amendment "A" on May 29. On June 7, the House rejected Senate "A" and adopted House "A." House "A" incorporates the changes of Senate "A" and also makes certain trustees, administrators, and executors of decedent's estates innocent landowners; makes a landowner liable for a third party act or omission if there was a reasonably foreseeable threat of pollution; and makes the bill effective upon passage.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference
Yea 25 Nay 0

Judiciary Committee

Joint Favorable Substitute
Yea 27 Nay 0

Committee on Appropriations

Joint Favorable Report
Yea 42 Nay 0

Crusaders and Criminals, Victims & Visionaries
Historic Encounter between Connecticut Citizens and the United States Supreme Court
David Bollier

Summary: *Griswold v. Connecticut*

The Bill of Rights - First Amendment

The First Amendment is one of the great bulwarks of freedom in this nation. Its language is simple, its interpretation is quite complex. In its entirety, the First Amendment reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Defining the precise meaning of the First Amendment for Americans today is an undertaking that falls to the Supreme Court. Relying on its previous decisions and its review of state and federal laws, the Court constantly refines its interpretations of the First Amendment as new circumstances arise.

As the language of the First Amendment suggests, its scope is quite large. It applies to diverse questions that affect daily life. When does a person's speech become so provocative that it can be suppressed? Can the government prevent a newspaper from publishing national secrets? In what circumstances can government contribute financially to religious groups? What constitutes obscenity and what forms of offensive expression are protected by the First Amendment? Do citizens have an inherent right of privacy?

The case *Griswold v. Connecticut*, which involves the right of married persons to obtain and use birth control devices, illustrates how Connecticut citizens have helped shape the meaning of the First Amendment as it stands today.

Griswold v. Connecticut (1965)

Privacy becomes a constitutional right

From their small, under-funded birth control clinic at 406 Orange Street, New Haven, a blue-blooded social reformer and a shy medical doctor decided in 1961 to become criminals by dispensing contraceptives to married couples. By getting arrested, Mrs. Estelle T. Griswold and Dr. C. Lee Buxton hoped to challenge the constitutionality of a Connecticut law that prohibited not just the sale but the *use* of contraceptives. Their distribution of birth control made them accessories to a crime.

Within 15 years, this simple act of civil disobedience would spark one of the most far-reaching revolutions in modern constitutional history. The 1965 Supreme Court decision of *Griswold v. Connecticut* marked a legal milestone both by overturning an archaic obscenity law and by defining

a new constitutional right of privacy. Henceforth the Constitution would limit the government's authority to invade a person's privacy in the context of marriage, family life, and procreation.

In 1954, when Estelle Griswold of Essex joined the Planned Parenthood League of Connecticut, the likelihood of such sweeping constitutional changes must have seemed remote. She had a far more basic goal: to repeal the so-called Comstock law banning the use of contraceptives.

While affluent women with private doctors could generally obtain contraceptives (illegally), and while drug stores sold condoms freely, the Comstock law remained a major obstacle to openly promoting family planning and distributing contraceptives. Uneducated and impoverished women, in particular, often did not know how to obtain birth control and could not afford to go to another state to obtain it. As one woman testified to the Legislature, "I can't see why us women have to be human incubators." She and her husband lived with ten children in a one-room apartment.

The Comstock law banning contraceptives was named for Anthony Comstock of New Canaan, who at age 29 began a four-decade campaign against all forms of obscenity. Comstock became nationally known as the "Puritan Strong Boy" because of his exploits as the chief spokesman for the Y.M.C.A.'s Committee for the Suppression of Vice.

His first major victory came in 1873 when he succeeded in pushing a bill through Congress which banned the use of the U.S. mails for distributing obscene materials. In the years that followed, he traveled to various state capitals lobbying for "little Comstock laws" that banned obscene materials.

In 1879, Comstock prevailed upon his native state to enact such an anti-obscenity law. With little apparent debate or public protest the bill breezed through the Connecticut legislature with the strong backing of Protestant clergymen and Bridgeport Representative Phineas T. Barnum, the bill's chief sponsor. Besides banning obscene pictures and books, the law prohibited the distribution of birth control information and devices. Specifically, section 53-32 stated: "Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned," section 54-196 stated: "Any person who assists, abets, counsels, causes hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender." Comstock explained his motives: "Can't everybody, rich or poor, learn to control themselves?"

By the time of World War I, Comstock's philosophy of abstinence found little favor among the early feminists rallying for women's reproductive rights. After a friend of hers died from a back-alley abortion, Margaret Sanger, a New York City nurse, emerged as the leader of the modern birth control movement. Its chief goal was to undo the many laws that restricted access to contraceptives.

Inspired by Sanger, Connecticut feminists founded the Connecticut Birth Control League in 1923 - later Planned Parenthood of Connecticut - to promote the legal distribution of contraceptives and birth control advice, especially among the poor. Over the next four decades, 29 different bills were introduced in the General Assembly to repeal or modify the Comstock law. All were defeated. By the 1930s, after repeated failure in the legislature, Connecticut feminists openly defied the law by opening nine birth control clinics across the state.

The clinics operated without incident until 1939, when police raided a Waterbury clinic and arrested two doctors and a nurse for dispensing birth control information and devices. The arrests provided an opportunity to test the constitutionality of the law in the state courts. But the 1940 challenge, *State v. Nelson*, proved unsuccessful: the state Supreme Court upheld the law, saying that the General Assembly was entitled to legislate in this area on behalf of the public health and morals.

The state then cleverly prevented its opponents from appealing to the U.S. Supreme Court, and possibly overturning the law, by withdrawing the charges against them. This preserved the Connecticut Supreme Court ruling as the law of the state.

After this case, family planning advocates tried to exploit another crack in the law: What if a doctor wanted to prescribe contraceptives to women whose lives could be threatened by pregnancy or giving birth? In 1942, the Connecticut Supreme Court ruled by a 3 to 2 vote, in the case of *Tileston v. Ullman*, that the Comstock law did not allow for any exceptions, even in cases where life or serious injury to health could result. The U.S. Supreme Court dismissed an appeal on a narrow procedural ground - that the doctor did not have "standing" (a sufficient stake in the matter) to raise the issue; the proper party to challenge the law must be the patient whose life or health might be affected.

These two court decisions in the early 1940s resulted in the closing of all birth control clinics in the state for the next 20 years. Planned Parenthood continued to try to repeal or modify the Comstock law so that doctors could legally prescribe contraceptive devices "for health reasons" - or, as a later bill proposed, "when in the opinion of a physician, pregnancy would endanger life." But these minor changes, too, were rejected by the legislature.

Meanwhile, the general public - at least women - favored easier access to birth control. A *Fortune* magazine poll in 1943 revealed that nearly 85 percent of women nationwide believed birth control should be made available to all married women. While many repeal bills succeeded in the state House of Representatives (where rural Protestants were dominant), bills sent to the Senate (where urban Catholics were dominant) always went down to defeat. Throughout this period, the Catholic Church steadfastly opposed repeal of the Comstock law.

It was in this context that Estelle Griswold joined the Planned Parenthood League of Connecticut in 1954 and became its executive director several years later. (It is widely and erroneously believed that Mrs. Griswold was married to or somehow related to former Yale President A. Whitney Griswold. In actuality, she was married to Mr. Richard Griswold of Essex.) Mrs. Griswold had previously worked in Europe with the United Nations and the World Council of Churches helping find new homes for the refugees of World War II. That experience exposed her to the perils of overpopulation - and convinced her that better family planning was the answer.

Described by a reporter as "a thin, gray-haired woman, who resembles an English teacher or a librarian more than a crusader," Mrs. Griswold brought new vigor to her movement's quest for legalized birth control. Forbidden by the 1940s court cases from openly dispensing contraceptives, Planned Parenthood volunteers initiated "border runs" to shuttle women to birth control clinics in Rhode Island and New York, where such medical attention was legal. In 1957, more than 2,400 women made the trip to out-of-state clinics under Planned Parenthood's auspices.

In the late 1950's, Mrs. Griswold enlisted the support of Dr. C. Lee Buxton, the chairman of The Yale Department of Gynecology and Obstetrics. Although a shy, retiring man - *The New York Times* had dubbed him "a gentle crusader" - Dr. Buxton had a burning determination to strike down the Comstock law. His activism on birth control stood in ironic counterpoint to his medical specialty - the problems of fertility.

It was Dr. Buxton who helped find several patients who would wage the next great court challenge, *Poe v. Ullman*. (Once again, State's Attorney Abraham S. Ullman was the defendant.) One party to the suit had nearly died after her last pregnancy, and still suffered from partial paralysis and impaired speech. Another woman had given birth to three retarded children, each of whom died shortly after birth. Dr. Buxton believed that another pregnancy could be fatal to the first woman (who was given the alias Jane Doe) and seriously unhealthy for the second woman (who was given the alias

Jane Poe). Dr. Buxton joined the suit, claiming that his due process rights were being denied by the law.

Again, the U.S. Supreme Court relied on a procedural issue to dismiss the case. In the *Poe v. Ullman* decision, issued on June 20, 1961, Justice Felix Frankfurter called the constitutionality of the Comstock law a "dead letter" because the law had gone unenforced for so long. The Court "cannot be umpire to debates concerning harmless, empty shadows," he wrote.

On the very day of the Poe decision, Mrs. Griswold and Dr. Buxton vowed to open up a new birth control clinic at 79 Trumbull Street in New Haven. Their goal was to be arrested as criminals in order to force a constitutional test on the merits of the law. Three days after the clinic had opened, the New Haven police stopped by to investigate. Dr. Buxton and Mrs. Griswold helpfully gave them a tour of the facility, pointing out the contraceptives they were dispensing. A few days later, the two were arrested.

Their attorneys were Fowler V. Harper, a Yale Law School Professor, and Catherine Roraback, the granddaughter of a Connecticut Supreme Court justice. Waiving their right to a jury (to help ensure that they would be convicted), Mrs. Griswold and Dr. Buxton were convicted and fined \$100. Their attorneys appealed to the state Supreme Court, which predictably upheld the law.

From there it was on to the U.S. Supreme Court - again. Attorney Harper had died in 1963, so Yale Law professor Thomas I. Emerson, a noted First Amendment scholar, stepped in to help prepare the legal briefs. This proved to be a fateful turning point in the case, because Thomas Emerson had less confidence than Fowler Harper that the Supreme Court would invalidate the law using the First Amendment.

Over several months, Emerson and Roraback wrestled with the legal arguments they should present to the Supreme Court. At first, they toyed with the idea of invoking the First Amendment's protection of free speech, which should protect the right of doctors to provide medical information to their patients. Emerson and Roraback also thought that they might rely on the Due Process Clause, which requires that a law not be "arbitrary or capricious" and that it bear a "reasonable relationship" for a legitimate legislative purpose. The Comstock law, whose purpose was to prevent adultery and uphold public morality, could be considered "arbitrary and capricious" because its ban on contraceptives was not "reasonably related" to that goal.

In the end, however, Emerson and Roraback decided to argue that the Constitution includes an inherent right to privacy. As Emerson told the *Hartford Courant* in 1985, twenty years after the Court's decision:

The idea had been knocking around the American Civil Liberties Union legal staff, but it had never been fully explored and developed and presented to the Supreme Court in a way where they would have to pass on it...I was pretty optimistic. It seemed to me that the birth control statute was so absurd that they would stretch to find some way of declaring it unconstitutional...and the whole idea of creating a zone of privacy where governmental officials can't intrude was...an idea whose time had come, as they say.

The State of Connecticut, for its part, argued that the Legislature had a legitimate role in regulating birth control devices and information. In oral arguments before the Court, prosecutor Joseph B. Clark (who later became a Superior Court judge) defended the right of the Legislature to pass a law intended to "reduce the chances of immorality" and to "act as a deterrent to sexual intercourse

outside of marriage...married couples could still practice birth control, Clark said, because abstinence, withdrawal and the rhythm method are available to the married in Connecticut."

His argument did not sway the Court, however. On June 7, 1965, the Supreme Court issued its famous *Griswold v. Connecticut* decision and struck down Connecticut's 86-year-old Comstock law. By a vote of 7 to 2, the Court held that the law unconstitutionally invaded the privacy rights of married couples.

Justice William O. Douglas wrote the majority opinion, in which he "created" a new constitutional right of privacy based on the First Amendment (the right to free association), the Third Amendment (ban on the quartering of soldiers in homes), the Fourth Amendment (protection against unreasonable search and seizures), the Fifth Amendment (ban on compulsory self-incrimination), and the Ninth Amendment (which reserves all rights not enumerated in the Bill of Rights to the people). Each of these Amendments, wrote Douglas, have "penumbras" (shadows) which create "zones of privacy..." "These separate guarantees of privacy, taken together, give "life and substance" to a broad, inherent constitutional right of privacy against government intrusion.

Justices Stewart and Black dissented in the *Griswold* case, arguing that while the Connecticut law was "uncommonly silly," it was a matter for the legislature, not the courts, to reverse. "We are not asked in this case to say whether we think this law is unwise or even asinine," wrote Stewart. "We are asked to hold that it violates the United States Constitution. And that I cannot do."

So it was that a case aimed simply at overturning the Comstock ban on birth control ended up recognizing a sweeping new constitutional right. In 1972, the Court extended the right of privacy to unmarried minors seeking birth control in its *Eisenstadt v. Baird* ruling. Then in 1973 came the controversial *Roe v. Wade* decision, which held that the right of privacy first recognized in *Griswold* "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." The right of privacy has also been raised in cases dealing with homosexuality, personal appearance and lifestyles, and the "right to die."

To the end, Dr. Buxton kept his low profile. On the day of the Supreme Court's decision, he left for Europe, prompting one medical journal to call his role in the case "a performance of *Hamlet* without the prince." Dr. Buxton remained active in the family planning movement, and died at age 64 in 1969.

For Estelle Griswold, who died in 1981 at age 81, the Supreme Court's ruling vindicated her strong convictions on the worldwide importance of family planning. "How we answer the question of birth control and controlled population increase is going to be the answer to the question of what the quality of life for future generations will be," she once said.

Estelle Griswold and Dr. Buxton may have thought that their biggest achievement was overturning an archaic obscenity law. In truth, their most significant legacy was to have inaugurated a new body of constitutional law protecting individual privacy.

Packer v. Thomaston

Statute in Question

Section 10-233d (a) (1) provides: Any local or regional board of education at a meeting at which three or more members of such board are present, or the impartial hearing board established pursuant to subsection (b) of this section, may expel, subject to the provisions of this subsection, any pupil whose conduct on school grounds or at a school-sponsored activity is violative of a publicized policy of such board or is seriously disruptive of the educational process or endangers persons or property or whose conduct off school grounds is violative of such policy and is seriously disruptive of the educational process, provided a majority of the board members sitting in the expulsion hearing vote to expel and that at least three affirmative votes for expulsion hearing vote to expel and that at least three affirmative votes for expulsion are cast."

Article I *The Hartford Courant*

COURT HEARS EXPULSION CASE - ARGUMENTS CENTER ON DEFINING DISRUPTIVE SCHOOL BEHAVIOR

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by DAVID OWENS; Courant Staff Writer

March 27, 1998

During more than 90 minutes of arguments before the state Supreme Court Thursday over the Thomaston school board's decision to expel a student, one fundamental question kept reemerging.

How could Kyle P. Packer's September 24 arrest on a charge of possession of 2 ounces of marijuana in a secluded section of Morris be "seriously disruptive of the education process" at Thomaston High School?

Lawyers on both sides agreed Thursday the law is vague, with the school board's attorney and the state attorney general arguing the vagueness is necessary.

Packer's lawyer said the vagueness makes the law unfair.

Thomaston school officials decided the arrest was a serious disruption and on October 8 expelled Packer, a senior, for the rest of the first marking period. They also banned him from participating in all school activities except graduation.

Packer's family appealed the board's decision and Litchfield Superior Court Judge Walter M. Pickett Jr. ruled in January that the board was wrong when it expelled Packer. He had previously issued an order permitting Packer to return to school. Pickett also ruled that the law the board used to make its decision was so vague that it was

unconstitutional. The Thomaston board appealed Pickett's precedent-setting ruling and the Supreme Court heard the appeal Thursday in an expedited hearing.

State law permits school officials to expel students for off-campus crimes if the offense is determined to be a violation of school policy and is "seriously disruptive of the educational process." Schools throughout the state have used the law to expel students accused of crimes such as murder, assault, brandishing a handgun and drug possession.

"School officials need discretion and flexibility to decide how and when to discipline students who commit illegal and disruptive acts, especially with drugs or guns," Attorney General Richard Blumenthal said.

The vagueness is unfair, countered Packer's lawyer, William A. Conti of Torrington. The statute should spell out what would constitute serious disruption, Conti said. It's conceivable the legislature could have included in the law possession of marijuana as something that would cause serious disruption.

"In the real world of education you're not expecting the legislature to spell out every nuance?" Justice Flemming L. Norcott Jr. asked Conti.

No, Conti replied. But there must be some link between the offense and the alleged serious disruption, he said. Otherwise students could be subjected to arbitrary discipline.

Smoking is against school policy and it's conceivable a board could expel a student for smoking a cigar at his sister's wedding, Conti argued.

Justice Ellen A. Peters suggested Conti was going a little too far. "The school setting is different," she said, repeating an argument Blumenthal made. "A school board has discretion to determine what's disruptive because that's the only way the school process can go forward. What's wrong with that?"

A school board should have discretion, Conti replied. But not unfettered discretion.

The fundamental question remained, however. Did Packer's crime -- for which he is performing community service -- seriously disrupt the educational process? The board based part of its decision on comments by Thomaston High School Principal Robin Willink that teachers and students were talking about the arrest.

Justice Robert I. Berdon questioned whether talk among students and teachers constituted a serious disruption.

George J. Kelly Jr., the Thomaston board's lawyer, said the disruption stemmed from the overall effect the arrest had on the educational process at the school.

"This young man had a history of being involved in illegal substances -- both marijuana and alcohol," Kelly said. Although Packer had no prior arrests for such charges, "there was sufficient information in the record."

The arrest also created a disruption in the school's ability to teach respect for the law and authority, Kelly said. "The school has to set standards. This happened to be a very visible situation," he said. "The school had to say there would be ramifications for this kind of conduct."

Peters appeared unconvinced. "But the statute on which you're relying talks about disruption," she said.

What was disruptive was the message it sent to the students, that it doesn't matter what you do," Kelly replied.

Article II **The Hartford Courant**

COURT OVERTURNS EXPULSION - JUSTICES CLARIFY RULES ON DISRUPTIVE BEHAVIOR

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by LYNNE TUOHY; Courant Staff Writer

July 28, 1998

The state Supreme Court has ruled that students may be expelled for only that behavior off school grounds that "markedly interrupts or severely impedes the day-to-day operation of a school."

Such behavior would include phoning in a bomb scare or uttering threats to kill or hurt a teacher or student, the justices said, in a 6-1 ruling released Monday.

But the arrest in another town of Thomaston High School senior Kyle Packer for possession of 2 ounces of marijuana last September did not rise to that level.

"We do not mean to pin any medals on [Packer] or condone his destructive conduct in any way," Chief Justice Robert J. Callahan wrote. "The school expulsion statute, as applied to this set of facts, however, is simply too vague to be constitutionally enforceable."

The issue of what off-premises conduct warrants expulsion has vexed school administrators, who have expelled students for offenses including theft, burglary, drug possession, assault and murder. It also has been scrutinized by the Connecticut Civil Liberties Union, which filed a friend-of-the-court brief on Packer's behalf.

"The potential for abuse in enforcing expulsion statutes is great if the laws don't provide enough guidance for school officials," said CCLU lawyer Ann Parrent.

Monday's ruling gives school officials a sharper definition, and examples, of what constitutes conduct that is "seriously

disruptive of the educational process" -- a phrase that many school systems copied directly from the state law into their student handbooks. Thomaston's was among them.

Thomaston's student handbook states that "students are subject to discipline, up to and including suspension and expulsion, for misconduct which is seriously disruptive of the educational process and is in violation of a publicized board policy, even if such conduct occurs off school property and during non-school time."

While Packer's possession of marijuana -- for which he performed 16 hours of community service and has no criminal record -- violated school policy, the Supreme Court ruled it was not seriously disruptive of the educational process. Or, as the justices defined that phrase, it did not "markedly interrupt or severely impede the day-to-day operation of a school."

Packer was 17 when he was arrested in Morris on September 24, by a state trooper who originally stopped him for not wearing a seatbelt, then noticed a marijuana cigarette in the car's ashtray. A search of the car turned up 2 ounces of marijuana.

State law requires police to notify a school system of the arrest of any student, aged 7-21, who is charged with a Class A misdemeanor or any felony. The school board held a hearing October 8, at which Thomaston High School Principal Robin Willink testified that Packer's arrest had disrupted the educational process because Packer's younger brother was in the car at the time, the rest of the school had become

aware of the arrest and teachers had asked Willink what he intended to do.

The board voted to expel Packer for the remainder of the semester -- about four months.

Packer, an honor student and soccer star, and his family convinced Litchfield Superior Court Judge Walter M. Pickett to issue a temporary injunction ordering his return to school in early November. Pickett ruled the expulsion law was unconstitutionally vague.

The Supreme Court reversed Pickett on that count, however, and upheld the constitutionality of the statute. The high court ruled instead that the law's application in Packer's case was unconstitutional because it did not put Packer on notice that "possession of two ounces of marijuana in the trunk of his car, off the school grounds

in the town of Morris, after school hours, without any tangible nexus to the operation of Thomaston High School, would subject him to expulsion," Callahan wrote.

Justice Francis M. McDonald dissented, saying, "The majority finds that possession of marijuana might not be recognized by students as conduct 'seriously disruptive of the educational process.' To the contrary, it can be said that illegal drugs are disrupting America. Unfortunately, this decision serves neither the public interest in education nor students."

Attorney William Conti, who represented Packer, lauded the ruling, saying, "Just because you want to declare a war on drugs doesn't mean you declare war on the constitution."

The Connecticut Court Process

Separation of Powers

Under our constitution, the courts are one of three branches of government. The **Legislative Branch** (the Senate and House of Representatives) is responsible for creating new laws. The **Executive Branch** (the governor and executive branch agencies) is responsible for enforcing them. The **Judicial Branch** is responsible for interpreting and upholding our laws.

Role of the Courts

The judicial system in Connecticut was established to uphold the laws of the State. Our courts help to maintain order in our society by:

- determining the guilt or innocence of persons accused of breaking the law;
- resolving disputes involving civil or personal rights;
- interpreting new laws or deciding what is to be the law of the State when none exists for certain situations; and
- determining whether a law violates the Constitution of either the State of Connecticut or the United States.

STATE COURTS VS. FEDERAL COURTS

In Connecticut, as throughout the United States, there are two judicial systems:

- 1) **The State Court System:** established in each state under the authority of the state constitution. Connecticut courts are courts of general jurisdiction. These courts handle most criminal matters and a variety of civil matters, including contracts, personal injury cases, dissolution of marriages and other legal controversies. In some instances, decisions of state courts may be appealed to the United States Supreme Court if a question of federal constitutional law arises.
- 2) **The Federal Court System:** established under the United States Constitution and regulated by the Congress of the United States. Federal courts have jurisdiction over matters arising under the U.S. Constitution (Federal Law). Other areas under federal jurisdiction include:
 - cases in which the United States is a party;
 - cases between two states or the citizens of two different state;
 - cases between a state and a foreign state or its citizens;
 - cases arising under treaties;

- admiralty and maritime cases; and
- cases affecting ambassadors and other diplomatic personnel.

The United States Constitution states only that:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Article III, Section I.

Thus, the only indispensable federal court is the United States Supreme Court. The Congress has from time to time set up and also abolished various other federal courts.

ORGANIZATION OF THE COURTS

Since July 1, 1978, Connecticut has had a unitary court system or one-tier court system. It consists of the Supreme Court, the Appellate Court, the Superior Court and Probate Courts.

Supreme Court

The Supreme Court is the state's highest court. It consists of the Chief Justice and six Associate Justices. The Supreme Court reviews decisions made in the Superior Court to determine whether questions of law were properly decided. It also reviews selected decisions of the Appellate Court to determine questions of law.

Generally, a panel of five justices hears and decides each case. On occasion, the Chief Justice summons the court to sit "en banc" as a full court of seven, instead of a panel of five, to hear particularly significant cases or when requested by one or both parties to the case and agreed to by the court.

Generally, the Supreme Court does not hear witnesses or receive evidence. It decides each case on:

- the record of lower court proceedings;
- briefs, which are used by counsel to convey to the court the essential points of each party's case; and
- oral argument based on the content.

State law specifies which types of appeals may be brought directly to the Supreme Court from the Superior Court, thereby bypassing the Appellate Court. These cases include decisions where the Superior Court has found a provision of the state Constitution or a state statute invalid, and convictions of capital felonies. All other appeals are brought to the Appellate Court.

The Supreme Court may transfer to itself any matter filed in the Appellate Court and may agree to review decisions of the Appellate Court through a process called certification. Except for any matter brought under its original jurisdiction as defined by the state Constitution, the Supreme Court may transfer any matter pending before it to the Appellate Court.

The Supreme Court has eight two-week sessions over the period from September through June of each year. The Supreme Court courtroom is located in the State Library/Supreme Court Building at 231 Capitol Avenue in Hartford.

Appellate Court

The Appellate Court consists of nine judges, one of whom is designated by the Chief Justice to be Chief Judge. Like the Supreme Court, the Appellate Court reviews decisions made in the Superior Court to determine whether questions of law were properly decided. Generally, a panel of three judges hears and decides each case. The Chief Judge of the Appellate Court may summon the court to sit en banc as a full court of nine. Like the Supreme Court, the Appellate Court does not hear witnesses, but renders its decision based upon the record, briefs and oral argument.

Superior Court

The Superior Court hears all legal controversies except those over which the Probate Court has exclusive jurisdiction. (Probate Court matters may be appealed to the Superior Court).

The Superior Court has five principal trial divisions: civil, criminal, family, juvenile and housing.

- 1) A **civil case** is usually a matter in which one party sues another to protect civil, personal or property rights. Examples of typical civil cases are automobile or personal accidents, product or professional liability claims and contract disputes. In most civil cases, the accusing party (plaintiff) seeks to recover money damages from another party (defendant). Cases may be decided by the judge or by a jury, depending on the nature of the claim and the preference of the parties.

The Civil Division is divided into five parts:

- Landlord-tenant, including summary process;
- Small claims;
- Administrative appeals;
- Civil jury; and
- Civil non-jury.

- 2) A **criminal case** is one in which a party (defendant) is accused of violating the law. The state is the plaintiff in criminal cases because crimes are considered acts that violate the rights of the entire state.

The following types of cases are heard in the Criminal Division:

- Crimes
 - felonies - punishable by prison sentences of more than one year;
 - misdemeanors - punishable by prison sentences of not more than one year.
- Violations, including motor vehicle - punishable by fine only.

- Infractions - fine may be paid by mail without requiring a court appearance.

The Criminal Division consists of four parts:

- Part A: capital felonies, class A felonies and unclassified felonies punishable by sentences of more than twenty years;
 - Part B: class B felonies and unclassified felonies punishable by sentences of ten to twenty years;
 - Part C: class C felonies and unclassified felonies punishable by sentences of five to ten years; and
 - Part D: class D felonies and all other crimes, violations, motor vehicle violations and infractions.
- 3) A **family case** involves matters such as dissolution of marriage and the custody of children.
 - 4) A **housing case** involves landlord-tenant disputes, summary process and similar matters.
 - 5) A **juvenile case** includes delinquency, child abuse, neglect and termination of parental rights.

The state is divided into 13 Judicial Districts, 22 Geographical Areas and 13 Juvenile Districts. In general, major criminal and civil matters and family cases not involving juveniles are heard at Judicial District court locations. Other civil and criminal matters are heard at Geographical Area locations. Cases involving juveniles are heard at Juvenile Court locations. In districts where they have been legislatively created, housing matters are heard exclusively at Judicial District Housing Session locations on a separate docket. In other districts, they are part of the regular civil docket.

Probate Court

In addition to the state-funded courts, Connecticut has Probate Courts, which have jurisdiction over the estates of deceased persons, testamentary trusts, adoptions, conservators, commitment of the mentally ill and guardians of the persons and estates of minors. Probate Judges are elected to four-year terms by the voters of the Probate District. Probate Judges need not be attorneys. They are paid for their services from Probate Court fees.

STEPS IN A JURY TRIAL

Selection of a Jury

1. Administration of voir dire oath
2. Voir dire - questioning of prospective jurors by counsel
3. Challenges by counsel
 - for cause
 - peremptory - without cause
4. Completion of jury selection
 - civil trials and most criminal trials - 6 jurors, 2 alternates
 - certain offenses - 12 jurors, 2 alternates
5. Impaneling of jury - administration of juror's oath to those chosen for a particular case

The Trial

1. Opening statements - generally brief, made by counsel for each side
2. Presentation of evidence
 - testimony - direct and cross-examination
 - exhibits
3. Closing arguments

Judge's Charge to the Jury

1. Explanation of the relevant points of law
2. Review of the procedures to be used in reaching the verdict

Jury Deliberation

1. Presided over by jury foreman, who is elected by members of the jury
2. Free discussion by jurors, who listen with open minds

The Verdict

1. Must be unanimous in civil and criminal cases
2. Written in civil cases; oral in criminal matters
3. Presented to the court by the jury foreman

JUDGES - APPOINTMENTS AND TERMS

Justices of the Supreme Court and Judges of the Appellate Court and the Superior Court are nominated for eight-year terms by the Governor from a list of candidates submitted by the Judicial Selection Commission. They serve eight-year terms and are eligible for reappointment. Judicial appointments require confirmation by the General Assembly.

To qualify for a judgeship, a person must be an attorney admitted to practice in Connecticut. The Connecticut Constitution provides that judges may hold their offices until reaching the age of 70.

At that time, they retire and become State Referees for the remainder of their terms. They are eligible for reappointment as State Referees during the remainder of their lives.

The Chief Justice may designate, from among the State Referees, State Trial Referees to whom cases of an adversary nature may be referred. Judges who retire from full-time active service prior to age 70 are known as Senior Judges.

PARAJUDICIAL OFFICERS

Not all legal controversies are heard by judges. They may also be heard by the following:

Small Claims Commissioners:

Attorneys designated by the Chief Court Administrator to hear and decide small claims cases.

Attorney State Trial Referees:

Attorneys appointed by the Chief Justice to preside over civil non-jury matters. They may not render judgments, but rather make findings of fact and file proposed decisions with the court. The court thereafter may render judgment in accordance with these findings.

Magistrates:

Attorneys appointed by the Chief Court Administrator to hear small claims matters, infractions, and certain non-jury motor vehicle cases.

Factfinders:

Attorneys appointed by the Chief Court Administrator to hear certain contract cases.

Arbitrators:

Attorneys appointed by the Chief Court Administrator to hear any civil jury action in which the amount, legal interest or property in demand, is less than \$50,000.

FUNDING FOR THE COURTS

The Judicial Branch receives its funding as part of the legislatively enacted state budget. This funding is provided to pay the salaries of judges and other judicial personnel, for computers and other equipment, for contractual services, to maintain courthouses and other judicial facilities, and for other necessary expenditures. All fines, fees and costs collected in the courts are deposited in the state's general fund and other funds established by the legislature.

COURT ADMINISTRATION and OPERATIONS

The Chief Justice of the Supreme Court is the head of the Judicial Branch. Its administrative director is the Chief Court Administrator.

Judicial Functions

The judicial functions of the branch are concerned with the just disposition of cases at the trial and appellate levels. All judges have the independent, decision-making power to preside over matters in their courtrooms and to determine the outcome of each case before them.

Administrative Operations

The Chief Court Administrator is responsible for the administrative operations of the Judicial Branch. In order to provide the diverse services necessary to effectively carry out the Judicial Branch's mission, the following administrative divisions have been created:

Administrative Services Division:

Provides a wide array of centrally conducted, statewide services for the benefit of all divisions within the Judicial Branch, such as data processing, financial services, personnel matters, affirmative action and facilities management.

Court Support Services Division:

Provides pre-trial services, family services and offender sentencing and supervision options. Consists of *Intake/Assessment/Referral (IAR) units*, which conduct comprehensive evaluations and referrals, and *Supervision units*, which focus on effective supervision of clients involved with the court system. Two separate, but parallel, service delivery systems operate - one for adults and one for juveniles. The state has been divided into five regions for the delivery of services.

External Affairs Division:

Facilitates positive relationships between the Judicial Branch and members of the public, the Legislature, policy makers, news professional and community organizations. Serves as the primary source of information about the Judicial Branch and coordinates informational activities designed to inform and educate the public about the role and function of the Judicial Branch .

Information Technology Division:

The Information Technology Division is dedicated to designing, developing, implementing, and maintaining the Judicial Branch's complex data and information processing, storage, retrieval, dissemination and printing systems for the Judicial Branch, for customers in the legal community and for the public.

Superior Court Operations:

The Superior Court Operations Division includes the following:

- *Administration* - provides support services and guidance to all segments of the division by directing the administrative, strategic planning, staff training and business activities, and provides for court transcript services, interpreter services, and the preservation and disposition of seized property;
- *Centralized Court Services* - performs a variety of functions including the Centralized Infractions Bureau, jury administration and the maintenance, retrieval and destruction of records;
- *Court Operations* - ensures that the Superior Court Clerk's offices process all matters in accordance with Statutory, Practice Book and Judicial Branch policy provisions in an

efficient and professional manner through the provision of technical assistance and support services;

- *Judge Support Services* - ensures the prompt delivery of services and programs to Superior Court judges pertaining to law libraries, legal research, judicial performance evaluations, continuing education and support for technology;
- *Legal Services* - determines legal issues and provides support services in the areas of attorney ethics, discipline and bar admission;
- *Office of Victim Services* - advocates for victims of crime and arranges for or provides services and financial compensation;
- *Support Enforcement Division* - enforces reviews and adjusts family support orders in accordance with federal and state regulators, rules and statutes.

CRIMINAL COURT vs. CIVIL COURT

CRIMINAL COURT decides whether a person accused of breaking a law is guilty or not guilty. In a criminal court, the government is the prosecution and the accused person is the defendant.

It is important to remember that under our system of justice every person accused of a crime must be considered innocent until proven beyond a reasonable doubt that the offender is guilty as charged.

Penalties in criminal courts require that offenders go to a correctional institution, be placed on probation under a suspended sentence, pay a fine, or any combination of these. In general, the purpose of the sentence is to protect the public, to punish the individual found guilty, to act as a warning to stop others from breaking the law, or a combination of these.

CIVIL COURT decides a case in which a person has a grievance against another person. In a civil lawsuit, the person taking legal action against another person is the **PLAINTIFF** and the person(s) defending against the complaint or suit of the Plaintiff is the **DEFENDANT**.

Disputes between private parties are settled in Civil Court. Some examples are domestic relations (family) disputes, disputes about business relations, or accidents. In these cases, the decision is made on the preponderance of the evidence. A jury of six may decide the facts in a civil case or a judge may render the decision.

Penalties may require the offender to pay money for damages or injuries, or the court may require the offender to do or not to do a specific act for, or to, the person bringing the suit. Some civil remedies are **RESTITUTION** (repayment), **COMPENSATION** (paying to make up for something), and **INJUNCTION** (a court order forbidding a certain action or ordering that a particular action be done).

CIVIL COURT TERMS

Answer: A paper filed in court by a defendant which states his or her defense or denies the plaintiff's complaint. The answer may also admit undisputed facts.

Appeal: To ask a higher court to correct what is believed to be an error by the trial judge, such as a misapplication of the law in the case, or a judge's failure to assure a fair trial.

Case dismissed without prejudice: The case is dismissed but the plaintiff has the right to bring suit again on the same claim.

Case dismissed with prejudice: The case is dismissed on its merits. The plaintiff then has no right to bring suit or maintain action on the same claim.

Complaint: Papers filed in court by the plaintiff claiming a civil wrong was done by the defendant to the plaintiff (for example, a contract was broken or injury was done to the plaintiff's person or property).

Counterclaim: After a plaintiff has presented a complaint to the court, the defendant may present an opposing claim against the plaintiff. This is a claim for damages that the original defendant brings against the original plaintiff who must then present a defense against the counterclaim.

Decision: A finding by a judge, or a verdict by a jury.

Deposition: One method of pretrial discovery (attorney getting information prior to the trial) is by oral or written questions given under oath. A deposition is usually given in the presence of a lawyer and a stenographer. The written record then becomes part of the trial records.

INTRODUCTION TO THE CRIMINAL JUSTICE SYSTEM

In the criminal justice system, a crime committed against a person or a person's property is a crime committed against all of the people of the State of Connecticut. The state, rather than the crime victim, brings criminal charges against the alleged criminal. If the case is prosecuted, the victim may become a witness.

The person employed by the state to bring criminal charges against people who are accused of committing crimes is called the prosecutor or state's attorney. The state's attorney has an equal responsibility to see that innocent persons are acquitted and that guilty persons are convicted.

A person accused of a crime is presumed by the law to be innocent until proven guilty. Because determination of guilt may lead to loss of liberty or even life, the state must make sure that the person accused of the crime in fact committed the crime. Therefore, the state must prove "beyond a reasonable doubt" that the person committed the crime.

The person who has been arrested and charged with committing a crime is the accused. In court, the accused is referred to as the defendant.

Most crimes are classified as either a felony or a misdemeanor. A felony is a crime for which the criminal may receive a sentence of imprisonment of longer than one year. Examples of felonies are murder, rape, kidnapping, burglary, and robbery. A misdemeanor is a crime punishable by sentence of imprisonment of one year or less. Examples of misdemeanors are shoplifting, breach of peace, disorderly conduct and criminal trespass.

The United States Constitution guarantees the defendant's right to the assistance of counsel in helping to prepare a defense. The defendant's lawyer is referred to as the defense counsel. If the defendant cannot afford a private attorney, the court will appoint a lawyer who is called a public defender. Public defenders, like prosecutors, are lawyers who are employed by the State of Connecticut. Public defenders serve only the interests of their client - the defendant.

In court, the defendant appears before a judge. The judge runs the courtrooms and decides all legal questions. The judge is aided in making decisions by the arguments presented by the prosecutor and defense counsel.

PRETRIAL RELEASE -THE RIGHT TO BAIL

In all but a few instances, the defendant in a criminal case has the right to bail (to be released from custody while awaiting trial). The type of release set is based upon the likelihood that the defendant will appear in court to face the criminal charges.

WHO DETERMINES WHAT TYPE OF BAIL WILL BE SET?

There are three different people who make a decision regarding the proper amount and type of bail: the police, the bail commissioner and the judge.

The police are the first entity who may decide the type of release. At booking, they will interview the accused for the purpose of setting bail. Information regarding the accused person's community ties, employment history, prior convictions and attendance at prior court appearances will help police determine the type of bail that will assure appearance in court.

An accused person who is unable to meet the bail conditions set by the police will be interviewed by a Court Support Services Division intake officer. The officer will investigate and verify the accused person's background and community ties and make an independent decision as to the bail conditions.

An accused person who is unable to secure release under the conditions set by the intake officer will be held by the police until the next scheduled court session. At the court session, the judge will hear arguments from counsel for and against the amount of bail and will review the conditions set for release of the accused. The specific factors a judge will consider are:

- The nature and circumstances of the offense insofar as they are relevant to the risk of non-appearance in court;
 - The weight of the evidence against the accused;
 - The accused person's prior criminal record, if any;
 - The accused person's past record of appearance in court after being admitted to bail;
 - The accused person's family ties;
 - The accused person's financial resources, character and mental condition; and
 - The accused person's community ties.

TYPES OF RELEASE

After considering all available information about the accused, the judge will reach an independent decision regarding the type of release which is the least restrictive means of assuring that the individual will appear in court.

There are three basic types of release:

1. *Written Promise to Appear:*

If the accused's promise is enough to assure the required court appearances, the individual will be released after signing a written promise to appear.

2. *Non-Surety Bond:*

If the accused's promise is not enough to assure appearance in court, the individual may be asked to sign a non-surety bond. With this type of bond, the accused will not pay any money before being released. However, an accused person who fails to appear in court as scheduled will have to pay the dollar amount.

2. *Surety Bond:*

If there is a risk that the accused may not appear in court when required, a surety bond will be set. The surety bond will establish a dollar amount that must be paid by the accused before release. The amount of the bond is set according to a schedule provided by the court.

In order to be released under a surety bond, the defendant must either pay the amount of the bond or use personal property as collateral for the bond. If the defendant shows up in court each time required, the payment will be returned. If the defendant does not appear, the bond is forfeited.

If a judge decides that a surety bond is appropriate, the defendant may be allowed to post ten percent (10%) cash bail. The defendant pays the court ten percent (10%) of the amount of the bond. If the defendant has appeared in court as required, the money is returned when the case ends.

When a surety bond is set, the defendant may choose to hire a private bondsman. The defendant will then pay the bondsman a percentage of the value of the bond plus a fee. All money paid to a bondsman is kept by the bondsman and is not returned to the defendant.

CONDITIONS OF RELEASE

The prosecutor may ask the judge to prohibit the accused from engaging in certain types of behavior while released and awaiting the disposition of the case. For example, the judge may order the accused not to have any contact with the victim or not to drink alcoholic beverages. Any violation of conditions placed upon release can cause the accused to be returned to jail and brought before the court to have conditions of the release reviewed.

IF THE ACCUSED THREATENS THE VICTIM

If the accused threatens the crime victim while criminal charges are pending, the accused has committed a separate crime. The victim should tell the prosecutor about threats made by the accused. However, a victim who makes up a threat by the accused - when no such threat occurred - is guilty of the crime "False Statement."

COURT APPEARANCES

When a defendant goes to court, the case will be given a name and docket number. Usually, the name of the case is State versus "the name of the defendant."

ARRAIGNMENT

The defendant's first court appearance is called "arraignment." At the arraignment, the defendant's constitutional rights will be read, and a defendant who cannot afford a lawyer will be offered the services of a public defender (court-appointed attorney).

The criminal charge(s) against the defendant will be read, and the defendant will be asked to enter a plea of guilty or not guilty.

Most defendants plead not guilty at their arraignments. This is because individuals who plead guilty waive many constitutional rights, including the right to call witnesses accusing them of committing a crime, the right to call witnesses in their own defense, the right to have an attorney, and most importantly, the right to have the State prove guilt beyond a reasonable doubt.

PRETRIAL CONFERENCE - PLEA NEGOTIATIONS

The defendant's next court appearance after arraignment is called pretrial conference. A pretrial conference is a meeting between the prosecutor and the defense attorney. At the pretrial conference, both sides try to resolve the case without going to trial. Some of the resolutions that might be reached are:

1. Dismissal of Criminal Charges

If the prosecutor or judge decides that the defendant's conduct was not criminal, the charge will be dismissed. Dismissal means that the defendant is no longer being prosecuted on the charges and the police and court records on the charges should be erased.

2. *Entering of a Nolle by a Prosecutor*

The prosecutor may "nolle" the charge against the defendant for a variety of reasons (for instance, if there is insufficient evidence in a case or if a witness to the crime is unavailable to testify). When the charge is nolle, it means the State does not wish to go ahead with the prosecution at this time. A prosecutor may reopen a nolle charge any time within 13 months after the nolle is entered. After 13 months, the nolle case may be erased on all police and court records. If a case is nolle, the charge against the defendant should be erased. This means there will be no public record of the offense.

3. *Alternative Sentencing*

The judge has the discretion to allow some defendants to participate in alternative programs, such as Accelerated Rehabilitation (AR), the Alcohol Education Program (AEP), the Family Violence Education Program, the Alternative to Incarceration Program (AIP), the Alternative Incarceration Center (AIC) and the Community Service Labor Program (CSLP). Each of these carries specific requirements for participant eligibility and in some instances will result in the eventual erasure of criminal charges if the defendant successfully completes the program.

4. *Pleading Guilty*

Almost ninety-five percent (95 %) of all convictions are the result of the defendant pleading guilty to criminal charges. After entering a "not guilty" plea at arraignment, the defendant may subsequently plead guilty to one charge and give up the right to trial in exchange for the State dropping other charges for allowing a guilty plea to a lesser crime than the one originally charged. This is called plea-bargaining and is the process by which both sides of the criminal case try to resolve the matter without going to trial. Final disposition of the case is thereby accelerated.

If the defendant pleads guilty, the case will not go to trial. Pleading guilty results in the same consequences as being found guilty by a judge or jury at trial.

Should the defendant plead guilty to a misdemeanor, the judge may sentence the defendant immediately. If the defendant pleads guilty to a felony, a sentencing hearing will be scheduled.

THE TRIAL

If the defendant pleads not guilty and decides to go to trial, it may take a considerable period of time from the date of the arrest to the time of trial. This delay is due to many factors, including the large number of criminal cases awaiting trial and the need for both the State and the defense to investigate the facts and prepare the case for trial.

During the course of the trial, the State of Connecticut must establish that a crime has been committed and prove beyond a reasonable doubt that the defendant is the person who committed the crime. The State must prove this by presenting evidence. Evidence is most frequently either the testimony of people who were present during the crime, or physical evidence, such as stolen property or weapons used during the crime.

People who saw the crime and testify at trial are called witnesses. The victim may be a witness. Witnesses are notified by subpoena that they will be needed in court. A subpoena is a court order directing the person to be in court at a certain date and place.

Often there will be a notation on a subpoena that the person is on standby. If this notation appears, one should call the number listed to find out when he/she will be needed in court. Persons should bring their subpoenas with them to court when they testify.

On most occasions, witnesses are asked to stay out of the courtroom when they are not testifying. The judge may also order the witnesses not to discuss the testimony with anyone. This procedure is called sequestration: it is a regular court procedure that should be strictly observed.

Trials may not always take place as scheduled. A postponement could mean an unnecessary trip to court. To avoid such a trip, or to have any questions related to a court appearance answered, a witness should call the State's Attorney's Office.

When called as a witness, an individual will walk to the witness stand, which is located alongside the judge's bench. There the witness will be asked by a court official to "swear to tell the truth." After being sworn in, the witness will be asked to give his/her name and address for the official record. Anyone who prefers not to give his/her address in court should tell the prosecutor this before testifying.

After completion of testimony and before leaving the court, a witness should ask the prosecutor whether he/she will be needed again. One should also check with the clerk's office for any fees which a witness may be eligible to receive.

TESTIMONY

After the courtroom has been called to order and the judge has directed the prosecutor to begin the State's case, the prosecutor will call witnesses to the stand, one at a time.

The prosecutor will ask each witness questions about the crime. This questioning is called direct examination. After the prosecutor has finished asking questions, the defense attorney may ask questions about the crime. This latter questioning is called cross-examination. After the defense attorney has completed cross-examination, it is possible that the prosecutor will question a witness again.

When the State has presented all its evidence, it will "rest its case" against the defendant. At this point, the defendant may present additional witnesses. The defendant need not present any evidence because the State bears the burden of proving beyond a reasonable doubt that the defendant is guilty of the crime. The defense is not required to prove the defendant's innocence.

CLOSING ARGUMENTS

When all the evidence has been presented, the prosecutor and defense attorney will give their summaries of the case. These summaries are called "closing arguments." The prosecutor will have the option of speaking both before and after the defense gives its "closing argument" because the State is the party which bears the burden of proving the defendant's guilt.

THE VERDICT

When closing arguments are finished in cases tried by jury, the judge will instruct the jurors about the law of the State of Connecticut in relation to the crime charged. The jury will then decide whether the defendant is guilty or not guilty of the crime. In cases involving several charges, it is possible that the jury may find the defendant guilty of one charge but not guilty of another. The jury will announce its verdict in court. Whatever the jury's verdict, it must be unanimous; all the jurors must agree that the defendant is guilty or not guilty. If the jury cannot reach a decision, a mistrial will be declared and the defendant will be tried again.

In cases of trial by judge, the judge alone will determine whether the defendant committed the crime as charged. The judge's verdict will be announced in court.

SENTENCING

If the defendant has been found guilty of a misdemeanor, sentencing will take place immediately after the verdict is given.

PRESENTENCE INVESTIGATION REPORT (P.S.I.)

If the defendant pleads to or is found guilty of a felony, in most cases the judge will order the Court Support Services Division to prepare a Pre-sentence Investigation Report (P.S.I.). Preparation of a P.S.I. will take approximately four to five weeks. A probation officer will interview the defendant regarding personal history, family history, prior criminal record and the offender's version of the crime. The probation officer will review state police records and may contact the defendant's family or employer. The probation officer will also contact the victim of the crime. The victim should provide the probation officer with factual information regarding the impact of the crime on his/her life, so that the court is made aware of the effects of the crime. An assessment or plan may also be included in the P.S.I.

SENTENCING HEARING

At the sentencing hearing, the judge will have reviewed the P.S.I. along with any material submitted by the defendant's lawyer.

If the defendant has been tried and found guilty, the judge will consider the arguments of defense counsel and the state's attorney, and the information contained in the P. S.I. The judge will then independently arrive at a decision as to the appropriate sentence for the defendant.

If the defendant did not stand trial but pleaded guilty, the judge will ask the prosecutor to state the substance of the plea bargain which had been agreed to by the defendant and the prosecutor. The judge will then hear arguments from the defendant's attorney in support of the agreement. The judge may sentence the defendant according to the terms of the plea bargain or may elect not to sentence according to the terms of the plea bargain. If the latter occurs, the defendant may withdraw the guilty plea and the case begins again.

SENTENCING WHICH MAY BE IMPOSED

The following are the basic sentences which can be imposed by a judge as punishment for a crime:

1. A Fine: The defendant may be fined a certain amount of money.
2. Imprisonment: The judge can send the defendant to jail or prison for a period of time.
3. Probation: The judge can place the defendant under the authority of the Court Support Services Division. This means that the defendant will be supervised by a probation officer for a certain period of time. A defendant who violated the conditions of probation can be made to serve a sentence in prison.
4. Conditional Discharge: The judge can release the defendant on conditional discharge, which means that the individual will stay out of jail as long as the conditions set by the judge are obeyed.
5. Unconditional Discharge: The judge suspends the sentence without imposing any conditions on the release.

The judge may sentence the defendant to a combination of the above sentences. For example, the judge might sentence the defendant to pay a \$30 fine and serve one month in jail to be followed by a year of probation.

CAN A SENTENCE BE CHANGED ONCE IT IS IMPOSED?

A sentence may be changed through one of several procedures:

1. A defendant might seek a sentence correction or reduction. If such a request is made, a hearing will be scheduled and the defendant must show good cause why the sentence should be changed.
2. A defendant may seek a sentence review. In such a case, the defendant will have to show that the sentence should be changed because it is disproportionate or inappropriate compared with sentences given for similar crimes.
3. A defendant may appeal a conviction, claiming that the procedure was unfair or improper. If the appeal is successful, the defendant will most likely be granted a new trial.

VICTIMS RIGHTS

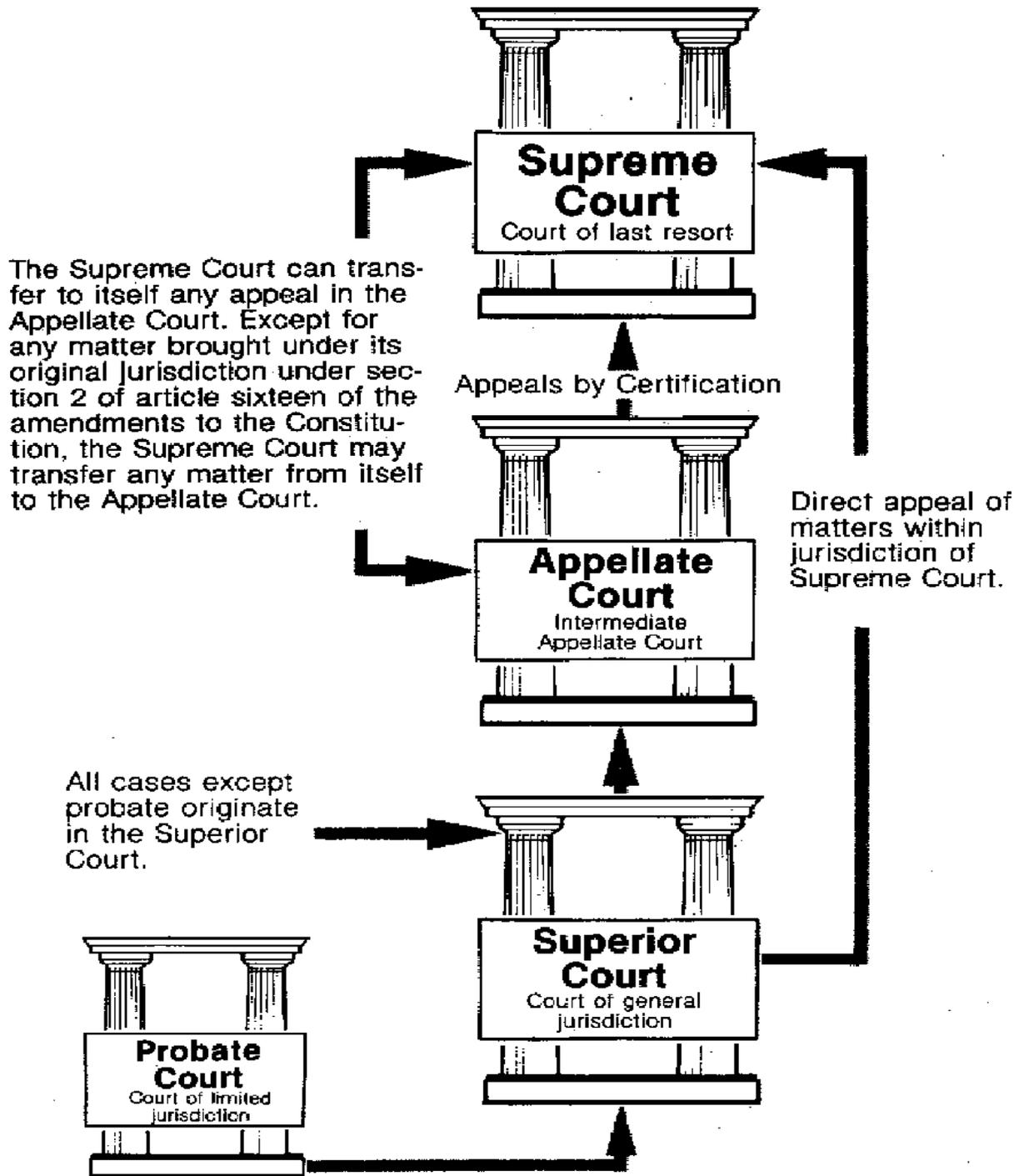
Victims of crimes are afforded numerous rights under Connecticut law. These wide-ranging rights include:

- *Notification:* The state's attorney shall notify any victim of an offense, if the victim has requested notification and has provided a current address, of any judicial proceedings relating to the case, including: arrest of the defendant, arraignment of the defendant, release of the defendant pending judicial proceedings, and other proceedings in the prosecution, including: entry of plea of guilty, trial, and sentencing.
- *Input:* Whenever a re-sentence investigation is required, the probation officer shall inquire into, among other things, the attitude of the complainant or victim, or of the

immediate family, where possible, in cases of homicide, and the damages suffered by the victim, including medical expenses, loss of earnings and property loss.

- *Testimony*: The court shall permit the victim of most serious felonies, his or her legal representative, or a member of the deceased victim's immediate family (1) to make an oral statement to the court or (2) to submit a written statement explaining the effects of the crime prior to the sentencing of the defendant or the acceptance by the court of a plea of guilty or a plea of nolo contendere (Latin for "I will not contest" the charges) made pursuant to a plea agreement. The victim's statement shall relate solely to the facts of the case and the extent of any injuries, financial loss and loss of earnings directly resulting from the crime.

Connecticut Court Structure



The above diagram depicts the relationship between Connecticut's courts. Shaded arrows indicate routes of appeal.

Video Viewing Guide Questions

The Pursuit of Justice: Judges and Juries

1. What rights are established by the Constitution for people who have been arrested?

2. What is the mission of the Connecticut Superior Court?

3. True or False – Judges have considerable power and discretion when handling legal matters, but laws and rulings of higher courts limit their powers. _____
4. What three courts comprise the Judicial Branch in Connecticut?

5. The Appellate Court reviews decisions, called judgments of the Superior Court. In conducting the review, the Appellate Court looks to see if a mistake was made on the basis of the _____.
5. The highest court in Connecticut and the court of last resort is the Connecticut _____.
6. How does one become a judge in Connecticut?

7. True or false? Judges must be re-elected in Connecticut every 8 years. _____.
8. There are approximately _____ cases per year that are decided by a jury in Connecticut.
9. Prospective jurors are chosen from 4 lists. What are they?

10. True or False? The attorneys in the jury selection process, called *voir dire*, may individually interview each prospective juror? _____

Video Viewing Guide Questions for *The State of Connecticut v. Michael T.*

1) What was Michael's attitude throughout the whole arrest and court appearance?

2) What did the Victim Advocate tell Sarah and her father?

3) What did the Family Relations Counselor do?

4) Who are the major players in this court case?

5) Who are the support staff in this court case?

Newspaper Article pertaining to the Thurman Case

The Hartford Courant

Torrington Suit Held Valid

Wives May Sue Police for Protection

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By GEORGE GOMBOSSY

Courant Staff Writer

10/24/1984

A battered wife may sue police in federal court for refusing to prevent her husband from assaulting her, a Hartford federal court judge ruled Tuesday.

The ruling was made in a suit brought by a Torrington woman who charged local police had refused to protect her from her estranged husband -- who had publicly threatened to kill her -- until he had repeatedly stabbed her.

U.S. District Judge M. Joseph Blumenfeld Tuesday refused to dismiss the suite brought by Tracey Thurman despite Torrington officials' arguments that she had not claimed any valid federal violations of her civil rights. However, the judge dismissed claims made on behalf of Thurman's 2^{1/2} year old son because there were no allegations that repeated threats had been made against the boy.

Bridgeport lawyer Judy Mauzaka said she believes Blumenfeld's decision for her client is precedent-setting.

While other recent court rulings have said that police can be sued for failing to assist potential victims, Mauzaka said that to her knowledge this is the first federal ruling saying a woman has the same right to be protected by police from her husband as she does from a stranger.

"If we win (the suit) there will be a new source of protection for battered wives," Mauzaka said.

The suit charges that this case was not isolated and that for a long time the Torrington Police Department "condoned a pattern or practice of affording inadequate protection, or

no protection at all, to women who have complained of having been abused by their husbands or others with whom they have had close relations."

Bridgeport attorney Thomas M. Germain, who is representing the town of Torrington and its police department, had no comment Tuesday on the decision, saying it is inappropriate for him to discuss pending litigation.

Thurman's suit, which seeks \$3.5 million in damages, charges that she and others notified Torrington police numerous times from October 1982 to June 10, 1983, that her estranged husband Charles Thurman made repeated threats against her life.

The complaints, the suit states, were generally "ignored or rejected" even though Thurman was under court order not to make contact with his wife.

According to the suit, the final incident took place June 10, 1983 when Charles Thurman stabbed Tracey Thurman in the chest, neck and throat with a knife 10 minutes after she had called police.

One police officer arrived at the scene 25 minutes after the call was made, and that officer did nothing to stop Charles Thurman from kicking his estranged wife in the head, the suit claims.

Thurman was arrested only after several other police officers arrived at the scene and Thurman allegedly again made a threatening move toward his wife, according to the suit.

Thurman is now appealing his first-degree assault conviction, Mauzaka said.

The suit says that Thurman, who was a cook in a Torrington restaurant frequented by

local police officers, told police he was going to kill his wife.

"In the course of his employment he boasted to said defendants that he intended to 'get' his wife and, on some occasions, that he intended to kill her, the suit says.

A court order barring Charles Thurman from making contact with his wife stemmed from his Nov. 9, 1982 arrest on a breach of peace charge after he broke the windshield of his estranged wife's car while she was in the vehicle.

The suit says that a police officer watched the incident, which allegedly was preceded by Thurman's screaming threats at Tracey Thurman, without taking any action to protect her.

In seeking the suit's dismissal, Germain said that equal protection under the Constitution does not guarantee equal application of public services. "Rather it only prohibits intentional discrimination which is racially motivated."

"There is no allegation that the defendants' alleged actions resulted from an intent to discriminate against the plaintiff Tracey Thurman, nor is there any allegation which would support a claim that any alleged discrimination was a result of plaintiff's race or gender," wrote Germain.

However, Blumenfeld rejected Germain's arguments.

"City officials and police officers are under an affirmative duty to preserve law and order, and to protect the personal safety of persons in the community," Blumenfeld said in his decision.

"This duty," he continued, "applies equally to women whose personal safety is threatened by individuals with whom they have or have had a domestic relationship as well as to all other persons whose personal safety is threatened, including women not involved in domestic relationships."

"If officials have notice of the possibility of attacks on women in domestic relationships or other persons, they are under an affirmative duty to take reasonable measures to protect the personal safety of such persons in the community. Failure to perform this duty would constitute a denial of equal protection of the laws," Blumenfeld wrote.

Mandatory Arrest Provision

Segment 3: Public Act 86-337

PA 86-337 - sHB 5255
Appropriations Committee
Judiciary Committee

AN ACT CONCERNING FAMILY VIOLENCE PREVENTION AND RESPONSE

SUMMARY: This act addresses family violence and response to it by the police and the courts. It provides directives and guidelines to the police and the courts on how to handle family violence cases and mandates the establishment of training programs for the police, judges, and court personnel.

The act establishes a "pretrial family violence education program" whereby a person charged with a family violence crime (e.g., spousal abuse) can, under specified circumstances, have the charges against him dismissed if he successfully completes an educational program. The program is available only once to an offender and only for misdemeanors (or, "for good cause shown," a class D felony).

The act requires the creation of family violence response and intervention units in all the geographical area courts and provides for the collection of statistical data on family violence over the next five years.

EFFECTIVE DATE: October 1, 1986

FURTHER EXPLANATION

Family Violence and Family Violence Crimes

The act defines "family violence" as an incident between family or household members that either causes physical injury or creates fear that physical injury is about to occur. The phrase "family or household members" is also defined. It means spouses, ex-spouses, people who have a child in common, people over 16 years old who are related to each other in any way, and people who either "reside together" or who have ever resided together.

The definition of "family violence crime" is any felony or misdemeanor that also constitutes family violence. The definition also contains examples of crimes that are family violence crimes. The examples (by statutory reference) range from kidnapping and sexual assault to damaging public property and tampering with smoke detectors.

Police Behavior, Arrests

The act provides an approach that the police must take when responding to family violence crimes. In making their decision whether to arrest, the police are not to take into account the relationship of the victim and suspect, nor whether the victim wants the suspect arrested. Additionally, the police are not to discourage requests for police intervention in domestic violence cases by threatening to or suggesting that they will arrest both the victim and the suspect.

The act also requires the police to evaluate each complaint from two or more opposing parties separately when deciding whether to seek arrest warrants for one or both of the parties.

Police Behavior, Victim Assistance

The act requires the police responding to family violence scenes to provide immediate assistance to victims, including helping them get medical help, informing them of their right to file for an arrest warrant, and referring them to the Criminal Injuries Compensation Board. In addition, when the police cannot make an arrest, the act requires them to remain on the scene until, in their “reasonable judgment,” the likelihood is eliminated that violence is about to reoccur.

Police Immunity

The act specifies that the police are not to be held civilly liable for personal or property injury when the suit is brought by “any party to the family violence” and the suit is for an arrest based on probable cause.

Child Abuse Reports by DCYS

The act amends the current child abuse reporting statute by specifying that the commissioner of the Department of Children and Youth Services is allowed to notify the appropriate law enforcement agency or agencies whenever the department's investigation of a reported incident of suspected child abuse produces evidence of abuse, and the commissioner deems such notification to be necessary. The commissioner could do this under prior law, but the statutes did not specify it.

The act requires the commissioner to adopt regulations by February 1, 1987 to carry out the notification provisions.

Family Violence Response and Intervention Units

The act requires the Judicial Department, via the Family Relations Division of the superior Court, to establish a “family violence intervention unit” in all geographical areas. The units must be coordinated and governed by a formal agreement between the Judicial Department and the chief state's attorney, which is within the Division of Criminal Justice. The act requires the family intervention units to:

1. Accept referrals of family violence cases from a judge or prosecutor,
2. Prepare written or oral reports on each case for the court,
3. Provide or arrange for services to victims and offenders,

4. Administer contracts to carry out these services,
5. Provide monitoring systems for all restraining orders, and
6. Establish centralized reporting procedures.

Pretrial Family Violence Education Program

The act creates a pretrial family violence education program for people who are charged with family violence crimes. When a person is charged with such a crime, he can ask the court to place him in the program. If the defendant successfully completes the program, the charges are dismissed. In order to qualify for the program, certain conditions must be present.

1. The crime he is charged with must be no more serious than a misdemeanor, or, if there is good cause, a class D felony. Thus, for example, a person charged with first degree assault or risk of injury to a minor would be ineligible; a person charged with second degree assault would be eligible only if good cause were shown.
2. The defendant must not have previously taken the program.
3. The defendant must not have been convicted of, or accepted accelerated rehabilitation for, a family violence crime committed after October 1, 1986.

The act requires the court to notify the victim of the defendant's request for the program and, if possible, to give the victim an opportunity to be heard. Additionally, the court can postpone its decision on acceptance into the program until it gets a report from a family violence intervention unit.

The defendant must, if he is able, pay a \$200 fee to the court to take the program. The money goes to the general fund.

Guidelines and Police Training

The act requires all "law enforcement agencies" together with the Criminal Justice Division to develop and implement guidelines for arrest policies in family violence incidents by October 1, 1986.

The act requires the Municipal Police Training Council, in conjunction with the Division of Criminal Justice, to establish an education and training program for law enforcement officers and for state's attorneys. The program is to be on the handling of family violence incidents and must include, among other things, the responsibilities of the police as to making arrests, providing assistance to victims, and informing victims and batterers of services and facilities available.

Training for Judges and Bail Commissioners

The act requires the Judicial Department to establish an ongoing training program for judges, family division personnel, bail commissioners, and clerks to inform them about the act's policies and procedures, the functions of the family violence intervention units, and the use of restraining orders.

Restraining Orders

The act adds 16- and 17-year-olds to those allowed to apply for restraining orders against a family or household member, a spouse, ex-spouse, or a person with whom he or she has a child in common. Prior law only allowed adults to apply for restraining orders.

The act probably also expands the category of people against whom restraining orders can be issued. Prior law allowed them against "household members" but did not define the term. The act defines the term as described above, broadly, to include former household members and relatives.

The act requires copies of the restraining order to be sent to the appropriate law enforcement agency, the applicant, the defendant, and the Family Division of the Superior Court.

The act requires the Family Division to keep a registry of all restraining orders in force and to inform the police of the status of such orders.

Contempt

The act requires an expedited hearing when a motion for contempt is filed for violating a restraining order. The defendant must get at least 24 hours notice of the contempt hearing and the hearing must be held within five days of notice.

The act allows the court to impose appropriate sanctions for violating a restraining order (under current rules of court this could include up to 30 days imprisonment).

Family Violence Offense Reports

The act requires the police to complete a "family violence offense report" whenever they respond to a family violence incident and subjects them to a fine of up to \$500 for failure to do so. The purpose of the report is to provide statistics on family violence. When an arrest is made, a report must be completed that includes the names, ages, sex, and relationship of the parties, whether children were involved, whether weapons were used, the type and extent of alleged abuse, the existence of substance abuse, the existence of any prior court orders, and any other information needed for a complete analysis of all the circumstances leading to the arrest.

The police must send the report to the state's attorney for the appropriate judicial district. The act requires the Department of Public Safety to tabulate the data from the reports annually and send it to the governor and the General Assembly for the next five years.

The act eliminates a requirement that the police submit abuse-suspicion reports to the commissioner of human resources.

Medical Data Collection Reports

The act requires medical providers to complete a report on any patient treated for injuries that the medical provider reasonably believes were caused by family violence

or when the patient says they were. The medical provider can be fined up to \$500 for failure to complete a report. Unlike the police reports, the medical reports do not have to contain the victim's name. They must contain the relationship, sex, and age of the parties, whether the incident was verified by the victim, the type of injuries, whether medical attention or hospitalization was required, whether the victim has previously sustained injuries from family violence, the action taken, the source of the report, and the address of the reporter.

The act requires the medical providers to send their reports to the Department of Public Safety quarterly. The department must compile the data from the reports annually and send it to the governor and the General Assembly for the next five years.

The act deletes a requirement that emergency room personnel submit abuse-suspicion reports to the commissioner of human resources.

Family Division Data

The act requires the Family Division of the Superior Court to maintain a statistical summary of all cases referred to the family violence intervention units and to submit the data to the Department of Public Safety, which must compile and submit the data annually to the governor and the General Assembly for the next five years.

APPENDIX

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Note: Additional resources including information on how to sue in small claims court, landlord/tenant issues, jury duty information and pro se divorce materials may be found on the Judicial Branch website at www.jud.state.ct.us.

Appendix I

Crusaders and Criminals, Victims & Visionaries

Historic Encounter between Connecticut Citizens & the U.S. Supreme Court

David Bollier

Segment 1: Amistad Case

Major 19th Century Cases. 1986

In re Amistad (1842)

The Amistad mutineers: slaves or free men?

For weeks, newspapers along the East Coast in 1839 reported sightings of a strange ship with tattered sails, a hull coated with barnacles and seaweed, and a crew of Negroes. Was the ship friend or foe? Where did it come from? And what was its purpose?

The mystery began to unravel in late August when a dilapidated 120-ton clipper-ship known as the *Amistad* (Spanish for "friendship") was found anchored in the Long Island Sound, near Montauk. Its crew consisted of 49 black men, three girls, and a captain's boy, none of whom spoke English.

As it happened, a United States naval brig, the *Washington*, was in the area making a survey of the waters. Upon investigating the strange ship, Lieutenant Commander Thomas Gedney and Lieutenant Richard Meade discovered that the Negroes on the *Amistad* were Africans who had staged a mutiny at sea after being bought by Spanish slave-traders in Cuba.

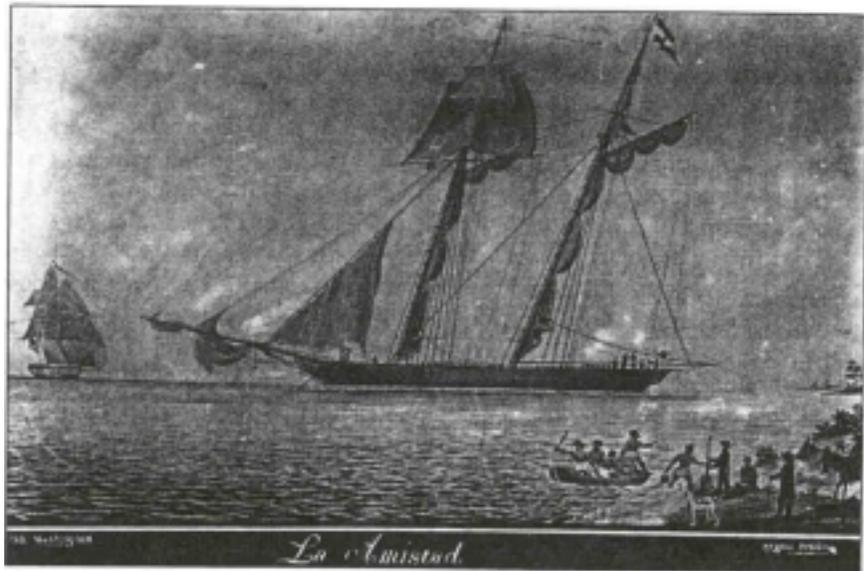
While Spain had outlawed slavery and slave-trading years earlier, there were still men who made fortunes by capturing Africans and illegally selling them into slavery in America. Many slave-traders first took their kidnap victims to Cuba - a Spanish colony - where they were given false papers certifying that the captives had been born before 1820. A loophole in the law made it legal to keep people in slavery if they had been born before 1820. By bribing Cuban officials, the slave-traders bought fraudulent papers making captured Africans "legal" slaves.

In Cuba, two slave-traders, Don Pedro Montez and Don Ruiz, bought 53 such "legal" slaves for \$22,000. Most of them were Mendi tribesmen who had been kidnapped from Sierra Leone in Africa. Montez and Ruiz bought cargo space on the *Amistad*, a trading ship, and set sail for the United States to sell the slaves for \$44,000.

Once at sea, there was not enough food and water for the Mendi tribesmen. Under the leadership of Cinque, the strong, natural leader of the group, the captives revolted and took control of the *Amistad*. Using sugar cane-knives, they killed the captain and the cook, while other crewmembers fled by rowboat.

The mutineers spared the lives of Montez and Ruiz because they were the only people on board who knew how to navigate the ship. Cinque ordered them to sail the ship back to Africa. As Ruiz later testified, "We were compelled to steer east in the day; but sometimes the wind would not allow us to steer east; then they would threaten us with death. In the night we steered west and kept to the northward as much as possible." Two months later, after following a zigzag course, the *Amistad* limped into the Long Island Sound.

It was at this point that the Navy's Lieutenant Commander Gedney and Lieutenant Meade stumbled across the *Amistad*. After boarding it, they immediately took charge and towed the vessel to New London. From there, they sent the Africans to New Haven, where they were jailed pending a court trial for piracy and murder.



Aftermath of a mutiny.

The discovery of *La Amistad* in the Long Island Sound triggered a national debate in 1839 over the fate of the 53 African tribesmen aboard. Should they be freed or enslaved?

The situation quickly exploded into an international controversy. Montez and Ruiz, now rescued from their ordeal, demanded that the ship and the "slaves" be returned to them. The Spanish Government, citing a 1795 treaty with the United States, demanded that President Martin Van Buren return the *Amistad* to Spain. The treaty stated that if a vessel of either nation were forced to enter the other's ports "under urgent necessity," that ship would be released immediately.

But there were other claims on the *Amistad* as well. Gedney and Meade, the naval commanders who "captured" the *Amistad*, asked the courts to give them salvage rights to the ship and its property which they said should include the 53 Mendi tribesmen. Gedney and Meade claimed they had found the broken-down vessel at sea, and therefore were entitled to whatever price the ship and its contents could bring.

When word of the *Amistad* capture reached the abolitionists (the activists seeking to outlaw slavery in the United States), they insisted that the Africans be set free at once and returned to Sierra Leone. They argued that it would be an outrage for the U.S. Government to consider the Negroes as property - even though, of course, slaves were then recognized as property in the South and also in Connecticut until 1848. (After 1808, it became illegal to import slaves into the United States. While slavery remained legal in Connecticut until 1848, slaves could only be brought into the state for short stays.) Abolitionists argued that the Mendi were free men who had been kidnapped and fraudulently pressed into slav-

ery by a nation that itself had outlawed slavery.

Anti-slavery forces raised funds to defend the Africans and shrewdly used the case to advance their cause. The chief lawyer for the *Amistad* captives was Roger Sherman Baldwin, the grandson of Roger Sherman, a prominent Connecticut attorney and later a distinguished Governor. Lewis Tappan, a leading abolitionist from New York, who happened to have a summer home in New Haven, helped fund much of the litigation and public agitation to free the captives.

While waiting for trial, the Mendi were held in the New Haven county jail, then located across from the green. The captives soon became celebrities. As historian Gene Gleason writes:

When they were let out to exercise on the New Haven village green, they somersaulted and leaped about with exuberance that astonished the reserved New Englanders. Over 5,000 persons paid 12-1/2 cents each to view the Africans, and the jailer kept his own account of the proceeds. Phrenologists studied the bumps on their heads, a wax museum entrepreneur made life-masks of them, and Nathaniel Jocelyn, a local artist, painted Cinque's portrait.

Newspapers around the country quickly sensationalized the controversy and melodramatically dubbed the *Amistad* "the long, low, black schooner." A play based on the events of the *Amistad* later opened in New York and successfully toured other cities. A Boston artist painted an enormous 135-square-foot dramatic painting entitled, "The Massacre," which portrayed the killing of the *Amistad* captain and cook. The painting drew large, paying crowds and favorable reviews.

In September 1839, the U.S. Circuit Court in Hartford dismissed the piracy- murder charges on the grounds that the alleged crimes had occurred in Spanish territory. But the Court instructed the federal district court to take up the competing claims over what should be done with the *Amistad* itself and its human "cargo."

Under the law and customs of the time, the court faced many perplexing dilemmas. Should the *Amistad* and the Africans be released to Spain under the terms of the 1795 treaty - even though Spain or Cuba would probably put the Africans into slavery, or would execute them? Or should Spain's treaty claims be ignored since the *Amistad* captives had been kidnapped in violation of Spain's own anti-slave trade laws?

Then there was the question of what should happen to the *Amistad* itself and its \$40,000 cargo of cottons, silks, and luxury goods. Should the U.S. naval commanders receive salvage rights? Or should the ship be returned to the Havana shippers who argued that the *Amistad* belonged to them? Or should the ship be given to the Spanish Government?

The most important question of the *Amistad* trial, of course, was whether the court should consider the Africans property or human beings. If the *Amistad* captives were to be considered slaves, then the court should return the 53 Africans to the slave-traders Montez and Ruiz. But if they were free men, then the court

Stranger in a strange land.
Cinque, the leader of the Mendi Tribesmen kidnapped from their home in Sierra Leone, Africa. New Haven painter Nathaniel Jocelyn painted this portrait in 1839 as Cinque and his fellow captives awaited trial



should immediately set them free. But what then? How would they, return to Africa?

The *Amistad* case provoked such enormous public controversy because it forced a definitive ruling on issues that had smoldered, unresolved, for years. In 1836, Congress had refused to deal with any slavery issues by passing its infamous "Gag Resolution," which automatically tabled (indefinitely delayed) any proposals regarding slavery. President Martin Van Buren was a northerner who did not want to inflame the South - so he, too, steered clear of any slavery issues.

So the *Amistad* case forced the courts to deal squarely with a question that the President and Congress had sidestepped - and which ultimately would require a civil war to resolve: What *is* the legal status of black people in a nation that is divided on the question of slavery?

In January 1840, after a weeklong trial in the New Haven Courthouse, District Court Judge Andrew T. Judson, a Van Buren appointee who had shut down Prudence Crandall's boarding school for Negro girls in 1833, rendered a judgment that surprised the abolitionists. He ruled that the Africans were not slaves even under Spanish law and thus should be released. Gedney and Meade received one-third of the salvage of the *Amistad* property - which would not include the Mendi.

The Government appealed the case, first to the Circuit Court and then to the U.S. Supreme Court. To bring added prestige to their case, the abolitionists enlisted Ex-President John Quincy Adams to argue the case. Adams, known as Old Man Eloquent to abolitionists and as the Madman of Massachusetts to southerners, was serving as a Representative in the House at the time. Although he was 74 years

old, in poor health and filled with self-doubts, Adams threw himself into the case. He spoke for 4-1/2 hours in a stirring defense that Justice Joseph Story later described as "extraordinary for its power, for its bitter sarcasm, and its dealing with topics far beyond the record and points of discussion."

On March 9, 1841, Story, one of the most accomplished Justices in our history, delivered the Supreme Court opinion which upheld the district court ruling: the Africans had been illegally pressed into slavery and thus the Spanish treaty could not be enforced. The ruling was explosive in the sense that it upheld the right to rebel against unlawful enslavement - a holding that surely made southern slaveholders uneasy.

The abolitionists took the Africans to Farmington while taking Cinque and a few other Mendi on tour to major U.S. cities. At churches and meeting halls, the tribesmen were exhibited and used to raise funds to finance their return to Africa. In November 1841, three years after their kidnapping by slave-traders, the Mendi tribesmen returned to Sierra Leone. Only 35 of the original 53 had survived their three years of captivity.

They were accompanied by American missionaries who set up a mission there. The American Missionary Association, which had backed the *Amistad* captives, went on to become a major force in Negro education in America. Spain continued to ask later Presidents to pay for the seizure of the *Amistad*. But Congress rejected any payments, and finally, in 1884, four decades later, Spain renounced its claims to the *Amistad* and its human "property."

Appendix II

Segment 1: Historical Documents

I. Citizenship and The Rule of Law: Historical Documents

- A. Plato (427-347 BC), Crito
According to Socrates, why ought a citizen obey the laws of the Athenian city-state?
- B. The Examination of Anne Hutchinson at the Court at Newton, Massachusetts, 1637
What is the "higher law" that Anne Hutchinson answers to?
Why did the patriarchs of Massachusetts Bay Colony find her adherence to divine will threatening to the established order?
- C. Henry David Thoreau (1817-1862), "Civil Disobedience" (1848)
Explain Thoreau's rationale for civil disobedience.
- D. Martin Luther King, Jr. (1929-1968), "Letter from a Birmingham Jail" (1963)
Compare King's stance on the rule of law with that of Socrates, Hutchinson, and Thoreau?
- E. Malcolm X (1925-1965), "The Ballot or the Bullet" (1964)
According to Malcolm X, how ought an oppressed citizen exercise their legal rights?

II. On the Nature of Government: Historical Documents

- A. Magna Carta (1215)
Why is the "Great Charter" the forerunner of constitutional government?
- B. Niccolo Machiavelli (1469-1527), The Prince (1513)
According to Machiavelli, why should a ruler be feared rather than loved or hated?
What is his attitude toward the citizenry and the rule of law?
- C. King James I (r.1603-1625) on Monarchical Authority
What is King James I's conception of royal power?
- D. Thomas Hobbes (1588-1679), Leviathan (1651)
What are the benefits that Hobbes sees in citizens contracting their power to a Leviathan, an absolute ruler?
How does Hobbes' view of the citizenry differ from King James I?
- E. The English Parliament's Bill Of Rights (1689)

In the aftermath of the Glorious Revolution (1688-1689), how did the triumphant Parliament restrict William of Oranges' executive power as a condition for his accession to the throne?

F. John Locke (1663-1704), Second Treatise on Government (1690)

What does Locke mean by a "state of nature"?

Why did people create government?

What is the social contract between the citizenry and the government?

III. The Development of Constitutional Government in the United States, 1620-1803: Historical Documents

A. Mayflower Compact (1620)

Why is this document signed by forty-one pilgrims off Cape Cod an example of self-government?

B. John Winthrop, "Model of Christian Charity" (1630)

What does Winthrop mean that the Massachusetts Bay Colony must be a "city upon a hill"?

Explain Winthrop's conception of a divine covenant between the colonists and God.

D. Fundamental Orders of Connecticut (1639)

What are the powers and purpose of the commonwealth?

Who are the voters?

Who are the magistrates?

E. Capital Laws, The Code of 1650...General Court of Connecticut

What are capital laws?

Why so many?

What is their basis for legitimacy?

Were they rigorously enforced?

F. Thomas Paine, Common Sense (1776)

What does Paine mean that the law is king?

Why does he suggest in this passage the need for a symbolic regicide?

G. Declaration of Independence (1776)

In the first two paragraphs, explain Thomas Jefferson's philosophy of government? (Note the Lockean and other Enlightenment influences).

When is political revolution justified?

Who is blamed for instigating a long train of abuses and usurpation against the North American colonists?

How does the document conclude?

H. Constitution of the United States (1787)

Identify and discuss:

1. the significance of the preamble;
2. the separation of powers:
3. checks and balances;
4. the roles of the three branches of government;
5. the amendment process (Article 5);
6. the purpose of the Bill of Rights (1791)

I. Alexander Hamilton, Federalist Papers, #78

What does Hamilton mean when he says that the Constitution is the "fundamental law"?

What is the role of the Judiciary?

J. Marbury v. Madison (1803)

How does this decision written by Chief Justice John Marshall affirm the Constitution as the "supreme" law of the land?

What is the role of the Judiciary?

Appendix III

Segment 2: The Case of Mary Jones

Justice and the Rule of Law - The Case of Mary Jones

A state statute provides as follows:

"In order to protect the health and welfare of the people of this state, all persons owning land in this state are required to maintain their land free of pollution that might endanger the public water supply."

"If the Department of Environmental Protection, after investigation, determines that any land is polluted so that it poses a danger to the public water supply, the Department shall order the landowner to remove the cause of the pollution, and the landowner shall promptly do so at his or her own expense."

"Any landowner who incurs expenses in removing pollution may sue and recover the amount of such expenses from any other person or company that is proved to have caused such pollution."

Another state statute provides that any landowner who receives a clean-up order from the Department may appeal to the Superior Court, and the Court must reverse the order if the Court finds that the order is "not in accordance with the statute."

Mary Jones is a single mother of two small children. She works as a computer programmer for an insurance company. Until her father died last year, Mary had been struggling to support her family, but then she inherited the sum of \$50,000, and this greatly relieved her financial problems. Her father also bequeathed her a parcel of undeveloped land, about 20 acres in another part of the state, which he had purchased as an investment shortly before he died. Mary is now the owner of this land, although she has never seen it.

After Mary had become the owner of the land, she received a letter from the Department of Environmental Protection informing her that its investigation revealed that the land was polluted and that the pollution was endangering the public water supply in the area. Specifically, the Department said it found that the soil is contaminated by some dangerous chemicals, which are seeping into a stream on the property. This stream flows directly into the local public water reservoir. Pursuant to the state statute, the Department ordered Mary, as the landowner, to remove the cause of the pollution.

Upon receiving the Department's order, Mary did a little investigating of her own. First, she consulted some experts in pollution removal, and they verified that her land is seriously polluted and endangers the reservoir. Mary also learned, to her dismay, that cleaning up chemical pollution is extremely expensive. It would cost at least \$175,000 and possibly even more, depending upon the results of some scientific tests that would have to be performed. As to the cause of the problem, a little good detective work revealed that the pollution occurred sometime around 1965 (before Mary was born), when a private rubbish removal company, "TrashAway, Inc.," illegally dumped the chemicals on the property without the knowledge of the person who then owned the property. Official records showed, however, that TrashAway, Inc. has been out of business since 1972, when its owner died leaving only a few hundred dollars in his estate. Finally, real estate experts advised her that the property, even unpolluted, would be worth only about \$25,000. Mary decided that her only choice was to appeal the Department's order to the Court.

In court, Mary argued that neither she nor her father was in any way responsible for the pollution, nor did either of them have any knowledge of it before acquiring the property. She pointed out that it would be futile to try to collect anything from TrashAway, Inc., which is defunct and without funds. But if she, the innocent landowner, were compelled to pay for the clean-up, she would be wiped out financially and be in debt for many years into the future. She argued that the legislature could not have intended that the statute it enacted would have such an "unjust" result. Under these circumstances, she argued, the only just decision would be to require the Department to pay for the clean-up.

The Department argued that Mary is required to follow the provisions of the state statute, which was duly enacted by the legislature to protect all the people of the state. It pointed out that if the Department were ordered to pay, the Court would essentially be shifting the responsibility from the landowner to the taxpayers, in violation of the statute, and that would be unjust. The Department argued that all citizens are subject to the "rule of law," and the Court may not make exceptions in individual cases unless authorized by the law to do so.

Before the judge makes a decision, the judge becomes aware that people in the community as well as the media overwhelmingly support Mary in the case. As an editorial in the most influential newspaper put it, "This is about a good, hardworking, innocent citizen caught up in a situation not of her own making, but in danger of being financially destroyed by it. As applied here, this is a cruel and destructive law that nobody wants. The outcome is in the judge's hands. The citizens of the state, voters, are watching. Do the right thing, judge!"

Appendix IV
Segment 2: The Judge's Think Sheet

The Case of Mary Jones

1) When was the land contaminated?

2) Does Mary own the land according to Connecticut law?

3) What is the law in this case?

4) How does the rule of law apply in this case?

5) Is Mary responsible for paying the clean-up costs?

6) Would your answer be different, if instead of Mary, the landowner were Micro Tec Company, a multi-billion dollar corporation? Why or why not?

7) To what extent, if any, should you as the judge be influenced in your decision by the obviously strong public opinion in support of Mary?

Appendix V

Segment 2: Synopsis of Starr Case

Susan Starr v. Commissioner, Department of Environmental Protection
Supreme Court, State of Connecticut
226 Conn. 358 (1993)

Superior Court, State of Connecticut
Judicial District of Hartford/New Britain
Docket No. CV91-0398162 (Feb. 10, 1992, Maloney, J.)

.....

Synopsis

The Case of Mary Jones was presented to illustrate the complexities and ambiguities that often confront judges as they attempt to ensure justice for our citizens while adhering to the rule of law. Although the Mary Jones case is fictional, it was derived from an actual case in Connecticut that arose as the result of efforts by the Connecticut Department of Environmental Protection to enforce state anti-pollution laws against an individual landowner. The case ultimately involved all three branches of government - the Judicial Branch (the Superior and Supreme Courts), the Executive Branch (the Department of Environmental Protection), and the Legislative Branch (the state House of Representatives and Senate) - each of which struggled in its own way to ensure that the rule of law would result in justice.

If you read the two court decisions, you will see that the facts in the actual case were very similar to those in the fictional case that you read for your class. In 1987, Susan Starr inherited from her deceased husband a 44-acre plot of vacant land in Enfield. Many years before her husband acquired the land, a now defunct trucking company used it as a dumping ground for polluted waste material that it was hauling for a gas company in Massachusetts, which is also now out of business.

Mrs. Starr had very little to do with the land either during her husband's lifetime or after she inherited it. In fact, she was denied access to the land from the time she inherited it until the summer of 1989, when the pollution was first noticed. This circumstance came about because the town of Enfield had closed the road leading into the land.

In the summer of 1989, the Connecticut Department of Environmental Protection commenced an investigation of complaints of noxious odors coming from the property. The investigation took about a year. The Department discovered that the polluted waste material that had been dumped on the property many years ago had begun to contaminate the public water

supply. Accordingly, on July 9, 1990, the Commissioner of the Department of Environmental Protection issued an enforcement order to Mrs. Starr directing her to cleanup the pollution. The Commissioner is the head of the Department, and orders are issued in his or her name.

Mrs. Starr requested a hearing before the Department in order to protest the order. The Department held a hearing, which is very much like a court trial and allows an individual who objects to an order of the Commissioner to present evidence and legal arguments in opposition. After hearing Mrs. Starr's side of the story, the Commissioner nevertheless issued a final decision ordering her to eliminate the pollution at her own expense.

The Commissioner based the decision primarily on a state statute enacted by the legislature in 1967. This became General Statute 22a-432. One of the state senators who sponsored the law in the legislature called it a "declaration of war against water pollution." The statute provides that if the Commissioner of the Department of Environmental Protection finds that any person "is maintaining a condition which reasonably can be expected to create a source of pollution to the waters of the state," the Commissioner may issue an order to such person to eliminate the pollution.

It was estimated that the cost of the cleanup would be about \$700,000, far in excess of what the land was worth, estimated at perhaps \$40,000. Instead of inheriting an asset therefore, as her husband had wished for her, Mrs. Starr was handed, in effect, a harsh financial liability.

Superior Court Proceedings

Mrs. Starr appealed the Commissioner's cleanup order to the Connecticut Superior Court, which is authorized to decide such appeals and to reverse the Commissioner's decision if the court finds that it was based on an error in interpreting the law. She thus became the plaintiff in the Superior Court case, and the Commissioner became the defendant. In the court proceeding, the attorneys for both sides submitted "briefs," which are written legal arguments in support of their respective positions, and the attorneys also appeared in court and presented oral arguments to the judge.

The Superior Court judge decided the appeal in favor of the plaintiff, Mrs. Starr. The judge ruled that the defendant Commissioner had misinterpreted the law in holding the plaintiff responsible for cleaning up the pollution on her property. The judge reasoned that she could not be found to be "maintaining" the pollution, as prohibited by the statute, because the word "maintaining" includes the concept of some positive conduct or effort designed to preserve a particular condition.

In the absence of any definition of the term "maintaining" in the statute itself, the judge turned to the definitions included in different dictionaries as an aid in interpreting the law. In effect, the judge ruled that the clean-up statute as enacted by the legislature, applies only to those owners of property who have had some active role in causing or continuing the pollution of the water supply. But in this case, the judge noted, all the evidence indicated that the plaintiff had never had any active involvement of any kind in the property and knew nothing of the pollution.

Since the plaintiff was essentially "innocent" of any involvement in the pollution, the judge held that the statute does not apply to her, and the Commissioner's order was in error. The judge did point out that other statutes could be employed to require even an innocent landowner to bear some of the cost of cleanup in some cases, but he noted that the Department had not followed the procedures set forth in those laws in this case.

Supreme Court Proceedings

Now it was the Commissioner's turn to appeal, and he did so by appealing to the Connecticut Supreme Court. The Supreme Court is empowered to hear and decide appeals of judgments of the Superior Court and to reverse those judgments if they are found to be based on errors in interpreting or applying the law.

As in the Superior Court proceedings, attorneys for both the plaintiff and the defendant submitted briefs in support of their respective positions. In addition, several other organizations were permitted by the Supreme Court to submit briefs on issues in the case of importance to them. These organizations were allowed to participate as "amicus curiae," or friends of the court, in the interest of providing diverse viewpoints that might be helpful to the Supreme Court in deciding the appeal. The attorneys also appeared in court and presented oral arguments on the legal issues.

The Supreme Court decided the case in favor of the defendant Commissioner, reversing the judgment of the Superior Court. In essence, the Supreme Court decided that the Superior Court judge had erroneously interpreted the relevant statute. It held that the term "maintaining," as used in the statute, does not necessarily require any affirmative action or conduct on the part of the landowner.

In reaching its ruling, the Supreme Court declined to follow the dictionary definitions of the term "maintaining" that the Superior Court judge had used and instead turned to prior Supreme Court decisions which had considered the use of the term in the context of the law relating to public nuisances. This method of reasoning in the law, relying on other cases previously decided, is known as "following precedent." The Court noted that in a preamble to the statute in question, the legislature had declared pollution of the water supply to be a "public nuisance." In prior public nuisance cases, the Court stated, the concept of "maintaining" a nuisance does not necessarily include any fault on the part of the owner of the land where the nuisance exists, and the landowner can be ordered to eliminate the nuisance and compensate anyone harmed by it regardless of the landowner's innocence in causing or continuing the nuisance.

Since the term "maintaining" (a source of pollution), as defined by the Supreme Court in interpreting the statute, can include totally passive ownership of the land where the pollution exists, the Supreme Court ruled that the Commissioner correctly applied the law in ordering the plaintiff to eliminate the pollution, regardless of her lack of fault and regardless of the expense to her.

In rendering its decision, the Supreme Court acknowledged the difficulty of reconciling the rule of law, as determined by the Court, with ordinary notions of fair play and the idea that a person who is not at fault should not be held responsible for damages or harm to others or the public. The Supreme Court stated:

"We realize that our resolution of this appeal may result in the imposition of liability on the plaintiff for abating the pollution on her land, the cost of which may be in excess of the value of the land. That appears to be a draconian result that violates notions of fairness ... Our perception, however, is that the legislature in 1967 saw the state's water pollution problem as being so grave that its concern for the public welfare outweighed any sympathy for individual property owners."

In concluding its decision holding the plaintiff financially responsible for cleaning up the pollution on her property, even though she was completely innocent of causing it, the Supreme Court made this observation about the roles of the different branches of government: "If the result is unduly harsh, the remedy properly lies with the legislature and not this court." That is to say, the Judicial Branch of the government is obligated to apply the law as set forth in statutes enacted by the Legislature, and it is up to the Legislature, not the Court, to modify the law if that is what the citizens of the state deem to be appropriate.

Legislative Activity

While the appeal to the Supreme Court was pending, the Legislature became aware of the issue surrounding innocent landowners and quickly passed a law that relieved these landowners from liability. The law did not automatically excuse Mrs. Starr from her liability, as the law set up a procedure for the landowner to establish innocence.

Appendix VI

Segment 2: Legislation Resulting from the Starr Case

Section A: Summary of the Legislative Process for Senate Bill 820

In order for Senate Bill 820: An Act Establishing An Innocent Landowner Defense In Pollution Cases to be passed by the General Assembly and be signed by the Governor, it must go through an extensive legislative process. This process begins with a public hearing. Public hearings are designed to allow concerned individuals an opportunity to submit oral or written testimony in support or opposition of a particular bill.

This particular bill, which would limit innocent landowners with polluted property from liability to the state for assessments, fines, and other costs imposed for cleanup, was first examined at an Environment Committee public hearing held on February 10, 1993.

Subsequent to the public hearing, the Environment Committee held a committee meeting to vote on the bill. The vote determines whether the bill is favorably reported out of the committee, and if so, where it should go next. The committee may also modify the language of the bill. In the case of Senate Bill 820, the Environment Committee voted favorably (25 Yea, 0 Nay) and sent the bill to the Judiciary Committee with some changes. The bill was sent to the Judiciary Committee for review because it contained language that would potentially impose a civil penalty in excess of five thousand dollars.

Prior to its arrival at the Judiciary Committee, the bill went to the Legislative Commissioners' Office (LCO) to be proofread and to incorporate the changes made by the Environment Committee. Shortly thereafter, the Judiciary Committee voted favorably on the bill, with changes, (27 Yea, 0 Nay), and sent it to the Senate Floor for debate. Since the bill had been modified, though, it first had to go back through LCO for the Judiciary Committee changes to be incorporated into the bill.

In addition to making the Judiciary Committee changes, LCO assigned the bill a file copy number (File No. 690) and sent the final document and its revised language to the Office of Legislative Research (OLR) and the Office of Fiscal Analysis (OFA). OLR is responsible for reviewing the language and content of the bill and providing a plain-language bill analysis which contains a summary of the bill's legal effect and, where appropriate, background information. OFA is responsible for looking at the fiscal impact of the legislation and creating a fiscal note. The bill analysis and fiscal note are then sent to LCO to be included in the file copy. LCO then forwarded the file copy to the Senate Clerk's Office so that the bill could be placed on the Senate Calendar.

Before the Senate could vote on the content of the bill, though, it was referred by the President Pro Tempore of the Senate to the committee on Appropriations. The Appropriations Committee is responsible for reviewing all bills pertaining to financial matters. The Appropriations Committee voted favorably on SB 820 (42 Yea, 0 Nay), thus the bill was filed again with LCO, and then sent back to the Senate Clerk's Office for calendaring.

A bill must be on the Senate calendar for three days before the Senate may debate and vote on it. On May 27, 1993, SB 820 was debated on the Senate floor. At this time, the Senate adopted one amendment, Senate Amendment Schedule A. Following debate, the Senate passed SB 820 with Senate A.

In order for a bill to become law, it must pass both houses of the General Assembly. On May 27, 1993, SB 820 was transferred to the House Clerk's Office where it was given a House calendar number and placed on their calendar. Subsequently, the House debated the bill, rejected Senate Amendment A, but adopted House Amendment Schedule A. The House then passed the bill, with House A.

Since the House passed SB820 with House A, but not Senate A, it was returned to the Senate for a vote on the new language. The Senate then rejected Senate Amendment A and passed SB 820 as amended by House A (32 Yea, 4 Nay).

The bill was then sent to LCO to receive its public act number (PA 93-375). A Legislative Commissioner, the Senate Clerk, the House Clerk, and the Secretary of the State then signed the Public Act. Finally, it was sent to the Governor. The Governor signed SB 820 (PA 93-375) on June 30, 1993, and since it contained language that stated that it would become effective upon passage, it became law upon his signature.

Section B: Bill History for Senate Bill 820

Introducer(s): Environment

Title: AN ACT ESTABLISHING AN INNOCENT LANDOWNER DEFENSE IN POLLUTION CASES.

Statement of Purpose: To specify liability of "innocent" owners of polluted real property.

Bill History:

02-04 REF. TO JOINT COMM. ON Environment
02-05 PUBLIC HEARING 02/10 (PH0210)
03-05 ENV - JFS CHANGE OF REFERENCE TO Judiciary
03-10 FILED WITH LEG. COMMISSIONER
03-17 RPTD. OUT OF LCO
03-17 FAV. CHG. OF REF., SEN. TO COMM. ON Judiciary
03-17 FAV. CHG. OF REF., HO. TO COMM.ON Judiciary
04-19 JUD - JOINT FAVORABLE SUBSTITUTE
04-20 FILED WITH LEG. COMMISSIONER
04-30 REFERRED TO OLR, OFA
05-07 RPTD. OUT OF LCO
05-10 FILE NO. 690
05-10 FAV. RPT., TAB. FOR CAL., SEN.
05-18 REF. BY SEN. TO COMM. ON Appropriations
05-20 APP - JOINT COMMITTEE FAVORABLE
05-20 FILED WITH LEG. COMMISSIONER
05-21 RPTD. OUT OF LCO
05-21 NO NEW FILE BY COMM. ON Appropriations
05-21 FAV. RPT., TAB. FOR CAL., SEN.
05-27 SEN. ADOPTED, SEN. AMEND. SCH. A:LCO-8049
05-27 SEN. PASSED, SEN. AMEND. SCH. A
05-27 R/S, TRANS. TO HOUSE
05-27 FAV. RPT., TAB. FOR CAL. HO.
06-07 HO. REJ. SEN. AMEND. SCH. A
06-07 HO. ADOPTED HO. AMEND. SCH. A:LCO-9307
06-07 HO. REJ. HO. AMEND. SCH. B:LCO-7418
06-07 HO. PASSED, HO. AMEND. SCH. A
06-07 TRANSMITTED PURSUANT TO JOINT RULES.
06-07 D/A,TAB. FOR CAL., SEN.
06-08 SEN. REJ. SEN. AMEND. SCH. A:LCO-8049
06-08 SEN. ADOPTED HO. AMEND. SCHED. A
06-08 SEN. PASSED, HO. AMEND. SCH. A
06-24 TRANS. SEC. OF STATE PA 375
06-30 SIGNED BY GOVERNOR

Co-sponsor(s): SEN. DAILY, 33rd DIST.

Section C: Bill Analysis of Senate Bill 820

OLR AMENDED BILL ANALYSIS

SB 820 (File 690, as amended by House "A")*

AN ACT ESTABLISHING AN INNOCENT LANDOWNER DEFENSE IN POLLUTION CASES

SUMMARY: This bill limits innocent landowners with polluted property from liability to the state for assessments, fines, and other costs imposed for cleanup. Liability is limited to reimbursing the state for cleanup costs incurred to the extent of the landowner's interest in the property if the amount of the state's expenditure is a lien on the property handled in accordance with a procedure available under existing law. The limitation on liability applies to spills or discharges whether they occurred before or after passage of the bill, but does not affect actions that are final and no longer appealable after that date.

The landowner must establish his innocence by a preponderance of the evidence. In determining innocence, a court may take into account a person's specialized knowledge or experience; the amount paid for the property as it relates to the value if it were not polluted; commonly known or readily available information; the obviousness of the presence or likely presence of the pollution; and the ability to detect pollution by inspection.

The bill makes any person who sells an interest in contaminated real estate, regardless of whether the state has spent money to clean the site, liable up to the net sale proceeds for the cost of cleanup. Net proceeds are the amount received by a person after paying reasonable expenses and satisfying security interests.

Under current law, unchanged by the bill, secured lenders acquiring title by foreclosure or tender of a deed in lieu of foreclosure have liability limited to the value of the real estate if the spill occurred before acquisition of title.

Current law allows the Department of Environmental Protection (DEP) to issue an order to abate water pollution or correct a hazardous waste violation to a landowner whenever the department is also issuing an order to the person who caused the pollution. The bill exempts innocent landowners from liability for any assessment, fine, or other costs imposed by the state under this law, except through imposition of a lien on the property for reimbursement of state cleanup costs.

*House Amendment "A" eliminates a landowner's innocence if he had reason to know of the act or omission of a third party (the unamended bill excluded only those who actually knew of such act or omission) or if there was a reasonably foreseeable threat of pollution; eliminates fiduciaries as innocent landowner's; makes certain executors, trustees, and administrators of decedent's estates innocent landowners; limits an innocent landowner's liability to that obtained

by the imposition of a lien on the property; specifies that the limitation on landowner liability does not affect actions that are final and no longer appealable on passage of the bill; and makes the bill effective on passage.

EFFECTIVE DATE: Upon passage

FURTHER EXPLANATION

Innocent Landowner

Innocent landowners under the bill are of two types. First, those with an interest in property which is contaminated while owned by them. Second, those who acquire property after the contamination and who have not caused the pollution. The term does not apply to secured lenders.

In the first case, a landowner is innocent if the pollution is caused by: (1) an act of God; (2) an act of war; (3) an act or omission of a third party who is not an employee, agent, lessee, or in a direct or indirect contractual relationship with the landowner; or (4) an act or omission occurring in connection with a contract arising from a published rail transportation tariff. In the case of an act or omission of a third party the landowner is not innocent if he had knowledge, or had reason to know, and failed to take reasonable steps to prevent the pollution, or there was a reasonably foreseeable threat of pollution. But in the case of an act or omission of a third party occurring in connection with a rail transportation contact, the landowner is not innocent if he had knowledge and failed to take reasonable steps.

A person who acquires land after contamination is considered innocent if he (1) has no knowledge of the contamination and inquires into previous uses of the property consistent with good commercial or customary practice, (2) is a government entity, (3) acquires the property by inheritance or bequest, or (4) acquires the interest as executor or administrator of a decedent's estate or as trustee receiving the real estate interest from a decedent's estate if the decedent had held the interest in the real estate.

BACKGROUND

Related Case

In *Starr v. Commissioner* (CV91 039 81 62, February 10, 1992) the Superior Court ruled that an innocent landowner cannot be held primarily liable for cleanup of his land unless the DEP also orders the person responsible for causing the pollution.

Legislative History

The Senate referred the bill to the Appropriations Committee on May 18. That committee favorably reported the bill, with no changes, on May 20.

The Senate adopted Senate Amendment "A" on May 29. On June 7, the House rejected Senate "A" and adopted House "A." House "A" incorporates the changes of Senate "A" and also makes certain trustees, administrators, and executors of decedent's estates innocent landowners; makes a landowner liable for a third party act or omission if there was a reasonably foreseeable threat of pollution; and makes the bill effective upon passage.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference
Yea 25 Nay 0

Judiciary Committee

Joint Favorable Substitute
Yea 27 Nay 0

Committee on Appropriations

Joint Favorable Report
Yea 42 Nay 0

Section D: Public Hearing on Senate Bill 820 - Keeney's Testimony

STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Committee on the Environment
Public Hearing, February 10, 1993

Testimony of Commissioner Timothy R. E. Keeney
Department of Environmental Protection

Raised Bill 820 Act Concerning Landowner Liability for Hazardous Waste Contamination

This bill limits the liability of past and present owners of land from which a source or potential source of pollution emanates. Building upon the language of 107(b) of the federal Comprehensive Environment Response, Compensation and Liability Act ("CERCLA, "also known as "Superfund"), the bill attempts to find a balance between, on the one hand, protecting taxpayers from responsibility for cleaning up private land and, on the other, protecting owners who did not cause or contribute to pollution on their land.

To the extent that this bill tracks the language of CERCLA §107(b), the Department does not object to it, although the Committee should keep in mind that enactment of any landowner liability limitation constitutes a significant change from present law (see §22a-433), under which the landowner, not the taxpayer, is responsible for all pollution costs associated with the land. And any limitation on liability, even one as relatively narrow as the one provided here, could result in a significant impact on the public treasury.

The Department urges the Committee that any bill that limits liability should, like CERCLA §107, begin by comprehensively identifying the classes of persons who are liable. Subsection (a) of CERCLA §107 identifies all persons, not just landowners, who are liable for reimbursing the Government or any other person for the costs of remediation, and subsection (b) then creates defenses to such liability. Under §107(a) liability is imposed, without respect to fault, on the present owner and operator of the facility or vessel, on any past owner or operator of the facility at the time the hazardous substance was disposed there, and on any person who arranged for transportation, treatment or disposal of a hazardous substance at, or who transported a hazardous substance to, the facility from which the release has occurred or is threatened. (Sections 7002 and 7003 of the federal Resource Conservation and Recovery Act similarly impose remedial liability on present and past owners and operators and those who contributed to handling the material which caused the hazard.)

If Raised Bill 820 were revised to thus identify all liable persons, much-needed clarity would be added to Connecticut's pollution clean-up and cost recovery laws (see §§22a-432, 22a-433, 22a-133c, 22a-4S2). Furthermore, the defenses to liability in the bill would then apply not only to landowners but to operators and other contributors. For example, an operator at whose

facility an act of God caused a release and who took precautions against such an event should be entitled, no less than an owner, to the "act of God" defense provided by the bill.

Another concern relates to subsection (e) of the bill, which would make it applicable not only to legal proceedings instituted after the bill's effective date but also to proceedings pending on that date. I would point out that there are many pending cases in the Department which were initiated under existing law (§22a-433), which provides that a landowner is liable for remedial action simply by virtue of ownership. If the law were to change while these cases were pending, a great deal of administrative resources might be wasted.

Attached to this testimony are some technical suggestions for the bill.

Thank you for this opportunity to comment on Raised Bill 820 and the important subject of liability for pollution clean-ups. I and my legal staff would be happy to work with the Committee in further refining the substance and language of the bill.

Section E: Public Hearing on Senate Bill 820 - Hemond's Testimony

Testimony of David L. Hemond Chief Attorney, Connecticut Law Revision Commission

to the Judiciary Committee

in favor of House Bill 7062,

An Act Establishing an Innocent Landowner Defense in Pollution Cases

Senate Bill 820,

An Act Concerning Landowner Liability for Hazardous Waste Contamination

March 1, 1993

By letter dated May 29, 1992, Senator Anthony V. Avallone and Representative Richard D. Tulisano, acting as Co-Chairmen of the Judiciary Committee of the Connecticut General Assembly, requested the Law Revision Commission to review Connecticut statutes in the light of the Superior Court decision in *Susan S. Starr v. Commissioner, Department of Environmental Protection and the Scantic Neighborhood Association, Inc.* CV 91 039 81 62, (February 10, 1992). (The case is currently on appeal before the Connecticut Supreme Court.) In that case, the Superior Court ruled that an innocent landowner cannot be held primarily liable under sections 22a-432 and 22a-433 of the general statutes for cleanup of his land unless, the Department of Environmental Protection (DEP) also charges the party responsible for causing the pollution. In particular, the Judiciary Co-Chairmen asked that the Commission draft legislation that would provide reasonable protection for “innocent parties”.

Pursuant to that mandate, the Commission appointed Commission members William Breetz, Martin Burke, Nicholas Simeone, and Milton Widem to review the issues and draft an appropriate innocent landowner's defense. After a number of meetings, review of the applicable statutes, and circulation of a proposed draft to concerned parties, the committee recommended, and the Commission approved, enactment of the draft legislation now before you as House Bill 7062, creating an innocent landowner defense. Viewed in the light of the *Starr* case, the Commission finds that Connecticut statutes fail to adequately protect innocent it landowners from the risk of unlimited liability for cleanup costs of a spill or discharge of contaminating maternal. In a given case, the liability flowing from contamination may be substantially greater than the value of the contaminated property. The Commission recommends enactment of appropriate protection for innocent parties who hold such property.

Liability under the Commission bill compared to the Environment Committee bill, Senate Bill 820, AAC Landowner Liability for Hazardous Waste Contamination:

Senate Bill 820, AAC Landowner Liability for Hazardous Waste Contamination, has been raised by the Environment Committee and addresses the same topic as the House Bill, 7062 now before the Judiciary Committee. The Environment Committee bill is similar to last years

1992 Senate Bill 287, particularly as amended by LCO No. 4028, and would create an innocent landowner defense based on CERCLA but limit liability "only to the extent of the value of his interest in such property, appraised as if such property was unpolluted." The Commission rejected the standard of the Environment Committee bill (and last year's bill) because it allows assessment of personal liability against an innocent party in an amount that is not related to any actual value in the land held by the landowner. An innocent party under those bills could, for example, be assessed a million dollar liability, out-of-pocket, for cleanup and mitigation costs on land that in theory, if clean, might be worth a million dollars, but that, in fact, remains so contaminated that it is unmarketable. Those bills also fail to adequately coordinate the state's right to assess personal liability with the state's right to lien the property, a situation that can double the actual loss of the landowner. I have previously sent to the Judiciary Committee Chairmen and Ranking Members my detailed analysis of the problems created by the Environment Committee bill approach, an analysis that I initially prepared for Representative Jessie Stratton, Co-Chair of the Environment Committee. I would be happy to provide a copy of that analysis on request. The Commission proposal avoids those problems by limiting the state's remedy to obtaining value out of the contaminated land through the state's lien on that property.

Lender issues:

The Commission draft does not address rights of lenders. Those rights are currently governed by section 22a-452b. As noted above, lenders are entitled to a limitation on liability for environmental pollution when they foreclose on collateral. Because that limitation on liability emerges from the concept of limiting the liability of an innocent party, the Commission initially considered folding the rule for an innocent foreclosing lender into the new innocent landowner defense. However, comments made to the Commission on an earlier proposed draft persuasively indicated that lenders are, in fact, a distinct group that should be addressed separately. Current federal law and a recent Massachusetts statute, for example, comprehensively address what acts of control or management may be taken by a lender without triggering liability as an owner. Other provisions in those statutes allow lenders to realize on their collateral by selling foreclosed property without any cleanup. These proposals, which were brought to the Commission's attention by the lending community, deserve consideration in the context of the commercial role of lenders. However, adoption of a provision allowing lenders to realize on their collateral notwithstanding an existing spill would require a public policy decision beyond the scope of this Law Revision Commission study of the case and the rights of innocent landowners. Because an existing statute already provides limited lender protections and because lender rights were not directly implicated in the decision, the Commission proposal does not address those issues.

Imposition of liability issues

Commissioner Timothy Keeney of the Department of Environmental Protection recommended that the Commission draft, in accordance with CERCLA, "begin by specifically defining the persons on whom liability is imposed (past and present owners and operators, transporters, etc.)." Existing statutes, however, appear to provide clear authority for ordering abatement of pollution (section 22a-432 and section 22a-433), assessing liability for pollution (section 22a-451), and imposing a lien on the land for the cleanup costs (section 22a-452a). While the legislature may wish to give further consideration to the adequacy of these provisions,

nothing in the Commission's study indicates that existing authority of DEP requires revision. The focus of the case and the Judiciary Committee request was on ensuring that DEP authority not be exercised in a way that improperly burdened an innocent party. The Commission proposal, therefore, does not address or clarify DEP authority except as it applies, to persons defined in the proposal as innocent landowners.

Conclusion:

The Commission review indicated that Connecticut law fails to provide adequate protection for innocent landowners who may currently be held fully liable for cleanup of environmental spills on their property notwithstanding lack of knowledge of or participation in causing the spill. Because those costs may substantially exceed the value of the landowner's interest in the property, current law imposes inappropriate liabilities on certain innocent owners who happen to be in the wrong place at the wrong time. The proposed Commission draft addresses that failure by limiting the innocent landowner's liability to the state's right to place a lien on his interest in the real estate, an interest that the legislature has already made subject to a lien for cleanup costs. The proposal balances the legitimate state interest in applying the value of contaminated property toward its cleanup costs with the legitimate interest of innocent persons to protection against unlimited liability for contamination for which they were not responsible.

Section F: House Debate on Senate Bill 820 - June 5, 1993

THE CONNECTICUT GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
JUNE 5, 1993

The House was called to order at 11:00 a.m. o'clock
Speaker Ritter in the Chair.

CLERK:

Page 9, Calendar 697, substitute for Senate Bill
820, AN ACT ESTABLISHING AN INNOCENT
LANDOWNER DEFENSE IN POLLUTION
CASES, as amended by Senate Amendment
Schedule "A". Favorable report of the Committee on
Appropriations.

DEPUTY SPEAKER PUDLIN:

The question is on acceptance and passage in
concurrence with the Senate. Will you remark?

REP. TULISANO: (29th)

Yes, Mr. Speaker. Mr. Speaker, the bill before us
deals with setting up a system in which individuals
who otherwise had no control over certain pollution
and say take it as an executor, or an executrix or
trustee under some will and if their property has been
subject to a spill or a discharge, will no longer be
liable for cleaning it up.

First, it includes two kinds, as I indicated. Those
who take it and those who are sitting there innocently
while someone else contaminates their property. And
they would have nothing to do with it or it was an act
of God or something like that.

Mr. Speaker, the Clerk has amendment LCO8049.

DEPUTY SPEAKER PUDLIN:

Would the Clerk please call LCO8049, Senate "A"?

CLERK:

LCO8049, designated Senate "A" offered by
Senators Jepsen and Daily.

REP. TULISANO: (29th)

Mr. Speaker, this amendment makes some technical
changes in the bill as I indicated if they knew or
reason to know. It also includes that after the
liability in line 121, there would have to be an
imposition of a lien against contaminated real estate
under a certain section of the General Statutes by
DEP. In line 90, dealing with security interest is that
it applies to spills or discharges which occurred
before or after the effective date of the act unless a
non-effective cost of the enforcement.

I move for its adoption.

DEPUTY SPEAKER PUDLIN:

The question is on adoption. Will you remark?

Representative Farr.

REP. FARR: (19th)

Yes, just through you to Representative Tulisano.

I am really confused on the line 47 where they
deleted "shall not be personally liable for any
assessment" and inserted the new language "except
through the imposition of a lien against the real
property". I thought the intent was to say that the
person wouldn't be personally liable, that the lien
would only be to the extent of the value and if we
allow them to be liable for a lien, aren't we back to
where we started? Because the lien is for, I would
assume, for the entire clean-up cost.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, the purpose of this is to
make it clear that the individual, the property itself,
the realty itself, is subject to the lien in of itself.
But the individual person is not personally liable to
other interest to property they have which may
otherwise occurred.

They may have other property. Under the old rule,
all of that property could be subject to the spill, to
costs for recovery for this spill under this one single
property. That is limited in this innocent landowner
piece.

DEPUTY SPEAKER PUDLIN:

Representative Farr.

REP. FARR: (19th)

Yes. Through you, Mr. Speaker. I understand what
the purpose was. I am concerned about line 47. It
seems to say that if you put a super lien on there for a
value that exceeded the property, you would be liable
to an amount that exceeds the value of the property.
Am I misreading that? We deleted the words "shall
not be personally liable".

REP. TULISANO: (29th)

Mr. Speaker, I understand the question and I will
read it closer to see if it is misreading or not. It could
very well be. Mr. Speaker, I think there is another
section of the statute that would clarify it, but this is a
very important statute and I would ask, unless there is
I just want to check it out.

DEPUTY SPEAKER PUDLIN:

The gentleman has requested leave to PT the bill.

Hearing no objection, the bill is passed temporarily
some objection, that we PT it until I can look at that
closely and compare those two sections.

Section G: House Debate on Senate Bill 820 - June 7, 1993

THE CONNECTICUT GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
JUNE 7, 1993

The House was called to order at 10:00 o'clock
a.m., Speaker Ritter in the Chair.

CLERK:

Page 8, Calendar 697. Substitute for Senate Bill
820, AN ACT ESTABLISHING INNOCENT
LANDOWNER DEFENSE IN POLLUTION
CASES, as amended by Senate "A". Committee
on Appropriations.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

I move for acceptance of the Joint Committee's
favorable report and passage of the bill in
concurrence with the Senate

SPEAKER RITTER:

The motion is on acceptance and passage in
concurrence with the Senate. Please proceed.

REP. TULISANO: (29th)

Yes, Mr. Speaker. Mr. Speaker, the bill before us
deals with establishing defenses to pollution when
dealing with ...it limits the liability of people who
have not caused any pollution on their land.

Mr. Speaker, the Clerk has an amendment, LCO8049.

CLERK:

Amendment LCO8049, designated Senate "A".

REP. TULISANO: (29th)

Mr. Speaker, this contains some language changes in
the amendment. However, we have another
amendment coming which incorporates, so therefore,
I would move for rejection of Senate Amendment
Schedule "A".

SPEAKER RITTER:

The question is on rejection. Will you remark
further? If not, I will try your minds. All in favor
of rejection, signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER RITTER:

Opposed, nay. Senate "A" is rejected. Care to
comment further? Representative Tulisano.

REP. TULISANO: (29th)

Clerk has amendment LCO9307.

CLERK:

LCO9307, House Amendment Schedule "A".

SPEAKER RITTER:

Will be designated House "A".

CLERK:

Offered by Representative Tulisano.

SPEAKER RITTER:

Representative Tulisano, you have the floor.

REP. TULISANO: (29th)

Yes. Mr. Speaker, this amendment clarifies who the
innocent landowner would be and how they would
receive their interest in the property. It indicates that
they won't be liable except through imposition of a
lien against the real estate under 22a-452a of the
General Statutes.

I think that follows what Representative Farr was
talking about. It clarifies another amendment we had
before. It indicates when it becomes effective. It
makes the line effective upon passage. I move for its
adoption.

SPEAKER RITTER:

The question is on adoption. Will you remark
further? Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, as I indicated, the amendment does
make some clarifications in the file copy. It does
straighten out how a person receives their interest in
the property. In my summary, I think I hit the major
parts of it.

SPEAKER RITTER:

Will you remark further? Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. Mr. Speaker, I guess just
to get something on the record, in the amendment,
line 16 we are adding "there was reasonably
foreseeable threat of pollution". Through you, Mr.
Speaker, does that mean acid rain? Does that mean
underground flow of below the water table of how
currents would carry materials that are not or may not
currently be on the property, but could migrate there
over a period of time? Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker. Under current law, Mr.
Speaker, well under the proposal in the file copy, it
limits it to you knew of the actual mission and failed
to take steps to protect against a spill. This
requires, a reasonable foreseeable threat. You knew,
that say there was a tank farm on the adjoining site
and there was leakage going on and you could have
cleaned it up or stopped it before it happened
although it wasn't actual pollution yet. Not acid rain.

REP. BELDEN: (113th)

Mr. Speaker.

SPEAKER RITTER:

Representative Belden.

REP. BELDEN: (113th)

Just to clarify that further, I believe the gentleman indicated if the property owner knew of a spill or something that could potentially contaminate that property, you could consider that under this definition of a reasonably foreseeable threat?

Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. That is correct.

SPEAKER RITTER:

Representative Belden, you have the floor.

REP. BELDEN: (113th)

Mr. Speaker, would just the fact that something may have occurred on another property fall under that category or would there have to be some reasonableness that the individual who owned the property should reasonably have knowledge of that threat, that pending threat? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I think if you look on line 17, which you knew or had reason to know. So, I think the reasonable standard is in there.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I just wanted to ask those questions because this is a very complex area and probably is going to keep the legal profession and the chemists busy for the next fifty years. I don't think whatever we put in the law is going to cover all of the various possibilities that can in fact, occur.

Thank you.

SPEAKER RITTER:

Will you remark further? Representative Ward.

REP. WARD: (86th)

Mr. Speaker. Thank you, Mr. Speaker. Mr. Speaker, through you to Representative Tulisano.

SPEAKER RITTER:

Please proceed.

REP. WARD: (86th)

In line 30 of the amendment, there is language, although it doesn't cite as new, I am assuming it is new language which would seem to, I believe it basically makes the law retroactive unless there is a final judgment out there, so it is retroactive even to pending cases. Through you, am I reading that correctly, Mr. Speaker?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I believe that is true.

REP. WARD: (86th)

Through you, Mr. Speaker. Was that the original

intent of the original bill that it be applied effectively. I guess that was my first question. Was that the intent of the original legislation?

REP. TULISANO: (29th)

Mr. Speaker, I believe so. If we look at the progenitor of this legislation, last year there was a Star decision that is still floating around and that was the one that began this whole thing and I don't think it has come to final conclusion yet. And it was in response to that, this legislation even started.

And I think that is where it came from.

SPEAKER RITTER:

Representative Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker. I am sorry. I just hadn't seen this before. Are there cases pending now that we are aware of that this undoes or is this reversing some sort of a recent court decision? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. As I indicated, the one I do know is something called Star and it was a case that actually started this legislation this way during the last session of the General Assembly. We tried to do a bill like it. It was a little bit complex. That case has not come down, as I understand it, to a final conclusion. And would effect that, but it is the one that got us looking at this whole issue.

REP. WARD: (86th)

Thank you, Mr. Speaker. As I understand it then, this amendment isn't really in response to that case, rather the original bill was in response to that case and this is really to clarify or make clear what the original legislation had in mind.

Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker. That is correct. In fact, I believe in one of the decisions that came down, innocence was raised by the courts and we started to look at that whole area. This is the clarification of that issue.

REP. WARD: (86th)

Thank you, Mr. Speaker. I appreciate the answers. I just wanted to make clear that this was to make what clear what the original intent of the legislation was a year or two years ago, whichever it was. And not to sort of change something that we had in mind previously.

SPEAKER RITTER:

Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. Having now had time while somebody else was talking to read the rest of the amendment, through you to Representative Tulisano

if I might, Mr. Speaker.

On line 32 of the amendment, it indicates that this section shall apply to any spill or discharge which occurred before or after the effective date of this act.

Mr. Speaker, to the gentleman, is there any statute of limitations or is this going to hold harmless anybody back to 1900 who maybe had a spill or on an abutting property or something?

I am trying to figure out, Mr. Speaker, through you, just how far back we are going to relieve people of any responsibility?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, It only applies to those people who fit the definition of an innocent landowner. And it is a person who either inherited it, without any knowledge or a trustee who takes in something like that and they are not going to personally liable. Under current law, they would be personally liable. So, if someone made the spill, a number of years ago, as an example, and they did have, as individuals, they don't come under the definition of innocent, an innocent landowner, then it would not apply to them. If this bill occurred, what we are really protecting is the personal assets of an individual so they don't have to go out and clean-up something and have no involvement with it.

SPEAKER RITTER:

Representative Belden, you have the floor, Sir.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I appreciate the gentleman's response, but let's just talk about the innocent landowner who bought the property in 1978. Would he be relieved of having any responsibility based upon all of the various federal and state legislation that have made more items hazardous, changed items around? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, If the individual bought it in 1978, and didn't know about it, and still doesn't know about it, he has no responsibility, individually, or personally of other personal assets.

The land is still liable for the cleanup charges.

The best I can think of in news today, for sort of an example, I think is Stratford. Where they have some polluted land supposedly. People are all innocent and as innocent landowners, all of their assets are not liable for the clean-up. And they didn't know anything about it when they bought it. So, they would be protected in some instances, I guess.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I would question whether

or not this was even legal because I think, as I understand it, and as the lawyers that I deal with on this issue, the minute you touch the property, no matter what, under the federal law, you become a potential participant in any legal action that can be related to that particular piece of land. Whether you in fact were the perpetrator or not or whatever else. Through you, Mr. Speaker. I appreciate the gentleman responding to that, if he might.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, as I understand it in our committee hearing meeting, the exception is in fact allowed by federal law. The exception. The innocent landowner exception is allowed under the federal statute.

For example, if your spouse dies and your spouse inherits the land from your father, your parent dies, you inherit the land, you take it over, you cannot be held personally liable, under this act to clean it up. That does not mean, however, the land itself. The State would have its lien when it goes in to clean it up and the land itself's value will be made available to pay for that clean-up. It is just that the individual is immunized and I will use that word loosely, from all of their total assets having to be drained for actions they had nothing to do with.

SPEAKER RITTER:

Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. My understanding was or is that even in that case, there is a need for proof of whether one had or did not have something to do with pollution on the property. I mean, that becomes, in of itself, an investigation and a defense and this is why my understanding is and every legal case regarding pollution that I know of, they always go after everybody who occupied owned or had anything to do with the property, in the case of ownership. I am not talking about landfills now. I am talking about ownership of generally commercial or industrial property. Mr. Speaker, I still have some concern that when we do this, we are absolving a party by law in Connecticut that does two things. Number one, as Representative Tulisano indicated, if it is inherited, the person who inherited it is free and clear even though the previous owner may have in fact, been a party to pollution and I just don't quite understand why we want to, in this law, right now, for Connecticut only, change the ground rules. I think in this whole area, common law is revolving as the environmental issues develop and are pursued through the courts and I find we are taking quite a jump here in suddenly deciding we are going to absolve the current owner of various properties because they may not be liable.

I think they still have some need to be a part of the actions that occur on their property.
Thank you, Mr. Speaker. I give you an example and that is if they are not liable, then what happens when the property is to be mitigated and who does that and what if the people don't want to give access for the property, being mitigated or tested prior to transfers to somebody else?

SPEAKER RITTER:

Representative San Angelo.

REP. SAN ANGELO: (131st)

Thank you, Mr. Speaker. A question through you to the proponent of the amendment, please?

SPEAKER RITTER:

Please proceed, Sir.

REP. SAN ANGELO: (131st)

Representative Tulisano, what would stop a town from purchasing a large block of land if they thought it might be polluted, but there was no testing done on it? Would they town be liable if they purchased that piece of land?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

They would be innocent landowners by definition in the proposed law, not the law as it exists today.

SPEAKER RITTER:

Okay. Now, Representative Wasserman, would you mind one more time, yielding to Representative San Angelo so he has the floor so he can continue his thought and then we will go back to you?

Representative San Angelo, do you accept the yield, Sir?

REP. SAN ANGELO: (131st)

Yeah. Again, through you then, so the current landowner, the landowner that sold the land would still be liable for it or not?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. Yes and under the Star decision we are talking about, it says that they are continually liable, the person who caused the pollution.

SPEAKER RITTER:

Representative San Angelo.

REP. SAN ANGELO: (131st)

I want to see if I am correct here. Through you, Mr. Speaker, so what would happen is if a town purchased that piece of land, the State would clean it up and then the State would have to go back and sue the original landowner?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. What would happen is the State would have a lien on the land, should it ever get sold to be recompensated, but also, you could go after, and I think the State probably would, go after also, the original polluters of the land. The problem obviously is, are they available, can you find them.

Yes, they have that right.

REP. SAN ANGELO: (131st)

Okay. Thank you, Mr. Speaker.

SPEAKER RITTER:

Thank you, Sir. Representative Wasserman, the patient Representative Wasserman. You have the floor, Madam.

REP. WASSERMAN: (106th)

Thank you, Mr. Speaker. Through you, Mr. Speaker to the proponent, Mr. Tulisano.

SPEAKER RITTER:

Representative Tulisano.

REP. WASSERMAN: (106th)

Representative Tulisano, in academic terms, what would we be doing to the concept of strict liability, as I understand it?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. Strict liability as I used to understand it used to mean the person who caused the pollution is strictly liable for the clean up costs. What happened when we wrote our first law

in 19-- whenever we did it, we also said, strict liability as Representative Belden has alluded to, applied to who ever owns the land, not just the cause of it. I objected that time and was told that that was the federal law as Representative Belden thinks it is. However, from testimony elicited today, not today, in this session, the Commissioner of DEP testified that in fact ever since 1986, the innocent landowner exception always existed in law. We were somewhat led astray in the past. That in fact, the federal law has that exception. In fact, that exception had been noticed by the courts of Connecticut and have indicated, before you go after, you have to go after the causes of the pollution who have strict liability and they sort of recognized it, but the invitation was there for us to clarify this whole area. As I indicated when I spoke the dialogue with Representative Ward.

REP. WASSERMAN: (106th)

Thank you, Mr. Speaker. Through you, Mr. Speaker, if I may? One more question.

SPEAKER RITTER:

Please proceed, Madam.

REP. WASSERMAN: (106th)

I don't see any reference to it. Is there a mention somewhere of flooding as a source of ...it is a kind of pollution. I don't see it mentioned anywhere. Is the intent that it does cover flooding? For

instance, if a dam breaks, the damage to the downstream owners, that kind of flooding?

REP. TULISANO: (29th)

Through you, Mr. Speaker. I don't think flooding is involved in this whole area of pollution. Do you mean if they brought some contamination from a river? Through you, Mr. Speaker.

REP. WASSERMAN: (106th)

Thank you.

DEPUTY SPEAKER PUDLIN:

Representative Angelo Fusco.

REP. FUSCO: (81st)

Thank you, Mr. Speaker. A question to the proponent, through you.

DEPUTY SPEAKER PUDLIN:

Frame your question, Sir.

REP. FUSCO: (81st)

Through you, Mr. Speaker. Representative Tulisano, if I could give you a hypothetical case, I would appreciate your best answer. I know the answer might be hypothetical, but I think I have a similar situation in my district and I don't want to be specific about the case.

Through you, Mr. Speaker, Representative Tulisano, if a person owned land adjacent to a federal super fund site, and that land is contaminated to what extent is not known, but there is evidence that the land is contaminated and the person who owns it dies and leaves in their will that land to another person who is aware that there is some pollution, who is aware that there is some pollution on the site, but doesn't know what they are really getting into or what they have inherited. Would this give them certain protection? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano. Do you care to respond, Sir?

REP. TULISANO: (29th)

I care to Mr. Speaker, but I am trying to think.

Generally speaking, that is the area who we are trying to protect. The hooker is of course, he might have know, there might have been some pollution and the amendment includes some language to the effect that he might have been involved in it and I am not so sure if he doesn't have some obligation, at least to being to clean that, but I don't think he is still personally liable.

REP. FUSCO: (81st)

Through you, Mr. Speaker. Then I would take that a little further, if I could and ask if the person knew that the land that they inherited had some contamination, really doesn't understand the extent or the environmental issue, but they inherited it and they weren't involved in the contamination, this would give them some protection?

REP. TULISANO: (29th)

Through you, Mr. Speaker. That is what it is designed to protect.

DEPUTY SPEAKER PUDLIN:

Representative Fusco.

REP. FUSCO: (81st)

If the inheritance took place, prior to the passage of this act, would they still be covered? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. The amendment includes spills that occur prior or after this act and there has been no final litigation in it and you will recall our dialogue with Representative Ward, then there would be some protection.

REP. FUSCO: (81st)

Thank you.

DEPUTY SPEAKER PUDLIN:

Representative Farr.

REP. FARR: (19th)

Yes, just to clarify some questions. I think some comments that were made by Representative Belden, so the Chamber understands.

What we are talking about here is a situation - somebody inherits property. At the present time, you inherit property, you get a million dollar piece of property, you've got a windfall and then it turns around and DEP comes in and says, guess what. It is going to cost \$3 million to clean it up and you owe \$2 million. That is what the present law says. What this amendment and what this bill is attempting to say is that if you inherit a one million dollar piece of property, you didn't contaminate it, you didn't know it was dirty, you get it, DEP comes in and says, guess what, it's dirty, it is going to cost \$3 million. They can put a lien on it. They can take the property.

So you lose the property, but they don't come after you personally over and above it and that is what the amendment and the bill are all about. It is relieving personal liability for people, from pollution that they didn't cause. It doesn't mean they don't lose the property, but at least they don't have to have personal liability over and above the property.

And I think that is what we are trying to get at here and that is why we want to make it for properties that are already out there because there are innocent people who didn't realize someone else had contaminated it prior to that.

I would support the amendment and the bill.

DEPUTY SPEAKER PUDLIN:

Representative Miller.

REP. MILLER: (122nd)

Thank you, Mr. Speaker. A quick question to the proponent.

DEPUTY SPEAKER PUDLIN:

Please proceed.

REP. MILLER: (122nd)

If I had a parcel that was worth \$50,000 and the cost to mitigate the property was \$100,000 and I thought the best idea for me to get away from any liability would be to file bankruptcy, would those laws protect me?

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I am not sure. If there is already a mortgage on the property and they went bankrupt and the mortgagee had to take back the property, they are already protected in the law.

For trustee in bankruptcy who takes it, the trustee would be an innocent landowner. If he took his trustee, but the land itself, the value of the land, would go to clean-up, if it was only worth \$50,000. But remember, if it was \$50,000 dirty, it maybe worth more once you clean it up to the closer the cost. I don't know if I answered the full question or if there was another. At least those two I know about.

REP. MILLER: (122nd)

Thank you. Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Wollenberg of the 21st.

REP. WOLLENBERG: (21st)

Yes, Mr. Speaker. I rise in support of this amendment and just by way of a little history. We had the super lien bill here a few years ago and at the time, we discussed some of these very issues and included some of these very issues in the super lien that was where someone did own property. It was found to be dirty. The law that was passed in the dark in the corner in the middle of one night the year before, was not recognized until October of the following year when banks had to deal with it. Banks refused to put on mortgages because they would be liable under the super lien bill and everything came to a halt. We did change that at that time. We limited liability on banks and we also limited liability on people who owned the land to the land itself, if they were not the polluter.

Now, if they were the polluter, it was a different case, but in that case, if someone bought the corner, it used to be a gas station and then found out it was polluted, all under the super lien, which was another type of recovery for the State, in these polluted areas, they would only recover that property, the value of that property. They couldn't recover the person's home and so on. There was no personal liability and we limited it at that time.

This just extends it. It is another circumstance and we are just extending it.

Thank you.

DEPUTY SPEAKER PUDLIN:

Thank you, Sir.

Representative Knierim.

REP. KNIERIM: (16th)

Thank you, Mr. Speaker. Through you, a question to the proponent of the amendment?

DEPUTY SPEAKER PUDLIN:

Frame your question, Sir.

REP. KNIERIM: (16th)

Thank you, Mr. Speaker. Through you to Representative Tulisano, I am interested in the language beginning on line 30 of the amendment and my question is whether the language is intended to affect in any way, contractual rights between parties? The reference here is to actions and presumably, that means a state initiated action for collection of costs, but if the parties in a transaction have made provision for the payment of remediation expenses, would they be, in any way, affected? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Just let me pull the file copy and put the amendment together for a second. Thank you.

DEPUTY SPEAKER PUDLIN:

Indulgence of the Chamber for a moment, please.

REP. TULISANO: (29th)

Through you, Mr. Speaker. As is clear when you read them together, this is all new language. It is Subsection D dealing with innocent landowner situations and the liability of the parties involved and how. I think you have to read this section within that which I think Representative Knierim identified as the obligations of the landowner and whether or not they have to pay costs and that kind of an action. I don't believe, when you are taking the context of the file copy and this, that it goes to a third party, contractual relations, people had a contract to do something like a clean-up company of some sort. It doesn't go there at all.

I think that is clear when you read it where it falls in the file copy.

DEPUTY SPEAKER PUDLIN:

Representative Knierim.

REP. KNIERIM: (16th)

Thank you, Mr. Speaker. Just to be a bit more specific in the question, I think that addresses my concern, but to be more specific, let's suppose that an individual sells a piece of property to someone, steps are taken, commercially reasonable steps are taken to investigate whether there are some environmental problems known are discovered, but the parties, nonetheless, in their deed or in their contracts that survive the deed, provide specifically that the buyer is going to pay for any costs for remediation. Is it the case, through you, Mr. Speaker?

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I think that would still be a valid contract. The relationship in here deals with between the State and the individual.

REP. KNIERIM: (16th)

Thank you, very much.

DEPUTY SPEAKER PUDLIN:

Will you remark further on House "A"? Will you remark? If not, let me try your minds. All those in favor of House "A", signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER PUDLIN:

Contrary minded, signify Nay.

The ayes have it. The amendment is adopted. Will you remark further on the bill? Will you remark?

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. The Clerk has an amendment, LCO7418. May he please call and may I request leave of the Chamber to summarize?

DEPUTY SPEAKER PUDLIN:

Will the Clerk please call LCO7418, House "B"?

CLERK:

LCO7418, House "B" offered by Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Yes. Mr. Speaker, this amendment would take the limited landowner defense to its logical conclusion.

It would change lines 71 through 74 of the existing bill and shall say that the interest of the state in a lien against contaminated property would be only to the extent that the interest is unencumbered by a mortgage or other lien on the property and that the innocent landowner would be liable only for his equity in the property and not for that covered by an incumbrance.

I move adoption.

DEPUTY SPEAKER PUDLIN:

Will you remark further, Sir.

REP. RADCLIFFE: (123rd)

Yes. Mr. Speaker, this particular amendment, as I indicated is the logical extension of what we are attempting to do here with the innocent landowner defense

The innocent landowner is by definition innocent, a stranger to the pollution, as it were. Not one who caused the condition although he or she now owns land and this could also be a corporation, owns land that is subject to pollution and therefore, subject to the legitimate public policy interest in cleaning that pollution.

But we want to encourage land to be transferred.

We want to encourage people to begin businesses on

commercial property to perhaps buy that property, to take a mortgage on that property, in order to finance and enhance capitol development and other activity.

At present, if an individual files a mortgage on that property, the innocent landowner, for example takes a mortgage on a piece of property, the State might have a lien up to the total value of the property.

Now, as was discussed earlier in debate, the State cannot, under any circumstances, attempt to satisfy that lien out of the personal assets of the individual who owns the property or the corporation or the partnership or other entities. What can be done, however, is that the lien can be foreclosed and at the time of the foreclosure, the lending institution, although no longer having a security interest, could enforce its note or its underlying obligation against the innocent landowner.

So, in effect, we defeat the purpose of a portion of this act. We defeat the purpose of this act because the innocent landowner is forced to pay for the clean up, although not directly to the State, out of the proceeds of what amounts to an attempt to enforce a note on property other than the property which is subject to the pollution.

A mortgage is usually guaranteed in two ways. One, by an incumbrance on the property and secondly, by a promissory note, signed by the individual to be discharged.

Even if the bank can't enforce the mortgage against the property in question, there is nothing to prevent an existing law that I know of from the lending institution attempting to enforce that obligation in a suit for which a prejudgment remedy was presumably would be appropriate against the other landowner. So therefore, what this says is you are truly innocent as a landowner, if you had nothing to do with the pollution, if you didn't know or have reason to know of any incumbrance on that particular property, then we are going to hold you truly harmless, not only for anything other than the equity in this property, which you bought is a legitimate risk, but also from a subsequent action by a third party. Thank you.

DEPUTY SPEAKER PUDLIN:

Representative Farr.

REP. FARR: (19th)

Through you, Mr. Speaker to Representative Radcliffe. Representative Radcliffe, my only, my major concern with this amendment is, does this cause any inconsistency with federal law? Is this going to make our act not consistent with federal law, therefore, not giving the protection the underlying bill would do? Through you, Mr. Speaker to Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. I am not sure whether or not there would be an inconsistency with federal law. I know that there has been an inconsistency with regard to the innocent landowner defense and that of course, is the reason for the underlying bill, that particular inconsistency.

Through you, Mr. Speaker.

REP. FARR: (19th)

Through you, Mr. Speaker to Representative Radcliffe.

Under this language, if the innocent landowner had a \$1 million piece of property and then subsequently, to buying it, put a \$900,000 mortgage on the property, does this language say that he is only liable to the equity after - above the \$900,000?

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. That is correct provided that he was a truly innocent landowner at the time. If there were an incumbrance which were placed on the property, subsequent to the purchase and the landowner had known or had reason to know at that time, under existing state and federal law, that the property was contaminated, then he would not truly be an innocent landowner to the extent that he had relinquished the interest in land to the lending institution to the extent of the security interest.

Through you, Mr. Speaker.

REP. FARR: (19th)

Through you, Mr. Speaker to Representative Radcliffe. I am a little bit confused then. The \$900,000 lien by the lending institution, does the lending institution now lose their \$900,000 lien as well or are they protected under other law because they are a lender? Are they able to claim the \$900,000?

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. I believe they would be protected under other law and in the event that the landowner was not a truly innocent landowner, would also preserve remedies under the negotiable instrument, the note, and if their lien on the property would then become secondary to the so-called super lien.

Through you, Mr. Speaker.

REP. FARR: (19th)

Thank you, Mr. Speaker. Thank you, Representative Radcliffe. I think I am very concerned about this amendment. The underlying bill is long overdue. I think the amendment, as I understand it, would allow an innocent landowner to acquire the property, let's say for one million dollars, then put a million dollar mortgage on it, in affect, getting his money out of the property and then wouldn't be liable.

I think the amendment goes further than we had intended. I am concerned it may make some problems with the underlying bill.

Thank you.

DEPUTY SPEAKER PUDLIN:

Thank you. Will you remark further on House "B"? Representative Radcliffe.

REP. RADCLIFFE: (123rd)

For the second time, Mr. Speaker. Mr. Speaker, I think what we have here are two public policies which are to a certain extent, in conflict with one another. One, it is the public policy to insure that pollution which may be decades old in this State, which may have occurred at a time when the means of that pollution really was, affect rather of the use of that land was really unknown to the landowner, has had its affects and ramifications for clean-up, far beyond what could have been anticipated by the original owners. And that ought to be abated and the property put in condition where it can be used in a suitable fashion. That is one public policy.

The other public policy, however, is to encourage individuals to take over a piece of property, take over a business, which could be subject to something like this which they would have no way of knowing. Would have no way of knowing by an examination of the land records, would have absolutely no way of knowing when they purchased the property and most properties, at least most properties commercial properties, when they are purchased, involve the financing of that property to a third party. You are going to have a third party who is involved, that third party, the lending institution, is already protected under state law as we have said.

But what of the individual who is taking the risk?

Yes, under the underlying file copy, which is long overdue, which deals with the Star case and we can discuss that after the amendment has been dispensed with, the innocent landowner is only to be liable up to the value of the property. Not to the total cost of the clean-up.

But that property is usually encumbered. And even though the incumbrance may come second to the super lien, even though the bank would then be in a secondary position because of this lien, because of this lien which could in fact, be foreclosed, there is nothing that I know of in existing law and I stand to be corrected on this, but there is nothing that I know of in existing law which would say that that bank, that institution, could not take that security instrument and assuming that the obligor had other property, attempt to enforce that security interest in a law suit, attempt to enforce that security interest by means of an attachment on a prejudgment remedy, or otherwise and that is the reason for the existing bill. And the amendment, Mr. Speaker, I think it is consistent with the file copy and would urge adoption.

Thank you.

DEPUTY SPEAKER PUDLIN:

Thank you, Sir. Will you comment on "B"?
Representative Stratton.

REP. STRATTON: (17th)

Through you, Mr. Speaker a question to the
proponent of the amendment.

DEPUTY SPEAKER PUDLIN:

Ready, Representative Radcliffe.

REP. STRATTON: (17th)

Just very simply in that this amendment would
clearly involve someone assuming the liability for the
rest of the value of that property in terms of the
expense of cleaning it up if the owner's interest was
not sufficient to do that. I am wondering whether the
proponent has a fiscal note on this.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. I do have a fiscal note
and anticipating the next question, would be pleased
to share with the Chamber.

The fiscal note does indicate it limits the
landowner exposure and limits therefore, what the
State can recoup for the clean-up costs and therefore,
it would involve potential significant cost to the State
for cleanup contamination. It could also result in
savings to municipalities because municipalities and
municipal property is subject to the super lien.
There could be significant cost to the State, but
those were undetermined, according to the fiscal note
that I have.

Through you, Mr. Speaker.

REP. STRATTON: (17th)

Just in answer to that question while I think all
of us would love to be in a position to say that the
State of Connecticut would assume that kind of
liability for any contaminated properties in the State,
given the fact that we have no clear indications of
how significant that could be and I guess most of us
assume it could be very, very significant, I think that
it is clearly irresponsible for this Chamber to say that
we are going to absolve an innocent landowner of
that liability clean-up of property and let them recoup
the value of the that property when it is later sold
after the taxpayers of Connecticut have footed the bill
for that and would therefore, strongly oppose the
amendment.

DEPUTY SPEAKER PUDLIN:

Will you remark further on "B"? If not, let me try
your minds. All those in favor of House "B",
signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER PUDLIN:

Those opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER PUDLIN:

The nays clearly have it. The amendment is passed.

Will you remark further on the bill, as amended?

Representative O'Neill.

REP. O'NEILL: (69th)

Yes, Mr. Speaker. If I may, a couple of questions
to Representative Tulisano.

When we are talking about the situation involving
contamination of land, let's say we are talking about a
gasoline station and there has been a release of
gasoline on to that land and it travels away from that
land on to somebody else's land, perhaps
contaminating a well or something like that. The
people start to become aware of some problems with
their water. Would this, what is the level of
innocence in terms of knowledge that we are talking
about knew or should have known that the land is
contaminated if their tests start to show that their
water starts to be something that indicates there is a
problem with it? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. They have some
obligation even with the proposal before us to take
steps to alleviate any further contamination. They
probably could also go against the ...they have a civil
right of action against the person who is
contaminating their land to try to get them to clean it
up as presumably, the State would go against that
person if they notified them and that person has the
obligation of at least reimbursing them for their
clean-up.

DEPUTY SPEAKER PUDLIN:

Representative O'Neill.

REP. O'NEILL: (69th)

Thank you. What would be the level of a situation
where let's say there's a known contamination on a
piece of land with say a gas station across the street
from you and your next door neighbor says their well
is contaminated, they have a test from the State
showing contamination on one side and your
neighbor on the other side says he's got
contamination, but your well is tested and doesn't
show any of that benzine contamination, or whatever
the other substance was that might be in the water to
show that you've got a contaminated piece of land
now.

Are you able to say that you are innocent insofar
as you don't really know that your land is
contaminated, even though everyone around you
seems to be in that status? Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker, I think the amendment
says you have to take reasonable steps to check it out
and reasonably know you're not, so that would be I
think unreasonable and I don't think they can come

under innocence by trying to ignore facts that would lead them to a conclusion.

DEPUTY SPEAKER PUDLIN:

Representative O'Neill.

REP. O'NEILL: (69th)

Just one very last question here, then. So a person who knows that their neighbors are contaminated is under an obligation, then, to make some sort of an inquiry to do some testing to see if perhaps they are contaminated as well, in order to maintain their innocence hereunder. Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker, that's correct.

REP. O'NEILL: (69th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Will you remark further? Will you remark further on the bill as amended? If not, staff and guests to the well of the House. Members please be seated. The machine will be opened.

CLERK:

The House of Representatives is voting by roll. Members to the Chamber, please. Members to the Chamber, please. The House of Representatives is voting by roll call.

The House is voting by roll. Members to the Chamber please. Members to the Chamber please.

The House is voting by roll.

DEPUTY SPEAKER PUDLIN:

If all the members have voted and if your votes are properly recorded, the machine will be locked. The Clerk will take the tally.

CLERK:

Senate Bill 820 as amended by House "A".

Total number voting 141

Necessary for passage 71

Those voting yea 141

Those voting nay 0

Those absent and not voting 10

DEPUTY SPEAKER PUDLIN:

The bill as amended passes. The Clerk please return to the Call of the Calendar.

Section H: Senate Debate on Senate Bill 820 - June 8, 1993

1993 GENERAL ASSEMBLY
SENATE

TUESDAY
June 8, 1993

THE CLERK:
Calendar Page 12, Calendar No. 406, File No. 690,
Substitute for Senate Bill 820, AN ACT
ESTABLISHING AN
INNOCENT LANDOWNER DEFENSE IN
POLLUTION CASES. (As amended by Senate
Amendment Schedule "A" and House Amendment
Schedule "A").
Favorable Report of the Committee on
Appropriations.
The House rejected Senate Amendment Schedule "A"
on June 7th.

THE CHAIR:
The Chair would recognize Senator Jepsen.

SENATOR JEPSEN:
Thank you, Madam President. I move adoption of the
Joint Committee's Favorable Report and passage of
the bill in concurrence with the House.

THE CHAIR:
Thank you very much. Would you wish to remark
further?

SENATOR JEPSEN:
I would, thank you, Madam President. This is a
bill that we passed I believe unanimously or close to
unanimously a couple of weeks ago, sent it down to
the House, so there has been some discussion
between us and the House on certain technical
aspects of the bill and applicable dates, in particular,
with regard to fiduciaries and in the end we've
resolved to go with the House's version of the
technical questions and I would urge support for the
bill as amended by the House.

THE CHAIR:
Thank you very much. Would anybody else wish to
remark? Senator Kissel.

SENATOR KISSEL:
Madam President, I would move re-adoption of
Senate Amendment "A" regarding this bill.

THE CHAIR:
Thank you very much. You have a motion before you
by Senator Kissel to readopt Senate Amendment "A."
Senator Kissel, would you like to speak on your
motion?

SENATOR KISSEL:

Yes, Madam President. One of the things involved in
Senate Amendment "A" is a simple standard
regarding what would make up an innocent
landowner. What we're doing here, if you read the
legislative notes regarding this bill, is exposing the
State of Connecticut to potentially millions and
millions of dollars worth of liability.

Senate Amendment "A" makes sure that individuals
involved had knowledge or had the need to know
regarding a standard on whether they were innocent
or not innocent. By disallowing this amendment, it's
my understanding that that standard has been reduced
so that an individual could merely state, let's say in
the process of civil case, that they did not know and
the questioning would end with the bare assertion of
lack of knowledge. It's my firm belief that if we are
going to expose the State of Connecticut to
potentially millions and millions and millions of
dollars of liability to take care of these toxic waste
spills, contamination, environmental problems, that if
in a court of law can be indicated that an individual
had a reason to know if the line of inquiry could be
expanded so that if the person made the bare
assertion that they did not know that this land was
contaminated, that upon further questioning an
attorney could bring out that the individual had a
reason to know.

My reasoning for this is that by discouraging real
knowledge we almost encourage individuals to be
ignorant of the risks associated with certain parcels of
land and we don't want to do that. So by making the
standard somewhat more expansive, especially when
we're dealing with a situation which could expose the
State of Connecticut to millions and millions of
dollars of liability, we should have a higher standard,
not just bare knowledge or lack of knowledge, but
whether the person had a reason to know, whether
their spouse perhaps was engaged in a business that
involved chemicals or toxic wastes, whether the
individual may have been involved in a small,
privately held corporation and therefore had a reason
to know what was going on on the parcel of land, all
sorts of different possibilities.

It seems like a very fine point, but what I want to
do is allow the attorney that's involved in this case to
have a little freer reign before the State of
Connecticut says this individual may indeed assert
that they are innocent and therefore the state will
absolve them of some of their liability because, and

as we'll get into later on with the rest of this bill, it's my understanding that the state is giving up through this legislation an ability to go to that landowner for more than the value of the land and that landowner may indeed be a millionaire, may be a very wealthy corporation and I believe this applies to both individuals, corporate and personal.

So I think that's a big change and I don't think it's too much to ask that we readopt Senate "A".

Thank you, Madam President.

THE CHAIR:

Thank you very much. The Chair --.

SENATOR KISSEL:

And I would ask for a roll call on this, Madam President.

THE CHAIR:

Thank you very much. Senator Jepsen, on the motion to readopt, sir.

SENATOR JEPSEN:

I would oppose the motion to readopt. I would refer Senator Kissel to the House Amendment Schedule "A" that was adopted. It adopts exactly the same language, exactly the same standard in line 17 of having a reason to know that it was in Senate Amendment Schedule "A" that he would like us to adopt. To adopt Senate "A" would not only be redundant, it would send it back to the House and certain death, so apparently Senator Kissel has made a technical mistake in misreading the House Amendment. The House Amendment does exactly what he wants the Senate Amendment to do.

THE CHAIR:

Thank you very much. Would anybody else wish to remark on the motion to readopt Senate "A"? Are there any further remarks on the motion to readopt Senate "A" on Senate Calendar 406? Senator Kissel for the second time.

SENATOR KISSEL:

Thank you, Madam President. I would be happy if Senator Jepsen would be willing to just have this go P-T. If he can assure me with the amendment that the House passed before me and we can resolve this issue, I'd be happy, because my intent is not to tank this bill.

THE CHAIR:

Thank you very much. Senator Jepsen.

SENATOR JEPSEN:

What if I suggested the Chamber stand at ease momentarily. I think that we could resolve this very quickly.

THE CHAIR:

Thank you very much. The Chair will stand at ease..

THE CHAIR:

The Chair will recognize Senator Kissel. Have you and Senator Jepsen had your conversation?

SENATOR KISSEL:

Yes, Madam President, I have reviewed the House Amendment to this bill, House Amendment Schedule "A", and my concerns regarding Senate Schedule "A", which was rejected by the House, my concerns have been ameliorated, so with the President's permission, I would withdraw my motion to readopt Senate "A".

THE CHAIR:

Senator Kissel, you've got the Chair's permission to withdraw Senate "A", I mean your motion regarding the re-adoption of Senate "A". Senator Kissel has withdrawn his motion, so we now have in front of us Senate Calendar 406, Substitute for Senate Bill 820, with House Amendment "A" only and no more other motion regarding that. Senator Jepsen, do you wish to speak for the third time, if there's no objection? Go ahead, sir.

SENATOR JEPSEN:

Thank you, Madam President. Not to belabor it, this is a bill that passed, I believe on Consent recently. It is a good bill which protects innocent purchasers or owners of land limiting their liability on a cleanup to the value of the land that they own and it's a fair bill. It's taken a lot of work by a number of interested parties and I urge its adoption.

THE CHAIR:

Thank you very much. Would anybody else wish to remark? Senator Kissel, do you wish to remark?

SENATOR KISSEL:

Yes, Madam President, just through you, questions to the proponent and I understand this matter went forward on a previous Consent Calendar, but in being concerned about my amendments, I also have some further concerns about the bill that I think since it's before us, perhaps we could easily clear up. In the file there's a note that states very clearly that Section 2 of the bill makes an innocent landowner liable to the extent of his interest in the property under certain circumstances, but the language in Section 3 appears to conflict by leaving the innocent landowner free of any liability whatsoever. My concern to create a proper legislative history for this bill is which takes precedence, Section 2 or Section 3, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

It is my understanding that the state retains its Super Lien on the land. There's no intention in Section 3 to remove all liability from the landowner and that the intention of the legislation is to, however, to limit the landowner's liability -- the landowner's value in the land.

SENATOR KISSEL:

Through you, again, to the proponent.

THE CHAIR:

Yes, Senator Kissel.

SENATOR KISSEL:

Thank you. Is there any portion of this bill which is retroactive or is does this just take effect from the date of adoption? in other words, would this apply to any past cases that may be before the courts at this time, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

Thank you, Madam President. Please excuse the delay, with the assistance of able counsel. This Section D of House Amendment Schedule "A" makes clear that this would apply to any action in court that has not reached a -- where action is not final and is not subject to an appeal.

So it's the opinion of -- aha, through you, Madam President, so this law now applies to the Starr vs. Commissioner Case, which is pending before the State Supreme Court? Is that my understanding, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

I'm not familiar with the specifics of that case, but if what you say is true and action is not final, it would appear to apply.

SENATOR KISSEL:

And through you, Madam President, that part of the House Amendment is new to this bill, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

I believe it clarifies what we intended to do throughout the tortuous road of bringing this legislation before us now.

SENATOR KISSEL:

So, again, through you, Madam President, it is retroactive. It applies to any case that's pending in the court system at this time as long as it hasn't reached a final determination, and as an addendum to that, through you, Madam President, I'm to assume that an appeal before the State Supreme Court is not considered a final determination, through you, Madam President.

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

That is my understanding, but that's not what I'm here to judge. Retroactivity is a relative question. If it's not retroactive relative to actions that it has not reached a final action, it is retroactive relative to actions that have already commenced.

SENATOR KISSEL:

And through you, Madam President, as a Point of Clarification regarding this bill, it says that the state's liability would be limited, or the individual's liability, the innocent landowner's liability would be limited to the extent of the value of the land that is being cleaned up and my question, through you, Madam President, is if the state does not file a lien against that land, but clearly had a right so to do, could the state file a lien against other land the landowner may have to the value of the land that may have been sold or encumbered in some other way before the state asserted its right against that original land, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

It's my understanding that the Super Lien is on the contaminated land alone.

SENATOR KISSEL:

Through you, Madam President, regarding the case that may be before the State Supreme Court at this time, then it would be advantageous for the state to file a lien against that land to the full extent of the value of the land if it appears that cleanup costs might exceed the value of that land, through you, Madam President.

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

It's not my position to judge what would be to the state's advantage in that situation.

SENATOR KISSEL:

So, again, through you, Madam President, if the state fails to file a lien against the land, then any rights by the "innocent land --" any liability of the innocent landowner is cut off? Through you, Madam President, the state's only recourse is to that contaminated land and that alone, through you, Madam President.

THE CHAIR:

That is correct.

SENATOR KISSEL:

And, through you, Madam President, for individuals that inherit property, is it correct to interpret that this bill, without an inquiry as to whether they knew or reasonably knew of the existence of contamination, that if they acquire the land through inheritance, they are immediately placed in the class of innocent landowner despite any knowledge or reasonableness of their lack of knowledge that may exist, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

If they're already liable for acts they may have committed, they would have remained liable. You

cannot cleanse them of that, but apart from that exception, that would be correct.

SENATOR KISSEL:

Can I, as a Point of Inquiry, through you, Madam President, why? Why are we absolving people who acquire the land through inheritance? Why are we not asking whether they knew or had a reasonable belief of lack of knowledge? Why are they being targeted as a class to be immediately made innocent landowners, through you, Madam President?

SENATOR JEPSEN:

Number one, it conforms with the federal law, and number two, if you think it through, that would be quite a treat to inherit a piece of polluted land from Uncle Bill and find that the -- let's say it was worth a million bucks and there was a \$2 million liability for cleanup and what you would in fact inherit, as what Senator Kissel has suggested, is that you would inherit not only the million dollars of land, but the \$2 million in cleanup costs. I'm not sure that that's correct. That's a nice present from Uncle Bill.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

This is by way of a statement, no further questions to the proponent. I realize that this went through this body once before very quickly on a Consent Calendar and I appreciate the fact that it's found its way back up here. I also want everyone to realize that the House Amendment very clearly makes this legislation apply to a pending legal case as noted in the file note, which case, the Starr vs.

Commissioners, CV910398162, which is a matter pending in, having to do with land in my hometown of Enfield. I don't have a fundamental problem with absolving innocent landowners and as a principle to guide us, I think protecting various assets of a truly innocent landowner from this type of exposure to liability is good public policy. Nonetheless, what we should all realize when we pass this legislation is that the state heretofore will be in a position, which it was my understanding that the Commissioner of the Department of Environmental Protection had objected to because in the file noted, it clearly indicates that the potential passage of the legislation would limit the liability of innocent landowners and the potential costs to the state would be in the tens of thousands to multi-millions of dollars for each potential site for remediation.

So by this small piece of legislation, which clearly doesn't have a lot of attention, the state could be opening itself up for multiple millions of dollars of liability. As long as everybody is aware of that, I don't have a problem and I think the case that pulls at our heartstrings is the individual that gains land by inheritance, but I think we should pay close

attention to this legislation as it is utilized in the court system, particularly by individuals that may be involved in corporations, either closely held corporations or larger corporations because when we get to the issue of cleaning up toxic waste spills, clearly, with the push for environmental reforms, our State of Connecticut could be looking at a major burden on its state budget, but given all the assurances that have been given to me by the proponent, Senator Jepsen,

I will support this bill. Thank you, Madam President.

THE CHAIR:

Thank you, Senator Kissel. Would anybody else wish to remark? Are there any further remarks on Senate Calendar 406? Are there any further remarks?

Senator Jepsen, if there is no objection, would you like to place this item on the Consent Calendar?

SENATOR JEPSEN:

I so move.

THE CHAIR:

Thank you very much. Is there any objection to placing Senate Calendar 406, Substitute for Senate Bill 820, on the Consent Calendar? Yes, there is an objection. Senator Kissel.

SENATOR KISSEL:

Yes, Madam President, I'd like to have this go on roll.

THE CHAIR:

Okay. Thank you very much. Mr. Clerk, would you please make the necessary announcement for a roll call vote. Wait a minute. A roll call on Calendar 406.

THE CLERK:

An immediate roll call has been requested in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Thank you very much, Mr. Clerk. The issue before the Chamber is Senate Calendar 406, Substitute for Senate Bill No. 820 with House Amendment "A" only. The machine is on. You may record your vote. Have all Senators voted and are your votes properly recorded? The machine is closed.

The result of the vote:

32 Yea

4 Nay

0 Absent

The Bill Passes.

Section I: Public Act No. 93-375

Substitute Senate Bill No. 820

AN ACT ESTABLISHING AN INNOCENT LANDOWNER DEFENSE IN POLLUTION CASES.

Section 1. (NEW) As used in this section, section 2 of this act and section 22a-433 of the general statutes, as amended by section 3 of this act:

(1) "Innocent landowner" means: (A) A person holding an interest in real estate, other than a security interest, that, while owned by that person, is subject to a spill or discharge if the spill or discharge is caused solely by any one of or any combination of the following: (i) An act of God; (ii) an act of war; (iii) an act or omission of a third party other than an employee, agent or lessee of the landowner or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the landowner, unless there was a reasonably foreseeable threat of pollution or the landowner knew or had reason to know of the act or omission and failed to take reasonable steps to prevent the spill or discharge, or (iv) an act or omission occurring in connection with a contractual arrangement arising from a published tariff and acceptance for carriage by a common carrier by rail, unless the landowner knew of the act or omission and failed to take reasonable steps to prevent the spill or discharge; or (B) A person who acquires an interest in real estate, other than a security interest, after the date of a spill or discharge if the person is not otherwise liable for the spill or discharge as the result of actions taken before the acquisition and, at the time of acquisition, the person (i) does not know and has no reason to know of the spill or discharge, and inquires, consistent with good commercial or customary practices, into the previous uses of the property; (ii) is a government entity; (iii) acquires the interest in real estate by inheritance or bequest; or (iv) acquires the interest in real estate as an executor or administrator of a decedent's estate or as a trustee that receives the interest in real estate from a decedent's estate, provided such decedent was the person holding the interest in real estate.

(2) "Discharge" means a discharge causing pollution, as those terms are defined in section 22a-423 of the general statutes.

(3) "Spill" means a spill as defined in section 22a-452c of the general statutes.

Sec. 2. (NEW) (a) An innocent landowner holding or acquiring an interest in real estate that has been subjected to a spill or discharge shall not be liable, except through imposition of a lien against that real estate under section 22a-452a of the general statutes, for any assessment, fine or other costs imposed by the state for the containment, removal or mitigation of such spill or discharge. A person claiming immunity under this subsection must establish that he is an innocent landowner by a preponderance of the evidence. In determining whether a person is an innocent landowner, a court may take into account any specialized knowledge or experience of the person, the relationship of the consideration paid for the interest in the real estate to the value

of such interest if the real estate were not polluted, commonly known or reasonably ascertainable information about the real estate, the obviousness of the presence or likely presence of the spill or discharge, and the ability to detect such spill or discharge by appropriate inspection. (b) Notwithstanding the provisions of subsection (a) of this section: (1) Any amount paid by the commissioner of environmental protection pursuant to subsection (b) of section 22a-451 of the general statutes to contain, remove or mitigate the effects of the spill or discharge shall be a lien against the real estate to the extent of the interest of the innocent landowner therein as provided by section 22a-452a of the general statutes, and (2) any person, including an innocent landowner, who sells an interest in real estate that has been subjected to a spill or discharge shall be liable, to the extent of the net proceeds of such sale, for the costs of containing, removing or mitigating the effects of such spill or discharge. For the purposes of this subsection, "net proceeds" means proceeds received by the person after payment of the reasonable expenses of the sale and satisfaction of all debts secured by any security interests. (c) The liability of a person holding a security interest in real estate who acquires title to the real estate by virtue of a foreclosure or tender of a deed in lieu of foreclosure shall be limited as provided in section 22a-452b of the general statutes. (d) This section shall apply to any spill or discharge which occurred before or after the effective date of this act, except that it shall not affect any enforcement or cost recovery action if such action has become final, and is no longer subject to appeal, prior to the effective date of this act.

Sec. 3. Section 22a-433 of the general statutes is repealed and the following is substituted in lieu thereof: Whenever the commissioner issues an order to abate pollution to any person pursuant to the provisions of section 22a-430 or 22a-431, an order to correct potential sources of pollution pursuant to the provisions of section 22a-432 or an order to correct a violation of hazardous waste regulations pursuant to section 22a-449 and the commissioner finds that such person is not the owner of the land from which such source of pollution or potential source of pollution emanates, he may issue a like order to the owner of such land or shall send a certified copy of such order, by certified mail, return receipt requested, to the owner at his last-known post-office address, with a notice that such order will be filed on the land records in the town wherein the land is located. When the commissioner issues such an order to an owner, the owner and the person causing such pollution shall be jointly and severally responsible. Any owner to whom such an order is issued or who receives a certified copy of an order pursuant to this section shall be entitled to all notices of, and rights to participate in, any proceedings before or orders of the commissioner and to such hearing and rights of appeal as are provided for in sections 22a-436 and 22a-437. AN INNOCENT LANDOWNER, AS DEFINED IN SECTION 1 OF THIS ACT, SHALL NOT BE HELD LIABLE EXCEPT THROUGH IMPOSITION OF A LIEN AGAINST THE CONTAMINATED REAL ESTATE UNDER SECTION 22a-452a, FOR ANY ASSESSMENT, FINE OR OTHER COSTS IMPOSED BY THE STATE UNDER THIS SECTION IN ANY ENFORCEMENT OR COST RECOVERY ACTION IF SUCH ACTION HAS BECOME FINAL, AND IS NO LONGER SUBJECT TO APPEAL, PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

Sec. 4. This act shall take effect from its passage.

Approved June 30, 1993

Section J: Office of Legislative Research Report on Public Act 93-375

SUMMARY

PA 93-375 places limits on the liability a so-called "innocent landowner" would have to clean-up polluted land. This protection would apply if the pollution were caused by acts of God or by third parties when the owner inherited the property or otherwise had no way of knowing about the pollution. Federal law also has provisions that limit the liability of landowners. There are differences in wording between federal law and Connecticut's act, but it is difficult to clearly discern the differences in the legal effect of the two laws. In general, Connecticut's law may provide less protection for any particular individual, but it is probably easier to qualify as an innocent landowner under Connecticut's law than under federal law.

The Department of Environmental Protection believes PA 93-375 may effectively terminate Connecticut's Super Lien provision and that in some cases it might protect at-fault landowners. The commissioner is also concerned that the state will not be able to pay for cleanups of all polluted properties where the landowner has no, or very limited, liability.

PA 93-375

This act limits innocent landowners with polluted property from liability to the state for assessments, fines, and other costs imposed for cleanup. Liability is limited to reimbursing the state for cleanup costs incurred to the extent of the landowner's interest in the property, if the amount of the state's expenditure is a lien on the property handled in accordance with a procedure available by law. The limitation on liability applies to spills or discharges, whether they occurred before or after passage of the act, but does not affect actions that are final and no longer appealable after that date.

The landowner must establish his innocence by a preponderance of the evidence. In determining innocence, a court may take into account his specialized knowledge or experience; the amount paid for the property as it relates to what the value would be if it were not polluted; commonly known or readily available information; the obviousness of the presence or likely presence of the pollution; and the ability to detect pollution by inspection.

The act makes any person who sells an interest in contaminated real estate, regardless of whether the state has spent money to clean the site, liable up to the net sale proceeds for the cost of cleanup. Net proceeds are the amount received by a person after paying reasonable expenses and satisfying security interests (such as a mortgage).

Under the law, unchanged by the bill, secured lenders acquiring title by foreclosure or tender of a deed in lieu of foreclosure have liability limited to the value of the real estate if the spill occurred before acquisition of title.

The law allows the Department of Environmental Protection (DEP) to issue an order to abate water pollution or correct a hazardous waste violation to a landowner whenever the department is also issuing an order to the person who caused the pollution. The act exempts innocent landowners from liability for any assessment, fine, or other costs imposed by the state under this law, except through imposition of a lien on the property for reimbursement of state cleanup costs.

Innocent landowners under the act are of two types. First, those with an interest in property which is contaminated while owned by them. Second, those who acquire property after the contamination and who have not caused the pollution. The term does not apply to secured lenders.

In the first case, a landowner is innocent if the pollution is caused by: (1) an act of God; (2) an act of war; (3) an act or omission of a third party who is not an employee, agent, lessee, or in a direct or indirect contractual relationship with the landowner; or (4) an act or omission occurring in connection with a contract arising from a published rail transportation tariff. In the case of an act or omission of a third party, the landowner is not innocent if he had knowledge, or had reason to know, and failed to take reasonable steps to prevent the pollution or there was a reasonably foreseeable threat of pollution. But in the case of an act or omission of a third party occurring in connection with a rail transportation contract, the landowner is not innocent if he had knowledge and failed to take reasonable steps.

A person who acquires land after contamination is considered innocent if he (1) has no knowledge of the contamination and inquires into previous uses of the property consistent with good commercial or customary practice, (2) is a government entity, (3) acquires the property by inheritance or bequest, or (4) acquires the interest as executor or administrator of a decedent's estate or as trustee receiving the real estate interest from a decedent's estate if the decedent had held the interest in the real estate.

Section K: Hartford Courant Newspaper Articles on Starr Case

The Hartford Courant

Courts beef up state's clout against polluters

Courts beef up authority of state in pollution cases

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by DANIEL P. JONES

Courant Environment Writer

December 18, 1993

Section: Main Section Length: 1478 words

Record Number: 472

Connecticut courts appear to be getting tougher when it comes to protecting the environment.

Several recent court decisions, environmental law experts say, have strengthened or reinforced the state's authority in dealing with polluters.

The rulings, including three state Supreme Court decisions earlier this year, have favored the State Department of Environmental Protection and the state attorney general's office in disputes with businesses and landowners when significant environmental issues were at stake in civil cases.

On a practical level, the trend means environmental offenders could expect higher fines and a more difficult time in court when trying to defend themselves. But some observers also wonder whether the trend could hurt efforts to revive the state's economy.

The courts, the experts say, are showing greater sensitivity to environmental concerns and are reflecting widespread public support for state policies that favor goals such as preserving wetlands, cleaning the air and the state's rivers and taking illegal dumpers to task.

"The courts do not follow the election returns, but judges can't help but heed the growing scientific evidence about the threat to natural resources that is posed by certain kinds of practices or pollution," said Attorney General Richard Blumenthal.

Environmentalists are pleased, while lawyers who usually represent industries in the state have raised concerns.

"I've obviously been watching the cases," said Elizabeth C. Barton, a lawyer with the Hartford firm of Updike, Kelly & Spellacy, who specializes in environmental law.

"When you read those cases, and read some of the language, you can't help but be concerned about what those decisions might portend for permittees or clients," she said.

Thomas F. Harrison, a lawyer who is co-chairman of the environmental practice group at Day, Berry & Howard in Hartford, the state's largest law firm, said he would call the string of recent cases strengthening the hand of state environmental officials a mini-trend.

"I don't know how long it will last but it's certainly there now," he said.

The decisions receiving the attention include a Supreme Court ruling in July, in which the justices sided with the state Department of Environmental Protection and said a landowner, Susan S. Starr of Enfield, could be held liable for pollution on her land even though she did not cause the pollution.

Starr inherited the polluted land as part of her late husband's estate. The Supreme Court reversed a Superior Court decision that said the DEP should have tried to force Starr to pay for the cleanup only as a last resort because of the possible Draconian result of making an innocent

landowner pay more for the cleanup than the value of the land.

Less than a week before the Supreme Court issued its opinion in the Starr case, Gov. Lowell P. Weicker Jr. signed a state law meant to shield landowners from being held liable for cleaning up pollution they did not cause.

But to be protected under the new law, owners of property must not be aware of the existing pollution when they acquire the property. The state's ability to hold innocent landowners liable remains partly intact, and some environmental law experts argue that the Supreme Court in the Starr case has made it clear that an innocent-landowner defense will be construed narrowly.

Another Supreme Court ruling in August said the owners of a wrecking company did not have a right to a jury trial when contesting civil penalties imposed under state environmental laws meant to prevent the illegal dumping of waste, destruction of wetlands and water pollution violations.

Chief Justice Ellen Peters wrote the majority opinion and said that the owners, Gino and Russell Capozziello, were properly fined \$162,750 --the total of \$250 a day for 651 days, the time that waste was illegally deposited in a wetland in Bridgeport.

In effect, the meter was running while the brothers argued in court that the fine should have been limited to the dumping itself. Peters relied on "a strong public policy in favor of protecting and preserving the natural resources, and particularly the wetlands, of this state," in concluding that fines should be assessed as long as a violation continues.

A Superior Court judge Friday sentenced Gino Capozziello to spend 52 weekends in jail in connection with the dumping in Bridgeport. Capozziello pleaded guilty in October to one count of operating a solid waste facility without a permit and 10 counts of altering a waste facility without a permit.

In July, the Supreme Court again gave deference to the environmental department's position, saying the state properly ordered a Farmington plastics processing company, Polymer Resources Ltd., to perform tests of chemical

emissions and determine the effectiveness of pollution-control devices at the plant.

Polymer had gone to Superior Court to get a restraining order barring the department from requiring the tests. The environmental department also had ordered the company to stop operating until the company's testing plans were approved.

Blumenthal, who personally argued the case before the court, said the Supreme Court decision in the case of the Polymer factory was important not only because of "the environmental damage it was doing to the health of the people in the area" but also because of the "very improper precedent that the trial court set on a public official seeking to enforce the law and protect public health."

Blumenthal said the case involved an important principle: whether those fighting the environmental department could forestall it from preventing pollution by going to court.

Blumenthal and environmental protection Commissioner Timothy R.E. Keeney had argued that Polymer should have gone through the administrative procedures set up at the environmental department before going to court.

The Supreme Court agreed and, in an opinion written by Justice Richard N. Palmer, reversed the Superior Court's decision that granted Polymer an injunction.

Keeney said the top court's decision lends credibility to the mechanisms established in the department for enforcing the rules. "They can't circumvent them," he said.

The experts also point to another Supreme Court decision in August, in which the court reversed a Superior Court ruling. That ruling had allowed a company to appeal a DEP denial of a permit to build a dam at Cargill Falls in Putnam, a landmark in town. The Supreme Court said the state's environmental commissioner was not required to hold a hearing on the denial of a permit for the dam.

Keeney attributes part of the department's success in recent court cases to a good working relationship with Blumenthal's office. Keeney is a Republican and a Weicker administration appointment.

Blumenthal, a Democrat, followed U.S. Sen. Joseph I. Lieberman in the attorney general's slot and he has continued Lieberman's policy of making environmental issues a priority.

He added three lawyers to the environmental staff in the past two years, bringing the number to 12.

Whether they view the trend in the court decisions as helping the state or hindering business, the experts agree that the environmental department's authority is increasingly being confirmed by the courts.

"It puts the focus on the department's ability to rely on its own interpretation of the law and the regulations," Keeney said.

Barton said she grouped together four recent court decisions, including the Starr case and the Polymer case, in a summary printed in the law firm's newsletter, because she saw courts and judges who "are willing to give the highest deference to DEP's exercise" of "very broad" laws and regulations set up by the General Assembly.

Often the limits of the agency's discretion are not defined, and that is a major source of the concern.

The trend, Barton said, could hamper efforts such as those of the state Department of Economic Development, to attract and keep businesses in Connecticut.

"It has to be a concern," she said.

Blumenthal, however, said that he is not convinced that the courts are uniformly adopting an environmentally minded approach. Moreover, he said, strong enforcement of environmental laws benefits businesses that abide by the rules.

The message that we have sought to send is that we are extremely sensitive to the needs and the financial pressures that are exerted in today's business environment," Blumenthal said.

"Those that do play by the rules will find that there is a level playing field, and we won't let their competitors who break those rules gain a competitive advantage."

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The Hartford Courant

Court rules against landowners in cleanup Landowners responsible for toxic cleanup, court rules

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by CHRISTOPHER KEATING Courant Staff Writer

July 7, 1993

Section: Main Section Length: 1034 words

Record Number: 243

In an important ruling for landowners and bankers, the state Supreme Court said Tuesday that property owners are responsible for cleaning up hazardous wastes on their land --even if they were not responsible for the contamination.

By a 6-1 vote, the court upheld the state Department of Environmental Protection's interpretation of the law that the current landowner is liable for any dumping by a previous owner or even an unknown dumper.

The ruling was made in an Enfield case, and its application was questioned Tuesday by lawyers for the landowner, Susan Starr.

Starr inherited contaminated property from her late husband in 1987. She filed a lawsuit to block the state's cleanup order by saying she was unaware of the dumping on the property in the 1960s.

Starr's lawyers say the Supreme Court's ruling Tuesday is irrelevant to their client because Gov. Lowell P. Weicker Jr. signed an innocent-landowner law last week. The attorneys claim the law applies retroactively to Starr. The new law limits the landowner's liability to the amount of equity in the property, which is generally far less than the millions of dollars needed to clean toxic sites.

State officials, meanwhile, are also confused by the eventual outcome.

"It's too early to say what the impact of the new law will be on this case," said Timothy Keeney, the DEP commissioner. "I just talked to the attorney general's office, and they don't have an answer, either. It's not that simple. The law is new and the [court's] decision is new."

But Thomas Tyler, one of Starr's attorneys, said he has no doubts that his client cannot be charged for the massive cleanup costs for her contaminated property. The state's new law, he says, overrides the decision by the Supreme Court.

"Who cares what happens with the Supreme Court case?" Tyler asked. "It's moot." Tyler said he will not even bother reading the Supreme Court's ruling. "I don't read fiction," he said. "I read facts."

Both Tyler and Kathleen Eldergill, another attorney for Starr, said the new innocent-landowner law became effective June 30 when Weicker signed the bill -- six days before the Supreme Court's ruling. But the legislature's research office says the new law will not become effective until Oct. 1.

On Tuesday, neither the governor's office nor the state attorney general could say whether the state Supreme Court decision applies to Starr.

Weicker's spokeswoman, Avice A. Meehan, said she would not comment on the court's decision. Bernard Kavalier, a spokesman for Attorney General Richard Blumenthal, said the attorney general's office would not comment until studying the decision further.

While the final resolution was still in dispute, the court's 36-page decision upheld a long-standing DEP policy that the current owner of any property is liable for the cleanup. The ruling overturned a decision last year by Superior Court Judge John Maloney in Hartford.

"We realize that our resolution of this appeal may result in the imposition of liability on the plaintiff for abating the pollution on her land, the cost of which may exceed the value of the land," said the court's ruling, written by Justice Robert J. Callahan. "That appears to be a draconian result that violates notions of fairness. We also recognize that there may be others who, without fault of their own, find themselves the owners of polluted real estate without their having created or caused the contamination."

In a rare request, the court signaled the importance of the case by asking environmental, real estate and banking experts to submit friend-of-the-court briefs two months after the oral arguments were completed. The Connecticut Bankers Association and The Banks' Association of Connecticut, along with the New England Legal Foundation, a non-profit group, all asked the court to avoid holding Starr liable. Briefs submitted by the Connecticut Bar Association's environmental and banking sections did not take positions, but they instead outlined the ramifications in the case.

Both sides have said the case would not be appealed to the U.S. Supreme Court because there are no federal issues involved.

In a sharp dissent, Justice Robert I. Berdon said the ruling will have a profound effect across the state because homebuyers might be forced to obtain costly environmental surveys before buying land.

"The majority opinion will place enormous costs not only on property owners, but also on the financial market," Berdon wrote. "A significant portion of the state's land and landowners may be affected by this decision. It could have a devastating effect on the ability of individuals to purchase homes."

Berdon also cited the brief by the two banking groups that the ruling will "have a significant adverse impact on an already struggling commercial real estate industry" in the state.

The state has already spent about \$700,000 for an investigation into the extent of contamination on the 44-acre Starr property, which is near the Enfield-East Windsor border. About 5 of the 44 acres are contaminated with carcinogens and

hazardous chemicals that include cyanide, volatile hydrocarbons, chrome, lead, silver and benzene.

The site has been placed on the state's Superfund list as one of the six most hazardous properties in the state. A site is placed on the state or federal Superfund list depending on which agency is responsible for overseeing its cleanup.

The state's study is ongoing, and the waste remains on the property. Three neighbors in the area have developed cancer, but preliminary tests have not shown any connection between the cancer-causing substances on the site and the health of nearby residents.

Starr and her attorneys have maintained that two defunct companies, Enfield Road Construction Co. and Springfield Gas Co., were responsible for dumping on the undeveloped land in the 1960s. Starr inherited the land from her husband, S. Leger Starr, a developer who left an estate of \$2.65 million.

Appendix VII

Segment 2: *Packer v. Thomaston*

Statute in Question

Section 10-233d (a) (1) provides: "Any local or regional board of education at a meeting at which three or more members of such board are present, or the impartial hearing board established pursuant to subsection (b) of this section, may expel, subject to the provisions of this subsection, any pupil whose conduct on school grounds or at a school-sponsored activity is violative of a publicized policy of such board or is seriously disruptive of the educational process or endangers persons or property or whose conduct off school grounds is violative of such policy and is seriously disruptive of the educational process, provided a majority of the board members sitting in the expulsion hearing vote to expel that at least three affirmative votes for expulsion are cast."

The Hartford Courant

COURT HEARS EXPULSION CASE - ARGUMENTS CENTER ON DEFINING DISRUPTIVE SCHOOL BEHAVIOR

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by DAVID OWENS; Courant Staff Writer

March 27, 1998

Record Number: 9803270345

During more than 90 minutes of arguments before the state Supreme Court Thursday over the Thomaston school board's decision to expel a student, one fundamental question kept reemerging.

How could Kyle P. Packer's Sept. 24 arrest on a charge of possession of 2 ounces of marijuana in a secluded section of Morris be "seriously disruptive of the education process" at Thomaston High School?

Lawyers on both sides agreed Thursday the law is vague, with the school board's attorney and the state attorney general arguing the vagueness is necessary.

Packer's lawyer said the vagueness makes the law unfair.

Thomaston school officials decided the arrest was a serious disruption and on Oct. 8 expelled Packer, a senior, for the rest of the first marking period. They also banned him from participating in all school activities except graduation.

Packer's family appealed the board's decision and Litchfield Superior Court Judge Walter M. Pickett Jr. ruled in January that the board was wrong when it expelled Packer. He had previously issued an order-permitting Packer to return to school. Pickett also ruled that the law the board used to

make its decision was so vague that it was unconstitutional. The Thomaston board appealed Pickett's precedent-setting ruling and the Supreme Court heard the appeal Thursday in an expedited hearing.

State law permits school officials to expel students for off-campus crimes if the offense is determined to be a violation of school policy and is "seriously disruptive of the educational process." Schools throughout the state have used the law to expel students accused of crimes such as murder, assault, brandishing a handgun and drug possession.

"School officials need discretion and flexibility to decide how and when to discipline students who commit illegal and disruptive acts, especially with drugs or guns," Attorney General Richard Blumenthal said.

The vagueness is unfair, countered Packer's lawyer, William A. Conti of Torrington. The statute should spell out what would constitute serious disruption, Conti said. It's conceivable the legislature could have included in the law possession of marijuana as something that would cause serious disruption.

"In the real world of education you're not expecting the legislature to spell out every nuance?" Justice Flemming L. Norcott Jr. asked Conti.

No, Conti replied. But there must be some link between the offense and the alleged serious disruption, he said. Otherwise students could be subjected to arbitrary discipline.

Smoking is against school policy and it's conceivable a board could expel a student for smoking a cigar at his sister's wedding, Conti argued.

Justice Ellen A. Peters suggested Conti was going a little too far. "The school setting is different," she said, repeating an argument Blumenthal made. "A school board has discretion to determine what's

disruptive because that's the only way the school process can go forward. What's wrong with that?"

A school board should have discretion, Conti replied. But not unfettered discretion.

The fundamental question remained, however. Did Packer's crime -- for which he is performing community service -- seriously disrupt the educational process? The board based part of its decision on comments by Thomaston High School Principal Robin Willink that teachers and students were talking about the arrest.

Justice Robert I. Berdon questioned whether talk among students and teachers constituted a serious disruption.

George J. Kelly Jr., the Thomaston board's lawyer, said the disruption stemmed from the overall effect the arrest had on the educational process at the school.

"This young man had a history of being involved in illegal substances -- both marijuana and alcohol," Kelly said. Although Packer had no prior arrests for such charges, "there was sufficient information in the record."

The arrest also created a disruption in the school's ability to teach respect for the law and authority, Kelly said. "The school has to set standards. This happened to be a very visible situation," he said. "The school had to say there would be ramifications for this kind of conduct."

Peters appeared unconvinced. "But the statute on which you're relying talks about disruption," she said.

What was disruptive was the message it sent to the students, that it doesn't matter what you do," Kelly replied.

The Hartford Courant

COURT OVERTURNS EXPULSION - JUSTICES CLARIFY RULES ON DISRUPTIVE BEHAVIOR

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by LYNNE TUOHY; Courant Staff Writer

July 28, 1998

of what constitutes conduct that is "seriously

The state Supreme Court has ruled that students may be expelled for only that behavior off school grounds that "markedly interrupts or severely impedes the day-to-day operation of a school."

Such behavior would include phoning in a bomb scare or uttering threats to kill or hurt a teacher or student, the justices said, in a 6-1 ruling released Monday.

But the arrest in another town of Thomaston High School senior Kyle Packer for possession of 2 ounces of marijuana last September did not rise to that level.

"We do not mean to pin any medals on [Packer] or condone his destructive conduct in any way," Chief Justice Robert J. Callahan wrote. "The school expulsion statute, as applied to this set of facts, however, is simply too vague to be constitutionally enforceable."

The issue of what off-premises conduct warrants expulsion has vexed school administrators, who have expelled students for offenses including theft, burglary, drug possession, assault and murder. It also has been scrutinized by the Connecticut Civil Liberties Union, which filed a friend-of-the-court brief on Packer's behalf.

"The potential for abuse in enforcing expulsion statutes is great if the laws don't provide enough guidance for school officials," said CCLU lawyer Ann Parrent.

Monday's ruling gives school officials a sharper definition, and examples,

disruptive of the educational process" -- a phrase that many school systems copied directly from the state law into their student handbooks. Thomaston's was among them.

Thomaston's student handbook states that "students are subject to discipline, up to and including suspension and expulsion, for misconduct which is seriously disruptive of the educational process and is in violation of a publicized board policy, even if such conduct occurs off school property and during non-school time."

While Packer's possession of marijuana -- for which he performed 16 hours of community service and has no criminal record -- violated school policy, the Supreme Court ruled it was not seriously disruptive of the educational process. Or, as the justices defined that phrase, it did not "markedly interrupt or severely impede the day-to-day operation of a school."

Packer was 17 when he was arrested in Morris on Sept. 24 by a state trooper who originally stopped him for not wearing a seatbelt, then noticed a marijuana cigarette in the car's ashtray. A search of the car turned up 2 ounces of marijuana.

State law requires police to notify a school system of the arrest of any student, aged 7-21, who is charged with a Class A misdemeanor or any felony. The school board held a hearing Oct. 8, at which Thomaston High School Principal Robin Willink testified that Packer's arrest had disrupted the educational process because

Packer's younger brother was in the car at the time, the rest of the school had become aware of the arrest and teachers had asked Willink what he intended to do.

The board voted to expel Packer for the remainder of the semester -- about four months.

Packer, an honor student and soccer star, and his family convinced Litchfield Superior Court Judge Walter M. Pickett to issue a temporary injunction ordering his return to school in early November. Pickett ruled the expulsion law was unconstitutionally vague.

The Supreme Court reversed Pickett on that count, however, and upheld the constitutionality of the statute. The high court ruled instead that the law's application in Packer's case was unconstitutional because it did not put Packer on notice that "possession of two ounces of marijuana in the trunk of his car, off the school grounds in the town of Morris, after school hours, without any tangible nexus to the operation of Thomaston High School, would subject him to expulsion," Callahan wrote.

Justice Francis M. McDonald dissented, saying, "The majority finds that possession of marijuana might not be recognized by students as conduct 'seriously disruptive of the educational process.' To the contrary, it can be said that illegal drugs are disrupting America. Unfortunately, this decision serves neither the public interest in education nor students."

Attorney William Conti, who represented Packer, lauded the ruling, saying, "Just because you want to declare a war on drugs doesn't mean you declare war on the constitution."

Appendix VIII
Crusaders and Criminals, Victims & Visionaries
Historic Encounter between Connecticut Citizens & the U.S. Supreme Court
David Bollier

Segment 2: Griswold v. Connecticut

The Bill of Rights - First Amendment

The First Amendment is one of the great bulwarks of freedom in this nation. Its language is simple, its interpretation is quite complex. In its entirety, the First Amendment reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Defining the precise meaning of the First Amendment for Americans today is an undertaking that falls to the Supreme Court. Relying on its previous decisions and its review of state and federal laws, the Court constantly refines its interpretations of the First Amendment as new circumstances arise.

As the language of the First Amendment suggests, its scope is quite large. It applies to diverse questions that affect daily life. When does a person's speech become so provocative that it can be suppressed? Can the government prevent a newspaper from publishing national secrets? In what circumstances can government contribute financially to religious groups? What constitutes obscenity and what forms of offensive expression are protected by the First Amendment? Do citizens have an inherent right of privacy?

The case *Griswold v. Connecticut*, which involves the right of married persons to obtain and use birth control devices, illustrates how Connecticut citizens have helped shape the meaning of the First Amendment as it stands today.

Griswold v. Connecticut (1965)

Privacy becomes a constitutional right

From their small, underfunded birth control clinic at 406 Orange Street, New Haven, a blue-blooded social reformer and a shy medical doctor decided in 1961 to become criminals by dispensing contraceptives to married couples. By getting arrested, Mrs. Estelle T. Griswold and Dr. C. Lee Buxton hoped to challenge the constitutionality of a Connecticut law that prohibited not just the sale but the *use* of contraceptives. Their distribution of birth control made them accessories to a crime.

Within 15 years, this simple act of civil disobedience would spark one of the most far-reaching revolutions in modern constitutional history. The 1965 Supreme Court decision of "*Griswold v. Connecticut*" marked a legal milestone both by overturning an archaic obscenity law and by defining a

new constitutional right of privacy. Henceforth the Constitution would limit the government's authority to invade a person's privacy in the context of marriage, family life, and procreation.

In 1954, when Estelle Griswold of Essex joined the Planned Parenthood League of Connecticut, the likelihood of such sweeping constitutional changes must have seemed remote. She had a far more basic goal: to repeal the so-called Comstock law banning the use of contraceptives.

While affluent women with private doctors could generally obtain contraceptives (illegally), and while drug stores sold condoms freely, the Comstock law remained a major obstacle to openly promoting family planning and distributing contraceptives. Uneducated and impoverished women, in particular, often did not know how to obtain birth control and could not afford to go to another state to obtain it. As one woman testified to the legislature, "I can't see why us women have to be human incubators." She and her husband lived with ten children in a one-room apartment.

The Comstock law banning contraceptives was named for Anthony Comstock of New Canaan, who at age 29 began a four-decade campaign against all forms of obscenity. Comstock became nationally known as the "Puritan Strong Boy" because of his exploits as the chief spokesman for the Y.M.C.A.'s Committee for the Suppression of Vice.

His first major victory came in 1873 when he succeeded in pushing a bill through Congress which banned the use of the U.S. mails for distributing obscene materials. In the years that followed, he traveled to various state capitals lobbying for "little Comstock laws" that banned obscene materials.

In 1879, Comstock prevailed upon his native state to enact such an anti-obscenity law. With little apparent debate or public protest the bill breezed through the Connecticut legislature with the strong backing of Protestant clergymen and Bridgeport Representative Phineas T. Barnum, the bill's chief sponsor. Besides banning obscene pictures and books, the law prohibited the distribution of birth control information and devices. Specifically, section 53-32 stated: "Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned," section 54-196 stated: "Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender." Comstock explained his motives: "Can't everybody, rich or poor, learn to control themselves?"

By the time of World War I, Comstock's philosophy of abstinence found little favor among the early feminists rallying for women's reproductive rights. After a friend of hers died from a back-alley abortion, Margaret Sanger, a New York City nurse, emerged as the leader of the modern birth control movement. Its chief goal was to undo the many laws that restricted access to contraceptives.

Inspired by Sanger, Connecticut feminists founded the Connecticut Birth Control League in 1923 - later Planned Parenthood of Connecticut - to promote the legal distribution of contraceptives and birth control advice, especially among the poor. Over the next four decades, 29 different bills were introduced in the General Assembly to repeal or modify the Comstock law. All were defeated. By the 1930s, after repeated failure in the legislature, Connecticut feminists openly defied the law by opening nine birth control clinics across the state.

The clinics operated without incident until 1939, when police raided a Waterbury clinic and arrested two doctors and a nurse for dispensing birth control information and devices. The arrests provided an opportunity to test the constitutionality of the law in the state courts. But the 1940 challenge, *State v. Nelson*, proved unsuccessful: the State Supreme Court upheld the law, saying that the General Assembly was entitled to legislate in this area on behalf of the public health and morals. The state then cleverly prevented its opponents from appealing to the U.S. Supreme Court, and possibly overturning the

law, by withdrawing the charges against them. This preserved the Connecticut Supreme Court ruling as the law of the state.

After this case, family planning advocates tried to exploit another crack in the law: What if a doctor wanted to prescribe contraceptives to women whose lives could be threatened by pregnancy or giving birth? In 1942, the Connecticut Supreme Court ruled by a 3 to 2 vote, in the case of *Tileston v. Ullman*, that the Comstock law did not allow for any exceptions, even in cases where life or serious injury to health could result. The U.S. Supreme Court dismissed an appeal on a narrow procedural ground - that the doctor did not have "standing" (a sufficient stake in the matter) to raise the issue; the proper party to challenge the law must be the patient whose life or health might be affected.

These two court decisions in the early 1940s resulted in the closing of all birth control clinics in the state for the next 20 years. Planned Parenthood continued to try to repeal or modify the Comstock law so that doctors could legally prescribe contraceptive devices "for health reasons" - or, as a later bill proposed, "when in the opinion of a physician, pregnancy would endanger life." But these minor changes, too, were rejected by the legislature.

Meanwhile, the general public - at least women - favored easier access to birth control. A Fortune magazine poll in 1943 revealed that nearly 85 percent of women nationwide believed birth control should be made available to all married women. While many repeal bills succeeded in the state House of Representatives (where rural Protestants were dominant), bills sent to the Senate (where urban Catholics were dominant) always went down to defeat. Throughout this period, the Catholic Church steadfastly opposed repeal of the Comstock law.

It was in this context that Estelle Griswold joined the Planned Parenthood League of Connecticut in 1954 and became its executive director several years later. (It is widely and erroneously believed that Mrs. Griswold was married to or somehow related to former Yale President A. Whitney Griswold. In actuality, she was married to Mr. Richard Griswold of Essex.) Mrs. Griswold had previously worked in Europe with the United Nations and the World Council of Churches helping find new homes for the refugees of World War II. That experience exposed her to the perils of overpopulation - and convinced her that better family planning was the answer.

Described by a reporter as "a thin, gray-haired woman, who resembles an English teacher or a librarian more than a crusader," Mrs. Griswold brought new vigor to her movement's quest for legalized birth control. Forbidden by the 1940s court cases from openly dispensing contraceptives, Planned Parenthood volunteers initiated "border runs" to shuttle women to birth control clinics in Rhode Island and New York, where such medical attention was legal. In 1957, more than 2,400 women made the trip to out-of-state clinics under Planned Parenthood's auspices.

In the late 1950s, Mrs. Griswold enlisted the support of Dr. C. Lee Buxton, the chairman of the Yale Department of gynecology and obstetrics. Although a shy, retiring man - *The New York Times* had dubbed him "a gentle crusader" - Dr. Buxton had a burning determination to strike down the Comstock law. His activism on birth control stood in ironic counterpoint to his medical specialty - the problems of sterility.

It was Dr. Buxton who helped find several patients who would wage the next great court challenge, *Poe v. Ullman*. (Once again, State's Attorney Abraham S. Ullman was the defendant.) One party to the suit had nearly died after her last pregnancy, and still suffered from partial paralysis and impaired speech. Another woman had given birth to three retarded children, each of whom died shortly after birth. Dr. Buxton believed that another pregnancy could be fatal to the first woman (who was given the alias Jane Doe) and seriously unhealthy for the second woman (who was given the alias Jane Poe). Dr. Buxton joined the suit, claiming that his due process rights were being denied by the law.

after birth. Dr. Buxton believed that another pregnancy could be fatal to the first woman (who was given the alias Jane Doe) and seriously unhealthy for the second woman (who was given the alias Jane Poe). Dr. Buxton joined the suit, claiming that his due process rights were being denied by the law.

Again, the U.S. Supreme Court relied on a procedural issue to dismiss the case. In the *Poe v. Ullman* decision, issued on June 20, 1961, Justice Felix Frankfurter called the constitutionality of the Comstock law a "dead letter" because the law had gone unenforced for so long. The Court "cannot be umpire to debates concerning harmless, empty shadows," he wrote.

On the very day of the Poe decision, Mrs. Griswold and Dr. Buxton vowed to open up a new birth control clinic at 79 Trumbull Street in New Haven. Their goal was to be arrested as criminals in order to force a constitutional test on the merits of the law. Three days after the clinic had opened, the New Haven police stopped by to investigate. Dr. Buxton and Mrs. Griswold helpfully gave them a tour of the facility, pointing out the contraceptives they were dispensing. A few days later, the two were arrested.

Their attorneys were Fowler V. Harper, a Yale Law School Professor, and Catherine Roraback, the granddaughter of a Connecticut Supreme Court justice. Waiving their right to a jury (to help ensure that they would be convicted), Mrs. Griswold and Dr. Buxton were convicted and fined \$100. Their attorneys appealed to the state Supreme Court, which predictably upheld the law.

From there it was on to the U.S. Supreme Court - again. Attorney Fowler Harper had died in 1963, so Yale Law professor Thomas I. Emerson, a noted First Amendment scholar, stepped in to help prepare the legal briefs. This proved to be a fateful turning point in the case because Thomas Emerson had less confidence than Fowler Harper that the Supreme Court would invalidate the law using the First Amendment.

Over several months, Attorneys Emerson and Roraback wrestled with the legal arguments they should present to the Supreme Court. At first, they toyed with the idea of invoking the First Amendment's protection of free speech, which should protect the right of doctors to provide medical information to their patients. Emerson and Roraback also thought that they might rely on the Due Process Clause, which requires that a law not be "arbitrary or capricious and that it bear a "reasonable relationship" for a legitimate legislative purpose. The Comstock law, whose purpose was to prevent adultery and uphold public morality, could be considered "arbitrary and capricious" because its ban on contraceptives was not "reasonably related" to that goal.

In the end, however, Emerson and Roraback decided to argue that the Constitution includes an inherent right to privacy. As Emerson told the *Hartford Courant* in 1985, twenty years after the Court's decision:

The idea had been knocking around the American Civil Liberties Union legal staff, but it had never been fully explored and developed and presented to the Supreme Court in a way where they would have to pass on it...I was pretty optimistic. It seemed to me that the birth control statute was so absurd that they would stretch to find some way of declaring it unconstitutional...And the whole idea of creating a zone of privacy where governmental officials can't intrude was...An idea whose time had come, as they say.

The State of Connecticut, for its part, argued that the legislature had a legitimate role in regulating birth control devices and information. In oral arguments before the court, prosecutor Attorney Joseph B. Clark (who later became a Superior Court judge) defended the right of the legislature to pass a law intended to "reduce the chances of immorality" and to "act as a deterrent to sexual intercourse outside of

vote of 7 to 2, the court held that the law unconstitutionally invaded the privacy rights of married couples.

Justice William O. Douglas wrote the majority opinion, in which he "created" a new constitutional right of privacy based on the First Amendment (the right to free association), the Third Amendment (ban on the quartering of soldiers in homes), the Fourth Amendment (protection against unreasonable search and seizures), the Fifth Amendment (ban on compulsory self-incrimination), and the Ninth Amendment (which reserves all rights not enumerated in the Bill of Rights to the people). Each of these Amendments, wrote Douglas, have "penumbras" (shadows) which create "zones of privacy..." "These separate guarantees of privacy, taken together, give "life and substance" to a broad, inherent constitutional right of privacy against government intrusion."

Justices Stewart and Black dissented in the *Griswold* case, arguing that while the Connecticut law was "uncommonly silly," it was a matter for the legislature, not the courts, to reverse. "We are not asked in this case to say whether we think this law is unwise or even asinine," wrote Stewart. "We are asked to hold that it violates the United States Constitution. And that I cannot do."

So it was that a case aimed simply at overturning the Comstock ban on birth control ended up recognizing a sweeping new constitutional right. In 1972, the Court extended the right of privacy to unmarried minors seeking birth control in its *Eisenstadt v. Baird* ruling. Then in 1973 came the controversial *Roe v. Wade* decision, which held that the right of privacy first recognized in *Griswold* "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." The right of privacy has also been raised in cases dealing with homosexuality, personal appearance and lifestyles, and the "right to die."

Apart from these broader constitutional effects, Mrs. Griswold and Dr. Buxton were pleased to achieve their most immediate goal. Three months after the Court's decision, the Trumbull Street clinic reopened. Planned Parenthood of Connecticut now boasts an \$8 million annual budget and 22 clinics that serve the primary health needs of any woman who comes to them. Nationwide, women's access to birth control has greatly increased since the *Griswold* ruling.

To the end, Dr. Buxton kept his low profile. On the day of the Supreme Court's decision, he left for Europe, prompting one medical journal to call his role in the case "a performance of *Hamlet* without the prince." Dr. Buxton remained active in the family planning movement, and died at age 64 in 1969.

For Estelle Griswold, who died in 1981 at age 81, the Supreme Court's ruling vindicated her strong convictions on the worldwide importance of family planning. "How we answer the question of birth control and controlled population increase is going to be the answer to the question of what the quality of life for future generations will be," she once said.

Estelle Griswold and Dr. Buxton may have thought that their biggest achievement was overturning an archaic obscenity law. In truth, their most significant legacy was to have inaugurated a new body of constitutional law protecting individual privacy.

Appendix IX

Segment 3: The Connecticut Court Process

SEPARATION OF POWERS

Under our constitution, the courts are one of three branches of government. The *legislative branch* (the Senate and House of Representatives) is responsible for creating new laws. The *executive branch* (the governor and executive branch agencies) is responsible for enforcing them. The *judicial branch* is responsible for interpreting and upholding our laws.

ROLE OF THE COURTS

The judicial system in Connecticut was established to uphold the laws of the State. Our courts help to maintain order in our society by:

- determining the guilt or innocence of persons accused of breaking the law;
- resolving disputes involving civil or personal rights;
- interpreting new laws or deciding what is to be the law of the State when none exists for certain situations; and
- determining whether a law violated the Constitution of either the State of Connecticut or the United States.

STATE COURTS VS. FEDERAL COURTS

In Connecticut, as throughout the United States, there are two judicial systems:

- 1) **The State Court System:** established in each state under the authority of the state constitution. Connecticut courts are courts of general jurisdiction. These courts handle most criminal matters and a variety of civil matters, including contracts, personal injury cases, dissolution of marriage and other legal controversies. In some instances, decisions of state courts may be appealed to the United States Supreme Court if a question of federal constitutional law arises.
- 2) **The Federal Court System:** established under the United States Constitution and regulated by the Congress of the United States. Federal courts have jurisdiction over matters arising under the U.S. Constitution (Federal Law). Other areas under federal jurisdiction include:
 - cases in which the United States is a party;
 - cases between two states or the citizens of two different state;
 - cases between a state and a foreign state or its citizens;

- cases arising under treaties;
- admiralty and maritime cases; and
- cases affecting ambassadors and other diplomatic personnel.

The United States Constitution states only that:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Article III, Section I.

Thus, the only indispensable federal court is the United States Supreme Court. The Congress has from time to time set up and also abolished various other federal courts.

ORGANIZATION OF THE COURTS

Since July 1, 1978, Connecticut has had a unitary court system or one-tier court system. It consists of the Supreme Court, the Appellate Court, the Superior Court and Probate Courts.

Supreme Court

The Supreme Court is the State's highest court. It consists of the Chief Justice and six Associate Justices. The Supreme Court reviews decisions made in the Superior Court to determine whether questions of law were properly decided. It also reviews selected decisions of the Appellate Court to determine questions of law.

Generally, a panel of five justices hears and decides each case. On occasion, the Chief Justice summons the court to sit "en banc" as a full court of seven, instead of a panel of five, to hear particularly significant cases or when requested by 1 or both parties to the case and agreed to by the court.

Generally, the Supreme Court does not hear witnesses or receive evidence. It decides each case on:

- the record of lower court proceedings;
- briefs, which are used by counsel to convey to the court the essential points of each party's case; and
- oral argument based on the content.

State law specifies which types of appeals may be brought directly to the Supreme Court from the Superior Court, thereby bypassing the Appellate Court. These cases include decisions where the Superior Court has found a provision of the State Constitution or a State statute invalid, and convictions of capital felonies. All other appeals are brought to the Appellate Court.

The Supreme Court may transfer to itself any matter filed in the Appellate Court and may agree to review decisions of the Appellate Court through a process called certification. Except for any

matter brought under its original jurisdiction as defined by the State Constitution, the Supreme Court may transfer any matter pending before it to the Appellate Court.

The Supreme Court has 8 two-week sessions over the period from September through June of each year. The Supreme Court courtroom is located in the State Library/Supreme Court Building at 231 Capitol Avenue in Hartford.

Appellate Court

The Appellate Court consists of nine judges, one of whom is designated by the Chief Justice to be Chief Judge. Like the Supreme Court, the Appellate Court reviews decisions made in the Superior Court to determine whether questions of law were properly decided. Generally, a panel of three judges hears and decides each case. The Chief Judge of the Appellate Court may summon the court to sit en banc as a full court of nine. Like the Supreme Court, the Appellate Court does not hear witnesses, but renders its decision based upon the record, briefs and oral argument.

Superior Court

The Superior Court hears all legal controversies except those over which the Probate Court has exclusive jurisdiction. (Probate Court matters may be appealed to the Superior Court).

The Superior Court has five principal trial divisions: civil, criminal, family, juvenile and housing.

- 1) A **civil case** is usually a matter in which one party sues another to protect civil, personal or property rights. Examples of typical civil cases are automobile or personal accidents, product or professional liability claims and contract disputes. In most civil cases, the accusing party (plaintiff) seeks to recover money damages from another party (defendant). Cases may be decided by the judge or by a jury, depending on the nature of the claim and the preference of the parties.

The Civil Division is divided into five parts:

- Landlord-tenant, including summary process;
 - Small claims;
 - Administrative appeals;
 - Civil jury; and
 - Civil non-jury.
- 2) A **criminal case** is one in which a party (defendant) is accused of violating the law. The State is the plaintiff in criminal cases because crimes are considered acts that violate the rights of the entire State.

The following types of cases are heard in the Criminal Division:

- Crimes
 - felonies - punishable by prison sentences of more than one year;
 - misdemeanors - punishable by prison sentences of not more than one year.
- Violations, including motor vehicle - punishable by fine only.
- Infractions - fine may be paid by mail without requiring a court appearance.

The Criminal Division consists of four parts:

- Part A: capital felonies, class A felonies and unclassified felonies punishable by sentences of more than twenty years;
 - Part B: class B felonies and unclassified felonies punishable by sentences of ten to twenty years;
 - Part C: class C felonies and unclassified felonies punishable by sentences of five to ten years; and
 - Part D: class D felonies and all other crimes, violations, motor vehicle violations and infractions.
- 3) A **family case** involves matters such as dissolution of marriage and the custody of children.
 - 4) A **housing case** involves landlord-tenant disputes, summary process and similar matters.
 - 5) A **juvenile case** includes delinquency, child abuse, neglect and termination of parental rights.

The state is divided into 13 Judicial Districts, 22 Geographical Areas and 13 Juvenile Districts. In general, major criminal and civil matters and family cases not involving juveniles are heard at Judicial District court locations. Other civil and criminal matters are heard at Geographical Area locations. Cases involving juveniles are heard at Juvenile Court locations. In districts where they have been legislatively created, housing matters are heard exclusively at Judicial District Housing Session locations on a separate docket. In other districts, they are part of the regular civil docket.

Probate Court

In addition to the state-funded courts, Connecticut has Probate Courts, which have jurisdiction over the estates of deceased persons, testamentary trusts, adoptions, conservators, commitment of the mentally ill and guardians of the persons and estates of minors. Probate Judges are elected to four-year terms by the voters of the Probate District. Probate Judges need not be attorneys. They are paid for their services from Probate Court fees.

STEPS IN A JURY TRIAL

Selection of a Jury

1. Administration of voir dire oath
2. Voir dire - questioning of prospective jurors by counsel
3. Challenges by counsel
 - for cause
 - peremptory - without cause
4. Completion of jury selection
 - civil trials and most criminal trials - 6 jurors, 2 alternates
 - certain offenses - 12 jurors, 2 alternates
5. Impaneling of jury - administration of juror's oath to those chosen for a particular case

The Trial

1. Opening statements - generally brief, made by counsel for each side
2. Presentation of evidence
 - testimony - direct and cross-examination
 - exhibits
3. Closing arguments

Judge's Charge to the Jury

1. Explanation of the relevant points of law
2. Review of the procedures to be used in reaching the verdict

Jury Deliberation

1. Presided over by jury foreman, who is elected by members of the jury
2. Free discussion by jurors, who listen with open minds

The Verdict

1. Must be unanimous in civil and criminal cases
2. Written in civil cases; oral in criminal matters
3. Presented to the court by the jury foreman

JUDGES - APPOINTMENTS AND TERMS

Justices of the Supreme Court and Judges of the Appellate Court and the Superior Court are nominated for eight-year terms by the Governor from a list of candidates submitted by the Judicial Selection Commission. They serve eight-year terms and are eligible for reappointment. Judicial appointments require confirmation by the General Assembly.

To qualify for a judgeship, a person must be an attorney admitted to practice in Connecticut. The Connecticut Constitution provides that judges may hold their offices until reaching the age of 70.

At that time, they retire and become State Referees for the remainder of their terms. They are eligible for reappointment as State Referees during the remainder of their lives.

The Chief Justice may designate, from among the State Referees, State Trial Referees to whom cases of an adversary nature may be referred. Judges who retire from full-time active service prior to age 70 are known as Senior Judges.

PARAJUDICIAL OFFICERS

Not all legal controversies are heard by judges. They may also be heard by the following:

Small Claims Commissioners:

Attorneys designated by the Chief Court Administrator to hear and decide small claims cases.

Attorney State Trial Referees:

Attorneys appointed by the Chief Justice to preside over civil non-jury matters. They may not render judgments, but rather make findings of fact and file proposed decisions with the court. The court thereafter may render judgment in accordance with these findings.

Magistrates:

Attorneys appointed by the Chief Court Administrator to hear small claims matters, infractions, and certain non-jury motor vehicle cases.

Factfinders:

Attorneys appointed by the Chief Court Administrator to hear certain contract cases.

Arbitrators:

Attorneys appointed by the Chief Court Administrator to hear any civil jury action in which the amount, legal interest or property in demand is less than \$50,000.

FUNDING FOR THE COURTS

The Judicial Branch receives its funding as part of the legislatively enacted state budget. This funding is provided to pay the salaries of judges and other judicial personnel, for computers and other equipment, for contractual services, to maintain courthouses and other judicial facilities, and for other necessary expenditures. All fines, fees and costs collected in the courts are deposited in the state's general fund and other funds established by the legislature.

COURT ADMINISTRATION AND OPERATIONS

The Chief Justice of the Supreme Court is the head of the Judicial Branch. Its administrative director is the Chief Court Administrator.

Judicial Functions

The judicial functions of the Branch are concerned with the just disposition of cases at the trial and appellate levels. All judges have the independent, decision-making power to preside over matters in their courtrooms and to determine the outcome of each case before them.

Administrative Operations

The Chief Court Administrator is responsible for the administrative operations of the Judicial Branch. In order to provide the diverse services necessary to effectively carry out the Judicial Branch's mission, the following administrative divisions have been created:

Administrative Services Division:

Provides a wide array of centrally conducted, statewide services for the benefit of all divisions within the Judicial Branch, such as data processing, financial services, personnel matters, affirmative action and facilities management.

Court Support Services Division:

Provides pre-trial services, family services and offender sentencing and supervision options. Consists of *Intake/Assessment/Referral (IAR) units*, which conduct comprehensive evaluations and referrals, and *Supervision units*, which focus on effective supervision of clients involved with the court system. Two separate, but parallel, service delivery systems operate - one for adults and one for juveniles. The state has been divided into five regions for the delivery of services.

External Affairs Division:

Coordinates a variety of legislative, educational and informational activities designed to inform and educate the public and private sectors about the mission, activities and goals of the Judicial Branch.

Information Technology Division:

The Information Technology Division is dedicated to designing, developing, implementing, and maintaining the Judicial Branch's complex data and information processing, storage, retrieval, dissemination and printing systems for the Judicial Branch, for customers in the legal community and for the public.

Superior Court Operations:

The Superior Court Operations Division includes the following:

- *Administration* provides support services and guidance to all segments of the Division by directing the administrative, strategic planning, staff training and business activities, and provides for court transcript services, interpreter services, and the preservation and disposition of seized property;
- *Centralized Court Services* performs a variety of functions including the Centralized Infractions Bureau, jury administration and the maintenance, retrieval and destruction of records;
- *Court Operations* ensures that the Superior Court Clerk's offices process all matters in accordance with Statutory, Practice Book and Judicial Branch policy provisions in an efficient and professional manner through the provision of technical assistance and support services;

- *Judge Support Services* ensures the prompt delivery of services and programs to Superior Court judges pertaining to law libraries, legal research, judicial performance evaluations, continuing education and support for technology;
- *Legal Services* determines legal issues and provides support services in the areas of attorney ethics, discipline and bar admission;
- *Office of Victim Services* advocates for victims of crime and arranges for or provides services and financial compensation;
- *Support Enforcement Division* enforces, reviews and adjusts family support orders in accordance with federal and state regulators, rules and statutes.

JUDICIAL CLERK'S OFFICE

The Clerk's Office is the center of operation in each courthouse. It is responsible for:

- Processing judgment and memoranda of decisions (including payment of fees and fines);
- The filing of pleadings;
- Care and handling of exhibits;
- Jury selection; and
- Mail sorting.

For the public, the Clerk's Office is often the first and last point of contact in the judicial process.

CRIMINAL COURT vs. CIVIL COURT

CRIMINAL COURT decides whether a person accused of breaking a law is guilty or not guilty. In a criminal court, the government is the prosecution and the accused person is the defendant.

It is important to remember that under our system of justice every person accused of a crime must be considered innocent until proven beyond a reasonable doubt that the offender is guilty as charged.

Penalties in criminal courts require that offenders go to a correctional institution, be placed on probation under a suspended sentence, pay a fine, or any combination of these. In general, the purpose of the sentence is to protect the public, to punish the individual found guilty, to act as a warning to stop others from breaking the law, or a combination of these.

CIVIL COURT decides a case in which a person has a grievance against another person. In a civil lawsuit, the person taking legal action against another person is the **PLAINTIFF** and the person(s) defending against the complaint or suit of the Plaintiff is the **DEFENDANT**.

Disputes between private parties are settled in Civil Court. Some examples are domestic relations (family) disputes, disputes about business relations, or accidents. In these cases, the decision is made on the preponderance of the evidence. A jury of six may decide the facts in a civil case or a judge may render the decision.

Penalties may require the offender to pay money for damages or injuries, or the court may require the offender to do or not to do a specific act for, or to, the person bringing the suit. Some civil remedies are RESTITUTION (repayment), COMPENSATION (paying to make up for something), and INJUNCTION (a court order forbidding a certain action or ordering that a particular action be done).

CIVIL PROCEEDINGS

What Happens in a Civil Law Suit?

Civil law is the area of the law which deals with the private lives of people and their relationships with each other. In particular, it deals with contracts and tort (or injury) laws.

Basic contract law states that a contract is an agreement for the exchange between two people of something of value to which both sides agree. The parties to a contract must be competent and what is agreed upon must be legal. A contract may be written or it may be verbal.

The basic injury law states that any person whose careless action (negligence) causes damages (injury or loss of property) to another person must pay that person for losses arising out of the damages.

In civil cases, a private individual or business takes legal action against another private individual or business. The person or business taking legal action is the plaintiff and the person or business defending themselves against the action is the defendant.

In a civil case, judgment is given on the preponderance of the evidence (over 50 percent). Civil cases do not use the "beyond reasonable doubt" standard required in criminal cases.

Civil Court Terms

Answer: A paper filed in court by a defendant which states his or her defense or denies the plaintiff's complaint. The answer may also admit undisputed facts.

Appeal: To ask a higher court to correct what is believed to be an error by the trial judge, such as a misapplication of the law in the case, or a judge's failure to assure a fair trial.

Case dismissed without prejudice: The case is dismissed but the plaintiff has the right to bring suit again on the same claim.

Case dismissed with prejudice: The case is dismissed on its merits. The plaintiff then has no right to bring suit or maintain action on the same claim.

Complaint: Papers filed in court by the plaintiff claiming a civil wrong was done by the defendant to the plaintiff (for example, a contract was broken or injury was done to the plaintiffs person or property).

Counterclaim: After a plaintiff has presented a complaint to the court, the defendant may present an opposing claim against the plaintiff. This is a claim for damages that the original defendant brings against the original plaintiff who must then present a defense against the counterclaim.

Decision: A finding by a judge, or a verdict by a jury.

Deposition: One method of pretrial discovery (attorney getting information prior to the trial) is by oral or written questions given under oath. A deposition is usually given in the presence of a lawyer and a stenographer. The written record then becomes part of the trial records.

INTRODUCTION TO THE CRIMINAL JUSTICE SYSTEM

In the criminal justice system, a crime committed against a person or a person's property is a crime committed against all of the people of the State of Connecticut. The State, rather than the crime victim, brings criminal charges against the alleged criminal. If the case is prosecuted, the victim may become a witness.

The person employed by the State to bring criminal charges against people who are accused of committing crimes is called the prosecutor or state's attorney. The state's attorney has an equal responsibility to see that innocent persons are acquitted and that guilty persons are convicted.

A person accused of a crime is presumed by the law to be innocent until proven guilty. Because determination of guilt may lead to loss of liberty or even life, the State must make sure that the person accused of the crime in fact committed the crime. Therefore, the State must prove "beyond a reasonable doubt" that the person committed the crime.

The person who has been arrested and charged with committing a crime is the accused. In court, the accused is referred to as the defendant.

Most crimes are classified as either a felony or a misdemeanor. A felony is a crime for which the criminal may receive a sentence of imprisonment of longer than one year. Examples of felonies are murder, rape, kidnapping, burglary, and robbery. A misdemeanor is a crime punishable by sentence of imprisonment of one year or less. Examples of misdemeanors are shoplifting, breach of peace, disorderly conduct and criminal trespass.

The United States Constitution guarantees the defendant's right to the assistance of counsel in helping to prepare a defense. The defendant's lawyer is referred to as the defense counsel. If the defendant cannot afford a private attorney, the court will appoint a lawyer who is called a public defender. Public defenders, like prosecutors, are lawyers who are employed by the State of Connecticut. Public defenders serve only the interests of their client - the defendant.

In court, the defendant appears before a judge. The judge runs the courtroom and decides all legal questions. The judge is aided in making decisions by the arguments presented by the prosecutor and defense counsel.

PRETRIAL RELEASE -THE RIGHT TO BAIL

In all but a few instances, the defendant in a criminal case has the right to bail (to be released from custody while awaiting trial). The type of release set is based upon the likelihood that the defendant will appear in court to face the criminal charges.

WHO DETERMINES WHAT TYPE OF BAIL WILL BE SET?

There are three different people who make a decision regarding the proper amount and type of bail: the police, the bail commissioner and the judge.

The police are the first entity who may decide the type of release. At booking, they will interview the accused for the purpose of setting bail. Information regarding the accused person's community ties, employment history, prior convictions and attendance at prior court appearances will help police determine the type of bail that will assure appearance in court.

An accused person who is unable to meet the bail conditions set by the police will be interviewed by a Court Support Services Division intake officer. The officer will investigate and verify the accused person's background and community ties and make an independent decision as to the bail conditions.

An accused person who is unable to secure release under the conditions set by the intake officer will be held by the police until the next scheduled court session. At the court session, the judge will hear arguments from counsel for and against the amount of bail and will review the conditions set for release of the accused. The specific factors a judge will consider are:

- The nature and circumstances of the offense insofar as they are relevant to the risk of non-appearance in court;
- The weight of the evidence against the accused;
- The accused person's prior criminal record, if any;
- The accused person's past record of appearance in court after being admitted to bail;
- The accused person's family ties;
- The accused person's financial resources, character and mental condition; and
- The accused person's community ties.

TYPES OF RELEASE

After considering all available information about the accused, the judge will reach an independent decision regarding the type of release which is the least restrictive means of assuring that the individual will appear in court.

There are three basic types of release:

1. *Written Promise to Appear:*

If the accused's promise is enough to assure the required court appearances, the individual will be released after signing a written promise to appear.

2. *Non-Surety Bond:*

If the accused's promise is not enough to assure appearance in court, the individual may be asked to sign a non-surety bond. With this type of bond, the accused will not pay any money before being released. However, an accused person who fails to appear in court as scheduled will have to pay the dollar amount.

2. *Surety Bond:*

If there is a risk that the accused may not appear in court when required, a surety bond will be set. The surety bond will establish a dollar amount that must be paid by the accused before release. The amount of the bond is set according to a schedule provided by the court.

In order to be released under a surety bond, the defendant must either pay the amount of the bond or use personal property as collateral for the bond. If the defendant shows up in court each time required, the payment will be returned. If the defendant does not appear, the bond is forfeited.

If a judge decides that a surety bond is appropriate, the defendant may be allowed to post ten percent (10%) cash bail. The defendant pays the court ten percent (10%) of the amount of the bond. If the defendant has appeared in court as required, the money is returned when the case ends.

When a surety bond is set, the defendant may choose to hire a private bondsman. The defendant will then pay the bondsman a percentage of the value of the bond plus a fee. All money paid to a bondsman is kept by the bondsman and is not returned to the defendant.

CONDITIONS OF RELEASE

The prosecutor may ask the judge to prohibit the accused from engaging in certain types of behavior while released and awaiting the disposition of the case. For example, the judge may order the accused not to have any contact with the victim or not to drink alcoholic beverages. Any violation of conditions placed upon release can cause the accused to be returned to jail and brought before the court to have conditions of the release reviewed.

IF THE ACCUSED THREATENS THE VICTIM

If the accused threatens the crime victim while criminal charges are pending, the accused has committed a separate crime. The victim should tell the prosecutor about threats made by the accused. However, a victim who makes up a threat by the accused - when no such threat occurred - is guilty of the crime "False Statement."

COURT APPEARANCES

When a defendant goes to court, the case will be given a name and docket number. Usually, the name of the case is State versus "the name of the defendant."

ARRAIGNMENT

The defendant's first court appearance is called "arraignment." At the arraignment, the defendant's constitutional rights will be read, and a defendant who cannot afford a lawyer will be offered the services of a public defender (court-appointed attorney).

The criminal charge(s) against the defendant will be read, and the defendant will be asked to enter a plea of guilty or not guilty.

Most defendants plead not guilty at their arraignments. This is because individuals who plead guilty waive many constitutional rights, including the right to call witnesses accusing them of committing a crime, the right to call witnesses in their own defense, the right to have an attorney, and most importantly, the right to have the State prove guilt beyond a reasonable doubt.

PRETRIAL CONFERENCE - PLEA NEGOTIATIONS

The defendant's next court appearance after arraignment is called pretrial conference. A pretrial conference is a meeting between the prosecutor and the defense attorney. At the pretrial conference, both sides try to resolve the case without going to trial. Some of the resolutions that might be reached are:

1. Dismissal of Criminal Charges

If the prosecutor or judge decides that the defendant's conduct was not criminal, the charge will be dismissed. Dismissal means that the defendant is no longer being prosecuted on the charges and the police and court records on the charges should be erased.

2. Entering of a Nolle by a Prosecutor

The prosecutor may "nolle" the charge against the defendant for a variety of reasons (for instance, if there is insufficient evidence in a case or if a witness to the crime is unavailable to testify). When the charge is nolle, it means the State does not wish to go ahead with the prosecution at this time. A prosecutor may reopen a nolle charge any time within 13 months after the nolle is entered. After 13 months, the nolle case may be erased on all police and court records. If a case is nolle, the charge against the defendant should be erased. This means there will be no public record of the offense.

3. Alternative Sentencing

The judge has the discretion to allow some defendants to participate in alternative programs, such as Accelerated Rehabilitation (AR), the Alcohol Education Program (AEP), the Family Violence Education Program, the Alternative to Incarceration Program (AIP), the Alternative Incarceration Center (AIC) and the Community Service Labor Program (CSLP). Each of these carries specific requirements for participant eligibility and in some instances will result in the eventual erasure of criminal charges if the defendant successfully completes the program.

4. *Pleading Guilty*

Almost ninety-five percent (95 %) of all convictions are the result of the defendant pleading guilty to criminal charges. After entering a "not guilty" plea at arraignment, the defendant may subsequently plead guilty to one charge and give up the right to trial in exchange for the State dropping other charges for allowing a guilty plea to a lesser crime than the one originally charged. This is called plea-bargaining and is the process by which both sides of the criminal case try to resolve the matter without going to trial. Final disposition of the case is thereby accelerated.

If the defendant pleads guilty, the case will not go to trial. Pleading guilty results in the same consequences as being found guilty by a judge or jury at trial.

Should the defendant plead guilty to a misdemeanor, the judge may sentence the defendant immediately. If the defendant pleads guilty to a felony, a sentencing hearing will be scheduled.

THE TRIAL

If the defendant pleads not guilty and decides to go to trial, it may take a considerable period of time from the date of the arrest to the time of trial. This delay is due to many factors, including the large number of criminal cases awaiting trial and the need for both the State and the defense to investigate the facts and prepare the case for trial.

During the course of the trial, the State of Connecticut must establish that a crime has been committed and prove beyond a reasonable doubt that the defendant is the person who committed the crime. The State must prove this by presenting evidence. Evidence is most frequently either the testimony of people who were present during the crime, or physical evidence, such as stolen property or weapons used during the crime.

People who saw the crime and testify at trial are called witnesses. The victim may be a witness. Witnesses are notified by subpoena that they will be needed in court. A subpoena is a court order directing the person to be in court at a certain date and place.

Often there will be a notation on a subpoena that the person is on standby. If this notation appears, one should call the number listed to find out when he/she will be needed in court. Persons should bring their subpoenas with them to court when they testify.

On most occasions, witnesses are asked to stay out of the courtroom when they are not testifying. The judge may also order the witnesses not to discuss the testimony with anyone. This procedure is called sequestration: it is a regular court procedure that should be strictly observed.

Trials may not always take place as scheduled. A postponement could mean an unnecessary trip to court. To avoid such a trip, or to have any questions related to a court appearance answered, a witness should call the state's attorney's office.

When called as a witness, an individual will walk to the witness stand, which is located alongside the judge's bench. There the witness will be asked by a court official to "swear to tell the truth."

After being sworn in, the witness will be asked to give his/her name and address for the official record. Anyone who prefers not to give his/her address in court should tell the prosecutor this before testifying.

After completion of testimony and before leaving the court, a witness should ask the prosecutor whether he/she will be needed again. One should also check with the clerk's office for any fees which a witness may be eligible to receive.

TESTIMONY

After the courtroom has been called to order and the judge has directed the prosecutor to begin the State's case, the prosecutor will call witnesses to the stand, one at a time.

The prosecutor will ask each witness questions about the crime. This questioning is called direct examination. After the prosecutor has finished asking questions, the defense attorney may ask questions about the crime. This latter questioning is called cross-examination. After the defense attorney has completed cross-examination, it is possible that the prosecutor will question a witness again.

When the State has presented all its evidence, it will "rest its case" against the defendant. At this point, the defendant may present additional witnesses. The defendant need not present any evidence because the State bears the burden of proving beyond a reasonable doubt that the defendant is guilty of the crime. The defense is not required to prove the defendant's innocence.

CLOSING ARGUMENTS

When all the evidence has been presented, the prosecutor and defense attorney will give their summaries of the case. These summaries are called "closing arguments." The prosecutor will have the option of speaking both before and after the defense gives its "closing argument" because the State is the party which bears the burden of proving the defendant's guilt.

THE VERDICT

When closing arguments are finished in cases tried by jury, the judge will instruct the jurors about the law of the State of Connecticut in relation to the crime charged. The jury will then decide whether the defendant is guilty or not guilty of the crime. In cases involving several charges, it is possible that the jury may find the defendant guilty of one charge but not guilty of another. The jury will announce its verdict in court. Whatever the jury's verdict, it must be unanimous; all the jurors must agree that the defendant is guilty or not guilty. If the jury cannot reach a decision, a mistrial will be declared and the defendant will be tried again.

In cases of trial by judge, the judge alone will determine whether the defendant committed the crime as charged. The judge's verdict will be announced in court.

SENTENCING

If the defendant has been found guilty of a misdemeanor, sentencing will take place immediately after the verdict is given.

PRESENTENCE INVESTIGATION REPORT (P.S.I.)

If the defendant pleads to or is found guilty of a felony, in most cases the judge will order the Court Support Services Division to prepare a Presentence Investigation Report (P.S.I.). Preparation of a P.S.I. will take approximately four to five weeks. A probation officer will interview the defendant regarding personal history, family history, prior criminal record and the offender's version of the crime. The probation officer will review state police records and may contact the defendant's family or employer. The probation officer will also contact the victim of the crime. The victim should provide the probation officer with factual information regarding the impact of the crime on his/her life, so that the court is made aware of the effects of the crime. An assessment or plan may also be included in the P.S.I.

SENTENCING HEARING

At the sentencing hearing, the judge will have reviewed the P.S.I. along with any material submitted by the defendant's lawyer.

If the defendant has been tried and found guilty, the judge will consider the arguments of defense counsel and the state's attorney, and the information contained in the P. S.I. The judge will then independently arrive at a decision as to the appropriate sentence for the defendant.

If the defendant did not stand trial but pleaded guilty, the judge will ask the prosecutor to state the substance of the plea bargain which had been agreed to by the defendant and the prosecutor. The judge will then hear arguments from the defendant's attorney in support of the agreement. The judge may sentence the defendant according to the terms of the plea bargain or may elect not to sentence according to the terms of the plea bargain. If the latter occurs, the defendant may withdraw the guilty plea and the case begins again.

SENTENCING WHICH MAY BE IMPOSED

The following are the basic sentences which can be imposed by a judge as punishment for a crime:

1. A Fine: The defendant may be fined a certain amount of money.
2. Imprisonment: The judge can send the defendant to jail or prison for a period of time.
3. Probation: The judge can place the defendant under the authority of the Court Support Services Division. This means that the defendant will be supervised by a probation officer for a certain period of time. A defendant who violated the conditions of probation can be made to serve a sentence in prison.
4. Conditional Discharge: The judge can release the defendant on conditional discharge, which means that the individual will stay out of jail as long as the conditions set by the judge are obeyed.

5. Unconditional Discharge: The judge suspends the sentence without imposing any conditions on the release.

The judge may sentence the defendant to a combination of the above sentences. For example, the judge might sentence the defendant to pay a \$30 fine and serve one month in jail to be followed by a year of probation.

CAN A SENTENCE BE CHANGED ONCE IT IS IMPOSED?

A sentence may be changed through one of several procedures:

1. A defendant might seek a sentence correction or reduction. If such a request is made, a hearing will be scheduled and the defendant must show good cause why the sentence should be changed.
2. A defendant may seek a sentence review. In such a case, the defendant will have to show that the sentence should be changed because it is disproportionate or inappropriate compared with sentences given for similar crimes.
3. A defendant may appeal a conviction, claiming that the procedure was unfair or improper. If the appeal is successful, the defendant will most likely be granted a new trial.

VICTIMS RIGHTS

Victims of crimes are afforded numerous rights under Connecticut law. These wide-ranging rights include:

- *Notification:* The state's attorney shall notify any victim of an offense, if the victim has requested notification and has provided a current address, of any judicial proceedings relating to the case, including: arrest of the defendant, arraignment of the defendant, release of the defendant pending judicial proceedings, and other proceedings in the prosecution, including: entry of plea of guilty, trial, and sentencing.
- *Input:* Whenever a presentence investigation is required, the probation officer shall inquire into, among other things, the attitude of the complainant or victim, or of the immediate family, where possible, in cases of homicide, and the damages suffered by the victim, including medical expenses, loss of earnings and property loss.
- *Testimony:* The court shall permit the victim of most serious felonies, his or her legal representative, or a member of the deceased victim's immediate family to make an oral statement to the court or to submit a written statement explaining the effects of the crime prior to the sentencing of the defendant or the acceptance by the court of a plea of guilty or a plea of nolo contendere (Latin for "I will not contest" the charges) made pursuant to a plea agreement. The victim's statement shall relate solely to the facts of the case and the extent of any injuries, financial loss and loss of earnings directly resulting from the crime.

Appendix X

Segment 3: Information on Entry Level Judicial Position

OFFICE CLERK

Number of applicants per position: 225
% not meeting minimum qualifications: 12%
Starting salary: \$27,742

Those candidates with customer service experience, good communication skills, good keyboard skills are always desired. Applicants may be required to score at least 40wpm on a typing test.

Division: Branch-Wide

Class definition: Under the supervision of an employee of a higher grade, performs a variety of clerical assignment including typing, transcription and code processing.

Examples of duties: Produces typewritten material such as court reports, correspondence, financial and statistical statements and other documents; processes purchasing, billing and other agency forms; may receive, record and disburse money; may maintain records and summaries; acts as a receptionist; answers telephone and provides information regarding agency procedures; may record assignments and dispositions during proceedings; maintains filing and record keeping systems; complies reports as needed; may operate data entry equipment or automated equipment to produce typewritten material; operates a variety of office equipment; performs other related duties as required.

Minimum qualification required: One (1) year of clerical experience; may be required to produce material at a rate of 40 wpm.

COURT INTERPRETER

Number of applicants per position: 50
Starting salary: \$36,027

Applicants are required to pass a verbal test involving simultaneous and consecutive modes of a foreign language into English.

Division: Superior Court

Class definition: This class is accountable for providing oral and written translation for the court in criminal matters and such other matters as may be assigned by the Chief Interpreter.

Examples of duties: Provides verbatim translation in simultaneous and consecutive modes of a foreign language into English and vice versa at a variety of court proceedings on a statewide basis; renders interpretations with as high a degree as possible of fidelity to the style and language level of the original source; maintains records of services provided; prepares activity

reports and submits them to supervisor; at the direction of the court, may assist defendants in completing court-related forms; performs related duties as required.

Minimum qualifications required:

Knowledge, skill and ability: Written language proficiency and oral interpreting skills in Spanish.

Experience and Training: Any education, experience or training which would provide the skills necessary to perform the duties of this position. Candidates will be required to pass a written and oral examination.

Special Requirement: Incumbents will be required to travel in the course of their daily work.

COURT RECORDING MONITOR

Number of applicants per position: 100

% not meeting minimum qualifications: 10%

Starting salary: \$31,464

A typing test is given and candidates must score 50wpm on a typing test.

Division: Superior Court

Class definition: Under the supervision of the Official Court Reporter of the Judicial District, is responsible for recording verbal testimony during courtroom proceedings using electronic recording equipment.

Examples of duties: Records verbal testimony during court proceeding; sets up and tests equipment; monitors the recordings using earphones; maintains proper notes of proceedings, including names of participants, case/docket number, tape and log numbers; clearly marks notes for recall testimony; prepares transcripts and appeal papers; assembles and maintains records and files; performs clerical duties, as assigned; performs other related duties as required.

Minimum qualifications required: Two (2) years of clerical experience and the ability to produce typewritten material at a rate of 50 wpm.

COURT REPORTER

Number of applicants per position: 20

Starting salary: \$45,960

In order to be considered for these position applicants must have been certified by the Board of Examiners of the State of Connecticut as a Court Reporter.

Division: Superior Court

Class definition: Under the supervision of an Official Court Reporter, records and transcribes verbatim testimony in formal and informal legal proceedings.

Examples of duties: Records verbatim testimony by operating stenographic equipment; operates a stenographic machine and records court hearing; transcribes court proceeding upon request;

types memoranda, letter, voucher and other correspondence for judges of the Superior Court; reads notes as to recommendations, dispositions and other court actions and outcomes for judge and other related courts agencies and officers; deals with attorneys and other members of the public seeking transcripts and information; performs secretarial duties, as assigns; performs other related duties as required.

Minimum qualifications: Certification of the Board of Examiners of the State of Connecticut as a Court Reporter.

JUVENILE DETENTION OFFICER

Number of applicants per position: 475
% not meeting minimum qualifications: 17%
Starting salary: \$32,882

Candidate must pass a criminal record check and a physical examination. If candidate qualifies by having an associate's degree, experience working with juveniles or working in the corrections field is a plus.

Division: Juvenile Detention

Class definition: This class is accountable for receiving on-the-job training and assuming increasing responsibilities for the care and custody of detainees.

Supervision received: Works under the general supervision of a Juvenile Detention Shift or other employee of higher grade.

Examples of duties: Received on-the-job training and assumes increasing responsibility for supervising the daily activities of detainee; maintains security; admits and releases juveniles in conformance with detention procedures; explains detention procedure to juveniles, parents, counsel, police, social worker, etc.; administers intake questionnaires under the supervision of professionals; oversees and records juveniles' behavior; supervises and participates in recreational activities with juveniles; supervises and instructs juveniles in personal hygiene; takes such action as required to control juveniles whose behavior is physically threatening to self or others; records and reports information of any misconduct, abuse or potentially criminal conduct; assists physician, as required, in dispensing and recording authorized medication; assists teacher as required; assists in transportation of detainees; prepares, serves and supervises meals and snacks in the absence of the cook; provides supervision of detainees at mealtime; assists in receiving and storing supplies; supervises detainees during visiting hours in accordance with detention policy; performs related duties as required.

Minimum qualifications required:

Knowledge, skill and ability: Knowledge of the principles and practices involved in care and custody of juveniles; knowledge of the behavioral and emotional problems experienced by juveniles; considerable interpersonal skills; oral and written communication skills; basic computer skills.

Experience and training: Two (2) years of experience in correctional work, institutional work involving adolescents or young adults, or areas related to juvenile delinquency prevention.

College training in related field may be substituted for the General Experience on the basis of fifteen (15) semester hours equaling one-half (½) year of experience.

Working Conditions: Incumbents may be exposed to risk of injury from assaultive/abusive detainees; may be exposed to communicable diseases.

Special requirements:

1. Incumbents must possess and maintain a valid Connecticut motor vehicle operator's license.
2. A criminal record investigation will be conducted for all candidates.
3. Incumbents may be required to pass a physical examination

JUVENILE PROBATION OFFICER TRAINEE

Number of applicants: 1,500
% not meeting minimum qualifications: 8%
Starting salary: (increases with gained) \$38,061

Experience serving as an intern in the probation office or experience working with juvenile clients is a plus.

Division: Court Support Services

Purpose of this class: This class is accountable for receiving on-the-job training in performing a variety of tasks relative to the effective and expeditious management of cases through the juvenile justice system recognizing the needs, rights and responsibilities of the child, family, community and victim.

Supervision received: Initially works under the close supervision of a Juvenile Matters Supervisor or other employee of a higher grade; works more independently with acquired experience.

Examples of duties: Receives on-the-job training and is given progressively responsible assignment in all aspects of the following operation: prepares predispositional studies for the court and formulates dispositional alternatives appropriate to the needs of the juvenile; conducts in-depth interviews with juveniles, parents, educators and social service agencies; initiates referrals for diagnostic evaluation and implements treatment recommendations; provides crisis intervention counseling to juveniles and families; may screen juveniles to determine eligibility for alternative vocational and educational programs; provides counseling services to enhance juveniles' adjustment in home, school and community; facilitates referral or placement to social service agencies or residential treatment program and serves as a liaison; investigates victim restitution and assists victims with their participation in court process; supervises and verifies juveniles' compliance with court orders through periodic interviews and field visits with family and school; in conjunction with the State's Advocate, prepares detention hearings and initiates probation violations; maintains probation contact records and prepares status reports; testifies at court hearings; may participate in drug and alcohol screening; develops community resources and conducts public education workshops and training; conducts judicial interviews which incorporate elements of assessment, supervision and diversion; mediates parent-child conflicts in

order to develop formal resolutions; may transport children and family for placement, medical testing or other required services; performs related duties as required.

Minimum qualifications required:

Knowledge, skill and ability: Knowledge of family dynamics and child development; considerable interpersonal skills; oral and written communication skills; interviewing and counseling skills; ability to relate to different cultural and economic backgrounds.

Experience and training: Bachelor's degree

Special requirement: Incumbents are required to have a valid Connecticut motor vehicle operator's license and a motor vehicle available for daily use.

Working conditions: Incumbents may be exposed to some risk of injury from assaultive/abusive clients; may be exposed to disagreeable conditions when interviewing clients in detention or conducting home visits; may be exposed to communicable diseases.

Term of appointment: This class is intended to permit the Judicial Branch to recruit and train employees for the class of Juvenile Probation Officer I. An employee classified as a Juvenile Probation Officer Trainee shall be advanced to Juvenile Probation officer I upon his/her first anniversary with the Judicial Branch and a service rating of satisfactory or better.

ADULT PROBATION OFFICER TRAINEE

Number of applicants: 1,300

% not meeting minimum qualifications: 8%

Starting salary: (increases with experience) \$38,061

Experience serving as an intern in the probation office or experience working with criminal justice clients is a plus.

Division: Court Support Services

Class definition: This class is accountable for receiving on-the-job training in conducting pre-sentence investigations and overseeing individuals referred by the court for supervision.

Supervision received: Initially works under the close supervision of a Chief Probation Officer or other employee of higher grade; works more independently with acquired experience.

Examples of duties: Receives on-the-job training and is given progressively responsible assignments in conducting pre-sentence investigations and preparing written reports of the circumstances of an offense; receives training in the use of automated information systems to gather client data; oversees client status and condition; assists in supervising probationers and furnishes such probationers with a written statement of the conditions of probation; conducts office and home visits to keep informed of probationer's conduct and condition; uses all suitable methods to aid and encourage probationers to improve their conduct and condition; refers probationers to treatment facilities and maintains contact with facilities to ensure probationers' compliance; collects and disburses restitution money in accordance with court orders; assists in preparation of written reports as the court or Director may require; may assist with the transportation of clients; may collect urine samples from clients for drug screening; performs related duties as required.

Minimum qualifications required:

Knowledge, skill and ability: Knowledge of criminal behavior; knowledge of psychology; considerable interpersonal skills; oral and written communication skills' interviewing and counseling skills; ability to relate to different cultural and economic backgrounds.

Experience and training: A Bachelor's degree.

Special requirement: Incumbents are required to have a valid Connecticut motor vehicle operator's license and a motor vehicle available for daily use.

Working conditions: Incumbents may be exposed to some risk of injury from assaultive/abusive clients; may be exposed to disagreeable conditions when performing home visits or interviewing incarcerated clients; may be exposed to communicable diseases.

Term of appointment: This class is intended to permit the Judicial Branch to recruit and train employees for the class of Adult Probation Officer. An employee classified as an Adult Probation Officer Trainee shall be advanced to Adult Probation Officer upon his/her first anniversary with the Judicial Branch and a service rating of satisfactory or better.

BAIL COMMISSIONER

Number of applicants: 1,100

% not meeting minimum qualifications: 14%

Starting salary: \$39,714

Bachelor's degree and experience interviewing/working with clients is a plus.

Division: Superior Court

Class requirement: Under the supervision of the district supervising bail commissioner, assists the court in setting bail in criminal matters and recommends pretrial services.

Examples of duties: Within an assigned geographical region, interviews all persons referred by the police; verifies information obtained during the interview; prepares written reports on all persons interviewed; sets and recommends appropriate bail; notifies all persons released of each requires court appearance; supervises those persons released on non-financial conditions; coordinates alcohol education programs; performs other related duties as required.

Minimum qualification: Associate's degree

Special requirements: Candidate must be available as required to implement Public Act 81-437. Candidate must possess a valid motor vehicle operator's license and have a motor vehicle available for daily use.

Appendix XI

Segment 3: Synopsis of the Thurman Case

The Hartford Courant

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Torrington Suit Held Valid Wives May Sue Police for Protection

By GEORGE GOMBOSSY
Courant Staff Writer
10/24/1984

A battered wife may sue police in federal court for refusing to prevent her husband from assaulting her, a Hartford federal court judge ruled Tuesday.

The ruling was made in a suit brought by a Torrington woman who charged local police had refused to protect her from her estranged husband -- who had publicly threatened to kill her -- until he had repeatedly stabbed her.

U.S. District Judge M. Joseph Blumenfeld Tuesday refused to dismiss the suite brought by Tracey Thurman despite Torrington officials' arguments that she had not claimed any valid federal violations of her civil rights. However, the judge dismissed claims made on behalf of Thurman's 2^{1/2} year old son because there were no allegations that repeated threats had been made against the boy.

Bridgeport lawyer Judy Mauzaka said she believes Blumenfeld's decision for her client is precedent-setting.

While other recent court rulings have said that police can be sued for failing to assist potential victims, Mauzaka said that to her knowledge this is the first federal ruling saying a woman has the same right to be protected by police from her husband as she does from a stranger.

"If we win (the suit) there will be a new source of protection for battered wives," Mauzaka said.

The suit charges that this case was not isolated and that for a long time the Torrington

Police Department "condoned a pattern or practice of affording inadequate protection, or no protection at all, to women who have complained of having been abused by their husbands or others with whom they have had close relations."

Bridgeport attorney Thomas M. Germain, who is representing the town of Torrington and its police department, had no comment Tuesday on the decision, saying it is inappropriate for him to discuss pending litigation.

Thurman's suit, which seeks \$3.5 million in damages, charges that she and others notified Torrington police numerous times from October 1982 to June 10, 1983, that her estranged husband Charles Thurman made repeated threats against her life.

The complaints, the suit states, were generally "ignored or rejected" even though Thurman was under court order not to make contact with his wife.

According to the suit, the final incident took place June 10, 1983 when Charles Thurman stabbed Tracey Thurman in the chest, neck and throat with a knife 10 minutes after she had called police.

One police officer arrived at the scene 25 minutes after the call was made, and that officer did nothing to stop Charles Thurman from kicking his estranged wife in the head, the suit claims.

Thurman was arrested only after several other police officers arrived at the scene and

Thurman allegedly again made a threatening move toward his wife, according to the suit.

Thurman is now appealing his first-degree assault conviction, Mauzaka said.

The suit says that Thurman, who was a cook in a Torrington restaurant frequented by local police officers, told police he was going to kill his wife.

"In the course of his employment he boasted to said defendants that he intended to 'get' his wife and, on some occasions, that he intended to kill her, the suit says.

A court order barring Charles Thurman from making contact with his wife stemmed from his Nov. 9, 1982 arrest on a breach of peace charge after he broke the windshield of his estranged wife's car while she was in the vehicle.

The suit says that a police officer watched the incident, which allegedly was preceded by Thurman's screaming threats at Tracey Thurman, without taking any action to protect her.

In seeking the suit's dismissal, Germain said that equal protection under the Constitution does not guarantee equal application of public services. "Rather it only prohibits intentional discrimination which is racially motivated."

"There is no allegation that the defendants' alleged actions resulted from an intent to discriminate against the plaintiff Tracey Thurman, nor is there any allegation which would support a claim that any alleged discrimination was a result of plaintiff's race or gender," wrote Germain.

However, Blumenfeld rejected Germain's arguments.

"City officials and police officers are under an affirmative duty to preserve law and order,

and to protect the personal safety of persons in the community," Blumenfeld said in his decision.

"This duty," he continued, "applies equally to women whose personal safety is threatened by individuals with whom they have or have had a domestic relationship as well as to all other persons whose personal safety is threatened, including women not involved in domestic relationships."

"If officials have notice of the possibility of attacks on women in domestic relationships or other persons, they are under an affirmative duty to take reasonable measures to protect the personal safety of such persons in the community. Failure to perform this duty would constitute a denial of equal protection of the laws," Blumenfeld wrote.

Appendix XII

Segment 3: Public Act 86-337

PA 86-337 - sHB 5255
Appropriations Committee
Judiciary Committee

AN ACT CONCERNING FAMILY VIOLENCE PREVENTION AND RESPONSE

SUMMARY: This act addresses family violence and response *to* it by the police and the courts. It provides directives and guidelines to the police and the courts on how to handle family violence cases and mandates the establishment of training programs for the police, judges, and court personnel.

The act establishes a "pretrial family violence education program" whereby a person charged with a family violence crime (e.g., spousal abuse) can, under specified circumstances, have the charges against him dismissed if he successfully completes an educational program. The program is available only once to an offender and only for misdemeanors (or, "for good cause shown," a class D felony).

The act requires the creation of family violence response and intervention units in all the geographical area courts and provides for the collection of statistical data on family violence over the next five years.

EFFECTIVE DATE: October 1, 1986

FURTHER EXPLANATION

Family Violence and Family Violence Crimes

The act defines "family violence" as an incident between family or household members that either causes physical injury or creates fear that physical injury is about to occur. The phrase "family or household members" is also defined. It means spouses, ex-spouses, people who have a child in common, people over 16 years old who are related to each other in any way, and people who either "reside together" or who have ever resided together.

The definition of "family violence crime" is any felony or misdemeanor that also constitutes family violence. The definition also contains examples of crimes that are family violence crimes. The examples (by statutory reference) range from kidnapping and sexual assault to damaging public property and tampering with smoke detectors.

Police Behavior, Arrests

The act provides an approach that the police must take when responding to family violence crimes. In making their decision whether to arrest, the police are not to take into account the relationship of the victim and suspect, nor whether the victim wants the suspect arrested.

Additionally, the police are not to discourage requests for police intervention in domestic violence cases by threatening to or suggesting that they will arrest both the victim and the suspect.

The act also requires the police to evaluate each complaint from two or more opposing parties separately when deciding whether to seek arrest warrants for one or both of the parties.

Police Behavior, Victim Assistance

The act requires the police responding to family violence scenes to provide immediate assistance to victims, including helping them get medical help, informing them of their right to file for an arrest warrant, and referring them to the Criminal Injuries Compensation Board. In addition, when the police cannot make an arrest, the act requires them to remain on the scene until, in their “reasonable judgment,” the likelihood is eliminated that violence is about to reoccur.

Police Immunity

The act specifies that the police are not to be held civilly liable for personal or property injury when the suit is brought by “any party to the family violence” and the suit is for an arrest based on probable cause.

Child Abuse Reports by DCYS

The act amends the current child abuse reporting statute by specifying that the commissioner of the Department of Children and Youth Services is allowed to notify the appropriate law enforcement agency or agencies whenever the department's investigation of a reported incident of suspected child abuse produces evidence of abuse, and the commissioner deems such notification to be necessary. The commissioner could do this under prior law, but the statutes did not specify it.

The act requires the commissioner to adopt regulations by February 1, 1987 to carry out the notification provisions.

Family Violence Response and Intervention Units

The act requires the Judicial Department, via the Family Relations Division of the Superior Court, to establish a “family violence intervention unit” in all geographical areas. The units must be coordinated and governed by a formal agreement between the Judicial Department and the chief state's attorney, which is within the Division of Criminal Justice. The act requires the family intervention units to:

1. Accept referrals of family violence cases from a judge or prosecutor,
2. Prepare written or oral reports on each case for the court,
3. Provide or arrange for services to victims and offenders,
4. Administer contracts to carry out these services,
5. Provide monitoring systems for all restraining orders, and
6. Establish centralized reporting procedures.

Pretrial Family Violence Education Program

The act creates a pretrial family violence education program for people who are charged with family violence crimes. When a person is charged with such a crime, he can ask the court to place him in the program. If the defendant successfully completes the program, the charges are dismissed. In order to qualify for the program, certain conditions must be present.

1. The crime he is charged with must be no more serious than a misdemeanor, or, if there is good cause, a class D felony. Thus, for example, a person charged with first degree assault or risk of injury to a minor would be ineligible; a person charged with second degree assault would be eligible only if good cause were shown.
2. The defendant must not have previously taken the program.
3. The defendant must not have been convicted of, or accepted accelerated rehabilitation for, a family violence crime committed after October 1, 1986.

The act requires the court to notify the victim of the defendant's request for the program and, if possible, to give the victim an opportunity to be heard. Additionally, the court can postpone its decision on acceptance into the program until it gets a report from a family violence intervention unit.

The defendant must, if he is able, pay a \$200 fee to the court to take the program. The money goes to the general fund.

Guidelines and Police Training

The act requires all "law enforcement agencies" together with the Criminal Justice Division to develop and implement guidelines for arrest policies in family violence incidents by October 1, 1986.

The act requires the Municipal Police Training Council, in conjunction with the Division of Criminal Justice, to establish an education and training program for law enforcement officers and for state's attorneys. The program is to be on the handling of family violence incidents and must include, among other things, the responsibilities of the police as to making arrests, providing assistance to victims, and informing victims and batterers of services and facilities available.

Training for Judges and Bail Commissioners

The act requires the Judicial Department to establish an ongoing training program for judges, family division personnel, bail commissioners, and clerks to inform them about the act's policies and procedures, the functions of the family violence intervention units, and the use of restraining orders.

Restraining Orders

The act adds 16-and 17-year-olds to those allowed to apply for restraining orders against a family or household member, a spouse, ex-spouse, or a person with whom he or she has a child in common. Prior law only allowed adults to apply for restraining orders.

The act probably also expands the category of people against whom restraining orders can be issued. Prior law allowed them against "household members" but did not define the term. The act defines the term as described above, broadly, to include former household members and relatives.

The act requires copies of the restraining order to be sent to the appropriate law enforcement agency, the applicant, the defendant, and the Family Division of the Superior Court.

The act requires the Family Division to keep a registry of all restraining orders in force and to inform the police of the status of such orders.

Contempt

The act requires an expedited hearing when a motion for contempt is filed for violating a restraining order. The defendant must get at least 24 hours notice of the contempt hearing and the hearing must be held within five days of notice.

The act allows the court to impose appropriate sanctions for violating a restraining order (under current rules of court this could include up to 30 days imprisonment).

Family Violence Offense Reports

The act requires the police to complete a "family violence offense report" whenever they respond to a family violence incident and subjects them to a fine of up to \$500 for failure to do so. The purpose of the report is to provide statistics on family violence. When an arrest is made, a report must be completed that includes the names, ages, sex, and relationship of the parties, whether children were involved, whether weapons were used, the type and extent of alleged abuse, the existence of substance abuse, the existence of any prior court orders, and any other information needed for a complete analysis of all the circumstances leading to the arrest.

The police must send the report to the state's attorney for the appropriate judicial district. The act requires the Department of Public Safety to tabulate the data from the reports annually and send it to the governor and the General Assembly for the next five years.

The act eliminates a requirement that the police submit abuse-suspicion reports to the commissioner of human resources.

Medical Data Collection Reports

The act requires medical providers to complete a report on any patient treated for injuries that the medical provider reasonably believes were caused by family violence or when the patient says they were. The medical provider can be fined up to \$500 for failure to complete a report. Unlike the police reports, the medical reports do not have to contain the victim's name. They must contain the relationship, sex, and age of the parties, whether the incident was verified by the victim, the type of injuries, whether medical attention or hospitalization was required, whether the victim has previously sustained injuries from family violence, the action taken, the source of the report, and the address of the reporter.

The act requires the medical providers to send their reports to the Department of Public Safety quarterly. The department must compile the data from the reports annually and send it to the governor and the General Assembly for the next five years.

The act deletes a requirement that emergency room personnel submit abuse-suspicion reports to the commissioner of human resources.

Family Division Data

The act requires the Family Division of the Superior Court to maintain a statistical summary of all cases referred to the family violence intervention units and to submit the data to the Department of Public Safety, which must compile and submit the data annually to the governor and the General Assembly for the next five years.

Appendix XIII

Segment 3: Video Viewing Guide Questions

The Pursuit of Justice: Judges and Juries

1. What rights are established by the Constitution for people who have been arrested?

2. What is the mission of the Connecticut Superior Court?

3. True or False – judges have considerable power and discretion when handling legal matters, but laws and rulings of higher courts limit their powers. _____.

4. What three courts comprise the Judicial Branch in Connecticut?

5. The Appellate Court reviews decisions, called judgments of the Superior Court. In conducting the review, the Appellate Court looks to see if a mistake was made on the basis of the _____.

5. The highest court in Connecticut and the court of last resort is the Connecticut _____.

6. How does one become a judge in Connecticut?

7. True or false? Judges must be re-elected in Connecticut every 8 years. _____

8. There are approximately _____ cases per year that are decided by a jury in Connecticut.

9. Prospective jurors are chosen from 4 lists. What are they?

10. True or False? The attorneys in the jury selection process, called *voir dire*, may individually interview each prospective juror? _____.

Appendix XIV
Segment 3: Video Viewing Guide Questions

The State of Connecticut v. Michael T.

1) What was Michael's attitude throughout the whole arrest and court appearance?

2) What did the Victim Advocate tell Sarah and her father?

3) What did the Family Relations Counselor do?

4) Who are the major players in this court case?

5) Who are the support staff in this court case?

Appendix XV

Glossary of Terms

Segment One

Abolitionist - a person who advocates doing away with slavery.

Admiralty Law - the branch of law concerning maritime disputes.

Chattels Real - the Common Law term in the 18th and 19th Century used to refer to slaves. The Constitution does not use the words "slaves" or "Negroes" or "Africans." It uses the term "other persons" or "such persons."

Chattel Property - the Common Law term in the 18th and 19th Century which referred to land and other forms of property. Chattels Real and Chattel Property were the terms used in the trial to decide the disposition of the cargo of the Amistad.

Criminal Law - the branch of the law dealing with crimes and their punishment.

Civil Law - the branch of the law dealing with private rights of individuals, groups or businesses including contracts, personal injury, dissolution of marriages, etc.

Courts - institution that (a) determine whether a person accused of breaking the law is guilty or not guilty; (b) resolve disputes involving civil or personal rights; (c) interpret provisions of laws enacted by the legislature and decide what is to be the law when none exists for certain situations; and (d) determine whether a law violates the Constitution of the State or the United States.

Judicial Review - the court's power to void any law passed by Congress or a state legislature that conflicts with the nation's highest law, the Constitution.

Justice - The principle or ideal of moral rightness. The upholding of what is right and fair. In our country, justice also includes the concept that every person is entitled to fair and impartial treatment under the law without regard to race, gender, ethnicity, age or religion. Due process requires that no law or government procedure be arbitrary or unfair.

Law - the rules and regulations made and enforced by government that regulate the conduct of people within a society.

Salvage Rights - the right to claim goods or property that remain after casualty.

The Rule of Law - the notion that all members of society, average citizens and government officials such as senators, judges and even the President – are required to support the legal system and obey its laws. No one is above the law.

Treaty - a formal agreement between two or more countries

Segment Two

Civil Disobedience - “Refusal to obey government demands or commands especially as a nonviolent and usually collective means of forcing concessions from the government.” Webster’s Dictionary.

Civil Law - cases involving the *private* rights of individual, groups or businesses including contracts, personal injury cases or dissolution of marriages, etc.

Criminal Law - cases brought by the *state* against an individual for an alleged violation of its criminal code. Cases that deal with crimes and their punishment.

Courts - institutions that (a) determine whether a person accused of breaking the law is guilty or not guilty; (b) resolve disputes involving civil or personal rights; (c) interpret provisions of laws enacted by the legislature and decide what is to be the law when none exists for certain situations, and (d) determine whether a law violates the Constitution of the State of the United States.

Sentence - a formal pronouncement of judgment by the court or judge on the defendant after conviction in a criminal proceeding, imposing the punishment to be inflicted. This can include probation, incarceration or in extreme cases, death.

Segment Three

Adversarial System – The system upon which American justice is based. In such a system, each party in a case presents his or her point of view as persuasively as possible to a neutral party – usually a judge.

Pre-Trial Diversionary Program - A system by which certain defendants in criminal cases are referred to community agencies prior to trial while their criminal complaints or indictments are held in abeyance. The defendant may be given job training, counseling and education. If he/she responds successfully within a specified period (*e.g.* 90 days, more or less), the charges against him/her are commonly dismissed.

Pre-Trial - In a civil case, a conference with a judge or trial referee to discuss discovery and settlement. In a criminal case, a conference with the prosecutor, defense attorney and judge to discuss the case status and what will happen next.

Arraignment - The first court appearance of a person accused of a crime. The person is advised of his or her rights by a judge and may respond to the criminal charges by entering a plea. Usually happens the morning after a person is arrested.

Key Players in Connecticut's Court System:

Bail Commissioner: The public official in the courtroom who recommends to the judge the amount of the bail to be set for each defendant.

Clerk: The officer of the court whose primary duty is to maintain court records. He or she also administers oaths. Court clerks are appointed by the judges.

Court Interpreter: Translates each word that is said during a court proceeding into the native language of a non-English speaking defendant.

Court Monitor: The court may have either a monitor or a reporter. The monitor is the official who makes a trial record or transcript by using a tape recorder.

Court Reporter: The court reporter is the court official who sits directly in front of the judge's bench. Using a special typewriter, the reporter takes down every word said during a trial. This becomes the official record or transcript.

Defendant: The individual accused of committing a crime. He or she may present a defense either with the assistance of an attorney or by self. The defendant may or may not testify on his or her own behalf and may waive rights as outlined by the judge. The defendant is always considered innocent until proven guilty beyond reasonable doubt. A defendant may not be forced to testify against him/herself (Amendment V to the U.S. Constitution).

Defense Counsel: As the lawyer representing the defendant, his or her responsibility is to present evidence and arguments on behalf of the defendant so that the State does not convince the judge or jury beyond a reasonable doubt that the defendant committed the acts as charged. The lawyer may be either a private attorney hired by the defendant to help in the trial or may be a public defender.

Judge: An elected or appointed official with the authority to hear and decide cases in a court of law. Judges preside over preliminary hearings and trials. Judges in Connecticut are appointed for eight-year terms, they are nominated by the governor and are confirmed by both the House of Representatives and the Senate.

Probation Officer: Provides information to the judge about a defendant and supervises an offender in the community to ensure compliance with court orders.

Marshals: Maintains order in the courtroom and is responsible for all prisoners while in the courthouse.

Public Defender: The public defender is an attorney appointed by the judge and paid by the state to assist a defendant who does not have enough money to hire a private attorney. Every person charged with a crime has the constitutional right to the advice of an attorney (Amendment VI to the United States Constitution).

State's Attorney: Tries to prove beyond a reasonable doubt that the defendant committed the crime as charged.

TERMS AND ABBREVIATIONS

AKA - "Also known as". Used to list aliases or another name, or another spelling of a name used by a person.

Accelerated Rehabilitation - Also called AR. A program that gives persons charged with a crime or motor vehicle violation for the first time a second chance. The person is placed on probation for up to two years. If probation is completed satisfactorily, the charges are dismissed.

Action - Also called a case or lawsuit. A civil judicial proceeding where one party sues another for a wrong done, or to protect a right or to prevent a wrong.

Adjournment - Postponement of a court session until another time or place.

Adjudication - A decision or sentence imposed by a judge.

Adjudicatory Hearing - Juvenile court proceeding to determine whether the allegations made in a petition are true and whether the child/youth should be subject to orders of the court.

Adult Court Transfer - The transfer of juveniles who are at least fourteen years old to regular criminal dockets in Geographical Area or Judicial District courts. Also involves the transfer from a Juvenile Detention Center to the State Department of Correction.

Adult Probation - A legal status, applied to people 16 years of age and older, who have been convicted of a crime and placed under the supervision of a probation officer for a period of time set by the court.

Adversary System - The system upon which American justice is based. In such a system, each party in a case presents his or her point of view as persuasively as possible to a neutral party – usually a judge

Affidavit - A written statement made under oath.

Alcohol Education Program - A pre-trial program for first time offenders charged with driving a motor vehicle under the influence of alcohol.

Alford Doctrine - A plea in a criminal case in which the defendant does not admit guilt, but agrees that the State has enough evidence against him or her to get a conviction. Allows the defendant to enter into a plea bargain with the state. If the judge accepts the Alford Plea, a guilty finding is made on the record.

Alternative Detention Program - A Program operated by service providers under the Court Support Services Division used to detain juveniles instead of in a Juvenile Detention Center.

Alternative Incarceration Center - Also called AIC. A community-based program that provides monitoring, supervision and services to people who would otherwise be incarcerated.

Alternative Sanctions - Criminal punishment that is less restrictive than incarceration.

Appeal - Asking a higher court to review the decision or sentence of a trial court because the lower court made an error.

Appeal Bond - Money paid to the court while taking an appeal to cover costs and damages to the other party, if the appeal is not successful.

Appearance - The official court form filed with the court clerk which tells the court that you are representing yourself in a lawsuit or criminal case or that an attorney is representing you. All court notices and calendars will be mailed to the address listed on the form. When a defendant in a civil case files an appearance, the person is submitting to the court's jurisdiction.

Arraignment - The first court appearance of a person accused of a crime. The person is advised of his or her rights by a judge and may respond to the criminal charges by entering a plea. Usually happens the morning after a person is arrested.

Arrest - When a person is taken into custody by a police officer and charged with a crime.

Bail - Also called Bond. Money or property given to the court for the temporary release of a defendant, to ensure that the defendant will return to court.

Bail Bondsperson - A person who lends money to a defendant to pay for bail.

Bail Commissioner - A state-appointed person who may set the amount of bond for persons detained at a police station prior to arraignment in court, and who recommends to the court the amount of bond that should be set for the defendant on each criminal case.

Bench Warrant - Court papers issued by the judge, "from the bench," for the arrest of a person.

Bond - Also called Bail. Money or property given to the court for the temporary release of a defendant to ensure that the defendant will return to court. There are two kinds of bonds:

- **Non-financial bonds:** a) Non-surety bond where the defendant's signature alone guarantees the amount of bond and the defendant is not required to post any property or retain the services of a professional bail bondsperson as collateral or b) Promise to appear .
- **Surety bond:** The court requires cash, real estate or a professional bail bondsperson's signature as collateral before releasing the defendant back into the community. (The court may allow the defendant to post ten percent of the bond in cash to secure his or her release.)

Bond Forfeiture (calling the Bond) - If the defendant fails to appear in court as scheduled, the judge may order the bond forfeited (paid to the state) and the defendant rearrested.

Bond Review - A hearing for a judge to decide if the defendant's bond amount needs to be changed.

Bondsman - One who has put a surety; one who has put up cash or property as collateral before a defendant may be released.

Calendar - A list of court cases scheduled for a specific date and time; the civil and family court docket.

Capias Mittimus - A civil arrest warrant used to get a person physically into court to respond to a specific case or claim.

Capital Felony - A criminal offense in which the death penalty may be imposed. (C.G.S. 53a-54b.)

C.G.S. - Abbreviation for Connecticut General Statutes.

Charge - Formal accusation of a crime.

Charge to Jury - In trial practice, a statement delivered by the court to the jury at the close of the case instructing the jury as to what principles of law they are to apply in reaching a decision.

"Chip Smith Charge" - An instruction to deadlocked jurors, urging those jurors who disagree with the majority vote to reexamine the majority views in an effort to reach a unanimous verdict.

CIP - Children in Placement is a voluntary program in Juvenile Court which monitors neglect cases.

Classification and Program Officer - Also called CPO. A person who provides classification, program counseling and recreational services to detained juveniles. May attend certain court hearings in Juvenile Matters and provide reports.

Complaint - A legal document that tells the court what you want and is served with a summons on the defendant to begin the case.

Conditional Discharge - A disposition, in criminal cases, where the defendant must satisfy certain court-ordered conditions instead of a prison term.

Contempt of Court - A finding that someone disobeyed a court order. Can also mean disrupting court, for example by being loud or disrespectful in court.

Continuance - The adjournment or postponement of a court case to another day.

Conviction - To be found guilty of committing a crime.

Court Clerk - The person who maintains the official court record of each case. The court clerk's office receives all court papers and assigns hearing dates.

Court Interpreter - The person who translates court hearings from English to another language. Provided at state expense in all criminal cases and in cases enforcing child support orders, if requested. No interpreter is available for divorce or any other civil case.

Court Monitor - The person who prepares a written record of the court hearing for a fee, if requested, from audio tapes made during the hearing.

Court Trial - Trial by a judge, rather than by a jury.

Day Incarceration Center - Also called DIC. A community-based program that provides monitoring supervision and services to people who would otherwise be incarcerated. DIC clients are supervised during the daytime hours, seven days per week.

Defendant - In civil cases, the person who is given court papers, also called a respondent. In criminal cases, the person who is arrested and charged with a crime.

Delinquent - In civil or family cases, failing to pay an amount of money when due. In juvenile cases, a child who violated a law, local ordinance or an order of the Superior Court.

Deposition - Testimony of a witness taken, under oath, in response to another party's questions. Testimony given outside the courtroom, usually in a lawyer's office. A word for word account (transcript) is made of the testimony.

Detention Hearing or Detention Release Hearing - A hearing on the first business day after a juvenile is admitted to juvenile detention concerning the legality and appropriateness of continued detention of the juvenile. The detention decision must be reviewed at least every fifteen days.

Dismissal - A judge's decision to end the case.

Diversions Programs - Community-based programs that are used to keep eligible, convicted criminal offenders out of prison.

Docket - A list of cases scheduled to be heard in court on a specific day or week.

Docket Number - A unique number the court clerk assigns to a case. It must be used on all future papers filed in the court case. Each docket number starts with two letters that tell the type of case. CI = criminal infraction; CR = criminal case; CV = civil case; FA = family case; MI = motor vehicle infraction; MV = motor vehicle case; SC = small claims.

Drug Court - A Special Session of the Superior Court that is responsible for hearing cases involving charges of drug offenses.

Education Program - A program for family violence offenders that, if granted and successfully completed, results in dismissal of criminal charges. (C.G.S. 46b-38c)

Electronic Monitoring - An electronic system that provides the Probation Officer or Bail Commissioner with a report about whether the offender has left home during the time when the offender was required to remain at his or her home.

Emancipated Minor - A person under the legal majority age of 18 who is granted most rights and legal privileges of an adult. (C.G.S. 46b-150, et seq.)

Emancipation - The release of a youth from the legal authority and control of his/her parents and the corresponding release of the youth's parents from their obligations to the youth.

Evidence - Testimony, documents or objects presented at a trial to prove a fact.

Failure to Appear - In a civil case, failing to file an appearance form. In a criminal case, failing to come to court for a scheduled hearing.

Family Relations Counselor - A person who mediates disagreements and negotiates agreements in custody, visitation and divorce cases. At the request of the judge, a family relations counselor may evaluate a family situation by interviewing each parent and the children in the family. The family relations counselor then writes a report for the judge, making recommendations about custody and visitation. Works in the Family Services Office.

Family Violence Education Program - A program for family violence offenders that, if successfully completed, results in the dismissal of criminal charges.

Family Violence Victim Advocate - A person who works with domestic violence victims to determine their needs and inform them of their rights and the resources available to them.

Family With Service Needs - Also called FWSN. A family that includes a child, who (a) runs away without just cause, (b) is beyond the control of his/her parents/guardian, (c) has engaged in indecent or immoral conduct, and/or (d) is a truant or continuously defiant of school rules and regulations.

Felony - Any criminal offense for which a person may be sentenced to a term of imprisonment of more than one year.

Felony Murder - A murder committed while the person is also committing a felony.

G.A. (Geographical Area) - The court location where motor vehicle and most criminal cases are heard. There are 22 GA courts in Connecticut.

Guardian - A person who has the power and duty to take care of another person and/or to manage the property and rights of another person, who is considered incapable of taking care of his or her personal affairs.

Guardian Ad Litem - A person, usually a parent, appointed by the court to represent a child or unborn person in a court case. If a family member is not available, a judge may appoint an attorney.

Habeas Corpus - A court order used to bring a person before a court in order to test the legality of the person's detention. Usually, it is directed to the official or person detaining another, commanding him to bring the person to court for the judge to determine if that person has been denied liberty without due process of law.

Hearsay - Testimony given by a witness who tells second or third-hand information.

Hung Jury - A jury whose members cannot reconcile their differences of opinion and thus cannot reach a verdict.

Incarceration - Confinement to a state correctional institute or prison.

Indigent - Someone without enough money to either support himself or herself or his or her family. Someone who cannot afford to pay certain fees required by the court.

Information - In a criminal case, the formal court document in the clerk's file which contains the charges, dates of offenses, bond status, continuance dates and disposition.

Infraction - A case where the fine may be paid by mail and usually the person does not have to appear or come to court. For example, a speeding ticket.

Injunction - A court order to stop doing or to start doing a specific act.

Investigatory Grand Jury - A judge, constitutional state referee or any three judges of the Superior Court appointed by the Chief Court Administrator to conduct an investigation into the commission of a crime or crimes.

Judge - A person who hears and decides cases for the courts. Appointed by the Governor for a term of eight years and confirmed by the General Assembly.

Judicial District - The court where most civil and family matters are heard in a certain area of the state. There are 13 judicial districts in Connecticut.

Jury Charge - The judge's formal instructions on the law to the jury concerning the law of the case.

Jury Instructions - Directions given by the judge to the jury concerning the law of the case.

Juvenile Delinquent - A person under the age of 16 who commits a criminal act.

Juvenile Detention Center - A secure facility for juveniles operated by the Court Support Services Division of the Connecticut Judicial Branch, open 24 hours a day, 7 days a week.

Juvenile Probation - Placement of an adjudicated delinquent under the supervision of a juvenile probation officer.

Magistrate - A person who is not a judge but who is authorized to hear and decide certain types of cases. For example, family support magistrates hear cases involving child support.

Marshal - The persons responsible for courthouse security, including the metal detectors at the entrance of each courthouse, and maintaining order in each courtroom.

Mediation - A dispute resolution process in which an impartial third party assists the parties to voluntarily reach a mutually acceptable settlement.

Minor - A person under age 18, the age of legal majority.

Misdemeanor - A crime that carries a maximum penalty of one year and/or a \$2,000 fine.

Mitigating Circumstances - Circumstances that may be considered to reduce the guilt of a defendant. Usually based on fairness or mercy.

Mittimus Judgment - Also called a Mitt. The formal document prepared by the court clerk to present a convicted defendant in a criminal case to the Department of Correction for incarceration.

Motion - Usually a written request to the court in a case. Filed with the clerk's office.

Neglected Minor - A child or youth who has (a) been abandoned, (b) is being denied proper attention, (c) is being permitted to live under conditions injurious to his/her well being, or (d) has been abused.

No Contact Order - A court order that prohibits contact by a defendant with a victim; can be ordered by a judge, a bail commissioner, a probation officer or a parole officer.

No Fault Divorce - The most common kind of divorce, when no one needs to prove that the husband or the wife is at fault, or caused the marriage to end. Described as "broken down irreconcilable."

Nolle - Short for nollo prosequi, which means "no prosecution." A disposition of a criminal or motor vehicle case where the prosecutor agrees to drop the case against the defendant but keeps the right to reopen the case and prosecute at any time during the next thirteen months. The nolle is entered on the court record and the defendant is released from custody. If the defendant stays out of trouble during the thirteen months, the case is removed from the official court records.

Nolo Contendre - It means "no contest." A plea in a criminal case that allows the defendant to be convicted without admitting guilt for the crime charged. Although a finding of guilty is entered on the criminal court record, the defendant can deny the charges in a civil action based on the same acts.

No Contest - A plea in a criminal case that allows the defendant to be convicted without admitting guilt for the crime charged. Also called nolo contendere. Although a finding of guilty is entered on the criminal court record, the defendant can deny the charges in a civil action based on the same acts.

Oath - To swear/affirm to the truth of a statement/document.

Order of Detention (Detention Order) - An order issued by a judge of the Superior Court finding that there is probable cause that a juvenile committed an offense or a violation of a court order and ordering that the juvenile be held in a Juvenile Detention Center or some alternative facility until further order of the court.

Orders of Temporary Custody - Also called an OTC. Court order placing a child or youth in the short-term legal custody of an individual or agency authorized to care for juveniles.

Parenting Education Program - A mandatory program for persons involved in a divorce with children or a custody or visitation case. Must be attended within 60 days of the return date on the summons.

Parole - Release from incarceration after serving part of a sentence.

Pendente lite order - A court order made before final orders are granted.

Peremptory Challenge - The rejection of a prospective juror by the attorneys in a case, without having to give a reason. State law defines the number of peremptory challenges available.

Perjury - Making false statements under oath.

Petition - A formal written request to a court, which starts a special proceeding. In juvenile court, the legal document which specifies the complaint against the juvenile and/or family; it includes the name, age and address of the minor and his/her guardian, as well as the statutory grounds and facts upon which the request for the court intervention is based.

Plaintiff - The person who sues or starts a civil case, also called the petitioner or the complainant.

Plea - An accused person's answer to a criminal charge. For example, not guilty, guilty or no contest.

Plea Bargain - The agreement a defendant makes with the prosecutor to avoid a trial. Usually involves pleading guilty to lesser charges in exchange for a lighter sentence.

Pleadings - The court documents filed with the court by the parties in a civil or criminal case. For example, motion to dismiss or motion for modification.

Posting Bond - To pay the court-ordered bond amount with cash or property.

Practice Book - Contains the rules of court and forms that must be followed in all Connecticut court cases. Available in all courthouse law libraries.

Pre-Sentence Investigation - Also called P.S.I. A background investigation conducted by a probation officer on a person who has been convicted of a criminal offense.

Pre-Trial - In a civil case, a conference with a judge or trial referee to discuss discovery and settlement. In a criminal case, a conference with the prosecutor, defense attorney and judge to discuss the case status and what will happen next.

Pre-Trial Diversion - A system by which certain defendants in criminal cases are referred to community agencies prior to trial while their criminal complaints or indictments are held in abeyance. The defendant may be given job training, counseling and education. If he responds successfully within a specified period (*e.g.* 90 days, more or less), the charges against him are commonly dismissed.

Probable Cause Hearing - A hearing held before a judge in criminal cases to determine if enough evidence exists to prosecute. The probable cause hearing must be conducted within 60 days of the filing of the complaint or information in Superior Court, unless the accused person waives the time or the court grants an extension based on good cause.

Probation - When a convicted offender receives a suspended term of incarceration and is then supervised by a probation officer for a period of time set by a judge.

Probation Absconder - A person under probation supervision whose location is unknown, in violation of the conditions of their probation.

Promise to Appear - A type of non-financial bond where the defendant agrees to return to court without giving cash or property.

Pro Se - A Latin phrase meaning "for yourself." Representing yourself in any kind of case.

Prosecute - To carry on a case or judicial proceeding. To proceed against a person criminally.

Protective Order - A criminal court order issued by a judge to protect a family or household member.

Referee - Judges who reach the mandatory retirement age of 70 may be designated as Judge Trial Referees by the Chief Justice and can hear and decide certain types of case.

Residential Treatment Program - Programs that provide extensive drug or alcohol treatment on an in-patient basis.

Respondent - Another word for defendant; the person responding to a lawsuit. In Juvenile Court, the word refers to the person or persons named in a petition.

Restitution - Money ordered to be paid by the defendant to the victim to reimburse the victim for the costs of the crime. Generally making good, or giving the equivalent for any loss, damage or injury caused by a person's actions. Often a condition of probation.

Restraining Order - A civil court order to protect a family or household member from physical abuse.

Revocation Hearing - A hearing held before a judge to determine whether or not a person has violated the conditions of probation. If there is a finding that a violation has occurred, the judge may impose all or part of the original sentence.

Seal - A court order closing a case file from public review, usually in cases of youthful offenders and acquittal. Prevents the public from obtaining information on the cases.

Senior Judge - A judge who reaches the age of 65, or who meets certain other requirements and chooses senior status. Senior judges hear cases on a part-time basis until they reach the mandatory retirement age of 70.

Sentences - The penalty imposed by a judge after the defendant is convicted of a crime. Sentences can be: Concurrent - Multiple sentences will be served at the same time (i.e., sentences of 10 years, 8 years and 2 years, to be served concurrently, equal a total effective sentence of 10 years); Consecutive - The sentences are served back-to-back. The same example above would equal a total effective sentence of 20 years.

Sentencing - When a criminal defendant is brought before a judge after conviction for ordering the terms of the punishment.

Sentence Review - A defendant's written application to a three-judge panel to review the sentence. Must be filed within 30 days after being sentenced with the court clerk. A review decision can increase or decrease the sentence.

Serious Juvenile Offender - A child who has been adjudicated by the juvenile court for a serious juvenile offense.

Serious Juvenile Offense - Certain criminal offenses listed in the Connecticut General Statutes, which are crimes against persons, serious property crimes and certain drug offenses. A juvenile charged with a Serious Juvenile Offense by police may be admitted to a Juvenile Detention Center with a prior court order and may be released only by order of a judge of the Superior Court.

State's Attorney - An attorney who represents the state in criminal cases. The prosecutor.

Statute of Limitations - A certain time allowed by law for starting a case. For example, six years in a contract case.

Subpoena - A command to appear in court to testify as a witness.

Substance Abuse Education - A community-based program for drug offenders that provides education about the harmful effects of drug abuse and also supervises community service.

Substitute Charge - In a criminal case, a charge that replaces the original charge by the prosecutor.

Summons - A legal paper that is used to start a civil case and get jurisdiction over a party.

Support Enforcement Officer - A person who supervises child support payments and brings parents to court to enforce child support orders. May also file legal papers to modify or change child support orders.

Testimony - Statements made by a witness or party under oath.

Time Served - A sentence of incarceration equal to the amount of time a defendant has already spent in state custody waiting for disposition of the case.

Transfer Hearing - Juvenile Court hearing to determine whether a child, 14 or older, charged with a serious juvenile offense should have his/her case transferred to a criminal court and be subject to the same processes and penalties as an adult charged with the same crime.

Transfer Hearing - Juvenile Court hearing to determine whether a child, 14 or older, charged with a serious juvenile offense should have his/her case transferred to a criminal court and be subject to the same processes and penalties as an adult charged with the same crime.

Uncared For - Legal description of a child or youth who is homeless or whose home cannot provide the specialized care which his/her physical, emotional or mental condition requires.

Unconditional Discharge - A sentence in a criminal case in which the defendant is released without imprisonment, probation supervision or conditions.

Venue - The court location.

Victim Services Advocate - A person who assesses a victim's needs and helps the victim understand the court case, how to exercise their right and how to access other resources.

Violation of Probation - Action or inaction that disobeys a condition of probation.

Voir Dire - "To speak the truth." The process of questioning prospective jurors or witnesses about their qualifications.

Witness - A person who testifies to what they saw, heard, observed or did.

Writ - Legal paper filed to start various types of civil lawsuits.

Youth - Any person (16) to (18) years of age.

Youthful Offender - A legal status available to persons who have been arrested for a crime committed when they were between the ages of 16 and 18 who meet other eligibility requirements. If the court grants Youthful Offender status, the information and proceeding are confidential and do not become part of the person's criminal record.

YOEI - An investigation performed by a probation officer to determine if the youth qualifies to be treated as a youthful offender.

Appendix XVI

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Resources on Amistad

Websites:

Amistad (www.amistad-thefilm.com) companion site to the Steven Spielberg film.

Amistad America (www.amistadamerica.org) project to build a replica of the Amistad vessel.

The Amistad Research Center (www.arc.tulane.edu) major archival repository for the study of African American history.

The Anacostia Museum (www.si.edu/organiza/museums/anacost/anachome.htm) home to the Center for African American History and Culture of the Smithsonian Institution.

Exploring Amistad (www.amistad.mysticseaport.org) online educational site.

NetNoir Online (www.netnoir.com) gateway to African American culture.

The Smithsonian Institution (www.si.edu) American's national museum.

Books:

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Joyce Annette Barnes, *Amistad* (Junior novel based on the screenplay, 1997)
Howard Jones, *Mutiny on the Amistad* (1987; rev.ed. 1997)
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B. Edmond Martin, *All We Want Is Make Us Free* (1986)
Walter Dean Myers, *Amistad: A Long Road to Freedom* (1997)
William A. Owens, *Black Mutiny* (1968; reprinted 1997)
Alexs Pate, *Amistad* (novel based on the screenplay, 1997)
Steven Spielberg, *Amistad - "Give Us Free": A Celebration of the Film* (1997)
Karen Zeinert, *The Amistad Slave Revolt and American Abolition* (1997)

Web Sites on Connecticut Court System

State of Connecticut Judicial Branch: www.jud.state.ct.us

Connecticut Consortium for Law & Citizenship Education: www.connix.com-cclce/home.html

Web Sites for Lesson Plans on Court System in General

New York Times Learning Network Lesson Plan Search: www.nvtimes.com (search American History, Language Arts, Social Studies, Civics)

AskERIC Lesson Plans: <http://askeric.org/virtual/lessons/> (search Justice)

Homework Central: www.homeworkcentral.com (search lesson plan archives-government & civics, justice).

Project Legal (run by Dr. Jim Carroll, Syracuse University): www.maxwell.svr.edu!plegal
(includes links to Project Critical which provides 6 units of lesson plans and an interactive website for students called compulegal, teacher resources, etc.)

Primary Documents on the Connecticut Courts

[A Guide to the Records of the Judicial Department](#). State Archives, Record Group #3: Part 1 : History of the Courts to 1900; Part 2: County Courts. Located in The Connecticut State Library.

Videos

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"Judge and Jury, Partners in Justice," produced by State of Connecticut Judicial Branch, revised 5/18/98.