

Testimony in Opposition
To Current Proposed Language of S.B. 460

March 22, 2016

In light that the Judiciary Committee tabled agenda item #20, a vote on S.B. 460 at the meeting held on March 21, 2016.

I am submitting a summary document of my testimony which can be reviewed on CT-N beginning at approximately 5:39 into the public hearing portion of the March 21, 2016 Judiciary Committee meeting.

S.B. 460 has now been re-docketed on the agenda of the March 28, 2016 JC meeting for a vote.

In addition to the review of the public remarks which were video-recorded, there are also some relevant **additional** comments included in this five page commentary on the "language" and design of this bill.

The design of S.B. 460 language in Section 2 (A) is unclear, ambiguous and therefore constitutionally vague

In my video recorded testimony on CT-N, I provide comments on this subject which were influenced by questions from Senator Gary Holder Winfield and Representative Ernest Hewitt of a member of the Innocence Project staff, seeking information from the commentator on S.B. 460 about who and when is "innocence" achieved.

My comments on video and in this document involve the definition of the word "innocent" or "innocence" in the draft language.

Nowhere in the definitions of the words which govern the criminal statutes in the State of Connecticut are the words "innocent" or "innocence" legally defined.

Black's Law Dictionary defines "innocence" as the absence of guilt esp. freedom from guilt for a particular offense."

Black's Law Dictionary defines "legal innocence" as the absence of one or more procedural or legal bases to support the sentence given to a defendant."

"Legal innocence" therefore would require a "sentence" to have been issued by a lawful court of jurisdiction. "Legal innocence" would imply that an Appellate Court would have to have "acquitted" the defendant—meaning there was no basis for a probable cause arrest and that there is no "remand" for a re-trial.

S.B. 460 language does not define, nor does current Connecticut law define the words "innocence" or "innocent."

Therefore, as designed, the language of proposed bill S.B. 460 is confusing, ambiguous and therefore unconstitutionally vague.

Such language, if adopted, could result in a "constitutional challenge" to the bill since the legislature Judiciary Committee colloquy on this subject showed "confusion" on when "innocence" is "considered a final judgment" and is no longer subject to appeal to the U.S. Supreme Court.

The bill in Section 2 (A) also requires a finding by the Claims Commissioner for the person to "prove actual innocence" in a hearing by the Claims Commissioner.

If the Appellate Court provides an acquittal, there is a finding of "actual innocence". However, this bill's language would suggest that the Claims Commissioner would have the ability to determine that an acquitted defendant could "over-ride" the determination of the Appellate Court.

Even the Attorney General of the State of Connecticut raised issues of the language in Section 2A of the S.B. 460.

Section 2 (B) of the language of S.B. 460 is inconsistent with the language of C.G.S. § 4-165

C.G.S. § 4-165 is current law in the State of Connecticut which does not exempt an employee of the State of Connecticut (including members of the judiciary) from conduct which is "wanton", or "reckless" or "malicious."

However, the language of S.B. 460 as designed makes no cross reference to this statute, thus creating more "confusion" because the "legal standard" of "innocence" is not properly defined in the current language.

The current language in Section 2 is overly broad and ill-defined.

An "acquittal with an order to vacate that is not appealed to a higher court of jurisdiction by the State of Connecticut" would be clearer language.

Such language would suffice to meet the conduct described in Section 2B proposed language. Such "substitute language" would narrow the grounds under which a claim could be pursued with the Claims Commissioner, who is already overburdened with cases according to S.B. 438 proposed language, which includes requiring a report annually for "unresolved" cases which languish for years in the Claims Commissioner.

In my testimony before the Judiciary Committee on March 21, I referenced my Appellate Court decision, AC 34577, as meeting the "criteria" outlined in my proposed "substitution language" to "acquittal with an order to vacate that is not appealed to a

higher court of jurisdiction by the State of Connecticut" (i.e. The Supreme Court of Connecticut or the United States Supreme Court).

Proposed language in Section 2 (c) of S.G. 460 is inconsistent with language in C.G.S. §4-165 and requirements to file with the Claims Commissioner

Again, conduct must be "wanton", or "reckless" or "malicious" to qualify for the Claims Commissioner to make awards for damages and current language proposed is "overly broad" and "confusing" in Section 2 (c).

The comments by the Attorney General Office on this section are also important to not are not "on point" regarding the fact that the Claims Commissioner should "not" in my opinion, have the right to determine "factual innocence" if the Appellate Court has acquitted a defendant and no appeal has been taken by the State of Connecticut's Attorney General office or the Office of Chief State Attorney, Appellate Division.

The Claims Commissioner function is not as a "court of jurisdiction" which supercedes the authority of the Appellate Court of Connecticut, the Supreme Court of Connecticut or the U.S. Supreme Court.

The limitations on the factors that the Claims Commissioner may determine an award, as defined in the proposed language in Section 2 (c) provides for no awards for "financial damages" suffered by a defendant in legal costs, bonds, etc. while the Appellate Court or Supreme Court of Connecticut "deliberates" after a sentence is issued.

This "invisible handcuffs" when an unjust sentence is also issued and the impact on "loss of the presumption of innocence" period of time in Connecticut is substantial.

The proposed language in SB 470 provides no compensation loss of "freedoms" from the date of arrest, the impact of "protective orders" and the "denial of equal protection and due process" in the State of Connecticut when application of "arrest warrants" involving "probable" cause invocations result in the issuance of "protective orders" which were later to be found to be grounded in "false arrest.

Let me illustrate by way of example of how long "freedoms" were denied from date of trial and sentencing in AC 34577.

In my case, it took three years from the point in time of trial (January 2012), conviction (January 24, 2012), appeal bond awaiting sentencing, unlawful incarceration, sentencing (May 8, 2012), unlawful incarceration, appeal bond (June 8, 2012) and decision for the Appellate Court (March 10, 2015) for the Appellate Court to have ruled.

During that three year span, the "loss of freedoms" were enormous, including the freedom to leave the State of Connecticut while the Appeal was being adjudicated.

The issues of the "lasting impact" of media coverage of the original "probable cause arrests" from February 24, 2010 to the "dismissal" of all charges on May 6, 2015, demonstrates the "long lasting" impact of the system of "injustice".

Section 2 (c) of the bill needs major restructuring to properly redesign re-assess the issue of "compensatory" damages which can be awarded by the Claims Commissioner when an "acquittal" is issued.

As referenced in my remarks before the Judiciary Committee, on March 10, 2016, a federal civil rights suit was filed by me and docketed as 3:16-cv-407 (JAM) and assigned to the Honorable Jeffrey Acker Meyer naming the State of Connecticut as a defendant.

Section 2 (g) of the bill is clearly unconstitutional

The matters of "unconstitutional" conduct by public employees in a State are clearly within the jurisdiction of the federal court.

Attorney General Jepsen, in his two pages of published commentary agreed with my "testimony" on March 21.

As noticed on March 10, 2016, there are only three cases in the State of Connecticut in Westlaw regarding an award of civil damages for "malicious prosecution".

While AG Jepsen suggests a "waiver" to be signed if a Claims Commissioner award is issued, it is my position that the right to sue the State of Connecticut is being impeded by the Claims Commissioner being "overburdened" with cases which deny a "due process and equal protection" right to collect damages for "official misconduct" in the conduct by "actors" for the State of Connecticut.

There are issues of "absolute immunity" granted in well settled federal court decisions protecting the ability for a defendant to sue a "prosecutor" or "a judge" for individual damages.

There are issues of the Eleventh Amendment to the Constitution about needing "permission" to sue a State in federal court.

However, as AG Jepsen points out, there is also the Supremacy Clause of the Constitution which would suggest a defendant also has "due process and equal protection rights" which cannot be denied by a State, in having set up a system in which the backlog of claims is designed to "inhibit" the collection of damages for conduct which results in an "acquittal".

The idea of having one individual (The Claims Commissioner) making all "legal determinations" of "factual innocence" is an example of the design of a system of "jurisprudence" which is duplicative and unnecessary, in my opinion.

SB 460 needs to be sent back to the drawing board and should not be considered in this session of the legislature because of the serious flaws in the language design.

The 2nd Circuit Court of Appeals decision in Martin v. Hearst and the long term impact of social media needs to be assessed as part of the Judiciary Committee re-tooling of the language in SB 460

Martin v. Hearst (13-3315, issued 2015 cert. denied by SCOTUS), provides an excellent review of the long term impact of what is determined to be "fact" which turned out to be "fiction" in today's media world.

In the filing by Attorney Mark Sherman on behalf of his client, Attorney Sherman unsuccessfully argued that the Hearst newspaper chain had a responsibility to take down or update stories which later resulted in a nolle for his client.

In today's media world, the 2nd Circuit, upheld the dismissal of the case on the grounds that "one cannot recreate" history.

The long lasting impact of search engines on employment of those either never tried or sentenced, or even those who were exonerated lives on forever in today's media world.

A copy of the link to this decision is found below:

<http://caselaw.findlaw.com/us-2nd-circuit/1690506.html>

A copy of the U.S. District court filing in 3:16-cv-407 (JAM) can be found on the PACER website.

Conclusion

S.B. 460 should be tabled and be reconsidered after the language of the bill is reconstructed for good cause shown herein.

Sincerely,

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cc: Attorney General George Jepsen