Newsletter of the Utah Prosecution Council

The Utah PROSECUTOR

LEGAL BRIEFS

United States Supreme Court

An intent to return capital, proffered as defense to tax evasion, is allowable.
The defendant was the president, founder, and controlling shareholder of Hawaiian Isles Enterprises (HIE). The government presented evidence that he gave millions of dollars of HIE money to both his girlfriend and his wife, without reporting any of it on his personal income tax returns. He allegedly diverted the money by writing checks to employees and friends and having them return the cash to him, by diverting payments by HIE customers, by submitting fraudulent invoices to HIE, and by laundering HIE money through companies in Tonga and Hong Kong. The government charged him with violating Section 7201, which makes it a felony willfully to "attemp[t] in any manner to evade or defeat any tax imposed" by the Internal Revenue Code. The defendant sought to introduce evidence that HIE had no earnings or profits in the relevant tax years, such that any distributions for those years had to be returns of capital up to the amount of his basis in the stock. The district court barred the evidence and refused to instruct the jury on the defendant's return-of-capital theory. Reversing, the Supreme Court said that a corporate distribution may be either a dividend or a return of capital even if done informally, as in the alleged diversions here, because the "objective economic realities" of the transaction govern. The Court said a tax-evasion conviction requires proof of a deficiency, that liability under Section 7201 cannot rest on bad intent alone and that the willfulness element must be proved by the government independent of the deficiency element. *Boulware v. United States*, No. 06-1509 (United States Supreme Court, March 3, 2008).

States are free to apply new federal rules in post-conviction relief, despite Teague doctrine.
When the U.S. Supreme Court decides that a new rule of federal constitutional procedure is not to be applied retroactively on federal habeas corpus review, state courts remain free to rely on the new rule to grant state post-conviction relief. The Court established a general rule that new constitutional rules of criminal procedure must not be applied on federal habeas review of state convictions which have already been af-

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firmed on direct appeal prior to the announcement of the new rule by the court. The test for retroactivity employed by the Court–the Teague doctrine–relates to the Court's statutory and prudential authority to regulate the remedies provided in the federal courts and was not based on federal constitutional authority over the state courts. State courts are divided as to whether the states have authority to adopt their own retroactivity standards that would apply federal constitutional rights in circumstances where the Teague test would not. Despite the fact that this creates some non-uniformity between state and federal government, the Court concluded such non-uniformity is inherent in the federalist system of government and that States are sovereigns with authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees. *Danforth v. Minnesota*, No. 06-8273 (United States Supreme Court, February 20, 2008

Utah Court of Appeals

Business owners awarded conditional use permits do not have a property interest in those permits.
Stevens, an owner of two parcels of land on State Street in LaVerkin, Utah, initiated an action against LaVerkin City after it chose not to renew conditional use business permits it had previously granted Stevens. The permits allowed him to use his parcels as an auto repair shop and used auto lot/storage facility. Stevens claimed that LaVerkin, in condemning one of his lots, intended to force him to sell the property and that he was subject to inverse condemnation. The trial court granted LaVerkin's motion for summary judgment, and Stevens appealed. The Court of Appeals held that Stevens' inverse condemnation claim must fail because he did not have a property interest in a conditional use permit such that a taking occurred when that permit was not renewed. In *Anderson v. Utah County Board of Commissioners*, the Supreme Court held that "an operating business [does not have] any such vested or inviolable right in the renewal of its license." 589 P.2d 1214, 1216 (Utah 1979). Stevens' claim was found not to be ripe because he had

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Case Summaries

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Danforth v. Minnesota - Teague Test, post-conviction relief

Utah Court of Appeals(p. 2-3,5)

Stevens v. LaVerkin City - Property rights in conditional use permits
State v. Zahn - Brickey rule
14th Street Gym, Inc. v. Salt Lake City - Business license revocation for third party criminal acts
Corwell v. Corwell - Marriage annulment and cohabitation
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United States v. Turvin – traffic stops, 4th Amendment
U.S. v. Villanueva-Sotelo - Identity theft
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U.S. v. Shrake - Walsh Act, child porn evidence

Other States (p. 11)

Jefferson v. Arkansas - Felony murder

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failed to exercise all administrative options available to him through LaVerkin City.

In addition, Stevens argued that the trial court failed to issue a "statement of grounds" in granting summary judgment pursuant to 52(a) of the Utah Rules of Civil Procedure. The Court of Appeals found that although such statement is highly useful, its omission is not a reversible error unless the trial court's ruling cannot be squared with the arguments in the summary judgment motion, or the case is overly complex. Neither exception applied to Stevens' case, and the trial court's ruling was affirmed. *Stevens v. LaVerkin City*, No. 20070031-CA (UT Court of Appeals, April 10, 2008)

***Brickey* rule does not bar new charges from being filed against a defendant when previous charges based on similar facts have been dismissed.**

Defendant Zahn argued that the State violated both his due process rights and the *Brickey* rule when the court failed to bind him over on a charge of unlawful sexual contact. Subsequently, the prosecutor re-filed charges based on new information, but used basically the same facts, alleging first degree felony rape. The *Brickey* rule states that due process rights of the defendant prohibit a prosecutor from re-filing charges following their dismissal for lack of evidence unless new evidence becomes available or good cause mandates re-filing. The reason for the *Brickey* rule was to avoid potential due process violations due to abusive practices. Such practices include forum-shopping, repeated filings of groundless charges, charging with an intent to harass, withholding evidence, and re-filing though there is no evidence of an element of the charged crime. *Brickey* has been narrowly construed by the Court and only limits a prosecutor's ability to re-file a previously dismissed charge, not to file new charges against a defendant when no abusive practices are evident. *State of Utah v. Zahn*, No. 20060183-CA (UT Court of App., February 28, 2008)

A business license may not be revoked based on criminal acts of a third party.

14th Street Gym, a fitness facility geared towards gay patrons, was the cite of several investigations by police. Police alledged that lewd sexual activity was occurring at the facility. In January 2005, a hearing by Salt Lake City Corporation was held to discuss the possible revocation of the Gym's business license due to sexual activity on the premises. The hearing officer found that employees either "turned a blind eye" towards or condoned the activities, and that management of the facility had the opportunity or duty to know about those activities. At the conclusion of the hearing, 14th Street's license was suspended for 90 days with an extended provisional suspension to follow. In June 2005, two gym patrons were arrested for lewd behavior in the facility and 14th Street's business license was subsequently revoked in March 2006. 14th Street sought review of the revocation, and those claims were dismissed by the trial court. 14th Street argued that the revocation of its license was arbitrary and capricious because it was based on the conduct of two patrons without any additional finding of knowledge or culpability on the part of the gym. The Court of Appeals found that long-standing disagreements over privacy and freedom existed between the gym and Salt Lake City. In reviewing the 2005 suspension order, the Court held that problems or violations referenced in the order that might lead to revocation of 14th Street's business license must be the result of some action on the part of the gym, rather than because of the criminal behavior of a third party. A revocable violation did not occur, and the Court reversed the dismissal by the lower court and ordered entry of a judgment in favor of 14th Street. *14th Street Gym, Inc. v. Salt Lake City Corporation*, No. 20061113-CA (UT Court of Appeals, April 10, 2008)

Annulment of a marriage precludes a finding of cohabitation under the Utah Cohabitant Abuse Act.

Rocky Corwell appealed the district court's denial of his objection to a protective order issued in favor of Stacy (Hall) Corwell. Corwell and Hall were married in March 2005. It was undisputed that the couple never cohabited, and Corwell began residing with another woman in October 2005. From October until December 2005, Corwell and his girlfriend received harassing

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PROSECUTOR PROFILE

Patrick Casaday,
Municipal Attorney, Sandy City

Pat has been a Municipal Attorney for Sandy City since 2004. He specializes in land use and water law. From 1996—2004, Pat was the Deputy Mayor for Sandy City, with an emphasis in legal, budget, policy development, transportation, land use and planning, and economic development. Pat has previously held positions as Assistant to the Mayor of Sandy City, a private practice attorney, and a Pro-Tem Judge for the Third Circuit Small Claims division and was Sandy City liason to the Utah State Legislature. He is currently Chair of the Healthy Sandy Partnership and Vice President of the Utah Municipal Attorney's Association. Active in the community, Pat has previously served as President-elect of the Sandy City Rotary, President-elect of the Utah State Trumpeters, Vice Chair of the Sandy Republican Club, and as a member of the Sandy City Planning and Zoning Commission. Pat was a Candidate for the Utah House in 2002 and was elected to the City Council of Lake Valley City in 1982.

Pat grew up in Salt Lake City as the oldest of four children. He says of his parents, "They are both wonderful people. Our household mottos were: honesty is the best policy and cleanliness is next to godliness. Our house is clean enough to be healthy and dirty enough to be happy." Pat graduated from the University of Utah in 1973 with a BS in Mathematics and a BA in Political Science. He did graduate work in Business Administration and Economics, and graduated with his Master of Public Administration from Ball State University in 1977. He received his J.D. from the University of Utah in 1983, and is also a graduate of the Air War College, Air Command and Staff University, and the Squadron Officer's School. A retired United States Air Force Lieutenant Colonel and Pilot, Pat flew reconnaissance missions and Command and Control missions during the Cold War and combat support missions during the Gulf War. He received the Air Medal (30+ combat missions) and the Presidential Unit Citation. He also served as a Judge Advocate General for the Utah Air National Guard.

Pat and his wife Adele have five children (four daughters, one son) and five grandchildren with a sixth due next month. He served as a Mission President, Stake President and Bishop for the Church of Jesus Christ of Latter-day Saints. Pat is an Eagle Scout and was named one of the Outstanding Young Men in America in 1984. In 2003, he was named the Sandy City Employee of the Year.

QUICK FACTS

NICKNAME
Pat

FAMILY
Oldest of four children; married to Adele with 5 children and 5 grandchildren (6th due in June)

HOMETOWN
Salt Lake City, Utah

CURRENT TOWN
Sandy, Utah

FIRST JOB
In a paper factory

CHILDHOOD DREAM JOB
Air Force pilot, astronaut

DID YOU KNOW?
Pat rode his bicycle around the United States in 1967 and has run in nine marathons

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telephone calls from Hall. Corwell filed for and received an annulment from Hall in March 2006. In April 2006, Hall began making harassing phone calls to Corwell again. Corwell called Hall and told her to stop calling or "I'll punch you in the face." Hall filed a protective order against Corwell, asserting that the couple was still married, that she wanted an annulment and that Corwell did not. Corwell objected to the protective order, which was brought under Utah's Cohabitant Abuse Act (the Act), because he claimed the couple never cohabited according to the statute. The trial court overruled his objection and entered the protective order. The Court of Appeals, on review, overturned the lower court's finding and determined that Corwell and Hall did not cohabit according to the Act. Corwell and Hall's marriage was annulled prior to the events that led to the protective order being filed; thus, as a matter of law, when the order was filed, the couple was never married and could not be found to have cohabitated as part of a previous marriage. The Court found that the legislature enumerated, in the Act, various ways in which cohabitant status can be found in a couple–one being if a current or previous marriage exists. Annulment was not addressed in the Act, but the Court held that it can preclude a find ing of cohabitant status. *Corwell v. Corwell*, No. 20061088-CA (UT Court of Appeals, February 22, 2008)

Motorist who refuses a breath test must have been informed of the consequences of his refusal by the arresting officer.
Defendant Decker appealed from the administrative suspension of his driver's license following his refusal to take a breath test. Decker was involved in a single car accident May 21, 2006. Deputy Marshall arrived on the scene and administered several field sobriety tests to Decker after smelling alcohol on him. Decker failed the tests, was arrested for DUI and was driven to the Salt Lake County Sheriff's Office. During the trip (approximately 1 hour), Decker questioned the Deputy as to his options and whether he should submit to a breath test at the Sheriff's Office. The Deputy refused to offer his thoughts to Decker, but ultimately said that if in a similar situation, he would not submit to the breath test. However, the Deputy indicated the adverse consequences for not doing so to Decker. At the Office, Decker refused a breath test. The Deputy again advised Decker of the consequences of refusal: namely, that he could face revocation or suspension of his license if he refused to take a breath test. The Deputy again offered the test, and Decker again refused. After his license was suspended, Decker appealed, claiming that the legal viability of his consent was affected by the Deputy's advice. The Court of Appeals held that Utah's implied consent laws require officers to warn motorists who refuse breath tests of the consequences of their refusal. The Deputy gave Decker proper information, both before and after Decker's refusal, regarding the consequences of his refusal. The issue is not the reason for Decker's refusal, but rather whether the was appropriately and clearly advised of his rights and obligations. He was, and the Deputy's comments did not excuse Decker's refusal. *Decker v. Rolfe*, No. 20070210-CA (UT Court of Appeals, March 6, 2008)

Tenth Circuit

Allowing admission of evidence of previous child molestation pursuant to FRE 413 and 414 must be weighed with danger of evidence causing unfair prejudice.
Defendant Grigsby was convicted of aggravated sexual abuse of a minor, appealed, and was

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Reference Chart

Penalties for Sexual Offenses

PENALTIES FOR SEXUAL OFFENSES
COMMITTED ON OR AFTER MAY 5, 2008

Offense (Attempt 76-4-102)	Degree	Penalty Range	Mandatory Prison*	Registration 77-27-21
Unlawful Sexual Activity with a Minor 76-5-401	3rd Class B	0-5 Years 0-6 Months	No No	10 year registration No registration requirement
Attempted Unlawful Sexual Activity with a Minor 76-5-401	Class A Class C	0-1 year 0-90 days	No No	10 year registration No registration requirement
Sexual Abuse of a Minor 76-5-401.1	Class A	0-1 year	No	10 year registration
Attempted Sexual Abuse of a Minor 76-5-401.1	Class B	0-6 months	No	10 year registration
Unlawful Sexual Conduct with a 16– or 17-year-old 76-5-401.2	3rd Class A	0-5 years 0-1 year	No No	10 year registration No registration requirement
Attempted Unlawful Sexual Conduct with a 16– or 17-year-old 76-5-401.2	Class A Class B	0-1 year 0-6 months	No No	10 year registration No registration requirement
Rape 76-5-402	1st	5– Life 6, 10 or 15-Life LWOP	No Yes Yes	Lifetime registration
Attempted Rape 76-5-402	1st	3-Life	No	Lifetime registration
Rape of a Child 76-5-402.1	1st	25-Life LWOP	Yes Yes	Lifetime registration
Attempted Rape of a Child 76-5-402.1	1st	3, 6, 10 or 15– Life	Yes	Lifetime registration
Object Rape 76-5-402.2	1st	5-Life 6, 10 or 15-Life LWOP	No Yes Yes	Lifetime registration
Attempted Object Rape 76-5-402.2	1st	3-Life	No	Lifetime registration
Object Rape of a Child 76-5-402.3	1st	25-Life LWOP	Yes Yes	Lifetime registration
Attempted Object Rape of a Child 76-5-402.3	1st	3, 6, 10 or 15-Life	Yes	Lifetime registration

See **REFERENCE** *on page*

Reference Chart continued

Sodomy 76-5-403(1)	Class B	0 - 6 months	No	No registration requirement
Attempted Sodomy 76-5-403(1)	Class C	0 - 90 days	No	No registration requirement
Forcible Sodomy 76-3-403(2)	1st	5 - Life 6, 10 or 15 - Life LWOP	No Yes Yes	Lifetime registration
Attempted Forcible Sodomy 76-3-403(2)	1st	3 - Life	No	Lifetime registration
Sodomy on a Child 76-5-403.1	1st	25 - Life LWOP	Yes Yes	Lifetime registration
Attempted Sodomy on a Child 76-5-403.1	1st	3, 6, 10 or 15 - Life	Yes	Lifetime registration
Forcible Sexual Abuse 76-5-404	2nd 1st	1 - 15 years 6, 10, or 15 - Life	No Yes	10 year registration 10 year registration
Attempted Forcible Sexual Abuse 76-5-404	3rd 1st	0 - 5 years 3 - Life	No No	10 year registration 10 year registration
Sexual Abuse of a Child 76-5-404.1	2nd	1 - 15 years	No	Lifetime registration
Attempted Sexual Abuse of a Child 76-5-404.1	3rd	0 - 5 years	No	Lifetime registration
Aggravated Sexual Abuse of a Child 76-5-404.1	1st	6, 10, or 15 - Life LWOP	Yes Yes	Lifetime registration Lifetime registration
Attempted Aggravated Sexual Abuse of a Child 76-5-404.1	1st	3 - Life	No	Lifetime registration
Aggravated Sexual Assault 76-5-405	1st	6, 10, or 15 - Life 15 - life / LWOP	Yes Yes	Lifetime registration Lifetime registration
Attempted Aggravated Sexual Assault 76-5-405	1st	3 - Life	No	Lifetime registration

* If imprisonment is mandatory under 76-3-406 the conviction may not be reduced under 76-3-402 and probation may not be granted except as provided in 76-5-406.5. 76-5-406 does not limit the powers of the Board of Pardons and Parole.

Corrections and suggestions may be emailed to phoyden@slco.org .

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granted a new trial by the district court. In granting Grigsby a new trial, the court found that the testimony of witness Capri Blakely, who alleged on the stand that Grigsby sexually abused her 20 years before, was both prejudicial and likely false. The jury was told to disregard the testimony, but the court held that the fairness of the proceedings was undermined by the initial admission of Blakely's testimony. The government appealed the decision of the district court to the 10th Circuit, which concluded that the reasoning of the district court in determining whether to grant a new trial was rational and plausible. The district court, in reaching its holding, balanced the testimony in light of FRE 413 and 414 (allowing admission of evidence of previous child molestation in considering present offense) with FRE 403 (exclude evidence of probative value if substantially outweighed by danger of unfair prejudice or misleading the jury). Additionally, the 10th Circuit agreed with the district court that the verdict was not strongly supported by the victim's statements or the defendant's confession. *United States v. Grigsby*, No. 07-7014 (10th Circuit Court of Appeals, April 9, 2008)

General guilty verdicts are permitted in death penalty cases and are not violations of Due Process.
Defendant Gilson was sentenced to death for 1st degree child abuse murder and appealed to the Tenth Circuit after his 28 U.S.C. 2254 habeas petition was denied. Gilson argued that the trial court erred in its jury instructions. The jury form indicated that all jurors were unanimous in finding Gilson guilty, but that as to the underlying theory (whether he committed the child abuse murder or permitted its commission by his accomplice, the child's mother), the jury was not unanimous. Gilson contended that in a death penalty case, the jury must be unanimous in the underlying theory of the crime, and that a lack of unanimity is a violation of his Due Process rights. The trial court held that a "general" guilty verdict is permitted when a prima facie case for each theory has been established by the prosecution. Gilson also argued that each theory proffered by the government (commission of or permitting to commit 1st degree child abuse murder) has separate elements and are separate offenses. The10th Circuit determined that the intent of the legislature in writing the criminal statute was to punish the commission of or permitting another to commit 1st degree child abuse murder, and that the issue is guilt or innocence, rather than means. Jurors need not agree on the means of commission of an offense, since each individual juror is persuaded by different pieces of evidence. Gilson's conviction and sentence were upheld. *Gilson v. Sirmons*, No. 06-6287 (10th Circuit Court of Appeals, April 2, 2008)

Other Circuits

A police officer who delays a traffic stop to ask questions outside the scope of the original stop is not violating a defendant's Fourth Amendment rights.
Defendant Turvin was stopped for traffic violations by a police officer, Christensen. After verifying the validity of Turvin's driver's license and while writing a citation, a second officer came on the scene and indicated Turvin had previously been involved in manufacturing methamphetamine. Christensen stopped writing the ticket, returned to Turvin's car, and began asking him about drug involvement. The conversation led to Turvin granting permission for a search, which yielded evidence used to charge Turvin with federal nar-

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On The Lighter Side!!

Wacky Warning Labels

(From http://www.power-of-attorneys.com/wacky_warning_labels.asp)

On a blanket from Taiwan:
Not to be used as protection from a tornado.

Warning on fireplace log:
Caution -- Risk of Fire.

A warning on a pair of shin guards manufactured for bicyclists:
Shin pads cannot protect any part of the body they do not cover.

Warning on an electric router made for carpenters:
This product not intended for use as a dental drill.

On a bottle of shampoo for dogs:
Caution: The contents of this bottle should not be fed to fish.

On a hair dryer:
Do not use in shower.

On Marks & Spencer bread pudding
Product will be hot after heating.

On a string of Chinese made Christmas lights:
For indoor or outdoor use only.

On Sainsbury's peanuts:
Warning: Contains nuts.

On an American Airlines packet of nuts:
Instructions - open packet, eat nuts.

On some frozen dinners:
Serving suggestion: defrost.

On a hotel provided shower cap:
Fits one head.

Warning on a cartridge for a laser printer:
Do not eat toner.

A wheel 13" a wheelbarrow warns:
Not for highway use.

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cotics and firearms offenses. From the time the traffic stop began to the point when permission for a search was granted, 14 minutes had elapsed. Turvin filed a motion to suppress in the district court, arguing that he had endured prolonged detention without reasonable suspicion during the traffic stop in violation of his Fourth Amendment rights. The district court agreed with Turvin, deciding that Christensen's investigation exceeded the scope of the traffic stop. On review, the Ninth Circuit disagreed, holding that Christensen did not prolong the detention of Turvin in violation of his Fourth Amendment rights by briefly delaying his investigation of the traffic offense to ask questions of Turvin that were unrelated to the traffic stop. As long as the stop as a whole is reasonable in terms of duration, it does not amount to unlawful detention. *United States v. Turvin*, No. 06-30551 (9th Circuit Court of Appeals, February 26, 2008).

Federal Identity Theft law requires proof defendant knew false identity information belonged to a real person.

Defendant Gustavo Villanueva-Sotelo was stopped by police in the District of Columbia and presented what appeared to be a permanent resident card with his name, photograph, and a fake alien registration number on it. Villanueva-Sotelo was charged with unlawful entry of a removed alien (he had been deported twice previously), possession of a fraudulent employment document, and aggravated identity theft under 18 U.S.C § 1028A(a)(1). The defendant pled guilty to the first two counts and challenged the third, claiming he did not "knowingly transfer[], possess[], or use[]...a means of identification of another person" and did not know the number on his card was not genuine. The Court of Appeals agreed with Villanueva-Sotelo and determined that to be guilty of aggravated identity theft, an individual must have known the false identity information belonged to a real person, as opposed to being chosen at random. The Court found the statutory language was ambiguous, but determined that theft was the purpose of the statute. The Court concluded that Congress intended for the statute, which increases a sentence by two years, to enhance penalties for thieves who steal identities, as opposed to those who merely use fraudulent documents. The defendant's argument has failed in the Fourth and Eleventh Circuits. *United States v. Villanueva-Sotelo*, No. 07-3055 (DC Circuit Court of Appeals, February 15, 2008)

Federal Identity Theft Statute requires proof that false ID used by defendant closely fits a real person.

Defendant Mitchell planned to use a fake driver's license and counterfeit checks to defraud retail merchants and banks. Mitchell was charged with bank fraud and aggravated identity theft, which is defined by 18 U.S.C. § 1028A(a)(1) as the knowing use without lawful authority of "a means of identification of another person" during and in relation to bank fraud or other listed felonies. Mitchell used the name "Marcus Jackson" on the driver's license and claimed he had chosen it out of a phone book and argued that because he was not identifying a specific person, he did not meet the statutory requirement of the use of a means of identification of "another person." At

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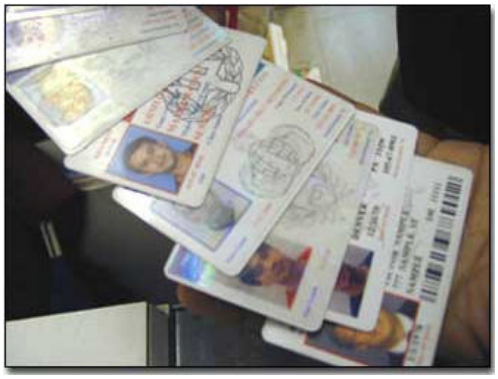
trial, the government produced two valid driver's licenses belonging to individuals named Marcus Jackson who lived at somewhat similar addresses to the one used on Mitchell's fake license. Both real individuals had similar birth dates as the one listed on the counterfeit license, but the license number used by Mitchell was not in use by any real person. The government argued that it only needed to prove a Marcus Jackson existed, not that Mitchell intended to use the identity of a particular person. The district court agreed with the government, and Mitchell was convicted. The Fourth Circuit reversed, distinguishing between a means of identification of a specific person and a "false" identification document generally. The Court held that similarities in non-unique characteristics such as name, city of residence, and birth date are insufficient statutorily to show that an individual "knowingly use[d]" the "means of identification of another person." *United States v. Mitchell*, No. 06-5169 (March 6, 2008)

Walsh Act's limitations on defense counsel access to child pornography images are constitutional.
The Adam Walsh Child Protection and Safety Act, at 18 U.S.C. § 3509(m), restricts defense counsel's pretrial access to child porn evidence in criminal proceedings and prohibits reproductions of that evidence. The statute provides that such material must be kept in the care of the government and that a defense request to reproduce any child pornography material should be denied "so long as the Government makes the ... material reasonably available to the defendant," meaning the defendant, his attorney, and his expert have ample opportunity to view, inspect, and examine the material at a government facility. The statute was challenged as unconstitutional by a defendant who requested to copy his computer hard drive (which had been confiscated and contained child porn) for his defense foren-



sic expert and whose request was denied based on the Walsh Act. The Court held that the U.S. Constitution does not guarantee a right to pretrial discovery in criminal cases and that limits on such discovery are constitutional. Further, the defendant's Sixth Amendment rights to confrontation and cross-examination are not harmed by the Walsh Act because those guarantees do not extend to pre-trial discovery. *United States v. Shrake*, No. 07-1790 (February 6, 2008). 7th Cir. Court of Appeals

Other States

Intent to commit an underlying felony is sufficient to convict a defendant of felony murder.
Jefferson and an accomplice robbed a convenience store and fled on the Interstate in a stolen car. Arkansas State Trooper Larry Astin pursued Jefferson while Trooper Mark Carthron readied stop sticks a few miles up the Interstate. At speeds of over 95 mph, Jefferson tried to avoid the stop sticks but was unable to do so. Trooper Carthron entered the roadway against protocol and was hit by Trooper Astin, who was following Jefferson at a slower rate of speed. Trooper Carthron later died. Defendant Jefferson was charged with capital murder, aggravated robbery, theft of property and fleeing in connection with a robbery. Jefferson appealed his conviction of capital murder and argued that the evidence presented did not support a finding that his actions manifested the extreme indifference to life necessary for felony-murder culpability. The Arkansas statute makes it a capital offense for a person to commit an aggravated robbery and in the course of committing it or fleeing "cause[ ] the death of any person under circumstances manifesting extreme indifference to the value of human life," Ark. Code Ann. § 5-10-101(a)(1) (2005).

The Court disagreed with Jefferson's claim and held that a defendant who flees the scene of an armed robbery and leads police on a high-speed pursuit on a busy highway exhibits prohibited conduct that falls within the "extreme indifference" phrase. Further, the Court held that the culpable intent for felony-murder is that which relates to the underlying felony, not the homicide. The court said that the extreme indifference element "involves actions that evidence a mental state on the part of the accused to engage in some life-threatening activity against the victim," citing Williams v. State, 91 S.W.3d 54 (Ark. 2002). The Court concluded that Jefferson's actions indeed constituted a life-threatening activity against Trooper Carthron, and that Jefferson was culpable for Cathron's death. *Jefferson v. State of Arkansas*, No. CR07-681 (Arkansas Sup. Ct., February 14. 2008)

The 2008 Training Calendar

Utah Prosecution Council (UPC) And Other Utah CLE Conferences

August 7-8	UTAH MUNICIPAL PROSECUTORS SUMMER CONFERENCE *Really good stuff for all whose caseload includes primarily misdemeanors*	Zion Park Inn Springdale, UT
August 18-22	BASIC PROSECUTOR COURSE *Substantive and trial skills training for new prosecutors*	University Inn Logan, UT
September 10-12	FALL PROSECUTORS TRAINING CONFERENCE *The annual fall meeting for all Utah prosecutors*	Iron Cnty Conf Center Cedar City, UT
October 15-17	GOVERNMENT CIVIL PRACTICE CONFERENCE *Specifically for civil side attorneys from county and city offices*	Zion Park Inn Springdale, UT
November 5-7	ADVANCED TRIAL SKILLS TRAINING *This will probably be a homicide related course*	Courtyard Marriott St. George, UT
November 12-14	COUNTY ATTORNEYS' EXECUTIVE MEETING & UAC CONF. *The only opportunity during the year for county/district attorneys to meet together as a group to discuss issues of common concern.*	Dixie Center St. George, UT

National Advocacy Center (NAC)

A description of and application form for NAC courses can be accessed by clicking on the course title or by contacting Utah Prosecution Council at (801) 366-0202; e-mail: mnash@utah.gov.

Restoration of federal funding for the National Advocacy Center is still being sought. In the meantime, NDAA continues to offer courses at the NAC, albeit without full reimbursement of expenses. Students at the NAC will be responsible for their travel, lodging and partial meal expenses. For specifics on NAC expenses, click here.

TRIAL ADVOCACY I — NAC, Columbia, SC

A practical, hands-on training course for prosecutors

COURSE DATE	NUMBER	REGISTRATION DUE
July 21-25, 2008	*11-08-TAI*	*May 23 (extended)*
August 18-22, 2008	*13-08-TAI*	*June 13 (extended)*
September 8-12, 2008	*14-08-TAI*	*June 11 (extended)*
September 29-October 3, 2008	*15-08-TAI*	*July 25 (extended)*

See **NAC SCHEDULE** *on page 13*

NAC SCHEDULE *continued from page 12*

August 11-15	BOOTCAMP: AN INTRODUCTION TO PROSECUTION *A course for newly hired prosecutors* ***The registration deadline has been extended to June 6, 2008***	NAC Columbia, SC
September 22 - 26	TRIAL ADVOCACY II *Practical instruction for experienced trial prosecutors* ***The registration deadline has been extended to July 25, 2008***	NAC Columbia, SC

National College of District Attorneys (NCDA) and American Prosecutors Research Institute (APRI) and Other National CLE Conferences

June 1-11	CAREER PROSECUTOR COURSE - NCDA* *The one course that should be attended by everyone who make prosecution their career*	Charleston, SC
June 2-6	EQUAL JUSTICE FOR CHILDREN - APRI* *Investigation and prosecution of child abuse cases*	Memphis, TN
June 23-27	CRIME SCENE INVESTIGATIONS - NCDA*	Las Vegas, NV
June 24-27	NAT'L INST. ON THE PROSEC. OF SEXUAL VIOLENCE -APRI*	San Francisco, CA
June 29-July 2	STRATEGIC CROSS-EXAMINATION COURSE - NCDA*	Houston, TX
August 4-7	*Prosecutors will work with case scenarios involving four types of expert witnesses: medical doctors, psychologists, DNA experts and toxicologists.*	Chicago, IL
July 7-11	SAFETY NET - APRI* *Multi-disciplinary Investigation & Prosecution of Computer-Facilitated Child Sexual Exploitation*	Microsoft Headqtrs Redmond, WA
July 14-18	INVESTIGATION AND PROSECUTION OF CHILD FATALATIES AND PHYSICAL ABUSE - APRI*	San Diego, CA
July 22-24	PROSECUTING ELDER ABUSE CASES - NCDA*	Charlotte, NC
August 27-30	ASSN. OF GOVERNMENT ATTORNEYS IN CAPITOL LITIGATION *AGACL is a must if you have a capitol case. For more information call Jan Dyer at (623) 979-4846.*	San Francisco, CA
September 7-11	EXPERTS - NCDA*	San Diego, CA
September 21-25	FINANCIAL CRIMES - NCDA*	TBA
October 4-7	NATIONAL CONFERENCE ON DOMESTIC VIOLENCE - NCDA*	San Diego, CA

See **NCDA SCHEDULE** *on page 14*

TRAINING SCHEDULE *continued from page 13*

October 11-15	THE EXECUTIVE PROGRAM - NCDA* *Specifically for elected prosecutors and chief deputies*	Marco Island, FL
October 12-16	EVIDENCE FOR PROSECUTORS - NCDA*	Mesa, AZ
October 26-30	PROSECUTING DRUG CASES - NCDA*	San Diego, CA
November 2-6	PROSECUTING HOMICIDE CASES - NCDA*	San Francisco, CA
November 16-20	PROSECUTING SEXUAL ASSAULTS AND RELATED VIOLENT CRIMES - NCDA*	TBA
December 7-11	FORENSIC EVIDENCE - NCDA*	San Francisco, CA
December 7-11	GOIVERNMENT CIVIL PRACTICE - NCDA*	Savannah, GA

* For a course description and on-line registration for this course, click on the course title (if the course title is not hyperlinked, the college has not yet put a course description on line) or call Prosecution Council at (801) 366-0202 or e-mail: . To access the interactive NCDA on-line registration form, click on either Spring 2008 Courses or Fall 2008 Courses, depending upon the date of the course.

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