

The

# PROSECUTOR



## RECENT CASES

### United States Supreme Court

#### Statements Are Non-testimonial if Their Primary Purpose Is to Assist in an Ongoing Emergency

In 2001, Detroit Police officers found Covington lying on the ground next to his car in a gas station parking lot. Covington had a gunshot wound from which he died hours later. Responding to the officers' questioning, Covington made statements incriminating Richard Bryant, which were

admitted at trial. After conviction, Bryant appealed and the Supreme Court of Michigan held that the Sixth Amendment's Confrontation Clause rendered Covington's statements inadmissible testimonial hearsay, reversing Bryant's conviction. The U.S. Supreme Court then vacated that decision, holding that the circumstances of the interaction between Covington and the police objectively indicate that the "primary purpose of the interrogation" was "to enable police assistance to meet an ongoing emergency," *Davis*, 547 U. S. 813, 822 (2006), and therefore did not violate the Confrontation Clause. The Court reasoned that the Michigan Supreme Court erroneously construed *Davis* by employing an unduly narrow understanding of "ongoing emergency" because the informal questions the police asked—"what had happened, who had shot him,

and where the shooting occurred,"—were necessary to allow the police to "assess the situation, the threat to their own safety, and possible danger to the potential victim" and to the public, *Davis*, 547 U. S., at 832. *Michigan v. Bryant*, 562 U. S. \_\_\_\_ (2011).



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## Utah Supreme Court

### Reimbursement Statute Does Not Allow Court to Question Acquittal

After being acquitted of criminal charges of sexual abuse of a former student, Acor sought reimbursement of fees and costs under the Reimbursement Statute. While the School District sincerely questioned

Acor's innocence on the grounds that she admitted to an "inappropriate" relationship with the student and successfully excluded incriminating evidence at the criminal trial, the court held that the Reimbursement Statute leaves no room for a court to question the propriety of an acquittal, even if there was a specific finding in a civil reimbursement action that she was *actually guilty* of similar conduct.

The School District also argued that in light of the inadmissible evidence, the acts giving rise to the

criminal information against Acor amounted to sexual misconduct that could not have been committed during the performance of her duties, within the scope of her employment, or under color of her authority as required by the Reimbursement Statute. Utah Code Ann. § 52-6-201

(1). However, the Court found the statute's broad formulation implies a general inquiry into the causal relationship between the



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employee's conduct and the underlying criminal charges and therefore Acor's acts or omissions were "in connection with or arising out of" the performance of the employee's duties, the scope of employment, or under color of authority. *Acor v. Salt Lake City School District*, 2011 UT 8.

## Utah Court of Appeals

### District Court May Not Suspend Required Ninety-day Sentence

In August of 2009, Williams pleaded guilty to a class A misdemeanor for failure to register as a sex offender under Utah Code section 77-27-21.5 (providing that a sex offender who knowingly fails to register as a sex offender shall be sentenced to serve a term of incarceration for not fewer than ninety days and that neither the court nor the Board of Pardons and Parole may suspend the minimum ninety-day term required). The district court initially imposed a one-year sentence but then suspended that sentence, instead imposing probation and converting some of the ninety-day period to a fine.

The appellate court held that because the district court released Williams from serving the required term of incarceration under section 77-27-21.5(16)(a) (ii), the district court's sentence was outside the au-

thorized statutory range and constituted an illegal sentence. *Utah v. Williams*, 2011 UT App 16. Also see *Utah v. Howard*, 2011 UT App 15.

### Expert Testimony of Defendant's Mental State at Time of Confession Is Admissible

After being convicted of aggravated sexual abuse of a child, one



of the arguments Prows raised on appeal was that the trial court should have allowed his expert witness to testify regarding Prows's mental state at the time of his confession. The trial court excluded this testimony under rule 608 of the Utah Rules of Evidence, which has been generally read to permit "testimony concerning a witness's general character or reputation for truthfulness or untruthfulness but prohibits any testimony as to a witness's truthfulness on a particular occasion." *State v. Rimmasch*, 775 P.2d 388, 391 (Utah 1989).

However, the appellate court disagreed with the district court and

found that the expert testimony was not a direct opinion as to whether Prows had been truthful when making his confession but simply addressed his mental state and how such may have affected him at the time he gave his confession. The court reasoned that even though one might infer from such expert testimony that the expert thought Prows was probably not telling the truth when he confessed, this possibility is not sufficient to require exclusion of the proposed testimony under rule 608. *State v. Prows*, 2011 UT App. 9

### Jury Instruction Should Include that State Has Burden of Disproving Affirmative Defense

At the conclusion of his trial for aggravated sexual abuse of a child, Sellers requested and received an instruction on the affirmative defense of voluntary intoxication as applied to the specific intent element. The instruction, however, failed to inform the jury that the State had the burden of disproving the voluntary intoxication defense beyond a reasonable doubt. After his conviction, one of Sellers arguments on appeal was ineffective assistance of counsel based on the jury instruction.

The appellate court held that counsel's failure to request an instruction that provided a clear explanation that the burden actually shifted to the State to disprove the defense--and to do so by the highest standard of proof--cannot be

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# PROSECUTOR PROFILE



## John Nielsen

### Deputy Utah County Attorney

Every prosecutor's office needs an "office nerd." John Nielsen is Utah County's. Yet he is so much more.

For starters, John is a hard worker and he loves the law. It began in fourth grade, when John's class did a mock trial in a Salt Lake courthouse where he played the part of a recalcitrant witness. He walked around in awe and thought how fun it must be to be a lawyer. But it wasn't until he pursued his interests in American history, government, and the Constitution, that he realized that if he really wanted to understand them, he needed to go to law school (though today he admits that courtroom practice is not as consistently exciting as he thought it might be at age 9, but it is still quite fun). After graduating from law school and spending two years at the Utah AG's Criminal Division, John now has worked 3 ½ years as a Deputy Utah County Attorney. In fact, he just finished working on the Timmy Olsen case, which was quite rewarding considering his interaction with multiple federal and state prosecutors and investigators, its coming to a resolution, and hearing Kiplyn's father, Richard Davis, make the most gracious and eloquent statement at sentencing that John had ever heard a crime victim make.

When he's not working, John is playing the piano and guitar, writing music, hiking, snowshoeing, and even cross fitting (just google "crossfit"—it's pretty intense).

On one end John is slightly cynical. Not negative, not unfriendly—just realistic. He knows that part of being an effective prosecutor is having a thick skin, because even if you do your level best to achieve justice, people (victims, defense attorneys, judges, other prosecutors) are going to disagree with you, sometimes quite sharply; but you just need to do your best and be willing to learn without caving just because someone disagrees. John admits that his cynicism was a pre-existing condition to being an attorney and prosecutor, but his career choice has certainly aggravated it. He often reminds himself that most people are good, law abiding citizens and that even our defendants can turn things around and become productive members of society. Overall, his job brings him much satisfaction, knowing that he is helping to protect (something he truly believes, even though sometimes he feels like he is just sticking another finger in the dyke). To him, it's important to have a healthy perspective of your limits and focus on what you can influence.

On the other end, while John has the capacity to be serious, he almost never is. Three random experiences that sum up John's light-hearted nature:

Experience # 1-- When John was in justice court, he prosecuted a man for wanton destruction of wildlife. The man had gone to the county dump in Elberta (consult google maps, people) and discovered that the gulls liked to eat waste noodles from the Nestle plant. They liked them so much they would gorge themselves and were unable to fly very well afterward. This man repeatedly snuck up on a group of them with his truck and gunned it to take out as many as he could. John didn't know this activity had a name until one of the secretaries from south county in his office asked him, somewhat surprised, "You're prosecuting a guy for seagull bowling?" Yes. Yes he was.

Experience # 2: During an arson trial, the defense attorney asked the judge to take judicial notice that the sun shines brighter on the South side of a building than on the North side. The judge declined to take judicial notice, replying that he was a former military celestial navigation expert, and that it depended on the time of day, angle of the sun, time of year, etc. The judge then volunteered to calculate the brightness if the defense attorney or anyone else could provide a celestial navigation guide. John replied, "Sorry, your honor, I'm fresh out." Everyone laughed, including the judge, who John had never seen laugh in court in almost three years.

Experience # 3: During a very important hearing on a very serious case, his cell phone went off. He had checked and re-checked to make sure it was on vibrate, but somehow, it got bumped and went off at the worst possible time. It did not help that his ringtone was the theme song to "Magnum, P.I."

From "office nerd" to "Magnum P.I.," John certainly has it all.

**BORN & RAISED** - SLC, UT

**FIRST JOB** - Washing dishes at a Chinese Restaurant

**FAVORITE FOOD** - Sushi

**FAVORITE BAND** - Toad the Wet Sprocket

**FAVORIT BOOK** - *Crime and Punishment*

**FAVORITE T.V. SERIES** - Burn Notice, White Collar, Psych

**FAVORITE MOVIE** - The Hunt for Red October and The Shawshank Redemption

**MARRIED?** - No, but hope springs eternal...

**FAVORITE QUOTE OR WORDS OF WISDOM:** "My daily task will be to ferret out criminals and free the city . . . from their grip."  
Psalms 101:8, New Living Translation



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attributed to any reasonable trial strategy, and therefore his trial counsel's performance was deficient. Also, because the burden of proof for an affirmative defense must be made plain to the jury since the burden intuitively may appear to be the defendant's rather than the State's (*See Knoll*, 712 P.2d at 214), the appellate court found that Sellers was prejudiced and therefore remanded for a new trial. *Utah v. Sellers*, 2011 UT App 38.

### **Defendant Not Required to Demonstrate that Requested Discovery is Relevant to Success at Trial**

Tanner was convicted of possession of a controlled substance with intent to distribute after selling meth to a Confidential Informant. On appeal, Tanner argued that the trial court erred by refusing to grant his motion to compel discovery of various items, including a copy of the return of search warrant, a copy of any probable cause affidavits, and a text copy of the Task Force's procedure for controlled buys.

The appellate court held that

under rule 16(a)(5) of the Utah Rules of Criminal Procedure, Defendant is not required, as the trial court misinterpreted, to demonstrate that the requested materials are relevant to success at trial. The good cause provision requires only a showing that disclosure of the requested evidence is necessary to the proper preparation of the defense. *See Spry*, 2001 UT App 75, ¶ 21. The appellate court found that Tanner made such a demonstration when he informed the trial court that the requested evidence was material to the issue of the CI's credibility, and hence the trial court erred by denying Tanner's motion to compel discovery. However, the error was harmless. *Utah v. Tanner*, 2011 UT App 39.

### **To Challenge Guilty Plea, Defendant Must File Motion to Withdraw Before Sentencing**

On appeal, Chavez asserted that her guilty plea was not voluntarily entered because she was not properly advised of the immigration consequences of a criminal conviction. She cited *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) in support of her argument that because she did not appreciate the consequences of her guilty plea, her plea was not voluntarily entered and should not have been accepted by the district court. However, the Court of Appeals held that although *Padilla* imposes a duty on counsel to advise a defendant of the immigration consequences of his or

her guilty plea, it does not displace state jurisdictional requirements. In order to challenge a guilty plea, Utah Code section 77-13-6 requires that a defendant file a motion to withdraw his or her guilty plea before the sentence is announced. Chavez had failed to file a timely motion to withdraw her plea, and therefore the



court lacked jurisdiction to consider any claim on appeal except a challenge to the sentence. *See State v. Rhinehart*, 2007 UT 61, ¶ 15, 167 P.3d 1046. *Utah v. Chavez*, 2011 UT App 17.

### **Appellate Court Lacks Jurisdiction on Constitutionally-unrelated Issues Originating from Justice Courts**

On appeal from the Saratoga Springs Justice Court, the Fourth District Court conducted a de novo jury trial which ended in Wayman's conviction of assault. Wayman further appealed. When a case originates in a justice court, a defendant may appeal the judgment and conviction from the justice court and obtain a trial de novo in the

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# The 29th Annual State and Local Government CLE Conference

Hosted by the **BYU LAW Government and Politics Legal Society**

This annual conference brings practitioners, administrators, judges, and academics together to collectively examine hot-button issues at the state and local government levels. Participants can choose from a variety of seminars, spanning the areas of civil, criminal, and political law, and earn up to five Continuing Legal Education Credits and one Ethics Credit. Registration is open and can be completed at:

[www.law2.byu.edu/organizations/gpls/conference.php](http://www.law2.byu.edu/organizations/gpls/conference.php)

## Registration Fees

Early Registration Fee:	\$90
At the Door:	\$100
Recent (2009,2010) Graduate Early Registration Fee:	\$45
Recent Grad At the Door:	\$50

Fee includes participation at the conference, lunch, and a conference handbook.

**Date: March 25th, 2011**  
**Time: 8:00 a.m. to 5:15 p.m.**  
**Location: Provo Marriott**  
**CLE Credit: 5 CLE credits & 1 Ethics Credit**

## Sample 2011 Conference Speakers and Topics:

Criminal Section	Political Section	Civil Section
<p><i>Supreme Court Review.</i> BYU Law Professors Panel. Professors John Fee and RoNell Anderson Jones</p> <p><i>Prosecuting Domestic Violence, Sexual Violence, and Driving Under the Influence in the New Sixth-Amendment Landscape.</i> Ed Berkovich</p> <p><i>Criminal Case Law Update.</i> Laura Dupaix, Asst. Utah Attorney General</p> <p><i>New Lawyer Training.</i> James Backman, BYU Law Professor, Tracy Gruber, Utah State Bar</p>	<p><i>Immigration Panel.</i> Carolina Nunez, BYU Law Professor; Senator Robles; Representative Sandstrom; Lynn McMurray, Attorney, Kirton McConkie</p> <p><i>Health Care.</i> Greg Mathis, Senior Counsel at Intermountain Healthcare</p> <p><i>Legislative Update.</i> Robert Rees, Office of Legislative Research &amp; General Counsel</p> <p><i>Ogden Gang Ordinance.</i> Darcy Goddard (Utah ACLU Director), David Reymann, (Parr, Brown, Gee, and Loveless)</p>	<p><i>Why Bankruptcy is Relevant to Everyone.</i> Bill Thurman, Chief Judge, Bankruptcy Courts</p> <p><i>Update and Practice Pointers From the Department of Financial Institutions.</i> Paul Allred, Utah Department of Financial Institutions</p> <p><i>Alternative/Renewable Energy.</i> Kevin Murray and Nicole Squires, Chapman and Cutler</p> <p><i>Impact Fees and Land Use.</i> Brent Bateman, Lead Attorney, Utah Office of the Property Rights Ombudsman</p>



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district court. *See* Utah Code Ann. § 78A-7-118 (1) (Supp. 2010). However, "the decision of the district court [following a trial de novo] is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance." *Id.* § 78A-7-118(8). Because no issue in Wayman's appeal challenged a ruling of the district court on the constitutionality of a statute or ordinance, the appellate court dismissed the appeal for lack of jurisdiction. *Saratoga Springs City v. Wayman*, 2011 UT App 22.

## Tenth Circuit Court of Appeals

### Pornography in Cache Did Not Prove 'Knowingly' Element

The Tenth Circuit overturned Dobb's conviction of knowingly receiving one or more images of child pornography, 18 U.S.C. §2252(a)(2), after determining that the evidence of files containing child pornography found in Dobb's temporary Internet files folder combined with evidence that Dobb's had searched the Internet for other files containing child pornography, was insufficient to sustain Dobb's conviction. Although Dobb's computer contained evidence that Dobb used search engines to find web sites with child pornography and then

opened files on those sites, that evidence did not relate to the two images of pornography admitted at trial. The court reasoned that computers will automatically send web images to a cache and may not display them on the computer's monitor or otherwise alert the user that they have been downloaded. Although there is no question that a rational jury could have found that Dobb 'received' the two images, the Tenth Circuit concluded that it



could not have found that Dobb did so 'knowingly.' *United States v. Dobb*, 10th Cir., No. 09-5025, 1/5/11).

## Other Circuits

### Knowledge of Habitants' Gun Permits Does Not Justify No-knock Entry

The Fourth Circuit held that

Police officers were not entitled to qualified immunity in a civil rights action challenging their use of a no-knock entry to execute a search warrant at a home. The warrant did not authorize a no-knock entry, and the fact that two occupants of the house had permits to carry concealed firearms did not create exigent circumstances, especially since one cannot obtain such a permit without passing a background check. *Bellotte v. Edwards*, 4th Cir., No. 10-1115, 1/11/11.

### Husband Did Not "Corruptly Persuade" When Asking His Wife to Use Spousal Privilege

The Ninth Circuit held that the federal statute that provides criminal penalties for anyone who "corruptly persuades" someone else not to testify, 18 U.S.C. §1512(b), does not apply to efforts by a criminal defendant to persuade a prosecution witness to exercise a privilege not to testify. The defendant had urged his wife to exercise her marital privilege not to testify against him in a sex trafficking case. The court reasoned that the statute requires some "inherently wrongful" conduct beyond a mere effort to persuade, and since Defendant's wife had the legal option not to testify, Defendant's request alone was insufficient to establish 'corrupt' as opposed to innocent persuasion. *United States v. Doss*, 9th Cir., No. 07-50334, 1/14/11

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## Plain View Doctrine Applies to Computer Searches

After seizing several computer hard drives during a consented search of Stabile's home, officers obtained a search warrant for the hard drives to uncover evidence of financial crimes. During execution of the search warrant, an officer noted numerous suspicious folders, including one which he understood to reference a file sharing program used often to share child pornography. The officer later testified that he highlighted the folder not because it necessarily contained child pornography but because it could harbor evidence of a financial crime. He then observed a list of file names suggestive of child pornography and obtained an additional search warrant that revealed child pornography.

On appeal, Stabile claimed that the files were not truly in plain view. An item may be seized under

the plain view doctrine if three factors are met. First, the initial intrusion is lawful; second, the item seized is actually in plain view; and third, the incriminating nature of the item is immediately apparent.

The Third Circuit announced that it would not categorically reject the plain view doctrine for computer searches, but would consider such

cases on their individual facts. The court reasoned that in this case, the officer appropriately highlighted a file directory as part of the initial search and that the file names provided probable cause to believe that the files contained child pornography. *United States v. Stabile*, --- F.3d ----, 2011 WL 294036 (3rd Cir. 2011).



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# *Padilla v. Kentucky*: A Threat to Uninformed Prosecutors

By: Brett Parkinson, Assistant United States Attorney

Andrew Choate, Special Assistant United States Attorney

The purpose of this article is to educate prosecutors on the true immigration consequences of criminal convictions. Prosecutors can no longer rely on a representation from defense counsel that “any felony will get my client deported,<sup>1</sup> so let him plead to . . .” It is not that simple. It is time that we, as prosecutors, educate ourselves on the basics of immigration law. This is especially true in the wake of the United States Supreme Court’s Decision in *Padilla v. Kentucky*, — U.S. —, 130 S. Ct. 1473 (2010).

In *Padilla*, the Supreme Court ruled that a lawyer representing a non-citizen in connection with a guilty plea to a criminal offense has a constitutional duty to advise his/her client regarding the risk of removal arising from the conviction. *Id.* at 1483-86. The Court held that a defense counsel’s inaccurate advice regarding the risk of removal, or even counsel’s failure to advise regarding that risk, may constitute ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). *Id.* As a likely unexpected consequence of this case, this new-found duty places defense counsel in a position of strength when it comes to plea negotiation if a prosecutor is not equally aware of the immigration consequences of the criminal conviction.

## **Impact of Convictions on Deportation**

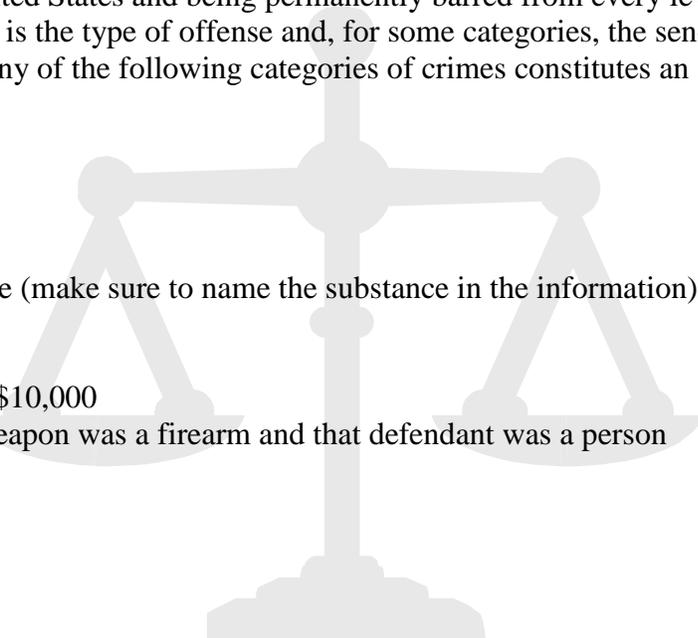
Generally speaking, there are four categories of convictions that affect a defendant’s immigration status and removability: (1) aggravated felonies, (2) crimes involving moral turpitude, (3) drug crimes, and (4) crimes against family members.

### **(1) Aggravated Felonies**

Aggravated felonies are defined by statute at 8 U.S.C. § 1101(a)(43)(A)-(U). The “felony” label is a misnomer as several misdemeanor convictions are “aggravated felonies” for purposes of immigration law. Convictions for these offenses are considered the most serious in immigration law. These convictions will also, in virtually all cases, result in a defendant being removed from the United States and being permanently barred from every legally reentering the United States. The general concern is the type of offense and, for some categories, the sentence imposed (not actually served). A conviction for any of the following categories of crimes constitutes an aggravated felony<sup>2</sup>:

#### *Length of Sentence Irrelevant*

- Murder, rape, or sexual abuse of minor;
- Illicit trafficking or sale of a controlled substance (make sure to name the substance in the information);
- Child pornography offenses;
- Offenses relating to prostitution management;
- Fraud or deceit convictions with loss of at least \$10,000
- Firearms offenses (information must state the weapon was a firearm and that defendant was a person unlawfully in the United States);
- Ransom offenses;
- Conviction in federal court for alien smuggling;



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# *Padilla v. Kentucky: A Threat to Uninformed Prosecutors*

## *(continued)*

### *Sentence of 365 Days Required*

- Crime of violence as defined by 18 U.S.C. § 16;
- Theft or burglary offense;
- Passport or document fraud;
- Offense relating to forgery or counterfeiting;
- Obstruction of justice or perjury;

### **(2) Crimes Involving Moral Turpitude or “CIMTs”**

A conviction for a CIMT can also affect one’s immigration status. Determining whether a particular crime qualifies as a CIMT is complicated because there is no clear definition for this phrase. According to the Tenth Circuit a crime involving moral turpitude is one that involves “conduct which is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between man and man, either one's fellow man or society in general.” *Wittgenstein v. INS*, 124 F.3d 1244, 1245 (10th Cir.1997) (*quoting In re Flores*, 17 I&N Dec. 225, 227, 1980 WL 121870 (1980)). Using this guidance it is difficult to limit its applicability. To assist in your determination of whether a particular conviction in your case will be a CIMT, however, consider the following factors:

- Crimes of deception such as theft, fraud, forgery, false statements and identity fraud are generally CIMTs if the statutory mental state is knowing or intentional, and involves the deception or theft of an item from another.
- Violent crimes can be CIMTs, however, misdemeanor domestic abuse or general assault statutes do not usually fit within the definition of a CIMT. For violent crimes to be CIMTs an aggravating factor such as use of a deadly weapon, or the perpetration of these crimes against a child, can tip the scale in favor a CIMT finding.

As with Aggravated Felonies, the sentence imposed is of great importance is the immigration consequences of a CIMT. To qualify as a CIMT, the conviction must meet the above definition and the sentence imposed must be more than 180 days, which in Utah means that no Class B misdemeanors qualify as CIMTs. In addition, a different set of rules apply to lawful permanent residents, commonly known as “green card” holders. Lawful permanent residents are removable only if they have two CIMT convictions, or have one CIMT for which they received a 365 day sentence within five years of receiving a green card.

### **(3) Drug Crimes**

Convictions for drug-related offenses can also result in a defendant’s removal from the United States. As stated above, convictions for drug distribution offenses renders a foreign national removable as an aggravated felon. However, other drug-related crimes, such as simple possession of a controlled substance can render a foreign national removable. For this to occur, the type of drug must be articulated in the charging document, plea statement or judgment because only possession of drugs listed in the Controlled Substances Act render a

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# *Padilla v. Kentucky: A Threat to Uninformed Prosecutors*

## *(continued)*

foreign national removable. However, there is an exception for marijuana. Lawful permanent residents cannot be removed based on a conviction for marijuana possession unless they possessed more than 30 grams and such is articulated in one of the court documents noted above.

### **(4) Crimes Against Family Members**

Another subset of crimes which can render a foreign national removable from the United States are those crimes which commonly involve violence between family members. The most common convictions in this group include violation of protective or no-contact orders and child abuse crimes. Interestingly, most simple domestic violence convictions do not make a foreign national removable from the United States. For example, in order for a misdemeanor assault to meet the definition of a crime of violence there has to be a *mens rea* above the default level of recklessness in order to sustain the charge. However, most felony assaults render a foreign national removable from the United States.

### **Impact of Convictions on Future Federal Prosecution**

Notwithstanding a defendant's removal, it is not uncommon to have a foreign national return unlawfully to this country after being removed. In an effort to encourage respect for our country's immigration laws and hopefully deter illegal reentries to this country, Congress has enacted laws with strong penalties for foreign nationals who are found here after previously being removed. *See* 8 U.S.C. § 1326.

It is a felony for a foreign national to illegally return to this country after being removed. If convicted these foreign nationals could receive a sentence of up to two (2) years in federal prison. The penalties are much more severe for those who, prior to their removal, were convicted for various felony offenses. Specifically, for foreign nationals who have been convicted of an aggravated felony prior to removal, the potential sentence they can receive is twenty (20) years imprisonment, a ten fold increase. If the foreign national has been convicted of a typical felony, the potential sentence is ten (10) years imprisonment. How you plead a case has serious ramifications in a future federal prosecution if and when your defendant returns to this country.

### **Conclusion**

When a non-citizen is convicted of an offense described above, the conviction will render the defendant removable. While there is some relief that is available to defendants in removal proceedings, relief is limited. Given these circumstances, combined with the obligation to inform the court and do what is in the best interest of our communities, prosecutors need to educate themselves as to the immigration consequences of a plea in their case. In that way, justice will be served.

**\*\*This article is not intended as legal advice and it does not reflect the opinion of the Department of Justice or the Department of Homeland Security. Further questions should be directed to Brett Parkinson (801-325-3359), or Andy Choate (801-325-1423).**



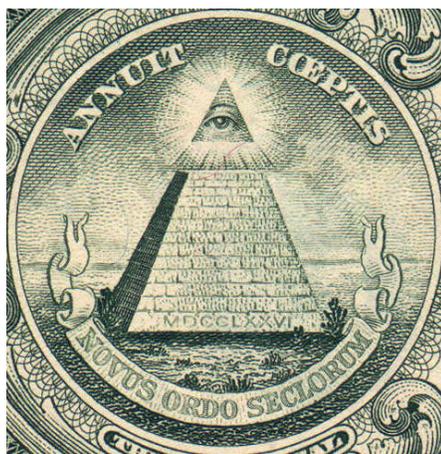
# On the Lighter Side

## THE DOLLAR BILL. WHAT DO THOSE SYMBOLS MEAN??



On the rear of the One Dollar bill, you will see two circles. Together, they comprise the Great Seal of the United States .

The First Continental Congress requested that Benjamin Franklin and a group of men come up with a Seal. It took them four years to accomplish this task and another two years to get it approved.



If you look at the left-hand circle, you will see a Pyramid. Notice the face is lighted, and the western side is dark. This country was just beginning. We had not begun to explore the west or decided what we could do for Western Civilization. The Pyramid is uncapped, again signifying that we were not even close to being finished. Inside the capstone you have the all-seeing eye, an ancient symbol for divinity. It was Franklin's belief that one man couldn't do it alone, but a group of men, with the help of God, could do anything.



# On the Lighter Side

If you look at the right-hand circle, and check it carefully, you will learn that it is on every National Cemetery in the United States. It is also on the Parade of Flags Walkway at the Bushnell, Florida National Cemetery, and is the centerpiece of most hero's monuments. Slightly modified, it is the seal of the President of the United States, and it is always visible whenever he speaks, yet very few people know what the symbols mean.

The Bald Eagle was selected as a symbol for victory for two reasons: First, he is not afraid of a storm; he is strong, and he is smart enough to soar above it. Secondly, he wears no material crown. We had just broken from the King of England. Also, notice the shield is unsupported. This country can now stand on its own. At the top of that shield you have a white bar signifying congress, a unifying factor. We were coming together as one nation. In the Eagle's beak you will read, 'E PLURIBUS UNUM' meaning, 'one from many.'

Above the Eagle, you have the thirteen stars, representing the thirteen original colonies, and any clouds of misunderstanding rolling away. Again, we were coming together as one.

Notice what the Eagle holds in his talons. He holds an olive branch and arrows. This country wants peace, but we will never be afraid to fight to preserve peace. The Eagle always wants to face the olive branch, but in time of war, his gaze turns toward the arrows.

They say that the number 13 is an unlucky number. This is almost a worldwide belief. You will usually never see a room numbered 13, or any hotels or motels with a 13th floor. But think about this: 13 original colonies, 13 signers of the Declaration of Independence, 13 stripes on our flag, 13 steps on the Pyramid, 13 letters in, 'Annuit Coeptis,' 13 letters in 'E Pluribus Unum,' 13 stars above the Eagle, 13 bars on that shield, 13 leaves on the olive branch, 13 fruits, and if you look closely, 13 arrows.

And finally, if you notice the arrangement of the 13 stars in the right-hand circle you will see that they are arranged as a Star of David. This was ordered by George Washington who, when he asked Hayim Solomon, a wealthy Philadelphia Jew, what he would like as a personal reward for his services to the Continental Army, Solomon said he wanted nothing for himself but that he would like something for his people. The Star of David was the result. Few people know that it was Solomon who saved the Army through his financial contributions but died a pauper.



## UTAH PROSECUTION COUNCIL AND OTHER LOCAL CLE TRAININGS

March 15-18	<a href="#"><u>TRAIN THE TRAINERS</u></a> <i>Training experienced prosecutors to be excellent trainers and instructors</i>	Courtyard by Marriot Layton, UT
April 12-13	<a href="#"><u>24TH ANNUAL CRIME VICTIMS CONFERENCE</u></a> <i>Sponsored by Utah Council on Victims of Crime. For more info: Call (801) 238-2370; E-mail: <a href="mailto:judyblack@utah.gov">judyblack@utah.gov</a>; or click <a href="http://www.crimevictim.utah.gov">www.crimevictim.utah.gov</a></i>	Radisson Hotel Salt Lake City, UT
April 28-29	<a href="#"><u>SPRING CONFERENCE</u></a> <i>Case law and 2011 legislative update, ethics, civility and more.</i>	South Towne Expo Sandy, UT
May	<a href="#"><u>REGIONAL LEGISLATIVE UPDATE SESSIONS</u></a> <i>24 legislative update sessions for cops and prosecutors</i>	24 locations in all areas of the state
May 17-19	<a href="#"><u>ANNUAL CJC / DOMESTIC VIOLENCE CONFERENCE</u></a> <i>Workers against all types of interpersonal violence get to mingle and learn</i>	Zermatt Resort Midway, UT
June 23-24	<a href="#"><u>UTAH PROSECUTORIAL ASSISTANTS ASSOCIATION CONFERENCE</u></a> <i>Substantive training for non-legal staff in prosecution offices</i>	Riverwood Conf. Cntr. Logan, UT
August 4-5	<a href="#"><u>UTAH MUNICIPAL PROSECUTORS ASSOCIATION SUMMER CONF.</u></a> <i>The annual opportunity for municipal prosecutors to gather for mutual training</i>	La Quinta Inn Moab, UT
August 15-19	<a href="#"><u>BASIC PROSECUTOR COURSE</u></a> <i>Substantive and trial advocacy training for new and newly hired prosecutors</i>	University Inn Logan, UT
September 14-16	<a href="#"><u>FALL PROSECUTOR TRAINING CONFERENCE</u></a> <i>The annual training and interaction event for all the state's prosecutors</i>	Yarrow Hotel Park City, UT
October 19-21	<a href="#"><u>GOVERNMENT CIVIL PRACTICE CONFERENCE</u></a> <i>Training and interaction for civil side public attorneys</i>	Zion Park Inn Springdale, UT
November 17-18	<a href="#"><u>COUNTY/DISTRICT ATTORNEYS EXECUTIVE SEMINAR</u></a> <i>Elected and appointed county/district attorneys meet in conjunction with UAC</i>	Dixie Center St. George, UT
Nov. 30 - Dec. 2	<a href="#"><u>ADVANCED TRIAL SKILLS TRAINING</u></a> <i>Substantive and trial advocacy training for experienced prosecutors</i>	Location pending

## NATIONAL ADVOCACY CENTER (NAC)

A description of and application form for NAC courses can be accessed by clicking on the course title.

*Effective February 1, 2010, The National District Attorneys Association will provide the following for NAC courses: course training materials; lodging [which includes breakfast, lunch and two refreshment breaks]; and airfare up to \$550. Evening dinner and any other incidentals are NOT covered.*

See the table

## TRIAL ADVOCACY I

[Summary](#)

[Register](#)

NAC

*A practical, "hands-on" training course for trial prosecutors*

Columbia, SC

Course Date	Registration Deadline
May 2-6	not yet posted
June 13-17	not yet posted
July 25-29	not yet posted
September 25-30	not yet posted

May 16-20

## PROSECUTOR BOOTCAMP

[Summary](#)

[Register](#)

NAC

August 15-19

*An introduction to prosecution*

**Registration deadlines not yet posted**

Columbia, SC

July 18-21

## COURTROOM TECHNOLOGY

[Summary](#)

NAC

*Upper Level PowerPoint; Sanction II; Audio/Video Editing (Audacity, Windows Movie Maker); 2-D and 3-D Crime Scenes (SmartDraw, Sketchup); Design Tactics*

Columbia, SC

**Registration deadline not yet posted**

August 1-4

## CROSS EXAMINATION

[Summary](#)

NAC

*A complete review of cross examination theory and practice*

Columbia, SC

**Registration deadline not yet posted**

September 19-23

[FALL CONFERENCE](#)

Summary & registration not posted

Columbia, SC

April 4-8

## EQUAL JUSTICE FOR CHILDREN

San Diego, CA

May 2-6

## INVESTIGATION AND PROSECUTION OF CHILD FATALITIES

Indianapolis, IN

**NATIONAL DISTRICT ATTORNEYS ASSOCIATION COURSES\*  
AND OTHER NATIONAL CLE CONFERENCES**

April 3-7	PROSECUTING HOMICIDE CASES	<a href="#">Summary</a>	<a href="#">Register</a>	San Francisco, CA	
April 4-8	EQUAL JUSTICE FOR CHILDREN	<a href="#">Summary</a>	<a href="#">Register</a>	San Diego, CA	
April 10-14	EXPERIENCED PROSECUTOR COURSE	<a href="#">Summary</a>	<a href="#">Register</a>	Orlando, FL	
May 2-6	INVESTIGATION AND PROSECUTION OF CHILD FATALITIES AND PHYSICAL ABUSE	<a href="#">Agenda</a>	<a href="#">Summary</a>	<a href="#">Register</a>	Indianapolis, IN
June 5-14	CAREER PROSECUTOR COURSE	<a href="#">Summary</a>	<a href="#">Register</a>	Charleston, SC	
June 20-24	UNSAFE HAVENS I			Portland, OR	
July 11-13	SafetyNet (In conjunction with AOL)			Dulles, VA	
July 15-20	NDAА SUMMER COMMITTEE & BOARD MEETINGS & CONFS.			Sun Valley, ID	
August 22-26	UNSAFE HAVENS II			Location Pending	
August - Sept	DEMYSTIFYING SMART DEVICES			Location Pending	

\* For a course description, click on the “[Summary](#)” link after the course title. If an agenda has been posted there will also be an “[Agenda](#)” link. Registration for all NDAA courses is now on-line. To register for a course, click on the “[Register](#)” link. If there are no “[Summary](#)” or “[Register](#)” links, that information has not yet been posted on the NDAA website.

