

The

# PROSECUTOR



## RECENT CASES

### United States Supreme Court

#### Fair-cross-section claim rejected

A Michigan state court jury convicted Diapolis Smith of murder and a weapons charge. On appeal, Smith raised a fair-cross-section claim on the basis of the convicting jury being comprised of all white citizens. In addition, the venire panel included between 60 and 100 persons, of whom only three were African-American. The Michigan Court of Appeals remanded

the case for an evidentiary hearing to be held on the issue. Nonetheless, the trial court rejected Smith's claim holding that there was insufficient evidence to prove any systematic exclusion of African-Americans. Further proceedings followed, which ultimately resulted in the trial court's ruling being upheld. On further appeal, the Sixth Circuit overturned the denial of Smith's federal habeas petition and held that he was entitled to relief. It held that the allocation system used by the state was not supported by any important state interest and that *Duren v. Missouri*, 439 U.S. 357, had been unreasonably applied.

The U.S. Supreme Court disagreed with the Sixth Circuit and found that Smith had scarcely shown evidence to support his claim that the allocation of jurors caused underrepresentation. It reasoned that although there was some

evidence that the assignment process created racial disparities; the belief was not substantiated by Smith's evidence. Reversed and remanded. *Berghuis v. Smith*, 130 S. Ct. 1382 (2010).



#### Defense counsel has duty to inform client of immigration consequences of plea

Jose Padilla had been a lawful permanent resident of the U.S. for over forty years prior to entering a guilty plea to drug distribution charges in Kentucky. On appeal Padilla claimed ineffective assistance of counsel. He argued that his counsel gave him inaccurate legal advice about his immigration status and risk of deportation by telling Padilla there was nothing to worry about since he'd been in the U.S. for so long. Based on that advice, Padilla entered a guilty plea. The state court ruled that Padilla was not protected from erroneous advice about deportation because it was just a "collateral

*Continued on page 2*

### In This Issue:

1 Case Summaries

4 Prosecutor Profile:

Robert J. Church,  
Orem City Prosecutor

8-9 Simple Ways to Enforce Crime Victim Rights

by Yvette Rodier Evans, Utah Crime Victims' Clinic

7

LEOJ Course Information

10

MLE Compliance Reminder

11

On the Lighter Side

12-13

Training Calendar



Continued from page 1

consequence of his conviction.”

The U.S. Supreme Court reversed the state court’s decision, holding that the failure of counsel to correctly advise Padilla of potential immigration consequences constituted constitutionally deficient assistance. It reasoned that because of the seriousness of deportation and its impact on families, the Court had a responsibility under the Constitution to ensure that no defendant, citizen or otherwise, is left to “the mercies of incompetent counsel.” To satisfy that responsibility, the Court held that counsel must inform a client whether his plea carries a risk of deportation. However, whether Padilla is entitled to relief is dependant on whether he can demonstrate prejudice.

Reversed and remanded. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).

## Utah Supreme Court

### Redacted patient records do not implicate the physician patient privilege

While recovering from a hysterectomy at St. Mark’s Hospital, Denise Staley’s blood pressure dropped to a dangerous level, initially undetected and unreported to a physician. Permanent damage to Staley’s kidneys was suffered as a result

of the lack of medical attention. The hospital’s policy required six nurses to be working when more than 34 patients were housed in the unit. It also required that a drop in blood pressure, below a certain level, should be reported to a physician. Neither of those requirements was met. During the course of litigation, Staley requested access to the medical records of the other six patients cared for by the nurse assigned to Staley. The purpose of the request was to show the level of medical need of the other patients and support Staley’s claim of negligence. In light of the legal restrictions on medical records Staley agreed to both the records being redacted of all private information and being subject to a limited review. St. Mark’s refused, arguing that the records

#### United States Supreme Court (p. 1-2)

*Berguis v. Smith* - Fair-cross-section claim rejected

*Padilla v. Kentucky* - Defense counsel's duty to inform client of immigration consequences

#### Utah Supreme Court (p. 2-3)

*Staley v. Jolles* - Redacted patient records do not implicate the physician patient privilege

*Morra v. Grand County* - Citizens have standing to challenge ordinance

*Peak Alarm Co v. SLC* - Directed verdict in criminal case not conclusive of probable cause

#### Utah Court of Appeals (p. 3, 5)

*R.A. v. State* - Explicit waiver of *Miranda* not required if totality of circumstances shows consent

#### Tenth Circuit (p. 5)

*U.S. v. Fox* - Illegal search and seizure during vehicle stop taints consent to search home

*U.S. v. Bergman* - Ineffective assistance of counsel valid if defense counsel not an attorney

#### Other Circuits (p. 5)

*U.S. v. Davis* - Good-faith exception applied to search

*U.S. v. Song Ja Cha* - Officers' seizure of home to seek warrant lasted too long

*U.S. v. Other Medicine* - State law may be used for felony crime under Major Crimes Act

*Brooks v. City of Seattle* - Taser setting is important in evaluating use of force claim

#### Other States (p.6)

*Joseph v. State* - Explicit waiver of *Miranda* rights not required

*People v. Cogswell* - Extreme action not required before finding a witness 'unavailable'

## Case Summary Index



Continued on page 3



Continued from page 2

were protected under the physician-patient privilege and that they were not relevant to Staley's negligence claim. The trial court ordered them to produce the charts for limited review as requested. St. Mark's filed this interlocutory appeal.

The Utah Supreme Court held that the redacted patient records did not implicate the physician-patient privilege because the redaction excluded all information that might have identified the patients. It further held that the records were relevant to Staley's medical negligence claims because the information would assist in determining whether the nurse could adequately care for all of her patients, whether she neglected Staley, and whether the hospital had understaffed the unit. Affirmed. *Staley v. Jolles*, 2010 UT 19.

## Citizens have standing to challenge ordinance when alleging personal and particularized injuries

A group of citizens (Citizens) challenged an ordinance passed by the Grand County Council (Council) approving an amended development agreement. The trial court granted summary judgment in favor of the Council and the Citizens appealed. The issue before the court is whether the trial court erred in granting summary judgment.

The Supreme Court found that the Citizens had standing to challenge the Council's decision because they alleged personal and particularized injuries as a result of the Council's approval. However, it further held that the trial court should

have required the County to transmit a record of the proceedings before addressing the Council's claims. Accordingly, the Utah Supreme Court held that the court erred in granting summary judgment and remanded the case back to the trial court. It further instructed the trial court to order the County to transmit the complete record and then resolve the Citizens' challenge on its merits. *Morra v. Grand County*, 2010 UT 21.

## Directed verdict in criminal case not conclusive of probable cause in civil case

After a number of teenage girls set off burglar alarms at a Salt Lake City school, Michael Jeffrey Howe reported the alarm and stated that a Peak Alarm security guard had verified the break in. In actuality, it was a school employee who confirmed the alarm and requested the alarm company have police respond. Howe was charged and acquitted by directed verdict for making a false alarm. After acquittal Howe sued Salt Lake City ("SLC"), several police department employees and administrators. Howe argues that the trial court committed reversible error for rejecting his motion for partial summary judgment on the issue of probable cause, for granting SLC's motion for summary judgment based on procedural requirements of the Utah Governmental Immunity Act (UGIA)

and for granting SLC's motion for summary judgment on Howe's seven claims of civil rights violations.

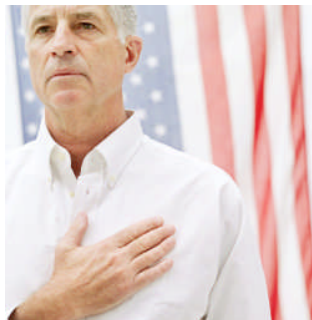
The Utah Supreme Court held that the granting of the directed verdict in

the criminal case was not conclusive evidence that SLC acted without probable cause and furthermore that the facts of the case did not prove insufficient probable cause. It also held that the trial court erred in granting summary judgment under UGIA because Howe had filed sufficient and timely notice of claims. Additionally, it held that the trial court erred in granting summary judgment against Howe's Fourth Amendment seizure claim because he presented facts supporting his claim of unlawful seizure and that officers lacked the probable cause to support the seizure. The dismissal of the remaining six civil rights claims was upheld. Affirmed in part, reversed in part, and remanded. *Peak Alarm Co. Inc. v. Salt Lake City Corp.*, 2010 UT 22.

## Utah Court of Appeals

### Explicit waiver of *Miranda* not required when totality of circumstances show consent was voluntary

R.A. was convicted for various drug-related charges in juvenile court. R.A. argues on appeal that the trial court erred in denying his motion to suppress the evidence. He alleges that the police violated his privilege against self-incrimination by questioning him without first giving him the required *Miranda* warning. He further argues that his Fourth Amendment rights were violated when police searched his home because they did not have a warrant



See BRIEFS on page 5



# PROSECUTOR PROFILE



**PREFERRED NAME** - Bob  
**NICKNAMES:** Rob, JAGMAN

**BIRTHPLACE** - Provo, UT

**FAMILY** - The oldest of six siblings;  
Father of three: Seth 21, Luke 18,  
Braxton 16

**PETS** - Dog named Rylee, Cat named  
Star and fish

**FIRST JOB** - Flipping burgers at  
McDonalds

**OTHER NOTEABLE JOBS:** Active  
duty as a Judge Advocate General in  
the United States Navy; Currently in  
the Utah Army National Guard as a  
Lieutenant colonel in the JAG Corps

**FAVORITE BOOK**—*Where the Wild  
Things Are* by Maurice Sendak

**LAST BOOK READ**— *The Hobbit*  
by J. R. R. Tolkien, *Lone Survivor:*  
*The Eyewitness Account of Operation*  
*Redwing* by Marcus Luttrell, and *The*  
*Lost Heroes of SEAL Team 10* by  
Marcus Luttrell & Patrick Robinson

**FAVORITE QUOTE** - A hero is not  
one who fearlessly rushes in but one  
who, despite their fear, goes in  
anyway!

## Robert J. Church, Orem City Prosecutor

Robert Church (Bob) was born in Provo, Utah and raised in Spokane, Washington. His mother was Mrs. Washington 1985 and his father graduated with an MBA from Harvard University. Academics are important in his family and four of the six siblings have advanced degrees. Bob met his wife, Janae, at a BYU singles ward and the rest is history! He graduated from BYU with a degree in International Relations and Spanish. After running out of any other ideas, he decided to go to law school and subsequently graduated from California Western School of Law in 1992. After taking his trial practice class, Bob knew he wanted to be in the courtroom. He understands the need for defense counsel but knew he couldn't be one himself. And, he like the burden and challenge of proving a case to the judge or jury. During his second year of law school Bob was commissioned in the US Navy and following graduation was stationed at the Legal Office in Norfolk, Virginia. He served as defense counsel, trial counsel (prosecutor) and as a Special Assistant U.S. Attorney for the Eastern District of Virginia. After leaving active duty, Bob moved back to Utah and was hired shortly thereafter by Orem City where he has remained ever since.

The BYU Cougars are Bob's favorite sports team. He loves snow skiing, hiking, mountain biking, reading and traveling. His favorite music includes Fleetwood Mac, Stevie Nicks, Sarah Brightman and "I Will Remember You" by Amy Grant. If money were no object, his favorite food is prime rib and lobster tail but if grabbing a snack, his favorite treat is the Symphony candy bar with almonds and toffee. As suggested by the list of books recently finished (almost simultaneously), Bob enjoys reading. His favorite movie is *The Blind Side* and his favorite TV series has included *Star Trek*, *The Next Generation*, *Lost*, *X-Files*, and *30-Rock*. His favorite cartoon as a kid was the original *Scooby-Doo*. Bob has traveled all over the world including: Iceland, Japan (twice), Korea, Germany, Austria, France, Ukraine, Katar, Kyrgyzstan, Mexico, Dominican Republic, Canada and living in Afghanistan for 12 months in 2006-07. If opportunity arises, he'd like to travel through Europe.

A funny experience from court involved a young blonde woman standing at the podium. She was handed the Information and the judge directed her to look in the upper left hand corner of it to see if her name, address and date of birth were correct. At that moment Bob happened to glance up at her. Instead of looking at the upper left hand corner of the information, she was looking at the upper left hand corner of the court room, intently searching for her name, address and date of birth. He barely stifled a laugh. The judge had to ask her to look at the paper in front of her. His eyes were watering as he fought to control his laughter.

For 12 months Bob served in Afghanistan and felt it had a major impact on his life both personally and professionally. His job was to help the Afghan military lawyers implement their newly adopted military justice code. In so doing he was able to prosecute and convict the first ever Afghan Brigadier (1-star) General who had raped his male soldiers, beat them, and stolen from them; all with the knowledge of everyone around. But, because the Brigadier had political connections and was from the right tribe he'd never before been held accountable. Despite death threats to all those involved in his prosecution, they were able to secure a conviction. Bob also learned a great deal from COL Khaliq who had at one time been taken prisoner for speaking out against the Soviets. He was beaten, tortured and subjected to watching his 14 year old daughter burned to death in front of him. Yet he never backed down from pursuing justice and what was right. He was a man who had such a positive outlook on life, despite the horrors he and his family had been forced to endure. COL Khaliq credited his strength to knowing that the Americans were there to help and held fast to his belief that his country would be free one day with the help of the U.S. Bob has a picture of them hanging in his office so he never forgets to *never* give up hope! We salute you Bob and all those who serve or have served to protect our liberty and freedom. Thanks for the great work you do for Orem City and the people of Utah!



LTC Robert Church, COL Khaliq



Continued from page 3

and his consent was not voluntary. The appellate court first addressed the issue of whether R.A.'s consent to search was voluntary. In so doing, it held that based on the totality of the circumstances, the consent was not the product of duress or coercion and, thus, the juvenile court did not err in finding that R.A.'s consent was voluntary.

Accordingly, the trial court did not err when it denied R.A.'s motion to suppress the evidence. Furthermore, because the evidence was properly admitted, prejudice cannot be shown from the alleged violation of his right against self-incrimination. As such, the court did not need to address the claim raised regarding his *Miranda* warning. Affirmed. *R.A. v. State (In re R.A.)*, 2010 UT App 71.

## Tenth Circuit Court of Appeals

### Illegal search and seizure during vehicle stop taints consent to search home

Shortly after Lucas Gregory Fox was arrested on a warrant and other unrelated criminal charges, his wife, Ms. Chiles, arrived at the house. She stopped in front of the residence and asked police, "What's going on?" An officer spoke to Chiles, got in her car and directed her to drive to a parking lot across the street. The officer then got her name and information and requested to search her car to which Chiles consented. Upon searching the vehicle, the officer located a baggie of white substance but told Chiles that the

police were more interested in Fox. Chiles advised him that Fox was her husband and upon further questioning, admitted to being on the lease to the home. The officer then inquired if the police could search the house. Chiles consented and let them inside where they located a sawed-off shotgun and ammunition. Fox was subsequently charged with two federal weapons offenses. He filed a motion to suppress the evidence arguing that Chiles' consent to search was not voluntary. The motion was denied and Fox appealed.

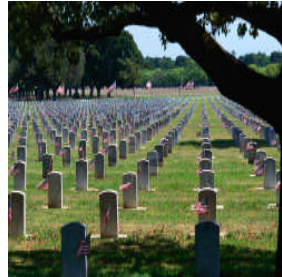
The Tenth Circuit agreed with Fox, that although the encounter between Chiles and police was initially consensual, it soon became a seizure at the point the officer got in her car and directed her to the parking lot. Because the officer did not have reasonable suspicion to detain Chiles, the seizure was unlawful. It further held that there were no intervening events that would have broken the causal connection between the illegal detention and vehicle search of Chiles and her consent to search the home. Lacking sufficient attenuation the evidence found as a result of the search should have been suppressed. Reversed and remanded. *United States v. Fox*, 600 F.3d 1253 (10th Cir. 2010).

### Ineffective assistance of counsel claim is automatically deemed valid if defense counsel is not an attorney.

Gwen Bergman hired Howard Kieffer to represent her during competency proceedings and at trial for charges of solicitation to commit murder and criminal conspiracy.

Unbeknownst to Bergman, Kieffer had never been a licensed attorney. Prior to sentencing the court discovered the fraud, appointed new counsel and proceeded to sentence her to 108 months imprisonment. Bergman appeals her conviction and sentence claiming ineffective assistance of counsel.

The Tenth Circuit Court of Appeals held that without any need to show prejudice, Bergman's Sixth Amendment right to effective assistance of counsel was automatically deemed violated based on her representation by someone never licensed as an attorney. Moreover, Kieffer's failure to ever meet the requirements for licensure constituted per se ineffectiveness. The case was remanded for an evidentiary hearing on the issue of whether a retrospective competency determination could be made. *United States v. Bergman*, 599 F.3d 1142 (10th Cir. 2010).



## Other Circuits

### Good-faith exception applied to search

An Alabama trial court denied a motion to suppress evidence located during the search of a vehicle that was conducted incident to Willie Gene Davis' arrest. Davis appealed. Although the search had occurred prior based on long established caselaw, Davis' case was pending on direct appeal at the time *Gant* was decided.

The Eleventh Circuit Court of

See **BRIEFS** on page 6



Continued from page 5

Appeals recognized that the search was objectively reasonable under the prior binding precedent. As such, it held that the good-faith exception was applicable because the evidence was obtained in reasonable reliance on the prior binding precedent. It further held that the mistake of law was not attributable to the police and to suppress the evidence based on the newly issued *Gant* opinion, would serve no deterrent purpose. Accordingly, the suppression of evidence was not warranted. Conviction affirmed. *United States v. Davis*, 598 F.3d 1259 (11th Cir. 2010).

## Officers' seizure of home to seek warrant lasted too long

Officer's seized a home during a sex trafficking investigation, but took 24.5 hours to obtain a search warrant. The defendant, Song Ja Cha, moved to suppress the evidence. The trial court granted the motion and ruled that the seizure was unreasonably long and violated Cha's Fourth Amendment rights. The government appealed.

The Ninth Circuit held that although the officers had probable cause for the seizure of the home, in light of all the circumstances of the case the duration of the seizure was, in fact, too long. Accordingly the evidence had to be suppressed because it violated the Fourth Amendment. Affirmed. *United States v. Song Ja Cha*, 597 F.3d 995 (9th Cir. 2010).

## State law may be used for felony crime under Major Crimes Act

Gus E. Other Medicine was charged with felony child abuse under the

federal Major Crimes Act. The definition of the crime was taken from state law in which Other Medicine's reservation was located. Other Medicine moved to dismiss the



indictment challenging the use of state law and arguing the offense is unconstitutionally vague. The trial court denied the

motion.

On appeal, the Ninth Circuit held that because no federal statute provided a definition or punishment for the federal felony child abuse crime, nothing prevented the prosecutors from relying on the state-defined crime. It further ruled that the vagueness claim failed because any reasonable person would have anticipated that severely beating a young child with a belt would cause injuries and warrant punishment. As such, the court held that prosecutors properly exercised their discretion to indict Other Medicine for an appropriately serious crime. *United States v. Other Medicine*, 596 F.3d 677 (9th Cir. 2010).

## Taser setting is important in evaluating use of force claim

Malaika Brooks brought an excessive use of force action against the Seattle Police Department for being tased three times during a traffic stop. The officers used the taser set on stun mode when she refused to sign a citation or get out of the vehicle. Officers claimed she was resisting arrest and becoming an increased risk to their safety because she became confrontational. Brooks was seven months pregnant at the time. The trial

court denied officers' motion for summary judgment based on qualified immunity.

The Ninth Circuit disagreed and held that officers' actions did not violate constitutional rights and that officers were entitled to qualified immunity under *Saucier v. Katz*, 533 U.S. 194 (2001). It reasoned that although a taser used in stun mode is painful, the effect is temporary and localized, unlike uses of force previously considered before the court. Reversed and remanded. *Brooks v. City of Seattle*, 599 F.3d 1018 (9th Cir. 2010).

## Other States

### Explicit waiver of *Miranda* rights not required

Wesley Charles Joseph received *Miranda* warnings during a murder investigation. After receiving the warnings he affirmed he understood them and signed in the margin of a warnings card. Interrogators then proceeded to ask questions and Joseph began answering them. The trial court denied his motion to suppress finding that he had waived his *Miranda* rights prior to his statement with police. He appealed.

The Texas Court of Criminal Appeals said, "The question is not whether Appellant 'explicitly' waived his *Miranda* rights, but whether he did so knowingly, intelligently, and voluntarily." Based on Joseph affirming his understanding of the rights, his failure to ever stop the interview, his failure to request an attorney and that he declined to answer

See BRIEFS on page 7





Continued from page 6

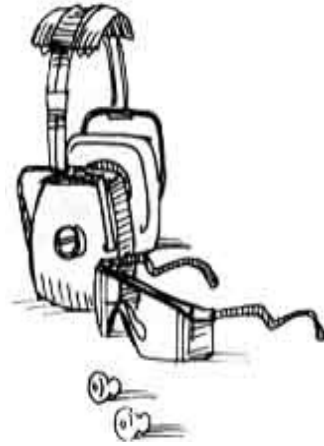
certain questions, the court held that the waiver was a free and deliberate choice without intimidation, coercion, or deception. Affirmed. *Joseph v. State*, --- S.W.3d ---, 2010 WL 625072 (Tex. Crim. App. 2010).

## **‘Extreme action’ not required before finding a witness unavailable**

While visiting California, a Colorado woman was sexually assaulted by Henry Ivan Cogswell. Initially the victim was cooperative and testified at the preliminary hearing but thereafter she refused to return to California to testify at the trial. The prosecutor sought to compel her to attend and testify under the Uniform Act to Secure the Attendance of Witnesses From Without the State in Criminal Cases. A Colorado court issued a subpoena ordering her to attend the trial but the victim failed to appear. At that time, the California trial court declared her unavailable and allowed the prosecution to introduce her preliminary hearing testimony into evidence during the trial. Cogswell was convicted. The California appellate court disagreed with the trial court and held that prosecution had not used reasonable diligence in securing the victim’s attendance because it did not pursue the actual detention and transportation of the victim as available under the Uniform Act.

On appeal to the California Supreme Court, the court reaffirmed a prior state ruling that a trial court did not have to pursue extreme action before making a finding of unavailability. As such, it held that prosecution had used reasonable means to compel the victim’s attendance and that, therefore, the preliminary hearing testimony was admissible. Reversed. *People v. Cogswell*, 227 P.3d 409 (Cal. 2010).

## 2010 LEOJ COURSE Course



June 16, 17, 18, 2010

8 a.m. to 5 p.m. each day  
Camp Williams, Salt Lake County

This is the only course that will qualify a judge, Board of Pardons member, or prosecutor, to qualify for the LEOJ CCW permit. *See* Utah Code Ann. § 53-5-711(2)(b).

Advance registration is required.

To register, contact Ken Wallentine by email, [KenWallentine@Utah.gov](mailto:KenWallentine@Utah.gov). There is no fee for the training.

Participants must supply their own eye and ear protection, ammunition, and firearm.

Space is limited, registration accepted on first come, first served, basis.

This class always has a waiting list. If you register and cancel or fail to attend, we often cannot fill your spot and the money and space is wasted.

If you are accepted for the class, we expect that you will block your calendars and arrange to be absent from court during the course. It is impossible for a prosecutor to “run to court for a quick plea” during this course. Please do not register if you are not presently certain that you will attend.

End of BRIEFS

# SIMPLE WAYS TO ENFORCE CRIME VICTIMS' RIGHTS

By Yvette Rodier Evans, Utah Crime Victims' Legal Clinic

In 1994 the legislature passed a victim's rights amendment to the Utah Constitution and enacted the Rights of Crime Victims Act. While crime victims have had rights in the Utah courts for 16 years, the criminal justice system is still acclimating itself to efficiently and effectively asserting those rights. Here are a few simple things prosecutors can do to enhance a crime victim's experience in the judicial system while enforcing the rights given them.

**Respect.** Crime affects each victim individually and no two reactions are exactly the same. You are encountering human beings who are, likely, not in their "normal" state of being. Being patient with their unique circumstances, and understanding that the person you are interacting with is likely different from the person they are outside of the judicial system, will probably make it easier to interact with each crime victim. You do not need to treat crime victims with kid gloves but with respect for the situation they are working through. The Constitution charges all criminal justice professionals to treat crime victims with dignity, fairness and respect. *See* UTAH CONSTITUTION ART. 1 Sec. 28-1(a).

**Inform.** Information is key for a victim who is usually unfamiliar with the court system and completely overwhelmed by the complexity of same. Once a criminal case has been filed, prosecutors are often the primary source of all information for crime victims. Victims do not often understand how the judicial system works and appreciate any information you or your victim coordinator can give them. All criminal justice agencies are charged to give them information and to give clear explanations. *See* UTAH CODE ANN. § 77-37-3(1)(b).

**Privacy.** After some crimes, a victim does not feel he or she has much left besides their identity. Other times, victims will have serious safety concerns. It is important for victims to feel that their personal information is protected. The Code does not require victims to testify about locating or contact information such as address, telephone number and employment information. *See* UTAH CODE ANN. § 77-38-6(1). Even in a simple line of questioning, it is helpful to be cautious about a victim's location or where or why they moved somewhere. Also, hold defendants accountable when they seek victim's private records by ensuring rule 14b of the Utah Rules of Criminal Procedure is complied with and *in camera* reviews are requested and required before a defendant can infringe on a victim's privacy.

**Speedy disposition.** A victim has the right to a speedy disposition of the case; correspondingly, delay and continuances are two of the most frustrating aspects of a criminal case for a victim and can often lead to a victim becoming uncooperative or apathetic about the case. This right does not trump the defendant's right to due process. What it does, is enables the judge to balance the interests of the defendant with the victim, and to ensure that there is a good, legally meaningful reason for continuing a hearing. At times the court may hold the defendant accountable for a delay by requiring the defendant to provide medical records or employment records to support a claimed reason for the delay. An acknowledgement in court by a prosecutor's office that the victim has a right to speedy disposition can be very helpful to a victim. Utah Code Ann. §§ 77-38-7 and 77-37-3(1)(h). All agencies involved in the court process are to "establish policies and procedures to encourage speedy disposition." UTAH CODE ANN. § 77-37-3(1)(h).

**Safety.** Being in a courtroom on a daily basis, and not having a personal connection to the case, immunizes us as attorneys and criminal justice professionals from the challenges victims feel in simply being in court. If a victim is in the courtroom and you know he or she is uncomfortable with the process, you can attempt to reduce the victim's time in court by asking the defense attorney to call the case or make the effort to call the case

*Continued on page 9*



# SIMPLE WAYS TO ENFORCE CRIME VICTIMS' RIGHTS *(Continued)*

yourself. We've found most defense attorneys are amenable to such a request. Defendants sometimes use their body language or eye contact to threaten a victim without needing to say a word. Being aware of that dynamic and making a request to the bailiff or even the judge when necessary, can help a victims to feel safer and more willing to continue cooperating. Additionally, even walking near the defendant can be difficult for the victim. When possible, staying physically between the defendant and the victim can be very helpful. It's a simple move that comforts more than you can imagine. *See UTAH CODE ANN. § 77-37-3(1)(d).*

**Support person.** By asking the crime victim whether they have someone to attend hearings with them or not, you will learn what type of support the victim has. You can then follow up with other services like a victim coordinator (if your office has one) or a law enforcement agency victim advocate. This is also very important when children are involved. There are specific rights given to child victims to help them through the justice system. *See UTAH CODE ANN. § 77-37-4* (instructing that there be no questions implying any responsibility of a child for adult behavior and that interviews be kept to a minimum), *77-38-8* (requiring all to use age appropriate language when questioning child witnesses and allowing the use of an advisor to assist the child during the hearing).

**Meet with the victim.** Heavy caseloads, demanding court calendars and other extreme time constraints make in-person meetings with victims sometimes challenging; however, the payoff of giving certain victims one-on-one attention and "face-time" can be invaluable to their mental health and willingness to fully participate in the process (also a good way to ward off victims' complaints). Meeting you, before they appear at court, gives the victim a face to look for in the courtroom and gives them an opportunity to ask questions about the case in private. Not all victims will want contact like this with you. Nonetheless, when you are asked for a meeting and you can manage it in your schedule, you are giving the victim an opportunity to be heard, and you can often enhance victim cooperation and help victims to have accurate expectations about a case. Notably, Rule 35 of the Utah Rules of Criminal Procedure requires prosecutors to convey to victims any plea bargain arrangements and the resolution's ramifications *before* the plea is actually taken.

**Know your resources.** Many crime victims have other legal matters which may cloud how they interact with you and your office. By knowing the other resources available to them you can give them information which may help them to focus on the criminal case. Being aware of civil legal services such as Utah Legal Services, and other resources specific to your location, can allow you to refer victims to the appropriate services for their collateral issues (such as protective orders, guardianships and other family law issues). Knowing of other resources can help victims to be more focused during their interactions with you.

Additionally, the Utah Crime Victims Legal Clinic may be able to assist you with crime victims. Under the Utah Code, a crime victim may have representation (legal or non-legal) through the criminal justice process. *See UTAH CODE ANN. § 77-38-9.* The Utah legal community has many public-minded attorneys and there are many of our colleagues who are willing to assist as counsel for crime victims on a pro bono basis. As a non-profit organization, the Utah Crime Victims Legal Clinic represents crime victims during the criminal justice process. Our office has three staff attorneys and two victim advocates who are able to assist with the enforcement of a crime victims' rights. We are able to assist whether a victim's interests coincide or conflict with the government's position on a victim-related issue. Moreover, having counsel represent the victim may be another avenue for the victim to understand the constraints on the state and the interests of justice. If this work is being done on sub-award funding, you need to include the acknowledgement of us and provide the grant number.

We thank you for all of the work you do to assist crime victims and protect the communities of Utah !



# 18 Month MCLE Compliance Period



## ~~REMINDER~~

(Don't get caught on July 1<sup>st</sup> with your CLE down!)

Notice has been sent out by the MCLE Office and by UPC that the MCLE Office is in the process of changing compliance years from a calendar year to a fiscal year – July 1 - June 30. In order to accomplish this, the MCLE Board has shortened the current compliance period for all attorneys licensed to practice in Utah to 18 months. It works as follows.

<b>EVEN YEAR COMPLIANCE</b> (Those who's last reporting cycle ended December 31, 2008.)	Your current MCLE compliance period began on January 1, 2009, and will <b>end on June 30, 2010</b> . Your MCLE compliance report will be due by July 31, 2011.
<b>ODD YEAR COMPLIANCE</b> (Those who's last reporting cycle ended December 31, 2009.)	Your current MCLE compliance period began on January 1, 2010, and will <b>end on June 30, 2011</b> . Your MCLE compliance report will be due by July 31, 2011.

During these shortened compliance periods only, each attorney must obtain 18 hours of MCLE approved training, including one hour of Ethics/Professional Responsibility AND one hour of Civility/Professionalism. Unlike past years, civility credit does not cover your general ethics requirement, or vice versa.

## So, How Can I Pick Up the Hours I need?

**UPC's Spring Conference:** April 22-23, South Towne Expo Center, 9575 South State Street, Sandy. Case Law Update, 2010 Legislative Update, Civility and more.

**UPC/SWAP/POST:** Legislative update sessions will be presented in almost all counties of the Regional Legislative state during late April and early May; two hours CLE credit per session. Update Sessions: Watch for your brochure in the mail.

**Self Study:** UPC has a wide variety of self study lectures available, either on DVD or on-line. No charge.

**2009 Fall Prosecutors Training Conference and the 2009 Government Civil Practice Conference (on-line):**

Go to the UPC website: [www.upc.utah.gov](http://www.upc.utah.gov), go to the right side and click on 2009 Fall and Civil Training Videos. Make sure to note the user name and password so you will be able to gain access.

**UPC website:** Select from a wide variety of lectures from the National Advocacy Center. Those are available on DVD. To borrow a DVD call UPC at (801) 366-0202.

**Utah State Bar:** Go to <http://www.legalspan.com/utah/catalog.asp>. There the Utah State Bar has a large number of MCLE approved presentations on a wide variety of topics. NOTE: the Bar charges a fee to watch these presentations.



# On the Lighter Side

The Navy Chief noticed a new seaman and barked at him, "Get over here! What's your name sailor?"

"John," the new seaman replied.

"Look, I don't know what kind of bleeding-heart pansy garbage they're teaching sailors in boot camp these days, but I don't call anyone by his first name," the chief scowled. "It breeds familiarity, and that leads to a breakdown in authority. I refer to my sailors by their last names only; Smith, Jones, Baker, whatever. And you are to refer to me as 'Chief.' Do I make myself clear?"

"Aye, Aye Chief!"

"Now that we've got that

straight, what's your last name?"

The seaman sighed. "Darling, My name is John Darling, Chief."

"Okay, John, here's what I want you to do..."



As we stood in formation at boot camp, our commander said, "All right! All you dummies fall out."

As the rest of the squad wandered away, I remained at attention.

The instructor walked over until he was eye-to-eye with me, and then just raised a single eyebrow. I smiled and said, "Sure was a lot of 'em, huh sir?"

Aviation wisdom: The only time you have too much fuel is when you're on fire.

Blue water Navy truism: There are more planes in the ocean than submarines in the sky.

When one engine fails on a twin-engine airplane you always have enough power left to get you to the scene of the crash.

Flashlights are tubular metal containers kept in a flight bag for the purpose of storing dead batteries!

## DO YOU HAVE A JOKE, HUMOROUS QUIP OR COURT EXPERIENCE?

We'd like to hear it! Please forward any jokes, stories or experiences to [mwhittington@utah.gov](mailto:mwhittington@utah.gov).

Submission does not ensure publication as we reserve the right to select the most appropriate material available and request your compliance with copyright restrictions. Thanks!

## The Utah Prosecution Counsel

**Mark Nash**, Director, [mnash@utah.gov](mailto:mnash@utah.gov)

**Ed Berkovich**, Staff Attorney - DV/TSRP, [eberkovich@utah.gov](mailto:eberkovich@utah.gov)

**Marilyn Jasperson**, Training Coordinator, [mjasperson@utah.gov](mailto:mjasperson@utah.gov)

**Ron Weight**, IT Director, [rweight@utah.gov](mailto:rweight@utah.gov)

**Marlesse Whittington**, Law Clerk/Editor, [mwhittington@utah.gov](mailto:mwhittington@utah.gov)

Visit the UPC online at

[www.upc.utah.gov](http://www.upc.utah.gov)





## UTAH PROSECUTION COUNCIL AND OTHER LOCAL CLE TRAININGS

June 16-18	LEOJ: FIREARMS TRAINING FOR PROSECUTORS, ET AL <i>The only course to qualify for the LEOJ CCW permit. See UCA 53-5-711(2)(b). To register, email Ken Wallentine at <a href="mailto:kenwallentine@utah.gov">kenwallentine@utah.gov</a>. Space is limited.</i>	Camp Williams Salt Lake County
June 24-25	<a href="#">UTAH PROSECUTORIAL ASSISTANTS ASSOCIATION CONFERENCE</a> <i>Outstanding training for non-attorney staff in prosecution offices</i>	University Marriott Salt Lake City, UT
August 5-6	<a href="#">UTAH MUNICIPAL PROSECUTORS ASSOCIATION SUMMER CONFERENCE</a> <i>For all prosecutors whose caseload consists primarily of misdemeanors</i>	Zion Park Inn Springdale, UT
August 16-20	<a href="#">BASIC PROSECUTOR COURSE</a> <i>A must attend course for all new prosecutors, or those new to prosecution</i>	University Inn Logan, UT
September 22-24	<a href="#">FALL PROSECUTOR CONFERENCE</a> <i>The annual fall professional training event for all Utah prosecutors</i>	Yarrow Hotel Park City, UT
October 20-22	<a href="#">GOVERNMENT CIVIL PRACTICE CONFERENCE</a> <i>For public attorneys who work the civil side of the office</i>	Moab Valley Inn Moab, UT
November 17-19	<a href="#">ADVANCED TRIAL ADVOCACY SKILLS COURSE</a> <i>Advanced training for those with 5+ years and lots of trials under their belt</i>	Hampton Inn & Suites West Jordan, UT

NATIONAL COLLEGE OF DISTRICT ATTORNEYS (NCDA)\*  
AND OTHER NATIONAL CLE CONFERENCES

June 6-16	<a href="#">CAREER PROSECUTOR COURSE</a> <i>A 'must' course for all who plan to make prosecution their career</i>	<a href="#">Register</a> Charleston, SC
July 11-14	NDAA SUMMER CONFERENCE	Napa, CA
August 23-27	STRATEGIES FOR JUSTICE	<a href="#">Register</a> National Harbor, MD
August 31– Sept. 3	<a href="#">ASSN OF GOVERNMENT ATTORNEYS IN CAPITAL LITIGATION</a> <i>Indispensable training and info for any prosecutor who has a capital case</i> <i>For more info: <a href="http://www.agacl.com">www.agacl.com</a>, contact Jan Dyer at (602) 938-5793 or <a href="mailto:agacl@msn.com">agacl@msn.com</a></i>	San Diego, CA
Sept. 27– Oct. 1	SAFETYNET <a href="#">Agenda</a>	Easton, MA
October 27-31	ANNUAL DOMESTIC VIOLENCE CONFERENCE	Washington, DC

For a course description, click on the course title (if the course title is not hyperlinked, the sponsor has yet to put a course description on-line). If an agenda has been posted there will be an “[Agenda](#)” link next to the course title. Registration for all NDAA sponsored courses is now on-line. To register for a course, click either on the course name or on the “[Register](#)” link next to the course name.

## 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.** For specifics on NAC expenses [click here](#). To access the NAC on-line application form [click here](#).

August 9-13      [BOOTCAMP](#)      [Register](#)      NAC  
*A course for newly hired prosecutors*  
*The registration deadline is June 11, 2010*  
 Columbia, SC

See the matrix      [TRIAL ADVOCACY I](#)      [Register](#)      NAC  
*A practical "hands-on" training course for trial prosecutors*  
 Columbia, SC

Course Number	Course Dates	Registration Deadlines
07-10-TAI	August 16-20	June 18, 2010
08-10-TAI	September 27 - October 1	July 23, 2010
09-10-TAI	November 15-19	September 8, 2010

August 3-6      [CROSS EXAMINATION](#)      [Register](#)      NAC  
*An in-depth examination of the theory and method of effective cross*  
 Columbia, SC

August 23-27      [UNSAFE HAVENS II](#)      [Register](#)      NAC  
*Advanced trial advocacy training for prosecution of technology-facilitated*  
*Child sexual exploitation cases*  
 Columbia, SC

September 13-17      [COURTROOM TECHNOLOGY](#)      [Register](#)      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