

The Attorney General's Chain of Command

*Who delivers favors for
Shurtleff and Swallow?*

By Lynn Packer *August 19, 2013*



Scott W. Reed
Chief of Criminal Justice Division

If former Utah Attorney General Mark Shurtleff and his successor John Swallow peddled their influence in exchange for money—taken on or under the table—they would have needed the assistance of others in their office. For example consider convicted swindler Marc Jenson who alleges Shurtleff and Swallow shook him down for financial favors in exchange for preferential treatment. Neither Shurtleff nor Swallow directly prosecuted Jenson. Criminal charges against Jenson were handled by two of their assistant attorney general subordinates—Charlene Barlow and her division chief Scott Reed. Barlow was Jenson's prosecutor and Reed her supervisor. For money to be converted into special treatment they would have to have been involved, wittingly or unwittingly.

Jenson thinks wittingly.



Marc S. Jenson

“My client strongly suspects Scott Reed was unusually vested in the case,” says Jenson's attorney Marcus Mumford. Reed's direct intervention in the case was unusual. In late 2007 and early 2008 he took over plea negotiations from Charlene Barlow, the prosecutor, who normally would have handled them. Barlow, now a judge, won't comment on why she thinks her boss intervened. (*The Deseret News* reported that “some victims also thought it fishy that Reed, Shurtleff's chief of the criminal division, handled the plea bargaining instead of the line prosecutor.”)

Was it merely fishy? Or worse?

To understand Reed's role and what some call the audacious plea bargain he attempted to orchestrate requires a peek at how the case began and how the Attorney General's office's actions for and against Jenson swung back and forth like a pendulum.

First the AG's actions swung against Jenson, then for him, then against him and then cycled two more times before Jenson landed in jail. Dramamine may be needed for anyone trying to follow the AG's cases against Jenson.

The first of two cases was odd from the get-go. Most securities fraud criminal prosecutions originate in Utah's Division of Securities where they are investigated and then referred to the AG for prosecution. Not this one.

The Jenson case, instead, began with Attorney General Mark Shurtleff. One of his campaign contributors, Riche White, told Shurtleff he had been defrauded by Jenson in a venture that involved, among other things, selling bicycles to the Mormon Church for use by

missionaries. The suspicion is that White's campaign donation bought him influence and resulted in criminal charges against Jenson. It was an alleged Ca-Ching factor, paying to play.

In August 2005, after Jenson was charged with fraud, the director of enforcement for Utah's Division of securities responded to an email sent by Jenson's attorney at the time, Rodney Snow. (Another twist: Snow is now John Swallow's criminal defense attorney.) Mike Hines told Snow that he, Hines, is the one who usually refers cases for prosecution. But, he wrote, "This case began with the AG himself."

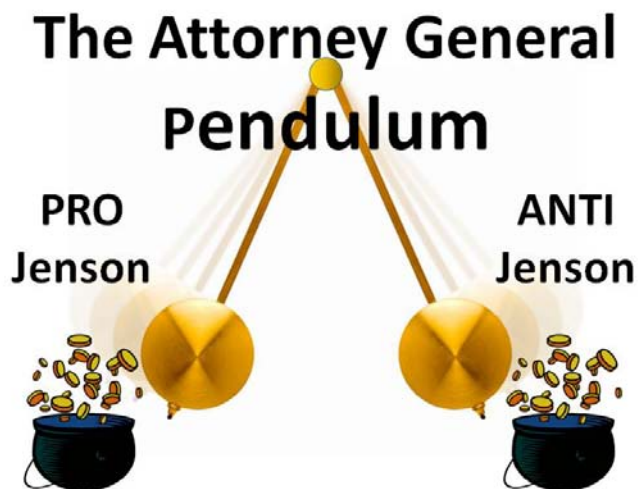
For almost two years the case languished. But then a Shurtleff campaign donor, Rob Stahura, approached Jenson at a Jazz game offering help. He referred Jenson to the attorney general's friend, Tim Lawson who called himself a "fixer." In exchange for a consulting fee Jenson was told Lawson could resolve Jenson's legal problems by donating to Shurtleff's campaign. Jenson says he was told Shurtleff might keep money in excess of what he needed to campaign. (Two years later Lawson offered his facilitator services to Brian Kitts who the attorney general's office also charged with securities fraud. Kitts says Lawson used his work for Jenson as a reference and that Lawson claimed to have set up an offshore bank account for Mark Shurtleff to handle some of the Jenson money.)

Jenson says he was also introduced to John Swallow, Shurtleff's chief fundraiser. Swallow purportedly told Jenson he planned to go to work for the Attorney General's office as Shurtleff's hand-picked successor and asked to be hired as a consultant on Jenson's Mount Holly resort project.

Now the pendulum was swinging Jenson's way. Now the ca-ching sound came from the man White wanted prosecuted.

Scott Reed took over plea negotiations from his subordinate, Charlene Barlow. Jenson claims Swallow and Lawson helped with those talks. Reed created a plea offer that just fell short of dropping charges altogether. It was a plea-in-abeyance proposal that involved no jail time and no restitution for victims and, after three years probation, no criminal conviction.

Victims, including White, squawked. Judge Robin Reese held a hearing on May 1, 2008 before deciding whether to reject the deal between the AG and Jenson. Scott Reed was on the hot seat and tried to explain why he was handling the talks and not Barlow. "It was my decision as



her supervisor not to burden her with the additional responsibilities of these negotiations because it was clear they were not going to be simple or easy,” he told Judge Reese.

Reed told the court his involvement in the case began “late last year” (2007) with the plea bargaining. Was he lying? Was he involved much earlier before plea talks began?



Scott Reed at 2008 plea-in-abeyance hearings: Nervously explaining sweet deal at one hearing; watching Jenson accept tougher deal at second.

One of Jenson’s attorneys, Paul Nelson, would later disclose that in April 2007 he met with Mark Shurtleff and Scott Reed, with prosecutor Barlow apparently not in attendance, to discuss the Jenson criminal matter. It was later that same month that Jenson was approached by the Shurtleff campaign donor, Rob Stahura, who “explained that they key to resolving matters with the Attorney General’s office was to donate to Mr. Shurtleff’s campaign.”

It was after Jenson began paying money to Tim “the Fixer” Lawson and donating money to the Shurtleff campaign that Reed took over plea bargaining with the alleged assistance of Lawson, Swallow and Stahura, facts he did not disclose to the judge at that May 1, 2008 hearing..

Reed had no answer when Judge Reese asked about the fairness of Jenson being able to “live a fairly lavish lifestyle” while “not paying any serious penalty.”

A video recording of the hearing shows Reed, appearing rattled, pausing frequently to drink from a cup, and saying he was “persuaded by defense counsel that Mr. Jenson’s, potential as a productive law-abiding citizen is greater served without a conviction than with.” “I suppose that’s true,” Reed said. “His 1992 securities conviction in federal court being now for the most part ancient history.” Reed, essentially, was vouching for the credibility for the man he was purportedly prosecuting.

Despite Reed’s argument Jenson lost his sweet deal. The judge rejected the plea bargain and insisted on a new one that at least included victim restitution if no jail time. The pendulum reversed course again.

According to Jenson Swallow and Lawson worked behind the scenes to help Reed craft a new, replacement plea bargain that included \$4.1 million restitution to two victims.

The court approved that plan. Jenson still got no jail time and was free to continue developing the Mount Holly ski and golf resort in the mountains 18 miles east of Beaver, Utah. Proceeds would help Jenson pay back victims.

Swallow, who allegedly helped with the plea deal that enabled Jenson to continue working on the Mount Holly project, went to work for Jenson, working with Jenson’s legal team. Jenson claims Swallow wanted to be paid with a million dollar membership in the Mount Holly Club along with one of the cabins at the resort.

How quickly the pendulum reversed direction yet again. A document Jenson’s attorney filed with the court explains:

A few days after the plea in abeyance had been entered, Lawson arranged a lunch between Jenson and Shurtleff at Red Rock restaurant in Salt

Lake City. Shurtleff asked for Jenson's forgiveness and told him that, if Jenson had contributed to his campaign, Shurtleff would have known who he was and the case would never have been brought against him. Shurtleff instructed Jenson to continue to pay Lawson as directed, and to "stay close" to Lawson, Stahura and Swallow to guide him through the process associated with the abeyance period. Shurtleff also told Jenson how impressed he was in Jenson's friends and supporters. Shurtleff wanted to stay in contact with Jenson so that Jenson could introduce him to his network. When Jenson explained that he was going to move to California to rebuild his business, Shurtleff suggested that they visit Jenson in California.

Despite his promise to the court Jenson paid no restitution. Instead Swallow along with Jenson's criminal defense attorney prepared a two-page report that argued Jenson really didn't owe his purported victims any money. The document explains that "Jenson did not in fact sell unregistered securities nor owe (the victims) any restitution" but merely accepted the result to avoid "the ongoing and significant expenses, business disruptions and uncertainties associated with the court process."

An interested party who had contact with both Lawson and Jenson after the plea deal told *PC* that "it's apparent that Shurtleff told Jenson, 'Don't worry about it.'" Nevertheless the source said he believes Scott Reed was honest and merely got caught in the middle.

It appears that Reed with Swallow's and Lawson's assistance had merely stuck the restitution clause in the plea deal to get it past the judge, that the AG's office would rather see any extra cash generated by Jenson going into Shurtleff's and Swallow's pockets or campaign coffers. Apparently the provision had only been added to get the judge to sign off and the AG would not enforce payment.

As Shurtleff and Swallow continued contact with Jenson during his probation period they discussed various deals. Jenson claims if he found \$2 million for one of them that Lawson said the Attorney General's office would resolve his case without having to pay the \$4.1 million restitution. Jenson also claims he told Shurtleff that having Jenson raise money for anything other than Mount Holly may violate conditions of his plea-in-abeyance. "Shurtleff told him not to worry about it, that he would protect Jenson," Jenson's attorney claims.

Whatever the justification the end result was that Jenson paid no restitution.

Jenson's attorney claims the Attorney General's office "took advantage of Jenson's precarious position." "He had been trying to meet their demands instead of making restitution payments in this time period," attorney Marcus Mumford wrote in a pleading filed with the court.

Which led to the next major momentum shift and the pendulum reversal that landed Jenson in jail. But not because Jenson failed to pay back investors but because he allegedly failed to continue paying Lawson.

A court filing claims that between the spring of 2007 and 2009, Jenson paid Lawson over \$200,000 and "a significant amount of expenses incurred by Shurtleff and Swallow." But in about late 2009 Jenson had a falling out with Lawson and stopped making the payments Jenson alleges Swallow and Shurtleff encouraged him to make.

In May 2010 Lawson accused Jenson of causing the foreclosure of his home because Jenson had not been making payments. "Lawson threatened to have Jenson put in prison if he failed to meet Lawson's demand for money," according to a court filing. "After Jenson stopped

paying Lawson, as Lawson had promised, the Utah Attorney General's office reinitiated proceedings against Jenson, including an investigation into the Mount Holly development" and began work to withdraw Jenson's plea in abeyance.

On August 23, 2011 the AG's office in the person of Scott Reed went to court, asked for Jenson's plea to be revoked and the criminal charges be enforced. The same day the AG filed criminal charges against Jenson for an alleged Mount Holly fraud. Judge Reese imposed the delayed sentence on Jenson, had him cuffed and sent to prison.

Jenson remains incarcerated today where he is singing like a canary. His willingness to help authorities extends beyond Shurtleff and Swallow. In an immunity-from-prosecution agreement he obtained from the Davis county Attorney and Salt Lake county district Attorney he also agreed to possibly implicate Swallow's chief deputy Kirk Torgensen and Scott Reed as well.



Kirk Torgensen
Chief Deputy Attorney General

KUTV News, among other media accounts, reported that "a letter and brief statement from prosecutors suggests two others in the Attorney General's Office may be key witnesses, or under investigation--in connection with the on-going probe into Attorney General John Swallow and his predecessor, Mark Shurtleff." "The letter, which 2News saw on Friday, listed the names of Kirk Torgensen, the Chief Deputy Attorney General, and Scott Reed, who heads the office's Criminal Justice Division."

Press accounts about the February, 2013 immunity agreement prompted Torgensen to call attorney Bret Rawson and advised that Rawson's law partner Marcus Mumford "needs to be careful." Rawson, who was friends with Torgensen, said Torgensen told him that he had tried to get Lawson to stop interfering in the Jenson case, and that Swallow's action "disgusted" him. And that he did not want to be associated with allegations against Swallow and Shurtleff. Torgensen told reporters what he told Rawson was in no way a threat.

Partly based on evidence of a purportedly threatening phone call the court removed the Attorney General's office from prosecuting Jenson on the Mount Holly charge and turned the case over to the Utah County Attorney. After the hearing on that motion Mumford maintained that Torgensen's call was still "saying to me they've got me in their sights." "I think it's time for the people of Utah to stop letting their prosecutors act like thugs" he said as television news cameras rolled.

Jenson may be hurling false accusations. Torgensen may have had nothing to do with giving favors to Jenson or with any subsequent, alleged retribution when Jenson failed to pay Lawson, Torgensen is accused of involvement nonetheless. Mumford said an unnamed source told him Torgensen played a role similar to Lawson's. And another source told *PC* that Jenson told him that Torgensen was a "bag man" and a "front man" handling some of the monies involving Shurtleff.

Both Reed and Torgensen declined returning phone calls prior to the publication of this report. Afterwards Torgensen emailed this response:

There is absolutely no evidence that supports your accusations made by unnamed sources that I had anything to do with Tim Lawson or Mark Jenson

and the meetings between them and Swallow and Shurtleff. In fact I have never met Tim Lawson or Mark Jenson outside of a courtroom. I find your article defamatory when you quote unnamed sources saying I was the money man or the bag man. Total lies and shame on you for reporting it. I guess damaging someone's reputation in that way is ok. I am sure I can get a unnamed source to say untruthful things about you. I can state unequivocally that I am not under investigation and there is no credible evidence to support that.