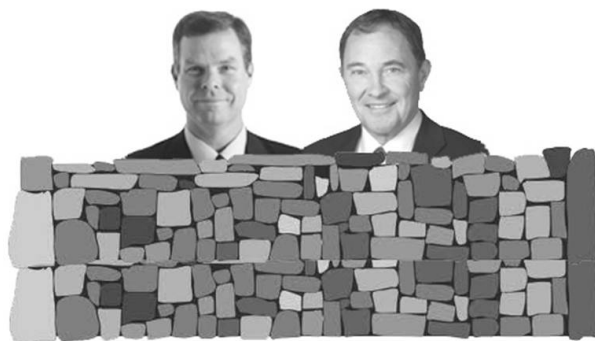


SWALLOW AND SHURTLEFF
CHRONICLED,
PART 25 OF A SERIES

The AG's Vehicle Fleet

*Governor's and AG's
offices stonewall records
requests and questions about misuse of state vehicles.
Abuses could be criminal offenses.*

PART II by Lynn Packer
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stonewall; 'stōn, wōl/*verb*; delay or block a request by refusing to answer questions or by giving evasive replies, esp. in politics.

the matter: Who decides which employees have take-home privileges for state vehicles, who decides what type of vehicle they use to commute and who monitors for illegal use?

An informed source says criminal investigators may look into the suspected mismanagement of the AG's car pool and resulting loss of state funds. *PackerChronicle* has also learned that the chief deputy attorney general, Kirk Torgensen, who refuses to explain how he qualified for personal use of a state-owned vehicle, is now a target of the criminal probe. It appears the net being cast by Salt Lake County District Attorney Sim Gill and Davis County Attorney Troy Rawlings could ensnare others besides Attorney General John Swallow and his predecessor Mark Shurtleff.

Nevertheless, stonewalling is usually an effective strategy. Both the governor and attorney general may yet escape accountability

Governor Gary Herbert and Attorney General John Swallow are standing shoulder-to-shoulder to deny access to records and dodge questions about the AG's bloated vehicle fleet. Over the years the AG's lavish motor pool policies may have cost taxpayers hundreds of thousands of dollars in unnecessary, perhaps unlawful expenditures. Information about the type of vehicles in the Attorney General's motor pool, about which employees have take-home privileges and about how the vehicles are used is off limits to the press and public. At the heart of



Kirk Torgensen, chief deputy to Shurtleff and Swallow, also a target of the criminal investigation.

for infractions of the state's motor vehicle law by blocking access to records and dodging questions.

The last two attorneys general, Shurtleff and Swallow, handed out vehicle take-home privileges like Halloween candy. At the same time the governor's Division of Fleet Operations, which is supposed to enforce state vehicle-use standards permitted the AG's office to set and enforce its own rules.

While the AG was bulking up on cars and lavishing commute privileges another state agency—the Division of Corporations—was taking away drive-home privileges from its investigators. And while state government was purportedly requiring valid reasons for the purchase of vehicles larger than compact cars, the AG's office has been buying large pickups, sport-utes, and full-sized cars for its take-home employees. The governor's administration merely looks the other way.



Top secret: Justification for full-size, quad-cab, four-wheel-drive trucks for undercover work and how investigators qualify for take-home privileges.

“The AG is a separately elected constitutional officer and directs his own office,” says Marilee Richins with the Department of Administrative Services (DAS), which is under the governor's office and over fleet operations. “I would suggest you contact Paul Murphy for answers to the questions that you raised concerning their use of state vehicles.”

“Most of the vehicles are used by investigators and we cannot release where they are going,” says AG spokesman Paul Murphy. “The take-home status and the trucks also involve investigators and we cannot release any information about them.”

After several inquiries made over several weeks the AG's office has provided no vehicle records. DAS only provided heavily redacted spreadsheets and no original records. “The spreadsheet I sent you contains the only records we keep of the justification at time of purchase,” wrote Richins in an email. “We have been asked by the AG's Office not to release any more information than what I gave you on the undercover vehicles.”

The governor's office declined *packerchronical.com*'s request for an interview with Governor Herbert. His deputy chief of staff, Ally Isom, responded in an email: “In regard to your interview request with the Governor, something of this nature is only considered with credentialed media outlets. This is standard protocol we follow in order to protect the Governor's schedule from multiple requests of non-credentialed media.” Isom says she does not consider *packerchronical.com* to be an “official media outlet.”

The questions neither she nor the governor would answer:

- Does the governor agree that the use made of the AG's trucks is protected information?
- Does the governor agree that the public should not know who is assigned a vehicle if they work undercover on occasion?
- Does the governor agree that his Division of Fleet Operations (DFO) has no duty to check to see if any take-home privileges are given in violation of the law and if any of those who have it violate the law.
- Does the governor agree that an agency director like John Swallow can grant the take-home privilege to whomever he or she wishes?

- Does the governor agree that is an adequate reason and that DFO does not require any further explanation and does not check to see if a truck is really needed?
- Does the governor disagree that a 2005 audit strongly suggests DFO needs to enforce the take-home policy?

Under Cover or Cover-up?

Forty vehicles in the AG's 54-vehicle motor pool are what the state calls "unmarked" vehicles. In Utah government parlance it simply means they carry non-EX plates. So no one can tell from the plates it's a state-owned vehicle. None of the AG's "marked" cars with EX plates is known to have other markings such as lettering the public sees on police, sheriff and highway patrol marked cars.

Thirty-six vehicles in the AG's fleet are currently assigned to employees who have commute privileges. Most of the 36 assigned employees are believed to be investigators but the AG is not providing names of those with drive-home authorization. *Packerchronicle* was able to find out by other means that Torgensen has a take-home car that is unmarked even though he does not work undercover.

The law requires those with commute privileges to verify they are not using the assigned vehicles for personal use beyond driving back and forth to work. "The trip log must be created for the first and last trip of the day for all take-home vehicles," the rule says.

Packerchronicle sought the daily trip logs for all for the AG's commute cars but, so far, none has been provided. AG spokesman Murphy said, "I have turned your request over to the GRAMA designee to see if any of the requested records are protected, private or public. I will notify you when that determination has been made."

It may be a stalling tactic. The failure to produce records and answers after weeks of inquiry hints that it's likely that many if not all AG commute privilege holders ignore the law and don't record their commute mileage. A former AG investigator says he didn't keep a daily log and was never told such a rule exists. Without the log it is more difficult to determine if the vehicles are driven for unauthorized, personal trips besides commuting.

It could also be that none of the AG's investigators even qualifies for take-home status whether or not he or she makes illegal, personal use of their vehicles. The law—incorporated in Administrative Rule R27-3-7—does not automatically grant take-home rights for anyone, including investigators. To qualify an employee either has to be on call, 24 hours a day "where the agency clearly demonstrates that the nature of a potential emergency is such that an increase in response time, if a commute or take home privilege is not authorized, could endanger a human life or cause significant property damage." The rule requires each driver to keep a complete list of all call-outs for renewal of the take home privilege the following year.

Another criteria is met if "an agency clearly demonstrates that an employee is required to work at home or out of a vehicle, a minimum of 80 percent of the time and the assigned vehicle is required to perform critical duties in a manner that is clearly in the best interest of the state."

Finally, if an employee works at an "alternative work site" and pool cars are only available at another site he or she may be granted the privilege.

There's no mention of any "undercover" justification in the rules.

Because the AG's Office is remaining silent there's no explanation whether any of its agents really do work undercover. Going undercover is defined as "disguising one's own identity or using an assumed identity for the purposes of gaining the trust of an individual or organization

to learn secret information or to gain the trust of targeted individuals in order to gain information or evidence.” No one will explain how a take-home vehicle as opposed to a pool car is necessary for undercover work, if any is done, or why pool or rental cars cannot be used to infiltrate suspected, illegal operations. How would a new, full-size, quad-cab truck help an investigator disguise himself better than a compact car? And if it would, what would that have to do with take-home privileges?

It’s true EX plates could be dead giveaways. Non-EX plates make it more difficult for lawbreakers like Internet sexual predators, alien smugglers and green-card counterfeiters to tell who might be infiltrating their ranks. But it’s also true that unmarked plates would also keep the general public from wondering why someone with EX plates is shopping at Kmart on a weekend. EX plates would make it harder to get away with using state vehicles for personal use.

DAS spokesperson Richins said she would not release specific information about the AG’s unmarked vehicles “because those records are protected.” “It is our opinion that specifics regarding the justification and/or specific usage of unmarked vehicles used by the Attorney General’s Office which are wholly or partially used for undercover work may potentially cause harm to potential investigations and/or investigators,” she said referring to Utah Code Title 63G Chapter 2 Section 305 (10)(d)(e) and (11). Indeed that law protects records maintained for criminal enforcement purposes if they “reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or reasonably could be expected to disclose investigative...techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement...”

Richins did not explain how revealing who has take-home privileges and why larger than default-sized vehicles are used by the AG would violate that law.

If county prosecutors decide to investigate the alleged misuse of vehicles it could show the AG’s and governor’s offices were not hiding records to protect state employees prosecuting crooks but hiding records to conceal crimes committed by state employees.

Then there’s the matter of oversized undercover vehicles. Do several agents often work undercover, together, at the same time, out of the same vehicle? So it has to be large and six-passenger. Or maybe quad-cab trucks and sport-utes are needed so agents can go to lunch together.



Hidden Camera: Unmarked, undercover vehicles used for lunch runs.

While the rules permit any state employee to take a state car out to eat if he or she is “spending at least one night on approved travel to conduct state business...with a supervisor’s approval” nothing in the rules says employees can take state vehicles to lunch from their offices on a daily basis.

But twice, on days picked at random, *Packerchronicle.com* observed three state vehicles being used for hour lunch runs: an “unmarked” Dodge Charger sedan with license plate number A118CF, a Chevy Traverse sport-

ute license number B2742F, and Chevy Quad Cab truck license number Y97 8PP.

Kirk Torgensen

Chief Deputy Utah Attorney General Kirk Torgensen was the number-two man under Mark Shurtleff, then briefly shared chief deputy duties with John Swallow from 2009 to 2011, and regained sole chief deputy status again when Swallow was elected.

Torgensen's working proximity to Swallow is a bit odd in that one might expect a chief deputy to office next to the AG. But Torgensen does not office at the state capitol building with Swallow. Neither does he office at the AG's primary location at the Heber Wells Building on 300 South in Salt Lake. Instead Torgensen has his office out in no-man's land at a facility on College Drive in Murray near 5300 South, overflow office space where mostly AG investigators work.

Torgensen is a highly decorated chief deputy. He won the Nelson Kampsky Award by the Conference of Western Attorneys General as Outstanding Leader and Manager of the Year for 2005-06; was named one of Utah's top lawyers in 2009 by his peers, received the Outstanding Contributor to Law Enforcement Award from the Utah Police Chief's Association and just this year received the highest public service award from the Conference of Western Attorneys General, the 2013 Jim Jones Public Service Award.



John Swallow resigning from office last week: "We have the best and brightest, the hardest-working people with the most integrity....working in the attorney general's office."

Attorney General John Swallow said no one is more deserving of the latest award than Torgensen because of "his unprecedented commitment to public service and the passion he shows in words and actions." At his November 21 resignation press conference Swallow said, "We have the best and brightest, the hardest-working people with the most integrity that I can't possibly describe or imagine working in the attorney general's office."

Swallow credits Torgensen with initiating the nation's first website to report and protect victims of identity theft and starting the first program to protect children's social security numbers and training at national conferences and hosting regional symposiums to combat white collar crime."

Torgensen has been heavily involved with the Attorney General office's crackdown on crimes committed by polygamists. He appeared on numerous discussion panels and granted many interviews about the AG's efforts to stop polygamy-related crime while stopping short of prosecuting any man for having more than one wife.

In 2004 he was interviewed by *The Calgary Herald* when FLDS prophet Warren Jeffs visited



Torgensen debates constitutional law scholar Marci Hamilton on polygamy and child abuse at the University of Utah Law School in 2008

the polygamous community in Canada after Canadian customers finding assault weapons in Jeff's bodyguard's car. Torgensen told the paper his office hoped that leaders excommunicated by Jeffs would have provided evidence against their former leader. Torgensen said it had been impossible to infiltrate the polygamy community. "It's easier to turn somebody in the Mafia than these people," Torgensen told the newspaper. "In the Mafia it's a lifestyle. With these people, it's their soul. It's an entirely different setup."

Despite all of his achievements and accolades some of Torgensen's co-workers see him as a sort of screw-off. Last May *The Salt Lake Tribune* wrote, "As employees raised concerns about how the agency has been managed, they also criticized another top official: Kirk Torgensen, Swallow's second in command on the criminal side. Those who spoke to *The Tribune* repeatedly accused Torgensen of what some characterized as "frequent" trips out of town, 'absent' leadership and a 'pervasive' lack of attention to his job. 'He's got a reputation,' a veteran attorney said. 'He should be doing his job, which he isn't.'"

Torgensen, however, told *The Tribune* that he is a hands-on manager who likes to be "in the trenches" with the attorneys. (Yet he offices away from most assistant AGs.) He told the paper he's taken just a week of vacation this year, meets regularly with division chiefs and that he reorganized his office."

Torgensen reportedly only works four days a week, taking Friday's off. On the days he is there he's accused of coming in late, leaving early and often spending upwards of two hours a day in the office's fitness facility.

He may need the extra time to moonlight as an instructor despite making about \$210,000 a year, about twice as much as Swallow whose salary is capped by the legislature. Most of the time Torgensen has worked for the state he also has been an instructor for Police Officer Standards and Training, Utah Narcotics Officers Association, Utah Prosecution Council, Weber State University and the University of Utah, teaching Constitutional Law and Criminal Justice classes.

(*Salt Lake City Weekly* last week reported that under a deal arranged by former Attorney General Shurtleff Torgensen along with Swallow and communications & policy director Paul Murphy Torgensen got a \$4,000 cash bonus along with Murphy and Swallow getting \$3,000. Shurtleff told *City Weekly* that the men "did an extraordinary job in so many ways," rendering remarkable service when Shurtleff was attorney general.")

Torgensen, during his career with the AG's office, was once able to rise like a Phoenix from the ashes. Twenty years ago he was demoted by then Attorney General Jan Graham after an incident at a Bear Lake training retreat during which several state employees engaged in after-hours, nude hot-tubbing. Graham told *The Deseret News* that not everyone involved removed their swimsuits. Torgensen was there at the time and, according to Graham, failed to supervise and be responsible for his employees. "Those involved apparently swore each other to secrecy," according to the newspaper account.

Torgensen's demotion along with another supervisor's was the extent of Graham's discipline. Graham assigned Mark Shurtleff to replace Torgensen as chief over the Corrections Section. Shurtleff would later name Torgensen his chief deputy.

Five years ago Torgensen dodged another PR bullet after Attorney General Shurtleff began receiving what he claimed were unsolicited emails from a Salt Lake escort service called the Doll House. *Salt Lake City Weekly* reported that his chief deputy, Torgensen, said Shurtleff was "pissed." Two of his investigators arrested the emailer, Rachel Guyon, and the Salt Lake District Attorney charged her with stalking. She was accused, according to *City Weekly*, of

conducting an 18-month, sexually themed email campaign against Shurtleff, Torgensen and other assistant AGs. Torgensen, on his moonlighting job, had taught Guyon at Salt Lake Community College. “It is telling how these e-mails rattled Shurtleff and Torgensen,” Guyon’s co-counsel, Kristine Rogers, argued according the article, “that the attorney general’s office tracked down Guyon with tactics that are, at least in one example, ‘at best improperly unauthorized, at worst illegal.’” She pointed out that Shurtleff’s investigators served 10 U.S. Department of Homeland Security summons on various information networks, including Yahoo! and MSN, along with Weber State University.

Torgensen provided no comment to the paper “ except to acknowledge that Guyon was in his class and that there was no relationship between them whatsoever.”

(Prosecutors eventually dropped evidence obtained via Homeland Security summons and Guyon worked out a plea in abeyance on a harassment charge.)

Torgensen also declined comment for this report.