

## **IMMUNITY**

### **JUDICIAL USE IMMUNITY/STATEMENTS AGAINST PENAL INTEREST**

State v. Haner, 2007 VT 49, (June 1, 2007)

The defendant was convicted of aggravated sexual assault on his daughter. A year after the Supreme Court affirmed his conviction, the defendant's brother went to the State police with his mother and confessed to the crime. He then proceeded to write 23 letters to various parties, including the defendant, SRS and the victim expressing his guilt. The defendant then filed a motion for new trial based upon newly discovered evidence with attached, a sworn affidavit written by the brother confessing his guilt. At the motion hearing, after court warning and assignment of counsel, brother takes the Fifth.

The Supreme Court holds that in VT, the decision to grant witness immunity lies exclusively with the prosecutor and while a defendant's constitutional rights might create circumstances where the court could use its inherent authority to grant use immunity, because the trial court was correct in finding that the proffered evidence was not "clearly exculpatory", it did not err as a matter of law in declining to grant use immunity to defendant's brother. The Court also found that the trial court did not abuse its discretion in finding the brother's statements inadmissible as statements against penal interest pursuant to V.R.E. 804(b)(3). The court properly analyzed the claim under State v. Corliss (motive and opportunity to establish trustworthiness) and was justified in looking beyond Corliss to analyze the statements for trustworthiness.