

1979

# Newton C. Estes v. Walter D. Talbot et al : Plaintiff's Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

TAXPAYER'S ACCUSATION FOR REMOVAL BY  
JUDICIAL PROCEEDINGS

77-7-15

NEWTON C. ESTES,

Plaintiff - Appellant,

-vs-

WALTER D. TALBOT ET AL,

Defendants - Respondents

Case No. 16099

PLAINTIFF'S REPLY BRIEF

Appeal from the order of dismissal of the  
Third Judicial District Court of Salt Lake  
County, Honorable Peter F. Leary, Judge

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POINT-BY-POINT REPLY TO RESPONDENT'S BRIEF

Point I

The Court's opinion in 407 P.2d at 572 should not be held to mean that the statute authorizing removal of officers must be so strictly construed against the authority (taxpayer) invoking it, and so liberally in favor of those against whom it is asserted that it would permit Utah's largest expenditure of public money to be made to the almost complete exclusion of the purpose for which it was collected.

Point II

The transcribed record of the hearing from which this appeal emanates has Judge Peter Leary accepting jurisdiction to conduct a jury trial of the Members of the Utah State Board of Education and Walter D. Talbot, its Superintendent. My appeal has come before

this Court because Judge Leary stated that unless Smith v. Losee (485 F.2d 1973) caused him to change his mind, a jury trial would be scheduled. I presented my appeal brief to ask the Court to rule that Smith v. Losee contains no grounds whatsoever for Judge Leary to have dismissed my action. This is, therefore, the only issue before the Court.

For these reasons the Court should not rule at this time on the correctness of applying 77-7-15, but rather should allow issues of such monumental importance to the future of the people of Utah to be heard by a jury. Then, if a convicted Member wished to make an appeal, he could raise the point about his being a state officer not subject to removal by judicial proceedings.

The people of Utah would thus have the chance to learn how the Utah public school system, under the supervision and with the knowledge of those individuals named in my accusation, is knowingly and wilfully preventing 75% of our school children from ever obtaining a basic education by permitting teachers to neglect to assign the type of work deemed necessary (by the State Board of Education) for the students to gain the foundation upon which all other education rests.

### Point III

I believe the Court will find untenable respondents' assertion that the Utah State Board of Education and its Superintendent have no "official duty" to those who pay the taxes, and to those who are required to place their children in the state system of public schools, to have those children receive a worthwhile educational foundation from which to enter adult citizenship. Twelve extremely crucial years of their lives have been set aside by law so they will be unable to avoid receiving this necessary instruction.

The word "education" found in the name of the organization I have accused of flagrant neglect of duty tells everyone, who has not himself been deprived of one, that the paramount official duty of the Utah State Board of Education is to make certain our children receive an education worthy of the time and money (the greatest of all our expenditures) committed to it, and that all other "official" duties are secondary.

In fact, all School Board duties and activities, unless based on the fundamental one of educating our children, are a sham and a fraud, and destructive of the public welfare!

I wonder if the Court has ever in its history had brought before it a more flagrant example of knowing and wilful neglect of duty by officials in such high positions? When ever has so much of our resource of time, money and energy been knowingly wasted on a public program after it was learned the program was failing to achieve the results considered necessary to insure a continuance of our system of self-government by citizens living in freedom?

When before did the Legislature ask the spender of its largest appropriation for an accounting of the results; but instead received a survey from which had deliberately been deleted the report showing our teachers were systematically neglecting to provide Utah's children the fundamental teaching "upon which all other education is necessarily based"?

Respondent's assertion that having Utah's children receive a worthwhile education is not the Board's official duty is an insult to the Court and a fraud upon the state of Utah.

#### Point IV

The Attorney General asserts that monumental misuse of public funds is not subject to civil action unless

the individuals responsible have been convicted of a previous crime. This is tantamount to the chief law enforcement officer of Utah giving all government officials without a previous criminal record the license to violate their oaths by committing acts of neglect, fraud and malfeasance with total disregard to the rights of the public.

Is it not wrong for such a proposition to be put before our highest court by our highest law enforcement officer?

### Conclusion

For the foregoing reasons I pray the Court rule that my grounds are sufficient for a jury to be impaneled by the Third District Court.

For this is the only means by which parents and taxpayers will, at any time in the foreseeable future, be able to receive an accounting of the value being received for their taxes and twelve years of their childrens' lives.

Through no other means than by answers sworn to in the courtroom will an owner of Utah's public school system ever learn:

- 1) Do my child's assignments include reading books

and writing book reports?

2) Are teachers required to demonstrate their effectiveness by showing scored comprehensive exam papers?

3) Is there any other way to make certain a teacher is presenting worthwhile material and that the student is learning it other than the method in question 2?

4) What steps have you taken to correct the reading weaknesses found in your 1975 survey which you describe as "unbelievable"?

I also pray that should my action be found to be technically flawed so as to preclude its going to conclusion, the Court will find that these charges are too serious for civil correction, and that the defendants' neglect of duty is so flagrantly fraudulent that it should be presented to the grand jury.

Respectfully submitted this 6th day of April,  
1979.



Newton C. Estes

MAILING CERTIFICATE

I hereby certify that I mailed two copies of the foregoing, postage prepaid, to Tom Anderson, 236 State Capitol, Salt Lake City, Utah 84114 this 6th day of April, 1979.

Newton C. Cole