

1990

J. Val Roberts and Verle Roberts v. Centerville City, et al. : Petition for Writ of Certiorari

Utah Supreme Court

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J. Val Roberts; Attorney for Petitioner.

Jody K. Burnett; Daniel D. Hill; Snow, Christensen & Martineau; Attorneys for Respondent.

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DOCKET NO.

BRIEF

900319

IN THE SUPREME COURT OF THE STATE OF UTAH

J. VAL ROBERTS and
VERLE ROBERTS,

Plaintiffs and Appellants,

vs.

CENTERVILLE CITY, CENTERVILLE
CITY BOARD OF ADJUSTMENT, and
NANCY H. GROLL, Chairman of
the Centerville City Board of
Adjustment, WILLIAM WINGO, NORM
WRIGHT, FRED NELSON, and DALE
REES, members of the Centerville
City Board of Adjustment,

Defendants and Respondents.

VERIFIED
PETITION FOR WRIT
OF
CERTIORARI

Docket No.

900319

VERIFIED PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI AS TO THE ORDER OF THE COURT
OF APPEALS AFFIRMING THE ORDER OF THE LOWER COURT; REVERSING
THE COURT OF APPEALS AND THE LOWER COURT; ENTERING JUDGMENT
FOR PETITIONERS.

Jody K. Burnett
Daniel D. Hill
Snow, Christensen & Martineau
10 Exchange Place, Eleventh Floor
Post Office Box 4500
Salt Lake City, Utah 84145
Telephone: (801) 521-9000
Attorneys for Defendants/Respondents

J. Val Roberts G2772
P. O. Box 666
Centerville, Utah 84014
Telephone: (801) 295-9003
Attorney for Plaintiff/Petitioner
VERLE ROBERTS and for Plaintiff/
Petitioner PRO SE

FILED

JUL 2 1990

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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| J. VAL ROBERTS and | : | |
| VERLE ROBERTS, | : | |
| | : | VERIFIED |
| Plaintiffs and Appellants, | : | PETITION FOR WRIT |
| | : | OF |
| vs. | : | CERTIORARI |
| | : | |
| CENTERVILLE CITY, CENTERVILLE | : | |
| CITY BOARD OF ADJUSTMENT, and | : | |
| NANCY H. GROLL, Chairman of | : | |
| the Centerville City Board of | : | |
| Adjustment, WILLIAM WINGO, NORM | : | |
| WRIGHT, FRED NELSON, and DALE | : | Docket No. _____ |
| REES, members of the Centerville | : | |
| City Board of Adjustment, | : | |
| | : | |
| Defendants and Respondents. | : | |

VERIFIED PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI AS TO THE ORDER OF THE COURT OF APPEALS AFFIRMING THE ORDER OF THE LOWER COURT; REVERSING THE COURT OF APPEALS AND THE LOWER COURT; ENTERING JUDGMENT FOR PETITIONERS.

Jody K. Burnett
Daniel D. Hill
Snow, Christensen & Martineau
10 Exchange Place, Eleventh Floor
Post Office Box 4500
Salt Lake City, Utah 84145
Telephone: (801) 521-9000
Attorneys for Defendants/Respondents

J. Val Roberts G2772
P. O. Box 666
Centerville, Utah 84014
Telephone: (801) 295-9003
Attorney for Plaintiff/Petitioner
VERLE ROBERTS and for Plaintiff/
Petitioner PRO SE

LIST OF ALL PARTIES

The parties of this litigation are as follows:

APPELLANTS: J. Val Roberts and Verle Roberts, on behalf of themselves.

RESPONDENTS: Centerville City, Centerville City Board of Adjustment, and Nancy H. Groll, Chairman of the Centerville City Board of Adjustment, William Wingo, Norm Wright, Fred Nelson, and Dale Rees, members of the Centerville City Board of Adjustment, of behalf of the City and the Board of Adjustment Respectively.

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err in affirming a decision of the Weber County Division of the Second Judicial District Court that is in direct conflict with a November 1971 decision of JUDGE THORNLEY K. SWAN in the Davis County Division of the Second Judicial District Court on the issue of collectable automobiles?

2. Did the Court of Appeals err in affirming a trial court's summary disposition of important questions of municipal law which will have wide spread general impact in Utah?

3. Did the Court of Appeals err by failing to recognize the improper motives of Defendant/Respondents in making Plaintiff/Petitioners the only persons against whom a 38-year old lapsed ordinance had ever been enforced?

4. Did the Court of Appeals err by not holding both the trial judge and trial counsel to an equally high standard of judicial conduct and professional representation as established by recent decisions of this Court and by the language of Rule 56 of the Utah Rules of Civil Procedure?

DECISION OF THE COURT OF APPEALS

The decision of the Utah Court of Appeals was rendered in Case No. 900160-CA. The opinion was not published. A copy thereof is included as Appendix A.

JURISDICTION

1. Date of Entry: The decision of the Utah Court of Appeals was entered on May 2, 1990.

2. Order re Extension of Time: An ex party motion for extension of time to file a Petition of Certiorari was filed on May 29, 1990, and an order granting a 30-day extension from the date of entry of the Utah Court of Appeals decision was entered on May 29, 1990.

3. Jurisdiction: Rule 46(b), Rule 46(c), and Rule 46(d) U.R.A.P. provide statutory authority for this Court to review the decision in question.

RELEVANT LAW

1. Rule 56, (b) (d) (e) (f) U.R.C.P.:

(b) A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment sought, may at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

Affidavits under subpart (e) or (f) of Rule 56 U.R.C.P. not required:

When read in the light of subdivision (d), it is clear that subdivision (e) requirement that a party opposing the summary judgment motion file affidavits in support of the motion applies only when the opposing party has elected to and has filed affidavits in support of his motion. If the moving party chooses not to or simply fails to file affidavits, subdivision (e) is inapplicable. (Gadd v. Olson, 685 P2d 1041 (Utah 1984). (See Appendix F.)

(c) Trial court's duty relative to facts as found by deposition. (Text is set forth in its entirety in Appendix C.)

(d) Trial court's duty to interrogate counsel to ascertain material facts. (Text is set forth in its entirety in Appendix C.)

(e) Counsel on appeal is unable to determine from the exhibits furnished by opposing counsel to the Court of Appeals whether or not Defendant/Respondent's July 3, 1989, Memorandum was supported by affidavits and, therefore, assumes that subpart (e) does not apply.

(f) Trial court's duty to order a continuance to permit copy of Defendant City's Zoning Inspector's deposition to be produced. (Text is set forth in its entirety in Appendix C.)

1952 Centerville City ordinance pertinent language, Centerville City ordinance 1968, Centerville City ordinance March 17, 1970, December 17, 1985, pertinent sections. Centerville City nuisance ordinance enacted April 1, 1970. (Appendix D.)

Utah State Statutes, 41-1-195 thru 41-1-198 UCA 1953 as amended April 23, 1990, Collector Motor Vehicles defined, optional titles; 41-1-79.5 Abandoned and inoperable vehicles, Determined by Commission. (Appendix E.)

TRANSCRIPT ON APPEAL

Hearings of July 27, 1988, November 8, 1989, and December 13, 1989, when second order for summary judgment was rendered. (Appendix B.)

Applicable Utah State Statutes cited. (Appendix E.)

Case law cited. (Appendix F.)

STATEMENT OF THE CASE

This action in the Trial Court is the attempt of a husband and wife who are joint tenants of real property fronting on Utah State Road 106 without pedestrian sidewalk to stop the six-year-old prosecution of Petitioner, J. VAL ROBERTS, and reverse the criminal conviction in the Bountiful Division of the Second Circuit Court of Petitioner, VERLE ROBERTS, which was not timely appealed by former counsel. Petitioners sought to establish a nonconforming use. At all times relevant to this action, Petitioner, J. VAL ROBERTS, has had sole title to SIX (6) or more automobiles properly titled under Utah State statutes.

VERLE ROBERTS is the Co-Petitioner/Appellant with her husband, J. VAL ROBERTS. At no time has VERLE ROBERTS ever owned any interest in any of the automobiles that are the subject of this action.

VERLE ROBERTS has never had anything more than a joint tenant interest in the real property owned by Petitioners at 499 North Main, Centerville, Davis County, Utah.

Petitioner/Appellants claim a prior existing, nonconforming use to the municipal ordinance making the keeping of inoperable automobiles on private A-1 property within the City for periods varying from SEVEN (7) to THIRTY (30) days maximum a nuisance punishable as a criminal misdemeanor.

Section 41-1-195(4) UCA 1953, Laws of Utah 1990, ch. 292, effective April 23, 1990, (Appendix E) was not argued in the Lower Court in December of 1989 when the decision appealed from was rendered nor was it presented to the Utah Court of Appeals because Petitioners had no knowledge of its enactment. This statute makes lawful the accumulation of a class of motor vehicles known as "collector motor vehicles which applies to any vehicle 20 years or older that is not used on the highway and has been acquired primarily as a collector's item." (Full text Appendix E.)

The new statute does away with the requirements of the City ordinances complained of herein for all automobiles acquired primarily as collector's items and voids the decision of the Lower Court and of the Court of Appeals as well as all similar ordinances among the 228 incorporated cities and towns of the State of Utah.

Petitioner/Appellants being the only persons in the City of Centerville to have ever been prosecuted in 38 years under any of the City ordinances cited, had discussed with their counsel in the Lower Court the doctrine of dissuaitude, and believe that he was prepared to argue Petitioners' United States Constitutional rights under the equal protection clause of the Fourteenth Amendment to be protected from prosecution for violation of an ordinance that had lapsed for want of enforcement over nearly FOUR decades. The trial court judge precipitously invoked a doctrine from a foreign jurisdiction in a 1972 Colorado case

which he ruled, without making specific findings of fact and conclusions of law, gave the Court authority to decide the matter by summary judgment. Neither Petitioner in the case at bar was advised by their counsel to attend the December 13, 1989, hearing. The affidavits of JAMES G. PARRISH, DAVID F. PARRISH, and LARRY G. SMITH were present in the record raising issues of fact that were disputed. (Appendix B, TR page 13, line 21.) (For full text, see Appendix I.) In addition, the deposition of Centerville City Zoning Enforcement Officer, RANDY RANDALL, taken by Appellants' trial counsel established as undisputed the nonenforcement of any of the Centerville City ordinances relating to the storage of motor vehicles on private property within the City against any other persons similarly situated at any time pertinent to the issues raised before the Lower Court, before the Utah Court of Appeals, and before this Honorable Court. Counsel for Defendant/Respondents' claim that Petitioner's trial counsel had not taken the deposition of Centerville City's Zoning Enforcement Officer, RANDY RANDALL, described the posture of the case on July 27, 1988, but was not an accurate statement of the case when summary judgment was entered on December 13, 1989. There were clearly issues of fact which were material and which should have precluded disposition of the case by summary judgment.

In the handling of this case on appeal, Petitioner, J. VAL ROBERTS, states that in accordance with the Anders Doctrine of the United States Supreme Court that he believes that the

Petition for Certiorari raises important constitutional questions under both the Utah and the United States Constitutions which he is not competent to handle for himself or in behalf of his wife as her attorney on appeal.

STATEMENT OF FACTS

No evidentiary hearing was held in this matter. Both of the Petitioner/Appellants in this case have been subjected to numerous criminal prosecutions in connection with Petitioner, J. VAL ROBERTS'S, private collection of collector automobiles. The most recent criminal complaints were authorized by JERALD JENSEN, Justice of the Peace for Centerville City and a member of the City Council which, prior to his being appointed Justice of the Peace, solicited the criminal prosecution of both Petitioners herein by appointing a special prosecutor pro tem. in the person of THEODORE E. KANELL, Attorney at Law.

VERLE ROBERTS was convicted of a criminal misdemeanor in Centerville Justice of the Peace Court by special Judge Pro Tem. DAVID YOUNG PAYNE, ESQ., who refused to dismiss the case against her notwithstanding the undisputed facts that she owned none of the automobiles, had no interest in any of their titles, and that her only interest in the real property where the automobiles are stored is that of a joint tenant. Even when special prosecutor, TED KANELL, and Petitioner's trial counsel, BRIAN M. BARNARD, ESQ., signed a written stipulation agreeing to the dismissal, Justice of the Peace, DAVID YOUNG PAYNE, refused to dismiss the

case and on his instructions, Petitioner was found guilty of a criminal misdemeanor. When the District Court refused trial counsel's application for an injunction to stop the prosecution until the issues raised by the pending civil challenge to the ordinances could be decided on appeal to the Second Circuit Court, Bountiful Department, Petitioner was again convicted of a criminal misdemeanor even though she had no interest in the automobiles, had only a joint tenancy interest in the real property where the automobiles are stored, and had no means short of a divorce to compel Petitioner, J. VAL ROBERTS, to remove any of the automobiles which are the subject of the several actions in the Lower Court and of the appeal herein.

All criminal action against Petitioner, J. VAL ROBERTS, for violation of any of the Centerville City ordinances complained of herein were either reversed on appeal to the Second Circuit Court, Bountiful Department, or have been dismissed with prejudice at the suggestion of Centerville City's special prosecutor, TED KANELL, and the concurrence of trial counsel, BRIAN M. BARNARD.

The City of Centerville and the Utah State Department of transportation have been seeking to coerce Petitioners into a donation of approximately 600 square feet of Petitioners' property fronting on Utah State Road 106 for a sidewalk easement since 1975. (Appendix G.) Centerville City renewed the attempt to claim a right-of-way easement at what City Administrator, DAVID HALES, apparently believed was the conclusion of the case

at bar by summary disposition in the Lower Court on January 3, 1990. (Appendix H.)

The Trial Court initially entered summary judgment without notice to ATTORNEY BRIAN M. BARNARD and subsequently withdrew its first judgment and conducted a hearing on December 13, 1989. So far as Petitioners can determine, the Lower Court entered no findings of fact in support of its decision. The Utah Court of Appeals sanctioned the Lower Court's methods of decision. (See second full paragraph, page 5, Utah Court of Appeals Decision, Appendix A.)

ARGUMENT FOR ISSUANCE OF THE WRIT

Absent elaboration by the Utah Supreme Court on the considerations that will invoke one or more of the subparts of Rule 46 U.R.A.P., Petitioners suggest relevant United States Supreme Court doctrine. In Forsyth v. Hammond, 166 U. S. 506, 515 (1897) (emphasis added), the Court said,

"It is a power which will be sparingly exercised,***the necessity of avoiding conflict between two or more courts of appeal or between courts of appeal and courts of a state,***"

The text, Federal Practice and Procedure, at Sec. 16(c) by Professors Wright A. Miller, E. Cooper, and E. Gressman, Sec. 4004 at 507-08 states,

"As the number of cases seeking review has grown, the docket has had to be devoted***to statutory questions that are likely to have wide spread general impact."

First Question Presented: Did the Court of Appeals err in affirming a decision of the Weber County Division of the Second Judicial District Court that is in direct conflict with a November 1971 decision of JUDGE THORNLEY K. SWAN in the Davis County Division of the Second Judicial District Court on the issue of collectable automobiles?

Petitioner, J. VAL ROBERTS, has relied upon the Second District Court decision on the issue of storage of old automobiles which was rendered in Davis County in November of 1971, and has assembled a private collection of Volkswagen automobiles, a 1941 flat head Ford pickup truck, and a 1954 flat head Ford one-ton truck which are, by State statute, horseless carriages. (See Appendix E.)

Unfortunately, Court records in Davis County have been computerized only back to 1981. All of the older files are stored in boxes in the basement of the Courthouse, and the handwritten file indexes which were prepared before the files went into storage are no longer helpful in locating the cases decided before 1981.

Petitioner, J. VAL ROBERTS, located a collateral reference to the 1971 Davis County case and forwarded a request to trial counsel, BRIAN M. BARNARD, that he contact the attorney who successfully defended MELVIN HELD, SR., against Farmington City on the issue of his right to store nonoperable automobiles at the Davis County seat in Farmington, Utah. (See Appendix F.) The question must be asked as to who was more at fault on

December 13, 1989, trial counsel who did not indicate the potential conflict between two divisions of the same district court or the trial judge who failed to interrogate counsel as to genuinely disputed issues and to delay the hearing so that depositions could be taken of MELVIN HELD, SR.'S widow and of Attorney, BILL THOMAS PETERS, under U.R.C.P. 56(c) (See Appendix C.)

Second Question Presented: Did the Court of Appeals err in summarily affirming the trial court's summary disposition on an important question of municipal law which will have wide spread general impact?

There are 228 incorporated cities or towns in Utah who are members of the Utah League of Cities and Towns. The League has drafted ordinances for many of its members about half of which are estimated to have ordinances dealing with nonoperational automobiles though the League maintains no specific records on the total number. It is clear that if such ordinances are selectively enforced, as in the case at bar, the questions presented are of wide spread impact. Serious constitutional questions of U.S. Constitutional stature under the Fifth Amendment, taking of an important real property right without compensation and denial of equal protection under the Fourteenth Amendment to the U.S. Constitution, are presented. The Writ of Certiorari should be granted and amicus briefs invited from as many of the 228 incorporated cities as may be affected.

A decision by the Utah Supreme Court on the facts of the case at bar will prevent future selective enforcement of the existing ordinances as has occurred in both the Justice of the Peace, the District Court, and the Utah Court of Appeals. The conflict between the definition of a nonoperational vehicle as contained in the Centerville municipal ordinance drafted for the City by the Utah League of Cities and Towns in December of 1985 which defines a motor vehicle as nonoperational unless it is currently inspected, registered, and licensed for road use, and Section 41-1-79.5 UCA as amended 1965 which states that a motor vehicle is only inoperable if, after inspection by an agent of the State Tax Commission, it is determined that, "the vehicle in question cannot be rebuilt or reconstructed in such a manner as to allow its use on the highways of the State as a self-propelled vehicle" will be resolved. (See Appendix D, Centerville City Ordinances. See Appendix E, Utah State Statutes.)

The Writ should be granted to deal with the impact of the newly created class of "Collector motor vehicles" under 41-1-195, 41-1-196(3) UCA 1953 as amended April 23, 1990, which permits citizens of the State to collect, and by implication, therefore, to store and to maintain on their private property within the municipality where they reside, any number of motor vehicles over 20 years of age which are not used on the highway and have been acquired primarily as collector's items. (See

Appendix E for full text effective April 23, 1990.) (Emphasis supplied.)

The Utah League of Cities and Towns estimates that of its 228 members, half, or approximately 114 cities and towns, have ordinances substantially similar to those of the Defendant/Respondents which are complained of in this case. With half or more of the cities and town affected by the issues presented in this Petition, it is clear that the Utah Court of Appeals has decided a case which should be decided by the Utah Supreme Court because of its wide spread impact.

J. VAL ROBERTS alleges under oath in the Verified Petition for Writ of Certiorari that the newly created class of "collector motor vehicles" includes all 28 of the Volkswagen automobiles which the City has sought to force Petitioner to remove by the Lower Court's Permanent Injunction Order through the application of its overly broad, punitive, and unconstitutional ordinances. The new State Statute renders all conflicting city ordinances, whether of the Defendant/Respondents or of similarly situated municipalities anywhere in the State of Utah, void from and after April 23, 1990, and makes a nullity of language in such ordinances which requires mechanical inspections, emissions inspections, current licenses, current registration, and general highway worthiness preconditions to a citizen's right to store such vehicles on any property privately owned with any city in the State of Utah provided the vehicles meet the definition of being more than 20

years old and having been acquired as collector's items and are not used on the highway.

The two 1976 Toyota sedans stored on the ROBERTS' property are neither wrecked, abandoned, nor inoperable as the same is defined by UCA 41-1-79.5 thus rendering the decision of the Lower Court and the sustaining decision of the Utah Court of Appeals nullities if Petitioners are afforded the protection of 41-1-195 thru 198 UCA 1953 as amended April 23, 1990.

Third Question Presented: Did the Court of Appeals err by failing to recognize the improper motives of Defendant/Respondents in making Plaintiff/Petitioners the only person against whom a 38-year old lapsed ordinance had ever been enforced?

Petitioner, J. VAL ROBERTS, having some training in the law, has pondered what motive or motives, what anger or what frustration, what public policy or what public need could be so strong as to cause Centerville City to initiate criminal prosecution against a citizen of 30 years standing beginning as far back as 1984 in the Justice Court of JAMES G. PARRISH, with prosecution by Attorney KEITH L. STAHLER? What motive or emotion would later cause the City to appoint a special prosecutor pro tem. and a special justice of the peace pro tem. to bring a new complaint authorized by the new Justice of the Peace, JERALD JENSEN, who went from being a City Council member to appointed Justice of the Peace and who sat on the same City council which initially solicited the prosecution of J. VAL ROBERTS for

storage of inoperable automobiles on the private property which he shares as a joint tenant with Petitioner, VERLE ROBERTS? What motive could be so strong as to impel the City officials and a former City Council member, now Justice of the Peace, to broaden the scope of prosecution to include Petitioner, J. VAL ROBERTS'S, wife? To insist on sending uniformed officers to serve the misdemeanor complaints and their several amendments at the Petitioners's residence where the teenage children were drawn into the controversy even after Petitioners were duly represented by Attorney BRIAN M. BARNARD and Defendant/Respondents and their agents had full knowledge of such representation?

The material contained in Appendix G showing an effort to coerce Petitioner, J. VAL ROBERTS, into donating 600 square feet of real property for a sidewalk easement fronting the Utah State Rod 106 together with a letter written by Petitioner, J. VAL ROBERTS, to the Utah State Department of Transportation citing the dangerous nature of the right-of-way design in front of Petitioner's home in Centerville as well as the potential for liability and suggesting that sufficient right-of-way be purchased by either the City of the State to elevate the problem is the most plausible explanation of the actions for the Defendant/Respondents. The plausibility of this explanation is vouched for by the fact that abutting property owners on the north and the south of Petitioner's real property have been persuaded by the Defendant/Respondents to sign quit-claim deeds

for the desired easements in exchange for the sidewalk improvements being paid for by the City and the State from highway safety grants. The documents contained in Appendix G show a renewal of the Defendant/Respondents' attempt to obtain the desired easement without paying the required compensation. It is respectfully suggested that actions speak louder than words and are a clearer indication of motives than anything that individuals are willing to articulate.

Fourth Question Presented: Did the Court of Appeals err by not holding both the trial judge and trial counsel to an equally high standard of judicial conduct and professional representation as established by recent decisions of this Court and by the language of Rule 56 of the Utah Rules of Civil Procedure?

In dealing with motions for summary judgment under Rule 56 of the Utah Rules of Civil Procedure, the statutory language makes no distinction between the standard of professional conduct to which trial counsel is held in raising issues of fact which make summary judgment inappropriate and the standard of judicial conduct to which a trial judge is held in his interrogation of counsel, his inquiry into what material facts are in good faith controverted. It is incumbent upon the trial court judge to make an order specifying which facts appear without substantial controversy and directing such further proceedings as are just including depositions of additional witness and publication of existing depositions such as that of

Centerville City's Zoning Inspector RANDY RANDALL. If the trial court judge had discharged his duty under Rule 56(d) (Appendix C), he would have discovered from Defendant's counsel, JODY BURNETT, that Centerville City had never enforced any of its ordinances involving the storage of used automobiles whether partially dismantled, rusted, or otherwise against anyone other than the Petitioners in the case at bar. The trial court judge would have discovered that the only other person whom the City of Centerville could say had cooperated with them, had sold the property to the City for a fire station or had merely relocated unused automobiles from the public street to his own private property. The trial court would have discovered, upon proper interrogation of counsel, that Petitioners' property had always been zoned A-1, not A-2, and had not been used solely as residential property but had been the regular abode of numerous cattle, pigs, and chickens. (See Appendix B, TR page 13, line 21.)

It is hornbook law that defaults and summary judgments are generally frowned upon by the entire judicial system, and the case at bar clearly illustrates the frailties of summary disposition of contested matters such as was done by the trial court and the Utah Court of Appeals in the case at bar.

DEAN SAMUEL THURMAN, formerly Dean of the University of Utah College of Law, stated in a legal ethics class attended by Petitioner, J. VAL ROBERTS, in December of 1971, "If honest people believe that something is wrong with the law or that

there ought to be a law to solve a social problem, you may rely upon the fact that something is wrong with the law or that somewhere, in some jurisdiction, there is already a model statute that solves the problem."

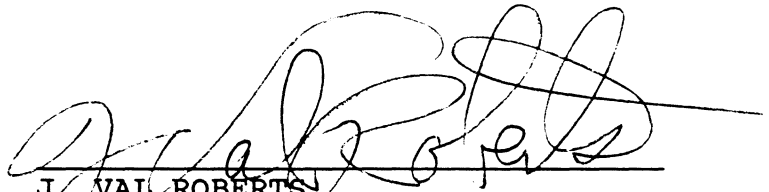
The State of Utah, by enacting the collector automobile statute of April 23, 1990, has come recently to a realization of an ongoing love affair between citizens and their automobiles even when the same are rusty or partially dismantled and are not suitable for use a transportation on the highways and byways of the State. The Writ of Certiorari should be granted in order to give full effect to the statute and to insure Petitioners their rights under the law.

If all of the issues raised in the Petition are to be addressed, Petitioner request that the Court conduct oral argument in camera and invite amicus briefs from interested municipalities, the Volkswagen Club of America, Utah Chapter, the Classic Car Collector's Club; and if the Court finds that this Petition lacks the organization and polish necessary for the economical application of the Court's time to the issues, it has the authority and power to do as it did in Robert Dunn v. Gerald L. Cook, Warden, Utah State Prison, State of Utah, Case No. 880067, decided April 2, 1990, (Appendix F) and invite competent Appellate counsel to rebrief the issues thereby assuring Petitioners State and Federal Constitutional rights under the Fifth and Fourteenth Amendments to the U.S. Constitution.

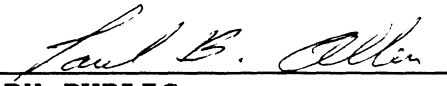
If the Court desired to have the case resolved without reaching the issues raised, it appears that counsel for the Petitioners, J. VAL ROBERTS, and counsel for the Respondent, JODY K. BURNETT, have a duty under the Rules of Appellate Procedure to determine whether or not they can agree that 41-1-195 thru 198 as amended April 23, 1990, has not, in fact, made it mandatory that the parties stipulate to an order vacating the decision of the Court of Appeals and that of the Trial court thereby rendering the issues moot.

WHEREFORE, Plaintiffs request the Court to grant a Writ of Certiorari.

Dated this 30th day of June, 1990.


J. VAL ROBERTS
Attorney at Law

SUBSCRIBED AND SWORN to before me on July 2nd 1990.


NOTARY PUBLIC
Residing at Bountiful, Utah

My commission expires: 6/30/91

CERTIFICATE OF DELIVERY

I hereby certify that I delivered a true and correct copy of the foregoing VERIFIED PETITION FOR WRIT OF CERTIORARI this 2nd day of July, 1990, to the following: Jody K. Burnett, Daniel D. Hill, Attorneys for Defendant/Respondents, of Snow, Christensen & Martineau, 10 Exchange Place, Eleventh Floor, Post Office Box 45000, Salt Lake City, Utah 84145.

A handwritten signature in dark ink, appearing to read 'J. Val Roberts', is written over a horizontal line.

J. VAL ROBERTS
Attorney at Law