

1990

# Lloyd D. Coley v. Nancy P. Coley : Petition for Writ of Certiorari

Utah Supreme Court

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Lloyd D. Coley; Petitioner Pro Se.

Randall J. Holmgren; Attorney for Respondent.

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## Recommended Citation

Legal Brief, *Coley v. Coley*, No. 900446.00 (Utah Supreme Court, 1990).  
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UTAH COURT OF APPEALS  
BRIEF

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900446-CA  
DOCKET NO. IN THE SUPREME COURT OF THE STATE OF UTAH

LLOYD D. COLEY,

PETITIONER,

vs.

NANCY P. COLEY,

RESPONDENT.

SUPREME COURT  
CASE NO. 910120

COURT OF APPEALS

CASE NO. 900446-CA

PETITION FOR WRIT OF CERTIORARI

PETITION FOR A WRIT OF CERTIORARI BY LLOYD COLEY FROM  
THAT CERTAIN DECISION AND OPINION DATED FEBRUARY 4TH, 1991,  
BY THE HONORABLE JUDGES: GREGORY K. ORME, REGINAL W. GARFF,  
AND RUSSELL W. BENCH ALL CONCURRING IN THE UTAH COURT OF  
APPEALS IN LLOYD D. COLEY VS. NANCY P. COLEY, CASE NO.  
900446-CA

LLOYD D. COLEY  
1065 LAKE STREET  
SALT LAKE CITY, UTAH 84105  
PETITIONER PRO SE

RANDALL J. HOLGREM  
50 WEST BROADWAY  
SALT LAKE CITY, UTAH 84101  
ATTORNEY FOR RESPONDENT

FILED

MAR 19 1991

Clerk, Supreme Court Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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LLOYD D. COLEY,

PETITIONER,

vs.

NANCY P. COLEY,

RESPONDENT.

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SUPREME COURT

CASE NO. \_\_\_\_\_

COURT OF APPEALS

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## QUESTIONS PRESENTED FOR REVIEW

1. DID THE COURT OF APPEALS ERR IN NOT FINDING THAT THE ORDER OF JANUARY 9TH, IS PRIMA FACIA UNCONTITUTIONAL ?
2. DID THE COURT OF APPEALS ERR IN NOT FINDING THAT THE ORDER OF JANUARY 9TH, IS PRIMA FACIA FALLACIOUS ?
3. DID THE COURT OF APPEALS ERR IN REQUIRING PETITIONER TO FULFILL THE CRITERIA OF JENSEN V. SCHWENDIMAN, ?
4. DID THE COURT OF APPEALS ERR IN FINDING THAT THE PETITIONER DID NOT MAKE A STRONG SHOWING THAT HE IS LIKELY TO SUCCEED ON THE MERDITS OF THE CASE ?
5. DID THE COURT OF APPEALS ERR IN NOT GRANTING PETITIONER REQUEST FOR STAY ?

## JURISDICTION

THE OPINION OF THE UTAH COURT OF APPEALS SOUGHT TO BE REVIEW IS ATTACHED HERETO AS EXHIBIT "A", DATED FEBRUARY 4TH, 1991.

RULE 45 AND RULE 46 OF THE UTAH COURTS OF APPELLATE PROCEDURE GIVES THE SUPREME COURT THE RIGHT TO REVIEW THE ABOVE DECISION OF THE COURT OF APPEALS.

THIS PETITION IS FILED ACCORDING TO RULE 48 OF THE RULES OF APPELLATE PROCEDURE AND THE ORDER OF THE SUPREME COURT DATED MARCH 6TH, 1991 ALLOWING PETITIONER UNTIL MARCH 19TH, 1991 TO FILE SAID PETITION.

## STATEMENT OF CASE

THE PETITIONER FILED FOR DIVORCE ON THE 31ST DAY OF DECEMBER, 1981, (DISTRICT COURT INDEX #2,, HEREAFTER REFERRED TO AS DCI). ON THE 26TH DAY OF AUGUST, 1982 THE DIVORCE WAS GRANTED TO BECOME EFFECTIVE AFTER THE 3-MONTH INTERLOCUTORY PERIOD (DCI# 12-14). PETITIONER AGREED BY STIPULATION TO PAY TO RESPONDENT, THE SUM OF \$250.00 PER MONTH AS CHILD SUPPORT, A SUM THAT WAS EQUAL TO 75% OF PETITIONER GROSS INCOME (DCI#7-10).

ON THE SEPTEMBER 29, 1982 PETITIONER FILED FOR PROTECTION UNDER CHAPTER 7 OF THE FEDERAL BANKRUPTCY ACT.

ON THE OCTOBER 12, 1982, RESPONDENT FILED A ORDER TO SHOW CAUSE, (DCI# 20). IN SAID ORDER RESPONDENT ASKED THE COURT TO HOLD THE PETITIONER IN CONTEMPT. THIS WAS DONE BEFORE THE DIVORCE BECAME FINAL AND WHILE THE PETITIONER WAS UNDER THE PROTECTION OF THE FEDERAL BANKRUPTCY ACT.

AFTER THE PETITIONER'S BANKRUPTCY WAS DISCHARGED HE PAID THE RESPONDENT ALL PAST DUE CHILD SUPPORT.

ON THE SEPTEMBER 27, 1982, RESPONDENT FILED A ORDER TO SHOW CAUSE (DCI# 40), ASKING THE COURT AGAIN TO FIND RESPONDENT IN CONTEMPT. THE CONTEMPT INVOLVED THE PROPERTY SETTLEMENT AND WAS PREVIOUSLY DISCHARGED IN THE BANKRUPTCY. SAID O.S.C. WAS STRICKEN ON THE 8TH DAY OF DECEMBER, 1983 (DCI# 47). PETITIONER AGREED TO PAY THE PAST DEBT AND A

ORDER CONFORMING TO THE AGREEMENT BETWEEN PARTIES WAS SIGNED BY THE COURT ON THE 7TH DAY OF FEBRUARY 1984 (DCI# 53-55).

ON THE APRIL 20, 1984 PETITIONER FILED A MOTION TO AMEND THE DIVORCE DECREE TO ALLOW THE PETITIONER TO EXPAND HIS VISITATION BECAUSE RESPONDENT UNREASONABLY WAS DENYING HIM REASONABLE VISITATION (DCI# 60). SAID MOTION WAS STIPULATED TO AND THE ORDER GRANTING SAID REQUEST WAS SIGNED ON THE 21ST OF JUNE 1984 (DCI# 65-67)

ON AUGUST 6, 1985 PETITIONER FILED A ORDER TO SHOW CAUSE BECAUSE RESPONDENT WAS DENYING HIM VISITATION WITH HIS DAUGHTER (DCI# 68). RESPONDENT AGREED TO ALLOW VISITATION TO RESUME AND THE O.S.C. WAS STRICKEN.

ON MARCH 27, 1986, RESPONDENT FILED A ORDER TO SHOW CAUSE AND PETITION FOR MODIFICATION (DCI# 71 & 74-83). IN THESE MOTIONS AND ORDERS RESPONDENT WANTED THE COURT TO HOLD THE PETITIONER IN CONTEMPT AND TO DENY HIS VISITATION WITH HIS DAUGHTER, UNTIL HE PAID THE PAST DUE CHILD SUPPORT PAYMENTS, AND THEN TO RESTRICT PETITIONERS'S FUTURE VISITATION. JUDGE FISHLER DENIED RESPONDENT REQUESTS AND ALLOWED THE PETITIONER TO FILE A PETITION TO REDUCE CHILD SUPPORT PAYMENT AND STAYED ANY CONTEMPT PROCEEDING AGAINST PETITIONER UNTIL A REVIEW OF THE ABILITY OF THE PETITIONER TO PAY SUPPORT IS ACCESSED. THE PETITIONER WAS PAYING THE RESPONDENT BETWEEN \$200.00 AND \$400.00 PER MONTH WHEN THE RESPONDENT FILED HER O.S.C. (DCI# 81-82).

JUDGE FISHLER WAS SO OFFENDED BY THE RESPONDENT AND HER ATTORNEY THAT HE RECUSED HIMSELF AND ASSIGNED THIS CASE TO JUDGE SAWAYA (DCI# 84).

ON APRIL 14, 1986, PETITIONER FILED HIS COUNTER-PETITION FOR MODIFICATION OF DIVORCE DECREE (DCI# 87-88).

ON APRIL 22, 1986, JUDGE SAWAYA SIGNED THE ORDER OF JUDGE FISHLER IN WHICH #2 OF THE JUDGEMENT STATES "THE ISSUED OF CONTEMPT AGAINST PLAINTIFF FOR HIS FAILURE TO PAY JUDGEMENTS AND OBLIGATION IS RESERVED UNTIL THE HEARING ON A PETITION BY PLAINTIFF FOR MODIFICATION OF THE DECREE OF DIVORCE WHICH WILL ADDRESS THE ISSUE OF THE PLAINTIFF'S ABILITY TO PAY SAID JUDGEMENTS." (DCI# 95-9)

ON OCTOBER 14, 1986 THE PETITIONER ATTEMPTED TO PROCEED WITH HIS PETITION TO MODIFY BY FILING A REQUEST FOR TRIAL SETTING. (DCI# 101).

COMMISSIONER SANDRA PEULAR SET A PRE-TRIAL SETTLEMENT FOR FEBRUARY 13, 1987. (DCI# 104)

RESPONDENT RESISTED ANY SETTLEMENT AND FILED OBJECTION TO REQUEST FOR TRIAL SETTING. (DCI# 105).

ON MARCH 17, 1988 PETITIONER WAS BEING DENIED HIS VISITATION AND FILED A ORDER TO SHOW CAUSE TO FORCE RESPONDENT TO ALLOW HIS VISITATION WITH HIS DAUGHTER. (DCI# 111-2).

RESPONDENT CLAIMED IT WAS UNFAIR THAT SHE COULD BE CALLED TO COURT TO ANSWER FOR DENYING VISITATION WHEN PETITIONER WAS DELINQUENT IN HIS CHILD SUPPORT PAYMENTS. (DCI# 125).

ON 18, APRIL, 1988 COMMISSIONER PEULER FOUND NO CONTEMPT OF THE PETITIONER AT THIS TIME AND RESPONDENT

PROMISED TO ALLOW PETITIONER HIS VISITATION FROM NOW ON. (DCI# 129).

ON MAY 6, 1988, RESPONDENT FILED A ORDER TO SHOW CAUSE AND REQUESTED THAT THE PLAINTIFF PAY THE FULL AMOUNT OF HER ATTORNEY FEES, BEGIN MAKING CHILD SUPPORT PAYMENTS WITH A WEEKLY REDUCTION OF THE JUDGEMENT, AND THAT PLAINTIFF BE ADVISED THAT IF HE DOES NOT COMPLY HE WILL BE ARRESTED AND JAILED UNTIL HE IS WILLING TO COMPLY. (DCI# 135). RESPONDENT FILED AT THE SAME TIME A PETITION TO DENY PETITIONER ALTERNATE FRIDAY VISITS. (DCI# 140)

AFTER SEVERAL DELAYS AND CONTINUANCES RESPONDENT'S O.S.C. CAME BEFORE JUDGE SAWAYA ON OCTOBER 3, 1988. PETITIONER AND HIS ATTORNEY WERE WILLING TO STIPULATE TO THE CONDITIONS OF THE O.S.C.. HOWEVER JUDGE SAWAYA MADE HIS OWN MOTION AND ORDERED IT BE HEARD AT THE END OF HIS LAW AND MOTION CALENDER THAT DAY. JUDGE SAWAYA THEN FOUND THE PETITIONER GUILTY OF CONTEMPT, SENTENCED HIM TO SERVED 30 DAY IN THE COUNTY JAIL, STAYED IMPOSITION OF JAIL SENTENCE FOR 60 DAYS TO ALLOW THE PETITONER TO PURGE THE CONTEMPT BY PAYING THE RESPONDENT A SIGNIFICANT AMOUNT OF MONEY. (DCI# 170)

DURING THE MONTH OF NOVEMBER OF 1989 THE PETITIONER SERVED HIS JAIL SENTENCE.

ON FEBRUARY 24, 1990 RESPONDENT FILED A ORDER TO SHOW CAUSE, IN THIS O.S.C. RESPONDENT REQUESTED THE SUSPEND VISITATION OF PETITIONER UNTIL HE IS NOT IN CONTEMPT OF COURT AND PAYING HER SUPPORT. (DCI# 214)

ON APRIL 13, 1990 THE COURT CANCELED THE HEARING ON RESPONDENT'S O.S.C. AND RESPONDENT FILED A NOTICE OF CONTINUANCE. (DCI# 258)

ON APRIL 24, 1990, THE PETITIONER APPEARED AT THE O.S.C. HEARING AND WAS TOLD BY THE COURT CLERK THAT THE HEARING HAS BEEN CANCELLED AND THAT THE RESPONDENT WOULD HAVE TO SERVED THE PETITIONER WITH A NEW O.S.C. BEFORE SHE COULD HAVE HER O.S.C. HEARD BY THE JUDGE.

ON MAY 21, 1990 THE RESPONDENT, THOUGH HER ATTORNEY, ASKED JUDGE SAWAYA TO ISSUE A BENCH WARRANT FOR THE ARREST OF THE PETITIONER BECAUSE HE HAD NOT SHOWN FOR THE O.S.C., THE PETITIONER HAD NOT BEEN SERVED WITH A NEW O.S.C. AND THEREFORE FELT HE DID NOT HAVE TO ATTEND, HOWEVER, PETITIONER KNEW OF JUDGE SAWAYA BIAS AGAINST HIM AND SENT RAY STODDARD, A ATTORNEY THAT HAD REPRESENTED HIM EARLY IN THIS CASE, TO INFORM JUDGE SAWAYA THAT PETITIONER HAD NOT BEEN SERVED WITH THE O.S.C. AND THAT THE PETITIONER AND HIS ATTORNEY COULD BE IN JUDGE SAWAYA COURT ROOM WITHIN 15 MINUTES IF JUDGE SAWAYA WANTED TO HOLD THE HEARING. JUDGE SAWAYA STATED THAT HE KNEW WHAT WAS GOING ON AND THEN ISSUED A NO BAIL BENCH WARRANT AGAINST PETITIONER. (DCI# 254)

WHEN MR. STODDARD TOLD THE PETITIONER OF JUDGE SAWAYA ACTIONS HE DIRECTED HIS ATTORNEY TO CONTACT JUDGE SAWAYA AND HAVE THE WARRANT RECALLED. ONLY AFTER JUDGE SAWAYA WAS SHOWN THE DOCKET PRINTOUT SHOWING THE CANCELLING OF THE O.S.C. HEARING DID JUDGE SAWAYA RECALL THE WARRANT, HOWEVER HE RULED THAT RESPONDENT DID NOT HAD TO SERVE THE PETITIONER

WITH A O.S.C. AND SET THE HEARING FOR JUNE 18, 1990. (DCI# 256-9)

ON JUNE 18, 1990 JUDGE SAWAYA FOUND THE PETITIONER GUILTY OF CONTEMPT, DENIED ALL CONTACT BETWEEN PETITIONER AND HIS DAUGHTER, SENTENCED THE PETITIONER TO SERVE 30 DAY IN THE COUNTY JAIL AND STAYED THE IMPOSITION OF THE JAIL SENTENCE FOR 30 DAY TO ALLOW THE PETITIONER TO PAY THE RESPONDENT SOME MONEY. (DCI# 262)

ON JULY 13, 1990 JUDGE SAWAYA SIGNED A ORDER OVER THE TIMELY FILED OBJECTIONS OF THE PETITIONER, THOSE OBJECTIONS WERE NOT FRIVOLOUS NOR WERE FILED AS A DELAYING TACTIC. (DCI# 268-71)

ON JULY 16, 1990, PETITIONER FILED A AFFIDAVIT OF BIAS DIRECTED TOWARD THE BIAS CONDUCT OF JUDGE SAWAYA. AT THE HEARIN LATER THAT SAME DAY PETITIONER TOLD JUDGE SAWAYA THAT HE HAD FILED A AFFIDAVIT OF BAIS EARLIER AND ACCORDING THE THE RULES OF CIVIL PROCEDURES HE COULD NO LONGER PROCEED UNTIL THE AFFIDAVIT OF BIAS WERE REVIEW BY THE PRESIDING JUDGE. JUDGE SAWAYA ACCEPT A COPY TO THE AFFIDAVIT BUT STATED HE WAS NOT BIAS AND THEN WHEN ON TO HOLD THE REVIEW HEARING. (DCI# 298)

ON AUGUST 7, 1990, JUDGE MURPHY DENIED PETITIONER AFFIDAVIT OF BIAS. (DCI# 298)

ON AUGUST 13, 1990 PETITIONER FILED A NOTICE OF APPEAL FOR BOTH THE JULY 13 ORDER OF JUDGE SAWAYA AND THE AUGUST 7 ORDER DENYING THE AFFIDAVIT OF BIAS BY JUDGE MURPHY. (DCI# 316)

ON OCTOBER 10, 1990, THE COURT OF APPEALS VACATED JUDGE SAWAYA ORDER AS IT RELATES TO VISITATION.

ON JANUARY 9 1991 JUDGE SAWAYA SIGNED A AMENDED ORDER AGAIN DENYING PETITIONER VISITATION RIGHTS.

PETITIONER THEN ASKED THE COURT OF APPEALS TO REVIEW THE JANUARY 9TH ORDER AND STAY THE EFFECT OF SAID UNTIL THE CASE COULD BE GIVING A FAIR HEARING.

ON FEBRUARY 4, 1991, THE COURT OF APPEALS DENIED THE PETITIONER'S REQUEST FOR STAY.

ON MARCH 19, 1991, PETITIONER FILED FOR A WRIT OF CERTIORARI.

## ARGUMENTS

1. THE PETITIONER CONTENDS THAT THERE IS A CONSTITUTIONAL RIGHT OF A PARENT TO MAINTAIN A PERSONAL AND CLOSE RELATIONSHIP WITH THEIR CHILDREN.

A PARENT HAS A "FUNDAMENTAL RIGHT, PROTECTED BY THE CONSTITUTION, TO SUSTAIN HIS RELATIONSHIP WITH HIS CHILD." STATE IN RE WALTER B., UTAH, 577 P.2ND 119, 124 (1978).

IN MEYER V. NEBRASKA, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923), THE SUPREME COURT INCLUDED FAMILY RELATIONSHIPS IN THE "LIBERTY" OF WHICH A STATE CANNOT DEPRIVE ANY PERSON WITHOUT DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

THE RIGHTS INHERENT IN FAMILY RELATIONSHIPS-HUSBAND-WIFE, PARENT-CHILD AND SIBLING-ARE THE MOST OBVIOUS EXAMPLES OF RIGHTS RETAINED BY THE PEOPLE. THEY ARE "NATURAL," "INTRINSIC," OR "PRIOR" IN THE SENSE THAT OUR CONSTITUTIONS PRESUPPOSE THEM,...IN RE J.P., UTAH 648 P.2D 1373. THIS PARENTAL RIGHT TRANSCENDS ALL PROPERTY AND ECONOMIC RIGHTS. IT IS ROOTED NOT IN STATE OR FEDERAL STATUTORY OR CONSTITUTIONAL LAW, TO WHICH IT IS LOGICALLY AND CHRONOLOGICALLY PRIOR, BUT IN IN NATURE AND HUMAN INSTINCT. SUPRA.@ 1373. "...TERMINATION OF PARENTAL RIGHTS

SOLELY ON THE BASIS OF THE CHILD'S BEST INTEREST AND WITHOUT ANY FINDING OF PARENTAL UNFITNESS, ABANDONMENT, OR SUBSTANTIAL NEGLECT, VIOLATES THE PARENT'S LIBERTY RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION." SUPRA @ 1375

THE ORDER OF JANUARY 9TH DID NOT FIND, AS REQUIRED ABOVE, ANY FINDING OF UNFITNESS, ABANDONMENT OR SUBSTANTIAL NEGLECT AND THEREFORE MUST BE FOUND IN CONTRADICTION WITH THE UNITED STATES CONSTITUTION AND BE OVERTURNED.

2. THE PETITIONER NEXT CONTENDS THAT THE ORDER VIOLATES THE EIGHT AMENDMENT, OF THE UNITED STATES CONSTITUTION IN THAT IT CALL FOR CRUEL AND UNUSUAL PUNISHMENT. IT IS UNUSUAL BECAUSE NO OTHER COURT HAS EVER DENIED ALL CONTACT BETWEEN PARENT AND CHILD FOR THE REASON STATED IN THE FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THIS ORDER. IT IS CRUEL BECAUSE IT DESTROYS A LOVING RELATIONSHIP BETWEEN PARENT AND CHILD AND IT ALLOWS THE CUSTODIAL PARENT TO TELL THE CHILD THAT HER FATHER DOES NOT LOVE HER ANYMORE BECAUSE IT DOES NOT WANT TO SEE HER ANYMORE, A FACT ALLEGED IN PETITIONER SUPPORTING AFFIDAVIT FOR STAY BEFORE THE COURT OF APPEALS AND LEFT UNCHALLENGED BY RESPONDENT AT THE HEARING OR ANY OTHER PLACE.

3. THE PETITIONER CONTENDS THAT THE ORDER VIOLATES THE FOURTEEN AMENDMENT OF THE UNITED STATES CONSTITUTION, IN THAT HE HAS BEEN DENIED DUE PROCESS. UTAH LAW REQUIRES "A SUBSTANTIAL CHANGE IN CIRCUMSTANCES MUST BE FOUND BEFORE A CUSTODY DECREE IS MODIFIED." SMITH V. SMITH, 793 P.2D 409.

ALSO IN HODGGE V. HODGEE, 649 P.2D 51 (UTAH 1982), HODGEE HELD THAT A PARENT SEEKING A CHANGE IN CUSTODY OF A CHILD MUST FIRST ESTABLISH THAT THERE HAS BEEN A SUBSTANTIAL AND MATERIAL CHANGE IN THE CIRCUMSTANCES UPON WHICH THE ORIGINAL CUSTODY AWARD WAS BASED.

IN ALL CASE, EXCEPT FOR THIS ONE, THE COURT HAS REQUIRED A PETITION TO MODIFY BEFORE CHANGING CUSTODIAL ARRANGEMENT, RESPONDENT HAS TRIED AND FAILED IN SEVERAL ATTEMPTS TO LIMIT THE VISITATION OF PETITIONER, THOUGH THE REGULAR PETITIONS TO MODIFY, NOW WITH ORDER TO SHOW TO CAUSE AS PUNISHMENT TO THE PETITIONER JUDGE SAWAYA HAS DENIED VISITATION RIGHTS AND IN EFFECT MODIFIED THE DIVORCE DECREE, DENYING THE PETITIONER HIS DUE PROCESS OF CHALLENGING THE ASSERTIONS AND PRESENTING HIS DEFENSES.

JUDGE SAWAYA STATED IF HE FOUND THE NONPAYMENT OF CHILD WAS WILLFUL HE COULD TERMINATE VISITATION, (TRANSCRIPT OF JUNE 18, 1990, PAGES 37 LINES 23-25, PAGE 38 LINES 1-4). JUDGE TOOK NO EVIDENCE CONCERNING THE BEST INTEREST OF THE CHILD HOWEVER, IN THE JANUARY 9TH ORDER JUDGE SAWAYA FOUND IT WAS IN THE BEST INTEREST OF THE CHILD NOT TO HAVE ANY CONTACT WITH HER FARTHER, "BECAUSE THE FAILURE TO PAY CHILD SUPPORT HAS BEEN WILLFUL, THE COURT FINDS THAT PLAINTIFF DOES NOT, IN PART, RESPECT THE LEGAL SYSTEM OR THE LAW REQUIRING PAYMENT OF CHILD SUPPORT. FOR THAT REASON, THE COURT FINDS THAT PLAINTIFF'S ATTITUDES AND BEHAVIORS ARE ANTI-SOCIAL AND CONSTITUTES A SUBSTANTIAL DEVIATION FROM THE MORAL NORMS OF SOCIETY". (FINDINGS OF FACT AND CONCLUSIONS

OF LAW RE: JANUARY 9, 1991 ORDER). THUS JUDGE SAWAYA BY NOT REQUIRING THE RESPONDENT TO FOLLOW THE STATUTORIAL PROCEDURE AND PRESENT HER EVIDENCE AND ALLOW THE PETITIONER TO COUNTER WITH HIS DEFENSES AND EVIDENCE DENIED PETITIONER HIS DUE PROCESS OF LAW.

4. THE PETITIONER CONTENDS THAT THE ORDER OF JANUARY VIOLATES THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION. "BECAUSE THE FAILURE TO PAY CHILD SUPPORT HAS BEEN WILLFUL, THE COURT FINDS THAT PLAINTIFF DOES NOT, IN PART, RESPECT THE LEGAL SYSTEM OR THE LAW REQUIRING PAYMENT OF CHILD SUPPORT. FOR THAT REASON, THE COURT FINDS THAT PLAINTIFF'S ATTITUDES AND BEHAVIORS ARE ANTI-SOCIAL AND CONSTITUTES A SUBSTANTIAL DEVIATION FROM THE MORAL NORMS OF SOCIETY. A PARENT INFLUENCES A CHILD FOR GOOD OR BAD; SOME OF THAT INFLUENCE COMES FROM THE CHILD'S OBSERVATIONS OF THE PARENT'S BEHAVIOR. FOR THESE REASONS, THE COURT FINDS THAT PLAINTIFF'S BEHAVIORS AND ATTITUDES, WITH RESPECT TO NOT PAYING CHILD SUPPORT, ARE NOT A PROPER EXAMPLE FOR HIS CHILD AND THAT UNTIL PLAINTIFF ADOPTS AN ATTITUDE, MANIFEST BY APPROPRIATE BEHAVIOR, THAT HE RESPECT THE LEGAL SYSTEM AND INTENDS TO CONFORM WITH THE LAWS OF THIS STATE AND THE DIRECTIVES OF THE COURT, HE SHOULD NOT HAVE PERSONAL CONTACT WITH HIS DAUGHTER.". (FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: JANUARY 9, 1991 ORDER).

IT IS CLEAR FROM THIS PORTION OF THE FINDING OF FACT THAT JUDGE SAWAYA IS PUNISHING THE PETITIONER FOR HIS DISRESPECT AND ATTITUDES TOWARDS THE GOVERNMENT, COURTS AND

LEGAL SYSTEM. HOW AN ORDER CAN MORE CLEARLY VIOLATE THE CONSTITUTIONAL RIGHT TO PROTEST AGAINST THE GOVERNMENT IS IMPOSSIBLE TO DETERMINE. ALTHOUGH PETITIONER CONTENDS HE DOES NOT HAVE SUCH ATTITUDES AND BEHAVIORS, IF HE DID, IT IS HIS CONSTITUTIONAL RIGHT TO HAVE SUCH AND TO DEMONSTRATE THOSE BELIEF AND ATTITUDES AGAINST THE GOVERNMENT AND TEACH HIS CHILDREN THOSE SAME ATTITUDES AND BELIEFS. TO PUNISH FOR SUCH ATTITUDES AND BEHAVIORS ARE UNACCEPTABLE IN THIS COUNTRY! THEREFORE, ANY ORDER THAT PUNISHES FOR SUCH REASON MUST BE OVERTURNED.

5. THE PETITIONER CONTENDS THAT REASONING USED BY JUDGE SAWAYA IS ERRONEOUS IN THAT HE COMMIT THE LOGICAL FALLACY OF HASTY GENERALIZATION. "TO INFER THAT ALL A IS B FROM ONE INSTANCES OF A BEING B IS FALLACIOUS UNLESS THE A IS KNOWN TO REPRESENTATIVE OF ALL A'S". FUNDAMENTALS OF LOGIC, JAMES D. CARNEY AND RICHARD K. SCHEER, PAGE 41. JUDGE SAWAYA ARGUMENT IS PLAINTIFF DOES NOT PAY CHILD SUPPORT, THEREFORE HE DOES NOT INPART RESPECT THE LEGAL SYSTEM OR THE LAW REQUIRING PAYMENT OF CHILD SUPPORT, THEREFORE HIS ATTITUDES AND BEHAVIORS ARE ANTI-SOCIAL, THEREFORE HIS SHOULD NOT HAVE ANY CONTACT WITH HIS CHILD. THE ARE SEVERAL REASON FOR NOT PAYING CHILD SUPPORT THAT HAVE NOTHING TO DO WITH RESPECT FOR THE GOVERNMENT. NOT HAVING RESPECT FOR THE GOVERNMENT DOES NOT MAKE ONE ANTI-SOCIAL. NO WHERE DOES JUDGE SAWAYA CONTENDS THAT THE CHILD HAS ANY KNOWLEDGE OF HER FATHER NONPAYMENT OF CHILD SUPPORT NOR THAT SUCH KNOWLEDGE IS EFFECTING HER. SIMPLY PUT JUDGE SAWAYA LOGIC DOES NOT

SUPPORT HIS ORDER AND THEREFORE FOR THAT REASON ALONE IT SHOULD BE OVERTURNED.

6. THE PETITIONER CONTENDS THAT JENSEN V. SCWENDIMAN, 744 P.2D 1026 (UTAH CT. APP. 1987) CRITERIA DOES NOT APPLY IN THIS CASE FOR THE FOLLOWING REASON.

THAT JENSEN IS A CASE THAT INVOLVES THE APPEAL OF A DRIVING UNDER THE INFLUENCE CONVICTION AND DENIAL OF DRIVING PRIVILEGES, WHERE SOCIETY HAS A RIGHT TO PROTECT ITS SELF FROM DRUNK DRIVERS, THEREFORE THE CRITERIA REQUIRES A STRONGER SHOWING OF SUCCESS THEN THE CASE AT BAR BECAUSE IT IS JUST THE OPPOSITE HERE, WE HAVE A HARM BEING DONE BY NOT GRANTING THE STAY IN THAT THE PARENT-CHILD RELATIONSHIP, A CONSTITUTIONAL PROTECTED RIGHT, IS BEING DESTROYED BY THE DENIAL OF SAID STAY.

7. THE PETITIONER CONTENDS THAT HE HAS MADE A STRONG SHOWING OF SUCCESS ON THE MERITS IN THIS CASE IN THAT HE HAS SHOWN THE ORDER TO BE UNCONSTITUTIONAL, HAS FALLACIOUS LOGIC, AND ISSUED BY A JUDGE THAT IS BIAS AND IS CONCERNED ABOUT PRESERVING HIS PRIOR ORDER THAN OF FINDING OUT WHAT IS IN THE BEST INTEREST OF THE CHILD. (SEE APPENDIX AFFIDAVIT OF BIAS AND SUPPLEMENTAL AFFIDAVIT OF BIAS).

8. THE PETITIONER CONTENDS THAT THE COURT OF APPEALS SHOULD HAVE GRANTED THE STAY FOR THE ABOVE STATED REASON AND ARGUMENTS.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to be "Dyde C. S.", written over a horizontal line.

I, LLOYD D. COLEY, DO HEREBY CERTIFY THAT I DELIVER A  
TRUE AND CORRECT COPY OF THE PETITION FOR WRIT OF CERTIORARI  
TO THE OFFICE OF:

RANDALL HOLGREM  
50 WEST BROADWAY  
SALT LAKE CITY, UTAH

DATED THIS 19TH DAY OF MARCH 1991.

---

LLOYD D. COLEY

## APPENDIX

**FILED**

FEB 4 1991

*Mary T. Noonan*

Mary T. Noonan  
Clerk of the Court  
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

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Lloyd D. Coley,	)	MEMORANDUM DECISION
	)	(Not For Publication)
Plaintiff and Appellant,	)	
	)	
v.	)	Case No. 900446-CA
	)	
Nancy P. Coley,	)	F I L E D
	)	(February 4, 1991)
Defendant and Appellee.	)	

Before Judges Orme, Garff and Bench (on Law and Motion).

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This matter is before the court on a Motion To Stay Pending Review seeking a stay of a trial court's order dated January 9, 1991 denying appellant visitation with his minor child pending satisfaction of specified conditions. We deny the motion. In October, 1990, this court heard argument and issued an order on a previous motion to stay the July 13, 1990 order of the Third District Court that denied appellant visitation with the minor child until further order of the trial court. This court entered the following orders, dated October 10, 1990:

1. That those provisions of the July 13, 1990 order denying appellant visitation and contact with the parties' minor child are vacated, subject to the further order of the trial court entered pursuant to this order.

2. That [the] case is temporarily remanded to the trial court for entry of an order on visitation supported by (1) factual findings as to the welfare of the child, as required by Utah Code Ann. § 30-3-5(4) (1989) and Rohr v. Rohr, 709 P.2d 382, 383 (Utah 1985), and (2) provisions as to the specific acts required of appellant to obtain an order reinstating visitation and contact privileges.

3. That this court retains jurisdiction to review any order of the trial court entered pursuant to this order during the pending appeal and appellant shall not be required to file an additional notice of appeal or pay additional filing fees.

On December 11, 1990 the trial court entered Findings of Fact and Conclusions of Law pursuant to the provisions of this court's October 10, 1990 order set forth above. The findings are based upon the evidence presented at the hearings in September 1988 and June 1990, the trial court record and the attitude and demeanor of appellant in court proceedings. The findings specify the trial court's factual basis for denying visitation and set forth the prerequisites for reestablishing visitation. The court found that appellant is in arrears in child support in the amount of \$27,305.00. Based upon the factual findings, the trial court concludes:

The plaintiff's conduct, in not paying child support . . . is willful and contumacious within the meaning of Rohr v. Rohr, 709 P.2d 382 (Utah 1985). Based on the foregoing Findings of Fact, the court concludes that it is not in the best interest of the minor child to have visitation with the plaintiff until such time as plaintiff shows to this court that he is concerned about the child's financial support and expresses that concern by paying his ongoing child support in the amount of \$250 per month and making a monthly reduction of \$200 toward the reduction of the judgments (child support, interest, and attorney fees) and makes both payments every month for a period of four (4) consecutive months. The court believes that if the plaintiff makes a serious effort to support his child financially and sustains that effort over a period of time, he will thereby demonstrate rehabilitation of the attitude and behavior defects, identified above, that led this court to deny plaintiff visitation and contact with the minor

child. If plaintiff thereafter fails to make such payments, without making a clear showing of changed circumstances, the court shall, without further hearing, suspend visitation.

Appellant now seeks a stay of the December, 1990 order as supported by the findings of fact and conclusions of law entered pursuant to this court's temporary remand. The issue before this court is whether appellant is entitled to a stay pending appeal under the criteria set forth in Jensen v. Schwendiman, 744 P.2d 1026 (Utah Ct. App. 1987). Under Rule 8(a) of the Utah Rules of Appellate Procedure as interpreted in Jensen v. Schwendiman, a party seeking a stay must (a) make a strong showing that he is likely to succeed on the merits of the appeal; (b) establish that unless a stay is granted he will suffer irreparable injury; (c) show that no substantial harm will come to other interested parties; and (d) show that a stay would do no harm to the public interest. Jensen, 744 P.2d at 1027.

Appellant first argues that the trial court erred in amending its July order because such amendment must have been done within ten days under Utah R. App. P. 52(b) and 59. This argument is wholly meritless since the amendment was pursuant to a specific remand of this court. Appellant further claims that the amended order is not in conformity with this court's October 1990 order or Rohr v. Rohr, disputes the factual findings, asserts that the trial court was required to hold a further evidentiary hearing, and apparently claims that the finding that he has shown disrespect for the court system inhibits appellant's constitutional right of free speech. Appellant argues generally that this case is distinguishable from Rohr.

Based on our review of the findings of fact and conclusions of law and appellant's arguments summarized above, we conclude that appellant has failed to make an adequate showing that he is likely to succeed on the merits and is not entitled to a stay on that basis. Appellant has failed to specifically address the remaining criteria of Jensen, and we do not address them in detail. This court recognizes that deprivation of visitation for failure to provide financial support is an extreme remedy requiring a trial court to conform with the criteria set forth in Rohr v. Rohr and to balance the potential harm to the parent/child relationship with the potential harm to the child from the willful failure to provide

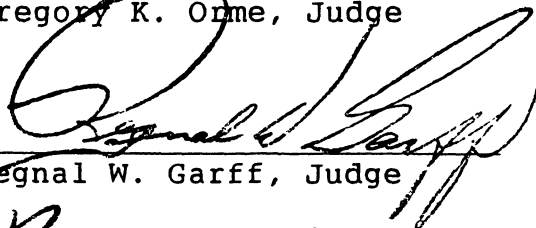
financial support. The ultimate determination of whether the trial court in this case has satisfied those requirements is reserved for plenary presentation and consideration of this case. We rule, however, that appellant has failed to satisfy the burden of establishing his entitlement to a stay pending appeal under the circumstances of this case, which include the availability of a mechanism for purging contempt and reestablishing contact and visitation. The motion for further stay pending appeal is denied.

One additional point requires clarification. Appellant asserts that this court held that "appellant may review subsequent orders in these proceedings without a new notice of appeals or additional filing fees." The October 10, 1990 order provided only that this court retained jurisdiction to review orders entered pursuant to the temporary remand. Appellant is, accordingly, not required to file a notice of appeal or additional filing fee to obtain review of the December, 1990 order entered pursuant to remand. Any subsequent appeals of unrelated orders, including judgments for arrearages or contempt, are subject to all appellate rules and requirements.

ALL CONCUR:



Gregory K. Orme, Judge



Regnal W. Garff, Judge



Russell W. Bench, Judge

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U.S. COURT

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AFFIDAVIT OF BIAS  
OR PREJUDICE

Case No. D 81 5126

Judge James S. Sawaya

Marlene Bell

HEARING ON OCTOBER 3, 1988

"you look like you haven't missed any meals..."

REVIEW HEARING ON JANUARY 9, 1989

"I want you to get this women some money even if you

*have to go out and borrow it..."*

HEARING ON MAY 21, 1990.

*"I know and you know everybody knows what's going on in this case."*

HEARING ON JUNE 18, 1990

*"I know what's going on in this case, just call your first witness."*

*"if we were not in this court room I would have a few words to say to this man..."*

*"...two hundred and fifty dollars should not be a problem for a forty-two year old man..."*

*"you do not need to continue to come back to this court I'll review this matter from time to time and let you know what happening in this matter."*

#### ARGUMENT

*The statements recited here demonstrates the obvious bias of Judge Sawaya. Some are self evident while others requires some explaining. When a Judge makes a comment like the "court can make it own motions" and then proceeds to hear that motion it become impossible that for an opponent to prepare a defense to such motions further it takes the Courts from a unbiased position to that of a prosecutor and judge at the same time. Our system of justice does not allow for that kind of Judaical conduct. Not only does it show bias but it also show a disrespect for the systems of rules by which we govern our society.*

*When a judge can set aside the rules and practice his*

own brand of justice he becomes worse than those he is to preside over, for he has sworn an oath to up hold those rules and to so fairly and we must rely on those whose duty it is to judge fairly or the system would perish.

It non-professional and rude for a Judge to make a comments regarding the physical appearance of a litigant whether they be complementary or degrading as in this case.

Judges have no right to makes threats that are nonenforceable not only does it show the judges' bullying attitudes, it is akin to the school yard bully saying "I'll rip for face off" neither one is believable. As in the comments listed " ...serve the rest of those nine years in the County Jail."

To suggest or demand to a person who is having trouble paying support payment and has a motion to reduce said payment to borrow money shows no understanding of the problem. How can borrowing money, even if possible, do anything but compound the problem.

One of the most damaging comments made however is the comment "that everybody knows what going on" just before Judge Sawaya issues a no-bail warrant for my arrest. The problem here that Judge Sawaya knew that I had been in his Court and he was present when his clerk told me that order needed to be reserved. Not only did Judge Sawaya know that I had appeared on the Order to Show Cause, but John Bucher, my attorney, sent Ray Stoddard to appear and inform the court that we could be in court in fifteen minuets. Judge Sawaya

then made those comments and issued the warrant.

In the hearing on June 18, 1990, when the opposing counsel stood to make his opening remarks Judge Sawaya said " I know what's going on in this case just call your first witness." It appears from this comment no matter what evidence would be presented Judge Sawaya has already made up his mind as to the outcome of this hearing. This is further demonstrated by the other comments listed above, particularly the comment "if we were not in this courtroom I would have a few things to say to this man" a comment not uncommon to bar room talk where men are trying to display their prowess, often challenging each other to a fight.

Again the comment "two hundred and fifty dollars should not be a problem for a 42 year old man" this comment implies that being short of funds or by having financial difficulties disallows one to be a man.

When I referred to a payment made to the defendant of five hundred dollars, (copies of the endorsed checks are inclosed), the defendants' attorney told the court that there had not been even one penny paid to the defendant in over five years. I told the court that Mr. Holgrem argued in the review in January of 1989 that the five hundred dollar payment was not sufficient to purge the contempt. Judge Sawaya said that he did recall anything about the payment, this then gives great concern because it means that Judge Sawaya committed me to jail for thirty days while ignoring the payments made to the defendant. This is a illustration

of Wild West Justice; forget the rules "let just hang'im".

Finally Judge Sawaya with a comment of "You need not continue to come back to this court. I'll review this matter from time to time and let you know what's happening in this matter." This comment shows Judge Sawayas' willingness to fully assume the defendants' case, prosecute it, judge it, and then punish the plaintiff. I can see no different between Judge Sawayas' dictatorial justice and that of Hilters' or the Communist regime.

#### ACTIONS

HEARING ON OCTOBER 3, 1988

1. Allowed a Order to Show Cause hearing to take place when:

a) There was not proper service nor sufficient notice to the plaintiff of the nature of the proceedings.

b) The service of process was served by the Defendant's attorney.

c) Judge Sawaya made his own motion and set it for hearing on the same day, which motion included jail time not asked for in the defendant's motion.

d) Judge Sawaya did not allow plaintiff any time to prepare for said hearing.

e) When the court had order that the issue of contempt on said failure to pay be reserved until a trial on plaintiff's Petition to Modify Decree of Divorce be heard. said order was signed by Judge Sawaya on the 22nd day of

April 1986. The trial has not occurred.

f) Issued a Contempt Order excessively vague on the question of how the plaintiff could purge himself of contempt.

REVIEW HEARING ON JANUARY 23rd, 1989.

Judge Sawaya issued a commitment for plaintiff to the Salt Lake County Jail when the order of the Court, on its face, gave the plaintiff until February 14th, 1989 to purge himself of said contempt.

HEARING ON MAY 21st 1990.

Issued a "no bail" bench warrant for the plaintiff when the plaintiff did not appear on May 21st. 1990. But the plaintiff did appear at the time and date of the Order to Show Cause that was served upon him and was told by the clerk of the court, in the presence of Judge Sawaya, that the Order to Show Cause had been canceled and would have to be reserved upon him. Judge Sawaya did not recall said warrant until the plaintiff provided a copy of the court minutes of the computer showing that the Order to Show Cause was canceled and a letter from plaintiff's attorney explaining the actions of the plaintiff.

Told both the attorneys in the case that the Order to Show Cause would be continue without the need for the plaintiff to be served. The original Order to Show Cause was issued directing the plaintiff to Commissioner Peuler, and not Judge Sawaya.

HEARING ON JUNE 18th 1990

*Issued a Contempt Order excessively vague on the question of how the plaintiff could purge himself of contempt.*

#### ORDERS

ORDER OF DECEMBER 16th 1989.

*This order is in conflict with the order of Sept. 22, 1986.*

ORDER OF JUNE 18th 1990.

*This order denies visitation rights purely on the grounds of non-payment of child support when even Judge Sawaya admits in the hearing that the best interest of the child is to have visitation with her father. No case law can be found where visitation rights were deny only for non-payment of child support.*

*For the above mentioned reason and facts, Judge Sawaya should be removed from this case for his showing of Bias and Prejudice against me and a different Judge appointed.*

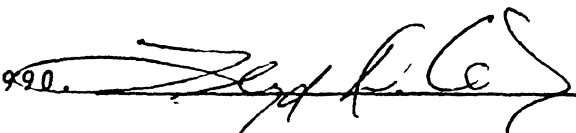
*This has been a difficult action for me to take. My attorney does not agree with it, and we have spent much time debating it. He has told me he would withdraw as my attorney if I filed this affidavit. It goes against my belief that Judge are impartial and fair, and that we should accept their decision, but when Judge Sawaya decided to deny my visitation with Laura it not only punishes me but it also denies her rights to her fathers' love and attention. There was not one single particle of evidence offered to justify the denial of visitation other than the nonpayment of child support. Judge Sawayas' action demands review and his removal from this case*

and forces me to make this affidavit.

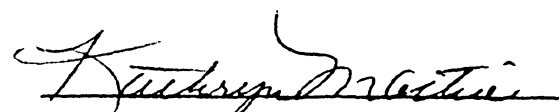
#### CERTIFICATION

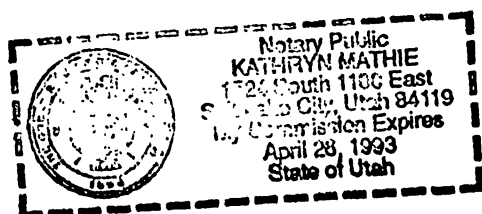
I HEREBY CERTIFY THAT I have read the foregoing Affidavit of Prejudice and that I understand the representations and information contained therein and that said information and representations are true and accurate to the best of my knowledge and belief. I also certify that this Affidavit of Prejudice is not made for the purpose of delay and is made in good faith.

DATED this 16th day of July, 1990.

  
Lloyd D. Coley,

SUBSCRIBED AND SWORN TO before me, a Notary Public on the 16th day of July, 1990.

  
Notary Public



Lloyd D. Coley, Pro Se,  
1065 Lake Street  
Salt Lake City, Utah, 84105  
Phone: 363-7029

FILED  
JUL 13 1990

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY  
STATE OF UTAH

-----  
LLOYD D. COLEY,  
Plaintiff,

vs.

NANCY P. COLEY,  
Defendant.

:  
:  
: SUPPLEMENTAL  
: AFFIDAVIT OF BIAS  
: OR PREJUDICE  
:

: Case No. D 81 5126

: Judge James S. Sawaya  
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COMES NOW, Lloyd D. Coley, plaintiff in the above matter and makes the following Supplemental Affidavit of Bias or Prejudice against Judge James S Sawaya, the assigned judge in the above matter. This affidavit is made under Utah Rules of Civil Procedure number 63 (b). This affidavit is made because of the following statements, actions and orders made by Judge James S. Sawaya since the filing of the first Affidavit of Prejudice.

JULY 13, 1990.

On this date Judge Sawaya signed a Order on Order to Show Cause when plaintiff had filed a objection to said<sup>order</sup> on the 11th of July. Said objections were filed in a timely manner and contained valid objections that if a hearing were had would be upheld. For example: defendant did not give credit for payment paid on the amount of the judgement asked for and said judgement amount contained the same interest in two different places or a double interest.

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REVIEW HEARING JULY 16, 1990.

Judge Sawaya was informed of the Affidavit of Bias at the start of the Hearing. Utah's Rules of Civil Procedure states that once the Affidavit of Bias is filed the judge in the case can proceed no further, Judge Sawaya said that he was not biased and therefore would ignore the affidavit and proceed with the hearing. The following actions of Judge Sawaya demonstrates his bias.

1. When informed that the Order he had signed was not supported by findings of fact he stated that the finding of fact were, in his opinion, incorporated in the body of the Order. Judge Sawaya was overturned by the Supreme Court in a divorce case for committing a man to jail for contempt when there were no findings of fact in that case.

2. When shown that proof of payment was made to the defendant, and therefore the order he had signed was in error in the amount of the judgement granted, he stated the amount payment was insignificant to the amount owed and therefore nothing need be done to correct the judgement.

3. Judge Sawaya apparently did not care that defendant and defendant's counsel filed false affidavits in regards to a \$500.00 payment that was denied by them because he said the amount is insignificant.

4. After a payment of \$500.00 he refuse to any contact with my daughter other than allowing me to call my daughter  
no objection of the defendant.

5. Order me to begin paying \$75.00 a week to the defendant or go to jail and then scheduled a review in sixty days.

#### ARGUMENT

The Utah Supreme Court in Andersen v. Andersen a 1962 case, where an Affidavit of Bias was filed and the Judge proceeded on the case, stated that the very fact that the Judge did not follow the rule, as did Sawaya in this case, was evidence of bias " There may be merit in an argument that such a refusal to comply with a rule might be indicative of the asserted prejudice; and somewhat demonstrates the wisdom of the rule itself."

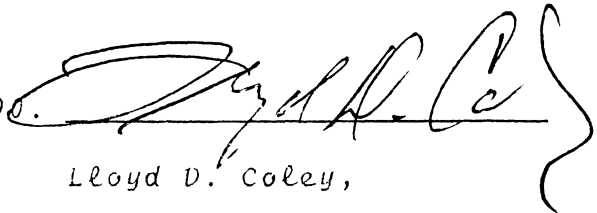
Judge Sawaya continued actions demonstrate a very real bias and prejudice even though he states he is not biased or prejudiced I can not see how any judge could show more prejudice and bias than Judge Sawaya has. The best that can be said of Judge Sawaya's actions is that he may not be prejudiced against me but that the bias is against people who do not pay their support obligations, if that is true then Judge Sawaya actions are even more deplorable, for it means that a Judge can choose any type of offender and deny their rights to a fair legal process just because the offense is one that he feels particularly strong about. It is a well known fact that prejudiced people believe themselves not to be prejudiced as demonstrated in Civil Rights Actions during the sixties. Lester Maddox and George Wallace, like Judge

Sawaya, did not believe themselves to a prejudiced person.

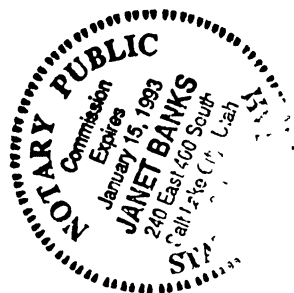
#### CERTIFICATION


I HEREBY CERTIFY THAT I have read the foregoing Affidavit of Prejudice and that I understand the representations and information contained therein and that said information and representations are true and accurate to the best of my knowledge and belief. I also certify that this Affidavit of Prejudice is not made for the purpose of delay and is made in good faith.

DATED this 20th day of July, 1990.

  
Lloyd D. Coley,

SUBSCRIBED AND SWORN TO before me, a Notary Public on the 16th day of July, 1990.



  
Notary Public Salt Lake County  
Expires - 1-15-93