

1992

Jeffrey L. Abbott v. State of Utah : Brief of Petitioner-Appellant

Utah Court of Appeals

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Jeffrey L. Abbott; pro se.

Jan Graham; attorney general; James H. Beadles; assistant attorney general; attorneys for appellee.

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BRIEF

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920495

IN THE COURT OF APPEALS IN & FOR THE STATE OF UTAH

JEFFREY L. ABBOTT,
PETITIONER/APPELLANT,

-V-

STATE OF UTAH,
RESPONDENT/APELLEE.

CASE No. 920495-CA

BRIEF OF THE PETITIONER-APPELLANT

ON APPEAL FROM THE THIRD
JUDICIAL DISTRICT COURT, SALT LAKE COUNTY,
IN CIVIL ACTION # 920900544-HC

HONORABLE DAVID S. YOUNG, THIRD JUDICIAL DISTRICT
COURT JUDGE

JEFFREY L. ABBOTT
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FILED

ORAL ARGUMENT REQUESTED BY PETITIONER/APPELLANT

COURT OF APPEALS

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THERE HAVE BEEN NO PRIOR OR RELATED APPEALS.

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JURISDICTIONAL STATEMENT

PETITIONER/APPELLANT ONLY KNOWS THAT THE UTAH COURT OF APPEALS HAS AUTHORITY TO HEAR CASES FROM THE THIRD JUDICIAL DISTRICT COURT, BUT DOES NOT KNOW THE EXACT STATUTE THAT GRANTS THIS POWER.

IN THE COURT OF APPEALS IN & FOR THE STATE OF UTAH

JEFFREY L. ABBOTT,
PETITIONER/APPELLANT,

-V-

STATE OF UTAH,
RESPONDENT/APPELLEE.

CASE No. 920495-CA

BRIEF OF THE PETITIONER-APPELLANT

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. PETITIONER/APPELLANT'S ACTION SHOULD NOT HAVE BEEN BARRED PURSUANT TO UTAH CODE ANN. § 78-12-31.1.
2. PETITIONER/APPELLANT'S RIGHTS TO DUE PROCESS IN A PAROLE RESCISSION/GRANT HEARING HAS BEEN VIOLATED.
3. A REQUEST MADE WHILE PETITIONER/APPELLANT WAS IN A CLEAR STATE OF FRUSTRATION & HAVING DIFFICULTY RETAINING THE ABILITY TO ARTICULATE PETITIONER/APPELLANT'S CASE TO THE UTAH BOARD OF PAROONS, SHOULD NOT BE BINDING ON THE PETITIONER/APPELLANT.
4. PETITIONER/APPELLANT WAS DENIED THE OPPORTUNITY TO FULLY PRESENT PETITIONER/APPELLANT'S CLAIMS ADEQUATELY & UNCENSORED TO THE THIRD JUDICIAL DISTRICT COURT; HONORABLE DAVID S. YOUNG, THE ASSIGNED JUDGE.
5. THE ALLOWANCE OF RESPONDENT/APPELLANT TO FILE SEVERAL UNTIMELY PLEADINGS IN THE THIRD JUDICIAL DISTRICT COURT, BY THE ASSIGNED JUDGE, NEGATIVELY IMPACTED PETITIONER/APPELLANT'S CHANCES OF PREVAILING IN THE OUTCOME OF THIS ACTION.

STATEMENT OF THE CASE

ON JANUARY 24, 1992, PETITIONER/APPELLANT, JEFFREY L. ABBOTT, INITIATED THIS COMPLAINT IN THE THIRD JUDICIAL DISTRICT COURT, ALLEGING THE UTAH BOARD OF PARDONS HELD HEARINGS THAT WERE IMPROPER & INADEQUATE, WITHOUT PROPER NOTICE OR REASONS & THERE WAS NO ATTORNEY PRESENT. - ON MAY 07, 1992, AFTER SEVERAL PLEADINGS HAD BEEN FILED BY BOTH PARTIES, AN "EVIDENTIARY" HEARING WAS HELD TO DETERMINE THE MERITS OF THIS ACTION. - AFTER THE "EVIDENTIARY" HEARING WAS HELD, THE RESPONDENT/APPELLEE FILED A "MOTION FOR SUMMARY JUDGEMENT", OF WHICH WAS DATED MAY 11, 1992. - PETITIONER/APPELLANT, IN RESPONSE, FILED A "MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT", OF WHICH WAS DATED JUNE 01, 1992. - ON JUNE 22, 1992, THE "MOTION FOR SUMMARY JUDGEMENT" & THE "MEMORANDUM IN OPPOSITION" WAS HEARD BEFORE HONORABLE JUDGE DAVID S. YOUNG OF THE THIRD JUDICIAL DISTRICT COURT. - ON JUNE 30, 1992, HONORABLE JUDGE DAVID S. YOUNG, ENTERED JUDGEMENT INTO THE RECORD IN FAVOR OF THE RESPONDENT/APPELLEE & DISMISSED PETITIONER/APPELLANT'S ACTION WITH PREJUDICE. - SUBSEQUENTLY, PETITIONER/APPELLANT FILED A "NOTICE OF APPEAL FROM FINAL JUDGEMENT."

STATEMENT OF THE RELEVANT FACTS

ON JANUARY 29, 1991, THE UTAH BOARD OF PARDONS HELD A PAROLE RESCISSION HEARING, IN WHICH THE DECISION WAS MADE TO RE-SCIND PETITIONER/APPELLANT'S ORIGINAL PAROLE DATE OF MARCH 12, 1991 (SEE RESPONDENT/APPELLEE'S "EXHIBIT 1-D"). PETITIONER/APPELLANT WAS DENIED THE RIGHT TO ATTEND THIS HEARING & WAS TOLD OF THE UTAH BOARD OF PARDONS DECISION, NOT BY THE UTAH BOARD OF PARDONS OR ANY OF ITS STAFF MEMBERS, NOR WAS NOTIFICATION IN WRITING, BUT PETITIONER/APPELLANT WAS INFORMED OF THIS DECISION BY SOCIAL SERVICES WORKER ANDREW HUNT & ETHNIC MINORITY RESOURCE SPECIALIST VICTORIA BRIDWELL. ON THE RESPONDENT/APPELLEE'S "EXHIBIT 1-D" IT IS CLEARLY EVIDENT THAT THERE WAS A DECISION REACHED WITHOUT THE PETITIONER/APPELLANT'S IN-

PUT OR KNOWLEDGE OF THE MATTER.

ON FEBRUARY 28, 1991, PETITIONER/APPELLANT APPEARED BEFORE THE UTAH BOARD OF PARDONS' HEARING OFFICER PAUL LARSEN WHO WAS NOT AN IMPARTIAL TRIBUNAL, AS MR. LARSEN FAILED TO SERIOUSLY CONSIDER ALL OF THE ISSUES OF RELEVANCY PRESENTED BY THE PETITIONER/APPELLANT. HEARING OFFICER PAUL LARSEN DID NOT ADVISE PETITIONER/APPELLANT OF THE RIGHT TO HAVE COUNSEL PRESENT, WHETHER APPOINTED OR PRIVATELY RETAINED, TO REPRESENT THE PETITIONER/APPELLANT BEFORE THE UTAH BOARD OF PARDONS. THE END RESULT WAS THAT PETITIONER/APPELLANT RECEIVED AN INTERIM PAROLE DATE OF MAY 14, 1991, FOR "NUMEROUS DISCIPLINARY VIOLATIONS", ALTHOUGH PETITIONER/APPELLANT HAD NOT RECEIVED A DISCIPLINARY INFRACTIONS REPORT IN NEARLY A YEAR.

ON MAY 09, 1991, AFTER HEARING THE STATEMENT OF SOCIAL SERVICES WORKER ANDREW HUNT, THE STATE OF UTAH BOARD OF PARDONS HEARING OFFICER ENID O. PINO RESCINDED PETITIONER/APPELLANT'S MAY 14, 1991, PAROLE DATE, BUT FAILED TO NOTIFY PETITIONER/APPELLANT OR ALLOW PETITIONER/APPELLANT TO ATTEND THE HEARING; THE RESULTS OF THIS HEARING WERE GIVEN TO PETITIONER/APPELLANT VIA MAIL ON MAY 15, 1991 AT 1630 HRS., THE DAY AFTER PETITIONER/APPELLANT'S SCHEDULED PAROLE DATE & SIX (6) DAYS AFTER THE DECISION WAS MADE TO RESCIND SAID DATE.

ON JUNE 13, 1991, PETITIONER/APPELLANT APPEARED BEFORE THE UTAH BOARD OF PARDONS' HEARING OFFICER PAUL LARSEN FOR THE PURPOSE OF DISCUSSING ANOTHER POSSIBLE PAROLE DATE, DURING WHICH TIME PETITIONER/APPELLANT, AFTER BEING CLEARLY FRUSTRATED DUE TO HEARING OFFICER PAUL LARSEN'S REFUSAL TO UNDERSTAND THE FULL CIRCUMSTANCES OF PETITIONER/APPELLANT'S REASONS FOR WISHING TO PAROLE, MADE THE REQUEST TO EXPIRATE HIS ENTIRE SENTENCE COMMITMENT. HOWEVER, THIS REQUEST WAS MADE WHILE THE PETITIONER/APPELLANT WAS CLEARLY UNDER AN ENORMOUS AMOUNT OF STRESS. THE END RESULT WAS AN INTERIM PAROLE DATE OF OCTOBER 08, 1991, & NO ONE HAD ADVISED PETITIONER/APPELLANT OF THE RIGHT TO HAVE COUNSEL PRESENT, WHETHER APPOINTED OR PRIVATELY RETAINED, NOR WAS PETITIONER/APPELLANT NOTIFIED IN ADVANCE OF THIS HEARING. PETITIONER/APPELLANT DID NOT WAIVE ANY RIGHT TO BE NOTIFIED IN ADVANCE OF THIS HEARING.

ON AUGUST 22, 1991, PETITIONER/APPELLANT APPEARED BEFORE UTAH BOARD OF PARDONS HEARING OFFICER MICHAEL R. SIBBETT, DURING WHICH TIME PETITIONER/APPELLANT AGAIN BECAME FRUSTRATED & REQUESTED TO BE ALLOWED TO EXPIRATE OR TERMINATE HIS SENTENCE. PETITIONER/APPELLANT RECIEVED A TERMINATION DATE OF NOVEMBER 23, 1993. THERE WAS NO NOTICE GIVEN THAT PETITIONER/APPELLANT HAD A RIGHT HAVE COUNSEL PRESENT TO REPRESENT HIM.

ON OCTOBER 15, 1991, UTAH BOARD OF PARDONS CHAIRMAN H. L. (PETE) HAUN, HELD A SPECIAL ATTENTION HEARING, WHICH WAS PROMPTED BY PETITIONER/APPELLANT'S WRITTEN REQUEST OF THE MONTH OF SEPTEMBER, 1991. THE END RESULT WAS A DECISION TO ALLOW THE TERMINATION DATE OF NOVEMBER 23, 1993, BUT NO REASONS WERE GIVEN AS TO WHY.

ON MAY 23, 1991, CONTRACT ATTORNEY DAVID J. ANGERHOFER HAD FORWARDED A REQUEST, TO THE UTAH BOARD OF PARDONS CHAIRMAN H. L. (PETE) HAUN, FOR THE INFORMATION USED TO DECIDE PETITIONER/APPELLANT'S PAROLE DATE OR REBSCISSION HEARING, BUT NEVER GOT ANY FORM OF A RESPONSE.

ON JANUARY 08, 1992, APPROXIMATELY TWO (2) MONTHS & ONE (1) WEEK AFTER PETITIONER/APPELLANT HAD RECIEVED, VIA U.S. MAIL, THE WRITTEN RESULTS OF THE OCTOBER 15, 1991 SPECIAL ATTENTION HEARING, CONTRACT ATTORNEY DAVID J. ANGERHOFER, AGAIN FORWARDED ANOTHER REQUEST FOR THE INFORMATION USED IN DECIDING PETITIONER/APPELLANT'S PAROLE DATE OR RE-SCISSION HEARING.

ON JANUARY 24, 1992, EXACTLY THREE (3) MONTHS AFTER PETITIONER/APPELLANT HAD RECIEVED THE WRITTEN RESULTS OF THE OCTOBER 15, 1991, SPECIAL ATTENTION HEARING, PETITIONER/APPELLANT SIGNED, DATED, & FORWARDED A PETITION FOR WRIT OF HABEAS CORPUS TO THE THIRD JUDICIAL DISTRICT COURT IN & FOR SALT LAKE CITY, UTAH.

ONLY AFTER PETITIONER/APPELLANT HAD FILED THE PETITION & THE ATTORNEY GENERAL'S OFFICE WAS ORDERED BY THE COURT TO RESPOND TO THE PETITIONER/APPELLANT'S COMPLAINT, DID THE UTAH BOARD OF PARDONS RELEASE THE INFORMATION, ALTHOUGH NOT IN ITS ENTIRETY, THAT WAS ORIGINALLY REQUESTED IN MAY OF 1991 & THAT PETITIONER/APPELLANT HAD A LEGAL RIGHT TO OBTAIN.

ARGUMENT

- 1) PETITIONER/APPELLANT'S "PETITION FOR WRIT OF HABEAS CORPUS" SHOULD NOT HAVE BEEN BARRED BY THE STATUTE OF LIMITATIONS.

RESPONDENT/APPELLEE HAS ALLEGED THAT PETITIONER/APPELLANT'S "PETITION FOR WRIT OF HABEAS CORPUS" IS BARRED, SINCE IT WAS NOT FILED WITHIN THE TIME LIMIT SET BY UTAH CODE § 78-12-1 & BY UTAH CODE § 78-12-31.1. HOWEVER, PETITIONER/APPELLANT HAD IN FACT MET WITH THE STATUTE OF LIMITATIONS BY COMMENCING THIS ON THE EXACT DATE THREE (3) MONTHS AFTER THE FINAL DECISION WAS MADE BY THE UTAH BOARD OF PARDONS, WHICH WAS RECEIVED BY PETITIONER/APPELLANT, IN WRITING, ON OCTOBER 24, 1991.

WHEN THE CONTRACT ATTORNEY'S REPRESENTATIVE DAVID J. ANGERHOFER, ORIGINALLY FORWARDED A REQUEST FOR INFORMATION TO UTAH BOARD OF PARDONS CHAIRMAN H. L. (PETE) HAUN, ON MAY 23, 1991, IT WAS CHAIRMAN HAUN'S DUTY TO PROMPTLY RESPOND & RELEASE INFORMATION IN ACCORDANCE WITH RULE 655-303 OF THE UTAH BOARD OF PARDONS' POLICY & PROCEDURE, OF WHICH IS PUBLISHED IN THE UTAH ADMINISTRATIVE CODE BOOK.

RESPONDENT/APPELLEE VIOLATED THE UTAH RULES OF CIVIL PROCEDURE'S RULE 12 (B), WHEN THEY FAILED TO PLEAD THE STATUTE OF LIMITATIONS, IN THE ORIGINAL ANSWER & MOTION TO DISMISS, THEREBY WAIVING SAID DEFENSE.

RESPONDENT/APPELLEE FAILED TO MOTION THE COURT FOR THE PERMISSION TO FILE THIS DEFENSE & WHEN PETITIONER/APPELLANT BROUGHT THIS TO THE ATTENTION OF THE COURT, THROUGH PROPER MOTION, THE COURT ERRED BY ALLOWING THE PLEADING TO STAND, EVEN IF IT WAS IN VIOLATION OF THE UTAH RULES OF CIVIL PROCEDURE.

BY FAILING TO RESPOND TO THE ORIGINAL REQUEST FOR THE INFORMATION USED IN DECIDING THE OUTCOME OF PETITIONER/APPELLANT'S PAROLE GRANT/RESCISSION HEARING, RESPONDENT/APPELLEE WAIVED THE DEFENSE OF THE STATUTE OF LIMITATIONS, AS RESPONDENT/APPELLEE HAD A LEGAL OBLIGATION TO RELEASE SAID INFORMATION TO PETITIONER/APPELLANT, WHO HAD A LEGAL RIGHT TO OBTAINING SAID INFORMATION.

THERE HAVE ALREADY BEEN CASES IN WHICH IT HAS BEEN DETERMINED THAT THE STATUTE OF LIMITATIONS HAS BEEN WAIVED AS A DEFENSE DUE TO A PARTY'S FAILURE TO PLEAD IT APPROPRIATELY AS A DEFENSE IN AN ANSWER OR BY MOTION.

SINCE STATUTES OF LIMITATION ARE NOT JURISDICTIONAL, IT HAS BEEN HELD THAT THEY CAN BE WAIVED. (SEE AMERICAN COAL CO. V. SANDSTROM, 689 P.2d 1 (UTAH 1984)).

FURTHERMORE, IN THE CASE OF STAKER V. HUNTINGTON CLEVELAND IRRIGATION CO., 664 P.2d 1188 (UTAH 1983), IT WAS HELD THAT THE STATUTE OF LIMITATIONS DEFENSE MUST BE PLEADED AS AN AFFIRMATIVE DEFENSE IN A RESPONSIVE PLEADING, OR IT IS WAIVED, UNLESS AN AMENDED PLEADING ASSERTING THIS DEFENSE IS ALLOWED PURSUANT TO THE REQUIREMENTS OF RULE 15 (A) OF THE UTAH RULES OF CIVIL PROCEDURE.

2) PETITIONER/APPELLANT'S RIGHTS TO DUE PROCESS IN A PAROLE GRANT/RESCISSION HEARING HAS BEEN VIOLATED.

IN ALL OF THE HEARINGS HELD BEFORE THE UTAH BOARD OF PARDONS, INVOLVING PETITIONER/APPELLANT, THE PETITIONER/APPELLANT WAS NEVER INFORMED OF THE RIGHT TO HAVE COUNSEL PRESENT TO REPRESENT PETITIONER/APPELLANT'S BEST INTEREST, WHETHER APPOINTED OR PRIVATELY RETAINED.

THE UTAH BOARD OF PARDONS FAILED TO NOTIFY PETITIONER/APPELLANT OF THE RESULTS OF THE HEARINGS HELD ON JANUARY 29, 1991, FEBRUARY 28, 1991 & MAY 09, 1991 & JUNE 13, 1991. ALTHOUGH THERE WAS NOTIFICATION OF FINAL DECISIONS, THERE WERE NO REASONS, IN WRITING, GIVEN AS TO HOW & WHY THESE DECISIONS WERE REACHED.

PETITIONER/APPELLANT HAS A RIGHT TO BE HEARD BY AN IMPARTIAL TRIBUNAL, HOWEVER, IN THE HEARING HELD BEFORE THE UTAH BOARD OF PARDONS' HEARING OFFICER, PAUL LARSEN ON FEBRUARY 28, 1991, THIS RIGHT WAS CLEARLY VIOLATED.

HEARING OFFICER PAUL LARSEN HAD MADE HIS MIND UP TO ASSESS PETITIONER/APPELLANT WITH AN ADDITIONAL FOUR (4) MONTHS FOR "NUMEROUS VIOLATIONS", EVEN THOUGH THERE WAS NOTHING TO SUPPORT THIS CLAIM WITHOUT GOING BACK TO NEARLY A YEAR BEFOREHAND.

ON JUNE 13, 1991, HEARING OFFICER PAUL LARSEN, AGAIN DISPLAYED IMPARTIALITY BY OPTING TO DEFEND THE ACTIONS OF ONE OF THE STAFF MEMBERS, EMPLOYED BY THE UTAH DEPARTMENT OF CORRECTIONS, WHILE MR. LARSEN WAS SUPPOSED TO BE UNBIASED.

IN THE CASE OF FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991), THE UTAH SUPREME COURT HELD THAT,

"THERE IS NO QUESTION THAT DUE PROCESS PROTECTIONS APPLY AT THE TIME OF SENTENCING BY THE TRIAL JUDGE... THE UTAH CONSTITUTION CERTAINLY REQUIRES THAT EQUIVALENT DUE PROCESS PROTECTIONS BE AFFORDED WHEN THE BOARD OF PARDONS DETERMINES THE ACTUAL NUMBER OF YEARS A DEFENDANT IS TO SERVE." (FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991) AT 735).

THIS BEING THE CASE, THERE SHOULD BE NO ARGUMENT THAT "EQUIVALENT DUE PROCESS" WOULD INCLUDE TIMELY NOTICE OF THE HEARING, THE RIGHT TO HAVE COUNSEL PRESENT TO REPRESENT A PRISONER, THE RIGHT TO CONFRONT & PRESENT WITNESSES, NOTICE OF & THE CHANCE TO, REFUTE ANY ADVERSE EVIDENCE, THE OPPORTUNITY TO PRESENT EVIDENCE, ACCESS TO ONE'S INSTITUTIONAL FILE TO DETERMINE THE VALIDITY OF INFORMATION STORED THEREIN, NOTICE OF ANY CRITERIA FOR POSSIBLE PAROLE, AN IMPARTIAL TRIBUNAL TO BE HEARD BY & A WRITTEN DECISION DETAILING REASONS FOR THE GRANT OR DENIAL OF PAROLE.

MEETING WITH THIS CONCLUSION IS NO HARD TASK, AS IT HAS ALREADY BEEN MADE SIMPLE SINCE THE UTAH SUPREME COURT HELD THAT THE UTAH BOARD OF PARDONS PERFORMS ITS DUTIES IN A MANNER SIMILAR TO THAT OF A TRIAL JUDGE & SINCE THESE ARE RIGHTS AFFORDED A PERSON APPEARING BEFORE A TRIAL JUDGE.

3) PETITIONER/APPELLANT WAS PREVENTED FROM FULLY PRESENTING HIS CASE IN THE THIRD JUDICIAL DISTRICT COURT.

SEVERAL TIMES DURING THE ORIGINAL PROCEEDINGS, IN THE THIRD JUDICIAL DISTRICT COURT, BEFORE HONORABLE JUDGE DAVID S. YOUNG, PETITIONER/APPELLANT MADE REQUESTS TO BE ALLOWED TO HAVE WITNESSES TO BE BROUGHT IN FOR TESTIMONY, INCLUDING THE VITAL TESTIMONY OF PAUL LARSEN, OF WHOM PRESIDED OVER TWO (2) OF PETITIONER/APPELLANT'S HEARINGS, BUT WAS DENIED THE OPPORTUNITY TO PRESENT WITNESSES.

RESPONDENT/APPELLEE WAS ALLOWED TO FILE SEVERAL UNTIMELY PLEADINGS, EVEN THOUGH THEY WERE NOT PROPERLY FILED IN ACCORDANCE WITH RULES 12(B) & 15(A) OF THE UTAH RULES OF CIVIL PROCEDURE, & IN PART, THESE DOCUMENTS HINDERED PETITIONER/APPELLANT'S CHANCES TO FULLY PRESENT THIS & SUBSEQUENTLY PREVAIL, IN THE OUTCOME OF THIS CASE.

PETITIONER/APPELLANT FILED MOTIONS REQUESTING THAT THE RESPONDENT/APPELLEE'S UNTIMELY PLEADINGS BE STRICKEN FROM THE RECORD PURSUANT TO RULE 12(F) OF THE UTAH RULES OF CIVIL PROCEDURE, BUT WAS DENIED THESE MOTIONS. THUS, FURTHER HINDERING PETITIONER/APPELLANT'S CHANCES OF PREVAILING IN THE OUTCOME OF THIS ACTION.

PETITIONER/APPELLANT DOES NOT HAVE ANY ACCESS TO THE MANY CASE LAW DECISIONS & THEREFORE WAS UNABLE TO DETERMINE IF THE CASES USED BY THE RESPONDENT/APPELLEE IN FACT PERTAINED TO PETITIONER/APPELLANT'S CASE & IF SO, IN WHAT WAYS. SINCE IT IS A BASIC NECESSITY TO KNOW THIS INFORMATION, PETITIONER/APPELLANT MADE AN ORAL MOTION, IN COURT & VIA TELEPHONE CONVERSATION, TO HAVE A COURT ORDER ISSUED FOR ACCESS TO THE LAW LIBRARY, BUT WAS DENIED THE MOTION. (SEE BOUNDS v. SMITH, 430 U.S. 817 @ 826 (1977)).

PETITIONER/APPELLANT IS NOT READILY KNOWLEDGABLE OF THE FULL ASPECTS OF THE LEGAL SYSTEM & THEREFORE, WAS AT A CLEAR DISADVANTAGE TO THE RESPONDENT/APPELLEE'S RESOURCES, WHICH IS ENDLESS, SINCE IT HAS THE STATE'S LAW LIBRARY TO USE AT IT'S DISPOSAL, THEREBY HINDERING PETITIONER/APPELLANT'S CHANCES OF PREVAILING.

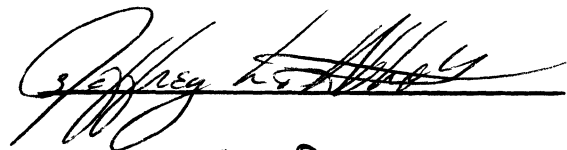
CONCLUSION

FOR THE REASONS SET FORTH HEREIN & IN THE ATTACHED "MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT", PETITIONER/APPELLANT URGES THIS COURT TO REVERSE THE DISTRICT COURT'S DECISION & DECLARE IT TO BE IN ERROR.

PETITIONER/APPELLANT FEELS THAT ORAL ARGUMENT IS NECESSARY IN THIS MATTER & REQUESTS THIS COURT TO CONDUCT THE SAME.

DATED THIS 20th DAY OF March, 1993.

RESPECTFULLY SUBMITTED,



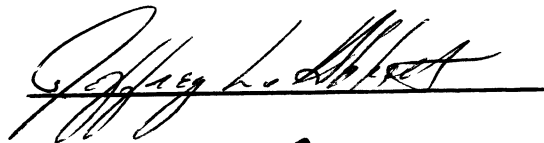
JEFFREY L. ABBOTT
PETITIONER/APPELLANT
COUNSEL PRO-SE

CERTIFICATE OF MAILING

I CERTIFY THAT I CAUSED TO BE MAILED, POSTAGE
PRE-PAID, A TRUE & CORRECT COPY OF PETITIONER/APPELLANT'S OPEN-
ING BRIEF, TO;

STEVEN MORRISSETT
ASST. ATTY. GENERAL
ATTY. FOR RESPONDENT
330 SOUTH 300 EAST
SALT LAKE CITY, UTAH
84111

DATED THIS 20th DAY OF March, 1993.


JEFFREY L. ABBOTT
PETITIONER / APPELLANT
COUNSEL PRO-SE

ADDENDUM "A"

~~JEFFREY LYNN ABBOTT~~
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IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH

JEFFREY LYNN ABBOTT,)	PETITIONER'S MEMORANDUM IN OPPOSITION
PETITIONER,)	TO RESPONDENT'S MOTION FOR SUMMARY
)	JUDGEMENT
-V-)	
STATE OF UTAH,)	CASE: 920900544 HC
RESPONDENT.)	JUDGE: HONORABLE DAVID S. YOUNG

COMES NOW, THE PETITIONER, JEFFREY LYNN ABBOTT, PROCEEDING PRO-SE, HEREBY FILES THE FOLLOWING MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT & IN SUPPORT OF SAID MEMORANDUM THE PETITIONER STATES AS FOLLOWS:

ALTHOUGH RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT IS PREPARED IN AN ORDERLY FASHION, IT FAILS TO ASSERT ANY PROPER GROUNDS AS TO WHY THIS MOTION FOR SUMMARY JUDGEMENT SHOULD BE GRANTED.

RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT DOES RECOGNIZE THE "SUBSTANTIALLY UNDISPUTED" FACTS, HOWEVER, TO BASE DECISIONS ON CHARGES THAT WERE CLEARLY DISMISSED BY A COURT OF LAW IS AN ERRONEOUS MOVEMENT THAT UNQUESTIONABLY CHALLENGES THE AUTHORITY & JUDGEMENT OF THE COURT TO THE EXTENT WHERE IT MUST BE PONDERED WHETHER A COURT'S DECISION IS SUBJECT TO REVIEW & MODIFICATION BY THE BOARD OF PARDONS. IT IS NOT.

IN RETROSPECT, THE COURT WILL NOTICE THE RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT IS SUPPORTED BY A FAULTY MEMORANDUM IN WHICH ATTEMPTS ARE MADE TO PRODUCE A CONVINCABLE GROUND FOR THE COURT GRANT A SUMMARY JUDGEMENT IN FAVOR OF THE RESPONDENT. THERE ARE, HOWEVER, MULTIPLE REASONS WHY SUMMARY JUDGEMENT SHOULD BE DENIED.

1. THE STATUTE OF LIMITATIONS SHOULD NOT APPLY IN THE INSTANT CASE.

WHEN THE PETITIONER INITIALLY FOUND THERE WAS JUST CAUSE TO BELIEVE THE STATE OF UTAH BOARD OF PARDONS HAD VIOLATED PETITIONER'S RIGHTS, THE STATE OF UTAH COURT OF APPEALS HAD PREVIOUSLY HANDED DOWN A DECISION DENYING A PETITIONER'S WRIT OF WHICH WAS CHALLENGING BOARD OF PARDONS' DECISIONS IN A PAROLE ORDER.

IN THAT CASE, CITED AS WHITE V. UTAH STATE BOARD OF PARDONS & JOHN DOES 1-7, MEMBERS, 778 P.2d 20 (UTAH 1989), IT WAS HELD THAT THE COURTS WERE PRECLUDED FROM GRANTING DESIRED RELIEF TO THE PETITIONER BECAUSE IT DID NOT HAVE THE AUTHORITY TO COMPEL THE BOARD OF PARDONS TO CORRECT OR AMEND A PAROLE ORDER, AS THE STATUTE (U.C.A. 1953, 77-27-5(3)) HAD PROVIDED, IN PART, THAT,

"THE DETERMINATIONS & DECISIONS OF THE BOARD OF PARDONS IN CASES INVOLVING APPROVAL OR DENIAL OF ANY ACTION, OF PAROLES, PARDONS OR TERMINATIONS OF SENTENCE ARE FINAL & ARE NOT SUBJECT TO JUDICIAL REVIEW."

THEREFORE, PETITIONER DID NOT FEEL THERE WERE ANY OUTLETS TO WHICH GRIEVANCES COULD SUCCESSFULLY BE REDRESSED, BUT RATHER ANY ATTEMPTS MIGHT BE DISMISSED, PURSUANT TO THE ABOVE-LISTED STATUTE, AS WAS THE ABOVE CASE IN WHICH THE PETITIONER (WHITE) SOUGHT JUDICIAL RELIEF.

WHEN THE PETITIONER FOUND THAT THE UTAH SUPREME COURT HAD DISAGREED WITH THE DETERMINATION THAT THE STATE OF UTAH BOARD OF PARDONS WAS NOT SUBJECT TO JUDICIAL REVIEW, THE PETITIONER NOTIFIED THE PRISON'S CONTRACT ATTORNEYS THAT PETITIONER WISHED TO FILE FOR RELIEF PURSUANT TO FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991). IN TURN, THE PRISON'S CONTRACT ATTORNEYS SUBSEQUENTLY FORWARDED A REQUEST FOR THE BASIS OF THE BOARD OF PARDONS' DECISIONS TO BOARD CHAIRMAN H.L. (PETE) HAUN OF WHICH WAS DATED MAY 23, 1991, EXACTLY FOURTEEN DAYS AFTER THE DECISION WAS MADE TO RESCIND PETITIONER'S MAY 14, 1991, PAROLE DATE.

PURSUANT TO RULE 655-303 OF THE BOARD OF PARDONS' POLICY IN THE UTAH ADMINISTRATIVE CODE BOOK, PETITIONER WAS ENTITLED TO SOME FORM OF INFORMATION AS TO THE DECISIONS OF THE BOARD OF PARDONS, HOWEVER, NOT ONLY WAS THIS REQUEST FOR INFORMATION NOT HONORED, BUT NEITHER DID IT EVER RECEIVE A RESPONSE. LIKEWISE, A SECOND LETTER OF REQUEST FOR INFORMATION NEVER RECEIVED A RESPONSE FROM CHAIRMAN HAUN. IN FACT, IT IS EVIDENT THAT THE BOARD OF PARDONS DID NOT RESPOND UNTIL AFTER THE ATTORNEY GENERAL'S OFFICE WAS SERVED, BY MAIL, WITH A COPY OF THE PETITION IN THIS MATTER & ORDERED TO RESPOND ACCORDINGLY.

THAT CHAIRMAN HAUN BE PROMPT IN RESPONDING TO THE PETITIONER'S REQUEST FOR INFORMATION, WAS AN ESSENTIAL FACTOR, SINCE THE PETITIONER HAD NO OTHER MEANS OF AFFIXING OR EXPLORING POTENTIAL LIABILITY WITHIN THE STATUTORY PERIOD. IT WAS ALSO IMPERATIVE FOR CHAIRMAN HAUN TO RESPOND PROMPTLY SINCE THE STATUTE OF LIMITATIONS BEGAN TO RUN FROM THE FIRST MOMENT PETITIONER "KNEW" A VIOLATION HAD DEFINITELY OCCURRED, WHICH IN THIS CASE WAS NOT DETERMINED UNTIL AFTER THE UTAH SUPREME COURT HAD DECIDED FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991), & NOT FROM THE ACTUAL DATE OF THE PAROLE GRANT HEARING.

THIS CONCEPT IS KNOWN AS THE "DISCOVERY RULE" & WAS RECENTLY ADDRESSED & ACKNOWLEDGED IN THE CASE OF MC HENRY V. UTAH VALLEY HOSPITAL, 724 F. Supp. 835 (DIST. OF UTAH 1989) & IN THE CASE OF BECTON DICKINSON & COMPANY V. REESE, 668 P.2d 1254 (UTAH 1983).

ALTHOUGH MERE IGNORANCE OF THE STATUTE OF LIMITATIONS IS INSUFFICIENT TO PREVENT THE RUNNING OF THE STATUTE, CERTAIN EXCEPTIONAL CIRCUMSTANCES "JUSTIFY APPLICATION OF THE DISCOVERY RULE, BECAUSE PLAINTIFFS HAD NO ALTERNATIVE OTHER THAN TO BRING THEIR ACTION AFTER THE STATUTORY LIMITATION PERIOD HAD EXPIRED." MC HENRY, 724 F. Supp. at 838.

MANY COURTS HAVE RECOGNIZED SITUATIONS WHERE THEY APPLY THE DISCOVERY RULE EVEN THOUGH IT IS BEYOND THE STATUTE OF LIMITATIONS. SEE MAUGHN V. S. W. SERVICING, 758 F.2d 1381 (10TH CIR. 1985) (RADIATION VICTIMS WHOSE SYMPTOMS BECAME KNOWN YEARS LATER); ALSO MYERS V. McDONALD, 635 P.2d 84 (UTAH 1981); & CHRISTENSEN V. REESE, 436 P.2d 435 (UTAH 1968).

FURTHERMORE, IT SHOULD BE ARGUABLE WHETHER PETITIONER, IN FACT
HAD "ADEQUATE, EFFECTIVE & MEANINGFUL" ACCESS TO THE COURTS, SINCE THERE WAS
LITIGATION, AT THE TIME WHEN PETITIONER FOUND A VIOLATION HAD DEFINITELY
OCCURRED, IN WHICH THE KEY ISSUE WAS WHETHER OR NOT THE PRISON'S CONTRACT
ATTORNEYS PROVIDE "ADEQUATE, EFFECTIVE & MEANINGFUL" ACCESS TO THE COURTS
FOR PRISONERS OF THE UTAH STATE PRISON. SEE CARPER, ET AL., V. DELAND, ET AL.,
90-CV-842 G, IN THE U.S. DIST. COURT OF UTAH, CENTRAL DIVISION.
* * *

2. THERE IS A CONSTITUTIONAL RIGHT TO APPOINTED COUNSEL AT ALL
PAROLE GRANT, RESCISSION & REVOCATION HEARINGS WHERE THE PAROLEE
OR PAROLEE-TO-BE IS INDIGENT.

RESPONDENT CLAIMS THAT "ABBOTT ALSO ASSERTS A VIOLATION OF
HIS RIGHTS BECAUSE NO ATTORNEY WAS APPOINTED AT STATE EXPENSE TO ASSIST
HIM AT THE PAROLE RESCISSION HEARINGS," HOWEVER, NOWHERE IN PETITIONER'S
PLEADINGS CAN THIS CLAIM BE FOUND. IN FACT, IN PETITIONER'S "RESPONSE TO
DEFENDANTS' MOTION TO DISMISS", FILED IN THIS MATTER ON APRIL 06, 1992,
PETITIONER EXPRESSLY STATED,

"BECAUSE COUNSEL IS REQUIRED AT THE TIME OF SENTENCING IN
UTAH & GUARANTEED BY BOTH THE UNITED STATES & UTAH CONSTITUTIONS,
COUNSEL IS ALSO REQUIRED AT HEARINGS BEFORE THE BOARD OF PARDONS,
"WHICH PERFORMS A FUNCTION ANALOGOUS TO THAT OF THE TRIAL JUDGE
IN JURISDICTIONS THAT HAVE A DETERMINATE SENTENCING SCHEME,"
AS DETERMINED BY FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734
(UTAH 1991). THUS, IT IS THE RESPONSIBILITY OF THE BOARD OF
PARDONS TO INFORM PRISONERS THAT THEY MAY EXERCISE THIS
RIGHT & THEY CAN BE APPOINTED COUNSEL IF THE PRISONER
CAN NOT AFFORD ONE, WHICH THE BOARD OF PARDONS FAILED
TO DO IN THE HEARINGS INVOLVING THIS PLAINTIFF.

THIS IS AN INTERPRETATION OF JUST WHAT FOOTE V. UTAH BOARD OF PARDONS MEANS WHEN IT HOLDS, IN PART, THAT,

"THERE IS NO QUESTION THAT DUE PROCESS PROTECTIONS APPLY AT THE TIME OF SENTENCING BY THE TRIAL JUDGE. THE UTAH CONSTITUTION CERTAINLY REQUIRES THAT EQUIVALENT DUE PROCESS PROTECTION BE AFFORDED WHEN THE BOARD OF PARDONS DETERMINES THE ACTUAL NUMBER OF YEARS A DEFENDANT IS TO SERVE." FOOTE V. UTAH Bd. OF PARDONS, 808 P.2d 734, AT 735 (UTAH 1991). (EMPHASIS ADDED)

WHETHER A PRISONER APPEARS BEFORE THE BOARD OF PARDONS FOR THE PURPOSE OF AN EVIDENTIARY HEARING, PAROLE GRANT, PAROLE RESCISSION OR PAROLE REVOCATION HEARING, THERE ARE ALWAYS TWO MAJOR ISSUES TO BE DISCUSSED, AS WELL AS OTHER ISSUES. THOSE TWO MAJOR ISSUES ARE: 1) IS THE PRISONER, DUE, OR WARRANTING BEHAVIOR-WISE, FOR A PAROLE DATE?; & 2) IF NOT, HOW LONG IS AN APPROPRIATE SPAN OF TIME FOR THE PRISONER TO BE INCARCERATED WHILE THAT PRISONER EARNS THE RIGHT TO A PAROLE DATE?

IN SO ADDRESSING THESE ISSUES, THE BOARD OF PARDONS IS DETERMINING "THE ACTUAL NUMBER OF YEARS" A PRISONER MUST SERVE & THEREFORE, "EQUIVALENT DUE PROCESS PROTECTION" MUST BE AFFORDED DURING THESE HEARINGS, AS PROVIDED BY FOOTE V. UTAH Bd. OF PARDONS, 808 P.2d 734 (UTAH 1991).

IT IS OBVIOUS THAT THOSE RIGHTS SHOULD INCLUDE WRITTEN NOTICE OF ANY & ALL CLAIMED VIOLATIONS, DISCLOSURE EVIDENCE AGAINST THE PRISONER, THE OPPORTUNITY TO BE HEARD IN PERSON & TO PRESENT WITNESSES & DOCUMENTARY EVIDENCE, THE RIGHT TO CONFRONT & CROSS-EXAMINE ADVERSE WITNESSES (UNLESS GOOD CAUSE IS FOUND FOR NOT ALLOWING CONFRONTATION), THE RIGHT TO AN IMPARTIAL HEARING, A WRITTEN STATEMENT BY THE FACT-FINDERS AS TO THE EVIDENCE RELIED UPON & REASONS FOR THE DECISIONS THAT ARE MADE & THE RIGHT TO COUNSEL. TO REACH THIS INTERPRETATION REQUIRES ONE TO THOROUGHLY EXAMINE THE DIFFERENCE BETWEEN WHAT IS TERMED A "PRESUMPTIVE" PAROLE DATE & AN ACTUAL PAROLE RELEASE DATE.

TO MAKE THESE DISTINCTIONS PETITIONER WILL USE THE PAROLE DATES MENTIONED IN THESE PLEADINGS.

PETITIONER WILL ASSUME THAT THERE WAS A SIXTY (60) DAY REVIEW ORDERED PRIOR TO PETITIONER'S MARCH 12, 1991, PAROLE RELEASE DATE. THAT BEING THE CASE, THE MARCH 12, 1991 PAROLE RELEASE DATE WOULD NOT HAVE BEEN TERMED "ACTUAL" BECAUSE IT WAS ORDERED TO BE REVIEWED, & MODIFIED PRIOR TO ITS IMPLEMENTATION. THEREFORE, IT WAS ONLY A "PRESUMPTIVE" DATE.

HOWEVER, AS EXHIBITS EIGHT (8) "D" & NINE (9) "D" SHOW, BOTH THE MAY 14, 1991 & OCTOBER 08, 1991 PAROLE RELEASE DATES WERE "ACTUAL" RELEASE DATES THAT HAD ALREADY BEEN GIVEN WITH NO REVIEW OR MODIFICATION ORDERS ATTACHED & IN ORDER FOR THE BOARD OF PARDONS TO CONSIDER ANY RESCISSIONS OF THOSE "ACTUAL" PAROLE RELEASE DATES, PETITIONER HAD TO BE FOUND GUILTY OF SPECIFIC WRONGDOINGS OR CONFRONTED WITH SPECIFIC ADVERSE INFORMATION.

AT LEAST ONE COURT HAS ADDRESSED & ACKNOWLEDGED THIS ISSUE OF DISTINCTION & HAS ACCORDINGLY ORDERED FOR REPRESENTATION OF COUNSEL AT PAROLE "RESCISSION" HEARINGS. GREEN V. McCALL, 822 F.2d 284 (2ND CIR. 1987).

THE RESPONDENT HAS STATED "THERE IS NO CONSTITUTIONAL RIGHT TO APPOINTED COUNSEL AT A PAROLE RESCISSION HEARING." (EMPHASIS ADDED).

RESPONDENT'S FIRST CLAIM WAS THERE IS NO RIGHT TO COUNSEL AT ALL & NOW THE RESPONDENT ONLY CLAIMS THERE IS NO RIGHT TO "APPOINTED COUNSEL." HOWEVER, THIS ISSUE HAS ALREADY BEEN DISCUSSED BEFORE & IT WAS HELD THAT IT IS NOT RIGHT TO DISCRIMINATE AGAINST A PERSON BECAUSE THE PERSON IS POOR. SEE DOUGLAS V. CALIFORNIA, 372 U.S. 353 (1963) (ALTHOUGH APPELLATE REVIEW NOT REQUIRED BY CONSTITUTION, STATE CANNOT DISCRIMINATE AGAINST INDIGENT DEFENDANT WHEN LAW PROVIDES FOR FIRST APPEAL AS OF RIGHT; "THERE CAN BE NO EQUAL JUSTICE WHERE THE KIND OF APPEAL A MAN ENJOYS DEPENDS ON THE AMOUNT OF MONEY HE HAS"). QUOTING GRIFFIN V. ILLINOIS, 351 U.S. 12 (1956); SEE ALSO PENSON V. OHIO, 488 U.S. 75 (1988); GIDEON V. WAINWRIGHT, 372 U.S. 335 (1963); & JOHNSON V. ZEBBST, 304 U.S. 458 (1938). ACCORDINGLY, COUNSEL IS REQUIRED & IS THEREFORE REQUIRED TO BE APPOINTED FOR INDIGENT PRISONERS.

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CONCLUSION

THE PETITION & SUCCEEDING PLEADINGS THEREAFTER, ALL DESCRIBE CONSTITUTIONAL VIOLATIONS. PETITIONER, WHILE CLEARLY UNDER STRESS & AFTER BECOMING FRUSTRATED WITH THE PREVIOUS RESCISSIONS OF HIS PAROLE DATES ASKED FOR A TERMINATION OR EXPIRATION DATE. SINCE PETITIONER WAS QUITE FRUSTRATED, IT IS OBVIOUS THE PETITIONER WAS NOT ABLE TO PRESENT HIS CASE TO THE BOARD OF PARDONS IN AN ORDERLY MANNER, NOR WAS PETITIONER ABLE TO DELINEATE THE ISSUES BEFORE THE BOARD OF PARDONS. THESE ISSUES COULD HAVE BEEN PROPERLY PRESENTED BY COUNSEL, WHETHER SELF-RETAINED OR APPOINTED, SINCE COUNSEL WOULD HAVE BEEN ABLE TO REFRAIN FROM BECOMING NOTICABLY FRUSTRATED. SIMPLY BECAUSE COUNSEL WOULD HAVE ONLY A PROFESSIONAL ATTACHMENT TO THE RESCISSION HEARINGS, WHEREAS THE PETITIONER HAS ALSO EMOTIONAL ATTACHMENTS.

THE FACT THAT PAUL LARSEN HAD HIS MIND ALREADY SET TO GIVE PETITIONER A MINIMUM OF FOUR MONTHS SHOWS THE ISSUE WAS NOT WHETHER THERE WAS CAUSE TO UPHOLD THE RESCISSION, BUT RATHER TO DETERMINE WHEN & IF THE PETITIONER WOULD BE GRANTED PAROLE. NOWHERE ON ANY OF THE DOCUMENTS SUBMITTED BY THE PETITIONER OR RESPONDENT ARE THE WORDS "NOTICE OF INTENT TO RESCIND PENDING PAROLE DATE" FOUND. ONLY THE FOLLOWING IS SEEN;

"THE ABOVE-ENTITLED MATTER CAME ON FOR A HEARING BEFORE THE UTAH STATE BOARD OF PARDONS ON THE 0000 DAY OF 000000, 1991, FOR CONSIDERATION 00000 AFTER THE STATEMENT OF 0000 AND THE FOLLOWING WITNESSES 00000 AND GOOD CAUSE APPEARING, THE BOARD MADE THE FOLLOWING DECISION AND ORDER 0000 (EMPHASIS ADDED).

THERE ARE NO TWO WAYS OF INTERPRETING OR "CHARACTERIZING" THE MEANING OF THE ABOVE-MENTIONED STATEMENT, AS IT IMPLIES EXACTLY WHAT PETITIONER ASSERTS, NOT WHAT RESPONDENT ATTEMPTS TO PERSUADE THE COURT INTO BELIEVING.

CONCLUSION

NOWHERE WAS IT SAID, NOR CAN IT BE FOUND THAT IT WAS SAID "MR. ABBOTT, CAN YOU GIVE ANY REASON WHY YOUR PAROLE DATE SHOULD NOT BE RESCINDED AT THIS TIME?" CONTRARY TO THE RESPONDENT'S CLAIMS, THERE WERE NO RESCISSION HEARINGS, ONLY PAROLE GRANT HEARINGS. THERE WAS NOT EVEN NOTICE OF INTENT, ONLY NOTICE THAT RESCISSION HAD OCCURRED.

THE RESPONDENT STATES THAT "THE REMEDY FOR A DUE PROCESS VIOLATION WOULD BE TO GIVE ABBOTT A NEW HEARING BEFORE THE BOARD OF PARDONS. BUT ABBOTT HAD SUCH A HEARING ON AUGUST 22, 1991." IS THIS TO SAY THE BOARD OF PARDONS USED A PROPOSED RESCISSION HEARING THAT WAS IN ALL ACTUALITY A REPLACEMENT HEARING FOR VIOLATING PETITIONER'S DUE PROCESS RIGHTS?

PETITIONER, IN FACT, MADE OBJECTIONS KNOWN TO BOARD CHAIRMAN H. L. (PETE) HAUN, WHOM SUBSEQUENTLY DENIED PETITIONER'S REQUEST FOR A CHANGE & OVERRULED PETITIONER'S OBJECTION.

THERE IS ALSO STILL THE ISSUE OF THE FALSE INFORMATION OF WHICH MAY HAVE PLAYED A PART IN THE BOARD'S DECISIONS.

THE NATURE OF THE DECISION TO BE MADE AT A PAROLE RESCISSION HEARING IS SIMILAR TO A PAROLE REVOCATION DECISION, BECAUSE THE CONDITIONS IMPEDING A PAROLEE-TO-BE'S ACHIEVEMENT OF ACTUAL LIBERTY ARE SPECIFIC & FACT-BOUND. THUS, PETITIONER ASKS, IS FALSE-INFORMATION BOUND BY FACTS?

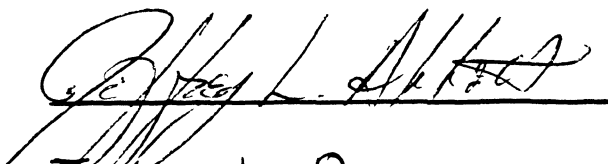
FINALLY, ALTHOUGH FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991) DID NOT OUTLINE THE DUE PROCESS THAT MUST BE AFFORDED IT DID HOLD THAT THE BOARD OF PARDONS "PERFORMS A FUNCTION ANALOGOUS TO THAT OF A TRIAL JUDGE" & THAT "EQUIVALENT DUE PROCESS" IS REQUIRED BY THE UTAH CONSTITUTION. FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d AT 735.

THERE IS NO QUESTION AS TO WHAT ONE'S RIGHTS ARE BEFORE A TRIAL JUDGE, SO THERE SHOULD BE NO QUESTION AS TO WHAT DUE PROCESS RIGHTS ONE HAS WHEN APPEARING BEFORE THE BOARD OF PARDONS. THUS, ANY DECISIONS MADE IN THIS MATTER, SHOULD NOT BE OF DISMISSAL OF PETITIONER'S CLAIMS, BECAUSE THEY ARE NOT "MOOT" BUT QUITE COLORABLE.

FOR THESE REASONS, PETITIONER OPPOSES SUMMARY JUDGEMENT & REQUESTS THIS HONORABLE COURT TO ALLOW THIS ACTION TO CONTINUE IT'S PROPER COURSE, AFTER WHICH THE MATTERS & THE RECORD CAN BE TAKEN UNDER ADVISEMENT & HABEAS RELIEF POSSIBLY GRANTED FOR PETITIONER.

DATED THIS 11th DAY OF JUNE, 1992.

RESPECTFULLY SUBMITTED,



JEFFREY L. ABBOTT
PETITIONER & COUNSEL PRO-SE

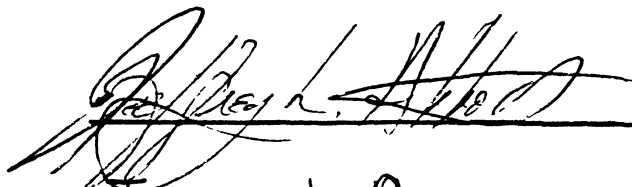
* CERTIFICATE OF MAILING *

I, HEREBY CERTIFY THAT I CAUSED TO BE MAILED A TRUE & CORRECT COPY, POSTAGE-PRE-PAID, OF THE PETITIONER'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT TO;

STEVEN MORRISSETT
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR RESPONDENT
SUITE 204
6100 SOUTH 300 EAST
SALT LAKE CITY, UTAH

84107

DATED THIS 11th DAY OF JUNE, 1992.



JEFFREY L. ABBOTT
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