

1992

Labrum v. Utah State Board : Brief of Appellant

Utah Supreme Court

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DOCKET NO. 920222

BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

ROBERT WILLIAM LABRUM,

Petitioner,

vs.

THE UTAH STATE BOARD OF
PARDONS, H. L. HAUN,
Chairman of the Utah State Board
of Pardons, and TOMMY HOUSE,
Warden, Utah State Prison, Draper
Facility,

No. 920222

Respondents.

PETITION FOR EXTRAORDINARY WRIT

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FILED

MAY 1 1992

CLERK SUPREME COURT,
UTAH

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Attorneys for Petitioner

- Exhibit No. 7 Order of Board of Pardons, re: November 20, 1987 parole determination hearing; Time Matrix
- Exhibit No. 8 October 15, 1990 Request for Special Attention Hearing; Order of Board of Pardons, re: denial of special attention hearing
- Exhibit No. 9 May 7, 1991 Letter from Robert Labrum, re: request for redetermination hearing and application; October 22, 1991 letter from Petitioner's counsel, re: request for rehearing; May 13, 1991 letter from Board of Pardons, re: denial of request for rehearing; Order from Board of Pardons, re: denial of redetermination hearing
- Exhibit No. 10 January 21, 1992 letter from Board of Pardons
- Exhibit No. 11 March 11, 1992 letter from Petitioner's counsel, re: request for disclosure of file; release of confidential information from Robert Labrum; April 15, 1992 letter from Board of Pardons, re: response to request for disclosure of file

Utah Code Ann. § 77-27-5 (1990)	4,5,6,7,8,9
Utah Admin. R. 655 - 202 (1987)	8
Utah Admin. R. 655 - 203 (1988)	10
Utah Admin. R. 655 - 301 (1987)	10
Utah Admin. R. 655 - 303 (1987)	11
Utah Admin. R. 655 - 308 (1987)	10
Utah Admin. R. 655 - 311 (1988)	4
Fed. R. Crim. P. 32	9,10,12,18
Utah R. Civ. P. 65(B)	5
Utah R. App. P. 19.....	5

Supplemental authorities.

3 R. LaFave & J. Israel, Criminal Procedure (1984)	13,19
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Corrections and Board of Pardons, to withhold information used against Petitioner at his parole hearings. Because this petition challenges a procedure of the Board of Pardons, this petition may affect all inmates appearing before the Board of Pardons as well as prison officials.

STATEMENT OF THE ISSUES AND RELIEF SOUGHT

The issue in this case is as follows:

Did the Board of Pardons deny Petitioner due process in violation of article I, section 7 of the Utah Constitution when it failed to disclose its entire file on Petitioner, or at least a summary of the file's contents, to Petitioner sufficiently before Petitioner's parole determination hearing to enable Petitioner to prepare for the hearing?

Petitioner requests the following relief:

1. For an order from this Court directing the Board of Pardons to disclose its entire file on Petitioner or at least a summary of the file's contents to Petitioner before Petitioner's parole determination hearing in a timely manner that affords Petitioner a reasonable chance to prepare for the hearing;
2. For an order from this Court directing the Board of Pardons to give Petitioner a reasonable opportunity to rebut any misinformation in its file that the Board earlier relied upon; and
3. For an order from this Court directing the Board of Pardons to vacate its determination on Petitioner's parole and rehear Petitioner's request for parole.

STATEMENT OF FACTS

1. In March, 1987, Petitioner's plea of guilty to the offense of manslaughter, a second-degree felony, was accepted before the Honorable J. Philip Eves, Fifth District Judge in and for Washington County, State of Utah. (See Exhibit No. 1).

2. On May 20 and 21, 1987, Petitioner appeared before the Honorable J. Philip Eves for sentencing. After a lengthy sentencing hearing in which Judge Eves speci-

8. On May 7, 1991, Petitioner requested the Board of Pardons to rehear his case. A similar request was made by Mr. Labrum's counsel on October 22, 1991. These requests were both denied. (*See* Exhibit No. 9).

9. Further, in response to counsel's request for information from the Board, the Board sent a letter to Petitioner's counsel dated January 21, 1992, in which it refused to provide any documents to Petitioner except those documents classified as public documents. (*See* Exhibit No. 10). At that time, no documents, other than the January 21, 1992 letter itself, were sent to Petitioner or Petitioner's counsel. (*See* Exhibit No. 5, Affidavit of Corrine Labrum, para. 8).

10. Finally, Petitioner's counsel informed the Board of Pardons that Petitioner was seeking an extraordinary writ to compel the Board of Pardons to disclose its entire file on Petitioner. In anticipation of filing the writ, Petitioner's counsel again requested the Board's entire file by letter dated March 11, 1992. In response, the Board sent copies of the numerous petitions from the public and community, newspaper clippings in its file, letters from Petitioner's family, friends and legal counsel, and some internal reports from the Board. The Board, however, sent no post-sentence or investigative reports, letters from the victim's family or any other helpful information to assist Petitioner in rebutting the accusations made against him as are more particularly set forth in the Argument, Part II, of this Petition. (*See* Exhibit No. 11; *see also* Exhibit No. 5, Affidavit of Corrine Labrum, paras. 9 and 10).

STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE

Petitioner is entitled to a hearing to determine his date of parole. *See* Utah Code Ann. § 77-27-5(2) (1990); Utah Admin. R. 655-311 (1988); *Cf.* Utah Const. art. VII, § 12. The fact that he is entitled to a hearing to determine his date of parole implies that due process protections apply at the parole hearing. *Footte v. Utah Bd. of Pardons*, 808 P.2 734, 735 (Utah 1991). Indeed, though to a lesser degree due to his incarceration, Petitioner has a liberty interest protected under article I, section 7 of

State Bd. of Pardons, wherein this Court, though finding that an inmate is entitled to due process protections under the Utah Constitution at the time of his parole determination hearing, left open the question of what protections and procedures are required to satisfy the Utah Constitution's due process clause.

Second, since a ruling by a lower court must ultimately be considered by this Court, this Court's hearing the writ in the first instance is the most expeditious means of establishing case law affecting hundreds of inmates coming up for parole. Petitioner and other inmates in his situation are entitled to have the scope of this due process right finally determined as quickly as possible.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

POINT I

PETITIONER HAS A LIBERTY INTEREST IN HIS PAROLE RELEASE SECURED BY THE UTAH CONSTITUTION, AND THE PROCEDURES USED BY THE UTAH BOARD OF PARDONS TO DETERMINE AN INMATE'S PAROLE DATE ARE SUBJECT TO JUDICIAL REVIEW FOR FAIRNESS AND DUE PROCESS.

In *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex*, 442 U.S. 1, 60 L.Ed. 2d 668 (1979), the U.S. Supreme Court found that no federally protected liberty interest in parole release exists unless the state's parole board is limited in its ability to determine when a prisoner will be paroled. *Id.* at 14-16. Prisoners in Utah, then, have no federally protected liberty interest in parole release because the Utah Board of Pardons' discretion in determining when an inmate will be paroled is complete. Utah Code Ann. § 77-27-5(3) (1990). The United States Constitution demands that no particular process of fairness be followed when the Utah Board of Pardons determines a prisoner's parole date.

Notwithstanding, in *Foote v. Utah Bd. of Pardons*, 808 P.2d 734 (Utah 1991), this Court, applying the Utah Constitution's due process clause, recognized that in spite of *Greenholtz*, prisoners up for parole had a protectable liberty interest in

inmate's parole by hearing after reasonable notice to the inmate. *See also* Utah Admin. R. 655-202 (1987). The fact that a hearing is required suggests that some notions of fairness be followed. If a prisoner has no liberty interest in parole release, there is no reason for a hearing and notice. No hearing or due process protection is afforded an inmate's mere hope of release. *Greenholtz*, 442 U.S. at 11.

Further, a prisoner's interest in parole release is the essential equivalent of his interest in commutation of punishment. In both cases, the prisoner is seeking a lessening of his time spent in prison. Clearly, a prisoner's right to seek commutation of punishment is a right secured by the Utah Constitution -- it is a liberty interest that cannot be granted absent "full hearing before the Board [of Pardons], in open session, after previous notice of the time and place of such hearing has been given." Utah Const. art. VII, § 12. Similarly, a prisoner is entitled to hearing and notice before the Board of Pardons determines his date of parole, which hearing is meaningless unless this Court recognizes a prisoner's liberty interest in parole release.

Mere recognition of a prisoner's liberty interest in parole release, however, is not the end of this Court's inquiry. Petitioner asks this Court to address the unanswered question in *Footnote*: namely, what additional procedural fairness is due at Petitioner's parole determination hearing than what is already provided, if anything.

Without question, this Court is free to review the procedural due process protections followed by the Utah Board of Pardons notwithstanding Utah Code Ann. § 77-27-5(3) (1990). That statute provides that the "[d]ecisions of the Board of Pardons in cases of parolees . . . are not subject to judicial review." *Id.* And indeed, were Petitioner challenging the authority of the Board of Pardons "to extend his parole," no judicial review would be available. *White v. Utah State Board of Pardons*, 787 P.2d 20, 21 (Utah App. 1989). Yet in this case, Petitioner challenges the

promise of confidentiality, then in lieu of disclosing the hearsay, the judge must still summarize it and disclose it to the defendant. Fed. R. Crim. P. 32(c)(3)(B) (Supp. 1991), *compare*, 18 U.S.C. § 4208(b) and (c); *Anderson v. United States Parole Commission*, 793 F.2d 1136, 1137, 1138 (9th Cir. 1986); *Pulver v. Brennan*, 912 F.2d 894, 896 n. 5 (7th Cir. 1990) ("18 U.S.C. § 4208(b) states that '[a]t least thirty days prior to any parole determination proceeding, the prisoner shall be provided with . . . reasonable access to a report or other document to be used by the Commission in making its determination.' Subsection (c) provides that any material withheld from disclosure is to be summarized for the inmate.").

In Utah, a prisoner has the right to counsel at his parole determination hearing, though prisoner's counsel is not able to address the Board of Pardons at the hearing. Utah Admin. R. 655-308 (1988). Though it is not the federal equivalent, a prisoner's right to representation at the Utah sentencing hearing or the parole determination hearing is largely recognized by the Utah Legislature, and Petitioner, at this juncture, has no objection to the State's current arrangements on representation.¹ Likewise, as at the federal sentencing hearing, Utah law provides a prisoner an opportunity to "speak on his own behalf, present documents, [and] ask and answer questions." Utah Admin. R. 655-301 (1987). The prisoner at the Utah sentencing hearing or parole determination hearing may offer evidence in mitigation similar to what is done in the federal sentencing hearing although there are noteworthy differences.² Petitioner strongly objects, however, to the Board of Pardons' procedure in refusing to disclose its entire file. Unlike disclosure of

¹ Naturally, if the Board's file on Petitioner discloses Petitioner's involvement in other crimes that require evidence in rebuttal, Petitioner asks that he be given the assistance of counsel to meet his burden of proof. Petitioner asks this Court to provide guidance on this issue though the issue is not fully ripe due to the Board's failure to disclose its file and Petitioner's resultant failure to learn of any evidence requiring rebuttal.

² For example, unlike the defendant at the federal sentencing hearing, the prisoner at the Utah parole determination hearing is not given the opportunity to produce witnesses in his own behalf. This though the victim is able to appear and testify. *See* Utah Admin. R. 655-203-2 (1988).

Procedure mandate full disclosure of that evidence or at least a summary of it. Rule 32 of the Federal Rules of Criminal Procedure provides in relevant part:

- A. At least 10 days before imposing sentence, unless this minimum period is waived by the defendant, the court shall provide the defendant and the defendant's counsel with a copy of the report of the presentence investigation, including the information required by subdivision (c)(2) but not including any final recommendation as to sentence, *and not to the extent that in the opinion of the court the report contains diagnostic opinions, which if disclosed, might seriously disrupt a program of rehabilitation; or sources of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons.* The court shall afford the defendant and the defendant's counsel an opportunity to comment on the report and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it.
- B. If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available *shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant and the defendant's counsel an opportunity to comment thereon.* The statement may be made to the parties in camera. (emphasis supplied).

Fed. R. Crim. P. 32(c) (Supp. 1991). The Federal courts recognize that "[t]he defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence even if he may have no right to object to a particular result in the sentencing process." *Gardner*, 430 U.S. at 358. "Assurances of secrecy are conducive to the transmission of confidences which may bear no closer relation to the fact than the average rumor or item of gossip, and may imply a pledge not to attempt independent verification of the information received." *Id.* at 359. The trend in federal courts as well as in many state courts is "in the direction of

on the alleged sex crimes. (*See* Exhibit No. 5, Affidavit of Corrine Labrum, paras. 8-10; *see also* Exhibit Nos. 10 and 11). Given the paucity of information disclosed, it is impossible for Petitioner to defend himself against the allegations made and rebut the same. The Board's reliance on undisclosed hearsay statements regarding Petitioner's connection with violent sex crimes denies Petitioner due process under article I, section 7 of the Utah Constitution.

Second, the Board relies upon reports containing statements from Petitioner's "friends" in which Petitioner allegedly fantasized violent sexual crimes toward women or in which Petitioner allegedly admitted to killing several people for which he was never tried. (*See* Exhibit No. 6 at 12, lines 23-25; 13, lines 1-6; 27, lines 24, 25; 28, lines 1-25). Again the Board fails to disclose specifics of the crimes. The Board does not identify the friends relied upon in the reports, the victims of the crimes, or when and where the crimes took place. It never discloses when or where Petitioner allegedly admitted to participation in those crimes, and the Board still refuses disclosure of any of this information. (*See* Exhibit No. 5, Affidavit of Corrine Labrum, paras. 8-10; *see also* Exhibit Nos. 10 and 11).

Third, the Board relied upon reports in which friends characterized Petitioner's drug habits as only a user of marijuana, drawing into question Petitioner's defense that he was heavily involved in drugs at the time, that he was under the influence of cocaine and could thus not recall specifics of the murder. (*See* Exhibit No. 6 at 14, lines 8-21; 22, lines 1-5). Again the Board does not disclose the identity of Petitioner's friends. Neither does it provide background information on the friends. The Board further does not disclose to Petitioner when his alleged admissions to these friends took place. Petitioner essentially has no way to test the reliability and veracity of the statements made.

Fourth, the Board relied upon several petitions to keep Petitioner incarcerated, at least one of which containing nearly 4,000 signatures. (*See* Exhibit No. 6

Finally, the Board referred to several recommendations that Petitioner expire his entire sentence or that Petitioner serve at least ten years of the sentence. These recommendations were made though the normal sentence for Petitioner's crime is 36 months. (See Exhibit No. 6 at 30, lines 1-10; *see also* Exhibit No. 7). Petitioner is entitled to know who gave those recommendations and what information those persons relied upon in making those recommendations. To date, this information has never been disclosed to Petitioner, counsel or family. (See Exhibit No. 5, Affidavit of Corrine Labrum, paras. 8-10; *see also* Exhibit Nos. 10, 11).

Under the federal sentencing system, when the defendant claims that his due process rights were violated by the sentencing court's reliance on false or unreliable information, the defendant "must make a showing of two elements: (1) that the challenged evidence is materially false or unreliable, and (2) that it actually served as the basis for the sentence." *Reme*, 738 P.2d at 1167; *see also Giltner*, 889 F.2d at 1107; *Robinson*, 898 F.2d at 1116. Petitioner can satisfy the second prong of that test. The allegations the Parole Board made and the information it referred to as cited in the transcript of the parole determination hearing establishes that the Board relied upon the information to deny Petitioner parole. This fact is further buttressed by the Parole Board's sentencing Petitioner to incarceration for a period of five times that normally imposed on inmates as suggest by the Board's own sentencing matrix. (See Exhibit No. 7). Petitioner is totally unable, however, to meet the burden required in the first prong of that test and demonstrate that the evidence is materially false or unreliable because the accusations brought against him are so vague and unclear that they disable Petitioner from preparing a rebuttal. Under the federal sentencing system, the reliability of the hearsay evidence used at the sentencing hearing is commensurate with the length of the sentence imposed. *Kikumura*, 918 F.2d at 1100, 1101 (defendant's sentence increased from 30 months to 30 years); *Reme*, 738 F.2d at 1166-1169 (defendant's sentence increased from two years

In addition, this Court must provide the Board guidelines on what is necessary to adequately summarize investigative reports about specific sex crimes. The Board's reliance upon confidentiality as a basis for nondisclosure is misplaced. The Board is sufficiently able to disclose specifics about the crimes Petitioner is allegedly connected with as outlined in the post-sentence and other investigative reports so as to enable Petitioner to prepare a rebuttal without disclosing the identity of the sources of that information. The concern for confidentiality is the very reason why the Federal Rules of Criminal Procedure provide for disclosure of a summary of the evidence. *See* Fed. R. Crim. P. 32(c)(3) (supp. 1991). In addition, many of the bases given in support of nondisclosure because of confidentiality have been re-evaluated.

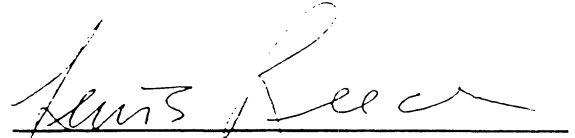
In recent years, there has been a very strong trend in the direction of permitting defendants to have access to most or all of the information set out in the presentence report. One reason for this development, no doubt, is the pro-disclosure attitude reflected in the Supreme Court decisions just discussed. Another has been the growing realization that very serious factual errors can and do find their way into presentence reports and that the consequence in such instances is likely to be an unjustifiably harsh sentence. Still another reason is that the justifications traditionally given for nondisclosure have been found wanting:

First, experience has consistently shown that the problems anticipated from disclosure of the presentence report do not materialize in practice. Empirical studies and the reports of first-hand observers repeatedly agree that confidential sources have not evaporated nor [sic] has serious information loss been encountered. Significant delay or obstructionism has also not accompanied the introduction of such reforms. Indeed, the contrary observation has been made that disclosure permits counsel to focus on the real issues of fact at stake, thereby eliminating the need to discuss extraneous matters or "cover the waterfront" from a fear that some point would otherwise go uncontroverted. . . . Finally, opponents of disclosure have often predicted injury to the relationship between the probation officer and the offender if the presentence report

Pardons in denying his parole.

DATED this 29th day of April, 1992.

SNOW & JENSEN



V. Lowry Snow

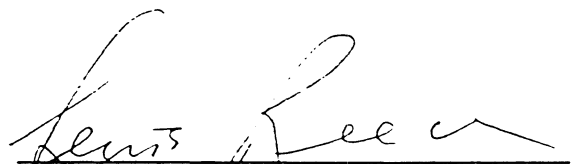
Lewis P. Reece

Attorneys for Petitioner

CERTIFICATE OF MAILING

This is to certify that I caused a true and exact copy of the within and foregoing PETITION FOR EXTRAORDINARY WRIT to be mailed first-class postage prepaid, on the 29th day of April, 1992, to the following:

Paul R. Van Dam
Utah State Attorney General
Lorenzo K. Miller
Deputy Attorney General
236 State Capitol
Salt Lake City, UT 84114



Lewis P. Reece



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IT-152

RULES OF CRIMINAL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

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APPENDIX OF FORMS [Abrogated]

Rule 32. Sentence and judgment

(a) Sentence.

(1) *Imposition of Sentence.* Sentence shall be imposed without unnecessary delay, but the court may, when there is a factor important to the sentencing determination that is not then capable of being resolved, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. Prior to the sentencing hearing, the court shall provide the counsel for the defendant and the attorney for the Government with notice of the probation officer's determination, pursuant to the provisions of subdivision (c)(2)(B), of the sentencing classifications and sentencing guideline range believed to be applicable to the case. At the sentencing hearing, the court shall afford the counsel for the defendant and the attorney for the Government an opportunity to comment upon the probation officer's determination and on other matters relating to the appropriate sentence. Before imposing sentence, the court shall also—

(A) determine that the defendant and defendant's counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

(B) afford counsel for the defendant an opportunity to speak on behalf of the defendant; and

(C) address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence.

The attorney for the Government shall have an equivalent opportunity to speak to the court. Upon a motion that is jointly filed by the defendant and by the attorney for the

Government, the court may hear in camera such a statement by the defendant, counsel for the defendant, or the attorney for the Government

(2) *Notification of Right to Appeal* After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of the defendant's right to appeal including any right to appeal the sentence, and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere, except that the court shall advise the defendant of any right to appeal the sentence. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant

(b) [Unchanged]

(c) *Presentence Investigation.*

(1) *When Made* A probation officer shall make a presentence investigation and report to the court before the imposition of sentence unless the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. 3553, and the court explains this finding on the record

Except with the written consent of the defendant, the report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty

(2) *Report* The report of the presentence investigation shall contain—

(A) information about the history and characteristics of the defendant, including prior criminal record, if any, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant

(B) the classification of the offense and of the defendant under the categories established by the Sentencing Commission pursuant to section 994(a) of title 28, that the probation officer believes to be applicable to the defendant's case, the kinds of sentence and the sentencing range suggested for such a category of offense committed by such a category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and an explanation by the probation officer of any factors that may indicate that a sentence of a different kind or of a different length from one within the applicable guideline would be more appropriate under all the circumstances,

(C) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2),

(D) verified information stated in a nonargumentative style containing an assessment of the financial, social, psychological, and medical impact upon, and cost to, any individual against whom the offense has been committed,

(E) unless the court orders otherwise, information concerning the nature and extent of nonprison programs and resources available for the defendant, and

(F) such other information as may be required by the court

(3) *Disclosure*

(A) At least 10 days before imposing sentence, unless this minimum period is waived by the defendant, the court shall provide the defendant and the defendant's counsel with a copy of the report of the presentence investigation, including the information required by subdivision (c)(2) but not including any final recommendation as to sentence, and not to the extent that in the opinion of the court the report contains diagnostic opinions, which if disclosed, might seriously disrupt a program of rehabilitation, or sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons. The court shall afford the defendant and the defendant's counsel an opportunity to comment on the report and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant and the defendant's counsel an opportunity to comment thereon. The statement may be made to the parties in camera

(C) Any material which may be disclosed to the defendant and the defendant's counsel shall be disclosed to the attorney for the government

(D) If the comments of the defendant and the defendant's counsel or testimony or

JUDGMENT

other information introduced by them allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make (i) a finding as to the allegation or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to the Bureau of Prisons

(E) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons pursuant to 18 U.S.C. § 3552(b) shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule

(F) [Redesignated]

(d) *Plea withdrawal.* If a motion for withdrawal of a plea of guilty or nolo contendere is made before sentence is imposed, the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only on direct appeal or by motion under 28 U.S.C. § 2255

(e) [Unchanged]

(f) [Abrogated]

(Amended Apr. 30, 1979, effective Dec. 1, 1980, as provided by Act July 31, 1979, P.L. 96-42, § 1(1), 93 Stat. 326, Aug. 1, 1979, Oct. 12, 1982, P.L. 97-291, § 3, 96 Stat. 1249 effective Oct. 12, 1982, Aug. 1, 1983, Oct. 12, 1984, P.L. 98-473, Title II, Ch. II, § 215(n), 98 Stat. 2014, Nov. 10, 1986, P.L. 99-646, § 25(a), 100 Stat. 3597, amended effective Aug. 1, 1987 Dec. 1, 1989)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments.

1984. Act Oct. 12, 1984 (effective on the first day of the first calendar month beginning 36 months after enactment on Oct. 12, 1984 as provided by § 235(a)(1) of such Act as amended by Act Dec. 26, 1985, P.L. 99-217, § 4, 99 Stat. 1728, which appears as 18 U.S.C. § 3551 note, and applicable as provided by such § 235 which appears as 18 U.S.C. § 3551 note), in subd. (a), substituted para. (1) for one which read:

"(1) *Imposition of sentence.* Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall:

"(A) determine that the defendant and his counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

"(B) afford counsel an opportunity to speak on behalf of the defendant; and

"(C) address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

The attorney for the government shall have an equivalent opportunity to speak to the court."

Such Act further, in subd. (a), in para. (2), inserted, including any right to appeal the sentence," and ", except that the court shall advise the defendant of any right to appeal his sentence", in subd. (c) in para. (1), substituted the sentence beginning "A probation officer shall" for "The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion and the court explains this finding on the record"; and substituted para. (2) for one which read:

"(2) *Report.* The presentence report shall contain—

"(A) any prior criminal record of the defendant

"(B) a statement of the circumstances of the commission of the offense and circumstances affecting the defendant's behavior,

"(C) information concerning any harm, including financial, social, psychological and physical harm, done to or loss suffered by any victim of the offense; and

"(D) any other information that may aid the court in sentencing, including the restitution needs of any victim of the offense.

Such Act further, in subd. (c), in para. (3) in subpara. (A) substituted, including the information required by subdivision (c)(2) but not including any final recommendation as to sentence," for "exclusive of any recommendations as to sentence," in subpara. (D) deleted "or the Parole Commission following Prisons," and in subpara. (F) substituted "pursuant to 18 U.S.C. § 3552(b) for "or the Parole Commission pursuant to 18 U.S.C. §§ 4205(e), 4252, 5010(e), or 5037(c)", and in subd. (d), deleted "imposition of sentence is suspended, or disposition is had under 18 U.S.C. § 4205(c) following imposed

1986. Act Nov. 10, 1986, (effective as provided by § 25(b) of such Act, which appears as a note to this section) in subsec. (c)(2)(B) substituted from for then

sales not to exceed a value of \$2,000 at not less than the established base rate without soliciting competi-

R632 180 6 Competitive Sales

The division must make sales of forest products through competitive bidding procedures when the total sale value exceeds \$2,000.

R632 180 7 Advertising Forest Product Sales

Reasonable notice must be given to potential purchasers and other interested parties prior to completion of any sale with a potential total value exceeding \$2,000. The cost of such notice will be borne by the successful applicant.

R632 180 8 Competitive Bidding Procedure

1 Initial bidding shall be conducted through sealed bids. Interested parties must submit sealed bids to the division during the bidding period. The bidding period shall run for a period of at least ten but not more than 30 working days and must run concurrently with the advertising period. Sealed bids shall be opened publicly on the first business day following bid closing.

2 Oral bidding may follow the opening of sealed bids but should be so advertised.

3 The division may cancel any forest products sale prior to bid closing.

R632 180 9 Awarding Forest Product Sales

Sales shall be awarded to the highest qualified bidder unless said bidder is disqualified, in writing, by the division on the grounds of previous poor contract performance or other good cause shown. The division shall award sales within ten business days of the bid opening.

R632 180 10 Bonding Requirements

1 Prior to commencement of harvest operations the purchaser shall post with the division a bond in such form and amount as may be determined by the division to assure compliance with all terms and conditions of the sale contract.

2 A bond will be posted for at least twice the estimated cost of rehabilitation. Unless the sale was paid for in advance the bond will also include the full purchase price of the sale.

3 All bonds posted may be used for payment of all monies due to the state on the total purchase price and also for the costs of compliance with all other performance terms and conditions of the sale as specified in the contract.

4 Bonds shall be in effect even if the purchaser conveys all or part of the sale interest to an assignee, or subsequent purchaser until such time as the purchaser fully satisfies sale contract obligations, or until such time as the bond is replaced with a new bond posted by the assignee.

5 Bonds may be increased in reasonable amounts, at any time as the division may order provided the division first gives the purchaser 30 days written notice stating the increase and the reason(s) for such increase.

6 Bonds may be accepted in any of the following forms at the discretion of the division:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash Deposit (the state will not be responsible for any investment returns on cash deposits).

(c) Certificate of deposit in the name of the "Utah Division of State Lands and Forestry" and purchaser with an approved state or federally insured banking

institution registered in Utah. All certificates of deposit must be endorsed by the purchaser prior to acceptance by the division. Such certificate of deposit must:

(i) have a maturity date no greater than 12 months.

(ii) be automatically renewable and

(iii) be deposited with the division (the purchaser will be entitled to and receive the interest payments).

(d) an irrevocable letter of credit for a period longer than the term of the sale.

7 Bonds shall remain in force until such time as all contract payments and/or performance provisions have been satisfied by the purchaser and so documented by the division in writing.

R632-180 11 Assignments

1 Competitively let sales may be assigned, in accordance with procedures established by the division to any person, firm, association or corporation qualified to execute the terms and conditions of the sale contract, with prior written approval from the division provided that the assignee agrees to be bound by the terms and conditions of the sale and to accept the obligations of the assignor.

2 Permits and non-competitive sales may not be assigned.

R632-180 12 Forest Product Valuation

Forest products shall be offered for sale based on a methodology or price schedule to be determined by the division and approved by the Board of State Lands and Forestry.

R632-180-13 Long Term Agreements

1 Long term agreements (LTA) are those sales where the harvest of specified forest products will take place over a period of time exceeding two years. Upon approval of the director, the division may enter into an LTA with a purchaser for a period not to exceed ten years provided that:

(a) resource and/or other benefits can be demonstrated by the LTA.

(b) the LTA is advertised and competitively bid.

(c) the area included in the LTA is defined by legal and/or other tangible description.

(d) The LTA includes provisions for periodic reappraisal and adjustment of prices.

(e) The LTA may not preclude or prohibit forest product sales to other purchasers on trust lands adjacent to or within the area designated by the LTA.

(f) The LTA provides for amendment during the term of the LTA.

(g) The LTA does not preclude or prohibit other concurrent resource management activities and uses adjacent to or within the area designated by the LTA.

(h) Each LTA states that access granted by the LTA is not exclusive.

(i) A due-diligence provision is included in each LTA.

R632-180-14. Fees and Procedures.

The division may establish fees and develop such procedures as may be necessary to provide for the administration and sale of forest products.

1990

65A-B-3

Pardons (Board of)

R655 Board of Pardons

R655. Board of Pardons

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R655 505 Parole Revocation Hearings

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R655 507 Restarting the Parole Period

R655 508 Evidentiary Hearings

R655 509 Multiple Referrals For Single Parole Violation Incident

R655-101. Policies

R655 101 1 Policy

R655-101-1. Policy.

Board of Pardons rules shall be processed according to state rulemaking procedures. The Board shall determine if the rule is to be submitted through the regular rulemaking or emergency rulemaking procedure. Rules shall then be distributed as necessary.

Any error, defect, irregularity or variance in the application of these rules which does not affect the substantial rights of a party may be disregarded. Rules are to be interpreted with the interests of public safety in mind so long as the rights of a party are not substantially affected.

Any reference in this manual to "policy" or "policies" and "procedure(s)" shall be interpreted to mean "rule(s)" as defined in the Administrative Rulemaking Act.

1990

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R655-201 Calendaring Original Parole Grant Hearings

R655 201 1 Policy

R655 201 2 Procedure

R655 201 1 Policy

It is the policy of the Board, consistent with the law, to establish a date upon which an offender may be released or upon which his case shall be considered within six months of his commitment.

R655 201 2 Procedure

An inmate who is serving up to a life sentence who was committed to the prison on or after July 1, 1988, will be eligible for a hearing after the service of three years of his sentence. An inmate who is serving up to a life sentence and who was committed to the prison prior to June 1, 1988, will be eligible for a hearing after the service of one year of his sentence.

An inmate who is serving a sentence of up to five years and who was committed to the prison on or after June 1, 1988, will be eligible for a hearing after the service of nine months of his sentence. An inmate who is serving a sentence of up to fifteen years who was committed to the prison prior to July 1, 1988, will be eligible for a hearing after the service of six months of his sentence.

An inmate who is serving a sentence of up to ninety days will be eligible for a hearing after the service of ninety days of his sentence.

Excluded from the above provisions are inmates who are sentenced to death. For death sentence matters, see the Board's policy on Commutation Hearings, No. 312.

An inmate may petition the Board to calendar a time other than the usual times designated or the Board may do so on its own motion. A petition by the inmate shall set out the exigencies which rise to the request. The Board shall notify the petitioner of its decision in writing as soon as possible.

The Board may elect to have an individual member hold any type of hearing provided these rules and make interim decisions to be subsequently reviewed and voted on by the full Board.

R655-202. Offender Notification Hearing.

R655 202 1 Policy

R655 202 2 Procedure

R655 202 1 Policy

An offender shall be notified at least seven calendar days in advance of a hearing, except in extraordinary circumstances and shall be specifically advised as to the purpose of the hearing.

R655-202 2 Procedure

A. For his initial parole grant hearing, an offender shall be notified of the month of his hearing within days after commitment to prison. At least seven calendar days in advance of any hearing in which a personal appearance is involved, the offender shall be given ten days notice of the day and purpose of the hearing. In extraordinary circumstances, a hearing may be conducted without the seven day notification.

B. Board calendars and materials are prepared in advance and, when possible, notice of original hearings, rehearings and parole revocation hearings

published in the newspaper at least four days in advance of the hearings. This procedure is in correlation with the policy on Calendaring Original Parole Grant Hearings #2.

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R655-203 Victim Input and Notification

R655-203-1 Policy
R655-203-2 Procedure

R655-203-1 Policy

The Board of Pardons shall be provided with all available information concerning the impact the crime may have had upon the victim or the victim's family including but not limited to the criteria outlined in Section 64-13-20(4) U.C.A. 1953.

R655-203-2 Procedure

In accordance with Corrections Field Operations' Victim Impact Policy, all presentence reports shall contain victim impact information. In all cases where a presentence report has not been provided, and a victim is involved, such information shall be included in the post sentence report or the probation/parole violation report.

At the time the offender is scheduled to be heard by the Board, a letter shall be sent to the victims at the last known address. The letter shall contain the date, place and estimated time of the inmate's hearing. All offenses involved a clear statement of the reason for the hearing, the address and telephone number of the Board office where further information may be obtained, an explanation that hearings are open public meetings that input from victims or their family members should be provided in writing, preferably in advance of the hearing, and that oral testimony at the hearing will also be permitted but will be subject to rules adopted by the Board governing victim testimony.

Victims wishing to make an oral statement prior to the hearing will be given the opportunity to meet with the Board of Pardons Administrator or a Hearing Officer and have the statement tape recorded. Such statements will be limited to ten minutes in length. The recording will then be reviewed by Board members prior to the hearing for the offender.

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R655-204 Pending Charges.

R655-204-1 Policy
R655-204-2 Procedure

R655-204-1 Policy

It is the policy of the Board of Pardons to consider continuing an original parole grant hearing, rehearing or rescission hearing pending the resolution of felony or misdemeanor charges.

R655-204-2 Procedure

Following notification of pending charges, the Board of Pardons will consider the gravity of the charges and determine whether to continue the hearing pending the outcome of those charges. If the Board determines that the charges are of sufficient gravity to warrant a continuance, the offender will be notified in writing that his hearing has been continued and the reasons for doing so.

When the Board is notified that the charges have been resolved, the following procedure will be used in scheduling subsequent hearings.

Original Parole Grant — The offender's hearing date will be scheduled as soon as practicable and will be measured from the earliest date of commitment based on the highest degree of crime for which he has been committed. When the resolution of the charges extends beyond the length of the period determined by the highest degree of crime, the hearing will be rescheduled as soon as practicable after notification of the resolution of the charges.

Rehearings and Rescissions — The hearing will be scheduled as soon as practicable after notification of the resolution of the charges.

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R655-205. Credit for Time Served.

R655-205-1 Policy
R655-205-2 Procedure

R655-205-1 Policy.

Effective July 15, 1987, an offender shall be granted credit toward imprisonment for any time spent in official detention on the crime of commitment prior to the date sentence was imposed with the following exceptions:

(1) Offenses which were considered by the Board for the first time prior to July 15, 1987.

(2) Time served solely as a condition of probation.

(3) Time spent in detention out of state awaiting return to Utah.

Credit for time served shall also be granted toward imprisonment when:

(1) A conviction is set aside and there is a subsequent commitment for the same criminal conduct.

(2) A commitment is made to the Utah State Hospital pursuant to a guilty and mentally ill conviction.

(3) Up to 180 days are served pursuant to diagnostic commitments.

R655-205-2 Procedure

Time served in the above referenced categories shall be noted in reports to Board members by Board staff. After the Board determines the number of months to be served to release, the amount of time to be credited shall be deducted and the release date set accordingly.

If no record of official detention time is in the Board file, it is presumed that none was served. If the offender desires credit, the burden is on the offender to request it and provide certified copies of records supporting his request.

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R655-207. Competency of Offenders.

R655-207-1 Policy
R655-207-2 Procedure

R655-207-1. Policy.

It is the policy of the Board to continue original parole grant hearings, rehearings, rescission hearings and revocation hearings when an offender is incompetent to proceed and to review his status regularly while proceedings are pending.

R655-207-2. Procedure.

Whenever an offender is scheduled for a hearing and reasonable doubt exists as to his ability to under-

stand the nature of and participate in the proceeding a hearing to determine his mental competency shall be conducted within a reasonable period of time by the Board or a Hearing Officer. An inmate shall be represented by counsel at competency hearings.

The Board or a Hearing Officer shall consider written psychiatric or psychological reports and may receive oral testimony and other evidence. All submissions shall be provided to the offender's attorney unless confidential.

If it is determined that the offender is mentally competent, the previously scheduled hearing shall be held.

If it is determined that the offender is mentally incompetent, the previously scheduled hearing shall be continued indefinitely until such time as it is determined that the offender has recovered sufficiently to understand the nature of and participate in the proceedings. The Board shall require a progress report on the mental health status of the offender every six months.

If after two years from the most recent competency hearing there is not a finding of substantial probability that the offender will in the foreseeable future attain competency, the Board shall petition for transfer to the Utah State Hospital under U.C.A. 64-7-3 or for involuntary hospitalization at the Utah State Hospital under U.C.A. 64-7-36. Upon a finding by the Board that the offender has sufficiently recovered from his mental illness, he shall be returned to the state prison and the pending proceeding shall be conducted.

The Board may dismiss a parole violation against an incompetent offender accused of a technical violation where the expected penalty of such violation would be minimal. Under these circumstances the offender shall be reinstated on parole with appropriate conditions.

For time spent in mental health facilities, the offender shall receive credit toward expiration of sentence and the total period of incarceration.

1968

77 27 2, 77 27 1 77 27 13

R655-301. Personal Appearance.

R655-301-1 Policy
R655-301-2 Procedure

R655-301-1. Policy.

It is the policy of the Board of Pardons that all offenders shall have a personal appearance before the Board, unless waived prior to a final decision to release.

R655-301-2. Procedure.

By statute, the Board or its designee is required to see each and every offender in at least one hearing. This usually occurs at the offender's initial hearing. However, by policy, the Board requires personal appearances for rehearings in cases when a date was not established, for rescission hearings, and for parole revocation hearings. In rehearings, the offender is afforded all the rights and considerations afforded in the initial hearing except as provided by other Board policies because the setting of a parole date is still at issue. In rescission hearings and parole revocation hearings, a personal appearance is mandatory unless waived. The offender is also given adequate notice of such hearings so that he may prepare. The hearing is conducted in such a manner to minimize distractions and facilitate offender input.

An offender has the right to be present at a parole grant, rehearing, rescission or parole violation hearing if he is within the state (U.C.A. 77-27-7). The offender has the right to be present at hearings conducted by a Board hearing officer. He may speak or his own behalf, present documents, ask and answer questions. An offender who waives his right or refuses to personally attend the hearing shall be advised that a decision may be made in his absence.

If an offender is being housed out of state, he may waive the right to a personal appearance. The waiver shall be in writing and witnessed by a staff member at the institution where the offender is housed. A written waiver shall be voluntary. The original copy of the waiver is to be forwarded to the Board and retained in the offender's file.

If the offender refuses to waive the appearance, any of the following four alternatives shall be utilized at the discretion of the Board in conducting the hearing:

1. Request the Warden to return the offender to the state for the hearing.

2. A courtesy hearing may be conducted with the consent of the offender by the paroling authority or jurisdiction where he is housed. A request along with a complete copy of Utah's record shall be forwarded for the hearing. All reports, a summary of the hearing, and a recommendation shall be returned to the Utah Board for final action.

3. An individual Board member may travel to the jurisdiction and conduct the hearing, record the proceeding, and make a written record and recommendation for the Board's final decision.

4. Send a Board hearing officer to conduct the hearing, record the proceeding and make a written record and recommendation for the Board's final decision.

5. A hearing may be conducted by way of conference telephone call with the consent of the offender.

1967

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R655-302 News Media and Public Access to Hearings

R655-302-1 Policy
R655-302-2 Procedure

R655-302-1 Policy

According to state law and subject to fairness and security requirements, Board of Pardons hearings shall be open to the public, including representatives of the news media.

R655-302-2 Procedure

LIMITED SEATING When the number of people wishing to attend a hearing exceeds the seating capacity of the room where the hearing will be conducted, priority shall be given to:

1. Individuals involved in the hearing.

2. Up to five people selected by the offender.

3. Up to five members of the news media as allocated by the Board Administrator (see RESERVED MEDIA SEATING).

4. Members of the public and media on a first come, first served basis.

SECURITY AND CONDUCT All attendees are subject to Prison security requirements and must conduct themselves in a manner which does not interfere with the orderly conduct of the hearing. Any individual causing a disturbance or engaging in behavior deemed by the Board to be disruptive of the proceeding may be ordered to leave and security personnel of

the prison may be requested to escort the individual from the premises.

EXECUTIVE SESSION. No filming, recording or transmitting of executive session portions of any hearing shall be allowed.

NEWS MEDIA EQUIPMENT. Subject to prior approval by the Board Administrator or the Board (see **APPROVING EQUIPMENT**), the news agency representatives shall be permitted to operate photographic, recording or transmitting equipment during the public portions of any hearing. When more than one news agency requests permission to use photographic, recording or transmitting equipment, a pooling arrangement may be required.

When it is determined by the Board Administrator or the Board that any such equipment or operators of that equipment have the potential to cause a disturbance or interfere with the holding of a fair and impartial hearing, or are causing a disturbance or interfering with the holding of a fair and impartial hearing, restrictions may be imposed to eliminate those problems.

PRIOR APPROVAL. News media representatives wishing to use photographic, recording or transmitting equipment or to be considered for one of the five reserved media seats shall submit a request in writing to the Board Administrator. Such requests must be submitted at least 48 hours in advance of a regularly scheduled Board of Pardons hearing and at least one week in advance of a Commutation Hearing. If requesting the use of equipment, the request must specify by type, brand and model all the pieces of equipment to be used.

APPROVING EQUIPMENT. If the request is to use photographic, recording or transmitting equipment, at least 24 hours prior to a regularly scheduled hearing and 96 hours prior to a Commutation Hearing, it shall be the responsibility of a representative of the news agency making the request to confer with the Board Administrator to work out the details. If the Board Administrator is unfamiliar with the equipment proposed to be used, he may require that a demonstration be performed to determine if it is likely to be intrusive, cause a disturbance or will inhibit the holding of a fair and impartial hearing in any way. If the Board Administrator or the Board determines that such may occur, it may be required that the equipment be modified or substituted for equipment that will not cause a problem or the equipment may be banned.

Video tape or "on air" type cameras mounted on a tripod and still cameras encased in a soundproof box and mounted on a tripod shall be deemed to be approved equipment.

If the equipment is approved for use at a hearing, its location and mode of operation shall be approved in advance by the Board Administrator and it shall remain in a stationary position during the entire hearing and shall be operated as unobtrusively as possible.

There shall be no artificial light used.

If there is more than one request for the same type of equipment, the news agencies shall be required to make pool arrangements, as no more than one piece of the same type of equipment shall be allowed. If no agreement can be reached on who the pool representative will be, the Board Administrator shall draw a name at random. All those wishing to be a pool representative must agree in advance to fully cooperate with all pool arrangements.

RESERVED MEDIA SEATING. If there are fewer than four other requests received prior to the dead-

line, the request shall be approved. If more than five requests are made, the Board Administrator shall allocate the seating based on a pool arrangement. Each category shall select its own representative(s). If no agreement can be reached on who the representative(s) will be, the Board Administrator shall draw names at random. All those wishing to be a pool representative must agree in advance to fully cooperate with all pool arrangements.

One seat shall be allocated to each of the following categories:

1. Local daily newspapers with statewide circulation
2. Major wire services with local bureaus
3. Local television stations with regularly scheduled daily newscasts
4. Local radio stations with regularly scheduled daily newscasts
5. Daily, weekly or monthly publications (in that order) located in the area where the criminal activity took place.
6. If the requests submitted do not fill all of the above categories, a seat shall be allocated to a representative of a major wire service with no local bureau or a national publication (in that order).

If seats remain unfilled, one additional seat shall be allocated to the categories in the above order until all seats are filled. No news agency shall have more than one individual assigned to reserved media seating unless all other requests have been satisfied.

VIOLATIONS. Any news agency found to be in violation of this policy may have its representatives restricted in or banned from covering future Board hearings.

1987

77-27-6

R655-303. Offender Access to Information.

R655-303-1. Policy.

R655-303-2. Procedure.

R655-303-1. Policy.

An offender shall have access to all information relating to his case on which parole decisions are made except that which is classified confidential.

R655-303-2. Procedure.

All material submitted to the Board, except that which is specifically classified as confidential, shall be available to be reviewed with the offender.

The Board may review the offender's record and cover areas of concern during the hearing. The offender may comment, clarify issues and ask questions at the hearing.

Upon written request from the offender, copies of requested information not classified as confidential shall be provided at the offender's expense.

1987

63-2-65.3, 63-2-65.4

R655-304. Board Hearing Record.

R655-304-1. Policy.

R655-304-2. Procedure.

R655-304-1. Policy.

The Board shall cause a record to be made of all proceedings.

R655-304-2. Procedure.

A record (verbatim transcript, tape recording or written summary) shall be made of all hearings. The record shall be retained by the Board for future reference or transcription upon request at cost. However, copies may be provided at no cost to the petitioner in accordance with UCA 77-27-8 (3). The record shall be retained for as long as the offender is under sentence.

1987

77-27-8, 77-27-9

R655-305. Notification of Board Decision.

R655-305-1. Policy.

R655-305-2. Procedure.

R655-305-1. Policy.

The offender will be notified verbally immediately after the hearing of the action taken or that the Board has taken the matter under advisement. The action shall, hereafter, be supported in writing signed by the Administrator or other staff in attendance at the hearing.

R655-305-2. Procedure.

At the time the offender appears before the Board, he is notified verbally of the decision. An explanation of the reasons for the decision is given and supported in writing. This is done in the following manner:

1. On a Parole Grant Hearing, Rehearing, Redetermination and/or Special Attention of the Board, the offender shall be notified in writing of the decision of the Board within thirty days after the hearing.

2. On a Parole Rescission Hearing, a Class A original hearing, or any other hearing conducted by a Hearing Officer, the offender shall be notified verbally and in writing of the interim decision of the Hearing Officer. Within thirty days of the hearing the offender shall be notified in writing of the decision of the Board.

3. On a Parole Revocation Hearing, the offender shall be notified in writing of findings of fact, which include the Board's decision, according to Policy #505.

Copies of the written decision are given to the offender, the institution and Field Operations. The Board shall publish written results of Board meetings, in minute form. Copies of minutes shall be kept on permanent file in the Board office.

1987

77-27-7, 77-27-11

R655-306. Full Hearing Schedule.

R655-306-1. Policy.

R655-306-2. Procedure.

R655-306-1. Policy.

The number of full hearings scheduled for a Board panel or hearing officer in a single day shall be limited to twenty cases, except as extraordinary circumstances may otherwise dictate.

R655-306-2. Procedure.

A full hearing shall consist of an offender's personal appearance before the Board or its Hearing Officer, in which all the facts of the case are reviewed, evidence is presented and statements are taken from involved parties. The following are full hearings:

Original Parole Grant Hearings
Parole Revocation Hearings
Rehearings

Rescissions

Class A Hearings

1987

77-27-7, 77-27-9

R655-307. Foreign Nationals and Offenders With Detainers.

R655-307-1. Policy.

R655-307-2. Procedure.

R655-307-1. Policy.

Offenders who are foreign nationals and offenders who have detainers lodged against them shall be considered for parole and termination consistent with other Board policies.

R655-307-2. Procedure.

Subject to other Board policies, hearings will be conducted for offenders who have detainers from other jurisdictions lodged against them. Reasons supporting the detainer will be considered in the Board's deliberations if they independently constitute factors relevant to the Board's decision.

Subject to other Board policies, hearings will be conducted for offenders who are foreign nationals. Where a detainer has been lodged by the Immigration and Naturalization Service, a foreign national may be considered for parole or termination to allow the offender to return to his home country.

1987

77-27-9, 77-27-13

R655-308. Offender Hearing Assistance.

R655-308-1. Policy.

R655-308-2. Procedure.

R655-308-1. Policy.

It is the policy of the Board of Pardons to allow an offender to have such assistance from other persons as may be required in preparation for a Board hearing.

R655-308-2. Procedure.

Family, friends, professionals, interpreters, case workers, and minority representatives are allowed to be present at hearings and may assist the offender in preparing his case.

An attorney shall be retained by the State to represent all parolees who desire representation at Parole Revocation hearings before the Board of Pardons. However, an alleged parole violator may choose to have a private attorney represent him at his own expense.

Except as otherwise provided by law, no person other than the offender may address the Board at any hearing except for the offender's attorney at a Parole Revocation hearing, or such persons as the Board may find necessary to the orderly conducting of any hearing.

1988

77-17-7, 77-27-9, 77-27-11, 77-27-29

R655-309. Impartial Hearings.

R655-309-1. Policy.

R655-309-2. Procedure.

R655-309-1. Policy.

Offenders are entitled to an impartial hearing before the Board of Pardons. To that end, the Board of

R655-313. Class "A" Hearings.

R655-313-1. Policy.

R655-313-2. Procedure.

R655-313-1. Policy.

The Utah State Board of Pardons will conduct Parole Grant Hearings for all prison inmates sentenced on Class "A" Misdemeanors on April 28, 1986 or later.

R655-313-2. Procedure.

1. No inmate sentenced or confined in the prison on a Class "A" Misdemeanor shall be eligible for an original parole grant hearing prior to service of three months of his or her sentence.

2. After at least three months have elapsed, the hearing shall be conducted by a Hearing Officer in the following manner:

a. The commitment, criminal history, presentence report, postsentence report, diagnostic evaluations, psychological reports, institutional progress reports, and any other pertinent information available will be evaluated to determine whether clemency should be granted for release earlier than the full sentence.

b. The inmate shall have the right to appear before the Hearing Examiner.

c. The inmate shall be allowed to make written and oral comment.

d. A voice recording of the hearing shall be made and preserved for the record.

e. A review of the entire record will be made by the Hearing Examiner.

f. After the hearing, the Hearing Examiner shall make an interim decision and inform the inmate of that decision both verbally and in writing.

3. The Hearing Examiner's findings and recommendations shall be reduced to writing and forwarded along with the inmate's file to the Board of Pardons for final review and decision.

4. The final decision of the Board shall be included in the minutes of a regular Board Meeting and the inmate will be informed in writing of the Board's decision within 10 days.

1987

77-27-21.5(8), 77-27-5, 77-27-7, 77-27-9

R655-314. Certification Hearings.

R655-314-1. Policy.

R655-314-2. Procedure.

R655-314-1. Policy.

It is the policy of the Board of Pardons to conduct a Certification Hearing on an offender within 30 days of notification from the Utah State Hospital under provisions of sections 77-16-5 or 77-35-21.5, U.C.A.

R655-314-2. Procedure.

Following receipt of the appropriate correspondence and documents from the Utah State Hospital, the Certification Hearing shall be scheduled as soon as practicable. However, in no case shall it be more than 30 days from receipt of the materials.

Pursuant to Section 77-35-21.5(8), U.C.A., the State Hospital shall provide to the Board a report on the condition of the defendant which includes the clinical facts, the diagnosis, the course of treatment, and the prognosis for the remission of symptoms, the potential for recidivism and for the danger to himself or the public, and recommendations for future treatment.

If all pertinent information is not available to the Board at the time of the Certification Hearing, the offender shall be transferred to the custody of the Department of Corrections and the parole grant portion of the hearing rescheduled.

All applicable Board policies shall govern the parole grant portion of the hearing.

Pursuant to Section 77-35-21.5(8), U.C.A., offenders committed on a finding of "guilty and mentally ill" to be considered for parole shall be the subject of a consultation with the treating facility or agency. If recommended by the treating facility or agency, treatment shall be made a condition of parole and failure to continue treatment or other condition of parole, except by agreement with the treating facility or agency, shall be the basis for initiating parole revocation proceedings. Such offenders shall serve a period of five years on parole or until the expiration of sentence, whichever occurs first, and such period shall not be reduced without consideration by the Board of a current report on the mental health status of the offender.

1987

77-27-7, 77-27-9, 77-16-5, 77-35-21.5

R655-315. Pardons.

R655-315-1. Policy.

R655-315-2. Procedure.

R655-315-1. Policy.

It is the policy of the Utah State Board of Pardons to consider petitions for pardons on a case-by-case basis consistent with its obligation to exercise the clemency power of the executive branch.

R655-315-2. Procedure.

The Board of Pardons shall consider a petition for a pardon from an offender whose sentence(s) have been terminated or expired for at least five years and who has exhausted all judicial remedies including appeal and expungement. Upon verification of these criteria, the Board may cause an investigation of the petitioner to be conducted which may include, but not be limited to, criminal, personal and employment history, particularly since termination or expiration. The Board may publish the petition in the legal notices section of a newspaper of general circulation and invite comment from the public.

The Board shall consider the petition and all available information relevant to it. The Board may deny a pardon by majority vote without a hearing. If the Board decides to consider the granting of a pardon, a hearing shall be scheduled with appropriate notice given. The Board may grant a conditional pardon or an unconditional pardon. The petitioner shall be notified in writing of the results as soon as practicable.

The Board may dispense with any requirement created by this policy if good cause exists.

1990

77-27-2, 77-27-5, 77-27-9, Art. VII, Sec. 12

R655-401. Parole Incident Reports.

R655-401-1. Policy.

R655-401-2. Procedure.

R655-401-1. Policy.

An incident report shall be submitted to the Board when an incident, positive or negative, occurs which would serve to modify the conditions of parole or a parolee's status.

R655-401-2. Procedure.

Examples of incidents which shall be reported to the Board via an Incident Report at the time of occurrence are:

a. Conviction of any infraction, misdemeanor or felony.

b. Significant incidents of rule infractions of the general or specific conditions of parole.

c. An incident which results in the parole supervisor placing the parolee in jail on a parole hold, arrest, detainment, or other conditions or incidents which result in the parolee's removal from the community for a period of time.

All suspected parole violations shall be investigated and an incident report along with a recommended course of action shall be submitted to the Board within a reasonable period of time. The report shall advise the Board of a parolee's adjustment and provide for modification of parole agreement conditions if necessary. Police reports, court orders, and waivers of personal appearance from parolees shall be attached when applicable.

1987

77-27-7, 77-27-10, 77-27-11, 77-27-13, 77-27-21.5

R655-402. Special Conditions of Parole.

R655-402-1. Policy.

R655-402-2. Procedure.

R655-402-1. Policy.

The Board of Pardons shall order special conditions as part of a parole agreement on an individual basis and only if such conditions can be reasonably related to rehabilitation of the offender or the protection of society. The offender shall be given an opportunity to respond to proposed special conditions.

R655-402-2. Procedure.

Prior to any hearing which may result in the setting of a parole date, information concerning an offender's past and present criminal activity should be gathered along with all background and social history from a pre-sentence or post-sentence report and any other documentation and input given to the Board of Pardons. Based upon information provided by the offender during the hearing and previous offense patterns or needs, the Board may require the addition of Special Conditions to the Parole Agreement. The offender shall be given the opportunity to respond to the imposition of any such conditions.

At any time, the Board may review an offender at its own initiative or upon recommendation by the Department of Corrections or others and add any special conditions it deems appropriate. The offender shall be afforded a personal appearance before the Board or a Board Hearing Officer to discuss the proposed condition(s) unless that appearance is waived. If a Hearing Officer conducts the hearing, an interim decision shall be made. That decision shall be reviewed, along with a summary report of the hearing, by the Board Members. Any decision by a Hearing Officer shall be binding and in full force and effect until reviewed by Board members, who shall make the final decision by approving, modifying, or overturning that decision. The decision shall then be entered into the record at a regularly scheduled Board meeting and the offender shall then be informed of the results. The offender is not afforded a personal appearance for this review.

An incident report and signed waiver of appearance and acceptance of special conditions may also be sent

to the Board of Pardons indicating that an offender voluntarily agrees to the addition of a particular condition to his parole agreement.

The new conditions ordered shall be reduced to writing and a copy provided to the offender. If the offender is on parole a new parole agreement shall be signed by the parolee reflecting the new conditions of parole. The new conditions shall be explained in writing to the offender and the offender shall acknowledge understanding by affixing his signature, and receive a copy of the same.

1988

77-27-5, 77-27-6, 77-27-10, 77-2

R655-403. Restitution.

R655-403-1. Policy.

R655-403-2. Procedure.

R655-403-1. Policy.

The Utah State Board of Pardons shall consider restitution in all cases where restitution has been ordered by the court, when requested by the Department of Corrections or other criminal justice agencies, or other appropriate cases.

R655-403-2. Procedure.

Except for class B and class C misdemeanors, cases where restitution has been ordered by the court and is included as part of the judgment and commitment, the Board shall consider whether affirming such restitution is appropriate and whether persons have or are prepared to make restitution in accordance with standards and procedures as set forth in U.C.A. 76-3-201 as a condition of parole. The board may also originate orders of restitution on crimes of commitment it deems appropriate, except for class B and class C misdemeanors.

The Board will consider ordering restitution or affirming court ordered restitution in the following instances:

1. When ordered by the sentencing court and order is included as part of the judgment and commitment provided to the Board by the court except class B and class C misdemeanors;

2. When ordered by or as a part of a disciplinary proceeding as a result of misconduct;

3. When requested by the Department of Corrections or other criminal justice agency for the cost of extradition or return to custody;

4. When requested by the Department of Corrections for the costs of programs such as unpaid fees, community correction centers, therapy or other services, and after attempts to collect from the offender have repeatedly failed; and

5. When new information is made available which was not available to the court at the sentencing hearing, under the following procedure:

The Board may request that the Department of Corrections investigate the matter and the background and ability of the offender to pay in accordance with U.C.A. 76-3-201 and provide the Board with a written report and recommendation.

A restitution hearing may be conducted by the Board panel or hearing officer. Prior to the hearing, the offender and the victim(s) shall be notified in writing of the hearing and shall be provided with copies of investigative report and other documentation unless it is of a confidential nature. The offender and victim(s) shall have the right to be present at the hearing and present evidence in their behalf. When hearings are conducted by a hearing officer, the hearing officer shall make a written report and rec-

Pardons discourages any direct outside contact with individual Board Members regarding specific cases. This also applies to Hearing Officers who may be designated to conduct hearings. Any such contact should be made with the Board Administrator.

R655-309-2. Procedure.

All contacts by offenders, victims of crime, their family members or any other person outside the staff of the Board of Pardons regarding a specific case shall be referred, whenever possible, to the Board Administrator or other Board staff member who may not be directly involved in hearing the case. If circumstances dictate, the Board Administrator or other Board staff member shall prepare a memorandum for the file containing the substance of the contact. If the contact is by a victim wishing to make a statement for the Board's consideration, the Board's policy on Victim Input and Notification, #203, shall apply.

Whenever an outside contact regarding a specific case with a Board Member or a designated Hearing Officer occurs prior to that case being heard, the conversation should be taped and placed in the file. The Board Member or designated Hearing Officer shall also prepare a memorandum for the file containing the substance of the contact.

In the event no recording equipment is available at the time of the contact, the Board Member or designated Hearing Officer shall prepare a memorandum for the file containing the substance of the conversation and the circumstances under which the contact took place.

If a contact, or prior knowledge of a case or individuals involved, is such that it may affect the ability of a Board Member or designated Hearing Officer to make a fair and impartial decision in a case, the Board Member or designated Hearing Officer shall decide whether to participate in the hearing. If the decision is to participate, the offender shall be informed of the contact or prior knowledge and be given the opportunity to request that the Board Member or Hearing Officer not participate. Such a request is not binding in any way, but shall be weighed along with all other factors in making a final decision regarding participation in the hearing.

This policy shall not preclude contact by members of the Department of Corrections so long as such contact is not for the purpose of influencing the decision of an individual Board Member on any particular case or hearing.

1967

77-27-7, 77-27-9

R655-310. Rescission Hearings.

R655-310-1. Policy.

R655-310-2. Procedure.

R655-310-1. Policy.

Any prior Board of Pardon's decision may be reviewed and rescinded by the Board at any time until an offender's actual release from custody.

R655-310-2. Procedure.

If the rescission of a release or rehearing date is being requested by an outside party, information shall be provided to the Board establishing the basis for the request. Upon receipt of such information, the offender may be scheduled for a rescission hearing. The Board may also review and rescind an offender's release or rehearing date on its own initiative. Except under extraordinary circumstances, the offender will be notified of all allegations and the date of the sched-

uled hearing at least three working days in advance. The offender may waive this period.

In the event of an escape, the Board will rescind the inmate's date upon official notification of escape from custody and continue the hearing until the inmate is available for appearance, charges have been resolved and appropriate information regarding the escape has been provided.

A Board of Pardons hearing officer shall hear the matter(s) when the violation consists of a new complaint or conviction for a non-violent felony, misdemeanor, or an adjudicated violation of rules or regulations except when otherwise directed by the Board. All other matters shall be heard by the Board.

When directed by the Board, the hearing officer shall conduct the hearing and make an interim decision to be reviewed, along with a summary report of the hearing, by the Board members. Any decision by a hearing officer shall be binding and in full force and effect until reviewed by Board members, who will make the final decision by approving, modifying, or overturning a hearing officer's decision. The decision is then entered into the record at a regular scheduled Board meeting and the offender is then informed by mail of the results. He is not afforded a personal appearance for this review.

1969

77-26-7

R655-311. Redeterminations and Special Attentions.

R655-311-1. Policy.

R655-311-2. Procedure.

R655-311-1. Policy.

It is the policy of the Board of Pardons to allow an offender or others to petition for a review of an offender's status subject to certain conditions.

R655-311-2. Procedure.

The Board of Pardons provides two methods in which an offender's status may be reviewed.

A. Redetermination: Upon receipt of an application for redetermination from an eligible offender, and an updated progress report and recommendation from the Department of Corrections, the Board shall reconsider the offender's release status. The Board may reduce the time to be served, make no change or increase the time to be served. The Board may change the offender's status to the setting of a date for rehearing, parole, termination, or expiration of sentence and may alter any conditions of parole. Effective September 1, 1988, an offender shall be eligible to apply for redetermination after serving one-half of the time from his last time-related consideration to his current date of rehearing or release. In no case shall an offender be eligible to apply sooner than eighteen (18) months after his last time-related consideration. In all cases, an offender is eligible to apply after the service of five (5) years from his last time-related consideration. As used in this policy, "time-related consideration" means any original hearing, rehearing, redetermination, special attention, rescission or parole revocation hearing. An offender is not entitled to a personal appearance before the Board for redetermination.

B. Special Attention: This type of hearing is used to grant relief in special circumstances requiring immediate action by the Board. This action is initiated by the receipt of a written request indicating that special circumstances exist for which a change in sta-

tus may be warranted. These circumstances could include, but are not limited to, illness in the offender's family, illness of the offender requiring extensive medical attention, exceptional performance or progress in the institution, or exceptional opportunity for employment and involves information that was not previously considered by the Board. A summary report is then prepared by Board staff along with a recommendation and the case is routed to Board members. The decision is then entered into the record at a regularly scheduled Board meeting and the offender is then informed by mail of the results. A personal appearance is not afforded for this review unless specifically granted by the full-time Members of the Board.

1968

77-27-7

R655-312. Commutation Hearings for Death Penalty Cases.

R655-312-1. Policy.

R655-312-2. Procedure.

R655-312-1. Policy.

The Utah State Board of Pardons shall conduct a Commutation Hearing when properly petitioned by the inmate sentenced to death or the inmate's attorney with the concurrence of the inmate. The Board members shall only review whether in their opinions the punishment properly fits the crime and will not review either legal or constitutional matters as those would have previously been reviewed by the courts. The burden shall be on the petitioner to show that the death penalty is not appropriate. The Commutation Hearing will be scheduled only after all court proceedings have been exhausted, including the setting of a new execution date, and shall be heard by the three full-time members of the Board except under exigent circumstances.

R655-312-2. Procedure.

Following the completion of all court proceedings, and either upon a respite being granted by the Governor or the filing of a petition by the inmate sentenced to death, or an attorney with the concurrence of the inmate, the Board of Pardons shall schedule a date and time certain for a Commutation Hearing. If the petition is made directly to the Board of Pardons, it must be done within 10 days from the trial court's entry of the order setting a new execution date. If necessary, the Board may grant a respite until such time as the hearing can be held and a decision rendered.

The petitioner may be represented by an attorney of his choosing and in the event that the petitioner cannot afford an attorney, one may be appointed to represent him. The petitioner may also represent himself. The petition should contain name and number of the petitioner and reasons the petitioner is requesting the hearing.

The Attorney General's office and the County Attorney's office that originally prosecuted the case shall be immediately notified in writing by Board staff of the filing of the Petition for Commutation. The State may be represented by the Attorney General's office and/or by the County Attorney's office that originally prosecuted the case.

Approximately two (2) weeks prior to the scheduled date of the hearing all relevant written material shall be provided to the Board either by the petitioner or his attorney, and also by the attorney(s) for the

State. This material shall include, but not be limited to, any relevant sections of the trial and/or sentencing transcripts, any briefs either party would care to provide to the Board, a brief description of any new evidence or aggravating or mitigating circumstance that might have been discovered since the time of the petitioner's original sentencing, a list of all witnesses; not to exceed twenty (20) in number including the petitioner, each side intends to call along with a brief synopsis of the testimony of each witness and a brief synopsis of all material to be introduced at the hearing. Any witness or material not included in such submissions or outside the scope of the synopsis may not be allowed to testify or be introduced. Three (3) copies of all written material shall be submitted to the Board and one (1) copy shall be provided to the other party.

Approximately one (1) week prior to the date of the hearing the Board shall schedule and conduct a pre-hearing conference, which shall not be open to the public or news media. At the time of the conference attorneys for both parties, or the petitioner, only if he is representing himself, may be present along with the members of the Board and Board staff. Each party shall also be informed of the procedure for the hearing. This shall include, but not be limited to, the fact that each party shall call its witnesses and have the testify under oath, but that no cross-examination will be allowed, and that each party shall be required to observe a time limit for presenting its case.

Board members may ask any questions they deem appropriate at any time. The petitioner may elect to be present at the Commutation Hearing and to testify, but he shall not be required to do either.

The Commutation Hearing and any other proceedings deemed appropriate by the Board shall be recorded pursuant to Section 77-27-8(2), U.C.A. amended. Attendance at the hearing shall be in accordance with the Board of Pardons policy on News Media and Public Access to Hearings, #3.02, and visitors, the public and the news media shall be subject to prison security and search, if deemed necessary.

The hearing shall be conducted in an orderly fashion and all participants and visitors shall conduct themselves accordingly. During the hearing if someone should become loud, disorderly, or disruptive the Board may stop the hearing until such time as the person or persons are removed from the hearing security, or order is restored and the hearing can reconvene. The Board may stop the hearing at a time for cause and reconvene as soon as practicable.

Following the submission of all evidence, the Board shall go into Executive Session to make its decision. The Board shall render written opinion, along with any concurring or dissenting opinions, within five working days after the submission of all evidence. The Board shall reconvene in open session with parties present to deliver its decision, which shall then be published. A copy shall be provided to each attorney, the inmate, the sentencing judge and the Department of Corrections.

After the decision has been published, the petitioner shall be referred back to the Court, if necessary, for the resetting of an execution date.

There shall be only one Commutation Hearing; petitioner unless new and significant information found that has not already been submitted to the Board.

1968

52-4-5 (3), 77-27-3, 77-19-7, Article VII, Section

R655-313. Class "A" Hearings.

R655-313-1. Policy.
R655-313-2. Procedure.

R655-313-1. Policy.

The Utah State Board of Pardons will conduct Parole Grant Hearings for all prison inmates sentenced on Class "A" Misdemeanors on April 28, 1986 or later.

R655-313-2. Procedure.

1. No inmate sentenced or confined in the prison on a Class "A" Misdemeanor shall be eligible for an original parole grant hearing prior to service of three months of his or her sentence.

2. After at least three months have elapsed, the hearing shall be conducted by a Hearing Officer in the following manner:

a. The commitment, criminal history, presentence report, postsentence report, diagnostic evaluations, psychological reports, institutional progress reports, and any other pertinent information available will be evaluated to determine whether clemency should be granted for release earlier than the full sentence.

b. The inmate shall have the right to appear before the Hearing Examiner.

c. The inmate shall be allowed to make written and oral comment.

d. A voice recording of the hearing shall be made and preserved for the record.

e. A review of the entire record will be made by the Hearing Examiner.

f. After the hearing, the Hearing Examiner shall make an interim decision and inform the inmate of that decision both verbally and in writing.

3. The Hearing Examiner's findings and recommendations shall be reduced to writing and forwarded along with the inmate's file to the Board of Pardons for final review and decision.

4. The final decision of the Board shall be included in the minutes of a regular Board Meeting and the inmate will be informed in writing of the Board's decision within 10 days.

1987

77-27-21.2(1), 77-27-5, 77-27-7, 77-27-9

R655-314. Certification Hearings.

R655-314-1. Policy.
R655-314-2. Procedure.

R655-314-1. Policy.

It is the policy of the Board of Pardons to conduct a Certification Hearing on an offender within 30 days of notification from the Utah State Hospital under provisions of sections 77-16-5 or 77-35-21.5, U.C.A.

R655-314-2. Procedure.

Following receipt of the appropriate correspondence and documents from the Utah State Hospital, the Certification Hearing shall be scheduled as soon as practicable. However, in no case shall it be more than 30 days from receipt of the materials.

Pursuant to Section 77-35-21.5(8), U.C.A., the State Hospital shall provide to the Board a report on the condition of the defendant which includes the clinical facts, the diagnosis, the course of treatment, and the prognosis for the remission of symptoms, the potential for recidivism and for the danger to himself or the public, and recommendations for future treatment.

If all pertinent information is not available to the Board at the time of the Certification Hearing, the offender shall be transferred to the custody of the Department of Corrections and the parole grant portion of the hearing rescheduled.

All applicable Board policies shall govern the parole grant portion of the hearing.

Pursuant to Section 77-35-21.5(8), U.C.A., offenders committed on a finding of "guilty and mentally ill" to be considered for parole shall be the subject of a consultation with the treating facility or agency. If recommended by the treating facility or agency, treatment shall be made a condition of parole and failure to continue treatment or other condition of parole, except by agreement with the treating facility or agency, shall be the basis for initiating parole revocation proceedings. Such offenders shall serve a period of five years on parole or until the expiration of sentence, whichever occurs first, and such period shall not be reduced without consideration by the Board of a current report on the mental health status of the offender.

1987

77-27-7, 77-27-9, 77-16-5, 77-35-21.5

R655-315. Pardons.

R655-315-1. Policy.
R655-315-2. Procedure.

R655-315-1. Policy.

It is the policy of the Utah State Board of Pardons to consider petitions for pardons on a case-by-case basis consistent with its obligation to exercise the clemency power of the executive branch.

R655-315-2. Procedure.

The Board of Pardons shall consider a petition for a pardon from an offender whose sentence(s) have been terminated or expired for at least five years and who has exhausted all judicial remedies including appeal and expungement. Upon verification of these criteria, the Board may cause an investigation of the petitioner to be conducted which may include, but not be limited to, criminal, personal and employment history, particularly since termination or expiration. The Board may publish the petition in the legal notices section of a newspaper of general circulation and invite comment from the public.

The Board shall consider the petition and all available information relevant to it. The Board may deny a pardon by majority vote without a hearing. If the Board decides to consider the granting of a pardon, a hearing shall be scheduled with appropriate notice given. The Board may grant a conditional pardon or an unconditional pardon. The petitioner shall be notified in writing of the results as soon as practicable.

The Board may dispense with any requirement created by this policy if good cause exists.

1990

77-27-2, 77-27-5, 77-27-9, Art. VII, Sec. 13

R655-401. Parole Incident Reports.

R655-401-1. Policy.
R655-401-2. Procedure.

R655-401-1. Policy.

An incident report shall be submitted to the Board when an incident, positive or negative, occurs which would serve to modify the conditions of parole or a parolee's status.

R655-401-2. Procedure.

Examples of incidents which shall be reported to the Board via an Incident Report at the time of occurrence are:

a. Conviction of any infraction, misdemeanor or felony.

b. Significant incidents of rule infractions of the general or specific conditions of parole.

c. An incident which results in the parole supervisor placing the parolee in jail on a parole hold, arrest, detainment, or other conditions or incidents which result in the parolee's removal from the community for a period of time.

All suspected parole violations shall be investigated and an incident report along with a recommended course of action shall be submitted to the Board within a reasonable period of time. The report shall advise the Board of a parolee's adjustment and provide for modification of parole agreement conditions if necessary. Police reports, court orders, and waivers of personal appearance from parolees shall be attached when applicable.

1987

77-27-7, 77-27-10, 77-27-11, 77-27-13, 77-27-21.5

R655-402. Special Conditions of Parole.

R655-402-1. Policy.
R655-402-2. Procedure.

R655-402-1. Policy.

The Board of Pardons shall order special conditions as part of a parole agreement on an individual basis and only if such conditions can be reasonably related to rehabilitation of the offender or the protection of society. The offender shall be given an opportunity to respond to proposed special conditions.

R655-402-2. Procedure.

Prior to any hearing which may result in the setting of a parole date, information concerning an offender's past and present criminal activity should be gathered along with all background and social history from a pre-sentence or post-sentence report and any other documentation and input given to the Board of Pardons. Based upon information provided by the offender during the hearing and previous offense patterns or needs, the Board may require the addition of Special Conditions to the Parole Agreement. The offender shall be given the opportunity to respond to the imposition of any such conditions.

At any time, the Board may review an offender at its own initiative or upon recommendation by the Department of Corrections or others and add any special conditions it deems appropriate. The offender shall be afforded a personal appearance before the Board or a Board Hearing Officer to discuss the proposed condition(s) unless that appearance is waived. If a Hearing Officer conducts the hearing, an interim decision shall be made. That decision shall be reviewed, along with a summary report of the hearing, by the Board Members. Any decision by a Hearing Officer shall be binding and in full force and effect until reviewed by Board members, who shall make the final decision by approving, modifying, or overturning that decision. The decision shall then be entered into the record at a regularly scheduled Board meeting and the offender shall then be informed of the results. The offender is not afforded a personal appearance for this review.

An incident report and signed waiver of appearance and acceptance of special conditions may also be sent

to the Board of Pardons indicating that a voluntarily agrees to the addition of a particular condition to his parole agreement.

The new conditions ordered shall be in writing and a copy provided to the offender. If the offender is on parole a new parole agreement signed by the parolee reflecting the new conditions of parole. The new conditions shall be explained, and the offender shall acknowledge understanding by affixing his signature, and receive the same.

1988

77-27-5, 77-27-6, 77-2

R655-403. Restitution.

R655-403-1. Policy.
R655-403-2. Procedure.

R655-403-1. Policy.

The Utah State Board of Pardons shall require restitution in all cases where restitution ordered by the court, when requested by the Department of Corrections or other criminal justice agencies, or other appropriate cases.

R655-403-2. Procedure.

Except for class B and class C misdemeanors where restitution has been ordered by the court and is included as part of the judgment at sentencing, the Board shall consider whether such restitution is appropriate and whether the offender has or is prepared to make restitution in accordance with standards and procedures as set forth in U.C.A. 76-3-201 as a condition of parole. The Board may also originate orders of restitution for class B and class C misdemeanors.

The Board will consider ordering restitution in the following circumstances:

1. When ordered by the sentencing court, restitution is included as part of the judgment at sentencing and provided to the Board by the court for class B and class C misdemeanors;

2. When ordered by or as a part of a proceeding as a result of misconduct;

3. When requested by the Department of Corrections or other criminal justice agency for extradition or return to custody;

4. When requested by the Department of Corrections for the costs of programs such as community correction centers, therapy or victim fees, and after attempts to collect from the offender have repeatedly failed; and

5. When new information is made available to the court at the sentencing hearing, under the following:

The Board may request that the Department of Corrections investigate the matter and ground and ability of the offender to pay restitution with U.C.A. 76-3-201 and provide with a written report and recommendation.

A restitution hearing may be conducted by a panel or hearing officer. Prior to the hearing, the offender and the victim(s) shall be notified of the hearing and shall be provided with an investigative report and other documents it is of a confidential nature. The offender and the victim(s) shall have the right to be present at the hearing and present evidence in their behalf. Hearings are conducted by a hearing officer and the hearing officer shall make a written report.

mendment to the Board which shall be considered in a regularly scheduled Board meeting.
1988 76-3-201, 77-27-5, 77-27-6

R655-405. Parole Termination.

R655-405-1. Policy.

R655-405-2. Procedure.

R655-405-1. Policy.

It is the policy of the Board of Pardons to consider terminating parole when petitioned to do so by the Department of Corrections, other interested parties or on its own initiative.

It is the policy of the Board of Pardons to toll any parole time that a parolee is an absconder.

R655-405-2. Procedure.

The Board of Pardons has established a 24 month parole period as a guideline for termination, although both early termination and statutory termination will be considered and approved when appropriate. When a termination request has been denied, the parolee may not be reconsidered for termination until six months has passed, unless there are exigent circumstances. When a termination is approved by the Board, written notification of the Board's action will be provided to the parolee and the Department of Corrections.

Statutory periods of parole without violation are three, five or ten years, depending on the crime. That period shall be extended by the amount of time that a parolee is an absconder.

That time shall be determined to be from the date a Board warrant was issued for absconding parole supervision to the date the offender was returned to custody in Utah.

Upon receipt of written notification of the service of the statutory maximum period on parole and verification of that information, the Board of Pardons shall then order the closing of the file.
1990 76-3-202, 77-35-21.5, 77-27-9, 77-27-12

R655-406. Sentence Expiration.

R655-406-1. Policy.

R655-406-2. Procedure.

R655-406-1. Policy.

It is the policy of the Board of Pardons to calculate sentence expiration dates from the date the commitment order was signed by the judge, tolling any time that an offender was an escapee or was a parole violator and not in Utah custody.

R655-406-2. Procedure.

The following periods of time shall be credited toward an offender's expiration of sentence: any time served as an inmate on the initial commitment or for any parole revocation; any time served at the State Hospital pursuant to a "guilty and mentally ill" conviction; up to 180 days served on diagnostic commitments; any other time granted by the Board in accordance with the policy on Credit for Time Served, #205, and any time served on parole. Expiration dates shall be extended by the amount of time that an offender is a parole violator but is not in custody in Utah. That time shall be determined to be from the date a Board of Pardons warrant was issued to the date the offender was returned to Utah custody. An offender is determined to be a parole violator when his parole is subsequently revoked by the Board.

On anything less than a life sentence, the sentence expiration date shall be the date the judge signed the commitment order, plus the maximum number of years in the sentence, minus one day. This is to reflect that the sentence expires at midnight on that day.

Sentence expiration dates shall be reflected on orders of parole and noted in reports to Board members by Board staff.

Upon expiration of sentence, the Board of Pardons shall be notified in writing. Upon verification of that information, the Board will then order the closing of the file.
1990 76-3-202, 77-35-21.5

R655-407. Emergency Releases.

R655-407-1. Policy.

R655-407-2. Procedure.

R655-407-1. Policy.

When the Executive Director of the Utah Department of Corrections formally serves notice that a maximum workable prison population has been exceeded for a 30-day period and requests emergency early releases, the Board of Pardons may make such emergency releases as it deems necessary based on the procedure outlined in the following section. Maximum workable prison population figures will be provided to the Board by memorandum from the Department.

R655-407-2. Procedure.

Upon receipt of the request for emergency releases, the Board of Pardons staff will assemble lists of individuals in the categories below to be reviewed by the Board members and submitted to the Department of Corrections. Emergency releases will be considered in the following order until the necessary number of releases is obtained or the Board deems it to be no longer in the interest of public safety to proceed further:

1. Inmates who are within three months from an existing release date and who are incarcerated for non-violent Class A misdemeanors and third degree felonies;

2. Inmates who are within three months from an existing release date and who are incarcerated for non-violent second degree felonies; and

3. Additional groups of non-violent Class A misdemeanants, third and second degree felons in increments of one month from existing release dates.

For each inmate considered for emergency release, the Department of Corrections shall provide to the Board an update of any information which is relevant to the inmate's release. After the Department of Corrections has had an opportunity to review the inmates' records and comment, the Board members will review each inmate's file and make a decision on whether to approve the emergency release. Emergency releases shall be approved by majority vote.

Following any Board action on emergency release requests, a report of such action shall be made to the Commission on Criminal and Juvenile Justice by the Board's representative to that body.

Inmates who have been approved for an emergency release will not also be eligible for flex release.
1988 77-27-7, 77-27-10, 77-27-13, 77-27-14

R655-501. Issuance of Warrants.

R655-501-1. Policy.

R655-501-2. Procedure.

R655-501-1. Policy.

Any member of the Board of Pardons may issue a warrant in compliance with the Board's policy on Evidence for Issuance of Warrants, #502. Such warrants shall have the same force and effect as if signed by all members.

R655-501-2. Procedure.

Any warrant issued by any member of the Board shall have the same force and effect as if signed by all members. The Board may delegate primary responsibility for issuing warrants to any of its members.

A request to recall a warrant shall be submitted to the Board member who issued that warrant; if that individual is not available any Board member may act on the request.
1987 77-27-11

R655-502. Evidence for Issuance of Warrants.

R655-502-1. Policy.

R655-502-2. Procedure.

R655-502-1. Policy.

Warrants of arrest and detention shall be issued only upon a showing that there is reasonable suspicion to believe that a parole violation has occurred.

R655-502-2. Procedure.

A certified Warrant Request shall be submitted by the parole agent setting forth reasons to believe that the named parolee committed specific parole violations. The request shall be based on the agent's information and belief. The request shall be accompanied by supporting documentation such as police reports, incident reports, and judgment and commitment orders. Upon approval of the request by the Board, a Warrant of Arrest shall be issued to arrest, detain, and return to actual custody any parolee suspected of violating the conditions of his parole. Thereafter, a hearing shall be conducted pursuant to policies on Prerevocation Hearings, #503, Timeliness of Parole Revocation Hearings, #504 and Parole Revocation Hearings, #505.
1987 77-27-11

R655-503. Prerevocation Hearings.

R655-503-1. Policy.

R655-503-2. Procedure.

R655-503-1. Policy.

A Prerevocation Hearing shall be conducted by an independent hearing officer within fourteen days after detention on a Board warrant, on all alleged parole violations unless such hearing is expressly waived by the parolee, or substantial reason for continuance exists as determined by an independent hearing officer. The parole officer shall serve Prerevocation Hearing Information on a parolee at least three working days prior to the actual Prerevocation Hearing. At the same time, the parole officer shall advise the parolee of his rights concerning the Prerevocation Hearing.

R655-503-2. Procedure.

A Parole Revocation shall be initiated by the filing of a Parole Violation Report with the Board of Pardons. Subsequently a Prerevocation Hearing Information shall be served on the parolee, and the parolee shall be advised of his right to request a

Prerevocation Hearing. The hearing shall be held reasonably near where the violation is alleged to have occurred, and scheduled within 14 days. The purpose of the hearing is to determine whether there is probable cause to believe that the parolee is in violation of his parole agreement. Upon completion of the hearing, the hearing officer will inform the parolee both verbally and in writing whether probable cause exists. At the time of service, the parolee shall also be informed of his right to waive a Prerevocation Hearing, and where the parolee elects to do so a written waiver to that effect shall be obtained. The parolee may request witnesses, an attorney, or a postponement. A finding of probable cause by a court on new criminal charges satisfies the process requirement of *Morrissey v. Brewer*, 408 U.S. 471 (1972). A certified copy of a bindover or conviction will be accepted by the Board as a finding of probable cause in lieu of a Prerevocation Hearing; the matter will proceed directly to a Parole Revocation hearing.

Upon completion of the Prerevocation Hearing, the hearing officer shall notify the parolee verbally whether probable cause exists that a parole violation has occurred. Within twenty-one calendar days, excluding holidays, written findings of fact and conclusions of law shall be issued by the hearing officer and served on the parolee.
1987 77-27-11, 77-27-27, 77-27-28, 77-27-29, 77-27-32

R655-504. Timeliness of Parole Revocation Hearings.

R655-504-1. Policy.

R655-504-2. Procedure.

R655-504-1. Policy.

The Parole Revocation Hearing shall be conducted within ninety (90) days from the date of Prerevocation Hearing or its waiver EXCEPT in following circumstances:

1. If a parolee is detained in another state or Utah Board warrant or on a new offense, a parole revocation hearing shall be conducted within ninety (90) days from the parolee's return to the State of Utah. When the only hold on a parolee is a U Board warrant, then the parolee must be returned soon as is practicable after affording the parolee rights.

2. When the parolee is convicted of a new offense which the parole office knew or should have known and the parolee has not been detained on a Board warrant during the pendency of court proceedings, the parole revocation hearing shall be conducted within ninety (90) days from the time of sentence on the new offense.

3. The Board may continue the hearing for any cause upon a motion by the parolee or the Department of Corrections, or upon its own motion.

R655-504-2. Procedure.

Upon receiving a copy of the allegations and either the parolee's waiver or a finding of probable cause a Prerevocation Hearing, a Board of Pardons hearing officer shall prepare a report for the Board and schedule the case for a hearing.

If a "guilty" plea is entered, the dispositional part of the hearing begins at once (see Parole Revocation Hearings, Policy #505).

If a "not guilty" plea is entered, and the case has not been continued, the evidentiary stage of the F

cation Hearing shall be scheduled within sixty (60) days (see Evidentiary Hearings, Policy #508).
1984 77-27-11, 77-27-27, 77-27-28, 77-27-29, 77-27-30

R655-505. Parole Revocation Hearings.

R655-505-1. Policy.
R655-505-2. Procedure.

R655-505-1. Policy.

Prior to the Parole Revocation Hearing, the parolee shall be given adequate written notice of the date, time and location of the hearing and the alleged parole violations. At the hearing, he shall be provided with an opportunity to hear the evidence in support of the allegations, legal counsel unless he waives it, an opportunity to confront and cross-examine adverse witnesses unless they would be subject to risk or harm, and an opportunity to present evidence and witnesses in his own behalf.

As soon as practicable following the hearing, the offender shall be notified in writing of the findings of fact and conclusions of law.

R655-505-2. Procedure.

Parolees are served with written allegations and notice of the hearing at least five working days prior to the Revocation Hearing. Such service and notice may be waived by the parolee. These allegations are again read at the hearing, after which the parolee enters a plea.

The parolee may plead guilty at the initial hearing and the dispositional phase will begin immediately, or the Board may continue the hearing upon request of the parolee, or on its own motion, pending the outcome of a court criminal action or an Evidentiary Hearing.

If a guilty plea is entered or the offender is found guilty in an Evidentiary Hearing, the Board will then hear discussion as to disposition from the offender or his attorney and the Department of Corrections. The Board will then retire to Executive Session, make a decision, reopen the hearing and render the decision on the record.

Subsequent to the Revocation Hearing, the Board of Pardons staff shall prepare findings of fact and conclusions of law which provide reasons for the decision made and the evidence relied upon. As soon as practicable, the document shall be signed by a full-time Board member and the Administrator of the Board of Pardons or designee and forwarded to the offender.

The Board may elect to have an individual Board Member hold any type of hearing provided for in this rule and make interim decisions.

When the parolee is alleged to have been convicted of only class B misdemeanors or less or to have committed only parole agreement violations, or any combination thereof, the hearing may be conducted by a hearing officer who shall make an interim decision.

Any such interim decision shall be binding and in full force and effect until reviewed by a majority of the full-time Board members, who will make the final decision by approving, modifying, or overturning the interim decision. The final decision shall then be entered into the record at a regularly scheduled Board meeting and the offender will be informed by mail of the results. A personal appearance shall not be granted for this review.

1990 77-27-11, 77-27-27, 77-27-28, 77-27-29, 77-27-30

R655-506. Alternatives to Re-Incarceration of Parolees.

R655-506-1. Policy.
R655-506-2. Procedure.

R655-506-1. Policy.

The Board of Pardons may pursue alternatives other than further imprisonment for parole violators. A parole violation shall not preclude an offender from being considered for re-parole.

R655-506-2. Procedure.

At any time during the pendency of the Parole Revocation proceeding, the Board may consider alternatives to reincarceration. In order to determine whether to place or retain an alleged parole violator in custody, the Board shall consider 1) the nature of the alleged violation, 2) the offender's criminal history (particularly violent behavior and escapes), 3) the impact of reincarceration on the offender and 4) any other factors relating to public safety and the well-being of the offender.

Release prior to the adjudication of a parole violation allegation, may be granted by the Board using the above criteria to permit a parolee accused of committing a new crime to obtain pre-trial release from the court.

At the time the Board of Pardons reaches a determination that a parolee has violated his parole, he may be considered for re-parole.

1987

77-27-9, 77-27-11

R655-507. Restarting the Parole Period.

R655-507-1. Policy.
R655-507-2. Procedure.

R655-507-1. Policy.

Upon a parolee's new conviction for a crime or a violation of the parole agreement, the Board of Pardons may restart the parole period at the recommendation of the Department of Corrections accompanied by a waiver of personal appearance signed by the parolee. This shall only be done when the Board has determined that an additional period of incarceration is unwarranted.

R655-507-2. Procedure.

Upon the receipt of a judgment or an incident report, both which shall be accompanied by a waiver of personal appearance, the case shall be routed to the Board Members to determine if additional incarceration or restarting the parole period are warranted.

If additional incarceration is indicated, parole revocation proceedings shall be initiated at the Board's direction.

If restarting the parole period is the decision of the Board, the Board staff shall create an amended parole agreement reflecting the new effective date. The amended agreement shall be signed by the parolee and returned to the Board file.

1987

76-3-302

R655-508. Evidentiary Hearings.

R655-508-1. Policy.
R655-508-2. Procedure.

R655-508-1. Policy.

It is the policy of the Utah Board of Pardons to conduct an evidentiary hearing when a not guilty plea is entered by a parolee at a parole revocation hearing and the Department of Corrections desires to pursue the allegation. (See Timeliness of Parole Revocation Hearings, #5.04.)

R655-508-2. Procedure.

The Board of Pardons shall adopt rules that govern the conducting of evidentiary hearings subject to state and federal law.

1988

77-27-2, 77-27-5, 77-27-9, 77-27-11

R655-509. Multiple Referrals For Single Parole Violation Incident.

R655-509-1. Policy.
R655-509-2. Procedure.

R655-509-1. Policy.

Prior Board of Pardons action to amend a parolee's parole agreement does not prevent subsequent parole revocation proceedings for the same incident, which constitutes an alleged violation of parole conditions, provided that the revocation occurs within six months from when the parole officer knew or should have known of the incident. Under no circumstances shall a parole be revoked more than once for the same incident regardless of whether the parolee was reincarcerated.

R655-509-2. Procedure.

Upon receipt of an incident report describing an alleged violation of parole, the Board of Pardons may, at any time, amend a parole agreement to adjust the special conditions for a parolee. Relative to any proposed special conditions, the parolee shall be afforded all his rights under policy #402, Special Conditions of Parole.

Nothing in this policy would prevent a parolee from remaining in the community on bail or being placed on community release pending adjudication of outstanding charges.

1988

77-27-11

Planning and Budget

R675. Planning and Budget.

R675. Planning and Budget.

R675-1. Rule for Implementation of the Resource Development Coordinating Committee Act, 1981.

R675-2. Rules of Procedure for the Utah Federal Activity Review System.

R675-1. Rule for Implementation of the Resource Development Coordinating Committee Act, 1981.

R675-1-1. Authority.

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R675-1-3. Definitions.

R675-1-4. Responsibilities of the Committee.

R675-1-5. Responsibilities of the State Planning Coordinator.

R675-1-6. Joint Responsibilities of the State Planning Coordinator and the Committee.

R675-1-7. Procedures

R675-1-1. Authority.

Sections 63-28a-1 and 63-28a-4 Utah Code Annotated (1953) as amended.

(Questions pertaining to these guidelines should be addressed to the Office of Planning and Budget at the Utah State Clearinghouse, 801-533-5245)

R675-1-2. Purpose.

To assist the State Planning Coordinator in implementing Section 63-28a Utah Code Annotated (1953) as amended, which created the Resource Development Coordinating Committee Act of 1981, by outlining procedures and responsibilities of the Committee and the State Planning Coordinator.

R675-1-3. Definitions.

A. Areawide Clearinghouse. One of seven, multi-county associations of government established by Executive Order of June 8, 1972.

B. Exempt State Action. Any state action exempted from review according to Section R675-1-7 of these guidelines.

C. Federal Action. Actions affecting the state's environment or physical resources initiated by a federal agency.

D. Federally-Assisted Action. Any activity affecting the state's environment or physical resources for which federal assistance is being sought, as listed in Appendices I and III of the Catalog of Federal Domestic Assistance, and all requests for federal assistance from state agencies pursuant to the Utah Federal Assistance Management Program Act of 1969.

E. Member. A state agency designated to serve on the Resource Development Coordinating Committee with full voting rights.

F. Ex Officio Member. An individual appointed to a federal agency upon the request of the Governor to represent that agency according to Section R675-1-7(A3 and 4) of these guidelines. Ex officio members do not have voting rights.

G. Representative. The individual representing member agency.

H. State Action. Any proposed action affecting the state's environment or physical resources for which state agency is directly or administratively responsible.

I. Committee. The Resource Development Coordinating Committee.

J. Priority Items. Proposed actions that have been determined by the Governor's Office, the State Planning Coordinator, or the chairperson as having high interest to the state. Priority items may include but are not limited to state actions, environmental impact statements, environmental assessments, federal agency planning documents, proposed regulatory actions or amendments, major policy statements, and cross-agency issues that require a coordinated state response.

R675-1-4. Responsibilities of the Committee.

A. To assist the State Planning Coordinator in the review of proposed state actions and forward its comments and recommendations on such actions to the State Planning Coordinator for recommendations to the initiating agency or the Governor or both.

B. To assist the State Planning Coordinator in the state review of federal and federally-assisted actions subject to the Federal Assistance Management Program Act of 1969, the National Environmental Policy Act of 1969 (P.L. 91-190), and Presidential Executive

CONSTITUTION OF UTAH

PREAMBLE

Article

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PREAMBLE

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the principles of free government, do ordain and establish this CONSTITUTION. 1896

ARTICLE I

DECLARATION OF RIGHTS

Section

1. [Inherent and inalienable rights.]
2. [All political power inherent in the people.]
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4. [Religious liberty — No property qualification to vote or hold office.]
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19. [Treason defined — Proof.]
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Section

24. [Uniform operation of laws.]
25. [Rights retained by people.]
26. [Provisions mandatory and prohibitory.]
27. [Fundamental rights.]

Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right. 1896

Sec. 2. [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require. 1896

Sec. 3. [Utah inseparable from the Union.]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land. 1896

Sec. 4. [Religious liberty — No property qualification to vote or hold office.]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution. 1896

Sec. 5. [Habeas corpus.]

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it. 1896

Sec. 6. [Right to bear arms.]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms. 1963

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law. 1896

Sec. 8. [Offenses bailable.]

(1) All persons charged with a crime shall be bailable except:

- (a) persons charged with a capital offense when there is substantial evidence to support the charge; or

(b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge; or

(c) persons charged with any other crime, designated by statute as one for which bail may be denied, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community or is likely to flee the jurisdiction of the court if released on bail.

(2) Persons convicted of a crime are bailable pending appeal only as prescribed by law. 1898

Sec. 9. [Excessive bail and fines — Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor. 1896

Sec. 10. [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded. 1896

Sec. 11. [Courts open — Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party. 1896

Sec. 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense. 1896

Sec. 13. [Prosecution by information or indictment — Grand jury.]

Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with the consent of the State, or by indictment, with or without such examination and commitment. The formation of the grand jury and the powers and duties thereof shall be as prescribed by the Legislature. 1947

Sec. 14. [Unreasonable searches forbidden — Issuance of warrant.]

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized. 1896

Sec. 15. [Freedom of speech and of the press — Libel.]

No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. 1896

Sec. 16. [No imprisonment for debt — Exception.]

There shall be no imprisonment for debt except in cases of absconding debtors. 1896

Sec. 17. [Elections to be free — Soldiers voting.]

All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty, in or out of the State, under regulations to be prescribed by law. 1896

Sec. 18. [Attainder — Ex post facto laws — Impairing contracts.]

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed. 1896

Sec. 19. [Treason defined — Proof.]

Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act. 1896

Sec. 20. [Military subordinate to the civil power.]

The military shall be in strict subordination to the civil power, and no soldier in time of peace, shall be quartered in any house without the consent of the owner; nor in time of war except in a manner to be prescribed by law. 1896

Sec. 21. [Slavery forbidden.]

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State. 1896

Sec. 22. [Private property for public use.]

Private property shall not be taken or damaged for public use without just compensation. 1896

Sec. 23. [Irrevocable franchises forbidden.]

No law shall be passed granting irrevocably any franchise, privilege or immunity. 1896

Sec. 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation. 1896

Sec. 25. [Rights retained by people.]

This enumeration of rights shall not be construed to impair or deny others retained by the people. 1896

Governor may disapprove any item of appropriation contained in any bill while approving other portions of the bill; and in such case the Governor shall append to the bill at the time of signing it a statement of the item or items which are disapproved, together with the reasons therefor, and such item or items shall not take effect unless passed over the Governor's objections as provided in this section. If the Governor disapproves any bill or item of appropriation after the adjournment sine die of any session of the Legislature, the presiding officer of each house shall poll the members of that house on the matter of reconvening the Legislature. If two-thirds of the members of each house are in favor of reconvening, the Legislature shall be convened in a session not to exceed five calendar days and at a time set jointly by the presiding officer of each house, solely for the purpose of reconsidering the bill or item of appropriation disapproved. If upon reconsideration, the bill or item of appropriation again passes both houses of the Legislature by a yea and nay vote of two-thirds of the members elected to each house, the bill shall become law or the item of appropriation shall take effect.

1979

Sec. 9. [Governor may fill certain vacancies.]

When any State or district office shall become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have the power to fill the same by granting a commission, which shall expire at the next election, and upon qualification of the person elected to such office.

1896

Sec. 10. [Governor's appointive power — Vacancies.]

The Governor shall nominate, and by and with consent of the Senate, appoint all State and district officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If, during the recess of the Senate, a vacancy occurs in any State or district office, the Governor shall appoint some qualified person to discharge the duties thereof until the next meeting of the Senate, when the Governor shall nominate some person to fill such office. If the office of Lieutenant Governor, State Auditor, State Treasurer or Attorney General be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill the same by appointment, from the same political party of the removed person; and the appointee shall hold office until a successor shall be elected and qualified, as provided by law.

1979

Sec. 11. [Vacancy in office of Governor — Determination of disability.]

In case of the death of the Governor, impeachment, removal from office, resignation, or disability to discharge the duties of the office, or in case of a Governor-elect who fails to take office, the powers and duties of the Governor shall devolve upon the Lieutenant Governor until the disability ceases or until the next general election, when the vacancy shall be filled by election. If, during a vacancy in the office of Governor, the Lieutenant Governor resigns, dies, is removed, or becomes incapable of performing the duties of the office, the President of the Senate shall act as Governor until the vacancy is filled or disability ceases. If in this case the President of the Senate resigns, dies, is removed, or becomes incapable of performing the duties of the office, the Speaker of the House shall act as Governor until the vacancy is filled or disability ceases. While performing the du-

ties of the Governor as provided in this section, the Lieutenant Governor, the President of the Senate, or the Speaker of the House, as the case may be, shall be entitled to the salary and emoluments of the Governor, except in cases of temporary disability.

The disability of the Governor or person acting as Governor shall be determined by either a written declaration transmitted to the Supreme Court by the Governor stating an inability to discharge the powers and duties of the office or by a majority of the Supreme Court on joint request of the President of the Senate and the Speaker of the House of Representatives. Such determination shall be final and conclusive. Thereafter, when the Governor transmits to the Supreme Court a written declaration that no disability exists, the Governor shall resume the powers and duties of the office unless the Supreme Court, upon joint request of the President of the Senate and the Speaker of the House of Representatives, or upon its own initiative, determines that the Governor is unable to discharge the powers and duties of the office. The Lieutenant Governor shall then continue to discharge these powers and duties as acting Governor. The Supreme Court has exclusive jurisdiction to determine all questions arising under this section.

1979

Sec. 12. [Board of Pardons — Respites and reprieves.]

Until otherwise provided by law, the Governor, Justices of the Supreme Court and Attorney General shall constitute a Board of Pardons, a majority of whom, including the Governor, upon such conditions as may be established by the Legislature, may remit fines and forfeitures, commute punishments, and grant pardons after convictions, in all cases except treason and impeachments, subject to such regulations as may be provided by law, relative to the manner of applying for pardons; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except after a full hearing before the Board, in open session, after previous notice of the time and place of such hearing has been given. The proceedings and decisions of the Board, with the reasons therefor in each case, together with the dissent of any member who may disagree, shall be reduced to writing, and filed with all papers used upon the hearing, in the office of such officer as provided by law.

The Governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the State, except treason or conviction on impeachment; but such respites or reprieves shall not extend beyond the next session of the Board of Pardons; and such Board, at such session, shall continue or determine such respite or reprieve, or they may commute the punishment, or pardon the offense as herein provided. In case of conviction for treason, the Governor shall have the power to suspend execution of the sentence, until the case shall be reported to the Legislature at its next regular session, when the Legislature shall either pardon, or commute the sentence, or direct its execution; and the Governor shall communicate to the Legislature at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon granted since the last previous report, stating the name of the convict, the crime for which convicted, the sentence and its date, the date of remission, commutation, pardon or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the Board made thereto.

1975

The pro tempore members serve terms of four years.

(b) All vacancies occurring on the board for any cause shall be filled by the governor with the advice and consent of the Senate pursuant to this section for the unexpired term of the vacating member.

(c) The governor may at any time remove any member of the board for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

(d) A member of the board may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state. A member may not engage in any occupation or business inconsistent with his duties.

(e) A majority of the board constitutes a quorum for the transaction of business, including the holding of hearings at any time or any place within or without the state, or for the purpose of exercising any duty or authority of the board. Action taken by a majority of the board regarding whether parole, pardon, commutation, termination of sentence, or remission of fines or forfeitures may be granted or restitution ordered in individual cases is deemed the action of the board. A majority vote of the five full-time members of the board is required for adoption of rules or policies of general applicability as provided by statute. However, a vacancy on the board does not impair the right of the remaining board members to exercise any duty or authority of the board as long as a majority of the board remains.

(f) Any investigation, inquiry, or hearing that the board has authority to undertake or hold may be conducted by any board member or an examiner appointed by the board. When any of these actions are approved and confirmed by the board and filed in its office, they are considered to be the action of the board and have the same effect as if originally made by the board.

(g) When a full-time board member is absent or in other extraordinary circumstances the chairperson may, as dictated by public interest and efficient administration of the board, assign a pro tempore member to act in the place of a full-time member. Pro tempore members shall receive a per diem rate of compensation as established by the Division of Finance and all actual and necessary expenses incurred in attending to official business.

(h) The chairperson may request staff and administrative support as necessary from the Department of Corrections.

(3) (a) Public notice shall be given of each available position on the board. Applications shall be received by the Department of Human Resource Management, which shall forward the applications to the Commission on Criminal and Juvenile Justice.

(b) The commission or a subcommittee of the commission shall recommend five applicants to the governor for appointment to the Board of Pardons.

(c) The commission shall consider applicants' knowledge of the criminal justice system, state and federal criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

1991

77-27-3. Repealed.

1985

77-27-4. Chairperson and vice chairperson.

(1) The governor shall select one of the members of the board to serve as chairperson and board administrator at the governor's pleasure. The chairperson may exercise the duties and powers, in addition to those established by this chapter, necessary for the administration of daily operations of the board, including personnel, budgetary matters, panel appointments, and scheduling of hearings.

(2) The chairperson shall appoint a vice chairperson to act in the absence of the chairperson.

1990

77-27-5. Board of Pardons authority.

(1) (a) The Board of Pardons shall determine by majority decision when and under what conditions, subject to this chapter and other laws of the state, persons committed to serve sentences in class A misdemeanor cases at penal or correctional facilities which are under the jurisdiction of the Department of Corrections, and all felony cases except treason or impeachment or as otherwise limited by law, may be released upon parole, pardoned, restitution ordered, or have their fines, forfeitures, or restitution remitted, or their sentences commuted or terminated.

(b) The board may sit together or in panels to conduct hearings. The chairperson shall appoint members to the panels in any combination and in accordance with rules promulgated by the board, except in hearings involving commutation and pardons. The chairperson may participate on any panel and when doing so is chairperson of the panel. The chairperson of the board may designate the chairperson for any other panel.

(c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole, pardon, or commutation granted or sentence terminated, except after a full hearing before the board or the board's appointed examiner in open session. Any action taken under this subsection other than by a majority of the board shall be affirmed by a majority of the board.

(d) A commutation or pardon may be granted only after a full hearing before the board.

(2) (a) In the case of original parole grant hearings, rehearings, and parole revocation hearings timely prior notice of the time and place of the hearing shall be given to the defendant, the county attorney's office responsible for prosecution of the case, the sentencing court, law enforcement officials responsible for the defendant's arrest and conviction, and whenever possible, the victim or the victim's family.

(b) Notice to the victim, his representative, or his family shall include information provided in Section 77-27-9.5, and any related rules made by the board under that section. This information shall be provided in terms that are reasonable for the lay person to understand.

(3) Decisions of the Board of Pardons in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a civil judgment.

(4) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment. However, respites or reprieves may

not extend beyond the next session of the Board of Pardons and the board, at that session, shall continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the offense as provided. In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at its next session. The Legislature shall then either pardon or commute the sentence, or direct its execution.

(5) In determining when, where, and under what conditions offenders serving sentences may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted, or their sentences commuted or terminated, the Board of Pardons shall consider whether the persons have made or are prepared to make restitution as ascertained in accordance with the standards and procedures of Section 76-3-201, as a condition of any parole, pardon, remission of fines or forfeitures, or commutation or termination of sentence. 1990

77-27-6. Payment of restitution.

When the Board of Pardons orders the release on parole of an inmate who has been sentenced to make restitution pursuant to § 76-3-201 or whom the board has ordered to make restitution, and all or a portion of restitution is still owing, the board may establish a schedule by which payment of the restitution shall be made, or order community service in lieu of or in combination with restitution. In fixing the schedule and supervising the paroled offender's performance, the board may consider the factors specified in Subsection 76-3-201(3). The board may impose any court order for restitution and order that a defendant make restitution in an amount not to exceed the pecuniary damages to the victim or victims of the offense of which the defendant has been convicted, or the victim of any other criminal conduct admitted to by the defendant to the sentencing court, unless the board applying the criteria as set forth in Subsection 76-3-201(3)(b) determines that restitution is inappropriate. The board may also make orders of restitution for recovery of any or all costs incurred by the Department of Corrections or the state or any other agency arising out of the defendant's needs or conduct. 1986

77-27-7. Parole or hearing dates — Interview — Hearings — Report of alienists — Mental competency.

(1) The Board of Pardons shall determine within six months after the date of an offender's commitment to the custody of the Department of Corrections, for serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

(2) Before reaching a final decision to release any offender under this chapter, the chairperson shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider his fitness for release and verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the Board of Pardons. Any offender outside of the state shall, if ordered by the Board of Pardons, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. Rules to carry out this section shall be made by the board. The offender

shall be promptly notified in writing of the board's decision.

(3) In the case of an offender convicted of violating or attempting to violate any of the provisions of Sections 76-5-301.1, 76-5-302, 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, and 76-5-405, the chairperson shall appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this subsection. The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) In any case where an offender's mental competency is questioned by the board, the chairperson shall appoint one or more alienists to examine the offender and report in writing to the board, specifically addressing the issue of competency. 1990

77-27-8. Record of hearing.

(1) A verbatim record of proceedings before the Board of Pardons shall be maintained by a certified shorthand reporter or suitable electronic recording device, except when the board dispenses with a record in a particular hearing or a portion of the proceedings.

(2) When the hearing involves the commutation of a death sentence, a certified shorthand reporter, in addition to mechanical means, shall record all proceedings except when the board dispenses with a record for the purpose of deliberations in executive session. The compensation of the reporter shall be determined by the board. The reporter shall immediately file with the board the original record and when requested shall with reasonable diligence furnish a transcription or copy of the record upon payment of reasonable fees as determined by the board.

(3) When the party in interest affirms by affidavit that he is unable to pay for a transcript or copy of the record which is necessary for further proceedings available to him, and that affidavit is not refuted, the board may order the reporter to furnish to the party in interest a transcript, or a copy of the record, or so much of it as is reasonably applicable to any further proceedings, or a copy of the recording, at the expense of the state, to the party in interest. 1985

77-27-9. Parole proceedings.

(1) The Board of Pardons may pardon or parole any offender or commute or terminate the sentence of any offender committed to a penal or correctional facility which is under the jurisdiction of the Department of Corrections for a felony or class A misdemeanor except as otherwise provided in Subsection (2). The release of an offender shall be at the initiative of the board, which shall consider each case as the offender becomes eligible. However, a prisoner may submit his own application, subject to the rules of the board.

(2) (a) A person sentenced to prison for a felony of the first degree involving child kidnapping, a violation of Section 76-5-301.1; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(3); or aggravated sexual assault, a violation of Section 76-5-405, or for a

RULES OF CRIMINAL PROCEDURE

Mar 18, 1974, 39 L Ed 2d 1xi,
eff July 1, 1974

Rules 41, 50 amended

Apr 22, 1974, 40 L Ed 2d xxxiii,
eff Dec 1, 1975²

Rules 4, 9, 11, 12, 15, 16, 17, 20,
32, 43 amended
Rules 12.1, 12.2, 29.1 added

Act July 31, 1975, P.L. 94-64 § 3,
89 Stat 370³

Rules 4, 9, 11, 12, 12.1, 12.2, 15,
16, 17, 20, 32, 43 amended

Act Dec 12, 1975, P.L. 94-149, § 5,
89 Stat 806

Rules 9, 16 amended

Apr 26, 1976, 47 L Ed 2d xli⁴

Rules 6, 23, 24, 41, 50 amended
Rule 40.1⁵ added

VII. JUDGMENT

Rule 32. Sentence and judgment

(a) Sentence.

(1) *Imposition of sentence.* Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The attorney for the government shall have an equivalent opportunity to speak to the court.

(2) *Notification of right to appeal.* After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of

² Effective date provided by Act July 31, 1975, P.L. 94-64, § 2, 89 Stat 370, which approved said Order Apr 22, 1974; see note to Rule 4.

³ Effective Dec 1, 1975, as provided by § 2 of Act July 31, 1975, except for amendment of Rule 11(e)(6), which became effective Aug. 1, 1975, as provided by § 2 of Act July 31, 1975, see note to Rule 4.

⁴ The amendments made to Rules 6(f) and 50 by Order Apr 26, 1976, became effective Aug 1, 1976, as provided by Act July 8, 1976, P.L. 94-349, § 1, 90 Stat. 822; see note to Rule 6.

The amendments made to Rules 6(e), 23, and 41(c) by Order Apr. 26, 1976, were approved or approved in modified form and were made effective Oct. 1, 1977, by Act July 30, 1977, P.L. 95-78, §§ 1, 2(a), (b), (c), 4, 91 Stat. 319, 320, 322; see note to Rule 6.

⁵ The proposed amendments to Rules 24 and 40.1 made by Order Apr. 26, 1976, were disapproved by Act July 30, 1977, P.L. 95-78, § 2(c), (d), 91 Stat. 320, eff. Oct. 1, 1977, and did not take effect.

JUDGMENT

Rule 32

any right of appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(b) Judgment.

(1) *In general.* A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(2) *Criminal forfeiture.* When a verdict contains a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the Attorney General to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper.

(c) Presentence Investigation.

(1) *When made.* The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.

(2) *Report.* The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court.

(3) Disclosure.

(A) Before imposing sentence the court shall upon request permit the defendant, or his counsel if he is so represented, to read the report of the presentence investigation exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity to comment thereon and, at the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the government.

(D) Any copies of the presentence investigation report made available to the defendant or his counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs.

(E) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons or the Youth Correction Division of the Board of Parole pursuant to 18 USC § 4208(b), 4252, 5010(e), or 5034 shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

(d) **Withdrawal of plea of guilty.** A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

(e) **Probation.** After conviction of an offense not punishable by death or by life imprisonment, the defendant may be placed on probation if permitted by law.

(f) **Revocation of probation.** The court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing.

(Dec. 26, 1944, eff. Mar. 21, 1946, as amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; Act July 31, 1975, P. L. 94-64, §§ 2, 3(31)-(34), 89 Stat. 370, 376, eff. Dec. 1, 1975.)

NOTES OF ADVISORY COMMITTEE ON RULES

Note to Subdivision (a)

This rule is substantially a restatement of existing procedure. Rule I of the Criminal Appeals Rules of 1933, 292 US 661 [18 USC formerly following § 688]. See Rule 43 relating to the presence of the defendant.

Note to Subdivision (b)

This rule is substantially a restatement of existing procedure. Rule I of the

Criminal Appeals Rules of 1933, 292 US 661 [18 USC formerly following § 688].

Note to Subdivision (c)

The purpose of this provision is to encourage and broaden the use of presentence investigations, which are now being utilized to good advantage in many cases. See, "The Presentence Investigation" published by Administrative Office of the United States Courts, Division of Probation.

Note to Subdivision (d)

This rule modifies existing practice by abrogating the ten-day limitation on a motion for leave to withdraw a plea of guilty. See Rule II (4) of the Criminal Appeals Rules of 1933, 292 US 661 [18 USC formerly following § 688].

Note to Subdivision (e)

See 18 USC former §§ 724 et seq. (now §§ 3651 et seq.).

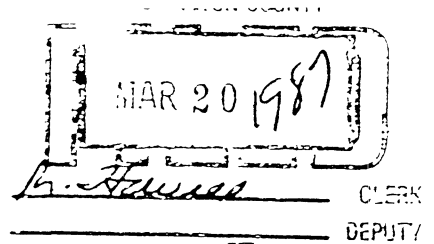
NOTES OF ADVISORY COMMITTEE ON 1966 AMENDMENTS TO RULES

Subdivision (a)(1). The amendment writes into the rule the holding of the Supreme Court that the court before imposing sentence must afford an opportunity to the defendant personally to speak in his own behalf. See *Green v United States*, 365 US 301, 5 L Ed 2d 670, 81 S Ct 653 (1961); *Hill v United States*, 368 US 424, 7 L Ed 2d 417, 82 S Ct 468 (1962). The amendment also provides an opportunity for counsel to speak on behalf of the defendant.

Subdivision (a)(2). This amendment is a substantial revision and a relocation of the provision originally found in Rule 37(a)(2): "When a court after trial imposes sentence upon a defendant not represented by counsel, the defendant shall be advised of his right to appeal and if he so requests, the clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant." The court is required to advise the defendant of his right to appeal in all cases which have gone to trial after plea of not guilty because situations arise in which a defendant represented by counsel at the trial is not adequately advised by such counsel of his right to appeal. Trial counsel may not regard his responsibility as extending beyond the time of imposition of sentence. The defendant may be removed from the courtroom immediately upon sentence and held in custody under circumstances which make it difficult for counsel to advise him. See, e.g., *Hodges v United States*, 368 US 139, 7 L Ed 2d 184, 82 S Ct 235 (1961). Because indigent defendants are most likely to be without effective assistance of counsel at this point in the proceedings, it is also provided that defendants be notified of the right of a person without funds to apply for leave to appeal in forma pauperis. The provision is added here because this rule seems the most appropriate place to set forth a procedure to be followed by the court at the time of sentencing.

Subdivision (c)(2). It is not a denial of due process of law for a court in sentencing to rely on a report of a presentence investigation without disclosing such report to the defendant or giving him an opportunity to rebut it. *Williams v New York*, 337 US 241, 93 L Ed 1337, 69 S Ct 1079 (1949);

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Hall of Justice
220 North 200 East
St. George, UT 84770
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF WASHINGTON, STATE OF UTAH

STATE OF UTAH)	
Plaintiff)	STATEMENT OF PLEA
-vs-)	AGREEMENT
ROBERT WILLIAM LABRUM)	Criminal No. 1603
Defendant)	

COMES NOW the Plaintiff, by and through O. Brenton Rowe, Deputy Washington County Attorney, and the Defendant, Robert William Labrum, by and through his attorney, John L. Miles, and hereby enter into the following Plea Agreement and submit the same and the reasons therefore for the Court's approval pursuant to Section 77-35-11, Utah Code Annotated 1953, as amended:

1. That the Defendant, Robert William Labrum, after being fully advised by his counsel of his rights, the nature of the charges against him and the consequences of his plea, including the possible penalty for the offense, the privilege against self-incrimination, the right to trial by jury, the right to confront witnesses against him, the right to appeal a conviction, and the waiver of these rights, has agreed to enter a plea of guilty to the charge in the Amended Information of MANSLAUGHTER, a 2nd Degree Felony, in violation of Sections 76-5-205(a) and 76-2-202,

Utah Code Annotated 1953, as amended.

2. That the Defendant has not received any threats, promises, or coercion of any kind to enter this plea.

3. That the State of Utah, by and through Paul F. Graf, Washington County Attorney, in return for the Defendant's plea of guilty to the Amended Information charging the offense of MANSLAUGHTER, a 2nd Degree Felony, and other terms as set forth herein, has agreed to move the Court to dismiss the original Information charging COUNT I: TAMPERING WITH WITNESS, a 3rd Degree Felony; COUNT II: OBSTRUCTION OF JUSTICE, a 2nd Degree Felony; and COUNT III: MURDER IN THE SECOND DEGREE, a 1st Degree Felony.

4. That the Defendant agrees to provide to the State of Utah information that leads to the discovery of the body of Becky Jo Jones, the victim in this matter.

5. That the Defendant agrees to give a truthful statement under oath before a court reporter regarding the acts which led to the filing of this case and any additional pertinent information which the State feels is necessary to their investigation.

6. That both parties agree that the Court should order the Utah State Prison to provide the Defendant psychological testing, evaluation and treatment beginning within sixty (60) days of the Defendant's commitment to said prison facility.

7. That the State of Utah agrees not to file any additional

charges against Robert William Labrum pertaining to any offenses relating to the death of Becky Jo Jones or the Washington County investigation thereof, arising out of facts known to the State of Utah as of the date of this agreement or disclosed by the Defendant, Robert William Labrum, in his statement which he agrees to provide as part of this Plea Agreement.

8. That the prosecutor has personally contacted Steve Despain, the investigating officer in this case, and he agrees and recommends that the proposed plea agreement would be a satisfactory and appropriate disposition of this case.

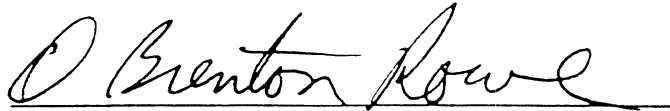
9. That the prosecutor has personally contacted Dean and JoAnn Jones, the parents of the victim in this matter, and they agree and recommend that the proposed plea agreement would be a satisfactory and appropriate disposition of this case.

10. That the Defendant and his counsel have been afforded an opportunity to review the Amended Information in this case.

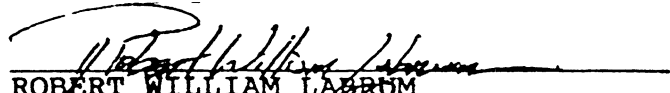
11. That the prosecutor believes that the interests of justice would be best served by the State's and the Defendant's agreement to, and the Court's acceptance of, the proposed plea

agreement set forth herein.

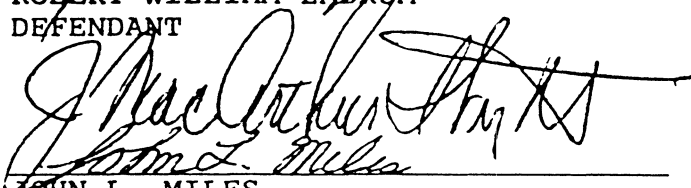
DATED this 18th day of March, 1987.



O. BRENTON ROWE
DEPUTY WASHINGTON COUNTY ATTORNEY



ROBERT WILLIAM LABRUM
DEFENDANT



JOHN L. MILES
ATTORNEY FOR DEFENDANT

Approved:

DISTRICT COURT JUDGE

Copy

1
2 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
3 IN AND FOR THE COUNTY OF WASHINGTON, STATE OF UTAH

4 * * * * *

5 STATE OF UTAH,)
6 Plaintiff,) COURT PROCEEDINGS
7 vs.)
8 ROBERT WILLIAM LABRUM,)
9 Defendant.) Criminal No. 1603

10 * * * *

11 BE IT REMEMBERED, that the above-entitled matter
12 came on regularly for hearing before sentencing, before
13 the Honorable J. Philip Eves, Judge of the above-entitled
14 Court, May 20th and 21st, 1987, at the Washington County
15 Hall of Justice, St. George, Utah, the respective parties
16 being represented by the following:

17
18 For the State of Utah:

19 PAUL F. GRAF,
20 Washington County Attorney
21 and
22 OWEN BRENTON ROWE,
23 Deputy Washington County Attorney

24 For the Defendant:

25 MESSRS. J. MACARTHUR WRIGHT
and
JOHN L. MILES

1 MR. WRIGHT: Yes, your Honor, and I have a state-
2 ment, if I may. Just a moment.

3 THE COURT: All right.

4 MR. WRIGHT: I would like to point out to the
5 Court that we received a copy of the presentence report,
6 that the Court has just referred to, almost a month ago.

7 This morning, as I walked in, I was handed a supplemental
8 document. I have not had an opportunity even to read that,
9 as much as I have been in court during another matter all
10 of that time. I did skim through it and I am concerned
11 about some of the documents that are in there, that have
12 been handed to us at this late date and given to us without
13 any opportunity to investigate or review --

14 THE COURT: What documents are you referring to?

15 MR. WRIGHT: It was suggested to me that it was
16 a supplemental --

17 MR. GRAF: It appears to be a packet of letters
18 from the Jones family and friends.

19 THE COURT: Oh. These documents are contained
20 in this envelope (indicating), I assume. For the record,
21 I have opened this envelope. I have not read the documents.
22 As soon as I realized what it was, it was placed back in
23 the file unread.

24 MR. WRIGHT: I see.

25 THE COURT: That's the status as far as that's

1 concerned.

2 MR. WRIGHT: Your Honor, we will have witnesses
3 during this hearing today --

4 THE COURT: All right.

5 MR. WRIGHT: -- in mitigation. I would like to
6 just simply state, as sort of an opening statement, I
7 assume that's the appropriate procedure for this, as well
8 as it would be at a trial --

9 THE COURT: Certainly.

10 MR. WRIGHT: -- that we are going to place Mr.
11 Labrum on the stand. He's going to give a statement that
12 I think that will probably track very much the statement
13 that he's already given in this case.

14 The situation, basically, that is going to be pointed
15 out to the Court is this: That Mr. Labrum, on the question
16 and the days preceding that day in question, had been
17 drinking very heavily, had consumed a great amount of
18 alcoholic beverages. And during the day he ran into
19 certain people who provided him with some crack, a derivative
20 of cocaine, a drug, that he used that rather heavily.
21 And that at the time that this incident was alleged to have
22 occurred, or did occur, that Mr. Labrum was under the
23 influence of those drugs and that alcohol to the extent that
24 he has absolutely no recollection consciously of the events
25 that occurred after a certain time in the evening that night

1 conviction of second-degree murder, that the Supreme Court
2 of the State of Utah, consistent with their ruling in
3 that case, would have declared this to be a manslaughter
4 case.

5 The State would have the Court remember Mark Hoffman.
6 He's probably created the best reputation in this state,
7 for a long, long time, for deception and for beating a
8 polygraph examination, and for other things, where he was
9 able to deceive the best of investigators.

10 I believe that Mr. Labrum is equally as deceptive
11 in his own way, and that the testimony that he gave today
12 was deceptive. He's a liar. He's a man who has serious
13 psychological problems.

14 The State agrees that he needs to have psychological
15 testing and evaluation and some kind of treatment at the
16 state prison.

17 The cover-up that he did was aggravious; it was terrible.
18 Becky Jones was dead on April the 13th. He knew it and
19 he denied it up until the time that he saw that he had
20 no way out but to admit to his activity. And even then,
21 perhaps for fear of admitting it to people that he loved,
22 or whatever, he still will not admit to it. That is
23 aggravious. That is terrible. And it's something that he
24 needs to deal with personally in his life.

25 The State recommends that in addition to the psycho-

1 logical testing and evaluation and treatment, that he also
2 be ordered to pay restitution to the Jones family. Now,
3 you have a letter from the Jones family that reflects that
4 the sum of approximately \$13,800 --

5 THE COURT: Let me just state that I have not
6 read that letter nor do I intend to consider it in these
7 proceedings.

8 MR. GRAF: Had I known that, I would have put on
9 testimony from them to the effect that that's what we
10 would request for restitution. You indicated that you had
11 it and I assumed that you were going to read those and
12 take --

13 THE COURT: No. In fact at the beginning of these
14 proceedings, I indicated that I had received such an
15 envelope and that Mr. MacArthur Wright was going to object,
16 and those documents -- I indicated I had opened the envelope
17 begun to read it and realized it was a packet of letters
18 related to the incident from persons outside the investiga-
19 tion of the Adult Parole and Probation Department, and I
20 put them away and did not read them and do not intend
21 to read them at this time.

22 MR. GRAF: I did not understand that, your Honor.
23 I would ask that we be able to reserve the opportunity to
24 have a restitution hearing for that purpose of allowing
25 the Jones family to recover the expenses that they have

1 incurred in the ongoing investigation in the search for
2 their daughter.

3 THE COURT: All right.

4 MR. GRAF: The State also recommends that the
5 defendant be given the maximum prison sentence with an
6 affirmative recommendation from the Court that the
7 defendant receive no parole during the term of this
8 prison sentence.

9 Thank you.

10 THE COURT: Thank you. Anything further, Mr.
11 Wright?

12 MR. WRIGHT: Your Honor, I, just very briefly,
13 indicate that the interpretation of Mr. Beatty's statement
14 could be considerably different than what counsel has
15 indicated. And I only say that because there's so much
16 that could be different than what has been said.

17 THE COURT: I've reviewed the statement, not
18 in great detail, but I have reviewed it.

19 MR. WRIGHT: I think it could be interpreted very
20 consistently with everything that has been testified to
21 here.

22 Your Honor, I think that as far as restitution, as
23 much as anybody is saddened by the trauma and the diffi-
24 culties that the Jones family has gone through, I think
25 that this is not the appropriate place. There's civil

1 remedies, if they wish to pursue that, and that may be
2 an appropriate way for them to go. I think under the
3 circumstances of this case, at this stage, that that would
4 not be appropriate to make an order at this time.

5 And, again, simply, your Honor, I would agree that
6 there has been a greivous crime, that is, the hiding of
7 the body certainly was. Mr. Labrum recognizes that.

8 I do not believe, however, that an opportunity of
9 him being rehabilitated, if it happens, should be deprived
10 of him. That should be left up to those who are professional
11 in that field, who have the expertise and would be able
12 to see things as they develop over the coming years to make
13 the determination as to what should be done. I recognize
14 that any recommendation the Court makes is only a recommenda-
15 tion. But I think that it should be left in their hands
16 at this point.

17 Thank you.

18 THE COURT: All right, thank you. Mr. Labrum,
19 is there anything you'd like to say before I impose
20 sentence?

21 ROBERT WILLIAM LABRUM: No, your Honor.

22 THE COURT: All right. Would you stand, please.
23 Mr. Robert William Labrum, based on your plea of guilty,
24 you've previously been found guilty of the offense of
25 manslaughter, a second-degree felony. That was a plea that

1 was voluntarily entered into by you, in this courtroom,
2 after a specific instruction that you could be sentenced
3 to the state prison from one to 15 years, you entered that
4 plea of guilty.

5 Your counsel has further said, during these proceedings,
6 that you have no intention of withdrawing that plea. And,
7 therefore, you stand convicted of that offense.

8 Based upon that offense, I sentence you to serve
9 from one to 15 years in the state penitentiary. I sentence
10 you to pay a fine of \$5,000. I'm going to reserve the
11 question of restitution pending any further hearing,
12 should that be appropriate.

13 I'm committing you to the custody of the sheriff to
14 be transported to the prison to be turned over to the
15 Department of Corrections to serve that sentence.

16 It will be my affirmative recommendation that you
17 be required to serve at least ten years of that sentence
18 before parole is considered.

19 Anything further we need to cover at this time?

20 MR. GRAF: No, your Honor. Thank you.

21 THE COURT: All right, that's the order. Mr.
22 Graf will prepare an order for my signature.

23 MR. GRAF: I will.

24 THE COURT: We're in recess. Mr. Labrum, you have
25 30 days to perfect an appeal from any action of this Court

1 or any error of this Court. That 30-day period begins
2 to run today. If you wish to file an appeal, it has to
3 be filed within that 30-day period or else you lose your
4 right to appeal.

5 Do you have any question about your right to appeal?

6 ROBERT WILLIAM LABRUM: No, your Honor.

7 THE COURT: If you want to appeal, you need to
8 notify your counsel right away.

9 * * *

1
2 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
3 IN AND FOR THE COUNTY OF WASHINGTON, STATE OF UTAH
4


5 * * * * *

6 STATE OF UTAH,)
7 Plaintiff,) REPORTER'S CERTIFICATE
8 vs.)
9 ROBERT WILLIAM LABRUM,)
10 Defendant.) Criminal No. 1603
11

12 * * *

13 I, BYRON RAY CHRISTIANSEN, JR., hereby certify
14 that I am the Official Court Reporter for the above-entitled
15 Court, duly registered and licensed to practice in the
16 State of Utah; that on the 20th and 21st days of May, 1987,
17 I appeared before the above-named Court and reported the
18 proceedings had and the testimony given in the above-entitled
19 cause of action; and that the foregoing pages, numbered from
20 1 to 176, inclusive, contain, to the best of my ability,
21 a full, true and correct transcription of said proceedings.

22 DATED this 20th day of June, 1987, at St. George,
23 Utah.
24
25


Byron Ray Christiansen, Jr., CSR

Paul F. Graf #1229
Washington County Attorney
Hall of Justice
220 North 200 East
St. George, UT 84770
(801) 634-5723

SEAL COURT
WASHINGTON COUNTY

'87 JUN 4 PM 4 02

FILED
M. Hunsaker CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF WASHINGTON, STATE OF UTAH

STATE OF UTAH)	
Plaintiff)	JUDGMENT, SENTENCE AND
-vs-)	COMMITMENT
ROBERT WILLIAM LABRUM)	Criminal No. 1603
Defendant)	

The above-entitled matter having come on before the Court for sentencing on the 20th and 21st days of May, 1987, and the State of Utah being represented by Paul F. Graf, Washington County Attorney, and the Defendant, ROBERT WILLIAM LABRUM, being present and represented by his attorney, J. MacArthur Wright, and the Defendant having previously entered a plea of guilty to the Amended Information on file herein charging him with the offense of MANSLAUGHTER, a 2nd Degree Felony, pursuant to a Plea Agreement with the State of Utah, and the Defendant having taken the stand, under oath, on his own behalf, and counsel for Defendant having called as witnesses in mitigation Michael Clinton Taylor, John Williams, the Defendant's grandfather, and Nolan Ashman, a psychological consultant, and the State of Utah having called as a witness in aggravation Jennifer Jones, the sister of the victim, and the Court having received exhibits from

the Defendant and the State as marked and placed in the file, and both counsel having presented arguments and the matter having been submitted, and there being no cause why judgment should not be entered, the Court having received a presentence report and being fully advised in the premises, now makes and enters the following Judgment, Sentence and Commitment:

JUDGMENT

IT IS HEREBY FOUND, ADJUDGED, AND DECREED that the Defendant, ROBERT WILLIAM LABRUM, is guilty of the offense charged in the Amended Information on file herein, to-wit: MANSLAUGHTER, a 2nd Degree Felony.

RESTITUTION

The Court hereby reserves jurisdiction to determine restitution in the above-entitled matter.

SENTENCE

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, ROBERT WILLIAM LABRUM, is hereby sentenced to serve a term of not less than one (1) year but not to exceed fifteen (15) years in the Utah State Prison.

IT IS FURTHER ORDERED that the Defendant pay a fine in the amount of five thousand (\$5,000.00) dollars.

RECOMMENDATION

It is hereby recommended that the Defendant, ROBERT WILLIAM LABRUM, serve ten (10) years of the sentence imposed herein before being considered for parole.

COMMITMENT

THE SHERIFF OF WASHINGTON COUNTY, State of Utah, is hereby commanded to take ROBERT WILLIAM LABRUM, the above-named Defendant, and deliver him to the Utah State Prison there to be kept and confined in accordance with the above Judgment, Sentence, and Commitment.

DATED this 26th day of May, 1987.


J. PHILIP EVES
DISTRICT COURT JUDGE

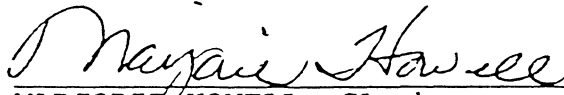
CERTIFICATE

STATE OF UTAH)

COUNTY OF WASHINGTON)

I, MARJORIE HOWELL, Clerk of said District Court of Washington County, State of Utah, do hereby certify that the Honorable J. Philip Eves, whose name is subscribed to the preceding certificate, is the Judge of said Court, duly commissioned and qualified, and that the signature of said Judge to said certificate is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Court this 26 day of May, 1987.

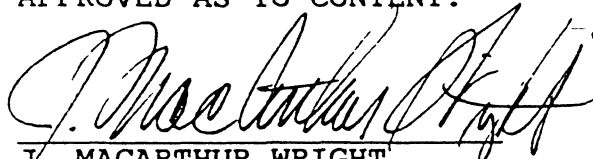

MARJORIE HOWELL, Clerk

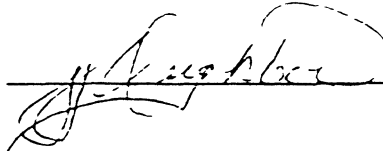
SHERIFF'S RETURN

I do hereby certify that on the 26 day of May, 1987, I delivered the above-named Defendant, ROBERT WILLIAM LABRUM, to

the Utah State Prison there to be kept and confined in accordance with the above Judgment, Sentence and Commitment.

APPROVED AS TO CONTENT:


J. MACARTHUR WRIGHT
ATTORNEY FOR DEFENDANT





MEMBERS

AUL W. BOYDEN
TORIA J. PALACIOS
ARY L. WEBSTER

THE STATE OF UTAH

BOARD OF PARDONS
6065 SOUTH 300 EAST
SALT LAKE CITY, UTAH 84107
(801) 261-2825

PAUL W. SHEFFIELD
Administrator

June 10, 1987

Robert Wm. Labrum, USP #18352
P. O. Box 250
Draper, Utah 84020

Dear Mr. Labrum:

You are advised that pursuant to the rules and regulations of the Board of Pardons of the State of Utah, your hearing date for consideration for parole has been set for a regular meeting of the Board of Pardons to be held during the month of November 1987.

Sincerely,

PAUL W. SHEFFIELD
Administrator

IN THE SUPREME COURT OF THE STATE OF UTAH

ROBERT WILLIAM LABRUM,

Petitioner,

vs.

THE UTAH STATE BOARD OF
PARDONS, H. L. HAUN,
Chairman of the Utah State Board
of Pardons, and TOMMY HOUSE,
Warden, Utah State Prison, Draper
Facility,

No.

Respondents.

State of Utah)
 : ss
Washington County)

CORRINE LABRUM, being first duly sworn upon oath deposes and
says:

1. I am the mother of the Petitioner, Robert William Labrum, and
have personal knowledge of the facts set forth in this affidavit.

2. Some time before November 20, 1987, my son informed me that
the Board of Pardons would conduct a parole determination hearing to
determine the earliest date of my son's parole. At that time, I spoke with a
Ms. Bobby Mahan, who was a social worker working with Robert Labrum's
unit at the Draper Facility, and asked her what could be done to prepare for
the hearing -- what information I needed from the Board to help my son for
the hearing. She said that the Board merely wanted to know whether my son
could obtain gainful employment and whether he would have a place to stay
upon his release. I was specifically lead to believe that the parole

determination hearing would not be a re-trial or a rehearing of all the facts and reports that had been used against my son at sentencing.

3. I remember that I, my ex husband, and my daughter spoke to several other people regarding the procedure of the parole determination hearing prior to the hearing. These people gave only minimal information about the hearing similar to what was received by Bobby Mahan. I and my family cannot recall who those persons were that we spoke to other than Bobby Mahan.

4. I and my family were unaware that the Board of Pardons had access to any private investigative reports from the victim's family. I and my family were unaware that the Board of Pardons had post-sentence reports on my son. I and my family were also unaware that a petition had been filed against my son and made available to the Board of Pardons since my family and parents had all left the St. George area shortly after Robert's sentencing hearing. Nothing that I, my son or my family received from the Board of Pardons suggested that we could obtain these reports and petitions from the Board upon request.

5. Upon request from my son, I was present at the parole determination hearing on November 20, 1987, for the purpose of assisting my son at the hearing.

6. Contrary to what I had been led to believe, at the hearing, the Board of Pardons relied upon several reports regarding Robert's character and accused him of several crimes in addition to the one for which he was incarcerated. The parole determination hearing was in essence a complete resentencing hearing similar to what was conducted before Judge Eves in Washington County.

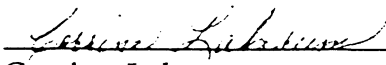
7. After the hearing, I approached Ms. Victoria Palacios, the spokeswoman for the Board of Pardons who conducted the parole determination hearing, in effort to obtain the reports and other information from the Board. I was, however, abruptly and summarily dismissed. For this reason I wrote Ms. Palacios the letter dated November 21, 1987.

8. When my son's attorneys wrote the Board of Pardons and requested the reports, petitions, letters and other information, the Board responded by letter dated January 21, 1992. My son's attorneys received no additional documentation regarding the contents of the Board's file on my son other than the January 21, 1992 letter.

9. Again on March 11, 1992, my son's attorneys wrote the Board requesting disclosure of the reports, petitions, letters and other information in the Board's file on my son. The Board responded to that letter by their April 15, 1992 letter. With the letter, the Board sent copies of the petitions from the community, but did not send any post-sentence reports, letters from anyone other than from myself and those friendly to Robert, investigative reports, statements from Robert's hostile friends, or any other information regarding the accusations the Board made to my son during the original parole determination hearing.

10. To date I have never received or seen copies of the post-sentence reports, investigative reports, hostile letters, or other information relied on by the Board and discussed during the original parole determination hearing.

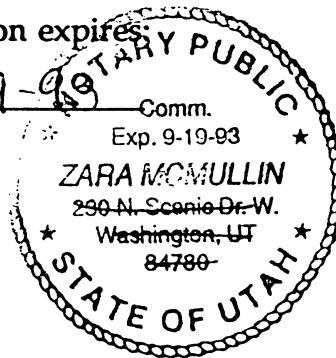
Dated this 23 day of April, 1992.


Corrine Labrum

On the 28th day of April, 1992, appeared before me CORRINE LABRUM, who being first duly sworn upon oath, swore and attested to the facts set forth above that the same are true to the best of her knowledge, information and belief, and who duly acknowledged before me that she is the signer of the foregoing affidavit.

My commission expires

9-19-93



Zara McMullen

Notary Public residing at: 148 E. 350 N.
HURR - UT

2340 Massachusetts Ave.
15
Lemon Grove, CA 92045
November 21, 1987

Ms. Victoria Palacios, Chairman
Board of Pardons Utah State Prison
14000 So. Frontage Rd.
Draper, UT 84020

Dear Ms. Palacios,

I do hope you'll take a few minutes to read and think about what I have to say. First let me tell you that I have respect for your position and realize your manner and attitude is the result of many years of study, experience and struggle to achieve in a "man's world". And I also realize what you are presented on paper is the folder presenting a "prisoner's life".

I understand that what I will say isn't going to change the world or alter the past, but it could have some bearing on the future. We asked several sources and were basically told the minimal facts. So we therefore came unprepared for the events of yesterday's hearing for Robert Labrum. We had been specifically told that the case would not be re-tried. And that our participation would be minimal (what an understatement that proved to be!).

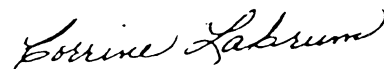
The saddest fact in our country today is that money can buy anything--good attorneys, good defense, freedom. Our plight was having none of the above. One outstanding fact, the plea bargain "the gift"...was written before Robert was ever expedited from Georgia. Harassment, wits, and techniques had all failed, and it was the final hope for attainment of fact. In this "bargain" was a clause stating that the Jones Family would not appear at or oppose parole hearings or ultimate release of Robert.

The fact constantly overlooked by most is that the criminal has a family. A family who loves, who cares for, and nurtures him forever. That family empathizes with the Joneses. We lived in the same town for over 15 years, we served the community, built homes, paid taxes, and were a productive integral part of life and growth. Becky and Robert attended the same schools, she was in our home, and we practiced the same religion.

Yet, as we sat listening once again to the statements taken out of context that painted the picture of a serial sex offender and narcotic abuser-I wondered why had no one taken a realistic look at us-Robert's family. We have the same facts presented only-his father abandoned us and his mother married several times. We as parents make mistakes, but they can be worked at and repaired, step fathers can be good people and love their step children also. And what of the rest of the family. Robert has a brother and a sister, and loving grandparents. Emphasis has been given to Becky's sisters. What of Robert's? Cynthia was and is very close to Robert. What of her continuing nightmares, fears, and "resultant scars"? What of the illegal harassment inflicted on us in the area of St. George? What of the libel and slander? What becomes of the lifetime of faith in the ultimate belief that justice will prevail through the only means left in this country to keep it intact--the judicial system?

Time is precious to all...a schedule is important, but when the ultimate lives of many are laid to shatter, what an advantage some thorough explanation, some courtesty, and a moment for understanding could have been offered. We had come a long way, expending effort and means, to only be "tolerated". The Jones family lost Becky, with many facts never to be known nor challenged. The Labrum family has lost a son to the inept, synical, callous system. We will go on to live a lifetime of dishonor and mistrust with a loss of faith in humanity. We were and are well educated, caring and law abiding citizens of a community of now some 20,000, many of whom would sign a petition on our behalf. Would our letters of contrition and petitions have any effect on you?

Sincerely,



Corrine Labrum Coccus
Mother of Robert W. Labrum
18352

UTAH BOARD OF PARDONS
IN AND FOR THE STATE OF UTAH

IN RE:)
)
ROBERT LADRUM)
USP # 18352)
)
_____)

HEARING HELD: NOVEMBER 20, 1987

5980 South 300 East • Murray, Utah 84107

OUR FILE NO. 112087



REPORTED BY

INTERMOUNTAIN COURT REPORTERS

Certified Shorthand Reporters •

COPY

1 APPEARANCES:

2 CHAIRMAN- VICTORIA PALACIOS

3

4 BOARD MEMBERS: GARY WEBSTER

5 GARY JUDKINS

6 PAUL SHEFFIELD

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1 SALT LAKE CITY, Utah, November 20th, 1987

2 CHAIRMAN: Good morning. This is the time set for
3 an original parole grant hearing for Robert William
4 Labrum, assigned USP number 18352. Is that you, sir?

5 MR. LABRUM: Yes, ma'am.

6 CHAIRMAN: Am I pronouncing your name correctly?

7 MR. LABRUM: Labrum.

8 CHAIRMAN: Labrum, okay. Mr. Labrum, you are here
9 convicted of a manslaughter and it's a second degree
10 felony. You are sentenced to serve between one and 15
11 years for this crime.

12 What occurred apparently is that for a period of
13 time you appeared to have been living, I guess
14 temporarily in St. George with your grandparents. Your
15 estranged wife at that time lived in Murray. You
16 encountered the victim on the street, and invited her to
17 visit you at a party, I suppose at your grandparents'
18 home.

19 What happened after that is apparently unknown. And
20 the only thing that is known is that you discovered her
21 body the following morning. And in essence you kept the
22 young woman's body in your grandparents' home for a
23 period of some three days during which time you called
24 your wife. She joined you there, and together through a
25 series of maneuvers to distract the grandparents and all

1 that sort of thing, you managed to get the body out into
2 the outlying areas and bury it.

3 Is that essentially a correct statement of the facts
4 as we know them?

5 MR. LABRUM: Yes, ma'am, that's correct.

6 CHAIRMAN: All right. Mr. Labrum, this is a
7 difficult case in many ways. First of all, let me note
8 for the record that you were initially charged with
9 second degree murder, a first degree felony, with
10 witness tampering and obstruction of justice. In
11 exchange or in a plea bargain, you agreed to plead
12 guilty to manslaughter and to give up the location of
13 the body in exchange for the dismissal of those charges;
14 is that correct?

15 MR. LABRUM: Yes.

16 CHAIRMAN: All right. We'll return to that point in
17 just a moment.

18 In terms of their reasons for having committed the
19 crime, Mr. Labrum, there are a number of different
20 stories that you promoted at various times. I don't
21 think we need to go into all of the stories, we'll go to
22 the most recent version, the version that appeared in
23 the letter from your attorney, McArthur Wright. We
24 received this information yesterday at the Board of
25 Pardons offices.

1 Apparently your version at this point is that you
2 did in fact admit meeting this woman on the street and
3 inviting her over. That you and a group of people had
4 intended to party, that your two friends, I forget their
5 names, DeDe and another, didn't make it at any rate.
6 And so you ended up being involved in a party with the
7 victim, two strangers and yourself. Apparently you have
8 a recollection up to that point.

9 It's my understanding that both the private
10 investigator that was hired by the victim's family and
11 the St. George police department, agree that the
12 evidence that there was in fact two strangers involved
13 with you, is rather flimsy. Your attorney tells us that
14 there is some evidence supporting the fact that there
15 were two additional people there.

16 Your version was that you were doing drugs with
17 them, you were doing crack and alcohol, and that you got
18 so high that you simply lost consciousness of what you
19 were doing, and so you remember nothing else.

20 Apparently the thrust of your lawyer's argument is
21 this: That you admit the possibility that you may have
22 committed the crime, but that you put forth that the
23 possibility that these other two individuals, is at
24 least as likely.

25 Now, do you wish to address that?

1 MR. LABRUM: That's basically it.

2 CHAIRMAN: When was the last time you made an effort
3 to recall the crime under hypnosis?

4 MR. LABRUM: I believe the hypnosis took place a day
5 or two before my sentencing hearing. I don't know the
6 exact date.

7 CHAIRMAN: It was a day or two before your
8 sentencing hearing that that occurred? Okay.

9 MR. LABRUM: Yes, ma'am.

10 CHAIRMAN: Okay. And you have absolutely no
11 recollection of it at all?

12 MR. LABRUM: Well, as I was incarcerated I was
13 experiencing some, I don't know if they are flashbacks
14 or exactly what. I had various nightmares about the
15 whole thing and I came to the conclusion that she had
16 been shot and there had been a knife wound or
17 something. And when I found the body there was a little
18 of blood around and so that kind of -- I told my lawyer
19 about that. He said well, let's not say anything to
20 that affect until the coroner's report comes back. He
21 said, you know, that might just be something --

22 CHAIRMAN: And one that is among them the more
23 puzzling questions in my mind, and that is, you seem to
24 have, I guess, selective recollection. I'm not sure
25 what it is. You seem to recall some details quite well

1 and others you don't have at all. I suppose one theory
2 might be that the extent of the trauma has caused you to
3 adopt this as a defense mechanism, I have no idea. But
4 it seems a little strange to me that you didn't recall
5 such very very important things as the fact that the
6 body was nude; and that there were the cords around the
7 neck. I suppose having forgotten, perhaps, a lot of the
8 details or even the essence of the crime at the time
9 that it occurred is one thing, but we're talking about a
10 three day period during which you and your wife
11 discussed, I suppose at some length, what to do about
12 your predicament. And I frankly, Mr. Labrum, I find it
13 very very hard to believe that you weren't aware of a
14 lot more than you are telling us, particularly during
15 the course of those three days.

16 Do you wish to address that?

17 MR. LABRUM: Well, I would say that it's -- I don't
18 know exactly what you're asking me to address. As far
19 as the body being nude, yes, it was. I was --

20 CHAIRMAN: Why did you say at some point that you
21 didn't remember whether it was nude or not?

22 MR. LABRUM: I was instructed by various individuals
23 that in this case it was pretty -- it was a case that
24 obviously the media exposure had blown out of
25 proportion, had brought different --

1 CHAIRMAN: Okay. Wait a minute.

2 MR. LABRUM: Well, I -- well, why the body being
3 nude, they came to me and said, you know, I don't think
4 if I were you on the witness stand I would actually go
5 as far as to say that.

6 CHAIRMAN: Okay. I'm very sorry and very
7 sympathetic to the family of the victim right now and I
8 hate to belabor this point, but it goes to your
9 truthfulness, and quite frankly Mr. Labrum, whether I
10 can believe anything else you say.

11 Are you telling me then that you decided to what,
12 commit perjury?

13 MR. LABRUM: I wasn't sure -- (inaudible) -- body --

14 CHAIRMAN: You are not -- let's look at your
15 criminal history. It looks as if you only have a minor
16 criminal history as a juvenile; alcohol theft, burglary
17 and escape from custody. As an adult, disorderly
18 conviction and arrest for alcohol to minors.

19 I want to get back to your life style and all of
20 those things in just a moment. But, let me ask you if
21 you're aware of this, and I think you probably are
22 because your attorney had an opportunity to look at the
23 presentence investigation report. Are you aware that
24 law enforcement, various law enforcement officials have
25 traced your life, I guess over the past maybe three or

1 four years, and as a consequence of that they have made
2 some connections with some other crimes that occurred
3 and they're quite concerned that this may not be the
4 first -- committed -- (inaudible).

5 MR. LABRUM: I have no idea.

6 CHAIRMAN: You're not being questioned about it any
7 further?

8 MR. LABRUM: No.

9 CHAIRMAN: I see.

10 MR. LABRUM: I never was --

11 CHAIRMAN: You were never even questioned about any
12 of the others?

13 MR. LABRUM: No, ma'am.

14 CHAIRMAN: Okay. You married Ann Fieldsted in
15 June?

16 MR. LABRUM: Yes.

17 CHAIRMAN: In June of '86. That marriage was rocky
18 at best and in fact you were separated at the time the
19 crime was committed. I suppose --

20 MR. LABRUM: I wasn't.

21 CHAIRMAN: You weren't separated, you were simply --

22 MR. LABRUM: I was on vacation.

23 CHAIRMAN: You were on vacation. Okay, okay. All
24 right. So that marriage sustained through the course of
25 all of this. Then in December there would have been

1 what, six months after you were married approximately in
2 December your ex-wife attempted suicide?

3 MR. LABRUM: Yes, ma'am.

4 CHAIRMAN: Was placed in a mental institution, and
5 at that point you decided to join the army. Let me ask
6 you, why didn't --

7 MR. LABRUM: No, ma'am, I joined the army the end of
8 September.

9 CHAIRMAN: Oh, I see. I thought you had done it.
10 Now, had you decided to separate at that point?

11 MR. LABRUM: No, ma'am. We had -- it was like you
12 said, it was very rocky. I was at a point where I felt
13 I was, you know, too young to be married. She was --
14 she is a college graduate, professional, and there were
15 just a lot of things that, you know, I really didn't get
16 into her friends and she didn't like mine.

17 CHAIRMAN: So the status in September was what
18 then?

19 MR. LABRUM: We were married.

20 CHAIRMAN: You were married, going away to the army
21 and she was going to stay in Murray and teach?

22 MR. LABRUM: Yes, well, I -- at that point we had
23 talked about a divorce. I was more than happy with it.
24 So I had nowhere really to go. Neither one of my
25 parents at that time were able to, you know, I wasn't

1 able to run home or anything. So --

2 CHAIRMAN: Okay. Let's see, your family -- looks as
3 if your family history, it looks as if you -- father for
4 very long at all. Your -- (inaudible).

5 MR. LABRUM: Not.

6 CHAIRMAN: That's not the case?

7 MR. LABRUM: No.

8 CHAIRMAN: Go ahead.

9 MR. LABRUM: It was my natural father.

10 CHAIRMAN: Excuse me. I had the impression -- well,
11 your natural father deserted your mother prior to your
12 birth? Or do I have incorrect information?

13 MR. LABRUM: I don't know.

14 CHAIRMAN: Okay. What is the status of your parents'
15 marriage, help me with that?

16 MR. LABRUM: My natural parents are divorced.

17 CHAIRMAN: All right. I got that right. All
18 right. And your mother remarried.

19 MR. LABRUM: Yes, ma'am.

20 CHAIRMAN: Okay, but for the most part she reared
21 you alone or with a step father, which?

22 MR. LABRUM: Both.

23 CHAIRMAN: In both situations. Okay.

24 You were an Eagle Scout and you had good grades and
25 there's no questions about your aptitude. And you went

1 on a mission and then you were recalled after that.

2 I guess I'd like to talk a little bit about your
3 life style Mr. Labrum. We have two different pictures
4 pointed out to -- painted for us, and I'll give you both
5 of them and you can tell me which is more accurate. One
6 of them is that you are a person who has, over a long
7 period of time, been developing increasing hostility
8 toward women and an increasing interest in sexual
9 violence. And that that interest has more likely than
10 not -- I'm sorry, did you smile at that?

11 MR. LABRUM: No, ma'am. I was just -- they told me
12 the different psychiatrists and stuff coming in, and
13 this sexual violence thing, that's not me. They came in
14 and said do you hate your mother and things. You know,
15 I love my mother more than -- you know, she's my mother.

16 CHAIRMAN: I'll give you an opportunity to expand on
17 that. I thought I had said something funny. All right.
18 So that's one picture, that you're a person who is
19 violent, who has some very very deep problems
20 psychopathic problems in fact, and perversions and they
21 base this on a lot of different things; on the writings
22 in the journal that you wrote, and on some statements
23 that you made. One in particular is of great interest
24 to me, and that's the statement that you made to your
25 friends and I believe it was on more than one occasion

1 or to more than one friend.

2 That you had a fantasy about going to Las Vegas and
3 picking up a black hooker and cutting off her breasts
4 and watching her bleed to death or murdering her after
5 that. Two different versions. Did you say that, Mr.
6 Labrum?

7 MR. LABRUM: Not in context of fantasy. It was more
8 in a context, everybody was sitting around, and I -- at
9 that point I was hanging out with a crowd of hard core
10 punk rockers. And I don't know if you're really into or
11 know anything about them, but they are very violent
12 natured. And I did make that statement, but it wasn't
13 in the context of any fantasy, and I never, never even
14 attempted to --

15 CHAIRMAN: Why would you make that statement? What
16 was the context?

17 MR. LABRUM: Everybody started -- it was more like
18 everybody was sitting around, we were drunk, we were
19 smoking a little dope and, you know, it just -- the
20 conversation led to this and that. And there were
21 things like people saying, you know, taking different
22 parts of people and putting them in a blender and
23 serving them at a cocktail party. That was just the --

24 CHAIRMAN: Okay. Mr. Labrum, I think the fact that
25 you would even sit through that conversation let alone

1 offer something of your own said something about you.

2 MR. LABRUM: Yes, ma'am.

3 CHAIRMAN: The other picture that we get is one of a
4 person who is just plain old mixed up and messed around
5 with a little bit of drugs and simply lost track of
6 whatever happened on that occasion, and I guess you
7 recognize that that's the picture you're painting.

8 I'm a little confused on the drug use. Several of
9 your friends were interviewed, and the indication I get
10 from them is that only infrequent marijuana use was all
11 that they ever saw. And yet a very important part of
12 your explanation of what happened on this night is tied
13 into our believing that you were able to quite readily
14 connect up with some drug dealers who you didn't know,
15 but who were deal anything crack which is not a light
16 weight drug. And that doesn't fit with what your
17 friends told us. Can you account for that?

18 MR. LABRUM: Yes, ma'am, very easily. I don't really
19 know exactly what friends you're talking about. If I
20 knew who you were talking about, I could tell you
21 exactly. I was very heavily involved in drug
22 trafficking. My wife knew it. She was probably the
23 only person that knew how heavy I was in to it. I've
24 had many sources of drugs. I've had them since I was 15
25 years old. I've made trips to Las Vegas and dealt in

1 cocaine.

2 CHAIRMAN: Okay.

3 MR. LABRUM: I've even had chances to deal in
4 heroin.

5 CHAIRMAN: That's fine, thank you. I need a little
6 bit of help on the sequence on discovering the crime.
7 Your wife's suicide attempt was in December of '86,
8 correct?

9 MR. LABRUM: Yes, ma'am.

10 CHAIRMAN: When were you arrested?

11 MR. LABRUM: February 26th, 1987.

12 CHAIRMAN: Okay. Do you know how much time passed
13 between your wife's suicide attempt and her discussion
14 with the police about having seen the body?

15 MR. LABRUM: I believe about 15 to 20 days.

16 CHAIRMAN: Okay. And so in the interim I suppose it
17 was just a period of time to complete their
18 investigation before they came to arrest you. And so
19 that would have made about a month before you -- between
20 the time of your arrest and the time you actually
21 revealed the location of the body?

22 MR. LABRUM: I'm not sure of that date but yes,
23 there was a time lapse there.

24 CHAIRMAN: Okay. We're just about at the end of
25 this. Here at the YACS it looks like you had

1 involvement in the college program; is that correct?

2 MR. LABRUM: Yes, ma'am.

3 CHAIRMAN: And you're in substance abuse therapy
4 with Mr. Richards?

5 MR. LABRUM: Yes, he's -- this was his last week over
6 here.

7 CHAIRMAN: And you were involved quite extensively
8 with the self help course here. It looks as though
9 you're trying to use your time well here.

10 MR. LABRUM: I'm trying.

11 CHAIRMAN: Okay, have you had any disciplinaries?

12 MR. LABRUM: I've had a minor and a major.

13 CHAIRMAN: Okay. What were they?

14 MR. LABRUM: I had a major for marijuana use.

15 CHAIRMAN: Okay, I'm glad I gave you an opportunity
16 to tell us that voluntarily. A lot of inmates don't.
17 That disciplinary troubles me a great deal Mr. Labrum,
18 and I'll tell you why. Your account is that you got
19 crazy enough possibly to do this in the first place or
20 at least to put yourself in this situation because of
21 drug use, and you turn around and use drugs in here.

22 MR. LABRUM: Yes, ma'am.

23 CHAIRMAN: Have you learned nothing from the
24 experience?

25 MR. LABRUM: Yes, ma'am, I have. But you also have

1 to look at my standpoint in here. When I came in here,
2 I didn't know anybody. I came in here with a bag on my
3 back (sic).

4 CHAIRMAN: What does that mean?

5 MR. LABRUM: It was just they knew who I was when I
6 got here. In order to -- for some people you know, they
7 wouldn't have said anything. But in my case, you know,
8 they knew different kind of things. And just -- I
9 believe I was one point, four points over on the
10 urinalysis test which, you know, I was pretty proud
11 about that, actually. Because I -- you know, I've taken
12 another one and I don't know the results of that. I
13 suppose it's negative.

14 CHAIRMAN: What precisely were you proud about, that
15 enough time had lapsed since you used the marijuana that
16 your count was down that low or was it taken
17 immediately? It couldn't have been taken immediately
18 after you got in here. When was it?

19 MR. LABRUM: September. Well, I would -- you know,
20 I've had a history of drug abuse and substance abuse.
21 I've never sought any help or treatment. And finally,
22 you know, I -- you know, this is where its got me.
23 Obviously there's some sort of problem.

24 CHAIRMAN: Let me just check some things you've
25 used. Speed?

1 MR. LABRUM: Yes.

2 CHAIRMAN: Heroin, LSD, mushrooms and marijuana and
3 crack. Okay. I just have one more thing. (inaudible)
4 profoundly affected by what they submitted. And I guess
5 one of the things about this crime that is hardest to
6 understand Mr. Labrum, is -- it's hard enough to
7 understand having put one's self in this situation that
8 you did, and this woman ending up dead. But it seems to
9 me you had an opportunity to ease the distress of the
10 victim's family and you failed to do that. And I
11 thought it was particularly callous, if in fact it's an
12 accurate representation of the plea bargain. I thought
13 it was particularly callous that you would trade off a
14 plea in exchange for revealing the location of the
15 body.

16 Do you wish to respond to that?

17 MR. LABRUM: Yes, ma'am. That is how it really
18 appeared but in fact, I said when I first came in to my
19 lawyers, I said look, you know, let's -- I'm here, let's
20 get it taken care of. I was sick and tired of -- it
21 wasn't like I was feeling real good inside all the
22 time. It wasn't like I was a callous criminal killer
23 that didn't have any feelings for the victim and her
24 family. I knew they was suffering, and that didn't make
25 me feel, you know, like yeah, I'm in control or

1 anything. I said I'd give back the body a long time
2 ago, before they even brought that out. They just --
3 that was one of their -- I don't know what it really
4 was. They, you know, my lawyers I guess were trying to
5 find the best deal for me.

6 CHAIRMAN: Okay.

7 MR. LABRUM: It wasn't like I was being callous and
8 saying no, I'm not going to take the body back.

9 CHAIRMAN: We have petitions with I believe some
10 3,834 signatures and that's only a partial. We have
11 more petitions in here. It's quite clear that a good
12 part of the community and that part of the country would
13 not like to see you be paroled.

14 And just one more thing I wanted to mention. The
15 letter by the sister, by one of the sisters, indicated
16 to me I think the real nature of -- the real impact of
17 the crime on this family. She represents that their
18 lives were placed on hold for all of those months and
19 that finally when it all came out, it was very much like
20 a horror story come true, that she heard about, read
21 about and thought about things like blood and recognized
22 that it was her sister they were talking about. That
23 young woman is scarred. I have nothing further.

24 Mr. Webster?

25 MR. WEBSTER: I think Ms. Palacios has covered most

1 of the questions I have, but there are a couple that I'd
2 like you to respond to.

3 And I've read most of the investigative reports as
4 well as the other documentation provided. I was
5 impressed to a point where I want to ask you this
6 question. When you said you discovered the body and you
7 decided -- your statement is in essence that you woke up
8 upstairs, got a glass of orange juice, went downstairs,
9 saw the party scene, went into the bedroom where you had
10 been staying and found the body. Wondered what to do,
11 went out and sat down, and then you said well, I guess I
12 better clean up. And as a part of that decided to put
13 the body in the trunk, the steamer trunk.

14 I'm interested in knowing what options you thought
15 of at that time? I mean, that's very callous and very
16 telling to me about your intent to cover up a death,
17 from the very very beginning.

18 MR. LABRUM: Well, I don't particularly recall every
19 thought and every flash --

20 MR. WEBSTER: Why did the trunk disposal become the
21 only option?

22 MR. LABRUM: I don't know. I really -- I don't
23 know. I was petrified, scared, you know. You got to
24 remember, people realize I was a partier. Whenever I
25 have a party, sure, you know, buys, drinking, drugs,

1 they knew that was going to be happening. I thought I'd
2 come downstairs. Sure, might be some pictures knocked
3 off the walls and beer cans, ash trays. But what I
4 found was, it wasn't like I was prepared for that.

5 MR. WEBSTER: Well, perhaps you ought to do some
6 introspection in that area. As I read your account and
7 all the investigative reports and subsequent accounts I
8 was left always with a question of why that seemed to be
9 the only option you ever thought of was to dispose of
10 the body. I'm also, as Ms. Palacios already pointed
11 out, I'm concerned about the callousness of not giving
12 up the body. I think you got one heck of a plea bargain
13 around this crime.

14 As I looked at the -- and a number of months of
15 investigation and read all those reports, had it not
16 been for your wife turning state's evidence, it's likely
17 you probably would not be here today.

18 There are a lot of inconsistencies, Mr. Labrum, in
19 your record. There's an awful lot. As you have just
20 said, you were known as a partier and there seems to be
21 an awful lot of violence associated with your background
22 as the investigative reports reveal. That appears for a
23 period of time in your life to have been a substantial
24 part, of sexual violence, aggressive sex, fighting, a
25 lot of drugs, what have you.

1 One area of conflict. Your friends say that -- some
2 of the friends say that you were only known to use
3 marijuana yet you just said you were heavily into
4 dealing drugs or distributing drugs. Is that how you
5 were making your living, in drugs?

6 MR. LABRUM: Yes.

7 CHAIRMAN: Comes up that you don't have much of a
8 stable job history?

9 MR. LABRUM: I do have a quite stable job history.

10 MR. WEBSTER: Answer the question, rather than my
11 observation.

12 MR. LABRUM: Well --

13 MR. WEBSTER: Were you getting your primary money in
14 income from dealing?

15 MR. LABRUM: No, my primary -- it was just a
16 supplement.

17 MR. WEBSTER: I may have some others. Let me turn
18 the time to Mr. Judkins.

19 CHAIRMAN: Mr. Judkins?

20 MR. JUDKINS: I have a couple of questions. First
21 -- drug use, how old were you when you were --
22 (inaudible)?

23 MR. LABRUM: Oh, 14, 15.

24 MR. JUDKINS: 14 or 15, and you're 23 now?

25 MR. LABRUM: Yes, sir.

1 MR. JUDKINS: As I understand your version of what
2 happened, you really don't have a recollection of how
3 the victim died; is that your position?

4 MR. LABRUM: It is.

5 MR. JUDKINS: And the reason that you give for that
6 would be that because of the partying and the condition
7 you were in that you can't remember. Have you ever had
8 an experience in your life that you're aware of prior to
9 that night, where either alcohol or drugs interfered
10 with your ability to recollect or correctly perceive
11 what was happening?

12 MR. LABRUM: Probably 20, 30 times.

13 MR. JUDKINS: Give me an example if you would.

14 MR. LABRUM: I totaled my car, woke up in my parking
15 lot and walked into my house, and my wife woke me up the
16 next day when she got home from work and told me that
17 the car had been wrecked. And I went to get up, and I
18 had hit the steering wheel, I guess I had hit
19 something. I hit the steering wheel and my whole chest
20 was black and blue. I had no idea how I even wrecked.

21 MR. JUDKINS: Had you been drinking that night or on
22 drugs or both?

23 MR. LABRUM: Both.

24 MR. JUDKINS: The night in question, where Vickie
25 Joe lost her life, what had you been taking?

1 MR. LABRUM: Well, (inaudible), I (inaudible) the
2 previous Thursday with non stop drinking. I'd wake up,
3 still be half drunk and start drinking again for an
4 entire week. And with marijuana use and I just happened
5 into -- to get into the coke thing, that was just a
6 freak.

7 MR. JUDKINS: I missed the last phrase.

8 MR. LABRUM: A freak.

9 MR. JUDKINS: Just before that.

10 MR. LABRUM: The cocaine?

11 MR. JUDKINS: I missed what you said. In your
12 estimation, do you have problems with accurate
13 perceptions in life due to the drugs?

14 MR. LABRUM: I've asked myself that also. I have --
15 since I been going to substance abuse, you know, I
16 realize I'm an alcoholic. I'm 23 and I'm an alcoholic,
17 that's pretty bad. But with my LSD use, and my use -- I
18 don't -- lost something, but you know, you don't know
19 what you've really lost because you can't remember what
20 it was. You hear what I'm saying?

21 MR. JUDKINS: I guess the real question that I want
22 to ask more than any other single thing, is it's evident
23 you do have a history. You represent that there's a
24 history where you're not perceiving life correctly with
25 the things that you've done to yourself. Did you kill

1 Vickie Joe?

2 MR. LABRUM: I might have, yes.

3 MR. JUDKINS: Do you have any further recollection
4 than that?

5 MR. LABRUM: No, I don't.

6 MR. JUDKINS: What do you recollect that would make
7 you think you did kill Vickie Joe?

8 MR. LABRUM: Like I said, just I had various
9 nightmares, if you will, about this. And I -- as I
10 understand the coroner's report was of strangulation,
11 and I thought there were weapons involved but -- I can't
12 see how that would happen. Due to the fact that we were
13 kind of like a militant society and were hard cores and
14 eventually, you know, it led to shooting her head --

15 MR. JUDKINS: You don't have specific recollections
16 but you think you may have --

17 MR. LABRUM: I was there.

18 MR. JUDKINS: Do you think you're a dangerous
19 person?

20 MR. LABRUM: No, sir. Not as long as I stay away
21 from the alcohol and drugs.

22 MR. JUDKINS: That's the only questions that I
23 have.

24 CHAIRMAN: Okay. I'd like to turn to the visitors
25 now. For the record let me indicate there are a number

1 of people attending the hearing. Among them are Joann
2 Sullivan Jones, mother of the victim. Rulon Dean Jones,
3 father of the victim. Loni Jones a sister and Jennifer
4 Jones, a sister. In addition appearing and attending on
5 behalf of Mr. Labrum are Corrine Williams -- would you
6 say your last name, please.

7 MS. COCCUS: Coccus.

8 CHAIRMAN: Coccus, Mr. Labrum's mother, Ken Labrum,
9 his father, Velva S. Labrum, his grandmother, and
10 Cynthia Susan Thomas, a sister.

11 Let's see, you have elected, Mr. Labrum, to have
12 your mother and father speak for you. We'll start with
13 your mother. Ms. Coccus, what would you like to tell
14 the board?

15 MS. COCCUS: Not knowing what you expected of us at
16 all, I talked with Mrs. (inaudible) and she said that
17 what you would ask us to offer here would be what we
18 could do in ways of supporting Robert when he's
19 released. We live in San Diego, and we have good jobs
20 there. And, you know, could rent anything where he
21 could be housed with us or separately. And I've talked
22 to two of their programs there. One that would offer
23 part-time work while he was finishing schooling, and a
24 full time program that they also offer. Talked with
25 them both at length, and you know, they would be willing

1 to accept him.

2 And the full time would be, you know, according to
3 whatever education and skills and so forth that they
4 would offer. So we feel like we can offer not only
5 family love and support to him, but also housing, work
6 and any establishment that he would need for any period
7 of time.

8 CHAIRMAN: All right. Thank you very much. Ken
9 Labrum, what would you like to tell us?

10 KEN LABRUM: I'm completely in a different
11 environment. I'm in a rural area which is Meadow (sic)
12 which my mother and myself and her relatives are there
13 where I'm starting into the pest control business. In
14 our area there wouldn't be any lacking of housing and
15 there are other relatives there. Our farm is small, but
16 there's always plenty of work to do and it's a clean LDS
17 environment, except for a few of us old fellers. But
18 other than that prison is a hell of a place to be, I can
19 see that, but sometimes that's the (inaudible).

20 CHAIRMAN: Okay. Thank you very much. Would any of
21 the board members have any further questions?

22 MR. JUDKINS: I have one.

23 CHAIRMAN: Okay.

24 MR. JUDKINS: I think I have this. In one of the
25 investigative reports that I read, you were quoted as

page 28 is missing from
the original

1 MR. JUDKINS: That's all.

2 CHAIRMAN: Did you ever threaten your wife if she
3 told?

4 MR. LABRUM: No, I did not as she can tell you.

5 CHAIRMAN: We learned from a more recent report,
6 11-12-87 is one of the dates on this thing, that you've
7 -- that the people in the prison are concerned about
8 your manner, your attitude, if you will, basically that
9 you're quite threatening. And in particular, visually
10 challenging female staff. I'll just read this. An
11 example of this behavior is his tendency to approach
12 female staff, look them in the eye start laughing and
13 then walk away. Reporting officers in the female staff
14 feel very uncomfortable with that kind of behavior. Do
15 you do that?

16 MR. LABRUM: I wasn't aware that I had done that.

17 CHAIRMAN: You weren't aware of it. You think you
18 do it?

19 MR. LABRUM: I don't. As far as being threatening
20 to staff, the staff pretty much has it under
21 controller. You know, I don't think the staff is
22 threatened by anybody to be quite honest with you. If
23 they feel threatened they lock you down and put you in a
24 hole where there's no way they are threatened.

25 CHAIRMAN: That's a sufficient response, thank you.

1 Mr. Labrum, before we close the hearing let me tell you
2 this; the board uses guidelines. The guidelines
3 recommend that you serve at least 36 months of the 15
4 years. Those are only a minimum guideline, they are
5 recommendation, we don't need to follow them. And we
6 have recommendations that we expire your entire
7 sentence, we have recommendations that you serve 10
8 years. We'll make that decision right now. I'd like you
9 all to step out and we'll call you back when it's
10 decided.

11 (Whereupon a recess was taken.)

12 CHAIRMAN: All right Mr. Labrum, it's the decision
13 of the board you should expire your sentence. You'll
14 spend every day of the 15 years in here, February 26th
15 in the year 2002 you will be released.

16 This is one of the few cases, Mr. Labrum, in which
17 it is the consensus of the board that it's a pity we
18 didn't have longer than 15 years to keep you.

19 I have something else to say. Because you will be
20 expiring your sentence we will be unable to place any
21 special conditions on your release. Therefore, any
22 restitution that may be owing for burial costs cannot be
23 had through the criminal system. And so I would like to
24 inform the victim's family that a civil judgment may be
25 had at this point, and renewed periodically so that when

1 the year 2002 rolls around the cost of both burial --
2 burial costs may be recovered from Mr. Labrum.

3 That's all.

4 (Whereupon the hearing was concluded.)

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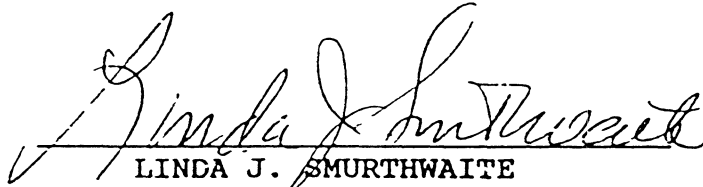
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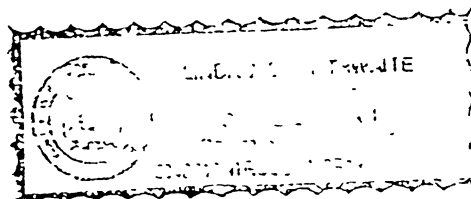
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6 I, Linda J. Smurthwaite, Certified Shorthand
7 Reporter, Registered Professional Reporter, and notary
8 public within and for the county of Salt Lake, State of
9 Utah do hereby certify:

10 That the foregoing proceedings were taken by me from
11 an electronic tape recording at the time and place set
12 forth herein, and was taken down by me in shorthand and
13 thereafter transcribed into typewriting under my
14 direction and supervision.

15 That the foregoing pages contain a true and correct
16 transcription of my said shorthand notes so taken.

17 In Witness Whereof, I have subscribed my name this
18 24th day of March, 1992.

19
20 
21 LINDA J. SMURTHWAITE
22 CERTIFIED SHORTHAND REPORTER



TIME MATRIX

USED TO CALCULATE MINIMUM TIME IF SENTENCE IS INCARCERATION

CRIME SEVERITY

	CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
		MUR II	OTHER	HOMICIDE 2ND SEX	2ND DEG 3RD SEX	3RD DEG	2ND DEG	3RD DEG	A	B
CRIMINAL HISTORY	PCOR	12 YRS	10 YRS	6 YRS	36 MON	24 MON	24 MON	18 MON	12 MON	6 MON
	FAIR	10 YRS	7 YRS	5 YRS	30 MON	21 MON	21 MON	15 MON	10 MON	5 MON
	MODERATE	7 YRS	5 YRS	4 YRS	24 MON	18 MON	18 MON	12 MON	8 MON	4 MON
	GOOD	5 YRS	5 YRS	3 YRS	21 MON	15 MON	15 MON	9 MON	4 MON	3 MON
	EXCELLEN	5 YRS	5 YRS	2 YRS	18 MON	12 MON	12 MON	6 MON	3 MON	3 MON
CONSECUTIVE ENHANCEMENTS										
		36 MON	30 MON	24 MON	18 MON	12 MON	12 MON	6 MON	3 MON	3 MON
CONCURRENT ENHANCEMENTS ADDED BY B.O.P.										
		18 MON	15 MON	12 MON	9 MON	6 MON	6 MON	3 MON	3 MON	3 MON

DRUG DISTRIBUTION OF OR INTENT TO DIST. OVER \$500 & RESIDENTIAL BURGLARY SHOULD BE "PERSON" CRIMES

ACTIVE CONVICTIONS

		DEGREE	YEARS	MONTHS
MOST SERIOUS	<u>Man slaughter 20</u>	_____	_____	<u>36</u>
NEXT MOST SERIOUS	_____	_____	_____	_____
OTHER	_____	_____	_____	_____
OTHER	_____	_____	_____	_____
TOTAL				<u>36</u>

SENTENCES SHOULD GENERALLY BE CONCURRENT. HOWEVER, THE EXISTENCE OF THE FOLLOWING AGGRAVATING CIRCUMSTANCES SUGGEST CONSIDERATION OF CONSECUTIVE SENTENCES:

1. ESCAPE OR FUGITIVE
2. UNDER SUPERVISION OR BAIL RELEASE WHEN OFFENSE WAS COMMITTED
3. UNUSUAL VICTIM VULNERABILITY
4. INJURY TO PERSON OR PROPERTY LOSS WAS EXTREME FOR CRIME CATEGORY
5. OFFENSE CHARACTERIZED BY EXTREME CRUELTY OR DEPRAVITY

IF THE SENTENCES ARE TO BE CONSECUTIVE, USE THE CONSECUTIVE ENCHANEMENTS PORTION OF THE "TIME MATRIX" FOR ALL CONSECUTIVE SENTENCES EXCEPT THE "MOST SERIOUS" CONVICTION.

Robert W. Labrum, 18352 11-20-87

CRIMINAL HISTORY ASSESSMENT

PRIOR FELONY CONVICTION
(SEPARATE CRIMINAL INCIDENTS)

0 NONE 0
2 ONE
4 TWO
6 THREE
8 MORE THAN THREE

CRIMINAL HISTORY CATEGORY

POOR 16 - 28

FAIR 12 - 15

MODERATE 8 - 11

GOOD 4 - 7

EXCELLENT 0 - 3

PLEASE CIRCLE THE
CORRECT CATEGORY

PRIOR MISD. CONVICTIONS
(SEPARATE CRIMINAL INCIDENTS)
(INCLUDES DUI & RECKLESS)
(EXCLUDES OTHER TRAFFIC)

0 NONE 1
1 ONE
2 TWO TO FOUR
3 FIVE TO SEVEN
4 MORE THAN SEVEN

PRIOR JUVENILE REFERRALS
(FINDINGS OF DELINQUENT FOR
INCIDENTS THAT WOULD HAVE BEEN
FELONIES IF COMMITTED BY AN ADULT)
[3 NON-STATUS MISD. = 1 FELONY]

0 NONE 2
1 ONE
2 TWO TO FOUR
3 MORE THAN FOUR
4 SECURE PLACEMENT

SUPERVISION HISTORY

(ADULT OR JUVENILE)

0 NO PRIOR SUPERVISION 1
1 PRIOR SUPERVISION
2 PRIOR RESIDENTIAL PLACEMENT
3 PRIOR REVOCATION
4 CURRENT SUPERVISION OR PRE-TRIAL RELEASE

SUPERVISION RISK

(ADULT OR JUVENILE)

0 NO ESCAPES OR ABSCONDINGS 0
1 FAILURE TO REPORT (ACTIVE OFF.) OR OUTSTANDING WARRANT
2 ABSCONDED FROM SUPERVISION
3 ABSCONDED FROM RESIDENTIAL PROG. OR EXTRADITION REQ'D
4 ESCAPED FROM CONFINEMENT

WEAPONS ENHANCEMENT

(ACTIVE OFFENSE)

0 NONE 2
1 OTHER
2 KNIFE
3 FIREARM OR EXPLOSIVE

** NOTE: 2nd FIREARMS CONVICTION
REQUIRES A MANDATORY 5 - 10 YEAR
CONSECUTIVE SENTENCE **

TOTAL PLACEMENT SCORE: 6

Strangulation

To: Board of Pardons
6100 South 300 East, Suite #203
Murray, Utah 84107

Frm: Robert Labrum USP #18352
PO Box 250
Draper, Utah 84020

Re: Special Attention Hearing Request

Oct. 15, 1990

Dear Sirs:

On November 20, 1987 I was considered for parole by the Board of¹ Pardons. At that time I was given a 15 year expiration date on my 1-15¹ year manslaughter sentence. I would respectfully request that a Special Attention Hearing could be arranged for reconsideration of my release date - February 26, 2002.

I seek this hearing for several reasons. The first being that during my original hearing various Board members used references to facts that were both maligned and non-truths. I presume that most of the references were gathered from a presentence report done by an AP&P worker in St. George, Ut.. His so called facts were a compilation of hear-say and nonadmissible courts evidence. During the time of his editing my case had not yet been heard in open court. Another reason for seeking this hearing is that during my original hearing other crimes were noted. These crimes I had not only not been charged with but was later exonerated from. From a combination of misinterpreted reports and allegations I feel a fair and impartial hearing was not conducted.

I have recently acquired my court records that were transcribed for the first original time since my sentencing to prison. These documents consist of 177 pages of court proceedings and court admitted exhibits (i.e., Hypnotic Interview by Nolan Ashman, Associate Professor of Psychology, and the results of a Polygraph Examination administered May 18, 1987.). All the above mentioned documents can be provided upon request.

I have been incarcerated for 4 years as of February 26, 1991. During this time I have sought out all available self-help programs and college. I am currently involved in a Vocational Training program provided by Salt Lake Community College. My G.P.A. for the past 3 quarters has been 4.0 respectfully with favorable work reports. I have also been prison disciplinary free for the past 2 1/2 years.

For the past 3 years I have attended the Substance Abuse Therapy program provided for the inmates here at the prison. I have also been involved in various group therapy programs. I've also had the opportunity for intensive diadic counseling with Dr. René Parker, Ph.D..

I feel that at this time I have changed my life and my lifestyle in a very positive way. Any consideration on your behalf for a Special Attention Hearing to be scheduled would be greatly appreciated.



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 00042175

Consideration of the Status of LABRUM, ROBERT WILLIAM PRISON NO. 18352

The above-entitled matter came on for a hearing before the Utah State Board of Pardons on the 30th day of October, 1990, for consideration as:

SPECIAL ATTENTION HEARING

After the statement of _____ and the following witnesses:

1) _____ 2) _____
and good cause appearing, the Board made the following decision and order:

ORDER

___ Rescind _____ parole date, _____

___ Parole to become effective _____ with following special conditions:

___ Amend parole agreement to add the following special conditions:

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |

___ Rehearing for _____

___ Termination of sentence and parole to become effective _____

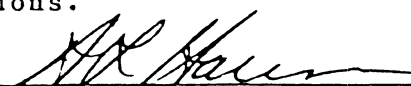
___ Expiration of sentence effective _____

☒ Other NO CHANGE.

CRIME	SENT CASE#	JUDGE	EXPIRATION
MANSLAUGHTER	1-15 1603	EVES	02/26/2002

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

By order of the Board of Pardons of the State of Utah, I have this date 30th day of October, 1990, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.


H. L. HAUN, Chairman

To: BOARD OF PARDONS
448 East 6400 South, Suite 300
Murray, UT 84107

From: ROBERT LABRUM USP# 18352
14000 South Frontage Rd.
Draper, UT 84020

Re: REDETERMINATION OF SENTENCE


May 7, 1991

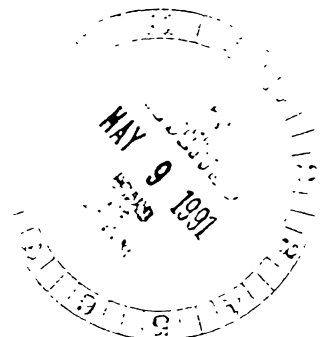
Gentlemen;

I am petitioning the Board of Pardons for the purpose of a redetermination of my expiration date, February 26, 2002. My reasons for this are stated on the attached application.

I do realize that the policy of the administration at this time states that I must complete 1/2 of my given date before any request for relief can be sought by this means. However, due to the extreme and excessive given time that I received and the new possibilities in the Foote vs. Board of Pardons case, for due process and other issues that can possibly exist, I am seeking all remedies at my disposal. As a result I respectfully request that your consideration be given to this matter.

Thank You,


Robert Labrum



UTAH JAIL BOARD (OF PAROLE)

THIS APPLICATION IS FOR REDETERMINATION OF DATE OF ELIGIBILITY FOR PAROLE, COMMUTATION OF SENTENCE, TERMINATION OF SENTENCE, REMISSION OF FINE OR FORTHFORTH, OR PARDON.

NAME: ROBERT WILLIAM LABRUM

U.S.P. NUMBER: 18352

STATE YOUR REASONS FOR APPLYING FOR THIS REDETERMINATION: _____

1) The UTAH SENTENCING AND RELEASE GUIDELINES are 36 months on my 1-15 years Manslaughter case. I recieved 180 months in my original Parole Board hearing November 20, 1987.

2) Information was used against me in an unfair and potentially prejudicial manner that I had no means to refute.

3) Information was used that was not in anyway related to my case.

4) There was the total overlooking of court evidence and centering mostly on hear-say and unsubstantial accusations with or without direct bearing on my case.

5) I have recieved extensive diadic counseling and group therapy by

150 NORTH 200 EAST, SUITE 203
P O BOX 2747
ST GEORGE, UTAH 84771-2747
TELEPHONE (801) 628-3688
TELECOPIER (801) 628-3275

V LOWRY SNOW
CURTIS M JENSEN
LEWIS P. REECE
OF COUNSEL
RICHARD A. HIGGINS

October 22, 1991

CERTIFIED RETURN-RECEIPT REQUESTED

Mr. H.L. Haun
Chairman of the Board of Pardons
for the State of Utah
448 East 6400 South, Suite 300
Murray, UT 84107

Re: Robert William Labrum
Utah State OBSCIS No. 00042175
Prison No. 18352

Dear Mr. Haun:

Our office represents the interests of Mr. Labrum.

In reviewing the record of the proceedings of Mr. Labrum's initial hearing before the Board on the 20th day of November, 1987, we note the following improprieties:

1. Mr. Labrum was denied the right of due process in that he was not able to review the contents of his file at the time of hearing or prior thereto. Apparently the Board took into consideration hearsay statements from witnesses submitted in the form of letters and other memorandum at the time of the hearing. Had he the opportunity, he would have been able to call witnesses in his own behalf to refute specific hearsay allegations.
2. Mr. Labrum was denied his constitutional right of confrontation of witnesses whose testimony apparently was utilized by the Board in hearsay form.

3. Mr. Labrum was denied the assistance of counsel.

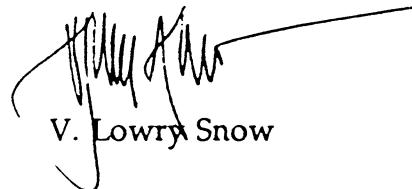
As a result of the hearing held on said date, Mr. Labrum was given a parole date of February 26, 2002. As you are aware, this date, if allowed to stand, represents the maximum term that he would serve in any event under the sentence imposed. The decision of the Board in recommending said date appears to be inappropriate and inconsistent in view of other like sentences and also in view of the recommendation of the Honorable J. Philip Eves, the District Court Judge who sentenced Mr. Labrum.

In view of the above and in view of the recent Supreme Court decision *Footte v. Utah Board of Pardons*, 156 Utah Adv. Rep. 3, we hereby request a rehearing for Mr. Labrum for the setting of his parole date. This is not a request for reconsideration, but rather a request that Mr. Labrum be afforded due process as should have been accorded him in his first hearing. In the event the Board refuses this request, then Mr. Labrum is prepared to file proceedings which we believe would mandate a rehearing, including the filing of a Writ of Habeas Corpus.

Would you please respond at your earliest convenience, but in no event later than ten (10) days from the date hereof. Your nonresponse shall be taken as a refusal of our request.

Very truly yours,

SNOW & JENSEN



V. Lowry Snow

VLS/zlm
pc: Mr. Robert Labrum



State of Utah

BOARD OF PARDONS

Ernest H. Bangerter
Governor
H.L. (Pete) Haun
Chairman
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke
Members

448 East 6400 South - Suite 300
Murray, Utah 84107
(801) 261-6464

May 13, 1991

Mr. Robert Labrum
USP#18352
Utah State Prison
Draper, Utah 84020

Dear Mr. Labrum:

This office is in receipt of your recent request for redetermination. However, according to Board of Pardons policy, you are not yet eligible for such. The redetermination policy reads this way:

... an offender shall be eligible to apply for redetermination after serving one-half of the time from his last time-related consideration to his current date of rehearing or release. in no case shall an offender be eligible to apply sooner than eighteen (18) months after his last time-related consideration. In all cases, an offender is eligible to apply after the service of five (5) years from his last time-related consideration. As used in this policy, "time-related consideration" means any original hearing, rehearing, redetermination, special attention, rescission or parole revocation hearing. An offender is not entitled to a personal appearance before the Board for redetermination.

Please feel free to request a redetermination when you qualify.

Sincerely,

PETE HAUN, CHAIRPERSON
UTAH STATE BOARD OF PARDONS

Enid O. Pino
Hearing Officer

cc: file
caseworker

3195c



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 42175

Consideration of the Status of LABRUM, ROBERT WILLIAM PRISON NO. 18352

The above-entitled matter came on for consideration before the Utah State Board of Pardons on the 21st day of May, 1991, for:

REDETERMINATION HEARING

After a review of the submitted information and good cause appearing, the Board makes the following decision and order:

RESULTS

No change. Subject no eligible for redetermination.

<u>No Crime</u>	<u>Sent Case No.</u>	<u>Judge</u>	<u>Expiration</u>
-----------------	----------------------	--------------	-------------------

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

By order of the Board of Pardons of the State of Utah, I have this date 21st day of May, 1991, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.



H. L. HAUN, Chairman



State of Utah

BOARD OF PARDONS

Ernest H. Bangerter
Governor
H.L. (Pete) Haun
Chairman
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke
Members

448 East 6400 South - Suite 300
Murray, Utah 84107
(801) 261-6464

Mr. V. Lowry Snow
Snow & Jensen
P.O. Box 2747
St. George, Utah 84771-2747

January 21, 1992

RE: Robert William Labrum, USP# 18352

Dear Mr. Snow:

The Board of Pardons has received and reviewed your letter of October 22, 1991, concerning your client's original hearing on November 20, 1987. It appears from the generalized allegations in your letter that no rehearing is warranted in this case absent some specific meritorious claims.

Your first concern is that your client was not allowed "to review the contents of his file at the time of hearing or prior thereto." It has been and continues to be the practice of the Board, in keeping with Board of Pardons Rule 655-303, that the only portions of a file that are accessible to an offender or his counsel are the "public documents." These documents include disposition forms reflecting the Board's decisions concerning your client. The information provided during the hearing and reasons reflecting the Board's decisions are electronically recorded and available both to you and your client by ordering a copy of the tape in question. This can be done by sending \$5.00 with a written request for the hearing desired. For your general information, however, let us inform you that your client's file, like other offenders' files, contains its own variation of the following categories of information:

- (1) Public information, including judgment and commitment orders, prior Board dispositions, parole agreements, and the like;
- (2) Information generated from Adult Probation and Parole, including presentence and postsentence reports, diagnostic reports, and so forth;
- (3) Prison information including institutional progress reports, disciplinaries, rescission reports, psychologicals, etc;
- (4) Information generated internally for the Board, including worksheets, routings, guideline matrices, alienist reports, warrant requests;
- (5) Other criminal justice information, including police and prosecutorial reports, recommendations from sentencing judges, criminal record data, other court documents;

(6) Other correspondence sent to the Board concerning your client.

Many of the above materials have already been reviewed by the offender and/or their attorney prior to their appearance before the Board of Pardons. Additionally, the Board of Pardons does not have the authority to release materials created by other departments that are not considered public information documents. Requests for those documents must be made to the appropriate department.

You also raise a concern with the Board's use of hearsay information and your client's alleged denial of confrontation. As you are aware, convicted offenders are not afforded the same due process rights during a parole hearing as are enjoyed at the trial or sentencing stages of the criminal process. While the current Board allows offenders to be apprised of and to respond to factual disputes they may have regarding information before the Board, there is no opportunity for direct confrontation of the providers of that information.

Your claim outlined in paragraph three of your letter is correct. No offender is permitted to have assistance of counsel during a hearing before the Board, except in a parole violation hearing. In your client's case, his hearing on November 20, 1987 was an original hearing and he was not afforded assistance of counsel.

For your information and review, we are provided a copy of the Board's rules and suggest that your concerns regarding your client's release date might be addressed through the Board's "redetermination process" outlined in Rule 655-311.

Sincerely,


PAUL LARSEN
SENIOR HEARING OFFICER

LAW OFFICE OF
SNOW & JENSEN
A PROFESSIONAL CORPORATION

150 NORTH 200 EAST SUITE 203
P.O. BOX 2747
ST. GEORGE, UTAH 84771-2747
TELEPHONE (801) 628-3688
TELECOPIER (801) 628-3275

3/18/92
P-11
JF

13

V. LOWRY SNOW
CURTIS M. JENSEN
LEWIS P. REECE
BRUCE C. JENKINS

March 11, 1992

State of Utah
Board of Pardons
Attn: Laurie
448 East 6400 South, Suite 300
Murray, UT 84107

Re: Robert Labrum, USP#18352

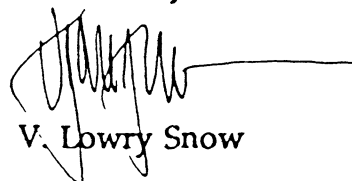
Dear Laurie:

Enclosed you will find a Release on behalf of Robert Labrum in which he authorizes the Board of Pardons release of all documents and records it has to me. Please send me your entire file on Robert Labrum. Particularly, I am interested in receiving a copy of a letter written shortly after his denial of parole and all letters written after parole hearings pursuant to R655-305 of the Utah Code of Judicial Administration.

If you have any questions with regard to the above, please contact me.

Very truly yours,

SNOW & JENSEN


V. Lowry Snow


VLS/nlc
enclosure
pc: Mr. Robert Labrum

RELEASE OF ROBERT LABRUM

To Whom it May Concern:

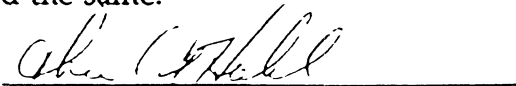
I, ROBERT LABRUM, hereby authorize and request you communicate with and furnish to V. Lowry Snow of Snow & Jensen, 150 North 200 East, Suite 203, P.O. Box 2747, St. George, UT 84771-2747, or anyone designated in writing by him, all of the following that I myself would be entitled to have: all papers, files, interoffice memoranda, records, and all other writings, recordings or belongings that belong to me or that relate in any way to your services rendered in my behalf or in behalf of legal entities, including partnerships, in which I have or have had any interests. In addition, I authorize and request that you disclose to V. Lowry Snow, or anyone designated in writing by him, all knowledge that I myself am entitled to with respect to the above, with respect to all services that you have rendered in my behalf or in behalf of legal entities, including partnerships, in which I have had or have any interests, and with respect to all associations you have had with me.

DATED this 17 day of OCTOBER, 1991.

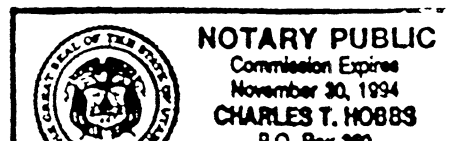

ROBERT LABRUM

STATE OF UTAH,)
 : ss.
County of Sevier)

On the 17 day of October, 1990, personally appeared before me ROBERT LABRUM, signer of the within and foregoing instrument, who duly acknowledged before me that he executed the same.


Notary Public
Residing at: _____

My Commission Expires:





Norman H Bangerter
Governor
H L (Pete) Haun
Chairman
Donald E Planchard
Michael T Sibbett
William L Peters
Heather N Cooke
Members

State of Utah

BOARD OF PARDONS

448 East 6400 South Suite 300
Murray Utah 84107
(801) 261 6464

April 15, 1992

Lewis P. Reece
SNOW & JENSEN
Attorney at Law
150 North 200 East, Suite 203
P. O. Box 2747
St. George, Utah 84771-2747

Re: Robert William Labrum
Utah State Prison No. 18352

Dear Mr. Reece:

This letter is in response to your request for information in Mr. Labrum's file.

Like other offenders' files, your client's file contains its own variation of the following categories of information:

- (1) Public information, including judgment and commitment orders, prior Board dispositions, and parole agreements;
- (2) Information generated from Adult Probation and Parole, including presentence and postsentence reports, probation violation reports, parole progress and violation reports, and diagnostic reports;
- (3) Prison information, including Board reports, disciplinaries, progress and rescission reports, and psychologicals;
- (4) Information generated internally for the Board, including its own work product, routings, worksheets, guidelines matrices, alienist reports, and warrant requests;
- (5) Other criminal justice information including police reports and prosecutorial reports, recommendations from sentencing judges, criminal record data, other court documents;
- (6) All correspondence sent to the Board from and concerning your client.

Board of Pardons Rule 655-303 only makes copies of documents available to your client which are not confidential. Many of the documents in Mr. Labrum's file are designated confidential, because they affect not just his privacy interests, but also the privacy and safety interests of persons who submitted information to the Board. Other documents are specifically made confidential by statute, such as the presentence investigation report, institutional progress report and diagnostic reports.

I have enclosed copies of all documents not designated confidential by the Board. These documents include disposition forms reflecting the Board's prior decisions concerning your client, letters to and from your client and other information submitted by your client or at his request.

In addition, past proceedings of the Board are available by ordering a copy of the tape recording of the hearing.

In anticipation of your client's next hearing before the Board, the Board will provide written notice of the hearing and a summary of the information it intends to rely upon and, at the hearing, the Board will verbally summarize any additional information that may influence the Board's decision. Before any decision is reached, your client will be given the opportunity at that hearing to respond to the information.

Respectfully,

A handwritten signature in cursive script, appearing to read "John Green".

John Green
Administrative Coordinator