

1970

**A. Grant Wiley, Brent Burt, Richard J. Williams, Mike Meidlinger, Edwin Ashby and Clair anderson v. Dewey Fillis, Salt Lake City Police Department and Richard J. Nelson, Health Commissioner, Salt Lake City Corporation : Brief of Defendants Appellants**

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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A. GRANT WILEY, BRENT  
BURT, RICHARD J. WILLIAMS,  
MIKE MEIDLINGER, EDWIN  
ASHBY and CLAIR ANDERSON,

*Petitioners-Respondents,*

vs.

DEWEY FILLIS, SALT LAKE  
CITY POLICE DEPARTMENT  
and RICHARD J. NELSON, Health  
Commissioner, Salt Lake City Corpo-  
ration,

*Defendants-Appellants.*

Case No.  
11888

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## Brief of Defendants - Appellants

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Appeal from an Order of the District Court  
of Salt Lake County, Utah  
Honorable Stewart M. Hanson, Judge

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## Brief of Defendants - Appellants

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### NATURE OF THE CASE

Salt Lake City has filed this appeal seeking to have this court clarify Rule 65B(f) and rule that Utah Judges may not release habeas corpus petitioners without a hearing at which the defendant may justify his detention of the petitioner.

## DISPOSITION IN THE LOWER COURT

The petitioners-respondents were released from a Health Department quarantine through an ex parte order of Judge Stewart M. Hanson. Subsequently, Judge Hanson disqualified himself from hearing evidence on the Writ of Habeas Corpus, and Judge Aldon J. Anderson heard the matter. Judge Anderson ruled there was no probable grounds for quarantine and ordered the release of the petitioners-respondents.

## RELIEF SOUGHT ON APPEAL

Defendants-appellants do not contest the holding of Judge Anderson but submit that Judge Hanson's ex parte order releasing petitioners-respondents from a health quarantine is and was illegal. There is no adequate procedure to raise this issue other than by this appeal, and this court should hold the order illegal to prevent similar future acts by a Utah District Court Judge.

## FACTS

The petitioners-respondents, and each of them, were ordered by the Salt Lake City Board of Health to be placed in quarantine because they were believed to be infected with a contagious disease, to-wit, venereal disease. See, Exhibit 2-D; R-49; R-64; R-121; R-133; R-84. All of the petitioners were ordered released from quarantine without a hearing, May 24,

1969, in an ex parte order entitled "Writ of Habeas Corpus" signed by Judge Stewart M. Hanson. R-184, 185, 186; Petitioner Wiley, R-3; Petitioner Burt, R-2; R-39.

A hearing date was set for May 26, 1969, before Judge Stewart M. Hanson, and on that date the parties appeared. R-182. However, the Salt Lake City Attorney noted at this hearing that the defendants could not obey a Writ of Habeas Corpus because the detained persons had already been released by the previous court order. R-183, 184, 186. Judge Hanson indicated that he was subject to a \$5,000 fine if he did not release them immediately upon their Petition for a Writ of Habeas Corpus. R-184. Judge Hanson also indicated that an ex parte order of release is required by the Constitution. R-184. Thereafter, upon motion of the City Attorney, Judge Hanson disqualified himself and the matter was continued for another hearing date. R-185, 187.

Subsequently, the matter was heard before the Honorable Aldon J. Anderson, Judge of the Third Judicial District of Utah, May 27, 1969, at 2:00 p.m. R-32. Judge Anderson held that defendants had the burden of proof to show that they had reasonable or probable cause to believe that the petitioners were infected with a contagious disease. Judge Anderson held that the facts presented were insufficient to sustain petitioners' quarantine and ordered petitioners-respondents released. R-16.

# ARGUMENT

## POINT I

A JUDGE AUTHORIZED TO ISSUE WRITS OF HABEAS CORPUS MAY NOT RELEASE A PETITIONER FROM CUSTODY WITHOUT A HEARING AT WHICH DETAINING PERSON HAS AN OPPORTUNITY TO SHOW CAUSE WHY THE PETITIONER SHOULD BE RETAINED IN HIS CUSTODY.

At the date the petitioners-respondents were released from custody in the ex parte hearing, Rule 65B (f) (3) read as follows:

“(f) Habeas Corpus. Appropriate relief shall also be granted whenever it appears to the proper court that any person is unjustly imprisoned or restrained of his liberty. Proceedings under this subdivision shall be subject to the following conditions:

(1) . . .

(2) . . .

(3) Upon the filing of the complaint the court shall, unless it appears from such complaint or the showing of the plaintiff that he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained *before the court at a time and place therein specified, at which time the court shall proceed in a summary manner to hear the matter and render judgment accordingly.* If the writ is not issued the court shall state its reasons

therefor in writing and file the same with the complaint, and shall deliver a copy thereof to the plaintiff.” (Emphasis added)

The court has subsequently amended this rule by changing paragraph (f). This change, however, does not alter the inherent obligation of a “habeas corpus proceeding” to require a hearing at which the defendant may justify his retention of the habeas corpus petitioner prior to his release.

Habeas corpus is a Latin expression meaning “you have the body.” *Black’s Law Dictionary* (4th Ed. 1957), p. 837. Historically there were a variety of writs of habeas corpus, but “(i)n common usage, and whenever these words are used alone, they are understood to mean the *habeas corpus ad subjiciendum*.” *Black’s Law Dictionary*, supra. *Black’s Law Dictionary* defines this term as follows:

“*Habeas Corpus Ad Subjiciendum*. A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, (or the person detained), with the day and cause of this caption and detention, *ad faciendum subjiciendum et recipiendum*, to do, submit to, and receive whatsoever the judge or court awarding the writ shall consider in that behalf.” *Black’s Law Dictionary* (4th Ed. 1957), p. 837.

Thus, the “writ” directs the detaining party to produce the body at a day certain and explain why detention should not be terminated. The issuance of the writ is usually done *ex parte*. *Ex parte Lange*, 18

Wall 163, 21 L.Ed. 872 (1874). However, there is no authority to grant the judge power to release the detained party without a hearing at which the restraining party has the opportunity to justify his position. This general point was explained by the United States Supreme Court; it said:

“ . . . its (a writ of habeas corpus) object is to ascertain whether the prisoner can be lawfully detained in custody; and if sufficient ground for his detention is *shown, he is not to be discharged . . .* ” (Emphasis added) *United States v. Tod*, 363 U.S. 148, 68 L.Ed. 221 (1921).

It is absurd to release one held in custody under color of law without a hearing, and such action is clearly without precedent or authority. Further, it should be noted that such a release would be violative of the very nature of the writ; it is impossible for the detaining party to obey the writ commanding him to produce the body, if that body has already been released from his custody.

Rule 65B(f) (3) is very clear in stating that this hearing procedure required of the historical habeas corpus proceeding should be followed by Utah Judges. It exempts the need of a hearing only if the record is sufficiently clear that a denial of the writ is required; otherwise, it affirmatively requires the court to set a day certain for the hearing and render a judgment therefrom. This hearing may be heard in chambers and need not be in open court, but there is absolutely no authority to justify an *ex parte* release! See, Rule

77(b) *Utah Rules of Civil Procedure*. Neither is there any merit to Judge Hanson's assertion that he had to release petitioners or face a \$5,000 fine. See, 78-35-5 *Utah Code Annotated* (1953).

The facts of the case before the bar should cause special concern for the court and for the residents of Salt Lake City. The petitioners-respondents were held in quarantine under an order of the Salt Lake City Board of Health. The District Judge released them from quarantine without so much as a call to the Board of Health or the City Attorney. Under this assumed power, a judge could easily release death and illness on hundreds of people. One must ask, "By what right, divine or otherwise, may a judge make such a release? On what power does he rely?" That answer can only be, None!

This court has previously held that a petitioner and his counsel have the right to be present at the habeas corpus hearing. *Stinnett v .Turner*, 20 Ut.2d 148, 434 P.2d 753 (1967). The appellants respectfully submit that they also have that right and that the judge may not order the release of one detained without such a hearing.

## CONCLUSION

A Writ of Habeas Corpus is a writ commanding the person who has control of another to bring that person before the court at a day certain and then and

there show cause why the restraining party should not be released. Rule 65B(f) of the Utah Rules of Civil Procedure has statutorily adopted this procedure. The restraining party has a right to defend his custody of the party at a hearing, and a judge has no power to order the release of a person in custody without such a hearing.

Respectfully submitted,

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