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IN THE SUPREME COURT

OF THE STATE OF UTAH

CHARLIE (BROWN) ARTMAN,)
appellant)
-vs-) Case No. 12799
THE STATE OF UTAH,)
respondent)

APPELLANT'S [illegible] BRIEF

Appeal from a conviction and sentence of appellant herein of contributing to the delinquency of a juvenile of the District Juvenile Court of the State of Utah in and for Salt Lake County Paul [illegible]. Keller presiding.

---

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FILED
FEB 28 1972
Clerk, Supreme Court, Utah

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B. Judge Keller based his decision particularly on two cases by making them sound similar to ours when in fact they were quite different. 10

C. The evidence clearly shows that it was RS' mother who caused her to become and remain a runaway, and that, had it not been for us, she had planned to run away to California instead of returning home. 12

D. The record shows RS was carrying her things out to her sisters car to return home when THE POLICE CAME, WOULD NOT ALLOW HER TO RETURN HOME, BUT INSTEAD RUDELY HANDCUFFED HER BEHIND HER BACK AND JAILED HER SO THEY COULD CHARGE US WITH CRIME. 12

E. RS' mother was not the complainant--the entire matter was planned and carried out by the Sheriff's Department, including the affidavit prepared for her brother to sign that would allow them to arrest us. The fact that, when their first plan to raid the church was foiled when the County Attorney recalled

the arrest warrants and issued subpoenas instead, another plan to raid the church was executed a short time later tends to cast doubt on whether the charge in this case was ever valid. [illegible]

F. Testimony of Salt Lake City Police officer Larry Patrick of the Juvenile Division, and of Dr. Stratford Pendleton and the transcript of the hearing regarding the restraining order placed on us clearly show our intent was to abide by the law and cooperate with authorities, [illegible] here any proof of mens rea. 13

G. Since the American Law Institute's Model Penal Code, and the Standard Juvenile Court Act, Federal Manual "Standards for Specialized Courts dealing with Children 35 (1954) both recommend dropping contributing statutes, and since, the definition of contributing being so unconstitutionally broad and vague, these laws are subject to severe abuse, as in our case, it would be better if this court would declare the statute unconstitutional. 14

H. Considering the principle that a statute must have a real, rational, and substantial relationship to the prevention of some harm to society or individuals, it can be argued that the contributing statutes attack only the symptoms of the problems and are not related to the real roots. 19

VIII. [illegible] 20

[illegible]

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"As long as contributing statutes are on the books, the danger exists that they wil be used, and when they are used, the danger exists—is almost inevitable—that they will be abused."

—Rubin, "Crime and Juvenile Delinquency"[1]

I. RELIEF SOUGHT ON APPEAL

Appellant submits that the conviction of the defendant-appellant herein should be reversed.

II? STATEMENT OF CLAIMS

1. Judge Keller's decision is not in accord with the facts as he himself stated them in aforesaid decision.
2. Under no legal interpretation of the law does the record show cause for conviction; but it does clearly show cause for praise of the defendant's efforts to combat the dauses of delinquency, and, in the instant case, in such a way as to cause a fourteen-year-old girl (hereinafter referred to by the initials RS) to return to the home she had run away from.
3. The prosecution must therefor be viewed as being politically motivated; said prosecution being, as a matter of fact, part of a continuing pattern of harrassment and abuse by the Salt Lake County Sheriff's Department and other authorities directed against appellant with the intent of driving him out of Salt Lake before his lawsuits against them came to trial, defaming appellant and his work in the area of drug abuse prevention, education, and rehabilitation, and destroying said work (thereby making drug problems worse in Salt Lake Valley.
4. In furtherance of the above ends, and in an attempt to prejudice the court (successful, it

might be added) at the prompting of Sheriff's Deputy Joe Gee (whom appellant has named a defendant in aforesaid laws its) prosecuting attorney Goodwill, in open court before the conclusion of the trial stated that Joe Gee had found the defendants violating the restraining order issued in this case; and the trial, therefor, should be declared a mistrial.

5. The record conclusively proves the appellants had no criminal intent or mens rea, and, in fact that their intent was the exact opposite; and, therefor, the conviction must not be allowed to stand or it will be a danger to the welfare of the State of Utah, since its effect is to discourage innovative programs designed to bridge the generation gap, the alienation that is the root cause of juvenile delinquency.

6. The Utah Legislature, in 1971, amended the Utah Code, section 55-10-77, 2(c) so that it is no longer delinquency to be merely a runaway without an additional endangering or criminal condition so that we could not now be charged criminally for giving shelter to a runaway; our case having been a perfect example of why the legislature found it necessary to correct this deficiency in the code.

(See also the court record at pp 160, 180--appellant's Motion for Dismissal and Motion for Certificate of Probable Cause.)

III. SUMMARY OF ARGUMENT

"To charge and convict of contributing, it is necessary that the...state prove(1) specific act or acts of misconduct and (2) that such act or acts manifestly tended to cause the chile to become [or remain] delinquent.[2]

Not so much as a scrap of evidence has been introduced to ~~xxxxxxxxxx~~ show any act that could have caused a child to so much as remain delinquent; in fact, considerable evidence was introduced to show acts that had exactly the opposite effect. This is proven by the fact that RS originally planned on going to California, but, when we gave her shelter, she not only decided not to, but, after a few days at our chirch, decided to return home, and was, in fact, carrying her belongings out to her sister's car to return home when sheriff's deputies rudely handcuffed her behind her back and then secured arrest warrants for myself and my co-defendant.

Altho for two of us to care for a facility where 20 to 50 people a day come thru with their various problems left us no time to give RS any more attention than for one of us to say "Hello", one morning, the record clearly shows that when it was brot to our attention there were juvenile runaways in our midst, we acted responsibly, and, in fact, sought out the juvenile and other authorities' advice and assistance.

Nor was there any evidence to show any law-breaking of any kind occuring in our establishment, or any sort of immorality or anything that might so much as tend to cause im orality of any sort. Since laws making it a crime to contribute to the delinquency of a minor are designed to stop just exactly that, we cannot, by any stretch of the imagination be considered to have contributed to the delinquency of R.

Nor was there ever any other charge brot again against my co-defendant and I for any further violation of the law or the restraining order placed upon us, making it clear that the prosecutor, Mr. Goodwill, upon prompting by Sheriff's Deputy Joe Gee by alleging such, was attempting to prejudice the court (and successfully) against us; and this travesty of justice must also be declared a mistrial.

Indeed, absent any such showing of law-lessness or immorality, it is clear that we did nothing more than the parent who allows their daughter's girl friend to stay overnight for a few nights and provides a few meals without asking whether or not their guest is 18 or a runaway, or than the innkeeper in Bethlehem 2,000 years ago who provided shelter for a young pregnant girl traveling with a man she was not married to, whose son later commanded us to do just exactly what we were doing.

What a far cry we are from Dr. Tritt who was told on sentencing (or so my contact in the Salt Lake City Police Department's Narcotics Bureau told me) that there were 21 people who had died on overdoses of the drugs he had so handily prescribed; about whose offense Chief Justice Crockett wrote (State v Tritt, 23 Utah 2d 365, 463 P2d 806, 36 ALR3d 1283):

> The conduct here charged would amount to the commission of a crime, which by any definition whatsoever, constitutes contributing to the delinquency of a minor.

IV. HISTORY OF CASE

On July 15, 1970, complaints were sworn out against me and my co-defendant charging us with committing the crime of contributing to the delinquency of a minor as follows:

> That [we]...aided and encouraged RS to become or remain a runaway by permitting and encouraging her to sleep and or reside in a house which [we were] renting and occupying.

Paul C. Keller, in a memorandum decision dated May 27, 1971, found us guilty as charged, sentencing us to a fine of $200 each or 3 months in jail, writing: (record at pp 174, 172)

> The child R. S. was given refuge in a residence other than her home...while she was running away from home in defiance of her parent. This did encourage her to remain away from home and thus did tend or did cause or did manifestly tend to cause her to become or remain delinquent. * * *
>
> There was no evidence that defendants, or either of them, verbally encouraged RS to leave home or remain a runaway from her parents, or conversely, encouraged her to return home. (emphasis added)

V. [illegible]

Section 55-10-5C gives the juvenile court jurisdiction to try:

> (1) Any person eighteen years of age or over who induces, aids, or encourages a child to violate any federal, state or local law or municipal ordinance, or who tends to cause children to become or remain delinquent, or who aids, contributes to, or becomes responsible for the neglect or delinquency of any child

As was pointed out by Professor Young, my co-defendant's counsel, at the trial, and in the Pritt case (supra) there is presently no definition of delinquency in the present statutes. Justice Tuckett, in his dissent in the Pritt case writes:

> Prior to 1965, Section 55-10-6, UCA 1953, contained the following definition:
> The words "delinquent child" includes: * * *
> A child who is habitually truant from school or home. (emphasis added)

Assuming this to be the present definition, it must be noted that there was no evidence introduced to show that RS was habitually truant or that she fit any of the other definitions. Nor was any evidence introduced to show that our actions might tend to cause a child to become a habitual truant. In fact, the evidence quite clearly shows our action tended to cause delinquent children to cease being delinquent. Our conviction must therefor be overturned on this [illegible].

It is indeed a weak argument to try to replace this definition with material from section 55-10-77 which does not purport to define delinquency, but only lists those areas wherein the court has jurisdiction with regard to juveniles; particularly since the legislature in 1971 removed <u>entirely</u> those who have "run away from.. home".

VI. ARGUMENT

Since RS did not fit the standard Utah definition of delinquency (see preceding section V.), Judge Keller clearly took the position that it is not necessary to determine whether or not delinquency did in fact result from our acts. Courts have been divided on this point, but it is clear, from surveying the cases on this point (see annotation in 18 AL 3d 824, particularly at 836-843) that those that took the position that it need not be established did so in cases involving grave abuses such as prescribing inordinate amounts of drugs (State v Tritt, supra) or sexual immorality or other evils.

A. Judge Keller's decision is not in accord with his own statement of the facts.

Judge Keller quoted Chief Justice Crockett in the Tritt decision:

...contributing to..delinquency....denotes ac-

> tions that will aid, encourage or involve children in conduct which is contrary to law, or which is so contrary to the generally accepted standards of decency and morality that its result would be substantially harmful to the mental, moral or physical well-being of the child.

thus implying we fit that category. The evidence clearly shows we were nothing of the sort, as he himself implied on the first page of his decision (record at 171) when he refers to my uncontradicted testimony:

> This church was described by defendant Artman as non-denominational, dedicated to service for others and primarily established to help alienated youth and young people involved with drug problems.

B. Judge Keller based his decision particularly on two cases by making them sound similar to ours when in fact they were quite different, as is made quite clear when we read the cases.

The first, People v Owens (Mich; 164 NW 2d 712) which Keller has the temerity to describe as "very similar", reads (at 714, 715):

> We fail to discover any evidence from the record that the defendant acted as a "good Samaritan" and in effect this allegation is made first on appeal to this Court. The girl was encouraged by defendants offer of assistance to leave her home..and take up lodging in..amotel room paid for by defendant. These encouragements would appear very attractive to a girl 16 years of age, and are exactly the type of activities which [the statutes] are intended to prohibit.

> The generosity of defendant in providing a home for runaway minor girls cannot be said to be an act of good Samaritanism when he has abetted the girl's departure from home by promises of assistance.

The other cases, State v Calkin (Cal. Ct. App. 119 P2d 142) is even further afield. What Judge Keller fails to mention is that the 15 year old girl lived with the defendant for 6 weeks and that they slept together behind a closed bedroom door!

The case I have been able to find that is the most similar is Zedicker v State (Fla. App. 218 So2d 464) in which the court held that parents who threw a party for their daughter were not responsible for a juvenile who got drunk and awoke to find herself nude in a ditch, when there was no showing of solicitation by the parents for the juvenile to drink. The evidence in this case quite clearly shows no situation that even remotely resembles RS getting drunk and waking up in a ditch nude!

It should be here noted that the vast majority of contributing cases involve sexual acts. Most of the rest involve juveniles drinking or being in dance halls or places where alcohol is sold. Not one shred of evidence was introduced to show even so much as smoking of tobacco occuring in our place, not even upon the prosecuting attorney's cross examination of the parent of a juvenile we had been trying to get together with

him again testified as to what he observed going on in the church.

C. The evidence clearly shows that it was RS' mother who caused her to become and remain a runaway, and that, had it not been for us, she had planned to run away to California instead of returning home.

On cross-examination, RS testified: (transcript at 32: lines 25, 26; p 30:17-24; 32:33-33:1, 16-19)

> Q Isn't it true that your mother told you to get out of the house?
> A Yes, she did. * * *
>
> Q What was the...reason?
> A I just didn't get along with nobody at all. I fought with my sister and I fought with my dad and I just thought of I left it might change a few lives if I left.
> Q And so then on Sunday or Monday night you had this discussion with your brother about you coming home and why didn't you go home then?
> A Because I didn't feel I should go home then. I just didn't think I should go home. * * *
>
> Q When you first left home, did you have any plans?
> A Yes. I had plans to go to California. * * *
>
> Q ...after you were at the church for a period of time you changed your plans and decided to go home. Is that correct?
> A Yeah.
>
> (See also Professor Young's argument, transcript p [illegible]:32-90:26)

D. The record shows RS was carrying her things out to her sisters car to return home when THE POLICE [illegible] but in-

STEAD RUDELY HANDCUFFED HER BEHIND HER BACK AND JAILED HER SO THEY COULD CHARGE HER WITH CRIME.

Q The day that the police came and got you, had you made some decision prior to them arriving?
A Yes.
Q And what was that decision?
A We had just called our moms and told them we were on our way home. Then we had gone back to the church when they came.
Q You had gone back to get your things?
A Yes. * * *

Q ...do you recall what happened...leading up to your leaving the house?
A My sister had come to get us and we had just gone down to...and picked up part of our stuff.

(transcript at 30:2?-31:3; 28:13-16)

E. RS' mother was not the complainant--the entire matter was planned and carried out by the Sherrif's Department, including the affidavit prepared for her brother to sign that would allow them to arrest us. The fact that, when their first plan to raid the church was foiled when the County Attorney recalled the arrest warrants and issued subpoenas instead, another plan to raid the church was executed a short time later tends to cast doubt on whether the charge in this case was ever valid.

(See appendix for a copy of the complaint I filed in Federal Court against Joe Gee for this.)

F. Testimony of Salt Lake City Police officer Harry Patrick of the Juvenile Division, and of Mr. Stratford Wendleboe and the transcript

of the hearing regarding the restraining order placed on us clearly show our intent was to abide by the law and cooperate with authorities, nor was there any proof of mens rea.

Another case Judge Keller cited to sustain his decision, State v [illegible]tshaw (7 Ariz. App 210, 437 P2d 962, 31 ALR3d 830) held the acts must have been committed with criminal intent or mens rea. Since there was no evidence of mens rea, but evidence that we had the opposite intent, clearly Judge Keller was again using a case he implied supported his decision, when, in fact, it was exactly opposite.

However, the cases are divided on this point (see the annotation in 31 ALR3d 848) but again, the cases holding it is not required are generally cases involving severe abuses, where cases holding the opposite generally involve minor infractions.

6. Since the American Law Institute's Model Penal Code, and the Standard Juvenile Court Act, Federal Manual "Standards for Specialized Courts dealing with Children 35 (1954) both reccommend dropping contributing statutes, and since, the definition of contributing being so unconstitutionally broad and vague these laws are subject to severe abuse, as in our case, it would be better if this court would declare the statute unconstitutional.

Certainly there is no disagreement that corruption

xxxx of our youth is not a serious matter or suggestion that we allow such to proceed unhindered, but, as a lawyer-penologist said, some years ago at a meeting of the American Bar Association regarding the contributing laws:

> Under that statute you could convict a drunk for staggering out of a saloon so that a passing child could see his condition and go imitate him.[3]

Derryck H. Dittman says:[4]

> The range of conduct potentially included within the prohibiting scope of contributing to delinquency statutes is even broader than the definition of delinquency because these statutes reach the infinite variety of conduct which might tend to cause delinquency, not merely that conduct which actually did cause delinquency. (emphasis added)

State v Crary (10 Oh. App. 2d 26, 800 Oh. L Abs 1117, 155 N 2d 262, 1959) held: (at 265)

> No defendant may be deprived of life, liberty or property for doing something which might just possibly sometime, somewhere lead to some child's becoming delinquent. Possibility must give way to comparative if not absolute certainty. The delinquency which the law is trying to prevent must be fairly imminent, reasonably certain result of the act complained of reasonably sure to befall a certain child in a reasonable time.

The annotation on contributing and mens rea (ALR 3d 848) says: (852, 853)

[illegible] contributing

statutes that can literally make a defendant a victim of circumstances has been attacked by scholars, and failure to require mens rea for any form of criminal punishment has been condemned as ineffectual and unjust, since conduct unaccompanied by awareness of factors making it criminal does not mark the actor as one who needs to be punished in order to deter him or others from similar behavior in the future, nor does it isolate him as a socially dangerous individual who needs to be incapacitated or reformed; rather it subjects him to the stigma of a criminal conviction without his being morally blameworthy.

The evolution of the view that mens rea is not a necessary element of some statutory offenses, such as contributing to the delinquency of a minor, has reached a stage where some courts evince an uneasy conscience with regard to the imposition of what amounts to liability without fault, no matter how salutary the public policy or worthwhile the purpose, marking, at least, a philosophical return to a period when courts were hesitant to dispense with intent except in those cases involving police regulations where only a fine was imposed for violation, and recalling Justice Cardozo's cautionary statement, in a decision, upholding the power to punish without intent where only a fine was involved, that the court's holding was not to be understood as sustaining to a like length the power to imprison

Derryck H. Dittman writes:[4]

The breadth of juvenile court jurisdiction is indicated in the following quotation from the recent report of the President's Commission [of Law Enforcement and the Administration of Justice]:

Enormous numbers of young people appear to be involved in delinquent acts. Indeed, self-

... per cent

> of all young have committed at least one act for which they could have been brought to juvenile court. Many of these offenses are relatively trivial--fighting, truancy, running away from home. Statutes often define juvenile delinquency so broadly as to make virtually all youngsters delinquent.[6]

As another writer put it:

> Delinquency is a vague and slippery concept indeed. Acts that may serve to get a juvenile labeled delinquent are enormously varied. Many of our difficulties at all stages of prevention, adjudication, and correction are rooted in the tremendous variety of acts that may at different times and places be defined as delinquent.[7] * * *

....contributing statutes...are based upon an assumption that delinquency has certain and known causes. More particularly, contributing statutes proceed from an assumption that delinquency is caused by the acts of adults. Thus, to prevent delinquency, the obviously oversimplified solution of the contributing statutes was to prohibit those acts which cause or tend to cause delinquency. To apply such a prohibition and for it to be effective as a deterrent there is no escape from the need to rely upon the defendant and the trier of fact to know as a matter of common belief and understanding when conduct of any kind causes or tends to cause delinquency. But the actuality is that neither the layman nor the experts know what acts cause delinquency or can predict that delinquency will follow upon an act being committed in the presence of a child.[8]

> What research is making increasingly clear is that delinquency is not so much an act of individual deviancy as a pattern of behavior produced by a multitude of pervasive societal influences well beyond the reach of the actions

of any judge, probation officer, correctional officer,[9] correctional counselor, or psychiatrist.

If delinquency is indeed so complex, fluid and undefined a pattern of behavior, how can an individual have notice that what he does may tend to cause delinquency. How could a jury know that what the defendant did tends to cause delinquency. More crucial as a policy matter is the question of how such a statute can effectively prevent delinquency.

(As to this latter question one leading authority indicates that it cannot.[10]

(See Task Force Report, Appendix D, "Social science research and current theory in social psychology refute the idea that there are fixed, inevitable sequences in delinquent or criminal careers."

H. <u>Considering the principle that a statute must have a real, rational, and substantial relationship to the prevention of some harm to society or individuals, it can be argued that the contributing statutes attack only the symptoms of the problems and are not related to the real roots.</u>

Harry [illegible], head of the Federal Bureau of Narcotics and Dangerous Drugs in Salt Lake reports that Utah's Drug Problem has "grown by leaps and bounds over the last few years".[11]

Dr. Julianne [illegible]enson-[illegible]erber, head of Odessy House, says Utah ranks in the top 4 states in the country in drug problems on a per capita basis.[12]

Law violations peculiar to children kept Utah juvenile officials busier than ever last year. ([illegible])

Gay Pauley, UPI Women's Editor, writes:[13]

> Runaways...numbers are estimated at one million. * * *
>
> Mike Michaelson....details some of the tragic cases, the runaway who evade apprehension and drifts into a 'roach-ridden 'xxxx crash pad'--communal sleeping where love is free and venereal disease is rife..." the big city communes where 14 and 15-year-old girls are accepted readily and forced into gang sex, prostitution, drug addiction and shoplifting.
>
> Sometimes suicide seems the teen's only escape. And police repords are full of the rape and murder cases.

If M. had not been able to stay with us, she indicated she would have gone to California. Indeed she might very well have gotten herself into the sort of situation described above. This is what we have been trying to prevent by providing some refuge for runaways other than the sort of junkies' pads described above.

An article in the Jehovah's Witness' magazine "Awake" on "The Runaways" (and the above article) lays the cause for runaways at the door of the parents and societies institutions.[14]

VII. CONCLUSION

President N. Eldon Tanner, of the Church of Jesus Christ of Latter Day Saints, at General Conference of the Mormon Church, October, 1970, said:[15]

> How can we call ourselves Christians and say we love our neighbor, who is any one in need of help, and fail to work with others who are endeavoring to set up facilities to assist alco-

> such efforts because they object to having such facilities in their midst. These unfortunate people need our help. Surely we must be prepared to be the Good Samaritan and help wherever possible.

Where RS' mother drove by the church but did not stop, and made no effort whatever to contact us (see transcript at 91:7-15; 1 1:2), and herself testified that if her daughter had been able to stay at a friend's house it would have offered her the same encouragement (T 107:11, 12, 29-32), and where she herself testified (T 30:26-28) that there was nothing we said or did that had to do with her decision not to go home; to sustain a finding of guilt in this case would not only be a travesty against Justice and the Christian principles of helping those in need, but would be in the interests only of those evil influences that wish to see all programs designed to help Youth and their parents destroyed.

(Indeed, it is the supreme irony, that, after having assisted in seeing to it Dr. Fritt was imprisoned--see appendix C for the note I published in Salt Lake's underground paper, the Electric News that brot so many people to the U. S. Attorney's office I was asked to tell people to stop coming--I was then prosecuted by the same man who prosecuted Fritt, and convicted!)

[illegible] CASES AND AUTHORITIES CITED IN FOOTNOTES

page

1. Dittm[illegible]n, [illegible]ercy k H, [illegible]ontributing to [illegible]e-linquency Statutes-- [illegible]n [illegible]unce of [illegible]revention?" 5 [illegible]illamette LJ 104-12[illegible] (19[illegible]) at 12[illegible], footnote 105 — 1
2. Ibid at 112 — 4
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— 18 ALR3d 824 (Annotation) — 9
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3. [illegible]ies, Gilbert, "Contributing to Delinquency" 8 St. Louis [illegible] LJ 5[illegible]-81 (1963) — 15
4. [illegible]ittman, supra, note 1, at 1[illegible], 119 — 15,[illegible]
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7. Task Force Report: Juvenile Delinquency and Youth Crime by the President's Commission of Law Enforcement and the Administration of Justice (1967) — 17
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9. [illegible]resident's Commission, supra notes 7,[illegible] — 18
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11. "Utah Drug Problem Rockets, Narcotics Agent Reports", Salt Lake Tribune, Feb. 22, 1972, p 1[illegible], by Robert Bryson — 18
12. Salt Lake Tribune, 1971 — 19
— "'[illegible]-Things' Burdening Court" ([illegible]endix [illegible]) by Brent [illegible]lement, Deseret News, 6/2[illegible]/71 — 19
13. "[illegible]unaways [illegible]in[illegible] Tragedy, [illegible] Trib. 6/9/71 — 20
14. [illegible]wake[illegible] March 12, 1[illegible]71 at [illegible]
15. [illegible] Church [illegible], Deseret News, [illegible]/6/71 — 20
[illegible]t [illegible] 16-c[illegible]arch

(See also appendix D)