

2005

# Michael A. Bacon v. Jerry Jorgensen, et al. : Brief of Appellant

Utah Court of Appeals

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~~SEP 16 2005~~

IN THE UTAH COURT OF APPEALS

MICHAEL A. BACON,  
Appellant

Appellate Case No. 20050582

v.  
JERRY JORGENSEN, et al.,  
Appellee

BRIEF OF APPELLEE

APPEAL FROM A HABEAS CORPUS IN THE  
THIRD DISTRICT COURT IN AND FOR SALT  
LAKE COUNTY JUDGE TIMOTHY R. HANSON  
PRESIDING

MICHAEL A. BACON  
Appellant  
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## JURISDICTION AND NATURE OF THE PROCEEDING

THIS APPEAL IS FROM A HABEAS CORPUS PETITION PURSUANT TO UTAH RULES OF CIVIL PROCEDURE RULE 65B IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY STATE OF UTAH JUDGE TIMOTHY R. HANSON PRESIDING. THIS COURT HAS JURISDICTION OF THIS APPEAL PURSUANT TO UTAH CODE ANNOTATED 78-22-3 (F)

## STATEMENT OF THE CASE

THIS CASE DEALS WITH THE ACTIONS OF THE UTAH BOARD OF PAROLENS PROCEDURAL SUBSTANTIVE DUE PROCESS VIOLATIONS. THE BOARD OF PAROLENS NOT IN COMPLIANCE OF THEIR OWN RULES AND THE ISSUE OF LANGUAGE THAT IS MANDATORY USED IN THEIR OWN RULES. THAT BINDS THE BOARD TO COMPLY.

THE LOWER COURT AND THIS PRESENT COURT HAS PROPER JURISDICTION TO GRANT RELIEF EVEN IF THAT RELIEF IS RELEASE FROM ONE ASPECT OF PHYSICAL CONFINEMENT (PRISON) TO ANOTHER (PAROLE)

THE STANDARD FOR SUMMARY JUDGMENT WAS NOT MET FACTS IN DISPUTE MATERIAL FACTS EXISTED MOTIONS WERE STILL PENDING. RESPONDENTS CITE WRONG LEGAL AUTHORITY

JUDGE HAD A DUTY TO RECUSE HIMSELF, TREATED THE CASE CARELESS ABUSED DISCRETION COMMITTED LEGAL ERRORS COMMITTED PLAIN ERROR HAD A PRO SE LITIGANT TO STRINGENT STANDARD.

ISSUE A : PROCEDURAL SUBSTANTIVE DUE PROCESS VIOLATIONS NOT RECEIVING TIMELY NOTIFICATION OF THE WARRANT, WARRANT REQUEST, PAROLE ALLEGATIONS, CHALLENGE TO PROBABLE CAUSE DETERMINATION AND AFFIDAVIT OF WAIVER AND PLEA OF GUILTY AS PUBLISHED BY THE BOARD. DENIED RIGHT TO CHALLENGE PROBABLE CAUSE. NEVER RECEIVED A WRITTEN STATEMENT AS TO EVIDENCE AND REASONS FOR REVOKING PAROLE

THE BOARD OF PAROLES AND PAROLE IN UTAH HAVE VIOLATED THE PETITIONERS PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHTS AND DO NOT, DID NOT MEET THE PROCEDURAL REQUIREMENTS OF MORRISSEY V. BREWER, 408 U.S. 471 (1972)

THE CONSTITUTIONALITY OF PAROLE REVOCATION PROCEDURES IN REGARDS TO THE SYSTEM, VIOLATES THE DUE PROCESS CLAUSE OF THE 14<sup>TH</sup> AMENDMENT AND SO DOES THE UNNECESSARY DELAYS IN THE PAROLE VIOLATION PROCESS ALSO VIOLATES DUE PROCESS PROTECTIONS VAIDIVIA V. DAVIS, 206 F. Supp. 2d 1068 (E.D. Cal 2002)

PURSUANT TO UTAH ADMINISTRATIVE CODE R671-512-1, IT STATES IN RELEVANT PART THAT:

"WHEN THE AGENT EXECUTES THE WARRANT... THE AGENT SHALL PROVIDE THE PAROLEE COPIES OF THE WARRANT AND THE WARRANT REQUEST, AT THE SAME TIME, THE AGENT SHALL ALSO PROVIDE THE PAROLEE WITH THE NOTICE REGARDING PAROLE ALLEGATIONS, THE CHALLENGE TO PROBABLE CAUSE DETERMINATION, AND THE AFFIDAVIT OF WAIVER AND PLEA OF GUILTY AS PUBLISHED BY THE BOARD."



THE LANGUAGE USED ABOVE LEAVES NO ROOM FOR DISCRETION OR PERSONAL INTERPRETATION. PETITIONER WAS DETAINED FROM HIS LIBERTY JUNE 15, 2004 AT SEVIER COUNTY JAIL. AS SHOWN IN 'EXHIBIT A' AT THE BOTTOM THE WARRANT WAS EXECUTED TO THE JAIL JUNE 17, 2004. YET PETITIONER DID NOT RECEIVE HIS COPIES UNTILL JULY 7, 2004. SEE 'EXHIBIT B & C'. IN FACT IT WAS BEYOND 20 DAYS, AFTER THE WARRANT WAS EXECUTED, BEFORE PETITIONER RECEIVED COPIES OF ANYTHING AS DESCRIBED ABOVE IN 2671-512-1. VIOLATION OF SAID RULE AND PROCEDURAL DUE PROCESS VIOLATION.

BY THIS BLATANT ACT AND DISREGARD FOR PETITIONERS RIGHTS HE WAS THEN DENIED THE CONSTITUTIONAL RIGHT TO CHALLENGE THE PROBABLE CAUSE AS ONE OF THE FORMS LISTED IN 2671-~~512-1~~<sup>512-1</sup>. THIS RIGHT IS A DUE PROCESS AND PROCEDURAL REQUIREMENT OF MORRISSEY 1d at 485. AND AN UTAH ADMINISTRATIVE CODE REQUIREMENT 2671-513-1 WHICH STATES IN RELEVANT PART THAT: "WITHIN (7) DAYS OF ARREST AND RETENTION ON THE WARRANT, IF THE PAROLEE WISHES TO CHALLENGE THE PROBABLE CAUSE ..."

AGAIN THE MANDATORY LANGUAGE IS USED HERE. BECAUSE OF THESE DENIALS OF RESPONDENT PETITIONER LOST THIS RIGHT FOR HE NEVER RECEIVED ANY OF THESE FORMS TO CHALLENGE PROBABLE CAUSE OUTLINED IN 2671-512-1 UNTILL BEYOND THE TIME FRAME OUTLINED IN 2671-513-1 20 DAYS ELAPSED BEFORE HE WAS SERVED IN VIOLATION OF SAID RULES AND MORRISSEY. 1d at 485; ALSO SEE VAIDIVIA V. DAVIS 206 F. SUPP. 2d 1068, 1078 (E.D. Cal. 2002)

IN MORRISSEY IT IS CALLED A PRELIMINARY HEARING, UTAH CALLS IT A PROBABLE CAUSE HEARING. MORRISSEY

DEALS WITH THE PLACE AND PROMPTNESS. UTAH SETS THIS TIME BY THE USE OF MANDATORY LANGUAGE IN R671-512-1 AND R671-513-1

QUESTION: ARE THESE PROCEDURAL DUE PROCESS RIGHTS MANDATED BY A GOVERNING LAW? YES!  
WERE THESE RIGHTS AFFORDED/PROVIDED TO PETITIONER? NO!

FROM ARREST TO REVOKING PAROLE THE ENTIRE PROCESS MUST BE COMPLETED WITHIN 2 MONTHS ANYTHING BEYOND THIS IS UNREASONABLE. MORRISSEY 408 U.S. 471

PETITIONER NEVER RECEIVED, AS PART OF PROCEDURAL DUE PROCESS, IN WRITING AS TO THE EVIDENCE IT RELIED ON OR THE REASONS FOR REVOKING PAROLE. MORRISSEY Id at 487-89 ALSO SEE PREECE V. HOUSE 886 P.2D 21 at 511; AND UTAH ADMINISTRATIVE RULE R671-305

AS PART OF PROCEDURAL DUE PROCESS RIGHTS THE FOLLOWING PROCEDURE MUST BE FOLLOWED IN A PAROLE REVOCATION PROCESS, TO CONFORM WITH THE REQUIREMENTS OF DUE PROCESS. THAT IS THE PAROLE AUTHORITY MUST COMPOSE A WRITTEN STATEMENT AS TO THE EVIDENCE IT RELIED ON AND THE REASONS FOR REVOKING PAROLE. MORRISSEY Id at 487-89 PREECE Id at 511

BEING ALSO HOW IT IS A RULE, R671-305, THE BOARD OF PAROLES ARE REQUIRED TO COMPLY WITH ITS OWN RULES. THIS ALSO GOES WITH THE RULES LISTED ABOVE R671-512-1 R671-513-1. PREECE Id at 508, 511-12

QUESTION: IS THIS RIGHT PROCEDURAL DUE PROCESS MANDATED BY A GOVERNING LAW? YES!  
WAS THIS RIGHT AFFORDED/PROVIDED TO PETITIONER? NO!

ISSUE B: TIMELY PAROLE REVOCATION HEARING NOT HELD IN  
PRESCRIBED TIME REQUIREMENT OF SET LAW AND  
SET TIME FRAME BY THE USE OF MANDATORY  
LANGUAGE. BOARD OF PAROONS ADMIT IS A CONSTITUTIONAL  
AND STATUTORY RIGHT TO A TIMELY PAROLE REVOCATION  
HEARING AND SET THE TIME WITH MANDATORY  
LANGUAGE AND BECAUSE OF SUCH ITS NO LONGER  
DIRECTORY. ALSO WHEN A HEARING IS SET IT  
CANNOT BE CHANGED WITHOUT IN WRITING AS  
TO WHY AND MUST ESTABLISH JUST CAUSE AND  
GROUNDS.

IT IS A FACT THAT ONE IS ENTITLED TO A TIMELY PAROLE  
REVOCATION HEARING AND UTAH SETS THAT TIME TO BE HELD  
WITHIN 30 DAYS. UTAH ADMINISTRATIVE CODE R671-515-1  
STATES IN RELEVANT PART THAT:

"A PAROLE REVOCATION HEARING  
WILL BE ~~HELD~~ CONDUCTED BY A HEARING OFFICER WITHIN 30 DAYS  
AFTER DETENTION UNLESS THE PAROLEE EXPRESSLY WAIVES THE  
HEARING IN WRITING."

THIS LANGUAGE IS MANDATORY NOT DISCRETIONARY OF "WILL BE  
CONDUCTED BY A HEARING OFFICER WITHIN 30 DAYS."

AS THIS COURT WILL NOTE AT EXHIBIT B THE PETITIONER NEVER  
"WAIVED THIS RIGHT AND IN FACT ON THAT FORM HE  
REQUESTED A HEARING" BY WRITING IT IN. ALSO PETITIONERS  
PAROLE OFFICER STATED THE SAME. SEE EXHIBIT C

PETITIONER WAS DETAINED FROM HIS LIBERTY JUNE 15, 2004  
HIS 1<sup>ST</sup> PAROLE REVOCATION HEARING WAS SET FOR  
AUGUST 25, 2004. SEE EXHIBIT D EVEN THOUGH  
THIS IS A CLEAR CONSTITUTIONAL VIOLATION THEY

MADE THE PROBLEM WORSE. FOR THAT HEARING NEVER TOOK PLACE AND THEY EXTENDED IT TO SEPTEMBER 8, 2005. PETITIONER NEVER RECEIVED ANYTHING IN WRITING AS TO WHY OR ESTABLISHED JUST CAUSE AND GROUNDS.  
SEE EXHIBIT E

NOT ONLY DOES THIS VIOLATE DUE PROCESS AND ADMINISTRATIVE CODE FOR NOT ~~complying~~ complying WITH THE 30 DAY REQUIREMENT BUT ALSO BY EXTENDING A SET DATE WITHOUT JUST CAUSE AND LISTING THOSE REASONS IN WRITING. THIS IS A PROCEDURAL DUE PROCESS VIOLATION.

THIS COURT WILL ALSO NOTE THAT IT TOOK OVER 90 DAYS TO REVOKE PETITIONERS PAROLE SEE EXHIBIT F IN MORRISSEY AND VALDIVIA MAKES IT CLEAR THAT DELAYS IN THE PAROLE REVOCATION PROCESS IS A DUE PROCESS VIOLATION. AND THAT THE ENTIRE PROCESS FROM DETENTION TO THE REVOKING OF PAROLE SHOULD TAKE NO LONGER THAN 60 DAYS NOT TO MENTION THAT THEIR OWN RULE SAYS 30 DAYS R671-S15-1

WHAT'S IRONIC IS THE BOARD OF PAROLES AND FORMS THAT THEY HAVE PAROLEES SIGN TO WAIVE THEIR RIGHTS THEY ADMIT THAT IT IS A "CONSTITUTIONAL AND STATUTORY RIGHT" TO A REVOCATION HEARING (EXHIBIT B) AND THAT ITS A "CONSTITUTIONAL RIGHT TO A TIMELY PAROLE REVOCATION HEARING" AND THAT UNDER BOARD RULES THAT RIGHT IS TO HAVE IT HELD WITHIN 30 DAYS AND THEN THEY QUOTE R671-S15-1 ON THEIR FORM SEE EXHIBIT G

THEY SET THIS TIME FRAME WITH MANDATORY LANGUAGE

AND BECAUSE OF SUCH THEY ARE BOUND TO COMPLY

THE BOARD OF PAROLES ARE NOT ACCORDED GREAT DIFFERENCE IN REGARDS TO VIOLATING AND CONFORMING TO CONSTITUTIONAL LAW. SETTING OF A PAROLE REUCATION HEARING IS NOT DIRECTLY CONTRARY TO MALEK V. SAWAYA 230 P2d 629, 636 (UTAH 1986) WHEN THE USE OF MANDATORY LANGUAGE IS USED IN THEIR OWN RULES. BECAUSE IT THEN CONTRADICTS THE REASONING LAYED OUT IN PRECED OF THE BOARD OF PAROLES IS REQUIRED BY LAW TO COMPLY WITH ITS OWN RULES Id at 508, 511-12 IT ALSO CONTRADICTS THE U.S. SUPREME COURTS REASONING THAT THE USE OF MANDATORY LANGUAGE RESTRICTS AND BINDS ONE TO COMPLY. GREENHITZ V. INMATES OF NEBRASKA PENAL AND CORRECTIONAL COMPLEX 442 U.S. 1, 12 (1972); BOARD OF PAROLES V. ALLEN, 482 U.S. 369 (1987); KENTUCKY DEPT OF CORRECTIONS V. THOMPSON 490 U.S. 454 (1989); OLIM V. WAKINEKONA, 461 U.S. 2+250; MEACHTUM V. FANO 427 U.S. 2+226-27; CONNECTICUT Bd of PAROLES V. DUMSCHAT 452 U.S. 458 (1981); HEWITT V. HELMS 459 U.S. 460 (1983)

REGARDLES THE FACT REMAINS IT WAS SET AT ONE POINT THEN IT WAS CHANGED WITHOUT IN WRITING AS TO JUST CAUSE OR GROUNDS WHY IT WAS CHANGED AND NOT ONLY WAS THE FIRST SETTING OF AUGUST 25, 2004 REUCATION HEARING SET BEYOND THEIR OWN RULE OF WITHIN 30 DAYS BUT THEY THEN CHANGE IT AGAIN

PRISONER IS ENTITLED TO PROCEDURAL DUE PROCESS

PROTECTIONS AT EVERY STEP BEFORE HIS LIBERTY  
CAN BE TAKEN. AND THAT "LIBERTY IS VALUABLE  
AND MUST BE SEEN AS WITHIN THE PROTECTION  
OF THE 14<sup>TH</sup> AMENDMENT" MORRISSEY 408 U.S. at 482

IN FOOTE V. UTAH Bd. of PAROLES 808 P.2d at 745  
MAKES IT CLEAR THAT "IT IS THE PRIVILEGE OF  
THE JUDICIARY TO ASSURE THAT A CLAIM OF THE DENIAL  
OF DUE PROCESS BY AN ARM OF GOVERNMENT BE HEARD  
AND IF JUSTIFIED THAT IT BE VINDICATED. (WHAT MAY  
CONSTITUTE DUE PROCESS IN ANY GIVEN CIRCUMSTANCE  
MAY VARY, BUT ASSUREDLY THE PAROLE BOARD IS NOT  
OUTSIDE THE CONSTITUTIONAL MANDATE THAT THE ACTIONS  
OF GOVERNMENT MUST AFFORD DUE PROCESS OF LAW). THUS,  
THERE IS NO QUESTION THAT HABEAS CORPUS REVIEW  
OF THE BOARD OF PAROLS ACTIONS IS AVAILABLE."

ISSUE C'. THE USE OF MANDATORY LANGUAGE IN STATUTES, RULES, REGULATIONS OR ADMINISTRATIVE CODES SET LIMITATIONS ON THE BOARD OF PAROONS DISCRETION AND BINDS THEM TO COMPLY, WHICH CALLS FOR PROCEDURAL DUE PROCESS PROTECTIONS. THE BOARD OF PAROONS MUST COMPLY WITH ITS OWN RULES AND NOT UP TO THEM OF THEIR DISCRETION TO COMPLY OR NOT

THE UTAH BOARD OF PAROONS USES DEFINED, MANDATORY LANGUAGE IN THEIR RULES THAT GOVERN THEM. IN MORRISSEY 408 U.S. 24 488 MAKES IT CLEAR THAT EACH STATE MUST WRITE A CODE OF PROCEDURE FOR REVOKING PAROLE. UTAH DID IN THE FORM OF UTAH ADMINISTRATIVE CODE AND STATUTE. HOWEVER THEY ARE IN NON-COMPLIANCE OF THEIR OWN RULES.

THEY REFUSE TO COMPLY WITH THEIR DUTY THEY REFUSE TO PERFORM AN ACT REQUIRED BY CONSTITUTION LAW, THEIR OWN RULES AND STATUTORY LAW. IT NEEDS TO BE UNDERSTOOD THAT THE BOARD OF PAROONS USE MANDATORY LANGUAGE IN THEIR RULES.

AS LISTED ABOVE IN "ISSUE A" IS QUOTED UTAH ADMINISTRATIVE CODE R671-512-1 AND R671-513-1 IN "ISSUE B" IS QUOTED R671-515-1 AND IN EACH INSTANCE THE WORDING USED IS "WILL" "SHALL" "WITHIN" LANGUAGE USED THEREIN REQUIRE PROTECTIONS AND ITS FUNDAMENTALLY UNFAIR WHEN NOT FOLLOWING DEFINED LANGUAGE.

THE LANGUAGE USED LIMITS THE ACTIONS OF THE BOARD OF PAROONS BY GOVERNING LAW. THE BOARD OF PAROONS PROCESSES AND ACTIONS DENIED THE PETITIONER PROCEDURAL DUE PROCESS RIGHTS OF CONSTITUTIONALLY PROTECTED LIBERTY. THE USE OF DEFINED LANGUAGE IS A PROTECTABLE INTEREST. PROCEDURAL DUE PROCESS STANDARDS MUST BE MET AND THE PROCESSES AND ACTIONS USED BY THE BOARD OF PAROONS FALL SHORT OF CONSTITUTIONAL GUARANTEES.

IN GREENHITZ V. INMATES OF NEBRASKA PENAL AND CORRECTIONAL COMPLEX, 442 U.S. 1, 12 (1972) DEALS WITH DEFINED LANGUAGE USED BY A BOARD OF PAROONS AND FOUND:

THE DUE PROCESS CLAUSE APPLIES WHEN GOVERNMENT ACTION DEPRIVES A PERSON OF LIBERTY OR PROPERTY Id at 7

LANGUAGE CREATES A LEGITIMATE EXPECTATION INVOKING DUE PROCESS PROTECTIONS Id at 9

LANGUAGE CREATES A PROTECTABLE EXPECTATION Id at 11

LANGUAGE CREATED A PRESUMPTION GAVE RISE TO LEGITIMATE EXPECTATION AND CONSTITUTIONAL PROTECTION Id at 11-12

DUE PROCESS PROTECTS INMATES FROM THE ARBITRARY LOSS OF A STATUTORY RIGHT Id at 12

NOW UTAH ADMINISTRATIVE CODE IS GOVERNED BY UTAH TITLE 63 CHAPTER 46(2) ADMINISTRATIVE RULE MAKING ACT. BECAUSE OF SUCH UNION IT THAT CLASSIFY AS A STATUTE PER SE CREATING AN UMBRELLA EFFECT? "DUE PROCESS IS FLEXIBLE AND CALLS FOR SUCH PROCEDURAL PROTECTIONS



AS THE PARTICULAR SITUATION DEMANDS" GREENHITZ  
1d 2f 12; ALSO SEE MORRISSEY 408 U.S. 1d 2f 481;  
AND LABRUM V. UT. ST. Bd. of PARONS 870 P2d 2f 903 & 911.

BECAUSE OF SUCH USE OF MANDATORY LANGUAGE IN  
THE BOARD OF PARONS RULES UNDER UTAH ADMINISTRATIVE  
CODE PROTECTIONS OF DUE PROCESS AND RIGHTS ARE ENTITLED.

"THE FUNCTION OF LEGAL PROCESS, AS THAT CONCEPT IS EMBODIED  
IN THE CONSTITUTION, AND IN THE REALM OF FACTFINDING, IS TO  
MINIMIZE THE RISK OF ERRONEOUS DECISIONS. BECAUSE OF THE  
BROAD SPECTRUM OF CONCERNS TO WHICH THE TERM ~~DO~~ MUST  
APPLY, FLEXIBILITY IS NECESSARY TO GEAR THE PROCESS TO  
THE PARTICULAR NEED; THE QUANTUM AND QUALITY OF THE  
PROCESS DUE IN A PARTICULAR ~~REASO~~ SITUATION DEPEND  
UPON THE NEED TO SERVE THE PURPOSE OF MINIMIZING  
THE RISK OF ERROR." GREENHITZ 1d 2f 13

PETITIONER MUST BE AFFORDED THESE PROTECTIONS AND  
HAS A PARTICULAR NEED THAT THE USE OF MANDATORY  
DEFINED LANGUAGE USED IN THE BOARD OF PARONS  
RULES UNDER THE UTAH ADMINISTRATIVE CODE  
IN REVOCATION PROCEDURES BE BOUND TO COMPLY  
WITH THEIR OWN RULES TO MINIMIZE THE RISK  
OF ERRORS ON THEIR PART IN VIOLATING, INFRINGING  
UPON PETITIONERS RIGHTS. THIS LANGUAGE BINDS  
THE BOARD GREENHITZ 1d 2f 11

THE ISSUE OF DEFINED MANDATORY LANGUAGE IS ALSO  
RAISED IN BOARD OF PARONS V. ALLEN 482 U.S. 369  
(1987) IN THAT THE USE OF MANDATORY LANGUAGE,  
FUNDAMENTAL FAIRNESS, CREATION OF LANGUAGE PUTS

RESTRICTIONS ON DISCRETION "CLEARLY CREATES A LIBERTY INTEREST THAT IS PROTECTED BY THE DUE PROCESS CLAUSE OF THE 14<sup>TH</sup> AMENDMENT... USES MANDATORY LANGUAGE ("SHALL") TO CREATE A PRESUMPTION" 101 at 369

THE BOARD OF PAROONS USES MANDATORY LANGUAGE OF "SHALL" "WILL" "WITHIN" THROUGHOUT ITS ADMINISTRATIVE RULES SETTING TIME LIMITS ETC. THE BOARD DID NOT COMPLY WITH ITS OWN DEFINED RULES THAT LIMITS THEIR DISCRETION

"STATE STATUTE MAY CREATE LIBERTY INTEREST THAT ARE ENTITLED TO PROTECTION UNDER THE DUE PROCESS CLAUSE. THE COURT CONCLUDED THAT THE MANDATORY LANGUAGE AND THE STRUCTURE ... CREATED AN EXPECTANCY ... WHICH IS A LIBERTY INTEREST ENTITLED TO SUCH PROTECTION." 101 at 371

"IN DECIDING THAT THIS STATE CREATED A CONSTITUTIONALLY PROTECTED LIBERTY INTEREST, THE COURT FOUND SIGNIFICANT ITS MANDATORY LANGUAGE - THE USE OF THE WORD "SHALL"... 101 at 374

THE USE OF MANDATORY LANGUAGE "SHALL" CREATES A PRESUMPTION 101 at 376

IT NEEDS TO BE UNDERSTAND THAT THESE REASONINGS NOT ONLY APPLY TO A STATUTE BUT ALSO APPLIES TO A RULE, REGULATION OR ADMINISTRATIVE CODES CREATES A LIBERTY OR PROPERTY INTEREST (OR "ENTITLEMENT") IF IT LIMITS THE DISCRETION OF OFFICIALS. KENTUCKY DEPT. OF CORRECTIONS V. THOMPSON, 490 U.S. 454 (1989); OLIM V. WAKINEKONA, 461 U.S. at 250; MEACHUM V. FANO, 427 U.S. at 226-27; CONNECTICUT Bd. of PAROONS V. DUMSCHAT, 452 U.S. 458 (1981).

THE MOST COMMON WAY OF LIMITING DISCRETION IS TO USE "EXPLICITLY MANDATORY LANGUAGE IN CONNECTION WITH REQUIRING SUBSTANTIVE PREDICATES." HEWITT V. HELMS, 459 U.S. 460 (1983); ACCORD KENTUCKY DEPT OF CORRECTIONS V. THOMPSON, 490 U.S. at 462; BOARD OF PARDONS V. ALLEN, 482 U.S. 369 (1987)

"MANDATORY LANGUAGE" MEANS WORDS LIKE "SHALL" "WILL" OR "MUST" HEWITT V. HELMS at 471; BOARD OF PARDONS V. ALLEN at 378

"SUBSTANTIVE PREDICATES" ARE "SUBSTANTIVE LIMITATIONS ON OFFICIAL DISCRETION" OLIM V. WALKINEKONA, 461 U.S. 238 (1983)

IN PLAIN ENGLISH THIS MEANS WHEN A STATUTE, RULE, REGULATION, ADMINISTRATIVE CODE SAYS THAT UNDER CERTAIN SPECIFIED CIRCUMSTANCES, OFFICIALS MUST DO SOMETHING, OR MUST REFRAIN FROM DOING IT, IT CREATES A LIBERTY OR PROPERTY INTEREST AS IN THIS MATTER IN REGARDS TO PENITENT.

IN PRECE V. HOUSE 886 P.2d 508 (UTAH) 1994) HAS MADE IT CLEAR THAT THE BOARD OF PARDONS IS REQUIRED BY LAW TO COMPLY WITH ITS OWN RULES at 508, 511-12 AND THAT WHEN NOT IN COMPLIANCE A WRIT CAN PROPERLY BE HEARD, RELIEF GRANTED AND FALLS UNDER UTAH RULES CIVIL PROCEDURE 65B (d)(2) BY HAVING FAILED TO PERFORM AN ACT REQUIRED BY LAW AS A DUTY OF OFFICE OR ACT REQUIRED BY CONSTITUTIONAL LAW at 511-12

REGARDLESS ADMINISTRATIVE AGENCIES ARE REQUIRED TO FOLLOW THEIR OWN REGULATIONS. BARN-K V. WEATHER, 994 F.2d 735 (10TH CIR. 1993).

ISSUE 0!

THE LOWER COURT AND THIS COURT HAVE PROPER JURISDICTION TO HEAR AND GRANT RELIEF, EVEN IF THAT RELIEF IS A RELEASE FOR PAROLE IS STILL A TYPE OF ~~PHYSICAL~~ PHYSICAL IMPRISONMENT AND IS WARRANTED WHEN THE BOARD OF PAROLES FAIL TO COMPLY WITH A DUTY AND CONSTITUTIONAL LAW

PETITIONER IS REQUESTING AN IMMEDIATE RELEASE FROM THIS PHYSICAL IMPRISONMENT BACK OUT ON PAROLE WHICH "IS AN ESTABLISHED VARIATION ON IMPRISONMENT OF CONVICTED PRISONERS" MORRISSEY V. BREWER, 408 U.S. 1d at 477 IN SO RELEASE IS OBTAINABLE.

WHAT'S IRONIC IS THE ATTORNEY GENERAL'S OFFICE BELIEVES THAT IS NOT AN <sup>OPTION</sup> ~~OPTION~~. HOWEVER PETITIONER FILED A HABEAS CORPUS WHICH IS <sup>OPTION</sup> CLEAR THAT FROM COMMON LAW HISTORY OF THE WRIT, THAT THE ESSENCE OF HABEAS CORPUS IS AN ATTACK BY A PERSON IN CUSTODY UPON THE LEGALITY OF THAT CUSTODY, AND THAT THE TRADITIONAL FUNCTION OF THE WRIT IS TO SECURE RELEASE FROM ILLEGAL CUSTODY. PREISER V. RODRIGUEZ 411 U.S. 1d at 477 (1973)

PETITIONER'S HABEAS CORPUS AD SUBJICIENDUM IS THE WRIT USED TO "INQUIRE INTO ILLEGAL DETENTION WITH A VIEW TO AN ORDER RELEASING THE PETITIONER." FAY V. NOIA 372 U.S. 391, 399 U.S. (1963). WHETHER THE PETITIONER HAD BEEN PLACED IN PHYSICAL CONFINEMENT BY EXECUTIVE DIRECTION ALONE OR BY ORDER OF A COURT OR EVEN BY PRIVATE PARTIES, HABEAS CORPUS WAS THE PROPER MEANS OF CHALLENGING THAT CONFINEMENT AND SEEKING RELEASE. PREISER 411 U.S. at 484

"[T]HE WRIT OF HABEAS CORPUS IS NOW THE MOST USUAL REMEDY BY WHICH A MAN IS RESTORED AGAIN TO HIS LIBERTY, IF HE HAVE BEEN AGAINST THE LAW DEPRIVED OF IT." BUSHELL'S CASE, VAUGHAN 135, 136, 124 ENG. REP. 1006, 1007. PREISER 411 U.S. 24 485

OVER THE YEARS, THE WRIT OF HABEAS CORPUS EVOLVED AS A REMEDY AVAILABLE TO EFFECT DISCHARGE FROM ANY CONFINEMENT CONTRARY TO THE CONSTITUTION OR FUNDAMENTAL LAW.. THUS, WHETHER THE PETITIONER'S CHALLENGE IS "... THAT HIS PAROLE WAS UNLAWFULLY REVOKED CAUSING HIM TO BE REINCARCERATED IN PRISON, AS IN MORRISSEY V. BREWER, 408 U.S. 471 (1972)- IN EACH CASE HIS GRIEVANCE IS THAT HE IS BEING UNLAWFULLY SUBJECTED TO PHYSICAL RESTRAINT AND IN EACH CASE HABEAS CORPUS HAS BEEN ACCEPTED AS THE SPECIFIC INSTRUMENT TO OBTAIN RELEASE FROM SUCH CONFINEMENT, PREISER 411 U.S. 24 485-86

PETITIONER IS CHALLENGING THE BOARD OF PAROLS, WHICH IS AN ADMINISTRATIVE AGENCY AND DID SO BY FILING A HABEAS CORPUS. "... UPON THE ALLEGED UNCONSTITUTIONALITY OF STATE ADMINISTRATIVE ACTION, SUCH A CHALLENGE IS JUST AS CLOSE TO THE CORE OF HABEAS CORPUS AS AN ATTACK ON THE PRISONER'S CONVICTION, FOR IT GOES DIRECTLY TO THE CONSTITUTIONALITY OF HIS PHYSICAL CONFINEMENT ITSELF AND SEEKS EITHER IMMEDIATE RELEASE FROM THAT CONFINEMENT OR THE SHORTENING OF ITS DURATION." PREISER 411 U.S. 24 489

"... COMITY CONSIDERATIONS ARE NOT LIMITED TO CHALLENGES TO THE VALIDITY OF STATE COURT CONVICTIONS IS EVIDENCED BY CASES AS MORRISSEY V. BREWER, SUPRA, WHERE THE PETITIONER'S HABEAS CHALLENGE WAS TO A STATE ADMINISTRATIVE DECISION..." PREISER 411 U.S. 24 491

IN SO PETITIONERS REQUEST FOR AN IMMEDIATE RELEASE BACK OUT ON PAROLE IS WITHIN THE SCOPE OF HABEAS CORPUS, THE CORE OF HABEAS CORPUS, THE HEART OF HABEAS CORPUS AND THE ESSENCE OF HABEAS CORPUS FOR IT WAS WHAT IT WAS CREATED FOR.

IT ALSO NEEDS TO BE UNDERSTOOD THAT RELIEF MUST BE GRANTED AND CAN BE GRANTED UNDER UTAH RULES OF CIVIL PROCEDURE 65 B (1) (2) WHERE THE BOARD OF PAROONS AND PAROLE HAS ... FAILED TO PERFORM AN ACT REQUIRED BY CONSTITUTIONAL OR STATUTORY LAW." OR "WRONGFUL USE OF JUDICIAL AUTHORITY OR FAILURE TO COMPLY WITH DUTY"

UNDER THE UTAH CONSTITUTION ARTICLE 1 SECTION 7, 11 ONE CANNOT BE DENIED/DEPRIVED JUDICIAL REVIEW OR GRANTED RELIEF. STATE CONSTITUTION REQUIRED JUDICIAL REVIEW OF ALLEGATIONS AGAINST THE BOARD OF PAROONS OF DEPRIVATION OF PROCEDURAL DUE PROCESS, EVEN THOUGH STATUTE PROVIDED THAT DECISIONS OF BOARD OF PAROONS WAS FINAL AND NOT SUBJECT TO JUDICIAL REVIEW, SINCE JUDICIARY HAS INHERENT POWER TO ASSURE THAT CLAIMS OF DENIAL OF DUE PROCESS BY GOVERNMENT BE HEARD, AND IF JUSTIFIED, VINDICATED. FOOTE V. UTAH Bd. OF PAROONS 808 P.2d 734 (1991). THE WORDING JUSTIFIED VINDICATED MAKES IT CLEAR ONE CAN OBTAIN RELEASE.

ALSO UNDER UTAH CONSTITUTION ARTICLE 1 SECTION 24 ITS CLEAR THAT ALL LAWS SHALL HAVE UNIFORM OPERATION AND THAT ITS NOT ENOUGH THAT IT BE UNIFORM ON ITS FACE. ITS CRITICAL THAT THE OPERATION OF THE LAW BE UNIFORM. A LAW DOES NOT OPERATE UNIFORMLY IF A PERSON SIMILARLY SITUATED ARE NOT TREATED SIMILARLY OR IF PERSONS IN DIFFERENT CIRCUMSTANCES ARE TREATED AS IF THESE CIRCUMSTANCES WERE THE SAME. MALAN V. LEWIS 693 P.2d 669 (UTAH 1984)

IT NEEDS TO BE UNDERSTOOD THAT IT IS NOT DIRECTORY ~~AND~~ TO FOLLOW RULES THAT GOVERN AN ENTITY ESPECIALLY WHEN THE WORDING/LANGUAGE USED IS NOT DIRECTORY BUT MANDATORY. BECAUSE OF SUCH THE LAW MUST BE UNIFORM AND RELEASE IS AN OPTION ~~WITH IT~~ WHEN THAT ENTITY IS IN NON-COMPLIANCE OF A RULE THAT BINDS THEM TO PERFORM A SPECIFIED ACT.

PETITIONER HAS ESTABLISHED CONSTITUTIONAL CLAIMS AS PER LANCASTER V. UTAH Bd. OF PAROLES, 869 P.2d 945 (UTAH 1994), AND THAT THE BOARD OF PAROLES DID IN FACT VIOLATE UT. R. CIV. P. 65B (c)(2) STATING A CLAIM THAT RIGHTS WERE VIOLATED AT EVERY STEP FROM ARREST TO REVOKING PAROLE. THUS, RELEASE IS MANDATORY.

PETITIONER HAS A RIGHT UNDER UT. CONST. ART. I SEC. 7, 11 FOR PROPER AND FAIR JUDICIAL REVIEW AND RELIEF. ONE CANNOT BE DENIED JUDICIAL REVIEW AND OBTAINING RELIEF EVEN IF THAT IS RELEASE. "IT IS THE PROVINCE OF THE JUDICIARY TO ASSURE THAT A CLAIM OF THE DENIAL OF DUE PROCESS BY AN ARM OF GOVERNMENT BE HEARD AND, IF JUSTIFIED, THAT IT BE VINDICATED. WHAT MAY CONSTITUTE DUE PROCESS IN ANY GIVEN CIRCUMSTANCE MAY VARY, BUT ASSUREDLY, THE PAROLE BOARD IS NOT OUTSIDE THE CONSTITUTIONAL MANDATE THAT THE ACTIONS OF GOVERNMENT MUST AFFORD DUE PROCESS OF LAW." FOOTE V. UT. Bd OF PAROLES 808 P.2d 1d at 745

RELEASE IS AN OPTION BECAUSE "DUE PROCESS IS FLEXIBLE AND CALLS FOR SUCH PROCEDURAL PROTECTIONS AS THE PARTICULAR SITUATION DEMANDS" GREENHOLTZ 442 U.S. 212; MORRISSEY 408 U.S. 21481; LABRUM 870 P.2d 21903 & 911

RELEASE IS ALSO AN OPTION BECAUSE IN PREECE V. HOUSE 886 P.2d 508 (UTAH 1994) MAKES IT CLEAR THAT THE BOARD OF PAROONS IS REQUIRED BY LAW TO COMPLY WITH ITS OWN RULES 2d 508, 511-12.. AND THAT WHEN NOT IN COMPLIANCE A WRIT CAN PROPERLY BE HEARD RELIEF CAN BE GRANTED AND FALLS UNDER UT. R. CIV. P. 65 B (1) (2) BY HAVING FAILED TO PERFORM AN ACT REQUIRED BY LAW AS A DUTY OF OFFICE TRUST OR STATION 1d 2d 511-12 AND BECAUSE OF NON-COMPLIANCE SOME SORT OF RELIEF IS REQUIRED

THE ATTORNEY GENERAL'S OFFICE HAS CONTENDED THAT "NOT EVERY CIRCUMSTANCE THAT GIVES RISE TO EXTRAORDINARY RELIEF COMPELS THE IMMEDIATE RELEASE OF A PETITIONER FROM EVERY ASPECT OF PHYSICAL IMPRISONMENT" PREECE 886 P.2d 2d 512

HOWEVER THE LANGUAGE USED THEREIN CLARIFIES THAT ONE CAN BE RELEASED FROM ONE TYPE OF PHYSICAL IMPRISONMENT TO ANOTHER. THE ATTORNEY GENERAL ALSO CITE WICKHAM V. FISHER 629 P.2d 896 (UTAH 1981) THAT REMEDY FOR UNLAWFUL CONDITION OF CONFINEMENT IS ELIMINATION OF THAT SPECIFIC ~~condition~~ CONDITION OF PHYSICAL IMPRISONMENT NOT RELEASE FROM EVERY ASPECT OF PHYSICAL IMPRISONMENT) HOWEVER, THIS CASE DEALS WITH A "CONDITION OF CONFINEMENT" NOT AN ISSUE THAT IS RAISED IN THIS APPEAL

NEVERTHELESS PETITIONER IS NOT ASKING TO BE RELEASED FROM EVERY ASPECT OF PHYSICAL IMPRISONMENT BECAUSE HE WILL STILL BE ON PAROLE WHICH IS "AN ESTABLISHED VARIATION ON IMPRISONMENT OF CONVICTED CRIMINALS" MORRISSEY 408 2d 477 AND THE TRUE NATURE OF A HABEAS CORPUS IS TO OBTAIN RELEASE FROM UNCONSTITUTIONAL ACTIONS OF AN ADMINISTRATIVE AGENCY PREISER 411 U.S. 2d 481-86, 489 & 491 WHICH IS THE BOARD OF PAROONS



ISSUE E:

STANDARD FOR SUMMARY JUDGMENT WAS NOT MET FACTS WERE STILL IN DISPUTE JUDGE NOT ALLOWED TO ACCESS CREDIBILITY RESPONDENTS DID NOT ADDRESS ALL OF THE CLAIMS. MATERIAL FACTS EXISTED UNDER GOVERNING LAW THE COURTS DECIDED DISPUTED FACTS. SUMMARY JUDGMENT CANNOT BE GRANTED WHEN MOTIONS WERE STILL PENDING (i.e. MOTION FOR APPOINTMENT OF COUNSEL etc.) RESPONDENTS CITE WRONG LEGAL AUTHORITY

THE ONLY TIME THAT THE LOWER COURT SHOULD OF GRANTED SUMMARY JUDGMENT IS "IF THE PLEADINGS, DEPOSITIONS, ANSWERS TO INTERROGATORIES, AND ADMISSIONS ON FILE, TOGETHER WITH THE AFFIDAVITS, IF ANY, SHOW THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT THE MOVING PARTY IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW." UT. R. CIV. P. 56(C) THE FACT REMAINS THAT THERE WERE MATERIAL FACTS THAT SUPPORTED THESE CLAIMS WITH GOVERNING LAW.

AT NO POINT IN TIME DID THE JUDGE EXAMINE THE RECORD IN THE LIGHT MOST FAVORABLE TO THE NON-MOVING PARTY. BULLINGTON V. UNITED AIRLINES INC., 186 F.3D 1301 (D. CO 1999)

THE MOVING PARTY SIBIDERS THE INITIAL BURDEN TO SHOW THAT THEY ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW. THOMAS V. FBM, 48 F.3D 478, 484 (10TH CIR. 1995) NECK THE RESPONDENTS COULDN'T EVEN CITE THE RIGHT LEGAL AUTHORITIES AND THE JUDGE EVEN ADMITTED AS SUCH ON THE RECORD.

RESPONDENTS STATED THAT PETITIONER WAS CHALLENGING THE TIME OF DAY OF THE REVOCATION HEARING YET IN FACT HE WAS CHALLENGING THE CHANGING OF THE DATES AND SAID AS SUCH IN WRITING WITH EXHIBITS. THAT WAS A FACT IN DISPUTE THE JUDGE DECIDED TO STILL GRANT SUMMARY JUDGMENT AND BY GOVERNING LAW IS NOT ALLOWED TO. ANOTHER FACTUAL DISPUTE WAS PETITIONER STATED HE DID NOT GET A WRITTEN STATEMENT AS TO EVIDENCE AND REASONS FOR REVOKING PAROLE AS PER THE MORRISSEY STANDARD. A SWORN STATEMENT WERE MADE TO THESE ISSUES FOR AS THIS COURT WILL NOTE PART OF THE REQUIREMENTS TO FILE A HABEAS CORPUS WHETHER IT IS 65B OR 65C IT MUST BE SWORN TO AS THE INFORMATION CONTAINED THEREIN UNDER THE PENALTY OF PERJURY. AS POINTED OUT BY THE UTAH SUPREME COURT, IT ONLY TAKES ONE SWORN STATEMENT TO DISPUTE AVERMENTS ON THE OTHER SIDE, THEREBY CREATING ISSUES OF FACT AND PRECLUDING SUMMARY JUDGMENT. DRAPER CITY V. ESTATE OF BENAROO 888 P.2d 1097, 1101 (UTAH 1995) AND ALSO THAT OF FACTUAL DISPUTES BY LAW THE PRESENCE OF A DISPUTE AS TO MATERIAL FACTS DISALLOWS THE GRANTING OF A SUMMARY JUDGMENT. BILL BROWN REALTY INC. V. ABBOTT 562 P.2d 238 (UTAH 1977)

MOREOVER, IN DETERMINING WHETHER A MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED, THE PARTY AGAINST WHOM THE JUDGMENT IS SOUGHT IS ENTITLED TO HAVE ALL THE FACTS PRESENTED, AND ALL THOSE FACTS, CONSIDERED IN THE LIGHT MOST FAVORABLE TO THAT PARTY IN THIS INSTANCE PETITIONER. STEIN V. MARRIOTT OWNERSHIP RESORTS INC. 944 P.2d 374, 376 (UTAH APP. 1997).

CONSIDERING THE FACTS, AND THE INFERENCES <sup>fairly</sup> ARISING FROM THESE FACTS, RESPONDENTS ARE NOT ENTITLED TO SUMMARY JUDGMENT. RESPONDENTS WERE NOT ENTITLED TO SUMMARY JUDGMENT UNDER GOVERNING LAW. SEE PETITIONER'S MOTIONS "OBJECTION TO RESPONDENTS MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT" "MOTION FOR HEARING ORDER" "OBJECTION TO RESPONDENTS REPLY MEMORANDUM" DATES FILED 2/23/05 2/25/05 THE LAST MOTION IT SHOWS NO FILED DATE BUT ITS LISTED IN "NOTICE TO SUBMIT FOR DECISION" 3/4/05 DATES LISTED RESPECTIVELY. THESE LIST THE FACTUAL DISPUTES ETC. LISTED ABOVE

ALSO BY THE RESPONDENTS NOT ADDRESSING THE ISSUE THAT PETITIONER NEVER RECEIVED WRITTEN NOTICE AND REASONS FOR REVOKING PAROLE UNDER RULE 8(1) UT. R. CIV. P. THAT PARAGRAPH IS TAKEN AS ADMITTED THUS CREATING MATERIAL FACT. SO AGAIN THE JUDGE COULD NOT BY LAW GRANT SUMMARY JUDGMENT.

THE "FINDINGS OF FACT, CONCLUSIONS OF LAW ORDER OF THE COURT" IS ALMOST VERBATIM TO RESPONDENTS "MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT" WHAT'S IRONIC AT THE HEARING OF APRIL 19, 2005 THE COURT STATED ON RECORD THAT IN THE "MEMORANDUM..." RESPONDENTS CITE WRONG LEGAL AUTHORITY YET THE COURT SIGNS THE "FINDINGS..." THAT LIST THESE SAME WRONG LEGAL AUTHORITIES YET THE COURT STILL GRANTS SUMMARY JUDGMENT THIS IS WRONG. THIS ISSUE IS RAISED

ITS BELIEVED ON 4 SEPARATE OCCASIONS ① OBJECTION TO RESPONDENTS MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT. ② AT THE HEARING APRIL 19, 2005 ③ OBJECTION TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW ORDER OF THE COURT

④ motion to alter or amend the judgment UT.R. CIV.  
P. 59 E) DATES FILED 2/23/05 5/16/2005  
5/19/2005 listed respectively

ANOTHER IRONIC MOMENT AT THE HEARING OF APRIL  
19, 2005 THE COURT STATED BY LAW THE BOARD OF  
PARDOONS MUST COMPLY WITH THEIR OWN RULES  
YET THEY STILL GRANT SUMMARY JUDGMENT. IF  
BY LAW THE BOARD OF PARDOONS MUST COMPLY WITH  
ITS OWN RULES BY GOVERNING LAW PRECEDE.  
HOUSE 886 P. 201 THEN BY NO MEANS WAS  
THE COURT ALLOWED TO GRANT SUMMARY JUDGMENT.

IF THE COURT WOULD OF FOLLOWED THE GOVERNING  
LAW IT WOULD OF SEEN MATERIAL FACTS THAT  
WOULD AFFECT THE OUTCOME OF THE CASE  
ANDERSON V. LIBERTY LOBBY INC. 477 U.S. 242  
248 (1986). A GENUINE ISSUE EXISTS IF THE  
EVIDENCE IS SUCH THAT A REASONABLE JURY COULD  
RETURN A VERDICT FOR THE NON-MOVING PARTY 1d at 248

MATSUSHITA ELECTRIC INDUSTRIAL CO. V. ZENITH  
RADIO CORP, 475 U.S. 574, 586 (1986) (TO SURVIVE  
SUMMARY JUDGMENT, NON-MOVANT PARTY MUST  
ONLY SHOW MORE THAN SOME METAPHYSICAL DOUBT  
AS TO THE MATERIAL FACTS) SEE CELOTEX 477 U.S.  
21 330 n.2 (ANY DOUBT AS TO THE EXISTENCE  
OF A GENUINE ISSUE FOR TRIAL SHOULD BE  
RESOLVED AGAINST THE MOVING PARTY)

PETITIONER HAS ESTABLISHED MATERIAL FACTS  
POINTED OUT FACTUM DISPUTES YET THE

Court still granted Summary Judgment. Summary Judgment cannot be properly granted where as here the evidence presents numerous genuine issues of material facts which if resolved in the favor of the non-moving party would entitle it to judgment as a matter of law. JACKSON V. DABNEY 645 P.2d 613 (UTAH 1982) IN PETITIONERS PETITION HE HAS ESTABLISHED NOT ONLY LAW BUT CLEAR RECORD OF MATERIAL FACT TO SUPPORT HIS ISSUES

IN DRAPER CITY V. ESTATE OF BENAROO THE COURT ALSO NOTED THAT "[i]t is not the purpose of the Summary Judgment procedure to judge the credibility of the averments of parties, or witnesses, or weight of the evidence. Neither is it to deny parties the right to a trial to resolve disputed issues of fact. Its purpose is to eliminate the time, trouble [1] and expense of trial when upon any view taken of the facts as asserted by the party ruled against, he would not be entitled to prevail." id. (quoting HILBROOK CO. V. ADAMS, 542 P.2d 191, 193 (UTAH 1975)).

THE LOWER COURT COMMITTED LEGAL ERRORS, DID NOT PAY ATTENTION TO THE ACTUAL FACTS AND LEGAL THEORIES IN THE COMPLAINT NOR FOLLOWED GOVERNING LAW OF PRECEDENCE. THERE WERE MOTIONS STILL PENDING WHICH INCLUDING MOTION FOR APPOINTMENT OF COUNSEL AND OBJECTIONS THAT WERE NOT HEARD AND IN CLEAR ABSENCE ONE CANNOT GRANT SUMMARY JUDGMENT WHEN MOTIONS ARE PENDING. TUCKER V. RANDALL 948 F.2d 21 390 (1991), MCELYEA V. BABBITT 833 F.2d 196, 199 (9th Cir 1987).

ANOTHER ISSUE THAT WAS NOT ADDRESSED BY THE RESPONDENTS IS THE ISSUE OF THE USE OF MANDATORY LANGUAGE. THIS IS ALSO TAKEN AS ADMITTED PURSUANT TO RULE 8(C) UT. R. CIV. P. THIS ESTABLISHING MATERIAL FACT.

QUESTION: ~~is~~ IS THERE A GOVERNING LAW OF ALL THESE ISSUES? YES  
CAN SUMMARY JUDGMENT BE GRANTED?  
NO.

THE LOWER COURT DID NOT VIEW ALL THE FACTS AND APPLY GOVERNING LAW NOR DID IT REASONABLY APPLY INFERENCES IN FAVOR OF THE NON-MOVING PARTY, (PETITIONER). IT DECIDED DISPUTED FACTS, ASSESSED CREDIBILITY ON A SUMMARY JUDGMENT MOTION. THE COURT TREATED A PRO SE

CASE CARELESS IN ITS DETERMINATION AND HELD PETITIONER TO UNUSUAL DIFFICULT STANDARDS. THE COURT HELD PETITIONER TO A STRINGENT STANDARD. A PRO SE LITIGANT'S PLEADINGS ARE TO BE CONSTRUED LIBERALLY AND HELD TO A LESS STRINGENT STANDARD THAN FORMAL PLEADINGS DRAFTED BY LAWYERS, 1411 U. Bellmon 935 F2d 1106, 1110 (10th Cir 1991).

THE LOWER COURT BY ITS ACTIONS WERE MORE LENIENT TO RESPONDENTS AND COVERED UP THEIR MISTAKES WHICH PETITIONER POINTED OUT. THE COURT COMMITTED PLAIN ERROR NOT IMPARTIAL COMMITTED ERRORS IN LAW HAVING NO FACTUAL FINDINGS OF EVIDENCE ~~PROBABLE~~ OF SUBSTANTIAL LAW TO SUPPORT ITS CONTRA DICTORY

DECISION AND NOT FOLLOWING GOVERNING LAW. BY NOT HEARING ALL MOTIONS AND OBJECTIONS THAT WERE PENDING, BY DECIDING DISPUTED FACTS, BY DECIDING ISSUES THAT THE RESPONDENTS NEVER RESPONDED TO IN PETITIONERS COMPLAINT, BY NOT FOLLOWING GOVERNING LAW BY SIGNING A CONTRADICTIONARY ORDER THAT COVERED UP THE RESPONDENTS WRONG CITING OF LEGAL AUTHORITY WHICH IT ADMITTED ON RECORD APRIL 19, 2005 ALL OF THESE ACTIONS TOGETHER ARE SO EXTREME IT AMOUNTS TO CONSTITUTE AN ABUSE OF DISCRETION. U.S. V. TAYLOR 487 U.S. 326 (1988) AN ABUSE OF DISCRETION OCCURS WHEN A DECISION IS BASED ON AN ERRONEOUS CONCLUSION OF LAW OR WHERE THERE IS NO RATIONAL BASIS IN THE EVIDENCE FOR THE RULING. LUNGIN V. CLAYTON 619 F.2d 61, 63 (10th Cir. 1980). ABUSE OF DISCRETION ON THE PART OF THE JUDGE AUTOMATIC REVERSAL APPLIES. U.S. V. JOHN 400 U.S. 470, 486-87 (1971) AN ABUSE OF DISCRETION OCCURS WHEN IT IS CLEAR THAT THE ACTIONS OF THE JUDGE WERE INHERENTLY UNFAIR. STATE V. RHODES, 818 P.2d 1048, 1051 (UTAH App. 1991) STATE V. GERRARD 584 P.2d 885, 887 (UTAH 1978). U.S. V. TAYLOR 487 U.S. 326 (1988) (EXPLAINING ABUSE OF DISCRETION STANDARD). THE COURT ALSO COMMITTED PLAIN ERROR FOR THE SUPREME COURT MAKES IT CLEAR THAT ERROR ARE CLEAR OR OBVIOUS AND THAT DEVIATION FROM A RULE OR LAW IS ERROR. U.S. V. OLANO 507 U.S. 725 (1993)

FEDERAL CONVENTION WHICH ARE NOT SUBJECT TO HARMLESS ERROR ANALYSIS INCLUDE THE PRESENCE ON THE BENCH OF A JUDGE WHO IS NOT IMPARTIAL AND WHEN A JUDGE IS NOT IMPARTIAL IN HIS PROCEEDINGS IT ACCOUNTS TO AN AUTOMATIC REVERSABLE ERROR ALONG WITH STRUCTURAL ERROR. ARIZONA V. FULMINATE 499 U.S. 279 (1991); CHAPMAN V. CALIFORNIA 386 U.S. 18 (1967). ALSO PROCEDURAL DEFECT REQUIRES AUTOMATIC REVERSAL ARIZONA V. WASHINGTON 434 U.S. 497 (1978)

ISSUE F:

JUDGE HAD A DUTY TO RECUSE HIMSELF WHEN FILED AGAINST. JUDGE WAS BIASED NOT IMPARTIAL, TREATED THE CASE CARELESS, ABUSED DISCRETION, COMMITTED LEGAL ERRORS, WRONG LEGAL STANDARDS, COMMITTED PLAIN ERROR HELD PRO SE LITIGANT TO STRINGENT STANDARDS WHILE HOLDING RESPONDENTS TO A LESSEER STANDARDS.

PETITIONER FILED AN AFFIDAVIT AND A MOTION FOR RECUSAL BOTH FILED 5/16/2005 PETITIONERS SINCERE BELIEFS COME ABOUT BECAUSE OF THE ACTIONS AS OUTLINED IN ISSUE C. ALSO STATED THE FOLLOWING.

THE ACTIONS ARE DEMONSTRATIVE OF ACTUAL BIAS UNDER UT. CONST. ART VIII SEC. 13, ACTUAL BIAS AND PREJUDICE ON PART OF A JUDGE FOR OR AGAINST ANY LITIGANT WOULD DISQUALIFY A JUDGE. HASLAM V. MORRISON 113 UTAH 14, 190 P.2d 520 (1948) STATE V. BYINGTON, 114 UTAH 388, 200 P.2d 723 (1948)

UNDER THE CONSTITUTION, ACTUAL BIAS AND PREJUDICE ON THE PART OF TRIAL JUDGE FOR OR AGAINST ANY LITIGANT WILL DISQUALIFY HIM. WHEN AN AFFIDAVIT OF BIAS AND PREJUDICE AGAINST JUDGE HAS BEEN FILED AND JUDGE CONCLUDES THAT AFFIANT IS SINCERE IN HIS BELIEF THAT JUDGE IS BIASED AGAINST AFFIANT, IT ORDINARILY IS PROPER FOR THE JUDGE NOT TO TRY THE CASE. IT IS BETTER FOR THE JUDGE TO DISQUALIFY HIMSELF EVEN THOUGH HE MAY BE ENTIRELY FREE OF BIAS AND PREJUDICE, IF EITHER LITIGANT FILES AN AFFIDAVIT OF BIAS AND PREJUDICE HE SHOULD DISQUALIFY HIMSELF. HASLAM V. MORRISON 190 P.2d 520 (1948)



A FAIR TRIAL IN A FAIR TRIBUNAL IS A BASIC REQUIREMENT OF DUE PROCESS AND REQUIRES AN ABSENCE OF ACTUAL BIAS IN TRIAL OF CASES. THE SYSTEM OF LAW HAS ALWAYS ENDEAVORED TO PREVENT EVEN THE PROBABILITY OF UNFAIRNESS. NO MAN CAN BE A JUDGE IN HIS OWN CASE, AND NO MAN IS PERMITTED TO TRY CASES WHERE HE HAS AN INTEREST IN THE OUTCOME. IN RE MURCHISON, 349 U.S. 133, 75 S.Ct. 623 (1955).

PETITIONER FILED THE MOTION FOR REUSAL AS HE SAID EARLIER AS OUTLINED IN "ISSUE E" AND BECAUSE HE DIDNT WANT JUDGE HANSON TO HEAR PETITIONER'S "OBJECTION TO THE FINDING OF FACT, CONCLUSIONS OF LAW, ORDER OF THE COURT" AND OBJECTION TO THE HEARING OF April 19, 2005. FOR THE JUDGE ADMITS ON RECORD BOARDS OF PAROONS MUST COMPLY WITH THEIR OWN RULES YET HE REFUSED TO ENFORCE GOVERNING LAW AND BY THE FACT THE JUDGE COVERING UP THE ATTORNEY GENERALS MISTAKES OF THEM CITING WRONG LEGAL AUTHORITY NOT ANSWERING ALL CLAIMS HE DECIDED DISPUTED FACTS AS WELL. AGAIN SEE "ISSUE E" ALSO SEE "OBJECTION TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW ORDER OF THE COURT" FILED 5/16/2005

PETITIONER HAS A RIGHT UNDER U.S. CONST. ART I SEC. 7, 11 FOR PROPER AND FAIR JUDICIAL REVIEW AND RETIRED. YET THE LOWER COURT DENIED THIS. JUDGE HANSON EVEN SAID ON RECORD THAT PETITIONER DESERVED TO BE LOCKED UP AND THAT HE WOULD HAVE TO DO TIME ANYWAYS. AT WHAT POINT IS A COURT FUNDAMENTALLY FAIR WHEN IT MAKES SUCH STATEMENTS AND AGREES BY LAW THE A BOARD OF PAROONS MUST COMPLY BUT YET

REFUSES TO ENFORCE THE LAW. BY SIGNING A CONTRADICTORY ORDER "FINDINGS OF FACT, CONCLUSIONS OF LAW ORDER OF THE COURT" FILED 5/3/2005 CONTRADICTS WHAT WAS SAID AT THE HEARING APRIL 19, 2005 SHOWS BIAS ABUSE OF DISCRETION plain error AND JUDICIAL MISCONDUCT AND ISSUES OUTLINED IN "ISSUE E"

"JUSTICE MARSHALL ALSO DESCRIBED IT IN GREENHUTZ: [THIS COURT HAS STRESSED THE IMPORTANCE OF ADOPTING PROCEDURES THAT PRESERVE THE APPEARANCE OF FAIRNESS AND THE CONFIDENCE OF INMATES IN THE DECISION MAKING PROCESS." LABRUM 870 p2d 24910

THERE IS NOT EVEN AN APPEARANCE OF FAIRNESS IN HOW JUDGE HANSON HAS TREATED THE ISSUES RAISED BY THE PETITIONER. ONLY CONFIDENCE PETITIONER HAS OF THE COURT IS THAT JUSTICE WILL GO UNSERVED AND NOT IMPARTIAL

"ACCURACY AND FAIRNESS ARE ESSENTIAL IN PROCEEDINGS WHICH IMPRISON AS DIRECTLY ON PERSONAL LIBERTY... THE INTEREST OF BOTH SOCIETY AND CRIMINAL OFFENDERS ARE BEST SERVED WHEN FAIRNESS AND ACCURACY ARE ASSURED AT ALL STAGES OF THE SENTENCING AND CORRECTIONAL PROCESS. AN OFFENDERS PERCEPTION OF FAIRNESS IN THE CRIMINAL JUSTICE SYSTEM IS THOUGHT TO PROMOTE REHABILITATION" LABRUM 870 p2d 24910

"FINALLY THE CRIMINAL JUSTICE SYSTEM AS A WHOLE VALUES AND PROTECTS ACCURACY AND THE APPEARANCE OF FAIRNESS"... LABRUM 870 24910

OBVIOUSLY THIS IS A FARCE BECAUSE THE SYSTEM

NAT PETITIONER HAS BEEN DEALING WITH HAS BEEN ANYTHING BUT AS QUOTED ABOVE. PETITIONER SEES NO FAIRNESS HERE BUT A COVER UP OF HIS RIGHTS BEING VIOLATED, THE JUDGE DIDNT WANT TO RECUSE HIMSELF

"THE BAKD LIKE THE COURTS IS GOVERNED BY CONSTITUTIONAL REQUIREMENTS" LABRUM 870 2f 9/1

ALL OF THE JUDGES ACTIONS TOGETHER ARE SO EXTREME IT AMOUNTS/CONSTITUTES AN ABUSE OF DISCRETION. U.S. V. TAYLOR 487 U.S. 326 (1988). AN ABUSE OF DISCRETION OCCURS WHEN A DECISION IS BASED ON AN ERRONEOUS CONCLUSION OF LAW OR WHERE THERE IS NO RATIONAL BASIS IN THE EVIDENCE FOR THE RULING. LUGRIN V. CLAYTON 619 F.2d 61, 63 (10th Cir 1980). ABUSE OF DISCRETION ON THE PART OF THE JUDGE AUTOMATIC REVERSAL APPLIES. U.S. V. JORN 400 U.S. 470, 486-87 (1971) AN ABUSE OF DISCRETION OCCURS WHEN IT IS CLEAR THAT THE ACTIONS OF THE JUDGE WERE INHERENTLY UNFAIR. STATE V. RHOES, 818 P.2d 1048, 1051 (UTAH App. 1991) STATE V. GERRARD, 584 P.2d 885, 887 (UTAH 1978).

FEDERAL CONSTITUTION WHICH ARE NOT SUBJECT TO HARMLESS ERROR ANALYSIS INCLUDE THE PRESENCE ON THE BENCH OF A JUDGE WHO IS NOT IMPARTIAL AND WHEN A JUDGE IS NOT IMPARTIAL IN HIS PROCEEDINGS IT ACCOUNTS TO AN AUTOMATIC REVERSABLE ERROR ALONG WITH STRUCTURAL ERROR. ARIZONA V. TIMINATE 499 U.S. 279 (1991); CHAPMAN V. CALIFORNIA 386 U.S. 18 (1967).

JUDGE HANSON HAS A DUTY TO RECUSE HIMSELF NOT ONLY BY PROCEDURAL REQUIREMENTS BUT ALSO BY RULE AND GOVERNING LAW. THE UNITED STATES

SUPREME COURT MAKES IT CLEAR THAT ERROR ARE CLEAR OR OBVIOUS AND THAT DEVIATION FROM A RULE OR LAW IS ERROR. U.S. V. OLAND 507 U.S. 725 (1993) ALSO PROCEDURAL DEFECT REQUIRES AUTOMATIC REVERSAL. ARIZONA V. WASHINGTON 434 U.S. 497 (1978).

AS SOON AS JUDGE HANSON REFUSED TO RECUSE HIMSELF PETITIONER FILED AN OBJECTION TO MINUTE ENTRY FILED 6/6/2005 AND MADE IT CLEAR THEREIN THAT THE PROPER COURSE OF ACTION WOULD BE FOR JUDGE HANSON TO RECUSE HIMSELF. AND THAT ITS PETITIONER'S BELIEF THAT ANOTHER JUDGE WILL SIDE WITH JUDGE HANSON. AND THAT TO PREVENT EVEN THE PROBABILITY OF UNFAIRNESS OR IMPROPRIETY HE SHOULD JUST RECUSE HIMSELF. ALSO THAT ITS PETITIONER'S SINCERE BELIEF JUDGE HANSON IS UNFAIR AND NOT IMPARTIAL.

THE REQUIREMENT BY LAW IS THAT AFFRANT BE SINCERE IN ITS BELIEF THAT A JUDGE IS BIASED AGAINST AFFRANT, WHICH PETITIONER BELIEVED, AND THAT IF A LITIGANT FILES AN AFFIDAVIT OF BIAS AND PREJUDICE, WHICH PETITIONER DID, THE JUDGE SHOULD RECUSE HIMSELF. HASLAM V. MORRISON 190 P.2D 520 (1948)

PETITIONER HAS STATED HE BELIEVES HE COULD NOT GET A FAIR HEARING AND THAT A JUDGE WILL NOT ADMIT HE WAS BIASED, NOT IMPARTIAL, COMMITTED ERRORS IN LAW ETC. BECAUSE HE DOESN'T WANT TO USE FACE. THE FACT REMAINS AS SOON AS ONE FILES AGAINST A JUDGE

THAT LEAVES A QUESTION IF HE CAN REMAIN IMPARTIAL  
HE THEN HAS A PERSONAL INTEREST IN THE CASE  
AND IN THE OUTCOME FOR HIS LEGAL DECISIONS  
ARE BEING QUESTIONED. CAN ONE BE FREE OF  
ANTAGONISM OR ANIMOSITY, HOSTILE FEELINGS OR ILL  
WILL TOWARDS THE ACCUSED AND REMAIN IMPARTIAL.

BY THE JUDGE MAKING THE STATEMENT IN HIS MINUTE  
ENTRY FILED MAY 23, 2005 THAT HE QUESTIONS THE  
LEGAL AND FACTUAL SUFFICIENCY AND ASKS IF HE SHOULD  
OR SHOULD NOT RECUSE HIMSELF. JUST BY THE  
IMPLICATION OF HIS DECISION NOT TO RECUSE HIMSELF  
IS SUSPECT AND QUESTIONABLE. ANY JUDGE OF  
THE U.S. SHOULD DISQUALIFY HIMSELF IN ANY  
PROCEEDING IN WHICH HIS IMPARTIALITY MIGHT  
REASONABLY BE QUESTIONED. UPDELL V. JONES,  
746 F.2d 21416; SEE TAMEY V. OHIO 47 S.Ct.  
437 (1927); IN RE MURCHISON, 349 U.S. 133 25  
S.Ct. 623 (1955); SMITH V. PHILLIPS, 102 S.Ct. 940  
(1982)

THE ~~INTEGRITY~~ INTEGRITY OF THE JUDICIAL SYSTEM  
SHOULD BE PROTECTED FROM ANY TAINT OF SUSPICION.  
JUDGE HANSON HAS AN INTEREST IN THE OUTCOME  
AND HE HAS A PERSONAL STAKE IN THE OUTCOME  
AND NOBODY WITH A REASONABLE MIND ~~CANNOT~~ CANNOT  
~~THESE RISKS~~ SEE THESE RISKS AT STAKE. A FAIR  
TRIAL IN A FAIR TRIBUNAL IS A BASIC REQUIREMENT OF OUR  
PROCESS AND REQUIRES ~~RECORDS~~ AN ABSENCE OF  
EVEN THE PROBABILITY, OF ACTUAL BIAS IN THE TRIAL  
OF CASES. THE SYSTEM OF LAW HAS ALWAYS

ENDEAVORED TO PREVENT EVEN THE PROBABILITY OF UNFAIRNESS. NO MAN CAN BE A JUDGE IN HIS OWN CASE, AND NO MAN IS PERMITTED TO TRY CASES WHERE HE HAS AN INTEREST IN THE OUTCOME. In re MURKINSON 349 U.S. 133, 75 S.Ct. 623 (1955).

THIS IT WAS ONLY FAIR, IF IT WAS A FAIR TRIBUNAL AND IF IT WANTS TO PREVENT EVEN THE PROBABILITY OF UNFAIRNESS JUDGE HANSON SHOULD OF RECUSED HIMSELF.

TO PROVE THE FACT THAT JUDGE HANSON HELD PETITIONER TO STRINGENT STANDARD HE MAKES THAT CLEAR IN HIS MINUTE ENTRY ~~ORDER~~ FILED MAY 23, 2005 WHEN HE STATES "AND QUESTIONS THE LEGAL AND FACTUAL SUFFICIENCY" WHAT SUPPORTS THIS BELIEF JUDGE WILLIAM W. BARRETT HEARD THE RECUSAL MOTION HAS EVEN STATED THE SAME THAT THE MOTION, WAS "LEGALLY AND FACTUALLY INSUFFICIENT." THIS GOES TO SHOW THAT THE COURT WAS NOT FAIR IN ITS DECISION MAKING PROCESS NOR DOES IT PROMOTE JUSTICE IN REGARDS TO PRO SE LITIGANTS FOR IT HELD PETITIONER WHO IS APPEARING PRO SE TO A STRINGENT STANDARD INSTEAD OF THE REQUIREMENT OF LAW THAT A PRO SE LITIGANT'S PLEADINGS ARE TO BE CONSTRUED LIBERALLY AND HELD TO A LESS STRINGENT STANDARD THEN FORMAL PLEADINGS DRAFTED BY LAWYERS. Hall v. Bellman, 935 F.2d 1106, 1110 (10th Cir 1991) IF THIS IS TRUE THEN WHY WASN'T THIS RIGHT AFFORDED TO PETITIONER'S MOTION FOR RECUSAL?

PETITIONER THEN FILED AN OBJECTION TO JUDGE WILLIAM BARRETT'S MINUTE ENTRY AND ORDER 6/16/2005. JUDGE WILLIAM BARRETT DIDN'T HEAR THE OBJECTION. JUDGE HANSON HEARD IT. WHAT'S IRONIC IS ITS PETITIONER'S BELIEF JUDGE HANSON SHOULD NOT OF HEARD AN OBJECTION MADE ABOUT ANOTHER JUDGE'S RULING. JUDGE WILLIAM BARRETT SHOULD OF HEARD THE OBJECTION BECAUSE THE OBJECTION WAS MADE TO HIS ORDER THAT HE ENTERED. SEE MINUTE ENTRY AND ORDER FILED 6/11/2005 AND PETITIONER'S OBJECTION FILED 6/16/2005.

ALSO TO PROVE A POINT MOST OF PETITIONER'S OBJECTIONS WERE NEVER HEARD. LOOK AT ALL HIS NOTICES TO SUBMIT FOR DECISIONS FOR THAT PROVES IT. ALONG WITH HIS LAST MOTION HE FILED MOTION FOR CLARIFICATION AND OBJECTION TO JUDGE WILLIAM BARRETT FILED 7/19/2005.

THE COURT TREATED PETITIONER'S CASE CARELESSLY AND THAT IS A FACT WHICH THE RECORD CLEARLY SHOWS. THE COURT'S ACTIONS WERE ERRONEOUS AND REASONABLE MINDS VIEWING THIS CASE CAN REACH A DIFFERENT CONCLUSION THAN WHAT THE LOWER COURT DID.

## CONCLUSION

THE BOARD OF PAROLES HAS FAILED TO PERFORM AN ACT REQUIRED BY GOVERNING CONSTITUTIONAL LAW. THE UNITED STATES SUPREME COURT HELD THAT A PAROLEE'S INTEREST IN CONTINUED LIBERTY IS SIGNIFICANT ENOUGH TO REQUIRE PROCEDURAL PROTECTION, AND THE NATURE OF THAT PROTECTION IS WITHIN THE SCOPE OF THE 14TH AMENDMENT.

MORRISSEY, 408 U.S. 24 482

GUIDELINES, STATUTES, CODES, PROCEDURAL DUE PROCESS RULES AND CONSTITUTIONAL RIGHTS MUST BE PROTECTED AND THE BOARD OF PAROLES MUST BE COMPELLED TO COMPLY WITH THEIR OWN RULES NO MATTER WHO THEY MAY BELIEVE THEY ARE. THEY ARE NOT EXCLUDED FROM ABIDING BY THE LAW NOR ARE THEY EXCLUDED FROM ABIDING BY THEIR OWN RULES. THEY MUST BE HELD ACCOUNTABLE FOR THEY ARE NOT ACCORDING GREAT DIFFERENCE WHEN IT COMES TO CONFORMING/COMPLYING WITH CONSTITUTIONAL LAW AND THEIR OWN RULES. IT IS A CLEAR ISSUE OF AN ABUSE OF DISCRETION

THE FACT REMAINS PETITIONER IS ENTITLED BY ESTABLISHED LAW THAT REQUIRES DUE PROCESS PROTECTIONS AT EVERY STEP BEFORE ONE'S LIBERTY CAN BE TAKEN AND PETITIONER WAS DENIED THESE MINIMAL DUE PROCESS PROTECTIONS AT EVERY STEP FROM ARREST TO THE REVOKING PAROLE. THE BOARD OF PAROLES FAILED TO COMPLY WITH A DUTY. ITS FUNDAMENTALLY UNFAIR THAT THEY DON'T COMPLY WITH THEIR OWN RULES AND CONSTITUTIONAL LAW. THEY ARE NOT IN COMPLIANCE OF THEIR OWN RULES FAILED TO PERFORM AN ACT REQUIRED BY LAW, ABUSED THEIR DISCRETION, REFUSED A RIGHT ENTITLED TO PETITIONER.



"DUE PROCESS IS FLEXIBLE AND CALLS FOR SUCH PROCEDURAL PROTECTIONS AS THE PARTICULAR SITUATION DEMANDS"  
GREENHUTZ 442 U.S. 2112; ALSO SEE MORRISSEY 400 U.S. 21481; AND LABRUM 870 P.2d 21903 & 911

"THE FUNCTION OF LEGAL PROCESS, AS THAT CONCEPT IS EMBODIED IN THE CONSTITUTION, AND IN THE REALM OF FACTFINDING IS TO MINIMIZE THE RISK OF ERRONEOUS DECISIONS. BECAUSE OF THE BROAD SPECTRUM OF CONCERNS TO WHICH THE TERM MUST APPLY, FLEXIBILITY IS NECESSARY TO GEAR THE PROCESS TO THE PARTICULAR NEED; THE QUANTUM AND QUALITY OF THE PROCESS DUE IN A PARTICULAR SITUATION DEPEND UPON THE NEED TO SERVE THE PURPOSE OF MINIMIZING THE RISK OF ERROR" GREENHUTZ 442 U.S. 211

IF A PRISONER HAS RIGHTS THAT ARE SET BY THE USE OF MANDATORY LANGUAGE IN THE BOARD OF PRISON RULES ~~FROM~~ AT EVERY STEP OF THE PROCESS FROM ~~REARREST~~ TO REVOKING PRISON AND IF BY GOVERNING LAW THE BOARD MUST COMPLY WITH THEIR RULES THEN WHY ARE THESE RIGHTS NOT BEING AFFORDED PETITIONER. RELIEF OF RELEASE IS APPROPRIATE AND CAN BE GRANTED BY LAW.

THE ACTIONS OF THE LOWER COURTS WAS OUT OF LINE AND TREATED A PRISON CASE CARELESS AND DIDNT FOLLOW THE GOVERNING LAW. INCLUDING ALL THE ISSUES OUTLINED IN THIS COMPLAINT AT "ISSUE E & F"

PETITIONER IS ENTITLED ~~TO~~ SOME FORM OF RELIEF AND THIS COURT NEEDS TO LIST PETITIONERS ENTITLEMENTS. IT ALSO NEEDS TO BE UNDERSTOOD THAT UNDER UTAH RULE CIVIL PROCEDURE RULE 65B (1) (2) THAT

RELIEF CAN BE GRANTED IF THE BOARD OF PAROONS  
FAILED TO PERFORM AN ACT REQUIRED BY LAW OR FAILED  
TO PERFORM A DUTY AS OUTLINED IN THEIR OWN RULES.  
THIS ALSO FALLS UNDER UTAH CONSTITUTION ART 1 SEC  
7, 11 UNITED STATES CONSTITUTION 14<sup>TH</sup> AMENDMENT AND  
PRECEDENCE THAT IF THERE ARE CLAIMS OF DENIAL OF  
DUE PROCESS BY GOVERNMENT BE HEARD AND IF  
JUSTIFIED, VINDICATED ROSE V. UTAH BOARD OF PAROONS  
809 P.2D 734 (1991)

THE USE OF MANDATORY LANGUAGE AS DEFINED IN  
THEIR RULES BINDS THE BOARD TO COMPLY AS OUTLINED  
IN "ISSUE C"

FINALLY THERE MUST BE SOME FORM OF RELIEF GRANTED  
AND IF PRECEDENCE ESTABLISHES THE BOARD MUST  
COMPLY WITH ITS OWN RULES PRECE V. HOUSE 886 P.2D  
508 (UTAH 1994) THEN WHAT IS THE RECOURSE IF  
THEY ARE NOT IN COMPLIANCE AND IF MANDATORY  
LANGUAGE BINDS THEM. PETITIONER IS ENTITLED TO SOME  
FORM OF RELIEF AND "DUE PROCESS REQUIRES FAIR PROCESS  
AND A PETITIONER IS ENTITLED TO AN EXPLANATION OF WHY  
THE ERROR SHOULD BE IGNORED" PRECE 1d at 510

REASONABLE MINDS VIEWING THIS CAN REACH A CONCLUSION THAT  
THERE IS PRECEDENCE AND THAT THE BOARD OF PAROONS WOULD USE  
MANDATORY LANGUAGE THAT BINDS THEM AND THAT PETITIONER IS  
ENTITLED TO RELIEF OF SOME SORT. PETITIONER'S REQUESTED  
RELIEF IS TO BE RELEASED FORTHWITH BACK OUT  
ON PAROLE ITS ALSO THE REQUEST OF PETITIONER

THAT HIS RIGHTS AND ENTITLEMENTS BE LISTED AND  
THAT THIS CASE BE EXPEDITED BECAUSE HIS  
SENTENCE EXPIRES IN JULY 2006 IN SO TIMELINESS  
IS AN ISSUE.

RESPECTFULLY SUBMITTED  
DATED THIS 12<sup>TH</sup> DAY OF September 2005

Michael O. Bacon  
MICHAEL A. BACON

I HEREBY CERTIFY THAT I MAILED A TRUE AND CORRECT COPY TO  
THE FOLLOWING THIS 12<sup>TH</sup> DAY OF September 2005

NATALIE A. WINTCH

ASS. ATTY. GEN.

P.O. Box 140812

160 E. 300S,

SALT LAKE CITY, UTAH 84114-0812

Michael O. Bacon  
MICHAEL A. BACON

EXHIBITA

# Utah!

Where ideas connect

Olene S. Walker  
Governor

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Chairman

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## BOARD OF PARDONS AND PAROLE

448 E 6400 S, STE 300  
MURRAY, UT 84107  
Tel (801) 261-6464  
Fax (801) 261-6481  
www.bop.utah.gov

### BEFORE THE BOARD OF PARDONS AND PAROLE OF THE STATE OF UTAH

IN THE MATTER OF MICHAEL ALEXANDER BACON OFFENDER # 78533 USP # 23737 DOB 01/14/1969

WARRANT FOR ARREST 24889

THE BOARD OF PARDONS OF THE STATE OF UTAH

To any Peace Officer, State of Utah, Greetings:

A certified Warrant Request having been made before the Board by RICHARD LAURSEN, REGION 6 and it appears from the Warrant Request or Affidavit filed with the Warrant Request that there is reason to believe that the parole violation(s) of:

- (1) By having committed or been convicted of the offense of Arson, on or about June 15, 2004, in violation of condition number three of the Parole Agreement.
- (2) By having committed or been convicted of the offense of Terrorist Threats, on or about June 15, 2004, in violation of condition number three of the Parole Agreement.
- (3) By having used a controlled substance, to wit: methamphetamine, or by having failed to submit to urinalysis or other tests for the detection of drugs, on or about June 13, 2004, in violation of condition number nine of the Parole Agreement.
- (4) By having failed to pay supervision fees as determined by the Department of Corrections, on or about June 15, 2004, in violation of condition number eleven of the Parole Agreement.
- (5) By having failed to pay restitution in violation of a special condition of the Parole Agreement.
- (6) By having used a controlled substance, to wit: marijuana, or by having failed to submit to urinalysis or other tests for the detection of drugs, on or about June 14, 2004, in violation of condition number nine of the Parole Agreement.

has/have been committed, and that the person named above has committed it/them; and

Whereas the person named above was conditionally released by the Board of Pardons and Parole of the State of Utah upon parole on the 10th day of February, 2004,

YOU ARE THEREFORE COMMANDED to arrest the above-named parolee and to cause him or her to be detained and returned to actual custody pending a determination whether there is probable cause to believe that the parolee has violated the conditions of his or her parole.

Dated this 17th day of June, 2004.



Cheryl Hansen, Utah State Board of Pardons

### CERTIFICATE OF RETURN

STATE OF UTAH COUNTY OF Sevier

I do hereby certify that I lodged the said warrant this 17<sup>th</sup> day of June, 2004 on Michael Alexander Bacon at (jail)

Sevier County Jail

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the within named parolee was delivered into custody of the Utah State Prison.

\_\_\_\_\_  
Name of Officer

\_\_\_\_\_  
Title of Officer

EXHIBIT B

**AFFIDAVIT OF WAIVER AND PLEA OF GUILT**

**I, BACON, ALEXANDER MICHAEL, USP # 23737, make the following declaration:**

- I. I understand that I have been charged with violating the following condition(s) of my parole:
1. By having committed or been convicted of the offense of Arson, on or about June 15, 2004, in violation of condition number three of the Parole Agreement.
  2. By having committed or been convicted of the offense of Terrorist Threats, on or about June 15, 2004, in violation of condition number three of the Parole Agreement.
  3. By having failed to pay restitution in violation of a special condition of the Parole Agreement.
  4. By having failed to pay supervision fees as determined by the Department of Corrections, on or about June 15, 2004, in violation of condition number eleven of the Parole Agreement.
  5. By having used a controlled substance, to wit: marijuana, or by having failed to submit to urinalysis or other tests for the detection of drugs, on or about June 14, 2004, in violation of condition number nine of the Parole Agreement.
  6. By having used a controlled substance, to wit: methamphetamine, or by having failed to submit to urinalysis or other tests for the detection of drugs, on or about June 13, 2004, in violation of condition number nine of the Parole Agreement.
- II. Though I am entitled to a parole revocation and evidentiary hearing if I plead not guilty to any or all of these charges, I choose to plead guilty to each of them.
- III. By pleading guilty, I waive the following constitutional and statutory rights:
1. A parole revocation hearing;
  2. An evidentiary hearing at which I may be entitled to the assistance of counsel, to call and question witnesses; and to cross-examine the Department of Corrections= witnesses;
  3. To require that the Department of Corrections bear the burden of proving, by a preponderance of the evidence, that the evidence establishes that I committed the charged violations of my parole agreement.
- IV. In pleading guilty, I represent the following to be true and correct:
1. I am not currently under the influence of alcohol or any controlled substances;
  2. I have read this Waiver and have been given the opportunity to question my AP&P agent regarding its meaning;
  3. I understand the rights I have if I choose to plead not guilty, but choose instead to plead guilty and waive those rights, including the right to a parole revocation and evidentiary hearing;
  4. I did violate my parole conditions in the manner charged by the Department of Corrections.
- V. ☐ I admit engaging in the following conduct in violation of my parole conditions:
- ☒ I deny engaging in the following conduct in violation of my parole conditions:

I AM REQUESTING HEARING, DENYING IT *WAB*

VI. By signing this waiver, I acknowledge that it is made knowingly and voluntarily because I believe the waiver is in my best interest. I also understand that the Board may take whatever action it considers appropriate in regard to my parole violations.

Date offender was taken into custody: June 15, 2004

Agent Signature

*Richard Lauiser*  
Agent Name Printed

7-7-04  
Date

Offender Signature

*Michael A. Bacon*  
Offender Name Printed

7/7/2004  
Date

I acknowledge receipt of disclosure of the Warrant Request/Parole Violation Report:

Offender Signature

*Michael A. Bacon*  
Agent Signature

Date

7/7/2004  
Date

EXHIBIT C



UTAH DEPARTMENT OF CORRECTIONS  
DIVISION OF FIELD OPERATIONS

REGION VI - RICHFIELD OFFICE

835 EAST 300 NORTH, SUITE #500  
RICHFIELD, UTAH 84701  
435-896-2770

FAX NO: 435-896-5967

TO: B&P Attn: Camie

FAX NO: \_\_\_\_\_ DATE: 7-7-04

FROM: R. Laursen LOCATION: Richfield

NUMBER OF PAGES BEING FAXED INCLUDING COVER SHEET: 2

COMMENTS: Mr. Michne / Bacon # 23737 has  
been served with the Warrant Request and  
Parole Violation Report - He is requesting a  
Revocation Hearing. Please schedule a Hearing  
as soon as possible & let me know if anything  
else is needed -

my # is (435) 896-2773 if  
needed. Thanks,

NOTICE

This facsimile may contain PRIVATE, PROTECTED and/or CONTROLLED INFORMATION intended only for the use of the address (s) named above. If you are not the intended recipient of the facsimile or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any review, dissemination or copying of this facsimile is **STRICTLY PROHIBITED**. If you received this facsimile in error, please notify us immediately by telephone and return the original facsimile to us at the above via the US Postal Service. Thank you.

IF YOU HAVE ANY PROBLEMS REGARDING THIS DOCUMENT

PLEASE CALL 435-896-2770

EXHIBIT D

**Utah!***Where ideas connect***Olene S. Walker**  
Governor**Michael R. Sibbett**  
Chairman**Donald E. Blanchard****Jesse Gallegos****Curtis L. Garner****Cheryl Hansen**  
Members**BOARD OF PARDONS AND PAROLE**448 E 6400 S, STE 300  
MURRAY, UT 84107  
Tel (801) 261-6464  
Fax (801) 261-6481  
www.bop.utah.gov

08/11/2004

**PAROLE VIOLATION HEARING NOTICE**MICHAEL ALEXANDER BACON USP #23737 Offender Number 78533  
GB 120B

Dear MICHAEL ALEXANDER BACON:

You are scheduled to appear before the Board of Pardons in the matter of a Parole Violation Hearing on 08/25/2004 at 01:45 pm.

Prior to your appearance before the Board, an Adult Probation and Parole representative will serve you with a copy of the charges against you and will explain your rights at the hearing. You have the right to be represented by an attorney. Parole Violation Defense Associates will provide legal service for this hearing to you for free of charge. A representative will contact you prior to your scheduled hearing date. However, if you wish to have your own attorney represent you, you will need to submit your request to us in writing and have them contact our office right away.

Family members, friends, and other visitors are allowed to attend the hearing, but are not allowed to speak. Visitors should call the Board one day prior to the scheduled hearing to confirm the scheduled time of the hearing. Visitors need to be present thirty minutes prior to the scheduled hearing.

Through a change in law, if your victim(s) request it, they will be allowed to speak at your hearing. They may also request that you leave the room while this testimony is being presented. If so, you will be given the opportunity to listen to a tape recording of that testimony before the hearing continues.

If, because of a language barrier, you are in need of an interpreter, please advise your caseworker who will arrange to have one appear with you at the hearing.

In connection with your upcoming hearing, everything in your Board file may be considered. Like other offenders' files, your file 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 pre-sentence and post-sentence reports, probation violation reports, parole progress and violation reports, diagnostic reports, and so forth;
- (3) Prison information, including Board reports, disciplinaries, progress and rescission reports, psychologicals, etc;
- (4) Information generated internally for the Board, including worksheets, routings, guideline matrixes, 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 you.

Any other specific items of information to be considered by the Board will be identified for you at the hearing, and you will have an opportunity to respond at that time.

Sincerely,



---

Michael R. Sibbett  
Chairman

EXHIBIT E

**Utah!***Where ideas connect*Olene S. Walker  
GovernorMichael R. Sibbett  
Chairman

Donald E. Blanchard

Jesse Gallegos

Curtis L. Garner

Cheryl Hansen  
Members**BOARD OF PARDONS AND PAROLE**448 E 6400 S, STE 300  
MURRAY, UT 84107  
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Fax (801) 261-6481  
www.bop.utah.gov

09/08/2004

**PAROLE VIOLATION HEARING NOTICE**

MICHAEL ALEXANDER BACON USP #23737 Offender Number 78533

GB 120B

Dear MICHAEL ALEXANDER BACON:

You are scheduled to appear before the Board of Pardons in the matter of a Parole Violation Hearing on 09/08/2004 at 08:00 am.

Prior to your appearance before the Board, an Adult Probation and Parole representative will serve you with a copy of the charges against you and will explain your rights at the hearing. You have the right to be represented by an attorney. Parole Violation Defense Associates will provide legal service for this hearing to you for free of charge. A representative will contact you prior to your scheduled hearing date. However, if you wish to have your own attorney represent you, you will need to submit your request to us in writing and have them contact our office right away.

Family members, friends, and other visitors are allowed to attend the hearing, but are not allowed to speak. Visitors should call the Board one day prior to the scheduled hearing to confirm the scheduled time of the hearing. Visitors need to be present thirty minutes prior to the scheduled hearing.

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- (2) Information generated from Adult Probation and Parole, including pre-sentence and post-sentence reports, probation violation reports, parole progress and violation reports, diagnostic reports, and so forth;
- (3) Prison information, including Board reports, disciplinaries, progress and rescission reports, psychologicals, etc;
- (4) Information generated internally for the Board, including worksheets, routings, guideline matrixes, 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 you.

Any other specific items of information to be considered by the Board will be identified for you at the hearing, and you will have an opportunity to respond at that time.

Sincerely,

Michael R. Sibbett  
Chairman

**Utah!***Where ideas connect***Olene S. Walker**  
Governor**Michael R. Sibbett**  
Chairman**Donald E. Blanchard****Jesse Gallegos****Curtis L. Garner****Cheryl Hansen**  
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08/18/2004

**PAROLE VIOLATION HEARING NOTICE**

MICHAEL ALEXANDER BACON USP #23737 Offender Number 78533

GB 120B

Dear MICHAEL ALEXANDER BACON:

You are scheduled to appear before the Board of Pardons in the matter of a Parole Violation Hearing on 09/08/2004 at 03:00 pm.

Prior to your appearance before the Board, an Adult Probation and Parole representative will serve you with a copy of the charges against you and will explain your rights at the hearing. You have the right to be represented by an attorney. Parole Violation Defense Associates will provide legal service for this hearing to you for free of charge. A representative will contact you prior to your scheduled hearing date. However, if you wish to have your own attorney represent you, you will need to submit your request to us in writing and have them contact our office right away.

Family members, friends, and other visitors are allowed to attend the hearing, but are not allowed to speak. Visitors should call the Board one day prior to the scheduled hearing to confirm the scheduled time of the hearing. Visitors need to be present thirty minutes prior to the scheduled hearing.

Through a change in law, if your victim(s) request it, they will be allowed to speak at your hearing. They may also request that you leave the room while this testimony is being presented. If so, you will be given the opportunity to listen to a tape recording of that testimony before the hearing continues.

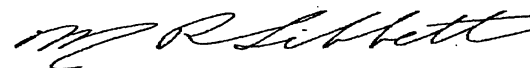
If, because of a language barrier, you are in need of an interpreter, please advise your caseworker who will arrange to have one appear with you at the hearing.

In connection with your upcoming hearing, everything in your Board file may be considered. Like other offenders' files, your file 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 pre-sentence and post-sentence reports, probation violation reports, parole progress and violation reports, diagnostic reports, and so forth;
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- (6) Other correspondence sent to the Board concerning you.

Any other specific items of information to be considered by the Board will be identified for you at the hearing, and you will have an opportunity to respond at that time.

Sincerely,

Michael R. Sibbett  
Chairman

**Utah!***Where ideas connect***Olene S. Walker**  
Governor**Michael R. Sibbett**  
Chairman**Donald E. Blanchard****Jesse Gallegos****Curtis L. Garner****Cheryl Hansen**  
Members**BOARD OF PARDONS AND PAROLE**448 E 6400 S, STE 300  
MURRAY, UT 84107  
Tel (801) 261-6464  
Fax (801) 261-6481  
www.bop.utah.gov

08/19/2004

**PAROLE VIOLATION HEARING NOTICE**MICHAEL ALEXANDER BACON USP #23737 Offender Number 78533  
GB 120B

Dear MICHAEL ALEXANDER BACON:

You are scheduled to appear before the Board of Pardons in the matter of a Parole Violation Hearing on 09/08/2004 at 02:45 pm.

Prior to your appearance before the Board, an Adult Probation and Parole representative will serve you with a copy of the charges against you and will explain your rights at the hearing. You have the right to be represented by an attorney. Parole Violation Defense Associates will provide legal service for this hearing to you for free of charge. A representative will contact you prior to your scheduled hearing date. However, if you wish to have your own attorney represent you, you will need to submit your request to us in writing and have them contact our office right away.

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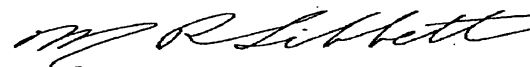
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Michael R. Sibbett  
Chairman

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www.bop.utah.gov

08/23/2004

**PAROLE VIOLATION HEARING NOTICE**

MICHAEL ALEXANDER BACON USP #23737

Offender Number 78533

WAW 335B

Dear MICHAEL ALEXANDER BACON:

You are scheduled to appear before the Board of Pardons in the matter of a Parole Violation Hearing on 09/08/2004 at 03:00 pm.

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Sincerely,



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Michael R. Sibbett  
Chairman



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08/24/2004

**PAROLE VIOLATION HEARING NOTICE**

MICHAEL ALEXANDER BACON USP #23737

Offender Number 78533

WAW 335B

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Sincerely,

Michael R. Sibbett  
Chairman

EXHIBIT F

# Utah!

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www.bop.utah.gov**BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH**Offender # 78533Consideration of the Status of Michael Alexander BaconUSP # 23737

The above-entitled matter came on for consideration before the Utah State Board of Pardons on the 8th day of September, 2004 for:

**PAROLE VIOLATION HEARING**

After a review of the submitted information and good cause appearing, the Board makes the following decision and order:

Results	Effective Date
1. PAROLE REVOKED	09/16/2004
2. TERMINATION OF INMATE SENTENCE	07/25/2006

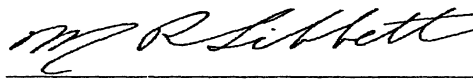
**Hearing Notes**

1. Revoke 02/10/2004 parole date.
2. The balance owing on restitution will be forwarded to the sentencing Court for a Civil Judgment.
3. Final decision of the hearing held on 09/08/2004.

No	Crime	Sent	Case No.	Judge	Expiration
1.	BURGLARY (COUNTS 2)	0-5	011600073	MCIFF	08/03/2006

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 16th day of September, 2004, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.



Michael R. Sibbett, Chairman

EXHIBIT G

TIME WAIVER FOR PAROLE REVOCATION HEARING  
(WITH PENDING CHARGES)

I, \_\_\_\_\_, USP# \_\_\_\_\_, a parolee under the jurisdiction of the Utah Board of Pardons and Parole, know that I have a constitutional right to a timely parole revocation hearing and that under Board rules my hearing should be held within 30 days after detention or return to Utah custody, absent good cause or a motion from me requesting delay (See Utah Admin. Code R671-515-1 and R671-515-2).

I am also aware that I am the subject of criminal charges arising from the same conduct for which parole may be revoked.

I believe it is in my best interest to postpone my parole revocation hearing until the disposition of criminal charges in a trial court.

Therefore, I waive any time requirement under the above rule and agree that the Board may schedule my hearing after disposition of the criminal charges in a trial court. I understand that, if at all possible, the hearing will proceed promptly after that time.

By signing this waiver, I acknowledge that I may be entitled to a parole revocation hearing within 30 days and that I have freely and voluntarily waived that right.

I acknowledge I will notify the Board of Pardons and Parole when the charges have been adjudicated.

\_\_\_\_\_  
Offender Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

I acknowledge receipt of disclosure of the Warrant Request/Parole Violation Report.

\_\_\_\_\_  
Offender Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

\*\*\*This time waiver is to be offered to offender when there are new criminal charges pending which may fall under Board of Pardons' jurisdiction OR when there are misdemeanor charges pending and the offender does not wish to answer to those charges before the Board prior to court adjudication.