

# CAPRICIOUS VINDICTIVENESS IN THE UTAH BOARD OF PARDONS AND PAROLE

By

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ACTIONS BY THE UTAH BOARD OF PARDONS AND PAROLE (UBOPP) PERSONIFY THE MAXIM THAT ABSOLUTE POWER CORRUPTS ABSOLUTELY. UBOPP IS AN INDEPENDANT AGENCY WITHIN UTAH'S EXECUTIVE BRANCH. ITS DECISIONS ARE NOT APPEALABLE IN COURT. AN INMATE MAY NOT CHALLENGE THE BOARD'S DECISIONS, BUT IT MAY CHALLENGE THE PROCESS UBOPP USED TO REACH ITS DECISIONS. MEETINGS, HOWEVER, ARE CLOSED TO THE PUBLIC AND RECORDS OF MEETINGS ARE UNAVAILABLE. THE ONLY DISCLOSURE TO INMATES IS THE CRITERIA UBOPP UTILIZES IN MAKING DECISIONS, AND THESE FACTS ARE OFTEN FLAWED OR ARE ERRONEOUS. UBOPP'S FIVE MEMBERS ARE USUALLY ANTAGONISTIC TOWARD OFFENDERS. CLARK HARMS, ANGELA MICKLOS, AND ROBERT YEATS ARE FORMER PROSECUTORS, JESSIE GALLEGOS HAS A CRIMINAL JUSTICE BACKGROUND, AND CHARLEEN ARBON IS A FORMER POLICY ANALYST.

THE UTAH SENTENCING COMMISSION'S GUIDELINES ARE NOT BINDING ON THE BOARD, AND UBOPP'S DECISIONS ARE NOT REVIEWABLE BY THE COURTS, SO THERE IS NO CONTROL OVER ITS DECISIONS. THE GOVERNOR MAY REDUCE AN INMATE'S SENTENCE OR RELEASE HIM EARLY, BUT HIS DECISION IS VALID ONLY UNTIL THE NEXT UBOPP MEETING. THE BOARD CAN THEN RESCIND THE GOVERNOR'S ACTION. AS SINCE IT MEETS ALMOST EVERY WEEKDAY THE INMATE WON'T MAKE IT OUT THE DOOR UNTIL THE RELEASE ORDER IS REVOKED. THE RESULT OF THE LACK OF ACCOUNTABILITY AND ABSOLUTE POWER OVER INMATES' FUTURES IS THAT THE BOARD MAKES SUBJECTIVE, EMOTIONAL AND ARBITRARY REVIEW DECISIONS WITH NO RECOURSE BY THE INMATES.

SOME BACKGROUND INFORMATION ON UTAH'S CRIMINAL JUSTICE SYSTEM



THAT ALSO AFFECTS UBOPP IS NECESSARY TO FULLY UNDERSTAND ITS LACK OF OBJECTIVITY IN REVIEWING CASES. I HAVE SPENT THE PAST 14 YEARS IN UTAH PRISONS ON A WRONGFUL CONVICTION. I WAS ARRESTED BY THE WEST VALLEY CITY, UTAH, POLICE DEPARTMENT WHICH HAS BEEN INVESTIGATED BY THE FBI FOR MISCONDUCT. OVER 100 OF ITS PENDING CASES WERE DROPPED FOR OFFICERS MISHANDLING EVIDENCE. ONE WVC OFFICER WAS CAUGHT TAKING DRUGS FROM A CRIME SCENE BY AN OFFICER FROM ANOTHER DEPARTMENT.

PROSECUTOR PAUL PARKER TOLD MY TRIAL JURY I DID "NOT VIOLATE THE LAW," AND MY DEFENSE WAS VALID. HOWEVER, HE TOLD THEM THERE WAS "SOME INNUEENDO, CERTAINLY, ONE COULD MAKE THAT [I] COULD HAVE "COMMITTED A CRIME. AND, "EVERYONE'S BEEN TALKING ABOUT THIS MAN, IT'S NOT A WHODUNIT. AS A PARTY TO THE CRIME. NOW, I HAVEN'T DEFINED PARTY TO THE CRIME BECAUSE IT DOESN'T APPLY HERE. PARTY TO THE CRIME MEANS SOMEONE WHO CAN BE PROSECUTED AS IF HE COMMITTED A CRIME" (EMPHASIS ADDED). PROSECUTORIAL REMARKS, EVEN IN OPENING AND CLOSING STATEMENTS, MUST BE GROUNDED IN FACT AND INNUEENDOS ARE FORBIDDEN. PARKER ADMITTED "PARTY TO THE CRIME" DID NOT APPLY, THEREFORE HE SHOULD NOT HAVE MENTIONED IT. HE ACTUALLY TOLD THE JURY HE HAD NO CASE: MY DEFENSE WAS VALID AND I DID "NOT VIOLATE THE LAW." BUT SINCE THERE WAS SOME UNBOUNDED INNUEENDO HE COULD (IMPERMISSABLY) MAKE THAT MAYBE I COULD HAVE COMMITTED A CRIME HE WAS PROSECUTING ME AS IF I HAD COMMITTED A CRIME, FIRST BECAUSE I WAS AIDING FEDERAL LAW ENFORCEMENT, AND SECOND BECAUSE MY ACTIONS VIOLATED MORMON MISPLACED SENSIBILITIES. MY ATTORNEY DID NOT CHALLENGE PARKER'S MISSTATEMENTS AND DID NOT MOVE FOR DISMISSAL OR CHARGES BECAUSE, HE TOLD THE JUDGE, MY HAVING CUSTODY OF EVIDENCE IN ORDER TO PRESERVE ITS INTEGRITY UNTIL I COULD TURN IT OVER TO THE FBI WAS "TECHNICALLY NOT A DEFENSE." THAT WAS A MOST PECULIAR POSITION FOR A DEFENSE ATTORNEY, PARTICULARLY CONSIDERING PARKER'S ADMISSION THAT



THAT THERE WAS NO ACTUAL CRIME. IF CITIZENS MAY NOT TURN OVER PRO-  
SCRIBED ITEMS TO POLICE WITHOUT BEING PROSECUTED, THEN POLICE COULD  
NOT USE INFORMANTS TO MAKE DRUG BUYS, AND CITIZENS COULD NOT TURN IN  
CONTRABAND WITHOUT BEING JAILED.

MY CASE IS NOT AN EXCEPTION TO THE RULE. TWO UTAH DEFENSE ATTORNEYS  
HAVE ESTIMATED THE STATE'S WRONGFUL CONVICTION RATE AT 40 PERCENT, TEN  
TIMES HIGHER THAN THE NATIONAL AVERAGE. THE RATE OF ACTUALLY INNOCENT  
CITIZENS IN PRISON IS ESTIMATED AT 18 TO 20 PERCENT OF THE PRISON POPULATION,  
ALSO TEN TIMES HIGHER THAN THE NATIONAL AVERAGE.

THE ACTIONS OF UTAH POLICE, PROSECUTORS, DEFENSE ATTORNEYS AND UBAPP  
SEEM INCREDULOUS UNLESS ONE UNDERSTANDS UTAH'S LONG-STANDING  
PUNITIVE ANIMUS TOWARD THE FEDERAL GOVERNMENT AND FEDERAL  
COURTS IN PARTICULAR, AND THE PERVASIVE THEO-JUDICIAL DESPOTISM IN-  
HERENT IN UTAH'S JUDICIAL SYSTEM. A JULY, 1860 NEW YORK TIMES EDI-  
TORIAL EXPLAINED THAT UTAH HAD AN "INVETERATE HOSTILITY TO ANYTHING WITH  
THE NAME, APPEARANCE, OR QUALITIES OF A UNITED STATES COURT," AND THE  
HOSTILITY WAS BASED UPON "A DETERMINATION TO RESIST, AS FAR AS POSSIBLE,  
ALL FEDERAL AUTHORITY." THIS WAS PARTICULARLY TRUE OF FEDERAL LAW  
ADMINISTERED BY "HEATHEN GENTILE" (NON-MORMON) JUDGES. UTAH'S CON-  
CEPT OF JUSTICE IS FOR MORMON JUDGES TO "TRY AND PUNISH THOSE PERSONS  
WHO THE WHOLE COMMUNITY IS CONVINCED ARE REALLY GUILTY. [BUT] SAY  
NOTHING OF THE GUILT OF BRIGHAM YOUNG OR OTHER MORMON LEADERS  
UNTIL EVIDENCE POINTS UNDENIABLY TOWARD SUCH OFFENDERS. NO JUDGE  
CAN HOPE TO HAVE ANY INFLUENCE WHO ASSAILS FULL TILT THE PREJUDICES  
OF THE PEOPLE, AND CONTINUALLY ALLEGES WRONG DOING AGAINST THOSE  
MEN WHOM THE MAJORITY OF THE PEOPLE DELIGHT TO HONOR" (EMPH. ADD.).

THE DOMINATION OF UTAH'S LEGAL SYSTEM BY THE MORMON CHURCH CON-  
TINUES TODAY. A FORMER UTAH JUDGE TOLD ME THAT THE CHURCH RE-  
CRUITS ALL INFLUENTIAL UTAHANS INTO THE CHURCH IN HIGH-RAVING POSI-



IONS. THE JUDGE SAID HIS RECRUITER TOLD HIM, "REMEMBER, YOU MAY BE A JUDGE, BUT YOU'RE A BROTHER IN THE CHURCH FIRST." THE IMPLICATION WAS THAT CHURCH DICTATES SUPERCEDES THE LAW AND THE CONSTITUTION. MORMON ELDER TAB R. CALLISTER EXPLAINED: "GOD NEEDS TO SPEAK ONLY ONCE ON THE ISSUE OF MORALITY, AND THAT ONE DECLARATION TRUMPS ALL THE OPINIONS OF THE LOWER COURTS." ("THE LORD'S STANDARD OF MORALITY" ENSIGN MAGAZINE, MARCH 2014, PP. 45-47). THEREFORE, I COULD BE PROSECUTED FOR HAVING CUSTODY - NOT POSSESSION - OF DOCUMENTS I INTENDED TO TURN OVER TO THE FBI BECAUSE IT WAS THE DOCUMENTS THEMSELVES, NOT MY INTENT, THAT WAS PROHIBITED (STATE V. MORRISON, 2001 UT. 73, 31 P. 2d 547).

PAULA HOUSTON, UTAH'S "PORN CZAR," ECHOED THE 1860 TIMES EDITORIAL WHEN SHE SAID, "COMMUNITY STANDARDS DEFINE WHAT PORN IS. IN UTAH, THOSE STANDARDS REFLECT THE DOMINANT CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS" (LDS, THE MORMONS) (CBS NEWS, 12 MARCH 2001). THE GOVERNOR MICHAEL LEAVITT REITERATED HOUSTON'S POSITION WHEN HE SAID, "IN A STATE WHERE THE MORMON CHURCH AND ITS SOCIALLY-CONSERVATIVE VIEWS INFLUENCE ALMOST ALL ASPECTS OF LIFE, THE STATE'S UNCONSTITUTIONAL PROSECUTORIAL MALFEASANCE WOULD "COPY OUR HIGHEST MORAL ASPIRATIONS BY ADDING STATE POWER TO COMMUNITY EFFORTS TO FIGHT WHAT SOME RESIDENTS REGARD AS OFFENSIVE," BUT NOT NECESSARILY ILLEGAL.

UBOPP OPERATES ON THE SAME RATIONALE. THE HEARING OFFICER AT ONE OF MY HEARINGS STATED I HAD "A HUGE NUMBER OF VICTIMS," MEANING THE DOCUMENTS DESTINED FOR THE FBI. I POINTED OUT TO HIM THAT THE BOARD'S OWN FACTS SAID I HAD NO VICTIMS. HE MADE FOUR MORE SUCH STATEMENTS WHICH, I POINTED OUT, CONTRADICTED THE FACTS HE HAD IN HIS POSSESSION. HE THEN SLAMMED PAPERS ONTO THE BENCH AND SAID, "YOU'RE GOING TO DO A LOT OF TIME," AND ENDED THE HEARING.

RON FAULKNER WAS CONVICTED OF A BURGLARY TO WHICH HE ADMITS.



HE WAS CAUGHT WHEN THE WOMAN WHO OWNED THE HOUSE CAME HOME WHILE HE WAS STILL INSIDE. FAULKNER FLED BUT WAS APPREHENDED BY POLICE. THE ONLY CHARGE AGAINST HIM WAS BURGLARY. NO HINT OF AN ADDITIONAL CRIME EXISTED. YET THE UBOPP HEARING OFFICER SAID, "WE THINK YOU WERE THINKING ABOUT RAPING [THE HOME OWNER] IF YOU HAD TIME." RON RECEIVED A 20-YEAR REHEARING DATE, WHEN HE WOULD RECEIVE ANOTHER REHEARING. HIS ATTORNEY HAD HIM TAKE A POLYGRAPH TEST WHICH HE PASSED. THE BOARD THEN RELEASED HIM (RON FAULKNER v BOARD OF PARDONS, UT. 3<sup>RD</sup> DIST. CT. NO. 100920215). RON WAS LUCKY. UBOPP DIDN'T HAVE TO ACCEPT THE POLYGRAPH RESULTS. BUT THANKS TO THE UTAH PRISONER ADVOCATE NETWORK AND OTHER GROUPS, UBOPP IS GETTING SENSITIVE TO PUBLIC OPINION. AN AUDIT OF UBOPP IS SUPPOSEDLY BEING CONDUCTED BY THE STATE. SO FAR, MOST OF WHAT'S BEING DONE IS REVISION OF SOME CRIMINAL LAWS TO SHORTEN THE MAXIMUM TIME SOME DRUG OFFENDERS SPEND IN PRISON.

UTAH HAS AN INDETERMINANT SENTENCING STRUCTURE. THIRD DEGREE FELONY CONVICTIONS REQUIRE A 0-5-YEAR SENTENCE. SECOND-DEGREE FELONIES REQUIRE A 1-15-YEAR SENTENCE, AND FIRST-DEGREE FELONY CONVICTIONS REQUIRE A TOP OR LIFE. UBOPP MAY PAROLE OR RELEASE AN INMATE BEFORE THE MAXIMUM TIME, BUT IT MOST OFTEN KEEPS OFFENDERS FAR LONGER THAN NECESSARY. ONE OF MY CELLMATES RECEIVED A TERMINATION (RELEASE) DATE 1 DAY BEFORE HIS SENTENCE EXPIRED. I AM SERVING THE FULL 15 YEARS OF MY SENTENCE FOR AN ALLEGED CRIME AGAINST PERSONS - WITH NO VICTIMS.

UBOPP IS IN NEED OF EXTENSIVE REVISION. BOARD MEMBERS NEED TO BE TRAINED AND EXPERIENCED IN REHABILITATING ERRANTS, AND THEY NEED TO BE HELD ACCOUNTABLE FOR THEIR ACTIONS. DECISIONS OF THE BOARD SHOULD BE REVIEWABLE BY THE COURTS. JUDGES NEED TO HAVE JURISDICTION TO IMPOSE A FIXED SENTENCE BETWEEN THE MINIMUM AND MAXIMUM TIMES.



UBOPP COULD THEN RELEASE SOMEONE SOONER, BUT IT COULD NOT EXTEND A JUDICIALLY-IMPOSED SENTENCE. AND JUDGES' RULINGS ARE APPEALABLE.

INMATES ARE HARMED BY EXTENSIVE STAYS IN PRISON. STATISTICS FROM THE U.S. DEPARTMENT OF JUSTICE, BUREAU OF STATISTICS SHOW THAT SENTENCES LONGER THAN THREE YEARS DO LITTLE TO LOWER RECIDIVISM RATES, AND MORE THAN 68 MONTHS IN PRISON IS DETRIMENTAL. UBOPP'S VINDICTIVELY EXTENDING SENTENCES BEYOND RATIONAL LIMITS DOES NOTHING TO MAKE COMMUNITIES SAFER: IT ACTUALLY INCREASES RECIDIVISM RATES BY HARMING THE PRISONERS' MENTAL AND EMOTIONAL WELL BEING.

FAMILIES ARE HARMED BY THEIR LOVED ONES SPENDING EXCESSIVE TIME IN PRISON. THE MAIN BREAD WINNER IS ABSENT WHICH CREATES ECONOMIC HARDSHIP FOR FAMILIES. HAVING BOTH PARENTS IS EXTREMELY IMPORTANT TO CHILDREN AS THEY GROW UP, AND WIVES USUALLY SEEK DIVORCE WHEN THEIR HUSBANDS ARE INCARCERATED FOR MANY YEARS. ACCORDINGLY, IT IS THE CHILDREN WHO SUFFER THE MOST FROM UBOPP'S VINDICTIVE MALFEASANCE. MY GRAND DAUGHTER RECENTLY ASKED GRANDMA, "WHEN IS HE COMING HOME? THEY'VE KEPT HIM THERE TOO LONG ALREADY, THEY HAVE, ESPECIALLY SINCE I COMMITTED NO CRIME EXCEPT TO OFFEND MOR-MON SENSIBILITIES.

FOR ME RELEASE COMES ONE YEAR FROM THE TIME I WRITE THIS ESSAY. IT WILL BE A TOTAL OF 15 YEARS. THE PUBLIC IS LEARNING ABOUT UBOPP'S EXCESSES, AND THE PUBLIC IS UNHAPPY. HOPEFULLY, MORE INFORMATION WILL BE PRESENTED TO THE PUBLIC, AND THE INCREASED PUBLIC PRESSURE WILL CAUSE THE UTAH LEGISLATURE TO REVAMP UBOPP SO OTHER DESERVING INMATES CAN FOLLOW ME OUT THE GATE.