

Utah's Star Chamber:

The Miscegenation of Law with Mormon Religious Dictates in the Utah Criminal Justice system

By: R. Henry Miller

On September 19, 2017, I expired a fifteen-year sentence in the Utah State Prison for aiding the FBI with an investigation. The legal description of my "crime" is that I had custody of possibly proscribed Internet documents in order to protect their integrity until I could turn them over to the Bureau. There was no conversion to possession for personal use. The FBI is exempt from providing evidence in state crimes unrelated to on-going federal cases, yet they provided me with copies of internal memorandums and my notes to them concerning my acting as an information source.

The arresting officer testified at trial that he saw current notes to the FBI in my briefcase. Those notes were not given to my attorney under discovery, nor did my counsel put the FBI memos into evidence. Thus, the jury never saw or heard the exculpatory evidence, a serious due process violation that should have caused my case to be dismissed, or the conviction to be overturned on appeal. The U.S. Supreme Court held in **Brady v. Maryland** that material evidence withheld from the jury undermines due process because there is a "reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different". A reasonable probability of a different result is one in which the suppressed evidence undermines confidence in the trial's outcome (**Turner v. US, 2017**). The FBI memos and my current notes were relevant under both **Brady** and **Turner** as they were proof beyond a reasonable doubt that my intent was to aid the FBI.

My attorney deliberately sabotaged my defense because he believed my helping federal law enforcement was "technically not a defense", even though the prosecutor said my defense was valid. His belief was founded on the Utah Supreme Court's dicta that the illegality of a proscribed item is inherent in the item itself, not in the actor's intent in having possession of it: The court did not speak to custody. My attorney wrote me, "It would not be legally incorrect for [the jury] to convict you even if they believed you because under **State v. Morrison** 'the defendant's subjective motive for possessing contraband material is not relevant" (emphasis original). Under Utah law, motive is never relevant, but intent is highly relevant. My defense turned on whether my intent was in having custody, not possession, of the documents until I could turn them over to the FBI.

The prosecutor told the jury, over the trial's span, that he did not have a valid case. In order to win a conviction he had to utilize constitutionally-prohibited misdirection and slights of tongue and logic consisting of unfounded assumptions, inferences and innuendo. He told the jury that my defense was valid, I did "not violate the law", but there was some innuendo he could

make that I could have committed a crime, therefore, he was prosecuting me as if I had committed a crime. My attorney wrote to me that the prosecutor could make such remarks because "the closing argument is, after all, argument". The Supreme Court disagrees. In **Giglio v. United States**, it said, "The use of known false evidence is incompatible with the rudimentary demands of justice," because "A presumption is not valid if it undermines the fact-finder's responsibility to determine the existence of essential elements of a crime charged beyond a reasonable doubt". The prosecutor could not "parade past the jury a litany of potentially similar acts that had been established or connected to the defendant only by unsubstantiated innuendo or by piling inference upon inference" (**County Court v. Allen, (1970); Huddelston v. U.S., (1989)**).

The prosecutor's duty to seek justice precluded his use of philistinian bamboozlement of judge and jury to win an unreliable conviction. To punish me because I had done only what the law plainly allowed me to do was a due process violation of the most basic sort. For state agents to pursue a course of action whose objective was to penalize my reliance on my legal rights was patently unconstitutional. And, to punish me for what was my civic duty and social responsibility to do destroys the People's trust and confidence in their government, cripples law enforcement efforts and undermines the integrity of the justice system.

I am not the only person to be subjected to the Utah criminal justice system's malfeasance. Two Utah defense attorneys have independently estimated the state's wrongful conviction rate at 40 percent and the conviction of actually-innocent persons at 18 percent, both ten times higher than the national average. Also, the *Deseret News* reported that about 30 percent of Utah's prison inmates are convicted of sex offenses: The national average is 12 percent. Sally*, a 13 year old was made pregnant by her 14 year old boyfriend Bob*. That was unfortunate. But more unfortunate was a prosecutor's decision to charge both children with "Sexual Exploitation of a Minor", a second-degree felony requiring a 1-15 year sentence in prison and registration as a sex offender for 10 years after release from confinement. The prosecutor's reason for the charges was, "we have to protect our children even if it is from themselves". The Utah legislature enacted the statute to protect children from adult predators. Subjecting the children to possible juvenile confinement and registration after release was not protecting them: It was victimizing them. The issue should have been left to the parents to resolve.

George Simmons* was burglarizing a house when the owner walked in on him. Simmons fled, but was caught and sent to prison only for burglary. The police didn't investigate a possible assault on the owner, nor did she make a claim that Simmons had made even a suggestion of an aggressive move toward her. Yet at his first parole hearing, the Board officer said, "We think you were thinking about raping the homeowner if you had time". George received a 20- year rehearing date. Simmons's attorney obtained a polygraph test for George. He passed, and the board of Pardons and Parole gave George a release date. He is now out on parole.

The Board's statement that they thought they knew what George was thinking, and my

- Names of victims and related parties have been changed.

prosecutor's statement that he was prosecuting me as if I had committed a crime were founded on the control the Mormon church has over the Utah criminal justice system. A former Utah judge told me that the church recruits all influential Utahans into the church in high-ranking positions. His recruiter told him, "Remember, you may be a judge, but you're a brother in the church first." The implication, said the judge, was that church dictates take precedence over the Constitution and the law in judicial decisions and rulings. The Utah Judicial Code of Conduct, Section 12, Canon 2(C), substantiates the judge's claim. It reads: "A judge shall not belong to any organization, other than a religious organization, that practices invidious discrimination on the bases of race, sex, religion, or national origin" (emphasis added). Canon 2(C) actually says that a judge may-or shall- belong to a religious organization that practices invidious discrimination. In Utah that is the Mormon Church. The church, and hence the government, will prosecute those persons who commit sins or who they think are having sinful thoughts. Gordon B. Hinckley, then president of the Church of Jesus Christ of Latter-Day Saints, (LDS), the Mormons, wrote in *Ensign* magazine that LDS missionaries wrongfully accused of sexual misbehavior may be sent home because "The Church will not tolerate the sin of which they may be guilty". The appearance of only unfounded accusations of sinful thoughts or acts is enough for LDS missionaries to be sent home or Utah citizens to be sent to prison.

Tad R. Callister delineated the LDS position in his *Ensign* essay, *The Lord's Standard of Morality*. He wrote that any thought that stimulates someone inappropriately is disapproved by God, and God's judgement trumps all opinion of lower courts. He alluded to Bible verses that say just thinking about sinful acts is the same as committing them. Therefore, Mormons should "abstain from all appearance of evil" (1 Thessalonians 5:22). The church, police, and prosecutors presume to know what someone is thinking. And like with Simmons, they are most often in error.

Utah attorney Noel Reynolds, past associate academic vice president at Brigham Young University, the epicenter of LDS education, wrote in the *Georgia Law Review*, "These matters are to be determined issue by issue according to social circumstances and the strength of public feelings, and it is the person in the jury box who will make the final determinations" (emphasis added). Reynold's statement that the administration of law is to be subjectively determined on the strength of feeling and social custom flies in the face of our U S Constitution and its Bill of Rights. And in Utah, where almost all jurors are Mormon, and the LDS church dominates the life of its members to the point where it tells women what style of underclothes they must wear, fair trials are impossible. Control of the judicial system by a domineering church contravenes the First Amendment's separation of church and state.

Utah's miscegenation of law with Mormon dictates attempts to circumvent the U.S. Constitution and federal law by reinterpreting the meaning and intent of our Constitution in light of LDS policy. Senator Ron Allen told the *Salt Lake Tribune*, "As a general rule, LDS legislators believe "the Constitution is divinely inspired as long as it is translated correctly" (Utah section, 1 February 2004). Allen paraphrased LDS Article of Faith 8 which says Mormons believe the Bible is divinely inspired as long as it is translated correctly, and they believe the *Book of Mormon* is also the word of God. But the *Book of Mormon* contradicts the Bible on all

key doctrine. In other words, the LDS church believes the Bible is divinely inspired as long as it is interpolated into conformity with the *Book of Mormon*. Senator Howard Stephonso told the *Tribune* that he doesn't see anything wrong with taking the moral high ground. That is true until the high ground eclipses the Constitution.

Mormons believe LDS doctrine is the essence of their society's life. The cult justifies its paternalism by claiming its religious mandates presume a societal consensus about the harmful nature of some acts-and thoughts-that are forbidden by the cult. The LDS version of the empirical disintegration theory holds that the decay of Mormon mores is a disintegrating factor. The rigid maintenance of core doctrine is necessary to prevent their culture from disintegrating. Thus, Mormon mores have become the sacred foundation of Utah's theocratic government that are to be protected at the expense of ethics.

Mormon cult founder Joseph Smith believed ethics cannot be divorced from what he perceived as reality, and ethics, reality and law cannot be separated from theology. The Utah government is therefore justified in enforcing LDS doctrine by passing laws that suppress practices and world views the cult sees as undermining key elements of its belief system whether or not the expressions are legal under federal law or the Constitution. A conflict arises in that about one third of Utah's citizens are not Mormon. They don't subscribe to cult doctrine and mores, nor do many agree with the LDS moral code. Many noncriminal citizens run afoul of the judicial system which is structured to inforce and perpetuate virtually all aspects of LDS invidious discrimination.

The Tenth Circuit Court of Appeals said in **US v. PHE, Inc.**, that a long-standing punitive animus exists in the Utah government that is designed to pressure certain classifications of citizens into relinquishing their First Amendment rights. That is, the constitutional rights of non-LDS citizens do not matter to the predominant Mormon majority; the numerically and politically more powerful cult's prejudices simply subsume minority rights. For example, in February 2010 Utah Senate president Michael Waddoups said that if gays continue to make offensive remarks in public it would trigger anti-gay rights legislation. His statement precipitated a First Amendment rally by gays who called his remark "polarizing". A bill was then considered to eliminate affirmative action in Utah (*Salt Lake Tribune*).

I need to make my position clear: I am a Christian. I do not condone homosexuality, gay activism, or offensive speech in public or private. I do advocate adherence to Biblical moral and ethical standards, particularly the internalizing and practicing of Christian values. I cannot, however, condone coerced compliance with these standards by utilizing vague and overbroad laws specifically designed to circumvent or undermine our constitutionally-guaranteed liberties. The elimination of affirmative action in Utah would negatively impact not only gays, but Native Americans, African Americans, Chinese, Japanese and other minority groups.

Utah's invidious discrimination is obsessively focused on pornography. Former Utah Governor Michael Leavitt created the nation's first office of porn czar in 2000. "In a state where the Mormon Church and its socially conservative views influence almost all aspect of life", he explained, the law would "codify our highest moral aspirations by adding state power to

community efforts in fighting what some residents regard as offensive,” but which are not necessarily illegal. (*New York Times*, September 30, 2009; emphasis added). Leavitt hired Paula Houston as Porn Czar. She attended LDS-owned Ricks College and BYU. Houston echoed Noel Reynolds by saying, “Community standards define what porn is. In Utah, these standards reflect the dominant Church of Jesus Christ of Latter-Day Saints” (LDS). Houston Contradicted herself by saying her faith would not affect her job, even though her sole duty is to fight pornography.

However, Utah lawyer Andrew McCullough with the American Civil Liberties Union said, “One thing that seems clear is she’s to be a resource for local governments to run bad influences out of town”. (*CBS News*, March 12, 2001). Utah had already been doing this by causing individuals and businesses to spend so much money on their legal defenses that they became bankrupt. Authorities raided a video rental store in 1996, confiscating more than 1000 videos. The owner was found not guilty, but legal costs put him out of business.

Utah knows its invidious discrimination is illegal under federal law. Accordingly, the state tries to make end runs around the Constitution to prevent federal oversight and intervention. US Representative Chris Cannon submitted *his Pornography Jurisdiction Act* to Congress in 2006. The act would have removed jurisdiction from all federal courts to review state sex-crime convictions. The bill was proposed at a time when Utah was facing a law suit in federal court over a pornography case. Cannon’s proposing his act in order to influence a case or group of cases was an abuse of the system (*Utah Daily Herald*, June 6, 2006, A1).

The Utah legislature passed **Joint Resolution-State 6** in 2010, which in part “strongly urges the United States Congress to prohibit or repeal any compulsory federal law that directs states to comply under threat of civil or criminal penalties or sanctions or requires states to pass legislation or lose federal funding.” And, “Whereas, in 1896, Utah entered into statehood by a contract between Utah and the several states with Congress and the President concurring and acting as the agent for the states”. In so doing Utah “became a free, sovereign, and independent body politic by the name of the State of Utah”. The resolution also said that since God bestowed unalienable rights on people, “the people are superior to the government and remain the master over it”. Therefore, Utah may “ignore or reject all unwarranted assumptions of power by other entities” both internal and external to Utah. Federal acts that would limit Utah’s control and censorship of religion, freedom of speech and press -in other words the First Amendment- would be a breach of contract between the federal government and Utah. But earlier, SJR-6 said the contract was between Utah and “the several states”. Now it is saying the contract negates the federal government’s control over Utah through the Constitution, First Amendment and federal law because federal control violates a contract between the state and the national government that the resolution previously said doesn’t exist. The First Amendment predates Utah becoming a state. And further, the Bible clearly says that God instituted governmental authority, not man (Isaiah 9:6; 22:21; 1Corinthians 12:28). SRJ-6’s foundation is clearly erroneous.

Utah was trying to tell Congress that it’s a sovereign political entity much like a foreign country. If SJR-6 had succeeded, there would be no federal control or oversight of Utah’s invidiousness against contrarian world views, or over any other state’s actions. A citizen’s or

business owner's defense of his legal, but not LDS, position is viewed as apostasy by the cult and the criminal justice agents it controls.

Professor Tracy E. George of Vanderbilt Law School and Albert H. Yoon of the Toronto Law School published *Gavel Gap: Who Sits in Judgement on State Courts?* In June, 2016. Utah judges ranked lowest in the data base of 10,000 sitting judges in gender, racial and ethnic diversity. Judges are guardians of the legal system. Their primary purpose is to ensure equal and fair treatment to all concerned people. George wrote, "We need a judiciary that reflects the population and we do not have it right now". This is especially true of Utah where the majority of judges, as members of the Mormon "elite society,"* do not countenance opposing opinions. "Our legal system", the report concluded, "is premised on the idea that judges can understand the circumstances of the community they serve. If we can't meet that presumption, then we need to reevaluate the role of courts in society." The Utah judiciary is in tune with the Mormon majority, but its rulings and decisions disregard the rights of more than one third of the state's populace that practice non-LDS lifestyles.

The theological-judicial despotism inherent in Utah's criminal justice system victimizes more citizens than those who are wrongly convicted. Wives lose husbands, children their fathers and families their main or only source of income. The children are more likely to be incarcerated later in life, tend to do poorly in school and they suffer abuse from their peers. The incarcerated parent is cut off from his child's development. And, when the parent has clearly been railroaded into prison, the children grow up fearing and hating authority figures, especially children who have been forced to give false testimony against the parent under threat of the being removed from the home. Wives most often divorce imprisoned husbands due to excessively long sentences which are exacerbated by vindictive rulings by the Board of Pardons. Society suffers from the loss of productive citizens who were positive influences in their communities and by the tax cost of keeping the inmates in prison. Also, citizens do not report crimes out of fear they will be prosecuted for the crime they are reporting.

Utah is for all practical purposes a theocracy. Theocracies have never worked well because of human failings. Our founding fathers knew this lesson from personal experience. Virginia passed Thomas Jefferson's *Statute of Religious Freedom* in 1786 which said efforts to use coercion in matters of religion "tend to beget habits of hypocrisy and meanness".

The First Amendment prohibits a government-established religion, and by extension it prohibits Utah's Mormon-established and controlled government. The founders of our republic addressed our individual rights in strong moral language. However, understanding their authorial intent requires considering what they hoped to achieve in drafting our Constitution. A fundamental concern was protecting the People from our country regressing back to being the type of church-dominated state that was the catalyst for the Protestant Reformation and a main motivation for the colonists throwing off the yoke of English oppression.

Today any Utah citizen is in danger of going to prison if some authority figure thinks there is

* Mitt Romney, *No Apology*

“some innuendo” he could make that the citizen could be thinking about sinning. But it is possible to change the system. The keys are public awareness and advocacy. The Utah Prisoner Advocate Network (UPAN) was founded in 2003 by parents and relatives of prison inmates. In just four years UPAN has contributed significantly to positive changes made within the Department of Corrections and the Board of Pardons and Parole. Changes can also be made to the police, prosecutors and courts through research, advocacy and making the public aware of the system’s abuses. The People need to let Utah’s theocratic government know that its invidious discrimination will no longer be tolerated. This is every citizen’s responsibility. Benjamin Franklin said that if we don’t all hang together as one, we will most assuredly hang separately. Freedom is not free: The more complacent the public, the bolder and more irresponsible the rulers become. Only the People can end the systemic abuses, and the People is you.

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