

RANDY L. DRYER (0924)
MICHAEL P. PETROGEORGE (8870)
Parsons Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

*Attorneys for defendants The Militant and
the Socialist Workers Party*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

INTERNATIONAL ASSOCIATION OF
UNITED WORKERS UNION, et al.,

Plaintiffs,

vs.

UNITED MINE WORKERS OF
AMERICA, et al.,

Defendants.

Case No. 2:04CV00901

**REPLY MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS ALL CLAIMS
AGAINST DEFENDANTS *THE MILITANT*
AND THE SOCIALIST WORKERS PARTY**

Judge Dee V. Benson

Defendants *The Militant* and the Socialist Workers' Party¹ (collectively "Defendants"),
by and through undersigned counsel, hereby submit this memorandum in support of their motion
to dismiss all claims asserted against them by the plaintiffs² in this matter.

¹ As noted in Defendants' opening memorandum, the only allegation against the Socialist Workers Party is that it owns and controls *The Militant*, and is therefore derivatively liable for *The Militant's* allegedly defamatory publications. See Amended Complaint at 4, ¶ 33. Even assuming (as we must for this motion) that the allegation is true (which it is not), Plaintiffs' claims against the Socialist Workers Party rise and fall with their claims against *The Militant*, and because the claims against *The Militant* should be dismissed, so too should the claims against the Socialist Workers Party.

² The plaintiffs in this case (collectively referred to herein as "Plaintiffs") are (i) the Co-Op Mine, (ii) some of the Co-Op Mine's officers, directors and employees, (iii) the International Association of United Workers Union ("IAUWU") (an association currently operating at the Co-Op Mine), and (iv) a number of the IAUWU's officials.

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INTRODUCTION

Plaintiffs bring this lawsuit not to redress any actionable legal harm, but to squelch the ongoing media coverage of the highly publicized labor dispute between the Co-Op Mine and its workers, divert public attention from the Co-Op Mine's alleged unfair and unsafe labor practices, and silence the many critics of the Co-Op Mine. This sweeping lawsuit, in which some twenty-seven plaintiffs have asserted claims of defamation against more than ninety different defendants, based on hundreds of articles and statements published by numerous news outlets and other organizations, including *The Salt Lake Tribune* ("*The Tribune*"), *The Deseret Morning News* ("*The Morning News*") and *The Militant*, poses a dangerous and significant risk of chilling the media's constitutionally-protected coverage of this important public controversy. Plaintiffs should not be allowed to use litigation, and the threat of protracted discovery, to chill First Amendment rights in this way, and their claims of defamation should therefore be dismissed, with prejudice.³

The Plaintiffs' memorandum in opposition to Defendants' motion to dismiss, like its memorandum in opposition to the parallel motion of *The Tribune* and *The Morning News*, only serves to illustrate why this action should be ended now. Plaintiffs recite selected portions of the subject articles at length, taking them entirely out of context. In one of the most graphic examples, Plaintiffs have intentionally misquoted an editorial published in *The Militant* on December 1, 2003, regarding the child abuse and neglect conviction of John Kingston (an

³ The time and expense associated with protracted litigation is a particular concern for small, independent, weekly newspapers with limited financial resources like *The Militant* (which, as stated on its masthead for decades, is "A socialist newsweekly published in the interests of working people"). The potential of frivolous defamation suits to chill First Amendment rights is even greater for these media outlets.

individual not named as a plaintiff in this lawsuit), incorrectly suggesting that this statement refers to and is actionable by one of the individually named plaintiffs. See Mem. Opp'n at 7 & 12; Amended Complaint at ¶ 81(k); December 1, 2003, editorial, attached hereto at Tab 1. Plaintiffs' efforts to mislead the Court in this way highlights the fact that their claims are wholly lacking in merit, and that the Amended Complaint cannot sustain any of Plaintiffs' defamation claims.

Plaintiffs' defamation claims against Defendants, like their defamation claims against *The Tribune* and *The Morning News*, should be dismissed, with prejudice, because (i) *The Militant's* publications are protected by Utah's public interest privilege, (ii) *The Militant's* publications, when taken in context (as required), do not convey any defamatory meaning, (iii) *The Militant's* publications constitute, in large part, constitutionally protected statements of opinion, (iv) many of *The Militant's* publications are fair and true reports of the official proceedings of the NLRB, and/or (v) with few exceptions, *The Militant's* statements are not "of and concerning" the individual plaintiffs. Insofar as Plaintiffs now attempt to assert a civil conspiracy claim against Defendants, such a claim rises and falls entirely on the underlying defamation claims, has not been adequately pled, and should likewise be dismissed, with prejudice.

ARGUMENT

I. PLAINTIFFS' DEFAMATION CLAIMS AGAINST THE DEFENDANTS SHOULD BE DISMISSED WITH PREJUDICE.

Plaintiffs' memorandum in opposition to Defendants' motion to dismiss has been copied almost verbatim from Plaintiffs' previously filed memorandum in opposition to the motion to dismiss filed by co-defendants *The Tribune* and *The Morning News*, and their individually named

editors and reporters (collectively, the “*Tribune/Morning News* Defendants”). The *Tribune/Morning News* Defendants have already provided a well reasoned and legally supported response to these arguments in their “Reply Memorandum in Support of Motion to Dismiss” (“*Tribune/Morning News* Reply Memorandum”) filed on March 21, 2005. Defendants therefore incorporate by reference paragraphs three thru nine of their “Introduction” and Sections II-VII of their “Reply Argument” as if fully set forth herein. *Tribune/Morning News* Reply Memorandum at vi-vii & 4-21.

A. **The Militant’s Statements Are Protected by The “Public Interest” Privilege.**

The vast majority (if not all) of the *Militant’s* published statements center around and report on the well publicized and hotly contested labor dispute at the Co-Op Mine, a dispute that involves charges of worker abuse and violations of mine safety practices, and thus raises issues of public health, safety and welfare. As set forth more fully in the incorporated sections of the *Tribune/Morning News* Reply Memorandum, these are issues of considerable interest to the public, and the reports of *The Militant*, like the reports of *The Tribune* and *The Morning News*, are therefore protected by the “public interest” privilege codified in Utah Code Ann. § 45-2-3(5). See *Tribune/Morning News* Reply Memorandum at 4-10.

Relying on *Seegmiller v. KSL, Inc.*, 626 P.2d 968 (Utah 1981), Plaintiffs suggest that the public interest privilege does not apply merely because a story is “newsworthy” in the abstract, but requires some sort of pre-existing public controversy. See Mem. Opp’n at 4. Plaintiffs’ reliance on *Seegmiller* is misplaced, and does not defeat the well-reasoned arguments set forth in *Tribune/Morning News* Reply Memorandum (and adopted by *The Militant*). The primary issue in *Seegmiller* was whether the broadcast of a single, unsolicited news story by KSL could

convert an otherwise private citizen into a public figure, and thus require the plaintiff to meet the higher burden of proving actual malice. 626 P.2d at 971-77. The Utah Supreme Court held that such an isolated incident of “publicity” was insufficient to invoke the public figure doctrine. *Id.* at 973-74. Because Defendants do not even invoke the “public figure” privilege at this stage of the proceeding, this aspect of *Seegmiller* is completely inapposite.

The *Seegmiller* court also briefly addressed the public interest privilege, concluding that an isolated allegation of animal cruelty did not rise to the level of a sufficient public interest. *See id.* at 978-79. In so doing, it specifically stated:

[T]he “public benefit” privilege, or the “public interest” privilege, might be applicable to a defamatory statement which in effect charges conduct that is criminal, if there are additional considerations which make the subject matter one about which the public ought to be informed because of a possible effect on the public health or safety. . . .

Id. at 978. As discussed more fully in the *Tribune/Morning News* Reply Memorandum, the labor dispute at the Co-Op Mine raises important issues of worker health and safety, and possible violations of federal labor laws and mine safety regulations, and have a significant impact on the surrounding community and the labor movement as a whole. The allegedly unfair labor practices span years, and have affected a significant number of mine workers and their families. These issues indisputably affect public health and safety, and have far broader social implications than a single incident of alleged animal cruelty in *Seegmiller*.⁴ As evidenced by the

⁴ *The Militant* agrees with *The Tribune/Morning News* Defendants that the analogy between the treatment of the workers at the Co-Op Mine and the horse in *Seegmiller* is offensive. *See Tribune/Morning News* Reply Memorandum at 5. As stated by the *Tribune/Morning News* Defendants, “[t]he workers at the Co-Op Mine are not animals, and their abuse, exploitation, and workplace safety raises significantly greater public concerns.” *See id.* at 6.

substantial local and national news coverage referred to in the Amended Complaint, the controversy surrounding the Co-Op Mine is not a purely private matter (as Plaintiffs strain to assert), but an issue of importance to the public at large. *The Militant's* coverage of this public controversy (like the coverage in *The Tribune* and *The Morning News*) is therefore entitled to the fullest protection of Utah's qualified public interest privilege.

B. The Militant's Statements Do Not Convey Defamatory Meaning

Plaintiffs do not advance any arguments to actually refute Defendants' contention that *The Militant's* statements, taken in the context of the contentious and highly publicized labor dispute, do not convey any defamatory meaning. Plaintiffs' only assertion on this point is that because others, namely Father Donald E. Hope, Bishop George Niederauer and Mel Logan, have made negative statements about the Co-Op Mine and its unfair labor practices, the adverse statements published by *The Militant* must have harmed the Co-Op Mine's reputation, and must therefore be defamatory. Plaintiffs do not plead (and cannot establish) any actual link between the statements published in *The Militant* and the statements made by these unrelated individuals, however, and in the absence of such a link, their argument is nonsensical.⁵ Plaintiffs' failure to

⁵ It is important to note that *The Militant*, a socialist weekly newspaper, has limited circulation and a relatively small number of subscribers. Many of the statements published in *The Militant* have also been published in large circulation daily publications such as *The Tribune* and *The Morning News*. There is absolutely no reason to believe Father Hope, Bishop Niederauer or Mr. Logan based any of their alleged statements on *The Militant's* publications, and there is no allegation in the Amended Complaint to support this inference. Indeed, it is much more likely that these gentlemen formed their opinions based on their own personal contact and discussions with mine workers, or the accounts of the labor dispute set forth in major dailies.

advance any real argument on the critical issue of defamatory meaning is telling, and constitutes an admission that their claims have no legal basis and should therefore be dismissed.⁶

C. ***The Militant's Statements Are Constitutionally Protected Statements of Opinion.***

Context is critical in assessing whether a published statement constitutes fact or opinion, and therefore gives rise to an actionable defamation claim. See *West v. Thompson*, 872 P.2d 999, 1008 (Utah 1994) (in determining whether a statement is defamatory, the court “must carefully examine the context in which the statement was made. . . .”). Contrary to Plaintiffs’ contention, when read in context the vast majority of the statements set forth in *The Militant’s* articles, like those of *The Tribune* and *The Morning News*, are constitutionally protected statements of opinions, not actionable statements of fact.⁷

Many of the statements in question were contained within clearly identified editorials which convey to the reader that the statements are the opinions and impressions of the editorialist about the ongoing labor dispute, the poor working conditions at the Co-Op Mine, and other related issues. Like the opinion columns published in *The Tribune* and *The Morning News*, the

⁶ The *Tribune/Morning News* Defendants have thoroughly explained why the statements published by *The Tribune* and *The Morning News* surrounding the hotly contested and well publicized labor dispute do not convey any defamatory meaning. These arguments apply with equal force to the coverage of the NLRB proceedings by *The Militant*, and Defendants therefore incorporate by reference Section III of the *Tribune/Morning News* Reply Memorandum. *The Militant* specifically agrees with the *Tribune/Morning News* Defendants, that “the defamatory meaning inquiry is a *context-based* determination, requiring an evaluation of the circumstances in which the publications were made,” and that “statements made in the course of a contentious labor dispute—a context that is ‘frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions’—[do] not convey defamatory meaning as a matter of law.” *Tribune/Morning News* Reply Memorandum at 10 (quoting *Linn v. United Plant Guard Workers of America*, 383 U.S. 53, 58 (1966)).

⁷ At page five of their opposing memorandum, Plaintiffs state: “The following is an abbreviated summary of *The Militant’s* defamations as quoted in paragraph 81 of the Complaint and as admitted by Defendants in their Exhibit 1.” Although Plaintiffs appear to be using the word “admitted” in an evidentiary sense, Defendants wish to make it clear that they do not admit any of the alleged defamations.

editorials in *The Militant* express the opinions of the author and/or quoted Co-Op mine workers regarding the “abuse” and “extreme level[s] of exploitation” suffered by the workers at the Co-Op Mine, and the subjective belief that the Co-Op Mine engages in “wage slavery” and “brutality against workers.” See, e.g., November 24, 2003, editorial entitled “Support the Co-Op miner!,” attached hereto at Tab 1 (quoting mine worker); December 1, 2003, editorial entitled “Solidarity with Utah miners!,” attached hereto at Tab 2. Plaintiffs cannot seriously contend that these types of editorial statements are anything but constitutionally protected statements of opinion.

The vast majority of challenged news articles likewise convey the statements and opinions of those workers who have been personally involved in the labor dispute at the Co-Op Mine, and depict their individual beliefs and observations about the deplorable conditions they have personally experienced at the mine. See, e.g., November 24, 2003, article entitled “Salt Lake City unionists donate food and funds to locked-out Co-Op miners,” attached hereto at Tab 3 (quoting PACE Local 8-758 union official) (“‘The Kingston’s are taking advantage of these miners.’”); December 29, 2003, article entitled “UWMA: ‘Support Co-Op miners strike’,” attached hereto at Tab 4 (citing allegations by mine workers) (“Workers are not provided adequate training by the company Workers are abused and mistreated by management.”). Taken in context, and read as part of a larger report of the ongoing labor dispute, these statements, like those published in *The Tribune* and *The Morning News*, also constitute constitutionally protected statements of opinion.

Plaintiffs’ own examples illustrate this point. Plaintiffs take particular issue with statements in *The Militant* reporting on claims by the mine workers themselves that the Co-Op

Mine has, among other things, “locked” the workers out of the mine, “harassed,” “threatened,” “intimidated” or “abused” the workers, tried to “disrupt” meetings and otherwise impeded the ability of the workers to seek true union representation, imposed “unfair” and “unsafe” working conditions, supplied workers with “defective” equipment, “jack[ed] up its profits” by abusing the workers, and tried to “stack” the union election. Taken in the context not only of the articles themselves, but of the ongoing and contentious labor dispute being reported, these statements are not statements of objectively verifiable fact (as Plaintiff’s strain to assert), but subjective statements of opinion based on what has been seen and experienced by the workers at the Co-Op Mine. Readers of *The Militant*, no less than readers of *The Tribune* and *The Morning News*, would recognize these statements for what they are: polemics and other expressions of the opinions or strongly held views of the speaker. Such statements are constitutionally protected, and cannot support Plaintiffs’ defamation claims.

In their effort to avoid *The Militant*’s well-taken motion to dismiss, Plaintiffs’ have selectively edited one of the quoted allegedly defamatory statements, which clearly distorts the context of the statement and misleads this Court. On page 7 of their opposing memorandum, Plaintiffs make the following assertion:

The *Militant* said, as a statement of fact, that one of CWM’s directors was convicted for savagely beating his daughter. (This is a good example of the defamatory nature of *The Militant*’s defamatory publications. (CWM’s directors are Earl Stoddard, Dorothy Sanders, and Charles Reynolds [Complaint ¶ 7], none of whom have been convicted of any crime, yet alone the one *The Militant* accused them of. A false accusation of criminal conduct is by definition defamatory *per se*.)

This assertion is based on an editorial contained in the December 1, 2003, issue of *The Militant* which actually reads, in relevant part, as follows:

The mine owners, the Kingstons, are a capitalist family notorious in the region for their brutality against workers they employ in their \$150 million business empire. They are widely despised by working people for their abuse of women. For example, *one of the directors of the Co-Op mine, John Kingston, was convicted for savagely beating his daughter* who had fled a forced polygamous marriage to her uncle, David Kingston, who spent four years in jail for sexual abuse of the 16-year-old.

(emphasis added).⁸ Contrary to the misleading and distorted picture painted by Plaintiffs, this editorial does not in any way identify Mr. Stoddard, Ms. Sanders or Mr. Reynolds (or any of the other named Plaintiffs). It specifically identifies another person, John Kingston (who is not named as a plaintiff in this action), as the director who perpetrated the crime.⁹ This illustrates the lengths to which Plaintiffs will go to distort the context of *The Militant's* actual statements in order to avoid the motion to dismiss and continue their frivolous lawsuit.¹⁰ Plaintiffs' characterization of *The Militant's* statements as "fact" rather than constitutionally protected "opinion" cannot be trusted, and even the most cursory reading of the relevant articles reveals that Plaintiffs have no valid claim for defamation.

⁸ A true and correct copy of this editorial, entitled "Solidarity with Utah miners!," is attached at Tab 2.

⁹ Although the Amended Complaint does not identify John Kingston as a current "director" of the Co-Op Mine, published news articles, not challenged as part of this litigation, indicate that he was a director in 1999 when he was convicted of child abuse. See 1999 *Tribune* article entitled "Wall Collapse in Kingston-Owned Mine Kills 1," attached hereto at Tab 5. Evidence of Mr. Kingston's criminal conviction for "Child Abuse/Neglect" can likewise be found on the Utah State Court's public database, Case No. 981100400. See Docket Sheet, attached hereto at Tab 6. The actual truth or falsity of the statement in *The Militant* editorial is irrelevant to the current motion, however, because Mr. Kingston was not named as a plaintiff in this action.

¹⁰ As noted by the United Mine Workers of America ("UMWA") in its own Reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss Complaint (at 4, n. 10), Plaintiffs also attempt to inappropriately attribute this statement to the UMWA.

D. The Militant's Coverage of NLRB Proceedings and MSHA Investigations Constitute Privileged Reports of Governmental Proceedings.

The *Tribune/Morning News* Defendants have already explained how the published statements on the NLRB proceedings are supported by the NLRB documents previously submitted to this Court, and why the coverage of such proceedings by *The Tribune* and *The Morning News* constitute “fair and accurate” reports which are privileged under Utah law. These arguments apply with equal force to the coverage of the NLRB proceedings by *The Militant*, and Defendants therefore incorporate by reference Section V of the *Tribune/Morning News* Reply Memorandum.¹¹

E. With Few Exceptions, The Militant's Statements Are Not “Of and Concerning” the Individual Plaintiffs.

Plaintiffs assert that because some of *The Militant's* statements reprint the statements of others about the actions of groups such as the “bosses” and “managers” of the Co-Op Mine, and the “officers” of IAUWU, and because the individual plaintiffs are members of these groups, these allegedly defamatory statements are “of and concerning” the individual plaintiffs. *See* Mem. Opp’n at 10-13. This argument is contrary to existing law, and does not prevent dismissal of the defamation claims asserted by the individual plaintiffs.¹²

¹¹ Plaintiffs’ do not dispute the fairness or accuracy of *The Militant's* reports about the MSHA investigations, *see* Mem. Opp’n at 9, and thus admit that these statements are privileged and cannot support their defamation claims.

¹² Defendants acknowledged in their opening memorandum that a *small* handful of the disputed statements refer specifically to some of the individual plaintiffs, and conceded that their “of and concerning” arguments did not apply to and would not support dismissal of these particular statements. Because these statements (i) convey no defamatory meaning (*e.g.*, August 3, 2004, article entitled “Back on the job, Utah miners face war by Co-Op bosses,” wherein it is reported merely that Chris Peterson issued a citation to a worker for the “minor ‘offense’” of ‘not having his safety glasses on.’”), (ii) are protected by the “public interest” privilege (*e.g.*, January 12, 2004, article entitled “Co-Op strikers force gov’t to investigate mine safety,” wherein it is reported that company trainer Jose Ortega charged excessive fees for mine safety training and instructed the miners to lie to MSHA investigators about the length and scope of their training), (iii) are constitutionally protected statements of opinion (*e.g.*, August

It has long been recognized that “[d]efamation is personal,” and that “a plaintiff who alleges defamation ‘must show that the allegedly defamatory statement was published ‘of and concerning’ him.” *Alexis v. District of Columbia*, 77 F. Supp. 2d 35, 40 (D.D.C. 1999) (quoting *Summerlin v. Washington Star*, 7 Media L. Rep. 2460, 2461 (D.D.C. 1981)); see also *West*, 872 P.2d at 1007 (“To state a claim for defamation, [plaintiff] must show that defendants published statements concerning him. . . .”).¹³ “Statements which refer to an organization or group do not necessarily implicate its members,” and a “defamatory statement directed at a group or class does not generally give rise to a cause of action on behalf of its individual members.” *Alexis*, 77 F. Supp. 2d at 40 (quoting *Provisional Government v. ABC*, 609 F. Supp. 104, 108 (D.D.C. 1985)); see also *Stanton v. Metro Corp.*, 357 F. Supp. 2d 369, 375 (D. Mass. 2005) (“The challenged statement must . . . refer specifically to the plaintiff, not to some generalized group or class of which the plaintiff is a member.”). This is commonly referred to as the “group defamation” doctrine. *Alexis*, 77 F. Supp. 2d at 40.

“In order to overcome the group [defamation] doctrine, a plaintiff must demonstrate that ‘the particular circumstances of the publication reasonably give rise to the conclusion that there is a particular reference to a member.’” *Friends of Falun Gong v. Pacific Cultural Enterprise*,

31, 2004, article entitled “Utah miners in trench war with bosses to win UMWA representation,” wherein it is reported that Nevin Pratt made a “thinly veiled threat” to call in immigration if workers continued to complain), and/or (iv) constitute fair reports of a government proceeding (e.g., August 10, 2004, article entitled “NLRB holds hearing in Price on union vote,” reporting on the arguments and tactics employed by mine attorney Mark Hansen at a July 20-21, 2004, NLRB hearing), the claims of these individual plaintiffs must nonetheless be dismissed.

¹³ See also *Lynch v. Standard Pub. Co.*, 170 P. 770, 773-74 (Utah 1918) (“[B]efore [statements] are to be regarded as actionable they must refer to some ascertained or ascertainable person, and that person must be the person complaining, shown to be such by directly being named, or so intended from the extrinsic facts and circumstances. . . .”); *Ogren v. Employers Reinsurance Corp.*, 350 N.W. 2d 725, 727 (Wis. Ct. App. 1984) (quoting *De Witte v. Kearney & Trecker Corp.*, 60 N.W. 2d 748, 751 (Wis. 1953) (“Defamatory words are not libelous unless they refer to an ascertained or ascertainable person. ‘Certainty as to the person or persons defamed must appear from the words themselves.’”).

288 F. Supp. 2d 273 (E.D.N.Y. 2003), *aff'd in relevant part*, 2004 WL 1792080, at *2 (2nd Cir. Aug. 9, 2004); *see also Anayanwu v. Columbia Broadcasting Sys., Inc.*, 887 F. Supp. 690, 692-93 (S.D.N.Y. 1995) (same).¹⁴ The fundamental inquiry is whether the reader, taking the statement in context, could reasonably ascertain the identity of, and attribute the statement to, an individual member of the group. *See Anayanwu*, 887 F. Supp. at 692 (“In determining whether the ‘of and concerning’ requirement has been sufficiently pleaded, the Court must consider whether those who know plaintiff, upon reading the statements, would know that he was the target of the allegedly libelous statement. . . . It is not sufficient that the plaintiff is libeled as a member of a group.”). Contrary to Plaintiffs’ assertion, the statements made in *The Militant* about the Co-Op Mine “bosses” and “managers” and the “officers” of IAUWU refer only generally to the groups, and do not target or refer to any particular person. No reasonable reader, taking these statements in context, would reasonably attribute these statements to any of the individually named plaintiffs.¹⁵

¹⁴ The ancient Utah case law cited and relied upon by Plaintiffs is not inconsistent with, and was in fact a pre-cursor to this well-recognized doctrine. *See Fenstermaker v. Tribune Pub. Co.*, 43 P. 112, 114 (Utah 1985) (member of group may successfully maintain action only if the “jury determines that the words have a personal application to the person bringing the suit.”); *Lynch v. Standard Pub. Co.*, 170 P. 770, 773-74 (Utah 1918) (“[B]efore [statements] are to be regarded as actionable they must refer to some ascertained or ascertainable person, and that person must be the person complaining, shown to be such by directly being named, or so intended from the extrinsic facts and circumstances. . . . Where words defamatory in their character seem to apply to a particular class of individuals, and are not specifically defamatory of any particular member of the class, an action may be maintained by any individual member who may be able to show the words referred to himself.”).

¹⁵ Plaintiffs attempt to invoke the so-called “small-group” exception to the “group defamation” doctrine, suggesting that because there are a discrete number of mine “bosses,” mine “managers” and IAUWU “officers,” any defamation against these groups is necessarily “of and concerning” the individual members. *See* Mem. Opp’n at 12. Although a small-group exception exists in the law, it “has been fairly narrowly construed,” *see Alexis*, 77 F. Supp. 2d at 41, and applies only where the group members are “easily ascertainable” and “the matter can reasonably be understood to refer to the [individual] member.” *Ogren v. Employers Reinsurance Corp.*, 350 N.W. 2d 725 (Wis. Ct. App. 1984). Despite their purportedly small number, the identity of the individual group members are not readily known to the public (and are likely to change from time to time), and no reasonable reader, taking *The Militant’s* articles in context, would construe the general statements about the “bosses,” “managers” or “officers” to

Plaintiffs have once again gone out of their way to affirmatively misrepresent the true nature of *The Militant's* statements and mislead this Court into believing that the individually named plaintiffs somehow have standing to assert their defamation claims. On page 12 of their opposing memorandum, Plaintiffs assert as follows:

CWM had three officers: Earl Stoddard, Dorothy Sanders, and Charles Reynolds [Complaint ¶ 7]. When *The Militant* published as its own statement that “one of the directors of the Co-Op . . . Mine was convicted for savagely beating his daughter” [Complaint ¶ 81(k)], that statement relates to and concerns, and has personal application, to at least Stoddard and Reynolds.

As previously explained, the disputed statement is contained in a December 1, 2003, editorial which *clearly and unequivocally* identifies the convicted “director” as John Kingston. Read in context, no reasonable reader could possibly construe this statement as referring to Messrs. Stoddard or Reynolds (or any other named plaintiff). Plaintiffs’ “editing” of this (and other) statements is misleading and cannot be relied upon to avoid dismissal of their defunct defamation claims.

II. PLAINTIFFS HAVE NOT ACTUALLY PLED A CONSPIRACY CLAIM AGAINST DEFENDANTS, AND ANY SUCH CLAIM RISES AND FALLS WITH THE CLAIMS FOR DEFAMATION.¹⁶

It is not at all clear from the Amended Complaint whether Plaintiffs ever actually intended to assert a conspiracy claim against Defendants. See Amended Complaint at ¶¶ 162-

refer specifically to any of the individually named plaintiffs. See *Boyce & Isley, PLLC v. Cooper*, 568 S.E. 2d 893 (N.C. Ct. App. 2002) (“[A] defamatory statement accusing ‘someone’ in a group of nine persons of misconduct will not support an action for defamation by a member of that group.”). The individual Plaintiff’s have not alleged the factual predicates necessary to assert the small group exception, and should not be allowed to rely upon this doctrine to avoid Defendants’ motion to dismiss. See *Dean v. Dearing*, 561 S.E. 2d 686 (Va. 2002) (The mere conclusory statement that the articles are ‘of and concerning’ an individually named plaintiff does not satisfy the pleading requirements of the small group exception.).

¹⁶ Plaintiffs do not raise any arguments in support of their claims for Intentional Interference with Economic Relations or Negligence, and thereby admit that these claims are not asserted against Defendants.

167 (asserting a conspiracy claim generally against “Defendants,” a term that was never defined in the Amended Complaint to include *The Militant* or the Socialist Workers Party); *see also* Plaintiffs’ Memorandum in Opposition to Motion to Dismiss of The Salt Lake Tribune, The Deseret Morning News, *et al.* (failing to argue a conspiracy claim against these similarly named defendants). Even if Plaintiffs intended to assert such a claim, it must be dismissed because (a) it rests entirely on Plaintiffs’ defunct defamation claims, and (b) has not been adequately pled.¹⁷

A. The Conspiracy Claim Rises and Falls With Plaintiffs’ Defamation Claims.

Even assuming *arguendo* that Plaintiffs’ have pled an actionable claim for civil conspiracy against Defendants (which they have not), Plaintiffs effectively concede that the only alleged conspiracy was a conspiracy to defame. *See* Mem. Opp’n at 14 (“The Defendants collectively comprise a combination of two or more persons, which operated with a meeting of minds to accomplish the unlawful object of defamation. . . .”). This amounts to an admission that the civil conspiracy claim rises and falls with the underlying defamation claims, and that any conspiracy claim must be dismissed along with the legally deficient claims of defamation. *See Coroles v. Sabey*, 79 P.3d 974, 983-84 (Utah Ct. App. 2003) (civil conspiracy is a “secondary” claim premised on an actionable “underlying tort,” and must be dismissed where a plaintiff fails to “adequately plead the existence of such a tort.”).

¹⁷ Contrary to Plaintiffs’ assertion, Defendants have never argued that the defamation claims are preempted by the National Labor Relations Act. This argument has been raised solely by other defendants, including the UMWA and the individually named workers involved in the labor dispute. It appears as if Plaintiffs have simply cut and pasted this section of their opposing memorandum from the memorandum previously filed in opposition to the motions to dismiss filed by the UMWA and others, without taking the time to consider whether these arguments are in fact responsive to the arguments raised by Defendants’ motion to dismiss.

B. Plaintiffs Have Not Actually Pled An Actionable Claim For Conspiracy Against Defendants.

As set forth in Plaintiff's opposing memorandum, a civil conspiracy has five elements: "(1) a combination of two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful, overt acts, and (5) damages as a proximate result thereof." *Israel Pagan Estate v. Cannon*, 746 P. 2d 785, 790 (Utah App. 1987). Although the Amended Complaint recites these elements in a conclusory fashion, *see* Amended Complaint at ¶¶ 162-167, Plaintiffs do not allege how any of the named defendants actually combined, what the object was they allegedly intended to accomplish, when the supposed meeting of the minds occurred (or who was even involved), or otherwise provide any of the factual details necessary to meet even the most liberal notice pleading requirements. *See Utah Steel & Iron Co. v. Bosch*, 475 P.2d 1019, 1020 (Utah 1970) (complaint alleging simply that defendants conspired together to harass, annoy, threaten and intimidate the plaintiff in order to cause him to go out of business, without more, "does not comport with the requirements of Rule 8(a) and failed to state a claim upon which relief can be granted."); *Heathman v. Hatch*, 372 P.2d 990, 991 (Utah 1962) ("It is to be noted that the terms 'fraud,' 'conspiracy,' and 'negligence' are but general accusations in the nature of conclusions of the pleader. They will not stand up against a motion to dismiss on that ground. The basic facts must be set forth with sufficient particularity to show what facts are claimed to constitute such charges."). Plaintiffs cannot rest on such conclusory allegations, and have not pled an actionable claim for civil conspiracy against Defendants.

III. THIS COURT SHOULD AWARD DEFENDANTS' THEIR REASONABLE ATTORNEYS' FEES AND COSTS.

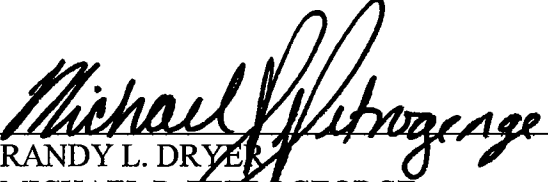
Defendants agree with the *Tribune/Morning News* Defendants that Plaintiffs' action is frivolous and has been asserted in bad faith for the primary (if not exclusive) purpose of harassing Defendants and squelching their First Amendment rights, and that this Court therefore has the power to award Defendants their reasonable attorneys' fees and costs incurred in defending this lawsuit. *See Tribune/Morning News* Reply Memorandum at 19-21 (an award of fees and costs is appropriate under Utah law and supported by the public policies underlying Utah's Anti-SLAAP statute).

As set forth above, *see supra* Argument, Sections I(B) and (E), Plaintiffs have already demonstrated a willingness to mislead this Court and affirmatively misrepresent the facts to achieve their desired result and hinder *The Militant* and other newspapers, such as *The Tribune* and *The Morning News*, from continuing their constitutionally protected coverage of the Co-Op Mine dispute. Such tactics besmirch the integrity of the judicial system, should not be countenanced, and provide an *independent basis* for this Court to award Defendants their reasonable attorneys' fees and costs.

CONCLUSION

For the reasons set forth above, and for those set forth in Defendants' original memorandum in support and the incorporated portions of the memoranda filed by the *Tribune/Morning News* Defendants, Defendants respectfully request that their motion to dismiss be granted, that Plaintiffs' claims against them be dismissed, with prejudice, and that Defendants be awarded all of the reasonable attorneys' fees and costs they have incurred in defending this frivolous lawsuit.

DATED this 28th day of April, 2005.


RANDY L. DRYER
MICHAEL P. PETROGEORGE
PARSONS BEHLE & LATIMER
*Attorneys for defendants The Militant and the
Socialist Workers Party*

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2005, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ALL CLAIMS AGAINST DEFENDANTS *THE MILITANT AND THE SOCIALIST WORKERS PARTY***, to the following:

F. Mark Hansen
F. Mark Hansen, P.C.
431 North 1300 West
Salt Lake City, Utah 84116

Arthur F. Sandack
8 East Broadway, Suite 510
Salt Lake City, Utah 84111

Steven K. Walkenhorst
Utah Attorney General's Office
160 East 300 South, 6th Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856

Jeffrey J. Hunt
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

Judith Rivlin
United Mine Workers of America
8315 Lee Highway
Fairfax, Virginia 22031-2215

Carl E. Kingston
3212 South State Street
Salt Lake City, Utah 84115

Richard Rosenblatt
Richard Rosenblatt & Associates
8085 E. Prentice
Greenwood, Colorado 80111

Michael Patrick O'Brien
Jones Waldo Holbrook & McDonough
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101

Joseph E. Hatch
5295 South Commerce Drive, Suite 200
Murray, Utah 84107

A handwritten signature in black ink, appearing to read "Michael P. Fitzgerald", is written over a horizontal line.

1

EDITORIALS

Support the Co-Op miners!

The struggle by some 75 workers fighting to get their jobs back and to organize a union at the Co-Op mine in Huntington, Utah—now in its seventh week—is the most important labor battle in the United States today. Organizing solidarity with this fight needs to be a top priority of every militant worker or farmer and every student or other youth who cares for workers' rights. The Co-Op miners' struggle can become a cause of the entire labor movement.

There are big stakes involved in this battle for both the coal miners' union in the West, and for the employers. If the company wins, the bosses will have a field day in diminishing the effectiveness of the miners' union in that entire region of the United States. If the workers succeed in getting their jobs back and winning union recognition, the road will be open to the renewal of the United Mine Workers of America (UMWA). Retired coal miners in the West and elsewhere, who are veterans of previous union struggles going back to the 1970s, have been among the first to see this fight as a step toward the potential revitalization of the entire union.

The workers at Co-Op, most of whom were born in Mexico, have turned to and won the backing of the UMWA as they have drawn the line against the bosses' push to operate the mine under increasingly dangerous conditions, with a pay scale of \$5.25 to \$7 an hour.

According to an October 6 UMWA press release, 75 percent of the mine's 83 hourly workers have signed a representation petition with the union. At the union's recent special convention in Las Vegas, Jesús Salazar, a leader of the Co-Op fight, addressed the delegates and said: "We are here looking for the UMWA's indispensable support because we were unjustly fired for defending our rights and protesting the mine's unsafe working conditions. We are determined to fight until this mine becomes UMWA territory and we can put an end to the abuse and extreme level of exploitation we have endured."

The union responded with financial and other aid. "We stand with these workers in solidarity as they fight for justice and dignity," UMWA president Cecil Roberts told the 500 convention delegates. "We call on all

American workers to support their struggle because we believe 'an injury to one is an injury to all.'"

As this week's *Militant* and previous issues have reported, UMWA locals in Colorado, New Mexico, Utah, and Wyoming have pitched in with food and other donations. The UMWA has made available to the Co-Op fighters a trailer to organize picketing outside the mine in the cold winter weather, and has assigned full-time organizers to assist the struggle. Solidarity has begun to spread beyond the labor movement to community, religious, and immigrant rights groups in Salt Lake City and nearby areas.

This solidarity can be extended across the country as knowledge spreads of the battle of these workers against the Kingston family. This is a well-known polygamous clan. It is infamous for a suit brought last August by one young woman from the family who has accused 242 clan members of operating "a secretive religious society and economic organization that teaches and promotes sexual abuse of young girls through illegal and underage marriages, incest, and polygamy." This wealthy family has a \$150 million business empire in six western states and has raked in as much as \$1 million per month from its Co-Op mine, one of its most profitable operations.

Solidarity activities can include raising funds for the workers and their families; collecting food donations; sending messages of support; and "adopting a family" among the strikers to help pay bills, make sure the kids can go to school, and put food on the table for the duration of the battle.

Most trade unions are likely to show interest in this struggle. Broader support can be solicited, however, from immigrant rights organizations, groups that support the right of miners and widows to receive black lung benefits, campus and other student and youth organizations, and many others.

The fact sheet the Co-Op miners have produced about their struggle says: "We call on all workers and all democratic minded people to support our just struggle."

Heed the call! Organize solidarity with the Co-Op miners!

2

EDITORIALS

Solidarity with Utah miners!

The strike by coal miners in Utah to get their jobs back and organize into the United Mine Workers of America (UMWA) has big stakes for the labor movement. The efforts of every worker and farmer and anyone else who believes in the rights of working people can make a difference by helping expand solidarity with the embattled miners.

If the Co-Op workers win, their success will give a boost to the entire UMWA and strengthen the hand of miners everywhere who are fighting for their livelihood and safety on the job. If the company prevails, the bosses will be able to step up their antiunion drive. Some 55 percent of the coal produced in the U.S. is mined west of the Mississippi, but only about a half-dozen mines in that region are union.

The Co-Op miners, most of whom were born in Mexico, are standing up for their rights in response to the brutal drive that the coal barons are waging nationwide to jack up their profits. On top of the regular exploitation through the system of wage slavery, these profits result from longer work hours, increased levels of coal dust miners breathe, refusal to pay black lung benefits, speed-up and other work rules that result in gratuitous deaths in the mines, disregard for the environment, and efforts to weaken or keep out the union. Miners around the country have engaged in struggles such as opposing efforts to loosen coal-dust rules, demanding federal black lung benefits for retired and disabled miners and their widows, and exposing the bosses' cover-up of last year's near-fatal mine disaster in Pennsylvania.

The 74 miners at Co-Op are fighting for decent wages, benefits, job safety, and dignity. Most of the workers there earn only \$5.25 to \$7 an hour and have no health insurance

or retirement benefits. They are forced to work under unsafe conditions in violation of federal mine regulations. The conditions at Co-Op were responsible for three deaths in the last half of the 1990s—half of the total coal mine deaths in the state. A UMWA statement notes that in September, as miners were taking steps to organize a union, they were fired en masse after they protested the arbitrary dismissal of one of their co-workers.

The mine owners, the Kingstons, are a capitalist family notorious in the region for their brutality against workers they employ in their \$150 million business empire. They are widely despised by working people for their abuse of women. For example, one of the directors of the Co-Op mine, John Kingston, was convicted for savagely beating his daughter who had fled a forced polygamous marriage to her uncle, David Kingston, who spent four years in jail for sexual abuse of the 16-year-old.

The UMWA is backing the fight by the Huntington miners, most of whom have signed a union representation petition (see coverage on page 6).

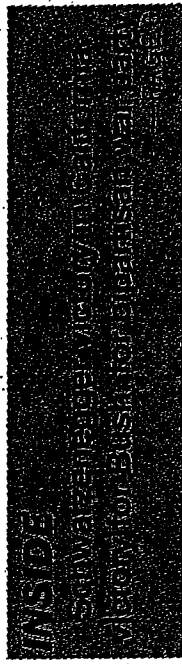
Solidarity can be won from other unions as well as from immigrant rights organizations, student and church groups, and many others. Collections for the miners and their families, messages of support, food drives, "Adopt-a-Family" campaigns, and distributing the miners' fact sheet and UMWA statements (see the union web site at www.umwa.org)—all such efforts can help bring needed support to the miners so they can win their fight.

Solidarity with our fighting brothers and sisters at the Co-Op mine!

3

THE **MILITANT**

A SOCIALIST NEWSWEEKLY PUBLISHED IN THE INTERESTS OF WORKING PEOPLE



VOL. 67/NO. 41 NOVEMBER 24, 2003

Salt Lake City unionists donate food and funds to locked-out Co-Op miners

BY ANNE CARROLL

PRICE, Utah—A delegation of nine Co-Op miners returned with donations of food and funds from unionists, students, and others following a trip to Salt Lake City the

Solidarity with Co-Op miners!
—see editorial, page 10

first week of November. The coal miners have been fired since September 22 by C.W. Mining Co., also known as Co-Op, in Huntington, Utah, for protesting the suspension of a coworker the company said it intended to discharge. The miners have set up picket lines and are conducting an unfair labor practice strike with the support of the United Mine Workers of America (UMWA).

The miners addressed a meeting of

Continued on Page 5

Co-Op miners win solidarity

Continued from front page
United Steelworkers of America (USWA) Local 392 and two meetings of the Paper, Allied/Industrial, Chemical and Energy union (PACE). Unionists at these gatherings donated funds and pledged additional support for the Co-Op miners.

USWA Local 392 is an amalgamated local that organizes workers at the giant Kennecott copper mine and smelter plant on the outskirts of Salt Lake City; Syro Steel, a company in Centerville, Utah; and Calhoun Maintenance, a custodian contractor for the Salt Lake Airport.

"What happened to Co-Op miners getting fired for union activity is happening to us," Linda Marcus, a USWA Local 392 member who works for Calhoun Maintenance, said in a telephone interview November 8. "My son was fired because he is a union member. The union is arbitrating his case. This is going on everywhere. Where Co-Op is located used to be all union until the coal companies started to turn things back to the early 1930s when there was no union. The Co-Op miners are valiant for what they are doing."

Marcus said that after the miners left the meeting her local voted to organize a \$1

per member collection and hopes to raise between \$800 and \$1,000 for the Co-Op miners in time for the holidays.

According to Danny Hernández, one of the Co-Op miners who spoke at this meeting, Local 392 collected \$180 at the meeting for the Co-Op fight. "On September 22," Hernández said he had told the steel workers, "the company unjustly fired and locked out 75 miners for standing together in solidarity with a co-worker they had suspended for three days with intent to discharge. The company called the sheriff to order us off the property. We had been talking to the UMW about organizing a union. The company has a so-called union and all of the officers are bosses. We are fighting to get our jobs back."

The invitations to speak at these union gatherings came from a trip to Salt Lake City on October 30 when a dozen Co-Op miners were part of a picket line with 40 people organized by Jobs with Justice, a coalition of labor and community organizations. The protest was held in front of the offices of Carl Kingston, the lawyer who represents the Kingston family, the owners of C.W. Mining (see last week's *Militant*).

Jesús Salazar, a leader of the Co-Op miners fight who was part of this delegation, said in a November 5 interview, "At the union meetings we said that our wages were very low and we worked in abusive conditions. We decided to unite and seek support from different organizations. That is why we went to Salt Lake and why we will be seeking broader solidarity."

The next morning part of the miners' delegation returned to Huntington with a pickup truck full of food from students at the University of Utah. The four miners who remained in Salt Lake were interviewed by *Univision* for the November 5 evening news.

That evening the embattled miners spoke at two meetings of the PACE union. Co-Op miners Jesús Salazar and Alyson Kennedy addressed one of these meetings. "We were dismissed unjustly and are seeking support from different

organizations," Salazar told the members of PACE Local 8-578, who work at the Holly Corporation Woods Cross oil refinery. "We are seven weeks out of work and our situation is critical. That is why we are here. We ask for your support."

These workers had collected \$250 from an in-plant collection, which they gave to the miners. Following the talk by Salazar, the local voted to give an additional \$350 to the Co-Op miners fund, organized by the UMW in Price.

"The Co-Op fight represents a basic struggle for decent human rights," said David Brown, chair of the Workmen's Committee of PACE Local 8-758, who attended the meeting. "Our wages in PACE-organized refineries are like what most members of the UMW make. But the Co-Op miners do not even have the basic rights to live and survive. The Kingstons are taking advantage of

Miners and their spouses divide up food supplies donated by supporters of the miners' fight for a union, November 7, at the San Rafael Church in Huntington.

Militant/Anne Carroll



these miners."

Brown said the Holly Refinery was recently bought out by a corporation in New Mexico. He said the local is facing serious attacks by the company, which is trying to cut wages and benefits.

Two other Co-Op miners, Ana María Sánchez and William Estrada, spoke at the meeting of PACE Local 8-931. This local organizes the Chevron oil refinery. The workers there took up a collection for the miners and voted to send additional funds.

On November 7, some 80 Co-Op miners and their families and supporters gathered at the San Rafael Catholic Mission just a few miles outside of Huntington for a food distribution for the locked-out miners.

Early that morning, the Co-Op miners' food committee and the spouses auxiliary brought a truckload of food to the church and organized it into cardboard boxes. The food committee had purchased the groceries earlier that week with donations sent for the Co-Op miners to the UMWA office in Price. Every miner's family received boxes full of canned goods, rice, beans, flour, produce, shampoo, soap, and lotion.

Just as the food distribution got going, four students from the University of Utah in Salt Lake City arrived at the church. They brought more food and clothing that they had collected on campus during the week. The students had met the miners at the picket line held in front of the Kingston family offices in Salt Lake one week earlier.

Funds urgently needed

Shortly after the students' arrival, three members of UMWA Local 1984 from the Deserado mine in Rangely, Colorado, entered the church. They had brought loads of very much needed eggs, gallons of fresh milk, pot roasts, chicken, and more fresh fruits and vegetables.

"At our union meeting last Sunday, we were discussing the annual Christmas party," said Carol Amy, a member of UMWA Local 1984. "We decided to take what we spend on this and give it to the Co-Op miners. We agreed on this last Sunday and then we got the ball rolling. We found out what the miners really needed and we bought \$871 of groceries. Our local had two strikes, in 1988 and 1999, and they paid off."

The miners have been receiving support from the mine workers union nationally. Larry Huestis, a UMWA international representative from Sheridan, Wyoming, has been assisting them. The UMWA has also set up a fund out of which Co-Op miners have been getting regular payments. These payments are given to the miners that have been pulling picket duty. The miners organize pickets in four six-hour shifts per day, seven days a week.

The Co-Op miners received their third payment from the fund as the food was being distributed. After the next week's payment, however, the fund will be down to \$800, according to UMWA representatives here. Urgently needed funds can be sent to the UMWA, 525 So. 1st St., Price, Utah 84501. They should be earmarked: Co-Op Miners. These funds help the miners pay the rent on their trailers and apartments. The miners are also receiving help from local food banks and Catholic churches for utility bill payments.

After the food and payments were distributed, everyone gathered for an impromptu program. The students presented the miners with \$350 they had collected on campus.

"We had been discussing the Co-Op fight at several union meetings," Don Thomas, a member of UMWA Local 1984, told the crowd. "At the last meeting a motion was made to take the money for the Christmas party and send it to the Co-Op miners. But just sending the money in an envelope was not the same as delivering the food ourselves. Sending it couldn't have the hands, the faces, and the hearts with it. The Co-Op fight is so very much what the union is about. You are doing something for us. You are courageous and remind the rest of us of what it took to get what we have."

4

UMWA: 'Support Co-Op miners strike'

Printed below is an update posted on the web site of the United Mine Workers of America (UMWA) outlining the backing by the UMWA of the coal miners' union-organizing struggle in Huntington, Utah, and urging broader solidarity. The article is titled "Let's Support the Co-Op Miners' Struggle for Justice." You can find it at www.umwa.org. It is reprinted by permission.

Seventy-four coal miners at C.W. Mining Company's Bear Canyon mine (known also as Co-Op mine) in Huntington, Utah, were illegally fired from their jobs on Sept. 22, 2003, after they protested the suspension of a co-worker and unsafe job conditions. The mine, owned by the Kingston family, had suspended UMWA supporter William Estrada for refusing to sign a disciplinary warning the week before. At the time, it was the company's third attempt to victimize a UMWA supporter, according to the Co-Op miners.

These workers, mostly Mexicans, contend they were fired and locked out by the company because of concerted activities and unsafe conditions. The Co-Op miners allege:

- Most immigrant workers at the mine earn only between \$5.25 and \$7 an hour;
- Most workers lack medical insurance and retirement benefits;
- Miners are forced to work under unsafe conditions in violation of Mine Safety & Health Administration regulations (Three workers have been killed at the Co-Op mine since 1996);
- Workers are forced to use defective and unsafe machinery;
- Workers are not provided adequate training by the company;
- Workers are abused and mistreated by management; and
- Female workers have no bathroom.

On Sept. 23, the UMWA filed unfair labor practice charges against C.W. Mining before the National Labor Relations Board (NLRB) stating: "The regular hourly workforce was discriminated against in regard to hire and tenure of employment by being discharged for protected, concerted activity."

On Oct. 3, the UMWA assisted in setting up picket lines at the Co-Op mine to support the striking miners. The miners' spouses, who formed an auxiliary group, are preparing hot food and feeding those on the picket line. The pickets are organized in 6-hour shifts, 24 hours a day, 7 days a week.

UMWA's Action:

United Mine Workers of America Vows to Support Struggle of Coal Miners Unjustly Fired from Utah's Co-Op Mine for Fighting to Join the Union

At the UMWA Special Convention Sept. 29-30 in Las Vegas, International President Cecil Roberts pledged the union will assist the coal miners who were fired from C.W. Mining Company's Co-Op mine.

Seven of the 74 fired Co-Op miners joined Roberts at the convention hall podium where their spokesman, Jesus H. Salazar Jr., described their plight—earning between \$5.25 and \$7 per hour with "no health insurance and no benefits in an unsafe, underground mine."

"We stand with these workers in solidarity as they fight for justice and dignity," Roberts told the 550 convention delegates at the closing session Sept. 30. "We call on all American workers to support their struggle because we believe an injury to one is an injury to all."

"We are here looking for the UMWA's indispensable support because we were unjustly fired for defending our rights and protesting the mine's unsafe working conditions," Salazar said. "We are determined to fight until this mine becomes UMWA territory and we can put an end to the abuse."

and extreme level of exploitation we have endured." Currently, 75 percent of the mine's 83 hourly workers have signed a representation petition with the UMWA.

"We all walked out in defense of our co-worker," explained Salazar, who has worked at the Co-Op mine four years. "The company refused to cooperate with us and fired us. We have been locked out because of our pro-union activity. Now, we're fighting back, and we want to be part of the UMWA. We are at a critical point in our fight. The company expects us to come back begging for our jobs."

"We won't go back to work until we get everybody back to work," said fired Co-Op miner Alyson Kennedy of Price, Utah. "We won't stop fighting until we get union representation." Describing the mine's "bad working environment," she noted that female miners have no bathroom to change clothes.


"We demand that our workers be reinstated with back pay, and we demand fair wages," said the Co-Op delegation to the UMWA convention. "We are tired of the abuses, lies and trickery of the fake company-led 'union' that Co-Op has maintained for years in the workplace. Our plea to the UMWA is to help us defend our dignity and our families."

"It was heartwarming to see our union delegates' overwhelming support of the Co-Op miners as they struggle for workers' rights and fairness," said UMWA District 22 International Executive Board Member Mike Dalpiaz of Price, Utah. "We'll be with them from the beginning to the end of their fight."

Since the UMWA convention, labor unions from across Utah and other states have responded to the striking miners' plea. Recent support has come from the New Mexico Federation of Labor and University of Utah students and professors, who gathered food and funds to deliver at a "Solidarity Rally" on Sunday, Oct. 26.

5

Media Corner Archive

 tx8bar.jpg (9075 bytes)

Salt Lake Tribune

Wall Collapse in Kingston-Owned Mine Kills 1

Second worker injured; death is mine site's 3rd

BY GREG BURTON THE SALT LAKE TRIBUNE

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A mine worker was killed and another injured late Thursday when a tunnel wall collapsed during a continuous mining operation at Bear Canyon Mine, a lucrative central Utah mine owned by the polygamous Kingston clan.

Waiting for a shuttle car to return to a seam of coal, Alejandro Medina, 31, was crushed to death when a "rib" or tunnel wall fell, according to a preliminary accident report from the U.S. Department of Labor's Mine Safety and Health Administration (MSHA). Another miner, Miguel Sanchez, was treated and released at Castlevew Hospital in Price for minor injuries.

Medina's death is the third mining death at the Bear Canyon site since December 1996. The Kingston-mine deaths represent half of the six coal mine-related deaths in Utah since 1995, a number MSHA agents find troubling.

"It is absolutely" a concern, said Ted Farmer, the regional MSHA supervisor of the government's Castledale office.

"We are going to do a very thorough inspection of the mine," said Amy Louviere, MSHA spokesperson in Arlington, Va. "At this time, the main focus is on the cause."

Almost two years ago, Kingston clan member Samuel Jenkins, 45, was crushed by a shuttle car during a cave-in at Bear Canyon Mine in Huntington Canyon. Jenkin's death was followed by a federal fatal accident report citing CW Mining (short for the late clan leader Charles W. Kingston) for a faulty roof control plan, inadequate cutting and failure to keep loose coal off the mining floor. Last year, his widow, Elaine Jenkins, and their six children sued CW Mining and two individuals for wrongful death and product liability. The lawsuit is pending.

Five days before Christmas 1996, 46-year-old miner Harvey Albert Randall was killed at Bear Canyon when a rock slid off a coal-cutting machine, crushing him against another piece of mining equipment.

The deaths of Randall and Jenkins will play a role in the latest federal investigation of Kingston mining operations and the death of Medina, Louviere said.

"It is true that we have had that run [of three deaths in 2 1/2 years], but this line has been in operation since 1940, and it is also the third fatality since 1940,"

said Wendell Owen, a Bear Canyon supervisor and longtime Kingston confidant. Thursday's death "was an unusual accident," he said.

Federal mine inspectors have temporarily closed the Bear Canyon operation and have begun an audit of the Kingston mine, a task routinely undertaken after a severe mining accident.

MSHA agents from Utah, Virginia and Pennsylvania will inspect the tunnel where the accident occurred, check time slips and training forms for all employees and conduct interviews with supervisors and co-workers of Medina and Sanchez. CW Mining is also known as the Co-Op Mine, a business whose directors include John Daniel Kingston, recently convicted in 1st District Court for beating his daughter who was trying to leave a forced polygamous marriage to David Ortell Kingston, the girl's uncle and John Daniel's brother. David Ortell Kingston was sentenced to prison for up to 10 years last Friday for incest and unlawful sexual abuse. Joseph Kingston, another sibling, is also listed as an agent for Co-Op Coal Development Corp.

In evaluating Thursday's fatality, MSHA will weigh previous violations and details of the recent death against the operator's willingness to correct violations and financial wherewithal. Routine violations can result in fines as large as \$55,000. Fatality investigations, though, can result in a much larger "special assessment," Louviere said.

According to the government's initial, but still not verified, report, 18 miners were inside Bear Canyon Mine No. 1 at 11 p.m. Thursday when a rib "bounced," a mining term for a geological quiver produced by pressure from the surrounding mountain.

"It's like a small earthquake," said Nathan Atwood, a former supervisor at the Kingston mine who left the polygamous clan. "A bounce is the result of extracting coal out of the mountain . . . There is tremendous pressure and [the mountain] is trying to release it."

The Kingstons have extracted millions of dollars of coal from their central Utah stronghold, financing lucrative land and mine developments, including the recent purchase of the adjacent and historic Hiawatha mine and the accompanying turn-of-the-century mining town, complete with paved roads, sewer, water, homes, machine shops, a grocery store, downtown business district, jail and cemetery. Atwood, who is not a polygamist, says when he worked at the mine, the company allegedly skirted federal standards, doctored time slips, failed to adequately train employees and hired undocumented workers.

Federal audits conducted after the previous two fatalities reported no such violations. "We broke a lot of federal rules," Atwood said. "The Kingstons are very organized. They hire cheap labor . . . They do not train their people properly, that is all there is to it. They don't put the effort into it, and they have got a high turnover." "We are always trying to do all we can to make it safer," Owen said. "We consider even one [fatality] too many. We try to cooperate with MSHA safety rules."

The tunnel where the accident occurred produces about 40 percent of the coal at Bear Canyon, Owen said. The tunnel will be closed for several days while inspectors complete interviews. A final report on the accident, including any potential federal violations or fines, is not expected for several weeks. About 60 people are employed at the mine.

"We did close the entire mine today out of respect to the other workers," said Owen, who denied the mine is owned by the Kingstons. "This has nothing to do with polygamy."

6

FIRST DISTRICT - Box Elder
BOX ELDER COUNTY, STATE OF UTAH

STATE OF UTAH vs. JOHN DANIEL KINGSTON

CASE NUMBER 981100400 State Felony

CHARGES

Charge 1 - 76-5-109 - CHILD ABUSE/NEGLECT (amended)
3rd Degree Felony Plea: April 21, 1999 No Contest
Disposition: April 21, 1999 No Contest

CURRENT ASSIGNED JUDGE

BEN HADFIELD

PARTIES

Plaintiff - STATE OF UTAH
Represented by: JON J BUNDERSON
Represented by: DIANNE R BALMAIN

Defendant - JOHN DANIEL KINGSTON
SALT LAKE CITY, UT 84119-1122
Represented by: RONALD J YENGICH

Other Party - INSIDE EDITION

DEFENDANT INFORMATION

Defendant Name: JOHN DANIEL KINGSTON
Offense tracking number: 9159955
Date of Birth: May 13, 1955
Law Enforcement Agency: BOX ELDER SHERIFF
Prosecuting Agency: BOX ELDER COUNTY
Violation Date: May 22, 1998

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	3,301.58
	Amount Paid:	3,301.08
	Credit:	0.50
	Balance:	0.00
PAPER BOND TOTALS	Posted:	10,000.00
	Forfeited:	0.00
	Exonerated:	10,000.00
	Balance:	0.00
TRUST TOTALS	Trust Due:	102.00
	Amount Paid:	102.00
	Credit:	0.00

Printed: 04/27/05 12:19:55

Page 1

CASE NUMBER 981100400 State Felony

Trust Balance Due:	0.00
Balance Payable:	0.00

REVENUE DETAIL - TYPE: FINE

Amount Due:	2,700.00
Amount Paid:	2,700.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	0.75
Amount Paid:	0.75
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	0.50
Amount Paid:	0.50
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

Amount Due:	5.00
Amount Paid:	5.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

Amount Due:	5.00
Amount Paid:	5.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

Amount Due:	5.00
Amount Paid:	5.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: MISCELLANEOUS FEE

Amount Due:	74.00
Amount Paid:	74.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	9.25
Amount Paid:	9.25

Printed: 04/27/05 12:19:55

Page 2

CASE NUMBER 981100400 State Felony

Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	2.00
Amount Paid:	2.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: REPORTER FEES

Amount Due:	167.50
Amount Paid:	167.50
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	0.75
Amount Paid:	0.75
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: VIDEO TAPE COPY

Original Amount Due:	15.00
Amended Amount Due:	0.00
Amount Paid:	0.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

Amount Due:	8.00
Amount Paid:	8.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	21.25
Amount Paid:	21.25
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: REPORTER FEES

Amount Due:	57.00
Amount Paid:	57.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: REPORTER FEES

Amount Due:	30.00
Amount Paid:	30.00

CASE NUMBER 981100400 State Felony

Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: VIDEO TAPE COPY

Original Amount Due:	17.00
Amended Amount Due:	0.00
Amount Paid:	0.00
Amount Credit:	0.00
Balance:	0.00

Account Adjustments

Date	Amount	Reason
Jun 30, 1999	-17.00	Reversal of transaction which created the account.

REVENUE DETAIL - TYPE: INTEREST

Amount Paid:	67.33
Amount Credit:	0.50
Balance:	0.00

Account Adjustments

Date	Amount	Reason
Dec 22, 1999	67.83	Interest Posted to Date

REVENUE DETAIL - TYPE: POSTAGE-COPIES

Amount Due:	3.00
Amount Paid:	3.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: VIDEO TAPE COPY

Amount Due:	15.00
Amount Paid:	15.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: CERTIFIED COPIES

Amount Due:	1.50
Amount Paid:	1.50
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	1.00
Amount Paid:	1.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: CERTIFICATION

Printed: 04/27/05 12:19:55

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CASE NUMBER 981100400 State Felony

Amount Due:	4.00
Amount Paid:	4.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: MISCELLANEOUS FEE

Amount Due:	42.00
Amount Paid:	42.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	81.25
Amount Paid:	81.25
Amount Credit:	0.00
Balance:	0.00

NONMONETARY BOND DETAIL - TYPE: Surety

Posted By:	{Bail Bond Specialist}
Posted:	10,000.00
Forfeited:	0.00
Exonerated:	10,000.00
Balance:	0.00

TRUST DETAIL

Trust Description:	Other Trust
Recipient:	RONALD J YENGICH
Amount Due:	15.00
Paid In:	15.00
Paid Out:	15.00

TRUST DETAIL

Trust Description:	Reporter Fees
Recipient:	FIRST DISTRICT - BOX ELDER
Amount Due:	30.00
Paid In:	30.00
Paid Out:	30.00

TRUST DETAIL

Trust Description:	Reporter Fees
Recipient:	FIRST DISTRICT - BOX ELDER
Amount Due:	57.00
Paid In:	57.00
Paid Out:	57.00

PROCEEDINGS

06-01-98 Case filed
06-01-98 Filed: Information

Printed: 04/27/05 12:19:55

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CASE NUMBER 981100400 State Felony

06-01-98 Judge HADFIELD assigned.
 06-01-98 Filed: INFORMATION
 06-01-98 Filed: AFFIDAVIT IN SUPPORT OF WARRANT OF ARREST
 06-01-98 Warrant ordered on: June 01, 1998 Warrant Num: 970200662 Bail
 Allowed
 Bail amount: 10000.00
 06-01-98 Warrant issued on: June 01, 1998 Warrant Num: 970200662 Bail
 Allowed
 Bail amount: 10000.00
 Judge: BEN HADFIELD
 Issue reason: Based on the probable cause statement.
 06-01-98 Notice - WARRANT for Case 981100400 ID 18783
 06-03-98 Fee Account created Total Due: 0.75
 06-03-98 COPY FEE Payment Received: 0.75
 06-03-98 Filed return: RETURN OF SERVICE ON WARRANT OF ARREST
 Party Served: KINGSTON, JOHN DANIEL
 Service Type: Personal
 Service Date: June 02, 1998
 06-03-98 Warrant recalled on: June 03, 1998 Warrant num: 970200662
 Recall reason: Warrant recalled because defendant was
 booked.
 06-03-98 Notice - NOTICE for Case 981100400 ID 18984
 ARRAIGNMENT is scheduled.
 Date: 06/08/1998
 Time: 09:00 a.m.
 Location: LAW & MOTION
 1ST DISTRICT COURT
 43 N MAIN P. O. BOX 873
 BRIGHAM CITY, UT 84302
 before Judge JUDGE BEN HADFIELD
 06-03-98 ARRAIGNMENT scheduled on June 08, 1998 at 09:00 AM in LAW &
 MOTION with Judge HADFIELD.
 06-04-98 Filed: UTAH OFFENSE TRACKING REPORT FORM
 06-04-98 Filed: UNDERTAKING OF BAIL
 06-04-98 Bond Account created Total Due: 10000.00
 06-04-98 Bond Posted Non-Monetary Bond: 10,000.00
 06-08-98 Minute Entry - Minutes for Initial Appearance
 Judge: JUDGE BEN HADFIELD
 PRESENT
 Clerk: kathij
 Prosecutor: DIANNE R BALMAIN
 Defendant
 Defendant's Attorney(s): CARL E. KINGSTON

 Audio
 Tape Count: 0001

 INITIAL APPEARANCE

A copy of the Information is given to the defendant.

Defendant waives reading of Information.

Advised of charges and penalties.

The defendant requests a Preliminary Hearing.

DEFENDANT TO HAVE NOT CONTACT WITH THE VICTIM. DEFENDANT IS NOT TO TRY TO CONTACT THE VICTIM THROUGH A THIRD PARTY - SUCH AS VICTIM'S MOTHER.

PRELIMINARY HEARING is scheduled.

Date: 07/22/1998

Time: 10:00 a.m.

Location: COURT ROOM

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873

BRIGHAM CITY, UT 84302

before Judge JUDGE BEN HADFIELD

06-08-98 Notice - NOTICE for Case 981100400 ID 19193

PRELIMINARY HEARING is scheduled.

Date: 07/22/1998

Time: 10:00 a.m.

Location: COURT ROOM

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873

BRIGHAM CITY, UT 84302

before Judge JUDGE BEN HADFIELD

06-08-98 PRELIMINARY HEARING scheduled on July 22, 1998 at 10:00 AM in COURT ROOM with Judge HADFIELD.

06-11-98 Fee Account created Total Due: 0.50

06-11-98 COPY FEE Payment Received: 0.50

Note: Mail Payment

06-25-98 Filed: REQUEST FOR DISCOVERY

07-08-98 Filed: COPY OF SUBPOENA

07-16-98 Filed return: RETURN OF SERVICE ON SUBPOENA

Party Served: SCOTT COSGROVE

Service Type: Personal

Service Date: July 09, 1998

07-20-98 Filed: COPY OF SUBPOENA

07-21-98 Filed: MEDIA REQUEST FOR STILL PHOTOGRAPHY IN COURTROOM - DENIED 7/20/98 BY BH

07-22-98 Minute Entry - Minutes for Preliminary Hearing

Judge: JUDGE BEN HADFIELD

PRESENT

Clerk: shaunaw

Prosecutor: JON J. BUNDERSON

DIANE BALMAIN

Defendant

Defendant's Attorney(s): CARL E. KINGSTON

Audio

Tape Number: 1 Tape Count: 649

Printed: 04/27/05 12:19:59

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CASE NUMBER 981100400 State Felony

HEARING

TAPE: 1 COUNT: 649

CASE CALLED, APPEARANCES ENTERED. DIANE BALMAIN IS PRESENT AS GUARDIAN AD LITEM FOR THE VICTIM.

COUNT: 696

COUNSEL FOR DEF REQUESTS THAT SPECTATORS BE REMOVED FROM THE COURTROOM. RULE RECITED FOR THE COURT, AND READ BY THE COURT. NO RESPONSE BY THE STATE. THE SPECTATORS ARE ALLOWED TO REMAIN SO LONG AS THEY ARE NOT DISRUPTIVE.

INFORMATION AMENDED ON THE 6TH LINE OF THE CHARGE INFORMATION BY INTERLINEATION.

COUNT: 910

STATES WITNESS LAUWRENCE MAUGHAN - BESO DEPUTY - SWORN AND TESTIFIES.

COUNT: 1170

HEARSAY OBJECTION - OVERRULED.

COUNT: 1230

MEDICAL REPORT PROVIDED TO THE COURT FOR USE DURING THIS HEARING. THE STATE REQUESTS IT NOT BE FORMALLY MARKED AND ADMITTED AND THAT IT BE RETURNED TO THE STATE AFTER THE HEARING. NO OBJECTION TO DEFENSE.

COUNT: 1535

CROSS

COUNT: 1575

STATES WITNESS MARY ANN KINGSTON - VICTIM - SWORN AND TESTIFIES.

COUNT: 1801

WITNESS IDENTIFIES THE DEFENDANT.

COUNT: 4015

CROSS

COUNT: 6080

RE-DIRECT

COUNT: 6159

DEPUTY MAUGHAN RE-CALLED TO THE STAND. SIX PHOTOS OF INJURIES TO THE VICTIM REVIEWED WITH THE WITNESS. NOT MARKED OR OFFERED AS EXHIBITS AT THIS TIME.

COUNT: 6680

STATE RESTS. DEFENSE RESTS.

COUNT: 6695

CLOSING ARGUMENTS BY STATE.

TAPE: 2 COUNT: 1

STATES CLOSING ARGUMENTS CONTINUE TO TAPE 2.

TAPE: 2 COUNT: 162

CLOSING ARGUMENTS BY DEFENSE.

COUNT: 605

REBUTTAL ARGUMENT.

COUNT: 738

Printed: 04/27/05 12:19:59

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CASE NUMBER 981100400 State Felony

THE COURT FINDS PROBABLE CAUSE EXISTS. THE DEFENDANT IS HELD TO ANSWER TO THE CHARGE. THE ARRAIGNMENT IS SCHEDULED FOR JULY 27,

1998 AT 9:00 AM.

AS CONDITION OF CONTINUED RELEASE ON BAIL, DEF IS TO HAVE NO CONTACT WITH THE VICTIM.

THE REPORT AND PHOTOS ARE RETURNED TO THE STATE.

ARRAIGNMENT is scheduled.

Date: 07/27/1998

Time: 09:00 a.m.

Location: LAW & MOTION

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873

BRIGHAM CITY, UT 84302

before Judge JUDGE BEN HADFIELD

07-22-98 ARRAIGNMENT scheduled on July 27, 1998 at 09:00 AM in LAW & MOTION with Judge HADFIELD.

07-22-98	Fee Account created	Total Due:	5.00
07-22-98	AUDIO TAPE COPY	Payment Received:	5.00
07-22-98	Fee Account created	Total Due:	5.00
07-22-98	AUDIO TAPE COPY	Payment Received:	5.00
07-22-98	Fee Account created	Total Due:	5.00
07-22-98	AUDIO TAPE COPY	Payment Received:	5.00

Note: AUDIO TAPE COPY

07-22-98 Filed: MEDIA REQUEST FOR STILL PHOTOGRAPHY IN COURTROOM - DENIED

07-22-98 Filed: MEDIA REQUEST FOR STILL PHOTOGRAPHY IN COURTROOM

07-23-98 Filed: REQUEST FOR COPY OF ELECTRONIC RECORDING/AUDIO TAPE

07-23-98 Filed: REQUEST FOR COPY OF ELECTRONIC RECORDING/AUDIO TAPE

07-23-98 Filed: REQUEST FOR COPY OF ELECTRONIC RECORDING/AUDIO TAPE

07-27-98 Minute Entry - Minutes for Arraignment

Judge: JUDGE BEN HADFIELD

PRESENT

Clerk: shaunaw

Prosecutor: JON J. BUNDERSON

Defendant

Defendant's Attorney(s): CARL E. KINGSTON

Audio

Tape Number: 1

ARRAIGNMENT

Defendant waives reading of Information.

Defendant is arraigned.

PTC IN 4 WEEKS REQUESTED BY DEF'S COUNSEL AND NOT OBJECTED TO BY THE STATE. DEFENDANT AND COUNSEL WILL ALSO BE INVOLVED IN THE JUVENILE COURT ON AUGUST 24TH.

PRETRIAL CONFERENCE is scheduled.

Date: 08/24/1998

Printed: 04/27/05 12:20:00

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CASE NUMBER 981100400 State Felony

Time: 01:30 p.m.

Location: LAW & MOTION

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873

BRIGHAM CITY, UT 84302

before Judge JUDGE BEN HADFIELD

07-27-98 PRETRIAL CONFERENCE scheduled on August 24, 1998 at 01:30 PM in
LAW & MOTION with Judge HADFIELD.

07-29-98 Fee Account created Total Due: 74.00

07-29-98 MISCELLANEOUS FEE Payment Received: 74.00

Note: MISCELLANEOUS FEE

08-05-98 Fee Account created Total Due: 9.25

08-05-98 COPY FEE Payment Received: 9.25

Note: COPY FEE

08-05-98 Filed: REQUEST FOR STILL PHOTO COVERAGE OF PRE-TRIAL HEARING

08-05-98 Filed: REQUEST FOR COPY OF FILE (NEWSWEEK)

08-06-98 Filed: REQUEST FOR COPIES (INSIDE EDITION)

08-06-98 Fee Account created Total Due: 2.00

08-06-98 COPY FEE Payment Received: 2.00

08-13-98 Filed order: ORDER - ALLOWING PHOTOGRAPHER DOUGLAS C PIZAC IN
COURTROOM FOR STILL PHOTOS

Judge bhadfiel

Signed August 13, 1998

08-13-98 Filed: REQUEST FOR DISCOVERY

08-13-98 Filed: MOTION IN LIMINE

08-18-98 PRETRIAL CONFERENCE rescheduled on August 24, 1998 at 01:29 PM
Reason: Court's own motion to reschedule..

08-24-98 Notice - NOTICE for Case 981100400 ID 24395

Nothing to Report

08-24-98 Minute Entry - Minutes for Pretrial Conference

Judge: JUDGE BEN HADFIELD

PRESENT

Clerk: shaunaw

Prosecutor: JON J. BUNDERSON

Defendant

Defendant's Attorney(s): RONALD J. YENGICH

Video

Tape Count: 8:55 AM

HEARING

BOTH PARTIES REQUEST THAT A TRIAL BE SET AFTER JANUARY 1999. THE
DEFENDANT WAIVES HIS RIGHT TO A SPEEDY TRIAL. A 3 DAY JURY TRIAL
IS TO BE SET FOR MARCH 3, 4, & 5, 1999. A FINAL PRETRIAL IS TO BE
SET FOR 2/8/99.

COUNSEL ARE TO CONTACT CHRIS TO SET UP A SCHEDULING PHONE
CONFERENCE FOR NEXT WEEK.

PRETRIAL / MOTION HEARING is scheduled.

Printed: 04/27/05 12:20:02

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CASE NUMBER 981100400 State Felony

Date: 02/08/1999

Time: 03:00 p.m.

Location: LAW & MOTION

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873
BRIGHAM CITY, UT 84302
before Judge JUDGE BEN HADFIELD

Jury Trial.

Date:

Date:

Date: 3/3/99

Time: 09:00 a.m.

Location: COURT ROOM

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873

BRIGHAM CITY, UT 84302

before Judge JUDGE BEN HADFIELD

Date: 3/4/99

Time: 09:00 a.m.

Location: COURT ROOM

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873

BRIGHAM CITY, UT 84302

before Judge JUDGE BEN HADFIELD

08-24-98 PRETRIAL / MOTION HEARING scheduled on February 08, 1999 at
03:00 PM in LAW & MOTION with Judge HADFIELD.

08-24-98 Notice - NOTICE for Case 981100400 ID 24426

PRETRIAL / MOTION HEARING is scheduled.

Date: 02/08/1999

Time: 03:00 p.m.

Location: LAW & MOTION

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873

BRIGHAM CITY, UT 84302

before Judge JUDGE BEN HADFIELD

Jury Trial.

Date: 3/3/99

Time: 09:00 a.m.

Location: COURT ROOM

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873

BRIGHAM CITY, UT 84302

before Judge JUDGE BEN HADFIELD

Date: 3/4/99

Time: 09:00 a.m.

Printed: 04/27/05 12:20:03

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CASE NUMBER 981100400 State Felony

Location: COURT ROOM

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873

BRIGHAM CITY, UT 84302

before Judge JUDGE BEN HADFIELD

Date: 3/5/99

Time: 09:00 a.m.

Location: COURT ROOM

1ST DISTRICT COURT

43 N MAIN P. O. BOX 873

BRIGHAM CITY, UT 84302

before Judge JUDGE BEN HADFIELD

08-24-98 JURY TRIAL scheduled on March 03, 1999 at 09:00 AM in COURT ROOM with Judge HADFIELD.

08-24-98 JURY TRIAL scheduled on March 04, 1999 at 09:00 AM in COURT ROOM with Judge HADFIELD.

08-24-98 JURY TRIAL scheduled on March 05, 1999 at 09:00 AM in COURT ROOM with Judge HADFIELD.

08-24-98 Filed: APPEARANCE OF COUNSEL

08-26-98 TELEPHONE CONFERENCE scheduled on September 02, 1998 at 09:00 AM in COURT ROOM with Judge HADFIELD.

08-27-98 Fee Account created Total Due: 167.50

08-27-98 REPORTER FEES Payment Received: 167.50

Note: REPORTER FEES

08-28-98 Fee Account created Total Due: 0.75

08-28-98 COPY FEE Payment Received: 0.75

09-02-98 Minute Entry - Minutes for TELEPHONE CONFERENCE

Judge: JUDGE BEN HADFIELD

Clerk: chrisjj

TELEPHONE CONFERENCE

Prosecutor: JON J. BUNDERSON

Defendant's Attorney(s): RONALD J. YENGICH

HEARING

TELEPHONE CONFERENCE IN CHAMBERS WITH THE COURT. MINUTE ENTRY IS ONLY RECORD OF CONFERENCE.

JURY SELECTION AND QUESTIONNAIRE DISCUSSED.

09-03-98 Filed: 7/29/98 LETTER TO MR FELSHAW REQUESTING TRANSCRIPT

09-03-98 Filed: 8/25/98 LETTER TO MR FELSHAW REFLECTING PAYMENT OF TRANSCRIPT

09-04-98 Filed: TRANSCRIPT OF AUDIO TAPE

09-04-98 Fee Account created Total Due: 15.00

09-04-98 VIDEO TAPE COPY Payment Received: 15.00

Note: Mail Payment

09-09-98 Trust Account created Total Due: 30.00

09-09-98 Reporter Fees Payment Received: 30.00

09-15-98 VIDEO TAPE COPY Payment Reversal: -15.00

Printed: 04/27/05 12:20:04

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CASE NUMBER 981100400 State Felony

Note: Clerk Error - will not re-enter

09-15-98 Trust Account created Total Due: 15.00

09-15-98 Other Trust Payment Received: 15.00

09-15-98 Other Trust Check # 10379 Trust Payout: 15.00

09-17-98 Trust Account created Total Due: 57.00

09-17-98 Reporter Fees Payment Received: 57.00

10-01-98 Fee Account created Total Due: 8.00
 10-01-98 AUDIO TAPE COPY Payment Received: 8.00
 Note: Mail Payment
 11-17-98 Filed: Microfilmed on 10-5-98, Order, dated 8-13-98, Roll #34
 11-17-98 Fee Account created Total Due: 21.25
 11-17-98 COPY FEE Payment Received: 21.25
 12-28-98 Filed: MOTION FOR CHANGE OF VENUE
 12-28-98 Filed: MOTION FOR CHANGE OF VENUE
 01-04-99 Filed: RESPONSE TO MOTION FOR CHANGE OF VENUE
 01-08-99 Filed order: MEMORANDUM DECISION - SIGNED BY BH ON 1-8-99
 Judge bhadfiel
 Signed January 08, 1999
 01-21-99 Filed: MOTION FOR CHANGE OF VENUE
 01-21-99 Filed: AFFIDAVIT OF DEFENSE COUNSEL
 01-21-99 Filed: REPLY TO STATE'S RESPONSE TO MOTION FOR CHANGE OF VENUE
 01-26-99 Notice - NOTICE for Case 981100400 ID 32100
 Jury Trial.
 Date: 04/21/1999
 Time: 09:00 a.m.
 Location: COURT ROOM
 1ST DISTRICT COURT
 43 N MAIN P. O. BOX 873
 BRIGHAM CITY, UT 84302
 before Judge JUDGE BEN HADFIELD
 The reason for the change is reprint notice
 Jury Trial.
 Date: 04/22/1999
 Time: 09:00 a.m.
 Location: COURT ROOM
 1ST DISTRICT COURT
 43 N MAIN P. O. BOX 873
 BRIGHAM CITY, UT 84302
 before Judge JUDGE BEN HADFIELD
 Jury Trial.
 Date: 04/23/1999
 Time: 09:00 a.m.
 Location: COURT ROOM
 1ST DISTRICT COURT
 43 N MAIN P. O. BOX 873
 BRIGHAM CITY, UT 84302
 before Judge JUDGE BEN HADFIELD
 01-26-99 JURY TRIAL rescheduled on April 21, 1999 at 09:00 AM

Printed: 04/27/05 12:20:05

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CASE NUMBER 981100400 State Felony

Reason:.
 01-26-99 JURY TRIAL rescheduled on April 22, 1999 at 09:00 AM
 Reason:.
 01-26-99 JURY TRIAL rescheduled on April 23, 1999 at 09:00 AM
 Reason:.
 01-29-99 Filed order: MEMORANDUM DECISION - SIGNED BY BH ON 1-29-99
 Judge bhadfiel

Signed January 29, 1999

02-02-99 Filed: MOTION FOR DISCOVERY

02-08-99 Minute Entry - Minutes for Pretrial Conference

Judge: JUDGE BEN HADFIELD

PRESENT

Clerk: shaunaw

Prosecutor: BUNDERSON, JON J.

Defendant not present

Defendant's Attorney(s): YENGICH, RONALD J.

Video

Tape Count: 3:30 pm

HEARING

CASE CALLED

APPEARANCES MADE

THE COURT ASKS COUNSEL IF THE DEFENDANT IS PRESENT. COUNSEL INDICATES THAT HE AND MR BUNDERSON DISCUSSED IT BETWEEN THEM AND THAT THE DEFENDANT WAIVES HIS RIGHT TO BE PRESENT FOR THIS HEARING. THE COURT ADVISES COUNSEL THAT THE DEFENDANTS PRESENCE IS NORMALLY REQUIRED.

ALL PARTIES CONFIRM THAT THE ISSUE OF VENUE HAS BEEN RESOLVED AND THE VENUE HAS BEEN MOVED TO CACHE COUNTY FOR THE TRIAL.

THE TRIAL SCHEDULED FOR 4/21,22, & 23/99 IS CONFIRMED.

COUNSEL INFORM THE COURT THAT JUDGE DAVID YOUNG HAS A TRIAL SCHEDULED IN SALT LAKE CITY BEGINNING THE DAY PRIOR TO THE BEGINNING OF THIS TRIAL INVOLVING THE SAME WITNESS. THE SALT LAKE PROSECUTOR HAS INDICATED THAT THE TRIAL IN SALT LAKE WOULD BE MOVED.

COMMENTS ARE MADE BY MS BALMAIN REGARDING HER CONCERNS ABOUT THE WITNESS' EMOTION AND MENTAL ABILITY TO TESTIFY IN BACK-TO-BACK TRIALS. MS BALMAIN IS TO SUBMIT A WRITTEN REPORT OR MOTION REGARDING THAT ISSUE.

DEFENDANT COUNSEL DOES NOT ANTICIPATE ANY MOTIONS NOW PRIOR TO THE TRIAL.

THE 'PROPOSED INSTRUCTION' DEADLINE IS SET FOR APRIL 1, 1999.

THE DEADLINE FOR PLEA NEGOTIATIONS IS APRIL 5, 1999.

COUNSEL TO EXCHANGE WITNESS LISTS BY 2/20/99. MR YENGICH INDICATES THERE WILL BE NO ALIBI AND NO EXPERT WITNESSES.

*MOTION IN LIMINE ADDRESSED. MR YENGICH IS TO SUBMIT AUTHORITIES

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CASE NUMBER 981100400 State Felony

BY MARCH 1, 1999. MR BUNDERSON WILL HAVE 10 DAYS TO RESPOND.

COUNSEL ARE TO REQUEST ORAL ARGUMENTS IF THEY FEEL IT IS NECESSARY.

MR YENGICH RECOMMENDS CALLING IN 18 OR 20 OF THE 'UNDECIDED' JURY LIST TO GO WITH THE 50 PRE-APPROVED JURORS.

THIS COURT WILL GO ON RECORD AND RANDOMLY DRAW 18 OR 20 NAMES FROM THE LIST OF 66 'UNDECIDED' JURORS.

THE COURT WILL CONDUCT THE MAJORITY OF VOIR DIRE. COUNSEL MAY BE LIMITED TO A SPECIFIC TIME FOR VOIR DIRE.

THE COURT ADMONISHED AGAINST PLACARDS, POSTERS, BUTTONS, RIBBONS ETC. IN THE THE COURTROOM, COURTHOUSE, OR ON COURT PROPERTY DURING THE TRIAL, BECAUSE OF POTENTIAL IMPACT ON THE JURY.

02-16-99 Minute Entry - Minutes for Law & Motion

Judge: JUDGE BEN HADFIELD

Clerk: chrisjj

Video

HEARING

TIME: 10:45 AM PRESENT IN THE COURT ROOM: JUDGE HADFIELD AND DEPUTY CLERKS SHAUNA WHITAKER AND CHRIS JEPPESEN, AS AGREED UPON BY COUNSEL.

THE COURT PLACES ON THE RECORD THE RANDOM SELECTION OF 24 NAMES FROM THE LIST OF CACHE COUNTY PROSPECTIVE JURORS COUNSEL PREVIOUSLY AGREED UPON AS "UNDECIDED".

THESE 24 JURORS WILL BE REQUIRED TO APPEAR AT 9:00 A.M. ON APRIL 21, 1999, IN FIRST DISTRICT COURT, CACHE COUNTY, TO ANSWER FOLLOW UP QUESTIONS REGARDING THEIR KNOWLEDGE OF THIS CASE.

THE PROSPECTIVE JURORS AGREED UPON AS "ACCEPTED" WILL BE REQUIRED TO APPEAR ON APRIL 21, 1999, AT

02-19-99 Filed: DEFENDANTS PROPOSED WITNESS LIST

02-22-99 Filed: DEFENDANT'S PROPOSED WITNESS LIST

02-25-99 Filed: DEFENDANT'S RESPONSE TO STATE'S MOTION IN LIMINE

03-08-99 Filed: PLAINTIFF'S REPLY REGARDING PLAINTIFF'S MOTION IN LIMINE

03-08-99 Filed: REQUEST FOR JURY INSTRUCTIONS

03-10-99 Filed: COPY OF SUBPOENA

03-10-99 Filed: COPY OF SUBPOENA

03-10-99 Filed: COPY OF SUBPOENA

03-12-99 Filed order: ORDER REGARDING DISCLOSURE OF WITNESSES

Judge bhadfiel

Signed March 12, 1999

03-12-99 Filed: MOTION IN LIMINE REGARDING DEFENDANT'S STATEMENT

03-17-99 Filed: DEFENDANTS RESPONSE TO STATE'S MOTION IN LIMINE

03-24-99 Note:

03-24-99 Note:

03-24-99 Reporter Fees Check #	10505	Trust Payout:	30.00
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03-24-99 Reporter Fees Check #	10509	Trust Payout:	57.00
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03-24-99 Fee Account created	Total Due:	57.00
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03-24-99 REPORTER FEES	Payment Received:	57.00
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Note: REPORTER FEES

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03-24-99 Fee Account created	Total Due:	30.00
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03-24-99 REPORTER FEES	Payment Received:	30.00
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Note: REPORTER FEES

03-31-99 Filed order: MEMORANDUM DECISION - SIGNED BY BH ON 3-31-99

Judge bhadfiel

Signed March 31, 1999

03-31-99 Filed order: ORDER - SIGNED BY BH ON 3-31-99

Judge bhadfiel

Signed March 31, 1999

04-02-99 Minute Entry - Minutes for INCOURT NOTE

Judge: BEN HADFIELD
 Clerk: chrisjj
 Prosecutor: BUNDERSON, JON J.

TELEPHONE CONFERENCE HELD AT THE COURT'S REQUEST. MR YENGICH'S SECRETARY INFORMED THE COURT THAT HE HAD TO LEAVE TO AN EMERGENCY. MR BUNDERSON AGREES TO CONTINUE THE TELEPHONE CONFERENCE. MR YENGICH TO ESTABLISH THE CONFERENCE CALL ON APRIL 6, 1999, AT 8:30 A.M.

04-02-99 TELEPHONE CONFERENCE scheduled on April 06, 1999 at 08:30 AM in LAW & MOTION with Judge HADFIELD.

04-05-99 Filed: REQUEST FOR JURY INSTRUCTION, MEMORANDUM AND REQUEST FOR HEARING

04-06-99 Minute Entry - Minutes for Law & Motion

Judge: BEN HADFIELD
 Clerk: shaunaw
 TELEPHONE CONFERENCE
 Prosecutor: BUNDERSON, JON J.
 Defendant's Attorney(s): YENGICH, RONALD J.
 Tape Count: 8:45 AM

HEARING

MR YENGICH AND MR BUNDERSON ARE PRESENT BY TELEPHONE. MR YENGICH INFORMS THE COURT THAT THE DEFENSE JURY INSTRUCTIONS WILL BE SENT TODAY.

BOTH COUNSEL STATE THERE WILL BE NO REQUEST FOR LESSER INCLUDED OFFENSE INSTRUCTIONS.

THE FIRST SET OF JURORS WILL BE SUMMONED FOR 8:30 WITH QUESTIONING BEGINNING AT 9:00 AM. THE SECOND SET OF JURORS WILL BE SUMMONED FOR 10:00 AM WITH QUESTIONING BEGINNING AT 10:30 AM.

COUNSEL DISCUSS THE ISSUE OF POLYGAMY AND THAT IT WILL AT SOME POINT NEED TO BE ADDRESSED WITH THE JURY.

THE COURT WILL PREPARE A 1 PAGE QUESTIONNAIRE AND INSTRUCTIONS TO THE JURORS AND FAX THEM TO COUNSEL.

COUNSEL AGREE TO MEET TOGETHER TOMORROW AT 11:30 TO EXCHANGE WITNESSES AND ADDRESSES.

MR BUNDERSON HAS A JURY INSTRUCTION TO PRESENT AND REQUESTS A HEARING ON THE SAME. THE COURT WANTS TO VIEW THE INSTRUCTION PRIOR

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CASE NUMBER 981100400 State Felony

TO SETTING A HEARING.

IF THE HEARING IS DEEMED NECESSARY BY COUNSEL, A TELEPHONE CONFERENCE MAY BE HELD ON APRIL 13, 1999 AT 4:00 PM.

04-13-99 Filed: MOTION TO SEAL PHOTOGRAPHIC EXHIBITS

04-13-99 Filed: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SEAL PHOTOGRAPHIC EXHIBITS

04-13-99 Minute Entry - Minutes for TELEPHONE CONFERENCE

Judge: BEN HADFIELD
 Clerk: shaunaw
 TELEPHONE CONFERENCE

Prosecutor: BUNDERSON, JON J.
Defendant's Attorney(s): YENGICH, RONALD J.
Tape Count: 3:15 PM

HEARING

COUNSEL DISCUSS THE JURY INSTRUCTION IN QUESTION. THE FINAL DECISION ON INSTRUCTIONS WILL BE DETERMINED AFTER THE EVIDENCE IS IN.

THERE HAS BEEN A MOTION FILED TODAY BY THE GUARDIAN AD LITEM TO SEAL PHOTOGRAPHIC EXHIBITS. NEITHER COUNSEL OBJECT TO THE MOTION.

BOTH COUNSEL APPROVE THE QUESTIONNAIRE AND JUROR INSTRUCTIONS PREPARED BY THE COURT.

THE ISSUE OF THE POSSIBILITY OF GOING LONGER THAN 3 DAYS IS DISCUSSED. THE OPTIONS OF GOING INTO THE WEEKEND AND RECONVENING ON MONDAY ARE DISCUSSED. MR YENGICH STRONGLY OPPOSES GOING INTO THE WEEKEND AND WOULD

REQUEST RECONVENING ON MONDAY, HOWEVER, BOTH COUNSEL INTEND TO FINISH IN THE 3 DAYS.

A LESSER INCLUDED OFFENSE IS RE-ADDRESSED. MR YENGICH HAS INCLUDED SOME INSTRUCTIONS IN HIS PACKET. THE COURT AND MR BUNDERSON WILL REVIEW THOSE INSTRUCTIONS WHEN THEY ARRIVE.

04-14-99 Filed: DEFENDANT'S REQUESTED JURY INSTRUCTIONS

04-16-99 Filed order: MEMORANDUM DECISION AND ORDER - SIGNED BY BH ON 4-16-99

Judge bhadfiel

Signed April 16, 1999

04-21-99 Filed: SUPPLEMENTAL JURY INSTRUCTIONS

04-21-99 Minute Entry - Minutes for Jury Trial

Judge: BEN HADFIELD

PRESENT

Clerk: chrisjj

Prosecutor: BUNDERSON, JON J.

DIANNE R BALMAIN

Defendant

Defendant's Attorney(s): YENGICH, RONALD J.

ARRAIGNMENT

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CASE NUMBER 981100400 State Felony

The Information is read.

Advised of rights and penalties.

Defendant is arraigned.

Defendant waives time for sentence.

Presentence Investigation ordered.

The Judge orders Adult Probation & Parole to prepare a pre-sentence report.

CHANGE OF PLEA

A pre-sentence investigation was ordered.

The Judge orders Adult Probation & Parole to prepare a Pre-sentence report.
TRIAL

THIS MATTER WAS SET FOR JURY TRIAL.
COUNSEL HAVE REACHED A PLEA NEGOTIATIONS
INFORMATION AMENDED BY INTERLINEATION IN OPEN COURT.
MR YENGICH PRESENTS PLEA NEGOTIATIONS TO THE COURT. DEFENDANT
AGREES TO TERMS OF THE NEGOTIATIONS.
DEFENDANT MAKES STATEMENT TO THE COURT
MR BUNDERSON MAKES RECORD THAT RULE 11 HAS BEEN COVERED BUT
REQUESTS THE COURT READ THE AMENDED CHARGE.
MR BUNDERSON OFFERS BRIEF SUMMARY OF EVIDENCE.
THE COURT QUESTIONS THE DEFENDANT REGARDING THE SUMMARY OF
EVIDENCE. THE DEFENDANT STATES HE WILL NOT DISPUTE THE SUMMARY AS
PRESENTED.
MR YENGICH APPROVES THE AMENDED INFORMATION AND CLARIFIES THE NO
CONTEST PLEA FOR THE DEFENDANT.
THE COURT READS AMENDED INFORMATION.
DEFENDANT ENTERS NO CONTEST PLEA.
MS BALMAIN INFORMS THE COURT THAT THE VICTIM AGREES WITH THE
AGREEMENT AS IT HAS BEEN STATED TODAY.
SENTENCING SET FOR JUNE 29, 1999, AT 8:45 A.M.
DEFENDANT WAIVES SENTENCING ON THE RECORD.
SENTENCING WILL BE HELD IN BOX ELDER COUNTY.
MR YENGICH NOTES THAT THE NO CONTACT PROVISIONS REMAIN IN EFFECT.
THE COURT MAKES RECORD OF ITS ACCEPTANCE OF THE PLEA NEGOTIATIONS.
MR YENGICH INFORMS THE COURT THAT HE MAY HAVE A PROBLEM WITH THE
JUNE 29TH SENTENCING DATE.
THE COURT OFFERS JUNE 21, 1999, AT 11:00 A.M. MR YENGICH IS NOT
SURE OF THAT DATE EITHER.
THE COURT AND COUNSEL AGREE THAT THE SENTENCING WILL BE HELD ON
JUNE 29, 1999, AS PREVIOUSLY STATED.

04-21-99 Charge 1 amended

06-01-99 Notice - NOTICE for Case 981100400 ID 36157

SENTENCING is scheduled.

Date: 06/29/1999

Time: 08:45 a.m.

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CASE NUMBER 981100400 State Felony

Location: LAW & MOTION
1ST DISTRICT COURT
43 N MAIN P. O. BOX 873
BRIGHAM CITY, UT 84302

Before Judge: BEN HADFIELD

06-01-99 SENTENCING scheduled on June 29, 1999 at 08:45 AM in LAW &
MOTION with Judge HADFIELD.

06-11-99 Notice - NOTICE for Case 981100400 ID 36556

TELEPHONE CONFERENCE is scheduled.

Date: 06/18/1999

Time: 10:00 a.m.

Location: COURT ROOM

1ST DISTRICT COURT
 43 N MAIN P. O. BOX 873
 BRIGHAM CITY, UT 84302

Before Judge: BEN HADFIELD

TELEPHONE CONFERENCE AT MR YENGICH'S REQUEST. MR YENGICH TO
 INITIATE THE TELEPHONE CONFERENCE AND WITH MR BUNDERSON ON THE
 LINE, CALL THE COURT AT (435)734-4600 AT THE TIME LISTED.

06-11-99 TELEPHONE CONFERENCE scheduled on June 18, 1999 at 10:00 AM in
 COURT ROOM with Judge HADFIELD.

06-18-99 Minute Entry - Minutes for TELEPHONE CONFERENCE

Judge: BEN HADFIELD

Clerk: jessio

TELEPHONE CONFERENCE

Prosecutor: BUNDERSON, JON J.

Defendant's Attorney(s): YENGICH, RONALD J.

HEARING

Off record

MR. YENGICH AND MR. BUNDERSON STIPULATE TO NO TRANSCRIPTS
 CONCERNS ABOUT THE PSI AND AP&P ARE ADDRESSED AND POSSIBLE
 RESOLUTIONS ARE DISCUSSED.

06-28-99 Filed: PHOTOGRAPHY REQUEST

06-28-99 Filed: VICTIM IMPACT STATEMENT

06-29-99 Fee Account created Total Due: 17.00

06-29-99 VIDEO TAPE COPY Payment Received: 17.00

Note: VIDEO TAPE COPY

06-29-99 Filed order: ORDER GOVERNING PHOTOGRAPHY

Judge bhadfiel

Signed June 29, 2099

06-29-99 Filed order: ORDER GOVERNING PHOTOGRAPHY

Judge bhadfiel

Signed June 29, 2099

06-29-99 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITME

Judge: BEN HADFIELD

PRESENT

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CASE NUMBER 981100400 State Felony

Clerk: chrisjj

Prosecutor: DIANNE R BALMAIN

Defendant

Defendant's Attorney(s): YENGICH, RONALD J.

Video

SENTENCE PRISON

Based on the defendant's conviction of CHILD ABUSE/NEGLECT a 3rd
 Degree Felony, the defendant is sentenced to an indeterminate term
 of not to exceed five years in the Utah State Prison.
 The prison term is suspended.

SENTENCE JAIL

Based on the defendant's conviction of CHILD ABUSE/NEGLECT a 3rd Degree Felony, the defendant is sentenced to a term of 196 day(s) in the Box Elder County Jail.

SENTENCE JAIL SERVICE NOTE

THE COURT WILL CONSIDER WORK RELEASE AFTER TWO WEEKS JAIL TIME IF RECOMMENDED BY AP&P. THE COURT WILL CONSIDER REDUCTION OF JAIL TIME UPON PROOF TO THE COURT OF DEFENDANT'S TRUE APOLOGY TO THE VICTIM.

SENTENCE FINE

Charge # 1	Fine: \$2700.00
	Suspended: \$0.00
	Surcharge: \$1240.54
	Due: \$2700.00
	Total Fine: \$2700.00
	Total Suspended: \$0
	Total Surcharge: \$1240.54
	Total Principal Due: \$2700.00
	Plus Interest

SENTENCE TRUST NOTE

RESTITUTION TO BE ORDERED UPON AGREEMENT OF THE AMOUNT OR HEARING TO BE HELD. RESTITUTION TO BE DETERMINED WITHIN 4 WEEKS.
ORDER OF PROBATION

The defendant is placed on probation for 36 month(s).
Probation is to be supervised by Adult Probation & Parole.
Defendant to serve 196 day(s) jail.
Defendant is to report to the Box Elder County Jail.
Defendant is to report by June 29, 1999.

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Defendant is to pay a fine of 2700.00 which includes the surcharge.
Interest may increase the final amount due.
Pay fine to The Court.

COMPLETE ANGER MANAGEMENT COURSE AS DESIGNATED BY AP&P
NO CONTACT WITH THE VICTIM, EVEN THIRD PARTY CONTACT, UNLESS
APPROVED BY AP&P AND DCFS.
DEFENDANT TO ENTER INTO ALL STANDARD TERMS AND CONDITIONS OF
PROBATION.

06-30-99 VIDEO TAPE COPY	Payment Reversal:	-17.00
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Note: Clerk Error - will not re-enter

07-06-99 Filed order: JUDGMENT AND ORDER OF PROBATION
Judge bhadfiel

Signed July 06, 1999

07-07-99 Bond Exonerated -10,000.00
 07-07-99 Judgment #1 Entered

Note: \$5824 amount for victim's education expenses paid through Office of Crime Victim Reparations. \$526 amount shelter costs to Box Elder County YWCA. \$95.80 amount shelter costs to CAPSA in Logan. Unknown amount for medical expenses to Medicaid & ca

Creditor: CAPSA - LOGAN
 Creditor: CRIME VICTIM REPARATIONS
 Creditor: YWCA BOX ELDER COUNTY
 Debtor: JOHN DANIEL KINGSTON

5,824.00
 526.90
 95.80

6,446.70 Judgment Grand Total

07-08-99 Note: JURY TRIAL minutes modified.

07-08-99 Fine Account created Total Due: 2700.00

08-03-99 Fee Account created Total Due: 67.83

08-03-99 Fee Account created Total Due: 3.00

08-03-99 Fee Account created Total Due: 15.00

08-03-99 POSTAGE-COPIES Payment Received: 3.00

Note: Mail Payment;

08-03-99 VIDEO TAPE COPY Payment Received: 15.00

08-12-99 Filed: MOTION

08-26-99 Filed order: Memorandum Decision

Judge bhadfiel

Signed August 26, 1999

10-20-99 Filed: AP&P PROGRESS/VIOLATION REPORT - REFERRED BACK TO AP&P FOR RECOMMENDATION

11-15-99 Fine Payment Received: 2,700.00

11-16-99 Judgment #1 Modified

Note: \$5824 amount for victim's education expenses paid through Office of Crime Victim Reparations. \$526 amount shelter costs to Box Elder County YWCA. \$95.80 amount

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CASE NUMBER 981100400 State Felony

shelter costs to CAPSA in Logan. Unknown amount for medical expenses to Medicaid & ca

Creditor: CAPSA - LOGAN
 Creditor: CRIME VICTIM REPARATIONS
 Creditor: YWCA BOX ELDER COUNTY
 Debtor: JOHN DANIEL KINGSTON

5,824.00
 526.90
 95.80

6,446.70 Judgment Grand Total

11-29-99 Filed: PROGRESS/VIOLATION REPORT - APPROVED BY BH ON 11-29-99

12-22-99 INTEREST Payment Received: 67.33

12-22-99 INTEREST Payment Received: 0.00

Credit Received: 0.50

Note: Interest Waived

01-18-00 Filed: SHERIFFS RETURN ON COMMITMENT AFTER JUDGMENT
 04-10-01 Filed: AP&P PROGRESS/VIOLATION REPORT - APPROVED AND ORDERED
 4/10/01 BY BH - RESTITUTION HEARING TO BE SET
 04-19-01 RESTITUTION HEARING scheduled on May 21, 2001 at 03:30 PM in
 LAW & MOTION with Judge HADFIELD.
 04-19-01 Notice - NOTICE for Case 981100400 ID 713719
 RESTITUTION HEARING is scheduled.
 Date: 05/21/2001
 Time: 03:30 p.m.
 Location: LAW & MOTION
 1ST DISTRICT COURT
 43 N MAIN P. O. BOX 873
 BRIGHAM CITY, UT 84302
 Before Judge: BEN HADFIELD
 04-23-01 Notice - NOTICE for Case 981100400 ID 715079
 RESTITUTION HEARING.
 Date: 07/02/2001
 Time: 03:00 p.m.
 Location: LAW & MOTION
 1ST DISTRICT COURT
 43 N MAIN P. O. BOX 873
 BRIGHAM CITY, UT 84302
 Before Judge: BEN HADFIELD
 The reason for the change is Conflict in attorney schedule
 04-23-01 RESTITUTION HEARING rescheduled on July 02, 2001 at 03:00 PM
 Reason: Conflict in attorney schedule.
 04-27-01 Filed: COPY OF SUBPOENA
 06-27-01 Notice - NOTICE for Case 981100400 ID 751173
 RESTITUTION HEARING.
 Date: 07/16/2001
 Time: 11:00 a.m.
 Location: LAW & MOTION
 1ST DISTRICT COURT
 43 N MAIN P. O. BOX 873

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BRIGHAM CITY, UT 84302
 Before Judge: BEN HADFIELD
 The reason for the change is Motion and Order to Continue signed
 06-27-01 RESTITUTION HEARING scheduled on July 16, 2001 at 11:00 AM in
 LAW & MOTION with Judge HADFIELD.
 06-27-01 Filed: MOTION TO CONTINUE AND STIPULATION
 06-27-01 Filed order: ORDER TO CONTINUE
 Judge bhadfiel
 Signed June 27, 2001
 06-28-01 Filed: COPY OF SUBPOENA
 07-16-01 Minute Entry - Minutes for Restitution Hearing
 Judge: BEN HADFIELD
 Clerk: shaunaw
 Prosecutor: BUNDERSON, JON J.
 Video

HEARING

A WRITTEN STIPULATION OF FACTS IS TO BE SUBMITTED. THIS HEARING IS STRICKEN. A CLERK REVIEW IS TO BE SET FOR ONE MONTH AND MR BUNDERSON CONTACTED IF NECESSARY.

08-06-01 Filed: MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO TERMINATE RESTITUTION
 08-08-01 Filed: STIPULATION OF FACTS
 08-08-01 Filed: MEMORANDUM OPPOSING DEFENDANT'S MOTION TO TERMINATE RESTITUTION AND SEEKING ORDER FOR ADDITIONAL PAYMENT
 08-14-01 Filed order: Memorandum Decision
 Judge bhadfiel
 Signed August 10, 2001
 09-27-01 Filed order: ORDER
 Judge bhadfiel
 Signed September 25, 2001
 09-27-01 Judgment #2 Entered
 Note: \$5824 amount for victim's education expenses paid through Office of Crime Victim Reparations. \$526 amount shelter costs to Box Elder County YWCA. \$95.80 amount shelter costs to CAPSA in Logan. Unknown amount for medical expenses to Medicaid & ca
 Creditor: FOR VICTIM ADULT PROBATION AND PAROLE
 Debtor: JOHN DANIEL KINGSTON
 4,480.00 AUGMENTED JUDGMENT
 4,480.00 Judgment Grand Total
 07-03-02 Filed: AP&P PROGRESS/VIOLETION REPORT - APPROVED AND ORDERED 7/3/02 BY BH - PROBATION SUCCESSFULLY TERMINATED
 07-03-02 Filed order: MOTION AND ORDER OF TERMINATION OF PROBATION
 Judge bhadfiel
 Signed July 03, 2002
 07-03-02 Judgment #1 Modified Disposition: Satisfied
 Note: \$5824 amount for victim's education expenses paid

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through Office of Crime Victim Reparations. \$526 amount shelter costs to Box Elder County YWCA. \$95.80 amount shelter costs to CAPSA in Logan. Unknown amount for medical expenses to Medicaid & ca
 07-03-02 Judgment #2 Modified Disposition: Satisfied
 Note: \$5824 amount for victim's education expenses paid through Office of Crime Victim Reparations. \$526 amount shelter costs to Box Elder County YWCA. \$95.80 amount shelter costs to CAPSA in Logan. Unknown amount for medical expenses to Medicaid & ca
 07-30-02 Fee Account created Total Due: 1.50
 07-30-02 Fee Account created Total Due: 1.00
 07-30-02 Fee Account created Total Due: 4.00
 07-30-02 CERTIFIED COPIES Payment Received: 1.50
 07-30-02 COPY FEE Payment Received: 1.00
 07-30-02 CERTIFICATION Payment Received: 4.00
 02-07-03 Fee Account created Total Due: 42.00

02-07-03 MISCELLANEOUS FEE	Payment Received:	42.00
Note: MISCELLANEOUS FEE		
09-05-03 Fee Account created	Total Due:	81.25
09-05-03 COPY FEE	Payment Received:	81.25
Note: COPY FEE; Mail Payment;		

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