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March 14, 2007

Utah POST Council
Utah Peace Officer Standards and Training Academy
410 West 9800 South
Sandy, Utah 84070

Re: Hildale POST Investigation

Dear POST Council members:

By way of introduction, Stirba & Associates represents the City of Hildale and its law enforcement officers in the pending POST investigation which was authorized by the POST Council at the last POST Council meeting. The purpose of this letter is to hopefully give POST Council, and maybe even the public at large, a perspective of this investigation that it may not have heard before. The perspective is that of the officers of Hildale, the City of Hildale and, to a limited extent, the vast majority of the 10,000 people in the communities of Hildale and Colorado City.

These people, because of their culture, are very private people who do not seek out media attention. You may have noticed, as I have noticed, that when the media converges upon the community of Hildale, the only people talking to the media are the few detractors the media can find, but nobody from the FLDS faith and the community at large will speak publicly. This is a cultural phenomena that I have noticed and commented upon to the people of Hildale that I know. The response I have received back has been unanimous that "this just is not who we are" and "we do not want to explain ourselves to the world." As you can imagine, this lack of the "other side of the story" has led a lot of people to just believe the one side that has been reported in the media.

A representative from our firm has been present at all of the individual POST officer interviews and at all of the POST meetings with the officers and the City since the investigation began. It is my understanding that this investigation was initiated by the POST Council after a complaint was made by an attorney for Bruce Wisan, the court appointed Special Fiduciary for the United Effort Plan Trust (UEP), complaining about the cooperation between the officers and the Special Fiduciary. These complaints are unfounded and your investigation, in our view, has confirmed this.

As a matter of background, I believe that it is important to understand the current political climate surrounding Hildale and its people. The UEP was set up many many years ago by the citizens of Hildale and Colorado City in accordance with their religious beliefs for the purpose of holding their homes and property in trust to advance and sustain the tenets of their religious faith. The UEP was originally set up by early leaders of the FLDS church to follow in the footsteps of the LDS church's attempts to live the Law of Consecration, as was previously directed by Joseph Smith and Brigham Young. The vast majority of the people of Hildale and Colorado City do not personally own their homes or property, but instead live in homes and on property that were deeded to the UEP trust many years ago by their ancestors. As a result of these structures, what was once barren desert land has become habitable, and supports flourishing religious communities.

Due to lawsuits filed by some against the UEP and other legal pressures, Mr. Wisan, a Salt Lake City accountant with no ties to the Hildale/Colorado City community or the FLDS religion, was appointed by the District Court as a Special Fiduciary for the UEP in 2005. As such, Bruce Wisan has the legal duty and responsibility to look out for the best interests of the UEP and its beneficiaries, namely the people of Hildale and Colorado City. I believe that the people of these communities consider (be it a fair characterization or not) Bruce Wisan and his attorneys as "carpet baggers" who have engaged in a "hostile takeover" of their ancestral property, the UEP. The UEP was created through their families' blood, sweat and tears, and now Wisan is selling it off piece-by-piece in order to pay for his attorneys (which by some accounts is upwards of a million dollars). I mention this only to hopefully give the POST Council and the public at least a glimpse into the internal pressures and the sentiment that the Hildale officers must contend with on a daily basis as they carry out their lawful duties as peace officers. I do not believe that it would be an exaggeration to state that the Hildale officers have been placed under extremely tight scrutiny by the local, state, national and world media in such a way as has never been before seen in the history of this State.

On a daily basis the Hildale Officers are placed in the position of being the interface between the Special Fiduciary and people of the community who are unfortunately very distrustful of anything the Special Fiduciary is trying to do in their community. Each of the officers has shown the POST investigators that they recognize and acknowledge the authority of the Court and its appointed Special Fiduciary. They also have each stated that they take their oaths of office very seriously because they swore before God and they all have expressed deep religious faith in God. With that being said, it has been difficult for the officers to effectuate the requests of the Special Fiduciary and enforce the orders of the court while at the same time maintain their trust with the people of the community that they have sworn to protect and serve. Hildale is a community that is very isolated, both by its location and by its culture. The scars from the Government raids known as the Short Creek raids of the 1950's still weigh heavy on the

collective consciousness of the community.

As a result, the officers in Hildale, because they are law enforcement, and as such agents of the State, are looked upon with a fair amount of suspicion and distrust by many in the community. However, the Hildale Officers are trusted to a far greater degree than the Washington County Sheriff's Office because they are from the community, have relatives in the community, and their ancestors contributed in building the community.

In discussions with many of the Sheriff's Deputies in Washington County (even with some of the concerns that the Deputies may have with Hildale), they all believe that they could not police the community nearly as well as the Hildale officers can and do. The reason given by these deputies for this observation is the fact that the Sheriff's Office is not trusted by the people in the community, never will be, and therefore the Sheriff's Office will not be called by the people when criminal violations occur that warrant police involvement.

As our firm sat through each and every interview of the officers with the POST investigators, it soon became clear that none of the allegations being investigated really involved criminal behavior by any of the Hildale Officers. In fact, almost all of the complaints came from the same four individuals who are vocal opponents to the FLDS church and who are all former members of the FLDS church. I believe that as you consider the complaints and allegations made against the Officers, the apparent bias of these individuals should be considered and weighed. It is clear that each of the complainants has a proverbial ax to grind. As the old saying goes, "the two people who now hate each other most, often times were once married." The problem with the bias of the complainants is exacerbated when the Special Fiduciary hires many of the four individuals doing most of the complaining to be the Special Fiduciary's liaisons in the community and to work directly with the Hildale Officers. These individuals do not have a law enforcement background and are not exactly sophisticated, even by Hildale standards. Thus I believe there has been unrealistic expectations by these individuals and their complaints have been passed on to the Special Fiduciary in Salt Lake City. But, after the complaints were compared to the police reports and the Officer's version of the incidents, it begins to become apparent that most of the complaints are wholly without merit.

This is not to say that the Hildale Officers have done everything correctly in every instance. I believe that the Officers' actions should be looked at in light of the totality of the circumstances. I cannot think of any similar circumstance dealt with by any other law enforcement agency in the State. These Officers are dealing with a very unique injunction which has been issued by the Court in order to enforce the injunction the Officers are called upon to make legal conclusions such as what is "attached" or what is a "trade fixture". These types of questions can keep even the most seasoned attorneys busy in litigation for years. Many of the

issues have come down to the question of whether appliances such as stoves or "bean cookers" are attached or unattached or otherwise exempted from the injunction. Also, the officers have to deal with the issue of what to do if it appears that an individual has violated the injunction. The injunction is civil in nature and not criminal such as a protective order. The representatives of the Special Fiduciary have complained that the Officers did not arrest people who were moving property that the complainants believed were subject to the injunction. But as I have often lamented with the Officers, the injunction does not provide for any criminal remedy. The injunction as I previously stated is civil in nature and therefore the proper remedy for the Special Fiduciary is to file an Order to Show Cause, in the civil case, against the violators and allow the Judge to determine if the violators should be held in contempt of court, or if the property is even subject to injunction. I believe, as the Officers do, that many of the alleged violations of the injunction are not crimes for which a probable cause analysis can or should be done. Instead, they are civil and should be sorted out by the civil court system and the Officers should not be putting their qualified immunity on the line by arresting an individual and then not having a probable cause of valid crime. The City and three of its officers have been sued in Federal District Court already for enforcing the injunction against one of the POST complainants.

The Officers have learned how they can and should cooperate with the Special Fiduciary in documenting the complaints made by the representatives of the Special Fiduciary. The Special Fiduciary has even stated that the cooperation has been much better. But, it took some time to adjust to a legal issue that no other agency in the State has had to deal with on such a large scale. The cities have lacked the resources to hire attorneys for every situation that has arisen. The Officers are committed to doing whatever it takes to work through any issues that may arise and have shown this by fully cooperating with POST's investigation. The Officers recognize that they made some mistakes when interviewed or deposed in the past. After working with these officers and discussing these issues with them in preparation for this POST investigation, the reason became apparent to us. These officers went into all of the depositions and interviews before this investigation without representation of legal counsel. Many of these Officers had a belief that many of the subject areas approached were protected by one privilege or another, but lacked the knowledge or expertise to properly and effectively voice their objections. After we were able to sit down with these officers as their attorneys, they were able to learn what types of questions were proper and which ones were not. As the POST investigators will attest to, the Officers fully cooperated with all the questions asked. Many of these questions were questions that the officers had resisted answering before, but now that they have counsel realize that they were legitimate questions and answered them. The questions that may not be legitimate were still answered and the objections preserved in the record for a later decision if necessary.

I hope that this letter will be taken in the light that it was intended to be taken. The Officers of Hildale acknowledge that they have room to improve and that they would benefit

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from more training. However, they also hope that the POST Council and the public at large understand that they do support the law of the land and that they do take their oaths of office very seriously. The Officers wish to continue protecting and serving the people of the Hildale and Colorado City community and they wish to do so in such a way that they will never be the subject of such an investigation again. After being present at all steps of this investigation, we do not believe that the POST investigation has brought forth any credible evidence that would warrant any type of action to be taken that would threaten these officer's certifications. Our firm has dedicated itself to protecting officers and departments from federal and state lawsuits. We take great pride in the fact that we help officers and law enforcement agencies to do their jobs better and without the fear of someone hinder them with harassing lawsuits. We also take pride in the fact that we are here to protect these officer's constitutionally guaranteed right to not have their livelihoods and professions taken away without adequate due process of the law. If the POST Council determines that they will take some type of drastic action against the Hildale officers, our firm will zealously represent the officers and we believe that the facts and the law is on our side.

Finally, it is our understanding that at the last POST Council meeting, the Council allowed the attorney for the Special Fiduciary speak to the Council. I would respectfully request that if the Council is truly considering taking action against the Hildale Officers then the Council should allow our office to have a few minutes to rebut the allegations made against the officers by the Special Fiduciary's attorney. Thank you for your time, efforts, and consideration of this matter and if the Officers or the City of Hildale can be of further assistance, please direct your suggestions and concerns to us, and they will be given the utmost of attention. Thank you and we look forward to seeing you at the POST Council meeting in St. George on March 19th.

Very Truly Yours,

STIRBA & ASSOCIATES

PETER STIRBA