

THE PLAINTIFFS, **AMERICAN ATHEISTS, INC.**, a Texas non-profit corporation, **RICHARD ANDREWS, STEPHEN CLARK** and **MICHAEL D. RIVERS**, as a complaint and cause of action against the defendants, by and through counsel, state and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action for declaratory relief and prospective injunctive relief to redress and prevent violation of civil rights protected by the constitutions of the United States and Utah. Plaintiffs seek declaratory relief as to the unconstitutionality of defendants' conduct. Plaintiffs seek injunctive relief prohibiting defendants from continuing their misconduct and from engaging in similar conduct in the future. Plaintiffs seek nominal damages of one dollar (\$1.00) based upon the federal claims herein. Plaintiff seeks attorney fees and court costs pursuant to 42 U.S.C. § 1983 and § 1988.

JURISDICTION & VENUE

2. Jurisdiction is based on 28 U.S.C. § 1343 and 42 U.S.C. § 1983 for claims arising under the United States Constitution. Declaratory relief is authorized by 28 U.S.C. § 2201 and § 2202 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by the United States Code and Rule 65 of the Federal Rules of Civil Procedure. This court has supplemental or pendent jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims under the Utah Constitution which arise out of the same fact situation.

3. All of the conduct complained of occurred, is occurring or will occur in the Central and Northern Division of the District of Utah and in Summit, Salt Lake, Garfield and Emery

Counties, Utah. The named individual defendants to this action reside in the Central Division of the District of Utah.

PARTIES

4. The plaintiff **AMERICAN ATHEISTS, INC.** is a non-profit Texas corporation. It brings this action on behalf of its members. Its main offices are located in New Jersey. It has supporters and/or members throughout the United States and in Utah. One of its corporate purposes is to pursue litigation in furtherance of the separation of church and state as guaranteed by the United States Constitution. It does so and has done so in cases such as this action. The corporate plaintiff participates in this litigation on behalf of its members.

5. The plaintiff **STEPHEN CLARK** is an adult citizen and resident of the State of Utah and a member of AMERICAN ATHEISTS, INC.

6. The plaintiff **MICHAEL D. RIVERS** is an adult citizen and resident of the State of Utah. He is a member and the Utah State Director of AMERICAN ATHEISTS, INC.

7. The plaintiff **RICHARD ANDREWS** is an adult citizen and resident of the State of Utah. R. ANDREWS is a member and/or supporter of AMERICAN ATHEISTS, INC.

8. The defendant **COLONEL SCOTT T. DUNCAN** is the duly appointed and serving Superintendent of the Utah Highway Patrol. He is an adult citizen and resident of the State of Utah. The Utah Highway Patrol is a division of the Utah Department of Public Safety. He has the administrative power to determine who will be allowed to use the trade marked logo of the Utah Highway Patrol (a beehive with the words "Utah Highway Patrol" across the beehive). He

is sued in his official capacity as well as his individual capacity.

9. The defendant **JOHN NJORD** is the duly appointed and serving Executive Director of the Utah Department of Transportation. He is an adult citizen and resident of the State of Utah. The Utah Department of Transportation is a Department of the State of Utah. He has the administrative power to determine who will be allowed to place monuments, structures, memorials, etc. in the public right-of-way adjacent to Utah State roads and highways. He is sued in his official capacity as well as his individual capacity.

10. The defendant **D'ARCY PIGNANELLI** is the duly appointed and serving Executive Director of the Utah Department of Administrative Services. She is an adult citizen and resident of the State of Utah. The Utah Department of Administrative Services is a Department of the State of Utah. She has the administrative power to determine who will be allowed to place monuments, structures, memorials, etc. on real property belonging to the State of Utah. She is the supervisor of F. Keith Stepan. She is sued in her official capacity as well as her individual capacity.

11. The defendant **F. KEITH STEPAN** is the duly appointed and serving Director of the Division of Facilities Construction and Management, a Division of the Utah Department of Administrative Services. He is an adult citizen and resident of the State of Utah. He has the administrative power to determine who will be allowed to place monuments, structures, memorials, etc. on real property belonging to the State of Utah. He is supervised by D'arcy Pignanelli. He is sued in his official capacity as well as his individual capacity.

12. The STATE OF UTAH is a government entity created by law which governs the

geographic area known as the State of Utah. The State is the principal and employer of the individual defendants. The State of Utah owns the real property at issue in this action. The State has delegated to the individual defendants, Pignanelli, Stepan and Njord administrative power to determine whether and who will be allowed to place what memorial, monuments, etc. on real property belonging to the State. The State has delegated to the individual defendant Duncan administrative power to determine whether and who will be allowed to use the official logo of the Utah Highway Patrol.

13. At all times pertinent to this action, the individual defendants and each of them were acting under color of state law and with the power and authority granted to them by the laws of the State of Utah. At all times pertinent to this action, the individual defendants and each of them were acting pursuant to and in compliance with the practice and policies of the State of Utah.

OPERATIVE FACTS

14. The Utah Highway Patrol has a logo which is a registered trademark. The logo is “a beehive with the words UTAH HIGHWAY PATROL across the beehive.” A reproduction of that logo is included in Exhibits “A” - “C” attached.

15. The Utah Highway Patrol Association (herein after the “Association”) is a private non-profit Utah corporation. Its corporate goals and purposes include supporting Utah State Highway Patrol Officers and acknowledging those troopers’ service to the people of the State of Utah.

16. The Association has been granted permission by defendant Duncan to use the Utah Highway Patrol logo for various purposes. The Association uses that logo for various purposes related to its activities.

17. One activity of the Association is to acknowledge and memorialize Utah State Highway Patrol troopers killed in the line of duty. The Association has done so by erecting large (12' tall) steel Latin crosses bearing the name and badge number of the trooper. The Latin crosses are erected near the location where a trooper has died in the line of duty. The Association has erected and permanent installed such crosses at various locations in Utah, including, but not limited to:

a. The right-of-way south of I-80 in Parley's Canyon, Salt Lake County, Utah (a photograph is attached as Exhibit "A");

b. The parking lot of the Utah Highway Patrol facilities east of I-15 at approximately 5757 South 360 West, Murray, Salt Lake County, Utah (a photograph is attached as Exhibit "B");

c. The northwest corner of the junction of Utah Highway 89 and Utah Highway 20 in Garfield County, Utah (a photograph is attached as Exhibit "C");

d. The highway rest area north of I-80 in Echo Canyon, Summit County, Utah;

e. The south bound highway rest stop on Utah Highway 15 in Kaysville, Davis County, Utah; and,

f. The Black Dragon rest area on I-70, west of Green River, Emery County, Utah.

18. The crosses are intentionally erected by the Association in prominent places visible to the general public. They are visible to motorists using the adjacent roads and highways owned

by the State of Utah.

19. On each of the crosses, just below where the two members intersect, the Utah State Highway Patrol logo is attached and is prominently displayed.

20. Each cross was erected on real property owned and/or controlled by the State of Utah and/or the individual defendants herein with the specific permission, knowledge and/or approval of the individual defendants.

21. The Association paid for the creation and erection of the crosses.

22. The Latin cross is a very familiar and poignant religious symbol exclusive to Christianity.

23. The presence of the Latin crosses on government owned property with the Utah Highway Patrol logo prominently displayed thereon has a primary effect to advance religion, and conveys or attempts to convey the message that religion or a particular religious belief is favored or preferred. The reaction of the average receiver of the government communication or average observer of the government action is that of endorsement of religion and particularly of Christianity.

24. Plaintiffs have suffered direct and personal contact with the Latin crosses causing non-economic injury to them. Because the Latin crosses are displayed at prominent locations, and plaintiffs are brought into direct and unwelcome personal contact with them, or plaintiffs are forced to alter their behavior to avoid contact with the crosses. Plaintiffs are forced to view a religious object that they wish to avoid but are unable to avoid because of plaintiffs' use of the public buildings, real property and/or highways of the State of Utah.

25. Plaintiffs' harm is actual personal injury, fairly traceable to the defendants' unlawful conduct and likely to be redressed by a favorable decision of the court.

26. The individual plaintiffs and the members of American Atheists have suffered and will continue to suffer harm as a result of defendants' conduct. Plaintiffs' constitutional rights and those of the members of American Atheists have been violated by the actions of defendants as set forth above. Plaintiffs seek and are entitled to nominal damages (\$1.00) as against the defendants in their individual capacities.

27. Absent specific permission from the defendants, private citizens and entities are not allowed to erect monuments, memorials, etc. on real property of the State of Utah including the right-of-way adjacent to Utah State Highways. Ut. Code Ann. § 72-7-102 & 104 (1953 as amended). Any such un-permitted displays are summarily removed by employees of defendants and the State of Utah if so erected on government property. Id.

28. The plaintiffs have incurred and will incur attorney fees and court costs in the pursuit of this matter. Pursuant to 42 U.S.C. § 1983 and § 1988, plaintiffs are entitled to reimbursement for said attorney fees and court costs.

CAUSES OF ACTION

Establishment Clause Violation

29. The presence of the large Latin crosses prominently displayed on real property owned by the State of Utah and controlled by the individual defendants for the State of Utah violates the establishment clause of the First Amendment and Article I, § 4 of the Utah Constitution.

30. The plaintiffs seek and are entitled to equitable relief ending the presence of the Latin crosses on real property of the State of Utah as set forth above.

31. The presence of the Utah Highway Patrol logo on the Latin crosses violates the establishment clause of the First Amendment and Article I, § 4 of the Utah Constitution.

32. The plaintiffs seek and are entitled to equitable relief ending the use of the Utah Highway Patrol logo as set forth above.

33. The plaintiffs seek and are entitled to nominal damages (\$1.00) as a result of the harm suffered based upon the presence of the Latin crosses on real property of the State of Utah and the use of the Utah Highway Patrol logo as set forth above.

Free Expression Violation

34. The defendants have created a forum for religious expression on real property owned by the State of Utah exclusively for the Association to the exclusion of all other persons in Utah. Creation and maintenance of that forum violates the free expression clause of the First Amendment and Article I, § 15 of the Utah Constitution.

35. The plaintiffs seek and are entitled to equitable relief ending the exclusive forum created by the defendants for the Association.

RELIEF

WHEREFORE, plaintiffs are entitled to and seek:

1. An order that the Latin crosses be immediately removed from real property owned by the State of Utah;

2. Declaratory relief that the presence of those crosses violates the constitutional rights of the plaintiffs;

3. An order that the Utah Highway Patrol logo be immediately removed from the religious displays challenged herein;

4. Declaratory relief that the presence of the Utah Highway Patrol logo on those crosses violates the constitutional rights of the plaintiffs;

5. For nominal damages (\$1.00) pursuant to plaintiffs' claims under the United States Constitution; plaintiffs make no claim for damages under their Utah Constitution claims;

6. For an award of attorney fees and court costs under 42 U.S.C. § 1983 and § 1988; and,

7. For such other and further relief as the court deems just and proper in the premises.

Dated this 1st day of DECEMBER 2005.

UTAH LEGAL CLINIC
Attorneys for Plaintiffs

By 

BRIAN M. BARNARD
JAMES L. HARRIS, Jr.

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing COMPLAINT to:

Jim Beadles, AAG
Utah Department of Transportation
4501 South 2700 West
Mail Stop 141200
Salt Lake City, UT 84114-1200

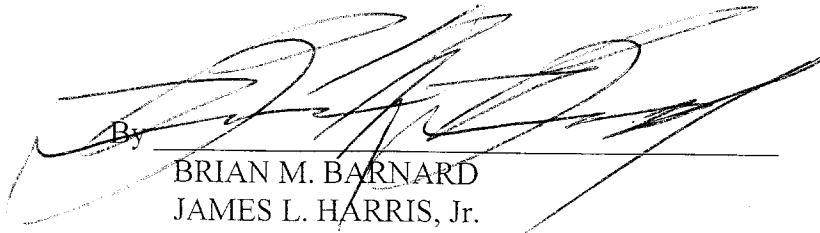
Alan Bachman, AAG
Division of Facilities Construction and Management
Department of Administrative Services
4130 State Office Building
Salt Lake City, Utah 84114

Mark Shurtleff
Utah Attorney General
Utah State Capitol Complex
East Office Bldg, Suite 320
Salt Lake City, Utah 84114-2320

on the 1st day of DECEMBER 2005, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC
Attorneys for Plaintiffs

By



BRIAN M. BARNARD
JAMES L. HARRIS, Jr.

Exhibit “A”

The right-of-way south of I-80 in Parley’s Canyon, Salt Lake County, Utah

Exhibit “B”

The parking lot of the Utah Highway Patrol facilities east of I-15 at 5770 South 360 West, Murray, Salt Lake County, Utah

Exhibit “C”

The northwest corner of junction of Utah Highway 89 and Utah Highway 20 in Garfield County, Utah



Exhibit “A”

The right-of-way south of I-80 in Parley’s Canyon, Salt Lake County, Utah



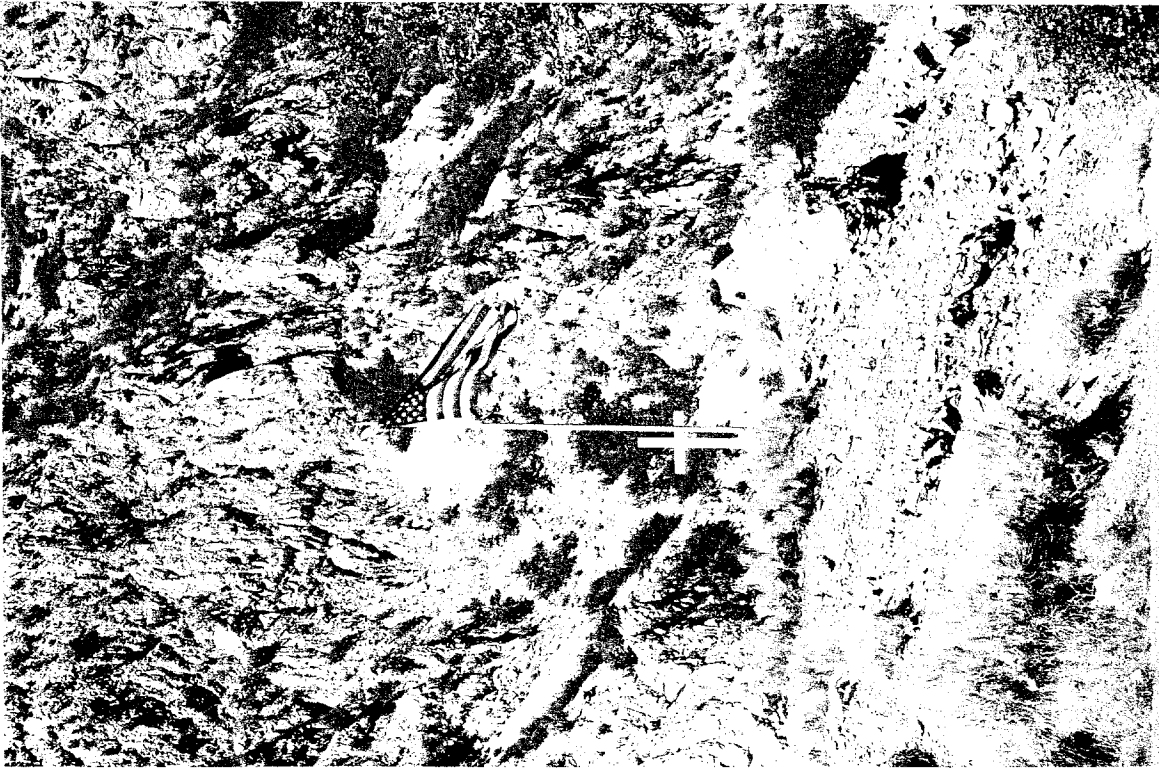
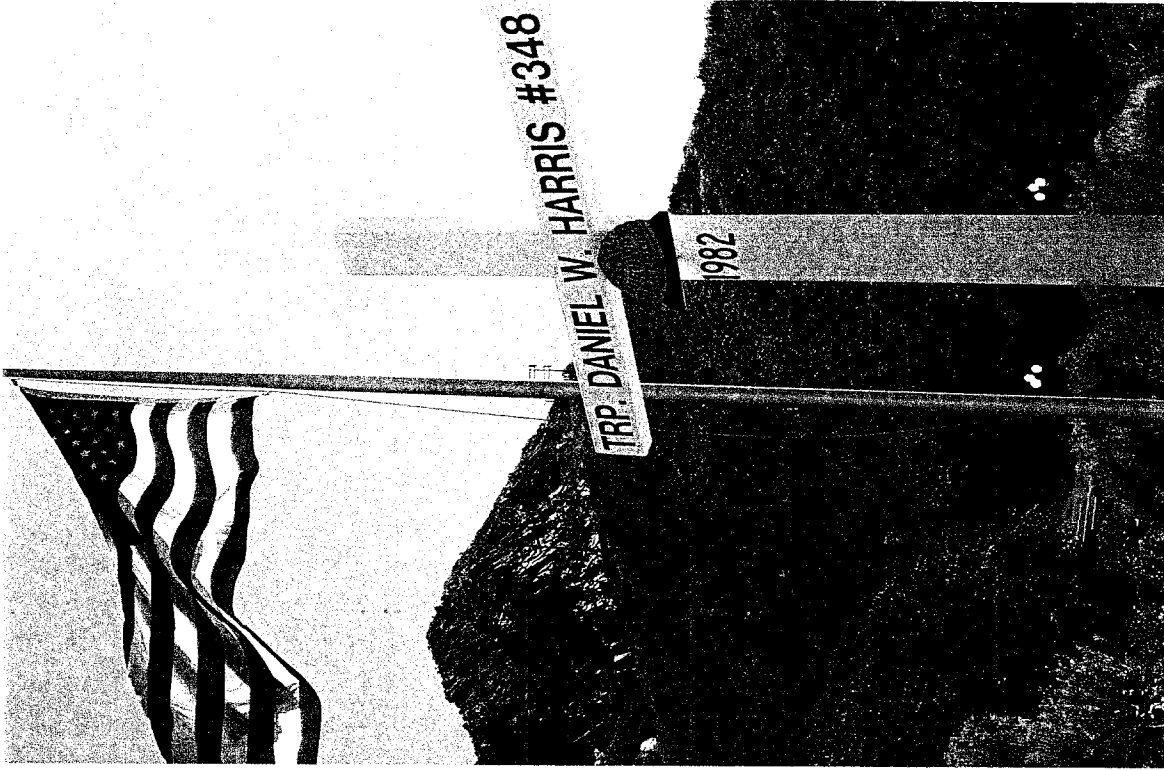


EXHIBIT
"A"

Exhibit “B”

The parking lot of the Utah Highway Patrol facilities east of I-15 at 5770 South 360 West,
Murray, Salt Lake County, Utah



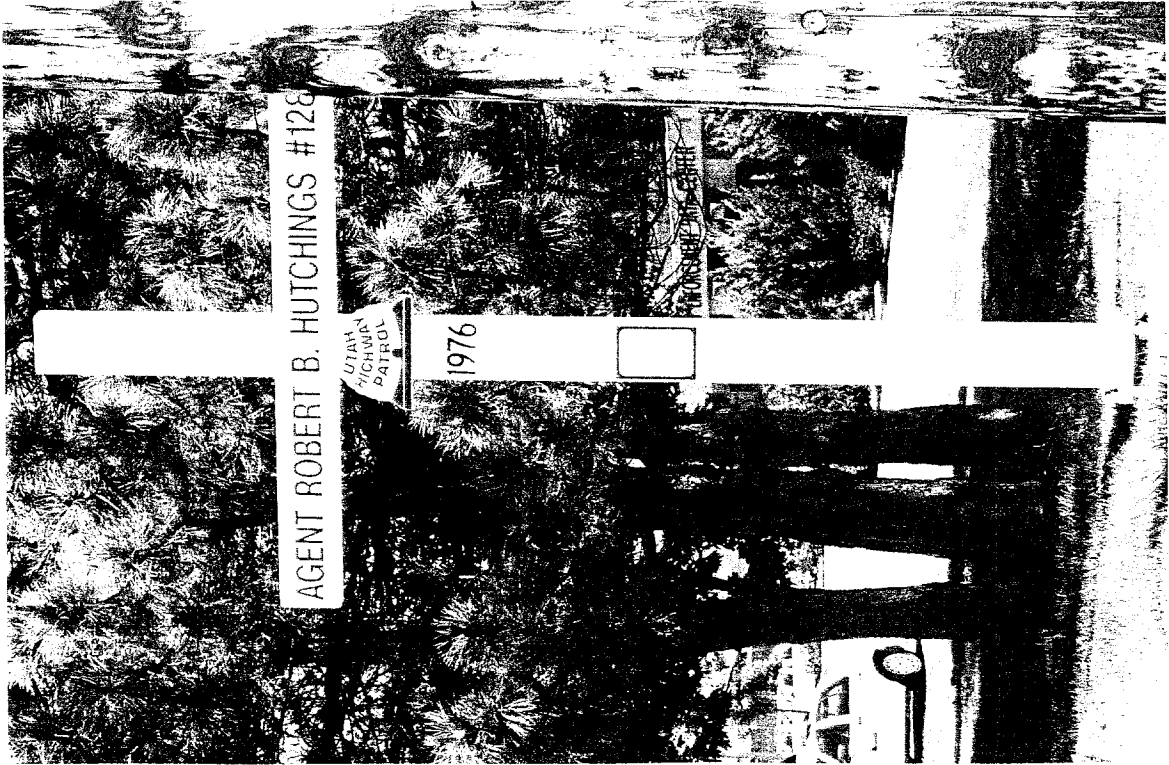
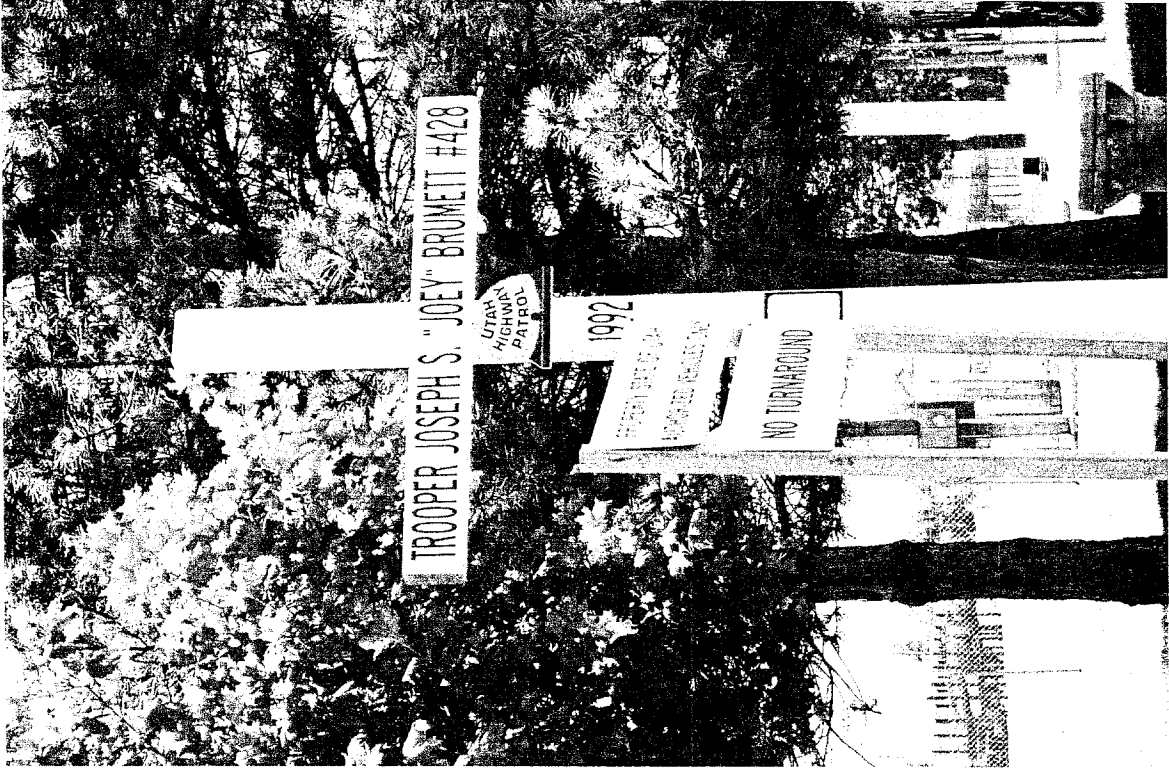
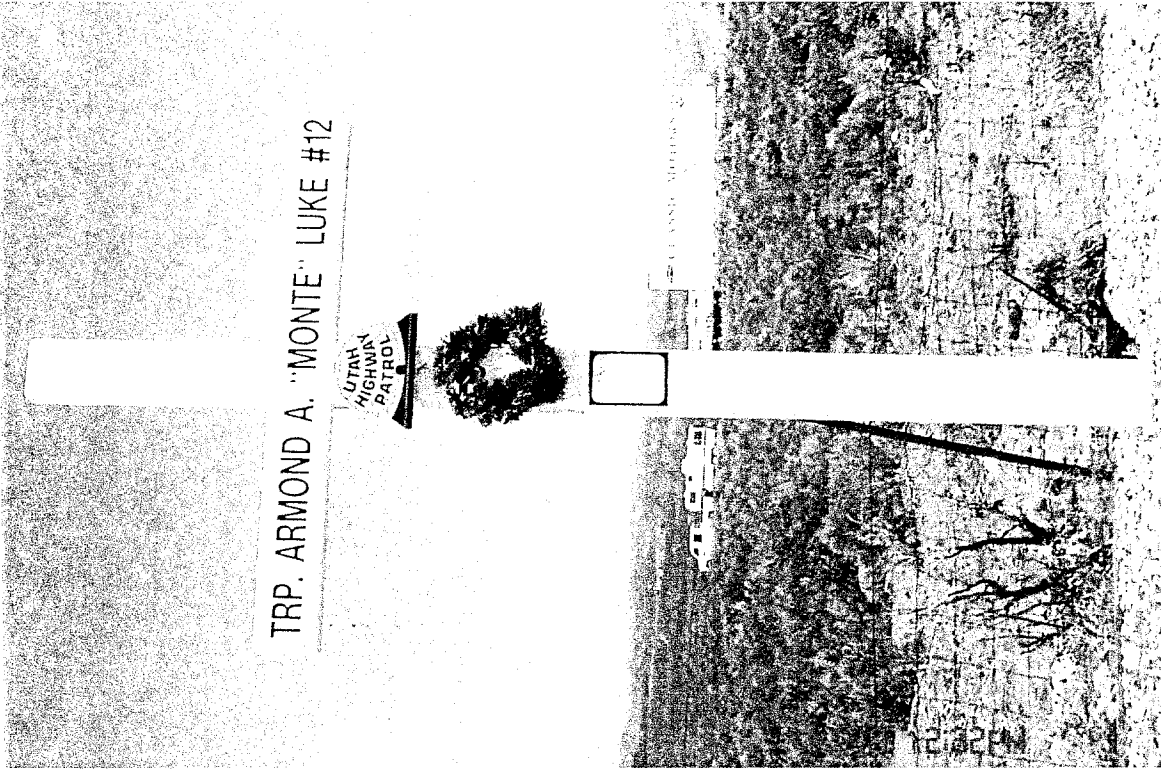


EXHIBIT
"B"

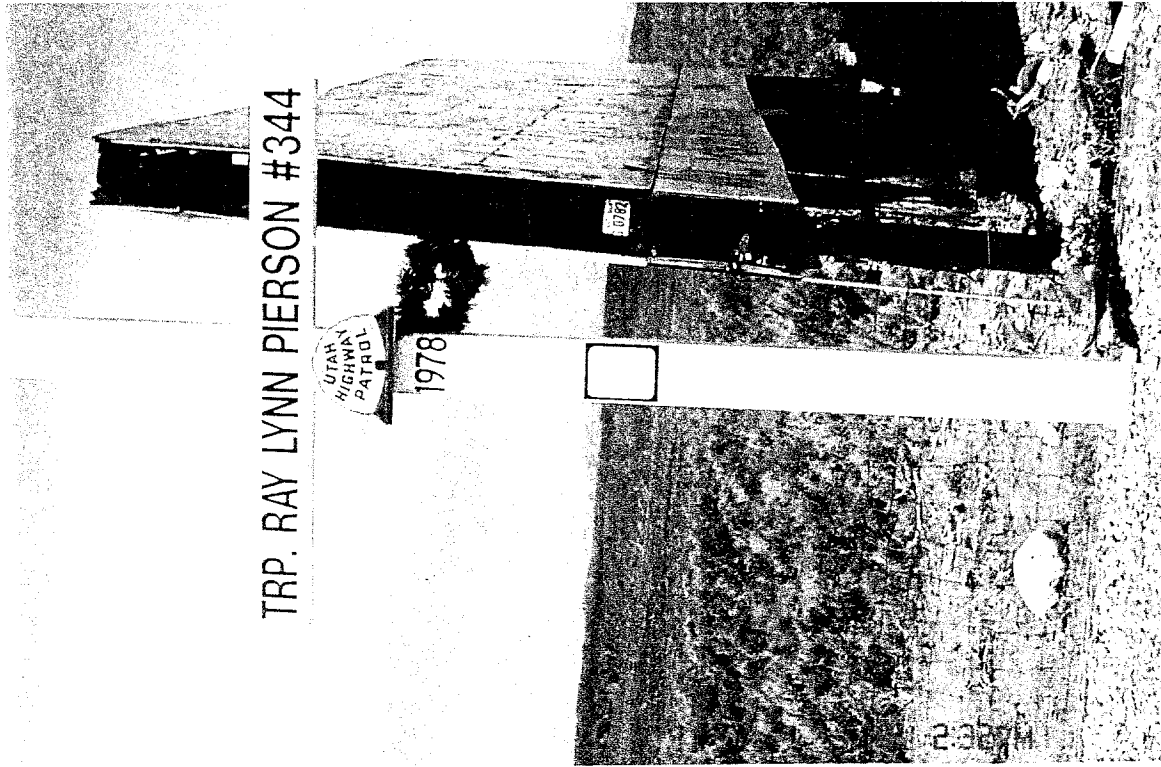
Exhibit “C”

The northwest corner of junction of Utah Highway 89 and Utah Highway 20 in Garfield County, Utah





TRP. ARMOND A. "MONTE" LUKE #12



TRP. RAY LYNN PIERSON #344

EXHIBIT "C"