

REPORT TO  
UTAH STATE LEGISLATURE  
REPORT NUMBER 90-10



A REVIEW  
of  
**INMATE LEGAL SERVICES**

APRIL 1990

Office of  
LEGISLATIVE AUDITOR GENERAL  
State of Utah

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STATE OF UTAH

# Office of the Legislative Auditor General

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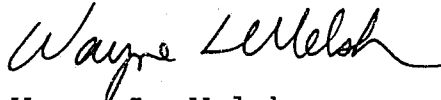
April 17, 1990

TO: THE UTAH STATE LEGISLATURE:

Transmitted herewith is our report, **A Review of Inmate Legal Services** (Report 90-10). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,



Wayne L. Welsh  
Auditor General

WLW:syg

# DIGEST OF A REVIEW OF INMATE LEGAL SERVICES

While some improvements are needed, our audit of inmate legal services at the Utah State Prison shows that inmates are receiving the legal assistance required by law. However, both the department and the principal contractor providing legal services need to make improvements to be more effective in assisting inmates.

The following briefly describes the findings and conclusions of the audit.

**Inmates Receive Help From The Contract Attorneys.** While not all inmate requests for legal assistance fall within the scope of the contract, we found that for those legal issues which did, the contract attorneys usually provided the inmate with the appropriate service. In addition, we determined that the law firm provided assistance with the complaints filed by inmates in Federal Court.

**Problems With The Services Provided.** Although we determined that inmates are receiving legal assistance, there are many ways in which the service can be improved. We found instances in which inmates were not given the proper legal assistance. For example, in some instances the law firm did a poor job of following-up on the inmate's problem; in others the law firm needed to do more for the inmate. In addition, sometimes the contract attorneys failed to visit the inmate within 10 days as required by the legal services contract. Finally, we determined that better contract monitoring as well as more thorough record keeping are needed to help the prison meet its responsibility in fulfilling inmate legal needs.

**Contract Problems And Expectations.** In our opinion, inmate legal services would be improved if certain improper and vague sections of the legal services contract were changed. In addition, one of the reasons inmates are dissatisfied with the legal services they receive may be that they expect more services from the contract attorneys than what the law firm is legally required to provide. By improving the language in the legal services contract and by better explaining to inmates what services are and are not available to them, the department can reduce the current discontent with how legal services are provided to inmates.

**Other Options Are Available But Are Not Necessarily Better.** In order to improve the legal services provided to inmates the Legislature might consider providing inmates with a law library or increase the legal services provided inmates. Although there are a variety of options available for providing inmate legal services, we were not convinced that any other approach than the one currently in use would be more effective or less expensive.

Further information and recommendations for improving the legal services provided to inmates may be found in the body of the report.

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**REPORT TO**  
**U T A H   S T A T E   L E G I S L A T U R E**

**Report No. 90-10**

**A REVIEW**  
**OF**  
**INMATE LEGAL SERVICES**

**April 1990**

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## TABLE OF CONTENTS

	<u>Page</u>
DIGEST . . . . .	i
I. INTRODUCTION . . . . .	1
Audit Scope and Objectives . . . . .	3
II. INMATES RECEIVE HELP FROM THE CONTRACT ATTORNEYS . . . . .	5
III. PROBLEMS WITH THE SERVICES PROVIDED. . . . .	9
Attorneys Sometimes Give Inadequate Service. . . . .	9
Attorneys Not Seeing All Inmates within Time Period. . . . .	11
Sometimes Attorneys Do Not Document Services Given . . . . .	12
Better Contract Monitoring, More Thorough Follow-Needed . . . . .	13
IV. CONTRACT PROBLEMS AND EXPECTATIONS . . . . .	17
Some Contract Provisions Must Be Changed . . . . .	17
Inmates Expect More Services Than What Contract Provides . . . . .	18
V. OTHER OPTIONS ARE AVAILABLE BUT ARE NOT NECESSARILY BETTER . . . . .	21
Other States Use Different Approaches. . . . .	21
Law Libraries Are Not Necessarily Less Expensive . . . . .	23
Law Libraries Have Other Problems. . . . .	24
More Legal Services Could Be Provided. . . . .	24
APENDIX: THE RESULTS OF A SURVEY OF INMATE REQUESTS FOR LEGAL SERVICES. . . . .	29
AGENCY RESPONSE. . . . .	31

# Chapter I

## INTRODUCTION

While some improvements are needed, our audit of inmate legal services at the Utah State Prison shows that inmates are receiving the legal assistance required by law. However, there are problems that must be corrected. We had some concerns with the adequacy of legal services given inmates. We found several examples where the law firm was slow in providing services. We were also concerned about inadequate documentation. Besides the law firm, the Department of Corrections must make sure all inmates are seen for the initial consultation within 10 days and the department should change some contract provisions. Also, the awarding and monitoring of the contract should be performed by an agency outside the Department of Corrections.

The United States Supreme Court has mandated that prisons provide inmates adequate legal services. In the case *Bounds v. Smith*, the Supreme Court stated that prisons have the obligation to assist inmates in gaining "access to the courts." This has been interpreted to mean that prisons must provide inmates with a law library, the services of a contract attorney, or both, to assist them in filing complaints in the courts. In Utah, the obligation to provide acceptable legal services rests with the Department of Corrections.

Utah provides legal services through contract attorneys. The current contracts require the law firms to assist inmates in preparing complaints to file in court and to assist them with other civil matters. The contracts also require the contract attorneys to assist inmates with domestic issues.

We examined in-depth the services provided by the law firm serving the most inmates known as McCullough, Jones, Jensen and Ivins, abbreviated as McCullough/Jones in our report. We reviewed inmate legal files and discussed the services provided with both the inmates and the attorneys. We did not review the services provided by the other law firms because the allegations about the legal services provided inmates were directed toward McCullough/Jones.

From our sample, we found that the highest percent of requests for service, about 30 percent, relates to how well inmates are treated in prison. To assist inmates with these cases, the law firm can prepare court documents contending there is some violation of an inmate's rights based on prison treatment.

The next highest percentage item, about 18 percent, is domestic matters. The law firm assists the inmate in such matters as filing for divorce, responding to paternity suits, and other issues.

To provide these services, the contract attorneys visit the prison weekly to meet with the inmates and discuss their legal concerns. Last year the law firm processed over 1,000 requests for legal services from prison inmates.

Besides McCullough/Jones, the Department of Corrections has contracted with other law firms to provide legal services. One firm provides the legal services for youth inmates and others. Another firm provides services for inmates incarcerated in Iron County.

Providing inmates with legal services is a very difficult job and does not appear to be one which too many law firms want. As noted below, inmates and their advocates are highly critical of legal services. Also, when the contract was bid three years ago, only three law firms bid on it.

The legal services area has been extremely controversial. Inmates and their advocates are concerned about the quality of services. They contend the law firm does not meet with inmates on time, the law firm will not file suits against the prison, and is slow in responding to inmate needs. The Department of Corrections has done very little to investigate these allegations, because staff argue that the attorney/client privilege prevents the department from reviewing individual inmate legal files.

The law firm believes the allegations to be unfair. The firm contends inmates in general do not understand the legal system. When inmates complain the firm is not helping them with filings, for example, it is because the inmate does not understand what is the necessary legal standard a case must meet in order to be filed. Also, the law firm contends inmate advocates have not given the firm a fair chance to explain its side of the story.

Our office was asked to investigate this controversy and recommend improvements. Though taking the steps we suggest will help, we do not believe this area will ever be completely free of complaints. Legal services are so important to inmates that they are generally very critical regardless of how they are provided. One very important step, however, which we believe will help reduce the controversy, is to have an agency outside the Department of Corrections administer the contract. This agency should be charged with awarding the contract as well as monitoring the quality of services given individual inmates. Having an outside agency does not, however, absolve the department of its responsibility to make certain that whatever approach is taken is adequate to meet the inmate's legal needs.

In addition to analyzing the current method of providing legal services, we also reviewed other approaches. We reviewed the option of providing inmates with a law library instead of a contract law



firm and concluded a law library would not necessarily be less expensive or more effective. We found both inmates and staff raise problems with either law firm or law library approach. However, we believe using a contract law firm is probably more desirable if the alternatives are between either a law firm or a library. Inmates should get better legal help by consulting with a trained attorney as opposed to researching legal problems on their own.

### **Audit Scope and Objectives**

This report is our second report of services provided inmates at the Utah State Prison. Our first report, **Inmate Bank Accounts at the Utah State Prison**, Report #90-07, dealt with how inmate funds are managed by the prison. This second report deals with how legal services are provided the inmates.

We are still conducting fieldwork in other areas of prison and correction operations in response to legislative requests. As we complete these areas, we will report to the Legislature.

This audit of legal services was conducted in response to a request from Senator K. S. Cornaby. He has received numerous complaints from inmates and their advocates concerning the legal services provided inmates at the prison.

To address these concerns we interviewed inmates and reviewed their legal files with the contract law firm. We selected a random sample of 174 inmate requests to see the attorneys (see appendix for a complete explanation of our methodology). From these 174 inmate requests, we interviewed 63 inmates who raised 142 legal issues (one inmate can have multiple issues). We then reviewed the inmates' legal files and discussed each issue with the contract attorneys. We identified that 91 of 142 legal issues fell within the scope of the contract.

To assist in our review we contracted with two Salt Lake attorneys--Ralph Mabey and Ronald Rencher--to help us interpret the law and analyze the services provided by McCullough/Jones. These attorneys were recommended by the Utah State Bar as well as by a number of other attorneys in Utah. Our consultants interviewed some inmates with us, reviewed the data we collected from inmate legal files, and analyzed the case law concerning legal services provided inmates. Our review of legal services incorporated the following objectives:

1. Determine if inmates are receiving adequate legal assistance.

2. Review the legal services contract to see if Utah is meeting the Supreme Court requirements and to see if there are areas where changes are needed.
3. Determine if there are alternative methods of providing legal services which would be more effective.

## Chapter II

# INMATES RECEIVE HELP FROM THE CONTRACT ATTORNEYS

Despite a common perception to the contrary, inmates are getting legal help from the contract attorneys. We conducted two tests of inmate legal services which show that inmates are getting assistance. The first test showed that in many instances the contract attorneys provided adequate services. The second test showed that in most cases filed in Federal Court the law firm assisted the inmate with the filing, although they didn't actually represent the inmate (the contract does not require the law firm to represent the inmate in court).

Our first sample shows the contract attorneys are providing requested services. We reviewed a random sample of 63 cases in which the inmate requested legal services from the contract attorneys (see appendix for a complete explanation of our sample methodology). We interviewed each inmate to determine what services he requested as well as the inmate's explanation of services provided. From these discussions, we compiled a list of 142 legal issues raised by inmates. We then reviewed the inmates' legal files and discussed the inmates' cases with the contract attorneys. Based on this review, we identified 91 legal issues for which the law firm was obligated to provide services. Of these 91 issues 28 lacked sufficient documentation for us to determine whether the contract attorneys provided adequate service. Of the remaining 63 issues, we determined that the law firm adequately addressed 45 of the issues and 18 issues were not adequately covered.

As we show in the following sections, there are problems with the services given. For example, there were five cases of poor follow-up, four cases where greater effort was needed, and two cases where there were mistakes in filing. We expect that each inmate should receive adequate service on his request. In addition, we found the attorneys are not seeing about twelve percent of the inmates within the 10-day deadline and are not documenting services given in some instances.

On the other hand, we found several instances where the law firm provided inmates with more services than what is required by the contract. For example, in several cases the law firm prepared a will for the inmate. This service is not required by the contract.

Our second sample of filings in Federal Court showed that in most cases the law firm assisted the inmate in filing his complaint. We randomly selected 74 cases filed in federal court during 1988 and 1989. We eliminated 27 cases from the sample because the case was not initiated by a Utah State Prison Inmate. We copied the documents filed with the court in the remaining 47

cases. Without advance notice, we then reviewed the legal files maintained by McCullough/Jones to determine what assistance is recorded within each case file. The results of our review are recorded below.

FIGURE 1

ACTION TAKEN BY THE LAW FIRM  
(AS PER CASE FILE)

Action Taken	Percent of Cases
Assistance given inmate	73 %
No assistance given inmate	23 %
Inadequate documentation to determine what assistance the contract attorneys provided	4 %

As the table above demonstrates, most inmates received some type of assistance in filing actions in Federal Court from the contract attorneys though we did not assess the adequacy of the service. In the majority of cases where the inmate was given assistance, the law firm either researched or advised the inmate concerning the issues raised by the lawsuit. We found a number of instances where in addition to providing advice, the law firm prepared the documents needed for filing in Federal Court. Also, in those instances where the inmate did not receive formal assistance from the contract attorneys, the inmate may have filed on his own or the inmate may have hired another attorney to file. Based on our analyses of both samples, we conclude that the contract attorneys are assisting inmates with their legal problems.

Several newspaper articles allege that inmates filing in Federal Court were not helped with their legal problems. Because the reporters did not have access to the inmates' legal files they used other methods to determine whether inmates received help. They felt McCullough/Jones assisted the inmate if the complaint were mailed from Orem (the law firm's location), if it were typed and if the correct number of copies were sent. However, McCullough/Jones assisted inmates in many cases that did not fit these criteria. The

only way to determine whether McCullough/Jones actually assisted the inmate would be to go through each inmate's legal file, which reporters could not do.

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## **Chapter III**

# **PROBLEMS WITH THE SERVICES PROVIDED**

Despite the fact that inmates receive adequate legal help, there are still areas of concern. Sometimes contract attorneys give inadequate service. In other instances, attorneys are not seeing inmates on time. Also, some inmates raised serious questions about the conditions of their confinement and we were not convinced after reviewing inmates' legal files, that the law firm had fully explored all options available. Better contract monitoring as well as more thorough follow-up and record keeping by the law firm will help the prison fulfill its obligation to meet all inmate legal needs.

We selected a random sample of 174 inmates submitting a formal request to see the contract attorneys. We first determined the percent of requests in which the contract attorneys interviewed the inmate within the 10-day period required by the contract. We then interviewed 63 of these inmates and compiled a list of 142 legal issues raised by the inmates (one inmate can raise multiple issues). We reviewed the legal files of these 63 inmates and determined in how many of these issues adequate legal services were provided.

### **Attorneys Sometimes Give Inadequate Service**

We found 18 instances where we had concerns about the service given. There could be even more instances. As we point out in another section, there are a significant number of requests for which documentation is inadequate to indicate what services were provided. Some of the cases in which legal assistance was inadequate are illustrated below.

#### **Five Cases of Poor Follow-Up**

In five cases, the contract attorneys did a poor job of following-up. For instance, one inmate wanted to contest parts of a divorce filing. The inmate had to respond to a complaint and wanted McCullough/Jones to help prepare the response. The information given with the summons indicated the inmate had 20 days to respond to the summons and complaint. The inmate wanted McCullough/Jones to review the paperwork, prepare a response and return this information

to the inmate, but it was several weeks past the deadline. Because the complaint was not answered within 20 days, the inmate thought it was too late and decided against contesting the divorce.

McCullough/Jones said it is not absolutely necessary to file the papers within 20 days. Most judges will allow an extension once they understand the inmate is incarcerated. However, whether or not the judge grants an extension is up to each judge. Rather than deciding against contesting the divorce, McCullough/Jones said the inmate should have submitted another request to see the contract attorneys. The law firm would then submit a request for an extension of time.

We believe the law firm should have gotten the materials back soon enough so the inmate could meet the twenty-day requirement or the firm should have sought an extension of time in behalf of the inmate. The inmate is not an experienced attorney, familiar with the fact that the time period can be extended. In this instance, the law firm just sent the inmate the needed documents in the mail without an explanation of his options.

In another instance, the inmate requested copies of legal documents. The inmate claimed he never got the documents back from McCullough/Jones. During our review of the legal files in McCullough/Jones' offices, we found the original documents still in the file.

#### **Four Cases Where Greater Effort Needed**

In one instance, the law firm failed to file court documents. The inmate wanted to petition the court for visitation rights for his children. Our review of the inmate's legal file showed the inmate requested this service as part of other legal assistance. McCullough/Jones prepared the other documents and mailed them to the inmate, but did not prepare the requested petition.

McCullough/Jones said that judges will not force a parent or guardian to bring an inmate's children to the prison to visit the inmate. However, our attorneys believe judges will decide each case on its own merits. In some instances, the judge probably will not force a parent or guardian to bring a child to prison. However, in other cases, where the child has lived with the inmate for years, our attorneys believe judges may view the matter differently and potentially enforce visitation rights.

In another instance, the inmate wanted to challenge his Pre-Sentence Report (information used by the judge in sentencing as well as the Board of Pardons in reviewing parole dates) claiming there were report inaccuracies. The law firm said it was the



inmate's original defense attorney's responsibility to review the Pre-Sentence Reports and correct any inaccuracies. McCullough/Jones said the Pre-Sentence Reports are confidential and so the contract law firm can not access them. Our attorneys believe McCullough/Jones should have determined if the original defense attorney reviewed this matter and then assisted the inmate in correcting the pre-sentence report if needed. Prison personnel said the Pre-Sentence Reports are available to the contract attorneys provided they receive approval from department officials.

### **Two Cases of Mistakes In Filing**

In another instance, the law firm made mistakes in preparing the court documents needed for filing a suit. The inmate wanted to file a lawsuit against the prison concerning an injury. The initial filing contained two mistakes. It was listed as being filed in the wrong court and it contained a petition to set aside the inmate's guilty plea. The judge asked the inmate if he wanted to file to overturn his conviction. The inmate said he did not. The judge told the inmate to submit an amended complaint. The contract attorneys prepared an entirely new complaint which the inmate said was dismissed because it duplicated the other complaint already filed.

### **Attorneys Not Seeing All Inmates within Time Period**

Our sample of 174 inmate requests to see attorneys showed about 12 percent are not being honored within the contracted 10-day period. The current contract requires that all inmates be seen within 10 days of the contract attorneys receiving the request. Being seen within 10 days is important to inmates, as some said they have court filing deadlines to meet. Of the 12 percent not being seen within 10 days, some inmates were not seen for over 20 days.

The Department of Corrections has established a tracking system to determine when an inmate requests service and when he is seen. When an inmate wants to see a contract attorney, the inmate completes a request form which is sent to prison administration. Administration logs all inmate requests to see the law firm. A copy of this log and the request forms are given to the attorneys when they make their weekly prison visit. After the attorneys see an inmate, they complete the request forms and return them to prison administration.

The problem with the system is that department administration does not track whether inmates are seen on time and take action to

correct lateness. Attorneys for the law firm said they see all the inmates they can when they visit the prison. Those they miss they see the following week. The attorneys claim they were unaware the contract required them to see inmates within 10 days. Regardless of whether the attorneys were aware of the 10-day requirement, the department should monitor how soon after the request inmates are seen and then require the law firm to consult within 10 days.

### **Sometimes Attorneys Do Not Document Services Given**

In addition to problems of adequate service and timeliness, there is a problem of documentation. Our review of the 142 legal issues, identified 60 instances where the attorneys did not document what services they provided. These 60 instances included requests that were outside the scope of the contract as well as requests that were within the contract's scope (see appendix). In these cases, sometimes the only documentation in the file is a notation stating that the inmate had been seen. There is no information on the inmate's request, the services provided or the law firm's analysis.

It is important to require the law firm to account for the services they deliver. Not only will better documentation give the firm an important internal control, but without documentation an outside agency can not monitor the services given. Without this documentation there is no assurance inmates are getting adequate services.

Part of the problem is that the state has not said what documentation is needed. The only reference to documentation in the contract is an ammendment that the law firm is to provide documentation in case "timeliness and sufficiency" of legal services is challenged. McCullough/Jones said they used to keep detailed documentation as to what services they provided, but no one from the department ever specified what documentation the firm needed to keep so they discontinued this practice.

We are concerned that inmates may be raising legitimate issues about conditions at the prison which are not being addressed by the law firm. The inmates raised some serious issues which they felt needed to be resolved through assistance from the law firm. Legal services is an important window through which an outside observer can view prison conditions. In our opinion, the window is somewhat clouded because we don't know what the law firm has done to address some serious allegations about prison conditions. We illustrate two areas--assistance in filing suit against the prison and assistance with other civil matters--in which serious issues are being raised and the documentation is lacking to tell what services were provided.

## **No Documentation Showing If Inmates Helped In Prison Suits**

We found 13 cases in which the inmate wanted to file suit against the prison but reviewing the legal file did not convince us the law firm had provided adequate service. Some inmates raised serious issues about their treatment in prison.

For instance, one inmate wanted to sue the prison for allegedly misdiagnosing him as a diabetic. The inmate claimed he has been taking insulin for seven years based on the diagnosis of the prison's medical staff. Last year, he claimed a doctor told him he had never been diabetic. The inmate wanted to sue the prison to recover the money he spent in getting insulin shots as well as to force the prison to allow inmates to get a second medical opinion.

We were not convinced that the law firm adequately assisted this inmate. The inmate's legal file contained a letter to the prison medical director that appeared to relate to this problem. However, we found no information as to this request in the file nor did we find information as to what the law firm's inquiries found or what the law firm had done or intended to do.

In another case, an inmate claimed his life was in danger and he wanted to sue the prison to force prison officials to move him to another location. He had already asked prison officials to move him and his request was denied. The case file contains no record of assistance concerning this matter. The only documentation in the file is a request form marked 'seen'. We believe the attorneys should have reviewed the options available to the inmate and documented them in the legal file.

## **No Documentation In Other Matters**

We found examples where the case file documentation did not convince us that the law firm had provided adequate service relating to other civil matters. For instance, one inmate claimed he wanted to prevent his ex-wife from putting their child up for adoption. There is no record of assistance in the case file other than the request to see the law firm.

### **Better Contract Monitoring, More Thorough Follow-Up Needed**

To help resolve the problems noted above, changes should be made in how legal services are provided. The first change is that an

agency outside the Department of Corrections should be given responsibility for monitoring the quality of legal services. The second is that the Department of Corrections should change some procedures to make certain inmates are seen within the ten day time limit. The final change should be that the contract attorneys make certain they provide adequate services to inmates and document services provided.

### **An Agency Outside Corrections Should Monitor**

To determine whether inmates receive the contracted legal services, an outside agency needs to monitor services given individual inmates. In our opinion, the Department of Corrections is not in a position to effectively monitor the quality of legal services given because of attorney/client privilege. Also, inmates and their advocates would be suspicious if the department were to review the inmate's legal file, because the department could potentially be a party to a lawsuit. There are a number of ways in which an agency outside the Department of Corrections could be used to monitor quality of services, but they may cost the state more money.

The Department of Corrections does not closely monitor the legal services contract because department staff believe the attorney/client privilege prevents them from reviewing individual inmate legal files. Rather than reviewing case files, the department receives monthly reports from the law firm summarizing in general categories what contract attorneys have done during the month. These monthly statements are inadequate because they do not assess the quality of individual legal services provided.

To solve this problem, the contracts with the law firms need to be moved outside the Department of Corrections. Another state has done this: in Oregon another agency within the executive branch of government administers the legal contract. Another alternative is an agency outside government administers the contract. Two other alternatives include an independent citizen panel or a group of university professors.

If an outside agency monitors the quality of legal services given inmates, it may well cost the state more money. There will probably be additional administrative costs for a state or nongovernment entity to monitor services. Requiring the law firm to provide better documentation may also cause their cost of providing services to increase. However, we believe monitoring the contract would help ensure that all inmates receive adequate services.

## **The Department Must Ensure Timeliness**

The department also needs to monitor whether inmates are being seen in a timely manner. The department can implement a procedure to track the time between date of request to date of being seen. If the contract attorney does not see the inmate on time, the department must act to improve the law firm's responsiveness.

## **The Law Firm Must Make Certain Adequate Services Are Provided And Documented**

The law firm must make certain its attorneys are spending the time needed to give adequate services. Once services are given, they must be adequately documented in the inmate's legal file.

In our opinion, one reason the law firm is not giving adequate services in some instances is because of poor communication between the inmate and the attorney. We believe that sometimes the attorneys do not spend the time needed to understand the inmate's legal problem and effectively help him with it. For example, some inmates said when they want to file a lawsuit the firm does not assist them in completing the necessary forms. Some inmates complain that they are illiterate or they do not understand the questions asked on the forms. Attorneys for the law firm said that if an inmate asks for help in completing the forms, they will provide help. The inmate, however, must ask for help on how to complete the form.

In reviewing the forms, we believe most inmates would need some help whether they are illiterate or not. For example, a question asked on one form is "Please set forth in detail your reasons why the individuals named...acted 'under color of State law'". Most laypeople would not understand the meaning of the term "under color of State law" and would need the law firm to assist them in interpreting the question.

Though there are always going to be some problems in communication between inmates and attorneys, interviewing inmates in a private office may help ensure that the contract attorneys spend adequate time understanding the inmate's problem and assisting him. We observed that attorneys often consult in a common area with other inmates and staff around. Often the consultation is interrupted by other inmate requests. If the interviews were conducted in a private office, the attorney would have a better opportunity to understand and help the inmate without interruption.

Once the attorney understands the inmate's problem, the attorney must develop a good tracking system to follow-up on what the inmate

needs and properly document the services delivered. The law firm once used a form which both identified the services requested by the inmate and then tracked the delivery of services. Such a document allows for independent review of the services given inmates.

McCullough/Jones needs to re-institute this method of record keeping. Our consultants recommended that the legal file should contain the inmate's request, notes, legal documents and a memo to the file indicating what was requested and the firm's analysis of the case.

### **Recommendations**

1. We recommend that the administration of the contract for legal services be moved to an agency outside the Department of Corrections. This agency should both award the contract as well as monitor the services being provided to individual inmates.
2. We recommend that the Department of Corrections track the timeliness of when inmates are being seen by the contract law firm and correct any problems with lateness.
3. We recommend that the law firm be required to establish and maintain a tracking system to document the services given in each legal file.

## Chapter IV

# CONTRACT PROBLEMS AND EXPECTATIONS

Besides finding deficiencies in the services provided, we also discovered problems with some contract provisions and with inmate expectations. Changing several contract provisions as well as informing inmates of what they can expect of the contract attorneys will bring the contract into conformity with Supreme Court decisions and will help reduce inmate frustration about legal services.

### Some Contract Provisions Must Be Changed

One provision of the contract is improper and should be revised. Two other provisions are vague and should be changed.

A provision of an amendment to the contract is improper. In *Bounds v. Smith*, 430 U.S. the United States Supreme Court stated:

We hold, therefore, that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate assistance from persons trained in the law.

An ammendment (Section 1 (B) of ammendment 2) to the law firm's contract says:

CONTRACTOR'S services under this contract only shall extend to the drafting of initial pleadings and legal advice appertaining thereto, in civil and criminal matters where no other government entity (federal, state, or local) has a legal obligation to prepare such pleadings or render such advice.

In the event an inmate is not assisted in filing pleadings as well as with their preparation, the inmate may effectively be denied access to the court. Courts have specific rules for filing suits, the violation of which can result in pleadings returned unfiled. Required fees can only be waived with a proper showing of impecuniosity to the court. A filing is only meaningful if the other parties to the action are properly served. Under *Bounds*, these services should be provided through "adequate assistance from persons trained in the law" which in this instance is the contract attorney.

In two other important issues the contract is so vague it causes inmate frustration. The contract says the law firm is to make copies and do legal research for inmates. The contract does not say who will pay for copies or how much research the law firm should do. Some inmates complained that they had to pay the law firm to make copies of legal documents. Some also complained that the firm would not do legal research for them. These inmates said they thought the contract provisions require the law firm to provide inmates with these services and they are frustrated because they are not getting the services.

The practice of the law firm is to provide free copies of filings which are submitted in court and to charge for copies of case law. The law firm also requires that when an inmate requests legal research, the inmate narrow his request to the specific issues at hand.

### **Inmates Expect More Services Than What Contract Provides**

Besides changing some contract provisions, the department must better inform inmates as to what services to expect from the attorneys. Some inmates expect more services from the attorneys than what the contract provides. According to the law firm, when an inmate discusses something outside the contract, the attorney explains that the firm does not provide such assistance; the attorney then offers the inmate alternative ways to get his problem solved. Often, however, the inmate is frustrated and believes the law firm is trying to get out of its obligation.

For example, one inmate complained that the law firm would not help him with his legal problems. The contract attorney, however, said the inmate only wanted to discuss his sex life. The attorney terminated the interview causing the inmate to be upset about the services provided.

Another inmate wanted the law firm to handle a traffic ticket. He said the contract attorney told him to write the judge and explain that he is incarcerated and needs more time to respond. The inmate wanted the attorneys to write the letter and respond to the citation. When the attorney said the contract does not cover this kind of service, the inmate was frustrated and complained to us that the law firm did not help him.

We also learned from interviews that some inmates want the law firm to represent them in court. Again, the contract calls for the law firm to assist the inmate in preparing initial filings in court, but not to represent the inmate in court. According to Utah's



federal magistrate, once the law firm has assisted the inmate in getting access to court, the state's constitutional obligation is over. The magistrate also explained that after reviewing the inmate's filing, he may assign an attorney to represent the inmate in court. We did not review the procedures followed by the state court.

We believe one reason inmates have false expectations about what the law firm will provide is that the prison does not adequately inform the inmate. When the inmate is first incarcerated he views an orientation film and receives an inmate handbook. The film and the handbook primarily explain how the inmate can contact the law firm. Neither the orientation nor the handbook specify what services the law firm will or will not provide.

Before letting the contract for bid next fiscal year, the department should change improper or vague provisions. Then, the department should better inform the inmates on what the attorneys are and are not obligated to do. The department should change the orientation and the inmate handbook to give a better description of legal services available. It may work most effectively if the contract attorneys conducted the orientation. Copies of the contract could also be made available to inmates.

### **Recommendations**

1. We recommend that the Department of Corrections change those contract provisions identified in this report as being improper or unclear.
2. We recommend that the Department of Corrections include in inmate orientation information on what services the contract law firm will provide.

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## Chapter V

# OTHER OPTIONS ARE AVAILABLE BUT ARE NOT NECESSARILY BETTER

Providing legal services through a contract attorney is not the only approach available. There are a variety of ways other states provide legal services. However, we did not find convincing evidence that these other approaches are more effective or less expensive.

We found other states are experimenting with different ways to provide legal services. The Supreme Court did not mandate what method the states must use. Rather, they allowed states the option of trying different ways to provide inmates with necessary legal services. Consequently, we found different methods of providing service among the six states contacted.

Whether Utah should provide more help to inmates is a policy question that the Legislature will have to decide. Currently, relative to what other states spend for legal services, we found that Utah is on the low end. This is because the Director of the Department of Corrections wants the department to provide only those services which are required by the *Bounds v. Smith* court case. If Utah were to go beyond what is required in this case costs would increase. However, our consultants believe there are advantages that should also be considered in any analysis of how much legal services should be given inmates.

If Utah continues to provide inmates with only those services required by *Bounds v. Smith*, using contract attorneys seems to be a good approach. As this section shows, some states use a law library rather than contract attorneys to meet the requirements. If the choice is between contract attorneys and law libraries, using contract attorneys seems better. The attorneys we hired to help us review inmate legal services as well as Utah's federal magistrate, believe that inmates should get better help with their legal problems if trained attorneys help them as opposed to researching legal problems on their own. Trained attorneys have expertise in this area which inmates generally do not have.

### Other States Use Different Approaches

Six western states contacted provide inmates with at least a law library. Some states provide an extensive library system using

interlibrary loan while others provide only a basic law library. Still other states provide both a law library and the services of contract attorneys. The following figure summarizes the options used in six other states.

FIGURE II  
SUMMARY OF LEGAL SERVICES IN WESTERN STATES

State	State Provided Law Library	State Provided Contract Attorney	Number of Libraries	Description	Inmate Clerks	State Employees
Colorado	Yes	Yes	14	1 Main, 13 Branch	Yes	3 Paralegals
Idaho	Yes	No	3	All self-contained	Yes	3 Officers
New Mexico	Yes	No	3	1 Main, 2 Branch	Yes	13 Librarians, 1 Officer
Oregon	Yes	Yes	8	4 Main, 4 Branch	Yes	N/A
Washington	Yes	Yes	7	All self-contained	Yes	7 Librarians
Wyoming	Yes	No *	3	1 Main, 2 Branch	Yes	2 Part-time Librarians
UTAH	No	Yes	N/A	N/A	N/A	N/A

\* Third year law students consult with inmates as part of their senior classwork.

This table highlights several points. First, there are different ways of providing legal services, though all surrounding states provide at least a law library. Colorado, Oregon, and Washington provide both contract attorneys and law libraries. Idaho, New Mexico and Wyoming provide only law libraries. Utah is alone in our sample in providing only contract attorneys.

Second, there are different kinds of library systems in use. New Mexico, for example, has a main library housing the most extensive book collection and then branch libraries containing only basic collections. If an inmate at a branch location wants a book from the main library, he can get it through interlibrary loan. By contrast, Idaho has three libraries, all of which have essentially the same collection of books. In this system interlibrary loan is not used.

Third, there are a variety of ways these libraries can be staffed. Washington has a librarian, a state employee, in each library. The librarian and inmate law clerks assist inmates in finding legal materials. On the other hand, Idaho has a correctional officer within each library and no paid librarian. In Idaho, inmate law clerks assist the inmates in finding the books needed.

### **Law Libraries Are Not Necessarily Less Expensive**

Using a law library in place of contract attorneys is not necessarily less expensive. From the limited cost information collected, we found libraries cost about the same or are more expensive than what Utah pays now for contract attorneys. Also, changing Utah's program to a library system does not appear less expensive than using the contract attorneys.

Four states gave us their cost estimates to provide law libraries. The initial cost for books averaged between \$25,000 and \$75,000 per library depending on the type of library. Costs to update the collections are about \$5,000 to \$15,000 yearly. Costs for staff varied from about \$100,000 to \$400,000 per year. Utah currently pays about \$140,000 for contract attorney services at the main prison. Comparing costs in these states with Utah's costs indicates that Utah spends about as much in some instances and considerably less in others.

If Utah used law libraries in place of contract attorneys, the costs would depend on the library system selected and the staffing. The most expensive option is multiple self-contained libraries (all libraries have the same book collections thus eliminating the need for interlibrary loan). A less expensive option is one main library with two branch libraries. As noted above, books cost about \$75,000 for the main library and about \$25,000 for each branch library. Costs to update the collections run about \$5,000 to \$15,000 per year.

If Utah chose to staff each library with a paralegal/librarian, the estimated yearly costs, again from what other states told us, would be about \$100,000. This figure is for salaries and benefits for three paralegal/librarians.

Comparing just the estimated costs of books and staff with what Utah's contract attorney costs, shows that both would probably cost about the same. Assuming constant yearly costs and assuming what other states pay for libraries is comparable with what Utah would have to pay; after five years the average yearly cost for attorneys is about the same. The Department of Corrections believes they would need five libraries rather than the three we considered

essential. The cost of the initial collections as well as the on-going staffing costs would obviously be much greater if five libraries were provided instead of three. We did not determine possible additional costs in developing a library system such as building remodeling costs.

### **Law Libraries Have Other Problems**

In addition to not necessarily being less expensive, corrections staff in other states said there are security and other problems with law libraries. We also believe, based on the opinions of Utah's federal magistrate and of our own consultant attorneys, that inmates will get better help if they discuss their legal problems with trained attorneys. Our conclusion, of course, is based on the assumption that the law firm adequately fulfills the contract.

One problem with law libraries is "jailhouse lawyers." Staff in Idaho, which does not have contract attorneys or librarians, complained about jailhouse lawyers, inmates who have some knowledge of the law. Because they can help other inmates with legal problems, they often demand payment. Jailhouse lawyers have demanded drugs and other illegal activities which contributes to discipline problems.

Another problem is book destruction and passing contraband. Staff in Wyoming complained that inmates rip pages out of books and pass contraband concealed between book pages.

Finally, staff in other states said that inmates complain about not having enough time in the library as well as having to pay for copies made on the library's copy machine.

### **More Legal Services Could Be Provided**

The Legislature could provide inmates with more services than what the Bounds decision requires. It would cost more, but our consultants see some advantages that should be considered.

There is an advantage to providing inmates with both a law library and contract attorneys as is done elsewhere. Both Washington and Colorado provide both contract attorneys and law libraries. A law library acts like a safety valve. If the inmate is unhappy with the legal advice given, he can do his own research

In addition, the state could allow the contract attorneys to represent the inmate in court and collect attorney fees. The advantage with having the law firm represent the inmate in court and be able to collect attorney fees, is that the law firm has an incentive to provide the best services possible because the law firm will get paid based on how much the firm is able to collect. Currently, there is not this incentive because the law firm will get paid the same amount regardless of the quality of services provided. The state of Washington allows their contract attorneys to do this on a limited basis. This state allows the contract attorneys to collect attorney fees but they must be deducted from contract payments.

### **Recommendation**

We recommend that the Legislature determine if they want to provide inmates with more services than what is covered by the *Bounds v. Smith* decision.

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## **APPENDIX**

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## Appendix

# THE RESULTS OF A SURVEY OF INMATE REQUESTS FOR LEGAL SERVICES

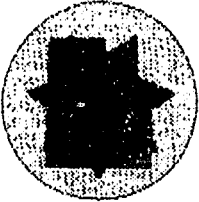
Our survey of the legal services provided to prison inmates came from interviews of 63 inmates at the Utah State Prison. We asked each inmate what legal services he had requested from the contract attorneys. From these interviews we identified 142 legal issues. However, of the 142 issues only 91 fell within the scope of the legal services contract. After reviewing each inmate's legal file we determined that the attorneys had provided the requested service in 45 of the 91 issues, and that there were 18 issues in which the requested service had not been provided. The remaining 28 issues (91-45-18=28) were those in which the documentation was not adequate to clearly determine whether or not the service had been provided.

Results:

<b>TOTAL INMATES INTERVIEWED</b> . . . . .	63
<b>TOTAL ISSUES RAISED BY INMATES.</b> . . . . .	142
a. Total issues within scope of contract . . . . .	91
b. The number of issues for which we could not determine if the service had been provided. . . . .	28
c. Those issues for which we could determine whether or not the attorneys provided the service (a-b). . . . .	63
d. Issues in which the service was provided. . . . .	45
e. Issues for legal services which were not provided by the contract attorneys (c-d). . . . .	18
<b>TOTAL ISSUES RAISED BY INMATES.</b> . . . . .	142
The number of issues for which the attorneys documented service . . . . .	82
The number of issues for which the attorneys did not document service . . . . .	60

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## **AGENCY RESPONSE**



Norman H. Bangert  
Governor  
Gary W. DeLand  
Executive Director

# State of Utah

## DEPARTMENT OF CORRECTIONS

8100 South Fashion Blvd  
Murray, Utah 84107  
(801) 265-5500

April 13, 1990

Mr. Wayne L. Welsh  
Office of the Legislative Fiscal Analyst  
412 State Capitol  
Salt Lake City, UT 84114

Dear Mr. Welsh:

I am in receipt of a draft copy of the Legislative Auditor General's review of the Department's legal services contract with the Orem, Utah law firm of McCollough, Jones, Jensen and Ivans. On the whole, I think that its approach is objective and its conclusions are fair. I do, however, want to make a few clarifying points.

Please be advised that the Department of Corrections intends to meet the constitutionally mandated requirements for providing legal services to inmates. However, the Department will not exceed those requirements, absent specific direction to the contrary by either the legislature (through a change in existing law) or by the governor (through a change in existing policy).

I sincerely hope that the report will not create an impression that the Department has failed to monitor our legal services contract. Please keep in mind that our ability to review the contractor's performance is severely circumscribed by the attorney-client privilege. In order to guarantee that the contractor is adequately performing every aspect of the contract, it would be necessary to gain access to types of information that no ethical attorney could reveal to us. For example, only a careful review of each individual inmate's legal file would show whether or not the contracted law firm had provided quality legal services in a timely fashion. Unfortunately, such an inspection would invariably betray confidential communications between attorney and client, in violation of the Utah State Bar's Rules of Professional Conduct. At the present time, our monitoring techniques go about as far as possible without treading on sensitive legal privileges.

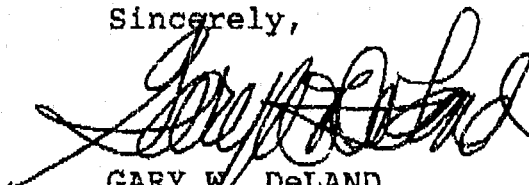
Finally, I have a reservation about the portion of the report that states the Department does not assist prisoners in filing lawsuits. Actually this statement is inaccurate and was probably

Mr. Wayne L. Welsh  
April 13, 1990  
Page 2 of 2

spawned by the mistaken assumption that the Department's legal services contracts contain the totality of our efforts to provide prisoners with access to the courts. In fact, they do not. For example, indigent prisoners are given paper, envelopes, and postage with which they can petition the courts for various forms of judicial relief. Please note that our various legal services contract mention nothing of this practice. Consequently, a look at contracts alone does not create an entirely accurate impression about the scope of our efforts to assist inmates in petitioning the courts for relief.

If I can be of further assistance to you in regard to the subject audit, please feel free to contact me. Thank you for your attention.

Sincerely,



GARY W. DeLAND  
Executive Director

GWD/gcp  
cc: Carrie Hill  
File

**McGULLOUGH, JONES & IVINS**

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April 11, 1990

Mr. Craig Monson  
Audit Supervisor  
412 State Capitol  
Salt Lake City, Utah 84114

Re: Report 90-10, A Review of Inmate Legal Services

Dear Mr. Monson:

I appreciate the opportunity which you have provided to respond to the above reference report.

First, I would like to express appreciation to all of those who have participated in the audit process. I realize that it has been extremely time consuming, frustrating, and difficult for many reasons; including the fact that the area of legal services does not easily lend itself to statistical analysis. I have appreciated the efforts taken to try and understand (even though it has not been perfectly successful on both our parts) the prison environment, the procedures followed, and the law as it applies to inmates. I have particularly appreciated the integrity of the members of the audit committee who regularly showed the ability to set aside preconceived notions and ideas in an attempt to learn the truth.

Second, I would like to indicate that none of the following comments should be considered as attacking the material as it was "seen" by the Audit Committee or Reviewing Attorneys. Rather, these comments are an attempt to clarify the position of our firm on some matters.

Finally, I would like to indicate that it is not the desire of our firm to show that every matter which we handle is handled perfectly. It is a small number of individuals who can with accuracy say that they have never made any mistakes, or that they could not have handled a particular matter in a better way. Services can be rendered by secretaries, clerks, paralegals, and new attorneys as well as more experienced attorneys. It is obvious that the level of training and experience varies greatly and can have a resultant impact on the service rendered.



## Audit Summary

The following is a summary of the Audit's statistical results.

Total Legal Issues Raised	142	100%
Legal Issues Felt by Auditors Not to be Covered by Contract	51	36%
Documented	19	
Not Documented	32	
Legal Issues Felt by Auditors to be Covered by Contract	91	64%
Documented Legal Issues Felt by Auditors to have been properly handled	45	50%
Documented Legal Issues Felt by Auditors to have been improperly handled.	18	20%
Poor Follow Up	5	5%
Filing Mistakes	2	2%
Greater Effort	4	4%
Seen After 10 Days	7	8%
Legal Issues for which no documentation was available	28	30%
Serious Issues Questioned	13	14%
Other Issues Questioned	3	3%
Issues Not Questioned	12	13%

### Legal Issues Felt by Auditors to be Covered by Contract

A brief review of the underlying statistical data will show that there was disagreement between our firm and the Auditors/ Reviewing Attorneys on whether a number of the issues were covered by the contract.

#### 4 Cases Greater Effort Needed

In the first example given (p.10) it is our position that there was no appropriate avenue of relief available. The Courts have directly requested that we carefully pre-screen the cases filed for inmates to avoid burdening the Court with non-meritorious actions. As a result of attempts

to obtain visitation rights for inmates, we learned that the Judges of the 3rd District Court uniformly denied such petitions. As a result, unless unusual facts are present will not file such actions.

In the second example (p.10-11) the issue is (a) beyond the scope of the contract and (b) not available to the firm. If the inmate wishes to challenge his sentencing that is a Criminal Matter to be handled by Trial Counsel. This is also an issue which cannot normally be raised in a Writ because it deals with judicial discretion in sentencing. If the inmate wishes to challenge it before the Board of Pardons he may do that through his appointed Board Attorney. However, since all actions by the Board of Pardons are discretionary, they may not normally be reviewed by the Courts. All of this would have been explained to the Inmate. If he had wished us to contact his Trial Counsel we would have done so. Since a review of the report, we have contacted the Inspector Generals Office and the Prison who have reaffirmed that we cannot obtain copies of this report for inmates due to it's confidentiality.

As to the other two matters I cannot respond because of unavailable data. However, I will readily admit that greater effort could be made from time to time on inmate matters.

### 13 Serious Issues Questioned

Under this heading (p.13) two examples are given. In both, there is no underlying right to the issues complained of.

First, "incorrect medical diagnosis" is not actionable in the Prison setting. We did all that we could for the individual which was to contact the Medical Department and ask them to review his case.

Second, there is no legal right to be housed in a chosen location. If an individual wishes to be moved to "protective custody" he must request that of the Prison. Most inmates will not ask for "protective custody" since it labels him within the prison population and will result in his being placed in a more confining location with less rights than he currently enjoys. Thus he will say he is in danger and needs to be moved, but will not admit to being in sufficient danger to be placed in "protective custody." The Prison is very careful to move any individual who requests "protective custody" since they are liable for any injuries that might result from a failure to move the individual. All of this would have been explained to the inmate.

As to the other eleven matters I cannot respond due to lack of data.

### 3 Other Issues Questioned

In the particular example used (p.13) there is again no legal right to the relief requested. The court will not grant injunctive relief in such a situation, since an adequate remedy at law already exists. In all adoption matters the natural father must be notified and given an opportunity to respond. This would have been explained to the inmate.

In each of the examples presented there is no underlying legal right to the requested assistance, even though there appears to be a moral right to the assistance. This is one of the most difficult issues faced when dealing with a review of the adequacy of inmate services by individuals not experienced in the differences and realities of corrections law. As a result I believe that the statistical results of the Audit are suspect. My suggested changes appear at the end of this letter as a separate page headed: "Adjusted Statistical Results".

### Other Issues

The following issues are areas where the report statistics are probably correct, but may be misleading as to seriousness.

#### Poor Follow Up & Filing Mistakes

These are two errors that we constantly try to eliminate. When you have over 1500 open files at any one time it is easy for a document to be forgotten. And while computers certainly speed the process of document preparation it is easy to merge the wrong pleading paragraphs. While I cannot tell from the data in the report if the numbers are correct, greater effort is often needed in this area. It should be noted, however, that the problems encountered in this area are never "fatal". Errors can always be corrected if brought to the attention of the Attorney responsible.

#### Seen After 10 Days

Without going into great detail, it is the position of the firm that inmates should be seen if possible within 10 days of our receiving an inmate request form. Unfortunately this does not always happen for a number of reasons, including but not limited to: equipment failure, low prison staffing, holidays, illness, conflicting court schedules, prison count, feeding times, and inattentiveness of staff. Our philosophy has been that the ten day limit is a goal to

be met "if possible", but "not at all costs". This has also been our understanding of Correction's wishes on the matter. It should again be noted that this is one of the "Aduquacy of Services" issues that is not "fatal" to an inmates rights.

#### Lack of Documentation

One of the initial matters that became apparent in the statistical analysis of inmate services, was the need for substantive data. Unfortunately, no one ever saw that it would be needed for this purpose and thus was never required in the form now desired. In the past the need for documentation has centered around "reporting" requirements not "adaquacy of performance." This coupled with the need for confidentiality, has resulted in the various forms of Monthly Reports which were deemed adequate by all involved.

Our firm originally kept much more extensive documentation on inmate work than it now does. The reduction occurred for a number of reasons. First, was the increasing volumn and thickness of inmates files resulting in difficulties of handling and storage. Second, the information was never requested or needed. Third, in cases where inmate matters could be resolved simply through consultation (rather than actual paperwork) no need was seen to open a file to document that advice had been given. Since the inmate was seen, some advice (presumably correct) had obviously been given. Fourth, unless direction was given as to the extent of documentation needed, anything short of full and extensive documentation (for which there was no available time or perceived need) would be inadequate. Fifth, was the need to streamline wherever possible to keep costs down. Per inmate costs under the contract have not increased to match overhead or inflationary cost increases. And sixth, a monitoring system that would catch all errors relating to follow up and pleading errors would be more cumbersome, expensive, and inefficient than any other method available. Any problems that arise and are reported through inmate grievances or direct contact with the inmate can be quickly and easily resolved by the Attorney involved. The philosphy being that any problem can be more easily, quickly, and inexpensively resolved by the parties involved.

#### Final Comments

##### Other Considerations

One of the concerns expressed by our Firm during the audit was the limited nature of the audit. As a rebuttal to media attacks it has been excellent. As an audit of the adaquacy of inmate legal services it may be lacking. This is not the fault of the Auditors but of the time and money

available for the task. Due to the nature of the Audit there are no comparables data. For example, a review of the report does not indicate if the statistics are better or worse than other firms rendering inmate services, or for comparable services in the private sector. My experience as both a public defender and a private attorney tells me that inmates at the Utah State Prison probably receive a higher standard of care than most other individuals involved with the legal system.

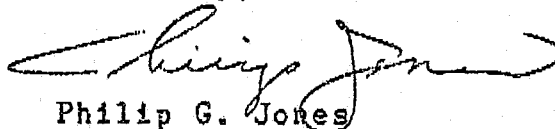
As a firm, we constantly strive to render the best work possible. All of those who work on the Prison Contract are proud of what they have been able to accomplish on behalf of the Inmates, the Courts, and Corrections; and the fact that while we may not be perfect, we have never caused irreparable harm to any of our inmate clients. We have always been happy to offer suggestions and to impliment changes necessary to improve inmate service (e.g. legal mail passing).

#### Report Recommendations

We agree with the suggestions for better tracking of inmate matters, clarification of contract provisions, and better orientation for inmates. There will of course be difficulties to be worked out in implimenting each of these suggestions, but that is to be expected in any attempt to improve the system. While greater documentation is an additional burden on those rendering legal services, we would welcome the requirement and the accompanying review as it will offer great future protection from non-meritorious complaints about legal services. The remaining suggestions will also make the providers job easier, since inmates will know the limits of available legal services.

Thankyou again for your time and consideration. If you need anything futher, please feel free to contact me.

Sincerely,



Philip G. Jones  
Managing Partner

## Adjusted Statistical Results

Total Issues Raised	142	
Documented Issues Not Covered by Contract		
Properly Handled	24	17%
Non-Documented Issues Not Covered by Contract		
Properly Handled	45	32%
Documented Issues Covered by Contract		
Properly Handled	45	32%
Could Have Been Handled Better		
Poor Follow Up	3	2%
Filing Mistakes	2	1%
Greater Effort	1	1%
Seen After 10 Days	7	5%
Non-Documented Issues Covered by Contract		
Properly Handled	12	8%
Could Have Been Handled Better		
Seen After 10 Days	2	1%
Other	1	1%
Total "Properly Handled"	126	88%
Total "Could Have Been Handled Better"	16	12%