

# The Pulitzer Prize

Wisdom and Inspiration · By Simon Townsend · 35 min read

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WARNING! this article is 10 pages long and contains 8,000 words. It is a painful, emotional story that is depressing to read. Several students have complained that I should not make this available as it's so upsetting for young students, inexperienced with life. You have been warned.

## Pulitzer Prize for feature writing

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A Father's Pain, a Judge's Duty, and a Justice Beyond Their Reach

### By BARRY SIEGEL, Times Staff Writer

SILVER SUMMIT, Utah -- He sat in his chambers, unprepared for this. "Just giving you a heads up," his court administrator was saying. "Paul Wayment hasn't reported in yet. They can't find him." Judge Robert Hilder felt uneasy. Wayment was supposed to start his jail sentence this morning.

The 52-year-old judge walked slowly to his Summit County district courtroom. The trial underway passed as a blur. More than once, clerks pulled him off the bench to give him updates on Wayment. Each time, in his chambers, he stared out windows at the jail, hoping to see Paul drive up. At the lunch break, he went into Park City to eat, alone with his thoughts.

He'd sentenced Wayment to jail even though the prosecutor didn't want this distraught father to serve time. Hilder felt he had to. Wayment's negligence caused his young son's death. There must be consequences, the judge ruled.

Now there were--more than he had intended.

On his way back from lunch, Hilder punched off the car radio, wanting to avoid the news. As always, his 6-year-old son's drawings and broken Lego toys covered the floor of his Ford Taurus. At the courthouse, he walked down a hallway that took him past the administrator's glass-walled office. She rose and waved him in. Concern, he saw, strained her face. He approached her door, bracing himself.

Had he driven Wayment to suicide? Hilder believed it possible. Just as he believed it possible that he'd caused his own father's suicide, 20 years before.

Although it includes the Park City ski resorts, Summit County is less the province of people than of rolling pastures and mountain forests. Only about 25,000 live in 1,849 square miles. Only one judge--Hilder--hears criminal cases. Three lawyers comprise the county attorney's criminal division. Two private lawyers on a part-time retainer fill the public defender's role. When they heard of Gage Wayment's death, all of them knew it would come to them. They knew they'd soon have to make their own choices.

The first choice, though, had been Paul Wayment's.

There he stood last year on a radiant October morning, high in a remote forest. Before him spread the wild green abundance of Chalk Creek Basin, a rugged 8,000-foot-high hunting ground where deer and elk and moose wander through dense stands of golden quaking aspens. Behind him, strapped in a car seat in his red Dodge pickup, sat his son Gage, his inseparable buddy, his most precious gift, his future hunting partner.

Paul Wayment felt more comfortable in these mountains than anywhere. At 38, he was an uncomplicated man, raised in small Utah towns, instructed in the Mormon faith, captivated by both hunting and the wilderness. When he worked, which wasn't always, it was in construction or on an assembly line. He found the inside of homes stifling. The same with any kind of social gathering, unless they held it outdoors, made it a picnic. He was fine with silence. He could sit for hours high on a ridge, watching the deer, studying the sky, searching for bald eagles. The mountains gave him solace and sanctuary, the mountains made him whole.

So did Gage. There had been a brief, troubled marriage, then a divorce. Now, for the time being, Paul had full custody. Gage was big for his age, a rambunctious 33-pound ball of energy who looked closer to 4. Father and son did everything together. Camping and boating as often as they could. Playing ball in the backyard, fixing things around the house, planting their vegetable garden. They'd roll around their neighborhood, Paul pulling Gage in a wagon, giving away their extra produce. They'd hike down to a vacant field, Gage on Paul's shoulders, to see the cows and geese. They looked so happy, joined at the heart. You never saw one without the other. Gage's gregarious manner made Paul more outgoing. Mr. Mom, the neighbors called him. On days when she felt in need of a lift, one neighbor would sit on her porch just to watch them, just so she could smile inside.

Bringing his young son into the wilderness made sense to Wayment. There he could join together the two things he loved most. Yet on this morning, he had to choose between them.

Before him stood three deer, two does and a buck.

Behind him Gage slept in the pickup.

The deer began to move off, gliding into the forest. Wayment counted five of them now. He'd come to scout deer, preparation for a weekend hunting trip.

He turned toward Gage, then back to the deer. All around him, the quaking aspens seemed alive in the breeze, humming a faint prayer. "In one brief monumental moment," he would later say of this instant, "I made the biggest and most painful mistake of my life."

He took a step. He began to follow the deer.

He had left Gage asleep out here once before, but that time he'd strayed only 75 yards from the pickup. Now he was well beyond 75 yards, well beyond sight of Gage.

The deer disappeared over a ridge. Wayment crept after them. Minutes passed--just how many remains uncertain. Wayment walked a mile, maybe two.

While he walked, two hunters drove by his pickup. They saw Gage alone in his car seat, awake and watching them. What they saw bothered them, but they thought the dad must be nearby. They also feared being taken for kidnappers. So they drove on, deciding there was nothing they could do.

In the forest, Wayment began to have a bad feeling. He turned and hurried back to the pickup. Even from afar, he could see he was too late. The driver's side door was wide open. The car seat was empty. Gage had gotten out, Gage had wandered off.

Wayment plunged into a nearby pond, fighting a rising panic. Gage loved the water. That's where he'd go. For sure he's in the pond.

He wasn't, though. The pond was muddy, waist deep. Wayment thrashed about, reaching out, feeling nothing. He clambered out of the water. He raced up and down ridges, shouting Gage's name. He jumped into his pickup, roaring off in search of help. My son is missing, he gasped to the hunters he found. My son is gone.

Rather than duck responsibility, Wayment drowned in it. The first deputy sheriff to arrive found him writhing on the ground, crying and vomiting, his face caked with snot and pond mud. "Just shoot me," Wayment urged when the deputy asked what he could do for him. And minutes later: "I should have never left him in the truck. That is the stupidest thing I've ever done in my life, and I should be skinned and shot for that."

They kept someone by Wayment's side that evening, fearing what he'd do if left alone. Past midnight, a storm blew in as search crews gathered on the mountainside. Temperatures plummeted; the rain turned to sleet, then snow. At 3 a.m. Wayment sat in a search-and-rescue commander's Ford Explorer with two sheriff's detectives. He was calmer now, but no less aware.

"I'm responsible for his death if he is dead," Wayment said. "I'm responsible for his death. I don't think you can put it any other way. . . . I had custody of him. I was supposed to look out for him. He was under my care."

## **Whispers and Suspicions**

Impatient with the sound bite approach to journalism, Judge Hilder avoids television. For his news he reads the major newspapers on the Internet and listens to National Public Radio. Yet he could not help hearing about the missing boy on the mountain. At the Summit County Justice Center, 30 miles east of Salt Lake City, people he saw every day quickly became part of the organized search. The Wayments were a major topic of conversation.

Hilder's first response was as a parent, not a judge. In his second marriage now, he is father to six sons and one daughter, including two stepsons, the youngest 6 years old. Of the missing little boy, he thought, what a tragedy. He believed Gage had the slimmest of chances.

Then Hilder began to hear hints that this might be something other than an awful accident. In time, the hints became no easier to avoid than news of the search itself. After all, there was Wayment's ex-wife, Brenda, telling detectives and TV cameras that she believed Paul had hidden Gage in order to deny her custody.

As the search widened and more hours slipped by and the snow fell heavier, not just Brenda voiced suspicions. There were whispers about the Wayment family's "marital problems." There was talk of protective orders and a thick Division of Child and Family Services file. Those who hadn't seen Paul in the early hours wondered why he now appeared so stoic, so lacking in remorse. Some wondered why, with dogs and horses and computers and helicopters, they still couldn't find Gage. Many searchers came to believe that Gage was not in the forest at all. Many thought Paul Wayment guilty of foul play or deception.

When darkness fell Sunday night, four days after Gage disappeared, officials called off their search. Sheriff's deputies invited Wayment to their headquarters for a polygraph exam and what they promised would be "a lengthy and detailed interview." The lead detective believed they needed to investigate the "ever-growing possibility that Gage had been abducted or hidden by his father."

## **From the Bench, the Human Stories**

It's an honest world when you're running, Robert Hilder believes. He can think clearly. So he jogs often, sometimes five or six miles a morning.

The Wayment affair now sometimes crept into his thoughts as he ran, but he made no conclusions. He couldn't, for he had to keep this matter at arm's length. He had to prepare himself to judge its meaning. What manner of story might he hear this time in his courtroom? If he felt some unease, he also felt anticipation. It was human stories like this that first drew him to the bench.

Hilder had always wanted to be a judge more than a practicing attorney. He was not at core committed to the adversary system, to the role of lawyer as advocate. He was much more interested in the narratives and issues heard in a courtroom. He liked to try to resolve them. He thought he was good at resolving them.

Sentencing, on the other hand, he found hard. There was always that horrible moment, after he heard the tremendous advocacy, the arguments, the pleas. Suddenly there was silence--and he had to decide. That was hell. That also was what he'd signed up for.

He didn't have a typical judge's background. For one thing, he'd never finished high school. He grew up in Australia, one of four siblings. His alcoholic father was abusive with his mother. By the time Hilder was 14 and more than 6 feet tall, he was intervening, getting his dad in headlocks. By 15, he'd left home.

For years, he found jobs where he could. He apprenticed on a farm. He labored over pipelines in underground tunnels. He worked as a bartender and bouncer by night, a bank clerk by day. He was making his way, but at the age of 24, he thought his life empty. He had few friends and little social life beyond the bars where he drank.

Then, as he sat in his apartment one night, reading a book on Lenin and Stalin--one of many history volumes in his self-improvement program--there came a knock on the door. A reformed drinking buddy had sent two Mormon missionaries his way. At first Hilder listened only out of curiosity. The curiosity soon turned to interest. He admired these young men's commitment and aestheticism, but what he embraced most was the sense of family they offered. They made him feel part of something.

Within two weeks, he'd joined the Church of Jesus Christ of Latter-day Saints; within six months, he was a Bible teacher and Sunday school president. He felt so needed. Asked if he wanted to do missionary work, he readily agreed, setting off on a two-year tour of southern Australia.

There he grew close to the mission president, a lawyer from Salt Lake City. Hilder thought him an excellent role model. Far more so than his own father. When Hilder returned to Sydney from his mission, he found his dad in a halfway house, recently released from jail. He was 60 and looked pathetic. Once a successful wool and sheepskin broker, he was living a drunken transient's life that took him to dry-out cells and psychiatric wards. Hilder had visited him as often as he could in these places. Yet it seemed as if his father wanted more from him--a rescue. He wrote Hilder letters, saying we need to make plans. I'm feeling stronger, he reported, as if to show he could be like his son. I'm reading the Book of Mormon, I'm meeting missionaries.

Hilder had hated his father for a time but had never deserted him. Now he could not think of a way to help him, for he'd met a woman on his Mormon mission, and they planned to move to the United States. Two weeks before he was to leave, Hilder got the call on a cold May morning: His father had hanged himself. This, Hilder believed, was his dad's response to hopelessness, to the prospect of his son leaving. At the funeral, an elderly aunt mentioned that his father had left a letter for him. Hilder never asked for it, never saw it. He was starting a new life. He just didn't want to know.

A month later in Utah's Mormon Temple, he married the woman from his mission. Ten months later came their first son. Hilder was 28, with a 10th-grade education. For a while, he made a living at day labor, then found a job as bookkeeper for a demolition company.

Desperate to do better, he took a high school equivalency test and then journalism training Scholastic Aptitude Test, scoring in the 99th percentile on both, a feat he credits to a lifetime of voracious reading. In January 1979, he was accepted at the University of Utah, from which he graduated 2 1/2 years later, a political science major with a nearly straight-A average. By the time he enrolled in the university's law school, he had three children. He earned his law degree at 35. Within 11 years, he was a Mormon bishop and managing partner at a Salt Lake City law firm.

That's when Utah's governor appointed Hilder, a Democrat in a very Republican state, to the bench. Eventually, he began sitting in Summit County, commuting from his Salt Lake City home. Over the last six years, he has earned the trust and warm regard of prosecutors and defense attorneys alike. Their testimonials on his behalf focus as much on his humanity as his legal acuity. They say there "probably is no more decent person in the legal profession than Judge Hilder." They call him "one of the kindest, most compassionate, gentlest people to sit on the bench." They think no jurist is "more prepared, fair and understanding than Judge Hilder."

That's not to say he's a pushover. He is seen as more complex than that. In one well-publicized case, Hilder sent a child molester to prison against all recommendations. Yet in another case, he spared a teenage boy who'd somehow accelerated his car into a crowd, killing two people. Hilder knew he should lock him up, but what he saw before him was a sweet kid he just couldn't send to jail.

Four days had passed now since Gage Wayment went missing. In Hilder's home, the news managed to filter through, as did images of Gage, for a house guest sometimes watched television. When would they find the body? When would this be Hilder's story to hear?

## **Rising Suspicions as the Search Goes On**

The Utah Division of Child and Family Services did its best to quell the rising suspicions about Paul Wayment. For more than a decade, their own attention had been focused not on him but his ex-wife, Brenda, who had five children and two husbands before Paul, one husband after, and a 10-year history of domestic troubles. The agency director made this as plain as he could when he publicly confirmed that they'd intervened with the Wayment family, but only due to Brenda's alleged behavior.

"We've had no allegations against him for any type of mistreatment," Ken Patterson told reporters. It was Brenda, he said, who had been referred to the agency in the mid-1990s; it was from Brenda that all six children, including Gage, had been taken. In June, the court, pending a final hearing, had awarded Wayment sole custody of Gage. Subsequent visits by social workers to his home had been "uneventful."

The suspicions would not subside, however. Paul's sister Valerie Burke became convinced that authorities were dropping their search because they believed Paul had killed or hidden Gage. So even before the county withdrew Sunday evening, she made a public plea for volunteers to take their place.

By mid-morning Monday, about 150 citizens from across the state were swarming the snow-covered mountains above Coalville. Among them was James Wilkes, 35, the husky proprietor of a self-service pet wash shop in a Salt Lake City suburb.

He brought with him his dog Dino, a giant schnauzer. At the base camp, he met a shy muscular man who seemed consumed by pain. Paul Wayment introduced himself, tears welling in his eyes. He could not look at Wilkes. Instead, he offered a sandwich. Wilkes shared it with his dog as he sat in his pickup trying to warm up by the truck's heater. Then he climbed out and plunged into the forest.

It had started to snow, a foot deep in places. Wilkes lost the trail and his bearings. He slid into a gully. It began snowing harder. He couldn't tell north from south. Guessing, he started up a mountain. He stumbled. On his hands and knees, he crawled. Darkness fell. In time, he and Dino settled under a large sheltering pine tree. There he dug a hole, 2 feet by 4, and climbed in, his body wrapped around his dog. They each kept the other warm, the two covered by a blanket of broken branches.

It was the longest night Wilkes ever spent. He feared falling asleep, afraid he'd never wake up. Near 5 a.m., he rose and began to walk. Within minutes, Dino's nose went down. The schnauzer darted up a slope to the base of a pine tree. From below, Wilkes could see his dog licking a mound of snow. Then, as he approached, he saw two little feet.

By the time Wilkes reached the tree, Dino had cleaned off Gage's face. Six inches of snow covered the small body. Gage lay in a fetal position, his hands clenched, his eyes wide open. His pajama legs were up to knees; his feet had worn through his thin booties. His throat was blue. In his eyes were frozen tears.

#### A Decision on the Charges

To those who wonder why he takes on the daunting role of judging others, Robert Hilder says: "What am I going to do? Not do this job and instead let someone get up there and decide instead of me? Someone who sees it all in black and white? Some come in so sure. They don't see the complexity. I'm 52. What worries me is people who can't see the complexity."

Watching the Wayment case unfold from afar, it was hard now for anyone to ignore the complexity. They had a body. They also had new suspicions. Some were asking how James Wilkes could have located Gage when hundreds of others had failed. Some wondered whether a conspiracy might be the explanation--a conspiracy between him and Paul Wayment.

Yet it still wasn't Hilder's turn. Maybe it never would be. The immediate issue--perhaps the toughest of all--was what, if anything, to charge.

That decision rested with Summit County Atty. Robert Adkins. Like Hilder, his first response to news of a missing boy was as a parent. He knew the rugged terrain up there--he was a former hunter--and that gave him concern. Then he saw Brenda on TV, accusing Paul of hiding Gage. He hoped she was right; better that than a lost boy.

Adkins could feel Paul Wayment's anguish clear to his bones. In 1989, he'd lost his own 8-year-old son in an accident. The boy had been playing with his cousins across the street at his grandmother's house. Someone activated the automatic garage door, which lacked an auto-reverse. The door pinned Adkins' son, obstructing his breathing. He died 21 days later. Adkins, who'd been at work, at his desk, never forgave himself. Something had told him, go home. But he'd thought, I'll just finish up.

Now they had Gage Wayment's body.

Adkins knew that those investigating Wayment didn't believe he should be charged with a crime. The deputies and detectives had spent more time with him than anyone. They had also met with the family services staff, whose account convinced them that domestic abuse accusations against Wayment could not be substantiated. Brenda had twice sought protective orders against him, but the judge had dismissed one, and Brenda herself eventually moved to dismiss the other. To a man, the detectives felt Wayment had already suffered enough. To a man, they felt Wayment would already be punished for the rest of his life.

When Adkins received the sheriff's report, he tried to focus on the facts, not the mounting public furor. Wayment drove into the wilderness with Gage dressed lightly in pajamas. He left Gage in a rugged, isolated area, with the pickup parked on a slant, which meant the car door could easily swing open, pulled by gravity. He was gone some unknowable length of time, anywhere from 30 to 90 minutes.

Certainly, it was not OK to do what Wayment did. Still, this was clearly a good man who had made a horrible mistake. He was a straight arrow, in fact, who didn't drink or use drugs. But for a stint in the Army, he'd lived at his mom's home until he met Brenda at age 34. He had no criminal history. Despite the headlines and whispers, Gage's death involved no conspiracies.

To forgive and empathize, or condemn and punish?

Adkins had never forgiven himself for failing to protect his own son. Now he had a chance to forgive another father. That was his inclination. Yet there were two other prosecutors in his office's criminal division, and they were of different minds.

For days, the three debated around a conference table. At times, voices rose. Adkins was most inclined toward leniency, David Brickey and Mary-Kathleen Wolsey toward exacting a severe punishment. Unable to sway his colleagues, wishing to give them their due, Adkins sought the advice of two consultants, who themselves couldn't agree.

In the end, Adkins had to make the call himself. Adkins struggled, wavered--and finally decided they must charge Wayment with something. If they didn't, they'd be saying it was OK, or at least not criminal, to leave children alone in a remote area.

Adkins didn't really want to punish Wayment, though. He chose one of the mildest recommendations, negligent homicide, a misdemeanor. He also decided he would not seek a jail sentence. He just couldn't argue for incarceration. Not in this situation, not where the man's son had died.

Robert Hilder learned of the prosecutor's choice when a detective appeared in his chambers one morning with a document that described the "probable cause" for charging Wayment. Hilder glanced at the pages as the detective stood before him formally swearing to their truth. The judge kept his face blank, not saying or showing anything. What he saw distressed him, though.

It would have been so much easier if they hadn't charged Paul Wayment. They didn't have to. By filing, the prosecutors had handed their quandary to the judge.

There would be no right answer in this matter, he believed. In no way could he make a good decision when this came down. Sentencing would be the hardest. In fact, if Paul Wayment wasn't acquitted, sentencing would be impossible.

#### A Plea That Reflects the Defendant

Judge Hilder first saw Paul Wayment face to face at his arraignment on Jan. 9. At 6 feet, 2 inches and 205 pounds, Wayment was big and muscular, with strawberry blond hair and bulging shoulders. Although he showed no emotion, the judge knew his pain and shame must be unbearable. He thought Wayment a decent, stoic man.

Yet there Paul stood, not just being stoic but pleading not guilty. A guilty plea would not have surprised Hilder, given that Wayment had openly accepted responsibility. Instead, it looked as if his public defenders were digging in for a vigorous fight.

Hilder thought he understood. This didn't necessarily mean Wayment wasn't accepting responsibility. This meant he was deferring to counsel. The defense lawyers, in turn, were just doing their job.

As it happened, Hilder was only partly right. Paul Wayment's plea that day reflected something more complex than his attorney's natural reflexes. The plea reflected Wayment's own attitude.

From the beginning, Paul and his sister Valerie had talked of the consequences he faced. He felt he had to go to jail. He said it over and over. "I know I'm going to jail." It was almost as if he were willing it, Valerie thought, as if he wanted to pay a price.

Yet Wayment recoiled when the prosecutors finally did file charges. They were calling what he'd done "criminal" negligence. Negligence he readily admitted, but he had a hard time with criminal. He felt they were saying he intentionally killed Gage. So he was adamant that he wouldn't plead guilty. Valerie sensed that it was somehow important for Paul's sanity that he not see himself as a criminal.

He was already tormented enough. There were terrible nightmares now, Paul waking up in a panic, reliving Gage's loss. He'd go out to his pickup in the middle of the night, trying to figure how Gage opened the car. He'd sit in the cab, locking and unlocking the door, asking, "How could he get out?"

He'd regularly go up to the mountain, driving as far as he could in the winter snow, trying to reach where he'd lost Gage. Once he enlisted the help of James Wilkes, who'd served as honored pallbearer at Gage's funeral. They rented snowmobiles and plunged deep into the frozen wilderness but had to turn back when one of the vehicles caught fire.

Paul wrote a letter to Gage: So strong so sweet an angel, a warrior, my dreams with you had only begun. If I could only be with you again. To hold you again . . . to kiss your tiny face. . . . Oh how I love you. . . . You were my most precious gift, heaven sent. . . .

Valerie and Paul talked openly in these days about suicide. She'd ask whether he thought about hurting himself. He would always reassure her. He couldn't do that, he pointed out, because then he'd never see Gage. Since he died so young, Gage went to the highest level of the Mormon heavenly kingdom. If Paul killed himself, he'd never get to that level, never rejoin his son. "So don't worry," he told Valerie. "I won't kill myself. This is my test. I have to live through this."

His test only intensified in the days after his arraignment. The public debate about Wayment expanded steadily, consuming much of Utah. There he was in newspaper articles and on TV news broadcasts, a magnifying glass put to his past domestic troubles, to his spotty employment record, to his love for hunting. People wrote letters to the editor, called radio talk shows, sent Internet messages, rendered verdicts on Web site polls. Those opposed to guns and hunting were heard from, and those horrified or victimized by child abuse. It was as parents, particularly, that so many spoke out--parents who could imagine themselves in Wayment's place and parents who could not. There were those who shuddered, thinking of their own past lapses. There were many more who thundered, unable to accept Wayment's failing.

Wayment cringed at the attention. He withdrew ever deeper into his stoicism. He hesitated to leave his house. He phoned his sister Valerie, in a monotone asking what was in the newspapers that day. One morning, it was Brenda's sister, publicly accusing him once again of domestic violence. He couldn't bear that. Nor could he bear being called a killer.

"Why do they hate me?" he asked Valerie.

In an e-mail to a friend, she wrote: "I'm wondering if it will stop once he kills himself."

## Legal Maneuvering Takes Its Toll

The fevered public discourse about Paul Wayment reached even into Judge Hilder's bedroom. Because his daughter had changed the station on his alarm clock radio, there were two mornings when he awoke to talk show conversations. In both, he heard rabid voices declaring that the death penalty was not a sufficient punishment for this man.

Then, in late March, came an evidentiary hearing. Again a stoic Paul Wayment stood before Robert Hilder, saying little, visibly uncomfortable in a coat and tie. Three detectives took the stand, offering detailed accounts of what transpired in the days after Gage went missing. The lawyers followed, rising to argue over what photos of Gage and statements by Paul could be admitted at trial. Listening, Hilder for the first time gained direct exposure to this distraught father's grief and his ex-wife's suspicions. Nothing he heard persuaded him that this case involved anything more than a tragic mistake.

That was not, however, how the Summit County chief criminal prosecutor, David Brickey, saw matters. He saw in Paul Wayment a neglectful father. Brickey had a son himself, a 10-month-old. He couldn't forget Gage, couldn't forget that this little boy had been a real person.

Like Hilder, Brickey loves stories. What he must do in the courtroom, he believes, is tell the better story. He learned that much when he attended a prosecutors' school in South Carolina. There Brickey took a course on child abusers. The class taught him you always want to use any information that suggests the parent isn't a perfect person. He came back to Utah promoting the fact that prosecutors don't use "prior bad acts" nearly enough. He started planting that idea with his boss, Summit County Atty. Robert Adkins. Let's try to use prior bad acts to our advantage.

In the Wayment case, Brickey believed there were "prior bad acts" in Paul's domestic problems. He believed this despite the fact that Adkins saw nothing in the family services file they could use at trial. They weren't going to wade into that history, Adkins had resolved. They definitely weren't going to call Brenda's other children to the stand.

Adkins hadn't shared that decision with Wayment's attorneys, though. In fact, for bargaining purposes, he'd argued in court that the family history should be admissible. Brickey took that thought further in his own talks with the defense attorneys. He meant to use whatever he could, he told Glen Cook and Julie George. If you don't plea bargain, he warned them, if you go to trial, we will seek to establish that Paul has done this before.

Cook and George, unsure where Hilder might land, saw no alternative: If Brickey was going to fling accusations, they'd have to respond, they'd have to disprove. That meant bringing in Brenda, bringing in the kids, bringing in the whole juvenile file.

Outrage and frustration consumed Wayment when his lawyers told him what might be coming. "All that stuff isn't true," he shouted. "Just look at the documents. I don't understand why you have to disprove anything. I don't want the kids involved. I don't want Brenda involved."

While they debated, they heard again from David Brickey. One Friday afternoon, he called Julie George to say he might also charge Paul Wayment with witness tampering. Wayment, it turned out, had contacted James Wilkes. He'd asked Wilkes if they could try again to visit where Gage died. Wilkes had balked, for he

had a lawyer now, a lawyer who'd ordered him not to talk with Paul, not to fuel suspicions about their connection. They'd talked anyway, among other things about the coming trial. Wilkes' lawyer had alerted Brickey. The prosecutor paid Wilkes a visit--and brought a tape recorder.

Clutching her phone, Julie George swore at Brickey, screaming and threatening, reminding that Wilkes wasn't even a subpoenaed witness. Then she called Wayment. This latest development stunned him. He began to cry.

Refusing to plead guilty--in his mind, refusing to say he intentionally, criminally harmed Gage--was the strand of sanity Wayment had been clinging to for months. Now he let go, now he conceded.

Julie George's phone rang three days later. "I need to take a plea," Wayment told her. "I want it over. I can't take any more."

During the course of two hours and three calls, they argued and anguished. It was no use. Wayment spoke in a monotone. "I can't put my family through this anymore," he said. "This is hurting too many people. Nobody else should be hurt by this except me."

Wayment quit going to church. He quit talking to Julie George. Using directions provided by a sheriff's detective, he started weekly pilgrimages to the spot where Gage had died. He brought Gage's toys with him, he carved their names in a tree, he built a memorial. There he sat for hours on end, reading the Bible.

He Knew He Had to Land Somewhere

To say that Paul Wayment made a tragic mistake did not, in Judge Hilder's view, mean there was no culpable negligence. That's what bothered him as Wayment stood before him on June 5. Once again this man looked so stoic. Rather than admitting guilt, he was entering a no contest plea, which meant he was only conceding the state could prove its case. In exchange, the prosecutors were not seeking a jail sentence.

Hilder couldn't help wonder: If this was what it came down to, then why were they all here?

I understand your deal, he told those gathered before him. But I'm not bound by it. I retain the right to impose jail or any other penalty.

Hilder pondered for days about Paul Wayment, often while jogging through the dense stand of sycamores that shaded his urban Salt Lake City neighborhood. Influenced by his tenure on the bench, he'd strayed from his Mormon faith in the last two years. After looking at so many good but fallible human beings, it was hard to live with any religion certain it had all the answers. The truth was, Hilder's role as a judge had caused him to question the nature of God, and particularly the certainty of the Mormon faith.

Yet he finally had to land somewhere.

For Paul Wayment, he decided, there's got to be a consequence. Wayment was not a monster; Wayment was no more or less than any man. All the same, he'd exposed Gage to significant risk. He'd caused Gage to wander through the forest, terrified and suffering.

There was no need for deterrence here, and no need for punishment. There was need for society to make a statement, for society to say, this is wrong. There was also need for rehabilitation. Hilder felt Wayment must pay some kind of penance, or he would never be able to put this behind him.

Was this a court's job, to worry about atonement? Hilder thought it was. Of course, he had to be careful not to step over a line. He wasn't a priest; he didn't want to play God.

And yet: In a way, a judge was a god.

"God."

Hilder would later speak that word out loud, reflecting on the Wayment case. Then he'd say, "I shudder at how that will look on paper. But it's true."

An Admission; an Acceptance of Fate

When his sentencing hearing began on the morning of July 17, Paul Wayment seemed not just stoic but hollow, as if he weren't there. Rising first, Summit County Atty. Robert Adkins talked of how "difficult" this case was, of how much "sympathy and empathy" his office had for the defendant. Then came defense attorney Glen Cook, arguing that Paul's "punishment will continue until he and Gage are together again." Finally Paul Wayment spoke, in an expressionless monotone:

If I could change places with my son, I would give up my life without question. But I can't. The life that I now live in is the hell that I alone created. The pain is incomprehensible. . . . The word "sorry" does not even begin to express the feelings I now live with. . . . I admit full responsibility for my actions and will accept whatever punishment you deem appropriate.

Soon enough came the horrible moment that Hilder thought such hell. Silence fell in the packed courtroom. Even those lawyers and defendants there for other matters stopped conferring and turned to the bench. As Hilder began to speak, Paul Wayment remained impassive while around him his relatives blinked back tears. Paul's sister Valerie Burke thought the judge seemed so soft-spoken, so kind, so determined to explain his decision to Paul. She also thought the judge seemed full of heartache.

He'd planned to give Wayment a 90-day sentence, a quarter of the possible one-year maximum. But after hearing the arguments--and seeing that the probation department also opposed jail--he chose to reduce the penalty and require a mental evaluation, followed by counseling if recommended. "The pre-sentence report . . ." Robert Hilder began, "says that nobody associated with this case believes serving jail time will serve a useful purpose. The problem . . . is that none of these people have to make the decision. The decision comes here. . . . The court understands that there is nothing it can do that would be a greater punishment to Mr. Wayment than the suffering he's going to endure daily for the rest of his life. But the court cannot fully accept the argument that there shouldn't be some further consequence. . . . The court rules there must be a consequence."

Moments later, Hilder imposed a 30-day jail sentence and invited Wayment to pick the date when it would start. Paul and his attorney Glen Cook conferred privately for 90 seconds. Then Cook said, "Thank you for the courtesy, judge. Tomorrow morning."

At the defense table, Julie George hugged Paul. Of the coming jail time, Wayment said, "It's three hot [hot meals] and a cot." George offered to walk him to his car, as she'd done before to buffer him from reporters. "You don't have to anymore," he said, patting her on the back. "It's over."

Robert Hilder did not rise from the bench this morning feeling he had made the right decision. He did not walk out thinking, I got it right. He walked out thinking, I did the best I could.

#### A Father's Final Choice

The questions still haunt about Paul Wayment's final choice, for they can't be answered. Why did neighbors see him outside planting flowers just days before? Why had he just gotten a new hunting license, a new truck, a new job? All people know is that Paul, as he left his sentencing hearing, said he was "going to the ridge." No one stopped him, for he always went up the mountain for comfort. Valerie told him, "Phone me when you get home."

Around nightfall, she started calling his house. By midnight, she was scared. In bed, in the middle of the night, she heard his voice speaking to her. Valerie. That gave her a warm feeling, a sense that Paul was home, Paul was OK. She fell back asleep.

Only in the early morning did she learn he still hadn't returned. Maybe he stayed for sunrise, she told herself. But in her heart, she knew.

So did Julie George. "I have my four-wheel drive," she told colleagues at 9:45 a.m. "I'm going to go look for him."

They found his body on a sloping ridge next to a pair of binoculars, a Pepsi Big Gulp and a Winchester .243 hunting rifle. He'd picked a spot, surrounded by quaking aspens, that provided a view of the hills where they'd searched for Gage. Julie George imagined his final afternoon. He'd sat with the binoculars, surveying where Gage died. At sunset--he would have waited for his beloved dusk--he'd put down the binoculars and picked up the rifle.

By the time Valerie Burke arrived on the ridge, a news media helicopter was hovering overhead. Julie George and others rushed to cover Paul's body, not wanting his mother to see it on TV. But the helicopter kept blowing the cover off.

At the courthouse that afternoon, Hilder sat dazed in his chambers. Tears filled his eyes. For a moment, he fixed on the far wall. There hung an aboriginal bark painting, an image of a shearing shed in the Australian outback. That was a memory; he'd worked in just such a shed in his teens. Hilder wanted nothing more now than to call his wife, Jan. When he reached her, she offered to come be with him. "I don't think that would help," he said. "I have to go on the bench."

What consumed him as he walked into the courtroom was his father's suicide. He'd never stopped wondering what he could have done. Suicides made their own decisions, he realized, and his father was never a happy man. Could he have prevented his death, though? He'd left his father's farewell letter unclaimed, not wanting to know what it might say.

This time, with Wayment, he did want to know. He didn't want to fight off his sense of responsibility.

On the witness stand, a water rights expert was testifying. Only occasionally did Hilder listen. Mostly, his eyes were on the legal pad beside his right hand. Judges never do such things, but he felt compelled to compose a public statement. He wanted to let people know why he sentenced Paul Wayment to jail. Blame me for this, he would tell them. Blame me if you will. But not because I didn't think about it.

Hilder picked up a pen and began. The first sentence he scratched out. The rest came without struggle or revision.

It is a judge's worst nightmare that his or her actions may lead to unforeseen and tragic human consequences. The death of Paul Wayment is such a tragedy. . . . As hard as it is for me to contemplate any contribution of mine to Mr. Wayment's death, his family and the public have a right to know how I feel as a person and as a judge. As Paul Wayment's fellow man, I am devastated, I hurt deeply. . . . Having suffered through my father's suicide over 20 years ago, I know the survivors' anguish. . . . As a judge, however, my sworn duty is to all who appear before me. . . . If the jail sentence I imposed was a factor, large or small, in Mr. Wayment's decision, I regret that result with all my heart, but I cannot change my decision. . . . For the rest of my career I will remember Paul Wayment and try to never lose sight of the human consequences as I discharge my responsibilities.

### **There Is Much Anguish Now**

Among those besides Robert Hilder whose choices affected Paul Wayment in his final months--the lawyers, detectives, journalists, relatives, hunters and friends--there is much anguish now. Many berate themselves. Many look to themselves when talking of responsibility.

Paul and Gage were inseparable. A neighbor said she used to sit on her porch just to watch them when she felt she needed her spirits lifted.

It was Hilder, though, who faced the greatest barrage of criticism immediately after Wayment's death. A few particularly harassing letters prompted the county to provide temporary protection. Where once there were calls for accountability and consequences, now there was outrage at the judge who provided just that. People assailed Hilder, demanding his resignation or dismissal, charging him with "a pathetic lack of wisdom," declaring him "directly responsible for the death of Paul Wayment."

Soon enough, there came an even greater wave of support for Hilder from lawyers, pundits, hundreds of citizens and--over and over--Wayment's sister Valerie Burke. "I don't believe the 30-day sentence caused Paul to kill himself," she told reporters. "I think the judge was compassionate. Our family understands where the judge was coming from, and we don't blame him at all. He had to do what he felt was right."

Hilder can only shake his head at that phrase, "what he felt was right." He takes comfort from all the support but is no more certain now than before of making correct decisions. This latest experience, above all, has made him look even harder at the role of the judge.

He reflects on what the law accomplishes, what the law can't accomplish. He loves the law but does not worship it. He believes it does not have the answer to everything. In matters full of ambiguity, he suggests, there may be no good solution. "Black and white answers are not always what's needed," he says. "But sometimes they're the only answer."

He says something else as well: "It's not a bad thing to have Paul Wayment's face forever part of my life."

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Barry Siegel won in Category 8 of the Pulitzer Prize for Journalism "for a distinguished example of feature writing giving prime consideration to high literary quality and originality".

I think it's brilliantly written. Simon Townsend

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