

1950

State of Utah in the interest of Lynn Lueorn Christensen : Brief of Appellant

Utah Supreme Court

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Clinton D. Vernon; Sterling R. Bossard; Lewis Larson;

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, In the Interest)

of)

) case No. 7559

LYNN LUEORN CHRISTENSEN,
Alleged Delinquent Child.)

APPELLANT'S BRIEF

FILED CLINTON D. VERNON,
Attorney General

AUG 21 1950

STERLING R. BOSSARD,

Juvenile Judge of the

Clerk, Supreme Court, Utah Fourth Juvenile District

LEWIS LARSON,

Attorney for Appellant.

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, In the Interest

08

**LYNN LUEORN CHRISTENSEN,
Alleged Delinquent Child.**

APPELLANT'S BRIEF

• • STATEMENT OF FACTS. • •

Trans. 12, Plaintiff's Exhibit A.,
H. H. Ramsey, M. D., Superintendent of
UTAH STATE TRAINING SCHOOL, speaking of
the defendant says: (Exhibits 12 and 13--
not sworn to, no opportunity for cross
examination.)

"His physical examination is a healthy youth, apparently, there being no physical deformities, defects or illness at the time of the examination. The only probable defect which I have found was with reference to his vision which apparently has been corrected by glasses."

Dr. Ramsey further says in the same

"According to our findings, this boy is sufficiently retarded mentally that he would be eligible for commitment to this institution and may profit by coming here and is possibly a case for sterilization."

Plaintiff's Exhibit B, (Trans. 13),

Leland E. Anderson, Superintendent of South Sanpete Schools, says:

"Mr. Lynn Christensen of Ephraim when in the Fifth Grade, had an I. Q. (Intelligent Quotient) of 30.*** His general academic work places him now as a Fourth Grade student."

These Exhibits 12 and 13, were objected to and objection overruled. (Trans. 116)

(Trans. 37) MR. BARTHOLOMEW, a teacher, says of the defendant, Lynn Christensen:

"His work as an eighth grade student has been very difficult for him. He does have some ability when working in the shop."

(Trans. 38) "He did pretty well in our shop this year." "He has a lot of difficulty trying to read; his reading is very difficult for him."

(Trans. 42) Richard Wright, was called as a witness. He was not sworn. None of the

young witnesses were sworn. (Trans. 100 Q. V.)

(Trans. 42 - 43) Probation Officer Kempf says the tire was out, and the seat was out. He says Lynn Christensen cut it. It was the day that he took it and rode around the school grounds. Time, noon, Recess. (Trans. 44)

(Trans. 45) The seat and the back tire. I waited until after school to see what had been done.

(Trans. 48) Michael Lund, not sworn, age 10: "Well, I didn't see him, but Richard, he did." (Trans. 49)

(Trans. 50) I saw Lynn take the bicycle at noon.

(Trans. 52) Beverly Stewart called, not sworn.

P. O. Kempf: Did you ever have your bicycle stolen?

Beverly: No. (Trans. 52)

(Trans. 53) The seat got out and the tire got out. I saw Lynn on the bicycle seat and he wouldn't give it back to me. I saw him take it. I said: "Lynn, you better give it back to me", and he gave it back after awhile.

(Trans. 54) I saw him cut the seat, but that was all. I know it was Lynn. . . . He gave me a new tire and my dad put it on the bike.

(Trans. 55) Only out a little.

(Trans. 56) Don't know when it was cut. He cut the inner-tube too. I don't know why he cut it.

(Trans. 57) It wasn't cut at noon because I took it home with me.

(Trans. 59) We dented the fender ourselves. My brother when he first learned dented it.

(Trans. 60) He said that the only time he knew about it was when I came over and told him, but he said he didn't do it.

(Trans. 61) GWEN GOBLE, was called, not sworn.

(Trans. 62) Maybe once or twice.

MR. CHRISTENSEN: When you were a boy, you did that too.

(Trans. 63) When Lynn was out on the lawn with you, did he say anything nasty to you?

GWEN: I think, but I don't know.

(Trans. 64) THE COURT: Now, did he say anything nasty?

GWEN: I don't know. I think he said something nasty. I don't know. I can't remember.

MR. LARSON. (Trans. 65) She has been coerced and urged to testify, all of which is improper.

THE COURT (Trans. 66) Are you afraid of Lynn?

A. Yes.

THE COURT: Q May?

OWEN: Because he came out with a .30-.30 gun and threatened to shoot one of the kids.

(Trans. 66) Diane Madsen called, 12 years of age:

THE COURT. Q. Has he ever kissed you? (Trans. 67)

Diane: Yes. He just kisses me and runs away.

(Trans. 68) Did he ever throw you down?

DIANE: One time he chased me and I fell and sprained my ankle, and he grabbed me and kissed me and then ran.

(Trans. 69) Esie Gelleagos, not sworn, 8 years of age:

(Trans. 70) He didn't do nothing.

Q. Are you afraid of Lynn?

A No, I'm not.

(Trans. 70) SHANNON BJERREGAARD.

Q You know Lynn Christensen?

(Trans. 71) A. Yes.

Q Has he ever grabbed hold of you?

A. No.

Kempf: Have you ever been in the Variety Store in Ephraim when Lynn was there:

Shannon: Yes.

Kempf: Did he ever try to grab you in the store:

Shannon: He didn't exactly push me down. He didn't grab hold of me. He took hold of my arm. He just took hold of my arm, that's all that happened.

(Trans. 77) Just fell down, that's all. He just took hold of my arm and I kind of tripped. He didn't do nothing. He just said he was sorry.

(Trans. 71-72) CROSS EXAMINATION BY Mr. Larson:

Q Did Lynn ever mistreat you in any way?

Shannon: No. He's been perfectly nice to me.

Q How long have you known Lynn?

A All my life. I am in the fifth grade. I will soon be ten.

(Trans. 72) GWEN GOBLE, re-called as a witness. (This was after thy, the Court, had her out and talked to her.)

THE COURT. Did Lynn ever say anything nasty to you?

GWEN: Yes.

(Trans. 73) Mr. Larson: Objection. I want the record to show it, I insist upon these children being given the right of testifying without being coerced or lead or driven, much less taken out and given a private talking to and then be brought into this court to testify and then suggest that the court do the testifying. Now, I object to all of that.

THE COURT. Objection overruled.

(Trans. 74) GWEN: Lynn told me and Diane that he had fucked Marie Dodge.

COURT: Now, he said that to you and Diane, and he said he had done that to Marie Dodge?

GWEN: Diane, Rue, and Charles Nielson, and Lynn.

MR. LARSON: Were all these children where they could hear him say that?

GWEN: Yes, they were right by him. We were on our lot and they were just across the fence in Nielson's lot.

(Trans. 75) Diane Madsen was there with us.

MR. LARSON: I think now, under the circumstances, we ought to have the opportunity to bring these other children in and hear their story.

THE COURT: Very well, if you wish. Tomorrow morning. If we can get in touch with them tonight, we can hear

then tomorrow morning.

Kempf: Diane Madsen is still out here, I believe.

MR. LARSON: She could testify now then, couldn't she?

THE COURT. Yes.

LARSON: That's all.

(Trans. 75) DIANE MADSEN re-called.

(Trans. 76) Court: Now do you remember a time when you were all together there?

Diane: Yes, I think I can. This

COURT: Now, think very carefully.

Diane: I don't remember of anything like that.

(Trans. 77) Diane: Well, I don't remember of anything he said or anything like that.

(Trans. 78) WAYNE GRASER called, placed under oath.

(Trans. 79) I was going in and out quite a bit for stuff anyway, and as I came around the corner of the building I saw Lynn and this little girl. Now, they have kind of a railing around there and this little girl was, I guess, had been playing on that. I saw that Lynn had his hand down in her pants. When he saw me, why, of course, he ran and left and went around the other side of the building, and that's the one incident.

The other one was last fall. I don't know just when it was, exactly.
(Trans. 79) He was masturbating. That's the second incident.

(Trans. 80) Graser: Oh, I guess it isn't over fifteen or twenty feet. Maybe twenty-five feet, the length of the room.

(Trans. 80) Gross Examination.

MR. LARSON: Who is this girl you're talking about?

Graser: I don't know her. I actually didn't look at her in the face or anything. I heard him ask if she had a brother. She didn't say anything that I heard.

(Trans. 81) I didn't speak to her at all.

(Trans. 82) SAMMY GALLEGOS called, not sworn, age 14. Mexican boy.

Kempf: (Trans. 83) That evening when Graser saw it too?

Sammy: Well, I saw him playing with that little girl.

Kempf: Where did he have his hand?

Sammy: He had his hand on her pussy.

Kempf: Could you see it? You mean on her privates?

Sammy: Yes. I couldn't see exactly where he had it, but he had it under her dress.

Kempf: Could you see whether she had any pants on or not?

Sammy: No, I couldn't. (Trans. 83)

(Trans. 84) Sammy: He just hollered at him.

Court. His hand under the girl's pants-- in the girl's pants?

Sammy: I didn't see it in her pants, but under her dress. I couldn't see his hand.

(Trans. 85) I was playing with him at that time.

MR. LARSON: (Trans. 85) Cross Examination.

(Trans. 86) I couldn't tell whether Lynn had his hand on her private parts or was it just under her dress. I couldn't tell.

MR. LARSON: The girl never said anything or made any complaints that you know of?

Sammy: No.

(Trans. 88) I can't remember her name.

(Trans. 89) Kempf: Have you ever seen Lynn play with himself?

Sammy: Yes.

Kempf: You have? What did he do?

Sammy: He played with his pussy (Trans. 89)

(Trans. 90) KENT JOHNSON called as a witness, not sworn. Age 14.

(Trans. 91) Kempf: Did you ever see Lynn play with himself, with his privates?

Kent: Yes. I believe Lynn Reed was there.

Kempf: Are you sure whether he was there or not?

Kent: No. I'm not positive.

(Trans. 92) LELAND ANDERSON, called placed under oath.

(Trans. 93) Anderson: Superintendent of Schools, South Sanpete School District. I keep in touch with the students. I know Lynn. I know of nothing that the boy has ever done. It hasn't been called to my attention.

MR. LARSON: Has Lynn's improper conduct been called to your attention?

Anderson: All I know is his record. In fact, I am the one who gives the I. Q. tests to the District, and also give progressive activity tests. I know the record very well.

(Trans. 94) He, Lynn, is quite slow. The principal comes to us if they have a boy who is incorrigible.

(Trans. 95) LYNN LUEORN CHRISTENSEN was called as a witness.

MR. LARSON: Did you on May 10, 1950, and on several other occasions, steal

a bicycle belonging to Beth Stewart of Ephraim?

A No. I never. I have nothing to do with that bicycle. I never took it.

Q Not even once?

Lynn: I never took it.

Mr. Larson: Do you know what steal means?

Lynn: Yes. It means you take something from someone without their permission and don't bring it back (Trans. 95)

Larson: Did you ever take the bicycle?

Lynn: No, I've had my own bike. I've had one for six or seven years or maybe three years.

Larson: Did you ever damage the tires on a bicycle of Beth Stewart of Ephraim?

Lynn: No. I never had nothing to do with that bicycle. I was playing on the school grounds when she came along and told me that the bike tire was out. Beverly Stewart told me. It was right after school. She told me I had out it.

(Trans. 96) Larson: You deny it entirely?

Lynn: Yes. Then Dad bought our car and I ride with him.

Larson: Have you ever entered the class rooms at Snow Junior High School since May 10th on improper occasions?

Lynn: No. I've never entered them.

Larson: (Trans. 96) There hasn't been a word of evidence to show you have.

Q Have you on different occasions during the past few weeks, entered the girl's dressing room at the Snow College?

Lynn: No. (Trans. 96)

Larson: Have you made indecent advances toward girls of the first, second, and third grades, of Elementary Schools or any other schools?

Lynn: No.

Larson: (Trans. 96) Now, there were several things here that were proved that there was no foundation for in the complaint and which I move be stricken out because they're not involved in the (Trans. 97) charge, and until a man is charged, even a child cannot be lawfully convicted. (Trans. 97) THE COURT. The motion is denied because of the Statutes of Utah, Section 14-7-25, state that the court may conduct a hearing informally and may use any form or procedure which it feels best suited to ascertain the facts and make a disposition in the best interest of the child. (Trans. 97)

Larson: If, for instance, this is a charge of larceny--

The Court: If it is a charge of larceny, the Juvenile Court has authority and jurisdiction to go into the matter and handle it.

Court. In Utah Statutes, 14-7-4 (2), it states: "in any case where a juvenile fourteen years of age or older is charged with an offense which, if committed by an adult would be a felony, the Juvenile Court shall have concurrent jurisdiction with the District Court. Trans. 98.

Re. cross examination by Probation Officer Kempf.

Court: Mr. Larson, so that you may have a clear picture of this boy's situation, I would like to give you some additional information. Last February the 21st, Lynn was brought before the Juvenile Court, on other reports, that he had entered the Snow College Dressing rooms where he had searched through clothing and taken some money, etc.

(Trans. 98) Mr. Kempf and Mr. Christensen took Lynn to the State Training School, but the doctor was not there at that time. They returned and later Mr. Christensen took Lynn to American Fork at which time the examination was given.

(Trans. 99) I have here the report of Dr. Ramsay, who is the Superintendent of the School. (Reads Ramsay's letter) (Exhibit A--Trans. 12)

Larson: You had in mind making an order to the effect that he should go to the State Reform School?

Court: That was the previous order that he was committed to the Industrial School at Ogden, but that was suspended to give us an opportunity to further study his actions.

(Trans. 99) Larson: Now, you think this Training School would be a more fitting place?

Court: I haven't made any decision as yet. But of course, the Juvenile Court cannot make a commitment to the Training School; that would require a petition in the District Court and they would make the commitment. However, the parents could make a voluntary commitment. (Trans. 99)

(Trans. 100) Larson: What is your disposition in regard to that matter, Mr. Christensen, about sending him to that school at American Fork?

Christensen: Oh, my god! Are you fellows crazy? I should say not. He's not that kind of a boy that has to go up among all them kids.

Larson: That's a different place than the Reform School entirely.

Christensen: Yes, I know it is. We went up there and seen it.

(Trans. 100) Court: We are not ready to make a decision at this time. Mr. Larson, do you have any witnesses you would like to call?

Larson: I would like to call that girl, Marie Dodge.

(Trans. 100) Examination of MARIE DODGE after she was sworn.

Larson: Isn't the court swearing these young witnesses?

(Trans. 100) Court: Because of the young age, the court feels they do not appreciate the meaning of an oath, but are of an age where they will state facts as they know them. For this reason the other witnesses were not sworn. If you wish your witness sworn the court will do so.

Larson: Marie, you know the meaning of an oath, don't you? That if you tell a lie under oath, you can be punished for it and sent to the penitentiary and things like that? You're willing to be sworn aren't you?

Marie: Yes. (Witness placed under oath)
(Trans. 100)

Larson: Has Kempf ever talked to you about this case?

Marie: Yes. About three weeks ago. He asked me if Lynn Christensen had ever kissed me and I said no. Then he told me to say yes. Lynn has never kissed me.

Larson: (Trans. 102) Is this the girl here that that little Goble girl said he'd fucked her? Have you ever had sexual relationship with Lynn Christensen?

A What?

Mr. Larson: Well, has he ever fucked you?

Marie: No. (Trans. 102)

Larson: Well, you know what that means, don't you?

Marie: Yes. (Trans. 102)

Larsen: Are you sick much of the time?

Marie: Yes. (Trans. 102)

(Trans. 103) Marie: I've been -- last summer I was in bed for four months.

Larsen: Isn't that the time that the Goble girl said you had relations with this girl last summer?

Lynn: Yes. (Trans. 103)

Marie: From the 20th day of June until September.

Larsen: And were you ever out during those months?

Marie: No.

Larsen: Do you know what was the matter of you?

Marie: I had hemorrhages. (Trans. 103)

(Trans. 104) Marie: Dr. McQuarry was my physician.

The Court cross examines. (Trans. 104)

Court: Did he say why you had to say that

Marie: He said "I'll bring you over to Manti to the court." (Trans. 104)

(Trans. 105) Court: But are you sure now that he came out and said to you "you've got to say yes, that he did kiss you?"

Marie: Yes.

Court: Did he say it in so many words, that "You've got to say yes?"

Marie: Yes. (Trans. 105) Mama was there.

Court. Were you right down on your back from June 20th until September the 5th?

Marie: Yes.

(Trans. 106) Marie: Yes. I got out of bed a few times. The doctor came every other day.

Court: Did Lynn ever come to visit you?

Marie: Yes. A few times. With him mother and dad.

Court: Did he ever come alone?

Marie: No. (Trans. 106)

Court: (Trans. 107) Now, you say positively then that Mr. Kempf, after you told him Lynn hadn't kissed you, you say positively, that Mr. Kempf said "You've got to say yes, or I'll take you to Court"?

Marie: Yes. (Trans. 107)

Kempf: (Trans. 108) Now, after I talked to you, you assured me that there had never been anything happen between you and Lynn. About two weeks later I brought you up a subpoena, didn't I?

Marie: Yes.

(Trans. 109) MRS. MYRTLE DODGE BJERREGAARD, mother of Marie. called as a witness.

Larson: He said, " You've got to say yes"

Mrs. Dodge Bjerregaard: He said, "If you don't say yes, why", he says, "don't lie." That's the way he told her, as near as I can remember.

Trans. 110) Larson: You say Mr. Kempf, said to say, "Yes you did or we'll take you over to the Manti Court"?

Mrs. Dodge: That's the way we understood it. (Trans. 110)

(Trans. 111) Kempf: I think she's cleared the point up there.

Court: I believe that's all. (Trans. 111)

(Trans. 111) Direct Examination for the child by Mr. Larson.

RUE NIELSON was called as a witness (Trans. 111)

Larson: And do you remember of hearing a conversation between Lynn here and yourself and some girls, there was a Goble girl there?

Court: Two girls.

Larson: You don't remember anything about it?

Rue: Not over there. (Trans. 111)

Larson: (Trans. 112) I've never heard such a persistent examination on the part of the court to try to make a girl say something that she was disposed not to say.

Court. She said she could have been,

she went in the house to get a drink.

She went in the house and it might have been said then.

Larson: The Goble girl said that these children were there all together.

Court. Do you know the place we're talking about? This fence by Gwen Goble's house?

Rue: Yes. I know the fence. (Trans. 112)

Court: Do you remember that situation at all?

Rue: No. (Trans. 113)

Court: Do you remember being there, a group like that together at any time?

Rue: No.

Larson: Why do you fellows want to make people testify to things they don't remember? I can't understand that system. (Trans. 113)

Rue: My brother is younger.

Cross Examination by Probation Officer Kempf: (Trans. 114)

Kempf: And was there a day last summer when you, Charles and Lynn were together?

Rue: Yes.

Kempf: Out by your granary?

Rue: Yes. The granary is about twice

as far as this room from the fence.

(Trans. 114)

Kempf: When you were out there by the granary, what did Lynn say to you?

Rue: He said he fucked Marie. (Trans. 114)

Kempf: Who did he tell?

Rue: Charles and Me. (Trans. 114)

Kempf: What were you talking about for him to tell you something like that?

Rue: I don't know.

Kempf: Does Lynn very often get mad at you kids? (Trans. 114)

Rue: Yes. He threw a bat at us and hit Dial, and then he ran home.

Kempf: Did he ever break up any property around your place?

Larson: I object to that. (Trans. 114)
This is not a cross examination. There is no charge against this boy for breaking any property around Rue's place and in the Juvenile Court, the same as any court, you must charge the child in the complaint with anything you're going to prove. (Trans. 114)

(Trans. 115) DIRECT EXAMINATION for the child by Mr. Larson:

CHARLES NIELSON was called as a witness.

Charles: My name is Charles Nielson.
I am ten.

Larson: Do you know a little girl, Miss Goble?

Charles: Yes.

Larson: Do you remember this conversatio

Charles: No.

Larson: Well, did you ever hear Lynn Christensen say that he had fucked Marie Dodge, when Diane Madsen, and your brother, and this Goble girl were present?

Charles: Not that I can remember.
Trans. 114.

CROSS EXAMINATION BY PROBATION OFFICER
KEMPF: (Trans. 115)

Charles: I don't know where it was, but he said it to me.

(Trans. 116) Kempf: That is all Charles. Your Honor, I have here two letters I would like to submit as evidence. The first letter is from the State Training School which was received a few days ago. I would like to submit that as an Exhibit. The second is signed by Leland Anderson, Superintendent of Schools. He has submitted a sworn statement concerning the academic qualifications and capability of Lynn Christensen. I would like to submit that as an Exhibit.

Larson: I object. That is not proper, it's irrelevant, and not within the issues involved in this particular case.
(Trans. 116)

Court. Objection overruled, (Trans. 116)
The letter from the Training School will be Exhibit A, and the other Exhibit B.
(Trans. 116)

Larson: May I see those Exhibits?

Court. Yes, sir. Anything further Mr. Larson?

Larson: That's all.

Court. That's all. Mr. Larson, is that all your witnesses?

Larson: Yes.

Court: (Trans. 116) Is there any statement you would like to make in summary?

Larson: I feel that the Court's mind is made up and there isn't much use arguing a case when the Court's mind is made up. The father says that he can use him and will take the boy into the mountains where he is under contract to herd sheep and the boy will be under his constant supervision all summer. He is working for Ruel Christensen. Mr. Christensen, do you have any trouble in handling this boy? (Trans. 116) Then follows informal discussion, among child's parents and Court. (Trans. 116 to 126)

Mr. Christensen: Not a bit. (Trans. 117)

Larson: And does he do the things that are required of him, willingly?

Mr. Christensen: Yes.

(Trans. 127) Reporter's Certificate.

In witness whereof, I have hereunto set

my hand at Manti, Utah, this 17th day of June,

1980.

(Trans. 128) Stipulation for settlement of Bill of Exceptions.

It is hereby stipulated that the above and foregoing Transcript of Testimony consisting of ninety-nine pages constituting the Bill of Exceptions in this case is correct as engrossed and may be allowed, and settled, as Appellant Orval Christensen's Bill of Exceptions.

Dated this 8th day of July, A. D., 1950.

/s/ Lewis Larson
Attorney for Orval
Christensen

/s/ Sterling R. Bossard,
Judge
Juvenile Court.
Ø Trans. 1280

(Trans. 129) Certificate to Bill of Exceptions

The foregoing Bill of Exceptions contains all the evidence adduced on the trial of this cause and correctly shows the various proceedings during the trial, as well as subsequent thereto. The same being true and correct, it is accordingly settled and

allowed as a true bill of exceptions in this
cause.

Dated this 23rd day of June, A. D., 1950.

/s/ Sterling H. Bossard,
Juvenile Judge.

POINT I.

VISION OF THE CHILD IS DEFECTIVE.

The vision of the child, Lynn Christensen, is defective, as appears from Dr. H. H. Ramsey's letter, Exhibit A, in this cause, and appears on page 18 of the transcript.

The fact that the boy's vision is defective is very important because much is made of the fact that the boy cannot read well. It seems that the teachers in his school discovered that he could not read well, but apparently until recently they have never discovered that his eye sight was defective.

I know of no law that warrants the committing a child to the Industrial School because he has poor eyesight, yet the Court enlarges upon this situation, or rather the fact, that the boy cannot read well and is only a fourth grade student so far as scholastic attainments are concerned, but he is in the eighth grade. There

support the Court in this matter. There is no mention of the fact that the boy's vision is bad or that he cannot read well in the Complaint or Petition and it was not an issue in this case, except that it was made an issue over objection of the defendant.

POINT II.

WITNESSES IN THIS CASE ON THE PART OF THE STATE WERE NOT SWORN. (Trans. 100-116*)

Most of the witnesses in this case were not sworn. (Trans. 100)

Mr. Larson: Q. Isn't the Court swearing these young witnesses?

The Court: Because of the young age, the Court feels they do not appreciate the meaning of an oath but are of an age where they will state facts as they know them. For this reason, the other witnesses were not sworn. If you wish your witness sworn, the court will do so.

In addition to the young witnesses we have Dr. Ramsay's letter dated May 13, 1950, which is Exhibit A. This letter was written entirely out of Court. There was no opportunity to cross-examine the

Doester. An objection was made to the admission of the evidence but the objection was overruled. Likewise State's Exhibit B, (Trans. 13) letter of Leland E. Anderson, was written outside of court after trial and defendant had no opportunity to cross examine Leland E. Anderson. Neither he nor Dr. Ramsay were sworn, as to these two Exhibits. See Transcript page 116.

P. O. Kempf: That is all, Charles. *** The second is signed by Leland Anderson, Superintendent of Schools. He has submitted a sworn statement concerning the academic qualifications and capability of Lynn Christensen. I would like to submit that as an exhibit.

Mr. Larson: "I object. That is not proper, it's irrelevant, and not within the issues involved in this particular case."

(Trans. 116) on :

Court: Objection overruled. The letter from the Training School will be Exhibit A,

and the other Exhibit B.

Larson: May I see those Exhibits?

POINT III.

THE COMPLAINT DOES NOT STATE A CAUSE OF ACTION.

14-7-5, Definitions, U.C.A. 1943, includes a delinquent as a child who has violated any State law or any Ordinance, or regulation of a subdivision of the State.

A child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian.

A child who is habitually truant from school or home.

A child who so deports himself as to injure or endanger the morals or health of himself or others.

U. C. A., 1943, 14-7-13, entitled PROCEEDINGS, HOW ENTITLED, PLEADINGS, provides that "the Petition shall be verified, alleging briefly and in a general way the facts which bring the child within the jurisdiction of

the court, stating the name, age and residence of the child; the names and residences of his parents, (a) of his legal guardian, if there is one, (b) of the person or persons having custody or control of the child, and (c) of the nearest known relative, if no parent or guardian can be found. If any of the facts herein required are not known by the petitioner the petition shall so state."

It is evident that what the pleader here designates as "stealing a bicycle" at most amounted to nothing more than the riding of the bicycle around the school yard and giving it back to the little girl who claimed the bicycle. Even the testimony on this is in dispute; likewise the testimony on the question as to the damage to the tires.

The statement that the child did unlawfully enter class rooms is merely a conclusion, and even the allegations of

the Petition are not supported by the testimony. There is no allegation here to the effect that the parents are unfit, incompetent, or that they have knowingly failed and neglected to provide for such child the proper maintenance, care, training and education required by both law and morals. It is not alleged that he has been tried on probation in the custody of his parents or that said parents have ever, either of them, been convicted of a felony, as required by 14-7-31, U.C.A., 1943. See Petition, (Trans. 8)

It is alleged in the Findings (Trans. 15) "That during that time said child was placed on probation to the Probation Officer Kempf, and to be further supervised by Reuel Christensen of Ephraim, Utah." And his parents were not given his custody.

The Court finds, (Trans. 15) that school is quite difficult for said child,

especially the eighth grade work which he has been trying to do, and finds further that he has some ability when working with his hands, that he is unable to read above a third or fourth grade level. (Trans. 15)

The Court finds (Trans. 16) that the evidence was conflicting in regard to the child stealing the bicycle. It does appear perfectly clear that the boy never stole any bicycle. The only conflict is whether he rode it around the yard or had possession of it at all.

The Court further finds that the father did replace the tire with a new one. (Trans. 16)

It seems that the Findings on questions are quite frivolous, and that this boy should be permitted to remain with his parents. There is nothing to indicate that they do not have absolute and full control of the boy. The probability is that they can do more for him than anyone else on this earth.

Then the Court finds, on the bottom of Transcript page 16, several witnesses testified that they were afraid of said child, for fear he might cause them "serious bodily injury." As a matter of fact none of these witnesses testified. They were not placed under oath. See Trans. 100, where the Court so states.

Then the Court finds, (Trans. 17)

" Further testimony was received to the effect that said child was seen to masturbate in the Gymnasium, and on the public baseball grounds."

There is no charge in the Complaint in regard to this matter, and certainly the child should be advised of what they intend to prove against him just as any other person should be in a law suit informed at least in a general way of what he is charged with.

The Court further finds, (Trans. 17)

" the Superintendent of Schools testified that Lynn was quite retarded." It seems

strange that none of these school people ever discovered that the boy's vision was defective, as stated by Dr. Ramsay in his letter, Exhibit A, which in all probability explains the reason for the boy's being retarded, which the boy could not help, and certainly it is not a cause for sending the boy to the Reform School.

The Court finds, (Trans. 18) that the boy was able to do only fourth grade work, and he was classified as being a fourth grade student. "This information was further verified by Exhibit B, found on Transcript 13.

POINT IV.

THE FINDINGS ARE NOT CONSISTENT WITH THE ALLEGATIONS OF THE COMPLAINT.

There is no finding as to the fitness or unfitness of the parents of the defendant to have his custody.

POINT V.

THERE IS NO FINDING AS TO THE FITNESS OR

TO HAVE HIS CUSTODY.

POINT VI.

THE CONCLUSIONS ARE NOT CONSISTENT WITH THE FINDINGS OF FACT AND DO NOT SUPPORT THE JUDGMENT.

POINT VII.

THE DECREE IS CONTRARY TO LAW AND ESPECIALLY CONTRARY TO 14-7-31 and 14-7-29, U. C. A., 1943.

POINT VIII.

ADMISSION OF EVIDENCE OUTSIDE OF THE ISSUES MADE BY THE PLEADINGS IS NOT ADMISSIBLE.

ARGUMENT

Point I. The child's vision was undoubtedly defective, as found by Dr. Ramsay in his letter written and made an Exhibit in this case, known as Exhibit A.

Point II. Witnesses in this case on the part of the State were not sworn, that is, all of the younger children were not sworn. See Transcript 100, where the Court so states after being questioned about the matter by the attorney for the child. Furthermore, Dr. Ramsay was not sworn. He wrote his letter in American Fork. In addition to that Meland H. Anderson's letter was introduced and taken by the Court after the trial was over, Exhibit B. Exhibits A and B. were admitted in evidence over the defendant's objections.

Point III. That the Complaint does not state a cause of action. It states no cause of action against the parents of the child. It does not allege that they are

fit or unfit, or otherwise, to look after the child.

Point. IV. The Findings are not consistent with the allegations of the complaint. It finds on many issues that were never mentioned in the Complaint.

Point V. There is no finding as to the fitness or the unfitness of the parents of defendant to have his custody.

Point VI. The Conclusions are not consistent with the Findings or with the allegations of the Petition, and do not support the Judgment.

Point VII. The Decree is contrary to law and especially contrary to 14-7-31 and 14-7-29, U. C. A., 1943.

Point VIII. Admission of evidence outside the issues made by the pleadings is not admissible.

See Title PLEADINGS, 41 Am. Jur. 546, par. 370, where it is said:

"It is a fundamental and vital principle of good pleading and procedure that allegata and probata must correspond; that nothing can generally be proved that is outside the allegations;"

Likewise, there must be a conformity of the Judgment to the pleadings.

See 41 Am. Jur. 555, paragraph 381, where it is said:

"A judgment upon a matter outside of the issues raised by the pleadings must, of necessity, be altogether arbitrary and unjust, as it attempts to conclude a point upon which the parties have not been heard. (Note 14) Such a judgment cannot be saved by the fact that it conforms to the findings. (Note 15)"

In 123 Pac. 2nd. page 103, syllabus 10, it is said:

"Issues are made by the pleadings and not by the evidence introduced at the trial."

In 123 Pac. 2nd. page 103, syllabus 12, it is said:

"The admission of evidence outside the issues as made by the pleadings does not enlarge the issues, except where the trial court permits an amendment of the pleadings to conform to proof."

The court finds that I told him that the rules of evidence in a juvenile court should conform to the rules of evidence in civil cases. In Section 39, page 805, 31 Am. Jur., title JUVENILE COURTS AND OFFENDERS, it is said:

"Evidence.-It seems that the ordinary rules of evidence, considered elsewhere, are applicable to proceedings in juvenile courts for the control of juvenile delinquents. (Note 14)"
Citing Utah.

Mill vs. Brown
31 Utah 473
88 P. 609
120 Am. St. Rep. 935
Also 85 A.L.R. 1001,
and other cases.
Anno. Ann. Cas. 1916 E.
1016

In 31 Am. Jur. page 807, paragraph 43, FINDINGS, JUDGMENTS, AND ORDERS, it is said:

"In order to warrant the commitment of an infant to a disciplinary institution as a delinquent or dependent, there must be a finding by the court, based upon competent evidence, that the facts authorizing such commitment exist."
Citing Utah.

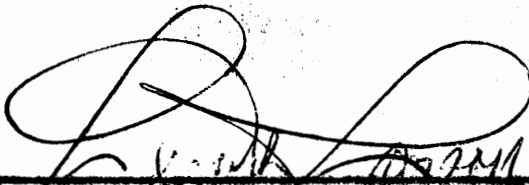
Mill vs. Brown, supra.
Re: Sharp,
15 Idaho 120.

86 P. 363.

55 L. R. A. (NS) 886

110 A. L. R. 1080
People v. Pikunas,
260 N.Y. 72;
182 N.E. 675;
85 A.L.R. 1097

Respectfully submitted,

A large, stylized handwritten signature in dark ink, appearing to read 'Lewis Larson', is written over a horizontal line.

~~Lewis Larson, Attorney for
Alleged Delinquent Child
and his parents.~~