

1980

Lynda Lea Tracy and Donna Tracy King v.
University of Utah Hospital, Does I Through X Ada
Hannah Tracy, Deceased, By and Through Sharon
Tracy Voight, Natural Daughter and Next Friend,
and Sharon Tracy Voigt : Brief of Appellant

Utah Supreme Court

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APPELLATE BRIEF

FILED

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16784

Clark, Supreme Court, Utah

IN THE SUPREME COURT OF
THE STATE OF UTAH

LYNDA LEA TRACY and
DONNA TRACY KING,

Plaintiffs

vs.

UNIVERSITY OF UTAH
HOSPITAL, DOES I
through X,

Defendants

ADA HANNAH TRACY, Deceased,
by and through Sharon Tracy Voigt,
natural daughter and next friend,
and SHARON TRACY VOIGT,

Applicants for
Intervention.

APPELLATE BRIEF

(with argument reference to Defendant Hospital's Memorandum
and Motions submitted) ~~XXXXXX~~

TO THE HONORABLE COURT,

I respectfully submit to you the following and beg of you indulgence in its form by reason of my severe poverty.

I want the Court to know I acted, am acting, and will act, in good faith.

I present my brief as a nonlawyer because I do not have the money to do anything else.

I must take my chances that it will be accepted in this form.

...The legal profession has to take a good, hard look at itself. THE MOST IMPORTANT THING IN ANY LAWSUIT IS WHAT'S RIGHT, HONORABLE, DECENT, FAIR, JUST.

Yet -- in seeking legal assistance in this and other suits I have -- the lawyers told me: I would be open to malpractice if I tried to practice in another State.

Come on! What is the matter with lawyers and Judges? A courtroom is not a secret fraternal organization which requires a secret password!

It is a place where people come with their problems and arguments and controversies.

In this case, I wanted the death of Ada Tracy investigated -- to be sure she "got a fair deal". Such a

simple request. But what convolutions of law!

I didn't know the "secret passwords". (And neither did out-of-state lawyers.)

How do I believe this matter should have been handled by the Judge - if he were a court instead of a secret fraternal organization?

HISTORY of this legal action

A. He would have determined right off that my goal was a follow-up of the investigation begun under mandatory law of the State of Utah in the case of accidental death. Let it be remembered that the Autopsy concerned itself only with causes of death and did not even touch upon negligences. (Inquests are no longer mandatory procedures in Utah; only Autopsies...the present plaintiffs did not give permission for the Autopsy I understand.) Possibly the Autopsy did satisfy itself that no murder occurred... that is, it appeared the blow to the head was not a blunt instrument but a fall. (She was observed to have fallen several times before her death.) But no investigation or inquiry, other than such an automatic surface one, into particular negligences was made. That is, no inquest was held to determine whether proper safeguards were taken to insure that the deceased did not fall again, after having fallen prior to the accidental fall that resulted in her death.

B. It would have determined right off that all parties should be listed upon the Complaint filed...that is, all plaintiffs and all DOE defendants.

C. The Motion to Intervene should have been granted upon its first presentation insofar as the listing of all proper plaintiffs. There should have been no question about this point of law and procedure. Tracy Voigt should have been included...if Lynda and Donna were.

(i.e., Ada Tracy, the deceased, had three daughters who constitute her heirs at law.)

OR,

the present plaintiffs dismissed and Ada Tracy, the deceased, allowed to be the only plaintiff (the TRADITION is heirs as plaintiffs in accidental death cases; and as to the malpractice causes of action, the decedent is TRADITIONALLY the plaintiff...)

Tracy Voigt contends to list BOTH heirs and deceased is proper...arguably optional.

In common law, a dead person was considered "beyond recompense". (So for death the only recourse was for Murder, under criminal law, where the murderer was executed (or imprisoned)...a tooth for a tooth concept... "punitive"....)

Then, someone got the idea that the heirs were deprived of society and could sue for that deprivation if negligence occurred in an accidental death. So, it was "deprivation" and not "recompense" which formed early basis for suits in accidents.

"Accidents", even with some negligence on the part of the defendant, were considered "acts of God", in common law. Whereas, the malpractice portion of the law inconsistently developed from the high standards "professionals" were supposed to work under, and they weren't supposed to have "accidents" like other people.

(e.g., in a civil malpractice suit, "punitive damages" for negligence toward a deceased plaintiff BY A PROFESSIONAL. The early basis for suits in malpractice stemmed from "punitive" rather than "deprivation".)

D. It is Tracy Voigt's contention that this is an action begun --

(a) as to plaintiffs...while bad faith on the part of the filing plaintiffs would appear to have been an issue, by the omission of a known plaintiff...

(b) as to the DOE defendants....apparently filing plaintiffs acted in good faith...

THEREFORE: the retroactive section relied upon for formal notice to the DOE defendants should have no more effect (in dismissal) than did the failure of notice to plaintiff Tracy Voigt. (this makes the court appear more consistent)

THUS: this should be considered an action begun by a Motion to Intervene and not by a complaint...and the retroactive section inapplicable--or allowable of curing. It is one fine precedent begun in law to give notice of intent to sue prior to a formal filing IN ORDER THAT A MAN MAY CORRECT THE CAUSE OF ACTION, if he can.

HOWEVER: the Constitution forbids ^{retro}prospective laws, and this retroactive section becomes just that if it bars causes of action which otherwise would have been timely filed...(another argument for "curing" the defect, without dismissal).

E. It is only fair that since the original plaintiffs were not dismissed out of court because no notice was given to this plaintiff, neither should these Intervening Plaintiffs have been dismissed out of Court because no formal notice was given to the DOE defendants.

It should be noted that these Intervening Plaintiffs were the ones who gave formal notice to the Defendant Hospital. And these Intervening Plaintiffs were properly parties to the action already filed with the Court. For these two reasons alone, these Intervening Plaintiffs (or Tracy Voigt; or Ada Tracy) should have been allowed without question by the original court.

The two questions which perhaps might have been in issue therefore, in the original Motion:

- (a) the adding of DOE defendants
- (b) the adding of causes of action

The adding of causes of action should have been allowed without question by the original court.

This leaves only the issue of the adding of DOE defendants without the formal notice required by a retroactive statute.

DOE defendants, like Intervening Plaintiffs, may be added anytime prior to trial... that is why lawyers put in DOE defendants on all complaint filing. Indeed, in some instances it might be argued that when the identity of certain DOE defendants are discovered after judgment, named defendants might recover from said DOE defendants, within statutes of limitation.

F. I am aware that the Defendants, and each of them, have denied the allegations,[#] (at the time my attorney Black withdrew, I called Doctor Jensen asking if he would go over the medical records with me, which I then had, to explain his reasons for surgery...I do not believe that was an unreasonable or unethical request... he refused, saying he had said all he had to say in his letter to my sister Lynda). However, I have questions, and I do not believe it is unreasonable that they be answered. (at that same time, when I was in Salt Lake City, I called the Insurance Adjuster, asking for a diagram of the bed and explanation of the guard rails...it appears these should not be too easily undone by a "befuddled" patient...indeed, I would suggest to the hospital that in particular cases, they be wired with a buzzer system... for falls and dizziness is a common complication in open heart surgery)*

THE COMPLAINT OF INTERVENING PLAINTIFFS sets out all of the allegations and many of the questions, including:

(1) I question that a lumbar procedure (the exact name escapes me, and my notes are in storage in a different city...but it takes fluid from the spine to test the pressure on the brain) was not necessary as preliminary investigation prior to burr hole surgery to remove hematoma (I believe this test should have been done.)

(2) I question that Ada Tracy's surgical wound was open an unusually long time...this makes it a foregone conclusion you're going to have an infection develop.

(3) A question I have not had opportunity to study properly yet, not finding an appropriate drug textbook, and not having the appropriate portions of the Autopsy: was any test made to determine the drug content of Ada Tracy's blood to determine if her blood pressure was so low due to an overdose. If she obtained (or had in her possession) her own medications, and "her head was going around", she may have taken an overdose....

(4) from past experience with the deceased, I believe firmly that her heart condition was partially psychosomatic....

These are only a few of the questions I have; I believe that I should have the right to ask these questions ...and to require the Defendants, and each of them, to answer my questions...BY SUIT IF NECESSARY. I do not believe I should be penalized for an error of court; my initial motion was timely...I should have been granted entrance, and causes of action added...the only point in controversy should have been the adding of DOE defendants, whether before or after notice. Because due process was

denied her...and if her briefs are read thoroughly speak well for her tehcnical argument...she should not be discriminated against because of her slowness by reason of her poverty and lack of formal legal education, but instead should be given a certain leniency by the Court to compensate for these obstacles in the path of having her questions answered. The Appellate Courts should not have refused jurisdiction initially, but should have let her argue through...by reason of their experience and formal legal education, it should have been immediately discerned that by right, all plaintiffs should be included in the action...whether on the filed causes of action or upon those plus additional causes of action; therefore, even though the Court might become impatient with her grappling with technicalities, ONE POINT (i.e., by right all plaintiffs should be included in the action) should have been sufficient reason to allow due process to continue its orderly process to allow these Intervening Plaintiffs their constitutional right to petition for redress.

DEFENDANT HOSPITAL ARGUMENT: res judicata

the April Motion to Intervene pending the appeal on the first Motion to Intervene must be considered -- in effect, and for all practical purposes -- a MOTION TO RECONSIDER. And is entered SIMULTANEOUSLY while an appeal is pending in the interests of time and the speedy conclusion of this controversy...and should not in any way prejudice or throw out of Court the original (on appeal) Motion to Intervene.....

Defendant Hospital contends that Tracy Voigt is not precluded from recovery of her share of any damages -- which is an argument that indeed Judge Winder's April Order denying intervention was a "without prejudice" Order, for if it were a "with prejudice" Order he would have - in effect - denied Tracy Voigt's claim to any portion of the action at law.

RES JUDICATA

I.

BEFORE APPLYING THE RES JUDICATA DOCTRINE A "THING" MUST BE
HEARD ON ITS MERITS.

The word "prejudice" in law does not mean
the Judge "plays favorites". Or that "he doesn't like one
party".

These Intervening Plaintiffs contend that the
Court erred in dismissing them out of court, but should have
allowed them to "cure" the "defect" of the "retroactively
provided formal notice". This (dismissal) is an inconsistency
in law, and the provisions of law -- which is a serious
error of court.

II.

ADMITTEDLY, (these Intervening Plaintiffs contend) UNLESS
THE DOCTRINE OF RES JUDICATA CAN BE APPLIED IN A DISMISSAL,
A DISMISSAL IS ERROR OF COURT.*

III.

NO PARTY SHOULD SUFFER FOR ERROR OF COURT, OR TECHNICAL
INCOMPETENCE OF A TRIAL JUDGE.

*see argument on page _____ (In addition, this writer is
cognizant of the fact that for every rule there is an exception!)

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ERGO:

A. The appeal(s) were not heard on the merits in either the Utah Supreme Court or the United States Supreme Court.

B. When error of court is found, precedent is to allow a party rehearing (most easily located precedent in criminal law; but these Intervening Plaintiffs contend that:

AN ILLEGAL ACTION OF A JUDGE - OR A SERIOUS TECHNICAL ERROR - NULLIFIES HIS DETERMINATION IN CIVIL ACTIONS AS WELL AS CRIMINAL, allowing appeal of that decision, or reconsideration.

NOTE: Error)s(of court ~~xxxxxx~~ in this action will be developed further in Oral Argument.
And Definition of "Error of Court" explored.

IV.

In regard to Defendant Hospital's contention that the April 12 Order of Judge Winder bars these Intervening Plaintiff's forever from pursuing, I believe it is right and just to state that these were only alternative motions...offered as appeasement, to more hastily bring this matter to a settlement or to adjudication...but that the lower court lacked jurisdiction, pending appeal; and could not erase from the record a standing Motion to Intervene. (By granting it, he could make the appeal "moot"; by denial, the appeal stands.)

There is no reason to believe that Judge Winder acted in good faith and/or in technical competence in April in denying a Motion to add Tracy Voigt as a plaintiff in this action, as his previous objection in November had been cured. (Formal notice had been given to the DOE Defendants.) Judge Winder states no grounds or law in support of his Order that Intervening Plaintiffs were not proper parties and had as much claim as did plaintiffs Lynda and Donna.

There is no reason to believe Judge Winder's Order at that time was any more a "with prejudice" Order than his November Order; but that it was technically a "without prejudice" order, for the Order had no basis in law or fact - except a "refusal of jurisdiction" at that time.

To take appeal on TWO Motions to Intervene would be frivolous and an insult to the Utah Supreme Court...the matter at the time of the April hearing was already before the Supreme Court of the State of Utah (that Court refused jurisdiction after April). The Supreme Court of Utah should have taken jurisdiction.

(I do not take any blame for a non-lawyer technical incompetence, because IF THE COURTS HAD PROCEEDED "IN DUE PROCESS", it would have given me the time necessary to counter arguments and to tie up the loose pieces. More blame must be laid upon the Court for technicalities, than upon a nonlawyer.)

The Motion to Intervene pending the appeal on the first Motion to Intervene (i.e, the second Motion to Intervene) must be considered -- in effect, and for all practical purposes -- a MOTION TO RECONSIDER. And is entered SIMULTANEOUSLY while an appeal is pending in the interests of time and the speedy conclusion of this controversy...And did not in any way (and should not in any way) prejudice or throw out of Court the original (on appeal) Motion to Intervene.

V.

As to Defendant Hospital's contention that Tracy Voigt is not precluded from recovery of her share of such damages, if any, is an argument that indeed Judge Winder's Order denying intervention was a "without prejudice" Order, for if it were "with prejudice" he would have - in effect - denied Tracy Voigt's claim to any portion of the action at law.

VI.

As to Defendant Hospital's argument that Tracy Voigt failed to complete appeal...please be advised that not having a filing fee, Tracy Voigt filed a Motion to Proceed in Forma Pauperis, which was in order... and remains so (see Poverty arguments herein).

...when the Utah Supreme Court refused jurisdiction (Defendant Hospital argued the dismissal in lower court was not a final judgment...that is, AFTER April hearing he argued this), Tracy Voigt attempted to get the United States Supreme Court to assume jurisdiction over the issue of Intervening Plaintiffs RIGHT to be party plaintiffs in this action. The U. S. Supreme Court refused to hear the matter. (They refused jurisdiction) By these actions, Tracy Voigt was timely and was prosecuting this action timely.

RES JUDICATA ... DEFINED

from BLACK'S LAW DICTIONARY:

Res judicata ... designates a point or question or subject matter which was in controversy or dispute and has been authoritatively and finally settled by the decision of a Court; that issuable fact once legally determined*is conclusive as between parties in same action or subsequent proceeding ...

... A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment*. Rule that a final judgment*rendered by a court of competent jurisdiction* on the merits*is conclusive as to the rights of the parties and privies, and to them constitutes an absolute bar to subsequent action involving the same claim, demand or cause of action.

...We do not need to read further... Let us examine the underlined key ingredients to res judicata....

*see argument next page

RES JUDICATA ... defined
continued

A. "legally determined" ...

it is not unreasonable to define this as "legally" (as opposed to "illegally") determined; rather than as: "a" decision made by "a" Judge. (A serious error of Court possibly renders it an "illegally" determined decision?)

B. "competent jurisdiction" ...

ALL courts refused jurisdiction, in the initial proceeding by these Intervening Plaintiffs*

(the lower court said - in effect - that it could not take jurisdiction UNTIL notice was given as provided in a retroactive statute).

q (both the Utah Supreme Court and the United States Supreme Court refused to hear the dismissal on its merits; that is, they both refused jurisdiction)

C. "on its merits" ...

includes due processes of law and argument; i.e., the contentions of each party have been thoroughly and completely investigated, pondered, and a due-process decision made. This is a requirement in any "with prejudice" ruling (except by waiver of the parties, e.g., through out-of-court settlement).

*see footnote set out p. ____a.

footnote to p. _____

"jurisdiction-----refusal"...

This I shall develop in Oral Argument (obviously, the Judge already had jurisdiction of the investigation of the death of Ada Tracy; and these Intervening Plaintiffs are arguing his refusal was error of court by reason of the fact he already had jurisdiction ; and the retroactive formal notice in the case OF AN ACTION ORIGINATED BY A COMPLAINT was not applicable in an action originated by a Motion to Intervene. That is, he should have granted at least a portion of the Motion to Intervene, rather than denying the complete Motion in his concern for the rights of the DOE defendants.)

A "without prejudice" ruling is one in which it is conceivable more investigation, due process, pondering and argument is needed - and the Court is willing to admit it. OR REQUIRED TO ADMIT IT. (before the matter at controversy is legally disposed of)

(The second Judge's "with prejudice" order as to proper plaintiffs and to DOE defendants might appear to be at issue until final judgment in the matter. It would appear that such a ruling could be countered by a change of venue motion, as all plaintiffs should be included in this one wrongful death action - by right. And each plaintiff has a right to counsel of his own choice, even should he be forced to "represent himself". This writer has chosen to appeal, rather than to present a motion for change of venue to another court thereby challenging the second Judge's "with prejudice" as to proper plaintiffs.)

D. "by judgment" "a final judgment" ...

Defendant hospital argued in the Utah Supreme Court that the dismissal was not "a final judgment" and for that reason, the Utah Supreme Court should not take jurisdiction, in the original proceedings of these Intervening Plaintiffs.

From that refusal to take jurisdiction, it is reasonable to imply that the Utah Supreme Court has already ruled that "a final judgment" has not been rendered, and therefore res judicata may not be applied by the lower court to ...

POVERTY arguments

Tracy Voigt's income last year (1979) was under \$5,000 and out of that she had the expenses of four lawsuits. In addition she was involved in political controversies (and/or "campaigning").

And in trying to establish herself as a writer, which is the career she has chosen for herself. However, Tracy Voigt has been unsuccessful in marketing her work.

I believe this puts me into a poverty level among the poorest in this nation. This is a gross injustice given the abilities and skills I possess. And is, in my opinion, and I do allege that it is, a conspiracy against me.

POVERTY arguments

My health is too important to me to put this lawsuit over it. I need certain amounts of food and sleep and those two items come first.

That means

- (a) looking for a job (permanent and/or temporary, as I am again unemployed
- (b) working whenever I can get a temporary typing assignment for little money. I make from \$25 to \$150 a week.

(Rarely \$150 a week because that means 40 hours and short assignments mean you have a non-working "break" time between jobs. But you are still spending time going to agencies, and checking out newspaper ads.

Whatever time and money I have left goes for my other projects. I would rather lose out in this lawsuit by missing a deadline (which I might do anyway even meeting deadlines and submitting perfect briefs) than ruin my health to meet deadlines.

I require a high protein diet, because I have a "heart murmur" and because apparently I have a tendency toward the formation of "skin tabs" which could result in cancer. Right now, that means (since I don't have cooking facilities) I eat two to three cans of tuna a day (200% to 300% of the RDA, in order to maintain my body cells at working level). I also have problems with my teeth, which is another reason for a high protein diet.

POVERTY arguments

I do not believe it is unreasonable to ask the Court to care -- and to have the necessary patience -- for a poverty-stricken party who is acting in good faith (see rest of "Appellate Brief").

BECAUSE:

A. Please remember I sought -- and found -- a lawyer immediately upon learning of the death. I hope that my lawyer's withdrawal and my sisters' opposition to my being included in this action, will not prejudice the Court against all of my arguments.

Financially it is better for me not to pursue this matter. In recent years, I have been hurt very badly and in looking back over my life it appears "I took the path of least resistance to keep the peace"; and I made a resolution I would not do so in the future but would stand and (a) fight for what I thought was right if it were in my "pathway" and (b) would finish what I start. If I had done this years ago, my sisters would not be opposing me and Ada Tracy would still be alive today.

B. I believed that a Conspiracy has been committed against me...that my other legal actions are an outgrowth of that Conspiracy (this action was the first of the four lawsuits). I have no information, or suspicion, to connect any of the Defendants herein or reason to believe that any of the Defendants herein participated or joined in that conspiracy.

However, it is possible that those participating may, or may not, have put pressure upon Ada Tracy to cause her to seek out the medical advice of Doctor Jensen at University Hospital due to her partially psychosomatic heart condition. (She desired "reason" to retire early.)

C. I would also like to make the Court aware of a "suspicion" of mine: Perhaps there was an "understanding" at the time of the April hearing on my Motion to Intervene, that if I went to the Salt Lake City hearing (instead of letting Mr. Alverson handle it) I would not work for the State of Nevada. SUCH "UNDERSTANDINGS" LIKE UNWRITTEN RULES, ARE KNOWN ONLY TO THE INITIATED.

However, it is a coincidence that I placed number ONE on the State of Nevada Legal Senior Steno Rolls; making a grade of 100% in Legal Definitions; typing 104 wpm with two errors; and taking shorthand (legal dictation) at 100+ wpm, the only one taking this shorthand test who was able to get it all down.

I took the test, some weeks later I was interviewed, and my application was pending at the time I made arrangements to give notice to set the hearing on my Motion to Intervene.

The hearing was set for Monday; I made plans to leave on the weekend. Sometime Friday night--or Saturday morning--a message was left with the Desk Clerk where I was staying that I was to report to work on Monday morning. I got in touch with an answering service at the number advising that I had scheduled a hearing for Monday and would come in for work on Tuesday.

I do not think it was unreasonable to go to the hearing when it had been planned for so long and when my application had been pending so long without action. (There was little work to be done in the office anyway on Tuesday.) They said they "didn't like me"; and I was fired from the job (with ten hours of pay). One of the persons for whom I was to work said I should never have gone to the hearing (this person was a lawyer).

In Nevada, my sisters' attorney J. Bruce Alverson is associated with Harry Reid, then Chairman of the Nevada Gaming Commission. I call them "my three political enemies": HARRY REID (J. BRUCE ALVERSON); ROBERT LIST (the employer; then Attorney General of Nevada; now Governor); and JOHN McCARTHY (Sheriff, now; then, Ralph Lamb was Sheriff). (I have never met any of them in person; their vendetta

appears to stem from their championship of other persons' causes...)

"Such things", like unwritten rules, are known only to the initiated...maybe it is all just "coincidence"...

In my opinion, state and government jobs must be awarded on merit; not political patronage. They should have decided they "didn't like me" before they gave me the job; and ten hours is not long enough to discern my likeability, unless one has become embroiled in a Conspiracy oneself and one doesn't care to make a personal effort.

D. I am sure the wealthy doctors appreciate the way the Court protects "their rights". And Ada Tracy died virtually a pauper; and maybe even the Court feels a woman like that should give her life in the cause of Doctor Jensen's research, as a way of "paying her dues" in the world. I hope not.

Ada Tracy's life was a tragedy. She looked forward for years to her "retirement", when she'd have a small pension, and she didn't have to go to work. She spent eight years "paying her dues" in a State Mental Hospital. And I firmly believe that was a miscarriage of justice. Medical men's word was taken without question.

E. I must take my chances with this less-than-perfect brief (by reason of time and poverty obstacles) for if the Court will allow such convolutions of law, with no regard to what is Right, Just, Honorable, there is no way I can prevent it, even should I present a perfect Brief.

It does not seem quite fair that the Court must rely so heavily upon Mr. Lybbert's honesty and professional ethics because the Court knows only too well that Tracy Voigt is not a lawyer and the Court does not trust Tracy Voigt as being "amicus curae" but accepts Mr. Lybbert in such position... for the Judge relies like a blind man upon the superior abilities of Mr. Lybbert (Mr. Lybbert's wording on an Order can overrule the Judge's courtroom utterances).

It would appear that the Judge does not properly weigh the arguments of Tracy Voigt, having already made a preconceived judgment that they are not worth poring over. This statement is evidenced by refusal for the due processes of law provided in the legal system to iron out controversies to Tracy Voigt.

I believe injustice has occurred in this action.

F.. In the Nevada action (the one in which I am a defendant, the only action filed against me), when I consulted with a lawyer who has practiced fifty years, he gave me this advice: if you're coming up against a prejudiced court, don't fight. You'll get hurt worse.

Oh, I guess I won that lawsuit. BUT...

if I had taken it on the chin, taken my "medicine" to please those filing against me, as I WAS ADVISED TO DO, I would have served four days jail time.

q By fighting it, they had to find another way to "git" me...I served 53 Hours before Probable Cause hearing (I was informed 48 hours is the legal limit) since I could not raise bail, was released finally on my own recognizance... after an initial bail of \$500 (coincidentally, the case I found most closely akin to mine, a California reported case, involving^a/South Tahoe casino, bail was set at \$25) and was held from December 6 until December 22, 1979... which of course makes a total of longer than four days.

To me, I would still fight it; I don't have a Criminal ^{Conviction} ~~Record~~ (at least I have a chance of getting the Record expunged). That case, of course, is still pending.

The Criminal Conviction was Reversed by Dismissal, which I interpret as No Probable Cause for Arrest.

They actually had a witness who got up on the stand and corroborated the Arresting Officer's testimony that I resisted arrest by attempting "to run", by "hitting"

the officer, and by yelling "sick and dirty things" at the officer, that I yelled at him Pig and Son of a Bitch. That is such a dirty, ugly perjury I can hardly believe it.

I was assigned a Public Defender Deputy as technical adviser but he was bent upon convicting me; I was not allowed to subpoena witnesses, the Deputy refused to do so.

It is my opinion I conducted a brilliant cross-examination of the City Attorney's witnesses (I was not allowed to call witnesses). However, the value judgment of the Judge, because I cried on the stand, remembering such an ugly thing to happen to anyone (the Arresting Officer's actions were an intentional infliction of emotional distress upon me...he grabbed me, threw my hands behind my back, and handcuffed me, without warning), was two days of examination ~~XX~~ at Southern Nevada Memorial Hospital (I say he lacked jurisdiction, he'd already dismissed my criminal charges) which two days extended from the 6th of December to the 22d of December.

I will swear under oath there was no verbal abuse of the officer making the arrest at the time of the arrest, nor did I attack him, nor EVEN TOUCH HIM in any way, nor did I attempt to run away.

These charges were politically motivated; and there was no probable cause for a sane and rational man to make an arrest...

I give you this background for two reasons:

a. for the court's indulgence in (i) accepting this brief, in its present form, and/or (ii) in granting an extension to rewrite it and retype it, by reason of the December detention which made it impossible to work, and during which time I was not paid a salary;

and

b. because I worry that I'm coming up against another prejudiced court...that was an old lawyer, not a young, who has practiced fifty years, whether well or poorly. "If you're coming up against a prejudiced court, don't fight. You'll get hurt worse."

Ada Tracy is dead; she's really beyond recompense... it isn't worth it financially for me to fight against a prejudiced court, for this principle of law: the investigation of the death of Ada Tracy, to be sure she "got a fair deal". Her death enriched the defendants herein in the amount of \$80,000. Her doctor in Montana unintentionally put it well: "they really worked their fingers to the bone".

A. open-heart surgery: I believe therapy should have been advised instead of surgery. She should have been advised to retire; because that's what she wanted. Even one year would have been "something special" for Ada Tracy.

B. Infection: one cause was the length of time the surgical wound was open; was predictable; and extreme

should have been
precautions taken; before it spread to the breastbone,
which then required surgical removal of the infected
breastbone.

C. burr hole to remove hematoma: I do not
believe that adequate precaution was taken to keep her
from falling; she had fallen before, and they were aware
of the danger.

I believe the lumbar procedure was necessary,
to make a surgical decision at the point it was made.

I do not believe adequate precautions were
taken to insure her feeling of well being and I am not
altogether satisfied that ample investigatory procedure
was made to determine the cause of the low blood pressure,
which made it impossible to use general anesthesia.

In light of the above, it is my opinion a
thorough investigation should be made as to whether or
not successive burr holes are usually done, one right
after the other. (One interesting case history in one
of the medical texts I read tells of a man who had a
hematoma removed, remained in the same state after surgery,
went into surgery again on a different day, to remove
another hematoma. Recovered quite nicely.)

Filed Feb 4, 1980

*Tracy Wright
acting as his own
counsel*