1985

State of Utah v. Timothy and Mildred Lairby : Appellants' Petition For Rehearing

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	Case No. 18998
vs.	:	
TIMOTHY AND MILDRED LAIRBY,	:	
Defendants-Appellants.	:	

APPELLANTS' PETITION FOR REHEARING

APPEAL FROM THE JUDGMENT RENDERED IN THE
THIRD JUDICIAL DISTRICT COURT

HONORABLE PETER F. LEARY
Judge Presiding

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IN THE SUPREME COURT OF THE STATE OF UTAH

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1. Did this Court err in failing to consider the record as supplemented on appeal?

2. Did the Court err in sustaining the trial court's refusal to subpoena an out of state witness on grounds that no showing had been made before the trial court or on appeal that Tracy Long was a material witness?

3. Did this Court err in sustaining the Trial Count's admission of Dr. Palmer's testimony (or alternatively did this Court err in ruling that Defense counsel in the trial court made no objection to Dr. Palmer's qualifications to testify)?

4. Did this Court err in refusing to acknowledge ineffective assistance of counsel in the trial court?

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	Case No. 18998
vs.	:	
TIMOTHY AND MILDRED LAIRBY,	:	
Defendants-Appellants.	:	

APPELLANTS' PETITION FOR REHEARING

This Petition for Rehearing, together with the arguments in support thereof, are submitted pursuant to Rule 35, Rules of Appellate Procedure (as amended January 1, 1985) for the purpose of directing the Court's attention to points of law or fact which the petitioners, through their attorney of record, claim the Court has overlooked or misapprehended.

NATURE OF THE CASE

Following a consolidated trial in the Third Judicial District Court, County of Salt Lake, the Honorable Peter F. Leary presiding, on or about November 1, 1982, a jury returned a verdict against Petitioners Timothy M. Lairby, Jr. and Mildred R. Lairby. Mr. Lairby was found guilty of rape, forcible sexual abuse, and forcible sodomy. Mrs. Lairby was found guilty of forcible sexual abuse. Petitioners appealed their convictions, and in an opinion issued on December 31, 1984, this Court affirmed the convictions imposed in the trial court.

STATEMENT OF FACTS

On May 14, 1981, Petitioner Mildred R. Lairby was arrested on charges of sexual abuse of her four year old daughter, Virginia M. Lairby ("Lisa") (R. 6). Later, on July 1981, Petitioner Timothy M. Lairby, Jr. was arrested on charges of sexual abuse involving his four year old natural daughter, Virginia M. Lairby and his eight year old step-daughter, Carri L. Long. A jury trial was held on October 26, through November 1, 1982. The principle witnesses for the State included Virginia Lairby, Carri Long, and Dr. William Palmer. At the conclusion of trial, the jury returned guilty verdicts on all counts against both petitioners. On December 14, 1982, the Honorable Peter F. Leary sentenced Petitioner Timothy Lairby to four concurrent prison terms at the Utah State Prison, the longest being an indeterminate sentence of between five years and life. Petitioner Mildred Lairby was given an indeterminate sentence at the Utah State Prison of between zero to five years, however, this sentence was suspended and Mrs. Lairby was placed on probation.

ARGUMENT

POINT I

THE COURT ERRED BY FAILING TO CONSIDER THE RECORD AS SUPPLEMENTED ON APPEAL

On or about the 9th day of July, 1984, counsel for the respective parties in the above-entitled action entered into a Stipulation to Supplement the Record on Appeal by including in such record State's Exhibit 5-A and 5-B offered into evidence in the Third Judicial District Court in and for Salt Lake County, State of Utah, in Case Nos. CR81-714 and CR82-373, consolidated

for trial before the Honorable Peter F. Leary. (See copy of said Stipulation to Supplement the Record on Appeal attached hereto as Appellants' Exhibit A.) On or about the 10th day of July, 1984, counsel for Appellants filed a Motion and Order to Supplement the Record on Appeal pursuant to the aforementioned Stipulation. On the 10th day of July, 1984, Utah Supreme Court Justice Christine M. Durham granted Appellants' Motion to Supplement the Record on Appeal and ordered the Third Judicial District Court in and for Salt Lake County to supplement the Supreme Court's Record on Appeal by including within such record State's Exhibit 5-A and 5-B, offered into evidence at the consolidated trial of Case Nos. CR81-714 and CR82-373. (See executed Motion and Order to Supplement the Record on Appeal attached hereto as Appellants' Exhibit B.)

On August 9, 1984, the Clerk of the Supreme Court of Utah, Geoffrey J. Butler, notified respective counsel that the supplements to the record on appeal had been filed, pursuant to this Court's order. (Find Notice of Filing of Supplemental Record on Appeal, attached hereto as Appellants' Exhibit C.)

On December 31, 1984, this Court issued its opinion affirming the verdicts below. Beginning on Page 18 of the Opinion, the Court addresses Appellants' claim that the Court below erred by admitting only a portion of a letter written by Defendant Kathy Lairby to Mildred Lairby's ex-husband by stating as follows:

> "The letter, however, was not included in the record on appeal. In this absence, we have no means of determining its relevance and cannot rule on this question."

The above excerpt taken from the Honorable Justice Christine M. Durham's opinion makes it immediately apparent that the Court overlooked the Stipulation, Motion and Order referred to herein as Appellant's Exhibits A, B and C. For the convenience of the Court, State's Exhibits 5-A and 5-B, offered into evidence in the Third Judicial District Court in Case Nos. CR81-714 and CR82-[illegible] consolidated for trial before the Honorable Peter F. Leary, are attached hereafter as Appellants' Exhibit D.

In light of the above, it remains Appellants' position on appeal that the Court below committed reversible error in admitting only a portion of a document which was highly prejudicial when admitted out of context from the remaining portions of that document, and which document should have been clearly inadmissible under Rule 45, Utah Rules of Evidence, to begin with. (See Tr. 619-658.)

POINT II

THE COURT ERRED IN FAILING TO ACKNOWLEDGE THE OBVIOUS MATERIALITY OF THE TESTIMONY OF TRACY LONG, AN EYE-WITNESS TO THE CHARGED OFFENSES

On Page 7 of the Court's Opinion, the Court defends the lower court's refusal to subpoena Tracy Long, an out-of-state witness, to testify on behalf of the Defendant by stating as follows:

> "Moreover, no showing was made before the lower court, nor has one been made on appeal, that Tracy Long was a material witness as required under the Act."

The materiality of Tracy Long's testimony is unquestionably obvious to anyone who is familiar with the record in this case. According to Lisa Lairby's testimony, Tracy Long was present during the alleged incidents. Tracy Long was an eye wit-

to whatever did or did not happen. (See, for example, Pages 43-47, 115-119, Transcript of first day's proceedings.)

There is no question that Tracy Long was a material witness. There is no question that the lower court knew from the proceedings of the first day of trial that Tracy Long was a material witness. And there is no question that the Court was aware defense counsel felt Tracy Long could provide potentially exculpating testimony. This Court's attempt to defend the lower court's refusal to compel the attendance of an out-of-state witness on grounds that there was no showing that Tracy Long was a material witness constitutes nothing more than avoidance of the real issue. The question on appeal is whether the lower court committed reversible error in disclaiming all authority to compel the attendance of a material out-of-state witness, despite defense counsel's request, thereby depriving defendants of their constitutional right "to compel the attendance of witnesses in [their] own behalf." (Utah State Constitution, Article I, Section 12.)

Furthermore, the Court implies in its opinion that defense counsel in the Court below was to blame for the lower court's clear error in disclaiming any authority to compel the attendance of an out-of-state witness at an in-state criminal proceeding, by stating that defense counsel should have been prepared to cite the applicable code section or should have proffered the anticipated testimony. First of all, once a basic showing of materiality is made, counsel for appellants knows of no law which requires that defense counsel go further and proffer

a preview of his case-in-chief for opposing counsel. Secondly, defense counsel's failure to cite the applicable code section does not change the fact that the lower court erred, and that because of the court's error, defense was prevented from calling a material witness in its own behalf.

POINT III

THE COURT ERRED IN ADMITTING THE TESTIMONY OF DR. PALMER THAT LISA LAIRBY HAD BEEN SEXUALLY ABUSED IN THAT THERE WAS INSUFFICIENT FOUNDATION FOR SUCH TESTIMONY

Among the most damaging testimony presented by the State against Defendants in the trial court was that of Dr. William Palmer, who was allowed to state, "My opinion was that she was a victim, in all probability was a victim of sexual abuse." Quite simply and clearly, Dr. Palmer's testimony gave expert, even medical, authenticity to the charges raised against Timothy and Mildred Lairby. In footnote 17 of the Court's opinion, at Page 16, this Court attempts to discount the prejudicial impact of Dr. Palmer's testimony by stating as follows:

> "Dr. Palmer did not conclude or testify that Virginia Lairby had been sexually abused by her father and step-mother. He stated only that, in all probability, Virginia was a victim of sexual abuse."

With all due respect, for this Court to indulge in this type of distinction is naive. In the face of no physical evidence to support the charges, Dr. Palmer's opinion became the most damning evidence offered against Defendants, and this Court's attempt to discount the import of that opinion is clearly without any legitimate basis. If indeed the record reveals that there was an insufficient foundation for such opinion, and if in fact defense counsel made a timely objection based upon lack of foundation to

as to prevent such testimony from being admitted, there is no avoiding that fact that the admission of such testimony constitutes reversible error.

In this Court's opinion, it is acknowledged that there was insufficient foundation for Dr. Palmer's testimony. This Court claims, however, that defense counsel in the trial count "made no objection to Dr. Palmer's qualifications to testify" relative to the occurrence of sexual abuse. In stating this, this Court "strains" to ignore the objections made by defense counsel which were based upon lack of foundation which would clearly encompass an objection as to a witness' qualification to diagnose the occurrence of sexual abuse in the absence of physical injury. It is clear from the record, on Pages 222 and 224 of the Trial Transcript, that on two separate occasions, the trial court sustained defense counsel's objections as to lack of foundation when the State attempted to elicit Dr. Palmer's opinion based upon his ability to diagnose the occurrence of sexual abuse in the absence of physical injury. As this Court acknowledges in its opinion, the trial court was correct in sustaining those objections on the basis of lack of foundation. On Page 226 of the Trial Transcript, it is seen that the State attempts a third time to elicit Dr. Palmer's expert opinion before the jury, and although defense counsel renewed his objection upon the basis of lack of foundation, this time the Court overruled his objection and allowed Dr. Palmer's opinion to come in based upon his "objective and subjective" observations. The plain fact of the matter is that there did not exist sufficient foundation for the introduction of such opinion, notwithstanding his observations. To have

allowed such opinion was clearly error. The context of this portion of the transcript reveals that defense counsel's foundational objections were clearly directed to Dr. Palmer's qualifications to diagnose the occurrence of sexual abuse in the absence of physical injury. For this Court to conclude otherwise, by its failure on the part of defense counsel to use key words such as "qualifications to testify" is nonsensical in avoidance of the true issue. In this regard, and in conclusion, it is unmistakable that the trial court allowed expert opinion over defense counsel's clear foundational objection, and in the admitted absence of such foundation, this was reversible error.

POINT IV

THE RECORD IN THE CASE AT HAND REVEALS THE INEFFECTIVE ASSISTANCE OF COUNSEL

As was indicated in Appellants' brief, until recently, the common law standard for ineffective assistance of counsel was that "on appeal it must appear that counsel's lack of diligence or competence reduces the trial to a force of a sham." (State v. McNichol, 554 P.2d 203 [Ut. 1976].) Recent case law has adopted a new standard which essentially demands that defense counsel exercise the skill, judgment and diligence of a reasonably competent defense attorney. (Codianna v. Morris, 660 P.2d 1111 [Ut. 1983].) A thorough and objective reading of the record from the trial in the instant case reveals a course of conduct on the part of defense counsel indicative of confusion and the lack of judgment, wherein the trial indeed becomes farcical. In this regard, and by way of example only, a fair observer could not help but view the dialogue and cross-examination as evidenced

Page 31 of the transcript as anything but embarrassing. Certainly, it must be said that defense counsel's inept contrasting of the names "Lisa" and "Virginia" at Page 27 of the transcript could do nothing more than place the petitioners in a bad light in front of the jury. These two examples are among many wherein defense counsel plainly and simply presents a very poor image before the jury. Reference in this regard is further made to Pages 68 through 73 of the Trial Transcript. In this regard further, reference is made to Pages 76 through 78 of the Trial Transcript. Can it be actually maintained that the dialogue engaged in by defense counsel relative to children's poetry and the like is evidence to this Court of the competent willingness of defense counsel to identify himself with the true interests of the accused in presenting such defenses as are available under the law and consistent with the efforts of the profession? We think not, and with these factors in mind, it is suggested that in attempting to condone the conduct of defense counsel and the handling of the case as evidenced by the transcript, this Court has been actively insensitive to the realities of trial practice before a jury, particularly in a serious case such as the instant one.

With reference to the ineffective assistance of counsel argument, we suggest that this Court again strains to avoid true and significant issues. For instance, it has been maintained that counsel exhibited incompetency in failing to move to strike certain evidence and in failing to request an admonishment to the jury to disregard certain testimony. At Page 177, Mr. Greg DuVal

was called to testify on behalf of the prosecution. Mr. [illegible] was a corporal in the patrol division of the Provo Police Department. His testimony consisted of no more than an indication that he spoke with and conversed with Lisa Lairby subsequent of the alleged violation. At Page 194 Dr. Christine Swanson was summoned by the prosecution. Her testimony consisted mostly of foundational questions after which time she indicated that she had submitted a report to Dr. Palmer and that she had formed a conclusion. There was no testimony as to that which was submitted to Dr. Palmer or essentially as to what her conclusion was. At Page 204, it is seen that the prosecution then called Ms. Finea Feuiaki, who indicated that she was an employee of the Division of Family Services and that she had interviewed Lisa Lairby at the Utah Valley Hospital and that Lisa Lairby was under distress. This was essentially all of her testimony. Additionally, it was indicated at Page 242 that Kelly Power, a protective social worker with nine years experience in social work, had conducted an examination of Tracy and Carri Long. After viewing such testimony, it is clear that the testimony of each of these individuals had no probative value as to any of the issues in the case. Obviously, to any person skilled in the law, the appropriate objection would have been as to relevance which would have no doubt been granted. In order that there be no misunderstanding, it is our position that where evidence has no probative value as to issues in the case, it is therefore irrelevant and inadmissible. Notwithstanding the irrelevancy and lack of probative value, it is also quite clear that these persons, simply by virtue of their official capacities, added a

significant amount of credibility to the prosecution's case before the jury. In other words, the prosecution chose to call such persons in their official capacity after such persons had had certain connection with the persons involved in this case, irrespective of the relevancy of their contact. The mere presence of these people, it can be said, tends to lend certain authenticity to the prosecutorial position. For these reasons, defense counsel exercising a minimal amount of competency should have been expected to move to strike the entirety of such testimony and should have requested an admonition from the Court directing the jury to disregard all of such testimony. Inasmuch as all of such testimony was clearly irrelevant as to the ultimate determination by the jury in this case, the trial court would have no doubt granted such a request.

This Court concludes this area of commentary by suggesting that nothing related to these witnesses may by remotely (emphasis added) characterized as harmful or prejudicial to the defense. Again, it is sincerely suggested that any person truly sensitive to the essential psychology of a trial before a jury could not so conclude under these circumstances attendant to this case.

CONCLUSION

In conclusion, it must be stated that counsel for petitioners herein have no desire to be disrespectful or rude to this Court or to the trial court. Rather, these comments are made very sincerely in the hope that by way of the instant Petition for Rehearing, this Honorable Court may see fit to

reassess its position as regards the matter of the convictions which resulted from this trial. Counsel for petitioners would be less than honest with this Court if it did not categorize the trial in this case as disgraceful in relation to that which anticipated and required under the law. In this regard, while the more significant points have been raised once again by way of the instant Petition for Rehearing, many other important features have been raised by way of the instant appeal, and we reaffirm those here.

As counsel for Petitioners, I certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

DATED this 29th day of January, 1985.

Respectfully submitted,

ROGER TAYLOR NUTTALL
Attorney for Petitioners/Appellants
Timothy and Mildred Lairby

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that four copies of the foregoing PETITION FOR REHEARING were hand delivered to Jan B. Thompson, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, this 29th day of January, 1985.

ROGER TAYLOR NUTTALL
Petitioners' Counsel of Record

APPELLANTS' EXHIBIT A

ROGER TAYLOR NUTTALL
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255 East 400 South
Suite 104
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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff/Respondent, vs. TIMOTHY AND MILDRED LAIRBY, Defedants/Appellants.	STIPULATION TO SUPPLEMENT THE RECORD ON APPEAL Case No. 18998

Defendants/Appellants, Timothy and Mildred Lairby, by and through their attorney of record, Roger Taylor Nuttall, and Respondent, the State of Utah, by and through the office of the Utah State Attorney General, hereby stipulate and agree that the record on appeal may be supplemented by including in such record State's Exhibit 5-A and 5-B offered into evidence in the Third Judicial District Court in and for Salt Lake County, State of Utah, in case numbers CR 81-714 and CR 82-373, consolidated for trial before the Honorable Peter F. Leary.

Dated this 3 day of July 1984.

ROGER TAYLOR NUTTALL
Attorney for Defendants/Appellants
Timothy and Mildred Lairby

Dated this 9th day of July 1984.

UTAH STATE ATTORNEY GENERAL's
OFFICE

By: Dave B. Thompson
Dave B. Thompson
Assistant Attorney General

MAILING CERTIFICATE

I, the undersigned, hereby certify that a copy of the foregoing STIPULATION TO SUPPLEMENT THE RECORD ON APPEAL was mailed by United States mail, postage pre-paid, to Dave B. Thompson, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, this 9 day of July 1984.

APPELLANTS' EXHIBIT B

FILED JUL 10 1984
Clerk, Supreme Court, Utah

FILED JUL 9 1984
Clerk, Supreme Court, Utah

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Salt Lake City, Utah 84111
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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff/Respondent, vs. TIMOTHY AND MILDRED LAIRBY, Defendants/Appellants.	MOTION AND ORDER TO SUPPLEMENT THE RECORD ON APPEAL Case No. 18998

Defendants/Appellants, Timothy and Mildred Lairby, by and through their attorney of record, Roger Taylor Nuttall, respectfully move this Court to direct the Third Judicial District Court in and for Salt Lake County to Supplement the Record on Appeal in the above entitled matter by including within such record State's Exhibits 5-A and 5-B offered into evidence into the consolidated trial of case number CR 81-714 and CR 82-373.

Dated this 3 day of July 1984.

ROGER TAYLOR NUTTALL
Attorney for Defendants/Appellants

ORDER

Based upon the foregoing Stipulation and Motion to Supplement the Record on Appeal, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Third Judicial District Court in and for Salt Lake County shall Supplement this Court's Record on Appeal in the above entitled case by including within such record State's Exhibit 5-A and 5-B, offered into evidence at the consolidated trial of case numbers CR 81-714 and CR 82-373.

Dated this 10th day of July 1984.

BY THE COURT:

Utah State Supreme Court Justice

MAILING CERTIFICATE

I, the undersigned, certify that a copy of the foregoing Motion and Order to Supplement the Record on Appeal was mailed by United States mail, postage pre-paid, this 9th day of July 1984, to Dave B. Thompson, Assistant Attorney General, 236 State Capitol, Salt Lake City, Utah 84114.

APPELLANTS' EXHIBIT C

SUPREME COURT OF UTAH
STATE OF UTAH
SALT LAKE CITY, UTAH

August 9, 1984

OFFICE OF THE CLERK

Timothy M. Lairby, Jr.
P.O. Box 250
Draper, Utah 84020

The State of Utah,
Plaintiff and Respondent,
v.
Timothy M. Lairby, Jr., and
Mildred Lairby, his wife,
Defendants and Appellants.

No. 18998

This day supplemental record on appeal filed (exhibits). The record in this case may be withdrawn from the Supreme Court only upon written request of the attorney of record.

Geoffrey J. Butler, Clerk

cc: David L. Wilkinson, Attorney General
Attn: Dave B. Thompson, Asst. Attorney General
Roger Taylor Nuttall, Esq.

Supreme Court, State of Utah
Salt Lake City, Utah 84114

Roger Taylor Nuttall, Esq.
255 East 400 South, Suite 104
Salt Lake City, Utah 84111

APPELLANTS' EXHIBIT D

March 19,1982

Dear Millie,

The purpose of this letter is to attempt to open a communications path between you and my family. Tracy and Carri are both happy, healthy and doing well in school. The girls currently feel a lot of anger towards you and blame you for much of what has happened. Through counseling I feel this can be corrected in the long term. What the girls need from you now is understanding and compassion. They would greatly appreciate receiving some of their belongings which are at your house. The receipt of these things would improve their feelings towards you.

I will accept letters addressed to me and will share the contents with the children. These letters will be reviewed by Rickie and myself before showing them to the children. There is no need to send letters registered mail as that does not accomplish anything. I would suggest that you address the children in more of an adult tone and not as babies. I would also suggest that you refrain from making references to Tim and signing the letters from Tim. In addition, please do not refer to when the children come home. They are already home.

I will always encourage the girls to write to you but I will never force them.

Yours truly,

May 8, 1982

Dear Rich,

We hope this letter finds you well, but you will probably feel much less so after reading it. You may consider this a statement of policy from both of us (That is why some of the sentences may seem a little awkward.) a policy which will make you a bit uncomfortable and probably a bit angry. Tough! We will try to answer your recent letter point by point, being as clear as we can.

To begin with, Tracy and Carri can never be - will never be- YOUR family. You and Rickie stole them with an opportunistic grab, with lies and half-truths, from us. Anything you steal can never belong to you. So you can put that notion in the trash can right now. They are ours, always have been, and always will be, regardless of where they happen to reside. You who hurt those two girls so deeply by leaving their mother (and them) for an adulterous relationship, who said, "I can't handle your problems," when you left, are a fool if you think you can erase that hurt by allowing Rickie to destroy the beautiful relationship Tracy and Carri had with us. Can't you see that Rickie is using you as brazenly as she is using your daughters to get her way? You a reaping a whirlwind, Richard Long.

There were a number of times during the five months that the four of us shared a home that Tim held Tracy and tried to comfort her sobs for the deep and terrible hurt you did to her. And that pain is one of the main reasons she's doing what she is now doing with regards to him: she is saying what she thinks you want her to say, hoping to please you, and you haven't got the common sense to see what's going on. Tim had a better relationship with Tracy and Carri in five months than you ever did have or ever will have with them. That galls you, too, and if you do not admit it you are a liar on top of being a fool.

What you cannot see in all this criminal sewage flying around is that you let Buzz Blunck (who merely repeated to you lies told him by Tim's ex-wife) prejudice you so much against Tim that you ignored Dr. Street's diagnosis, shut your mind to anything but filth, and have not REALLY tried to get to the truth. All you have done is reinforce the girls' lies because they are what you want to hear, and they serve your purpose. But then, you always were a wimp when it came to Tracy and Carri; you haven't got the guts to give them a swat or a sharp word even it if would bring out the truth.

Carri is saying what she is to please you as well. Just for the record, so that in the future you cannot say we did not tell you so, Tim has never hurt, debased, or abused ANY child, much less his own daughters. (And make no mistake: Tracy, Carri, and Virginia are all three his daughters, whether you like it or not.) Millie has never hurt Virginia either, and you know her well enough to know that, regardless of what Rickie has pressured Carri into saying.

Now, as to the anger that Tracy and Carri feel towards their mother, look to your own household, Fool. You know what kind of relationship she had with them. Add that to the fact that you saw NO evidence of fear of Tim (on their part) while you were here. In fact, if you will recall, what you saw between at least Tracy and him was exactly the opposite of fear. All the fear, hurt, anger, and lies did not just 'finally' come out down there. They were born down there, after Tracy and Carri arrived.

for this, which you have stood by and allowed, and for your convenient refusal to believe Dr. Street, and for your convenient refusal to admit what you really know about Millie, you will bear full responsibility, Richard, and at the end will feel even more agony that we now feel at being unjustly accused.

As far as the girls' belongings are concerned, if you want them you can come up and get them. In fact, we would like you to come up and get them so we could talk to you face to face. If you are stupid enough to think we might resort to violence, you are more than welcome to bring whomever you desire to protect your tender hide. You had enough money to come up here and steal the girls with your 'Father of the Year' act in juvenile court, so you can account to the girls for not having their belongings. And don't try being cute and sending a "Legal Representative" to pick up the stuff. It will be turned over to the girls and only the girls. Bring them for two reasons: (1)They deserve to pick out what they want, and (2)they deserve to see us, whether you like it or not.

Between your convenient blind stupidity and my ex-wife's lies, we both have ulcers, Tim has lost five jobs, and we have spent over $5,000.00 on legal fees alone. Add that to the fact that you are ignoring your obligation for July, August, September, October, November, and December (first half) child support payments, and you can see that we just cannot afford to send anything anywhere. Oh, and do not lie to the girls; when they ask you why we do not send their belongings, tell them that it is because you owe their mother $2,750.00 and she cannot afford to sent it.

And by the way, all letters will continue to be from both of us, because neither of us have done anything to deserve being cut off. Tracy and Carri will not be HOME until they are back here with us.

You accuse Millie of talking down to the girls. Well, thanks to your lies and a few other people's as well, it has been almost a year since she's been able to hold a decent conversation with them. Don't blame her. Besides, what are you doing when you open and censor all their mail? - treating them as adults? Bull feathers! If you really meant what you said, you'd allow them to have their mail unopened as the U. S. Mail says you should and not be afraid of what we'd say to them. (I don't think you would be afraid of what we'd say - such as "I love you" if you really believed we were guilty. You're insecure in your hold on them and you know it, even if you won't admit it). We love Tracy and Carri more than you can even conceive of so we're not going to write anything to hurt them. But I forget, you're so good you can censor their mail and treat them like babies, but we can't even write or talk to them to your approval. You think you're protecting them? Remember what we said before about the girls' feelings towards Millie? Their anger and lies didn't just come out down there - they were born down there. Tracy and Carri need protecting from Rickie and you, not from us.

Yours truly,

Tim Lairby and Millie Lairby

I really expect you to laugh at the last part of this letter, but that is fine. The effect will still be the same. I actually hesitate to do this because it's like casting pearls before swine, but nevertheless even swine must at times be taught a lesson.

Richard Russell Long, you and your filthy wife have been delivered up by the power of the Holy Priesthood to any and all manner of misfortunes and plagues that God sees fit to inflict upon you. This because of what you have done and are doing to innocent persons and to an innocent family. I feel sorry for you because as your life slowly comes apart - and it will - you won't even have a simple prayer to fall back on because you think you're so good you don't need it. Fool! Maybe, just maybe in that computer mind of yours is enough humility and Godly sense to realize what you're doing, but I doubt it. I seal this on your head by the power of the Holy Melchizedek Priesthood and in the name of Jesus Christ. Amen.

Timothy G. Lairby, Jr.

PLAINTIFF'S EXHIBIT