

C. ISSUES PRESENTED FOR REVIEW

DOES IT VIOLATE the Sixth Amendment right to counsel of choice to force a defendant to accept defense counsel hired by relatives without his knowledge or consent, when the defendant can afford to pay for private counsel, objects to the attorney hired by relatives, and wishes to retain someone else?

DOES IT VIOLATE the 6th or 14th Amendments for a court to refuse to remove retained private counsel whom the defendant claims he never hired, without ever holding an evidentiary hearing to determine whether the attorneys were in fact hired by someone other than the defendant?

IS THE APPELLANT ENTITLED to dismissal of the charges against him, pursuant to Washington state Constitution, Art. 1, §§ 10, or CrR 8.3(b), or the 6th or 14th Amendment, where the prosecution causes a 6½+ year delay in the processing of a criminal appeal, by falsely informing a state court judge that defendant is responsible for the failure to file transcripts, thereby causing the erroneous dismissal of defendant's appeal, when in fact the prosecution was responsible for the delay because it informed the Court Clerk to not file the "missing" transcripts?

DOES PERJURY, suborn of perjury, judicial misconduct and Governmental misconduct initiated and abetted by court officials in the underlying case, as canted in the trial and appellate record, constitute such an insult to due process so as to require the Court to dismiss Stein's conviction in the interest of justice?

DOES THE GOVERNMENTAL MISCONDUCT, including a conspiracy to kill Stein and sabotage, thwart, and delay his original direct appeal, and federal habeas, constitute such shocking misconduct so as to dismiss prosecution in the interest of justice?

DOES THE COURT'S FAILURE to consider Stein's original PRP on the merits in 1991, where the Chief Judge (improperly) refused to consider PRP, and compelling evidence shows that bribes and extra-judicial influence were paid court officials to sabotage Stein's legal interest, resulting in **unlawful** incarceration for 16+ years, constitute such due process violation or judicial misconduct as to dismiss prosecution in interest of justice?

DOES IT VIOLATE DUE PROCESS for a private attorney, appearing in violation of the Sixth Amendment guarantee of retained counsel of choice, to waive speedy trial over the objection of the defendant?

IS THE DEFENDANT ENTITLED TO ENFORCE terms of a conditional speedy trial waiver, when the waiver's terms and the unique conditions would require the Court to dismiss the prosecution?

DOES IT VIOLATE CONFRONTATION for a private attorney whom the defendant did not retain, and had sought to remove as counsel, to cross-examine the state's witness, and, thereafter, if a state's witness becomes unavailable in a second criminal trial, can such testimony be canted into the record and used against defendant's interest in a subsequent criminal trial?

D. BACKGROUND OF CASE

The events underlying this case began over 25 years ago, before 1980, after an attorney and real estate developers asserted that Nicholas Stein signed a real estate contract which the attorney had prepared. The \$1,800,000. contract is suspect because no down payment was received.

Initially, Nicholas Stein asserted that the attorney, et al., had deceived him and he said that he had not knowingly signed any contract to sell his Clark County based real property.

After Nicholas attempted to expose the fraud and set aside the contract, Nicholas received a series of threats - demanding that he consent to the contract. In response to one threat, his house was destroyed by arson.

Thereafter, Nicholas Stein retained the prominent Clark County law firm, Landerholm, Memovich, Whiteside, et al., and he also asked his ex-wife, Muriel Graham, (who had remained his best friend in life), and his son, Jack Stein, to assist his efforts to repudiate the alleged, fraudulent, real estate contract.

Regretfully, the Landerholm Law Firm was also, secretly, representing the alleged purchaser, Haagen. Indeed, unknown to Nicholas, the law firm had represented Haagen for years.

Thereafter, Muriel and Jack received threats of violence demanding that they stop supporting Nicholas' efforts to vacate the contract. Muriel contacted police who placed phone taps.

Also, Muriel contacted attorneys and judicial officials to expose misconduct by court officials.

One day after Muriel contacted a judicial official, she was found dead in her bed.

Stein's family believe Muriel was murdered to sabotage her efforts to assist Nicholas to repudiate the "Haagen" contract.

Thereafter, without notice to Nicholas Stein's new attorney of record, a Superior Court Judge granted a guardianship over Nicholas Stein, as requested by the real estate developer, Haagen, and Nicholas' brother, George.

This, despite the fact that Nicholas did not suffer any mental or physical limitation that would require a guardianship. The guardian, Ned Hall, the purchaser, Haagen, and brother, George, were concerned because Jack's father, Nicholas, had assigned his interest in the property and disputed contract to Jack, and when Haagen failed to make a scheduled payment on the assigned contract, Jack retained attorney Ken Eiesland to prepare documents to foreclose and cancel the disputed contract, for non-payment.

The guardian immediately sued Jack Stein to set aside agreements between Jack and Nicholas. The guardian's lawsuit was assigned to Clark County Superior Court Judge, John N. Skimas. Jack retained attorney Ken Eiesland to represent him.

However, almost immediately, a court clerk, acting as a confidential informant, advised Stein that Judge Lodge and a prosecutor were observed "tampering" with court files, and Lodge requested that Jack Stein's case be reassigned to himself.

Jack Stein notified Mr. Eiesland, who drafted an Affidavit of Prejudice against Judge Lodge, intending to block transfer of Stein's case to Judge Lodge. Eiesland asserted that he could not stand Lodge and that would not want Lodge as the assigned judge. Recusal was also appropriate because Jack had previously broken off an intense sexual relationship with Lodge's wife.

p-6

However, later, Eiesland stated that Judge Lodge refused to honor the Affidavit of Prejudice and would not recuse himself, allegedly asserting that because the case was in equity, Jack was not entitled to recusal. Eiesland asserted Lodge's refusal to recuse would be a good issue on appeal.

Stein expected Ken Eiesland to provide capable legal service because Eiesland had prepared the documents to foreclose on the disputed "Haagen" contract. However, after Eiesland failed to initiate appropriate discovery, Jack Stein discussed his concerns with another judge, over lunch. It was Jack's custom to have lunch with judicial officials, periodically. Stein was advised to seek independent advice, which Jack did do. Then, Jack confronted Ken Eiesland about his lack of appropriate pre-trial preparation. Mr. Eiesland angrily resigned and Jack Stein accepted his resignation.

However, when Stein requested return of all unearned retainer, Eiesland explained that he was short of cash. When Jack complained, Eiesland explained that he had been desperate for cash and did not think Jack would mind so he "borrowed" Stein's money. Eiesland never returned the money! Later, Stein discovered Eiesland had converted Jack's trust assets to his own use.

Eventually, years later, Stein learned that Mr. Eiesland had improperly taken money from Jack's account, which he then used to purchase real property with Judge Lodge, et al. This secrete wrongdoing was done at the same time Eiesland was (officially) representing Jack Stein's interest before Judge Lodge.

It seems criminal and unethical for an attorney to divert funds from a client's account for his own personal use. Furthermore, it seems improper to misuse a client's funds to purchase real property in partnership with the judge assigned to the client's case.

In retrospect, it seems Lodge was vengeful toward Stein because of his past sexual relationship with Mrs. Lodge, and that Lodge had Stein's case reassigned as a ploy to harm Stein.

Jack Stein's attorney should not have diverted funds from a trust account without Stein's knowledge or authorization. Moreover, Stein's attorney should not have used the converted funds to purchase property with the judge assigned to his client's case. In retrospect, it appears Mr. Eiesland was manipulated to sabotage Stein's legal interest, as a quid pro quo to serve Judge Lodge's animosity, and to betray Stein's interest.

Ned Hall used the guardianship proceeding to control and exploit Nicholas Stein. Jack Stein asserted that Ned Hall was an unfit guardian and that, because there was no medical or other reason for a guardianship, the guardianship should be terminated. In response, Ned Hall conspired with a Clark County authorities to place Nicholas Stein in a convalescent center, and secured a "protection" order prohibiting Jack Stein from visiting his father, Nicholas. Both Nicholas and Jack were aggrieved and filed motions to vacate the guardianship and vacate the protection order, as abuse of process.

Nicholas sought to vacate the guardianship and retained new and independent legal counsel. His new attorney secured medical documentation showing a guardianship was not appropriate.

Also, the attorney recommended that Nicholas move from Clark County and establish himself as a domicile of Oregon for legal purposes. At his father's request, and in concert with Ned's doctor, Jack transported Nicholas from Washington to a Portland, Oregon medical facility. Nicholas Stein's doctor arranged for therapy and other treatment at the Oregon hospital.

Jack Stein visited his father daily at the hospital. Nicholas' health showed marked improvement. Nicholas' attorney secured medical and psychological evaluations showing Nicholas did not require a guardianship and prepared pleadings to vacate the Washington guardianship. Presumably, the guardian and adverse interests feared their opportunity to control and exploit Nicholas was in jeopardy. The guardian secured a Clark County Superior Court order purporting to authorize Ned Hall to remove Nicholas to a care facility in Washington State.

Furthermore, the prosecutor and Ned Hall arranged for Clark County Sheriff deputies to accompany Hall into Oregon and then to transport Nicholas "back" into Washington State.

Nicholas and Jack Stein filed a 28 U.S.C. §1331 et al., civil rights lawsuit against Ned Hall, seeking \$2,500,000. in damages.

In 1987, one or more crime was committed against Ned Hall by a friend of Stein's stepson, Richard Bailey. However, Jack Stein was neither a conspirator nor accomplice and had no knowledge of the crimes against Hall. However, at request of prosecutors, Clark County authorities contrived to produce evidence to falsely implicate Jack Stein in the 1987 crimes against Ned Hall.

CRIMINAL JUDICIAL MISCONDUCT TO EXPLOIT STEIN

In 1988, Jack Stein was arrested and charged with crimes related to the underlying conviction. At the time of Stein's arrest, Stein was a modestly wealthy man, owning real property valued in excess \$5,000,000. and holding stocks and securities valued in excess \$950,000.

Shortly after Stein's arrest, a prosecutor confronted Stein on a lower level of the jail, while Stein was still in handcuffs, and boasted that prosecutors had a plan to control and exploit Stein's assets through the Clark County Superior Court, where they could control everything. The prosecutor predicted; "There will be nothing left when the court gets through."

At the time, Stein considered the threat an idle boast. However, Stein was aware that the prosecutor and a deputy prosecutor harbored extreme political animus against Jack Stein.

Shortly after Stein's arrest, a prominent defense attorney, Richard Petersen, filed his appearance as defense counsel for Jack Stein. However, within 10 days, Mr. Petersen told Stein that the elected prosecutor, Art Curtis, wanted to force him to resign as Stein's defense counsel.

Mr. Petersen explained that he had once been in a financial bind and had diverted a client's funds to his personal use. He continued, "Art (Curtis) had known about it and would never have said anything, but Art was so obsessed with getting you out of his hair, he will do anything. ... Art has hated you for so long that he will stoop to anything to get you. ..."

Over Stein's objection, the court removed Petersen, and then appointed substitute attorneys, Dane and Dunkerly, despite the fact Jack Stein did not claim to be indigent, advised he wished to be represented by retained counsel of choice, and had filed a bar complaint against Dane's law partner.

Dane and Dunkerly filed a motion to recuse Judge Morgan, without Stein's knowledge. Dane and Dunkerly conspired with Judge Heavy of Seattle to have the court appoint Judge Heavy. Mr. Dane spit gobers on Stein during attorney conferences, and he also threatened Stein.

It is apparent the Court failed to protect Stein from miscreant attorneys and judicial officials, such as Judge Heavy and Judge Borst.

Moreover, the Court failed to protect Stein from FRAUD and abuse of process and/or judicial misconduct in collateral (civil) proceedings.

THE PROSECUTOR STEALS COURT DOCUMENTS

Prior to Jack Stein's 1988 arrest, his father, Nicholas died. As the only child, and named executor, Jack filed his father's last will in Oregon Circuit Court. However, at some time, Nicholas Stein's will and other documents were discovered missing from the Clerk's file. Later, sheriff deputies admitted taking Nicholas Stein's probate file from the court clerk's office and delivering it to a Clark County deputy prosecutor. After the file was returned, the last will and other documents were discovered to be missing.

At about the same time, a deputy prosecutor conspired with Ned Hall and Haagen to cause a revoked will to be filed in Clark County Superior Court. Jack Stein filed a formal objection to probate of the revoked will, and advised the Clark County Superior Court that a later Will had been proved in Multnomah County, Portland, where the Probate Court had appointed him as executor.

MORE COURT DOCUMENTS VANISH

However, Stein's Objection Document vanished from the Clark County Superior Court's probate file. Thereafter, Jack Stein was advised of the vanished document, so, Stein filed a duplicate copy of "Objection" to probate of revoked will.

During this same period, Clark County officials contacted the Multnomah County Circuit Court and slandered Jack Stein. According to the record, without any hearing, Judge Riggs issued an order freezing Stein's accounts. However, during interviews after Jack Stein's conviction was vacated and Stein was released, his attorneys and investigator contacted Judge Riggs, now on the Oregon Supreme Court. Judge Riggs could not recall signing any order to freeze the assets, and opined it would not be proper to issue such order without a hearing and some record, showing reason for such an extraordinary ruling.

Since the circumstances are suspect, presumably the order freezing Stein's assets was a fake, initiated by a Clark County prosecutor, or other adverse interest. Be that as it may, soon, Stein succeeded in getting the freeze recalled.

Then, with a copy of the Multnomah County Circuit Court's superseding order lifting the previous freeze order, Jack Stein and his son, Greg, appeared at the office of his stock broker.

It was Stein's intent to make stock trades and to transfer assets to an account controlled by his son, Greg. The broker began to initiate the trades, but left the room. He returned and said he was told to refuse any activity on the account.

When presented with the order lifting the freeze, the broker acknowledged that he already knew the freeze had been lifted. He explained the Clark County Prosecutor had asked his Company to refuse to allow any transactions. In response to our request, the broker stressed that he was told the Clark County Prosecutor had something else planned, and Clark County did not want Jack Stein to make any transactions. At the time of this office conference, the value of Stein's stocks and securities in the account exceeded \$950,000. Stein had intended to transfer \$300,000. to an account managed by his son, Greg.

CONSPIRACY TO EXPLOIT JACK STEIN

Also, after Jack Stein was arrested the prosecutor conspired with third parties to sabotage the lawful probate of Nicholas Stein's Last Will, in Multnomah County Circuit Court at Portland, Oregon, and abet an (unlawful) probate of a revoked will in Clark County Superior Court. Regretfully, corrupt attorneys and miscreant court officials abetted in that FRAUD upon the Court.

The probate of a revoked will constitutes an (unlawful) abuse of process. Regretfully, corrupt attorneys and miscreant court officials abetted in that FRAUD and criminal abuse of process as well.

CONSPIRACY TO SELL STEIN'S RESIDENCE

After Jack Stein was convicted, the Clark County Probate Court (unlawfully) ordered that the Clark County probate administrator should evict Bethany from their Portland, Oregon residence and sell that upscale residence. Corrupt attorneys and miscreant court officials abetted in that (unlawful) abuse of process, too.

Those improper actions were used to control and exploit Jack Stein's estate through the Clark County Superior Court, exactly as the prosecutor had prophesied and boasted they had already planned, when a deputy prosecutor spoke to Stein in jail, after he was arrested, in 1988.

Bethany was upset, confused, and went to her doctor. After the doctor appointment, Bethany was crying, tripped on a sidewalk, and hit her head on a landscaping rock. She suffered a concussion, and was forced to resign from her teaching career.

MISCREANT COURT OFFICIALS

Regretfully, corrupt attorneys and miscreant court officials abetted in the wrongdoing to evict Bethany from her fully-paid-for Portland, Oregon residence. Her Oregon residence was located in an upscale Portland neighborhood, has six bathrooms, and was fully-paid-for.

The malevolent ploy to evict Bethany and sell her home was particularly evil, and part of the prosecutor's announced plan to control and exploit Stein's estate of which a deputy had first boasted in conversation with Jack Stein, in 1988.

The Court was used as a criminal enterprise because a prosecutor nurtured animus against Stein and sought to use the court to falsely convict Stein, sabotage appeal, sabotage post-conviction relief, and to control and exploit his estate of property now valued in excess \$67,000,000.

Regretfully, trial court officials and appeals court officials made improper rulings that aided and abetted a conspiracy to use the court to control and exploit Stein's estate.

PROSECUTORS RUSTLE VALUABLE CATTLE

Prior to the 1989 trial, it had been Jack and Bethany's custom to give one another unusual gifts. One year, Jack gave Bethany some exotic Scottish Highland cattle. Bethany loved the beautiful cattle, and pleased that her gift had grown to become a small (but very valuable) herd.

After Stein was convicted, and sent to prison, some unauthorized people and equipment entered the pasture where the Scottish Highland cattle were kept. A passerby noticed the unusual activity, and came on the property to investigate.

He contacted the stranger who was in charge, and asked what they were doing. The "boss" explained that he was the prosecutor and they were taking these "abandoned" cattle. He said, "No one is feeding the cattle or taking care of them, because Jack Stein was sent to prison." The passerby explained that he had seen people feeding the cattle and taking care of them most every day. Then the boss, who previously identified himself as the prosecutor, explained, "The vet said the cattle are sick, so we are going to take them."

When asked who said any were sick, the "boss" pointed out the vet, "Over there." The passerby walked over to the vet and asked which cattle were sick, and of what disease. However, the vet said they were not sick, so the passerby went back to the "boss" and said, "The vet says that no cattle are sick." The prosecutor called his people together, they got in their trucks and left.

However, later, the prosecutor came again and they stole all Bethany's Scottish Highland cattle.

PROSECUTORIAL ANIMUS AGAINST JACK STEIN

Prior to filing the underlying charges, the Clark County Prosecutor and a deputy prosecutor had developed extreme animus for Jack Stein. That ill will was based on Stein's periodic criticism of the prosecutor and deputy. Stein's criticism of the prosecutor, Art Curtis, began after he failed to prosecute white collar crime. p-18

Indeed, as reflected in Stein's pleadings, while Jack Stein was employed by Vancouver, he was responsible for both grounds maintenance, building maintenance, equipment, and 15 to 40 employees.

Also, Jack had budget and purchasing responsibilities. In the process of preparing budgets, Mr. Stein became aware that many items purchased in the past year were missing. Stein's supervisor asserted a mechanic, with a criminal record, probably stole the missing equipment.

Thereafter, Stein initiated a superficial search. Staff could not locate many items. We determined that no hourly employee would have keys and access to steal some missing items. Jack's supervisor insisted that Stein fire the mechanic.

However, largely by chance, Stein discovered that some suppliers and vendors had been accepting purchase orders and refunding cash to the city employees. With the help of a cooperating vendor, Stein determined at least one person involved in the "purchase order scam" was his supervisor.

Mr. Stein advised the mechanic that an investigation had cleared him. The mechanic was so relieved and thankful, that he asked Stein to advise his attorney that he was no longer a suspect. Stein did so. The attorney was nice.

Stein explained that the problem was far more complex than simple theft, and involved high level city employees, including Stein's supervisor. The respected attorney offered to present the facts to the prosecutor, a man Stein did not know.

However, no arrests occurred. Thereafter, Stein's supervisor wrote his position out of the budget and gave Stein a bottle of human shit as a Christmas gift. Jack Stein changed employment.

However, Stein has followed the career of his former supervisor and learned that he transferred to a similar position with the Clark County Parks. Regretfully, he has initiated similar wrongdoing in that position, according to disgruntled staff.

Because the prosecutor refused to prosecute those involved in the "purchase order scam" and ignored white collar crime, Stein was critical and supported political challenges to Curtis. Indeed, Stein has been openly critical of Art Curtis.

A deputy prosecutor, Roger Bennett, attempted to convict Jack Stein of some bogus thing. I have forgotten the charge. Be that as it may, during the trial, there was a break. Stein used the restroom. Upon returning to the courtroom, Stein observed the prosecutor coaching a sheriff deputy. Stein realized that the deputy sheriff was being coached to lie and urged to give false testimony.

SUBORN OF PERJURY

Stein reported the suborn of perjury to his defense attorney. After the deputy testified, Stein's defense counsel exposed the perjury on cross-examination. In response, the prosecutor moved to dismiss the bogus charges against Stein.

Eventually, the sheriff officer was fired or resigned. Thereafter, Jack Stein openly and repeatedly asserted the deputy prosecutor should have lost his job, too. Stein was so outspoken, and critical, that Mr. Bennett became vengeful.

Jack Stein took the deputy prosecutor's obvious animosity as a sign that his criticism was well placed and effective. Mr. Stein encouraged people to report/expose prosecutorial misconduct. Periodically, Mr. Stein would instigate political pressure against the prosecutor and his deputy.

PROSECUTORIAL MISCONDUCT AGAINST JACK STEIN

Jack Stein was arrested in 1988, and accused of crimes related to the murder of Thelma Lund, occurring a year earlier. From the moment of discovering the crime, police and prosecutors considered Jack Stein their only suspect and focused their attention on Stein. Had Jack Stein actually been guilty, the police focus may have been appropriate. However, Stein was not guilty.

Nevertheless, prior to Jack Stein's arrest, over one year after the Lund homicide, the prosecutor had conspired to fabricate evidence to implicate Jack Stein in that crime. Moreover, the prosecutor conspired to control Stein's access to his financial resources and inherited property.

Indeed, the prosecutor and Clark County officials slandered Stein before Multnomah County Circuit Court officials. Declaring an emergency, the Circuit Court froze Stein's brokerage account.

At the time, the value of Stein's stocks and securities under freeze exceeded \$950,000.

Eventually, Mr. Stein successfully got the improvident freeze order lifted. However, according to the broker's comment to Stein and Greg on that day, the Clark County prosecutor had recently contacted the management of the brokerage house and had told them to refuse to allow any activity on Stein's account. As a consequence, Jack Stein was denied trades or asset transfers.

But for the malevolent interference by Clark County officials, Stein would have had access to substantial financial resources when arrested. Certainly more than sufficient to retain counsel, post bail, and provide for his family. However, in passing, the broker revealed he was just told the prosecutor has "something else" planned soon.

A few days later, Jack Stein was arrested by the deputy prosecutor and Clark County deputies as he left his attorney's office, walking with him toward the courthouse. The previous day, Jack Stein had told court officials that he was coming to the courthouse at 10:00, hoping to avoid the prosecutor staging a deadly ambush-arrest.

During the previous months, Stein had been arrested on three occasions, always by "mistake" according to police. Indeed, on one occasion, the arresting officer explained, "We were not supposed to arrest you, sorry."

The year preceding Stein's 1988 arrest, Stein lived in the Portland-Vancouver area. Jack Stein made business or vacation trips to Canada and Mexico and attended to his farming and family, personal, and business interests in and around Clark County and Multnomah County. During that period, Stein kept up a social and business relationship with certain court officials and others. Certainly, Jack Stein was not avoiding service of process or arrest.

Interestingly, no less than five attorneys who have represented Jack Stein in the underlying proceedings have been disbarred, or forced out of the WSBA, causing much prejudice to Jack Stein.

In most cases, disbarment was the result of criminal wrongdoing occurring prior to representing Stein. Indeed, Jack Stein was not associated with any misconduct resulting in the attorney's disciplinary action. In some cases, the attorney's wrongdoing had been overlooked for years, until the attorney represented Jack Stein. Then he was prosecuted, presumably as a ploy to thwart Mr. Stein's access to effective counsel.

Moreover, this case has been dominated by misconduct. **FIRST**, at the trial level, Stein was denied the opportunity to be represented by retained counsel of choice. Furthermore, there were other egregious violations and judicial misconduct as reported in Stein's RCW 7.36 habeas Memorandum in Support. The conspiracy to remove the assigned Clark County trial judge and substitute their friend, Judge Heavy of Seattle, required judicial misconduct by the unethical defense attorneys, Dane and Dunkerly, and by Judge Heavy, and also by a (presumably) miscreant Supreme Court administrator. Mr. Dane has since been disbarred for misconduct.

SECOND, Stein's original direct appeal was sabotaged by criminal judicial misconduct by Judge Borst, and others. Moreover, that judicial misconduct and wrongdoing was abetted by corrupt prosecutors and miscreant COA Officials.

There can be no doubt that Judge Borst's perjury and judicial misconduct was willful. Also, his actions constituted a deliberate ploy to sabotage due process. Furthermore, Court of Appeals' officials abetted that wrongdoing.

THIRD, Jack Stein's petition (PRP) for post-conviction relief was **improperly denied** by COA Chief Judge Gerry Alexander in 1993. Indeed, Judge Alexander's improvident denial of the PRP in 1993 precipitated a cascade of consequences costing in excess one million dollars and also catastrophic damages and irreparable harm to Stein's family, and other innocent persons. Furthermore, the improvident PRP ruling appears to constitute criminal judicial misconduct as the consequence of another bribe or some similar extra-judicial incentive.

As the court may recall, a real estate developer has provided compelling evidence that bribes were paid to influence decisions against Stein. The developer implicated court officials, including a Commissioner and a former COA Chief Judge, et al., in criminal judicial misconduct.

Prior to Stein's 1988 arrest, he knew many Clark County officials. Also, Stein knew many respected attorneys and no less than nine past, present, and future Clark County judges.

The depth of the corruption and judicial misconduct in this case is astonishing. Indeed, the prosecutor forced, coerced, and intimidated my first attorney, Richard Petersen, to withdraw, with a stick and a carrot. Thereafter, the court appointed attorneys Dane and Dunkerly, without my knowledge and over my strong objection, although I did not claim to be indigent. Such appointment violated the FUNDAMENTAL Constitutional guarantee to be represented at trial by retained counsel of choice or proceed pro se. Faretta v. California, 422 US 806, 818-823 (1975).

Next, the newly appointed defense attorneys, Dane and Dunkerly, filed a motion to recuse the assigned judge, without Stein's knowledge. At the same time, they conspired with Judge Heavy of King County to have the Supreme Court appoint Judge Heavy as a visiting judge. The conspiracy to replace Judge Morgan with Judge Heavy involved the attorneys, Dane and Dunkerly, Judge Heavy, and a Supreme Court administrator. Immediately, Judge Heavy ruled that Stein must pay Dane and Dunkerly.

Moreover, Judge Heavy specifically stated the appointed attorneys could sue Stein to collect fees. However, WSBA ethics rule #168 seeks to forbid such fees and lawsuit.

After about 30 days legal representation, the court declared a mistrial, December 12, 1988. Dane and Dunkerly promptly moved to withdraw.

Thereafter, the attorneys sued Stein, secured a judgment, and executed on Stein's lake property.

The attorneys secured a new appraisal and sold the property to a land trust, financed by a grant money provided by Clark County. In effect, for representing Stein for 30 days, the appointed attorneys realized approximately \$1,000,000. net.

Presumably, that obscene windfall was split between the two attorneys and their friend, Judge Heavy. For attorneys to be able to get an out of town friend appointed to their case, and have that judge make rulings that serve their financial interest, and harm the client, as here, seems abusive judge shopping. Moreover, such misconduct constitutes egregious governmental misconduct.

Obviously, at least when he was arrested, Stein was in a financial position to retain counsel of choice. However, as a consequence of the appointed attorneys' action to take his property, and other action to exploit his valuable estate, Stein was eventually rendered indigent.

Next, a private Seattle attorney signed himself up as Stein's defense counsel of record, without Stein's knowledge, and over his objection.

Indeed, Stein was represented by a private attorney, John Henry Browne, retained by adverse third parties, without Stein's knowledge and over his objection. When Mr. Browne first appeared as defense counsel, Stein asked the court to remove him so he could be represented by retained counsel of choice or proceed pro se. When Stein asked Browne who had retained him, Mr. Browne replied, "It's none of your God Damn Business."

Eventually, Mr. Browne acknowledged that Stein had not retained him and that Stein did not consider him his attorney. Stein advised the Trial Court that he believed that the parties who retained Browne did so with the intent that Browne sabotage his defense so he would be convicted. Stein advised the Court that adverse relatives had threatened to sue Stein, and he believed that it would be cheaper to retain John Henry Browne, with intent that he be convicted.

The record shows that Jack Stein advised the Court that he believed the parties who had retained Mr. Browne were adverse relatives who had been working with the prosecutor and that their interest would be served by Stein's conviction.

Accordingly, Stein did not consider Browne to be his defense counsel, and believed that Browne had been retained by adverse interests (relatives) who would be served by Stein's conviction.

Stein filed written motions in the Court, requesting the Trial Court remove Browne so Stein could be represented by retained counsel of choice or proceed pro se. Not only did the Court essentially ignore Stein, Judge Forst actually committed egregious judicial misconduct (perjury) and conspired to deceive the record on appeal as to the relevant facts and proceedings concerning the denial of retained counsel of choice issue.

Furthermore, Browne conspired to sabotage Stein's defense in several ways. For instance, during trial, Mr. Browne met with the prosecutor and a potential defense witness, at Browne's motel, late at night. Both Browne and the Prosecutor coerced Stein's witness to not testify.

Moreover, Browne failed to conduct appropriate discovery and failed to effectively cross-examine state witnesses. As a consequence, the state was able to introduce untruthful testimony, without effective cross-examination by Constitutionally adequate counsel.

One such violation concerns the 1989 testimony of Roy Stradley concerning Jack Stein.

However, the Stradley testimony was untrue, and contrived with malicious intent to (falsely) implicate Jack Stein in the crimes at issue.

Mr. Browne could have exposed Stradley's 1989 testimony, and demonstrated it to be perjury, had Mr. Browne been concerned with Stein's acquittal. However, adverse relatives had retained Browne as a ploy to betray Jack Stein's liberty interest.

Moreover, prior to trial, John Henry Browne had waived Jack Stein's speedy trial rights, over Mr. Stein's adamant objection.

The 1989 trial was hopelessly infirm with Constitutional errors. Eventually, the conviction was vacated by Court of Appeals and Supreme Court.

However, the Courts' actions did not cure all the egregious due process violations that had occurred from date of Stein's arrest, July 1988, to date of Stein's release, November 10, 2001. Indeed, in its opinion vacating Jack Stein's 1989 conviction, the Supreme Court specifically remanded some of those violations to the sound discretion of Superior Court, as CrR 8.3 issues.

Regretfully, after Jack Stein was released from prison, and State had elected to retry Stein, Judge Stonier refused to consider issues remanded to the Trial Court by the Supreme Court, in 2001.

Moreover, Judge Stonier applied the wrong legal standard to those issues and claims Stein sought to present by way of his CrR 8.3 motion. So, Mr. Stein sought relief by PRP and RCW 7.36.

Stein showed that prosecutors and miscreant attorneys, along with a band of corrupt court officials, including certain commissioners and judges, issued rulings which served the malevolent interest of the prosecutor and evil officials who conspired to misuse the court to control and exploit Stein's estate of property currently valued in excess \$67,000,000.

However, regrettably, the Court of Appeals and the Supreme Court refused to consider relief by PRP and/or by RCW 7.36 habeas, as was required.

Exceptional remedy of writ of habeas corpus is intended as bulwark against those convictions, such as Stein, that violate fundamental fairness.

Indeed, our own Supreme Court has observed, no higher duty befits our court than to deliver up the man unlawfully confined. The history of judicial misconduct in this case has been presented to the Court of Appeals and the Supreme Court on repeated occasions, by PRP, state habeas, and RCW 7.36 habeas. Regrettably, miscreant court commissioners and judicial officers have made a series of imprudent rulings which abetted the underlying wrongdoing and the imprudent dismissal of Stein's original direct appeal in 1991, and improper dismissal of his original PRP in 1993.

The Governmental Misconduct initiated or abetted at trial, on direct appeal, and during 1991-1996 habeas proceedings, constitutes such an egregious violation of due process as to justify dismissing conviction, in the interest of justice.

Supreme Court held that prejudice includes any threat to "'an accused's significant stakes,' whether - psychological, physical, or financial - in the prompt termination of a proceeding which may deprive him of life, liberty, or property."

From the moment Stein was arrested in 1988, the prosecutor boasted of a plan to use the court to control and exploit Stein of his property. Prior to Stein's arrest, the prosecutor had begun a covert conspiracy to control and exploit Stein's property and to fabricate evidence to falsely convict Stein. Although Jack Stein was neither an accomplice nor conspirator as to the 1987 crimes against Ned Hall, Stein was convicted due to egregious Constitutional violations.

After Stein's 1989 conviction, prosecutors conspired with other court officials, with judicial officials, and with others, to thwart, delay, and sabotage Stein's original direct appeal and post-conviction proceedings, through fraud, perjury, violence, and other misconduct.

The underlying prosecution was initiated in 1988. Since then, Petitioner has been victimized by a series of misconduct calculated to cover-up misconduct by miscreant court officials, thwart prompt relief and exploit my estate.

Originally, Stein presented Court of Appeals with the violations, by PRP. However, in 1993, COA Chief Judge Gerry Alexander refused to consider the claims and denied PRP, December 16, 1993, **FALSELY** asserting that Stein was responsible for the failure to file certain "missing" trial transcripts. However, NO competent COA Judge could have refused to consider Stein's PRP.

Competent evidence shows adverse interests **paid bribes** to influence Court of Appeals' rulings against Stein. Be that as it may, Judge Alexander DID make improvident rulings adverse to Stein, precisely as solicited by adverse third parties.

JUSTICE DELAYED IS JUSTICE DENIED

Stein presented the same claims in Federal District Court in a habeas petition. Judge Bryan held a hearing and found some 45 violations. Presumably, but for the extra-judicial influence, Judge Alexander would have held a hearing in 1993, found the same 45 violations, and granted relief over **eight years sooner** than occurred in 2001.

Indeed, had the COA Chief Judge considered Stein's original PRP claims in 1993, as required, rather than improvidently dismiss the petition, a pattern of egregious misconduct by miscreant officials and corrupt attorneys would have been exposed in 1993, and moreover, Stein's 1989 conviction would have been vacated years earlier.

Since Mr. Stein's original conviction was vacated, an investigation into the past judicial misconduct to thwart, sabotage, and delay the direct appeal and post-conviction relief from 1988 to 2004 shows wrongdoing was even more egregious than proved in 1996. Accordingly, Stein filed a PRP in the Supreme Court, which was transferred to the COA, and proceeded as No. 31993-4-II.

Regretfully, much like the miscreant action by former COA Chief Judge Gerry Alexander in 1993, COA Chief Judge Quinn-B refused to consider Stein's **nine** claims, November 17, 2004, and essentially reduced the PRP to a procedural sham. Stein sought Discretionary Review in Supreme Court. However, Chief Judge Alexander refused to consider Stein's claims, without any rational argument, much as he had improperly ruled in 1993.

In essence, it seems the Court has abetted a cover-up of criminal judicial misconduct.

Compelling evidence presented in the RCW 7.36 habeas pleadings demonstrated that Judge Heavy was corrupt and/or unethical. Indeed, a body of compelling evidence shows that, in concert with attorneys Dane and Dunkerly, Judge Heavy of Seattle conspired with the miscreant attorneys and court officials to have himself appointed as "visiting" judge in the Clark County trial, November 1988. Indeed, in view of the unethical conduct of Judge Heavy and the defense attorneys, Dane and Dunkerly, and/or misconduct of the Clark County prosecutors, prosecution of Stein should have been dismissed with prejudice, years ago.

Regretfully, Stein's direct appeal was dismissed by the Court of Appeals, Division II, after his appellate attorney, Darrell Lee, and a Clark County prosecutor, Dennis Hunter, falsely advised the Court of Appeals that Stein refused to file the "missing" Langer transcripts.

Although, Stein had denied the allegations, and asserted that Mr. Lee had a copy of the transcripts at issue, a miscreant Superior Court Judge, Hon. Philip W. Borst, had conducted a sham hearing and made fictitious findings, asserting the defendant, Stein, was personally responsible for failure to file the Langer transcripts.

However, in 1996, that finding was set aside by Judge Bryan following a 28 U.S.C. §2254 habeas hearing. Moreover, since the 1996 hearing in Federal District Court, Darrell Lee has acknowledged that he had the Langer transcripts all along. Furthermore, Darrell Lee recently acknowledged that Bethany Norberg had provided him with a set of those "missing" trial transcripts.

Moreover, as the Court's Justices may recall, on August 9, 1990, Mr. Lee wrote Court of Appeals, **falsely**, asserting that he would ask Bethany Norberg to provide a copy. That was untrue and constituted a deception calculated to harm Jack Stein and the Stein family.

Based on Mr. Lee's recent admissions, coupled with fact Bethany Norberg had **already** delivered a set of the Langer transcripts to Darrell Lee the week prior to Mr. Lee's August 9, 1990 letter to the Court of Appeals, it is apparent that Mr. Lee lied to the Superior Court, and also lied to the Court of Appeals, Supreme Court, and Federal District Court as to who was responsible the Langer transcripts were "missing" and not filed.

Presumably, Mr. Lee and Dennis Hunter had lied to the Court to sabotage Mr. Stein's appeal and sabotage potential post-conviction relief.

CONSPIRACY TO DISMISS DIRECT APPEAL

Stein's original direct appeal was dismissed as the consequence of criminal judicial misconduct by the attorney, Darrell Lee, and a prosecutor, Dennis Hunter. Nether Lee nor Hunter received WSEA sanctions or criminal prosecution for their willful and egregious misconduct.

I believe court officials who were involved in that misconduct should be prosecuted and held accountable for financial damages. My family also suffered other, irreparable, loss as a consequence of the underlying judicial misconduct.

The present value of property taken from Jack Stein as a consequence of the judicial misconduct to control and exploit his estate, exceeds \$67,000,000. based on current values. All of that loss is the consequence of fraud and judicial misconduct. None of that loss would have occurred if the court had not improperly dismissed my original direct appeal, based on, or as a consequence of, judicial misconduct by attorneys and miscreant court officials.

IRREPARABLE HARM - CASTROPHIC DAMAGES

As reported in Stein prior pleadings, our son, Mark Norberg, attempted to secure the allegedly "missing" transcripts. In response. Judge Lodge coerced Mark's employer to fire him.

IRREPARABLE HARM - DEATH OF MARK NORBERG

After a prosecutor and appellate attorney asserted that they could not prepare Stein's original direct appeal, Stein's step-son, Mark Norberg, wrote letters and attempted to determine the location of the "missing" Langer transcripts and the reason the transcripts were not filed with the Court Clerk. At the time, Mark Norberg was employed with a Portland court reporting firm.

One of Norberg's letters came to the attention of Clark County Superior Court Judge, Thomas Lodge. Judge Lodge contacted Mark's employer and demanded that they fire Norberg.

Judge Lodge asserted that he would see that they were refused any court reporting in Clark County unless they complied with his malevolent demand. Mark lost his job and became depressed. He began abusing alcohol. In time, Mark became an alcoholic. Mark died as a consequence of his alcoholism on November 11, 2001.

It is all but certain that Mark would not have died prematurely if Stein's conviction had been vacated by 1993, as it should have been, absent egregious judicial misconduct reported in prior pleadings. Indeed, Jack could have helped Mark recover from his depression and overcome his

alcoholism. Accordingly, the miscreant court officials who caused delay in Stein's original direct appeal, and sabotaged post-conviction relief by Personal Restraint petition in the state court, and habeas corpus in Federal District Court, are also responsible for excessive delay and collateral damages to Stein and his family.

But for judicial misconduct by officials, Mark Norberg's premature death would not have occurred. The court officials should be held financially, personally, and legally accountable for the consequences of intentional wrongdoing, particularly when their misconduct results in the death of innocent person, Mark Norberg, as here.

"IT IS COMMON, WE ALL DO IT"

Prior to Stein's 1988 arrest, he knew many court officials. Also, Stein knew many respected attorneys and no less than nine past, present, and future judges. Some court officials boasted of knowing Jack Stein and some "confided" or shared inside stories with Stein. One court official, during a social function where he and Jack Stein had consumed alcohol, confided that he received substantial financial support from law firms, "because they realize that we are not paid enough." Perhaps I looked shocked. The official continued, "It is common, we all do it."

BRIBES PAID TO COURT OFFICIALS

Real estate developers had a falling out and revealed that bribes had been paid to court officials. They implicated a COA Commissioner and COA Chief Judge Gerry Alexander, et al., in such judicial misconduct

PRP RELIEF IMPROPERLY DENIED

After the court dismissed Stein's original direct appeal, Stein filed a Personal Restraint Petition, asserting, among other issues, that his appellate attorney, Darrell Lee, and a prosecutor, Dennis Hunter, had conspired to deceive the Court so that Stein's original appeal be dismissed.

One would remind the Court that Stein's appellate attorney, Darrell Lee, had advised the Court that Lee could not perfect Stein's appeal, asserting he did not have "missing" transcripts.

Harsh and conflicting allegations were lodged in the Court by Lee and Stein. Stein advised the Court that his attorney, Darrell Lee had the transcripts at issue, despite allegations to the contrary. The Clerk removed Mr. Lee as counsel.

However, third parties contacted the Clerk and coerced him to reinstate Mr. Lee as counsel.

The Clerk's action abetted Lee's conspiracy to sabotage Stein's appeal. In 2003, Mr. Lee acknowledged he had had the transcripts all along.

Since Mr. Lee's egregious deception, we have learned that, at the time of the deception and conspiracy to sabotage Stein's appeal, Darrell Lee was under investigation for criminal activities. Moreover, we now know that the Clark County Prosecutor had solicited Mr. Lee to deceive the Court of Appeals and to sabotage Stein's appeal.

As a consequence, Stein's appeal was delayed over eight years - resulting in prejudice.

Moreover, the Clark County Prosecutor and third parties used the delay to fabricate false evidence and to exploit Stein's estate.

Stein asserted his direct appeal had been improperly dismissed as the consequence of covert misconduct by Messrs. Lee and Hunter. However, COA Chief Judge Gerry Alexander refused to consider Mr. Stein's PRP claims, asserting (falsely) that Stein was responsible that the trial transcripts were not filed, and summarily dismissed Stein's PRP, by order December 16, 1993.

Mark became depressed, abused alcohol, and died of alcoholism in 2001, the day after Stein's conviction was vacated and he was released from prison. But for the judicial misconduct at issue, Mark would not have died. Court officials; Lodge, Lee, Hunter, Alexander, and others, etc. should be accountable - and prosecuted for manslaughter.

Furthermore, the Supreme Court officials who conspired to appoint Judge Heavy should be held accountable for the irreparable harm and catastrophic damages that the Stein family have suffered. Likewise, Judge Heavy and Judge Borst committed egregious judicial misconduct that appears malevolent and criminal. Commissioners at the Court of Appeals and Supreme Court have played a significant roll in abetting the cover-up and judicial misconduct, by initiating improper and malevolent rulings in prior proceedings.

Indeed, the Court of Appeals or Supreme Court also refused to vacate malevolent rulings, often ignoring facts, law, or issues, and, in other cases, by simply denying "discretionary" review.

Indeed, but for their wrongdoing - involving Messrs. Lee, Hunter, and Alexander, etc., to sabotage and delay my original appeal and PRP, it is all but certain that Mark would not have died.

Normally, one would not be critical of officials in a position of power or authority. However, when officials are corrupt, or abetting corruption, as here, it seems appropriate to expose the wrongdoing, particularly when it would not serve any useful purpose to pretend that the corrupt officials are not abetting evil, as here.

As a further consequence of misfeasance or nonfeasance outlined in Stein's prior pleadings, Stein and his family suffered other irreparable harm and catastrophic damages too. Moreover, as a consequence of wrongdoing that court officials allowed to fall upon this innocent defendant, resolution of the Constitutional violations was delayed and litigation costs are now excessive.

Indeed, it seems, once a Constitutional violation has been presented, court officials proceed as if in a conspiracy of indifference. Misconduct in this case has been presented to the Court of Appeals and Supreme court on repeated occasions, in various pleadings, but the Court's rulings avoid any responsibility. In effect, court officials have repeatedly shirked their duty to review the Constitutional violations at issue.

As a consequence, the judicial misconduct in the criminal case, and related collateral matters, constitute some of the worst examples of criminal judicial misconduct in the United States - calculated to falsely convict an innocent person, sabotage a direct appeal, post-conviction relief, and covert conspiracy to control and exploit his estate of property worth millions of dollars - that has been exposed in over 50 years.

Certainly, the court has been used as a criminal enterprise to abet and cover-up the deceptions and wrongdoing originally initiated by the prosecutor, in 1988, and wrongdoing by Clark County officials and by attorneys, Messrs. Lee and Hunter, as canted in the record, and as presented in pleadings Stein's previously pleadings filed.

That is the only plausible explanation for the series of egregious and imprudent rulings and orders in Court of Appeals and in Supreme Court. Evidence of improper rulings can not be realistically disputed. Federal habeas hearings found some 45 egregious violations by court officials. The only real question is which of the improper court rulings were malevolent.

Indeed, malevolent rulings by court officials abetted the Clark County prosecutor's boastful prediction of a conspiracy to convict Stein and use the court to control and exploit his estate.

Court officials used malevolent orders to thwart post-conviction relief by direct appeal, PRP, or habeas and abetted judicial misconduct to exploit Stein through collateral proceedings.

The assessed value of property exploited from Stein by abuse of process, exceeds \$67,000,000.

Nearly every appellate judge and commissioner who have ruled on Stein's past criminal and civil proceedings had committed egregious misconduct, presumably calculated to abet a conspiracy to sabotage relief and also abet the Prosecutor's ploy to control and exploit Jack Stein's estate.

Indeed, miscreant officials at all three levels of the State Court have been responsible for criminal judicial misconduct and/or for malevolent action which served to sanction or cover-up such misconduct. As a consequence, although innocent, Jack Stein had been falsely convicted, and incarcerated for over 16 years.

No less than six former attorneys betrayed Stein and have been disbarred, convicted of criminal activity, or resigned WSEA rather than challenge disbarment. Based on wrongdoing presented in Stein's 1996 Federal habeas, a host of other attorneys and State Court officials should be subject to disbarment and similar fates. However, it seems an unwritten "code of cover-up" shields attorneys and "influential" officials from public exposure or official criticism and disbarment or prison confinement.

Were it not so, each court official exposed for perjury, suborn of perjury, and/or wrongdoing, would have suffered severe sanctions.

Indeed, despite the evil conduct and well documented history of prosecutorial misconduct and criminal judicial misconduct which denied Stein of both State and Federal Constitutional rights, being called to Supreme Court's attention on repeated occasions, appellate court officials have essentially ignored egregious wrongdoing, and made rulings that sanctioned and/or abetted misconduct. Rather than rule on issues in 2001, the Court remanded the CrR 8.3 issues to the Superior Court.

Had the Supreme Court ruled on issues in a timely manner, it is all but certain Stein could have helped Mark recover from his alcoholism, and that our son, Mark, would not have died in 2001.

In essence, Jack Stein and his family have been victimized by a complex and perverse conspiracy to deny FUNDAMENTAL Civil Rights and to exploit his estate through fraud and criminal abuse of process, causing catastrophic damages.

While Stein has absolutely no confidence in this Court because of its past record of egregious judicial misconduct, Stein has filed this pleading, and presented his arguments, to preserve the issues so some higher court will investigate and prosecute the attorneys and miscreant court officials who have conspired to sabotage Stein's FUNDAMENTAL right to due process.

To punish the miscreant government officials, and serve to deter similar wrongdoing by others, this Court should vacate Stein's conviction, and order immediate release, without further delay!

Regretfully, untrue statements are reported as facts in the COA and Supreme Court rulings, re: Stein. Indeed, some 48% of the alleged "facts" in the 1999 COA Opinion are actually false. State v. Stein, 94 Wn.App. 616, 1999. Moreover, some 54% of the alleged "facts" in the Supreme Court's Opinion are actually untrue. State v. Stein, 144 Wn.2d 236, 2001. Although the referenced Court of Appeals and Supreme Court opinions vacated my 1989 conviction, the untrue facts slandered me and the published decisions "ignored" judicial misconduct.

Perhaps the Court is willing to tolerate a little judicial misconduct to secure conviction of guilty persons. However, in this case, Stein is NOT guilty of any wrongdoing. Indeed, evidence implicating Stein in the criminal activity at issue was fabricated by prosecutors and others through various suborn of perjury to induce and reward testimony (falsely) implicating Stein.

One witness explained he was given a script of what they wanted him to say and was coached to lie effectively in some 10-12 training sessions.

After 1989 trial, that witness recanted his testimony, explaining that nearly everything he had testified about was a lie, fabricated by police and/or prosecutors, because they were obsessed to convict Stein and get control of his property. According to one state witness, a deputy prosecutor arranged for him to use the prosecutor's office for 20-30 minutes of private time, unsupervised, for sexual intercourse with his wife or girlfriend on at least two occasions, as inducement to suborn perjury against Stein.

In court, after the woman testified that the prosecutor had facilitated their sexual contact, the deputy prosecutor, at first, denied he had made his office available for sexual activity or otherwise facilitated the sexual contact.

However, years later, the former deputy prosecutor, now a judge, acknowledged his former testimony was untrue and admitted that he had facilitated the witness, Richard Bailey, to use his office to engage in sexual intercourse.

Indeed, as I recall, Mr. Bennett asserted, "So what does it matter, Bailey could have gotten contact visits when he got to prison."

However, the state used the offer of sex and reduced charges to solicit false testimony, calculated to implicate Jack Stein in crimes.

Additionally, prosecutors agreed to drop one or more murder charge, to waive several attempted murder charges, ignore 350 burglary incidents, and turn a blind eye to drug manufacturing and distribution to induce his witness to testify falsely against Jack Stein. Indeed, in the 1989 trial, there was NO testimony implicating Stein that was not false and solicited by the state.

Likewise, in the third trial, conducted in 2004, the only trial testimony implicating Jack Stein in the alleged crimes at issue came from an unavailable witness, presumably dead, who's 1989 testimony was read to the jury. That testimony consisted of an alleged conversation he overheard in 1987. However, the principals of that 1987 conversation testify Stein never made comments the state "witness" (falsely) asserted.

At the time of his 1989 testimony, the state's witness admitted strong animis for Jack Stein because Stein had accused him of theft of tools, had fired him, and threatened to call the police unless he left a house remodel project. The witness claimed he did not get paid because Stein ran him off and threatened to call police.

The witness lied at trial in 1989, with intent to harm Stein. His extreme animus for Stein was apparent, even from the cold record.

Indeed, the Roy Stradley testimony was untrue, and obviously contrived with malicious intent to (falsely) implicate Jack Stein in the crimes at issue. Mr. Browne could have exposed Stradley's 1989 testimony, and demonstrated it to be perjury, had Mr. Browne been concerned with Stein's acquittal. However, adverse relatives had retained Browne as a ploy to betray Stein.

The record shows that Jack Stein advised the Court that he believed the parties who had retained Mr. Browne were adverse relatives who had been working with the prosecutor and that their interest would be served by Stein's conviction.

When Browne first appeared as defense counsel, Stein asked who retained him. Mr. Browne replied, "Its none of your God Damn Business." Stein moved to remove Browne, and proceed with retained counsel of choice - or pro se.

Eventually, Browne acknowledged that Stein had not retained him and Stein did not consider him as his attorney. Stein advised the 1989 Trial Court he believed the parties who retained Browne did so with the intent that Browne sabotage his defense so he would be convicted. Stein explained that adverse relatives had threatened to sue him, and speculated it would be cheaper to retain Browne, with intent to sabotage his defense.

Accordingly, Stein did not consider Browne to be his defense counsel, and believed that Browne had been retained by adverse interests (relatives) who would be served by Stein's conviction. Stein made written and oral motions to remove Browne so Stein could be represented by retained counsel of choice or proceed pro se. Not only did the Court essentially ignore Stein, Judge Borst actually committed egregious judicial misconduct (perjury) and conspired to deceive the record on appeal as to the relevant facts and proceedings concerning the denial of retained counsel of choice issue.

Furthermore, Browne conspired to sabotage Stein's defense in several ways. For instance, during trial, Browne met with the prosecutor and a potential defense witness, at Browne's motel, late at night. Both Browne and the Prosecutor coerced the witness to not testify.

Moreover, Mr. Browne failed to conduct appropriate discovery and failed to effectively cross-examine State witnesses. As a consequence, the State was able to introduce untruthful testimony, without effective cross-examination by Constitutionally adequate counsel.

One such violation concerned the 1989 testimony of Roy Stradley concerning Jack Stein.

However, the Stradley testimony was untrue, and obviously contrived with malicious intent to (falsely) implicate Jack Stein in the crimes at issue. Browne could have exposed Stradley's perjury, had Mr. Browne been concerned with Stein's acquittal. However, adverse relatives had retained Browne as a ploy to betray Stein.

ANOTHER DISHONEST ATTORNEY SCAM

After Darrell Lee had attempted to sabotage Stein's appeal and conspired to control and exploit Jack Stein, the direct appeal was dismissed and Darrell Lee lost any appearance of authority over legal affairs concerning Stein.

During this period, and while the prosecutor was pursuing a RICO action against Mr. Stein, Jack Stein attempted to contact Mr. Browne's office to secure evidence and documents. Coincidentally, attorney Gordon Jones took the call and spoke with Stein. Mr. Jones represented that Stein should retain him because, he asserted, he probably knew more about Stein's case than almost anyone else. In particular, he knew facts about the attorney, John Henry Browne, that would be helpful.

Also, Jones asserted his wife (or ex-wife) was on the Court and she would release Mr. Stein on minimal bond, as a professional courtesy.

Gordon Jones stressed her assistance would be a certainty, if he received a \$35,000. retainer.

In response, the requested \$35,000. retainer was promptly paid. However, the expected release did not occur, as expected. A little while later, Mr. Jones said he was short of cash and needed more retainer. Sensing that Jones was intending to milk the situation, Stein advised Mr. Jones that he was unable to raise additional funds. The statement was actually true at the time. Jones said he would withdraw unless Stein paid a substantial additional retainer.

However, Stein's daughter, Jamie Kay Stein, being concerned, contacted Mr. Jones and offered to pledge her Redmond, Washington house as security that her dad would later pay Mr. Jones.

Thereafter, Gordon Jones secretly prepared and executed a deed to Jamie's Redmond house, which Mr. Jones backdated to a time years before he had met Jack Stein or Jamie. Next, Mr. Jones presented the phoney deed to a bank and they secretly negotiated a loan of about \$118,000., using his "deed" to Jamie's house as collateral.

When Jones' promises were not forthcoming, Jack Stein began to be concerned and critical of Jones. Jones prepared documents to place Stein in a guardianship, and asked Bethany to sign them.

Bethany almost signed the malevolent petition for guardianship, when Gordon Jones provided it to her - buried within a stack of "routine" documents that, he asserted, just needed her signature.

Also, Mr. Jones created the impression he was rushed for time, asking Bethany to simply "sign here, and here, and here," etc., not explaining the purpose for any documents. Fortunately, our young granddaughter (age 10) said, "Gram, don't you think you should read them first."

Upon reading the documents, Bethany refused to sign, told Mr. Jones to leave, and she promptly advised Jack Stein of the attempted guardianship.

Jack Stein contacted Mr. Jones and they discussed a potential WSEA ethics complaint, etc.

Thereafter, on December 24, Gordon Jones had papers served to evict Jamie and her young children from their Redmond home. Gordon Jones filed a lawsuit. Jack, Bethany, and Jamie filed a counter suit. On the day set for trial, just before jury selection, Mr. Jones admitted that what he did was wrong and executed documents surrendering any claim in Jamie's Redmond home.

While that litigation was pending, Jack Stein contacted each woman member of the Supreme Court, trying to confirm if any were Mr. Jones' wife or former wife. Each responded, except one.

Eventually, after repeated letters, Stein speculated Rosselle Pekelis was probably Jones' wife or ex-wife and a corrupt Justice. Thereafter, we found confirmation that Gordon Jones and Rosselle Pekelis had been married in King County, but were later divorced.

Obviously, Rosselle Pekelis had allowed Jones to use her high judicial office on the Court of Appeals and Supreme Court to further his interests, and she abetted Mr. Jones' promise of judicial favors - to exploit innocent persons. By nonfeasance, Justice Pekelis abetted her former husband's ploy to exploit the innocence of desperate people, such as Jamie and her children.

Even if Ms. Pekelis could claim she was unaware of Gordon Jones' wrongdoing at the time, her silence and refusal to answer Stein's letters constituted a conspiracy to cover-up her ex-husband's criminal and ethical wrongdoing.

Such conduct reflects unfavorably on the integrity of her former positions on the Court.

Regretfully, the fraud and deception perpetrated by Gordon Jones precipitated profound damages upon Jamie and her children. Indeed, they were wrongfully evicted from their Redmond home. Their loss is much greater than simply the equity and financial values of that residence.

CONSPIRACY TO KILL JACK STEIN

After his conviction, miscreant government officials conspired to kill Jack Stein. Indeed, as documented in Jack Stein's prior pleadings, a prison administrator solicited a WSP inmate to sabotage Stein's appeal and habeas, and then to assault and kill Jack Stein. At the time of the solicitation, the WSP inmate, John Adams, originally from Clark County, was incarcerated at WSP, having been convicted of several crimes, including contract murder. The conspiracy to kill Stein was thwarted when an associate of Mr. Adams revealed the plot. John Adams confessed to the plot to kill Jack Stein and implicated a prison administrator and a prosecutor as coconspirators.

Later, Mr. Adams explained they had offered him both incentive and reward, including early release from prison, to assist in the plot to harm Stein. In 1998, Adams was released from prison.

Adams testified he "was released as reward because "they" felt the good he did made up for all the bad." However, such acts are "shocking" to the concept of due process and justice.

In view of the conspiracy to kill Stein, a truly innocent person, this Court should vacate Stein's conviction and order immediate release, without delay - in the interest of justice.

During the year proceeding Stein's 1988 arrest, Stein lived in the Portland-Vancouver area. He made business or vacation trips to Canada and to Mexico and attended to his farming and family, personal, and business interests in and around Clark County and Multnomah County. During that period, Stein kept up a social or business relationship with court officials.

1989 CONVICTION IS VACATED

After the 1989 conviction was vacated, Stein was released from custody, having been unlawfully confined for over 12 years. Stein filed action against his former appellate attorney and others for civil rights claims pursuant to 28 U.S.C. §1331 and §1341 and for professional negligence pursuant to §1367. Thereafter, the Clark County Prosecutor requested the State Attorney General to prosecute Stein on the same charges and a new information was filed in 2002. The Trial Court appointed counsel and discovery proceeded.

MORE WRONGDOING

However, the State failed to provide Stein with addresses of its witnesses, as required, claiming that they did not know the addresses of 10-15 of their proposed witnesses. One such State witness, allegedly without a known address, was Richard Bailey and another was Peter Lusky.

For months, the State pretended that they did not have any address for many of its witnesses, including Richard Pailey and Peter Lusky. Untrue.

However, while the State's attorneys continued to represent to the Court and to Defense that they did not know addresses for Bailey and Lusky, the State's attorneys were conducting meetings with both Bailey and Lusky.

At first, Richard Pailey refused to testify in any retrial of Jack Stein. As the Court may recall, Richard Bailey had testified for the State in the 1989 trial, implicating Stein in the crimes committed by Bailey, by (falsely) asserting that Stein made certain comments to Bailey.

However, after the 1989 trial, Mr. Pailey recanted his trial testimony, and asserted that the prosecutor and police had solicited fraudulent testimony as a condition of a favorable plea bargain. Moreover, Mr. Pailey asserted that the prosecutor had provided him with access to sex and drugs while he was in jail, as inducement to provide false testimony implicating Jack Stein.

Richard Pailey explained he had been provided a script of what to say and several training sessions in which to create and rehearse the perjury. Moreover, Pailey accused the prosecutor, Roger Bennett, et al., of suborn of perjury.

Indeed, Richard Bailey asserted that his 1989 testimony implicating Stein was false and that Jack Stein had had no knowledge of his criminal activity. In essence, Richard Bailey accused the prosecutor, Roger Bennett, et al., of suborn of perjury and of other prosecutorial misconduct.

Thereafter, Richard Bailey made the same claims in open court, testifying that his ¹⁹⁸⁹ trial testimony had been untrue, scripted and directly requested by the prosecutor, and testified that the prosecutor facilitated sexual opportunities for him, and testified Stein was not privy to their 1987 crimes, during testimony in open court.

During the period the State asserted they did not know the whereabouts of Mr. Bailey, the State's attorney, Lana Wisemann, and the former prosecutor, Roger Bennett, spoke with Mr. Bailey and met with Bailey on at least two occasions. At the time of those meetings, Roger Bennett was a Clark County judge. According to Judge Bennett, a purpose of meeting was to get Bailey on board.

Mr. Bailey has changed his testimony several times based on his personal interest at the time he gave his testimony. The record shows Bailey had refused to testify, but Judge Bennett succeeded in changing his mind again, by pointing out he could face jail if he refused to testify for the prosecution.

JUDGE BENNETT COMMITS JUDICIAL MISCONDUCT

The Code of Judicial Conduct bars a judge from using his or her office to influence others. Code of Judicial Conduct, Cannon 2(b). Cannon 8(f) of the Code prohibits an attorney from assisting or facilitating a judge in violation of the judge's ethical obligations. Cannon 8(f) does not require any intent to engage in wrongdoing; it is a strict liability standard.

Before Stein's retrial, the prosecution enlisted Clark County Judge Roger Bennett to speak with a key witness, Richard Bailey. The acknowledged purpose of having Judge Bennett attend a meeting with Bailey and the prosecutor was to "get him back on board."

Judge Bennett met with Bailey on two occasions and discussed his testimony with him. They also shared correspondence and e-mails. Judge Bennett informed Bailey of the legal consequences of refusing to testify for the prosecution, and against Stein. According to Bailey, "He [Bennett] made it clear that if I [Richard Bailey] don't testify for the prosecution they can put me in jail." Bailey had told so many different versions, and conflicting stories, that he was concerned that he could be prosecuted for perjury, and/or other crimes. Judge Bennett told Mr. Bailey that he could trust the prosecution.

Moreover, Judge Bennett assured Bailey that he would not be prosecuted for other crimes if he agreed to testify for the prosecution.

Bailey knew that Judge Bennett was obsessed with prosecuting Stein and knew that Judge Bennett was in a position to deliver promises.

Judge Bennett had a good relationship with Bailey because among other things, he had permitted Bailey and his "wife" to have two "contact" visits in the prosecutor's office while he was in jail waiting to testify in Stein's criminal trial. Bailey had sex with his wife during those contact visits. In 1988, Judge Bennett had agreed to forego prosecution for one murder in Washington and another in Oregon, several attempted murders in both Washington and Oregon, hundreds of residential burglary in Washington and Oregon, and drug distribution charges against Mr. Bailey in exchange for perjured testimony (falsely) implicating Jack Stein in three incidents concerning Ned Hall.

Furthermore, although Bailey had burglarized Hall on at least 10 occasions, Bennett also agreed to ignore those other incidents in exchange for testimony exaggerating the 1987 Hall crimes as attempted murder and to implicate Jack Stein.

Bailey received two 20 year sentences for his participation in the Lund homicide and his participation in the three incidents at the Hall residence. Sentences were served concurrently. Bailey was released from prison in 13 years.

Indeed, after Stein's conviction was vacated, Mr. Bailey's release from prison was expedited, presumably in anticipation of, as Roger Bennett testified, to "get him [Bailey] back on board."

Law Professor John Strait testified at the CrR 8.3 hearings as an expert in professional ethics. Strait explained that the meeting with a witness for the purpose of "getting him on board" violated the canon's prohibition of using one's status as a judge to benefit another person.

It was particularly egregious because Bailey knew Judge Bennett, had turned to Judge Bennett for favors and special consideration before, and would be expected to be influenced by the judge based on his judicial status.

Professor Strait also testified that the prosecution violated the ethical rules by enlisting Judge Bennett's help in convincing Bailey to cooperate. By allowing or encouraging Judge Bennett to participate in a meeting with Bailey for the purpose of persuading Bailey to testify for the prosecution, the prosecution violated Canon 8(f) and 2(b). p-62

As the prosecutor, Roger Bennett coerced and encouraged Bailey to testify falsely in 1989. Stein had testified that Bailey's 1989 testimony was false. Also, Bailey has testified that his 1989 trial testimony against Stein was false, and was the result of suborn of perjury by Roger Bennett, et al. After Judge Bennett solicited Bailey to testify in the 2004 trial, it came as no wonder that Bailey testified untruthfully.

Indeed, in Stein's 2004 trial, Richard Bailey made up new (but untruthful) facts that he had never said before, calculated to (falsely) implicate Jack Stein as an accessory in his 1967 criminal activity concerning Ned Hall.

Incredulously, the Trial Court found Judge Bennett had not committed misconduct because he had not coerced or threatened Bailey to procure his testimony and had not encouraged him to lie. Finding of Fact 28 provided, "There is nothing in the record to suggest Judge Bennett encouraged Richard Bailey to testify untruthfully, nor did Judge Bennett use his office to unlawfully coerce or induce Bailey to testify." Conclusion of Law 8 states, "Judge Bennett's activities in regard to Richard Bailey did not amount to governmental misconduct, nor did they prejudice the defense of this case."

The Court's erroneous determination of facts, unsupported by evidence, as here, is not binding.

Moreover, the Trial Court's findings and conclusions of law are obviously incorrect, as anyone with normal experience can see. Here, Judge Bennett admitted he met with a key prosecution witnesses in order to use not only his familiarity with the case but also his status as a judge to convince the witness to testify.

Indeed, CrR 8.3 does not require deliberate or intentional misconduct. "Fairness to the defendant underlies the purpose of CrR 8.3. No coercion or actual threats were required to be a violation of basic ethical rules. The Trial Court failed to appropriately analyze the misconduct by assuming deliberate wrongdoing must be proved.

Moreover, where, as prosecutor, Mr. Bennett had succeeded in getting Bailey to testify falsely against Stein in the 1989 trial, it is obvious Judge Bennett sought a similar result in 2004.

Furthermore, Stein was plainly prejudiced by the Judge's intervention and the prosecution's request for such intervention. Bailey had refused to testify. It is all but certain that he would not have done so had not Judge Bennett asserted he faced jail if he refused to testify.

It is just as certain that Mr. Bailey understood the message to be that "we" want you to testify against Stein, to hell with the truth, just like before. Also, Judge Bennett stressed that he [Bailey] could trust the prosecution. Bailey had demanded assurance that he would not be prosecuted for certain uncharged crimes. Also, Bailey was seeking the State's help to be employed in law enforcement as a drug informant.

During Stein's prosecution, Mr. Bailey met with Judge Bennett for lunch on at least one occasion. When placed under oath and asked who also attended that lunch meeting, Judge Bennett refused to answer, asserting that he felt Bailey's life would be placed at risk if that were known.

Since his premature release from prison, Bailey has kept in contact with former felons. Apparently, according to what he told his friends, Mr. Bailey was relocated to Florida to be used by law enforcement as an informant.

Without Bailey's testimony, and without aligning themselves with Judge Bennett in order to ensure Bailey's testimony, the State's case would have been decidedly weak. Indeed, Bailey's (fictitious) testimony was the only testimony implicating Stein in the three incidents at issue.

Furthermore, Bailey was the only person who claimed their intent was to kill Ned Hall. The other principal, Gordon Smith, testified that their purpose was NOT to kill Hall. In the 1989 trial, Norberg was a State's witness and testified that he had no intent to kill Ned Hall. However, the State did not call Norberg as a witness in the 2004 trial, although Norberg was available.

Indeed, Mike Norberg was in the courtroom and made known his desire to testify. As the Court may recall, Jack Stein had never met or spoken with Richard Bailey or Gordon Smith until well after the three incidents at the Hall residence.

Moreover, it is undisputed that Stein was not at either of the three 1987 incidents and did not know about the three incidents until long after the incidents. Indeed, Stein did not know about the first two incidents at the Hall residence until over a year after the incidents!

Accordingly, the only way the State could implicate Stein in the incidents would be through the false and perjurious testimony of Richard Bailey, a person who would say anything that served his own interest, without any conscience whatsoever. Indeed, I understand that Mr. Bailey murdered Lund for a few dollars, if anything, and he murdered an Oregon woman over a bag of dope.

Since Jack Stein had never even met or spoke with Bailey or Smith prior to the three incidents at issue, it is unclear how the 2004 jury found Stein guilty of attempted murder concerning the three incidents at the Ned Hall residence in 1987.

Indeed, since Gordon Smith denied any intent to kill Ned Hall, the 2004 trial testimony would seem insufficient to support an attempted murder conviction against Jack Stein, absent Bailey's perjurious testimony, and Judge Bennett's improper intervention in the case was critical to obtaining Bailey's testimony.

Stein could probably provide an additional 40-50 more pages of text concerning compelling evidence of Governmental Misconduct. However, if the forgoing does not constitute a showing of wrongdoing and prejudice, would anything satisfy?

E. AFFIRMATION

STATE OF WASHINGTON)
 : ss Oath of Jack K. Stein
County of Snohomish)

Jack K. Stein, being first duly sworn, depose and says that:

I am the Appellant in this matter, have read the forgoing statement, and it is true as I verily believe.

RESPECTFULLY SUBMITTED this 3 day of October, 2005.



Jack K. Stein, Appellant

SUBSCRIBED AND SWORN to before me this 3 day of October, 2005.



NOTARY PUBLIC for Washington
My Commission expires: 10/21/08

F. SUMMARY OF ADDITIONAL GROUNDS

Jack Stein presents eight additional grounds:

1. SPEEDY TRIAL VIOLATIONS
 - a. Sixty Day Speedy Trial Violation
 - b. Conditional Speedy Trial Waiver
 - c. Browne Waives Speedy Trial
2. DENIAL OF RETAINED COUNSEL OF CHOICE
 - a. Richard Petersen
 - b. Dane and Dunkerly
 - c. John Henry Browne
 - d. Proceed Pro Se
3. CONSPIRACY TO CONTROL AND EXPLOIT ASSETS
 - a. Multnomah County Probate
 - b. Freeze Assets
 - c. Intimidate Stock Broker
 - d. Stein's Lake Property
 - e. Clark County Probate
 - f. Sell Oregon Residence
 - g. Steal Valuable Cattle
4. RIGHT TO CONFRONT WITNESSES
 - a. Roy Stradley
5. EXCESSIVE DELAY
 - a. Trial Delay
 - b. Appeal Delay
 - c. Competency Proceeding
6. GOVERNMENTAL MISCONDUCT
 - a. Prosecutorial Misconduct
 - b. Judicial Misconduct at Trial
 - c. Judicial Misconduct at Appeal
 - d. Misconduct at Post-conviction
 - e. Conspiracy to Kill Jack Stein
 - f. Death of Mark Norberg
7. INEFFECTIVE ASSISTANCE OF COUNSEL
 - a. Suzan Clark
8. VINDICTIVE PROSECUTION

As provided by RAP 10.10, Jack Stein submits these additional grounds for review, because they were not included in my attorney's opening brief.

Please consider the following argument.

G. ARGUMENT

Jack Stein's right to due process and certain Constitutional rights were violated at trial, and at appeal, and at post-convictions proceedings in no less than eight categories of wrongdoing.

STANDARD OF REVIEW

Some violation are normally reviewed under the harmless error analysis. However, because of its interaction with another issue or claim, the appropriate standard of review becomes another standard, or Structural Trial Error. Furthermore, the synergic interaction between these violations often shift the burden as to show of prejudice.

1. SPEEDY TRIAL VIOLATIONS

Right to a speedy trial under Criminal Rules is fundamental right. State v. Ross, 98 Wn.App. 1 (1999). Failure to comply with speedy trial rule requires dismissal of conviction, regardless of whether defendant shows prejudice. State v. Ralph, 90 Wn.App. 16 (1989). Strict compliance with the speedy trial rule is required, not substantial compliance, and when the rule is not followed, prosecution must be dismissed with prejudice. State v. Helms, 72 Wn.App. 273 (1993).

The Trial Court violated Jack Stein's right to Speedy Trial on three occasions, as follows:

a. The Trial Court violated Stein's right to speedy trial within 60 days as provided by CrR 3.3 et seq.

Jack Stein was arrested in July 1988. Stein was arraigned on three charges. Later, the state filed an amended information adding four charges. However, for purposes of speedy trial, etc., the additional charges would relate back to the original arraignment. From the outset, Stein advised the Court that he demanded speedy trial.

Provision under RCW 10.46.010 [superseded by CrR 3.3] as to accused's right to speedy trial was designed to protect person charged with crimes. State v. Persinger, 62 Wn.2d 362 (1963).

RELEVANT DATES

Arrest:	<u>July 28, 1988</u>
Information filed:	<u>July 29, 1988</u>
Arraignment:	<u>Aug 5, 1988</u>
Appoint Counsel:	<u>Aug 22, 1988</u>
Recuse Judge Morgan:	<u>Sept 22, 1988</u>
Trial Set For:	<u>Oct 3, 1988</u>
Speedy Trial Ends:	<u>Oct 4, 1988</u>
Recuse Judge Quinn:	<u>Oct 6, 1988</u>
Appoint Judge Heavy:	<u>Oct 7, 1988</u>
Conditional Waiver:	<u>Oct 26, 1988</u>
Second ST Waiver:	<u>Nov 7, 1988</u>
Trial Started:	<u>Nov 21, 1988</u>

Initially, Mr. Stein was represented by defense counsel, Richard Petersen. However, shortly after Mr. Petersen filed an appearance, the Court, on its own motion, removed Petersen.

REMOVAL OF DEFENSE COUNSEL

The speedy trial issue is complicated by the removal of Stein's defense counsel, *sue sponte*. Indeed, the Trial Court's removal of Mr. Petersen was over Mr. Stein's written and oral objection.

As this court may recall, within a few days after Mr. Petersen filed his appearance as Stein's defense attorney, Mr. Petersen told Jack Stein that the Clark County prosecutor, Art Curtis, confronted him and demanded that Mr. Petersen withdraw as Stein's defense attorney.

At that time, Mr. Petersen had asserted that Mr. Curtis offered him a stick and a carrot. The prosecutor demanded that Mr. Petersen withdraw as Stein's counsel, or face criminal charges based on a prior incident of theft or improper conversion of a client's funds. Also, Mr. Petersen said that, as a carrot, the prosecutor had offered to assist him to become employed as a deputy prosecutor.

The issue came to the attention of Judge Morgan, who urged Stein to interview other counsel, and made a jail phone available to Stein.

Thereafter, Mr. Stein advised the trial court that he wished to be represented by Mr. Petersen, did not believe allegations against Mr. Petersen would cause him any concern. However, if required to select another attorney, Stein stressed that, if Petersen were removed, he would need time to interview and select retained counsel of choice. Also, Mr. Stein stressed he demanded speedy trial.

Judge Morgan arranged for Mr. Stein to have use of an unmonitored jail phone with outside line and long distance calling. Moreover, Judge Morgan authorized a billing account so Jack Stein could make long distance calls from jail over weekend.

Thereafter, although Mr. Stein had contacted several attorneys over the weekend, Stein had not selected any replacement attorney, and advised the trial court that, if the court removed Petersen, he would require time to interview and select a replacement counsel. On Sunday, Stein wrote Court he was unable to reach many attorneys over weekend, and required more time to select counsel.

However, the trial court removed Stein's counsel, sue sponte, and appointed Messrs. Dane and Dunkerly, despite the fact Stein did not claim to be indigent, and that Mr. Stein demanded to be represented by retained counsel of choice.

Once again, Stein stressed that he wished to be represented by retained counsel of choice and that he had previously filed a WSBA complaint against Mr. Dane's law partner. The Court ignored Stein, which denied his Sixth Amend. right to retained counsel of choice.

Shortly after Judge Morgan appointed Dane and Dynkerly, the attorneys moved to recuse Judge Morgan. This without Stein's knowledge and over his objection. Moreover, the improperly appointed defense attorneys were actually unaware their action would cause Stein's trial date to be reset.

When Stein objected to them, the attorneys were physically and emotionally abusive to him. Indeed, Mr. Dane spit on Stein's face on two occasions and he was physically abusive. They threatened and implied they could get Stein convicted, if he continued to complain. After the court appointed Judge Quinn as trial judge, counsel coerced Stein into signing an affidavit of prejudice, asserting they wanted Mr. Dane's friend, Ed Heavy of Seattle, to be the judge. Stein signed the document, although he had no reason, except for the attorneys' intimidation.

Counsel did not advise Stein that recusal of the judge would impact his speedy trial rights.

As evidence that appointed defense counsel, did not tell Stein that removing Judge Morgan, or removing Judge Quinn, ~~and~~ trial judge, would impact the speedy trial period, Stein advises this court that, on October, 27, 1988, after the original trial date had passed, defense counsel filed a motion to dismiss the charges for violation of speedy trial. Dkt. 195.

Then, on November 7, 1988, defense counsel filed another motion to dismiss for violation of speedy trial, together with a memorandum in support. Dkt. 210 and 211. The content of those three documents is evidence that counsel did not comprehend the effect of their actions to remove Judge Morgan and to get Judge Heavy appointed.

Indeed, their actions sabotaged Mr. Stein's interest in trial within 60 days of arraignment. Such conduct by defense counsel constitutes ineffective assistance of counsel. A competent defense attorney should have known that CrR 3.3 provided that recusal of the trial judge would added 30 days to the speedy trial period. However, Messrs. Dane and Dunkerly did not comprehend that fact, and initiated irresponsible [and unethical] actions, that sabotaged Stein's FUNDAMENTAL right to speedy trial within 60 days.

The prosecutor used delay to suborn perjury from Messrs. Bailey and Norberg. Indeed, after the October 3 trial date, Mr. Norberg accepted a generous plea agreement on October 7, 1988 and agreed to testify (falsely) against Jack Stein.

After the 1988 trial, both Mr. Norberg and Mr. Bailey would testify that the prosecutor induced them to testify falsely against Mr. Stein, with generous plea agreements, etc. But for the speedy trial delay caused by the unauthorized recusal of Judge Morgan and the unethical recusal of Judge Quinn, the State would have had to prosecute Mr. Stein on the original trial date of October 3, 1988. At that time, the prosecutor did not have sufficient evidence implicating Stein.

Indeed, that (false) evidence only became available after the speedy trial date [October 3] had passed. Moreover, both Norberg and Bailey later revealed that their (false) evidence against Stein was fabricated through suborn of perjury and by several "training" sessions.

Be that as it may, on October 27, counsel advised the court that the speedy trial period was passed, that Stein had no duty to bring himself to trial, and because it was impossible to set a trial date within the required speedy trial period, charges must be dismissed with prejudice.

The content of defense counsel's motions to dismiss for violation of speedy trial, constitute compelling evidence that defense counsel were unaware their actions had sabotaged Stein's right to speedy trial by the original trial date, October 3, 1988. Counsel's ignorance of basic court rules concerning the extensions of speedy trial and their conspiracy to get themselves appointed, and their conspiracy to solicit Judge Heavy as trial judge, and their conspiracy to sue Stein for legal fees, constitute ineffective assistance of counsel. Moreover, their conduct was certainly unethical and probably criminal.

The Court should find that the usual 30 day extension of Stein's speedy trial rights following the unauthorized recusal of Judge Morgan should not be added in this case. Moreover, as an independent cause for vacating the 30 day extension, the Court should find that the appointment of Messrs. Dane and Dunkerly violated Stein's FUNDAMENTAL Sixth Amendment Right to be represented by retained counsel of choice, and therefore Stein should not be held accountable for the misconduct and adverse actions taken by Messrs. Dane and Dunkerly. At the very least, the Sixth Amendment violation should shift the burden to show prejudice from Stein to the state.

PREJUDICE

Criminal trial not brought within the required time limits shall be dismissed with prejudice. State v. Carlyle, 84 Wn.App. 33 (1996). Failure to comply with speedy trial rule requires dismissal, regardless whether defendant can show prejudice. State v. Earl 97 Wn.App. 408 (1999).

However, Stein has shown that he suffered prejudice by recusing Judge Morgan and by resetting the trial date because the state used the extra days to secure (false) evidence from Norberg and Bailey. Moreover, it is undisputed that such false evidence was not available to the state - had the trial proceeded on the original speedy trial date of October 3, 1988.

DISMISSAL IS REQUIRED

Failure to comply with the speedy trial rule, which grants a defendant in custody the right to be brought to trial within 60 days if incarcerated, requires dismissal. State v. Kindsvogel, 149 Wn.2d 477 (2003).

Here, where Stein was not the cause, but the fault for two speedy trial extensions is shared by the trial court, Judge J. Dean Morgan, and by the ineffective assistance of counsel, Messrs. Dane and Dunkerly, and by prosecutorial misconduct, the court should dismiss the charges, with prejudice.

Indeed, Judge J. Dean Morgan should not have appointed Messrs. Dane and Dunkerly as defense counsel. Secondly, the appointed attorneys should not have moved to recuse Judge Morgan, without consulting the defendant, especially, where the action to recuse the trial judge would impact on the defendant's speedy trial rights. Dane and Dunkerly knew that Stein demanded speedy trial, and that the prosecutor was trying to buy extra time to get Bailey and Norberg to testify against Stein. Third, according to testimony from both Bailey and Norberg, the Clark County prosecutor used the extra time coupled with suborn of perjury to suborn (false) evidence against Mr. Stein.

Whether speedy trial rule was violated, mandating dismissal, is question of law, reviewed de novo. State v. Carlyle, 84 Wn.App. 33 (1996).

It is undisputed that Jack Stein had insisted on speedy trial, at least before the prosecutor asserted that he had secured (false) evidence from Messrs. Bailey and Norberg. However, after the conviction, both Bailey and Norberg recanted their trial testimony implicating Jack Stein in the crimes at issue, and they testified that the prosecutor, and other officials, had solicited their (false) testimony implicating Jack Stein.

Prior to the speedy trial date of October 3, 1988, the state did not have sufficient evidence implicating Jack Stein in the crimes against Ned Hall. Indeed, the state did have a statement of Defendant [Richard D. Bailey] on plea of guilty, dated May 20, 1988. However, that statement does not implicate Jack Stein in the crimes at issue.

Indeed, Mr. Bailey issued two recantation affidavits and testified in open court on multiple occasions, asserting that the prosecutor and other court officials, had coached him and given him a script. Mr. Bailey stressed and testified that Stein had no knowledge of his crimes and that he had not intended to kill Ned Hall.

On November 1, 1988, some 28 days after the original speedy trial date of October 3, 1988, Mike Norberg signed a Statement of Defendant on Plea. However, Mike Norberg has since testified his plea statement was untrue and was authored by the prosecutor. Indeed, Norberg testified that the prosecutor crafted his written plea statement so that it would (falsely) implicate Jack Stein.

Mr. Norberg's attorney, Jeffrey D. Cohen, has stated in a deposition that although Norberg's eight page plea statement is on his pleading paper, he was not the author of that statement.

Likewise, Mr. Norberg testified he had no intention to kill Mr. Hall. However, Mr. Bailey did admit to attempted arson on the residence of Ned Hall, June 1, 1987. In his testimony, Bailey said he expected, "Hall would run out." However, Bailey and Smith abandoned their plan and fled.

As to the second incident at the Hall residence at issue, Mr. Bailey testified that his intention was to kidnap Mr. Hall, and take him to Mike Norberg. However, as previously documented, Norberg testified of NO intention to kill Hall.

As a consequence of judicial wrongdoing, Stein and his family have suffered irreparable harm and catastrophic damages. Moreover, as a further consequence of the wrongdoing, Stein's son, Mark Norberg, suffered and died, others died as well, litigation costs have become astronomical, exceeding \$1,000,000. and financial damages to Jack Stein and his family exceed several million dollars. Since the improvident appointment of Messrs. Dane and Dunkerly, Judge Morgan was appointed to the Court of Appeals.

Certainly, in that responsible position, Judge Dean Morgan had both the authority and moral duty to mediate the consequences of his prior wrongdoing at issue here, but he did nothing to correct the wrongdoing or to mediate the error.

However, had Judge Morgan taken timely steps to mediate the consequences of that error, our son would still be alive, my family would not have suffered from a travesty of egregious judicial misconduct in this and collateral legal proceedings, and the underlying conviction could have been vacated, as unlawful, years ago. Moreover, Stein could have recovered his property taken by Dane and Dunkerly, and Stein would not have suffered other loss, including his loss of liberty, and/or catastrophic financial damages.

b. Terms of Conditional Speedy Trial waiver require Stein's prosecution be dismissed.

On October 26, 1988, after the prosecutor asserted he intended to charge Stein with additional crimes, Stein signed a Conditional speedy trial waiver. That document specifically provided: "NOTE: However, that if the prosecutor is deceiving me and the court again as he has done on SEVERAL previous occasions, this waiver to November 7, 88. is **VOID** [and charges will be dismissed as provided by law as to speedy trial]."

The court omitted only that portion of Stein's conditional waiver in brackets. However, the remainder of Mr. Stein's conditional waiver remained. Accordingly, because the conditions of the waiver were not met, the waiver **is void**.

Since the conditional waiver to November 7, 1988 is void, the speedy trial period expires as provided by the facts of the case. Prior to this date, October 26, 1988, Mr. Stein had not agreed to any other speedy trial waiver or continuance.

Accordingly, the effective speedy trial periods for determining the relevant speedy trial date can be calculated from the docket and the record, as follows:

RELEVANT SPEEDY TRIAL DATES

Arrest:	<u>July 23, 1988</u>
Arraignment:	<u>Aug 5, 1988</u>
Trial Set for:	<u>Oct 3, 1988</u>
Recuse Judge Morgan:	<u>Sep 22, 1988</u>
Constructive Date:	<u>Oct 22, 1988</u>
Recuse Judge Quinn:	<u>Oct 6, 1988</u>
Constructive Date:	<u>Nov 5, 1988</u>
Conditional Waiver:	<u>Oct 26, 1988</u>

Even if the court held Stein responsible for the 30 day speedy trial extensions related to the recusal of Judge J. Dean Morgan and Judge Quinn, such speedy trial extensions would have expired on October 22, and November 5, 1988. Clearly, the speedy trial period had expired, and the court had not brought Stein to trial, before the expiration of the imputed extensions, as indicated above.

The charges MUST be dismissed with prejudice.

Since the conditional waiver to November 7, 1988 is void, the speedy trial period expires as provided by the facts of the case. Prior to this date, October 26, 1988, Mr. Stein had not agreed to any other speedy trial waiver or continuance.

Accordingly, the effective speedy trial periods for determining the relevant speedy trial date can be calculated from the docket and the record, as follows:

RELEVANT SPEEDY TRIAL DATES

Arrest:	<u>July 28, 1988</u>
Arraignment:	<u>Aug 5, 1988</u>
Trial Set for:	<u>Oct 3, 1988</u>
Recuse Judge Morgan:	<u>Sep 22, 1988</u>
Constructive Date:	<u>Oct 22, 1988</u>
Recuse Judge Quinn:	<u>Oct 6, 1988</u>
Constructive Date:	<u>Nov 5, 1988</u>
Conditional Waiver:	<u>Oct 26, 1988</u>

Even if the court held Stein responsible for the 30 day speedy trial extensions related to the recusal of Judge J. Dean Morgan and Judge Quinn, such speedy trial extensions would have expired on October 22, and November 5, 1988. Clearly, the speedy trial period had expired, and the court had not brought Stein to trial, before the expiration of the imputed extensions, as indicated above.

The charges MUST be dismissed with prejudice.

Failure to comply with the speedy trial rule, which grants a defendant in custody the right to be brought to trial within 60 days if incarcerated, requires dismissal. State v. Kindsvogel, 149 Wn.2d 477 (2003).

Here, where the first trial should have begun on October 3; or on October 22; or on November 5, 1988, but the trial did not begin on either of the calculated speedy trial dates, as rule required, the charges must be dismissed, with prejudice.

Stein presented these violations of speedy trial rights to the trial court, and also in post-conviction proceedings, but the court ignored the issue, presumably because the court dismissed the 1989 conviction on other grounds. However, the dismissal of the 1989 conviction did not cure these violations - nor sweep it under the rug.

While trial court has discretion to grant continuance beyond time limits established in speedy trial rule, it could not grant retroactive extension after defendant's right to dismissal had accrued. State v. Jack, 87 Wn.2d 467 (1976).

Where trial was not held within time limited by rule, hearing court would not presume the trial court exercised discretion under rules previously in effect. State v. Coutlee, 15 Wn.App. 401 (1976).

Accordingly, the charges **MUST** be dismissed.

When the State delinquently amends an information to allege new charges, a defendant's right to speedy trial may be affected; if a defendant requests a continuance to prepare a defense to the new charges, the continuance does not act as a waiver of the defendant's right to a speedy trial. State v Earl, 97 Wn.App. 408 (1999).

For each of the forgoing reasons, Stein has presented facts and case law in support his claim of speedy trial violation, requiring dismissal.

c. Speedy Trial was waived, over Stein's objection, by John Henry Browne, an attorney who did not satisfy Sixth Amendment: Retained Counsel of Choice.

The third speedy trial violation occurred when attorney John Henry Browne waived Stein's speedy trial right over Stein's objection.

This, because Stein had not retained Browne and did not consider Browne his attorney. Indeed, Mr. Stein believed Browne was retained by adverse relatives, and that they had intended that Browne sabotage Stein's due process interest.

Indeed, John Henry Browne had simply filed a notice of appearance. Moreover, when Stein asked Browne who had retained him, Mr. Browne replied, "It's none of your God Damn Business."

Thereafter, Stein tried to remove Brown and filed both oral and written motions with the trial court. However the court denied Stein's motions. During this ongoing conflict, Mr. Browne moved to continue the trial date, a motion Stein objected. When the court denied Browne's motion, Browne and the prosecution to joined in a stipulation to continuing the trial date.

Although, at first, Browne refused to reveal who retained him, Mr. Stein believed the people who retained Browne were adverse relatives.

It is not a manifest abuse of discretion for a court to grant a continuance under rule allowing a continuance when required in the administration of justice and when defendant will not be substantially prejudiced in presentation of defense to allow counsel more time to prepare for trial, even over defendant's objection, to ensure effective representation and fair trial. State v. Williams, 104 Wn.App 516 (2001).

It follows, a fortiori, it is a manifest abuse of discretion to grant a continuance over defendant's objection, when he will be prejudiced. Particularly, when a continuance is requested by a defense counsel who's unwanted appearance violates defendant's FUNDAMENTAL Sixth Amendment Right to proceed with retained counsel of choice or pro se.

PREJUDICE

John Henry Browne used the extra time they secured with a continuance that he requested, to meet with a defense witness, late at night, at his motel, with the prosecutor, and a defense witness, where Mr. Browne and the deputy prosecutor coerced a defense witness to not testify for Mr. Stein.

First, Mr. Browne should not have used his position to intimidate a potential defense witness to refuse to testify. Also, Browne should not have conspired with the prosecutor against the interest of defendant, Stein. Neither Browne or the prosecutor would have had the time or opportunity to coerce the potential defense witness to not testify, but for their stipulation for continuance of the May 8, 1989 trial date.

Secondly, Richard Bailey has testified that the prosecutor used the extra time to give him training sessions in how to present his (false) evidence to a jury. Indeed, both Mr. Bailey and Mr. Norberg report that they were given training sessions during the period of trial continuance.

2. DENIAL OF RETAINED COUNSEL OF CHOICE

The trial court denied the Constitutional Sixth Amendment Right to be represented by retained counsel of choice in four respects.

The successful direct appeal of Mr. Stein's 1989 conviction did not cure those violations nor sweep them under the rug. The violations are even more significant, and worthy of relief at this time, because they interacted with other violations to deny the defendant with due process and fundamental fair trial.

Furthermore, the violations of retained counsel of choice and related violations, impacted other aspects of the case and collateral issues, causing irreparable harm and catastrophic damages. As such, defendant has suffered extreme prejudice. Moreover, Stein's entire family has suffered as the consequence of the violations of retained counsel of choice and the consequential damages.

- a. The court violated Stein's FUNDAMENTAL right to retained counsel of choice by removing attorney, Richard Petersen, sue sponte, and not providing Stein with a reasonable opportunity to retain other counsel of choice.

On or about August 16, 1988, Richard Petersen filed his notice of appearance as Stein's defense attorney. Thereafter, Mr. Petersen advised Stein that the Clark County prosecutor, Art Curtis, approached Mr. Petersen and demanded he withdraw as Stein's defense counsel.

Mr. Petersen said the prosecutor presented him with a "carrot and a stick." As Mr. Petersen explained, the "carrot" was that the prosecutor would assist him to become a prosecutor, if he resigned as Stein's defense attorney. As to the "stick", Mr. Petersen explained, the prosecutor threatened that he would be charged with theft or embezzlement unless he withdrew as Stein counsel.

Mr. Petersen explained that he had been in a financial bind and had diverted a client's funds to his personal use. He continued, "Art (Curtis) had known about it and he would never have said anything, but Art was so obsessed with getting you out of his hair, he will do anything." Mr. Petersen continued, "But Art has hated you for so long that he will stoop to anything to get you. I just never thought he would sacrifice me too."

In violation of Jack Stein's FUNDAMENTAL Constitutional Right to be represented by retained counsel of choice, Judge Morgan removed Mr. Petersen, over Stein's objection, and substituted attorneys Lee Dane and Edward Dunkerly, also over Stein's objection. In response, Mr. Stein advised the court that he was not indigent, and wanted to be represented by counsel of his choice, not Dane and Dunkerly, and that he previously filed a bar complaint against Mr. Dane's law partner.

The trial court ignored Jack Stein and violated his FUNDAMENTAL Sixth Amendment Right to be represented by retained counsel of choice.

PREJUDICE

The violation of the Sixth Amendment Right to retained counsel of choice does not require a showing of prejudice. However, the facts of this case is complicated by the fact the court appointed a Messrs. Dane and Dunkerly as substitute counsel and by the fact the first trial was declared a mistrial, following misconduct.

By removing Stein's retained counsel of choice, and substituting counsel who caused speedy trial violations and who moved for a mistrial, Stein's case was not timely resolved. Indeed, Stein suffered excessive delay, as the consequence of misconduct after Petersen was removed.

Had the trial court not removed Mr. Petersen on August 23, 1988, the case would have continued to trial on October 3, 1988. Although, the record confirms that Mr. Petersen became the subject of disciplinary proceedings, and was eventually disbarred years later, review of disciplinary proceedings against Mr. Petersen show that there was nothing whatsoever conducted until months after Stein's October 3, 1988 trial date.

Accordingly, as Stein had advised the trial court, he did not believe that whatever ethical or criminal problems Mr. Petersen may eventually face, any such future problems would not deny him (Jack Stein) of due process. Had the trial court allowed Mr. Petersen to represent Stein, the case would have gone to trial on October 3, 1988. However, on October 3, 1998, the state had no evidence implicating Stein in the three crimes against Ned Hall.

In-as-much as the state had no evidence implicating Stein in the crimes against Ned Hall, it is all but certain that Stein would have been acquitted. Removing Mr. Petersen and substituting Messrs. Dane and Dunkerly caused grave prejudice, because it resulted in actions that delayed the trial, resulted in the state securing (false) evidence from Mr. Bailey and Mr. Norberg, as the result of generous plea bargains and of suborn of perjury, that the state did not have available, had the trial proceeded with Mr. Petersen on October 3, 1988.

Furthermore, the prosecutor used the extra time, and used other consequential due process violations, to control and exploit Stein's estate of property worth millions, by abuse of process, through the probate of a revoked will, etc.

b. Appointment of Messrs. Dane and Dunkerly violated Stein's Sixth Amendment Right to be represented by Retained Counsel Of Choice

In violation to Mr. Stein's FUNDAMENTAL Constitutional Right to be represented by retained counsel of choice, the court removed Mr. Petersen, over Stein's objection. At the same time, the court appointed Messrs. Lee Dane and Ed Dunkerly as substitute attorneys, also over Stein's objection. Indeed, Stein advised the court he was not indigent, and wanted to be represented by counsel of his choice, not Dane and Dunkerly.

Furthermore, Stein advised the court that he had previously filed a WSEA complaint against Mr. Dane's law partner. The trial court ignored Stein and violated a FUNDAMENTAL Sixth Amendment Right to be represented by retained counsel of choice.

The first trial ended in a mistrial, as the consequence of prosecutorial misconduct. However, the 1988 mistrial did not cure the wrongs nor sweep the Sixth Amendment violation under the rug.

PREJUDICE

Although, there is no duty to show prejudice for violation of a STRUCTURAL trial error, the issue is complicated by the fact the conviction has been vacated, on other grounds.

Never-the-less, Stein suffered grave prejudice by the denial of counsel of choice and the resulting delay in his trial. Indeed, although actually innocent, Stein was falsely convicted and has suffered in excess 16 years excessive delay as a consequence of the deception to delay his direct appeal because court officials failed to file certain transcripts. Furthermore, Stein had suffered additional delay as the consequence of due process violations between 2001 and 2004. The total delay exceeds 16 years.

Furthermore, the improperly appointed attorneys conspired to recuse the trial judge, and then conspired to get Dane's friend, Judge Ed Heavy, appointed to the Clark County case.

Before Judge Heavy was appointed, Messrs. Dane and Dunkerly advised Stein that they had arranged for Judge Heavy to be appointed and unabashedly predicted that Judge Heavy would make rulings favorable to them. Stein felt that he was required to cooperate with the attorneys plan to get Judge Heavy appointed, or face the attorneys wrath and willful betrayal. The next day following recusal of Judge Quinn, a Supreme Court administrator appointed Judge Heavy. It is apparent that the attorneys and Judge Heavy conspired to achieve some type of judge shopping.

Thereafter, Judge Heavy ordered that Mr. Stein would be responsible to pay the unwanted attorneys' legal fees, in violation of RPC 1.8, RPC 1.10, WSBA ethics rule #1XX, and FUNDAMENTAL Due Process.

The trial proceeded but resulted in a mistrial after thirty days. The appointed attorneys, Messrs. Dane and Dunkerly exploited their claim for thirty days unwanted legal representation to demand unethical legal fees. The attorneys sued Stein, secured a judgment, and attached Stein's valuable lake property. After the attorneys petitioned to rezone the lake property, they arranged to sell Stein's choice property to a Federal/State land trust, financed by a grant in excess \$700,000. from Clark County. In effect, by inducing public officials to underwrite the purchase with a grant, the appointed attorneys expected to realize unethical legal fees and excess profit in excess \$1,000,000. for some 30 days of unwanted representation of Jack Stein during the first trial.

In response to evidence of repeated acts of embezzlement and unethical conduct over several years, Lee Dane was disbarred and his license to practice law was revoked.

c. Appearance of John Henry Browne in Stein's criminal case, and the trial court's refusal to remove Mr. Browne so that Jack Stein could be represented by retained counsel of choice, or proceed pro se, forced Stein to proceed with Browne as defense counsel, and denied the FUNDAMENTAL Sixth Amendment Right to be represented by retained counsel of choice.

Prominent Seattle defense attorney, John Henry Browne, filed an appearance in Stein's case, without Stein's knowledge, on January 25, 1989.

Although, Stein had interviewed Mr. Browne on occasion, Jack Stein did not sign any fee agreement with Mr. Browne and Stein advised Browne that he had NO intention of retaining Browne.

Despite the fact Stein did not retain Browne as defense counsel, Browne filed an appearance without Stein's knowledge. Thereafter, Mr. Browne met with the trial judge and prosecutor, also without Stein's knowledge. At the same time, Stein was actively interviewing potential counsel.

April 27, 1989, during a telephone conference with the trial judge, Stein advised the Court that he had not selected counsel for this case. Stein stated, "There seems to be a popular misconception on that issue." At that time, Stein was unaware that Mr. Browne had filed a Notice of Appearance.

Because John Henry Browne continued to interject himself in Stein's pre-trial proceedings, on May 18, 1989, Jack Stein filed a formal motion asking the Court to remove Browne. However, even at that time, Stein was not aware that Mr. Browne had filed a notice of appearance back on January 25, 1989.

Thereafter, Stein learned that Browne claimed to have been retained as Stein's defense counsel. In response, Jack Stein asked Mr. Browne who had retained him. Mr. Browne replied to Mr. Stein, "It's none of your God Damn Business."

Jack Stein advised the Court that he believed that Browne was retained by adverse relatives. Further, Stein advised the court that his adverse relatives had threatened to sue him, and he believed that they felt it would be cheaper to retain Browne with intent that Stein be convicted.

It is an open rumor that Mr. Browne has a bad reputation for double dealing his clients, allegedly betraying one client to gain favors from the prosecution in another case.

Be that as it may, Stein did not trust Browne and did not trust some of his relatives. Indeed, there were three sets of relatives that had previously taken positions adverse to Jack Stein.

On May 18, 1989, Stein filed a motion seeking the removal of Browne, arguing these same grounds, and stating his counsel of choice would not appear until Mr. Browne was no longer counsel of record. CP 472. Stein's accompanying affidavit stated:

I am the defendant in the captioned case. That I did not retain Brown(e) and Ressler as my counsel. That no one in my family retained Brown(e) and Ressler. That third parties retained Brown(e) and Ressler without my knowledge or consent and that I advised Brown(e) and Ressler and the third parties that I did not wish to be represented by that counsel and that I did not wish that counsel to receive any further funds.

Over my strenuous objections, and in direct and total disregard to my position, Brown(e) and Ressler sued the third parties for additional fees and expenses. I am also advised that Brown(e) and Ressler have requested and have received an additional sum of \$40,000. to \$60,000. after I became aware of their demands and expressed to them, and third parties, my objections.

That the total paid to Brown(e), in my behalf, \$100,000. to date, and that Brown(e) and Ressler are holding demand notes for additional fees and separately are also asking for additional expenses from the Stein estate. I was never privy to any fee discussions and admittedly*/ this was all done because they thought I would benefit. One of my "benefactors" recently explained to me that they didn't tell me "because he felt that it would be better if I did not know until it was a done deal." */ I now know this was a sham against me.

I do not wish to be represented by Browne and Ressler. I have no confidence in Browne and Ressler and hold them in contempt for their ethics and personal values. I resent their suing for their fees when they knew I did not want them and that I had no intention of retaining them. I have found them to be uncommonly deceitful and obsessed with money and I am very concerned that they are under some pressure or plan to betray my interests. CP 473-74.

Stein advised the trial court that his retained counsel of choice, Janet Hoffman, would not make an appearance as Stein's defense counsel, unless the Court first removed John Henry Browne.

In response, the State filed a brief which advised the trial court, inter alia, to hold an evidentiary hearing to decide if in fact Stein retained attorneys Browne and Ressler. CP 483.

However, the court never held such hearing.

At Stein's competency hearing May 31, 1989, Browne called Stein as a witness. Apparently, to buttress defense counsel's contention that Stein was not competent to stand trial (Stein thought he was competent), attorney Browne asked Stein questions regarding his beliefs and his concerns about his representation.

Stein testified as follows:

My position is that I did not select you. I did not sign a fee agreement with you. I made no decision that you are my counsel. And in a number of discussions that we have had you folks have said that you were not, and I have said that you were not, so I don't - and in one presentation that you made to the court, it was my understanding that you made it very clear that you were making a very limited representation and that no decision had been made with regard to whether you were going to do - be my counsel and were going to take up my case or I had, in fact, decided to retain you, and that at all times both prior to being released up to the present I have made diligent enquiry to retain counsel.

RP 5/31/89 @43-44.

In response to the prosecutor's questions
Jack Stein refused to recognize Browne and Ressler
as his attorneys. RP 5/31/89 @46.

Q. Do I understand that Browne and Ressler
were retained by third parties on your
behalf?

A. When I asked them about that, they said
it's none of my God Damn Business.
* * *

Q. Okay. Do you question and have you
questioned the possible motives of third
parties to secure counsel in your
behalf?

A. You say do I question.

Q. Do you? Are you concerned about the
motives that these third persons may
have in bringing Browne and Ressler to
your assistance?

A. I believe that third persons that are
paying for them are people that are
working for you.

RP 5/31/89 @ 48-49.

The prosecutor asked Mr. Stein why Stein was
concerned that Dick and Ken Behm were paying the
attorneys Browne and Ressler to represent him, and
Stein explained that the Behms had threatened to
sue him unless he renounced his inheritance from
his father Nick Stein:

I simply do not know if it's proper for a
third party to retain counsel for someone,
and I understand an awful lot of money, six
figures plus, not having any societal
relationship with me, not having ever called
me or talked to me since I've been out of
jail, how you doing. It seems incredible
that someone would come up with \$100,000.
plus and not be concerned about what I'm
doing. Whereas they came to jail and
insisted that I renounce my inheritance or
else they would sue me. And I see this as a
cheaper avenue rather than suing me.

RP 5/31/89 @ 52

One relative had conspired to sue Stein over property, another relative had demanded a portion of his inheritance and threatened to sue, another had embezzled money from Stein. If Browne were retained by either of those three relatives, their motive would be suspect. Moreover, Browne's refusal to reveal who had retained him greatly enhanced Stein's concern and distrust of Browne.

Attorney Browne then had himself called as a witness, and was examined by his co-counsel and law partner, Allen Ressler. On direct examination attorney Browne explained that Stein would not cooperate with him, and would not meet with him: "Most recently last month or so saying I'm not his attorney so why should I do anything."

RP 5/31/89 @ 59.

Stein has suggested that you [attorney Resler] and I are conspiring with the Prosecuting Attorney, the judges, and police authorities to insure his conviction." RP 5/31/89 @ 59. Browne said that Stein truly believed that Ressler and Browne were involved in a conspiracy against him. RP 5/31/89 @ 62. Browne acknowledged he was being paid by third parties, but said that he knew of no basis for Stein's belief the third parties were hostile toward Stein.

RP 5/31/89 @62

When asked by his law partner if he had leaked information provided by Stein to the Prosecuting Attorney, Browne admitted that he had, but said that he only did that to confuse the prosecution. RP 5/31/89 @62

The prosecution called Superior Court Judge Robert Harris as a witness at the competency hearing. Judge Harris who presided over the contested probate of the revoked will of Nicholas Stein, Jack Stein's father, testified that Jack Stein had expressed his belief that he did not trust the lawyers Browne and Ressler, and that he believed that the prosecutor was conspiring with relatives who had hired Browne and Ressler. RP 5/31/89 @123-24. Judge Harris also confirmed that Stein averred attorneys Browne and Ressler had been hired by third parties who would benefit if Stein were convicted in the criminal case.

When both parties had completed the presentation of evidence with respect to the competency hearing, the attorneys made their arguments on that issue. Stein then attempted to address the court, but the trial judge cut him off and delivered his ruling. RP 5/31/89 @ 144-45. Judge Borst ruled that Stein was competent to stand trial. RP 5/31/89 @145-49.

Next, Browne reminded the court that Stein had a pending motion to have Browne and Ressler removed as counsel of record. Then, Judge Borst immediately denied the motion to remove Browne and Ressler, prompting Stein to object that he had never had any opportunity to present evidence in support of that motion. Judge Borst said that he had, pointing out that he had just testified. But attorney Ressler pointed out Stein's testimony only related to the competency issue, not Stein's motion to remove Browne and Ressler:

Mr. Browne: Just to suggest to the court the most orderly way of dealing things, to me, I'd suggest Mr. Stein has a pending motion as to whether to have us removed as counsel, and it seems, and it seems to me that the court ought to deal with that.

The Court: The motion's denied.

Jack Stein: Denied without any argument or opportunity to present evidence, Your Honor?

The Court: Talk to these two attorneys. If you choose to talk to them, that's fine. If you don't, I can't ask you to talk to them.

Jack Stein: I understand, Your Honor, but you're saying that cooperation and competency are equivalent.

The Court: I've made my ruling, Mr. Stein. You will talk to your attorneys.

Jack Stein: Your Honor, your record is inadequate because you didn't allow me to present the information for several reasons.

The Court: You were on the stand Mr. Stein. I've ruled on that issue.

RP 5/31/89 @149-150.

Attorney Browne then suggested that since Browne could not represent Stein in connection with Stein's motion to remove Browne, that Stein was entitled to have separate independent counsel to argue that motion for Stein, but Judge Borst disagreed. RP 5/31/89 @149

Stein complained that he had never had any hearing on his motion to remove the attorneys, but the court told him he had just had it:

Jack Stein: I'd like for the record though to put some information on the record.

The Court: You had your chance when you were on the stand.

Mr. Ressler: Your Honor, the motion before the court was on the competency issue, not on Mr. Stein's motion to disqualify. [Motion to Remove Browne and Ressler] Just for the record.

The Court: The Court's ruled.

Mr. Ressler: Okay. RP 5/31/89 @ 149-150.

On June 5, 1989, attorneys Browne and Ressler moved to withdraw, a motion Stein concurred in, but the judge denied the motion. RP 6/5/89 @ 3-5.

The trial judge also refused to consider allowing Stein the opportunity to proceed pro se. RP 6/5/89 @10, 12.

On June 8, 1989, the trial judge revisited Stein's motion to remove Browne and Ressler, and Browne's motion to withdraw. RP 6/8/89 @27.

Stein again explained that Browne and Ressler had been retained by a third party, first without his knowledge, and then without his consent and over his objection. RP 6/8/89 @31. Attorney Browne confirmed for the trial court that Kenneth Behm, Stein's cousin, was paying Browne and Ressler to represent Stein. RP 6/8/89 @28-29. The trial judge then entered written findings of fact, conclusions of law, and an order denying Stein's motion to remove counsel of record. CR 488-93; RP 6/8/89 @36-40. Stein took exception to the findings. RP 6/8/89 @ 52-57.

Previous to the June 8, 1989 hearing, Browne had refused to reveal who had retained him. Mr. Stein had advised the court that he felt an adverse relative, either Behm or Welch, had retained Browne. The record shows that when Stein asked Browne who had retained him, Browne replied; "It is none of your God Damn Business."

Although, Mr. Browne had refused to reveal who retained them, he admitted on record that Stein did not retain them. After Stein's trial, the Washington State Bar secured copies of Browne's billing records, which show R. D. Behm and/or Kenneth Behm retained Browne & Ressler and they secretly paid Browne in excess \$90,000.

R. D. Behm is an adverse relative who conspired to exploit Jack Stein. Additionally, Mr. Behm had a conflict of interest, as Stein repeatedly advised the court, and Behm was known to support the alleged victim, Ned Hall.

For several months, Mr. Browne would not reveal that R.D. Behm and Kenneth Behm had retained him. Indeed, Browne took great pains to protect the identity of the persons who had retained him. Browne's attitude and secrecy made Stein very concerned and suspicious. Previously, Stein told Browne he would sue him if he did not get off his case. In reply, Mr. Browne told Stein, "I don't care, we have \$5,000,000. insurance."

Despite the fact that Stein told Browne that he was unwilling to use him, Mr. Browne petitioned Judge Harris to distribute Stein's probate assets to Browne and Ressler, for representing Stein.

Jack Stein objected. Notwithstanding Stein's objection, Judge Harris granted Browne's motion.

In support of his malevolent May 11, 1989 motion for attorney fees, John Henry Browne had falsely advised Judge Harris that Stein's trial judge, Judge Borst, refused to remove Browne and Ressler as Stein's defense attorney of record in the second criminal trial, as Stein had requested.

Moreover, Mr. Browne's representations in his May 11, 1989 motion for attorney fees constitute compelling evidence of an illegal and unethical "understanding" that Judge Borst would NOT remove Mr. Browne. Such facts seem to implicate criminal judicial misconduct and conspiracy to deny Stein's FUNDAMENTAL Sixth Amendment right to retained counsel of choice. Attorney Browne and Judge Harris, knew, or should have known, that Judge Borst had NOT yet made any ruling on Stein's motion to remove John Henry Browne as Stein's defense attorney. Indeed, as Stein's pleadings and exhibits show, Judge Borst did not actually rule upon Stein's May 18, 1989 motion to remove Browne until June 8, 1989, almost a month later.

Accordingly, Browne's action constituted **grand theft** by abuse of process by attorney Browne and judicial misconduct by Judge Harris to abet fraud and to violate Stein's Sixth Amendment Right to be represented by retained counsel of choice.

Incredibly, Judge Borst failed to conduct any inquiry whatsoever into Stein's Motion to Remove Browne and Ressler as Attorney of record in Stein's criminal trial. Indeed, Judge Borst's June 8, 1989 ruling denying Mr. Stein's Motion to Remove Browne and Ressler as attorney of record is based on Stein's May 18, 1989 motion.

Furthermore, attorney Browne's misconduct violated WSBA Rules of Professional Conduct. Moreover, at a minimum, the fraud at issue warrants criminal prosecution and civil damages.

Adding to the judicial misconduct is the fact that Judge Borst's perjurious order was prepared by Dennis Hunter, on prosecutor's pleading paper.

On June 8, 1989 Judge Borst issued a perjurious order containing fictitious statements alleging he held a hearing on Stein's motion to remove Browne and Ressler. Judge Borst's misrepresentations and deception precipitated a judicial travesty that sabotaged Mr. Stein's liberty and deceived State and Federal officials, constituted Manifest Error and abetted wrongdoing under color of law causing catastrophic damages exceeding \$100,000,000.

Nearly ten years later, on October 28, 1997, a telephone hearing was held. Mr. Stein testified that there was no such hearing in court and no in-camera proceeding in 1989. The prosecutor acknowledged he was NOT present at any hearing on Stein's motion to remove Browne and Ressler as his defense counsel. Stein asserted that the Judge's statement was not supported by any record because the alleged proceedings DID NOT HAPPEN.

Transcripts of the October 28, 1997 phone conference hearing show:

Judge Borst: My problem with all of this is I held very extensive hearing concerning Mr. Stein and his attorneys and went over it with him very carefully, and he would consent to their representation. And then he'd turn around two or three days later and make an objection. Finally, I got to the point where I asked him, I said, We have considered this many times, and I'm not going to listen to it any more unless you put it in writing and file it as a motion and state your reasons.

Mr. Stein: This is Jack Stein speaking and there is **absolutely no truth** to what you've just said.

Thereafter, the prosecutor and appellate counsel conducted an extensive search to locate transcripts that would show that Judge Borst actually held a hearing in court, or in-camera, on Mr. Stein's Sixth Amendment issue. The prosecutor, Dennis Hunter, and Stein's appellate attorney, Will Hutcheson, filed their "Joint Status Report Re: Transcripts of Pretrial Hearings." In essence, counsel has concluded that transcripts which would show that Judge Borst held a hearing, or that Judge Borst failed to hold a hearing, cannot be found.

Moreover, they reported that "transcripts or stenographic notes of the alleged pretrial proceedings do not presently exist and that there are no contemporaneous notes made by prosecutor, or defense counsel, or court reporter, as would support a narrative report of the alleged proceedings in accordance with RAP 9.3 or 9.4."

Indeed, the record fails to show that Judge Borst held any hearing on Mr. Stein's motion to remove Browne and Ressler. Furthermore, travel documents show that Judge Borst was not even in Clark County during the period he later asserted that he held a "very extensive hearing" concerning Mr. Stein's motion to remove counsel. Indeed, the colloquy on May 30, 1989 at page 147 shows that Stein's motion was "denied without any argument or opportunity for presenting any evidence."

Judge Borst and Dennis Hunter should have known that their false statements constituted criminal judicial misconduct and thwarted FUNDAMENTAL Constitutional Rights protected by the Sixth Amendment to the United States Constitution.

Moreover, the judicial misconduct constituted manifest error and precipitate Structural Trial Error. Such deliberate wrongdoing is NOT covered by the doctrine of absolute immunity otherwise available to such miscreant court officials.

Clearly, the Sixth Amendment provides that a criminal defendant has a qualified right to be represented by retained counsel of choice. Alternatively, a defendant has the right to represent himself and proceed pro se.

Judge Borst had a duty to amend, vacate, or rescind the court's imprudent order denying Stein's motion to remove Browne and Ressler as retained counsel so Stein could be represented by retained counsel of choice or proceed pro se. However, despite the Manifest Error being called to his attention on several occasions, Judge Borst failed to mediate the wrongdoing and conspired to cover-up his error through egregious misfeasance, nonfeasance, and perjurious statements.

By denying Stein's motion to remove Browne, Judge Borst unlawfully interfered with Stein's fundamental Constitutional Rights, resulting in STRUCTURAL trial error.

Judge Borst was not only incompetent and irresponsible, compelling evidence shows that Judge Borst actually conspired to sabotage Stein's Constitutional Sixth Amendment Right to retained counsel of choice, by patent judicial misconduct and abuse of discretion. Moreover, Judge Borst attempted to cover-up his error by perjury in pre-trial and post-trial proceedings.

Moreover, they reported that "transcripts or stenographic notes of the alleged pretrial proceedings do not presently exist and there are no contemporaneous notes made by prosecutor, or defense counsel, or court reporter, as would support a narrative or agreed report of the alleged proceedings in accordance with RAP 9.3 or 9.4." In summary, the record fails to show that Judge Borst held a hearing, as he had alleged.

PREJUDICE

By requiring Stein, not an indigent man, to undergo a criminal trial represented by an attorney who was retained by adverse interests, over Stein's objection, Judge Borst committed judicial misconduct that constituted STRUCTURAL trial error. By committing perjury in pre-trial and post-trial proceedings, and by conspiring to cover-up violation of Stein's fundamental Sixth Amendment rights, Judge Borst sabotaged Stein's trial, sabotaged his direct appeal, and sabotaged post-conviction proceedings by state PRP and by Federal habeas corpus. As a consequence, Stein had been unlawfully incarcerated for over 16 years. Moreover, judicial misconduct at issue abetted the prosecutor's malevolent ploy to control and exploit Jack Stein's valuable estate.

Mr. Stein's pleadings document that the unwanted attorney, Browne, openly conspired with adverse interests against Stein, conspired to sabotage his defense, conspired to withhold exculpatory information from the jury, and slandered Stein in remarks to the jury. A potential defense witness revealed that Browne and the prosecutor secretly met with the witness, late at night, in Browne's motel, and they coerced the witness to not testify.

Prior to Jack Stein's trial, R. D. Behm demanded that Jack Stein agree to probate the revoked will of his father, Nicholas Stein, which the prosecutor had arranged to be filed in Clark County Superior Court. Also, prior to trial, Behm's son, Kenneth, demanded that Jack Stein divide his inheritance with him. When Stein refused Behm's demand, Kenneth looked around Stein's upscale home and said, "We are going to take all of this away from you." After Stein's conviction, a probate judge ordered Christopher Welch to evict Mrs. Jack Stein from her residence and sell the upscale Portland, Oregon residence.

The Court's order constituted judicial misconduct by Judge Harris and abetted the prosecutor's ploy to control and exploit Stein through the unlawful probate of a revoked will.

Adverse relatives, corrupt attorneys, court officials, and the Clark County Prosecutor conspired to use Browne to falsely convict Stein and to abet the ploy to exploit Stein of property valued in excess \$5,000,000. by fraud and abuse of process because it would serve their interests.

After he was convicted, Jack Stein contacted defense attorney, John Henry Browne, and repeatedly requested certain filed and documents. Stein made at least twenty phone calls and sent several letters to Browne to request his files.

However, Mr. Browne refused to surrender any of the requested files, even though state law and court rules required him to do so. Stein advised Browne, "The files are necessary for my appeal." Mr. Browne sarcastically replied, "I know that. That exactly why you arn's going to get them."

THREAT OF VIOLENCE

During 1989, and after, Mr. Browne refused to provide Stein with access to his files. Stein asserted that the Court and Bar Association could force Browne to comply with his responsibility to provide Stein his files. Also, Stein said a Bar complaint could lead to disbarment proceedings and/or other sanctions. However, Mr. Browne became hostile and threatened Stein with violence.

Mr. Browne spoke of extensive contacts in the Attorney General's office, prison administration, and inmate population, and asserted if Stein exposed his professional misconduct to State Bar authorities, that his contacts could hurt Stein, or even kill him.

The United States Supreme Court has recognized that when a criminal defendant is represented by a lawyer hired and paid by a third party. "there are dangers that arise." Wood v. Georgia, 450 U.S. 261 (1981). In the present case, the defendant was represented by attorneys hired by his uncle and cousin. Defendant Stein did not approve of this arrangement, and distrusted his attorneys because he felt that his relatives did not have his best interest at heart.

BROWNE'S CONDUCT VIOLATED RPC 1.8

Washington's rules of professional conduct provide that it was unethical for attorneys Browne and Ressler to represent Stein while being paid by Behm, without first obtaining Stein's consent to this third party arrangement. RPC 1.8(f) provides that an attorney representing a client in a matter "shall not accept compensation for representing a client from one other than the client unless: (1) the client consents after consultation; ..."

Since Jack Stein did not consent to having his relatives pay Browne and Ressler, their representation of Jack Stein was defined by the Rules of Professional Conduct 1.8(f) as a Conflict of Interest, and Prohibited Transaction.

The appeals courts of this state, and the Federal circuit courts have recognized this right in the past. State v. Chase, 59 Wn.App. 501, 506 (1990). [Clearly, a defendant has the right to be represented by retained counsel of choice.]; State v. Roth, 75 Wn.App. 808, 824 (1994). "The presumption is that a criminal defendant may have counsel of his choice if he can pay for it and counsel is willing." United States v. Stites, 56 F.3d 1021 1024 (9th Cir. 1995). Defendants' qualified right to counsel of choice is an essential component of the Sixth Amendment right to counsel. United States v. Jones, 160 F.3d 641 (10th Cir. 1990) When a defendant is financially able to retain counsel, the choice of counsel rests in his hands, not in the hands of the State. United States v. Richardson, 894 F.2d 492, 496 (1st Cir. 1990). The defendant's right to counsel of his choice therefore represents "a right of Constitutional dimension," the denial of which may rise to the level of a Constitutional violation. Birt v. Montgomery, 725 F.2d 587 (11th Cir. 1984).

Attorneys Browne and Ressler admitted that they were being paid by a third party, a relative of Jack Stein, and openly acknowledged that Stein did not want to be represented by them. By failing to grant Jack Stein's motion to remove Browne and Ressler, the trial judge endorsed both a violation of the Rules of Professional Conduct, and a conflict of interest, and violated Stein's FUNDAMENTAL Sixth Amendment right.

In the present case, the defendant was prepared to retain private counsel and to pay for such counsel by himself. Nevertheless, the Superior Court forced him to go to trial with a counsel that was retained and paid for by adverse relatives. The Superior Court expressly forbade Stein from firing his own attorney. In Faretta v. California, 422 U.S. 806 (1975), the Supreme Court recognized that the State could not force a defendant to be represented by counsel if he didn't want to be." "No person charged with a criminal offense can have counsel forced upon him against his will." *Id.* at 826.

The court noted that while defense counsel traditionally has the power to make binding decisions of trial strategy in many areas, "this allocation [of power] can only be justified, however, by the defendant's consent, at the outset, to accept counsel as his representative.

Unwanted counsel "represents" the defendant only through a tenuous and unacceptable legal fiction." Id. at 820-21. It is inconsistent with Faretta to conclude that while the state can not force a defendant to be represented by counsel he does not want, that the defendant's relatives can. To thrust counsel upon the accused, against his considered wish, violates logic of the Amendment."

The Superior Court entered finding that Stein himself selected Browne and Ressler to be his attorneys. And yet there is absolutely nothing in the record to support this finding, which Stein assigned error to. In 1999, the Court of Appeals rejected Stein's Sixth Amendment claim in the unpublished portion of its opinion.

But in so doing the Court of Appeals also declined to affirm the Superior Court's unsupported finding that Stein hired Browne and Ressler. Instead, the Court held that even though Stein did not retain Browne and Ressler, that to be entitled to removal of those attorneys, thus freeing him to retain his own chosen counsel or proceed pro se, Stein had to prove that he had meritorious reasons for being dissatisfied with Browne. In so holding, the Court of Appeals relied upon the Supreme Court's decision in State v. Stenson, 132 Wn.2d 668 (1997).

However, the test set forth in Stenson is the test for determining when an indigent defendant represented by court appointed counsel is entitled to a change of appointed counsel. That test has no application to Stein's case. It is well settled that the position of indigent defendants with court appointed counsel and the position of nonindigent defendants able to retain their own counsel are not similar. Thus, the Court of Appeals' reliance on Stenson, in 1999, was completely misplaced and inappropriate.

Moreover, it is settled law that when a defendant's right to retain counsel of choice is violated, he need not show any prejudice flowing from his representation by unwanted counsel. Obtaining reversal for violation of such right does not require a showing of prejudice to the defense, since the right reflects constitutional protection of defendant's free choice independent of the concern for the objective fairness of the proceeding. Flanagin v. U.S., 465 U.S. 259, (1984)

Stein did not want the attorney hired by relatives; had other counsel willing to represent him; and did not seek a continuance of the trial date but was actually opposing the continuance motion of the attorney hired by his relatives.

There was no reason to deny Stein his Sixth Amendment right to be represented by retained counsel of choice. Presumably, the trial judge and the Court of Appeals officials sabotaged Stein's FUNDAMENTAL Constitutional right at trial and at appeal to abet the underlying conspiracy to false convict Stein and the prosecutor's malevolent conspiracy to control and exploit Stein's estate through collateral actions. Certainly, the persons who retained Browne and Ressler were in fact conspiring with the Clark County prosecutor, and other miscreant court officials, to exploit Jack Stein's valuable estate and to cover-up judicial misconduct. Indeed, as a consequence, the court has been used as a criminal enterprise to exploit Stein of property presently valued in excess of \$67,000,000.

d. After refusing to remove Browne and Ressler as Stein's defense attorney, the trial court also refused to allow Stein to proceed pro se

After the trial court refused to remove Browne, Jack Stein advised the court that he would rather proceed with counsel of choice or proceed pro se. However, the court ignored Mr. Stein.

Thus, the trial court denied a FUNDAMENTAL Constitutional right to proceed pro se guaranteed by the Sixth Amendment.

PREJUDICE

There is no need to show prejudice from the denial of a Constitutional right resulting in structural trial error, as here. However, because the 1989 conviction was dismissed on other grounds, Stein will show prejudice to his right to due process and denial of fundamental fairness.

The prejudice presented in the foregoing sections applies to this violation as well, and is incorporated, as if fully repeated here.

Charges should be dismissed, with prejudice.

3. CONSPIRACY TO CONTROL AND EXPLOIT ASSETS

Immediately after Jack Stein was arrested in 1988, a deputy prosecutor met with Jack Stein in a lower floor of the jail, while Stein was still in handcuffs, and boasted of a plan to use the court to control and exploit Stein's estate. Thereafter, the prosecutor and others initiated and abetted a series of fraud, criminal acts, judicial misconduct and abuse of process calculated to control and exploit Stein's estate. Moreover, some of the wrongdoing to control Stein's valuable estate had already been initiated by the prosecutor prior to Stein's arrest. Miscreant court officials have abetted the wrongdoing to exploit Stein, often by judicial misconduct or tacit nonfeasance.

The conspiracy to control and exploit Stein's estate included unethical conduct, judicial misconduct, and criminal conduct; as follows:

- a. Multnomah County Probate
- b. Freeze assets
- c. Intimidate Stock Broker
- d. Stein's Lake Property
- e. Clark County Probate
- f. Sell Oregon Residence
- g. Steal Valuable Cattle

Each of the listed acts of wrongdoing abetted the ploy to control and exploit Stein's estate. The ploy to control and exploit Stein's estate served to sabotage Stein's ability to retain counsel of choice in his third trial, served to sabotage his direct appeal, served to sabotage post-conviction relief, and also served to sabotage Stein's ability to post bail and to provide for his family. Furthermore, the actions were malevolent and calculated to serve the prosecutor's extreme animus.

Some of these acts were initiated before Stein was arrested, others thereafter. As the court may recall, immediately after Stein's arrest, July 28, 1988, a deputy prosecutor approached Stein and boasted of a ploy to use the court to control and exploit Stein's estate.

The conspiracy to control and exploit Stein's estate included unethical conduct, judicial misconduct, and criminal conduct; as follows:

- a. Multnomah County Probate
- b. Freeze assets
- c. Intimidate Stock Broker
- d. Stein's Lake Property
- e. Clark County Probate
- f. Sell Oregon Residence
- g. Steal Valuable Cattle

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40-2-05

a. The Clark County Washington Prosecutor conspired with other court officials and third parties to sabotage and close the Multnomah County Oregon probate of Nicholas Stein's Last Will and transfer assets to Clark County Superior Court.

Prior to Jack Stein's 1988 arrest, Nicholas Stein died. As his only son and the executor named in his father's will, Jack Stein filed his father's last will for probate in the Multnomah County, Oregon, circuit court. Nicholas Stein had died on August 27, 1987. The circuit court proved the will and appointed Jack Stein as executor and personal representative. However, Clark County officials conspired to sabotage the Oregon probate proceeding and then to transfer the assets to a probate court in Clark County, where a revoked will had been filed for probate. Clark County officials "borrowed" the Oregon probate file, and delivered the file to a Clark County deputy prosecutor. When the file was returned to the Multnomah court clerk, Nicholas Stein's Last Will and other documents were discovered to be missing.

Thereafter, the Clark County prosecutor and Clark County officials conspired to cause the Multnomah County Judge to remove Jack Stein as personal representative of the probate proceeding.

PROBATE OF REVOKED WILL IS UNLAWFUL

The court appointed Stein's son-in-law, Christopher Welch, an officer of the Washington State Attorney General's office, as executor, over Stein's objection. This despite the fact Jack Stein was removed without cause and Welch was not qualified. Thereafter, Welch moved to close the Oregon probate proceeding and transfer the assets to the Clark County probate of a revoked will, where he was appointed executor.

TIMELY NOTICE OF APPEAL IS IGNORED

Jack Stein filed a timely notice of appeal. However, the Oregon Circuit Court ignored Stein's appeal, closed the Oregon probate proceeding, and transferred the assets to a Clark County Superior Court, as Welch requested.

CRIMINAL ABUSE OF PROCESS

Thereafter, Clark County Superior Court was used to control and exploit Jack Stein's inherited property, just as the prosecutor had prophesized in a meeting with Jack Stein, in jail, shortly after Stein was arrested July 28, 1988. Indeed, the Superior Court sold Stein's real property and liquidated his inherited assets, through fraud, judicial misconduct, and abuse of process.

It is unlawful to probate a revoked will.

However, after the prosecutor arranged for a revoked will to be filed in Clark County, and Nicholas Stein's TRUE Last Will to vanish from the Multnomah County probate, and the Multnomah County probate assets to be transferred to Clark County probate court, that is precisely what occurred.

Indeed, just as the deputy prosecutor had openly predicted on July 28, 1988, the Clark County Superior Court was used as a criminal enterprise to control and exploit Stein's estate.

Probate of a revoked will is criminal abuse of process. The conspiracy to commit criminal abuse of process, sabotaged Stein's criminal defense, sabotaged Stein's direct appeal, sabotaged post-conviction proceedings, and sabotaged Stein's ability to post bail and provide for his family.

At the time the prosecutor conspired to sabotage the Oregon Circuit Court's probate action, the value of Stein's inherited property, including both real property and liquid assets, exceeded \$3,000,000. Clark County purchased a major portion of Stein's inherited real property. Other real property was "sold" to various real estate developers, et al. According to the assessor, the present value of Stein's inherited real property exceeds \$67,000,000.

DENIAL OF DUE PROCESS AND FUNDAMENTAL FAIRNESS

The conspiracy to probate a revoked will and to control and exploit Jack Stein's estate through the Clark County Superior Court, et al., violated fundamental fairness and sabotaged Due Process.

Indeed, the prosecutor's ploy to control and exploit Stein has used the court as a criminal enterprise. It is unlawful to knowingly probate a revoked will. However, by conspiring to file a revoked will in Clark County Superior Court, conspiring to cause the Oregon Court to remove Jack Stein, conspiring to close the Oregon probate proceeding, the ploy to control and exploit Jack Stein through the Clark Superior Court was facilitated. Indeed, the Clark County Superior Court was used as a criminal enterprise, to accomplish fraud and abuse of process, through a malevolent conspiracy of criminal judicial conduct. Furthermore, by ignoring the wrongdoing, the Court of Appeals officials abetted the criminal judicial misconduct.

PREJUDICE

By conspiring to probate a revoked will, and by sabotaging Stein's original direct appeal, the prosecutor and court officials caused excessive appellate delay which abetted the malevolent ploy to control and exploit Stein's estate.

Furthermore, the unlawful conviction and the improper probate, and excessive delay on appeal, frustrated Jack Stein's standing to protect his interest and to object to the malevolent and unlawful exploitation of his inherited estate.

As a consequence of the malevolent misconduct at issue, Mr. Stein was denied due process in both the criminal case, and in the probate case. Indeed, as referenced above, the Court was used as a criminal enterprise to exploit Stein of property valued in excess \$3,000,000. which denied fundamental fairness in the criminal trial and on appeal. As a consequence, Stein was unable to afford to retain counsel of choice in the third criminal trial, occurring in July 2004.

The Court should never be used as a criminal enterprise to control or exploit a defendant's estate. However, it violates fundamental fairness for the state, through the prosecutor, to conspire with miscreant court officials, attorneys, and third parties, to control and exploit the estate of a criminal defendant. Particularly, as here, where the wrongdoing included fraud and abuse of process, and the consequence was to render Jack Stein indigent, unable to retain counsel in his third trial, and unable to afford bail.

Moreover, Stein has been unable to provide for the financial needs of his family, while incarcerated, as a direct consequence of the malevolent misconduct to probate a revoked will.

But for the ploy to probate a revoked will in Clark County Superior Court, Jack Stein would have inherited property valued in excess \$3,000,000.

However, Stein did not inherit but a small fraction of that amount under the revoked will. Moreover, the state used the delay and unlawful conviction to prosecute a RICO action against Stein, which resulted in a large award against Stein. Although, Stein was ultimately successful in getting that RICO judgment vacated, ab initio, by then, the unlawful probate proceeding had liquidated all of Stein's inherited property.

Accordingly, this case constitutes one of the worst cases of criminal judicial misconduct to unlawfully convict an innocent person, sabotage and delay his appeal, sabotage post-conviction, and conspiracy to control and exploit his estate uncovered in the United States in over 50 years.

The present assessed value of property taken from Stein as a consequence of the unlawful conviction, the probate of revoked will, and other malevolent abuse of process, exceeds \$67,000,000.

b. Prior to Jack Stein's arrest, a Clark County deputy prosecutor conspired with court officials, et al., to cause the Multnomah County probate judge to issue an order freezing Stein's brokerage assets.

After Jack Stein was appointed personal representative and executor of the Oregon probate of his father's Last Will, the Court, allegedly, in response to malevolent extra judicial contact, on its own motion, and without any hearing, issued an order to freeze Stein's street account.

At the time of that action, Stein's account held stocks and securities valued in excess \$950,000. There was no reason or just cause to declare an emergency and freeze Stein's assets. The Multnomah Circuit Court Judge asserted that Clark County officials had contacted him, prior to Stein's 1988 arrest, and slandered Jack Stein.

Clark County authorities made slanderous statements against Jack Stein and caused the Court to take the highly unusual action. Jack Stein was able to get the freeze lifted. However, by the time Stein prevailed in getting the freeze lifted, prosecutors initiate other judicial misconduct.

Moreover, the prosecutor had also intimidated the management of the stockbroker to refuse to make stock trades and transactions requested by Jack Stein, as presented in part c.

Within days thereafter, Stein was arrested.

PREJUDICE

The conspiracy to freeze my stock account and intimidate my stockbroker from allowing trades and transactions on my account sabotaged my ability to retain counsel, to post bail, and provide for my family. The wrongdoing was particularly evil.

Moreover, the wrongdoing sabotaged Stein's Constitutional Rights in each of the three trials and post-conviction proceedings. Furthermore, the wrongdoing sabotaged due process in collateral litigation, which in turn, sabotaged due process in the third trial, in 2004.

c. The Clark County prosecutor intimidated Stein's stockbroker causing them to refuse to make transactions for Mr. Stein, even after the freeze order was vacated.

Prior to Stein's arrest, Clark County officials contacted Stein's stockbroker and intimidated them into refusing to allow Stein to make trades and transactions, even after the malevolent freeze order was vacated. After Stein successfully vacated the freeze order, Jack Stein and his son, Greg, went to the stockbroker. Jack Stein intended to make trades and to transfer \$300,000. to an account controlled by his son.

However, as a consequence of the malevolent interference by Clark County officials, Stein's stockbroker refused to process his transactions.

PREJUDICE

As a consequence of the improper conduct and unlawful interference with Stein's management of his stock account, Stein was unable to access his liquid assets. This violated due process affecting each of his three trials.

- d. The appointed attorneys in Stein's 1988 trial, Messrs. Dane and Dunkerly, sued Stein and acquired his Lake property.

In the first trial, 1988, the trial court appointed Messrs. Ed Dunkerly and Lee Dane to represent Stein as defense counsel. Stein did not have any input into the selection of appointed defense counsel. Indeed, Stein objected to the appointment of Dane and Dunkerly, pointing out he had filed a bar complaint against Dane's law partner, and that he insisted on his right to be represented by retained counsel of choice.

Regretfully, the court ignored those concerns expressed by Stein. Thereafter, the appointed attorneys recused the trial judge, without Stein's knowledge and over his objection. The attorneys conspired with Hon. Ed Heavy, of King County, that he become appointed as visiting trial judge.

Almost immediately, Judge Heavy ruled that Clark County should not pay the fees of the appointed attorneys, and that the attorneys should look to Stein for fees. At the time, Judge Heavy did not allow the attorneys to withdraw or allow Stein to select other counsel or proceed pro se.

JACK STEIN WAS NOT INDIGENT

At the time of his arrest, Stein did not claim to be indigent, and did not seek appointment of counsel. Indeed, Stein owned stocks and bonds valued well in excess \$950,000. and owned inherited real property valued ^{well} in excess \$3,000,000. Additionally, Stein owned other valuable property.

Certainly, at the time of his 1988 arrest, Stein did not claim to be indigent. After the court appointed Dane and Dunkerly, Stein transferred certain of his assets to others. Nevertheless, Stein did not claim to be indigent.

Indeed, Jack Stein advised the Court that a number of attorneys had expressed interest in representing him, under affordable fee agreements.

PREJUDICE

Accordingly, it was error of the most serious order for the court to appoint Dane and Dunkerly, an error that has precipitated irreparable harm and catastrophic financial damages, resulted in a travesty of justice and needless legal expenses.

Moreover, the court's error in appointing Dane and Dunkerly allowed the appointed attorneys to then recuse the trial judge, and then to conspire to get their friend, Hon. Ed Heavy of King County, appointed as visiting trial judge. Certainly, that was egregious judge shopping.

As a further consequence, then, Judge Heavy ruled that the appointed attorneys could sue Stein for their fees. After the 1988 mistrial, the appointed attorneys moved to withdraw and filed a suit against Stein, demanding legal fees for representing Stein for 30 days in December, 1988. This, despite the fact WSBA ethics rule #168 and RPC 7.3 seeks to forbid such lawsuit.

Thereafter, the attorneys attached Stein's valuable Lake property and then sold Stein's Lake property to a Federal/State land trust, financed by a large grant from Clark County.

In effect, for representing Stein for about 30 days, the unwanted attorneys realized over \$1,000,000. from sale of Stein's Lake property.

As a consequence, Stein was stripped of a valuable asset that would have allowed him to retain and finance counsel of choice, raise bail, and provide for support of his family. As a further consequence, Stein was denied due process and fundamental fairness in the second [1989] trial and in the third trial held in 2004.

WSBA ethics rule #168 provides, in part;

"May the [previously appointed] attorney charge the client for services rendered?"

NO. The imposition of postproceeding payment obligations upon an accused's exercise of the right to counsel without providing the client an opportunity to discuss fee involved, in advance, is probably arbitrary and violative of due process protections. State v. Eide, 83 Wn.2d 676 (1974).

The client should not be charged for the [appointed] attorney's services unless the fee arrangement has been discussed and agreed upon in advance." WSBA ethics rule #168.

However, in this case, the attorneys did not discuss a fee agreement with Stein, in advance. Moreover, Stein did not agree or consent to any fee arrangement, in advance, as the ethics rule would seem to require. Accordingly, the appointed attorneys violated the WSBA ethics rule #168 in seeking to sue Stein for the 30 days of unwanted legal representation concerning the 1988 trial.

Furthermore, because Jack Stein was in jail, he was rendered unable to defend himself against the attorney's lawsuit. Despite a prohibition intended by WSBA #168, the appointed attorneys received a judgment in their favor, against Stein, for legal fees for representation for 30 days.

The previously appointed attorneys next attached Stein's valuable Lake property, which they later sold to a Federal/State land trust. Such action deprived Stein of a valuable asset and sabotaged Stein's financial ability to post bail or to retain counsel of choice in his 2004 trial.

Thus, Stein was denied due process and fundamental fairness forcing Stein to proceed with appointed counsel, Suzan Clark, in his third trial, 2004, where he was represented by Suzan Clark, and attorney who provided ineffective assistance of counsel as presented in part 7(a).

- e. The Clark County prosecutor and third parties conspired to probate a revoked will in Clark County Superior Court, which fraud and abuse of process deprived Stein of fundamental fairness and sabotaged ability to post bail or retain counsel of choice in third trial.

Prior to Stein's 1988 arrest, his father died. Jack Stein filed his father's Last Will, dated May 18, 1987, in the Multnomah County, Oregon, Circuit Court. Thereafter, an alleged creditor, Haagen, filed an earlier, **revoked**, will, in Clark County Superior Court. However, a revoked will has no force or effect. Accordingly, probating a revoked will is abuse of process.

Immediately after Stein's arrest, July 28, 1988, a deputy prosecutor met with Stein in a lower floor of the Clark County jail and boasted of a plan to control and exploit Stein and his inherited property through the Clark County Superior Court. The prosecutor predicted, "We are going to bring everything under control of the Clark County Superior Court where we can control everything." ... He continued; "You will have nothing left when the court gets through."

Thereafter, a Clark County Superior Court administered on a revoked will. However, a revoked will has no force and effect. Accordingly, it was criminal abuse of process to administer and probate a revoked will. Indeed, miscreant court officials ignored their duty to forgo probate of a revoked will and to set a will contest. The judicial misconduct at issue abetted the prosecutor's ploy to bring all Stein's assets under control of the Clark County Court and to exploit Jack Stein's valuable estate.

PREJUDICE

The unlawful probate of a revoked will deprived Jack Stein of his property and assets, which violated fundamental fairness and sabotaged due process in Stein's 2004 trial.

f. A Clark County Superior Court, while "probating" a revoked will, ordered the "personal representative" to evict Bethany from her upscale home and sell Stein's fully-paid-for Portland, Oregon residence.

The Superior Court Judge refused Stein's repeated request to suspend probate on the revoked will and to hold a will contest as provided by statute. Thereafter, the Superior Court Judge ordered Bethany evicted from their fully-paid-for upscale Portland, Oregon residence and further ordered the "personal representative" to sell Stein's Oregon residence. The action to evict Bethany and sell her home was particularly evil, and egregious judicial misconduct. The wrongdoing abetted the prosecutor's ploy to use the Clark County Superior Court to control and exploit Stein - so he would have nothing left.

PREJUDICE

The sale of Stein's upscale Portland, Oregon residence by the Clark County probate court constituted criminal judicial misconduct and malevolent abuse of process. As a consequence, Stein was deprived of a substantial asset and the Court was used as a criminal enterprise. Also, as a further consequence, Stein's ability to finance his criminal defense was sabotaged and his right to fundamental fairness was violated.

9. After Stein was convicted, the prosecutor came upon Stein's property and stole a herd of Scottish Highland cattle.

Prior to Stein's arrest, it had been Jack and Bethany's custom to give one another unusual gifts. One year, Jack gave Bethany some exotic Scottish Highland cattle. Bethany loved the beautiful cattle, and pleased that her gift had grown to become a small (but very valuable) herd.

After Stein was convicted, and sent to prison, some unauthorized people and equipment entered the pasture where the Scottish Highland cattle were kept. A passerby noticed the unusual activity, and came on the pasture to investigate.

He contacted the stranger who was in charge, and asked what they were doing. The "boss" explained that he was the prosecutor and they were taking these "abandoned" cattle. He said, "No one is feeding the cattle or taking care of them, because Jack Stein was sent to prison." The passerby explained that he had seen people feeding the cattle and taking care of them most every day. Then the boss, who previously identified himself as the prosecutor, explained, "The vet said the cattle are sick, so we are going to take them."

When asked who said any cattle were sick, the "boss" pointed out the vet, "Over there."

The passerby walked over to the vet and asked which cattle were sick, and of what disease. However, the vet said they were not sick, so the passerby went back to the "boss" and said, "The vet says that no cattle are sick." The prosecutor called his people together, they got in their trucks and left.

However, later, the prosecutor came again and they stole all Bethany's Scottish Highland cattle.

4. DENIED THE RIGHT TO CONFRONT STATE WITNESS

The United States Supreme Court has found that the Sixth Amendment implicates the FUNDAMENTAL right to confront one's accuser. Crawford v. Washington, 541 U.S. 36 (2004).

- a. The prosecution introduced testimony of Roy Stradley from the former [1989] trial, which violated the right of confrontation.

During the third trial, the prosecution sought to introduce the former testimony of Roy Stradley from the 1989 trial, asserting that Mr. Stradley was not available. Indeed, it seems as if Mr. Stradley may be in custody or dead. However, the prosecution produced no evidence of his whereabouts, but simply argued that they had not "found" Stradley, and that mail addressed to Mr. Stradley, in Illinois, had been returned.

Mr. Stradley had testified for the state in Stein's 1989 trial. However, Stein was not represented by retained counsel of choice in the 1989 trial. Indeed, Stein was represented by John Henry Browne, an attorney retained by third party relatives, who, Mr. Stein had advised the court in 1989, had interests adverse to Stein. In section 2(c), Stein shows that John Henry Browne had sabotaged Stein's defense in a number of ways.

Moreover, the Court refused to remove Browne, as requested. Indeed, prior to trial, both Stein and Browne filed motions asking the trial court to remove Browne. The trial court denied the motions and forced Stein to proceed to trial with Browne, an attorney he did not retain, did not want, and who he had repeatedly attempted to remove so he could be represented by retained counsel of choice or proceed pro se. Browne had violated the Code of Professional Conduct by accepting fees from a third party, without consent of a client.

It follows, a fortiori, as Stein advised the court in 2004, former testimony of Roy Stradley should not be allowed read into the 2004 trial, because, in the 1989 trial, Stein had not been represented by counsel satisfying the Sixth Amendment guarantee. Accordingly, it was error to allow the former testimony of Roy Stradley.

PREJUDICE

The testimony of Roy Stradley was untruthful. Mr. Stradley explained that Stein had accused him on theft and other criminal wrongdoing and fired Stradley from a jobsite, threatening to call the police on Stradley. As a consequence of Stein's treatment of him, Mr. Stradley held a grudge against Stein, as can be seen from 1989 testimony.

In the 1989 trial, Mr. Stradley presented untruthful statements calculated to implicate Stein in the crimes at issue. Defense counsel, John Henry Browne, could have easily impeached Roy Stradley, but failed to present a reasonable cross-examination of Stradley. Consequently, the truth finding function of confrontation was not served and, therefore, the Stradley testimony from the 1989 trial would not satisfy Crawford.

Without (false) testimony introduced through Stradley, the State would have had NO testimony implicating Stein in the incidents at issue.

Accordingly, this Court should dismiss the charges, and 2004 conviction, with prejudice.

5. EXCESSIVE DELAY VIOLATE FUNDAMENTAL FAIRNESS

As the consequence of judicial misconduct, governmental wrongdoing, mismanagement, and fraud, this case has suffered from excessive delay at trial and at appeal, resulting in a the denial of due process and fundamental fairness.

All excessive delay abetted the prosecutor's ploy to use the Court to control and exploit Stein in collateral legal proceedings. Some of that delay was the result of prosecutorial wrongdoing.

Stein suffered three types of delay:

- a. Trial Delay
- b. Appeal Delay
- c. Competency Proceeding

Although some miscreant state court officials abetted the wrongdoing leading to excessive delay and other court officials abetted mismanagement or refused to consider the claims of wrongdoing, the federal District Court held a hearing and made findings and conclusions of law implicating state court officials in over 45 acts of egregious misconduct which precipitated excessive delay.

- a. The prosecutor and other court officials were responsible for judicial misconduct that delayed the 2004 trial for 16 years.

Jack Stein was arrested on the underlying charges on July 29, 1988. The first trial was delayed, first as the consequence of the court's removal of Richard Peterson as defense counsel, sue sponte, followed by the imprudent appointment of Messrs. Dane and Dunkerly, sue sponte. Then when Dane and Dunkerly conspired to get Judge Heavy of King County appointed as visiting judge.

Jack Stein should not be held to suffer delay caused by the actions and misconduct precipitated by those miscreant court officials. Secondly, the trial was delayed when the prosecutor committed misconduct resulting in a mistrial. Although, Judge Heavy ruled the prosecutorial misconduct precipitating the mistrial was not intentional, compelling evidence shows that the prosecutor conspired to stage a mistrial because he was concerned that the jury would acquit.

Indeed, the prosecutor opined that he was concerned that his witnesses had gotten too carried away with their stories and the jury would not believe them. Accordingly, the prosecutor sought a mistrial so he might have another opportunity to coach his witnesses into less exaggerated stories. Obviously, Stein was not responsible for the prosecutor's misconduct. Moreover, Stein was not responsible for any judicial misconduct attributed to Judge Heavy.

Third, professional misconduct by attorney John Henry Browne in receiving fees and retainer from third parties [Behm] violated RPC 1.8, appearing as counsel of record, then refusing to withdraw, and finally by using his ill gotten position to continue the trial date over the objection of the defendant, precipitated delay.

Fourth, judicial misconduct at all three levels of the state court system created a number of needless procedural ploys that further delayed the ultimate disposition of the case. All of the judicial misconduct, as found by the federal District Court in 1996, was the responsibility of miscreant and incompetent court officials.

PREJUDICE

However, the misconduct and mismanagement that caused delay in the trial abetted the prosecutor's ploy to control and exploit Jack Stein's estate, and in turn, abetted the ploy to falsely convict Stein in 1988, in 1989, and in 2004. But for the trial delay, the court could not have been used to exploit Stein's estate.

The delay allowed miscreant court officials to use the court as a criminal enterprise, much like miscreant police officers misuse their position to exploit businessmen, citizens, and drug dealers in Miami, New York, Los Angeles, Chicago, and other cities where such misconduct has been exposed and prosecuted over the years.

Miscreant court officials should be disbarred and prosecuted. However, since their misconduct has been known since the District Court habeas hearings in 1996, and nothing whatsoever has been done, I expect that nothing will be done, ever.

Presumably, there is too much corruption by highly placed state court officials, and too much money involved, to allow the cover-up to fail. The present value of property stolen from Jack Stein through fraud and abuse of process exceeds \$67,000,000. We had discovered that wrongdoers have not paid taxes on property valued in excess \$20,000,000. taken from Stein by judicial misconduct through abuse of process. Presumably, certain attorneys and judicial officials received extra-judicial influence calculated to abet the wrongdoing and cause excessive delay that they required to control and exploit Stein's estate through the state court.

Be that as it may, Stein suffered excessive delay and that delay resulted in prejudice to his criminal defense in each of the three trials, because, as the state's witnesses reported and testified, the prosecution used the delay to suborn perjury, and because the excessive delay was used to exploit Stein, rendering him unable to retain counsel of choice, or raise bail.

Certainly, the trial delay was as essential to those who sought to control and exploit Stein's estate through abuse of process in the court as an AK-47 gun is to the Columbian drug cartel or is a face-mask to the common street criminal.

- b. The prosecutor and other court officials were responsible for judicial misconduct to delay Stein's appeal for 12 years.

Following the conspiracy to hide the trial transcripts, and the Court of Appeals refusal to hold a hearing as was required by PRP rules, the federal District Court held a hearing in 1996, and found some 45 violations by court officials. Judge Bryan found as a matter of law that Stein's appellate attorney and miscreant court officials were responsible for excessive appellate delay and the improper dismissal of Stein's original direct appeal. As a consequence of the governmental misconduct, Stein's direct appeal was dismissed over 6½ years in the first instance, and an additional 4 years in the second instance. All of that appellate delay was due to court officials.

PREJUDICE

The appellate delay allowed adverse interests to control and exploit Stein's estate, rendering Stein indigent. Prior to the delay, Stein was a modestly wealthy man, owing stocks and securities valued in excess \$950,000. and real property valued in excess \$3,000,000.

Additionally, the appellate delay allowed the state to suborn perjury from witnesses, such as Richard Bailey.

Indeed, Bailey had testified (falsely) for the state in the 1989 trial, and then recanted his false testimony, asserting the state had provided him with a script and both training and incentive to testify untruthful. Then, after Judge Bennett contacted Mr. Bailey in 2001, Bailey recanted his recantations, changed his story again, and provided new (but untrue) facts to the 2004 jury.

But for the appellate delay, the state would not have had Bailey's newly invented testimony.

Without Bailey's fabricated testimony, the state would not have had sufficient evidence to implicate Stein as an accomplice to crimes committed by Bailey, against Ned Hall, in 1987.

c. Stein's defense attorney was responsible for malevolent professional misconduct that precipitated an imprudent competency proceeding, resulting in trial delay.

In the 2004 trial, Jack Stein was represented by appointed attorney, Suzan Clark. Almost from the outset, Suzan Clark advised Stein that she would not put on a defense that would put the state on trial or expose wrongdoing by Court officials. Thereafter, Stein attempted to have the court remove or replace Suzan Clark. Indeed, Stein presented written and oral motions to the Court, seeking to have Clark removed or replaced.

Presumably, in response to Stein's repeated criticism of Clark, and the fact that they had absolutely no attorney-client relationship, Suzan Clark asked the Court for authority to have Dr. Jerry Larsen evaluate Stein. Clark told Stein that Dr. Larson was going to evaluate certain medical issues. Thereafter, an evaluation was held, and Dr. Larson produced a confidential letter/report which he provided to Clark and Stein. When Stein and Clark reviewed the report, Stein instructed Clark to NOT file the report with the Court. In direct violation, Suzan Clark provided a copy to Judge Stonier and a copy to the state's attorney, Lana Winemann.

Relying on a statement in Dr. Larson's report, asserting that Stein was unable to receive the assistance of counsel, the state asked the court to have Stein committed to Western State Hospital in November for competency evaluation, delaying trial over several months, to June 2004.

PREJUDICE

The delay resulting from the imprudent competency evaluation allowed the state additional time to hire and train a second attorney to replace Barbara Bailey, who was unassigned from the case following the disclosure that she had conspired to deceive the court and defense as to the address of certain witnesses.

One such witness, Peter Lusky, committed suicide as the consequence of stress. Presumably, the state's actions in attempting to use Lusky as a reluctant witness and keep his location secret through deception and repeated misrepresentations, contributed to that stress, resulting in his suicide. The state would not have been able to mount a successful prosecution (but unlawful) of Stein, had the 2004 trial not been postponed and delayed by the imprudent competency evaluation.

6. GOVERNMENTAL MISCONDUCT

Jack Stein has been denied fundamental fairness and Due Process as the consequence of egregious governmental misconduct, as follows:

- a. Prosecutorial Misconduct
- b. Judicial Misconduct at Trial
- c. Judicial Misconduct at Appeal
- d. Misconduct at Post-Conviction
- e. Conspiracy to Kill Jack Stein
- f. Death of Mark Norberg

In each of the foregoing, governmental actors committed wrongdoing or egregious mismanagement. Often, court officials and others conspired to abet the wrongdoing or to cover-up the wrongdoing. But for the wrongdoing, Stein would not have been denied a FUNDAMENTAL Constitutional Right and would not have been falsely convicted.

- a. Stein suffered prosecutorial misconduct that denied him FUNDAMENTAL fairness and Due Process in all three trials, at appeal, at both the state and federal post-conviction proceedings, and at the collateral legal proceedings calculated to control and exploit his valuable estate.

According to post-trial testimony of Richard Bailey and Mike Norberg, the prosecutor, police, and state officials provided the state witnesses with a script and training sessions to rehearse untruthful testimony calculated to falsely implicate Stein in the crimes at issue.

Prosecutors provided generous plea agreements and other incentive and rewards to sweeten the suborn of perjury. Such suborn of perjury precipitated untruthful trial testimony from both Messrs. Bailey and Norberg. Moreover, according to Bailey and Norberg, deputy prosecutor Roger Bennett was the driving force and instigator of the suborn of perjury infecting the first [1988] trial and the 1989 trial that resulted in conviction for three counts attempted murder.

Thereafter, Roger Bennett was appointed as a judge of Clark County Superior Court.

The 2004 trial was also infected with false trial testimony, constituting perjury, which the state [AAG] introduced through Richard Bailey.

The CrR 8.3 proceedings prior to the 2004 trial revealed that the prosecution [AAG] had invited judge Roger Bennett to assist her in interviewing Richard Bailey in Monroe.

According to CrR 8.3 testimony from Judge Bennett, the avowed purpose of his participation with the prosecution in interviewing Richard Bailey was to get Bailey back on board. So, the very person who Mr. Bailey had previously accused of suborn of perjury, was used by the prosecution to entice Bailey to recant his recantations and get Bailey to testify against Jack Stein.

As a consequence of Judge Bennett's interview, Mr. Bailey agreed to testify for the state. Thereafter, Mr. Bailey testified against Jack Stein, implicating Stein as an accessory in the crimes committed against Ned hall in 1987.

However, Bailey invented (false) facts and provided perjurious testimony in the 2004 trial, calculated to (falsely) implicate Jack Stein.

PREJUDICE

But for the suborn of perjury by Roger Bennett affecting the first trial and the second trial, and/or other prosecutorial misconduct and wrongdoing, no reasonable jury would have convicted Jack Stein.

Moreover, but for the unethical conduct of the prosecution in using Judge Roger Bennett to get Richard Bailey back on board, the state would not have had testimony from Mr. Bailey. Indeed, Mr. Bailey had made known his intent to refuse to testify in the 2004 trial.

However, Bailey changed his position after Judge Bennett and the state met with him, in Monroe, prior to trial. Mr. Bailey has revealed that he consented to recant his prior recantation and testify against Stein after the state assured him that he would not face prosecution for perjury or other crimes, and Bailey was assured that he would not be returned to prison.

Additionally, Bailey sought assistance from Judge Bennett and the state in getting employment as a drug informant.

After Mr. Bailey testified against Stein, according to the account Bailey told his former felony friends, he was transferred to Florida and employed in law enforcement and trained to be used as an undercover agent.

Without the (false) testimony the state [AAG] introduced to the 2004 jury from Richard Bailey, the state would not have had any (false) testimony implicating Jack Stein in the crimes at issue.

Accordingly, the underlying charges against Jack Stein should be dismissed with prejudice.

b. Jack Stein suffered **judicial misconduct** that denied him of FUNDAMENTAL fairness and sabotaged Due Process in three trials.

It was error for the trial court to appoint attorneys Dane and Dunkerly to represent Jack Stein in his first [1988] trial. It was criminal judicial misconduct for judge Ed Heavy to conspire to have himself appointed as visiting judge in the first trial.

Under the facts and circumstances, it was judicial misconduct to grant the December 1988 motion for mistrial without also dismissing the charges with prejudice, where the prosecutor has conspired to cause a mistrial, because the prosecutor believed, or was concerned, the 1988 jury would acquit Jack Stein.

It was judicial misconduct for Judge Borst to refuse to hold a hearing on Stein's motion to remove Browne as defense counsel. Also, it was judicial misconduct for Judge Borst to testify falsely, and conspire to cover-up his judicial misconduct, in mis-handling and violating Stein's Sixth Amendment retained counsel of choice issue.

Under the facts presented to the trial court, it was judicial misconduct for Judge Stonier to refuse to remove Suzan Clark as defense counsel.

Each act sabotaged FUNDAMENTAL fairness.

Furthermore, it was judicial misconduct for Judge Stonier to allow Richard Bailey to testify in the 2004 trial, or to make findings that were not supported by the record.

PREJUDICE

But for the judicial misconduct found in each of the three trials, Jack Stein would not have been (falsely) convicted. Accordingly, this Court should vacate the 2004 conviction and dismiss the underlying charges, with prejudice.

c. Egregious judicial misconduct denied Stein of FUNDAMENTAL fairness and sabotaged the right to Due Process in his direct appeal.

After court officials and Stein's appellate attorney, Darrell Lee, asserted that they could not perfect Stein's original direct appeal, the Court of Appeals remanded the case to the trial court for a hearing to determine who possessed the trial transcripts. However, Judge Borst held a sham hearing, and the prosecutor and defense counsel misrepresented facts at the hearing.

Judge Borst made findings that were not supported by the record. Thereafter, Judge Borst committed repeated acts of perjury and criminal judicial misconduct to cover-up the wrongdoing that he committed during the appeal proceedings.

PREJUDICE

But for the judicial misconduct by Judge Borst and judicial misconduct by Court of Appeals officials, Jack Stein would have enjoyed a successful appeal in 1991, or soon thereafter.

Had Stein received a successful appeal in 1991, or soon thereafter, the state would not have had an opportunity to secure false testimony from Richard Bailey, as they did in the 2004 trial. Accordingly, without the (false) testimony of Richard Bailey, the state would not have had any evidence implicating Jack Stein in the 1987 crimes committed by Richard Bailey.

Accordingly, it is all but certain the state could not have convicted Stein in a third trial, if such third trial had been held in 1991, or at anytime before Bailey was released from prison.

d. Stein suffered misconduct that sabotaged his post-conviction proceedings and denied him FUNDAMENTAL fairness and Due Process.

As this Court may recall, after the Court dismissed Jack Stein's direct appeal, Stein sought post-conviction relief in the Court of Appeals.

However, Chief Judge Gerry Alexander denied Stein's PRP, falsely asserting that Stein was responsible for failure to file trial transcripts.

Although Stein's PRP and state habeas corpus claims presented FUNDAMENTAL Constitutional issues, including STRUCTURAL Trial error, Chief Judge Gerry Alexander denied Stein's PRP, ruling:

"We invoke a seldom used power of this court when we dismissed the petitioner's direct appeal because of his failure to perfect the appeal, a failure resulting from the defendant's unwillingness to file portions of the record of proceedings (transcripts) from his trial below.

Therefore, we refuse to consider his argument. ... Accordingly, it is hereby ORDERED that this petition is dismissed." However, COA Chief Judge Gerry Alexander's malevolent ruling violated well-established state and federal law.

Indeed, his statement was untrue! Moreover, Judge Alexander had a duty to hold a hearing on Stein's claims, but His Honor failed to do so.

Indeed, Judge Alexander's ruling constituted egregious judicial misconduct and Manifest Error. NO state judge could have denied a PRP based on the legal argument referenced above. In effect, Judge Alexander denied Stein's PRP, and his Constitutional Rights, ignoring FUNDAMENTAL law.

Compelling evidence shows that COA Chief Gerry Judge Alexander was unethical and corrupt.

As discussed in Stein's pleadings, real estate developers who conspired with court officials, and adverse relatives, to sabotage Jack Stein, had a falling out. Thereafter, one of them told Stein their former partner paid a bribe to sabotage Jack Stein. They implicated a COA Commissioner and Chief Judge Gerry Alexander in criminal judicial misconduct.

In view of the criminal judicial misconduct at issue, Judge Alexander and those other officials should be disbarred and prosecuted, and receive exceptional sentences, like 200 years.

e. Officials conspired to **assault and kill Jack Stein** which violated Constitutional Due Process and FUNDAMENTAL fairness.

Investigation has revealed that an officer solicited prison officials to sabotage Jack Stein's release. Also, they solicited serious injury to Stein. To effect the conspiracy against Stein, a prison official recruited one or more inmates. In July 1993, inmate John Adams was exposed. After he was first exposed, Adams stated that he worked for prison officials to sabotage Jack Stein's legal interest and harm Stein.

Inmate Adams confessed to stealing Stein's legal files and the request of prison staff.

John Adams asserted prison officials asked him to help obstruct Stein's case. Adams also said he helped vandalize Stein's typewriter because they wanted to impede his legal work.

In 1993, John Adams wrote a letter to District Court judge Caroline Dimmick. Later Adams explained, "The intent of the letter was to accuse Jack Stein of soliciting him to kill Judge Dimmick and attorney Browne." When asked to explain his motive for writing such a slanderous and false letter, inmate Adams told Stein, "They promised me early release for helping them." Adams also said, "They asked me to arrange for you to be assaulted and hurt badly. They said they did not even care if you got killed."

Thereafter, Stein reported Adams' allegations to state investigators. The state investigators asserted they could not find no evidence that Mr. Adams had written a letter to Judge Dimmick, as John Adams claimed.

However, the state investigator also explained that Adams had conspired to alter hundreds of Postal Money Orders, and was involved in extensive drug distribution since he came to prison. Also, they stressed that John Adams had been convicted of one murder. Mr. Adams held himself out to be a contract hitman and claimed responsibility for assaults and murders.

The investigators also asserted that a dangerous man like inmate Adams would not be released from prison for helping a prison administrator. State investigators assured Stein that John Adams would never be released.

However, despite their predictions and despite Mr. Adams' extensive criminal background and violent crimes, he was released from the prison in 1996, just as he had predicted in 1993. After he was released, Adams testified that he was released early because prison authorities and officials felt, "The good he had done made up for all the bad." However, Mr. Adams' alleged good works, such as his 1993 letter to Judge Dimmick, were really scams.

PEOPLE SHOULD BE OUTRAGED

Responsible people should be outraged that state court officials would conspire with prison officials to solicit a dangerous criminal to commit violent acts against Jack Stein. The public and court officials should be outraged that state court officials and prison administrators would conspire to cause a dangerous criminal to be released from prison as reward for committing crimes against Jack Stein, particularly where the admitted objective of the conspiracy was to thwart Stein's access to court and delay his release.

PREJUDICE

But for the wrongdoing at issue, Stein would have been released years sooner. Had Jack Stein been released years earlier, the state could not have had the (false) evidence from Mr. Bailey that they introduced to convict Stein in 2004.

f. State Court officials committed misconduct precipitating the death of Mark Norberg.

After a prosecutor and appellate attorney falsely asserted they could not prepare Stein's original direct appeal, Stein's step-son, Mark Norberg, wrote letters and attempted to determine the location of the "missing" Langer transcripts and the reason the transcripts were not filed with the Court Clerk. At the time, Mark Norberg was employed with a Portland court reporting firm.

One of Norberg's letters came to the attention of Clark County Superior Court Judge, Thomas Lodge. Judge Lodge contacted Mark's employer and demanded that they fire Norberg.

Judge Lodge asserted that he would see that they were refused any court reporting in Clark County unless they complied with his malevolent demand. Mark lost his job and became depressed. He began abusing alcohol. In time, Mark became an alcoholic. Mark died as a consequence of his alcoholism on November 11, 2001.

It is all but certain that Mark would not have died prematurely if Stein's conviction had been vacated earlier, as it should have been, absent egregious judicial misconduct reported in his pleadings. Indeed, Jack could have helped Mark recover from his depression and overcome his alcoholism. Accordingly, the miscreant court officials who caused delay in Stein's original direct appeal, and sabotaged post-conviction relief by Personal Restraint Petition in the state court, and by habeas corpus in federal District Court, are also responsible for excessive delay and collateral damages to Stein and his family.

JUDICIAL MISCONDUCT BY COURT OFFICIALS

But for the judicial misconduct by officials, Mark Norberg's premature death would not have occurred. Court officials should be held financially, personally, and legally accountable for consequences of intentional wrongdoing, particularly when misconduct results in the death of an innocent person, Mark Norberg, as here.

PREJUDICE

The judicial misconduct and abuse of office should have resulted in disbarment and in criminal prosecution of certain officials. Court officials should be held accountable for willful misconduct.

Regretfully, untrue statements are reported as facts in the COA and Supreme Court rulings, re: Stein. Indeed, some 48% of the alleged "facts" in the 1999 COA Opinion are actually false. State v. Stein, 94 Wn.App. 616, 1999. Moreover, some 54% of the alleged "facts" in the Supreme Court's Opinion are actually untrue. State v. Stein, 144 Wn.2d 236, 2001. Although the referenced Court of Appeals and Supreme Court opinions vacated my 1989 conviction, the untrue facts slandered me and the published decisions "ignored" judicial misconduct.

Perhaps the court is willing to tolerate a little judicial misconduct to secure conviction of guilty persons. However, in this case, Stein is NOT guilty of any wrongdoing. Indeed, evidence implicating Stein in the criminal activity at issue was fabricated by prosecutors and others through suborn of perjury to induce and reward (false) testimony implicating Stein.

Furthermore, miscreant court officials committed acts of judicial misconduct, such as Judge Lodge's ploy to thwart the discovery of the location of the "missing" Langer transcripts, which sabotaged Stein's appeal and post-conviction efforts. Presumably, some of that wrongdoing was malevolent, and some was simple mismanagement.

7. INEFFECTIVE ASSISTANCE OF COUNSEL

In addition to the ineffective assistance of counsel referenced earlier, such as trial counsels Dane and Dunkerly, or John Henry Browne, or the appellate attorneys, Darrell Lee and Gordon Jones, all of which related to prior convictions and appeals, Mr. Stein received ineffective assistance of counsel from his 2004 trial defense counsel, Suzan Clark.

- a. Jack Stein received ineffective assistance of counsel from appointed defense attorney Suzan Clark.

Stein repeatedly requested the court to remove Suzan Clark and replace her or allow him to proceed with the second chair, Linda Staples, or simply proceed Pro Se. Unfortunately, Judge Stonier refused to remove Suzan Clark. However, compelling evidence shows that Suzan Clark repeatedly deceived Stein and betrayed Stein. As a consequence, there was absolutely NO attorney client relationship between Stein and Clark.

The breakdown between counsel and defendant was repeatedly presented to the trial judge, Hon. James Stonier, and is apparent from the record.

From December 2003, Stein had written the trial court a series of letters to advise that Suzan Clark intended to betray his defense.

Indeed, Stein believed her objective was to avoid exposing wrongdoing by the prosecutor, and she would insure his conviction, presumably to advance her own perverted personal or professional interest at the expense of Stein's liberty interest. Stein advised the trial court of facts and conduct by the appointed attorney that was consistent with his belief and had repeatedly asked the court to remove Suzan Clark.

By presenting the facts and conduct contained in Stein's letters, he did not intend to suggest that the court remove Suzan Clark simply because she had failed to respond to his questions or requests. Indeed, the issue that prompted Stein to request the court remove Suzan Clark as defense counsel was not disagreement over the pre-trial development of the case, although her conduct constituted evidence of ineffective assistance, the real issue was that Stein was absolutely certain that Suzan Clark intended to sabotage his case during pretrial preparation, and at trial, with intent that Stein be convicted. The facts and conduct Stein cites are simply symptoms consistent with his conclusion. Moreover, others also believe Susan Clark had betrayed Stein, so the wrongdoing by court officials not be exposed, where it would reflect badly on court officials.

In this regard, Clark attempted to deceive the record, and deceive the court, by asserting, as she did during the April 14, 2004 hearing, that Stein's motion to have her removed was founded on a demand Clark present spurious issues - which she refused to do. In response, Stein advised the court that there was NO truth to her allegation. In essence, Stein advised the court that Clark's statement was calculated to serve her own interest, deceive court, and slander defendant.

Within days after the court appointed Suzan Clark, Stein met with Clark and outlined his theory of the case. Clark responded by advising Stein that "she would not present a defense that put the conduct of court officials on trial."

Thereafter, Suzan Clark failed to conduct appropriate pretrial interviews and investigation. Indeed, Stein wrote Clark a series of letters documenting over 249 oral and written requests and instructions that he had presented to counsel. Regretfully, Suzan Clark ignored every one of those items. Clark failed and refused to conduct timely or meaningful interviews of witnesses, including Norberg and Bailey.

However, under facts of this case, there can be no trial strategy or good reason for failing to interview the state's proposed **"key"** witnesses.

After court denied Stein's CrR 8.3 motion, Mr. Lobsenz filed a Notice of Interloctory Appeal and asked the court to appoint counsel. Clark addressed the Court on that issue as well. She advised that Stein's appeal issue was worthy and asked the court to appoint independent counsel.

Judge Stonier refused to appoint independent counsel and asserted that, if she believed the appeal had merit, that Suzan Clark should perfect the appeal. However, Suzan Clark failed to do so.

Indeed, Ms. Clark ignored the due dates set by the Court of Appeals and (falsely) told Stein that Mr. Lobsenz was "on the hook" to perfect Stein's interloctory appeal. However, although Mr. Lobsenz filed the notice of appeal, he did not consider himself responsible to perfect the appeal. Moreover, Mr. Stein was not advised to perfect the appeal. Indeed, as a consequence of Ms. Clark's willful misrepresentations to Stein, he did not file pleadings either. After the required pleadings were not filed, the Court of Appeals dismissed Stein's interloctory appeal.

At about the same time, Suzan Clark conspired to trick Stein into submitting to a medical evaluation by Dr. Jerry Larson. Dr. Larson conducted an evaluation and wrote a report.

Stein told Suzan Clark that Dr. Larson's evaluation did not focus on the issues she had represented, and that the written letter/report should be held confidential, and not be filed. However, Suzan Clark filed Dr. Larson's report.

The state seized upon Dr. Larson's opinion that Stein did not trust Suzan Clark, resulting in complete lack of attorney client relationship, impacting Stein's legal competency to proceed. As a consequence, the State asked that Stein be sent to Western State Hospital for evaluation. The referral for competency evaluation and treatment at Western State resulted in trial delay from February 18, 2004 to May 24, 2004.

During this period, Suzan Clark failed to interview the state's two key witnesses, Bailey and Norberg. However, Mr. Bailey received contact from the state, and from Judge Bennett, which constituted unethical conduct in violation of Cannon 8(f) and 2(d), resulting in Mr. Bailey fabricating an (untrue) story to implicate Stein in his crimes against Ned Hall.

At trial, Mr. Bailey testified to facts that were inconsistent with earlier testimony. Indeed, Bailey testified to new but untrue facts, calculated to implicate Stein as an accessory.

PREJUDICE

Had Suzan Clark not tricked Jack Stein into meeting with Dr. Larson [under false pretenses] and not filed Dr. Larson's report which asserted that Stein was unable to work with Suzan Clark, the state could not have secured the referral to Western State, resulting in trial delay.

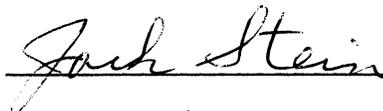
Without that delay, false testimony provided by Mr. Bailey would not have been available. Moreover, had Suzan Clark interviewed Bailey properly, prior to trial, she could have prepared an effective cross-examination which would have exposed Mr. Bailey's untruthful trial testimony.

G. CONCLUSION

In view of the issues raised in Appellant's Opening Brief, consolidated Personal Restraint Petition and RCW 7.36 habeas pleadings, and/or the issues raised in this Statement of Additional Grounds, this Court should vacate the underlying conviction and dismiss the charges with prejudice.

In the alternative, this Court should remand the issues raised in this Statement, and in other consolidated pleadings, for evidentiary hearing.

RESPECTFULLY SUBMITTED this 19 day of December, 2005.


Jack Stein, pro se

FILED
COURT OF APPEALS
SEATTLE, WA

05 DEC -5 AM 11:29 THE COURT OF APPEALS FOR WASHINGTON

STATE OF WASHINGTON

DIVISION II

BY _____
DEPUTY

STATE OF WASHINGTON,)
Respondent,)
vs.)
JACK K. STEIN,)
Appellant.)
_____)

No. 31980-2-II
CERTIFICATE OF SERVICE

C E R T I F I C A T E O F S E R V I C E

I certify that I served the referenced pleadings, as follows:

1. STATEMENT OF ADDITIONAL GROUNDS

on Respondent by mailing a copy, contained in sealed envelope, with postage prepaid, addressed as follows:

Hon. Rob McKenna, Esq.
State Attorney General
P.O. Box 40116
Olympia, WA 98504-0116

Nancy Collins, Esq.
Washington Appellate Project
1511 Third Ave.
Seattle, WA 98101-3635

DATED this 19 day of December, 2005.

Jack Stein
Jack K. Stein, Petitioner
Monroe Correctional Complex
P.O. Box 888 (B-121) #955827
Monroe, WA 98272-0888

CERTIFICATE OF SERVICE
I certify that I mailed
to _____
Date 12/15/05 Signed [Signature]

FILED
COURT OF APPEALS
DIVISION II

05 NOV 21 PM 2:08

IN THE COURT OF APPEALS FOR WASHINGTON

STATE OF WASHINGTON

DIVISION II

BY _____
DEPUTY

STATE OF WASHINGTON,)
Respondent,)
vs.)
Jack K. Stein,)
Appellant,)
_____)

No. 31980-2-II
CERTIFICATE OF SERVICE

C E R T I F I C A T E O F S E R V I C E

I certify that I served the referenced pleadings, as follows:

1. STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

on Respondent by mailing a copy, contained in sealed envelope, with postage prepaid, addressed as follows:

Hon. Rob McKenna, Esq.
% Lana Winemann, AAG *w/d*
State Attorney General *encl*
P.O. Box 40116
Olympia, WA 98504-0116

David L. Donnan, Esq. *w/d*
Nancy P. Collins, Esq. *w/d*
Washington Appellate Project *encl*
1511 Third Ave.
Seattle, WA 98101-3635

DATED this _____ day of November, 2005.

Jack Stein

Jack K. Stein, Appellant
Monroe Correctional Complex
P.O. Box 888 (B-121) #955827
Monroe, WA 98272-0888

No. 31980-2-II

COURT OF APPEALS FOR WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JACK K. STEIN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

Honorable James J. Stonier, Judge

STATEMENT OF ADDITIONAL GROUNDS
APPENDIX

JACK K. STEIN, Appellant
Monroe Correctional Complex
TRCC - P.O.Box 888 - #955827
Monroe, WA 98272-0888
Ph. (360) 794-2600

No. 31980-2-II

=====
COURT OF APPEALS FOR WASHINGTON
DIVISION II

STATE OF WASHINGTON,
Respondent,
v.
JACK K. STEIN,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

Honorable James J. Stonier, Judge

STATEMENT OF ADDITIONAL GROUNDS
APPENDIX

JACK K. STEIN, Appellant
Monroe Correctional Complex
TRCC - P.O.Box 888 - #955827
Monroe, WA 98272-0888
Ph. (360) 794-2600
=====

APPENDIX A

Exhibit (1)

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SCANNED

FILED

OCT 08 2003

Joanne McBride, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF CLARK COUNTY, STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

JOHN KENNETH STEIN,

Defendant.

No. 88-1-788-8

ORDER AUTHORIZING FURLOUGH

THIS MATTER having come on regularly for hearing this date upon the motion of the Defendant for furlough

IT IS HEREBY ORDERED:

That the Defendant, John Kenneth Stein shall be released from the Clark County Jail at 8:00 AM on October 7, 2003 to attend his social security hearing. Defendant shall return to the custody of the Clark County Jail at 5:00 PM on October 7, 2003. Defendant's release shall be pursuant to the following conditions of release:

No alcohol / drugs to remain in the State of Washington, and no contact with witnesses in the above captioned matter

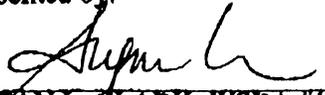
ORDER AUTHORIZING FURLOUGH - 1

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DATED this 6th day of October, 2003.


JUDGE JAMES STONIER

Presented by:

SUZAN L. CLARK, WSBA #17476
Attorney for Defendant

ORDER AUTHORIZING FURLOUGH - 2

Furlough
Today
From
1300 hrs - 1600 hrs
800

FAXED TO: Properly
DATE: 6/14/04
BY: 800/HDFD
(PSN)

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

State of Washington
Plaintiff/Petitioner,

No. 88-1-788-8

v.
John Kenneth Stein
Defendant/Respondent.

ORDER Authorizing furlough

THIS MATTER, having come before the court on the motion of the
Petitioner/Respondent on this 14th day of June, 2004, the Court having
heard counsel, having read the pleadings and records filed herein, and being otherwise fully
informed, NOW, THEREFORE, it is hereby.

ORDERED, ADJUDGE AND DECREED that: the defendant shall be
released from the Clark County Jail at 1:30pm on June
14, 2004 to attend a medical appointment with Dr. Nasser,
at Sea-Mar Clinic 407 NE 87th Ave Vancouver, WA 98664.
Defendant shall return to the custody of the Clark
County Jail on June 14, 2004 no later than 4:00pm
Defendant shall consume no drugs or alcohol during
his release from custody.
Dated this 14th day of June, 2004

[Signature]
Judge/Commissioner of the Superior Court

[Signature]
Attorney for
WSBA # 17476
ORDERED

Attorney for
WSBA#

Furlough
on 6/16/04
(c) Down - 1:30 pm.

494
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FAXED TO: *Property*
DATE: 6/14/04
BY: 80/4040
(PSN)

FILED

JUN 14 2004

JoAnne McBride, Clerk Clark Co.

IN THE SUPERIOR COURT OF CLARK COUNTY, STATE OF WASHINGTON
STATE OF WASHINGTON,

Plaintiff,

vs.

JOHN KENNETH STEIN.

Defendant)

No 88-1-788-8

ORDER AUTHORIZING FURLOUGH

THIS MATTER having come on regularly for hearing this date upon the motion of the Defendant for furlough

IT IS HEREBY ORDERED:

That the Defendant, John Kenneth Stein shall be released from the Clark County Jail at 10:00 AM on June 16, 2004 to attend a medical appointment with Dr. Ravi at the Vancouver Clinic, 700 NE 87th Avenue, Vancouver, Washington 98664 Defendant shall return to the custody of the Clark County Jail no later than 1:30pm on June 16, 2004. Defendant's release shall be pursuant to the following conditions of release. Defendant shall consume no drugs or alcohol.

DATED this 14th day of June, 2004

JUDGE JAMES STONIER

Presented by:

SUZAN L. CLARK, WSBA #17476
Attorney for Defendant

ORDER AUTHORIZING FURLOUGH - 1

SCANNED

FILED

JUN 23 2004

JoAnne McBride, Clerk, Clark Co.

IN THE SUPERIOR COURT OF CLARK COUNTY, STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

JOHN KENNETH STEIN,

Defendant.)

No. 88-1-00788-8

ORDER AUTHORIZING FURLOUGH

THIS MATTER having come on regularly for hearing this date upon the motion of the Defendant for furlough

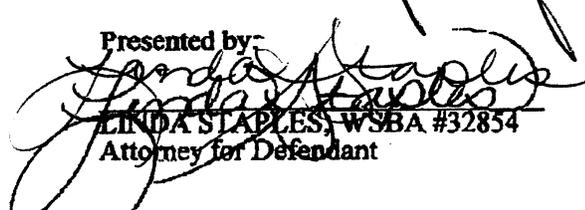
IT IS HEREBY ORDERED:

That the Defendant, John Kenneth Stein shall be released from the Clark County Jail at 7:00 AM on June 25, 2004 to attend medical appointments at SW Washington Hospital, X Ray Department, 400 North Mother Joseph Place, Vancouver, Washington, and with Dr. Ravi at the Vancouver Clinic, 700 NE 87th Street, Vancouver, Washington 98664. Defendant shall return to the custody of the Clark County Jail no later than 2:00pm on June 25, 2004. Defendant's release shall be pursuant to the following conditions of release: Defendant shall consume no drugs or alcohol. Defendant shall be allowed to be transported by family members.

DATED this 21st day of June, 2004


JUDGE JAMES STONIER

Presented by-


LINDA STAPLES, WSBA #32854
Attorney for Defendant

ORDER AUTHORIZING FURLOUGH - 1

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SCANNED

FILED

JUN 23 2004

Clerk of the Court, Clark Co.

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IN THE SUPERIOR COURT OF CLARK COUNTY, STATE OF WASHINGTON

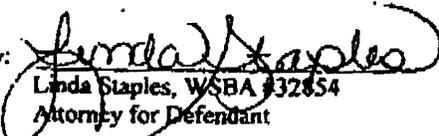
State of Washington, Plaintiff v. John Kenneth Stein, Defendant		NO. 88-1-00788-8 AMENDED ORDER AUTHORIZING FURLOUGH
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THIS MATTER having come on regularly for hearing this date upon motion of the Defendant for furlough

IT IS HEREBY ORDERED

That the Defendant, JOHN KENNETH STEIN, shall be released from the Clark County Jail at 11:30 a.m. on June 25, 2004, to attend a medical appointment with Dr. Ravi at the Vancouver Clinic, 700 NE 87th Street, Vancouver, WA 98664. Defendant shall return to the custody of the Clark County Jail no later than 2:00 p.m. on June 25, 2004. Defendant's release shall be pursuant to the following conditions of release: Defendant shall consume no drugs or alcohol. Defendant shall be allowed to be transported by family members. DATED this 23rd day of June, 2004.


JUDGE

Presented by: 
Linda Staples, WSBA #32854
Attorney for Defendant

**AMENDED
ORDER AUTHORIZING FURLOUGH**

LAW OFFICE OF LIND STAPLES,
Attorney at Law
1014 Franklin Street, Suite 204
Vancouver WA 98660
360-694-9309
Fax 360-694-9335

1152

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Exhibit (2)

SCANNED

In the Superior Court of the State of Washington
In and For the County of Clark

6

STATE OF WASHINGTON, Plaintiff,
vs.
JOHN KENNETH STEIN,
aka JACK STEIN
Defendant

No. 88 1 00788 8
INFORMATION

COMES NOW the Prosecuting Attorney in and for Clark County, State of Washington, and does by this inform the Court that the above named defendant is ... guilty of a . . . crime... committed as follows. to-wit

That he, JOHN KENNETH STEIN, aka JACK STEIN, in the County of Clark, State of Washington, on or about the 13th day of April, 1987, with a premeditated intent to cause the death of Thelma Lund, a human being, did cause her death, and the defendant did solicit another person to commit the murder and had paid or agreed to pay money or another thing of value for committing the murder, and the murder was committed in the course of, or in furtherance of the crimes of Burglary in the First or Second Degree, in violation of RCW 9A.32.030(1)(a) and RCW 10.95.020 and contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Washington.

August 1, 1988

ARTHUR D. CURTIS,
Prosecuting Attorney
Clark County, Washington

By: *Roger A. Bennett*
Roger A. Bennett, WSPA #6536
Deputy Prosecuting Attorney

AUG 1 - 1988

JoAnne McBride, Clerk, Clark Co

AGGRAVATED MURDER IN THE FIRST DEGREE
RCW 9A.32.030(1)(a) and RCW 10.95.020

Exhibit (3)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
Plaintiff,) NO. 88-1-00788-8
vs.)
John Kenneth Stein) PLEA
aka Jack Stein Defendant.)

THIS CAUSE coming on in open Court this 5
day of August, 19 88, for the Defendant to
plead to the Information filed herein, the State of
Washington being represented by Kay Bennett Deputy
Prosecuting Attorney, and the Defendant being present in
Court with his/her attorney Mark Muenster
and it being demanded of the Defendant whether he is
guilty or not guilty of the matters set forth in the
Information, the Defendant pleads NOT GUILTY to each count
in the Information.

DONE IN OPEN COURT this 5 day of
August, 19 88.

Robert Harris
JUDGE OF THE SUPERIOR COURT

PLEA - 1

FILED
AUG 5 1988

JoAnne McBride, Clerk, Clark Co

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P O BOX 1000
VANCOUVER WASHINGTON 98660
(206) 409-3201

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Exhibit (4)

~~DEMANDED~~ CLAY COUNTY, WASH

NO. 88-1-788-8

ASSIGNMENT FOR TRIAL

TRIAL SHALL BE AT 9:00 AM unless noted otherwise

PLAINTIFFS STATE OF WASHINGTON

Prosecutor Address

VERSUS

DEFENDANTS

Jack Stein

FILED
AUG 1 R 1988

Johna H. Smith, Clerk, Clark Co.

JURY NON-JURY

JUDGE

J. Allen Morgan

SPELL DATES

10-3-88

OR

TRIAL DATES

*6 weeks
starting*

59 days elapsed

CLERK

K. Fisher

Exhibit (5)

SCANNED

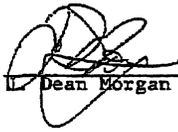
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
Plaintiff,) No. 88-1-00788-8
v.) ORDER APPOINTING COUNSEL
JOHN KENNETH STEIN,)
aka JACK STEIN,)
Defendant.)

The court hereby appoints Edward Dunkerly and Lee Dane as co-counsel for the defendant in this case. Counsel are appointed at public expense, with the proviso that the defendant will make contribution back to the county for all costs incurred by the county. Richard Peterson is hereby relieved as counsel. A more complete order will follow shortly. The bailiff is directed to deliver copies of this order as soon as possible to the following persons: Roger Bennett, Richard Peterson, Edward Dunkerly, Lee Dane, John Kenneth Stein.

DATED this 22 day of August, 1988.



Dean Morgan

FILED
AUG 23 1988
Clerk of Court

7A

Exhibit (6)

Exhibit (7)

SCANNED

WASHINGTON SUPERIOR COURT FOR CLARK COUNTY

1
2 STATE OF WASHINGTON)
3 Plaintiff,)
4 v.)
5 JOHN KENNETH STEIN)
6 Defendant.)

No. 88-1-00788-8

MOTION TO APPROVE COUNSEL FEES

CR 3.1

7 Pursuant to ~~it~~, counsel for the Defendant seeks approval
8 of fee agreements in this matter based upon the following
9 criteria:

10 1) Guarantee Richard Petersen the sum of \$100,000.00 as
11 payment for partial counsel fees and all other trial costs to be
12 paid in this matter.

13 2) Require Clark County to pay the above sum in
14 increments of \$20,000.00 to be paid monthly beginning the 20th
15 day of August, 1988 and on the 20th day of each successive month
16 thereafter until the total of \$100,000.00 has been paid.

17 3) Richard Petersen agrees as follows:

18 A) He will advance any and all costs and
19 fees for witnesses, office overhead, consultants, and associate
20 counsel.

21 B) He will agree to hold Clark County
22 harmless for any fees for witnesses, consultants, and associate
23 counsel.

24 C) Any funds and real or personal property

25 /
26 /
Page /

FILED
AUG 22 1988

JoAnne McBride, Clerk, Clark Co.

RICHARD PETERSEN
Attorney at Law
1700 East Fourth Plain Blvd
Vancouver, Washington 98651
(206) 633-5395
OR# 84023 WA# 10313

7

received from Mr. Stein will immediately be transferred to Clark
County to offset the funds received from Clark County.

Dated this 18th day of August, 1988.

3



Richard Petersen

6

DECLARATION OF RICHARD PETERSEN

7

Upon penalty of perjury, Richard Petersen declares as

8 follows:

9

1) I have had conversations with several attorneys
regarding the fees and fee arrangements necessary and appropriate
to handle the homicide case involving John Kenneth Stein.

12

2) I believe that at least one attorney would
willingly represent Mr. Stein without any requirement of payment
of funds in advance on his case, provided, that Mr. Stein would be
willing to assign his right to collect a portion of the estate of
his late father to that attorney to guarantee trial expenses and
counsel fees.

18

3) The attorneys with whom I have spoken or who have
provided information to me about their conversations with
experienced criminal attorneys have all indicated that
\$150,000.00 is the minimum fee which would be acceptable for the
defense of Mr. Stein's case. The upper range of fees for this
defense would be in the area of \$250,000.00.

24

4) These fees are required based upon the following:

25

A) complexity of the case,

26

B) difficulty of dealing with Mr. Stein,

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- C) level of experience required to handle the case,
- D) the rapidity with which the case will go to trial,
- E) the length of the trial,
- F) the fact that the attorney(s) will be precluded from handling other matters and accepting new cases which will likely impact the attorney's practice for 4 - 6 months after the case is over,
- F) and the fact that additional staff would have to be hired to handle on-going matters now active in the attorney's practice.

Dated this 18th day of August, 1988.


Richard Petersen

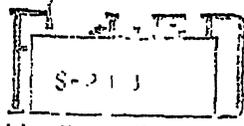
Page

RICHARD PETERSEN
Attorney at Law
1703 East Fourth Plain Blvd
Vancouver, Washington 98651
(206) 693-5395
OR# 84023 WA# 10313

Exhibit (8)

*Copies to
Cramer, Clark*

SCANNED



Joanne McBride, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

1	STATE OF WASHINGTON,)	
2)	
3	Plaintiff,	)	No. 88-1-00788-8
4)	
5	v.	)	ORDER APPOINTING COUNSEL
6	JOHN KENNETH STEIN, aka	)	AND REQUIRING CONTRIBUTION
7	JACK STEIN,)	
8	Defendant.)	

As the result of hearings held on August 17, 18,
and 19, 1988, the court now finds and orders as follows:

FINDINGS OF FACT

1. The defendant is charged with aggravated murder in the first degree. No death penalty notice has been filed.
2. The defendant demands court appointed counsel. He states that he does not wish to represent himself and that he is financially unable to retain counsel on a private basis.
3. The defendant, who is in custody, also demands trial within sixty days pursuant to CrR. 3.3. Trial is presently set to commence on October 3, 1988, which is the 59th day following arraignment.
4. The record does not disclose that the defendant has any available cash. However, he owns a parcel of land on Evergreen Boulevard in Clark County, and by a preponderance of the evidence it appears that the value of that land significantly exceeds the encumbrances against it. Additionally, the defendant owns an interest in the estate of his late father. That interest is a vested beneficial interest in a portion of the assets in his father's estate, subject, however, to further court proceedings and to the personal representative's right to possess and control the assets while administering the estate. Bishop v. Luck, 92 Wash. at 92; In re Estate of Novolich, 7 Wash. App. 495; Hasthagen v. Harby, 78 Wash. 2d at 942.

I - ORDER APPOINTING COUNSEL AND REQUIRING CONTRIBUTION

Original stored in different file because of degraded condition. This is certified true copy. Lms

1 It is legally possible for the defendant to encumber his present
2 interest in the estate, notwithstanding that further court pro-
3 ceedings are pending and that the personal representative
4 of the estate has the right to presently possess and control
5 the assets in the estate. National Bank of Commerce v. Peterson,
6 179 Wash. at 644; Kerns v. Pickett, 49 Wash. 2d at 772-73;
7 In re Blodgett's Estate, 67 Wash. 2d at 96.

8 5. The probate estate of the father is presently
9 being litigated in both Oregon and Washington. A different
10 will has been offered in Oregon than in Washington, and the
11 personal representative appointed in Oregon is different from
12 the one appointed in Washington. In very general terms, the
13 Oregon will makes certain minor specific requests and it leaves
14 the residue of the estate to the defendant. The Washington
15 will makes a more significant request to one Thelma Lund (10%
16 of the estate or \$150,000, whichever is more) and then leaves
17 one-third of the residue to the defendant. The inventory
18 filed in Oregon values the probate estate at more than \$3,000,000.
19 No inventory has yet been filed in Washington.

20 6. Based on a preponderance of the evidence, the
21 court finds that the defendant does not have the type of assets
22 which would enable him to retain private counsel. Morgan
23 v. Rhay, 78 Wash. 2d 116, 470 P.2d 180 (1970). As already
24 noted, the record does not disclose that the defendant has
25 any cash on hand, and it is unlikely that counsel will accept
26 a pledge or encumbrance against either the real estate or
27 the interest in the father's estate unless some cash is also
28 paid in advance. Moreover, the probate estate is subject
29 to a variety of contingencies that make it unlikely that counsel
30 would accept it as security for fees whether or not it is
31 accompanied by cash. Those contingencies include which state
32 will litigate the probate estate, how long that litigation

1 will take, how far litigation related expenses may deplete
2 the estate, and whether the defendant, if he is found guilty
3 of the present charge, might be divested of whatever interest
4 he would have otherwise had in the estate. Moreover, it is
5 unknown whether the defendant might be able to secure a partial
6 distribution from the estate, but assuming that might occur,
7 it is highly unlikely that such an advance could be obtained
8 in time for retained counsel to prepare for trial on October
9 3, 1988. As a result of these considerations, the court concludes
10 that the defendant presently qualifies for court appointed
11 counsel.

12 7. Although the defendant is presently unable to
13 retain counsel, his inability in this regard arises not from
14 a lack of assets but rather from the non-liquid nature of
15 his assets. He does presently have assets which, if they were
16 liquid in form, would easily enable him to retain counsel.
17 At such time as the land on Evergreen Boulevard is sold, volun-
18 tarily or by operation of law, and/or at such time as the
19 father's probate estate is distributed to the defendant, the
20 defendant will have the ability to pay the costs of his defense
21 in full, including both the fees for court appointed counsel
22 and the other costs of litigation. Based upon this present
23 ability, the court hereby orders the defendant to repay the
24 county in full at such time as the father's probate estate
25 is distributed, at such time as the land on Evergreen Boulevard
26 is sold or otherwise transferred, or at such earlier time
27 as the court may order. The court specifically reserves the
28 right to require that any asset of the defendant's be attached
29 and sold at a reasonable time and in a reasonable manner in
30 order to satisfy the defendant's contribution obligation to
31 the county. The court further notes that its contribution order
32 made herein is to be distinguished from a reimbursement order and

1 is in accord with the commentary that accompanies the American
2 Bar Association's Standards for Providing Defense Services 5.6-2.

3 8. The county is entitled to appropriate judgments
4 or security interests so that its right to contribution will
5 be secured by the defendant's interest in the father's estate
6 and/or by the land on Evergreen Boulevard. The exact form
7 of such judgments or security documents will be handled by
8 supplemental orders. The county should request a hearing
9 regarding such orders when it is ready to propose whatever
10 documents it desires.

11 9. Edward Dunkerly and Lee Dane are appointed as
12 co-counsel for the defendant. They are entitled to reasonable
13 compensation. Under the circumstances of this case, such
14 compensation is as follows: the county shall pay each of
15 them \$5,000 as soon as possible, \$5,000 on September 16, 1988,
16 \$5,000 on October 3, 1988, \$5,000 on October 17, 1988, \$5,000
17 on November 1, 1988, and \$5,000 on November 16, 1988. This
18 makes a total of \$30,000 per counsel, or \$60,000 for the case.

19 10. The compensation set in the preceding paragraph
20 is based on the following premises, all of which have been
21 discussed with counsel in open court:

22 (1) The case is complex and will involve a
23 great amount of preparation;

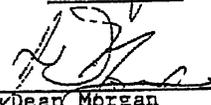
24 (2) The case will not be resolved by a method
25 other than trial;

26 (3) Trial will take approximately 6 to 8 weeks;

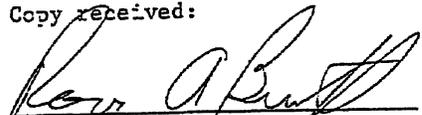
27 (4) Trial is set to start on October 3, 1988,
28 and will not be continued. Before the Court Administrator's
29 office delivers any of the foregoing checks to either counsel,
30 it shall require that each counsel certify in writing that
31 he has no information leading him to believe that any of the
32 foregoing premises are incorrect as of the time of the making

1 of the certification. If any such information becomes known,
2 each counsel is required to immediately notify the court and
3 the Court Administrator's office. The foregoing payment schedule
4 will thereupon be deemed suspended, and the court will make
5 such additional compensation orders as appear fair and equitable
6 under the circumstances then existing. The court reserves
7 the right to reduce the compensation set forth herein if later
8 circumstances warrant such action; conversely, it grants the
9 defense counsel the right to apply for compensation in excess
10 of that set forth herein if circumstances appear to warrant
11 such action. Even if the total amount of payment is not reduced
12 or increased, the court further reserves the right to spread
13 the payments over a greater number of months should the trial
14 be continued.

15 DATED this 12 day of Sept, 1988.

16
17 
18 _____
19 J. Dean Morgan
20 Superior Court Judge

21 Copy received:

22 
23 _____
24 Roger Bennett

25 
26 _____
27 Edward Dunkerly

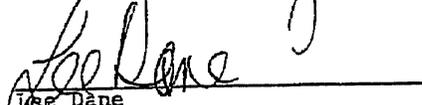
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29 _____
30 Lee Dane

Exhibit (9)

SCANNED

FILED
OCT 26 1988
Justice Roberts, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
Plaintiff,) No. 88-1-00788-8
vs.)
John Kenneth Stein) WAIVER OF SPEEDY TRIAL
Defendant.)

I ~~have been informed~~ ^{Justice Stein} and understand that I have the following rights:

- 1. The right to trial within sixty (60) days following the day of arraignment if I am incarcerated. *we call it*
- 2. The right to trial within ninety (90) days following the day of arraignment if I am not incarcerated. *Cr 2.0*
- ~~3. The constitutional right to a speedy trial.~~

We know that
~~I have been informed and understand that if I do not receive a trial within the time limits set out above, the case against me will be dismissed and cannot ever be filed again. Knowing all of the above, I hereby waive (give up) the right to trial within 60 days and the constitutional right to speedy trial.~~ *11/1/88*

Dated this 26th day of October, 1988.

Note: However that if the PROSC is deciding and request a me and the court again as the has done continue to on SEVERAL PREVIOUS occasions WAIVER to Washington COURSE

APPROVED: *changes will be dismissed from proceed by hand as to [unclear]*
Deputy Prosecuting Attorney *Jack Stein*
~~OMITTED by Court~~
~~AND consented FINDINGS AND ORDER~~

I have questioned the defendant and find that (1) he intelligently, knowingly and voluntarily waived the above rights to speedy trial, and (2) that he was competent to make such waiver.

^{conditional}
DONE in Open Court and in the presence of the defendant this 26th day of October, 1988.

Edwards
JUDGE OF THE SUPERIOR COURT

WAIVER OF SPEEDY TRIAL - 1

CLARK COUNTY PROSECUTING ATTORNEY
1285 FRANKLIN
P. O. BOX 3888
VANCOUVER WASHINGTON 98668
(206) 499-2261

19

Exhibit (10)

1 **SCANNED**

FILED
SEP 22 1988

JoAnne McBride, Clerk, Clark Co.

4 **THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY**

5 STATE OF WASHINGTON,

6
7 Plaintiff,

No. 88-1-00788-8

8 v.

**MOTION FOR:
RECUSAL OF JUDGE AND FOR OR-
DER DISQUALIFYING ALL CLARK
COUNTY JUDGES**

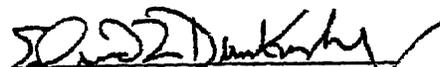
9 JOHN KENNETH STEIN, aka JACK
10 STEIN,

11 Defendant.

12 The defendant through his counsels of record moves the court to:

- 13 1. Recuse itself from this case;
- 14 2. Enter an order disqualifying all Clark County Judges
- 15 3. Ask the State Supreme Court to appoint a Judge to hear this case.

16
17 This motion is based upon the records and files herein, the memorandum of authorities
18 filed herewith and the annexed affidavit of Edward L. Dunkerly and the affidavit of Albert
19 Armstrong.

20
21 
22 EDWARD L. DUNKERLY
Of Attorneys for Defendant

20
21 
22 LEE DANE
Attorney for Defendant

23 STATE OF WASHINGTON)
24 County of Clark) :ss

25 Edward L. Dunkerly, being first duly sworn, on oath, deposes and says:
26

MOTION: RECUSAL - 1

1 1. I am one of the attorneys herein.

2 2. A review of the reports shows that:

3 a. Judge Lodge

4 b. Judge Johnson and

5 c. Judge Ladley have acted as Special Inquiry Judges in proceedings relating to
6 this case. RCW 10.27.180 precludes them from sitting as Judge in this case.

7 d. Judge Lodge has been alleged by the State to be target of an alleged
8 conspiracy in which Mr. Stein was allegedly involved.

9 e. Mr. Curtis, at the hearing on Michael Norberg's motion to disqualify all Clark
10 County Judges, stated, on the record, that Judge Harris indicated that he might be the
11 target of the alleged conspiracy, in addition, Judge Harris and Judge Lodge were present
12 during certain pre-trial motions before Judge Skimas on or about 16 May 1988. Their
13 presence indicates, to counsels and Mr. Stein, a less than neutral and detached
14 involvement in the case. Counsels for Mr. Stein have rarely noted the presence of Judges
15 during pretrial hearings in criminal cases, of course, this does not include the Judge
16 assigned to the case.

17 3. Judge Skimas previously recused himself from hearing the case of State v. Norberg,
18 Superior Court for Clark County Cause No. 88-1-00130-8 because of the possibility that
19 he may have been the target of an alleged plot to "blow up" the Clark County Courthouse
20 to "pay back" a Judge.

21 4. The State alleged, in open court, that Judge Lodge was the target of said alleged plot.

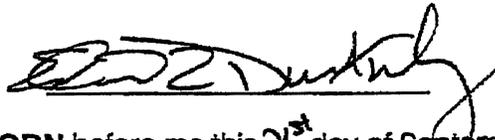
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MOTION: RECUSAL - 2

1 5. The State has not produced any statements by any potential witness that Judge Lodge
2 was the actual target of said plot.

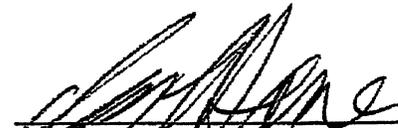
3 6. The court as noted in Mr. Armstrong's affidavit had contacts with Mr. Stein before
4 being elected/appointed to the bench.

5 7. The court previously presided over cases involving Mr. Stein, as noted in the
6 memorandum filed with this motion, which may influence the court's view of Mr. Stein and
7 in some fashion effect the court's decisions in this case.

8 8. During and/or shortly after the 1982 case involving Mr. Stein which the court presided
9 over Mr. Stein was forced to leave law school.
10

11 

12
13 **SUBSCRIBED** and **SWORN** before me this 21st day of September 1988 by Edward
14 L. Dunkerly.

15 

16 **NOTARY PUBLIC** in and for
17 the State of Washington
18 residing at Vancouver
19 My Commission Expires: Jan 10, 1989

20
21
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MOTION: RECUSAL - 3

Exhibit (11)

SCANNED

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

1
2 STATE OF WASHINGTON,)
3)
4 Plaintiff,)
5 v.) No. 88-1-00788-8
6) MOTION AND
7) AFFIDAVIT OF PREJUDICE
8)
9 JOHN KENNETH STEIN, aka)
10 JACK STEIN,)
11)
12 Defendant.)

The defendant through his attorneys of record move the court for a change of judge in this case. This motion is based upon the affidavit of John Kenneth Stein.

Oct 6, 1988

Lee Dane

LEE DANE

Edward L. Dunkerly

EDWARD L. DUNKERLY

Attorney for Defendant
STATE OF WASHINGTON)
14) :ss
15 County of Clark)

Attorney for Defendant

John Kenneth Stein, being first duly sworn, on oath, deposes and says:

1. I am the defendant herein.
2. I believe that Judge Norman Quinn is prejudiced against me and that I cannot have a fair and impartial trial before him.

John Kenneth Stein

SUBSCRIBED and SWORN to before me this 6th day of October 1988 by John Kenneth Stein.

Edward L. Dunkerly

NOTARY PUBLIC in and for
the State of Washington,
residing at Vancouver. Jan 10, 1989

FILED
OCT - 6 1988

JoAnne McBride, Clerk, Clark Co.

Law Offices of
STEWART & DANE
1613 Broadway
Vancouver, Washington 98663
(206) 694-2547

27

Exhibit (12)

*Spine
Journal*

SCANNED

In the Supreme Court
OF THE
STATE OF WASHINGTON

IN THE MATTER OF THE ASSIGNMENT OF A Visiting
Judge to Preside in the Action entitled
STATE OF WASHINGTON, Plaintiff,
vs
JOEN KENNETH STEIN a.k.a. JACK STEIN, Defendant.
Clark County Cause No. 88-1-00788-8

No. 25700-0 *2896*

ORDER

Mc
CLERK
OCT 7 11 30 AM '88

It appearing that the Court Administrator, pursuant to the provisions of chapter 303, Laws of 1961, and chapter 259, Laws of 1957, has recommended that the Honorable Edward Heavey be authorized to hear and make appropriate disposition of the matter entitled: STATE OF WASHINGTON, Plaintiff, vs. JOEN KENNETH STEIN, a.k.a. JACK STEIN, Defendant, Clark County Cause No. 88-1-00788-8;

It is now therefore ORDERED by the Chief Justice of this Court, in compliance with the aforementioned provisions of law, that the selected judge is hereby authorized and requested to establish a date for the trial of said cause in Clark County and to hear and try appropriately said action to its final conclusion. The judge who is to preside shall be the Honorable Edward Heavey, considering his respective responsibilities in his own judicial district.

Date this 7th day of October, 1988.

Vernon R. Pearson

Vernon R. Pearson
Chief Justice of the Supreme Court
of the State of Washington

FILED
OCT 19 1988

JoAnne McBride, Clerk, Clark Co.

103/91

116

Exhibit (13)

10/28/88
Solvie accepted
All R. O. M.

FILED
NOV 7 - 1988

JoAnn McBride, Clerk, Clark Co.

SCANNED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	No. 88-1-00788-8
Plaintiff,)	
vs.	)	S E C O N D
JOHN KENNETH STEIN aka JACK	)	A M E N D E D
STEIN,	)	I N F O R M A T I O N
Defendant.)	

COMES NOW the Prosecuting Attorney in and for Clark County, State of Washington, and does by this inform the Court that the above-named defendant is guilty of the crimes committed as follows: to-wit:

Count I.

That he, John Kenneth Stein, also known as Jack Stein, in the County of Clark, State of Washington, between the 1st day of April, 1987, and the 30th day of June, 1987, with intent that conduct constituting the crime of Murder in the First Degree be performed, did agree with Michael Norberg, Gordon Wayne Smith and Richard Douglas Bailey to engage in or cause the performance of said conduct, and one or more of the persons so agreeing did take a substantial step in pursuance of said agreement, in violation of RCW 9A.28.040 (1) and (3) (a) and RCW 9A.32.030 (1) (a), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count II.

That he, John Kenneth Stein, also known as Jack Stein, in the County of Clark, State of Washington, on or about the 13th day of April, 1988, with intent to commit a crime against a person therein, did enter or remain unlawfully in the dwelling of Thelma Lund, located at 1709 N.E. 78th Street, #141, Vancouver, Clark County, Washington, and, while in the dwelling, the defendant or another participant did assault Thelma Lund, and in the course of and in furtherance of said crime, he or another participant did cause the death of Thelma Lund, who was not a participant in said crimes, in violation of RCW 9A.32.030 (1) (c) (3), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count III.

That he, John Kenneth Stein also known as Jack Stein, in the County of Clark, State of Washington, on or about the 13th day of April, 1987, with a premeditated intent to cause the death of Thelma Lund, a human being, did cause her death by strangulation, and said defendant did solicit another person to commit the murder and had agreed to pay money or a thing of value for committing the murder, and the murder was committed in the course of the crime of Burglary in the First or Second Degree, in violation of RCW 9A.32.030 (1) (a) and RCW 10.95.020 (4), (5) and (9) (c), contrary to the statutes in such case made and provided, and against the peace and dignity of the State of Washington.

203

Count IV.

That he, John Kenneth Stein, also known as Jack Stein, in the County of Clark, State of Washington, on or about the 1st day of June, 1987, with intent to commit the crime of Murder in the First Degree, did an act which was a substantial step toward commission of said crime, in that, with a premeditated intent to cause the death of Charles E. Hall, the defendant, or an accomplice of the defendant, did attempt to cause the death of Charles E. Hall, in violation of RCW 9A.28.020 (1) and (3) (a) and RCW 9A.32.030 (1) (a) and (2), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count V.

That he, John Kenneth Stein, also known as Jack Stein, in the County of Clark, State of Washington, between the 2nd day of June, 1987, and the 13th day of June, 1987, with intent to commit the crime of Murder in the First Degree, did an act which was a substantial step toward commission of said crime, in that, with a premeditated intent to cause the death of Charles E. Hall, the defendant, or an accomplice of the defendant, did attempt to cause the death of Charles E. Hall, in violation of RCW 9A.28.020 (1) and (3) (a) and RCW 9A.32.030 (1) (a) and (2), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

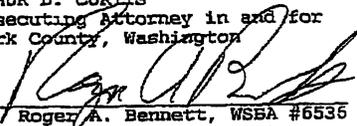
Count VI.

That he, John Kenneth Stein, also known as Jack Stein, in the County of Clark, State of Washington, on or about the 14th day of June, 1987, with intent to commit the crime of Murder in the First Degree, did an act which was a substantial step toward commission of said crime, in that, with a premeditated intent to cause the death of Charles E. Hall, the defendant, or an accomplice of the defendant, did attempt to cause the death of Charles E. Hall, in violation of RCW 9A.28.020 (1) and (3) (a) and RCW 9A.32.030 (1) (a) and (2), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

Count VII.

That he, John Kenneth Stein, also known as Jack Stein, in the County of Clark, State of Washington, on or about the 14th day of June, 1987, with intent to commit a crime against a person therein, did unlawfully enter and remain in a dwelling located at 6313 Riverside Drive, Vancouver, Washington, belonging to Charles E. Hall, and in entering and while in the dwelling, the defendant or another participant in the crime was armed with a deadly weapon, a firearm, and did assault Charles E. Hall therein, in violation of RCW 9A.52.020 (1) (a) and (b), and that the defendant did commit the foregoing offense while armed with and in possession of a deadly weapon as that term is employed and defined in RCW 9.94A.125, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington.

ARTHUR D. CURTIS
Prosecuting Attorney in and for
Clark County, Washington

By: 
Roger A. Bennett, WSPA #6535
Deputy Prosecuting Attorney

Date: October 28, 1988

Count I - Conspiracy to Commit Murder I - RCW 9A.28.040 (1) and
(3) (a) and RCW 9A.32.030 (1) (a);

Count II - ^{Felony} Aggravated Murder in the First Degree - RCW 9A.32.030
(1) (a) and ~~RCW 10.95.020 (4), (5) and (9) (c):~~

Count III - ^{Aggravated} ~~Felony~~ Murder I - RCW 9A.32.030 (1) (c) (2)

Count IV - Attempted Murder I - RCW 9A.28.020 (1) and (3) (a) and
RCW 9A.32.030 (1) (a) and (2);

Count V - Attempted Murder I - RCW 9A.28.020 (1) and (3) (a) and
RCW 9A.32.030 (1) (a) and (2);

Count VI - Attempted Murder I - RCW 9A.28.020 (1) and (3) (a) and
RCW 9A.32.030 (1) (a) and (2); and

Count VII - Burglary in the First Degree - RCW 9A.52.020 (1) (a)
and (b)

Exhibit (14)

SCANNED

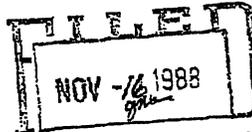
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

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STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
JOHN KENNETH STEIN, aka)
JACK STEIN,)
)
Defendant.)

No. 88-1-00788-8

FINDINGS AND CONCLUSIONS
AND ORDER DENYING
MOTION



THIS MATTER having come duly and regularly before the Court upon the defendant's Motion for an Order continuing payment of fees at public expense, and the Court having considered the records and files herein, as well as evidence submitted in previous hearings, and the comments of counsel, hereby makes the following findings of fact.

1. The defendant, John Kenneth Stein aka Jack Stein, is not indigent.
2. Counsel's oral motion for an order allowing withdrawal is denied.
3. Representation by counsel has not only been competent, but very competent.
4. Mr. Stein, on November 7, 1988, did indicate some reservations about counsel during the morning hearing. In the afternoon at approximately 1:30 he indicated that he was satisfied with his representation and felt that his attorneys could adequately represent him.
5. Mr. Stein refuses to enter into any agreement regarding payment to counsel for past or future services rendered in his defense by Mr. Dunkerly and Mr. Dane.
6. Mr. Stein was able to raise \$40,000 cash and assigned \$60,000 of his expectancy in the Estate of Nicholas Stein, his father, to

IHRINGER & DUNKERLY
2712 WASHINGTON ST.
VANCOUVER, WA. 98660
(206)-694-6077

Findings, Conclusions, & Order - 1

- 1 attorneys for the defense of Michael Norberg in Superior Court for
2 Clark County Cause No. 88-1-00130-8. Mr. Stein has the ability to
3 raise funds for his defense which could include the liquidation of
4 assets. To date Mr. Stein has taken no steps to liquidate any
5 assets.
- 6 7. Mr. Stein has indicated that he has some reservations with
7 counsel, but that he does not want to fire his current counsel,
8 although he might do so if he could find other counsel to represent
9 him.
- 10 8. Mr. Stein has unequivocally stated that he does not wish to
11 represent himself at trial.
- 12 9. Counsel was appropriately appointed at the time counsel were
13 appointed for Mr. Stein.
- 14 10. Mr. Stein has indicated that he does wish to be represented by
15 counsel.
- 16 11. The sum of \$60,000.00 ordered by Judge Morgan is a reasonable
17 fee for services rendered, up to and including the first day of
18 trial in this case, November 21, 1988.
- 19 12. Defendant has ^{CP received} requested two continuances for a total of 24
20 days.

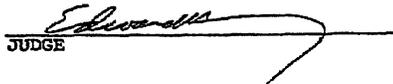
21 The Court having entered the foregoing Findings of Fact
22 hereby makes the following Conclusions of Law and Orders:

- 23 1. Although Mr. Stein has expressed a desire to have the counsel
24 of his choosing, he has waived the right to have counsel of his
25 choice by virtue of his activities in this case and due to the fact
26 that trial is set for 21 November 1988.
- 27 2. Mr. Stein shall be responsible for a reasonable attorney fee for
28 services rendered by Messrs. Dane and Dunkerly, from November 22,
29 1988 to the conclusion of the case.
- 30 3. Clark County shall not advance any further sums on Mr. Stein's
31 behalf, and counsel's are ordered to notify their investigator,

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VANCOUVER, WA. 98660
(206)-694-6077

1 Tony Sahli, of that fact.
2 4. Counsel's motion for an order staying the court's order denying
3 counsel's motion for an order allowing withdrawal is denied.
4 5. The court determines that the previous order entered by Judge
5 Morgan remains unchanged. Except that no further payment shall be
6 made by the county *other than funds already authorized. Eky*
7 6. The court denies the motion for order continuing fees and denies
8 the motion requiring the county to withdraw its Lis Pendens filed
9 against Mr. Stein.

10 Dated this 16th day of November 1988.

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JUDGE

Presented by:

~~LEE DANE
Attorney for Defendant~~

~~EDWARD L. DUNKERLY
Attorney for Defendant~~

Exhibit (15)

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THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,)

Plaintiff,)

v.)

JOHN KENNETH STEIN, aka JACK
STEIN,)

Defendant.)

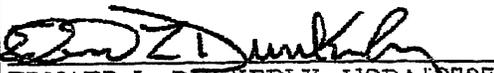
No. 88-1-00788-8

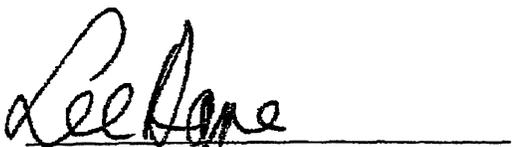
MOTION FOR ORDER ALLOWING
WITHDRAWAL OF COUNSEL

Attorneys Edward L. Dunkerly and Lee Dane move the court to enter its order allowing their withdrawal as counsels for Mr. Stein.

This motion is based upon the records and files herein and the attached affidavit of Edward L. Dunkerly and Lee Dane.

Dated this 15 December 1988.


EDWARD L. DUNKERLY, WSBA#2727
Attorney for Defendant

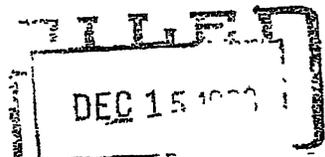

LEE DANE, WSBA#6587
Attorney for Defendant

STATE OF WASHINGTON)
) :ss
County of Clark)

Edward L. Dunkerly and Lee Dane, being first duly sworn, on oath, deposes and says:

1. Counsels have discussed with and advised Mr. Stein about the court's setting of the trial date in this case for 6 March 1989 and that if he did not decide to

MOTION FOR ORDER ALLOWING - 1
WITHDRAWAL OF COUNSEL



JoAnne McBride
Hringer and Dunkerly
2712 Washington Street
P.O. Box 61526
Vancouver, Washington 98666-1526
206-694-6077 693-6695

1 waive his right to a speedy trial that the new trial would be held before another
2 Judge.

3 2. We were ordered by the court to represent Mr. Stein after the court found that
4 he was not indigent and denied our previous motion to withdraw.

5 3. We have received no payment on this case in some time.

6 4. Our private practices have suffered as a result of the time we have had to
7 spend on this case. It would impose an unreasonable financial burden upon
8 counsels if counsels were required to continue to represent Mr. Stein without
9 payment.

10 5. As the court is aware an order was entered in the probate proceeding regarding
11 the Estate of Nicholas Stein, John Kenneth Stein's father. That order authorized
12 attorney fees, investigative fees, and money for expenses. The order is insufficient
13 to cover what we feel is a reasonable fee for our services since 21 November 1988.

14 6. It was our intention to pursue fees and costs from Mr. Stein shortly after the
15 verdict was returned. If we are ordered to continue to represent Mr. Stein that
16 suit will probably be delayed.

17 7. Mr. Stein has been and remains unwilling to enter into any sort of fee
18 arrangement with us. We have always been willing to discuss it with him. We do not
19 believe that he is willing to make suitable arrangements for payment of fees and
20 expenses necessary to his representation, in other words, he is unwilling to pay
21 or agree to pay us. He has stated that he is going to contact other counsel to
22 represent him.

23 8. We understood that the court entered its Order requiring us to stay in the case
24 due to the lack of time for Mr. Stein to locate and retain counsel. Mr. Stein now

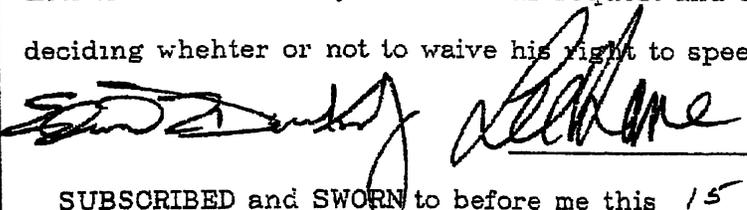
25
26 MOTION FOR ORDER ALLOWING - 2
WITHDRAWAL OF COUNSEL

Ihringer and Dunkerly
2712 Washington Street
P.O. Box 61526
Vancouver, Washington 98666-1526
206-694-6077 693-6695

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has time to do so.

9. By the time of the hearing Mr. Stein will have been provided with a copy of this motion. He will be fully aware of our request and can consider our request when deciding whehter or not to waive his right to speedy trial.



SUBSCRIBED and SWORN to before me this 15 December 1988 by Edward L. Dunkerly and Lee Dane.


NOTARY PUBLIC in and for
the State of Washington
residing at Vancouver
My Commission Expires: 7-9-91

MOTION FOR ORDER ALLOWING - 3
WITHDRAWAL OF COUNSEL

Ihringer and Dunkerly
2712 Washington Street
P.O. Box 61526
Vancouver, Washington 98666-1526
206-694-6077 693-6695

Exhibit (16)

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THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,)	
)	
)	
Plaintiff,)	No. 88-1-00788-8
)	
v.	)	ORDER GRANTING MOTION: RE
	)	WITHDRAWAL OF COUNSEL
JOHN KENNETH STEIN, aka JACK)	
STEIN,)	
)	
Defendant.)	

The court having considered the record and files herein, the comments of counsel, Mr. Stein, and the Motion for Order Allowing Withdrawal of Counsel it is ORDERED that counsels' motion is granted.

DATED this 15 December 1988.

Edward Heavey

JUDGE EDWARD HEAVEY

Presented by:

Edward L. Dunkerly

EDWARD L. DUNKERLY, WSBA#8727
Attorney for Defendant

Lee Dane

LEE DANE, WSBA#6587
Attorney for Defendant

FILED
DEC 15 1988

JoAnne McBride, Clerk, Clark Co.

ORDER ALLOWING WITHDRAWAL

Ihringer and Dunkerly
2712 Washington Street
P.O. Box 61526
Vancouver, Washington 98666-1526
206-694-6077 693-6695

Exhibit (17)

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THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 88-1-00788-8

v.

WAIVER OF SPEEDY TRIAL

JOHN KENNETH STEIN, aka JACK STEIN,

Defendant.

STATE OF WASHINGTON }

County of Clark }

):ss

I, JOHN KENNETH STEIN, Defendant in the above-entitled case, am presently charged with the following crimes: Aggravated Murder I, Felony Murder, Three Counts of Attempted Murder and Burglary I. I have been advised that I have a right under the laws of the State of Washington to have a trial in the above-entitled matter within sixty (60) days of the date of my arraignment if I am incarcerated and within ninety (90) days of the date of my arraignment if I am not incarcerated. Said provisions are contained in CrR 3.3. I have been further advised that under the Constitution of the State of Washington and under the Constitution of the United States, I have a right to a speedy trial in the above-entitled matter. After having conferred with my attorney, EDWARD L. DUNKERLY, I acknowledge that I understand my right to have a trial within 60 days of my arraignment and I hereby waive that right and my right to a speedy trial under the Constitution of the State of Washington and under the Constitution of the United States and hereby consent to a continuance of my trial date in the above entitled matter to 21 November 1988. ~~I understand that it is the court's intention that evidence be presented beginning 29 November 1988.~~ *js*

DATED this 7 November 1988.

Jack Stein
JOHN KENNETH STEIN
Defendant.

FILED
NOV 7 - 1988

JoAnne McBride, Clerk, Clark Co.

IHRINGER & DUNKERLY

2712 Washington St.
Vancouver, Wa. 98660
(206) 694-6077

WAIVER OF SPEEDY TRIAL

Exhibit (18)

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THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,)

Plaintiff,)

v.)

JOHN KENNETH STEIN, aka JACK STEIN,)

Defendant.)

No. 88-1-00788-8

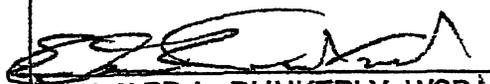
ORDER RE: CONTINUANCE OF TRIAL

This matter having come before the court upon the motion of the defendant, JOHN KENNETH STEIN, and the court having considered the records and files herein, the affidavit of EDWARD L. DUNKERLY, and deeming itself fully apprised in the premises **ORDERS** that the trial is continued until 21 November 1988.

DATED this 2nd November 1988.


JUDGE EDWARD HEAVEY

Presented by:

 
EDWARD L. DUNKERLY, WSBA #8727 Of Attorneys for Defendant. LEE DANE, WSBA#6587 Attorney for Defendant.

ORDER: CONTINUANCE

NOV 7 - 1988

JoAnne McBride, Clerk, Clark Co.

IHRINGER & DUNKERLY
2712 Washington St.
Vancouver, Wa. 98660
(206) 694-6077

168.

(1978)

**Obligations of Court-Appointed Criminal
Defense Counsel When Learning That Client
No Longer Indigent**

An opinion has been requested regarding the obligations of court-appointed criminal defense counsel who learns that his/her client is no longer indigent. The following inquiries and responses set forth the Committee's position:

1. Must the attorney formally advise the court of the client's change of circumstance and further seek either discharge as appointed counsel or appointment under a "part payment" plan pursuant to CrR 3.1(d)(2)?

Response:

Assuming that the client is no longer eligible for appointed counsel, a court-appointed attorney should normally advise the court of the client's change of circumstances. CrR 3.1(b) (2) provides that counsel who is initially appointed shall continue to represent the defendant "through all stages of the proceedings unless a new appointment is made by the court following withdrawal of original counsel pursuant to section (e) because geographical considerations or other factors make it necessary." Accordingly, the court-appointed attorney should either seek withdrawal in the manner permitted under CrR 3.1 or seek continued employment under a "part payment" plan as specified in CrR 3.1(d)(2).

2. Must the attorney advise the client that the client is no longer eligible for a court-appointed attorney and that he/she is seeking discharge (or simply withdrawing) from the appointment?

Response:

Prior to advising the court of the client's change of circumstances, a court-appointed attorney must advise the client that the attorney believes the client is no longer eligible for a court-appointed attorney. If the attorney seeks withdrawal pursuant to CrR 3.1(e), the client should be advised in advance of this fact.

3. Must the attorney advise the client that the client is now entitled to seek retained counsel of his or her choosing?

Response:

Yes.

4. May the attorney encourage the client to continue employment because of the attorney's familiarity with the case?

Response:

Yes. This does not constitute solicitation. See DR 2-104(A) (1).

5. If the attorney does not fulfill such duties as the Committee feels apply, may the attorney nonetheless charge the client for services rendered?

Response:

No. The imposition of postproceeding payment obligations upon an accused's exercise of the right to counsel without providing the client an opportunity to discuss the fee involved, in advance, is probably arbitrary and violative of due process protections. *State v. Eide*, 83 Wn.2d 676, 521 P.2d 706 1974). The client should not be charged for the attorney's services unless the fee arrangement has been discussed and agreed upon in advance. Cf EC 2-19.

[See RPC 7.3]

Exhibit (19)

Exhibit (20)

Case Name: JACK STEIN

Cause Number: 88-1-00788-8

Judge: STONIER

June 14, '04

Jury Note

With regard to Instruction #9. Do we need to have a preponderance of evidence to prove an accomplice under sub paragraphs (1) + (2) (solicits, commands, encourages ... (2) aids or agrees to aid ...)?

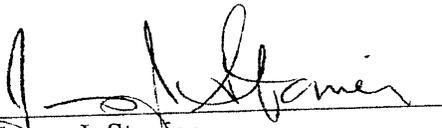
Or, Will a single piece of evidence in favor of conviction take precedence over other evidence in favor of acquittal?

Tom Kunt

Presiding juror

Exhibit (21)

“Preponderance of the evidence” is not the applicable burden of proof in a criminal trial. Refer to instructions 1, 2, 15, 16, 17 and 21.



James J. Stoner
Superior Court Judge

Exhibit (22)

168.

(1978)

**Obligations of Court-Appointed Criminal
Defense Counsel When Learning That Client
No Longer Indigent**

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3. Must the attorney advise the client that the client is now entitled to seek retained counsel of his or her choosing?

Response:

Yes.

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Response:

Yes. This does not constitute solicitation. See DR 2-104(A) (1).

5. If the attorney does not fulfill such duties as the Committee feels apply, may the attorney nonetheless charge the client for services rendered?

Response:

No. The imposition of postproceeding payment obligations upon an accused's exercise of the right to counsel without providing the client an opportunity to discuss the fee involved, in advance, is probably arbitrary and violative of due process protections. *State v. Eide*, 83 Wn.2d 676, 521 P.2d 706 (1974). The client should not be charged for the attorney's services unless the fee arrangement has been discussed and agreed upon in advance. Cf EC 2-19.

[See RPC 7.3]

Exhibit (23)

J: Would you please state your full name, spelling your last name for the record?

RB: Roger Bennett, B-E-N-N-E-T-T.

J: Counsel?

SKIP TO PAGE

WM: When you had your interview with Mr. Richard Bailey earlier this year in Everett in the Attorney General's office or wherever the interview took place there in Everett, did you discuss with him his change in testimony?

RB: That's quite possible, although I don't remember everything we discussed. Because I had another meeting with him right before the interview with you and we discussed that, so what he talked about in two different contacts, I can't necessarily separate them out.

WM: The meeting that you had with Mr. Bailey before your interview with me, was a, was basically a lunch meeting, isn't that right?

RB: Right.

WM: Who all was present at that lunch meeting?

RB: I think it would put Mr. Bailey in danger if I told you that.

WM: Well, Your Honor, I'm going to ask you to direct the witness to go ahead and answer the question, unless he wants-, if he wants to disclose something in camera and can convince the court it's going to truly put Mr. Bailey in danger, that's fine, otherwise I want to hear who was at that meeting.

LW: And Your Honor, I would object in that I believe it does put Mr. Bailey's personal life in danger.

WM: Your Honor, I need a ruling on that, and I think it needs to be done in camera, because I don't think we can leave that in a vacuum.

J: You're proposing a meeting in camera?

WM: I am.

J: Who are you proposing is present?

WM: That Judge Bennett, yourself, me, Mr. Marlton, Ms. Weiman and Ms. Bailey. I am assuming that the danger they're inferring is from Mr. Stein.

J: It will be Ms. Weiman and you and Judge Bennett.

LW: *And Your Honor, I would express concern that Mr. Bailey has expressed to me about who was with him being released to anybody on the defense side. [end of Tape 1, Side 1].*

J: Well, we're going to discuss that in camera.

WM: Your Honor, I apologize to the court for this, but we could take about 2-1/2 to 3 minutes to use the restroom? I drank a lot of water this morning.

J: Alright. 5 minutes [inaudible]. Counsel?

WM: *Your Honor, to make sure that I don't violate anything that happened in chambers, my proposal is to ask a question of the number of people that were at-*

J: You can ask the number. Not identities.

WM: Aren't disclosable, I know, for the court.

J: The number can be disclosed, but not the identities or addresses.

WM: I'm asking, then, for permission to ask the identities of those that they're not concerned about for purposes of the safety issue.

J: The three, there are three that can be identified, one that cannot be. You may ask.

WM: Thank you, Your Honor.

J: Proceed.

WM: On April, whatever day that was, but in April of this year when you had a luncheon before my interview of you, the luncheon involved 4 individuals, is that correct?

J: Correct.

WM: And one of those was Ms. Weiman?

RB: Yes.

WM: And one of those was Mr. Bailey?

RB: Yes.

WM: And one was you?

RB: Correct.

WM: And then an unidentified fourth party?

RB: Yes.

WM: What was your view of the purpose of that luncheon?

RB: To eat lunch.

WM: What was discussed during that, during that lunch?

RB: Well, I assume we discussed the Stein case.

WM: And it was either in that meeting on, in April, or in a meeting earlier in the year in Everett, that you specifically learned from Mr. Bailey himself, or there were discussions about his change of testimony from '89 to '91, is that correct?

RB: Yes, he told my why he changed his testimony.

WM: Part of your involvement in this case since 2001 when the State Supreme Court issued its ruling which, if you will, affirmed the Court of Appeals' reversal of Mr. Stein's conviction, part of your involvement has been to, if you will, reassure Mr. Bailey?

RB: I don't understand.

WM: Well, as I understand it, even though you were involved in the prosecution of Mr. Bailey, he felt some sense of trust in you, is that right?

RB: He's told me that, correct.

WM: And the result of him feeling some sense of trust in you, he would be more willing to testify presently against Mr. Stein if he could feel some assurance by having the contact with you?

RB: You're asking me about Mr. Bailey's state of mind, I can't answer that.

LW: Objection, Your Honor.

WM: Let me back up and lay a foundation to that, Your Honor.

J: I'll overrule the objection, he's answered he doesn't know.

WM: You didn't just now say you didn't know, did you? You said I'm asking you for Mr. Bailey's state of mind?

RB: I don't know his state of mind other than what he's told me.

WM: Okay, and what he-

RB: He didn't tell me anything like what you just put in your question.

WM: Alright. Did you sense that Mr. Bailey was willing to come forward and testify if you didn't talk to him?

RB: I didn't sense one way or the other.

WM: Why did Denny Hunter ask you to go up and talk to Mr. Bailey?

LW: Objection. Not within this witness' knowledge base.

J: You need to lay a foundation, sustain the objection.

WM: Did Denny Hunter tell you why he wanted you to go to Everett and be a part of the interview?

RB: Well, just what I've already answered and that is that he felt I knew more about the case and, this is a paraphrasing, something like, if Mr. Bailey tried to blow smoke at the AG's, I would know it, I would be able to spot it. I took that to mean provide them with information that was inconsistent with what I knew about the case.

WM: So you didn't at all perceive your role, then, as being a facilitator, but rather more of kind of a watch dog?

LW: Objection, it's argumentative.

WM: I don't, Your Honor, I disagree, I'm asking which of those options best fits his role.

LW: It presumes one of them does.

WM: Alright, I'll break it down.

J: Sustain the objection, ask it without a leading question.

WM: Did you perceive of your role as being of a, if you will, watch dog? That is my term, I can't think of a better term to use.

LW: Objection, Your Honor.

RB: It's not a term I would use, I don't understand it.

WM: Okay, what term would you use for your role?

RB: Observer.

WM: And why would you need to be an observer?

RB: Why would I need to be?

WM: Yes.

RB: Now you're talking about somebody else's state of mind. Why did somebody need me to do that? I don't know. It seemed like a reasonable thing.

WM: Who needed you to do that?

RB: Denny Hunter asked me to go along.

WM: But this is after the Clark County Prosecutor's Office is no longer, supposedly prosecuting this case, correct?

LW: Asked and answered.

RB: Correct. I don't know that they're disqualified from any involvement in it.

WM: Have you had any kind of contact with Richard Bailey since April of 2002?

RB: Richard Bailey called me on the telephone last week.

WM: At the office or at your home?

RB: At the office.

WM: Have you given him your home phone number?

LW: Objection, relevance?

WM: Your Honor-

J: Sustained.

WM: How long did the telephone conversation take place in your office?

RB: A couple minutes.

WM: What did he, what did he want to know?

LW: Objection, relevance.

J: Overruled.

RB: It had to do with his location. That's something that I'm not at liberty to divulge to you.

WM: I'm not now asking you about his location, in sense of where it is, what I am asking you is, was that 2 minute telephone call limited to a description of where he is now residing, or was that telephone call a, it takes probably 15-, you'd agree with me that it takes-, strike the other question. Does it take roughly 15, 20 seconds where their address is, correct?

RB: Yeah, and then when you throw in, "Hi, how are you? I'm fine, okay."

WM: That probably took about another 10 seconds.

RB: Counsel, you're twisting this here.

LW: Your Honor, I'm going to object, it's argumentative.

RB: The 2 minutes is an estimate, the subject of the conversation was his location or a potential change of location and that's it.

WM: In that 2 minutes, there was absolutely no discussion whatsoever about any possible testimony that he would give?

RB: No.

LW: Objection, it's been answered.

J: He's already answered the question. Overrule the objection.

WM: Has there been any written correspondence that's gone back and forth between you and Richard Bailey since November, excuse me, since April of this year?

RB: No.

WM: Has there been any written correspondence between you and Mr. Bailey, other than that which appears in the court file of Richard Bailey? I'm making reference to the letters that he wrote to you back in, I believe, in '99 telling you that he was doing better and describing his life and how he thought he was getting his act together, that kind of thing.

J: I think you need to rephrase that question. You've got a file of Richard Bailey. What specifically are you referring to?

WM: Okay.

J: Rephrase the question.

WM: And Judge Bennett, and when I'm talking about Richard Bailey's file, I'm referring to the criminal cause number of Richard Bailey, which is either 87 or 88-1-something or other here.

RB: I'm not familiar with the contents of that file.

WM: You are not familiar with the contents?

RB: No.

WM: Were you familiar with the fact that the correspondence between you and Mr. Bailey was in that court file?

RB: If it was, it's because I sent it to the court to file, but I don't remember that.

WM: Both that which came to you and that which you sent to him in response?

RB: I don't know. I'd have to look at it.

WM: Since the correspondence that was in the file, which was in '99, have you had any written correspondence with Mr. Bailey?

RB: I can't remember any.

WM: Do you believe it's possible that there has been and you're just aren't sure one way or the other?

RB: I don't remember any.

WM: Has there been any e-mail contact between you and Mr. Bailey since 2001?

RB: You mean since the end of 2001?

WM: Since the middle part of 2001 when the State Supreme Court affirmed the reversal of Jack Stein's conviction.

RB: I know that I've e-mailed him and he's e-mailed me and, like I said previously, I think there was an exchange of phone numbers, he gave me his phone number or his cell number or something like that, by e-mail.

WM: What was the nature of your e-mail to him in 2001?

RB: I don't know. I don't recall.

WM: You're the one that sent it, correct?

RB: I think I sent him some e-mails.

WM: And would you agree with me that the Jack Stein has been a fairly significant case in your prosecutorial history?

RB: Yes.

WM: *And something that has held your attention ever since you prosecuted it? It's something that's stayed on your mind?*

RB: Occasionally.

WM: The, you can't even give us a general nature of the e-mails that you sent to Mr. Bailey?

RB: No. Other than I remember there was something about phone numbers.

WM: Phone numbers that you sent to him, where he could contact you?

RB: Or him giving me his phone number where I could contact him, I'm not-, whether it went both ways, I don't recall.

WM: Approximately how many e-mails did you send to him and approximately how many e-mails did he send to you?

LW: Objection, it's been asked and answered.

WM: Your Honor, I don't believe that has.

J: Overruled.

RB: 2 maybe 3 each way, at the most, I don't recall anything more specific than that.

WM: The e-mails that you sent to Mr. Stein, excuse me, Stein, I apologize for that. The e-mails that you sent to Richard Bailey were e-mail sent from the Clark County Courthouse, is that correct?

RB: Yes.

WM: You did not send them from your residence?

RB: I don't remember doing any from my residence.

WM: And the e-mails that he sent to you, again, were to the Clark County Courthouse, to the best of your recollection?

RB: Yes.

WM: Were any of the telephone calls that were placed to Mr. Bailey or received from Mr. Bailey at your residence?

RB: I don't think so.

WM: Since approximately July, whenever it was the Supreme Court affirmed the reversal by Division II, since that time period, how many telephone calls have you done to Richard Bailey and how many has he done to you? I realize that's compound, so I'll break it down. How many telephone calls did you place to Mr. Bailey?

RB: I don't know.

WM: More than one?

RB: I think the total number of phone calls I've had with Mr. Bailey, one way or the other, would be as I said 3 or 4, a few. When those occurred precisely, I don't know. I just remembered something about the last phone call I had with him. He had a daughter that was adopted out, he wanted to know if I could find that daughter. I told him no.

WM: That call was when, approximately?

RB: That was the one last week.

WM: You reviewed Denny Hunter's brief to the Supreme Court in Stein's matter after Division II had reversed Stein's conviction, did you not?

RB: Yes.

WM: Did you also review his brief to Division II of the Court of Appeals when the appeal was reinstated by the Federal District Court in 1996?

RB: I think I did.

WM: *When you reviewed that brief, did you review, I said that brief, and there were apparently 2 briefs at least. Let's talk about the brief to Division II of the Court of Appeals. That review that you did, would it have been in the nature of an editorial review, in other words that you were just taking care of scribbler errors or was it in the nature of a critical review where you made suggestions to Mr. Hunter where a portion was weak, needed to be shored up, that he needed to either cite more cases on a particular point, or that he needed to bring out a particular point that he hadn't brought out?*

RB: Neither.

WM: Neither?

RB: Neither.

WM: Okay, how would you characterize your review of that brief to Division II?

RB: He asked me to read his brief.

WM: And after having reviewed the brief, did you have contact with Mr. Hunter?

RB: Yes.

WM: And did that contact include any suggestions at all to Mr. Hunter, any comments at all about that brief?

RB: I don't remember making any. Other than, "Looks like you did a good job."

WM: With regards to-

RB: *Probably not. No.*

WM: Okay. With regards to any reply brief that may have been done, actually he wouldn't have done a reply brief, he would have done only the response brief, wouldn't he? How about in the Supreme Court, you also reviewed the materials that Mr. Hunter supplied to the Supreme Court after the, or when he made a petition for review to the Supreme Court, is

that correct?

RB: Right.

WM: And were there any requests that you review that petition for review critically or with any view to having any input at all on that brief, or the petition for review to the Supreme Court?

RB: I think the whole purpose of having me read it is to see if I saw any glaring errors, and I didn't.

WM: When you say glaring errors, are you simply talking scribbler type stuff, you know, punctuation, commas, mis-cited or partial citations in a case, or are you talking more serious errors like the omitted certain facts or included facts that were not correct statement of facts, or?

RB: Well, the way I looked at it was the latter. To see if I saw a misstatement of fact. What was in his mind? I don't know.

WM: How many conversations have you had with Denny Hunter since the Supreme Court affirmed Division II's reversal of Mr. Stein's conviction, about-?

RB: 5, 6 maybe. That's an estimate.

WM: Give us the approximate length of those conversations, shortest to longest and you don't have to be in chronological order, I'm just saying what would be the shortest of any of those and what would have been the longest of any of those?

RB: I don't have any recollection of that.

SKIP TO LAST PAGE

WM: Nothing further.

J: You may step down, you are excused at this time.

RB: Thank you.

J: Counsel?

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Exhibit (24)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

No. 88-1-00788-8

Plaintiff,

v.

THIRD AMENDED INFORMATION

JOHN KENNETH STEIN, aka JACK
STEIN,

FILED

SEP 12 2001

Defendant.

Anne McInda Clerk, Clark Co

COMES NOW the Attorney General for the State of Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

**Count I - Attempted Murder in the First Degree - RCW 9A.28.020(1),
RCW 9A.32.030(1)(a)**

That he, John Kenneth Stein, aka Jack Stein, in the County of Clark, State of Washington, on or about the 1st day of June, 1987, with intent to commit the crime of Murder in the First Degree, did an act which was a substantial step toward the commission of that crime, to-wit: with premeditated intent to cause the death of Charles E. Hall, a human being. the defendant, or an accomplice of the defendant, did attempt to cause the death of Charles E. Hall by use of firebombs, in violation of RCW 9A 28.020 (1) and (3)(a) and RCW 9A.32.030 (1) (a) and (2), contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(25) and (29), and RCW 9.94A.120(4)

THIRD AMENDED INFORMATION - 1 of 3

ATTORNEY GENERAL OF WASHINGTON
Criminal Justice Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164
(206) 464-6430

682

1 **Count II - Attempted Murder in the First Degree - RCW 9A.28.020(1),**
2 **RCW 9A.32.030(1)(a)**

3 That he, John Kenneth Stein, aka Jack Stein, in the County of Clark, State of
4 Washington, between the 2nd day of June 1987. and the 13th day of June, 1987, with
5 intent to commit the crime of Murder in the First Degree, did an act which was a
6 substantial step toward the commission of that crime, to-wit: with premeditated intent to
7 cause the death of Charles E. Hall, a human being, the defendant, or an accomplice of
8 the defendant, did attempt to cause the death of Charles E. Hall by use of firearm(s) in
9 violation of RCW 9A 28.020 (1) and (3)(a) and RCW 9A 32.030 (1) (a) and (2), contrary
10 to the statutes in such cases made and provided, and against the peace and dignity of
11 the State of Washington

12 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability
13 Act (RCW 9 94A 030(25) and (29), and RCW 9.94A.120(4).

14 **Count III - Attempted Murder in the First Degree - RCW 9A.28.020(1),**
15 **RCW 9A.32.030(1)(a)**

16 That he, John Kenneth Stein, aka Jack Stein. in the County of Clark, State of
17 Washington, on or about the 14th day of June. 1987, with intent to commit the crime of
18 Murder in the First Degree, did an act which was a substantial step toward the
19 commission of that crime, to-wit: with premeditated intent to cause the death of Charles
20 E Hall, a human being, the defendant. or an accomplice of the defendant, did attempt
21 to cause the death of Charles E. Hall by use of firearm(s) in violation of RCW 9A 28.020
22 (1) and (3)(a) and RCW 9A.32.030 (1) (a) and (2), contrary to the statutes in such cases
23 made and provided, and against the peace and dignity of the State of Washington.

24 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability
25 Act (RCW 9.94A 030(25) and (29), and RCW 9 94A.120(4).

26 **Count IV - Burglary In The First Degree - RCW 9A.52.020(1)(a) and/or (1)(b)**

27 That he, John Kenneth Stein, aka Jack Stein, in the County of Clark, State of
28 Washington, on or about the 14th day of June, 1987. with intent to commit a crime
29 against a person or property therein, did enter or remain unlawfully in a dwelling located
at 6313 Riverside Drive, Vancouver, Washington, belonging to Charles E. Hall, and in
entering or while in such dwelling or in immediate flight therefrom, the defendant or
another participant in the crime was armed with a deadly weapon, to wit: a firearm, and
did assault Charles E. Hall. a person therein, in violation of RCW 9A.52.020(1)(a) and/or
(1)(b), and that the defendant or an accomplice did commit the foregoing offense while
armed with and in possession of a deadly weapon as that term is employed in and
defined in RCW 9.94A 125, contrary to the statutes in such cases made and provided,
and against the peace and dignity of the State of Washington

Exhibit (25)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
vs.
JOHN KENNETH STEIN, a.k.a,
JACK STEIN,
Defendant.

Case No.: No. 88-1-00788-8
MOTION TO REMOVE ATTORNEY'S
SUZAN CLARK & LINDA STAPLES

COMES NOW the defendant, Jack Stein, acting pro se, to advise the court that he would like to remove attorney's Suzan Clark and Linda Staples, and have attorney James Lobsenz and/or attorney William McCool appointed as replacements or in the alternative Jack Stein wishes to represent himself.

I believed Suzan Clark intended to betray my interest at trial. The court denied my repeated requests to remove her.

1 I learned Suzan Clark had caused the trial to be delayed by 116 days
2 when she first secured an Order of Evaluation for Observation **without my**
3 **knowledge** and the when she filed Dr. Larsen's letter/report with the court
4 and served a copy on the AAG, precipitating further evaluation at
5 Washington State Hospital and the resulting 116 day delay of trial.

6 At trial, the State prepared instructions which seemed to be
7 defective, as I advised defense counsel. However, Suzan Clark elected to
8 not call the defects to the court's attention.

9 The Court's instructions, taken as a whole, were legally defective
10 because they allowed the jury to convict defendant as an accomplice based
11 on evidence a substantial step, without proving a completed crime and/or
12 without showing that the defendant had knowledge of the crime of Murder in
13 the First Degree in violation of Washington's accomplice statute.

14 Since the jury verdict, defendant has written two letters to counsel and
15 left several phone messages calculated to promote a motion to vacate the
16 verdict on counts 1, 2, and 3 based on the improper jury instructions.

17 However, Counsel has ignored the defendant's efforts. I am again
18 concerned that counsel intends to ignore the defective instructions at this
19 time, just as counsel ignored the defective instructions at trial, all to my
20 detriment.

21 Accordingly, I do not trust counsel to look out for my legal interests.
22 Therefore, please remove counsels Suzan Clark and Linda Staples.

23 DATED this 6th day of July 2004.

24 
25 Jack K. Stein, Petitioner
PO Box 1147; 707 West 13th Street
Vancouver, Washington 98666-1147

Exhibit (26)

Jack K. Stein % Clark County Jail
707 West 13th Street; PO Box 1147; #955827
Vancouver, Washington 98666-1147
Phone/Fax: 360-896-9535
July 6, 2004

Fax: 360-414-5506
The Honorable James J. Stonier, Judge
Cowlitz County Superior Court
Hall of Justice; 312 SW 1st Avenue
Kelso, WA 98626

Re: State v Stein, Clark County Cause No. 88-1-00788-8

Dear Judge Stonier:

As you will recall, from October 2003, I had written several letters requesting the court to remove Suzan Clark as defense counsel because I believed she was not preparing my defense properly and because I believed Suzan Clark intended to betray my interest at trial. The court denied my request.

Thereafter, I learned Suzan Clark had caused the trial to be delayed by 116 days when she first secured an Order of Evaluation for Observation **without my knowledge** and the when she filed Dr. Larsen's letter/report with the court and served a copy on the AAG, precipitating further evaluation at Washington State Hospital and the resulting 116 day delay of trial.

At trial, the State prepared instructions which seemed to be defective, as I advised defense counsel. However, Suzan Clark elected to not call the defects to the court's attention.

At the close of the State's case, Suzan Clark moved to dismiss charges. In view of the testimony and evidence produced by the State, and the elements of accomplice liability, the court should have dismissed counts 1, 2, and 3.

The jury was instructed that they could find Stein guilty of an anticipatory crime based on the conduct of an alleged accomplice. As given, the instructions are legally defective under RCW 9a.28.020 (1) because the "to convict" instructions improperly expanded the criminal liability established by Washington Statue. Indeed RCW 9a.28.020 (1) provides: A person is guilty of an attempt to commit a crime if, it, to commit a specific crime, **he** or **she** does any act which is a substantial step toward that commission of that crime"

However, in this case, the "to convict" instruction included the clause "or an accomplice of the defendant" which clause is not found in the statute RCW 9a.28.020 (1). As such, the instruction constituted Manifest Error affecting the defendant's Constitutional Right.

Accordingly, Stein can not be held liable under RCW 9a.28 .020 (1) for an anticipatory crime based on the criminal conduct of a third party except through an applicable theory of vicariously liability, notwithstanding, as discussed herein, neither theory of vicarious liability provided by Washington Statue law would support a conviction, under the facts of this case, even if the jury had been properly instructed.

The Court's instructions, taken as a whole, were legally defective because they allowed the jury to convict defendant as an accomplice based on evidence a substantial step, without proving a completed crime and/or without showing that the defendant had knowledge of the crime of Murder in the First Degree in violation of Washington's accomplice statute.

Since the jury verdict, defendant has written two letters to counsel and left several phone messages calculated to promote a motion to vacate the verdict on counts 1, 2, and 3 based on the improper jury instructions.

However, Counsel has ignored the defendant's efforts. I am again concerned that counsel intends to ignore the defective instructions at this time, just as counsel ignored the defective instructions at trial, all to my detriment.

Accordingly, I do not trust counsel to look out for my legal interests. Therefore, please remove counsels Suzan Clark and Linda Staples.

I am filing a timely motion to vacate the conviction on counts 1, 2, and 3. Jack Stein moves the court to consider defendant's enclosed motion or to remove Suzan Clark and Lind Staples so defendant motion will be filed of record and considered by the court.

Respectfully Yours,


Jack Stein

Cc Suzan Clark, Esq.
Lana Weinmann, Esq.

Exhibit (27)

Exhibit (28)

Exhibit (29)

Exhibit (30)

Exhibit (31)

Exhibit (32)

Exhibit (32)

APPENDIX B

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FILED
JUN 19 2003

JoAnne McBride, Clerk, Clark Co.

FILED

JUN 19 2003

JoAnne McBride, Clerk, Clark Co.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON,

Plaintiff.

v.

JOHN KENNETH STEIN,
a.k.a. JACK STEIN

Defendant.

NO. 88-1-00788-8

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
PURSUANT TO CRIMINAL
RULE 8.3 HEARING

THIS MATTER having come on regularly for hearing beginning on September 3, 2002 and concluding on April 1, 2003, before the undersigned Judge of the above-entitled court pursuant to a CrR 8.3 hearing. The parties appeared by and through their attorneys of record below named. The Court having considered the motion, testimony of the witnesses, the arguments of counsel, and the records and files herein, and being fully advised in the premises, now, therefore, makes the following:

I. FINDINGS OF FACT

1. Mr. Stein has failed to prove that his memory of the events surrounding the charges has been impaired to the extent that his ability to assist in his defense has been adversely affected.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW PURSUANT
TO CRIMINAL
RULE 8.3 HEARING

ATTORNEY GENERAL'S OFFICE
Criminal Justice Division
900 Fourth Avenue, Suite 20
Seattle, WA 98164
(206) 464-6430

- 1 2. Mr. Stein's memory function was tested in 1989 and again in February 2003 by Dr. Stan
2 Abrams.
- 3 3. Based upon a comparison of the memory tests in 1989 and 2003, Mr. Stein's memory
4 functioning is stable.
- 5 4. Prior to 1989, Mr. Stein suffered from impairment of his short-term memory functioning,
6 but that impairment has stayed the same over time.
- 7 5. Mr. Stein's short-term and long-term memory and cognitive functioning were stable from
8 1989 to the present.
- 9 6. Mr. Stein's reported difficulty staying focused is not due to deterioration in his mental
10 condition, but rather his distraction by family activities.
- 11 7. The conclusions of Dr. Stan Abrams are consistent with the Court's observations of Mr.
12 Stein throughout these proceedings and in his testimony.
- 13 8. Mr. Stein is an intelligent man, and described his relationships and dealings with attorneys
14 and others, recalling both in-court and out-of-court proceedings with detail.
- 15 9. Neither Mr. Stein nor his counsel, except for one instance involving a deposition transcript,
16 has complained that Mr. Stein's memory of the events of 1989 was defective or faulty.
- 17 10. Mr. Stein has failed to prove that his mental abilities have deteriorated over the years since
18 his 1989 trial and during the period of his delayed appeal.
- 19 11. At no time since these criminal proceedings began in 1988, has Mr. Stein had the liquid
20 resources to retain his own counsel.
- 21 12. The lack of liquidity of Mr. Stein's assets required Judge Morgan to sign a provisional
22 order guaranteeing payment to attorneys Dane and Dunkerly at the time of Mr. Stein's first
23 trial in 1988.
- 24 13. At the time of his first trial in 1988, Mr. Stein stood to inherit approximately three million
25 dollars from his father's estate, but over the years, these funds have been exhausted.

- 1 14. Attorneys Dane and Dunkerly successfully sued Mr. Stein for their fees, decreasing Mr.
2 Stein's financial resources, and this representation was for the first trial and was not the
3 basis of the appellate court's action.
- 4 15. Mr. Stein's potential inheritance was lost to the estate of Thelma Lund as the result of a
5 wrongful death/RICO civil action that resulted in a judgment against Mr. Stein of four
6 million dollars. There has been no evidence that the estate would have exceeded the
7 judgment against Mr. Stein.
- 8 16. Mr. Stein has failed to establish how the reversal of his criminal convictions would have
9 had any impact on the wrongful death judgement, since the wrongful death action would
10 not have turned on the criminal enterprise predicate acts.
- 11 17. As of this time, Mr. Stein's father's estate has been distributed, and all appeals have been
12 exhausted and denied.
- 13 18. Mr. Stein has argued that the testimony of Richard Bailey would have been in favor of Mr.
14 Stein had this trial commenced around six years ago, however, this Court cannot speculate
15 on how Mr. Bailey would have testified at that time.
- 16 19. The current condition of witness Michael Norberg cannot be concluded to have prejudiced
17 the defense, as his most recent video deposition shows him to be coherent but combative.
- 18 20. It is not clear that Michael Norberg's abilities and effectiveness as a witness have
19 diminished with the passage of time.
- 20 21. Potential witness Dr. Peter Lusky has recently died, and will not be available to testify.
- 21 22. Should the inability to cross-examine Dr. Lusky prejudice the defense, the remedy is to
22 exclude the testimony, not to dismiss the charges.
- 23 23. The loss or destruction of Multnomah county jail records related to whether Richard Bailey
24 ^{had} ~~was allowed~~ visitors cannot be deemed to be prejudicial to Mr. Stein's right to a fair trial
25 since, (1) we do not know when they were destroyed; (2) we do not know if they would

1 have corroborated or impeached Mr. Bailey; and (3) the impeachment would have been on
2 a collateral matter.

3 24. There has been no direct evidence that any of the witnesses on the merits of the criminal
4 allegations have suffered dissipated memories or that Mr. Stein has been prejudiced by
5 dimmed memories of witnesses.

6 25. Not only is this case deluged with trial transcripts of prior testimony, but Mr. Bailey,
7 testified that he could recall the events.

8 26. Mr. Norberg was not asked about the events, and Mr. Stein's memory of the events remains
9 intact as previously discussed.

10 27. As a former prosecutor in the first two trials, Judge Roger Bennett was disqualified to act
11 as a judge in the instant case, and he has not so acted.

12 28. There is nothing in the record to suggest that Judge Bennett encouraged Richard Bailey to
13 testify untruthfully, nor did Judge Bennett use his office to unlawfully coerce or induce Mr.
14 Bailey to testify.

15 II. CONCLUSIONS OF LAW

16 1. Mr. Stein is collaterally estopped from raising a claim of ineffective assistance of appellate
17 counsel because that issue was decided in the federal district court under, *Stein v. Wood*, U.S.
18 District Court (W.D. Wash., Tacoma) Case No. C91-5523B.

19 2. This Court is also bound by the decision and oral findings made on May 15, 1996 by Judge
20 Robert J. Bryan of the federal district court in the above-referenced case, who found that Mr.
21 Stein's appeal was dismissed and delayed in part due to governmental misconduct.

22 3. The only issue before this Court in the CrR 8.3 hearing was whether Mr. Stein's right to a fair
23 trial has been prejudiced by governmental misconduct causing a delay in his appeal.
24
25

- 1 4. Mr. Stein has failed to meet his burden of proving that his memory of the events surrounding
2 the charges has been impaired to the extent that his ability to assist in his defense has been
3 adversely affected.
- 4 5. Mr. Stein has failed to prove that any misconduct of the government, resulting in the delay of
5 his appeal, has caused Mr. Stein's financial losses.
- 6 6. Unfair prejudice does not result from a witness' current leanings, and it is irrelevant to the
7 issue of actual prejudice that a witness chooses to switch from the prosecution or the defense.
- 8 7. There are numerous trial transcripts with which to refresh witnesses' memories, impeach their
9 testimony, or substitute in lieu of their testimony, therefore, the possibility that memories of
10 witnesses have faded does not establish actual prejudice to Mr. Stein's right to a fair trial.
- 11 8. Judge Roger Bennett's activities in regards to Richard Bailey did not amount to governmental
12 misconduct, nor did they prejudice the defense in this case.
- 13 9. Despite Judge Bryan's finding of governmental misconduct in the delay of Mr. Stein's appeal,
14 Mr. Stein has not proven actual prejudice resulting from this misconduct.
- 15 10. Mr. Stein has failed to prove that his ability to defend against the criminal charges has been
16 impaired by the delay in his appeal.
- 17 11. The case of *State v. Rorich*, 110 Wn. App 832 (Div III, 2002) is an anomaly in the case law
18 and is not controlling authority on this Court. Therefore, the mere passage of time is
19 insufficient to show Mr. Stein's right to a fair trial has been actually prejudiced. If *State v*
20 *Rorich* is a correct application of the current state of the law, then Mr. Stein would be entitled
21 to a dismissal.
- 22 12. Mr. Stein has failed to prove that there has been prejudice to his rights which materially affect
23 his right to a fair trial, and that a dismissal is justified in the furtherance of justice as required
24 by CrR 8.3.

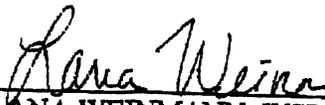
25

1 DATED THIS 9th June
2 day of May, 2003

3 
4 THE HONORABLE JAMES J. STONIER
SUPERIOR COURT JUDGE

5 Presented By:

6 CHRISTINE O. GREGOIRE
7 Attorney General of Washington

8 
9 LANA WEINMANN, WSBA #21393
10 Assistant Attorney General
11 Attorney for Plaintiff State of Washington

12 Approved for Entry:

13 _____
14 WILLIAM D. MCCOOL, WSBA #09605
15 Attorney for Defendant
16
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18
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APPENDIX C

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT TACOMA

4	JACK K. STEIN,	)	Docket No. C91-5523B
)	
5	Petitioner,	)	Tacoma, Washington
		)	May 15, 1996
6	v.	)	9:35 a.m.
)	
7	TANA WOOD,)	
)	
8	Respondent,)	

9
10 TRANSCRIPT OF COURT'S ORAL DECISION
11 BEFORE THE HONORABLE ROBERT J. BRYAN
12 UNITED STATES DISTRICT.

12 APPEARANCES:

13	For the Petitioner:	BARRY L. FLEGENHEIMER
14		Bell, O'Connor, Flegenheimer &
		Leong
15		119 First Avenue South
		500 Maynard Building
16		Seattle, Washington 98104
17	For the Respondent:	THOMAS J. YOUNG
18		Assistant Attorney General
		Corrections Division
19		P.O. Box 40116
		Olympia, Washington 98504-0116
20	Court Reporter:	Julaine V. Ryen
21		Post Office Box 885
22		Tacoma, Washington 98401-0885
23		(206) 383-7919

24 Proceedings recorded by mechanical stenography, transcript
25 produced by Reporter on computer.

COPY

1 THE COURT: Preliminarily -- well, to start the
2 record, this is Stein versus Wood, No. 91-5233.

3 I would like to have the clerk file the original
4 depositions that I read that are part of the record in this
5 matter. I have those, and they have not yet been filed, but
6 they are the depositions of Bonnie Lainhart, James Frame, Gordon
7 Jones, and Dennis Hunter. In the absence of objection, unless
8 there is some objection, I will just file those with the clerk's
9 office and they will be part of the record of this case.

10 This comes before the court for a decision following
11 evidentiary hearing that was granted pursuant to 28 United
12 States Code Section 2254(d) and pursuant to the case of Sumner
13 v. Mata, found at 449 U.S. 539 at page 536. At issue in this
14 proceeding are requests for habeas relief based on, first,
15 denial of effective assistance of counsel during the appellate
16 process; and second, excessive delay in the appellate process
17 amounting to a due process violation. These issues are closely
18 intertwined. It is clear that the petitioner, Mr. Stein, has
19 exhausted his state remedies on these issues.

20 I will make oral findings of fact and conclusions of law
21 here this morning pursuant to Federal Rule of Civil Procedure
22 52(a), making written findings of fact and conclusions of law
23 unnecessary.

24 While there may be a question of whether the habeas corpus
25 amendments found in the Antiterrorism and Effective Death

1 Penalty Act of 1996 apply here, the same result follows, with or
2 without consideration of those amendments.

3 I am mindful of the presumption of correctness that the
4 findings in state court has in these matters. The findings I
5 Make here are based on a clear and convincing standard rather
6 than just a preponderance of the evidence standard. These
7 findings, however, are not intended to cover every detail that
8 supports them. To some extent, the findings will be conclusory
9 findings as opposed to a recitation of every detail that
10 supports those conclusions.

11 The file reflects that Mr. Stein is not incompetent, but
12 that he was not competent to represent himself on appeal in this
13 case, on direct appeal, nor is he competent to represent himself
14 on his habeas corpus petition. That finding is based on the
15 contents of the voluminous record here.

16 Mr. Stein was convicted of multiple counts of attempted
17 murder in a second trial in July of 1989, and he was sentenced
18 to 45 years imprisonment in the Superior Court of the State of
19 Washington for Clark County. He then filed a timely pro se
20 notice of appeal, and he also filed pro se a designation of
21 clerk's papers and a statement of arrangements. The latter two
22 filings were not adequate under the State Rules of Appellate
23 Procedure, but they were made.

24 In January of 1990, Mr. Stein timely employed counsel on
25 appeal, Mr. Lee, and through Mr. Lee arranged for the necessary

1 verbatim report of proceedings from three different court
2 reporters that had covered his trial. The object of Mr. Lee's
3 representation of Mr. Stein never varied. It was, at least, to
4 perfect Mr. Stein's appeal. The perfection of the appeal is the
5 issue in this case; that is, filing of the notice of appeal,
6 designation of clerk's papers, filing a statement of
7 arrangements, and filing what was necessary of a verbatim report
8 of proceedings. All of those are as required under the State
9 Rules on Appellate Procedure to perfect an appeal.

10 The question of responsibility for prosecuting the appeal
11 beyond perfecting it is somewhat cloudy here, but the appeal was
12 dismissed for want of perfection, and it's not necessary in
13 these proceedings to examine beyond that stage. I am not going
14 to get into the question of what should have been done if the
15 appeal had been perfected.

16 By the spring of 1990, the relationship between Mr. Stein
17 and Mr. Lee fell apart. Mr. Stein attempted to fire Mr. Lee,
18 and over time Stein filed appropriate pro se pleadings. He made
19 a bar complaint against Mr. Lee and attacked him and his legal
20 representation in writing.

21 It should be noted that Mr. Stein is the most difficult of
22 clients, and not just in regard to his relationship with Mr.
23 Lee, but certainly in regard to that relationship, he was a most
24 difficult client. He attacks his attorneys, he attacks judges
25 and prosecutors. He believes that there is a vast conspiracy

1 against him, and because of the nature of the offenses of
2 convictions, some fear on the part of those he distrusts is not
3 unreasonable.

4 Mr. Stein disagrees with and tries to fire virtually every
5 lawyer that he's had whenever they don't get the results that he
6 wants on an immediate basis, but nevertheless, in spite of that,
7 he has never waived his right to direct appeal, nor has he
8 waived any of his constitutional rights that are at issue in
9 this proceeding. In spite of the fact that he is a difficult
10 client, he is entitled to constitutional protections.

11 Over the next several months, after March and April of 1990
12 when Mr. Stein attempted to fire Mr. Lee, the stormy
13 relationship continued and Mr. Lee attempted to withdraw. His
14 withdrawal from representation of Mr. Stein was rejected by the
15 Court of Appeals and he remained counsel of record throughout
16 the relevant period, the period relevant to these habeas
17 proceedings.

18 Because of Mr. Stein's attempt to fire him and because of
19 Mr. Stein's abusive conduct towards him, Mr. Lee effectively
20 abandoned Mr. Stein and any attempt to perfect his appeal. Mr.
21 Lee now, erroneously, takes the position that he could not do
22 anything for Mr. Stein after being fired by Mr. Stein in the
23 spring of 1990. He was still in the case, however, as is
24 reflected by the Court of Appeals' rejection of his withdrawal
25 motion, and as is reflected by Mr. Lee's own correspondence in

1 the record and his own activities in regard to the appeal.
2 Clearly, he had a continuing duty to Mr. Stein to perfect the
3 appeal.

4 Mr. Lee believed, and apparently still believes, that Mr.
5 Stein's appeal was not frivolous and that he had meritorious
6 issues to raise on direct appeal.

7 I indicated that Mr. Lee abandoned Mr. Stein and any
8 attempt to perfect his appeal. There are a number of specific
9 facts that show Mr. Lee's abandonment of his client. This is
10 not necessarily an exhaustive list, but here are some of the
11 things that lead me to that conclusion:

12 Mr. Lee did not speak to trial counsel. He did not review
13 trial counsel's file even though it was offered to him.

14 He allowed his personal view of Mr. Stein's competency to
15 color his judgment regarding Mr. Stein's credibility and to
16 color his judgment regarding his own, that is Mr. Lee's,
17 actions. His view was that Mr. Stein was not competent, and he
18 let that personal view inappropriately affect his judgment in
19 regard to how he handled the case.

20 Mr. Lee inappropriately and in an untimely fashion disposed
21 of Mr. Stein's files.

22 Mr. Lee did not follow through in getting the verbatim
23 report of proceedings ordered and filed, although funds for that
24 purpose were available to him. He did not file a proper
25 designation of clerk's papers or a proper statement of

1 arrangements, and as near as I can tell and recall, he never
2 really examined into what his client had done in regard to
3 filing those documents.

4 When problems with producing court reporter Langer's part
5 of the verbatim report of proceedings surfaced, Mr. Lee made no
6 reasonable effort to perfect the record by either seeking or
7 requiring production of and filing the existing originals or
8 copies. He made no reasonable effort to order and file new
9 copies. He did not monitor Mr. Langer's efforts to produce an
10 original or a duplicate original or a copy. He made no effort
11 to reconstruct the record by other methods. And he
12 inappropriately relied on statements of his client's wife made
13 against the best interests of his own client.

14 Mr. Lee ignored the Court of Appeal's orders, including
15 sanction orders against him, and wrongly told his client to pay
16 the sanctions. It is my understanding that the sanctions have
17 not been paid to this date.

18 As reflected by his testimony here, Mr. Lee failed to
19 understand his obligations to both Mr. Stein, as his client, and
20 to the court and apparently based his erroneous understanding of
21 his duties on a negligently wrong misinterpretation of the case
22 of State v. Dodd in which he had been involved.

23 On the 4th of January of 1991 the Court of Appeals remanded
24 the case, the appeal of State v. Stein, to the Superior Court to
25 settle the record, because by then, of course, the appropriate

1 necessary verbatim report of proceedings had not been filed. In
2 spite of this opportunity to perfect the record, or to perfect
3 the appeal, Mr. Lee's abandonment of the case and his client
4 continued. He took no reasonable steps to settle the record.
5 He did not request a timely hearing. When the prosecution did
6 initiate a hearing, Mr. Lee did not plan for it or prepare for
7 it and did not meaningfully participate in it. Although he knew
8 that evidence was available laying blame for the missing part of
9 the record on others than Stein, he did not arrange for the
10 presentation of that evidence to the court. That evidence was
11 available from court reporter Langer, from Mr. Stein himself,
12 and also from Mr. Stein's wife, Bethany Norberg.

13 He made no effort to secure Mr. Stein's presence, although
14 it was a fact-finding hearing at which Stein had a right to be
15 present, and in spite of the fact that he knew that Mr. Stein
16 wanted to be there.

17 He did not request that a verbatim record be made of the
18 hearing, although substantial rights of his client were at
19 issue. He allowed the prosecutor to present the matter as
20 essentially not in dispute, and by his apparent acquiescence
21 and/or lack of a position at the remand hearing, Mr. Lee misled
22 the court into believing and concluding that Mr. Stein
23 personally was responsible for the missing transcripts when that
24 was not true.

25 The result of the remand to settle the record was that

1 Stein was held responsible for perfecting the record. Clear and
2 convincing evidence indicates to this court that the judge's
3 conclusion was erroneous. Stein used due diligence in
4 attempting to avoid the erroneous conclusion but was prevented
5 by his attorney's inaction from presenting his own evidence, and
6 it appears to me that no reasonable fact finder would have
7 reached the conclusion that the superior court did reach at the
8 remand hearing if Mr. Stein had minimally effective assistance
9 of counsel at that hearing.

10 Even after the remand hearing and ruling, which occurred in
11 August of 1991, Mr. Lee -- I believe that date is correct -- Mr.
12 Lee had further opportunity to correct the injustice of the
13 ruling and to perfect the appeal, but he not only did not do so,
14 but made no effort to do so. The result of these events and the
15 remand to settle the record was that Mr. Stein's direct appeal
16 was dismissed by the Washington State Court of Appeals.

17 Since the dismissal of the appeal, Mr. Stein has been
18 trying to reinstate his appeal, although his efforts and the
19 issues regarding what happened to his appeal have been somewhat
20 clouded by Mr. Stein's pro se efforts and by his attacks on
21 anyone who disagrees with him or his approach to this matter.
22 His attacks have included attacks on judges, including me; on
23 all of his attorneys, including Mr. Flegenheimer; and all
24 prosecutors who have been involved in the case; as well as
25 others. I am not aware, counsel, that he has attacked the

1 Attorney General's office or assistant attorneys general
2 individually, but I would expect if he has not, he may.

3 Indeed, if this court had not required Mr. Flegenheimer to
4 stay in the case over Mr. Stein's objection, as Mr. Lee was
5 required to stay in the case over Mr. Stein's objections at the
6 direct appeal process, this court probably would never have been
7 able to deal with the issue of whether Mr. Stein's right to
8 appeal was unconstitutionally taken from him by ineffective
9 assistance of counsel or for any other reason.

10 In any event, Mr. Lee's abandonment of Mr. Stein's appeal
11 and of Mr. Stein amounted to ineffective assistance of counsel
12 under the Strickland case test and certainly prejudiced Mr.
13 Stein because that was the cause of the loss of his right to
14 direct appeal.

15 Now let me turn my attention next to the actions of other
16 players in this matter who also by their actions deprived Mr.
17 Stein of due process rights by causing excessive delay in the
18 appellate process.

19 First, the official court reporter, Mr. Langer. I note
20 that Mr. Langer is an official court reporter. He at least was,
21 at the time in issue here, an officer of the court and had
22 obligations to the court and the public, as well as a
23 contractual obligation to Mr. Stein. He was the author or the
24 transcriber, taker and transcriber of the part of the verbatim
25 report of proceedings that was missing and that was the subject

1 of the remand to settle the record. He failed in many ways.

2 First, he should have filed the original transcript with
3 the court when it was completed instead of delivering it to a
4 third party. There was not a rule that required that, but it
5 was the custom and practice, certainly, at that time, and he
6 should have seen to the filing of the original.

7 When he was made aware that the original was not filed by
8 the third party, he should have immediately filed a duplicate
9 original or a copy or prepared an additional copy or original
10 and filed it. That should have been done immediately and
11 without delay as soon as he learned that the original had not
12 been filed, as he expected it was going to be filed, by the
13 third party, who was Mr. Stein's stepson, I gather.

14 The Clark County Clerk's Office also failed in their
15 duties, not only to Mr. Stein, but also to the court and the
16 public. They should have filed what they did have in the way of
17 a report of proceedings with the Court of Appeals. They did not
18 file it, as required, and as I understand the evidence, they are
19 still holding the report of proceedings, although it has now
20 been completed, and they should have filed it timely when it was
21 filed with them. They should have filed it, that is with the
22 Court of Appeals.

23 The prosecutor, Mr. Hunter, also was a part of this
24 unfortunate scenario. I want to note that the clerk is also an
25 officer of the court, acting on the court's behalf. The

1 prosecutor is an officer of the court, also acting on the
2 court's behalf, as any lawyer is. The prosecutor gave bad
3 advice to the clerk to hold the file until all the report of
4 proceedings was in, and then failed to give appropriate advice
5 to tell the clerk when everything was in so the clerk could file
6 the report of proceedings. The clerk, after getting the advice
7 from Mr. Hunter to hold the file until everything was in, has no
8 way of knowing when the report of proceedings was complete, and
9 Mr. Hunter failed to follow up by giving them that information.
10 It seems to me that Mr. Hunter took on the duty when he
11 undertook to advise the clerk; particularly in a matter in which
12 he represented a party to the dispute in the case, he took on
13 the duty to advise the clerk fully in regard to the requirements
14 of filing the report of proceedings.

15 All of the report of proceedings that was in issue was in
16 the Clark County Clerk's Office before the mandate came down
17 from the Court of Appeals dismissing the direct appeal. It's an
18 open question as to whether that mandate would have been
19 withheld if the Court of Appeals had been aware that the record
20 was finally settled to perfect the appeal.

21 The prosecution also failed in its duties in the way that
22 the hearing to settle the record was set up and conducted. The
23 prosecution, without knowing the truth regarding these
24 transcripts and without investigating the facts adequately,
25 presented an untruth to the court, which I think the prosecutor

1 believed in good faith, but he presented an untruth as a fact,
2 that this was all Mr. Stein's fault. In addition to that, he
3 failed to protect the criminal defendant's due process rights to
4 be present and to have a record made, and that was less than one
5 would hope of a prosecuting attorney who represents not only the
6 state, but also is an officer of the court and has a duty to the
7 public beyond getting and holding convictions.

8 The superior court judge, Judge Borst, also, unwittingly, I
9 expect, participated in this unfortunate matter. He should have
10 had the defendant present at this fact-finding hearing to settle
11 the record. He should have had a reporter present to make a
12 verbatim record of what occurred, and he should have had
13 evidence before him on which to base a finding as to the
14 responsibility for the incomplete verbatim report of
15 proceedings. Although, in his defense, I should say, it
16 probably appeared to him to be an agreed set of facts between
17 the plaintiff and the defendant made, through that agreement, by
18 defendant's counsel of record. I expect that it appeared to him
19 that it was essentially a stipulated factual matter.

20 While Mr. Stein's call direct to Judge Borst was not
21 appropriate since he was a litigant represented by a lawyer,
22 that call should have put the judge on inquiry at least
23 regarding Mr. Stein's presence and participation in this record
24 settlement proceeding. There is no record to tell us what, if
25 anything, was made of that call by the judge or by counsel.

1 And lastly, the judge should have had notice of the remand
2 to settle the record from the Court of Appeals and should have
3 set a more timely hearing rather than just waiting for someone
4 to set a hearing up, as the prosecutor did. I have no way of
5 knowing whether he personally had notice that the case was
6 remanded to him or not.

7 Those are the necessary findings of fact in this matter,
8 and from those findings conclusions of law follow.

9 The first conclusion of law is, in a way, a mixed finding
10 of fact and conclusion of law. This is an obvious shortcut, but
11 in regard to the question of ineffective assistance of counsel,
12 I simply agree with everything that Professor Strait said. He
13 was credible, and his opinions are consistent with the law and
14 the duty of counsel, as I know it, and his opinions were not
15 seriously here attacked. I accept those, his conclusions, in
16 regard to the ineffective assistance of counsel.

17 The second conclusion of law is that Mr. Stein was denied
18 effective assistance of counsel in regard to perfecting his
19 direct appeal, as a result of which he was prejudiced by the
20 dismissal of his direct appeal.

21 The third conclusion is that Mr. Stein was denied his due
22 process rights due to excessive delay in the appellate process
23 caused by officers of the court, separate and apart from his own
24 attorney, and this delay also prejudiced him in that it was also
25 a cause of the dismissal of his appeal.

1 The fourth conclusion is that the two aforementioned
2 constitutional violations independently justify habeas relief
3 but are factually closely entwined together and combine to show
4 a clear violation of Mr. Stein's right to effective assistance
5 of counsel on appeal and his right to due process of law on
6 appeal.

7 Fifth, any presumption of correctness in the state
8 fact-finding process regarding dismissal of the appeal is
9 overcome by clear and convincing evidence presented in this
10 habeas proceeding. The fact finding of Judge Borst that was
11 then relied on by the Court of Appeals, and the Supreme Court in
12 later proceedings, should be set aside in this court under the
13 authority of 28 United States Code Section 2254(d), and
14 specifically because the merits of the factual dispute regarding
15 either responsibility for the missing record and regarding
16 ineffective assistance of counsel were not resolved in the state
17 court proceeding because the fact-finding procedure employed by
18 the state court was not adequate to afford a full and fair
19 hearing; because the material facts were not adequately
20 developed at the state court hearing; because the applicant,
21 that is Mr. Stein, did not receive a full, fair, and adequate
22 hearing in the state court proceeding; because Mr. Stein was
23 otherwise denied due process of law in the state court
24 proceeding; and because this court has concluded, based on the
25 record as a whole, that the factual determination is not fairly

1 supported by the record. Those last findings are consistent
2 with subparts 1, 2, 3, 6, 7, and 8 of the statute, of 28 USC
3 2254(d).

4 The sixth conclusion of law is that the appropriate remedy
5 under Lozada v. Deeds, 964 F.2d 956, and Coe v. Thurman, 922
6 F.2d 529, is to set aside the state court's order dismissing Mr.
7 Stein's direct appeal and to reinstate the appeal subject to the
8 Washington State Rules of Appellate Procedure. An order and a
9 writ of habeas corpus will issue, and I have prepared that order
10 and writ, and it indicates that the writ is granted and that the
11 respondent shall release the petitioner from custody within 90
12 days of the date of this order if he is not afforded a right to
13 direct appeal pursuant to the Washington State Rules of
14 Appellate Procedure.

15 The order further recites that timelines set by said rules
16 should run from the date of this writ as though it were the date
17 of entry of a trial court decision pursuant to Rules of
18 Appellate Procedure 5.2(c). All proceedings, including but not
19 limited to request for counsel, notice of appeal, perfection of
20 appeal, briefing, and argument should be conducted pursuant to
21 the Rules of Appellate Procedure. In other words, the order and
22 writ puts this case back in the same position that it was in on
23 the day the judgment of conviction was signed.

24 That's the findings, conclusions, and the order of the
25 court in this matter.

1 Now, I want to do a couple more things.

2 Mr. Flegenheimer's participation in this matter with this
3 judgment is effectively concluded. The burden will be on Mr.
4 Stein from here on to follow the state court rules if he wants
5 the direct appeal that he indicates he's been seeking for all
6 these years.

7 I am concerned about his ability to process an appeal on
8 his own. As I indicated, I personally don't think he's
9 competent to do that. I have no idea of his current financial
10 status, as to whether he can afford a lawyer or not. He needs
11 at least to be steered into the appeal process and the Rules of
12 Appellate Procedure regarding filing notice of appeal. Although
13 he filed one, I think it's appropriate that he file another
14 since we're starting everything from scratch, and he needs to
15 know how to seek counsel if he is indigent. I suspect that
16 someone should advise the clerk as to what to do with the
17 transcript they have, and someone should tell Mr. Stein what he
18 must do to perfect his appeal at this stage.

19 I guess what I'm saying, Mr. Flegenheimer, is that I would
20 appreciate it if you would carry this two steps further by
21 assisting Mr. Stein with the filing of his notice of appeal, if
22 he chooses to do so pro se, and advise him, maybe by being sure
23 he has a copy of the State Rules on Appellate Procedure, as to
24 what he must do to seek counsel and to get the matter, the
25 appeal, perfected. I am not asking that you give him further

1 legal advice, only that mechanically it seems to me that he
2 needs to be steered in the right direction, and that should be
3 the end of your representation of him.

4 I expect, Mr. Flegenheimer, that you will want to order a
5 transcript of this, of these findings and conclusions and
6 decision, on his behalf, and I would expect that you would want
7 the court reporter to send a copy of that direct to Mr. Stein.

8 Am I second-guessing you too much?

9 MR. FLEGENHEIMER: No, that's correct, Your Honor.
10 Immediately after this proceeding I will go down and get the
11 order form and present it to the court.

12 THE COURT: I think that's appropriate. I guess I'm
13 concerned, in light of what's happened here, that Mr. Stein get
14 a copy of this proceeding this morning, a transcript of it, as
15 soon as possible so that he can understand what happened and
16 will not be further confounded by the problems of court
17 reporters and so forth.

18 I might add to this that I have no idea whatsoever about
19 what went on at the trial, whether he has grounds that should be
20 argued on appeal or whether there was error in the record,
21 whether he was guilty of what he did or didn't do. Those things
22 are not the subject of this proceeding. All I know is that he
23 does have a right to a direct appeal that was unconstitutionally
24 taken from him.

25 Counsel, I want to thank both of you for -- or all of you,

1 I should say -- for your efforts in this matter. It has not
2 been easy. It particularly has not been easy for Mr.
3 Flegenheimer, as we know from the record in his attempts to
4 withdraw and Mr. Stein's attempts to fire him, but certainly Mr.
5 Flegenheimer's continued efforts in Mr. Stein's behalf have been
6 in the highest traditions of our profession. I want to extend
7 my personal appreciation to Mr. Flegenheimer for staying in this
8 matter, in a difficult situation, and doing the best he could
9 with it. While he didn't win on a lot of the points that Mr.
10 Stein raised, he won on this important point, which certainly is
11 to his credit, and is an indication of considerable work and
12 legal ability in bringing this difficult matter to this
13 conclusion. One can only hope that ultimately in this matter,
14 if the appeal is prosecuted and ruled on, on its merits, that
15 justice will be done.

16 Thank you. I'm closing my file on the Stein matter at this
17 point.

18 (Recessed at 10:20 a.m.)

19

20 C E R T I F I C A T E

21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled matter.

23

24

25

JULAINÉ V. RYEN

May 16, 1996
Date