

Ground - NINE

Whether Defendant received
Effective assistance of Counsel ON
Motion For New Trial.

Defendant asserts that his Counselor, John Muenster, rendered ineffective Assistance of Counsel in his Motion For New Trial by failing to show how previous Counselors, James White and Harvey Chamberlin were ineffective for failing to interview and present defendants past Medical-Psychiatric-Psychologist witnesses.

This defendant had made known to his past Attorney's of their need to contact these witnesses. These witnesses were all active treating professionals up until the time of Defendant's arrest in these matters.

In the August 20, 2003, proceeding to withdraw then Attorney James White address in the sentencing hearing that the defendant has filed a Motion for New trial. And the basis or at least ONE of the basis was failure to call and interview certain witnesses. More importantly Attorney James White acknowledges that "... in fact that may be accurate." see trial trans. 8-20-03, pg. 14, lines 6-9.

Subsequently to this hearing Attorney John Muenster was hired to bring these claims before the trial court on the Motion For New trial.

Mitchell Farrell

SIGNATURE AND DC#

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CONTINUATION OF GRIEVANCE/APPEAL

On March 5, 2004, hearing on Motion for New trial, Mr. Muenster relates to the trial Court that the ineffective of assistance of Counsel claim relating to Witnesses, regard failing to call and interview family and friends. While this was true, this was not the complete issue of failing to call witnesses. His claim regarded his previous treating physicians as witnesses as well.

This major omission by Attorney Muenster, caused the defendant to submit to the Court several submissions clarifying his claims which were left out by Counselor. In fact the Court in the stated March 15, 2004 hearing, affirmed they would consider such material. (see MEMO - Additional Information #2)

On April 6, 2004 Judge Krese sent out a correspondence to the State Attorney and Attorney John Muenster outlining the Courts recently received submissions from the defendant and that the Court considered such submissions as a Motion to Reconsider. And that said Motion would be decided 4-19-04. see supra (Exhibit #1) Amongst those submissions contained was defendant's Supplemental Memorandum in support of Motion for New Trial dated 3-22-04. This document contained some 100 pages of material. And in this documents first 9-10 pp specifically outline the exact witnesses the defendant is referring to, totalling some 31 individuals.

This defendant alerted Attorney James White about the failure to interview and contact these witnesses as early as 9-3-02 in a letter to him asking why he didn't do so. see (Exhibit #3)

Mitchell Wainell

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CONTINUATION OF GRIEVANCE/APPEAL

This letter also was contained in the defendant's Supplemental Memorandum in Support of Motion for New Trial for Mr. Muenster as well (see line #9 of Memorandum) Once again the defendant provided the Court and Mr. Muenster a letter dated 1-12-03 imploring Counselor White to come see him and questioning yet again why he and hubrey hasn't contacted any of these "witnesses, Doctors, ect." He states these witnesses would be able to testify to his "severe emotional distress, diminished capacity". He further states "I want to talk to you about these emotional factors". Supra line #9 of Memorandum, letter dated 1-12-03. see (exhibit #4)

The issue by the defendant to the Court and Mr. Muenster was these two previous attorney's knew about these witnesses and didn't act on them, allegedly because of NO funds, which as the defendant will show below was in contradiction to James white very words. These very witnesses (professional doctors) first was mentioned by state attorney John Stansell in the June 10, 2002 hearing transcripts. see (Exhibit #5) There in this hearing the issue of an continuance arose, and one of the two cited reasons for such given by Mr. Stansell was that "there are some mental issues that I know Mr. Chamberline and Mr. White have had difficulty getting the reports. And I think that difficulty is still ongoing." (lines 8-10. pg 5)

Further Mr. White wrote the defendant on Sept. 9, 2002 acknowledging contact with the "psychological and psychiatric

Michelle Venable

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CONTINUATION OF GRIEVANCE/APPEAL

Witnesses whom we have previously discussed with you." And also that "I/we have talked with other witnesses"... See (Exhibit #6), which was also MADE available in the "MEMORANDUM" ~~supra~~ at Line 12.

Counselor White in a signed Declaration for public MONIES for Expert Services a little of a month later, states the defense expects to call "More than twenty witnesses" to testify on behalf of the defendant regarding his psychiatric treatment over the past several years. See (Exhibit #7) This Motion For Funds were denied. Judge Thorpe stated Mitchell Varnell would have to testify to not having any funds which Attorney White knew Mitchell Varnell would not do. He had already given Mr. White \$128,700.00. The following Day Oct. 24, 2002 (Exhibit #8) Mr. Stensell (State Attorney) reports that they "Keep hearing about Expert witnesses". pg. 2, Line 14

IN ONE OF THE LAST LETTERS contained in the Defendant's Supplemental Memorandum in support of Motion For New Trial, Dated 2-10-03, Line 9 ~~supra~~. The defendant again complains to Judge Thorpe that Neither of his attorney's has "INTERVIEWED" any of the "witnesses" Nor hired an investigator. See (Exhibit #9). Four Days later on 2-14-03 in Court before Judge Thorpe, the defendant reiterates again Counsels Not having "interviewed" ZERO witnesses "to prepare for trial. See (Exhibit #10 Pg. 8, Lines 20-25.) (see also pg. 9, Lines 1-25)



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It is without question Mr. White and Harvey Chamberlin were aware of their client's desire to have these medical professionals called as witnesses at his trial. It is also further evident from the 8-20-03 hearing that Mr. White in fact agreed with the defendant's claim that Counselors were ineffective for failing to interview and call as witnesses these individuals in their client's trial. Thus constituting his ineffective claims.

For Purpose of the New trial Motion, Attorney Muenster acknowledges the defendant's claim against his previous attorneys were their "failure to investigate and prepare" these witnesses for trial. see (Exhibit 11 *). Twenty days later in a letter to Judge Krese dated 2-16-04, the defendant relates to the judge that the "potential witnesses" have not been interviewed, which consisted of (13) Doctors, two Attorneys and family and friends. (See Court Admitted Exhibit #12, dated 2-27-04 for motion for New trial) Also contained in this Court Exhibit #1 is a legal mail correspondence regarding medical releases from Attorney Muenster to Mitchell Varnell for signature and return in self-addressed and stamped envelope, dated Feb 11, 2004, sixteen days before Motion hearing (2-27-04) and roughly 3 1/2 months after being hired for this purpose. (*) So there is little doubt that Attorney Muenster knew the potential professional witnesses were in fact important, and that Mr. White and Mr. Chamberlin needed to be questioned about their failure as to why these witnesses were never interviewed and called to testify in the defendant's trial.

(*) Pg. 2, lines 15-17 (*) Exhibit 13

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CONTINUATION OF GRIEVANCE/APEAL

What is clear from the transcripts on the motion for New trial is that Attorney Muenster in fact questioned Mr. White regarding Varnell medicine usage (which were all prescribed by these MANY doctors) and which Mr. White described as "a virtual pharmacy." See. (2-27-04 transcripts, pg. 14, Lines 4-17.) And more specifically Attorney Muenster asked Mr. White was any of the Doctors who prescribed these medicines interviewed regarding their effect, which Mr. White stated "No". (pg. 16 supra) Mr. White further answered when questioned about the "witnesses" pg. 26, supra, that "Mitchell always objected to" them not calling his medical witnesses for trial. (Lines 16-20 supra) Mr. White stated these witnesses were to "speak to his [defendant's] mental Chaos," (pg. 27, Lines 5-10 supra.)

In Sum, Mr. Muenster asked Mr. White the question that Mitchell Varnell had been trying to get these attorney's to do in his trial which was, "Assuming hypothetically... his feelings for love for his wife... would that testimony people who were talking to him before his arrest, before the charge, from doctors, have the potential of being helpful on the defense which was lack of criminal intent being a hero instead? Mr. White Answered - Certainly could have. See pg. 34, Lines 5-13.

This was in fact one of the reasons Mr. Muenster was hired to establish in this proceeding and of which he was to secure evidence of these very important admissions for his then treating Doctors through interviews.

Mitchell Varnell

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CONTINUATION OF GRIEVANCE/APPEAL

Mr. Muenster did not present any evidence to confirm the defendant's claim to support his ineffective claims against Mr. White and Mr. Chamberlin on this issue. And is why the defendant sought reconsideration on Mr. Muenster ineffectiveness in handling this claim. Mitchell Varnell again hired an investigator to obtain the necessary interviews that Attorney Muenster neglected to obtain from these witnesses. In the defendant's Supplemental Motion (Memorandum) in Support of Reconsideration of Motion for New Trial, see (Exhibit #14 which the trial court accepted and is listed in the court's letter to both the State Attorney and Mr. Muenster Exhibit #1). The defendant provided the court with interviews of 8 of 9 requested professionals. Within included Dr. Smith's noting Mitchell Varnell was experiencing "pain and disorientation"; Dr. Smith further noted Mr. Varnell was being prescribed a "pain cocktail program" from Dr. Steven Taylor. Another interview was from Dr. Kris Kyre who was treating the defendant for emotional issues as well as for the defendant's pain disorder. Further this Dr. stated their observance of you was that "you really seemed to care about" the defendant's ex-wife. Dr. Kyre also noted that as of Oct. 2001, was aware that the defendant was taking "Wellbutin, ZANAX, Neurontin, Oxycontin and FLEXERIL, all prescribed by Dr. James Fletcher" and that the defendant had a "flattered" personality. Also there was the report from Dr. Donald Rice, the treating physician from March 1998 to Feb 7, 2002, which outlined various treatments and



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CONTINUATION OF GRIEVANCE/APPEAL

Medications similar to the previous reports. But of particular note, this report from Dr. Rice contained information regarding the defendant and the alleged victim in this matter (Karen Virell) Dr. Rice notes how the defendant complains about being over medicated and concerns of mixing of all these medications. And lastly a report from Dr. Ernest A. Weymuller regarding an operation the defendant had undergone almost a month before his arrest.

These reports were specifically to show in the hearing for reconsideration that Mr. Muenster just like Mr. White and Mr. Chamberlin were ineffective in failing to secure these interviews and present their testimony at trial and at the hearing on Motion for New trial that the defendant loved and cared for his Ex-wife and that prior to his arrest that the defendant was over prescribed very powerful pain Narcotics and that they were in fact having an adverse effect on him physically and mental diminishing his ability to understand his actions. And because All three Attorneys failed to bring this information before the Court as a defense to these charges and as evidence of ineffective Assistance of Counsel in the Motion for New trial, the defendant was convicted as well as was denied his opportunity for a New trial at his hearing on.

Special Note - It should be noted that these uncalled witnesses continued to play a vital role for the defendant where Mr.

AT Bell Virell
SIGNATURE AND DC#

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Muenster brought in the defendant's Sentencing Memorandum that the defendant should receive a downward departure sentence based on "Mr. Varnell, in his submissions to the Court, has apparently urged that his mental state and medications prescribed by doctors impacted his involvement in the events leading to his arrest.

Mr. Varnell's pharmaceutical records indicate that in January and February of 2002, he was filling prescriptions for Risperdal, Oxycontin, Neurontin, Alprazolam, Carisoprodol, Serzone, Viiox, Zanaflex and Pretonix, Prednisone, Cyclobenzaprine, and Sipro." These doctors had to have been called to explain these adverse effects of this medicine cocktail. see exhibit #15, pg. 8, lines 16-25; Also pg 9, lines 1-22 supra.

From the very beginning this Appellant has informed all counsels in this matter of his severe emotional, mental and physical handicap. As noted with his doctors reports, this Appellant was questioning the over-medication and mixing of all these drugs because they were having a tremendous adverse effect on him. While this Appellant feels these treating physicians reports show the Appellant's critical mental & physical impairments, ~~their~~ their actual indept testimony before my jury would have enabled the jury to find that I had no intentions of committing these crimes. I'm a new man without all of those pills.

Michael Varnell

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STATE OF WASHINGTON

✓
MITCHELL VARNELL

CONTINUATION OF GRIEVANCE/APEAL

NO. COA-54287-7-I

TO: CLERK OF THE COURT OF APPEALS

THE ATTACHED IS THE ADDENDUM OF GROUND 9 WITH ATTACHMENTS OF ADDITIONAL GROUNDS.

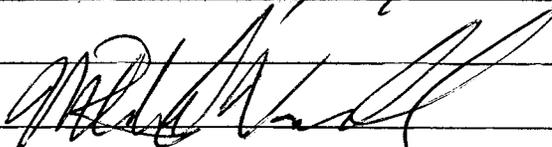
THE ADDENDUM IS ON THE SAME COVER SHEET AS THE FIRST STATEMENT OF ADDITIONAL GROUNDS DATED AND MAILED SEPT 2-05.

THE STATEMENT OF ADDITIONAL GROUNDS COMBINED WITH ADDENDUM EQUALS 33 PAGES TOTAL. THE ATTACHMENTS ARE ALL FROM THE COURT FILE AND TOTAL 170 PAGES.

PLEASE PUT THE STATEMENT OF GROUNDS DATED SEPT 2-05 AND THE ADDENDUM TOGETHER FOR ME.

I WASN'T SURE HOW THE STATEMENT OF ADDITIONAL GROUNDS, ADDENDUM AND ATTACHMENTS SHOULD BE STAPLED TOGETHER. I WOULD APPRECIATE YOUR HELP IN PROPERLY ORGANIZING FOR APPELLATE COURT PRESENTATION.

THANK YOU VERY MUCH



P.S. I WASN'T SURE WHERE CERTIFICATE OF SERVICE SHOULD BE ATTACHED? THANK

SIGNATURE AND DC#

DATE

9-22-05

FILED
COURT OF APPEALS
STATE OF WASHINGTON
SEP 22 9 11 AM '05

TO COURT

UNNOTARIZED OATH

I hereby declare, under penalty of perjury, pursuant to s92.525 Fla. Stat., that I have read the foregoing instrument, and that the facts and matters stated herein are true and correct.

9-22-05
Date

Mitchell Varnell

168302 M.B.
Zephyrhills Correctional Institution
2739 Gall Blvd.
Zephyrhills, Fl. 33541-9701

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded to the Office of ~~the~~ NIELSEN, BROMAN & KOCH PLLC at 1908 E. MADISON STREET,
SEATTLE, WASH. 98122, AND * by U.S. Mail this 22 of SEPT,
2005 ~~By~~ By PLACING IN THE HANDS OF INSTITUTIONAL MAIL
HANDLERS PER FL. RULES OF CRIMINAL PROCEDURE 9.420(a)(2).

Mitchell Varnell

*
SNODGRASS COUNTY COURTHOUSE
PROSECUTORS OFFICE
3000 ROCKEFELLER AVE.
EVERETT, WASH. 98201

PROVIDED TO ZEPHYRHILLS C.I.
ON 9-22-05 FOR MAILING.

Exhibit Listing

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SEARCHED
SERIALIZED
INDEXED
FILED
APR 11 2007
FBI - MEMPHIS

Exhibit # 1

(A)

Superior Court of the State of Washington for Snohomish County

JUDGES
GERALD L. KNIGHT
JOSEPH A. THIBODEAU
RICHARD J. THORPE
JAMES H. ALLENDOERFER
LARRY E. MC KEEMAN
RONALD L. CASTLEBERRY
THOMAS J. WYNNE
DAVID F. HULBERT
ANITA L. FARRIS
LINDA C. KRESE
CHARLES S. FRENCH
GEORGE N. BOWDEN
ELLEN J. FAIR
KENNETH L. COWSERT

SNOHOMISH COUNTY COURTHOUSE
M/S #502
3000 Rockefeller Avenue
Everett, WA 98201-4060
(425)388-3421 (425)388-3536

PRESIDING JUDGE
THOMAS J. WYNNE
COURT COMMISSIONERS
ARDEN J. BEDLE
LESTER H. STEWART
JACALYN D. BRUDVIK
TRACY G. WAGGONER

SUPERIOR COURT
AND
JUVENILE COURT
ADMINISTRATOR
RICHARD E. CARLSON

April 6, 2004

02-1-00390-1

John Stansell
Snohomish County Prosecutor's Office
3000 Rockefeller
Everett, WA 98201

John Muesnter
1111 3rd Ave Ste 2220
Seattle, WA
98101-3213

Dear Counsel:

Since the last hearing to the present date, the Court has received the following submissions directly from Mr. Varnell:

1. Letter dated 3/14/04 (10 pages)
- ✓ 2. Defendant's Supplemental Memorandum on Motion for New Trial dated 3/22/04 ✓
3. Supplementary Materials dated 3/25/04
4. Letter dated 3/30/04
- ✓ 5. Additional Information Per Reconsideration, New Trial dated 4/4/04 - refer letter to 4-16-04 material

The Court has also received letters on behalf of Mr. Varnell from the following persons: Diane Demarie, Dorothy Richardson, Renee Rondel and Roxanne Burkett.

To the extent the materials submitted by Mr. Varnell constitute a Motion for Reconsideration, the Court will rule on that motion at the sentencing hearing currently set for 1:00 p.m. on April 19th. Any motions to proceed pro se, substitute counsel, continue sentencing date, or withdraw as counsel of record will also be heard at that time. In addition, any other issues raised by Mr. Varnell since the date of the last hearing, will be addressed at that time. Unless the Court finds good cause to continue the sentencing, it will proceed as scheduled.

(A)

In order to be considered by the Court, any materials pertaining to the sentencing, motion for reconsideration, motion to proceed pro se, or any other matters, must be received by the Court no later than 12:00 noon on Friday, April 16, 2004. Any materials not received by that time will not be considered. To be deemed received by the court, a working copy must be delivered to court administration in Room 201 or my chambers by that time. Materials may be submitted by fax or e-mail. If materials are filed with the clerk by noon on April 16th, but a working copy is not provided to the court by the set deadline they will be deemed to be untimely and will not be considered by the court.

Sincerely,



Linda C. Krese
Judge
Snohomish County Superior Court

cc: Mitchell Varnell

Exhibit #2

IN FILE GUIDED

NO. 02-1-00390-1

STATE OF WASHINGTON,

PLAINTIFF,

MITCHELL VARNELL,

DEFENDANT.

DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION FOR NEW TRIAL.

MEDICAL / ATTORNEY / PSYCHIATRIST /
PSYCHOLOGIST INFORMATION AS ASKED FOR,
ADDITIONAL ATTACHMENTS, TRANSCRIPTS, ECT.

MEDICAL, ATTORNEY, PSYCHIATRIST, PSYCHOLOGIST. COVERSHEET, ATTACH/MMS 1-4. #

LETTERS TO MR. WHITE, 9-3, 12-4, 1-5, 1-12, 1-15, 1-27, 2-10, 3-1-03. ATTACH/5-20. #

LETTERS TO MR. CHAMBERLIN, 11-18, 12-3-02 IN WHICH COURT HAS, 6-9-03 "21-23 #

COMMUNICATION ATTEMPTS THROUGH COUNSELOR. 3-3-03 MEMO # 24

FEE AGREEMENT. RETENTION AGREEMENT. 9-9-02 MEMO. 1-6-03 MEMO.

3-6-03 MEMO. ALL FROM MR. WHITE. PROBLEMS. PHONE. # 25-36.

DEED OF TRUST. PROMISARY NOTE FROM MR. WHITE. P.O.P.S. POWER RETAINED. # 37-43. # 55-59

ABUSIVE BEHAVIOR. LIES. ATTORNEY CLIENT PRIVILEGE, MR. CHAMBERLIN. # 68-72.

12-20-02 LETTER TO JIM. 11-4-03 LETTER FROM MÜNSTER, COUNSEL. # 74-77

INFORMATION REQUESTS MR. CHAMBERLIN, MR. WHITE, NOTHING, TESTIMONY PER MEDS. # 78-80

TRANSCRIPT. "9-20-02". NUMEROUS CONFLICTS, PER OTHER INFORMATION. 21-PGS. # 81

TRANSCRIPT. "7-3-03". TRIAL CONTINUANCE EXCUSES. EXHIBIT G ATTACHED. 2-20-04, 2-21-04 # 85

TRANSCRIPT. "7-2-03". CONTINUANCE EXCUSES, WESTERN STATE. EXHIBIT H, # 89

TRANSCRIPT. "7-8-03" EXCERPT. WORK WITH ATTORNEYS AFTER THREATS. # 90

TRANSCRIPT. "7-8-03" 2ND EXCERPT. CONT DENIED. ARGUMENT. ATTACH/DECL-B. # 91-96

Exhibit # 3

I sent a letter on 8-21-02 in which I was up until 3:am to write to you.

on 8-24-02 I was told by Harvey that you would be here on Monday 8-26-02 as per you telling Harvey such.

You did not show up on Monday 8-26-02 as you said you would, and as I waited patiently for yet another example of your slowing of "Clear Communication".

As I had stated in my last letter, I had seen you in the courthouse on 8-1-02 Thursday in which you told me you would come over to see me the following day of Friday 8-2 or Saturday 8-3-02. That statement was made by you over eight weeks ago. No communication as usual. Now Harvey tells me on 8-31-02 that you didn't come see me as you said you would because you didn't like what I stated to you in the letter 8-21-02.

But still no reply. I wonder why no communication.

We need to resolve these issues of importance to me.

Harvey says you will right when you have time.

I'm not interested in excuses. You've wasted my time and money. No reply to my letters of concern is very neglectful and inconsiderate. I entrusted my life to you and you've failed me as a attorney and as my personal friend of Jesus. Explain this type of productiveness to our case. What has been done? You said you were working on my case this summer and that Kelly Smith was having a baby and that summer was a bad time for trials because everyone is on vacation and that's¹⁶ why the 10-25-02 Continuance

give back my monies and I'll hire a new attorney that would be in my best interest and not yours.

You have deceived me and lost my trust.

My monies are not gone and I don't understand why you said we needed moneys for an investigator when we had one for three months paying my bills until you let him go because you apparently decided to continue my trial.

* all the investigator did towards our trial was mail out two release forms to two doctors and then subpoena Dr Rices records, what did you do with the other release forms for the psychologists, Dr Weymuller, Johnson and the two attorneys?

You said the witnesses would be interviewed right away while everything was fresh in their heads. Now its the end of summer and you've lied to me, you and Harvey won't tell me anything that's been done.

You said you would help with signing my home sale papers. the papers were changed I didn't know it. I signed and the new owners didn't give my family the 30 days to take all my belongings off the property that was on the first papers.

I lost my Jeep project for my sons and approx forty thousand dollars worth of stuff that they refused to give me. Writs for monies released, guns, divorce attorney,

Deceived for six more months. what have you done towards freeing me from bondage?? mthh

Exhibit #4

QUESTIONS AND CONCERNS. I AM ~~EN~~ FILED TO CLEAR COMMUNICATION, IN WHICH I BELIEVE IS ESSENTIAL TO OUR RELATIONSHIP, THIS CASE, AND THE OTHER ISSUES SURROUNDING THIS CASE AND MY IMPRISONMENT. "ANSWERS THAT YOU HAVE". 1-12-03

THERE ARE MANY ISSUES IN WHICH WE WERE WORKING ON AS OF 11-8-02 WHICH ARE SPELLED OUT IN MY LETTERS TO YOU OF 10-25-02, 11-8-02, 11-10-02, 12-4-02 AND 15-03.

YOUR LETTER TO ME OF 1-6-03 WAS SENT PRIOR TO YOU RECEIVING MY 1-5-03 LETTER.

YOUR 1-6-03 LETTER DOES NOT COVER THESE ISSUES IN MY PREVIOUS LETTERS. NOR DID THE LETTER STATE ANYTHING ABOUT YOU USING INCOMPETENCE OR COMPETENCE AS YET ANOTHER EXCUSE TO CONTINUE THE TRIAL. WE BOTH KNOW THAT A DOCTOR-PSYCHIATRIST WAS SUPPOSED TO SEE ME MONTHS AGO, AND YET AFTER COMMITTING TO A 1-24-03 TRIAL DATE ON 10-24-02, NO DOCTOR SHOWS UP TO SEE ME RIGHT AWAY, BUT SHOWS UP WITH HARVEY THREE DAYS AFTER HARVEY WAS FIRED.

REGARDLESS, YOU COMMITED TO HELPING ME WITH MY MEDICAL ISSUES OF ~~PHYSICAL~~ PHYSICAL PROBLEMS CAUSING EMOTIONAL PROBLEMS. I AM BECOMING MORE PERMANANTLY DISABLED EVERY DAY I'M HERE, PHYSICALLY LEADING TO EMOTIONALLY. HARVEY AGREED 1-4-03 TO CONTACT THE MEDICAL AT MY REQUEST AS TO MAKE SURE I GOT MY MEDS BEFORE OUR HEARING FRI 1-10-03. I RITED MEDICAL THE NIGHT BEFORE AND HANDED IT TO NURSE STEELE WITH EXPLANATION AS SHE WAS TO BE THE MORNING NURSE AM FRI 1-10-03. I DID NOT GET MY MEDS, HARVEY ADMITTED HE DIDNT CALL MEDICAL PRIOR-

1-12-03

THE EMOTIONAL DISTRESS I WAS SUFFERING FROM, WAS CAUSED BY SEVERE LOW BACK PAIN, FROM STANDING SHOULDER TO SHOULDER IN TWO DIFFERENT HOLDING CELLS FOR APROX TWO HOURS WITH NO WAY TO SIT, STRETCH OR EXERCISE MY BACK AS TO KEEP ~~INFLAMING~~ MY LOW BACK FROM HURTING TO SEVERITY, AND NOT HAVING MY MEDICATIONS CAUSED ME PAIN THAT BROUGHT ME TO TEARS.

MR WHITE, YOU HAVE KNOWN ABOUT MY PHYSICAL AND EMOTIONAL PROBLEMS SINCE BEFORE MY ARREST AND CERTAINLY AFTER. FOR ELEVEN MONTHS YOU DID NOTHING TO HELP ME WITH MY MEDICAL PROBLEMS. THERE WERE TWO DOCUMENTED HEARINGS FOR MEDICAL CONCERNS, CANCELLED - WHY?

I TOLD BOTH YOU AND HARVEY ABOUT THE SCAR TISSUE IN MY BACK, WHICH CONTINUES TO SPREAD IF NOT TREATED, AND CAUSES ONLY ONE THING. SEVERE PAIN - DISSABLING PAIN AS WELL DOCUMENTED IN MY NUMEROUS KITES AND GRIEVES TO THIS JAIL MEDICAL STAFF.

I HAVE SUFFERED CRUEL AND UNUSUAL PUNISHMENT FROM NOT GETTING ANY MEDICAL HELP FOR MY SERIOUS AILMENTS ALL OF WHICH YOU HAVE BEEN AWARE OF AND DONE NOTHING. NOW THAT MY BACK PAIN IS CRIPPLING ME AND WITH THE PAIN, COMES THE UNCONTROLLABLE FRUSTRATION, CONFUSION AND ANGER, BUT YET YOU GET MAD AT ME BECAUSE YOU ARE APPARENTLY NOT CARING OF MY EMOTIONAL STATE ^{AND PAIN} AND ~~WHEN~~, WHEN I TRY TO WRITE YOU A LETTER. I AM NOT DIRECTLY MAD AT YOU. I AM MAD AT THE ENTIRE SITUATION AND MY FEELING OF HELPLESSNESS AS TO THE OBVIOUSNESS OF HOW THIS CASE KEEPS BEING DRAG OUT, THE NEED TO TELL KAREN AND MY SONS THE LOVE I HAVE FOR THEM. WHY DID YOU TELL ME I WAS GOING TO BE ABLE TO CORRESPOND?

~~DO YOU HAVE ANY IDEA WHAT THAT WAS~~
 THAT I WAS GOING TO BE ABLE TO MAYBE SEE MY ~~SONS~~ I GAVE
 YOU ALL OF THOSE SPECIAL THINGS FOR MY ~~SONS~~ DRAWINGS, LETTERS,
 NEWS PAPER CLIPPINGS AND CARDS. YOU SAID THEY WOULD GET THEM.
 WHY ELSE WOULD I HAVE GIVEN THEM TO YOU. YOU EVEN SAID
 THAT KAREN AND I MIGHT BE ABLE TO TALK AND THAT YOU
 WERE SETTING THESE THINGS UP WITH CORY AND STANSEL.
WHERE ARE ALL THE THINGS FOR MY SONS? AND WHY AM I ^{NOT} ~~NOT~~
SEEING THEM? THE ALIENATION THAT KAREN IS DOING IS NOT
 RIGHT. NO CHRISTMAS CARD - NOTHING. YOU HAD GAVE ME HOPE
 OF WHAT WAS RIGHT, TO SEE MY SONS AND TO TELL KAREN THAT
 I'M SORRY FOR THE HARDSHIPS IN THE PAST AND THAT I'M NOT MAD
 OR ANGRY WITH HER AND THAT I STILL LOVE HER AND BELIEVE
 OUR FAMILY CAN PASS THIS TEST AND GO ON AND BE HAPPY AND
 WITHOUT ANGER IN THE FUTURE. TO JUST PUT THE PAST BEHIND
 US AND GO FORWARD. I DON'T WANT TO LIVE IN THE PAST AND I
 KNOW IF KAREN CAN FIND GOD, SHE WILL QUIT DWELLING ON
 THE PAST, REMEMBER ALL THE GOOD AND GO FORWARD WITH
 A NEW BEGINNING AND A NEW LEADER, "GOD". WHY ~~FAIL~~ WHEN
 WE CAN SUCCEED. _{FAIL}

I WANT A LIE DETECTOR TEST FOR ME. "DID I INTEND TO KILL OR
 HAVE KAREN KILLED"? PYOTT, LIE DETECTOR. YOU HEARD STANSEL.
 THEY THINK PYOTT AND I WERE UP TO NO GOOD, SO THEY'LL USE THAT TO ^{WIN IN} ~~WIN~~
 COURT.

I WANT MY LETTERS ^{ANSWERED} ~~ANSWERED~~. I WANT TO FINISH THE THINGS
 YOU SAID YOU WOULD DO. BOYS, KAREN PYOTT, MEDICAL, DIET, HERC,
 SUPPORT HEARING?, SMITH WRIT MONIES, "WRIT OF EXECUTION DEC 9TH PER
 KAREN-1503 LETTER/CAR-TRUCK TAKEN, ²² ~~NON~~ CAN THAT BE LEGAL? SMITHS ALREADY HAD

Exhibit #5

FAX

Snohomish County Superior Court
Snohomish County Courthouse
M/S 502; 3000 Rockefeller
Everett, WA 98201 - 4060

Date 3-19-04

Number of pages including cover sheet 7

TO:

JOHN MURPHY

Phone: _____

Fax Phone: 206-855-1027

CC: _____

FROM:

MICHAEL JAY
COURT REPORTER

Phone: (425) 388-3421

Fax Phone: (425) 388-3498

FYI Urgent For your review Reply ASAP Please comment

VARNELL TRANSCRIPT 6-10-02

1 EVERETT, WASHINGTON, MONDAY, JUNE 10, 2002

2 AFTERNOON SESSION

3 --oo0oo--

4
03:15:52 5 MR. STANSELL: Your Honor, State v. Mitchell
03:15:54 6 Varnell is ready.

03:16:00 7 Your Honor, John Stansell for the State on two
03:16:04 8 matters, 02-1-00390-1 and 02-1-00385-5. Mr. White
03:16:14 9 representing Mr. Varnell. He's present in custody.

03:16:16 10 I would hand forward at this time an order on
03:16:19 11 motion declaring Mr. Varnell competent to stand trial.
03:16:25 12 Has the court had an opportunity to read the Western
03:16:28 13 State evaluation?

03:16:29 14 THE COURT: Yes, I have. Mr. White, for purposes
03:16:34 15 of determining competency, is there anything else that
03:16:38 16 you wish to put on the record or for the court to
03:16:42 17 consider?

03:16:44 18 MR. WHITE: Your Honor, in regard to the
03:16:44 19 evaluation, it is what it is at this point. We've
03:16:48 20 discussed with Mr. Stansell the prospects of having an
03:16:51 21 independent evaluator come in at Mr. Varnell's expense to
03:16:56 22 supplement that, and I believe we're in agreement that if
03:17:01 23 something new be should produced as a consequence, we'll
03:17:04 24 revisit that issue. Other than that, I believe the order
03:17:08 25 can be signed as it is.

COLLOQUY

03:17:13 1 MR. STANSELL: That's all correct, Your Honor.

03:17:13 2 THE COURT: Mr. Varnell, you understand for
03:17:14 3 purposes of today's hearing there are a number of things
03:17:16 4 being considered. The first is the consideration of
03:17:20 5 whether you are competent to testify -- to stand trial on
03:17:25 6 these charges, and based on the report that has been
03:17:30 7 submitted, a copy of which will be admitted into the
03:17:34 8 court file, obviously the forensic experts who examined
03:17:40 9 you pursuant to the court order would opine that you are
03:17:43 10 competent.

03:17:44 11 Do you understand?

03:17:45 12 THE DEFENDANT: Yes.

03:17:45 13 THE COURT: And you also understand that you
03:17:49 14 would have a right at a competency proceeding to present
03:17:53 15 evidence on your own behalf. You'd be able to see and
03:17:56 16 confront witnesses. You'd be able to present your own
03:18:00 17 experts. You'd be able to testify yourself. But as
03:18:04 18 Mr. White has indicated at this point in time, the only
03:18:08 19 thing the court is being asked to consider is this
03:18:12 20 report.

03:18:13 21 Do you understand?

03:18:14 22 THE DEFENDANT: Yes.

03:18:14 23 THE COURT: All right. Very well. For purposes
03:18:20 24 of the record, I have read the report and it is
03:18:23 25 abundantly clear based upon that report that the

COLLOQUY

03:18:26 1 defendant is competent and, therefore, I would sign the
03:18:30 2 order to that effect.

03:18:34 3 I've also been handed two different agreed trial
03:18:41 4 continuances on both cause numbers. And Mr. White, have
03:18:43 5 you reviewed this with your client?

03:18:45 6 MR. WHITE: I have, Your Honor. He's just asked
03:18:49 7 me a question.

03:18:49 8 THE COURT: Okay.

03:19:04 9 MR. WHITE: Your Honor, on the issue of
03:19:06 10 continuance, I've gone through this with Mr. Varnell and
03:19:08 11 that question did not involve that issue.

03:19:11 12 THE COURT: Mr. Varnell, I've been handed two
03:19:14 13 agreed trial continuances. Did you read these over?

03:19:19 14 THE DEFENDANT: Yes.

03:19:19 15 THE COURT: Did you understand them?

03:19:21 16 THE DEFENDANT: Yes.

03:19:23 17 THE COURT: Do you know that you're being asked
03:19:24 18 to waive or give up your right to a speedy trial in both
03:19:28 19 of these cases until the 15th of November?

03:19:37 20 (Discussion at counsel table.)

03:19:45 21 THE DEFENDANT: Yes, I understand.

03:19:48 22 THE COURT: Are you doing this freely and
03:19:49 23 voluntarily?

03:19:50 24 THE DEFENDANT: Yes.

03:19:50 25 THE COURT: Have any promises or threats been

COLLOQUY

03:19:53 1 done to get you to do this?

03:19:55 2 THE DEFENDANT: No.

03:19:55 3 THE COURT: Counsel, why is the continuance being
03:19:59 4 requested?

03:19:59 5 MR. STANSELL: Two reasons, Your Honor. One on
03:20:01 6 the defense side. Trial preparation in addition to the
03:20:08 7 discovery, which I think is well over a thousand pages,
03:20:13 8 there are some mental issues that I know Mr. Chamberlin
03:20:16 9 and Mr. White have had difficulty getting the reports,
03:20:19 10 and I think that difficulty is still ongoing.

03:20:23 11 The other reason from the State's perspective is
03:20:24 12 one of the State's witnesses in the 385-5 case is due to
03:20:31 13 deliver a child at the end of September, so we were
03:20:34 14 hoping at the end of October would be the appropriate
03:20:38 15 time for both sides. So that's the reason for the
03:20:41 16 continuance.

03:20:42 17 MR. WHITE: I agree with that.

03:20:43 18 THE COURT: All right. I'll find good cause for
03:20:45 19 the continuance. I'll find that the agreed trial
03:20:48 20 continuances are knowingly, voluntarily, intelligently
03:20:52 21 entered into. Therefore, I will approve the same.

03:20:56 22 MR. STANSELL: Thank you, Your Honor.

03:20:58 23

03:20:58 24

03:20:58 25

--oo00oo--

COLLOQUY

Exhibit # 6

6

Law Office of
James L. White

Tel (425) 774-9378
Fax (425) 774-0602

September 9, 2002

TO: Mitchell Varnell
From: Jim White

Dear Mitchell:

Bad Business Deal
Working Without Compensation
DET TITIAL-WITNESSES
DRS INTERVIEWED

As we discussed before you ever retained us for this case, Harvey is to be and has been your primary source of contact at the jail. We discussed that his office is a short walk to the courthouse while mine 45 minutes to an hour away (one way) depending on the traffic. Despite that agreement, I have spent more hours with you at the jail than I have ever spent with any other client in 18 years. I have seen you more 15 times with an average of 4 hours per visit. Some visits have been more than 5 hours. I have seen you on weekends, holidays and late at night. The jail visits alone equate to \$15,000 in billable hours. I have spent countless hours reviewing the hundreds of pages of discovery and will spend many more as trial preparation continues. My standard fee for a day of trial is \$3000 which accounts for 10 hours of work (a typical trial day) at my hourly trial rate of \$300. I expect your trial to be at least 10 days (\$30,000). This may seem extraordinary to you but many firms bill at a significantly higher rate. Check Short Cressman's rates for example.

In addition to the criminal representation, I have represented you in the civil suit Smiths filed based upon the alleged burglary and I am representing you in the support modification case (Motion to vacate Writ of Attachment hearing scheduled for 9/24; trial date in late October) as well as in the effort to get you access to your children through letters or personal visits (I expect written and/or personal visits within the next two weeks or sooner.) Additionally, I have assisted you in a myriad of personal matters all beyond the scope of our agreement.

Harvey has spent more time with you than any lawyer could ever be expected to spend with a client. Add it up and multiply by \$250-\$300 per hour (I am not sure of Harvey's hourly rate.) The ridiculous part of this is that both Harvey and I learned everything we needed to know from you regarding the criminal case and how to defend it in probably 10 hours. We do not need to meet with you for your defense, we choose to meet with you. We do so because we know that it helps you and you feel better for it. You have told us just that. We listen to you and talk to you because Harvey and I are compassionate human beings. As a result, I and I expect Harvey, have already put so many hours into this case that everything from now through trial will essentially be without compensation.

When we took on your case, Harvey and I discussed the fee and were reluctant to take it because we believe the case would take more time than we would be paid for. As a business owner, you know that overhead costs are ongoing, taxes and wages all come before the owner takes home

9-9-02
10-25-02
1-24-03
6-6-03
7-7-03?
TRIALS

ALREADY PAID 60,000.00
AFTER ASKED FOR 10,000.00
MORE PER RETENTION
AGREEMENT 2-28-02 FOR

a dime. Taking this case was a bad business decision. That being said, we have never considered withdrawing or providing you with less than our very best efforts. We both, in our own ways, have invested a lot into this case and want nothing more than to win. I think we have developed a personal relationship . . . the kind which comes from working through great adversity together. I do not believe that anything that has happened to you is fair or right. But we have gone over that time and again. What we have to do now is to minimize your damage. Nothing will bring back the lost time with your sons or your lost personal freedom. Based upon your recent correspondence, I know you find it hard to accept but Harvey and I do truly hurt for you. If we did not, we both would have found a way out of this case long ago. If you want me or Harvey out now, that is your choice. I would be sorry to leave before the work is done as I believe Harvey would, but we have both earned what we have been paid and our work would simply go on with other clients. I think such a decision would be against your best interests.

LETTERS - RESPONSE?
"Your recent accusations that we have treated you unfairly ["and I though I got screwed by my divorce attorneys"] along with the other 6 pages of accusations and innuendos was uncalled for. Your frustration about not seeing me rather than Harvey is not going to change. I must spend available time working on the trial presentation and not sitting with you talking. If and when I need to speak with you directly you will know it because I will be there and we will talk. Also, you should not expect Harvey to be there as often as he has been since I expect he also will be emphasizing trial preparation.

More than once we have talked about the only plausible defense theory, the "hero" theory, as Harvey coined it. If you are going to reject that we need to know now. But be advised, however, nothing else is reasonably plausible.

LETTERS BY I GAVE 3-30-83
The writ should be vacated within the next two weeks and cash will be available to your defense. We have contacted the psychological and psychiatric witnesses whom we have previously discussed with you. (I/we have talked with other witnesses and made other plans which I will not discuss in a letter which can be read by others.) Harvey can keep you updated as his schedule allows but do not expect to have him come in with a simple clear answer to any of your questions. There are no simple clear answers and with each new fact we discover or new thoughts we have, old facts we thought were correct or old thoughts we may have had will often change. *

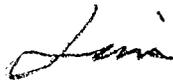
You have said more than once that you have place you life in our hands and that you have to trust us. This is not the time for you to start doubting those decisions. Regardless of your anxieties, you need to decide to either trust us and follow our advice . . . or not. This is true regardless of whether we meet twenty more times or once more. If we are not meeting, you must trust that we are nevertheless working for you with your best interests in mind. If you cannot do that, you will have no peace and we will be ineffective as your attorneys. You are not going to know everything that is happening all the time, regardless of whether that is your right. There are simply not enough hours in the day to service that need.

I will deliver a declaration to you for signature in the next few days related to the Writ motion. I will also need you to review some documents regarding the modification trial. And finally, I hope to have an agreed order regarding access to the children within the next several days.

It is likely that I will deliver these through Harvey or the mail since a 30 minute meeting with you takes three hours for me when travel and getting in and out of the visiting room is calculated. Given yours and other cases, I do not have that much time to give this month to just get signatures.

We may have some time to talk on Friday at the motion hearing. It would be helpful if you could have a list of questions available if you have them as our time will be very limited as it always is.

Very truly yours,



JAMES L. WHITE

Exhibit #7

(124)

FILED

2002 OCT 28 PM 2:40

COURT CLERK
SUPERIOR COURT
SNOHOMISH

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

STATE OF WASHINGTON

Plaintiff,

vs.

MITCHELL LEE VARNELL,

Defendant.

NO. 02-1-00390-1

MOTION AND DECLARATION FOR
ORDER AUTHORIZING EXPERT
SERVICES AT PUBLIC EXPENSE

MOTION

COMES NOW the defendant, by and through his attorney of record, James L. White, pursuant to CrR 3.1(f), and moves the court for an order authorizing expert services at public expense. This motion is based upon the files and records herein and the declaration of counsel appended hereto.

DATED this 23rd day of October, 2002


JAMES L. WHITE
Attorney for Respondent
WSBA #14132

MOTION AND DECLARATION FOR
ORDER AUTHORIZING EXPERT
SERVICES AT PUBLIC EXPENSE - 1

JAMES L. WHITE
ATTORNEY AT LAW
110 Main Street, Suite 103
Edmonds, WA 98020
Tel (425) 774-9378
Fax (425) 774-0602

ORIGINAL 35



1 **DECLARATION**

2 I, James L. White, attorney for defendant herein states under penalty of perjury
3 under the laws of the State of Washington that the following is correct and true to the best
4 of my knowledge and belief.

5 I am over the age of eighteen, not an interested party in this matter, competent to
6 be a witness herein and have personal knowledge of the facts set forth in this declaration.

7 I have reviewed the discovery in this and related matters. The documentary
8 evidence exceeds 1000 pages. The information alleges five counts of solicitation to
9 commit first degree murder. A concurrent charge in this court (02-1-00386-5) alleges
10 residential burglary. Defendant faces a standard sentencing range in excess of 100 years
11 If convicted as charged. More than twenty witnesses are expected to testify at trial.
12 Defendant has been under the treatment of a psychiatrist for the past several years.

13 Defense counsel has discussed this matter with August Piper, a psychiatrist as well
14 as Rose Winquest, a private investigator. Based upon my discussions with each of these
15 professionals, I believe the following services are necessary to ensure adequate
16 preparation of this case.

17	Dr. Piper	Review of medical records; meeting with defendant; trial preparation.	\$ 5,000
18			
19	Winquest	Review of discovery; interview witnesses; Seek additional evidence as directed.	\$10,000
20			

21 Defendant had substantial funds and property when this case was initially filed. His
22 remaining funds are currently the subject of a writ of attachment under Snohomish County
23 Cause number 00-3-02449-7. That writ was challenged unsuccessfully on October 18,
24 2002. At this time, defendant has no funds with which to hire any investigative or expert
25 services. *FALSE STATEMENT*

26
27 **MOTION AND DECLARATION FOR**
28 **ORDER AUTHORIZING EXPERT**
SERVICES AT PUBLIC EXPENSE - 2

JAMES L. WHITE
ATTORNEY AT LAW
110 Main Street, Suite 103
Edmonds, WA 98020
Tel (425) 774-9378
Fax (425) 774-0602

1 I request that the court authorize \$15,000 to be expended for investigative and
2 expert services in this matter.

3 DATED this 23rd day of October, 2002.

4
5 
6 **JAMES L. WHITE**
7 Attorney for Defendant
8 WSBA #14132

9
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26
27 **MOTION AND DECLARATION FOR**
28 **ORDER AUTHORIZING EXPERT**
SERVICES AT PUBLIC EXPENSE - 3

JAMES L. WHITE
ATTORNEY AT LAW
110 Main Street, Suite 103
Edmonds, WA 98020
Tel (425) 774-9378
Fax (425) 774-0602

124

Superior Court of the State of Washington
for Snohomish County

RICHARD J. THORPE
JUDGE

SNOHOMISH COUNTY COURTHOUSE
M/S #502
3000 Rockefeller Avenue
Everett, WA 98201-4060
(425) 388-3421 (425)388-3536

DEPT. 8
(425) 388-3408
Fax: (425)388-3714
Richard.Thorpe@co.snohomish.wa.us

October 29, 2002

Reviewed by Judge.
Please file.

James L. White
Attorney at Law
110 Main St. Suite. 103
Edmonds, WA 98020

Re: State v. Varnell

No. 02 1 00390 1

Dear Mr. White:

I have reviewed the Motion and Declaration for Order Authorizing Expert Services at Public Expense.

Given the information contained in the Affidavit of Probable Cause concerning evidence of substantial cash assets, and the findings that have been made by two different judges in his dissolution case, I cannot grant the motion supported only by your attached Declaration.

To grant the motion, we would need testimony from Mr. Varnell, under oath, sufficient to persuade me that he does not have the funds or access to the funds needed to secure the services you request.

Yours very truly

Richard J. Thorpe

FILED

02 OCT 30 PM 3:56

PAUL J. CLERY
COUNTY CLERK
SNOHOMISH CO. WASH.

dlb

Exhibit # 8

Subj: **Re: Mitchell Varnell**
Date: 3/19/2004 9:24:46 PM Pacific Standard Time
From: swest54321@yahoo.com
To: Greenroxpls@aol.com
CC: jmkk1613@aol.com

The transcript is on an ASCII disk. Just click on it to open. Please confirm you received it. I will be out of town from early Saturday until Sunday night.

Sharon

Greenroxpls@aol.com wrote:

Thank you so much for working with our deadline . I really appreciate it. I didn't understand what kind of email it is. So if I need a specific application to open it , could you give me instructions? Also an address or instructons for payment. Thank you again,

Roxanne Burkett

Do you Yahoo!?
Yahoo! Finance Tax Center - File online. File on time.

1

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

2 _____

3)
3 THE STATE OF WASHINGTON)

4 Plaintiff,) No. 02-1-00390-1

5 Vs.,)

6 MITCHELL VARNELL,)

7 Defendant.)

8 _____

9 VERBATIM REPORT OF PROCEEDINGS

10 _____

11 THE HONORABLE GERALD L. KNIGHT, JUDGE

12 October 24, 2002
Snohomish County Courthouse

13

14 APPEARANCES:

15 For The Plaintiff: JOHN STANSELL
16 Snohomish County Deputy Prosecuting
Everett, Washington

17
18 For The Defendant: JAMES WHITE
Attorney at Law
Edmonds, Washington

19

20

21 SHARON L. WESTLING, RMR
22 Official Court Reporter
License Number 2301
425 388 3785

23

24

25

2

1 THE COURT: Do we have the last two in-custody
2 matters?

3 MR. STANSELL: I believe we do. The Varnell
4 matter, I believe, is ready. That is cause number
5 02-1-00390-1. John Stansell for the State. Jim
6 White representing Mr. Varnell. He is present, he
7 is in custody, on for agreed trial continuance.
8 Trial on each matter is set for tomorrow. The
9 parties are asking the matter be carried until the
10 24th of January. Speedy trial waived until February
11 10. I know Mr. Chamberlin at least did have a
12 conflict with today's date, but it's also my
13 understanding that the defendant does need more time

Monday, March 22, 2004 America Online: JMKK1613

14 to prepare. We keep hearing about expert witnesses;
15 I don't think they have had an opportunity to obtain
16 those yet, and that is the reason for the
17 continuance.

18 THE COURT: And you're not opposed to it?

19 MR. STANSELL: No, Your Honor. I've contacted
20 the victim's family members, they're not pleased
21 with it, but they understand the reason for it and
22 the reasons behind it, and there is not an
23 objection. I think that that may change if there is
24 an additional request in January.

25 Your Honor, I also am going to hand up two

3

1 agreed motions on each cause number. Mr. Chamberlin
2 sometime ago presented me with an order that
3 basically prohibited any mail from Mr. Varnell
4 whatsoever, indicated to me, don't ask, I didn't, I
5 signed it. And now Mr. White is indicating they
6 wish to rescind that earlier order. I believe it's
7 clear on the order that the defendant is not to mail
8 or contact any of the State's listed witnesses, and
9 particularly his ex-wife. He's been told not to
10 contact her, and I believe he understands that that
11 prohibition is still in he effect. But I think
12 Mr. Varnell has other matters he wishes to attend

13 to, and this order will allow him to do that.

14 THE COURT: Mr. White.

15 MR. WHITE: For the record, Jim White appearing

16 with Mr. Varnell, who's present in court today.

17 Essentially what Mr. Stansell says is correct. The

18 issue regarding continuance had to do with --

19 Mr. Varnell has funds which have been tied up in a

20 civil proceeding. It now appears that they will not

21 be coming back to Mr. Varnell, so we'll be seeking

22 public funds for experts. There has been a motion

23 presented I believe to Judge Thorpe today on that.

24 So that's the necessity for continuance. We do

25 anticipate going to trial as scheduled in January.

4

1 Mr. Varnell has indicated to me that he himself

2 would object to any further continuance. So it's

3 not as if there is an option, I think.

4 THE COURT: Sir, you're agreeing to have your

5 trial continued?

6 MR. VARNELL: Yes, sir.

7 THE COURT: And you're doing this of your own

8 free will and choosing?

9 MR. VARNELL: Yes, sir.

10 THE COURT: Anybody made any threats or promises

11 to you to cause you to do so?

12 MR. VARNELL: No, other than it's my

13 understanding my attorneys will work continuously
14 from now until trial to prepare for my trial as
15 such.

16 THE COURT: I don't know about continuously.
17 Taken literally, that would mean 24 hours a day.
18 But I'm finding you're doing this of your own free
19 will and choosing, and with your agreement, your
20 trial date is now continued to the 24th.

21 MR. VARNELL: Okay.

22 THE COURT: That concludes this matter.

23 (End of the hearing.)

24

25

Exhibit #9

FROM MARSHALL VASQUEZ

ORIGINAL WHITE

TO JUDGE THORPE

SOLICITATION 02-1-00390-1

COPY YELLOW, PG 1

Reviewed by Judge.

DATE 2-10-03

MR THORPE. **LETTERS NO RESPONSE. NUMEROUS PH CALLS = NO RESPONSE?** Please file.

PER 1-24-03 **HEARING 3:49** I'VE BEEN IN 'LAW' FOR 12 MONTHS? PROBLEMS.

I WAS ASKED BY **MARNELS COURT CLERK SNOHOMISH CO. WASH** MR WHITE TO ACT A CERTAIN WAY FOR THE WESTERN STATES WITH A ACTING GAME TO SEEK AN EVALUATION FOR HIS PURPOSE.

ALTHOUGH I DO HAVE SOME EMOTIONAL PROBLEMS AT TIMES, MOST OF MY ANXIETY HAS BEEN A RESULT OF MY ATTORNEYS NOT DOING WHAT THEY HAVE STATED THEY WOULD DO AS TO REPRESENT ME FOR WHATS IN MY BEST INTEREST, NOT THEIRS. WHILE MR WHITE CLAIMS WE ARE NOT READY FOR TRIAL, USING ME AS A PROBLEM AND DR PIPER NOT BEING READY AS HE WAS NOT EVEN INTRODUCED TO ME UNTIL 12-6-02 THREE DAYS AFTER I HAD FIRED MR. CHAMBERLAIN, **"HE IS FIRED. NOT ACKNOWLEDGED?"**

WHAT MR. WHITE FAILED TO TELL THE COURT, IS THAT REGARDLESS OF MY HEAD PAIN AND CONFUSION IN WHICH I'M BEING TREATED FOR A BAD SINUS INFECTION PER 1-22 CT SCAN OF SINUSES, AND DR. PIPER SUPPOSEDLY NEEDING MORE TIME, IS THAT MR. WHITE NOR MR. CHAMBERLAIN HAD INTERVIEWED ANY WITNESSES OR EVEN HAD A PRIVATE INVESTIGATOR ON BOARD, AS OF THE PROPOSED 1-24-03 TRIAL DATE IN WHICH MR. WHITE AND MR. STANSEL ASSURED THE COURT ON 10-24-02 THAT WE WOULD BE READY FOR TRIAL 1-24-03. I MADE A BRIEF STATEMENT AT THAT HEARING AS TO MR. WHITE PROMISING ME THAT HARVEY AND HIMSELF WOULD BE READY WITH NO FURTHER DELAYS.

I HAVE BEEN USED AS A SCAP GOAT FOR THREE TRIAL CONTINUANCES. JUNE 21ST? OCT 25TH-02 THAT I DIDN'T HAVE ANY MONIES. WRONG! JAN 24TH-03 A COMPETENCE ISSUE, NO MEDICATION AND A SINUS INFECTION. THE FACT IS ⁴⁶ THEY AREN'T READY AT ALL. ?

Exhibit #10

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.	)	Cause No. 02-1-00390-1
)	
MITCHELL LEE VARNELL,)	
)	
Defendant.)	
)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on 14th day of February,
2003, the above-entitled and numbered cause came on
for hearing before JUDGE RICHARD JOSEPH THORPE,
Snohomish County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Plaintiff: JOHN STANSELL

For the Defendant: JAMES WHITE and
HARVEY CHAMBERLIN

REPORTED BY:
DIANA NISHIMOTO, OFFICIAL COURT REPORTER
SNOHOMISH COUNTY COURTHOUSE
3000 EVERETT, WA 98201
PHONE (425)388-3281
CSR. 3222

COPY

1 MR. STANSELL: Good afternoon, your Honor. We are
2 here on two matters, both of them State vs. Lee
3 Varnell, number 02-1-00390-1 and 02-1-00385-5. John
4 Stansell for the State. Mr. White and Mr. Chamberlin
5 are here for Mr. Varnell. He is present, he is in
6 custody.

7 We come on after the Court did sign an order that
8 did order Western State to evaluate Mr. Varnell for
9 competency. There is a report that was issued dated
10 February 6th, 2003 by Dr. Finch of Western State
11 Hospital. Has the Court had an opportunity read to
12 review that report?

13 THE COURT: Yes.

14 MR. STANSELL: The report pretty much speaks for
15 itself. I would ask the Court to sign orders finding
16 Mr. Varnell competent under both cause numbers at this
17 time.

18 THE COURT: Any objection?

19 MR. WHITE: For the record, I do object. I think
20 the description of the interview is precisely the
21 reason we requested the evaluation to begin with. The
22 conclusion following the interview was that it was
23 fabricated or fake. If so, frankly it has been for
24 the last year. So I think the -- while I understand
25 the conclusion and likely outcome of this hearing, I

1 object to the Court signing the order.

2 THE COURT: All right. Well, I'm satisfied from
3 this report that Mr. Varnell is competent. And if he
4 chooses to not cooperate with you, it's not by any
5 reason of any mental defect or anything of that
6 nature. It's just because he chooses to do that for
7 some reason known only to himself to date. I will
8 sign the orders.

9 MR. STANSELL: Your Honor, what that brings us next
10 to is the setting of a trial date at this time. By my
11 calculation, the speedy trial time period would expire
12 on March 3rd.

13 We have two cases. There is no way that, given the
14 nature of the cases, that they can be joined at this
15 point and I will not request that they be joined. I'm
16 going to ask that one be set for the 21st of February,
17 and I guess I'm going to request that be 385-5, which
18 is the residential burglary, that be set for the 21st.
19 The other one, the 390-1 be set for the 28th of
20 February unless there is a waiver of speedy trial and
21 a date beyond the current speedy trial time period of
22 -- or expiration of the third of March that is signed
23 to or agreed by the parties.

24 THE COURT: Any objection to those dates?

25 MR. WHITE: First of all, I want to enter an

1 objection to the order in which the cases are tried.
2 'It would be my request that cause number ending 390-1
3 be tried first and 385-5 be tried second. I think
4 there is probably obvious reasons for both requests.
5 It is a Residential Burglary, it is inconsequential
6 relatively speaking to the five counts of Solicitation
7 to Commit First Degree Murder. I believe that if the
8 primary charge results in a conviction, it would be
9 dispositive either way of the second residential
10 burglary charge. On the other hand, if the
11 Residential Burglary charge is charged, it is
12 certainly not dispositive of, in any way of the
13 second, of the solicitation charges.

14 So I believe that if the solicitation charges are
15 tried first, it will -- there is a possibility that
16 it's dispositive of the second case.

17 THE COURT: How would the solicitation charge be
18 dispositive of the burglary?

19 MR. WHITE: Because if Mr. Varnell is convicted on
20 the solicitation charges, he will, by standard range,
21 serve the rest of his life in prison. It's unlikely
22 that he will fight the burglary charge at that point.

23 THE COURT: How long will the solicitation charge
24 take to try?

25 MR. STANSELL: I'm going to say six days, perhaps

1 five.

2 And I may get the -- the cart before the horse at
3 this point. I don't know if defense is ready to go by
4 the 28th or by the 21st, but I'm up against speedy
5 trial at this point. We haven't discussed trial
6 dates. I would prefer something beyond that, but
7 certainly if I need to go before the expiration of
8 speedy trial I can.

9 I'm requesting the burglary case go first, because
10 I can insure that that's going to take less than a
11 week, I can get that done and then start the second
12 case on time, as opposed to the other way around. If
13 I start the solicitation case, then I am not sure if I
14 will be able to start the second case before the
15 expiration of speedy trial time period.

16 MR. WHITE: Well, in regard to the trial dates, it
17 is -- as the Court knows, we have Dr. Piper working on
18 his evaluation and is preparing for testimony as well.
19 He is not done and he won't be done until the middle
20 part of March, that's been previously discussed. And
21 until then we can not even be prepared to state what
22 an appropriate trial date would be.

23 I would be looking at a date toward the first part
24 of June as more practical. And that ultimately would
25 be my request.

1 THE COURT: That's on which case, solicitation?

2 MR. WHITE: Both matters. Again, I think one is
3 essentially dispositive of the other.

4 THE COURT: If --

5 MR. WHITE: And again, noting our challenge to the
6 Court's previous order, Dr. Piper, I think, may have
7 additional information to provide there. It is one of
8 the purposes for which he was retained. So I wouldn't
9 be comfortable -- I would prefer not to go forward in
10 trial in any case until that report comes in, because
11 on the chance that it is contrary to Western State's
12 evaluation and the Court finds it to be superiorly
13 credible on the issue of competency, we wouldn't have
14 wasted the effort of trial entirely at that point.

15 So I would like to see at least that come in. And
16 once that comes in, then there are other aspects of
17 the case that we would likely look at. So I would be
18 seeking a date in early June.

19 THE COURT: Would you prefer that we recess for a
20 few minutes, so you can converse with your client?

21 MR. WHITE: Yes.

22 THE COURT: We will be in recess for a few
23 minutes.

24 (Recess taken.)

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THE COURT: Counsel?

MR. WHITE: Well, your Honor, there are issues Mr. Varnell wants to raise to your Honor. I think there are issues which involve our continued representation of Mr. Varnell.

I received a letter today that I've never seen before, suggesting I did things that I would disagree with. And with regard to the representation of Mr. Varnell, and I think these issues need to be voiced before Mr. Varnell is put to the task of making a decision of do you want to waive your speedy trial rights? He indicated he is prepared to go to trial next week, but not with me. And at the same time he says that wouldn't make any sense, I need to go to trial later on. But I am not sure if that's with Mr. Chamberlin or I or not.

I think what it boils down to is I think we need to have a brief discussion with your Honor in camera on some of these confidential representation issues that Mr. Varnell has raised.

THE DEFENDANT: I don't believe it needs to be confidential, your Honor.

MR. WHITE: Well, if there are discussions that have been had between Mr. Varnell and his attorneys I believe they are confidential and to make them public

1 would essentially create a waiver of the
2 confidentiality that he has with his attorneys.

3 So I understand he doesn't mind saying things he
4 says, he wants to say to whoever wants to listen. But
5 I have an issue with the legal ramifications of that.

6 THE COURT: You understand, Mr. Varnell, anything
7 that your attorneys have told you is confidential and
8 you can not be forced to divulge those things, do you
9 understand that?

10 THE DEFENDANT: Well, the only thing I want to
11 state for the benefit of the Prosecution --

12 THE COURT: Answer my question, do you understand
13 that?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Go ahead.

16 THE DEFENDANT: Mr. Stansell, Mr. White and Harvey
17 Chamberlin as to -- prior to January 24th trial date
18 were not prepared in any way. And this whole
19 situation of Michelle Varnell supposedly not
20 cooperating with Harvey and Jim is incorrect. Jim or
21 Harvey have interviewed zero witnesses to prepare for
22 the January 24th trial, nothing whatsoever. They do
23 not even have a private investigator on board, but yet
24 they want to claim that I'm the one who is not
25 cooperating with them.

1 I've written Mr. White numerous letters with no
2 response. I wrote a letter to Mr. White the same
3 exact day that I wrote a letter to Judge Thorpe. And
4 my understanding from Jim is that Judge Thorpe got the
5 letter, but for some reason Jim claims he didn't get
6 his letter. That's been his statement throughout the
7 last several months is that I never got your letter,
8 letters asking me for responses or concerns
9 specifically pertaining to why don't we have an
10 investigator, why are we not interviewing witnesses if
11 we are getting ready for a January 24th trial that you
12 know, October 24th, I think it was, in court, that Mr.
13 White and yourself and me there promised basically the
14 judge that we would be prepared for a January 24th
15 trial, correct?

16 MR. STANSELL: I recall it.

17 THE DEFENDANT: And yet there was nothing done
18 whatsoever from that time, that day of January 24th.
19 The one thing that was done was Dr. Piper was brought
20 on board, showed up mysteriously with Mr. Chamberlin
21 three days after Mr. Chamberlin had been fired
22 verbally by me, in writing by me, and in writing to
23 Mr. White, and in writing to the Court, which has
24 obviously been ignored for some reason.

25 And I just want to make it a known fact to the

1 Court and to you that I am not the one holding up
2 anything. I want to go to court. I wanted this over
3 back in June, at our first trial date. That's
4 basically what I wanted you to know, that I am not
5 holding up anything. I'm trying to communicate with
6 my attorneys, and they'll not respond in letters.

7 I do not believe that they have my best interests
8 at hand if they'll not even communicate with me and
9 there is a possibility that I may have to change
10 counsel because of such. I do not want to have to but
11 they'll not communicate with me.

12 And yes, I do have a problem when I am not on my
13 medications, I can become very confused and
14 disoriented. And Harvey Chamberlin has made specific
15 comments that he doesn't know that he doesn't want me
16 exactly as such. And that's why I've gotten no help
17 with the medical department over at the jail.

18 My own attorneys will not help me. So there are
19 certain times of the day -- if I come over here, for
20 instance, in the morning and they don't medicate me
21 before I leave, I wouldn't be able to even say this to
22 you, what I have said.

23 And there have been days that I feel that they
24 intentionally had me come to court after a promise of
25 contacting the medical facility to make sure I got my

1 medication before I went to court. They didn't do
2 that. And when I was brought to court expecting to go
3 speak to the judge about something, which is what
4 happened here, the first hearing we had pertaining to
5 the 3.5 hearing. And everyone was asked to leave the
6 Court and I fell apart trying to talk to the judge. I
7 was not medicated, my back was hurting, I had a sinus
8 infection that has been bothering me lately, and I
9 could not communicate with him properly. And that's
10 what brought on for the Western State incident.

11 I have had a sinus infection for the past
12 approximately 6 to 8 months, which Snohomish County
13 medical has^D not diagnosed just recently from January
14 22nd CAT scan of the head.

15 Anyhow, I guess I wanted to confirm that you did
16 get my letter.

17 THE COURT: Yes, I got it. The one in which you
18 said that you had fired Chamberlin and can't
19 understand why he showed up with a doctor.

20 THE DEFENDANT: Correct. I believe it was nothing
21 more than for him to schmooze things over after
22 ignoring me for eight weeks to show up three days
23 after he is fired after -- and the reason being is I
24 simply asked him, what are you doing towards my case,
25 Mr. Chamberlin. Will you please give me some work

1 product, tell me what is happening. Are we
2 interviewing witnesses? What is happening towards our
3 January 24th trial that we promised we would be ready
4 for? He refused to give me any work product. I put
5 it in writing to him. He refused in writing also, so
6 I fired him. And since then he has shown up for every
7 single thing.

8 I guess that is all I have to say, your Honor.

9 THE COURT: All right.

10 If I understand what you said a moment ago to Mr.
11 Stansell, you don't, at this time, intend to secure or
12 to hire other counsel?

13 THE DEFENDANT: I have interviewed just recently a
14 couple other attorneys. I'm very concerned about the
15 situation of the fact, like I said, that there has
16 been no preparation for the January 24th trial. Every
17 trial that has been scheduled, specifically the
18 January 24th one, where we promised the judge in court
19 that we would be ready. I made a statement during
20 that hearing also.

21 And the problem that I had with both of my
22 attorneys is that they literally ignored me from the
23 day we walked out of that courtroom until almost the
24 date that we came in here. I had only talked to Jim
25 White once, and that was the day before he came to

1 this hearing for him to tell me specifically what he
2 wanted me to say to Western State.

3 Yeah, I have some emotional problems, your Honor,
4 and there may very well be a need for me to have a
5 full evaluation. I'm scared to death of it, to be
6 honest of it. Nobody explained to me what Western
7 State involves or anything. They only told me that
8 they are going to send me off to some place down south
9 and run a bunch of tests on me. And to be honest with
10 you, some of the things that have gone over there for
11 12 plus months over at the jail, sitting there
12 wondering and waiting, to be honest with you, the only
13 place that I find peace right now is in that little
14 cell.

15 When I first came into that little cell I sure as
16 heck wanted out of there. And now every time I get
17 out of that cell, the people around me scare the hell
18 out of me.

19 THE COURT: Okay. You getting your medication
20 now?

21 THE DEFENDANT: I'm getting medication. I do not
22 believe that I'm medicated properly, no.

23 THE COURT: Okay.

24 THE DEFENDANT: You saw how I acted when I was in
25 here and talked to you in closed camera or whatever

1 you want to call it.

2 THE COURT: Yes.

3 THE DEFENDANT: I had not gotten my medication
4 that morning and I could not focus or stay on track
5 about anything. And I have made that point to my
6 attorney specifically because of -- for instance Mr.
7 White, I say, what are you going to do with me when it
8 comes time for the two week trial that they claim we
9 are going to have, a two week trial that I'm going to
10 be drug out of my cell early in the morning and come
11 into court and be in court all day long? If I am not
12 medicated, then I'm going to be a problem.

13 MR. WHITE: For the record, I'm going to interject
14 and tell Mr. Varnell that he is getting into
15 discussions about the strategy that we have about
16 trial and that he should keep his mouth shut.

17 THE DEFENDANT: Then why can't you return a letter
18 to me, Mr. White --

19 THE COURT: Wait a minute.

20 THE DEFENDANT: -- to even tell me that?

21 THE COURT: Mr. Varnell, you can have a private
22 conversation with your attorney in private.

23 Well, the only thing I want to suggest is that if
24 you get another attorney, if you think you are going
25 to hire another attorney, time's a wasting, because as

1 it is right now, we are going to have to set one of
2 these trials for February 21 and one for February 28.
3 And I can't help but notice that February 21 is next
4 Friday.

5 THE DEFENDANT: I know, I just had that
6 conversation with my attorneys.

7 THE COURT: All right.

8 THE DEFENDANT: I asked them if we go to court in
9 ten days, I go to prison for the rest of my life,
10 right?

11 THE COURT: Only if you are convicted .

12 THE DEFENDANT: Well, obviously there is no
13 preparation, and they know it. They don't have
14 anything ready.

15 THE COURT: All right.

16 MR. STANSELL: Your Honor, I guess the question
17 that I have at this point is, is there going to be a
18 request to continue the case beyond the expiration of
19 speedy trial date? And I certainly have no objection
20 to that. And if so, if there is such a request, is
21 Mr. Varnell going to agree to it, or is counsel going
22 to request that over his objection?

23 MR. WHITE: Your Honor, I am going to make a
24 request to continue the matter beyond the speedy trial
25 to a trial date in early June, regardless of Mr.

1 Varnell's agreement with that request or not. I've
2 discussed with him the fact that until Dr. Piper's
3 report is completed and in my hands I can not be
4 prepared to represent him competently at the time of
5 trial.

6 In the briefest fashion, I will say that I do tend
7 not to meet with Mr. Varnell unless Mr. Chamberlin is
8 present, because Mr. Varnell tends to hear things
9 differently than what I believe was said.

10 Mr. Varnell gets pretty anxious when Mr. Chamberlin
11 is present, so any meeting becomes pretty difficult.
12 And frankly, I don't believe I need to meet with Mr.
13 Varnell to prepare his case. I know everything he
14 could possibly tell me about his case. I've heard it
15 a hundred times. And there is no reason for me to be
16 meeting with him.

17 If that calms him at all, so be it, if not, I'm
18 sorry. But this case is not prepared for trial next
19 week. It would not be prepared to be tried next week.
20 It needs to be continued and that is our motion.

21 THE DEFENDANT: How do you intend to interview the
22 witnesses, Mr. White, if you don't have any of my
23 knowledge of the witnesses that are to be interviewed?

24 THE COURT: Well, that's an issue that you can
25 take up with him outside of hearing of opposing

1 counsel --

2 THE DEFENDANT: Why exactly --

3 THE COURT: -- and the judge.

4 Do you agree or do you object to a trial date after
5 the speedy trial time, the present speedy trial?

6 THE DEFENDANT: Which is the end of this month?

7 THE COURT: Yes, March 3.

8 MR. STANSELL: March 3rd.

9 THE COURT: Which is two weeks away, basically.

10 THE DEFENDANT: My concern is why does it have to
11 go all the way out to June? I was supposed to go to
12 trial in January, and now it's June. And in my eyes
13 the only reason is because my attorneys aren't
14 prepared. So I get to sit and wait in jail for them
15 again for another six months.

16 MR. WHITE: Well, I don't disagree with that. His
17 attorneys are not prepared to go to trial next week.
18 And the problem with setting it between now and June
19 is I don't anticipate any practical response from Dr.
20 Piper until the middle of or end of March. Once we
21 receive that, I expect it will affect, to some degree,
22 our preparation. That would set a trial date in, at
23 earliest possible, end of April, I would imagine. And
24 my schedule does not allow me to be present during
25 that time.

1 I expect to be out of the country for a large part
2 of April. And I have several trials stacked up
3 following that. So that's why I'm asking for the
4 first of June. I don't know what Mr. Chamberlin's
5 schedule is exactly. So that's how that date is not
6 drawn out of thin air. That's a good practical date.

7 THE DEFENDANT: That's completely unfair to me,
8 your Honor, for people to be taking vacations all year
9 round.

10 MR. WHITE: I don't believe I said I was going on
11 vacation.

12 THE DEFENDANT: I know there were some vacations
13 taken last summer, and you told me you were working on
14 my case and I found there were several vacations
15 taken.

16 THE COURT: Mr. Stansell?

17 MR. STANSELL: Yes, sir.

18 THE COURT: Any exception to continuing the trial
19 date, or the requested trial date or any problem with
20 your schedule?

21 MR. STANSELL: I'm going to suggest June 6th. That
22 would, at this point, to the best of my recollection
23 that would fit with my trial schedule. And I would
24 ask speedy trial waiver to June 27th.

25 MR. WHITE: 6th would be a good date for me.

1 THE COURT: Is?

2 MR. WHITE: It is.

3 THE COURT: All right.

4 THE DEFENDANT: I don't have any say so in the
5 matter then, your Honor, is that correct?

6 THE COURT: Well you can --

7 THE DEFENDANT: Well --

8 THE COURT: If you don't want to wait that long,
9 you can always try to hire another lawyer who can try
10 it earlier, if you can find one.

11 THE DEFENDANT: What kind of position does that
12 put me in, if I want to keep to the trial date that's
13 March 3rd, or whenever it was, prior to my speedy
14 trial rights?

15 THE COURT: You would have counsel that wasn't
16 prepared for trial, and not even a medical report that
17 they've already requested.

18 THE DEFENDANT: Yeah, and I have been told that
19 Dr. Piper has already been through everything, so I'm
20 real confused on that issue too.

21 MR. WHITE: I don't know who he has been talking
22 to.

23 THE DEFENDANT: Is there -- I don't understand
24 this, your Honor. For the record, I don't understand
25 the communication issue. I'm sitting over there, they

1 know where I'm at, they know what they got to do to
2 prepare for this trial. Why is it that January 24th
3 rolled by, now they are talking to blow it out until
4 June something. And I know without a doubt that the
5 only reason is because they have been doing other
6 things and not working on my case.

7 I have 450 pages of discovery in my cell that I've
8 had since May of last year.

9 THE COURT: I do my best to appear to be very
10 wise, but I can't answer that question. You are going
11 to have to ask your lawyer that.

12 THE DEFENDANT: What's to say that June 6th will
13 roll around and there would be another reason for a
14 postponement, your Honor?

15 THE COURT: What did you say, to the 16th?

16 MR. STANSELL: Speedy trial waived to the 27th,
17 three weeks beyond would be my request.

18 THE COURT: All right. And that would be for
19 which trial?

20 MR. STANSELL: No, I would be referring -- I think
21 which trial goes first, I think we can defer that to
22 another day. But I would suggest that we -- if there
23 is an agreed trial continuance, that we continue it to
24 June 6th, with a speedy trial waiver three weeks
25 beyond to the 27th.

1 THE COURT: Both of them?

2 MR. STANSELL: Both of them, and that would give us
3 ample opportunity --

4 THE COURT: To pick out which goes first?

5 MR. STANSELL: To piggyback them regardless of
6 order.

7 MR. WHITE: You mean the 27th or the 30th?

8 MR. STANSELL: 27th, we usually do it 17 days, but
9 21 days would be fine.

10 THE COURT: All right.

11 So do you have any objection, Mr. Varnell, real
12 objection to continuing the trial to June 6th and
13 waiving speedy trial to June 27th?

14 THE DEFENDANT: Yes, I object strongly, but it
15 appears that I don't have any choice, does it?

16 THE COURT: Well, are you willing to waive, are
17 you willing to do it?

18 THE DEFENDANT: I'm willing to do it under the
19 basis that I don't have any choice because my
20 attorneys are not prepared at this time to go to
21 trial, and wrongfully so.

22 THE COURT: All right. In addition to that waiver
23 I find there is just cause to continue it to both of
24 these trials, to schedule both of these trials for
25 June 6th. And I would --

1 MR. STANSELL: Is it too much to ask to get a
2 written waiver at this point, or if we can't get a
3 written waiver, I ask that the Court specifically find
4 that there is good cause to continue the speedy trial
5 expiration period until the 27th, to allow us to get
6 both trials in, starting them at the 6th, but be able
7 to get them both completed by the 27th?

8 THE COURT: I am not so sure I can do that, can I?
9 What I can do is find good cause to schedule the
10 burglary for June 6th and the solicitation for murder
11 to June 13th.

12 MR. STANSELL: Well, with the understanding that a
13 subsequent judge, if it is not you, is not locked into
14 that order.

15 THE COURT: That's fine, that's fine.

16 MR. STANSELL: Just as long as everybody is aware
17 we are going to argue which goes first, because we
18 have differing views as to which one should go first.

19 So for the record the Court, at this time, is --

20 THE COURT: Do you have a waiver?

21 MR. STANSELL: There is a waiver. I don't know if
22 he is going to fill it out or not.

23 THE COURT: I will give him the opportunity to do
24 that.

25 MR. STANSELL: In the event he doesn't, the Court

1 is finding good cause to continue 02-1-00390-1, which
2 is the five counts of Solicitation to Commit First
3 Degree Murder to June 6th, 2003, the Court is so
4 finding?

5 THE COURT: Yes.

6 MR. STANSELL: And 02-1-00385-5, the Court is
7 finding good cause to continue that until the 13th of
8 June?

9 THE COURT: Yes.

10 MR. STANSELL: With the understanding that it may,
11 may start there to after that, given the length of the
12 other case.

13 THE COURT: It's understood. And that is the
14 order in which defense counsel requests?

15 MR. STANSELL: It is, and I will file a written
16 motion to determine the order.

17 MR. WHITE: So the soliciting is set for the 6th?

18 THE COURT: Yes.

19 MR. WHITE: Okay.

20 THE COURT: And as far as a waiver is concerned, I
21 suppose both of them can be to the 27th.

22 MR. STANSELL: That would be acceptable to the
23 State.

24 THE COURT: Very well.

25 MR. CHAMBERLIN: But I didn't hear Mr. Varnell

1 agreeing to waive that. If the Court is finding good
2 cause --

3 THE COURT: Well, I think he has agreed to it
4 orally. Whether or not he will actually put his
5 signature on the piece of paper is another question.

6 MR. STANSELL: Could the Court inquire at this
7 time?

8 THE COURT: Well, why don't we wait until he has
9 it in front of him.

10 THE DEFENDANT: Your Honor, I would also like to
11 express that anxiety and confusion that I have had in
12 the recent months have been specifically related to my
13 frustrations with my two attorneys more than any other
14 reason, period.

15 THE COURT: Oh, I understand that. I understand
16 that.

17 THE DEFENDANT: I have ten unanswered letters
18 right here in my folder here. When I asked Mr. White
19 why doesn't he return my letters he claims it's
20 because I will take a sentence out of that letter and
21 use it against him somehow. That was his comment. Am
22 I not allowed that type of communication with my
23 attorneys? I don't understand if I write my attorney
24 and --

25 THE COURT: The Court is not in a position to

1 referee relationships between attorney and client.

2 THE DEFENDANT: Is there someone that is in that
3 position?

4 MR. WHITE: Well, you have the bar complaint forms,
5 I have seen them.

6 THE COURT: You can file a bar complaint form.

7 THE DEFENDANT: I like that attitude Mr. White,
8 for you being mad at me for you postponing my trial
9 because you haven't done your job.

10 MR. CHAMBERLIN: Just as -- to put something on the
11 record, your Honor, .

12 The reason that Mr. White and I suggested at the
13 top of this earlier in this hearing, that we conduct
14 an in camera review is that it -- it's got to be
15 fairly obvious to the casual observer that in the
16 event that Mr. Varnell is convicted, the first claim
17 on any appeal will be the relationship, the
18 attorney-client relationship and the communication
19 between Mr. Varnell and his two attorneys.

20 And it has occurred to me on more than one occasion
21 that that is an issue that should be resolved one way
22 or the other before trial as opposed to being brought
23 up after trial. And I think that's why Mr. White was
24 suggesting that we do some of this.

25 THE COURT: Well, how do you propose it be

1 resolved? He can resolve it very simply by firing the
2 two of you and hiring another lawyer. That's his
3 call. He has not fired Mr. White yet.

4 THE DEFENDANT: I wanted to work with --

5 THE COURT: Pardon?

6 THE DEFENDANT: I made it very clear to Jim White
7 in writing and verbally several times that I want to
8 work with him and another attorney, if he needs
9 another attorney. But that I do not want to work with
10 Mr. Chamberlin. The man is verbally and physically
11 threatened me numerous times, and I can not work with
12 a man that wants to do business that way, to take me
13 into a court of law to supposedly defend my life while
14 he stands toe to toe to me screaming in my face,
15 standing in the C room over at the jail numerous
16 times. And I am not the only client he has done such
17 to.

18 MR. CHAMBERLIN: And your Honor, for the record,
19 that is why not only does Mr. White not seeing Mr.
20 Varnell without me present for sometime now, because
21 of these kinds of false accusations. I don't see Mr.
22 Varnell without a third party present. And whenever
23 there is a third party present, Mr. Varnell does not
24 hesitate to keep me there for as long as four hours in
25 the evening discussing things. Practically none of

1 which have anything to do with his case, by the way.

2 But the issue that troubles me is an ethical one
3 for Mr. White and I, given the letter that Mr. Varnell
4 has sent your Honor accusing Mr. White and given the
5 comments that Mr. Varnell likes to make on the record
6 about me, which of course has prompted me to only
7 visit him with a third party, someone who can come
8 within the privilege.

9 If I was an appellate attorney and I was
10 representing Mr. Varnell on appeal, an issue that I
11 would explore is whether or not Mr. White and I had an
12 ethical obligation to discontinue our representation
13 given the claims that Mr. Varnell is making.

14 It may very well be that there is a conflict. It
15 may very well be that Mr. Varnell has accused both Mr.
16 White and I of unethical conduct, then neither Mr.
17 White nor I want to abandon this case. But I think
18 that's why Mr. White was asking earlier for the in
19 camera review to try to at least implicitly resolve
20 some of these ethical issues that he and I both
21 believe that we may be facing.

22 I am not suggesting that Mr. Varnell is being
23 manipulative about all of this, but not only is there
24 -- there are these ethical issues.

25 THE DEFENDANT: Your Honor, this did not occur

1 until after Mr. Chamberlin was fired, before he
2 decided to show up the very first time three days
3 after he was fired with Dr. Piper, claiming as a
4 witness. A few days after that, he showed up by
5 himself up on four north. I told him I didn't have
6 anything to say to him and he had been fired and he
7 went out there and made a comment, calling me
8 specifically a punk with witnesses on four north as he
9 left. And a few days later, he shows up with a lady
10 attorney out of no where, three times, all in a couple
11 weeks after he basically abandoned me for almost eight
12 weeks.

13 Those are the only three times that he has come
14 over to see me with a witness other than Mr. White
15 recently 1-23.

16 So since February 2nd, or 16, since my
17 incarceration, February 16 of 02, Harvey Chamberlin
18 has seen me numerous times all the way until after he
19 was fired, before they decided to make up this, let's
20 team up on Mitchell deal to cover our you no whats.
21 That's the only reason they have done this, in my
22 opinion, because they know they haven't prepared for
23 their job to defend me and they want to make up their
24 own little excuses by having somebody there so that
25 whatever is said they can change it around and

1 manipulate it themselves, not me, I haven't
2 manipulated anything.

3 The only thing I asked from these men is to go to
4 work, do what you said you were going to do. You had
5 my money in February, do what you say you were going
6 to do, get this case ready for trial and let's get it
7 done. And they know darn well that's been my only
8 goal. And I've become very frustrated when trial time
9 comes rolling around, and I find out there is nothing
10 ready again and again and again.

11 MR. CHAMBERLIN: Just if I can comment on one
12 thing. The encounter where Mr. Varnell says that I
13 came unaccompanied, that was not a confidential
14 communication, that was up on four north D. I was not
15 calling him a punk as I was leaving, I made a remark
16 about stop being a jerk. And this was after Mr.
17 Varnell, which he hadn't done in several months, once
18 again approached me about dumping Mr. White and my
19 proceeding to represent him with perhaps somebody
20 else. So those are the kinds of things that we are
21 talking about.

22 THE DEFENDANT: I had already fired Mr. Chamberlin
23 and he showed up on his own. He didn't like what I
24 had to say when I asked him to leave. He said, oh, so
25 now you are a tough guy and I said, no, I am not. He

1 said that's right, you are just a punk. That's
2 exactly what was said and several steps as to show as
3 such.

4 THE COURT: All right.

5 MR. STANSELL: Your Honor, may I make a suggestion?

6 THE COURT: Sure.

7 MR. STANSELL: Why don't we set a motion for the
8 ethical issue that Mr. Chamberlin has raised for March
9 7th, if that is a concern at this point, if they
10 believe it, they have an ethical duty to withdraw, or
11 they have an ethical conflict at this point, let's set
12 it for March 7th or somewhere in there and let's have
13 briefing and let's have affidavits and let's have the
14 Court decide it, rather than just talk about it.

15 MR. WHITE: Well, in response to that, let me say
16 because I don't believe I have any ethical issue with
17 Mr. Varnell whatsoever. Mr. Varnell has a problem
18 with me evidently. That's fine, he can have that
19 problem. He has hired me, he's paid me, he can fire
20 me as far as I'm concern. I have a lot of other
21 things to do. I choose to stay in this. Case, I am
22 not intending on abandoning him. I am not intending
23 to go away. If he chooses to make me go away, I will,
24 that's his decision. I don't think there is any
25 ethical decision here.

1 MR. STANSELL: Well, I heard it raised and I was
2 responding.

3 THE COURT: Well, if anybody gets excited about
4 it, they can always raise it, they can always make a
5 motion about it. But I just don't see where --

6 THE DEFENDANT: Your Honor --

7 THE COURT: I understand Mr. Chamberlin's concern,
8 because this is a situation in which he is retained
9 not appointed.

10 THE DEFENDANT: All I have asked from these men is
11 to level with me and to do their job.

12 THE COURT: I understand. Why don't you go ahead
13 and sign that, and we will get this over with.

14 THE DEFENDANT: Am I obligated to sign these?

15 THE COURT: No, it just confirms what you said
16 before.

17 THE DEFENDANT: Well, I said that I didn't appear
18 to have any choice in the matter.

19 THE COURT: And that you were willing to do it?

20 THE DEFENDANT: So if I find another attorney that
21 can represent me prior to June 6th?

22 THE COURT: They can make a motion to schedule the
23 trial earlier.

24 THE DEFENDANT: Okay, fine.

25 THE COURT: I have approved the defendant's waiver

1 and have signed the agreed trial continuances.
2 MR. STANSELL: Thank you, your Honor.
3 THE COURT: Any other matters to come before the
4 Court?
5 MR. STANSELL: No, your Honor.
6 THE DEFENDANT: Yes, your Honor. I prefer the
7 Court, that I believe Mr. Chamberlin and Mr. White are
8 intentionally avoiding me, intentionally not preparing
9 for this case, specifically so that I will indeed fire
10 them and they can walk off with monies they have
11 already been paid. It's already been stated to me in
12 the September 9 letter, which I will be glad to show
13 you, I have a copy right here, it says as of September
14 9th that they had already earned their money and that
15 from here all the way through trial that they were
16 working initially without compensation. And I have
17 that right here, right here with me.
18 THE COURT: I am not going to get involved in your
19 --
20 THE DEFENDANT: The point is I'm getting no
21 communication, and I feel as if these people
22 intentionally want me to fire them, so where they can
23 walk away from it. And the way Mr. White wrote up his
24 fee agreement, because he already had my money in his
25 pocket, \$128,000 and change before he had brought me a

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fee agreement. Figure that one out.

THE COURT: That's a lot of money.

Court will be in recess.

(Proceedings concluded.)

Exhibit # 11

FILED
JAN 27 PM 1:29
SNOHOMISH COUNTY
SUPERIOR COURT

RECEIVED

JAN 27 2004

PROSECUTING ATTORNEY
FOR SNOHOMISH COUNTY
BY _____
FOR _____

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

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	NO. 02-1-00390-1
)	
v.	)	DEFENDANT'S MEMORANDUM
MITCHELL VARNELL,	)	RE: SCHEDULING
)	
Defendant.)	
_____)	

Undersigned counsel substituted in as counsel for Mr. Varnell in late October, 2003. I received the trial transcript, which contained the witness testimony but not other proceedings, on or about November 18, 2003. I also have received approximately eight linear feet of documents (filling two lateral file drawers) from the Snohomish County Public Defender Association and from Harvey Chamberlin, Mr. Varnell's co-counsel at trial.

DEFENDANT'S MEMORANDUM RE: SCHEDULING - 1

MUENSTER & KOENIG
JOHN R. MUENSTER, INC., P.S.
1111 THIRD AVE., SUITE 2220
SEATTLE, WASHINGTON 98104
(206) 467-7500
FAX: (206) 467-0101

AA
210

1
2 Mr. Varnell was also represented by attorney James White. By letter dated October
3 22, 2003, I wrote to Mr. White requesting a copy of Mr. Varnell's records and enclosed
4 an authorization for release of information. I believe that we followed that up with phone
5 calls, but did not hear back from Mr. White until mid-January, 2004, when he left our
6 office a voice mail indicating that he had his file available. My legal assistant spoke with
7 Mr. White this morning and we will be obtaining Mr. White's file from him this week.

8
9 Mr. Varnell alleges that he was deprived of his Sixth Amendment right to counsel
10 of choice. He asserts that he sought to discharge Mr. Chamberlin and Mr. White on
11 several different occasions. It is my understanding, from talking with deputy prosecutor
12 John Stansell, that that proposition is not disputed. We contend that a new trial must be
13 granted because deprivation of the right to counsel of choice requires automatic reversal.
14

15 Mr. Varnell also alleges ineffective assistance of counsel. He alleges failure to
16 investigate and failure to prepare. These inquiries are fact-driven. In this case, the factual
17 inquiry is time-consuming.

18 Meanwhile, undersigned counsel represented the defendant in *State v. John Athan*,
19 a 1982 King County homicide case which was based upon DNA identification obtained by
20 police who posed as attorneys and solicited Mr. Athan to be their client. There were
21 hearings and litigation in that case in late-October, November and December of 2003,
22 culminating in a hearing on a motion for discretionary review in the state Supreme Court
23 on New Year's Eve, December 31, 2003. The trial in that case started on January 5,
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2004, and ended with a verdict of not guilty as to first degree murder but guilty as to second degree murder on January 21, 2004.

During the same time frame of November through January, I was reviewing documents and completing the mitigation package in *State v. John Whitaker*, a case currently pending before this Court. The package was completed and presented to the prosecutor's office in January, 2004.

Preparation for and litigation of the Athan case, combined with preparation of the mitigation package in the *Whitaker* case, proved to be substantially more time-consuming than I had originally estimated. I estimate that I spent approximately eight weeks on the two matters as of Wednesday, January 21, 2004, the day of the *Athan* verdict. As a result of these efforts, I have not been able to complete the motion for a new trial in Mr. Varnell's case.

I have a three-day trial scheduled to start in King County on February 2nd, but otherwise am in good shape schedulewise in February. Assuming that the state does not seek the death penalty in the *Whitaker* case, that trial is scheduled to start on March 1,

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2004. The defense requests that the due date for filing Mr. Varnell's motion for a new trial be set for Friday, February 20, 2004, and that the hearing on the motion for a new trial be set at a time selected by the Court thereafter.

DATED this the 27~~th~~ day of January, 2004.

Respectfully submitted,

MUENSTER & KOENIG

By: 
JOHN R. MUENSTER
Attorney at Law
WSBA No. 6237
Of Attorneys for Defendant Mitchell Varnell

Exhibit #12

FROM: MITCHELL, J. ELLIOTT
1918 WELLS STREET # 63696

APPENDIX A

DATE 2-16-04

PG 1 OF 5

TO: LINDA KRESE
CAUSE # 02-1-00390-1

MOTION FOR NEW TRIAL...

PLEASE RETURN
COPY THANK YOU

HELLO. PLEASE READ THESE IMMEDIATE CONCERNS

MR. MUENSTER WAS HIRED OCT 9 03 AS TO
REPRESENT ME PER THIS MOTION FOR NEW TRIAL
EVEN THOUGH OFFICIALLY OCT 23-03.

OCT. 20, 03 MR. MUENSTER ASKED FOR THE INFORMATION I HAD
PERTAINING TO COMMUNICATIONS WITH MY PREVIOUS
COUNSEL. HEARINGS OF PROBLEMS, COMMUNICATION
PROBLEMS, THE OVERALL HISTORY OF MY RELATIONSHIP
WITH PREVIOUS COUNSEL.

OCT 28, 03 I RESPONDED WITH 106 PAGES OF PERTINANT
MATERIALS. EIGHT "DAYS"

NOV 20, 03 I RECEIVED A COPY OF THE TRIAL TRANSCRIPT IN
WHICH WAS INCOMPLETE.

THE PRETRIAL PROCEEDINGS OF MR. LAWBERMAN
ARGUING FOR A NOTHER CONTINUANCE.

YOU STATING YOU WOULDN'T BE BULLIED.

HARVEY MAKING OFF REASONS AS TO WHY HE
NEEDED CONTINUANCE. "AFTER EIGHTEEN MONTHS..."

AND YOU CLAIMING BASICALLY ONE MORE
WORD AND YOUR OFF TO GO.

I THEN MADE A STATEMENT OF WRONG DOING
TO MYSELF. WRONGFUL STATEMENTS COUNSEL
HAD STATED TO JUDGES AT OTHER HEARINGS.

COUNSEL STATED THEY MAY HAVE TO WITHDRAW

NOV 24TH 03 MR. MÜNSTER STATED HE WOULD ORDER THAT FIRST PART OF THE 7-7-03 TRIAL TRANSCRIPT AS WELL AS THE NUMEROUS ADDITIONAL TRANSCRIPTS ASKS FOR BY HIMSELF PER PROBLEMS AT HEARINGS.

I GAVE HIM THE DATES OF HEARINGS AND A BRIEF SUMMARY OF THE CONTENTS MR MÜNSTER RECEIVED THE DATES OF ~~FIVE~~ FOURTEEN HEARINGS IN WHICH HE AGREED WERE RELEVANT TO OUR MOTION AGREED TO, AND IMMEDIATELY ORDER TRANSCRIPTS OF SUCH. END

START: MR MÜNSTER RECEIVED INFORMATION OF POTENTIAL WITNESSES TO BE INTERVIEWED PER MOTION.

I PROVIDED THIRTEEN DOCTORS WITH SUMMARY TWO ATTORNEYS WITH SUMMARIES AND EIGHT FRIEND AND FAMILY POTENTIAL WITNESS.

ALL OF THIS SAME INFORMATION WAS GIVEN TO PREVIOUS COUNSEL

JAN 28-04 HEARING. MR MÜNSTER HAD PRESENTED JAN. 27-04 DEFENDANT'S MEMORANDUM RE: SCHEDULING.

THESE ARE EXCUSES IN THIS MEMORANDUM AS TO WHY IN THREE MONTHS THIS MOTION IS NOT PREPARED.

DATE 2-16-04

PG 3 OF 5

JAN 28TH, 03 CONTINUED.

JUDGE BRESE. PRIOR TO THAT HEARING OR YOUR PRESENTS AT THAT HEARING, MR. MUESTER TOLD ME HE HAD THE TRANSCRIPTS IN HIS POSSESSION.

REFERRING TO ALL OF THEM, FOURTEEN PLUS TRIAL.

YOU STATED AFTER LOOKING AT COMPUTOR I ASSUME, THAT NO OTHER TRANSCRIPTS HAD BEEN ORDERED, "PER MY ASSUMPTION THAT YOU MEANT THAT."

MR. MUESTER STATED HE WAS TO ORDER THEM LATER.

FEB 4, 04

MR. MUESTER HAD STATED THAT HE HAD FORGOTTEN TO ORDER TRANSCRIPTS AS HE WAS VERY BUSY.

I INQUIRED OF THE WITNESS INTERVIEWS AND WHY I HAD NOT BEEN CONTACTED BY PRIVATE INVESTIGATOR

MR. MUESTER BECAME ANGRY WITH ME PER PHONE CALL CONVERSATION WHEN I ASKED HOW HE EXPECTED TO HAVE A COMPLETE MOTION FILED BY FEB 20, 04 WHEN HE HIMSELF STATED THAT THE TRANSCRIPTS TAKE APPROX 4 WEEKS.

FEB 5, 6, 04

MY FAMILY CALLED DOCTORS, ATTORNEYS, FRIENDS AND NO ONE HAD BEEN CONTACTED IN ANYWAY?

FEB 11, 04

I RECEIVE FIVE GENERAL RELEASE FORMS AND FIVE MEDICAL RELEASE FORMS. FILL OUT AND SEND BACK. I'M TO FILL IN DOCTORS NAMES AND INFO THAT MR. MUESTER HAS HAD FOR MONTHS.

JUDGE KRESE. UNRELATED MATTER IN WHICH MR. ALLENSTER
HAS BEEN MY COUNSEL SINCE NOV 22, 03.

CONTINUANCE DEC 2, 03 - JAN 14, 04.

MOTION GIVEN TO JUDGE WYNN FEB 10, 04 ONE HOUR
AND FIFTEEN MINUTES BEFORE 1:00 PM HEARING.

MOTION DENIED PER TIME LIMITS OF MOTIONS TO
BE FILED. EXAMPLE OF TOO BUSY TO KEEP WR ^TSUFFER

JUDGE KRESE. I CAN'T SEE ANY WAY THAT THIS MOTION
CAN BE PRESENTED TO THE COURT COMPLETE ON
FEB 20, 04. "THE LEGAL SYSTEM"??

JUDGE KRESE. THERE WERE ALSO ISSUES OF "RIGHT TO COUNSEL".

- > 9-13-02 AND 9-19-02 THERE WERE HEARINGS PERTAINING
TO REPRESENTATION SPECIFICALLY ASKED FOR BY MYSELF. NO WORK
- > 1-16-03 I SHOWED UP FOR HEARING AND NO ATTORNEYS?
- > 2-14-03 SPECIFIC BLOWOUT OF REPRESENTATION ISSUE
YOU ALSO KNOW I FIRED HARLEY CHAMBERLAIN
- > DEC 3, 02, LETTERS TO HIMSELF, MR WHITE AND THE COURT
- > MARCH 23-03 I SUBMITTED PAPERWORK TO THE
COURT FOR NOTICE OF MOTION FOR INEFFECTIVE
ASSISTANCE OF COUNSEL. MR. WHITE HAD DONE DEPOSITIONS
- > AND WAS HAVING \$40,000⁰⁰ RELEASED PER A INVALID WRIT OF ATTACHMENT
- > PER HIS 3-6-03 LETTER TO ME. WHEN 3-23-03 CAME ABOUT
MR WHITE DROPPED THE MONIES PURSUIT AS HE KNEW I WOULD
USE IT FOR NEW COUNSEL. "HOW DOES ONE BE TREATED FAIR"
- > 2-14-03 MR WHITE ASKED TO BE FIRED.

DATE 2-13-04

PAGE 5 OF 5

PLEASE

RETURN COPY

"GREED FOR AND OF POLITICS - GAIN." "GREED"
24 MONTHS TO THE DAY IN JAIL. MY WIFE, SONS,
FRIENDS AND IMMEDIATELY FAMILY WITH MYSELF LAST SUFFER!

JUDGE KRESE. I WOULD LIKE THIS MOTION TO BE FILED
COMPLETE IN ALL ASPECTS AS MY LIFE DEPENDS
ON IT.

I SHOULD NOT HAVE TO BE CONCERNED OF
THE COMPETENCE OF ATTORNEYS THAT CLAIM
THEIR PROFESSIONAL ABILITY TO REPRESENT
THEIR CLIENTS.

ATTORNEYS HAPPILY ACCEPT YOUR MONIES
WITH A NON REFUNDABLE RETAINER AGREEMENT,
KEEP THESE CLIENTS IN JAIL AS LONG AS
THEY WISH AND PRESENT THEMSELVES
AND THEIR PAPERWORK TO THE COURTS
IN COMPLETE WITH A SMILE. (I PAY THE PRICE. ^{THEY} ^{WALK})

77-037 I WAS NOT REPRESENTED PROPERLY PRE TRIAL
AND ITS REFLECTION SHOWED DURING MY TRIAL
AFTER EIGHTEEN MONTHS OF "PREPERATION"?

MYR CHAMBERLAIN WAS STILL ASKING FOR
CONSTINUANCES. NO WITNESS ECT. OR WITNESSES ECT.

"I BELIEVE YOU KNOW WHAT'S RIGHT. YOU OPPORTUNITY, THANK"

JUDGE KRESE. I ALREADY HAD A MOTION 95% COMPLETE
EXCLUDING THE TRANSCRIPTS AND WITNESSES.

I FEEL CONFIDENT THAT I COULD HAVE AT LEAST
PRESENTED A COMPLETE MOTION TO THE COURT PER
ISSUES OF INEFFECTIVE ASSISTANCE AND RIGHTS COUNSEL

I'M ASKING FOR CONSIDERATION FOR ADDITIONAL TIME
TO PRESENT THIS MYSELF. IT DOES NOT HARM THE
COURT TO WAIT, BUT IT MEANS MY LIFE NOT TO.

STATE OF WASHINGTON
COUNTY OF SNOHOMISH
SUPERIOR COURT, WASH.

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

STATE of Washington
Plaintiff/Petitioner

VS

Varnell Mitchell Lee
Defendant/Respondent

NO. 02-1-00390-1

COVER SHEET

ATTACHED HERETO IS: Additional information Per Motion
New Trial

FROM MITCHELL VARNELL

DATE 2-21-04

STATE VS VARNELL
02-1-00390-1

PAGE 1 OF

TO JUDGE KRESE

ADDITIONAL INFORMATION PER MOTION NEW TRIAL

- ① INFORMATION PER NINE DR'S. PSYCHIATRIST. PSYCHOLOGIST. MEDICAL
- ② INFORMATION PER TWO ATTORNEYS PERTAINING TO DIVORCE.
- ③ INFORMATION PER FAMILY, FRIENDS, COACHES, EMPLOYEES.

CAUSE

POTENTIAL DEFENSE WITNESSES THAT WERE NEVER PURSUED.

(DOCTORS) INFORMATION PER ATTACHMENT (A) NUMBERED ONE THROUGH NINE.

THIS SAME INFORMATION AS WELL AS ADDRESSES AND PHONE NUMBERS WERE GIVEN TO MR. WHITE AND MR. CHAMBERLIN, SPRING OF 2002.

RECORDS OF TWO DR'S WERE OBTAINED. THE REMAINING SEVEN WERE NOT. NONE OF THE NINE DOCTORS WERE INTERVIEWED NOR DID THEY TESTIFY. SEVEN NOT CONTACTED. "DOCTORS WERE NOT PURSUED AS POTENTIAL DEFENSE WITNESSES".

(ATTORNEYS) INFORMATION PER ATTACHMENT (B) NUMBERED ONE AND TWO.

THIS INFORMATION, ADDRESSES, PHONE NUMBERS WERE GIVEN TO MR. WHITE AND MR. CHAMBERLIN, SPRING OF 2002. "THESE TWO ATTORNEYS WERE NOT PURSUED AS POTENTIAL DEFENSE WITNESSES IN ANY WAY."

(FRIENDS, FAMILY, COACHES, EMPLOYEES.) ATTACH (C)

TWENTY ONE PLUS WITNESSES NEVER COLLECTED, INTERVIEWED NOR TESTIFIED.

THESE POTENTIAL DEFENSE WITNESSES WERE NOT PURSUED IN ANYWAY, 93

FROM MICHAEL ^{WHITE} STATE VS VARNER

DATE 2-21-04

TO JUDGE KRESE

02-1-00390-1

PAGE 2 OF

DOCTORS

(A)

① DR. DONALD RICE. PSYCHIATRIST.

DR. RICE TREATED ME AND CONSULTED WITH ME OF EMOTIONAL AND PHYSICAL PROBLEMS SINCE PRIOR TO 1998 THROUGHOUT AND UP TO 2-16-02.

DR. RICE PRESCRIBED ME NUMEROUS MEDICATIONS FOR MY CHRONIC PAIN CONDITION. "STRESS CAUSED CHEST PAIN."

DR. RICE ALSO PRESCRIBED ME NUMEROUS MEDICATIONS FOR EMOTIONAL PROBLEMS OF SEVERAL DIAGNOSED DISORDERS. "PHARMACY RECORDS"?

DISCUSSIONS OF LOVE FOR WIFE, LOSS OF FAMILY, NOT WANTING A DIVORCE, LOTS OF CRYING, ANGUISH, HELPLESSNESS EMOTIONAL AND MEDICATION PROBLEMS. MANY MEDICATION CONFLICTS, MEDICATIONS THAT CAUSED ME SEVERE EMOTIONAL PROBLEMS AS PER DOCUMENTED DURING THE EXACT DATE OF 2-16-02 AND JUST PRIOR.

MR. WHITE AND M.R. CHAMBERLIN WERE LOST IN POSSESSION OF THESE RECORDS AND MEDICATIONS. A BAG FULL THAT WERE NOT BROUGHT FORTH PER TRIAL, NOR THE BAG FULL OF SUPPLEMENTS INCLUDING A TESTOSTERONE STEROID. ALL OF THESE MIXED TOGETHER AND I WAS HAVING PROBLEMS? YES SEVERES! THE DR. RECORDS, DOCUMENTATION, WERE BRIEFLY MENTIONED IN DR. PIPER'S EVALUATION, PAGE SEVEN. ALSO NOTED ON PAGE TWELVE THAT DURING THE PERIOD OF THIS ORDEAL, I WAS TREATED IN A GROSSLY IN ADEQUATE MANNER.

DOCTORS

② DR. KRIS KYRO. NORTH SOUND PSYCHOLOGY.

DR. KYRO INTERVIEWED ME NUMEROUS TIMES PERTAINING TO LOVE FOR WIFE DURING PRE DIVORCE. WANTING TO TALK TO HER AS TO NOT GET DIVORCED.

LOSS OF FAMILY. DEVASTATION. SEVERE PAIN IN CHEST FROM STRESS AS OF 9-20-00 WHEN I WAS TERRIBLY SURPRIZED BY DESOLUTION PAPERS

THIS CHEST PAIN HOSPITALIZED ME TWICE, RECORDS AND DOCUMENTATION AS ABOVE AS WELL AS MEDICATION AND DRIVING PROBLEMS FROM STRESS, ETC.

MR. WHITE AND MR. CHAMBERLAIN HAD THIS INFORMATION STATED THEY WOULD RETRIEVE THIS AND NEVER DID "DR. KYRO WAS NOT CALLED NOR INTERVIEWED?"

③ DR. NATALIE NOVICK. PSYCHOLOGY. PARANT EVALUATOR.

DR. NOVICK WAS INVOLVED WITH ME JUST PRIOR, DURING AND AFTER MY DIVORCE.

DR. NOVICK WAS IMMEDIATELY AWARE OF MY LOVE FOR KAREN, MY CRYING AND WANTING HER BACK IN MY LIFE AS MY WIFE, TO STAY A FAMILY AND NOT GET DIVORCED. SHE WAS AWARE OF MY STRESSFUL CHEST PAIN.

DR. NOVICK NEW I CONSTANTLY WANTED TO TALK TO KAREN AS TO MAKE UP AND TELL HER HOW MUCH I LOVED HER. SHE WAS AWARE OF THE MEDICATION/DEVASTATION

DR. NOVICK CRIED AS WELL AS SHE STATED THAT SHE SAW A UNIQUE FAMILY BEING TORN APART. "DR. NOVICK WAS NOT EVEN CALLED NOR INTERVIEWED."

DOCTORS

④ DR. WEYMUELLER, CHIEF OF HEAD, EARS, NOSE, THROAT
AT UNIVERSITY OF WASHINGTON.

DR. WEYMUELLER DIAGNOSED ME WITH A SEVERE
SINUS INFECTION AND BLOCKAGE IN ALL SIX SINUS
CAVITIES AND PASSAGES. RECOMMENDED SURGERY.

DR. JOHNSON, ARLINGTON, EAR NOSE AND THROAT.
AFTER TREATING MY SINUS INFECTION FOR MONTHS WITH
ANTIBIOTICS WITHOUT SUCCESS, I WAS REFERRED TO
DR. WEYMUELLER.

DR. WEYMUELLER ON 1-14-02 PERFORMED
A DELICATE AND DIFFICULT SIX WAY SINUS
OPERATION JUST ONE MONTH PRIOR TO MY ARREST.

DR. WEYMUELLER PERFORMED THIS OPERATION
SIX WEEKS AFTER HE DIAGNOSED ME.

I WAS PUT ON ANTIBIOTICS, PAIN MEDICATIONS
AND MEDICATION TO REDUCE BLEEDING AND SWELLING.

"DR. WEYMUELLER WAS NOT CALLED OR INTERVIEWED?"

⑤ DR. FLETCHER HEAD OF WHITE HORSE FAMILY MEDICINE.

DR. FLETCHER HAS SEEN ME FOR YEARS FOR NUMEROUS
PAIN AND FAMILY RELATED EMOTIONAL PROBLEMS.

DR. FLETCHER WAS AWARE OF THE CHEST PAIN AND
I WAS HAVING DURING MY SEPERATION OF ONE YEAR
FROM KAREN AND HOW HARD IT WAS ON ME.

DR. FLETCHER KNEW I LOVED KAREN AND DID NOT
WANT A DIVORCE. DR. PIPER TOUCHES ON THE PROBLEMS
IN HIS EVALUATION ON PAGE ⁹⁶ FOUR. DR. FLETCHER WAS

DOCTORS

- ⑥ ARLINGTON PHYSICAL THERAPY. OWNER, BRAD
THERAPIST AND PAT. ? RECEPTIONIST.

BRAD TREATED ME FOR MY BACK, NECK AND HIP INJURIES
FOR OVER A YEAR UP TO 2-16-02. "THE WEEK BEFORE"

BRAD KNEW THAT I WAS SEPERATED AND LOVED
KAREN AND THAT I WAS KNOCKED TO THE GROUND WITH
DESOLUTION PAPERS, THE DEVESTATION OF THE POSSIBILITY
OF TOTAL LOSS OF FAMILY. MEDICATED HEAVILY.

I STARTED MISSING THERAPY APPOINTMENTS BECAUSE
AT TIMES I BECAME AFRAID TO DRIVE ON THE ROAD.

BRAD TOLD ME HE COULD NOT SEE ME ANY LONGER,
TO FIND A NEW THERAPIST, THAT I WAS COSTING HIM
MUCH MONEY BY NOT SHOWING UP FOR MY APPOINTMENTS.

I EXPLAINED MY TERRIBLE CHEST PAIN AND HOW THE STRESS PAIN
WAS AFFECTING ME. HE AGREED TO KEEP SEEING ME

PAT THE RECEPTIONIST ANSWERED THE MY CALLS OF
CANCELLATION, AND I TOLD HER MANY TIMES THAT I
WAS EMOTIONALLY AFRAID TO DRIVE TEN MINUTES TO MY
THERAPY. SHE WOULD CERTAINLY HAVE RECORDS OF THIS.

"BRAD NOR PAT WERE CALLED NOR INTERVIEWED?"

- ② DR. STUART DUPEN. CHIEF PAIN MANAGMNT, SWEEDISH HOSPITAL.

DR. DUPEN TREATED ME FOR A YEAR AND A HALF FOR SEVERE LOW
BACK PAIN WITH VERY STRONG NARCOTICS. I WAS MESSED
UP TERRIRLY FROM THE MEDICATION. "BARELY ABLE TO FUNTION"

DR. DUPEN WAS GOING TO INSTALL A PERMANANT COMPUTORIZED
PAIN MANAGMNT SYSTEM SURGICALLY IN MY SPINE. APT. 2-19-02

DOCTORS

⑧ DR. ROLAND MAIRO. CHIEF DOMESTIC VIOLENCE. HARBORVIEW.

I WAS SEEING DR. MAIRO FOR AN ANGER MANAGEMENT ASSESSMENT PER ACCUSATIONS OF DOMESTIC VIOLENCE BETWEEN KAREN AND I.

DR. MAIRO WAS WELL AWARE OF MY LOVE FOR KAREN AS I CRIED SINCERELY OF MY FEAR OF LOSING HER.

HE KNEW I WAS MEDICATED AND VERY CONFUSED, AND THOUGHT THAT I WAS NOT VIOLENT, BUT ANGRY.

HE THOUGHT I WOULD BENEFIT FROM THE COMMUNICATION SKILLS. DR. MAIRO WAS VERY AWARE OF MY SEVERE STRESS, CHEST PAIN AND EMOTIONAL DISTRESS.

EVEN THOUGH I SIGNED UP VOLUNTARILY BEFORE THE DIVORCE. DR. MAIRO TRIED TO FIND ME A FACILITY TO COMPLETE MY PROGRAM BECAUSE OF HIS KNOWLEDGE OF MY DRIVING PROBLEMS

I HAD WIPED OUT ONE OF THE WOODEN CARPOOL BARRIERS AT NORTHGATE DRIVING ON THE SHOULDER THAT I THOUGHT WAS A LANE IN A CONVERTIBLE BMW. ^{NOT} GOOD!
"THE DR. WAS NOT CALLED NOR INTERVIEWED?"

⑨ DR. _____? CARDIOVASCULAR DR. FROM EVERETT WAS TREATING ME FOR MY FREQUENT SEVERE CHEST PAIN CAUSED FROM MUSCLES TIGHTENING AROUND THE ESOPHAGUS CAUSED BY THE EXTREME STRESS OF MY UNFORTUNATE CIRCUMSTANCES. THIS DR. TREATED WITH A MEDICATION THAT HAS THE NAME OF THE DR. AND THE MED OINT IN WHICH IS ⁹⁸ STILL IN THE POSSESSION OF MIRNHITE

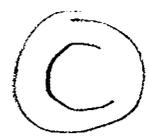
ATTORNEYS

(B)

① KEN BREWE, ATTORNEY AT LAW.
MR. BREWE WAS MY FIRST DIVORCE ATTORNEY.
MR. BREWE HEARD REPEATEDLY FROM ME THAT I
LOVED KAREN VERY MUCH AND WANTED TO TALK TO
HER AS I DID NOT UNDERSTAND. I CRIED AND CRIED.
KENS PARALEGAL WORKED WITH ME CLOSELY AND
WE HARDLY GOT ANY WORK DONE BECAUSE OF MY
CONSTANT CRYING AND DISBELIEF OF WHAT WAS
HAPPENING AS I LOVED KAREN AND DID NOT WANT
A DIVORCE. MY ATTORNEY TRIED TO ARRANGE FOR
KAREN AND I TO TALK, AND SHE REFUSED.
ONLY WEEKS BEFORE WE SAT AND WATCHED OUR
SONS PLAY FOOT BALL. HOLLY CRIED WITH ME AS I
WAS SO EMOTIONAL. "NO CALL NO INTERVIEW"?

② MICHAEL GALLAGER, ATTORNEY AT LAW.
MR GALLAGER KNEW I DID NOT WANT DIVORCE.
HE KNEW I LOVED KAREN VERY MUCH. AS I SAID,
I WOULDN'T LEAVE HIM ALONE ABOUT WANTING
TO TALK TO HER AND WORK THINGS OUT AS TO
STAY TOGETHER. STAY A FAMILY AND CONTINUE
WITH ALL OUR HOPES AND DREAMS
I CALLED MR. GALLAGER ALMOST EVERYDAY
AS I HAD WANTED TO TALK TO KAREN AND WOULD
NOT GIVE. EVEN DURING THE DIVORCE PROCEEDINGS
I TRIED TO TALK TO HER⁹⁹ IN THE HALLS, EVERYWHERE.

FRIENDS, FAMILY, COACHES, EMPLOYEES.



SOME FRIENDS DURING

- ① MIKE WHIT. LOVE FOR KAREN. DEVASTATED. DRUGS. HE LISTENED.
- ② DAVE BRANSCUM. LOVE FOR KAREN. FAMILY LOSS AND WANTING TO FIX IT.
- ③ WENDY & DAN? HOSPITAL-CHEST PAIN. DEVESTATED. MEDS AND PAIN FOR FAMILY
- ④ KEN GARMAN. CHEST PAIN, MEDS. WORRIED OF ME. SAW ME SUFFER. HE IF
- ⑤ MONTE GRIFFIN. FISHING-MEDS

SOME FAMILY

- ⑥ DIANA DE MARIE. SAW AND HEARD IT ALL FROM STRONG TO FEBBLE.
- ⑦ BOB SCHMALZ. LOVE FOR KAREN-BOYS. HE COULDN'T STAND TO SEE ME DWINDLE.
- ⑧ ROXANNE BURKETT. LOVE FOR KAREN. DEVESTATION. MEDS. BIG TO SPAL.
- ⑨ RENEE LYNN. TALK OF LOVE AND LOSS. WANTING TO MEND TOWARDS. MEDS
- ⑩ DOROTHY RICHARDSON. BROKE HER HEART TO SEE KAREN? I FAIL AS FAMILY.
- ⑪ JOHN OLSON. HARDSHIP, HURT BAD. MEDS BREAKING ME DOWN. WIEGHT LOS
- ⑫ JIM WELTON. CONFUSED, TALKING IN CIRCLES. VERY HURT. CHEST PAIN. MISERABLE.

COACHES WITH KIDS

- ⑬ TIM JOHNSON. BACK PAIN, HIM? I. HE SAW FIGHT THROUGH PAIN. THEN DROP.
- ⑭ TIM PAUL. LOVE FOR KAREN. CONFUSED. HE'D BEEN THROUGH IT. DIFFICULT.
- ⑮ MIKE BUTLER. TALKED OF FAMILY. UNFORTUNATE. WELL KNOWN FAMILY. HE DIDNT KN
- ⑯ ROW WHITE. TALKED MUCH OF LOVE FOR KAREN, BOYS, LOSS, WORRY OF ME, MEDS.

EMPLOYEES DURING DIVORCE

- ⑰ RALPH STURH. JUST WENT THROUGH IT. VERY HARD. CHEST PAIN. WORRIED FOR ME.
- ⑱ KEVIN BROOKS. UPSET THAT I WAS ALWAYS HURT? CONFUSED. PISSED HIM OF.
- ⑲ GENE ALFRED. VERY SORRY FOR MY LOSS, LOVE OF KAREN, FAMILY, FUTURE, MEDS
- ⑳ JOSH STILLVALA. LISTENED TO ME WINE OF MY PAIN IN CHEST AND LOSS.
- ㉑ SCOTT...? FELT BAD FOR ME, WIFE, SONS, MEDS-PHYSICALLY DWINDLING.

ALL OF THESE WITNESSES HAD SOME STRONG LENGTHLY COMMUNICATION WITH ME OF LOVE FOR KAREN. MEDICATION. TERRIBLE PAIN IN CHEST. LOSS, AND WANTING TO RECONCILE

"NONE OF THESE WITNESSES WERE CALLED OR INTERVIEWED"

POST TRIAL MEDICAL INFORMATION

TRIAL 7-7-03 THROUGH 7-17-03.

DURING THIS TIME PRIOR TO ARREST DR. RICES RECORDS SHOW I WAS ON NUMEROUS MIND ALTERTERING DRUGS.

DR. PIPER PAGE THIRTEEN COMMENTS OF DR. RICE TREATING ME IN A GROSSLY AND WOEFULLY INADEQUATE MANNER. "ANTIDEPRESSANTS"

DURING MY STAY AT THIS FACILITY 2-16-02 UP TO MY TRIAL 7-7-03 OF APPROX 17 MONTHS, I HAD NO PROPER MEDICATIONS OTHER PER MY PAIN CONDITIONS, NO MOOD STABILIZERS AS MR. WHITE CLAIMED, HE NEVER SAW MY RECORDS HERE. ANXIETY MEDICATION PER PAIN.

ON APPROX 7-17-03 M. H.P. RACED TO MY CELL WHICH WAS NOW SUICIDE WATCH PER CONVICTION. STANDARD I GUESS. M. H.P. PUT ME ON "LOLOFT," A ANTIDEPRESANT, SAME AS WHAT I WAS TAKING JUST BEFORE I WAS ARRESTED 2-16-02.

I BECAME ALMOST IMMEDIATELY ANGRY, FRUSTRATED, MY INSIDES FELT AS IF THEY WERE CRAWLING. TURMOIL IN MY MIND. THIS IS DOCUMENTED PER MHP. RECORDS.

JOANNE SPRUNGER. HEAD PSYCHIATRIC MEDICATION PRESCRIBER, TALKED WITH ME AND PUT ME ON A MOOD STABILIZER, "LAMICTAL". MOOD STABILIZER "THE FIRST TIME EVER" (I'M DOING THAT I HAVE IN 6+ YEARS!) I ASKED IF JOANNE

D 60

SNOHOMISH COUNTY CORRECTIONS
MENTAL HEALTH MEMO TO INMATE

Name VARNELL, MITCHELL CIN# 65696 Module 4ND

We received your referral/request and are responding as follows:

- We do not medicate for sleep disturbance during the initial 30 days of incarceration. Please rekit after 30 days if you continue having sleep disturbance. In the meantime, you may order Banaphen (Benadryl) from the pharmacy to take at bedtime.
- Your medication status has been referred to the psychiatrist or psychiatric ARNP for review during the next available consult on: Mon^{3/1} Tue Wed Thu Fri
- We are still awaiting treatment or medication confirmation from your provider.
- We believe your issues would be better addressed with your personal care provider after your release from jail.
- We do not provide routine counseling or therapy sessions for inmates.
- We do not perform court-ordered mental health evaluations.
- We need more information in order to respond to your request. Please rekit with more specifics.
- Your issues are outside the scope of the MHP office and have been referred to:
 - Medical staff
 - Sergeant's office
 - Classification/Counseling staff
 - Jail Administration
 - Other _____

Staff comments: Joanne Sprunger is out of town this week

[Signature]
Mental Health Staff

2/24/04
Date

Exhibit #13

MUENSTER & KOENIG
ATTORNEYS AT LAW

RECEIVED
AOL
M. Koenig

JOHN R. MUENSTER, INC., P.S.
JOHN R. MUENSTER
Attorney at Law
KIM D. KOENIG
Attorney at Law

SUITE 2220
1111 THIRD AVENUE
SEATTLE, WASHINGTON 98101
TELEPHONE: (206)467-7500
FAX: (206)467-0101
EMAIL: JMKK1613@aol.com

February 11, 2004

*LEGAL MAIL-SPECIAL MAIL; CONFIDENTIAL
ATTORNEY CLIENT PRIVILEGED CORRESPONDENCE;
DO NOT OPEN EXCEPT IN PRESENCE OF CLIENT*

Mitchell Varnell
c/o Snohomish County Jail
1918 Wall St.
Everett, WA 98201

Re: *Enclosed Releases*

Dear Mitchell:

Enclosed please find five general releases and five medical releases for you to sign and date and return to me in the enclosed self-addressed, stamped envelope.

Best wishes.

Very truly yours,

MUENSTER & KOENIG

By:

Andi Anderson
Andi Anderson
Legal Assistant

Enclosures

MUENSTER & KOENIG
ATTORNEYS AT LAW

JOHN R. MUENSTER, INC., P.S.
JOHN R. MUENSTER
Attorney at Law
KIM D. KOENIG
Attorney at Law

SUITE 2220
1111 THIRD AVENUE
SEATTLE, WASHINGTON 98101
TELEPHONE: (206)467-7500
FAX: (206)467-0101
EMAIL: JMKK1613@aol.com

CONSENT FOR RELEASE OF INFORMATION

I, the undersigned, hereby authorize _____

(Health Care Provider)

to disclose to the law firm of Muenster & Koenig, John R. Muenster, Attorney at Law, Kim D. Koenig, Attorney at Law, and/or any employees of said attorneys, the following information: Complete medical records, including all the clinical or hospital records in full. This includes, but is not limited to, x-rays, diagnostic testing of any nature, laboratory tests, correspondence, notes, written records, chart notes, or written documents of any nature within the meaning of the Uniform Health Care Act.

I consent to the release of information regarding myself which may be protected by local, state or federal laws which could pertain to testing and/or treatment for HIV infection, AIDS, sexually transmitted diseases, mental health problems, alcohol or drug abuse. I understand that I may prevent the release of such protected information by filing with you a "Prohibition Against Disclosure of Protected Information" form. I hereby release you from all legal responsibility or liability for the release of the above-mentioned information. I understand that I have the right to withdraw this authorization at any time in writing.

I understand that the information disclosed may be subject to redisclosure and may not be protected under state and federal laws protecting health care information unless protected by specific statutes protecting more sensitive information (e.g., 42 C.F.R. Part II for Alcohol and Drug Treatment Records; Ch. 70.24 RCW for HIV/STD/AIDS information).

This release authorizes disclosure through means of inspection, photocopying, or interviews of the above-named medical provider in connection with the above-listed medical records.

You are hereby instructed that I specifically deny access or disclosure of this information to the following: Any health care provider who has previously provided health care to me unless I have given a separate authorization in writing to you. Any other disclosure is denied except as required under the Uniform Health Care Act and only in strict compliance with the Act.

This consent is subject to my revocation at any time, except to the extent that action has been taken in reliance thereof and unless earlier revoked, it shall expire within 90 days from the date of this release.

All other medical release authorizations are canceled upon receipt of this medical release authorization.

DATE: _____

WITNESS

CLIENT/PATIENT

MUENSTER & KOENIG
ATTORNEYS AT LAW

JOHN R. MUENSTER, INC., P.S.
JOHN R. MUENSTER
Attorney at Law
KIM D. KOENIG
Attorney at Law

SUITE 2220
1111 THIRD AVENUE
SEATTLE, WASHINGTON 98101
TELEPHONE: (206)467-7500
FAX: (206)467-0101
EMAIL: JKK1613@aol.com

AUTHORIZATION FOR RELEASE OF INFORMATION

I, _____, do hereby authorize the law firm of Muenster & Koenig, John R. Muenster, Attorney at Law, Kim D. Koenig, Attorney at Law, and/or their employees, to contact the company, agency, or facility set forth below and receive any and all information or records that they may request. This includes, but is not limited, to inspection, copying and taking notation from all sources of information and records compiled by staff or professionals at _____.

DATED this ____ day of _____, 2004.

Signature: _____

Exhibit 14

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

STATE OF WASHINGTON,

PLAINTIFF

v.

MICHELL VARNELL,

DEFENDANT

NO. 02-1-00390-1

DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
RECONSIDERATION OF MOTION
FOR NEW TRIAL

NOTED FOR HEARING: 19th
MONDAY, APRIL 1~~4~~, 2004, AT
1 PM BEFORE THE HONORABLE
LINDA KRESE.

1. INTRODUCTION.

THE DEFENSE MEMORADUM IN SUPPORT OF RECONSIDERATION OF MOTION FOR NEW TRIAL CONTAINS A REPORT BY A PRIVATE INVESTIGATOR OF INTERVIEWS WITH POTENTIAL DEFENSE WITNESSES , WHICH SHOULD HAVE BEEN OBTAINED BY TRIAL ATTORNEYS.

RESPECTFULLY SUBMITTED, 4-16-04 FILED DATE

MITCHELL VARNELL



L E I G H H E A R O N
I N V E S T I G A T I V E S E R V I C E S

April 15, 2004

To: Mitchell Varnell

From: Leigh Hearon

Re: State v. Varnell:
#02-1-00390-1
Interviews with medical caregivers and legal counsel

10812 Forbes Cr. Dr.

V-107

Kirkland, WA 98033

425 827-5808

Fax 425 803-3036

www.hearonpi.com

On April 14 and 15th, I interviewed via phone the following people in regard to your case:

1. Dr. Budge Smith, cardiovascular specialist
2. Dr. Kris Kyro, psychologist
3. Dr. Weymuller, surgeon
4. Jay Michael Gallagher, lawyer
5. Dr. Donald Rice, psychiatrist

Here is the status of interviews with the other care providers you wished me to interview:

1. Dr. Roland Mauro, Director of the Anger Management & Domestic Violence Program at Harborview Medical Center: Dr. Mauro could not meet with me this week. We have a 2-hour appointment set up for next Wednesday, April 21st. Mr. Mauro charges \$300/hr. for consultations, and will require payment at the time of our meeting.

2. Dr. Stuart Dupan, Swedish Pain Center for Swedish Hospital, Seattle: Dr. Dupan cannot meet with me until next Wednesday or Thursday (April 21st or 22nd). In addition, your file is in storage and will have to be retrieved. There is a small cost of obtaining your file from storage; Dr. Dupan also charges \$475/hr. for consultation and records review. Payment for this interview is required at the time we meet.
3. Dr. James Fletcher, White Horse Family Medicine, Arlington: Dr. Fletcher will not speak to me outside the presence of the clinic's attorneys. Your medical files already have been sent to John Muenster. The attorneys for the clinic are supposed to call me to review the questions I will ask Dr. Fletcher. Dr. Fletcher charges \$600/hr. for consultations, and will require payment at the time he is interviewed. I do not know, as yet, if the clinic's attorneys will request fees for their time.
4. Dr. Natalie Novick-Brown: I was informed that Dr. Novick-Brown was now practicing in FL. In fact, she has returned to Western Washington. I have left a message for her, but have not received a return phone call.

Following are recaps of my interviews with your caregivers and divorce attorney.

Dr. Budge Smith
April 14th, 2004

Dr. Smith recalled your consultation with him on February 27, 2001. He sent his chart notes of that visit to John Muenster on March 17, 2004.

Your then rehab physician, Dr. Steven Taylor, had referred you to Dr. Smith. At the time, you were experiencing chest pain, pain in your right arm, right arm weakness, and disorientation. He was aware that you had had multiple surgeries, and that your pain symptoms resulted from a number of issues. He believed your chest pain was due to your esophagus squeezing your chest, and that the chest pain was a symptom of stress. Your EKG was normal, as was a treadmill test in excess of 20 minutes. Therefore, Dr. Smith assumed that the chest pain was due to a psychophysical source.

Dr. Smith recalled that you were extremely anxious about an ongoing divorce proceeding and attendant custody battle. Today, he cannot recall the specific issues that were causing you stress, but he does remember your constant worry about the future of your family.

Dr. Smith said he recommended trying Reglan, a neuroleptic prescribed medication used to treat gastrointestinal problems. In his notes, he states that you were "highly motivated" to try Reglan therapy. Dr. Smith also was aware that you were currently on what he called "a pain cocktail program," under the supervision of Dr. Steven Taylor. Dr. Smith did not see any problems adding Reglan to the other medications you then were taking. He continued to refill your prescription for Reglan up to the time of your arrest.

However, since the time of your consultation with Dr. Smith, Reglan has undergone increasing scrutiny by the medical profession. It is now recommended for short-term use only, because of the adverse effects some long-term patients have felt.

The most prominent symptom chronic users of Reglan have experienced is Tardive Dyskinesia, a movement disorder that causes people to involuntarily grimace, blink their eyes, and make other repetitive movements, often without their knowledge. Tardive Dyskinesia also has been linked to psychological problems, as well.

Other side effects from taking Reglan include confusion, restlessness, and unusual irritability.

Attached are printouts from Web sites describing the usages and potential problems associated with Reglan. Additional information is available at www.reglan-lawsuit.com.

CONSULTATIVE HISTORY AND PHYSICAL EXAMINATION

PATIENT: VARNELL, Mitchell L.
DATE: 02/27/01

REFERRING PHYSICIAN: Steven Taylor, M.D.
CONSULTING PHYSICIAN: Budge H. Smith, M.D.

REASON FOR CONSULTATION: Evaluation of chest and arm discomfort.

HISTORY OF PRESENT ILLNESS: Mr. Varnell is a 39-year-old construction and landscaping developer, who has had multiple surgeries for cervical disk disease and lumbosacral injuries. He has seen Dr. Taylor for unfortunate narcotic addiction associated with depression given his chronic back problems and pain. He is currently on a pain cocktail program including medication with Neurontin 600 mg t.i.d., Wellbutrin 150 mg p.o. b.i.d. for his depression. He also has noted some chest pain, which he states is quite disabling and severe from time to time. It occurs when he is emotionally stressed. He has recently begun to jog with his 8-year-old son and states that he does not typically get chest pain with physical activity. He denies nausea, vomiting, shortness of breath, or diaphoresis with his chest discomfort.

He states his discomfort has several components. He was once kicked in the chest and has tenderness in his chest. Over the past 30 days he has also noted right arm radiating discomfort that he describes like nerve pain and associated right arm weakness. He also gets disoriented when he gets his chest discomfort. He has had an upper GI, which was evidently unrevealing. He denies any associated symptoms with food or relief with food, but clearly there is a component of stress related with this chest discomfort by his description. He has been tried on Propanolol with some relief, but his pain returned despite increasing doses of the medication and pain cocktail also relieved his discomfort temporarily. He denies the use of recreational drugs.

He states he has been under a great deal of emotional stress, as he has been served divorce papers by his wife and he is in a custody battle for his children. His other past medical problems revolve around chronic sinus drainage.

CARDIOVASCULAR RISK FACTORS: No history of tobacco use, hypertension, diabetes, hypercholesterolemia or a family history of ischemic heart disease.

CURRENT MEDICATIONS: Neurontin, pain cocktail and Wellbutrin.

PHYSICAL EXAMINATION:

Vital signs: Blood pressure is 120/88, heart rate is 95 and regular.
HEENT: Unremarkable without xanthelasmas or xanthomas.
Neck: Carotid upstrokes are 2+ bilaterally without associated bruits. Jugular veins are flat. No thyromegaly is evident.
Chest: The patient has mild tenderness around his xiphoid process.
Lungs: Clear throughout without rales, rhonchi or wheezes.
Cardiac: Demonstrates a normal S1 and S2. No murmurs, rubs, gallops, heaves or clicks are evident.

(Continued)

Page Two - Consultative History and Physical Examination
VARNELL, Mitchell L.
02/27/01

PHYSICAL EXAMINATION CONTINUED:

Abdomen: Soft, nontender. Bowel sounds present and normoactive. No hepatosplenomegaly is evident.
Extremities: Without cyanosis, clubbing or edema.

On treadmill the patient exercised for 10 minutes and 39 seconds on the standard Bruce protocol. Resting blood pressure was 138/88 and heart rate was 95. At peak stress blood pressure was 186/76 and heart rate was 154. The patient had mild chest discomfort throughout the course of his study, which did not increase with exertion.

His 12-lead EKG at rest was normal and absolutely no ST-T wave abnormalities occurred with stress. Functional aerobic capacity is normal and no arrhythmias are evident.

IMPRESSION: Chronic multifactorial chest pain without evidence of myocardial ischemia.

RECOMMENDATIONS: I think that the patient's discomfort has multiple facets. He certainly has a component of chest wall syndrome and I am concerned about his right upper arm neurologic pain and weakness, which would suggest cervical radiculopathy and with his previous surgeries I am concerned that he is possibly developing nerve compression. I tried to call Dr. Taylor today, but he is out of the office and we will touch base with him next week. I urged that the patient's recent right upper arm discomfort, that Dr. Taylor is unaware of, is aggressively evaluated.

He may have a component of stress related esophageal dysmotility, given that it appears to be related to his psychological stress and I have a low threshold for trying him on Raglan or calcium channel blocker. I think Raglan would be the most responsive course of therapy without interfering with his depression and other active medical problems. It is certainly not habit forming.

At the end of my interaction with Mr. Varnell, recognizing that Dr. Taylor was gone for the week, the patient was highly motivated for a trial of Raglan therapy, 10 mg ac and q.h.s. will be started with 12 tablets given because the patient should notice the responsiveness if he has esophageal dysmotility as a component of his discomfort. It is clear that his cardiovascular fitness is quite good and I do not feel that he has myocardial ischemia as a component of his chest pain and arm pain syndrome.

Thanks very much, Steve, for asking me to see this challenging patient with you.

Budge H. Smith, M.D.
BHS/tls
cc: Steve Taylor, M.D.
D: 02/27/01
T: 02/28/01

Dr. Kris Kyro
April 14th, 2004

Dr. Kyro treated you on a semi-regular basis from January 2001 to October 2001. He testified at your court hearing regarding child custody. Dr. Kyro recalls testifying he did not consider you at risk to act violently. He has sent a copy of your file to John Muenster.

In addition to emotional issues, Dr. Kyro treated you for pain disorder and depression stemming from your L&I claim. Your pain medication doctor, Steven Taylor, referred Dr. Kyro to you.

Dr. Kyro diagnosed you as anxious, nervous, and stressed out. He worked with you to try to alleviate your stress so it wouldn't negatively impact your pain level. He was concerned that your muscle tension was contributing to your pain.

Your treatment with Dr. Kyro started shortly after your wife served you with divorce papers. Dr. Kyro said that you really seemed to care about Karen, but were frustrated about what was happening, particularly in regard to the restrictions imposed about seeing your children.

Dr. Kyro said you obsessed a lot about your pending divorce, especially how it would impact the lives of your children. Dr. Kyro said you were determined to remain involved in your children's lives.

There were times, Dr. Kyro said, when you "relieved" some strong feelings about the marriage ending. His recollection is that you felt Karen shared equal blame in the altercations you had with her. However, he does not recall you speaking with any particular anger toward Karen. He said your feelings were more of anxiety and depression over the situation. He recalls you telling him you did not want to get divorced.

Dr. Kyro said he gets "a lot of angry guys" in his office, and his impression was that you did not fall into the category of being one of the men so angry that there was concern about you acting out.

Dr. Kyro said you often felt overwhelmed by your chronic back and neck pain. He said you often felt disabled because of its severity, which he ranked as often 9 on a scale of 1 - 10, with 10 as the worst pain you'd felt.

On some occasions, Dr. Kyro felt you had been over-medicated, which was reflected in the way you physically presented.

Dr. Kyro said that at the beginning of therapy, you were "pretty impaired psychologically." At times, you seemed to track, but you often would get ruminative, and go over the same information incessantly. Dr. Kyro said the thought of losing your family was "eating you up." By October 2001, he believed you had reconciled yourself to the divorce, but were still deeply troubled with the prospect. You were having difficulty thinking about anything else.

Because of the magnitude of the medications you were on at the time—Dr. Kyro recalls in October 2001, you were taking Wellbutrin, Zanax, Neurotrin, Oxycontin, and Flexeril, all prescribed by Dr. James Fletcher, your new pain med doctor—you had a “flattened” personality. Dr. Kyro could see your stress level fluctuate, but thought your intrinsic personality remained the same. However, you showed signs of sedation and fatigue.

Dr. Kyro was unaware that you had been charged criminally in Snohomish Co. Superior Court until after your conviction.

Dr. Ernest Weymuller
April 15, 2004

Dr. Weymuller had two consultations with you and performed surgery on your sinuses in January 2002.

He has no independent recollection of you talking about your family or any domestic issues. Dr. Weymuller did note that you presented "a flat effect," meaning your mood was less expressive. He said depressed people often present this way.

The surgery Dr. Weymuller performed was fairly extensive, and he anticipated that your recovery would take about two months. He said you would not necessarily be out of pain following surgery.

Dr. Weymuller does not know what your recovery was like, because he did not see you following the surgery.

He acknowledged that your pain level clearly could have affected your thought processes, but felt you were capable of making the decision to have surgery.

VARNELL, MITCHELL LEE U6828709
Clinic Note Authenticated
Service date: 21-nov-2001
Dictated by Wood, MD, J David on 21-nov-2001

CLINIC NOTE

PT NAME: VARNELL, MITCHELL
NUMBER: U 6-82-87-09
DOB: 06/21/1961
DOS: 11/21/2001

OTOLARYNGOLOGY CLINIC

BRIEF HISTORY:

Mr. Varnell is a 40-year-old gentleman with a chief complaint of chronic fatigue. He has a 10-year history of near constant 7/10 bifrontal and occasional bilateral retro-orbital pressure. In addition, he reports postnasal drip with green to brown sputum. This postnasal drip is exacerbated by exercise and most prominent in the morning. In addition, he complains of chronic halitosis. The patient notes that his symptoms are mitigated by antibiotics. He has taken numerous different antibiotics over the preceding 10 years and has had multiple courses of antibiotics up to three weeks. He notes that after discontinuing his antibiotics, his symptoms return to their baseline within two weeks. He has taken a tapered seven-day course of prednisone in the past and reports that it provided some relief of his symptoms. Mr. Varnell has undergone allergen screening which was negative. He denies symptoms of allergic rhinitis, including sneezing and itchy eyes. Mr. Varnell also complains that all of his body fluids are thickened.

Mr. Varnell underwent a septoplasty in 1999, he underwent endoscopic sinus surgery, and in 2000 he underwent another endoscopic sinus surgery.

He has reported no relief, and again in 2000 he underwent no relief, and again in 2000 he had no relief.

*BT 10/26/02
fax
573-5662
e-mail spine surgery, fixed
patient's PCP-5152 has*

PAST MEDICAL HISTORY:

Anxiety, lower back pain, three lumbar spine surgeries, hepatitis C, history of hiatal hernia, and now the patient has reported been working him up for Sjogren syndrome.

CURRENT MEDICATIONS: Bactroban nasal spray which provides no relief for the patient, Neurontin, Xanax, and Roxicodone. The patient has taken decongestants, antihistamines, and nasal steroids in the past, but none of these agents provided relief of his symptoms.

SOCIAL HISTORY:

The patient denies the use of tobacco and alcohol. He is the manager of an excavation company, but reports that he is working less and less secondary to his fatigue.

ALLERGIES:

NO KNOWN DRUG ALLERGIES.

REVIEW OF SYSTEMS:

Please see the Patient Intake Survey for a full review of systems.

PHYSICAL EXAMINATION:

GENERAL: The patient is alert and interactive with a normal voice. **HEENT:** Eyes: Pupils are equal, round and reactive to light bilaterally. Extraocular movements are intact. There is no afferent pupillary defect. Ears: External auditory canals and tympanic membranes are clear bilaterally. Nose: The patient has a slight left septal deviation. The nasal mucosa is pink and healthy-appearing. There is no visible purulence nor are there any visible masses or lesions. Oral cavity: There are no masses or lesions. Indirect laryngoscopy: The true vocal cords are mobile bilaterally. There are no visible masses or lesions. **NECK:** The patient's neck is soft and nontender. Normal anatomic landmarks are present. There are no masses or lesions. **NEUROLOGICAL:** Cranial nerves II through XII are intact. The patient does have a slightly flattened affect.

RADIOGRAPHIC STUDIES:

Review of a CAT scan of the sinuses performed in October 2001 reveals residual ethmoid cells with bilateral partial opacification.

Fiberoptic examination reveals healthy nasal mucosa. The nasofrontal duct is not visible. The true vocal cords are mobile bilaterally, and there are no visible masses or lesions.

IMPRESSION AND PLAN: Mr. Varnell's symptoms of headache, fatigue, and postnasal drip could all be attributed to chronic sinusitis. The patient's presentation, however, is complicated by his multiple medical problems. In addition, his history of occasional heartburn and symptoms of morning postnasal drip could be attributable to gastroesophageal reflux disease. Our plan is to have Mr. Varnell take a three-week course of steroids and Augmentin. If this proves to be an effective therapy and provides lasting improvement of the patient's symptoms, we may manage his sinus disease with biannual or triannual courses of steroids and antibiotics. If despite the steroids and antibiotics, Mr. Varnell continues to have postnasal drip, we have given him a prescription for Protonix to address his possible gastroesophageal reflux disease. If Mr. Varnell's sinusitis symptoms persist after taking both medications, he plans to follow up with us in one month for planning of revision endoscopic sinus surgery.

A cystic fibrosis DNA blood test was ordered to determine whether the patient might be a cystic fibrosis carrier, accounting for his thickened secretions.

J. DAVID WOOD, MD
RESIDENT

ERNEST A. WEYMULLER, MD
ATTENDING PHYSICIAN, DEPARTMENT OF OTOLARYNGOLOGY BOX 356515

ELECTRONICALLY AUTHENTICATED ON: November 30, 2001 15:04:11
ERNEST A. WEYMULLER JR MD
Professor & Chairman
Dept. Oto/Head & Neck Surgery

TranscriptView

Page 3 of 3

JDW:11/21/2001mq/ed:11/23/2001

CC: GARY K JOHNSON
N CASCADE ENT
111 S 13TH ST
MOUNT VERNON, WA 98273

CC Address Information
none

Jay Michael Gallagher
April 15, 2004

Gallagher recalls you as a demanding client. He said you were very obsessive about your divorce case, but did not think you presented any danger to your family.

He remembers you telling him how much you loved your wife, and not wanting to lose her. He thinks Karen manipulated things to work to her advantage. For example, he recalled that Karen once sent you a birthday card, and you reciprocated with a bouquet of flowers. In doing so, you violated the existing protection order, but Karen was not culpable by sending you the card.

Gallagher usually sets up 1/2 hour meeting with his clients, and bills them for 1/2 hour each month for phone calls, whether any are made or not. In your case, Gallagher said he had to set aside 1-1/2 hours for consultations, and ended up billing you for 10 hours of phone time each month, because of your obsession about your case.

When you met with Gallagher, Gallagher said he couldn't get rid of you. He would literally turn off the lights, get his keys, load up his car, and you would still be following him around, asking him questions. Gallagher said his focus was on trying to get you visitation with your children. He said it was difficult to keep you focused.

Gallagher recalls you saying on several occasions that you wanted to talk to your wife and make things OK. You cried all the time. You were extremely emotional when talking about your children.

Gallagher also recalls you complaining on a regular basis about chest pain. He believes your problems and attitude were exacerbated by over-medication. He recalls you were taking at least 17 different pills a day during the time he represented you. He described you at this time as paranoid, hyper, emotional, and anxious. At times, you seemed mentally confused.

When you called Gallagher, which was frequently, you would ramble on and on, sometimes for hours, about the same thing. Gallagher said he hung up on you several times, because you would not stop talking about the same thing.

Gallagher said that at least a third of his male clients tell him, "I should just take a gun and shoot my wife." He doesn't recall if you ever said something similar, because, he said, he hears it so often he tunes it out.

Gallagher said that at some point in the proceedings, Karen agreed to let you have back your hunting rifles. He wondered why Karen would agree to do this, if she were truly concerned that you might be violent towards her.

Dr. Donald Rice
April 15, 2004

Dr. Rice intermittently treated you from March 1998 until February 7, 2002. You presented problems of a mixed effect of anxiety and depression.

Dr. Natalie Novick-Brown requested his records from your file when you were going through your divorce. In March 2004, John Muenster requested your records. Dr. Rice wrote back a letter stating he would provide the records for the cost of copying them, which is \$250.00.

Dr. Rice diagnosed you with anxiety and depressive disorders not otherwise specified, and chronic pain disorder associated with medical conditions.

Dr. Rice recalls that you would see him regularly in a time of crisis, then drop off for significant periods until another crisis occurred. There were several times when you didn't show up for scheduled appointments. Dr. Rice cannot recall at this time what prohibited you from coming in.

Dr. Rice prescribed for you, at various times, Risperdol, an anti-psychotic used to treat schizophrenia, Zanax, an anti-anxiety drug, Gabitril, an anti-seizure drug, and Neurotrin, for pain. He continued to prescribe these medications for you up until the time of your arrest.

Dr. Rice also prescribed on rare occasions Oxycontin for you when you were unable to get into a pain clinic. Dr. Rice did not see any signs of drug-seeking behavior; he said there was never any question that you experienced chronic pain. You often exhibited signs of acute distress, both from physical and psychic pain.

Dr. Rice co-counseled you and Karen a couple of times, early on in your treatment. It's his understanding that your marital problems pre-dated seeing him. He remembers Karen accusing you of being too demanding of attention and too critical of her. He remembers you as believing Karen was too critical of you, never grateful, and unsympathetic to the pain that you were in. Dr. Rice's impression was that both of you were in a state of no compromise. He believes you were trying to hold onto the marriage, while Karen was trying to get some distance.

Dr. Rice remembers you talking to him about concerns of over-medication and mixing medications. Dr. Rice knew that you were seeing a pain med specialist. He believes he talked with one of your pain med doctors on one occasion.

On January 11, 2002, you complained to Dr. Rice of chest pains that you said had been described to you as "only stress." At that time, you were walking with a cane because of chronic pain from sciatica nerves. You had been housebound for three months, trying to protect yourself from your pain. You told Dr. Rice that your right arm hurt and was weak, and your life felt out of control. Dr. Rice started you on a new anti-depressant at that time (phonetic spelling: Zercil). Until November 2001, you had been on Efflexor, another anti-depressant.

You often told Dr. Rice how much you loved your wife. He believes you were very dependent on her, and saw her as a valuable person. He said your one wish was to be a good father to your children. You told him this, over and over again. Dr. Rice recalls that a lot of your activities revolved around your children.

You were emotional in sessions with Dr. Rice, but never lost control. You often spoke with vigor, but never raged. Dr. Rice described you as a circumstantial kind of guy and over-inclusive, who said more than you had to say. He said it was hard for you to honor the boundaries of the session; there always was just one more thing that came to mind. It sometimes took you a long time to get to the point.

You told Dr. Rice that you often felt confused. You were unable to work because of your physical pain, and had trouble concentrating on usual tasks, such as getting estimates done.

At your last scheduled meeting with Dr. Rice on February 7, 2002, you continued to express concern over the side effects you were experiencing with Risperdol.

April 16, 2004

I have directed Leigh Hearon to submit her investigative report dated April 15th, 2004 to the Honorable Linda Krese.

Mitchell Varnell
April 16, 2004

VARNELL, MITCHELL LEE U6828709
Clinic Note Authenticated
Service date: 10-jan-2002
Dictated by Murphy, MD, Michael Patrick on 11-jan-2002

CLINIC NOTE

Patient: VARNELL, MITCHELL LEE
MR#: U6828709
Visit: 01/10/02
Dictator: MICHAEL MURPHY, RES

OTOLARYNGOLOGY CLINIC PREOPERATIVE HISTORY AND PHYSICAL VISIT

SUBJECTIVE:

Mr. Varnell is a 40-year-old gentleman with a 10-year history of chronic sinusitis. The primary symptoms are that of near constant, 7/10 bifrontal and occasional bilateral retro-orbital pressure. In addition, he reports frequent postnasal drip with green to brown sputum. These primary symptoms respond briefly to multiple courses of antibiotics he has had in the past, but these symptoms promptly return once he completes his courses of antibiotics.

He has undergone endoscopic sinus surgery in 1999 and again in 2000. Despite these prior procedures, he continues to have difficulties with his primary symptoms.

ASSESSMENT/PLAN: The risks and benefits of revision endoscopic sinus surgery were explained to the patient in depth. Specifically, the risks of cerebrospinal fluid leak, diplopia, and even potentially loss of vision were explained to the patient in depth. He understands these risks and wishes to proceed with the surgery.

Approximately 25 minutes were spent in consultation with the patient during this visit.

MICHAEL MURPHY, MD
RESIDENT, Box #356515

ERNEST A WEYMULLER, MD
ATTENDING PHYSICIAN, Box #356515

ELECTRONICALLY AUTHENTICATED ON: January 17, 2002 16:47:06
ERNEST A. WEYMULLER JR MD
Professor & Chairman
Dept. Oto/Head & Neck Surgery

MM/
DD: 01/11/2002
DT: 01/14/2002

CC: GARY L JOHNSON
PO BOX 82066
FAIRBANKS, AK 99708

CC Address Information
none

VARNELL, MITCHELL LEE U6828709
Operative Report Authenticated
Service date: 14-jan-2002
Dictated by Heydt, MD, Jennifer L on 14-jan-2002

OP REPORT

PT NAME: VARNELL, MITCHELL
NUMBER: U 6-82-87-09
DOS: 01/14/2002

PREOPERATIVE DIAGNOSIS:
Chronic sinusitis.

POSTOPERATIVE DIAGNOSIS:
Same.

OPERATION:

1. Bilateral sphenoidotomy.
2. Bilateral nasofrontal duct decompression.
3. Bilateral revision maxillary antrostomy.

ANESTHESIA: General endotracheal.

SURGEONS:

Ernest A. Weymuller, MD, Attending Physician
Jennifer L. Heydt, MD, Resident

OPERATIVE INDICATIONS:

Mr. Varnell has a long history of sinusitis and is status post endoscopic sinus surgery in the past. He has persistent thick nasal drainage and frontal and periorbital pain and pressure. A CT scan reveals mucosal disease in the naso frontal duct region. He is therefore being taken to the Operating Room for revision endoscopic sinus surgery.

OPERATIVE FINDINGS:

1. Edematous mucosa of the bilateral nasofrontal duct region.
2. The rest of the ethmoids and maxillary sinuses appeared healthy.

OPERATIVE PROCEDURE:

After written consent was obtained, the patient was taken to the Operating Room and placed supine on the operating table. After adequate IV sedation was provided, the patient was endotracheally intubated. The head of the bed was rotated 90 degrees and the eyes were taped shut. The anterior origin of the left middle turbinate was injected with 1% lidocaine with 1:100,000 epinephrine. The face was prepped and draped in standard sterile fashion. The left nasal passage was found to be quite narrow. A 30 degree endoscope was introduced and passed into the middle meatus. The sphenoid ostium was identified in the sphenoid recess with a #7 sucker. The ostium was enlarged with upbiting Kerrison's and the microdebrider. Dissection was continued forward. Any remaining ethmoid cells were opened with an

upbiting Kerrison and the microdebrider. The patient was found to have persistent agger nasi cells, with edematous, hypertrophied mucosa. These cells were opened. Upon opening these cells, the nasofrontal duct was visualized. The nasofrontal duct was decompressed widely. Again, there was an edematous, hypertrophied mucosa in this area. Finally, the patient was found to have a residual uncinat process. This was removed with backbiting forceps and a microdebrider.

The anterior origin of the right middle turbinate, as well as the posterior origin of the right middle turbinate were injected with 1% lidocaine with 1:100,000 epinephrine. The 30 degree endoscope was introduced. The sphenoid ostium was identified with a #7 sucker. The ostium was enlarged with an upbiting Kerrison and the microdebrider. Again, any remaining ethmoid cells were slowly opened with upbiting Kerrison and microdebrider. The patient was noted to have residual agger nasi cells. These contained edematous hypertrophied mucosa. Once these were opened, the nasofrontal duct was visualized. The nasofrontal duct was decompressed with upbiting Kerrison's and microdebrider.

The patient was also found to have residual uncinat on the right maxillary sinus. This was removed with backbiting forceps and a debrider. At the end of the bilateral dissection, the patient had widely patent sphenoidotomies. All anterior and posterior ethmoid cells appeared to be open. The nasofrontal ducts were widely decompressed bilaterally and bilateral residual uncinat process had been removed. Floseal was applied to the sinuses bilaterally. Next, a single Merocel was placed in the middle meatus bilaterally.

The patient was allowed to awaken from anesthesia and was extubated without difficulty. He was transported to the Recovery Room in good condition.

Doctor Weymuller was present for the entirety of the case.

ESTIMATED BLOOD LOSS:100 cc.
IV FLUIDS:Maintenance.
COMPLICATIONS:None.

JENNIFER L. HEYDT, MD
RESIDENT

ERNEST A. WEYMULLER, MD
ATTENDING PHYSICIAN, DEPARTMENT OF OTOLARYNGOLOGY BOX 356515

ELECTRONICALLY EDITED AND AUTHENTICATED ON: January 17, 2002 17:27:59
ERNEST A. WEYMULLER JR MD
Professor & Chairman
Dept. Oto/Head & Neck Surgery

JLH[18:50]:01/14/2002jas[21:43]:01/14/2002

CC: GARY K JOHNSON
N CASCADE ENT
111 S 13TH ST
MOUNT VERNON, WA 98273

CC Address Information

none

Exhibit 15

132

STATE OF WASHINGTON
SUPERIOR COURT
COUNTY OF SNOHOMISH

CERTIFICATE OF SERVICE *email &*
I certify, that I served via messenger a copy of
the foregoing document to which this certificate
is attached, to the attorneys of record of
plaintiff, defendant, on the 16th day
of April ~~2004~~ 2004
MUNSTER & KOENIG
By Andreas Andrus

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

STATE OF WASHINGTON,	)	No. <u>02-1-00390-1</u> <i>15</i>
	)	03-1-00390-1
Plaintiff,	)	DEFENSE COUNSEL'S SENTENCING
	)	MEMORANDUM
v.)	
)	
MITCHELL L. VARNELL,	)	Noted for Hearing: Monday, April 19,
	)	2004, at 1:00 p.m.
Defendant.)	
_____)	

I. Introduction

Mitchell Varnell was found guilty by a jury of five counts of the offense of solicitation to commit first degree murder. After the verdict, Mr. Varnell's trial counsel withdrew at his request and he ultimately retained the undersigned to represent him in a motion for new trial.

ORIGINAL

Handwritten initials

1 The Court recently denied that motion. Mr. Varnell has filed several documents with the
2 Court stating that undersigned counsel has been discharged.

3 At a hearing before this Court on March 15, 2004, the undersigned advised the Court
4 that I was willing to continue to represent Mr. Varnell at the sentencing, because I wanted
5 to brief legal grounds for imposition of an exceptional sentence and did not believe that Mr.
6 Varnell had the sufficient legal training or experience to brief those issues. However, in
7 response to the Court's inquiry, Mr. Varnell declined to state whether or not he preferred the
8 undersigned to continue as his counsel for sentencing.
9

10 Accordingly, this memorandum is submitted to brief the Court on the grounds
11 available for imposition of an exceptional sentence, as promised by the undersigned at the
12 March 15th hearing. Mr. Varnell has availed himself of the opportunity to present additional
13 information to the Court.
14

15
16
17 II. Calculation of the Guideline Range

18
19 Mr. Varnell has an offender score of zero. The "seriousness level" of the offense of
20 solicitation to commit first degree murder is XV. The standard range is 180 to 240 months.

21 When a person is convicted of two or more serious violent offenses "arising from
22 separate and distinct criminal conduct", the sentences imposed are to be served consecutively
23 to each other. RCW 9.94A.589(1)(b).
24

1 It is undersigned counsel's view, based on a review of the trial transcript, that Counts
2 II-V are based upon one conversation: Mr. Varnell's contact with Detective Warren on or
3 about February 16, 2002. From the standpoint of logic, a single conversation would not
4 appear to constitute "separate and distinct criminal conduct". However, case law seems to
5 emphasize the fact that if behavior does not meet the definition of "same criminal conduct",
6 as defined in RCW 9.94A.589(1)(a), then it is necessarily "separate and distinct criminal
7 conduct". See, e.g., *State v. Price*, 103 Wn. App. 845, 14 P.3d 841, rev. denied, 143 Wn.2d
8 1014 (2000). The definition of "same criminal conduct" requires that multiple offenses
9 "involve the same victim". *Ibid.* The Varnell-Warren conversation apparently involved four
10 people. Thus, under current case law, Counts II through V, even though occurring during
11 a single conversation, apparently would constitute "separate and distinct criminal conduct",
12 triggering the consecutive sentence provisions of RCW 9.94A.589(1)(b).
13
14

15 Undersigned counsel respectfully disagrees with these cases. We contend, for the
16 record and for purposes of preservation of this issue, that multiple inchoate offenses such as
17 criminal solicitation, occurring during the same conversation, should not be deemed "separate
18 and distinct criminal conduct". We contend that cases holding to the contrary should be
19 overruled. If this result were achieved, Mr. Varnell's standard range would be 180 to 240
20 months on each count, running concurrently, rather than the 900 to 1,200 months calculated
21 by the prosecutor's office.
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1 III. An Exceptional Sentence Downward Should Be Imposed Pursuant to RCW
2 9.94A.535(1)(g).
3

4 This Court may impose a sentence outside the standard sentence range for an offense
5 if it finds, considering the purposes of the Sentencing Reform Act, that there are substantial
6 and compelling reasons justifying an exceptional sentence. RCW 9.94A.535. One of the
7 statutory mitigating circumstances codified in the Sentencing Reform Act justifying a sentence
8 below the standard range is found in subsection (1)(g) of the statute. That subsection
9 specifically provides that the Court may impose an exceptional sentence downward where
10

11 . . . [t]he operation of the multiple offense policy of RCW 9.94A.589 results
12 in a presumptive sentence that is clearly excessive in light of the purpose of
13 this chapter, as expressed in RCW 9.94A.010.

14 Here, we contend that RCW 9.94A.535(1)(g) should be applied to run all terms
15 imposed by the Court concurrently.
16

17 This result is supported by analysis of the trial testimony. It appears that Count I was
18 based upon Mr. Varnell's alleged comments to Mary Wilson, which appear to have gone no
19 farther than just talk. Ms. Wilson then reported Mr. Varnell's comments to Karen Varnell,
20 who then reported the same to her attorney, who then contacted the police.
21

22 It was the Sheriff's office that instigated the ensuing chain of events. As the Court
23 knows, it was arranged that Detective Warren would pose as a "biker" or "hit man" to see
24 if Mr. Varnell would engage in criminal solicitation. Mary Wilson, acting as a police agent,
25 apparently contacted Mr. Varnell and told him that the detective would be contacting him.
26
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1 After a series of attempts to contact, the police eventually lured Mr. Varnell to the fateful
2 meeting at the restaurant. It appears that Counts II through V are all based upon the
3 conversation with Detective Warren.
4

5 The Court can impose an exceptional sentence in a multiple count attempted murder
6 case by running the sentences concurrently or shortening the sentences under RCW
7 9.94A.390(1)(g). *State v. Hale*, 65 Wn. App. 752, 757-758, 829 P.2d 802, 805-806 (1992).
8

9 When more than one mitigating factor is present, an exceptional
10 sentence may include both elements: *i.e.*, shortening the sentences and making
11 them run concurrently.

12 *Hale*, 65 Wn. App. at 758, citing *State v. Oxborrow*, 106 Wn.2d 525, 723 P.2d 1123 (1986).
13 See also *State v. McGill*, 112 Wn. App. 95, 99-102, 47 P.3d 173, 175-177 (Div. I, 2002)
14 (sentencing court in drug case had discretion to consider and impose an exceptional sentence
15 downward under the multiple offense policy of the SRA); *State v. Hortman*, 76 Wn. App.
16 454, 463-464, 886 P.2d 234 (Div. I, 1994) (same); *State v. Sanchez*, 69 Wn. App. 255, 848
17 P.2d 208 (1993) (sentencing court in drug case could impose exceptional sentence downward
18 where prosecutor obtained multiple convictions on police-initiated drug charges); *State v.*
19 *Moore*, 73 Wn. App. 789, 871 P.2d 642 (1994) (sentencing court in marijuana-stolen
20 property operation could impose exceptional sentence downward under the multiple offense
21 policy).
22
23

24 It is important to note that Counts II through V were police-initiated. Mr. Varnell did
25 not seek out Detective Warren on his own. The police set up the contact. This can be a
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1 factor in applying the multiple offense mitigating circumstance statute. *See Hortman, supra;*
2 *Sanchez, supra.*

3 One of the purposes of the SRA is proportionality in sentencing. RCW 9.94A.010(1).
4 If the Court were to run Mr. Varnell's sentences in Counts II through V consecutively, Mr.
5 Varnell would receive a longer sentence for a single conversation than if he had actually killed
6 someone. In fact, even if the sentences in Counts II-V are run concurrently, if the Court were
7 to impose a term within the standard range, Mr. Varnell would still receive a longer sentence
8 based upon a single conversation than some individuals who actually caused someone's death
9 and are convicted of second degree murder or manslaughter would receive under the Act.
10 It is clear that running the sentences consecutively would result in a presumptive sentence that
11 is clearly excessive in light of the purposes of the Sentencing Reform Act.
12
13
14

15 There are other important purposes codified in the Sentencing Reform Act. Sentences
16 are to promote respect for the law by providing punishment which is just. RCW
17 9.94A.010(2). Sentences should be commensurate with the punishment imposed on others
18 committing similar offenses. RCW 9.94A.010(3). Sentences should offer the offender an
19 opportunity to improve him or herself. RCW 9.94A.010(5). Sentences should make frugal
20 use of the state's and local government's resources. RCW 9.94A.010(6). All of these
21 purposes, which RCW 9.94A.535(1)(g) directs the Court's attention to, are best served by
22 running the sentences concurrently.
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1 The sentences in Counts II through V should also run concurrently with Count I under
2 RCW 9.94A.535(1)(g). It appears that Count I, like the other counts, involved a
3 conversation. If the Court were to run sentences in Counts II through V concurrently with
4 each other but consecutive to Count I, once again, Mr. Varnell would receive a far longer
5 term for engaging in a conversation than the terms imposed by persons who actually go out
6 and commit first degree murder. Such a result would frustrate the values of proportionality,
7 just punishment, and commensurate punishment—important purposes of the Sentencing
8 Reform Act. RCW 9.94A.010(1), (2), and (3).
9

10
11 Based upon the foregoing analysis, undersigned counsel respectfully urges the Court
12 to impose concurrent sentences in all five counts pursuant to RCW 9.94A.535(1)(g).
13

14 IV. An Exceptional Sentence Downward Should Be Imposed Pursuant to RCW
15 9.94A.535(1)(d).
16

17 A second statutory mitigating circumstance justifying an exceptional sentence
18 downward is that: “[T]he defendant, with no apparent predisposition to do so, was induced
19 by others to participate in the crime.” In the instant case, “the crime” is first degree murder.
20 As discussed above, Counts II through V were police-initiated counts; Mr. Varnell did not
21 seek out Detective Warren; the reverse was true. Mr. Varnell was put in contact with
22 Detective Warren at the instigation of the police.
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1 As the state concedes, Mr. Varnell has an offender score of zero. Whatever the
2 imperfections in the Karen Varnell-Mitchell Varnell relationship were, it appears that he did
3 not have a "predisposition" to actually go out and cause his ex-wife's death. As the Court
4 is aware from Mr. Varnell's trial testimony and the pro se submissions he has filed with the
5 Court, he emphatically denies that he had any intent to harm his wife.
6

7 This statutory mitigating factor likewise justifies an exceptional sentence downward
8 and justifies running Counts II through V concurrently. As noted previously, when more than
9 one mitigating factor is present, an exceptional sentence can include both shortening the
10 sentences and making them run concurrently. *State v. Hale, supra*. We urge that result here.
11

12
13 V. *An Exceptional Sentence Downward Should Be Imposed Pursuant to RCW*
14 *9.94A.535(1)(e)*
15

16 A third statutory mitigating factor is that "[t]he defendant's capacity to appreciate the
17 wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of
18 the law, was significantly impaired." Mr. Varnell, in his submissions to the Court, has
19 apparently urged that his mental state and medications prescribed by doctors impacted his
20 involvement in the events leading to his arrest.
21

22 Mr. Varnell's pharmaceutical records indicate that in January and February of 2002,
23 he was filling prescriptions for Risperdal, Oxycontin, Neurontin, Alprazolam, Carisoprodol,
24 Serzone, Vioxx, Zanaflex and Protonix, Prednisone, Cyclobenzaprone, and Sipro.
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1 The medical records of Mr. Varnell's psychiatrist, Dr. Donald E. Rice, M.D., indicate
2 that as of January, 2002, Mr. Varnell was suffering from depression, chronic pain disorder,
3 and anxiety disorder. He was prescribed a battery of medications. The records of Dr. James
4 Fletcher of Whitehorse Family Medicine indicate that as of January 23, 2002, Mr. Varnell was
5 suffering from fatigue, severe problems sleeping, inability to work, that he was emotionally
6 frazzled, that he was fuzzy-headed. The records of North Cascade ENT and FP Surgery,
7 Arlington, Washington, indicate that Mr. Varnell was diagnosed with neocosal disease in
8 January, 2002, and subjected to surgery with Dr. Ernest Weymuller, M.D., as the attending
9 physician. Clinic records indicate that as of November of 2001, he complained of chronic
10 fatigue. His history indicated anxiety, lower back pain, cervical spine surgeries, lumbar spine
11 surgeries, hepatitis C and headaches. Records received from Arlington Physical Therapy
12 indicate that he was requesting traction devices for his back as of January, 2002 to alleviate
13 his chronic neck and back pain.
14

15
16
17 The combination of these medical conditions, and the combination of the medications
18 that Mr. Varnell was taking to alleviate psychiatric and physical symptoms, may be considered
19 by the Court in the light of RCW 9.94A.535(1)(e).
20

21
22 VI. Conclusion

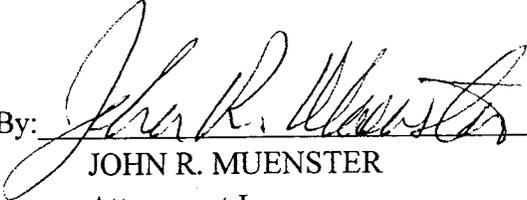
23 For the reasons stated, undersigned counsel urges the Court to impose an exceptional
24 sentence downward in this case. Undersigned counsel requests that the sentence in each
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1 count run concurrently and that the Court take the foregoing factors into account in setting
2 the term.

3 DATED this the 10th day of April, 2004.

4 Respectfully submitted,

5 MUENSTER & KOENIG

6
7
8 By: 

9 JOHN R. MUENSTER

10 Attorney at Law

11 WSBA No. 6237