

Response to SAG

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COURT OF APPEALS
DIVISION ONE

JAN 18 2006

NO. 31980-2-II

COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON

JOHN KENNETH STEIN, a.k.a. JACK STEIN,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

FILED
COURT OF APPEALS
DIVISION ONE
JAN 18 2006
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KSC
STATE OF WASHINGTON

RESPONSE TO PRO SE STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

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TABLE OF CONTENTS

I.	ISSUES RAISED IN PRO SE STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW	1
II.	ARGUMENT	2
	A. Stein Was Afforded the Right to Confront Witness Roy Stradley	2
	B. The Competency Proceeding was Appropriately Handled and Did Not Cause Undue Delay in the Trial	4
	C. Stein Received Effective Assistance of Counsel	6
III.	CONCLUSION	7

TABLE OF AUTHORITIES

Cases

Hunt v. Smith,
856 F. Supp. 251 (D. Md. 1994)..... 2

Mullen v. Blackburn,
808 F.2d 1143 (5th Cir. 1987) 2

State v. DeSantiago,
108 Wn. App. 855, 33 P.3d 394 (2001), affirmed in part, reversed
in part 149 Wn.2d 402, 68 P.3d 1065 (2003) 3

State v. Smith,
104 Wn.2d 497, 707 P.2d 1306 (1985)..... 2

State v. Stein,
94 Wn. App. 616, 972 P.2d 505 (1999) (partially published),
affirmed, 144 Wn.2d 236, 27 P.3d 184 (2001) 1

Statutes

RCW 10.77.010 5

RCW 10.77.090 5

Rules

ER 804 4

ER 804(a)(5) 3

RAP 10.3(a)(4)..... 2

**I. ISSUES RAISED IN PRO SE STATEMENT OF
ADDITIONAL GROUNDS FOR REVIEW**

On page 68 of his supplemental brief, appellant Stein raises twenty-six additional grounds for review. Of those twenty-six grounds, only three relate in any way to the trial in 2004. Those three issues are stated by Mr. Stein as follows:

...

4. RIGHT TO CONFRONT WITNESSES

a. Roy Stradley

...

5. EXCESSIVE DELAY

c. Competency Proceeding

...

7. INEFFECTIVE ASSISTANCE OF COUNSEL

a. Suzan Clark

...

The remaining issues have been previously raised by Stein and rejected by this Court and the Supreme Court in the decisions preceding the remand for a new trial. *State v. Stein*, 94 Wn. App. 616, 972 P.2d 505 (1999) (partially published), *affirmed*, 144 Wn.2d 236, 27 P.3d 184 (2001); *State v. Stein*, 144 Wn.2d 236, 27 P.3d 184 (2001).

Additionally, as to all of the issues raised, Mr. Stein once again fails to provide any reference to the record to support his allegations. Instead, he serves up a melange of claims that prior counsel, court officials, witnesses, current counsel and prosecutors engaged in a conspiracy against Mr. Stein during the course of his prior trials, appeals, and now the current proceedings. However, this is nothing more than unsubstantiated ramblings with no discernible legal analysis or citation to

the record of the facts underlying the alleged violations. Claims so vague and lacking in specifics can neither be addressed nor remedied.

Pro se litigants are subject to the same rules of procedure as attorneys. *State v. Smith*, 104 Wn.2d 497, 508, 707 P.2d 1306 (1985). Mr. Stein has failed to provide a reference to any record supporting any of his claims. RAP 10.3(a)(4) provides that “reference to the record must be included for each factual statement.” “The fact that many claims of . . . error are pressed does not alter fundamental math -- a string of zeros still adds up to zero.” *Hunt v. Smith*, 856 F. Supp. 251, 258 (D. Md. 1994); *Mullen v. Blackburn*, 808 F.2d 1143, 1147 (5th Cir. 1987) (“Twenty times zero equals zero.”).

Despite Stein’s failure to provide reference to the record to support his claims, the State will briefly address issues 4a, 5c, and 7a, as there is a record before this Court that clearly shows Stein’s claims are without merit. The facts relevant to each issue will be included in the relevant argument sections.

II. ARGUMENT

A. Stein Was Afforded the Right to Confront Witness Roy Stradley

At the 2004 trial, the State offered the 1989 trial testimony of witness Roy Stradley in lieu of live testimony because the State’s reasonable efforts to locate the witness had been unsuccessful. 21 RP 3598, 3635-60. Clark County Sheriff’s Sergeant David Trimble testified that he had tried unsuccessfully to locate the witness several times

over the course of more than two years, including again just prior to the trial. 21 RP 3599. Sergeant Trimble's efforts included contacting a family member, running a criminal history check, checking the last known addresses of the witness, using an Internet search tool relied upon by law enforcement and financial institutions to locate people, sending multiple letters to the witnesses last known addresses, and twice sending law enforcement from Nebraska to check the last know address in Omaha listed on the Internet for the witness. 21 RP 3599-3605. None of those efforts provided any information on the current location of the witness. *Id.* The court found the State had taken reasonable steps to locate the witness, and that for purposes of ER 804(a)(5), the witness was unavailable. 21 RP 3607-08.

Stein essentially raises two issues related to his ability to confront witness Roy Stradley. First, Stein wrongly claims that the State offered Stradley's former testimony without offering evidence supporting the claim that the witness was unavailable. As shown above, the record is clear that the State went to great lengths to locate the witness and was not able to do so.

A witness may be found to be unavailable if the proponent shows that all reasonable means were used in an effort to secure the presence of the declarant at trial, even though no subpoena was used. *State v. DeSantiago*, 108 Wn. App. 855, 33 P.3d 394 (2001), affirmed in part, reversed in part 149 Wn.2d 402, 68 P.3d 1065 (2003) (it would be pointless to try to serve subpoenas on witnesses who could not be located,

witnesses held unavailable.) Therefore, the trial court properly found Stradley to be unavailable for purposes of ER 804.

Second, and without citing to any authority to support his contention, Stein claims the prior testimony of Stradley was improperly admitted because Stein was not represented by “retained counsel of choice” in the 1989 trial where Stradley testified. As previously indicated, the issue of whether Stein’s right to counsel was violated in 1989 was previously decided against Stein. And there is nothing in ER 804 or the Confrontation Clause that requires the exclusion of admissible evidence simply because a defendant was not satisfied with his prior counsel.

B. The Competency Proceeding was Appropriately Handled and Did Not Cause Undue Delay in the Trial

Stein asserts that his trial counsel, Suzan Clark, inappropriately raised the issue of whether Stein was competent to stand trial, which led to a delay in the trial while Stein was evaluated and a competency hearing was conducted. However, it is clear from the trial record that Ms. Clark was trying to protect the rights of her client and ensure that Stein was competent to stand trial and received a fair trial.

Ms. Clark was appointed as counsel for Stein at his request after his repeated requests for a continuance of the trial date in June 2003. 15 RP 2352-77, 2448-75, 2478-87, 2513-14, 2532-35; CP 1196-1202, 1310-11. After working with Stein for over three months preparing for trial, Ms. Clark became concerned that Stein had suffered some unknown neurological damage that was interfering with his ability to assist counsel.

16 RP 2592-97. At counsel's request, the trial court appointed a psychologist to evaluate Stein for purposes of determining whether there was a competency issue. 16 RP 2597-98; CP 1321-23. Pursuant to that order, Ms. Clark was required to provide a copy of the psychologist's report regarding Mr. Stein's competency to the court. CP 1321-22.

Thereafter, licensed psychologist Dr. Jerry Larsen submitted a report that concluded Stein was not competent to stand trial. 16 RP 2615; CP ___, subnumber 1040.¹ Based on that report and the concerns raised by Ms. Clark, the court ordered Stein committed to Western State Hospital for a competency evaluation pursuant to RCW 10.77.010. 16 RP 2615, CP 1327-29.

After arriving at Western State Hospital, Stein refused to cooperate with his counsel and the doctors, and as a result, Dr. Murray Hart submitted a report finding he had insufficient evidence to contest Dr. Larsen's determination that Stein was incompetent. CP ___, subnumber 1059²; 16 RP 2638-42. Therefore, the court found Stein incompetent and ordered him committed to Western State Hospital for 90 days, pursuant to RCW 10.77.090. 16 RP 2639-48; CP 1330-32.

In a report dated April 10, 2004, Dr. Murray Hart found that, while Stein continued to refuse to cooperate with the evaluation and treatment processes, Dr. Hart now had sufficient information and observation of

¹ Confidential Report of Dr. Jerry Larsen, attached as Appendix A.

² Confidential Report of Dr. Murray Hart, dated February 3, 2004, attached as Appendix B.

Stein to conclude that Stein was now competent to stand trial. 16 RP 2654, 2667-75; CP ___, subnumber 1083³. Despite his prior protestations that he was indeed competent, Stein now argued that he was not competent because he did not have the ability to assist his defense counsel. 16 RP 2656. Stein initially requested a continuance for a hearing on that issue, but when he was informed that would further toll his speedy trial expiration date, he changed his position and stipulated he was now competent. 16 RP 2656-66. Based on Stein's answers to the court's questions and the testimony of Dr. Hart, the court found Stein competent to proceed. 16 RP 2656-75; CP 1336-37. Thereafter, the trial date was reset to begin prior to the speedy trial expiration date of June 6, 2004. 16 RP 2677.

And despite Stein's unfounded claim that the delay in his trial was calculated by the State to allow more time to replace one assistant attorney general with another, new co-counsel for the State had already been assigned to replace previous co-counsel, who had taken a job in a different division of the Attorney General's Office. 16 RP 2622-23. The court and counsel were notified of this change at the same hearing that Stein's counsel originally raised her concerns about Stein's competency. *Id.*

C. Stein Received Effective Assistance of Counsel

In addition to the above complaints about Ms. Clark, Stein also alleges that he received ineffective assistance of counsel because the trial

³ Confidential Report of Dr. Murray Hart, dated April 10, 2004, attached as Appendix C.

court refused Steins' request to remove Ms. Clark as counsel. Immediately after having been found competent, Stein asked the court to remove Ms. Clark as counsel and appoint the second chair attorney or another attorney of his choosing as lead counsel. 16 RP 2677-83. The court inquired of Stein in detail his reasons for wanting Ms. Clark removed, and found that Stein's differences with Ms. Clark related to differences of opinion regarding trial strategy. 16 RP 2677-90. Accordingly, the court refused to discharge Ms. Clark. 16 RP 2689-90. In fact, Stein himself later reconsidered his position regarding Ms. Clark as lead counsel and specifically notified the court that he wished to proceed to trial with Ms. Clark as lead counsel. 17 RP 2713-16.

Thereafter, the record is replete with examples of Ms. Clark's superb performance as Stein's attorney throughout the course of the trial and the post-conviction motions. Mr. Stein again fails to provide reference to the record to support any of his ridiculous claims regarding Ms. Clark's performance as his counsel. His claims are without merit.

III. CONCLUSION

Based on the foregoing arguments, the State respectfully asks this Court to affirm Stein's convictions.

RESPECTFULLY SUBMITTED this 13th day of January, 2006.



LANA S. WEINMANN, WSBA #21393
Assistant Attorney General

Appendix A



WILLAMETTE VALLEY FAMILY CENTER, LLC

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CRIMINAL JUSTICE DIVISION
ATTORNEY GENERAL'S OFFICE

November 11, 2003

Suzan Clark
Attorney at Law
1101 Broadway Street, Suite 250
Vancouver, WA 98660

RE: Jack Stein
Clark County Case #: 88 1 00788-8

Dear Ms. Clark:

At your kind request, in the Clark County Detention Center, on November 4, 2003, I examined Jack Stein, a 64 year old, white male born 7-6-1939, in Vancouver, Washington. He is an only child, born to his mother, Muriel, whom he describes as kind, loving and supportive. She is a high school graduate who was also reared in Vancouver and for several years worked as a homemaker on the family farm. She divorced her husband, Jack's father, when he was but six years of age and started her own seamstress and drapery business. She is described as outgoing, a social climber, who was well-liked by friends, neighbors and family. She never abused alcohol or illicit drugs nor is there report of legal problems. She did not suffer from mental disease nor defect. Unfortunately, she underwent surgery for a bowel obstruction, post-op she did well and the day before she was to be discharged she was found "dead". Jack believes that she was murdered and claims that she, as he, were threatened by attorneys and judges in an elaborate scheme to cover up illegal activities related to "illegal acquisition of the family farm". She had two brothers and one sister, all of whom led stable lives. The maternal grandmother, Helen, was a homemaker with whom Jack lived for several years as will be described. She was kind, caring and supportive. The grandfather, Ed, was a carpenter and builder. In later years he established his own nursery business.

Jack's biological father, Nick, died at the age of 72. He too was a high school graduate living in Vancouver who for many years managed the family farm accumulating acreage but became "land poor". He was never abusive to his son but became depressed and as Jack reports "devastated" after the divorce. In later years Jack and his father would argue but again was never physically abusive to his family. At this point Jack Stein launches into a very, very long, detailed and obviously paranoid discourse about Vancouver attorneys, judges, businessmen, real estate agents who allegedly forged the father's signature on documents and then much of his property was "garnished". He also alleges that his father became ill and was hospitalized in Oregon. He contends that he was

kidnapped" by Washington authorities, transported to Vancouver, where Jack was not allowed to see his father and a court order was reportedly issued, such that as Jack puts it "I couldn't help my father protect himself". The father died at the age of 72 in 1987 and the cause of death is not reported. The father had a brother who was a county road worker and a sister who was "mentally defective". The paternal grandfather, Nick, was a farmer while the mother, Elizabeth, Jack never met. There was a step-father, Leonard Graham, who he believes is alive, worked as an upholsterer and was "good to all of us". He was never abusive nor did he use alcohol or illicit drugs.

Jack believes he was the product of an uncomplicated pregnancy and a normal delivery. It does not know his birth weight but believes he met expected developmental milestones. He attended three one room schools, passed from grade to grade, was a good student and never a behavioral problem. He entered Evergreen High School where he received A's and B's and reportedly graduated with a 3.5 GPA. He took particular interest in vocational agriculture and is quite proud of the fact that he received the "State Star Farmer's Award". Throughout his formative years he was not involved in physical altercations. He did not run away nor was he truant. He denies stealing and robbed from no one. He did not carry weapon. He was never a gang member nor did he set fires. He did not torture animals nor vandalize property. As a juvenile he reports no arrests nor convictions and abused neither alcohol or illicit drugs.

In his senior year he excelled in agriculture and claims that he became a high school agricultural teacher and became a teacher's assistant while still in high school at the community college. He borrowed money from his father to buy a pig rather than spend \$50-\$60 he spent \$360.00, bought pigs and developed a several acre parcel into a nursery where he also raised corn, cattle, hay and grass seed. He claims to have, within a four year period, saved \$7,000.00. He then attended Clark Community College then transferred to Washington State University where he graduated as an agricultural major. He then went to Oregon State University in Corvallis to work on a two year Master's program. He completed his studies, did not do a thesis and then adds that he was married twenty years to Irene. This union produced a son, John, 42 and daughter, Tammy, 40, from whom he is estranged. He worked as a statistician for the State of Oregon Agricultural Department. He moved from place to place until some years later he was hired by Boeing as a statistician. During his four years of employment he became a Management Pricer but his job was terminated due to layoffs. He worked long hours and later learned that his wife was into drugs, had an affair and their relationship ended in divorce. He did not maintain close contact with his children. He then worked for some years for the Agricultural Business Council in Portland, Oregon. When his boss's health failed his job was terminated. He then became an agricultural teacher at Camas High School. Two months later he was involved in a serious automobile accident and in 1976 suffered a concussion and a subdural hematoma requiring evacuation. Then followed a five year period of recovery, he had to learn to talk and walk. His memory has since been impaired and he has difficulty with concentration and remembering new information. He had married Bethany and she nursed him back to good health. It was during this time that the legal problems with his father's 72 acres of land surfaced. And again Jack Stein becomes emotional, rambling and states that he and his father were the subject of

"criminal, judicial misconduct". There were bribes and corruption and this has been an on-going problem for years. Jack contends that he was trying to help his father and the father's lady friend, Thelma, when she was murdered. He was accused of the murder, went to trial and was found not guilty but additional charges were levied when it was alleged that someone had broke into the attorney's home or office. The above murder trial was then combined with the break-in and attempted murder charges. Jack Stein was acquitted of the murder charges, found guilty of the break-ins and attempted murder and was sentenced to 45 years and transferred to the Walla Walla State Prison. He served 13 years. He allegedly paid Darrel Lee, an attorney, \$50,000.00 to conduct an appeal. Allegedly his attorney had a trial transcript but denied its existence. Allegedly the District Attorney had hidden the trial transcripts in the basement of the courthouse and subsequently his conviction was overturned. He was not released from prison but transferred to the Clark County Detention Facility and now claims to have filed "45 counts of federal misconduct in Federal Court". In 2001 he was granted bail and placed on electronic home confinement. His wife had five children from a previous relationship when his step-son attempted to assist Jack Stein with the legal problems and to "track down the transcripts". Allegedly a Vancouver judge, Tom Lodge, put pressure on the son's employer resulting in loss of job and increasing alcohol intake. This, Jack Stein, contends resulted in the son's death.

Jack Stein was subsequently released to home confinement as described and then found the house in disarray. He was not given Social Security, there was no money and the "\$67 million dollars in father's property was not returned". He then tells me that an individual involved in this illegal act, Hagen, avoided paying tax on five million dollars. Claims that again through "official misconduct" his wife was evicted and their six bathroom home near Gresham was taken by the government. His wife fell, suffered a head injury and then retained only "15% of her capacity". She was therefore unable to teach, unable to work and he describes her now as "crazy and dingy". The couple then lived in their home in Vancouver where Jack Stein continued on electronic home confinement. He claims that he would go out and work in the yard and lose track of time. As a result he would violate his electronic monitoring and eventually on or about September 16, 2003, he was taken back into custody. He tells me that he is experiencing increasing stress and that he easily forgets names, dates and places. In conversation he searched for words. His ability to write in a concise manner has deteriorated. He intermittently has headaches, occasional nausea and vomiting. He describes pain in the lateral posterior portion of his head lasting from a few minutes to an hour with associated nausea and vomiting and visual disturbance. He points out to "three burr holes in skull". He then tells me that he believes the D.A. is intending to "retry me". He then begins to tell me about crimes he saw in prison but then tells me "I can't tell you, my life would be in danger". He then tells me there have been several cases where he has proof of attorney's misdeeds and wrongdoings. He tells me that he purchased a home for his daughter that an attorney backdated a deed, took out a loan against the property and the daughter in turn lost her home. He claims he was helped "pro bono" by Kenny Selander, an older attorney who claimed "I don't need the money". Interestingly Jack Stein claims that it was Kenny Selander who "sold by daughter's house". He goes on to tell me that he trusts no doctors and no attorneys. He tells me that he has fired Suzan Clark, his

attorney, but then tells me that "we've mended our relationship". He tells me in the past he was evaluated by Stan Abrams, who claimed that Jack Stein reported hallucinations. He believes that Stan Abrams is a part of the conspiracy. At this point in the interview he breaks down crying and sobbing. Perhaps wailing would be a better descriptive term and the interview was briefly interrupted as Mr. Stein was then able to compose himself. As will be demonstrated in the mental status we see not only memory loss and confusion but also associated paranoid thought.

MENTAL STATUS EXAMINATION

Jack Stein was interviewed in the Clark County Detention Center, dressed in jail garb, unshaven and poorly groomed. He was oriented to time, date, place and person and recalled the name of his attorney, Suzan Clark, who he states "I fired". He has retained the associate, Linda Staples, who he tells me has "never tried a criminal case". He described Suzan Clark as bright but her written work was "sloppy" and goes on to tell me that she intended to "sabotage my case". He justifies this accusation telling me that there have been at least six attorneys who have been coerced or directed by Clark County alleging that they have been pressured to participate in "wrongdoing" or the attorneys would be prosecuted. He displayed good eye contact and spoke with normal latency, duration and volume of utterance. When undirected he would ramble from subject to subject in great detail. He denied depression stating that "I don't think in those terms". He did admit to anxiety and apprehension but denied current suicidal ideation, intent or plan. He denied past suicide attempts. He tells me that his sleep is at times disturbed but appetite is stable. He could remember only one of three unrelated words at five minutes then after prompting could recall two of three unrelated words, then three of three unrelated words. He could figure simple change. When I asked him to subtract serial sevens he said "No, I can't do that"; when I encouraged him to try to do so he makes the first calculation accurately then counts on his fingers and begins to make unrecognized mistakes. He could recall only five to six digits forward and only three in reverse. His response to proverbs were appropriately abstract but as the interpretations became more difficult he became unresponsive.

NEUROLOGICAL EXAMINATION

Cranial nerves appeared to be grossly intact two through twelve. Visual fields were intact. Finger to nose, heel to shin functions were unremarkable. Stereogonosis was unremarkable. Strength in the upper extremities was equal bilaterally in this right handed gentleman. There appeared to be no overt soft signs and no problems were noted in gait.

Past medical history reveals hypertension currently treated. He is currently taking Bonadine .1mg daily; Atenolol 50mg twice daily and Accupril 20mg twice daily with hydrochlorothiazide once per day all meant to control his blood pressure which now appears to be running 128/75 to 124/80. I reviewed his laboratory studies and blood sugar was slightly elevated on a random chem profile at 115; proteinuria was positive at 100, BUN was elevated to 31, triglycerides are elevated to 342 and his cholesterol was in

the high normal range at 190 with an elevated VDL at 49. The medical staff notes nausea and vomiting and as needed medications have been ordered.

PSYCHOLOGICAL TESTING

The MMPI-II is generally valid suggesting severe defensiveness, denial and an attempt to present one's self in an improbably favorable light. Hostile and resentful characteristics can be expected in a rigid, egocentric and immature person. They tend to be impulsive and self indulgent. Relationships tend to be immature and superficial. A paranoid psychotic disorder is suggested with hypochondriosis.

DIAGNOSIS

- Axis I: Delusional Disorder, persecutory (297.1)
- Axis II: Personality Disorder NOS
- Axis III: Organic Brain Syndrome with memory loss, impairment in higher cognitive function secondary to trauma.
- Axis IV: Psychosocial and environmental problems related to interaction with legal system.
- Axis V: Code 55-60

DISCUSSION

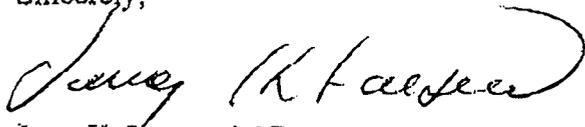
I have conducted psychological testing including a Slossen IQ of 92 which places Jack Stein in the low normal range of intelligence. I suspect his IQ prior to his injury was higher and there certainly appears to be a decline in intellectual and cognitive functioning based on this evaluation. In the Hamilton Depression Scale the responses appear to be ambiguous while the Hamilton Anxiety Scale is elevated. Cornell Medical Index with a number of positive responses is suggestive of, in part, organic illness and also suggests the presence of psychosomatic disease. The MAST alcohol assessment and DAST drug abuse assessments are both unremarkable.

I am attempting to interview family members to verify and quantify Jack Stein's level of dysfunction. Jack Stein does not display classical signs and symptoms of schizophrenia or other psychotic disorder. Although there likely is truth in part his paranoid thoughts appear to be bizarre and are certainly not derived from ordinary life experiences. Although such situations could conceivably occur in his life obviously his psychosocial functioning has been greatly impaired. He believes that his life may be in danger, he believes that a variety of authorities are conspiring against him and is distrustful of his attorney and states that he distrusts "all attorneys and doctors". I do believe that there are medications which may improve his paranoia but he adamantly refuses saying "I do not trust doctors or medicines". He does certainly understand in minute detail the nature of

the charges against him but in the sense that he does not trust his attorney, nor any other attorney, I believe his delusional, paranoid belief interferes to the extent that he can not adequately aid and assist in his own defense. I have not discussed this opinion with Jack Stein as I am quite certain he will take offense and totally disagree. I do feel that it is important that additional testing such as a cranial CT scan be considered. As he reports no such studies have been done in 30 years. I suspect with specific organic, projective testing we can clearly identify the specific deficits and quantify his deficiencies.

If you have further questions do not hesitate to contact me.

Sincerely,



Jerry K. Larsen, M.D.
Associate Professor of Psychiatry
Oregon Health Sciences University

JKL/lc

Appendix B



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
WESTERN STATE HOSPITAL
W27-19 • 9601 Steilacoom Blvd SW • Tacoma WA 98498-7213 • (253) 582-8900

February 3, 2004

Forensic Psychological Report

**Re: State of Washington
vs.
John Kenneth Stein
Aka: Jack Stein**

**Cause No: 88-1-00788-8
WSH No: 387011
DOB: 7-06-39**

The forensic evaluation reflected in this report was conducted pursuant to court order under the authority of RCW 10.77.060. This report has been released to the Court, its officers and other persons designated in statute and is intended for their use only. Any other use or distribution of this document is not authorized by the undersigned.

Reason for Referral:

John Kenneth Stein was admitted to Western State Hospital on 1-09-04. He was court ordered to the hospital for a period of up to 15 days, for an assessment of his mental condition, his competency to precede, his imminent risk to self or others under RCW 71.05 and his future dangerousness under RCW 10.77.060.

Mr. Stein is charged by Third Amended Information in the Superior Court for Clark County, with three counts of Attempted Murder in the First Degree and one count of Burglary in the First Degree. In this regard, the State alleges that between 6-01-78 and 6-14-78, Mr. Stein and accomplices took substantial steps to cause the death of Charles E. Hall, guardian of Mr. Stein's father's estate. These acts allegedly occurred at Victim Hall's, residence, 6313 Riverside Drive, Vancouver, Clark County, Washington.

In 1978, Mr. Stein was charged with: I. Conspiracy to Commit First Degree Murder, II. Felony First Degree Murder of Thelma Lund, III. Aggravated First Degree Murder of Thelma Lund, IV – VI. Criminal Attempt to Commit First Degree Murder of Charles (Ned) Hall. And VII. Burglary in the First Degree. On 9-01-89, the jury acquitted Mr. Stein of Counts I – III, but convicted on Counts VI – VII. The Court sentenced him to 180 months for each count of attempted murder and ordered that the sentence be served consecutively. Mr. Stein's 1989 first appeal was finally dismissed by the Division

**Forensic Psychological Report
John Kenneth Stein****January 3, 2004
Page 2 of 6**

Two Appellate Court. He then brought a Writ of Habeas Corpus and in May 1996, the federal district court ordered that appeal, which was converted to a personal restraint petition, reinstated. In February 1999, the Division Two Appellate Court found reversible error in the trial court's instructions and reversed his conviction. In July 2001, the Supreme Court affirmed the Court of appeals, on different grounds, and remanded the case to the trial court for further proceedings.

Database:

Following his admission to the hospital, Mr. Stein was placed on an evaluation ward in the Center for Forensic Services to undergo psychiatric, psychological, physical and social examinations, including 24-hour clinical observation. For purposes of this evaluation, Dr. Brian Waiblinger, Staff Psychiatrist and Dr. R. M. Hart, Staff Psychologist, comprised the sanity commission. In formulating my opinion for the Court, I have considered information contained in the following:

1. A brief initial intake interview with Dr. Waiblinger, 1-09-04
2. Attempted forensic interview conducted in the presence of Suzan Clark, Mr. Stein's Attorney, 1-14-04
3. Meeting with Mr. Stein and Dr. Waiblinger to address Mr. Stein's concerns over his treatment plan, 1-22-03
4. Letter addressed to Western State Hospital from Suzan Clark, Counsel for Defense, 1-03-04
5. State v. Stein 94 Wn. App. 616 (Division Two, 1999)
6. State v. Stein 144 Wn.2d 236
7. Winchester v. Stein 86 Wn. App. 458 (Division Two, 1997)
8. Winchester v. Stein 135 Wn.2d 835
9. Third Amended Information, Barbara N. Bailey, AAG (copy undated)
10. State's Objection to Dismissal Under CrR 8.3 and Memorandum in Support thereof, 9-2001
11. State's Amended Response to Defendant's Motion Dismiss Charges for Malicious Prosecution and Affidavit Regarding Disputed Facts, Lana Weinmann, AAG, 5-2003
12. Finding of Fact and Conclusion of Law Pursuant to Criminal Rule 8.3 Hearing, Superior Court for Clark County, 6-2003
13. Safe to Be at Large and Violence Risk assessments, Stan Abrams, Ph.D., Portland, Oregon, 11-21-96 & 6-25-99
14. Competency Evaluation, Stan Abrams, Ph.D., Portland, Oregon, 3-08-03
15. Competency Evaluation, Caleb Burns, Ph.D., Portland, Oregon, 1-29-03

**Forensic Psychological Report
John Kenneth Stein****January 3, 2004
Page 3 of 6**

16. Psychological Evaluation, Caleb Burns, Ph.D., Portland, Oregon, 3-06-03
17. Psychiatric Evaluation, Jerry K. Larsen, M.D., Oregon City, Oregon,
11-11-03
18. Criminal History as found in the Washington State Patrol WATCH
database and with the National Crime Information Center

This comprehensive evaluation and report was completed by the undersigned taking into consideration all of the examinations, consultation and findings of the entire evaluation team.

Notification of Rights:

Prior to each interview with Mr. Stein he was informed of the nature of my evaluation and the limited confidentiality inherent. Specifically, he was told that a report of my findings would be forwarded to the Court for possible use in his case. He was informed that he had the right to refuse participation in the evaluation to any extent that he wished. He was told that he had the right to be represented by an attorney during my interviews with him. Mr. Stein stated that he understood this notification, and demanded the presence of counsel before he would participate in any forensic aspect of this evaluation. He further informed me that he was discharging Suzan Clark as his attorney and that he would further refuse to participate in any further forensic evaluation if I were to ask Ms. Clark to represent him at this hospital.

Mental Status Examination:

Mr. Stein presented as a well developed and well nourished man who was born on 7-06-39 and who appeared approximately his chronological age of 64. He was not in acute physical or emotional distress at the time of admission. He was of average height, with proportionate weight and receding brown hair. He was admitted in jail scrubs and his hygiene was good. His gait was normal and he evidenced a full range of motion in his upper extremities. No gross involuntary movements were observed. His sensorium, or capacity to apprehend sensation from his environment was clear. His affect, or observable emotional state, was euthymic, supple, of increased intensity, and congruent to his thinking. His speech was quite spontaneous, well articulated, with a demanding and at times accusatory tone, brisk rate and strong volume. His demeanor was polite, but he refused to participate in any portion of the formal forensic assessment. He was well oriented in four spheres, knowing who he was, where he was, the exact date and time and the reason for his admission to this hospital. His working memory was certainly intact. His long-term memory could not be sufficiently assessed

**Forensic Psychological Report
John Kenneth Stein****January 3, 2004
Page 4 of 6**

because of his lack of cooperation. He did spontaneously recount historical elements which satisfied me that he understands that his conviction on three counts of attempted murder and burglary have been overturned and that he has been overturned and that he has been recharged on the same counts.

Mr. Stein's thought processes were grossly within normal limits. The form of his thinking was logical and goal directed. There was no autistic thought intrusion. The structure of his thinking was minimally circumstantial, but not tangential. His associations were quick and normally tight. There was not thought derailment. The rate of his think was predominantly brisk, but there also appeared to be some thought blocking or at least difficulty in memory retrieval. The content of his thinking was not delusional, or at least bizarre. There were no ideas of reference, which would suggest an underlying circumscribed delusional basis to his thinking. He did seem quite preoccupied with his legal issues, his steadfast refusal to participate and his desire to discharge his attorney. Others, who have more experience with Mr. Stein and with whom he has been more cooperative, have diagnosed his thinking as delusional. His interpretation of his own legal history and the events which have occurred since his initial arrest, according to others is quite delusional. This may be the case. Mr. Stein refused to afford me the opportunity to assess this first hand. His intellectual functioning has been estimated to fall in the superior range. His presentation here was consistent with this estimate. His judgment for basic adult daily living activities, as evidenced by his integration into the ward milieu was well intact and he expressed considerable questionable insight into the nature of his present life circumstances.

Conclusion and Recommendations:

My clinical impression is that John Kenneth Stein is a 64-year-old man admitted to this hospital for the first time, possibly his first psychiatric admission. He was not in acute distress during this hospitalization. His affect was euthymic and congruent. He was fully oriented. He clearly communicated and at times demanded, that he needs be met. He could clearly articulate his need for medical attention and was compliant with medical advice. His thought processes were grossly normal in form, structure and rate. The content of his thinking could not be fully assessed because of his lack of cooperation. Considering all that I know of this man, his history and giving great weight to the congruency of his passive aggressive presentation and euthymic affect, it is my hypothesis that Mr. Stein's present position is a direct manifestation of his characterological makeup and that his long standing need to control and subsequently impede a resolution to his present legal issues, in spite of his protest to the contrary, somehow meets his narcissistic needs for control and attention. There may very well be

**Forensic Psychological Report
John Kenneth Stein****January 3, 2004
Page 5 of 6**

a central core of paranoid thinking and there may very well be some delusional interpretation, but this is not patently obvious at this time, nor do I believe his present desire to discharge his attorney is based in any psychotic interpretation of their relationship, based on my limited evaluation to date. To the contrary, Mr. Stein characterized his attorney as highly competent and fully capable of handling the demands of his case. He clearly owned his own anger and dissatisfaction with counsel, because she would not meet his numerous demands. I am making on judgment what so ever about the legitimacy of those demands, but site this fact only to illustrate that it is not a paranoia or psychosis or confusion stemming from any cognitive impairment, which brings his desire to discharge his attorney into question.

Counsel and others who have evaluated Mr. Stein in the past raise important questions concerning his ability to rationally participate in his own defense. He has apparently sustained a head injury as the result of a motor vehicle accident in 1976. The present effects, if any, of that traumatic brain injury have not, to my knowledge, been assessed. Mr. Stein does suffer with hypertension, which at times has been out of control. This increases his risk for a cerebral vascular accident. Similarly, as I have stated previously, his interpretation of his legal history, though not bizarre, may be delusional to such an extent that his ability to choose in his own best interest would be compromised. All of these issues potentially bear on Mr. Stein's competency to proceed and all could, given his cooperation, be fully explored and hopefully answered.

Recognizing the legitimate issues raised by counsel and the observations asserted by Dr. Larson and recognizing the very serious limits of my own evaluation efforts, I can not assure the Court that Mr. Stein will meet the statutory test of legal competency at this time.

Thus, it is my recommendation that the Court order Mr. Stein returned to this hospital for up to 90 days of continued evaluation and treatment. There is no question that Mr. Stein demands to be in charge of his treatment. Therefore, in anticipation of the power struggle that we foresee in treatment Mr. Stein, I think it is essential for the Court to grant Western State Hospital judicial authority to administer appropriate psychotropic medications to Mr. Stein, against his will if necessary, if such treatment is deemed necessary to restore his competency to proceed. It is my sincere hope that the Court will make every effort to impress upon Mr. Stein that the proceeding in his case are stayed and that he will not be allowed to argue for the dismissal of counsel or argue for any other change, so long as the issue of his legal competency is unsettled.

**Forensic Psychological Report
John Kenneth Stein**

**January 3, 2004
Page 6 of 6**

Dangerousness:

In response to a direct question from Dr. Waiblinger, Mr. Stein denied imminent intent to harm himself and similarly denied imminent intent to harm someone else. Nothing in his overt behavior would indicate that he was less than sincere in this denial. I do not consider Mr. Stein an imminent risk to himself or others at this time and have no reason to recommend for the Court to detain him or to order the County Designated Mental Health Professional to evaluate him for possible civil commitment under RCW 71.05.

Due to the limited scope of my evaluation of Mr. Stein, I am unable to offer an opinion as to his future dangerousness under RCW 10.77.060.

As the evaluation of John Kenneth Stein is thus far complete with the submission of this report, he has been released into the custody of the Clark County Sheriff and was transported to Clark County Detention Center to await further disposition by the Court. Please contact me if I may be of any further assistance to the Court in this matter.



R. M. Hart, Ph.D.

Licensed Psychologist #1180

RMH/bh

Cc: Presiding Judge, Clark County Superior Court
Lana Weinmann, AAG
Suzan Clark, Counsel for Defense
Clark Co. Jail, Mental Health Dept.
Sally Hopkins, Psy.D., CDMHP

Appendix C



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
WESTERN STATE HOSPITAL
W27-19 • 9601 Steilacoom Blvd SW • Tacoma WA 98498-7213 • (253) 582-8900

April 10, 2004

Forensic Psychological Report

**Re: State of Washington
vs.
John Kenneth Stein
Aka: Jack Stein**

**Cause No: 88-1-00788-8
WSH No: 387011
DOB: 07-06-39**

The forensic evaluation reflected in this report was conducted pursuant to court order under the authority of RCW 10.77.060. This report has been released to the Court, its officers and other persons designated in statute and is intended for their use only. Any other use or distribution of this document is not authorized by the undersigned.

Reason for Referral:

John Kenneth Stein was originally admitted to Western State Hospital on 1/09/04. He was court ordered to the hospital for a period of up to 15 days, for an assessment of his mental condition, his competency to proceed, his imminent risk to self or others under RCW 71.05 and his future dangerousness under RCW 10.77.060.

Mr. Stein is charged by Third Amended Information in the Superior Court for Clark County with three counts of Attempted Murder in the First Degree and one count of Burglary in the First Degree. In this regard, the State alleges that between 6/01/78 and 6/14/78, Mr. Stein and accomplices took substantial steps to cause the death of Charles E. Hall, guardian of Mr. Stein's father's estate. These acts allegedly occurred at Victim Hall's, residence, 6313 Riverside Drive, Vancouver, Clark County, Washington.

In 1978, Mr. Stein was charged with I. Conspiracy to Commit First Degree Murder, II. Felony First-Degree Murder of Thelma Lund, III. Aggravated First Degree Murder of Thelma Lund, IV – VI. Criminal Attempt to Commit First Degree Murder of Charles (Ned) Hall and VII. Burglary in the First Degree. On 9/01/89, the jury acquitted Mr. Stein of Counts I – III, but convicted on Counts VI – VII. The Court sentenced him to 180 months for each count of Attempted Murder and ordered that the sentence be served consecutively. Mr. Stein's 1989 first appeal was finally dismissed by the Division Two Appellate Court. He then brought a Writ of Habeas Corpus and in May 1996, the federal district court ordered that appeal, which was converted to a personal restraint petition, reinstated. In February 1999, the Division Two Appellate Court found reversible error in the trial court's instructions and reversed his conviction. In July 2001, the Supreme Court affirmed the Court of appeals, on different grounds, and remanded the case to the trial court for further proceedings.

**Forensic Psychological Report
John Kenneth Stein****April 10, 2004
Page 2**

As the result of my initial assessment, I informed the Court, in a brief report, 2/03/04, that Mr. Stein has refused to participate in a formal assessment of his legal competency. As a result, I could not assure the Court that he possessed the basic and fundamental capacities to proceed. On 2/05/04, the Court found Mr. Stein legally incompetent to proceed and ordered him to this hospital for up to 90 days of continued evaluation and treatment. On 2/10/04, the Court amended its 2/5/04 order, restricting the hospital's authority to administer psychotropic medications to Mr. Stein.

Database:

Following his return to this hospital, on 1/28/04, Mr. Stein was again placed on Ward F-2, a treatment ward in the Center for Forensic Services under the direct care of Dr. Brian Waiblinger, Staff Psychiatrist, who together with the undersigned, continued to comprised the Sanity Commission of this evaluation. In formulating my opinion for the Court, I have considered information contained in the collateral source documents listed in my 2/03/04 report:

1. A brief initial intake interview with Dr. Waiblinger, 1/09/04
2. Attempted forensic interview conducted in the presence of Suzan Clark, Mr. Stein's Attorney, 1/14/04
3. Meeting with Mr. Stein and Dr. Waiblinger to address Mr. Stein's concerns over his treatment plan, 1/22/03
4. Letter addressed to Western State Hospital from Suzan Clark, Counsel for Defense, 1/03/04
5. State v. Stein 94 Wn. App. 616 (Division Two, 1999)
6. State v. Stein 144 Wn.2d 236
7. Winchester v. Stein 86 Wn. App. 458 (Division Two, 1997)
8. Winchester v. Stein 135 Wn.2d 835
9. Third Amended Information, Barbara N. Bailey, AAG (copy undated)
10. State's Objection to Dismissal Under CrR 8.3 and Memorandum in Support thereof, 9-2001
11. State's Amended Response to Defendant's Motion Dismiss Charges for Malicious Prosecution and Affidavit Regarding Disputed Facts, Lana Weinmann, AAG, 5-2003
12. Finding of Fact and Conclusion of Law Pursuant to Criminal Rule 8.3 Hearing, Superior Court for Clark County, 6-2003
13. Safe to Be at Large and Violence Risk assessments, Stan Abrams, Ph.D., Portland, Oregon, 11/21/96 & 6/25/99
14. Competency Evaluation, Stan Abrams, Ph.D., Portland, Oregon, 3/08/03
15. Competency Evaluation, Caleb Burns, Ph.D., Portland, Oregon, 1/29/03
16. Psychological Evaluation, Caleb Burns, Ph.D., Portland, Oregon, 3/06/03
17. Psychiatric Evaluation, Jerry K. Larsen, M.D., Oregon City, Oregon, 11/11//03

**Forensic Psychological Report
John Kenneth Stein****April 10, 2004
Page 3****18. Criminal History as found in the Washington State Patrol WATCH database and with the National Crime Information Center**

In addition, I have considered information obtained from the following additional contacts with Mr. Stein and new sources of collateral data:

1. Several brief interviews and conversations with Mr. Stein
2. Telephonic interview with James E. Lobsenz, Seattle Washington, 3/24/04
3. Letters written by Bethany Norberg, Portland, Oregon, 2/09/04 & 2/14/04
4. Copy of a letter written to Bethany Norberg from Jerry K. Larsen, M.D., University of Oregon Health Sciences University, 2/11/04
5. Brief Telephone conversation with Dr. Jerry K. Larsen, 3/26/04
6. Letter from Caleb Burns, Ph.D., Portland, Oregon, 3/19/04
7. Answer to Petition for Review, James E. Lobsenz, No. 68112-1, for John K. Stein, Petitioner (undated document)
8. Case Consultation Daisuke Nakashima, Ph.D., Psychology Service Supervisor & Carl Redick, Ph.D., PFEC Manager (Both Licensed Psychologists)

This evaluation and report was completed by the undersigned taking into consideration all of the examinations, consultations and findings of the entire evaluation team.

Notification of Rights:

Prior to each attempted interview with Mr. Stein, he was informed of the nature of my evaluation and the limited confidentiality inherent. Specifically, he was told that a report of my findings would be forwarded to the Court for possible use in his case. He was informed that he had the right to refuse participation in the evaluation to any extent that he wished. Mr. Stein was inconsistent in his response to this information, as will be illustrated. Mr. Stein informed me that he wished to exercise his right to be represented by counsel of his choosing during part of my evaluation. He subsequently told me on several occasions that he would refuse to participate if I did not furnish him a copy of my written response to the 2/09/04 letter written to me by Bethany Norberg. He did however, speak to me informally on several occasions.

Mental Status Examination:

Throughout his hospitalization, Mr. Stein's presentation remained relatively consistent. Physically he appeared as he had upon admission. At no time during his hospitalization did he appear to be in acute physical or emotional distress. His hygiene remained quite good. His sensorium, or capacity to apprehend sensation from his environment remained clear. His affect, or observable emotional state, was euthymic, supple, of normal intensity, and congruent to his thinking. During this hospitalization, Mr. Stein suffered a bladder infection and was understandably emotionally distressed because of this condition. His speech was quite spontaneous, well articulated with a variable tone, normal rate and strong volume. His demeanor was polite but varied considerably depending on his personal agenda. At times he

**Forensic Psychological Report
John Kenneth Stein****April 10, 2004
Page 4**

was most accusatory, hypercritical and argumentative. However, he always remained in perfect emotional control and was never rude. He remained completely oriented in four spheres, knowing who he was, where he was, the exact date and time and was fully cognizant of the issues in his environment. His working memory was certainly intact. Though he refused to provide a psychosocial history, unless I was willing to meet his demands from his spontaneous references, I would judge that his long-term memory was also intact.

Mr. Stein's thought processes were well within normal limits. The form of his thinking was logical and goal directed. There was no autistic thought intrusion. The structure of his thinking was neither circumstantial nor tangential. His associations were quick and normally tight. There was no thought derailment. The rate of his thinking was well within normal limits, but there did appear to be a modest degree of thought blocking or at least word finding difficulties. The content of his thinking was not delusional, and there were no ideas of reference, which would suggest an underlying circumscribed delusional basis to his thinking. He did seem quite preoccupied with his legal issues, in particular, his refusal to accept Suzan Clark as his attorney and his desire to discharge her. His intellectual functioning has been estimated to fall in the superior range, and as noted previously, his presentation here was quite consistent with this estimate. His judgment for basic adult daily living activities, as evidenced by his integration into the ward milieu, was well intact and he expressed considerable, apparently accurate, insight into the nature of his present life circumstances.

Course of the Evaluation:

Following Mr. Stein's return to this service, after he had settled in, I met with him and outlined the scope of my evaluation objectives. I advised him that I wanted to take his psychosocial history so that I could understand his background and have a basis to evaluate his present adjustment. I informed Mr. Stein that the issue of his past head trauma resulting from his 1976 motor vehicle accident has been raised as a possible cause of his legal incompetence. I informed him that I would make a referral for both imaging studies and Neuropsychological testing to assess any possible effect that his past head trauma may have on his present ability to proceed with his legal issues. Finally, I informed Mr. Stein that I wanted to get more background information on the course and difficulties of his involvement with the criminal justice system and that I would contact knowledgeable collateral sources to collect additional information and then wanted to discuss these issues with him.

In fact, Mr. Stein successfully thwarted my efforts in two of these areas. From the onset, he attempted to control both the process and the resulting content of my evaluation. Dr. Waiblinger scheduled Mr. Stein for a MRI study. Mr. Stein refused. He was referred to Dr. Audrey Mattson, Neuropsychologist here at the hospital. Mr. Stein refused to participate. He refused to participate in an interview concerning his psychosocial history, however, he did relate some antidotal experiences which gave me some insight into his personality and some of the difficulties he has experienced in the criminal justice system.

**Forensic Psychological Report
John Kenneth Stein****April 10, 2004
Page 5**

I was able to gain significant insight into Mr. Stein's ability to work cooperatively with counsel as well as his ability to choose in his own best interest, which are precisely the issues which have been raised in the question of his legal competence.

I contacted James E. Lobsenz, who successfully won Mr. Stein's appeal, and asked Mr. Lobsenz if I could interview him concerning the history of Mr. Stein's case. Mr. Lobsenz agreed and asked me to prepare a written authorization for Mr. Stein's signature and further requested that the interview be conducted on speaker phone, in Mr. Stein's presence, to afford Mr. Lobsenz the opportunity to clarify any issues of privilege with Mr. Stein. I prepared the document of authorization, which Mr. Stein signed. He also added that prior to the interview I was to give he and Mr. Lobsenz a copy of my response to Bethany Norberg's 2/14/04 letters. He also verbally demanded that I fax a copy of the document of authorization to Dr. Caleb Burns. The day prior to the scheduled 3/24/04 telephonic interview, Mr. Stein sent me a hand written letter asking for (1) a copy of the letter of authorization which had been faxed to Mr. Lobsenz, (2) a tape recorder and tapes for his use during the interview and (3) a copy of my response to Bethany Norberg's February 9 and February 14, 2004, letters to me.

On 2/24/03, at the appointed time, Mr. Stein and I met in a private room for the telephone interview. I again informed Mr. Stein that for professional reasons I had decided not to respond to Bethany Norberg's letters. He informed me that he would not participate in the interview. I placed a call to Mr. Lobsenz to cancel the appointment. As I was talking to Mr. Lobsenz, Mr. Stein demanded that I use the speaker on the telephone. He thus began a dialog with Mr. Lobsenz, to which I was privy.

Mr. Lobsenz very appropriately informed Mr. Stein that he would, with Mr. Stein's informed consent, provide me with information about his case. However, if Mr. Stein consented to allow Mr. Lobsenz to provide this information, Mr. Lobsenz would in fact be acting as a witness and thus would be barred from ever representing Mr. Stein, either at the trial level or upon appeal, in this case. Mr. Lobsenz very carefully informed Mr. Stein of exactly what he was forfeiting. Mr. Stein, without hesitation, refused to allow Mr. Lobsenz to respond to any of my questions, "I am better off having you as an attorney than a witness." During their approximately 30 minute exchange, I witnessed Mr. Stein's ability to recount important historical information. I heard Mr. Lobsenz remind Mr. Stein of the difference between a retained and an appointed counsel, specifically as to the defendant's control over the process, and I witnessed Mr. Stein's flexibility in responding to this information. Mr. Stein spoke of issues and factual events with his former representatives and referenced a number of individuals by name. Apparently these references were accurate, as Mr. Lobsenz responded knowingly. At one point, Mr. Stein made reference to the Supreme Court's order to reverse. Mr. Lobsenz corrected Mr. Stein, and Mr. Stein immediately restated his understanding. Finally, perhaps for my benefit, Mr. Lobsenz made the point that Mr. Stein's distrust of attorneys has some basis in fact. Repeatedly, Mr. Stein asked Mr. Lobsenz to represent him because, "But, I trust you."

Forensic Psychological Report
John Kenneth Stein

April 10, 2004
Page 6

Conclusion:

Acknowledging the real limits in the scope of my evaluation, and in consultation with Dr. Waiblinger, Staff Psychiatrist, and corresponding member of the Sanity Commission, it is my opinion that Mr. Stein does not suffer with a major mental illness. As stated previously in the Mental Status section of this report, his cognitive capacities are not compromised by the symptoms of a major mental disorder. He is a very bright man who is fully capable of perusing his own agenda and meeting his own needs. My plan to assess the sequela of his past head injury, if any, were stopped by Mr. Stein's refusal to participate. In response to my repeated request for cooperation, Mr. Stein informed me, "Look Dr. Hart, even if it's there, even if I have brain damage, I still have more left than the average guy who goes into that court room." I agree.

I disagree with Dr. Larson's opinion that Mr. Stein's understanding and beliefs about the criminal justice system and specifically about his current and some of his past legal representatives, are delusional. Undeniably, Mr. Stein has not been represented well by some of his past attorneys.

I was impressed with his ability to work with Ms. Clark, his attorney of record in our first joint interview, 1/14/04. Though he refused to participate in the formal interview, his dialog with Ms. Clark did not reveal any indication that his choice was colored by the manifestations of a mental disorder. He acknowledged Ms. Clark's competence as an attorney. They actually appeared almost collegial. Mr. Stein made it perfectly clear that his refusal to participate and his desire to discharge Ms. Clark rested in the fact that Ms. Clark had not responded to Mr. Stein's 100 plus written demands. Their issue was one of control over the development of the case. Considering all that I know about Mr. Stein, it is my opinion that he, perhaps rightly so, feels that he has been the victim of a great legal injustice. He is not alone in this opinion. He is going to have retribution. He is going to have his day in court and see that justice is finally delivered, and he is going to have it his way.

What is patently evident to us here in this hospital, and I gather also evident to others involved in this case, is that Mr. Stein functions with personality characteristics, that are rather disagreeable, if not frankly offensive. He is hypercritical, righteously indignant, condescending, demanding and controlling. He berated us for misstatements in his treatment plan, asked me why I practiced so incompetently, pointing to the typing errors in my original report and then passively aggressively refused to sit down with me and review his concerns with that report when I offered. He patently declared his medical care in this hospital incompetent and malpractice. His repeated demand that I engage Bethany Norberg is an example of his need to be in control of every process. In our didactic competency restoration classes, he was argumentative, accusing, dominated the discussion and constantly answered questions posed to other patients. There he was identified as an individual who had a powerful need to demonstrate his competence to the instructor and the other patients. It was evident that he had more sophisticated knowledge of the subject matter, and though his instructor

**Forensic Psychological Report
John Kenneth Stein****April 10, 2004
Page 7**

acknowledged this, he could not resist the urge to dominate the classes and generally belittle our educative efforts. While all of us found our interactions with Mr. Stein to be trying, no one in this service suspected that he was suffering with a major mental disorder.

It is my opinion that Mr. Stein does possess the basic and fundamental capacity to understand the nature of the charges against him and it is my opinion that he has the basic and fundamental capacity to rationally participate in his own defense, if he so chooses. In this, I give weight to his intact cognitive capacities, weight to his factual knowledge and I give substantial weight to the fact that he is not now evidencing signs or symptoms of a mental disease or defect, I see no reason why he would not meet the statutory definition of legal competence at this time.

Objective Nature of the Evaluation:

Professional objectivity is the hallmark and foundation of a forensic mental health evaluation. It is imperative that the forensic evaluator set aside any personal stake in performing the evaluation or the development of data to support the opinions expressed.¹ During Mr. Stein's hospitalization, I received a letter dated 2/09/04, from Bethany Norberg. I found the letter to be highly critical, demanding and a clear attempt to influence my evaluation of Mr. Stein. The threatening nature of the letter is clear in the fact that Ms. Norberg forwarded a copy of her complaints to the Washington State Department of Health, Health Professions Quality Assurance. The Department of Health grants my license to practice.

Though I have not received notice from the Department of Health, I fully expect that there will be a full investigation in response to Ms. Norberg's letter. Regardless of how I may feel about Ms. Norberg's issues, I have maintained the utmost objectivity in conducting this evaluation. To assure my objectivity, I have consulted repeatedly with Dr. Waiblinger, the corresponding member of the Sanity Commission, throughout this evaluation. As an additional step to assure professional objectivity, I staffed Mr. Stein's case, the basis of my findings and Ms. Norberg's communication with Dr. Daisuke Nakashima, Inpatient Psychology Service Supervisor and with Dr. Carl Redick, Program for Forensic Evaluations in Corrections and the Community, Manager, both psychologists. I am confident that I have not allowed any personal feelings to influence my forensic opinions in this case.

Dangerousness:

Nothing in Mr. Stein's recent or overt behavior would indicate that he constitutes an imminent risk to himself or others, at this time. I do not consider him a risk to himself or to others and thus I have no reason to recommend that the Court detain him or otherwise order him evaluated by the County Designated Mental Health Professional for possible civil commitment under RCW 71.05.

¹ Melton, G. B., Petrila, J., Poythress, N. G., & Slobogin, C. Psychological Evaluations for the Courts, Guilford Press, 1997

**Forensic Psychological Report
John Kenneth Stein**

**April 10, 2004
Page 8**

Considering those factors that are statistically correlated with the increased risk for future violence or future offenses, I find no significant risk factors present in Mr. Stein. In my opinion, he does not meet the dangerousness criteria under the meaning of RCW 10.77.060.



R. M. Hart, Ph.D.
Licensed Psychologist #1180

RMH:dlc

Cc: Presiding Judge, Clark County Superior Court
Lana Weinmann, AAG
Suzan Clark, Counsel for Defense
Sally Hopkins, Clark CDMHP
Mental Health Department, Clark County Jail

JAN 18 2006

NO. 31980-2-II

**COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON**

JOHN KENNETH STEIN,
a.k.a, JACK STEIN,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

DECLARATION OF
SERVICE

VICTORIA ANTHONY declares as follows:

On Friday, January 13, 2006, I deposited into the United States

Mail, first-class postage prepaid and addressed as follows:

NANCY P. COLLINS
DAVID L. DONNAN
WASHINGTON APPELLATE PROJECT
1511 3RD AVENUE, SUITE 701
SEATTLE, WA 98101

JACK K. STEIN
MONROE CORRECTIONAL COMPLEX
TRCC - P.O. BOX 888 - #955827
MONROE, WA 98277-0888

Copies of the following documents :

- 1) RESPONSE TO PRO SE STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW
- 2) SUPPLEMENTAL DESIGNATION OF CLERK'S PAPERS
- 3) DECLARATION OF SERVICE

ORIGINAL

FILED
COURT OF APPEALS
06 JAN 18 PM 2:51
BY [Signature]
STATE OF WASHINGTON

2006 JAN 13 PM 4:19

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

RESPECTFULLY SUBMITTED this 13th day of January, 2006,
at Seattle, Washington.


VICTORIA ANTHONY
Legal Assistant