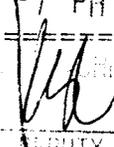


FILED  
COURT OF APPEALS

05 JUN 77 PM 1:14

No. 32982-4-II

STATE OF WASHINGTON

BY 

IN THE COURT OF APPEALS FOR WASHINGTON

DIVISION II

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IN RE THE PERSONAL RESTRAINT OF

JACK K. STEIN,  
Petitioner,

vs.

THE STATE OF WASHINGTON,

Respondent.

---

PERSONAL RESTRAINT PETITION  
- and -  
PETITION FOR HABEAS CORPUS RELIEF  
RCW 7.36, et seq.

---

TRAVERSE TO RESPONSE, REPLY, AND  
OBJECTION TO MOTION

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Jack K. Stein, Petitioner  
Monroe Correctional Complex  
P.O. Box 777 (B-305) #955827  
Monroe, WA 98272-0777  
Ph. 360-794-2600

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Jack K. Stein, Petitioner  
Monroe Correctional Complex  
P.O. Box 777 (B-305) #955827  
Monroe, WA 98277-0777

FILED  
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STATE OF WASHINGTON  
BY \_\_\_\_\_  
CITY

IN THE COURT OF APPEALS FOR WASHINGTON  
DIVISION II

Jack K. Stein,	)	No. 32982-4-II
Petitioner,	)	
vs.	)	TRAVERSE TO RESPONSE, REPLY,
	)	AND OBJECTION TO MOTION
James Spalding,	)	
Respondent.	)	
_____	)	

**A. IDENTITY OF PETITIONER**

COMES NOW Jack K. Stein, appearing pro se and proceeding In Forma Pauperis, to file this TRAVERSE TO RESPONSE submitted by the Respondent and to publish his OBJECTION TO MOTION in response to the Respondent's May 11, 2005 motion to dismiss. Petitioner also renews his request for relief, as canted in Section B.

**B. STATEMENT OF RELIEF SOUGHT**

This Court should reject Respondent's "Answering Brief" as unresponsive, and deny her motion to dismiss. Petitioner renews his request to vacate the conviction, or, in the alternative, release Petitioner on recognizance and refer this matter to the Superior Court for a hearing, as provided by RCW 7.36 et seq.

### III. FACTS RELEVANT TO MOTION

Petitioner filed a Petition for Habeas Corpus relief in the Snohomish County Superior Court. A COA Commissioner ruled the State Habeas should be transferred to the Court of Appeals and converted to a Personal Restraint Petition. Thereafter, the COA Commissioner ruled the converted Personal Restraint Petition should be consolidated with Stein's appeal, No. 31980-2-II.

Stein filed timely objections to the Commissioner's rulings, asserting the Commissioner attempted to subvert the Constitution and RCW 7.36, which guaranty the right to habeas corpus review.

Further, Stein has asserted the Commissioner's action abets a history of malevolent judicial misconduct in the Superior Court and Court of Appeals, et al., which has sabotaged, delayed, and thwarted his past requests for post-conviction review and relief.

Regretfully, as Stein's pleadings show, corrupt attorneys and miscreant court officials have conspired to deceive the record and sabotage appropriate relief to Jack Stein, an innocent person. The history of judicial misconduct at issue has been proven in Federal District Court and was presented below. This Court has been previously advised of egregious misconduct already proven in Federal District Court, so there seems no need to repeat a litany of already proven judicial misconduct.

The Attorney General filed a Response and Answering Brief, dated May 11, 2005. Additionally, she also filed some thirteen Appendix, labeled: Appendix A through Appendix M. However, her "Brief" has **nothing whatsoever** to do with Petitioner's issues.

Regretfully, the Respondent's Response and Answer has nothing whatsoever to do with claims presented by Petitioner. ABSOLUTELY NOTHING. Moreover, none of Respondent's appendix have anything to do with the Petitioner's claims either. Presumably, Respondent is attempting to confuse the Court of Appeals with pseudo-argument, there being no defense to the claims and issues.

Respondent admits Stein filed a Personal Restraint Petition in the State Supreme Court, in March 2004. The Supreme Court transferred that petition to the Court of Appeals. Thereafter, Stein amended his petition, twice, to present his nine claims::

1. Counsel of Choice;
2. Speedy Trial;
3. Due Process;
4. Judicial Misconduct;
5. Mismanagement;
6. Prosecutorial Misconduct;
7. Excessive Delay;
8. Egregious Misconduct by Court Officials; and,
9. Vindictive Prosecution.

In addition to the above "abbreviated listing" of claims, Stein also filed a detailed Memorandum In Support, showing facts and legal argument in support of his nine claims and issues. Although, not required by the rules, the Memorandum In Support provided facts and argument in support of his petition.

Also, Stein provided the Court with three documents titled Exceptional Circumstances, which justify the requested relief.

#### IV. GROUNDS FOR RELIEF AND ARGUMENT

If the claims and issues raised in the PRP are not frivolous, as was the case in COA No. 31993-4-II, RAP 16.11 provides that the Chief Judge must refer the PRP to a panel of judges for determination on the merits or to the Superior Court for a hearing. However, in either case, appellate rules and PRP policy intend the Chief Judge's initial consideration be prompt.

Moreover, PRP 16.11 provides that; if the petition can not be determined solely on the record, the Chief Judge will transfer the petition to Superior Court for determination on the merits or for a reference hearing. However, that did not happen either.

Respondent asserts Stein's State Habeas, COA No. 32982-4-II, (recently transferred from the Snohomish County Superior Court to the Court of Appeals and converted to a PRP) should be dismissed, under RCW 10.73.140, and/or by the abuse of the writ doctrine, because Stein previously filed a Personal Restraint Petition in Supreme Court, April 9, 2004, transferred to Court of Appeals, May 14, 2004, which PRP the Chief Judge dismissed during initial consideration, by Order Dismissing Petition, November 17, 2004.

However, Respondent's argument in support of dismissal of this petition for post-conviction relief has misrepresented relevant facts and post-conviction procedural history. Moreover, Respondent has provided absolutely no facts or relevant case law in support of her argument to dismiss Stein's petition. Indeed, dismissal would constitute judicial misconduct.

Furthermore, under the circumstances and procedural history of the underlying case and appeal process, dismissal of Stein's petition for post-conviction relief by State Habeas/PRP would implicate a cover-up of wrongdoing and judicial misconduct and violate the Constitutional guarantee of habeas relief.

Moreover, the Respondent has provided nothing whatsoever, absolutely nothing whatsoever, that is truly relevant to the claims and issues presented by Stein's State Habeas/PRP petition.

Indeed, since Stein's petition for post-conviction relief was filed as a State Habeas Corpus petition, rather than a PRP, it seems both inappropriate and premature to argue either the appropriateness of RCW 10.73.140 and/or the abuse of writ doctrine, until Stein's objection to transfer of his State Habeas, and the conversion of his State Habeas in Superior Court to a PRP in the Court Of Appeals, has been resolved in the Supreme Court.

**RAP 16.4(d) DOES NOT BAR RELIEF**

A petition for post-conviction relief by State Habeas Corpus is provided for by the Washington State Constitution, Art. 4, §4, and is codified by statute at RCW 7.36. The statute provides that the Habeas petition be presented to the Superior Court serving the county in which the petitioner is unlawfully incarcerated, in Stein's case, that is Snohomish County.

On the other hand, Court of Appeals rules (RAP 16.4 et seq.) govern post-conviction relief by Personal Restraint Petition.

Accordingly, RAP 16.4(d) does not bar a State prisoner's petition for post-conviction relief by State Habeas, as here.

Stein's PRP, COA No. 31993-4-II, shows the following:

<u>Date</u>	<u>Document or Action</u>
4- 9-04	PRP filed in Supreme Court
5- 0-04	Supplemental Memorandum In Support (9 claims)
5-14-04	PRP is transferred to COA
7-30-04	PRP receives expedited consideration/clerk
8-18-04	Amended Brief In Support (nine claims)
11- 2-04	Supp to Amended Supplement In Support
11-15-04	Amended Memorandum In Support (9 claims)
11-17-04	Order Dismissing PRP - by Chief Judge
11-30-04	Motion For Reconsideration - by Stein

On November 17, 2004, COA Chief Judge Quinn-Brinall issued an Order Dismissing Petition. Text of her Order Dismissing Petition asserts that Stein's PRP makes only four challenges.

However, the docket record shows Stein filed several supplemental pleadings - which expanded his list of challenges to nine PRP claims. Consequently, it appears, the Chief Judge failed to even consider several of Mr. Stein's PRP claims, despite that they were presented by way of supplemental pleadings filed in the Supreme Court and/or COA, several months earlier.

Presumably, no judge read and considered the "overlooked" claims Stein presented. However, the COA docket record shows his documents were properly filed. Certainly, the nine claims should have been considered by the Chief Judge. One can only speculate as to what relief Stein would have received if the Chief Judge had actually considered all nine claims Stein's PRP presented.

Regretfully, the Chief Judge of Div. II, Court of Appeals, provided a delayed, superficial, and clearly inadequate review of Stein's PRP, failing to satisfy the requirements of RAP 16.11.

Accordingly, Stein's present Habeas/PRP issues will also, hereafter, incorporate past PRP delay and assert misconduct by the COA Chief Judge, in failing to provide timely and/or proper PRP consideration, constitutes malevolent judicial misconduct intended to cover-up wrongdoing by corrupt court officials, and/or to thwart post-conviction relief and/or to abet a ploy to exploit Stein's estate through criminal abuse of process.

Be that as it may, after Chief Judge Quinn-Brinall issued her November 11 Order Dismissing Petition, Stein filed a timely Motion for Reconsideration, dtc November 23, 2005. Furthermore, Stein filed a Motion For Discretionary Review in Supreme Court.

Indeed, once Stein filed his Motion for Reconsideration in the Court of Appeals, and/or his Motion for Discretionary Review in the Supreme Court, his pleadings and argument once again put the Court on notice of the nine PRP claims in COA No. 32993-4-II.

Each incorporated Stein's earlier Memorandum In Support, thereby once again presenting both the Court of Appeals and the Supreme Court with the nine claims Stein had presented in his April 2004 PRP, which had been transferred to Court of Appeals, as cause No. 32993-4-II. Presumably, the Division II Chief Judge may now attempt to assert she was unaware of Stein's nine claims, by alleging her staff failed to file Stein's pleadings properly or to call Stein's amended pleadings to her attention. Bogus!

Be that as it may, it can not be disputed that Stein filed a PRP in the State Supreme Court, requesting post-conviction relief from unlawful incarceration, and presenting the Supreme Court with nine claims and issues. Stein's PRP was assigned SC cause No. 75331-0. Stein's PRP presented nine claims and issues showing egregious Constitutional violations. Thereafter, May 14, 2004, the Supreme Court transferred Stein's PRP to Division II.

Some six months later, Stein's PRP was finally reviewed by the Chief Judge for her "initial consideration" as provided by RAP 16.11. However, RAP 16.11 provides: Chief Judge will consider petition promptly after the time has expired to file Petitioner's reply brief. The reply brief was due June 14, 2004.

At the initial consideration, the Chief Judge determines if the petition will be retained by the appellate court for determination on the merits or transferred to a superior court for determination on the merits or for a reference hearing. ... The Chief Judge may enter other orders necessary to obtain prompt determination of petition on merits.

Clearly, in Stein's case, the Chief Judge did not provide initial consideration for over six months. Such delay violated Stein's right to prompt review. Indeed, RAP 16.11 and appellate policy contemplate the initial consideration shall be prompt. Despite COA policy and the requirement of RAP 16.11, in Stein's case, the initial consideration was anything but prompt. Furthermore, during that sham initial consideration, 11-17-04, the Chief Judge improperly ignored Stein's nine PRP claims.

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of 22

The Chief judge's conduct - by first failing to provide a prompt initial consideration, as required by RAP 16.11, and then by ignoring Stein's nine PRP claims, and then by asserting, falsely, that Stein only presented four claims, and furthermore, by conducting a malevolent analysis of Stein's claims and issues, - seems to constitute, nonfeasance, misfeasance, and malfeasance.

Based on the foregoing facts, procedural history, and argument, RAP 16.4(d) does NOT bar relief for several reasons:

1. Stein's pending petition for relief was filed as State Habeas under RCW 7.36. Accordingly, RAP rules are not applicable.

2. Even though Stein's former PRP did present the same nine claims and issues presented in the pending habeas petition, the Court of Appeals did not even consider Stein's nine claims. Indeed, it is as if Stein's claims were never presented!

3. Each of Stein's claims will require a habeas hearing and development of a record. Accordingly, the merits of neither of the nine claims can be determined on the record below. Therefore, there can be NO other remedy available that would be adequate to review Stein's nine RCW 7.36 habeas claims.

4. Stein's petition for Habeas relief should not be construed as a second or successive petition for similar relief, because any similar claims that might have been presented in a prior petition were, in effect, "overlooked" by the Chief Judge.

Accordingly, Stein has shown GOOD CAUSE to entertain his claims, because, in effect, the claims have not been previously entertained, and, because, the Court failed to address the nine Constitutional claims now presented by Stein's RCW 7.36 petition.

Furthermore, RCW 10.73.140 does NOT preclude consideration of the nine claims and issues Stein's Habeas presented, because:

1. The nine claims are serious Constitutional violations, accordingly, the pending Habeas/PRP petition is not frivolous.

2. Petitioner has demonstrated that the failure of the Court to consider the nine grounds presented in the PRP was not the fault of Petitioner. Indeed, Petitioner is entirely innocent of any error or oversight that may have caused the Court to ignore his claims earlier. So, in the context of RCW 10.73.140, the forgoing facts should constitute GOOD CAUSE to proceed.

Moreover, the abuse of the writ doctrine does NOT apply to this case. Indeed, simply because one has counsel representing him on a direct appeal, does not preclude him from filing a pro se PRP. If that were so, almost no person could file a PRP, because everyone is represented by counsel on direct appeal.

While, as the Respondent concedes, Stein was aware of the facts supporting his current claims when the prior petition was filed, apparently, the Respondent seeks either to misinform or confuse when she asserts that Stein did not present those facts in his earlier petition. The problem is not that Stein did not present the claims and facts, the real problem is that the Court of Appeals, for some reason not yet explained, seems to have "overlooked" Stein's PRP claims and the facts he had presented.

Certainly, in view of the procedural history of Stein's petition for post-conviction relief, where any failure was not Stein's fault, and any fault was clearly outside Stein's control, the abuse of the writ doctrine is not applicable.

### **ABUSE OF WRIT DOCTRINE NOT APPLICABLE**

Indeed, the abuse of the writ doctrine is not applicable in habeas corpus actions where the petitioner makes a showing of miscarriage of justice, as here. *Carriger v Stewart*, 132 F.3d 463 (9th Cir. 1998). Equitable principles govern habeas review.

### **MISCARRIAGE OF JUSTICE**

Habeas petitioner is not banned from raising an issue not previously raised, or from raising an issue previously presented, when to deny habeas review would abet a miscarriage of justice, as here. In *Schlup*, the U.S. Supreme Court defined a miscarriage of justice as such that "a court can not have confidence in the outcome of the trial." Washington follows *Schlup* and adopted the abuse of the writ approach used in federal courts. In *Re Cook*, 114 Wn.2d 809 (1990). Federal Courts consider the miscarriage of justice doctrine to function as a "gateway," permitting the habeas petitioner to have his claims considered on the merits. *Carriger v Stewart*, *Ibid.* at 465.

Petitioner's argument is of the type meriting habeas review because, when his assertion is correct, upholding his conviction would amount to a complete miscarriage of justice. *Cook*, *Ibid.*

### **COLLATERAL ESTOPPLE DOES NOT APPLY TO HABEAS CORPUS**

Furthermore, Collateral Estopple does not apply to habeas actions. *Washington v Chrans*, 769 F. Supp 1045 (1991). Likewise, *Res Judica* has no application to a petition for habeas corpus relief regardless of the nature of the prior proceedings. *Calderon v United States*, 163 F.3d 530 (9th Cir. 1998).

## TRAVERSE TO RESPONSE TO PETITIONER'S CLAIMS

A perverted and deceptive statement of the facts of the underlying case is contained in opinions by the Court of Appeals and by the Supreme Court. Indeed, some 54% of the so called "facts" presented by the Supreme Court opinion, State v Stein, 144 Wn2d 236 (2001), are actually false. Moreover, over 48% of so called "facts" as alleged in the Court of Appeals' opinion, State v Stein, 94 Wn.App. 616 (1999), are actually false.

However, a true statement of facts is presented in Stein's web page, <http://www.teleport.com/~calebb/stein.html>, titled: "STEIN'S CASE SABOTAGED BY IRRESPONSIBLE COURT OFFICIALS." A copy of that document is incorporated in Stein's Habeas petition.

### PROCEDURAL HISTORY AND RELEVANT FACTS

The procedural history of Stein's case constitutes a travesty of mismanagement, official wrongdoing and judicial misconduct which has delayed, thwarted, and sabotaged Stein's efforts to secure relief from Due Process violations.

The underlying case began in Clark County Superior Court in 1988. The first trial ended in a mistrial in 1988, after the prosecution staged procedures resulting in a mistrial requested by the defense. When the prosecution stages a mistrial, as here, the Court should dismiss the prosecution with prejudice. Regretfully, my first trial was conducted by Hon. Edward Heavy. He ruled the prosecutorial misconduct was not deliberate, and therefore Judge Heavy refused to dismiss the prosecution. Failure to dismiss the case constituted judicial misconduct.

However, compelling evidence presented to the Court in my pleadings demonstrate Judge Heavy was both unethical and corrupt. Indeed, a body of compelling evidence shows that, in concert with attorneys Lee Dane and Edward Dunkerly, Judge Heavy of Seattle conspired with the miscreant attorneys and court officials to have himself appointed as "visiting" trial judge in the first (November 1988) trial. Indeed, in view of the unethical conduct of Judge Heavy and the defense attorneys, coupled with the misconduct of Clark County prosecutors, the prosecution should have been dismissed with prejudice, years ago.

Regretfully, first appeal was dismissed by Court of Appeals, Division II, after my appellate attorney, Darrell Lee, and a prosecutor, Dennis Hunter, falsely advised the Court of Appeals that Stein refused to file the "missing" Langer transcripts. Although, Jack Stein had denied Lee's allegation, and asserted that Mr. Lee had a copy of the transcripts at issue, a miscreant Superior Court Judge, Hon. Philip W. Borst, had conducted a sham hearing and made fictitious findings, asserting the defendant, Jack Stein, was personally responsible for the failure to file the Langer transcripts. However, in 1996, that finding was set aside by Judge Bryan following a 28 U.S.C. §2254 habeas hearing.

Moreover, since a 1996 hearing in Federal District Court, Darrell Lee has acknowledged that he had the Langer transcripts all along. Furthermore, Darrell Lee recently acknowledged that Bothany Norberg had provided him with a set of those transcripts.

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

Based on Mr. Lee's recent admissions, coupled with the fact that Bethany Norberg delivered a set of the Langer transcripts to Darrell Lee the week prior to Mr. Lee's August 9, 1990 letter to the Court of Appeals, it is apparent that Mr. Lee lied to the Superior Court, and also lied to the Court of Appeals, Supreme Court and the Federal District Court as to who was responsible the Langer transcripts were "missing" and not filed. Presumably, the reason Mr. Lee and Dennis Hunter lied to the Court was to sabotage Stein's direct appeal and to sabotage post-conviction relief. The conspiracy to falsely convict Jack Stein and sabotage Stein's direct appeal in 1990, was to abet the prosecutors' sinister plot to control and exploit Jack Stein's valuable estate through FRAUD and criminal abuse of process.

The Court may recall, in 1988, a prosecutor boasted they had an agenda to control and exploit my estate and predicted Stein would have nothing left when the court gets through. Thereafter, corrupt prosecutors and miscreant attorneys, along with a band of corrupt court officials, including commissioners and judges, issued a series of irresponsible rulings which served the interest of the prosecutor and those evil persons who conspired to misuse the State Court System to control and exploit my estate of property currently valued in excess \$67,000,000.

### OTHER RELIEF INADEQUATE

Respondent's Answering brief has asserted, falsely, at page 12, "He has failed to show, or even allege, those other remedies are inadequate." However, Respondent's statement is a lie.

Indeed, Stein's pro-se Petition For Writ of Habeas Corpus, at page 2, states; "... no other remedy is available." Stein's statement was true when written, and is still true.

**None** of the nine claims presented in Stein's Habeas/PRP petition now pending can be properly presented in a direct appeal, as the Respondent's brief falsely asserts. Presumably, Respondent is simply attempting to once again deceive the record, as has been her tactic since first assigned to this case.

Indeed, to the extent, that any other Court was presented claims presented in this petition for post-conviction relief, such other court, if any, completely misapprehended the claim or ignored the issue, resulting in the Court's complete and total failure to consider Stein's prior PRP claims.

Accordingly, the doctrine of res judicata and collateral estoppel have no application to claims presented by Stein's habeas/PRP at this time. Furthermore, Stein has shown, that to mediate a travesty of egregious judicial misconduct, fundamental justice requires "relitigation" of any claim or issue that may have been previously presented because the Court failed to address or resolve the issue, presumably out of misunderstanding and/or as the consequence of criminal judicial misconduct.

## A WEB OF EVIL AND WICKEDNESS

This case began after an attorney and real estate developers asserted that Nicholas Stein signed a real estate contract which the attorney had prepared. Terms of the alleged \$1,800,000. contract are suspect because no down payment was received. Initially, Nicholas asserted that the attorney, et al., had deceived him and said that he had not knowingly signed any contract to sell his real estate. After Nicholas attempted to expose fraud and set aside the contract, Nicholas received a series of threats, demanding he consent. In response to one threat, his house was destroyed by arson.

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

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

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

Also, Muriel contacted attorneys and judicial officials to expose misconduct by court officials. One day after Muriel contacted a judicial official, she was found dead in her bed.

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

Thereafter, without notice to Nicholas Stein's new attorney of record, the Superior Court granted a Guardianship over Nicholas Stein, as requested by the real estate developer, Haagen, and Nicholas' brother, George. This, despite the fact that Nicholas did not suffer any mental or physical limitation that would require a Guardianship. The guardian, Ned Hall, the purchaser, Haagen, and brother, George, were concerned because Jack's father, Nicholas, had assigned his interest in the property and disputed contract to Jack, and, when Haagen failed to make a scheduled payment on the assigned real estate contract, Jack retained attorney Ken Eiesland to prepare documents to foreclose and cancel the disputed contract, for nonpayment.

The guardian immediately sued Jack Stein to set aside agreements between Jack and Nick. The guardian's lawsuit was assigned to Clark County Superior Court Judge, John J. Skimis. Jack retained attorney Kenneth Eiesland to represent him.

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

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

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

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

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

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

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

In retrospect, it seems Judge Lodge was vengeful toward Stein because of his past sexual relationship with Mrs. Lodge, and that Lodge had Stein's case reassigned to himself as a ploy to harm Jack Stein. Stein's attorney should not have diverted funds from a trust account without Stein's knowledge or authorization. Moreover, Stein's attorney should not have used the converted funds to purchase property with the judge assigned to his client's case. In retrospect, it appears Mr. Eiesland was manipulated to sabotage Stein's legal interest, as a quid pro quo to serve Judge Lodge's animosity, and to betray Stein's interest.

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

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

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

Jack Stein visited Nicholas daily at the hospital. Nicholas' health showed marked improvement. Nicholas' attorney secured medical and psychological evaluations showing Nicholas did not require a guardianship and prepared pleadings to vacate the Washington guardianship. Presumably, the guardian and adverse interests feared their opportunity to control and exploit Nicholas was in jeopardy. The guardian secured a Clark County Superior Court order purporting to authorize Ned Hall to remove Nicholas Stein from his Oregon hospital facility and relocate Nicholas to a care facility located in Washington State. Furthermore, the prosecutor and Ned Hall arranged for Clark County Sheriff deputies to accompany Hall into Oregon and then to transport Nicholas "back" into Washington State.

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

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

## CRIMINAL JUDICIAL MISCONDUCT TO EXPLOIT JACK STEIN

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

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

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

Shortly after Stein's arrest, a prominent defense attorney, Richard Petersen, filed his appearance as defense counsel for Jack Stein. However, within 10 days, Mr. Petersen told Stein that the elected County Prosecutor, Art Curtis, wanted to force him to resign as Stein's defense counsel. Mr. Petersen explained he had once been in a financial bind and had diverted a client's funds to his personal use. He continued, "Art (Curtis) had known about it and would never have said anything, but Art was so obsessed with getting you out of his hair, he will do anything. ... Art has hated you for so long that he will stoop to anything to get you. ..."

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

Dane and Dunkerly filed a motion to recuse Judge Morgan, without Stein's knowledge. Dane and Dunkerly conspired with Judge Heavy of Seattle to have the court appoint Judge Heavy.

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

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

#### **IRREPARABLE HARM AND CATASTROPHIC DAMAGES**

Taken together, it can not be denied; my family and I have suffered from a series of corrupt attorneys, court officials, and several corrupt judges. These miscreant officials have caused irreparable harm and catastrophic damages to Stein and family.

Respondent has attempted to misrepresent the nature of Stein's Habeas/PRP claims and asserts that Stein presented but four claims. However, Stein presented nine Habeas/PRP claims:

1. Counsel of Choice,
2. Speedy Trial,
3. Due process,
4. Judicial Misconduct,
5. Mismanagement,
6. Prosecutorial Misconduct,
7. Excessive Delay,
8. Egregious Misconduct by Court Official,
9. Vindictive Prosecution.

This text belongs on page 8 of memo 8

The State's official PRP form specifically provides that the petitioner not show case law or great detail in the petition.

The Petitioner is simply to present his claims and issues. Thereafter, the Chief Judge is to make an initial consideration of the issues raised. However, in this case, over 11 months passed from the time Stein filed his PRP until the Chief Judge issued her initial consideration. Regretfully, her initial consideration dismissed Stein's PRP. However, RAP 16.11 provides a PRP should not be dismissed at the initial consideration stage, unless the PRP is frivolous. Stein's claims were NOT frivolous!

Each of those nine claims has merit and is supported by the facts and argument presented in Stein's Memorandum in Support.

A summary of issues and facts supporting Stein's habeas/PRP claims can be extracted from Stein's November 15, 2004, Memorandum in Support, as follows:

**ISSUES**

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

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

**IS THE DEFENDANT ENTITLED** to reversal and dismissal of the charges against him, pursuant to Washington State Constitution, Art. 1, § 10 and/or CrR 8.3(b), where the prosecution causes a 6-½ year delay in the processing of a criminal appeal, by falsely informing a state court judge that the defendant is responsible for the failure to file transcripts, thereby causing the erroneous dismissal of the defendant's appeal, when in fact the prosecution was responsible for the delay because it had informed the Superior Court Clerk not to file the transcripts?

**DOES THE PERJURY**, suborn of perjury, judicial misconduct and Governmental Misconduct initiated or abetted by court officials in the underlying case, as canted in the Memorandum in Support, constitute such an insult to Due Process so as to require the Court of Appeals to dismiss the charges in interest of justice?

**DID COURT OF APPEALS ERR** by transferring Stein's RCW 7.36 habeas corpus petition for post-conviction relief, filed in the Snohomish County Superior Court, to the Court of Appeals for consideration as a Personal Restraint Petition?

**DOES IT VIOLATE DUE PROCESS**, or the intent for prompt review of a RCW 7.36 habeas petition, to consolidate Stein's RCW 7.36 petition for post-conviction relief with his direct appeal?

**RESPONDENT DOES NOT DISPUTE RELEVANT FACTS STEIN PRESENTED**

Respondent's Brief has not disputed any fact presented in Stein's Memorandum In Support, nor has the Respondent's Answer provided any relevant fact in rebuttal to Stein's issues.

**PREJUDICE**

For purposes of habeas review, the law provides prejudice is assumed as to the Egregious and FUNDAMENTAL violations presented in Stein's RCW 7.36 (habeas) petition for post-conviction relief.

**ALL CLAIMS RELATE TO VIOLATIONS FROM 1988 to 1999**

The claims and grounds for relief presented in this habeas petition have nothing to do with errors and violations in the trial ultimately conducted in July 2004. Consolidation of Stein's RCW 7.36 petition for post-conviction relief with the anticipated direct appeal of the 2004 trial would improperly thwart prompt consideration that RCW 7.36 and habeas law intend.

**CLAIMS**

Stein's RCW 7.36 habeas claims can be summarized as follows:

**COUNSEL OF CHOICE**

The Court denied Stein's FUNDAMENTAL right to be represented by retained counsel of choice in the first trial and in the 1989 trial. In the first (1988) trial, the Court appointed counsel, despite the fact that Mr. Stein did not claim to be indigent.

In the second trial, the Court forced Stein to proceed with an attorney retained by adverse third parties, without Stein's knowledge, by denying Mr. Stein's pro se motion to remove Browne, so to be represented by retained counsel of choice, or pro se.

**DUE PROCESS**

Stein's Memorandum in Support present Egregious Due Process violations in both the first and second trial, and up to 1999.

### **SPEEDY TRIAL**

Speedy Trial violations in the first trial and second trial, demonstrated in Stein's Memorandum in Support, were neither cured nor swept under the rug by Stein's successful direct appeal.

### **JUDICIAL MISCONDUCT**

Egregious Judicial Misconduct occurring in the first trial, second trial, and post-conviction proceedings from 1989 to 1999.

### **MISMANAGEMENT**

Mismanagement occurring in the first trial, second trial, and in the post-conviction proceedings from 1989 to 1999.

### **PROSECUTORIAL MISCONDUCT**

Prosecutorial Misconduct occurring in the first trial, second trial, and post-conviction proceedings from 1989 to 1999.

### **EXCESSIVE DELAY**

Violations of Due Process, and the Judicial Misconduct, Mismanagement, and Prosecutorial Misconduct resulted in Excessive Delay, that is not cured by Stein's successful direct appeal.

### **EGREGIOUS MISCONDUCT BY COURT OFFICIALS**

Misconduct by Court Officials occurring in the first trial, second trial, and post-conviction proceedings from 1989 to 1999.

### **VINDICTIVE PROSECUTION**

Animus and Vindictive Prosecution distorted the proceedings.

### **EGREGIOUS GOVERNMENT MISCONDUCT REQUIRES DISMISSAL**

Egregious Governmental Misconduct by AAG attorneys, et al., is an independent cause for dismissal. The Attorney General, Hon. Rob McKenna, was advised of misconduct by AAG attorneys.

**SIMPLY MAKING A RECORD**

In view of the protracted history of judicial misconduct presented in the Habeas/PRP, and the apparent judicial conspiracy to cover-up wrongdoing by court officials, Stein has no realistic expectation of a favorable ruling by a COA Commissioner or Court of Appeals Judge, or the Supreme Court. Moreover, Stein would point out that the Supreme Court was presented with opportunity to mediate and correct the due process violations and judicial misconduct on several occasions, but the Court declined to act, allowing the catastrophic damages to continue escalating.

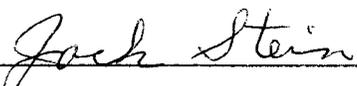
Accordingly, Stein files this pleading simply to preserve issues and document the ongoing judicial misconduct. Hopefully, at a time in the future, state/federal officials will prosecute miscreant attorneys and court officials who have precipitated and/or abetted in the underlying travesty of justice. Maybe.

**V. CONCLUSION**

This Court should refer Stein's RCW 7.36 petition for relief back to Snohomish County Superior Court with instructions to consider the Habeas claims without further delay.

In the alternative, the Court of Appeals should refer this matter to a panel of COA judges for consideration on the merits, or to the Superior Court for a hearing. Furthermore, the Court should appoint counsel to represent petitioner in this matter, as provided by case law, habeas procedures, and/or RAP \_\_\_\_.

RESPECTFULLY SUBMITTED this 6 day of June, 2005.

  
\_\_\_\_\_  
Jack Stein, Petitioner

FILED  
COURT OF APPEALS

05 JUN -7 PM 1:14

IN THE COURT OF APPEALS FOR WASHINGTON  
STATE OF WASHINGTON

DIVISION II

BY \_\_\_\_\_  
REPLY

JACK K. STEIN, )  
                  ) Petitioner, )  
                  ) vs. )  
                  ) )  
JAMES SPALDING, )  
                  ) Respondent. )  
\_\_\_\_\_ )

No. 32982-4-II  
CERTIFICATE OF SERVICE

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

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

- 1. TRAVERSE TO RESPONSE, REPLY, AND OBJECTION TO MOTION

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

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

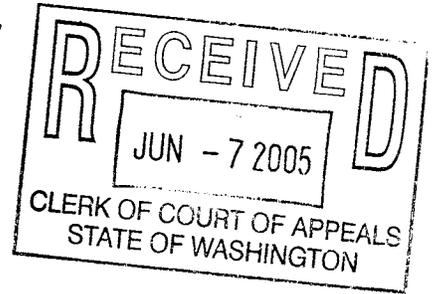
Nancy P. Collins  
Wash Appellate Project  
1511 3rd Ave. Ste 701  
Seattle, WA 98101-3635

DATED this 6 day of June, 2005.

  
\_\_\_\_\_  
Jack K. Stein, Petitioner  
Monroe Correctional Complex  
P.O. Box 777 (B-305) #955827  
Monroe, WA 98272-0777

**JACK K. STEIN**  
Monroe Correctional Complex  
P.O. Box 777 (B-305) #955827  
Monroe, WA 98272-0777

June 6, 2005



Hon. David C. Ponzoha, Clerk  
Court of Appeals; Div. II  
950 Broadway; Suite 300  
Tacoma, WA 98402-

Re: State v Stein, COA Cause No. 31980-2-II  
Personal Restraint: Jack Stein, No. 32982-4-II  
Petition For Writ of Habeas Corpus (RCW 7.36 et seq.)

Dear Mr. Ponzoha,

The enclosed June 6, 2005 Traverse will replace my preliminary Traverse dated May 20, 2005.

The enclosed pleadings consist of a memorandum, Traverse (pages 1-26), and Certificate

Please be aware, the Traverse includes 10.1. This page notation was necessary to avoid s when I discovered the need to insert (an t that should be presented at page 10, rather icular argument placed out of order.

*mat. to st  
6/20/05*

While, I do not expect to cause a moral and ethical reform among Court of Appeals officials, I trust that my pleadings will give certain officials pause to reflect on the judicial misconduct presented in my memorandum because governmental misconduct is so hurtful to innocent persons.

Indeed, my family and I have suffered irreparable harm and catastrophic damages as the consequence of judicial malfeasance and/or egregious misconduct at issue. I have advised the State Attorney General, Hon. Rob McKenna, of the pattern of ethical violations and governmental misconduct committed by attorneys and staff employed by his office. The Attorney General should initiate an investigation and prosecute both state employees and court officials responsible for egregious wrongdoing referenced in my 12/15/04 RCW 7.36 memorandum in support. **I remain . . .**

Respectfully yours,

*Jack Stein*  
Jack Stein

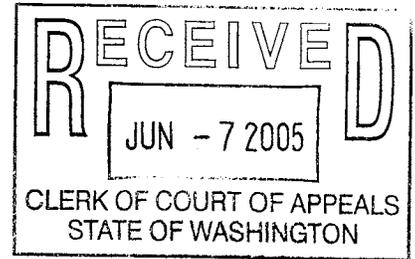
encl: Traverse; June 6, 2005, pages 1-26. TM. CS.

cc: Hon. Rob McKenna, Esq.  
Nancy P. Collins, Esq.  
David L. Donnan, Esq.

**JACK K. STEIN**  
Monroe Correctional Complex  
P.O. Box 777 (B-305) #955827  
Monroe, WA 98272-0777

May 19, 2005

Hon. David C. Ponzoha, Clerk  
Court of Appeals; Div. II  
950 Broadway; Suite 300  
Tacoma, WA 98402-



Re: State v Stein, COA Cause No. 31980-2-II  
Personal Restraint: Jack Stein, No. 32982-4-II  
Petition For Writ of Habeas Corpus (RCW 7.36 et seq.)

Dear Mr. Ponzoha,

I was aggrieved by the ruling in your March 9, letter advising:  
"A RULING SIGNED BY THE COMMISSIONER"

Accordingly, on March 28, 2005, I prepared a Motion to Modify the Commissioner's March 9 ruling, as provided by RAP 17.7. That pleading was mailed to Court of Appeals, and interested parties, on March 28, 2005. At the time, I was deathly ill.

Frankly, I had expected the Court to consider the matter on the next opportunity, and to issue a ruling long before now.

Similar facts apply to a Commissioner's March 23, 2005 ruling.

In view of my opinion the Chief Judge and Commissioner are both malevolent and corrupt, particularly as to the ploy to cover-up wrongdoing that my pleadings expose, I can appreciate that the Court may not want to do anything that would facilitate my attempts to expose criminal misconduct by court officials, as the referenced State Habeas pleadings may do, particularly if the matter can be considered in a jurisdiction that is free from judicial corruption and/or the motive to cover-up wrongdoing that has sabotaged my liberty interest and my civil issues from 1988, and before. Corrupt officials should be prosecuted.

**Please advise me when the Court will rule on my motions.**

If the Court of Appeals made any ruling on the Motion to Modify, I did not receive a copy. Please provide. I remain . . .

Respectfully yours,

*Jack Stein*  
Jack Stein

cc: Hon. Rob McKenna, Esq.  
David L. Donnan, Esq.

**JACK K. STEIN**  
Monroe Correctional Complex  
P.O. Box 777 (B-305) #955827  
Monroe, WA 98272-0777

June 6, 2005

Hon. David Ponzoha, Clerk  
Court of Appeals, Div. II  
950 Broadway; Suite 300  
Tacoma, WA 98402-



Re: State v Stein, COA Cause No. 31980-2-II  
Petition For Writ of Habeas Corpus (RCW 7.36 et seq.)  
Personal Restraint Petition; Jack Stein, No. 32982-4-II

**TRANSMITTAL MEMORANDUM**

Dear Clerk,

Please find my Pro Se pleadings enclosed for filing, as follows:

1. TRAVERSE TO RESPONSE, REPLY, AND OBJECTION TO MOTION
2. CERTIFICATE OF SERVICE

Respectfully yours,

  
\_\_\_\_\_  
Jack K. Stein, Pro Se

enclosures:

cc: Hon Rob McKenna, Esq.  
State Attorney General  
% Lana Weinmann, AAG

TRANSMITTAL MEMORANDUM



William Lawrence Eason, Esq.  
P.O. Box 777 (18-305)  
Washouak, WA 98222-0777

RECEIVED  
JUN - 7 2005  
CLERK OF COURT OF APPEALS  
STATE OF WASHINGTON

Hon. David L. Bergeson, Clerk  
Court of Appeals - Division II  
950 Broadway - Suite 300  
Tacoma, WA 98402

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