

SUPREME COURT OF APPEALS WEST VIRGINIA

DENNIS J. RYDBOM,
Prisoner No. 26302,

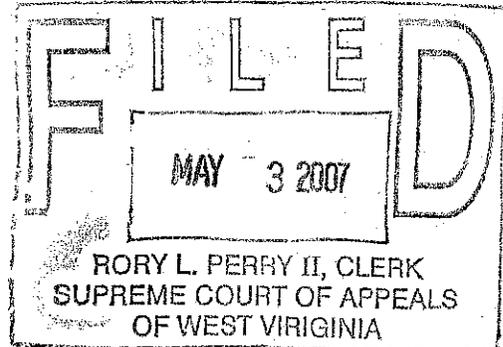
Petitioner,

v.

CASE No. _____

COMMISSIONER of the
W.Va. Division of Corrections,

Respondent.



PETITION FOR WRIT OF HABEAS CORPUS

Dennis J. Rydbom, *in pro se*
Prisoner # 26302
Mt. Olive Prison
One Mountainside Way
Mt. Olive, W.Va. 25185

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INTRODUCTION

This is a *Petition for Writ of Habeas Corpus*, filed by Dennis J. Rydborn, *in pro se*. Rydborn invokes this Court's original jurisdiction.

1. The judgment of conviction under attack here occurred at the Circuit Court of Wood County, West Virginia, Judge Jeffrey B. Reed presiding (Case No. 97-F-87)..
2. The judgment of conviction under attack occurred on or about April 17, 1998.
3. The length of sentence is imprisonment in the custody of the Respondent for the rest and remainder of Rydborn's natural life, without the possibility of parole.
4. The nature of the offense was First Degree Murder.
5. Rydborn pleaded NOT guilty.
6. Rydborn was tried by a jury.
7. Rydborn did not testify at trial.
8. Rydborn did not petition for a direct appeal from the judgment of conviction in the Supreme Court of Appeals of West Virginia (SCAWV).
9. The trial judge, Jeffrey B. Reed, refused to allow Rydborn to file a petition for discretionary direct appeal.

Court-appointed lawyer, Patrick Radcliff -- without Rydborn's consent -- filed a petition for discretionary direct appeal (SCAWV No. 990272) on or about February 10, 1999.

While prosecutors listened, via telephone, to attorney Radcliff's oral argument before the SCAWV, Rydborn was not allowed to attend, listen to, or even review attorney Radcliff's argument regarding the appellate proceeding bearing his name.

10. Rydborn has previously filed habeas corpus petitions with respect to this judgment.
- 11(a). The first petition for writ of habeas corpus was submitted to the Wood County Circuit Court, West Virginia on January 12, 1999 (Case No. 99-P-9).

The grounds raised in the first petition included:

- a. Interference with Rydbom's *pro se* and assistance of counsel rights;
- b. attorney's obstructing Rydbom's strategic decisions;
- c. ineffective assistance of counsel;
- d. prosecutorial/discovery misconduct;
- e. illegal search & seizure issues, and;
- f. speedy trial issues.

Judge Reed dismissed Rydbom's first habeas corpus petition without the merits of the claims being addressed because court-appointed lawyer Radcliff filed a petition for direct appeal with Rydbom's name on it without Rydbom's consent.

11(b). The second petition for writ of habeas corpus was submitted to the Wood County Circuit Court, West Virginia on December 9, 1999 (Case No. 99-P-228).

The grounds raised in the second petition included:

- a. Interference with Rydbom's *pro se* and assistance of counsel rights;
- b. attorney's obstructing Rydbom's strategic decisions;
- c. ineffective assistance of counsel;
- d. prosecutorial/discovery misconduct;
- e. illegal search & seizure issues, and;
- f. speedy trial issues.

Judge Reed dismissed the second habeas corpus petition because Rydbom did not use a form which did not even exist at the time Rydbom submitted the second petition.

On or about October 16, 1998, the Wood County Circuit Court, responding to Rydbom's request for a standard habeas corpus form, told Rydbom they did not have forms available for such petitions.

11(c). The third petition for writ of habeas corpus was submitted to the Wood County Circuit Court, West Virginia on May 22, 2000 (Case No. 00-P-62).

The grounds raised in the third petition included:

- a. Interference with Rydbom's *pro se* and assistance of counsel rights;
- b. attorney's obstructing Rydbom's strategic decisions;
- c. ineffective assistance of counsel;
- d. prosecutorial/discovery misconduct;
- e. illegal search & seizure issues, and;
- f. speedy trial issues.

The third petition has been pending since May 2000 without adjudication.

12(a). Court-appointed lawyers Patrick Radcliff and Bruce M. White were assigned to represent Rydbom from the preliminary hearing and through trial.

- 12(b).** Patrick Radcliff was assigned to represent Rydbom from sentencing up through discretionary direct appeal.
- 12(c).** Ira M. Haught was assigned as co-counsel during discretionary direct appeal, and as advisory counsel from July 11, 2000 through August 14, 2000.
- 12(d).** Reggie R. Bailey was assigned as advisory counsel from August 14, 2000 through November 26, 2002.
- 12(e).** Jack Hickok of the W.Va. Public Defender Services, Appellate Division, was assigned as advisory counsel from November 26, 2002 to present.
- 13(a).** Rydbom has transcripts of all pretrial proceedings known to Rydbom, except for a couple of pages of the October 10, 1997, pretrial hearing.
- 13(b).** Rydbom has transcripts of all trial/sentence proceedings.
- 13(c).** Rydbom has *not* obtained transcripts of any post-sentence proceedings.
- 13(d).** There exist at least one-hundred seventy-nine (179) documents filed with the Wood County Circuit Court which Rydbom has been unable to obtain a copy of.
- 13(e).** Rydbom has not been able to obtain a complete copy of his case file (e.g. exhibits, notes, work product, etc.).
- 13(f).** Rydbom claims he cannot have a full and fair opportunity to marshal his inadequate-assistance-of-counsel claims absent a true and complete copy of his case file.
- 14.** Rydbom has a future sentence to serve *after* the sentence imposed by the judgment under attack is completed or reversed. This stems from a violent pretrial altercation between Rydbom and his jailors on or about December 22, 1997 (Wood County Circuit Court, Case No. 98-F-69.).

The future (consecutive) sentence consists of not less than two, not more than five years imprisonment in the custody of the Respondent.

A habeas corpus petition was filed in the Circuit Court of Wood County, West Virginia (Case No. 02-P-145), on or about February 22, 2001, regarding the future sentence and included grounds such as:

- a. Omitting essential elements of the alleged offense from the indictment and from jury instructions;
- b. trial court's erroneous understanding of the term "official capacity" and refusal to define the term in its charge to the jury;
- c. perjured testimony of prosecution witnesses, and;
- d. ineffective assistance of counsel who did not investigate the State's case.

The future-sentence habeas petition has been pending since February 2001 without adjudication, and the Wood County Circuit Court refuses to appoint a qualified forensic odontologist to examine bite-mark evidence which would prove perjured testimony on the part of Rydbom's jailers.

15. *Ineffective/Inadequate Habeas Corpus Corrective Process*

Throughout the underlying case, (a) the Wood County Circuit Court, (b) lawyers appointed by the Wood County Circuit Court to assist/advise Rydbom, and (c) jail/prison officials appointed by the Wood County Circuit Court to imprison Rydbom, have all employed unfair, dilatory, and obstructionist behavior against Rydbom's efforts to obtain justice.

The actions of the Wood County Circuit Court and its cohorts, as described throughout this petition, have effectively rendered any legal process at the state circuit court level ineffective, inadequate, and futile, with regard to Rydbom's legal claims.

Rydbom's Jailers

Prison officials have wrongly interfered with Rydbom's right to petition for redress of grievances by seizing Rydbom's legal materials, censoring Rydbom's legal mail, and interfering with Rydbom's attorney-client interactions.

For example, on July 18, 2000, officials seized Rydbom's copy of *Practical Homicide Investigation: Tactics, Procedures, and Forensic Techniques*, by Vernon J. Geberth. Rydbom purchased this book through the mail in May 1997 while incarcerated in the Wood County Jail.

The Geberth text was cited by local media regarding the underlying murder case (see *The Marietta Times*, 13 Aug. 1996). Geberth's text has also been referenced in at least one network television show about forensic science (CBS *48-Hours*, 25 July 2003).

Practical Homicide Investigation is tied to the underlying murder case of Sheree Ann Petry. Instead of simply ignoring or declining Rydborn's request for help investigating the underlying murder case, the author, Vernon J. Geberth turned Rydborn's letter from jail over to the prosecution team. Vernon Geberth was subpoenaed by prosecutors, though not called, to be a witness in the underlying murder case.

It is Rydborn's position that (a) Rydborn had no involvement in Sheree Petry's murder, and (b) is only natural for a person wrongly accused of murdering his friend to be compelled to seek answers relevant to the underlying murder case.

The head detective in the underlying murder case, Ohio cop Sgt. Richard Meek testified at trial that he used knowledge gained from *Practical Homicide Investigation: Tactics, Procedures, and Forensic Techniques*, by Vernon J. Geberth, to guide him along in his investigations (Trial Transcript: 14 Jan. 1998, pp. 1401-1402, 1414). Copies of Geberth's book were also on both prosecution and defense tables during the underlying murder trial.

Officials also censor Rydborn's legal mail. For example, in June 2003, attorney William Summers mailed Rydborn a letter with one photocopy of a page of an office-supply catalog. Prison officials seized the mail claiming prisoners cannot receive catalogs.

When Rydborn complained about officials censoring Rydborn's legal mail (Case No. 02-P-145), the circuit court did nothing.

In 2006, prison officials and lawyer Jack Hickok tricked Rydborn into surrendering part of his case file (e.g. photographs, attorney-client communications, work product, etc.) to prison officials -- with the promise that it would be given to lawyer Hickok. Instead, the legal materials went to the warden's office. When Rydborn complained, officials said Rydborn did not surrender the materials quickly enough. Prison officials still refuse to return -- and lawyer Hickok refuses to retrieve -- such legal materials.

Through no fault of Rydborn, prison officials refuse to allow Rydborn to personally exchange legal papers with attorneys (e.g. during legal visits).

Lawyers

Every lawyer appointed by the Wood County Circuit Court regarding the underlying murder case has been stingy about sharing with Rydbom a complete copy of Rydbom's case file (while safekeeping the original in case of theft, flooding, fire, etc.), and has acted in opposition to Rydbom's best interests.

Examples of lawyers Radcliff and White betraying Rydbom's interests are in the various grounds for relief, *infra*.

Attorney Ira M. Haught successfully billed for \$427.50 for services rendered on behalf of Rydbom, even though he did no work in the case.

Attorney Reggie Bailey wasted twenty-seven (27) months of Rydbom's life doing absolutely nothing in the case.

Jack Hickok of the WV Public Defender Services shared attorney-client communications with the prison officials, and conspired with prison officials to trick Rydbom into surrendering part of his case file (e.g. photographs, attorney-client communications, work product, etc.) to prison officials -- under the promise that it would be given to lawyer Hickok. To this day, prison officials refuse to return -- and Hickok refuses retrieve -- such materials.

Lawyer Hickok, like the other lawyers referred to above, has also refused to provide Rydbom with a true and complete copy of his case file -- even in increments -- while safeguarding the original in case of fire, theft, flooding, etcetera.

Wood County Circuit Court

Rydbom's comparison of the docket sheet (Case No. 97-F-87) with the so-called "complete record" certified by the Wood County Circuit Court Clerk on February 5, 1999, reveals one-hundred and seventy-nine (179) documents filed with the Wood County Circuit Court that have not been made part of the so-called "complete record." For example, the clerk's censored version of the "complete record" omits everything involving Judge Reed, the clerk, and the lawyers utilizing the *Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings* -- relevant to Rydbom's tag-teaming claim, *infra*.

The verdict form read in open court by the clerk, when the jury "found" Rydborn guilty, does not exist at all in the so-called "complete record" or even in the docket sheet. What else is missing?

The remainder of this petition further explains how the (in)actions of (a) the Wood County Circuit Court, (b) attorneys appointed by the Wood County Circuit Court to assist/advise Rydborn, and (c) jail/prison officials appointed by the Wood County Circuit Court to imprison Rydborn, effectively render any legal process at the state circuit court level ineffective, inadequate, and futile. One strange example worth noting here involves the tag-teaming claim where the Wood County Circuit Court was either unwilling or unable to prevent Ohio and West Virginia authority figures from jointly prosecuting Rydborn while the two states also hid behind their sovereignty so as to avoid complying with Rydborn's fundamental rights.

16. Attached are the grounds (in seven parts) upon which Rydborn relies in claiming he is unlawfully imprisoned.

PART ONE SPEEDY TRIAL VIOLATIONS

The Wood County Circuit Court, and prosecution team, denied Rydbom his speedy trial and due process rights, in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution, Article 3, §§ 10 & 14 of the W.Va. Constitution, and W.Va. Code § 62-3-1.

CHRONOLOGY OF EVENTS

On November 16, 1996, Rydbom was arrested in Phoenix, Arizona, pursuant to an Ohio fugitive of justice warrant,¹ for the May 25, 1996, murder of his close friend Sheree Petry. On November 20, 1996, Rydbom waived extradition and demanded a speedy trial.²

The Washington County, Ohio, grand jury indicted Rydbom on December 3, 1996.³ The Ohio trial judge scheduled a speedy jury trial for February 10, 1997.⁴

On January 27, 1997, the same day the Ohio indictment was dismissed for lack of territorial jurisdiction, West Virginia issued a warrant against Rydbom for Sheree's murder.⁵

On January 28, 1997, *The Parkersburg News* reported that Rydbom's Ohio attorney, Janet Fogle, said:

...[Rydbom] was concerned about receiving a speedy trial in West Virginia.

"They have what they call a three-term rule and they don't have to indict him for nine months," [Fogle] said. "So he knows this change of jurisdiction will undoubtedly mean at least nine more months in jail for him because his time here does not transfer."⁶

West Virginia arrested and imprisoned Rydbom on January 30, 1997. During a bond hearing before Judge Reed the next day, Rydbom requested a speedy trial.⁷

The Wood County Prosecutor Virginia Conley refused to have Rydbom indicted during the January 1997 term, which ended May 11, 1997.

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- 1 Maricopa County, AZ, # A175136; and, Marietta, Ohio, Municipal Court, Case # 96-CRA-1825.
 - 2 Transcripts of Arizona extradition waiver unavailable to Rydbom, but speedy trial demand noted in police reports and during Ohio Case # 96-CR-235; Bond Hearing: 12-04-96, p. 6.
 - 3 Washington County Common Pleas Court, Case # 96-CR-235.
 - 4 Washington County Common Pleas Court, Case # 96-CR-235; Arraignment: 12-11-96, p. 10.
 - 5 Wood County Magistrate Court, Case # 97-F-71.
 - 6 Sequin, C. (1997, Jan. 29). Rydbom still in Ohio but move likely. *The Parkersburg News*, p. 1A.
 - 7 Wood County Circuit Court, Case # 97-U-15; Bond Hearing: 01-31-97, p. 12. Bond was denied.

On May 22, 1997, *The Marietta Times* reported that Virginia Conley, said:

Rydbom has the right to demand a speedy trial only after an indictment is issued, Conley said. Conley declined to discuss when she might present the case to a grand jury.

"If he's indicted this term, he has the right to request a speedy trial and be tried this term," Conley said.⁸

The same day, May 22, 1997, Rydbom filed a written motion for speedy trial.⁹ On June 11, 1997, after a brief hearing, Judge Reed said he would take the May 22 speedy trial motion under advisement -- but he never ruled on it.¹⁰

A month later, on July 11, 1997, Rydbom was finally given a West Virginia indictment. On July 24, 1997, Rydbom filed another written demand for a speedy trial.¹¹

At the July 28 arraignment, when substitute Judge, Arthur N. Gustke, suggested setting trial for November 3, 1997, Rydbom protested and requested a speedy trial.¹²

On August 4, 1997, without "good cause" for delay having been shown, Judge Gustke *pro forma* scheduled Rydbom's trial for November 3, 1997, past the term of Rydbom's indictment -- which ended September 7, 1997.¹³ According to Wood County Prosecutor Virginia Conley, the date had come from Judge Reed.¹⁴ How did Conley learn the decided trial date came from Judge Reed? Logic dictates Judge Reed colluded, *ex parte*, with Conley on the matter.¹⁵

On August 13, 1997, supposedly "because of [Rydbom's] desire for a speedy trial," Judge Reed ordered all pretrial motions set for hearing were required to provide fifteen (15) days written notice.¹⁶

⁸ Hoover, C. (1997, May 22). Murder suspect not indicted. *The Marietta Times*, p. 1A.

⁹ Clerk's version of the "complete record," pp. 61-63.

¹⁰ Pre-Indictment Transcript: Wood County Circuit Court, Case # 97-B-40; 06-11-97.

¹¹ Wood County Circuit Court, Case # 97-F-87; Clerk's version of "complete record," pg. 75.

¹² Arraignment: 07-28-97, p. 5.

¹³ Pretrial: 08-04-97, p. 7. See Lewis v. Henry, 400 S.E.2d 567, 570 (W.Va. 1990) (A continuance may not be granted *pro forma* by the trial court.)

¹⁴ Pretrial: 08-04-97, p. 17-18 (Judge Gustke: "You all did establish that there was a November 3rd trial?" Conley: "That was what my understanding -- yeah. That's what came from Judge Reed." Judge: "Okay. He just ripped out that page for some reason or other, okay?" Conley: "I don't know what that means." Durig intercedes: "Judge we might end up with you then." Judge: "No."). (Whereupon, the proceeding ended.)

¹⁵ See Canon 3 (B)(7), WV Code of Judicial Conduct (prohibits undue *ex parte* communications).

¹⁶ Clerk's version of "complete record," pg. 105A - 106.

On September 25, 1997, Rydbom filed a motion to dismiss for the State's failure to provide Rydbom with his statutory and constitutional rights to a speedy trial, and for the State's undue delay in obtaining an indictment against Rydbom.¹⁷

In the September 25 motion to dismiss, Judge Reed and the prosecution team were told Rydbom was "totally" unwilling to allow defense motions to be interpreted as an excuse for delaying trial. In fact, Rydbom expressed his willingness to forgo whatever was necessary in order to obtain a speedy trial. Rydbom also promised to dismiss court-appointed lawyers if any delay was to be attributed to them.

Rydbom's September 25 motion to dismiss for speedy trial violations was set for an October 10, 1997, hearing. However, on October 10, without advance notice, prosecutors moved for another delay of Rydbom's trial.¹⁸ Judge Reed took up the prosecutors' request, ignoring his own 15-day notice order, and ignoring Rydbom's slated September 25 motion.¹⁹

One of the excuses for the prosecution's continuance motion was to respond to defense motions. Noticing Judge Reed was sympathetic to the prosecution, Rydbom tried to waive motions Judge Reed deemed problematic. Instead of delineating which motions he wanted to blame for giving prosecutors another trial delay, Judge Reed ordered Rydbom to specify which motions the defense was willing to waive.²⁰

Rydbom initially tried to waive all but a couple motions to avoid further trial delay.²¹ Recognizing this would not work (from the squabbling that ensued), Rydbom offered to waive *all* motions to avoid further trial delay.²² Judge Reed and the prosecution team objected to Rydbom waiving defense motions, and again delayed Rydbom's trial,²³ even though it had "first case" priority over other trials.²⁴

17 Clerk's version of "complete record," pp. 232 - 243. See also, Pretrial: 09-19-97.

18 Clerk's version of "complete record," pp. 511 - 515.

19 Pretrial: 10-10-97, pp. 13-14.

20 Pretrial: 10-10-97, p. 30.

21 Pretrial: 10-10-97, pp. 31-35.

22 Pretrial: 10-10-97, pp. 35-37.

23 Pretrial: 10-10-97, pp. 37-39.

24 Pretrial: 08-04-97, p. 7.

In desperation, Rydbom filed, *in propria persona*, a petition for writ of prohibition in the Supreme Court of Appeals of West Virginia (SCAWV) asking that Judge Reed be stopped from further delaying Rydbom's trial. The SCAWV refused Rydbom's petition without comment.²⁵

On December 23, 1997, upon learning prosecutors misrepresented their reasons for seeking another trial delay, Rydbom filed a motion to dismiss, this time because of the prosecutors' bad faith.²⁶ One of the excuses for prosecutors' October 10 motion was that a material witness (Cynthia Tokarz) would not be available²⁷ for trial until January 1998. After delay was granted, and shortly before Cynthia Tokarz was to be deposed by State and defense attorneys, the prosecutors said they did not need Tokarz's testimony after all.

Earlier, the prosecutors also misrepresented their delay in submitting materials to the State Police lab for forensic testing. On September 26, 1997, when Judge Reed asked why there was such a time crunch, Wood County Prosecutor Virginia Conley claimed:

...it's just a matter of circumstance.

These items were sent to the state police -- oh, I can't give you the exact date now, but from the time we got the case and figured out what all evidence we had, we've done it as timely as we could...²⁸

It is patently incredible that, on September 26, 1997, prosecutors could not remember that their "timely" submission of materials for testing was just three days earlier²⁹ (September 23, 1997) but almost eight months *after* Rydbom demanded a speedy trial from West Virginia. Judge Reed denied Rydbom's December 23 motion to dismiss without explanation.³⁰

On January 8, 1998, a jury was impaneled and sworn, and the trial began.

²⁵ *s.e.r. Rydbom v. Reed*, SCAWV # 972199, *Petition* filed 10-15-97, *Order* filed 10-23-97. Compare with *Lewis v. Henry*, 400 S.E.2d 567, 570 (W.Va. 1990) ("When a defendant requests an immediate review of a trial court's determination of good cause by seeking original relief in this court to compel an immediate trial, we are very solicitous because the defendant is awaiting trial and is obviously sincere in his desire to be tried promptly.")

²⁶ Clerk's version of "*complete record*," pp. 699 - 701.

²⁷ *Pretrial*: 10-10-97, pp. 22-23.

²⁸ *Pretrial*: 09-26-97, p. 33.

²⁹ See *Trial Transcript*: 01-27-98, p. 2491.

³⁰ *Pretrial*: 12-23-97, pp. 17-18.

The only reason for seeking a speedy trial recognized by Judge Reed was, "to catch the prosecution before they're ready"³¹ -- hardly a fair statement given that, when prosecutors lock someone up, they then owe that prisoner a speedy trial. Moreover, Ohio handed the case to West Virginia on a silver platter, i.e. already "ready" for trial.

I DUE PROCESS OF LAW

West Virginia Code § 62-3-1 says in pertinent part, "[w]hen an indictment is found ... against a person ... the accused, if in custody ... shall, unless good cause be *shown* for a continuance, be tried at the same term" (emphasis added).

The relevant "*terms*" of court for Wood County, WV, commenced on January 13, May 12, and September 8, 1997.

West Virginia officials arrested and imprisoned Rydborn on January 30, 1997.

Rydborn was indicted on July 11, 1997, in the May 1997 term of court.

A petit jury was sworn and impaneled, and trial began, on January 8, 1998, the second-to-last business day of the September 1997 term of court.

Rydborn was denied his statutory right³² to be tried within the same term of his indictment, "unless good cause be shown for a continuance," whereas:

- (A) The arraignment judge (Gustke) set trial beyond the term of indictment, *pro forma*, without declaring there to be "good cause" for the delayed trial date;
- (B) prosecutors did not *show* "good cause" for setting trial past the term of indictment;
- (C) Rydborn demanded a speedy trial early and often, both verbally and in writing;
- (D) Rydborn personally objected, during arraignment, to scheduling trial beyond the term of his indictment; and,
- (E) Judge Reed and Prosecutor Virginia Conley colluded, *ex parte*, to set Rydborn's trial beyond the term of indictment.

³¹ Pretrial: 11-05-97, p. 22.

³² See *s.e.r. Holstein v. Casey*, 265 S.E.2d 530 (W.Va. 1980) (Failure by the state to abide by W.Va. Code § 62-3-1 bars prosecution of a criminal defendant.).

II. SIXTH AMENDMENT

A. Length of Delay

Along with trial occurring past the "term of indictment,"³³ the 344 days from Rydbom's arrest on January 30, 1997, to his trial beginning January 8, 1998, is presumptively prejudicial so as to trigger speedy trial analysis³⁴ -- aside from the 75 days Rydbom spent in Arizona, Texas, Missouri, and Ohio jails accused of his friend's (Sheree Petry's) murder.³⁵

B. Reasons for Delay

It was Judge Reed and the prosecution team who wanted trial delays.

1. Delay #1: There was no reason to force Rydbom to wait in jail five and one-half (5½) months for an indictment³⁶ except to delay Rydbom's trial -- especially since the indictment was based entirely on hearsay testimony from Ohio cop Sgt. Meek.

2. Delay #2: Retired Judge Gustke, filling in for Judge Reed, *pro forma* set Rydbom's trial past the term of indictment for November 3, 1997, without finding, and without anybody offering, "good cause." Instead, according to Prosecutor Conley, the date had come from Judge Reed -- and Rydbom was excluded from this backdoor arrangement.

3. Delay #3: No legitimate reason existed for pushing the November 1997 trial date to January 1998, since the alleged reason -- defense motions -- was obviated by Rydbom's (foretold) offer to waive whatever was necessary to speed his trial date. Judge Reed and the prosecution team, however, refused to allow any such waiver.³⁷

³³ If it is relevant (a questionable policy for 6th Amendment analysis) that trial occurs within a state speedy-trial statute, e.g. Mathews v. Lockhart, 726 F.2d 394 (8th Cir. 1984), then it should also be relevant that Rydbom was denied his statutory right to be tried within the "same term" of indictment absent "good cause."

³⁴ Note: Generally, trial delay of eight months or longer is presumptively prejudicial to trigger speedy trial analysis. US v. Woolfolk, 399 F.3d 590, 598 (4th Cir. 2005) (8 months sufficient); 4 LaFave, Israel, & King, Criminal Procedure § 18.2(b), n. 10 (2d Ed.) (2006 Update); Doggett v. U.S., 505 U.S. 647, 652, n.1 (1992) (Delays approaching one year presumptively prejudicial).

³⁵ Cf. United States v. Marler, 756 F.2d 206 (1st Cir. 1985) (The general rule that an accusation by one sovereign does not engage speedy trial rights in another sovereign could be different if there is sufficient federal involvement in state action.). See also, Two-State Tag Team claim, *infra*.

³⁶ See Hoover, C. (1997, May 22). Murder suspect not indicted. *The Marietta Times*. p. 1A.

³⁷ Compare Pretrial: 10-10-97, pp. 13-39 with Pretrial transcripts: 11-05-97, p. 25 (Judge Reed: "So I'm assuming that [Rydbom] is receiving all the motions that [Radcliff and White] file, and ... if he would have said, 'I don't want to pursue that', then you could have withdrawn that motion. I mean, I don't think that simply because a motion's filed, that it has to be heard.").

C. Speedy Trial Demands

Rydbom vehemently demanded a speedy trial since the first day he waived extradition in Phoenix on November 20, 1996. Even the press noticed Rydbom's demands.³⁸

Rydbom *verbally* invoked his speedy trial rights on January 31, 1997, at his very first West Virginia court appearance, and also on July 28, 1997, during arraignment.

Rydbom submitted *written* speedy trial demands, (1) on May 22nd, before his indictment; (2) on July 24th, between his indictment and arraignment; and (3) on September 25th, 1997, after being summoned for a second arraignment.

Rydbom futilely sought an extraordinary writ to prohibit Judge Reed from delaying trial after he refused to accept Rydbom's waiver of defense motions in order to speed his trial.

Rydbom did everything conceivable to obtain a speedy trial.³⁹ Yet the record is bereft of any action taken by Judge Reed⁴⁰ and the prosecutors to speed Rydbom's trial.

D. Prejudice from Delay⁴¹

While waiting for his not-so-speedy trial, Rydbom lost his residence, lost his job, and went into default on over fifty thousand dollars (\$50,000) in student loans and other bills. Rydbom's deeply invested pursuit of a college education was terminated. Rydbom suffered oppressive pretrial imprisonment without bail in a decrepit and severely overcrowded jail, without bail, while being subjected to dozens upon dozens of biased and defamatory media stories⁴² -- all while wrongly accused of murdering his (and several others's) best friend.

³⁸ Page 1, n. 6, supra.

³⁹ The frequency and force of Rydbom's speedy trial demands were probably unmatched. In the 2½ years Rydbom spent in the county jail, he saw no other prisoners demanding a speedy trial.

⁴⁰ On August 13, 1997, Judge Reed imposed a 15-day written notice requirement due to Rydbom's "desire for a speedy trial." However, On October 10, 1997, in the only instance it mattered for speedy trial purposes, Judge Reed ignored his order. Page 2, n. 16, and page 3, nn. 18-23.

⁴¹ See *United States v. Marion*, 404 US 307, 320 (1971) ("[T]he major evils protected against by the speedy trial guarantee exist quite apart from actual or possible prejudice to an accused's defense ... Arrest is a public act that may seriously interfere with the defendant's liberty ... disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him ...").

⁴² Cf. Trial: 01-14-98, pp. 1438-1439; Trial: 02-05-98, pp. 3598-3601; Trial: 02-02-98, pp. 3654-3655. The same jury who claimed their familiarity with pretrial media coverage gave them no bias, also claimed that watching Rydbom, via the jury-room window (with the other jurors present), being escorted by cops from the jail in handcuffs -- during trial -- had no effect on their verdict. If there is no legal remedy here, circumstances such as these -- with local media parroting the prosecution story line early and often -- still shed more light on Rydbom's desperation for a speedy trial and on the prosecution team's opposition to the same.

So, why else would a wrongly accused murder defendant be so desperate for a speedy trial (aside from the only reason recognized by Judge Reed)? Notice that Ohio agents spent six months creating their case against Rydbom before arresting him, yet he demanded (and was scheduled) a speedy trial in Ohio. So why the W.Va. delay? Rydbom's primary defense was an "alibi." If, as in this case, there is no forensic evidence tying the prisoner to the crime, what then is the single best way to attack his alibi? Lengthy delays -- which caused the loss of exculpatory evidence and the embellishment of inculpatory evidence.

1. Exculpatory Evidence Lost

Long before his arrest Rydbom claimed to be busy on the morning of Sheree Petry's murder,⁴³ but crucial evidence of his alibi was diminished and lost due to trial delay.

a. Sheree's Time of Death

The coroner who autopsied Sheree Petry's body, Dr. David McMaken, expertly opined in January 1997 Ohio proceedings that: (i) Sheree died of the highest level of chloroform poisoning ever reported; and (ii) the chloroform was constantly administered for between five to fifteen (5-15) minutes to prevent Sheree from regaining consciousness.⁴⁴

Unlike his testimony in January 1997, Dr. McMaken's January 1998 unimpeached *trial* testimony was that he had no opinion as to how long it takes for chloroform to cause death.⁴⁵ Thus, jurors were free to assume death was instantaneous -- effectively removing between five to fifteen (5-15) minutes from Rydbom's alibi.

b. Rydbom's Whereabouts

There were two gaps in Rydbom's direct alibi for the morning Sheree Petry's death:

- (1) the time between the last Sheree sighting (by Blatt and Thomas) at 8:10 a.m. - 8:20 a.m. and the first Rydbom sighting (by Starcher) at 8:45 a.m.; and
- (2) the time between Rydbom leaving Edee Starcher's house at 8:55 a.m. and Rydbom first being seen at Scott Zeoli's apartment.

⁴³ See Hoover, C. (1996, June 28-29). Rydbom claims alibi in murder. *The Marietta Times*. p. 1A.

⁴⁴ Washington County, Ohio, Common Pleas Court, Case # 96-CR-235, Hearing: 01-24-97, pp. 9, 16, 18-20.

⁴⁵ Trial: 01-16-98, p. 1524.

Barbara Blatt⁴⁶ and Darlene Thomas⁴⁷ were the last people known to have seen Sheree Petry alive; this being at the New Image Hair Salon in Williamstown, WV, where Sheree's massage shop was located. Sheree left the shop around 8:10 a.m. - 8:20 a.m.

Rydbom's neighbor, Edee Starcher, said Rydbom was at her Marietta, OH, house returning cremora and conversing from about 8:45 a.m. to 8:55 a.m.⁴⁸

Scott Zeoli told police he arrived at his Marietta apartment, where Rydbom was waiting, between 9:15 a.m. - 9:25 a.m.. But at trial, Zeoli quietly agreed when the prosecutor said Zeoli got home between 9:25 a.m. - 9:30 a.m., *after* the Rutter sighting⁴⁹ (see *infra*).

c. RX-7 Sightings

The prosecution story line alleges:

- (1) that Rydbom killed Sheree Petry, then drove Sheree's RX-7 (and her corpse?) to his residence "to set up [his] alibi" from 8:45 a.m. to 8:55 a.m. with his neighbor;⁵⁰
- (2) that Rydbom drove to the Marietta storm drain before 9:00 a.m., hid Sheree's body in the storm drain, and stuck around until driving away at 9:15 a.m. - 9:19 a.m.; and,
- (3) that Rydbom drove Sheree's RX-7 back to her Williamstown home, then magically arrived at Zeoli's Marietta apartment before Zeoli did.⁵¹

Steve Rutter said he waited for a bus at the corner of Wayne St. and South 7th St. in Marietta, from 9:00 a.m. to about 9:19 a.m., with no vehicles driving by him to the storm drain;⁵² -- and Rutter's corner was the *only* route to the dead end where the storm drain was.

Sheree Petry's RX-7 was driven to the Ohio storm drain ostensibly to hide Sheree's body. But when and by whom? Rutter's was the *only* testimony linking Rydbom to Sheree's RX-7 on the day of her murder and to the storm-drain area. However, as explained below, vital witnesses impeaching Rutter's alleged sighting were unavailable due to trial delay.

⁴⁶ Trial: 01-13-98, pp. 1072-1099.

⁴⁷ Trial: 01-29-98, pp. 2924-2955.

⁴⁸ Trial: 01-14-98, pp. 1315-1319.

⁴⁹ Trial: 01-15-98 (p.m.) (Baker), p. 64. See Trial: 01-09-98, p. 808 (Rutter sighting 9:15-9:19 a.m.).

⁵⁰ Trial: 02-03-98, pp. 3456. (Prosecutor: "Was this a well -- placed -- a well-planned crime? 'Okay. I've got to get to Edee Starcher's. I've got to set up this alibi.'")

⁵¹ Trial: 01-15-98, (p.m.) (Baker) 62-67, pp. 71-74 (RX-7 was not seen anywhere near Zeoli's apartment); Trial: 01-27-98, pp. 2527-2540 (Othor Flesher saw RX-7 in front of Sheree's home between 11:00 a.m. and noon); Trial: 01-27-98, pp. 2513-2527 (Patrolman Phillis saw RX-7 in front of Sheree's home approx. 11:45 a.m.).

⁵² Trial: 01-09-98, pp. 793, 813. See also Marietta phone-book Map attached to this petition, *supra*.

First, Barbara Thompson told police she left Blatt's salon and drove by Sheree Petry's Williamstown, home between 9:00 a.m. and 9:05 a.m., on the morning of Sheree's murder, where Thompson saw Sheree's RX-7 parked in front of Sheree's home. If Thompson's sighting was correct, then Rutter's sighting of Sheree's RX-7 was *impossible*.

However, Thompson became very ill, was hospitalized during trial, and could not travel to the courthouse. Judge Reed let lawyer Radcliff read Thompson's unsworn statement to the jury, but he refused to allow the document to be admitted into evidence.⁵³

Reading the curt, unsworn document, which omitted Thompson's familiarity with Sheree Petry and her RX-7, paled compared to Rutter swearing to tell three kinds of truth, raising his arm and pointing his index finger at Rydborn at the defense table -- reminiscent of Scrooge's third ghost -- and dryly saying, "I saw that fellow right over there."⁵⁴

Second, the landowner of the storm-drain area, Craig Nichols, testified he was in front of his South 7th St. house, near the storm drain, conversing with Gary Pickenpaugh and John Ladley from around 8:00 a.m. to 9:15 a.m. on May 25th. Nichols said he would have noticed a car traveling the dead-end street, but he saw nothing of the sort,⁵⁵ emphatically refuting Rutter's alleged sighting of Sheree Petry's RX-7 and of her ex-convict friend Rydborn.

Importantly, John Ladley and Gary Pickenpaugh would have also refuted Rutter's pivotal testimony. While Rydborn has no clue what became of Ladley, Pickenpaugh was subpoenaed but died during trial, before having to testify⁵⁶ -- justice delayed is justice denied.

Apparently unable to agree with prosecutors as to exactly which unsworn hearsay statements attributed to Pickenpaugh were to be allowed at trial, court-appointed lawyers dropped the matter without obtaining Rydborn's consent.⁵⁷

⁵³ Trial: 02-02-98, pp. 3319-3323, 3347-3348. Compare with Trial: 01-23-98, pp. 2380-2381, 2389, 2395-2396 (Judge Reed admitted into evidence police report logging a police-sponsored time trial, after Sgt. Meek already testified about the same -- but Reed refused to admit into evidence Thompson's written statement made only two days after Sheree's death.).

⁵⁴ Trial: 01-09-98, p. 801.

⁵⁵ Trial: 01-23-98, pp. 2419-2438.

⁵⁶ Trial: 01-16-98, pp. 1613-1614.

⁵⁷ Trial: 01-20-98, pp. 1622-1623; Trial: 01-21-98, pp. 1833-1836; Trial: 01-29-98, pp. 2992-3004; Trial: 02-02-98, pp. 3239-3244, 3323-3324.

2. Inculpatory Evidence Embellished

a. Steve Rutter⁵⁸

The car that Rutter (a mechanic) said he saw being driven changed from (a) having a square/box shape in December 1996, to (b) resembling a sedan like a Toyota Celica⁵⁹ in February 1997, to (c) having a curved shape (like Sheree Petry's RX-7)⁶⁰ in January 1998.

The driver's window during the Rutter sighting was said in February 1997 to be rolled up.⁶¹ By January 1998 the alleged window was rolled *down*⁶² -- allowing a better sighting.

The color of Rutter's transmogrifying car went from being "white"⁶³ in February 1997 to being a "funny dirty white color"⁶⁴ in January 1998 -- allowing jurors to more easily make the inductive leap to the copper/champagne color of Sheree Petry's RX-7.

b. Sharon Rowsey

Sheree's cousin Sharon Rowsey, told police in 1996 that Sheree had sinus problems and took Benadryl (diphenhydramine).⁶⁵ At trial the prosecution team claimed that Sheree's diphenhydramine/blood level⁶⁶ was a higher-than-therapeutic dose. Coincidentally, Sharon's story at trial changed to: *Sheree would have never taken Benadryl.*⁶⁷

c. Arizona Items

i. Lingerie

After Rydbom had been found guilty, The Marietta Times reported:

Prosecutor Ginny Conley said the key link between Rydbom and victim Sheree Petry was the many pieces of lingerie found in Rydbom's Phoenix apartment ... later identified by Petry family members as Petry's.⁶⁸

⁵⁸ Not until Rydbom's Ohio indictment six months *after* the murder did Rutter allege any such (bigfoot) sighting -- even to his wife and friends.

⁵⁹ Preliminary Hearing: 02-07-97, pp. 124-125 (car resembled Celica, not RX-7).

⁶⁰ Trial: 01-09-98, p. 799, (photo of Sheree's RX-7 "sort of looks like the car"). *Ibid.*, at 834 ("It was like glass on the side of it where it was rounded.")

⁶¹ Preliminary Hearing: 02-07-97, p. 128.

⁶² Trial: 01-09-98, p. 847.

⁶³ Preliminary Hearing: 02-07-97, p. 125.

⁶⁴ Trial: 01-09-98, pp. 798-799.

⁶⁵ Trial: 01-30-98, pp. 3052-3056.

⁶⁶ Trial: 01-16-98, p. 1551-1608; (Prosecution's toxicologist declared a peri-mortem level of 1.2 mcg/ml from the *actual* post-mortem level of 1.87 mcg/ml. *Supposedly*, this is five times higher than normal, and took from 30 to 120 minutes before death to reach this level in Sheree's blood.

⁶⁷ Trial: 01-28-98, pp. 2634.

⁶⁸ Hrach, T. (1998, Feb. 7-8). *Mass of evidence was key to winning case.* *The Marietta Times*. p. 1A.

Nobody claimed Sheree Petry's lingerie to be missing until *after* learning of lingerie in Rydbom's possession 2,000 miles and several months *after* his return to Arizona. Cops seized lingerie from Rydbom's Phoenix home on November 12, 1996, and presented the items to biased "witnesses" who, in turn, said it belonged to Sheree. *In case the truth ever matters: Sheree Petry never owned, touched, or even saw the seized lingerie.*

Leon Saja, Sheree Petry's ex-boyfriend from the 1980s, to explain changes in one of his panty stories (regarding State's Exhibit #30), actually claimed the time between Rydbom's arrest and trial "improved" his memory.⁶⁹

Sheree Petry's ex-roommate from Phoenix, Susan Morris Hauck, originally chose one brassiere (with a pair of panties and a camisole) from the seized lingerie as being Sheree's. At trial a year later, Susan's memory improved and she added a second bra to the mix.⁷⁰

ii. Pictures of Petry

The "pictures" issue is important because it was the prosecutors' *only* explanation for why lingerie was never sought or seized during Ohio searches 5½ months before the Arizona search. All other extrinsic (unbiased) factors back Rydbom's claim that the seized lingerie *never* belonged to Sheree Petry (including *Victoria's Secret*, and *DNA* testimony).

Along with seizing lingerie taken from Rydbom's Phoenix residence, Ohio cops Sgt. Meek and Det. Nohe seized four photographs of Sheree Petry (State's Exhibits 39 (A-D)).

Sgt. Meek, Det. Nohe, and Washington County Sheriff's Detective Rodney Kinzel, all swore under oath at trial that they never saw any pictures of Sheree Petry during their four-hour search of Rydbom's Marietta, Ohio, residence⁷¹ in May 1996. Sgt. Meek made a special point to say he specifically sought pictures of Sheree Petry⁷² during the Ohio search.

⁶⁹ Trial: 01-20-98, pp. 1718-1719; Trial: 01-21-98, pp. 1837-1839 (Saja said in November 1996 that Sheree bought State's Exhibit #30 as a surprise for Saja. But at trial, Saja said he bought S.E.#30 for Sheree. Lawyer White: "Okay. So your recollection is better now than it was fifteen months ago?" Saja: "Yeah. Well, I guess, yes, I mean, if it's a yes or no question.")

⁷⁰ Trial: 01-20-98, pp. 1781-1782; Trial: 01-21-98, p. 1841.

⁷¹ Trial: 01-22-98, pp. 2180, 2210; Trial: 01-23-97, p. 2397, 2402-2403, 2404.

⁷² Trial: 01-23-97, p. 2397 (Sgt. Meek: "While we were looking in Mr. Rydbom's home (May 28, 1996), I specifically looked for photographs of the victim."). Note: No photographs of Sheree were alleged to have been missing or involved in Sheree's murder, and the Ohio warrant gave no permission to search for pictures of Sheree.

Assistant prosecutor Durig told the jury that Rydbom hid the seized pictures of Sheree Petry and, thus, hid *lingerie* also⁷³ during the May 1996 Ohio search.

But, search photographs from the May 1996 search depict on Rydbom's dresser a photograph case (opened) with a picture of Sheree Petry. The search photos also depict the photo case in different positions, proving cops *saw and handled* the photograph case.⁷⁴

The panty trial was a juicy "key" to convicting Rydbom of his best friend's murder. The fact that Rydbom did *not* hide photographs of Sheree Petry while still in Ohio refutes the prosecution team's basis for claiming that he acquired and hid *lingerie* in May 1996.

Delaying Rydbom's trial allowed cops to *not remember* seeing pictures of Sheree during their Ohio searches; a canard used by prosecutors to paint their *junque* masterpiece.

3. Grand Jury Transcripts

Ohio refused to release Ohio grand jury testimony⁷⁵ of over a dozen prosecution witnesses⁷⁶ for impeachment at the West Virginia trial a year later, West Virginia refused to subpoena the material,⁷⁷ and Judge Reed refused to compel the production of evidence or otherwise sanction the prosecution team.⁷⁸ Transcripts of trial witnesses' previous grand jury testimony would likely further illuminate the prejudicial effects of delaying Rydbom's trial.

73 Trial: 02-03-98, p. 3438. (Durig: "This underwear and these photographs were somewhere. I mean, you know, this isn't science fiction. You don't just snap your fingers and it's created. It's somewhere. Where was it? Where was this evidence of a crime? It was hidden.")

74 The top picture in the photograph case is of Sheree Petry standing with Sharon and Howard Rowsey at Marietta College. This photo, like State's Exhibits 39 (A), (B), and (D), is part of a series made in August 1993, which Susan Morris Hauck still has the negatives for (Trial: 01-20-98, pp. 1776, 1800-1802). The negatives would show the dresser photo's place among the seized photographs, and further negate the claim of Rydbom hiding pictures and panties.

75 Petition for Disclosure of Grand Jury Record, Wash. Co. Common Pleas Court, Case # 98-CR-2 (denying Rydbom's request for grand jury testimony to be given to Judge Reed); Trial: 01-20-98, pp. 1625-1627. *Cf. State v. Rydbom*, Ohio 4th Appellate District, Case No. 97-CA-16 (Ohio trial and appellate courts agreed, without dissent, Ohio lacks any jurisdiction over Sheree's murder -- which begs the question: *why not release evidence to the state having jurisdiction?*).

76 Hoover, C. (1996, Dec. 4). Grand jury files murder indictment. *The Marietta Times*, p. 1A. ("Thirteen to 14 witnesses testified to the grand jury in the case, (Ohio prosecutor) Rings said.")

77 States addressing the issue agree Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings allows issuance of subpoena for witnesses and evidence. See 7 A.L.R. 4th 836; State v. Harman, 270 S.E.2d 146 (W.Va. 1980).

78 Pretrial: 09-26-97, pp. 75-76 (Judge Reed says W.Va. R. Crim. Proc. shall apply - e.g. Rule 26.2); Pretrial: 10-03-97, pp. 39-41 (Judge Reed orders WV to make every effort to obtain OH grand jury transcripts); Pretrial: 12-02-97, pp. 41-42, 114-117 (Judge Reed reverses previous orders: "... I don't think that I can ask [W.Va.] to get something in Ohio if they have to rely on somebody else to do it."); Pretrial: 12-30-97, pp. 20-25 (Judge Reed refuses to sanction Ohio and West Virginia officials for refusal to make available grand jury testimony of trial witnesses.).

PART TWO REPRESENTATION ISSUES

I STATE INTERFERENCE

The trial judge, Jeffrey B. Reed, wrongly misled Rydborn into accepting a defense setup where Rydborn was assigned strategic control over his defense without self-representation, and where court-appointed lawyers "represented" Rydborn without having strategic control over his defense⁷⁹ and; thus, violated Rydborn's fundamental rights to: (A) self-representation; (B) assistance of counsel, and; (C) due process of law, in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

RELEVANT FACTS

On September 25, 1997, in a motion to dismiss the indictment against Rydborn for speedy trial violations, Judge Reed and the prosecutors were informed that Rydborn, "has even promised to dismiss his counsel if any delay was to be attributed to the defense."⁸⁰

Two weeks later, on October 10, 1997, Judge Reed received and granted the prosecutors' impromptu request for further trial delay, blaming motions filed by court-appointed defense lawyers for the additional delay. Judge Reed refused to allow Rydborn to waive all non-speedy-trial motions which should have obviated Judge Reed's excuse for granting the prosecution team's impromptu request to further delay trial.⁸¹

On October 15, 1997, Rydborn submitted a petition for writ of prohibition, *in propria persona*, to the Supreme Court of Appeals of West Virginia (hereinafter SCAWV) trying to prevent further trial delay. The SCAWV refused the petition without comment.

⁷⁹ See Circuit Court Clerk's version of the "complete record," pp. 938-939 (Judge Reed's written order declares, "that the defendant has the right to have authority over the strategic decisions concerning his case, that his counsel shall remain counsel of record and the defendant must inform the court ten days prior to trial as to who and what questions he wants asked.").

⁸⁰ Clerk's version of the "Complete Record," pg. 238.

⁸¹ Pretrial transcripts: 10-10-97; (pp. 40, 43 of transcripts unavailable to Rydborn). Compare with Pretrial transcripts: 11-05-97, pg. 25:12-17. (Judge Reed: "So I'm assuming that [Rydborn] is receiving all the motions that [Radcliff and White] file, and ... if he would have said, 'I don't want to pursue that', then you could have withdrawn that motion. I mean, I don't think that simply because a motion's filed, that it has to be heard."). What a convenient flip-flop for Reed.

On November 4, 1997, Rydbom filed a motion to represent himself.⁸² On November 5, 1997, Judge Reed decided to "take care of" Rydbom's motion to represent himself.⁸³ Judge Reed asked Rydbom if he still wanted to proceed *pro se*, to which Rydbom responded, "yes."⁸⁴ Prosecutor Virginia Conley then asked that a psychiatric evaluation be performed upon Rydbom. Court-appointed lawyers said there was no legitimate issue regarding Rydbom's competency.⁸⁵

In a seemingly collateral but factually related issue, Judge Reed claimed Rydbom misunderstood the proceedings against him, saying Rydbom was wrong when claiming in his motion to represent himself that Reed found defense motions to be filed in bad faith:

I did not make that finding, Mr. Rydbom. I said that the conduct of coming in here, filing all these motions, and then when those motions caused delays, to waive the motions so that you can have your speedy trial, causes me to have some concerns as to whether they are made in bad faith.⁸⁶

However, at the October 10, 1997, hearing, assistant prosecutor C. Scott Durig made the following statement:

First of all, their willingness to withdraw all of the pending motions we believe is evidence that they shouldn't have filed those motions, clearly, to begin with. They were filed to take up the Court's and the State's time.⁸⁷

And Judge Reed readily agreed with prosecutor Durig's statement:

I think what the State has said has some truth to it in terms of how many things have been filed *just for the purpose* of having the hearing to take up the Court's time, too.⁸⁸ (emphasis added)

Rydbom had no misunderstanding. Lawyers file motions in bad faith when they file motions just for the purpose of taking up the court's time. What's weird is that Judge Reed refused to allow Rydbom to withdraw the bad-faith motions filed by court-appointed lawyers because "it is just the lesser of two evils."⁸⁹

⁸² Clerk's version of "*complete record*," pp. 524-526.

⁸³ Pretrial transcripts: 11-05-97, pg. 1-41..

⁸⁴ Pretrial transcripts: 11-05-97, pg. 1.

⁸⁵ Pretrial transcripts: 11-05-97, pp. 2-3.

⁸⁶ Pretrial transcripts: 11-05-97, pp. 3-4. Compare with Pretrial transcripts: 11-05-97, pg. 25: 12-17.

⁸⁷ Pretrial transcripts: 10-10-97, pg. 37.

⁸⁸ Pretrial transcripts: 10-10-97, pg. 39.

⁸⁹ Pretrial transcript: 10-10-97, pg. 39. Again, compare with Pretrial Transcript: 11-05-97, pg. 25.

Instead, Judge Reed imposed the greater of two evils upon Rydbom - further trial delay - in spite of Judge Reed knowing: (a) Rydbom was not willing to allow defense motions to be used as an excuse for denying his right to a speedy trial; (b) Rydbom was willing to forego whatever was necessary in order to secure a speedy trial; and (c) Rydbom promised to dismiss court-appointed lawyers if further delay was to be attributed to them.⁹⁰

Judge Reed went on to mention some potential problems associated with proceeding *pro se* and asked Rydbom again if he still desired to proceed *pro se*. Rydbom explained his position on the matters referred to above and said he wanted to have overriding authority and responsibility for what gets pursued with regard to the underlying case. Judge Reed replied that the client always controls what happens and the other matters were fait accompli, thus further discussion of them was "wasting time."⁹¹

Rydbom said if he was allowed to invoke his right to represent himself he would have the authority and responsibility to file motions on his own behalf, so he wouldn't have to worry whether his concerns were addressed promptly.⁹²

Judge Reed said it sounded like Rydbom wanted to file motions but still have his attorneys. Rydbom responded that he believed a person's right to self-representation is the opposite side of the same assistance-of-counsel coin, and if Rydbom did not have to totally abolish the side with the assistance of counsel then he was not going to. But, if Rydbom had to in order to be allowed to represent himself then he would.⁹³

Judge Reed asked what Rydbom meant by "represent" himself, and whether Rydbom actually wanted to question witnesses, make opening statements, etcetera. Rydbom said he did want this, and asked if Judge Reed would have a problem with one, or more, attorneys assisting him as long as Rydbom made the decisions. Judge Reed again repeated that Rydbom made the decisions anyway.⁹⁴

⁹⁰ Clerk's version of the "complete record," pp. 232-243.

⁹¹ Pretrial transcripts: 11-05-97, pp. 8-9.

⁹² Pretrial transcripts: 11-05-97, pg. 9.

⁹³ Pretrial transcripts: 11-05-97, pp. 11-12.

⁹⁴ Pretrial transcripts: 11-05-97, pg. 12.

Rydbom said it was his understanding that attorneys have the right to decide strategically how their client's defense is going to be run. Judge Reed disagreed and asked prosecutors whether Rydbom was correct.⁹⁵

Assistant prosecutor Dan Fowler agreed with Rydbom's interpretation. Judge Reed told prosecutor Fowler to get the law for that because Judge Reed did not understand Rydbom's interpretation to be correct. While Mr. Fowler appears to have fetched a couple of West Virginia cases on self-representation, nothing regarding strategic/tactical control of a defense was produced.⁹⁶

Appointed lawyer White sided with Judge Reed, wrongly claiming LaFave's *Criminal Procedure* hornbook interpreted *Faretta v. California*, 422 U.S. 806 (1975), as cutting against the grain of earlier cases giving exclusive strategic/tactical control to attorneys.⁹⁷

Importantly, Judge Reed refused Rydbom access to a law library,⁹⁸ so Rydbom was unable to find and cite authority regarding who has the lawful and traditional power to manage a criminal defendant's defense.

Rydbom stressed that he wanted to be sure he had authority and responsibility to make strategic decisions. Rydbom explained that the only way he knew to prevent the recurrence of past problems was if he had the reins and could make the strategic decisions.⁹⁹

Judge Reed asked if Rydbom just wanted the authority to make strategic decisions and have the ultimate say as to what happens in his case. Rydbom said it had to go farther, but that was his primary concern. Rydbom added he wanted the court to address him when it came to certain issues.¹⁰⁰ Judge Reed again maintained the client always decides what strategies to take; e.g., whether to present certain defenses and what witnesses to call.¹⁰¹

⁹⁵ Ibid.

⁹⁶ Pretrial transcripts: 11-05-97, pp. 12-13, 26.

⁹⁷ Pretrial transcripts: 11-05-97, pp. 26-27. See generally, W. LaFave, J. Israel, & N. King, 3 Crim. Proc. §11.6(a) (2d ed. updated 2006).

⁹⁸ Pretrial transcripts: 08-27-97.

⁹⁹ Pretrial transcripts: 11-05-97, pp. 17, 19.

¹⁰⁰ Pretrial transcripts: 11-05-97, pg. 20.

¹⁰¹ Pretrial transcripts: 11-05-97, pp. 21-22.

Court-appointed lawyer Pat Radcliff told Judge Reed he did not think he and court-appointed lawyer Bruce M. White did anything against Rydbom's direction, but he didn't know he was required to get personal approval for everything he did. Judge Reed said he didn't believe lawyers needed to get a personal stamp of approval on every motion, either.¹⁰²

One might ask: if appointed lawyers never acted in opposition to Rydbom's wishes, as Radcliff claimed, then why did Rydbom express his unwillingness for their motions to be used as an excuse for delaying trial? Why, during arraignment, did Rydbom, rather than appointed lawyer Bruce White, personally object to delaying trial through another court term?¹⁰³ Why did Rydbom earlier promise to dismiss court-appointed lawyers if further delay was to be attributed to them?¹⁰⁴ Why did lawyers give Judge Reed an excuse for further trial delay by the dilatory filing of defense motions?¹⁰⁵ Why did Rydbom, rather than lawyers, appeal for a writ of prohibition against Judge Reed's further delaying of trial?¹⁰⁶ Why did Radcliff and White disclose Rydbom's private communications to the prosecutors?¹⁰⁷ All of these occurrences were *before* Rydbom's self-representation motion. Yet, Judge Reed claimed Rydbom was "getting premium quality out of [his] two attorneys."¹⁰⁸

Judge Reed told Rydbom to tell him exactly what Rydbom was wanting. Rydbom said he wanted to act *pro se* with attorneys acting as standby, hybrid or co-counsel - his first choice being co-counsel, and his second choice being standby counsel;¹⁰⁹ just as presented in Rydbom's written motion to represent himself.

Judge Reed asked if Rydbom wanted to proceed as co-counsel. Rydbom said he believed *he* would be acting *pro se* because *he* would be the ultimate decider of what would go on, and somebody had to be in charge of the case.¹¹⁰

¹⁰² Pretrial transcripts: 11-05-97, pp. 23-25.

¹⁰³ Arraignment: 07-28-97, pg. 5.

¹⁰⁴ Clerk's version of the "*complete record*," pp. 232-243.

¹⁰⁵ Pretrial: 10-10-97, pp. 7, 18.

¹⁰⁶ *s.e.r. Rydbom v. Reed*, SCAWV No. 972199.

¹⁰⁷ Pretrial transcripts: 11-05-97, pp. 13-14.

¹⁰⁸ Pretrial transcripts: 11-05-97, pg. 4.

¹⁰⁹ Pretrial transcripts: 11-05-97, pg. 36.

¹¹⁰ *Ibid.* at pp. 36-37.

Judge Reed again insisted that, even though Rydbom had attorneys representing him, Rydbom was ultimately the one who made the final decisions as to whatever course of action was taken. Rydbom asked if that also applied to how the case was prepared, and Judge Reed said that was right.¹¹¹

After about an hour-long discussion and argument, as summarized above, Rydbom finally capitulated to Judge Reed's set up, which was that Rydbom would "have the ultimate decision on all of those matters [discussed above], matters of strategy, and all those things," but Rydbom would not be actively participating in the course of the trial¹¹² unless Rydbom submitted a specific request as to a specific witness, etc., ten (10) days before trial so the prosecutors could have a chance to participate.¹¹³

ARGUMENT

Judge Reed violated Rydbom's rights to *both*: (1) self-representation *and* (2) the assistance of counsel by wrongly misleading Rydbom into a defense setup where Rydbom supposedly managed his defense without representing himself, and court-appointed lawyers supposedly represented Rydbom without managing his defense.

In *New York v. Hill*, the U.S. Supreme Court, in a unanimous opinion, held:

Although there are basic rights that the attorney cannot waive without the fully informed and publicly acknowledged consent of the client, the lawyer has - and must have - full authority to manage the conduct of the trial.¹¹⁴

Attorneys have always had "wide latitude ... in making tactical decisions."¹¹⁵ It is presumed that all significant decisions were based on the *attorney's* reasonable professional judgment.¹¹⁶ A represented defendant has only *limited* authority to make certain decisions: whether to plead guilty; waive a jury trial; testify; or take an appeal.¹¹⁷

¹¹¹ Pretrial transcripts: 11-05-97, pp. 36-37.

¹¹² Pretrial transcripts: 11-05-97, pp. 37.

¹¹³ Pretrial transcripts: 11-05-97, pp. 32.

¹¹⁴ *New York v. Hill*, 528 U.S. 110, 114-115 (2000) (quoting *Taylor v. Illinois*, 484 US 400, 418 (1988)).

¹¹⁵ *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

¹¹⁶ *Id.*, at 690.

¹¹⁷ *Jones v. Barnes*, 463 U.S. 745, 751 (1983).

The "right to the assistance of counsel," the Court has noted, "has been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary factfinding process that has been constitutionalized in the Sixth and Fourteenth Amendments."¹¹⁸

Consequently, logic dictates that state action, whether by statute or trial court ruling, which prohibits counsel from making full use of his lawful and traditional authority to make binding decisions of trial strategy, amounts to constructive denial of counsel.¹¹⁹

In contrast to a represented defendant, a *pro se* defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in *voir dire*, to question witnesses, and to address the court and the jury at appropriate points in the trial.¹²⁰ During self-representation, and *only* during self-representation, it is the defendant's judgment - not the attorney's - which is exercised to manage the trial.

Judge Reed vociferously misled Rydbom on the fundamental right of self-representation.¹²¹ Rydbom wanted to exercise his judgment to manage his defense,¹²² correctly believing self-representation was the appropriate avenue of achieving his goal. Judge Reed, however, wrongly and repeatedly insisted that represented defendants are the managers of their own defense.¹²³

¹¹⁸ Yarborough v. Gentry, 540 U.S. 1, 5-6 (2003).

¹¹⁹ See generally, Herring v. New York, 422 U.S. 853 (1975).

¹²⁰ McKaskle v. Wiggins, 465 U.S. 168, 174 (1984).

¹²¹ Elementary fairness is violated when a trial court misleads a defendant concerning a fundamental right. See Jenkins v. Anderson, 447 U.S. 231, 240 n. 6. (1980).

¹²² Pretrial transcripts: 11-05-97, p.12 ("make the decisions"), p.17 ("have the reins and make the strategic decisions"), p.19 ("I want to make sure I have ... the authority and responsibility to make strategic decisions."), p.20 (same), p.36 ("be the ultimate decider of what's going on ... to be in charge of the case"); see also Defendant's Motion to Represent Himself, filed 11-04-97, p.1 ("control over his defense"), p.2 ("Defendant believes that his interests would be better served if he represented himself ..."), p. 3 ("Defendant invokes his right to proceed pro se in this matter, and asks that this court dismiss Defendant's attorney's as counsel of record.").

¹²³ Pretrial transcripts: 11-05-97, pg. 8 ("the client always controls what happens."), pg. 9 ("you need to know, and I'm assuming that you knew this, you have control of what happens, what Motions are filed, you know -- when they're filed --"), pg. 12 ("You make that decision anyway."), pg. 21 ("ultimately it is the defendant's decision."), pg. 31 ("the Defendant has said he wants to be able to be -- he wants to be able to make strategic decisions. I thought, still think, that he always has had that right"), pg. 37 ("And that's what I've said, that you are ultimately the one who makes the final decision as to whatever course of action is taken ... you still have the final decision as to what is done in terms of strategy, in terms of what motions are filed, in terms of what witnesses are questioned --").

If, in Judge Reed's view, all criminal defendants control defense strategy, then what exactly is the difference between hybrid, standby, and co-counsel representation? Indeed, what is the purpose, in Judge Reed's view, of self-representation at all?

The law in this matter can be summarized as follows: A represented criminal defendant controls *only* the objectives of his defense, but the lawyer controls the means used for achieving the defendant's objectives. If a criminal defendant so entitled wants to control the means of achieving defense-related objectives, then the various goals of the adversary system mandate self-representation, with the authority and responsibilities that come with it.

Along with misleading Rydbom away from self-representation, Judge Reed's defense setup converted the appointment of counsel into a sham; into nothing more than an empty formal compliance with the Constitution's requirement that an accused be provided the assistance of counsel, since attorneys were stripped of strategic control of the defense.

The Supreme Court has found constitutional error requiring automatic reversal when trial courts have wrongly denied counsel the ability to make independent decisions about how to conduct the defense.¹²⁴ Likewise, denial of counsel altogether, denying counsel of one's choice, and denial of the right to self-representation are all "structural defects" immune from harmless error analysis.¹²⁵

II. DISLOYAL ATTORNEYS

Court-appointed lawyers (1) violated attorney-client confidentiality, (2) refused to follow Rydbom's directions, (3) acted in opposition to Rydbom's defense-related efforts, and waived Rydbom's rights without his permission, in violation of (a) Judge Reed's unworkable defense set up, and (b) the Sixth and Fourteenth Amendments to the U.S. Constitution.

¹²⁴ *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (citing *Geders v. United States*, 425 U.S. 80 (1976) (bar on attorney-client consultation during overnight recess); *Herring v. New York*, 422 U.S. 853 (1975) (bar on summation at bench trial); *Brooks v. Tennessee*, 406 U.S. 605 (1972) (requiring defendant to be first defense witness); *Ferguson v. Georgia*, 365 U.S. 570 (1961) (bar on direct examination of defendant)).

¹²⁵ *U.S. v. Gonzalez-Lopez*, 126 S.Ct. 2557, 2564 (2006) (citations omitted).

A. Violation of Confidentiality

1. According to Prosecutor Virginia Conley, court-appointed lawyers made statements to her to the effect of, "[Rydbom] wants this witness, wants this officer here," and, "he won't let us show this document."¹²⁶

2. On or about December 2nd and 4th, 1998, while refusing to allow Rydbom to file his own request for direct appeal, Judge Reed made a comment about his having had *ex parte* communications with attorney Bruce White regarding Rydbom. Transcripts of post-sentence proceedings have not been made part of the record, and such transcripts are necessary to prove the fact and content of Reed's disclosure.

3. Court-appointed lawyers Bruce White and Patrick Radcliff helped the prosecution team (without Rydbom's consent) make a television show, depicting Rydbom as Sheree Petry's murderer.¹²⁷ The job of the court-appointed lawyers was to give producers the image of being fair & balanced. During the show, lawyer White said Rydbom's character/personality was consistent with the State's theory of the case.

Rydbom never gave permission for court-appointed lawyers to reveal information obtained as a result of, or relating to, their representation of Rydbom.

B. Sabotaging Rydbom's Defense

1. Court-appointed lawyers failed to offer into evidence the many (hundreds) local newspaper and television stories and promos associating Rydbom with Sheree Petry's murder, or other admissible evidence, which would have raised a presumption of prejudice justifying (a) change of venue and/or (b) mid-trial polling of the petit jury.

2. Court-appointed lawyers refused Rydbom's directions to obtain and share with Rydbom prosecution exhibits, fifty-two of which were admitted into evidence.¹²⁸

¹²⁶ Pretrial: 11-05-97, pp. 13-14.

¹²⁷ See *The Prosecutors: In Pursuit of Justice*. (Discovery Channel, television series), Deadly Fixation, (Feb. 16, 2002, episode by New Dominion Pictures) (This episode was repeated on the Discovery Channel approximately every other month for the next four years.)

¹²⁸ Such exhibits included: State's Exhibit #s 21 (A-E), 22, 39 (A-D), 40, 67-70, 72-77, 81-84, 86-94, 97-99, 101, 103-107, 109, 116, 118-119, 122-126.

3. Without Rydbom's consent, lawyer Radcliff asserted his personal beliefs to the jury (an ethical violation in itself) that Steve Rutter actually *did* see Sheree's murderer drive away from the storm drain area where Sheree's body had been dumped.¹²⁹

4. Court-appointed lawyers refused Rydbom's directions for them to: (a) investigate the suggestiveness, impropriety, and unreliability of Steve Rutter's pretrial identifications,¹³⁰ (b) seek the testimony of an expert in the field of eyewitness identification, until the last days of the month-long trial,¹³¹ and (c) type and submit Rydbom's offer of proof pertaining to the use of an expert in the area of eyewitness identification.¹³²

5. Court-appointed lawyers, in contrast to Rydbom's directions, requested a blanket admission of lingerie if any lingerie was to be admitted over objection.¹³³

6. Court-appointed lawyers refused Rydbom's directions to object to improper statements made by prosecutors during closing arguments.¹³⁴ Prosecutor Virginia Conley, for example: vouched for the honesty of her witnesses;¹³⁵ commented on Rydbom's refusal to speak to the police;¹³⁶ and, asserted personal knowledge of Rydbom's guilt.¹³⁷

C. WAIVING RYDBOM'S RIGHTS

1. Lost or Missing Evidence Instruction

Without advising Rydbom that such was available, court-appointed lawyers forfeited any right Rydbom may have had to a state-created lost or missing evidence instruction.¹³⁸

¹²⁹ Trial: 01-08-98, pg. 745. (Radcliff: "I think [Rutter] saw the killer driving that dirty white car.")

¹³⁰ Lawyer Radcliff said State failed to disclose photo lineup; see Sentencing: 04-17-98, pp. 18-19.

¹³¹ Trial: 01-28-98, pp. 2767-2774; Trial: 01-29-98, pp. 2775-2794; Trial: 01-30-98, pp. 3233.

¹³² Trial: 01-29-98, pp. 2775-2794.

¹³³ Trial: 01-22-98, pp. 2037-2042; Trial: 01-28-98, pp. 2694-2699.

¹³⁴ Sentencing: 04-17-98, pg. 22.

¹³⁵ Trial: 02-03-98, pp. 3530-3531 ("Well, they were honest with you. Leon Saja, Susan Moris, Howard and Sharon Rowsey, they got up here and they told you what they knew and what they remembered.")

¹³⁶ Trial: 02-03-98, pg. 3534 ("Just ask yourself -- your best friend's been murdered. You know the police want to speak with you, and you choose not to help them. You need to ask yourself why someone would do that."). See generally, *People v. Welsh*, 58 P.3d 1065 (Colo. 2002) (analyzing split among federal circuits and holding admission of nontestifying defendant's pre-arrest silence as substantive evidence of guilt and prosecutor's comment upon it violated privilege against self-incrimination); accord, *State v. Leach*, 807 N.E.2d 335 (Ohio 2004).

¹³⁷ Trial: 02-03-98, pg. 3536 ("And one thing that we know for sure is that Dennis John Rydbom murdered Sheree Ann Petry.")

¹³⁸ *State v. Osakalumi*, 461 S.E.2d 504 (W.Va. 1995)(allowing inference unfavorable to the state). See Part IV Two-State Tag Team, *infra* (prosecution team destroying and withholding evidence).

2. Peremptory Challenges

At the suggestion of Judge Reed, court-appointed lawyers waived Rydborn's state-created right to exercise peremptory strikes against alternate jurors, without ever advising Rydborn of such right, and without obtaining Rydborn's consent.¹³⁹

West Virginia Code §62-3-3 provides in pertinent part that:

Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, and two peremptory challenges if three or four alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by this section may not be used against an alternate juror.¹⁴⁰

In Rydborn's case, four alternate jurors were grouped with regular jurors during peremptory challenges and Rydborn was allowed to exercise only *regular* peremptory strikes -- and *not* the two extra challenges against alternate jurors provided by state law.

Rydborn personally exercised all peremptory strikes to which Rydborn *thought* he was entitled. During that time, lawyer Radcliff worked on other matters, and lawyer White absented himself from court proceedings to punish Rydborn for being dissatisfied with White.

On the fourth and final day of jury deliberations, a regular juror (Betty J.) called in sick and was replaced by an alternate juror (Mansoor M.).¹⁴¹

3. Hearsay Statements

Without first advising Rydborn or obtaining his consent, Court-appointed lawyers waived any right Rydborn may have had to use hearsay statements attributed to a deceased witness, Gary Pickenpaugh, as cumulative -- but still vital -- evidence refuting Steve Rutter's alleged sighting, the same morning of Sheree Petry's murder, of Rydborn driving away from the dead-end street where Sheree Petry's body had been disposed.¹⁴²

¹³⁹ Pretrial: 12-23-97, p. 42; Trial: 01-07-98, p. 336.

¹⁴⁰ Accord W.Va. Rules of Criminal Procedure, Rule 24(c).

¹⁴¹ Trial: 02-06-98, pp. 3610-3614.

¹⁴² Clerk's version of "Complete Record," pp. 762-767; Trial: 01-16-98, pp. 1613-1614; Trial: 01-20-98, pp. 1622-1623; Trial: 01-21-98, pp. 1833-1836; Trial: 01-29-98, pp. 2992-3004; Trial: 02-02-98, pp. 3239-3244, 3323-3324.

PART THREE SEARCH & SEIZURE

The trial judge, Jeffrey B. Reed, unlawfully allowed Rydborn's property to be used against him, whereas the property was seized in violation of Rydborn's fundamental rights to be free from unreasonable searches & seizures, and to due process of law, under the Fourth and Fourteenth amendments to the United States Constitution.

I. NO NEXUS BETWEEN THINGS SOUGHT AND LOCATION SEARCHED

On November 12, 1996, Judge Ronald Reinstein of the Maricopa County, Arizona, Superior Court signed a search warrant for Phoenix Police to search 911 East Medlock Drive for items (e.g. lingerie) listed in the search warrant.¹⁴³

The affidavit for the Arizona search warrant contained the unsubstantiated claim that the affiant, Phoenix Police Detective Brian E. McIndoo:

- A. Has probable cause to believe that the items were on the premises known as 911 East Medlock Drive; and,
- B. received the following information leading him to believe that evidence can be located at 911 East Medlock Drive.

However, the entire body of the affidavit was spent depicting Rydborn as being obsessively in love with Sheree Petry, and the affidavit failed to offer any nexus linking Rydborn or the items sought with "the premises known as 911 East Medlock Drive."

Consequently, it was *impossible* for Judge Reinstein to have made an independent determination of probable cause for searching 911 East Medlock Drive.

Even an uncorroborated tip from an unknown, unavailable informant, who heard a rumor that the items sought were at 911 East Medlock Drive would have offered a better link between the items sought and 911 East Medlock Drive than actually existed here.

¹⁴³ See Pretrial Transcripts: October 9, 1997, pp. 88-98 (State's Exhibit #15 = Phoenix, AZ, Search Warrant # SW 96-00166 and accompanying documents.).

II. OHIO SEIZURE OF RYDBOM'S ARIZONA PROPERTY

Judge Ronald Reinstein, in issuing Search Warrant No. SW 96-00166, ordered Phoenix Police Detective McIndoo to retain the seized items in his custody or in the custody of the Phoenix Police Department, as provided by Arizona Revised Statutes § 13-3920.

Arizona Revised Statutes § 13-3920 states:

All property or things taken on a warrant shall be retained in the custody of the seizing officer or agency which he represents, subject to the order of the court in which the warrant was issued, or any other court in which such property or things is sought to be used as evidence.

On or about November 18, 1996, Judge Reinstein again specifically ordered, "appointing the Phoenix Police Department for the purpose of retaining possession of any property seized pursuant to [Search Warrant No. SW 96-00166]."

Instead of complying with Judge Reinstein's orders, Phoenix Police Detective Brian E. McIndoo bestowed every bit of Rydbom's seized property to Marietta, Ohio, Police Sgt. Richard Meek -- absent any well-established exceptions to the warrant requirement.

III. WEST VIRGINIA SEIZURE OF RYDBOM'S PROPERTY

Ohio agents refused to return Rydbom's seized property to him and, instead, gave it to West Virginia agents -- absent any well-established and specifically-delineated exceptions to the warrant requirement.

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

Court-appointed lawyers failed to allege that:

- A. The Arizona warrant affidavit violated the Fourth Amendment by failing to offer any nexus linking the items sought with 911 East Medlock Drive;
- B. Ohio's seizure of Rydbom's Arizona property violated the Fourth Amendment because (1) Ohio did not have probable cause to believe a homicide occurred within its jurisdiction, (2) Ohio did not obtain a warrant, and (3) none of the well-delineated exceptions to the warrant requirement existed during such seizure; and
- C. West Virginia's seizure of Rydbom's Ohio and Arizona property violated the Fourth Amendment because (1) West Virginia did not obtain a warrant, and (2) none of the well-delineated exceptions to the warrant requirement existed during such seizure.

PART FOUR TWO-STATE TAG TEAM

Ohio and West Virginia jointly prosecuted Rydbom so as to deprive Rydbom of a fair trial, in violation of Rydbom's Compulsory Process, Confrontation, Due Process, and Equal Protection rights under the U.S. Constitution's Sixth, and Fourteenth Amendments.

TERRITORIAL JURISDICTION

On Memorial Day weekend, Saturday, May 25, 1996, at about 1:05 p.m., Sheree Petry's body was found by a urinating lawn-care worker, in a storm drain on the bank of the Ohio River, at the dead end of South 7th Street, Marietta (Washington County), Ohio.

Four days later, on May 29, 1996, Marietta Police Sgt. Richard Meek told Williamstown, W.Va., Police Chief Lon Starkey that he (Meek) was convinced Sheree Petry had been attacked at her Williamstown (Wood County) home. Thus, West Virginia had jurisdiction to investigate and prosecute Sheree's murder. For the next eight (8) months, with the consent of West Virginia officials, Ohio agents exercised exclusive control of the case.

Using facts already in Ohio's possession before arresting Rydbom, the Ohio courts agreed, without dissent, that Ohio has no jurisdiction over Sheree Petry's murder.¹⁴⁴

MURDER CASE MOVES TO W.Va.

West Virginia issued an arrest warrant for Rydbom the same day (Jan. 27, 1997) the Ohio indictment was dismissed for lack of jurisdiction. According to local newspapers:

Washington County prosecutors met with Wood County prosecutors Monday [01/27/97] in Marietta to hand over court records and other trial information.

"We made copies of the files for them, and whatever they ask us to do, we will try to help," said (assistant prosecutor) Rings. "Of course once you begin something you want to see it through."

Ohio lead investigator Rick [M]eek reiterated, "We're just going to help any way we can."¹⁴⁵

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State v. Rydbom, Ohio 4th Appellate District, Case No. 97-CA-16.
Sequin, C. (1997, Jan. 28). Rydbom murder trial moving to W.Va. *The Parkersburg News*, p. 1A.

and;

"They've been really helpful in this case," [Wood County Prosecutor] Conley said of Washington County authorities, who traveled to New Jersey and Arizona to investigate the case and bring back Rydbom.

"At this point, I'm sure we'll be handling it with their assistance," Conley said of her prosecutor's office. "The (Washington County) prosecutor's office has offered as much assistance as possible."¹⁴⁶

RYDBOM'S PROPERTY/PRIVACY

Ohio did more than just share information and files. Ohio refused to return Rydbom's seized property to him and, instead, gave it to West Virginia absent any specifically established and well-delineated exceptions to the warrant requirement.¹⁴⁷

On June 3, 1996, Rydbom tried to retrieve his property seized on May 28th. Ohio cops responded later that day with another search warrant against Rydbom, adding items which they already seized to the second search warrant.

On June 7, 1996, Rydbom's Ohio attorney asked the Washington County Court of Common Pleas to order the return of Rydbom's property because it wasn't listed on the warrant and wasn't involved in Sheree Petry's murder. This too was unsuccessful.¹⁴⁷

In November 1996, Ohio cops went to Arizona and seized more of Rydbom's property (lingerie) without Rydbom's consent, without a warrant, and without a subpoena.¹⁴⁹

In July 1997, Rydbom filed a motion to the Ohio trial court for the return of his property. Once again denied.¹⁵⁰

Instead, Ohio gave Rydbom's Ohio and Arizona belongings to West Virginia, without any well-established exceptions to the warrant requirement. Ohio cops continued executing warrants against Rydbom (e.g. internet records) after the Ohio indictment was dismissed.¹⁵¹

¹⁴⁶ Hoover, C. (1997, Jan. 28). Judge sends murder trial to Wood County. *The Marietta Times*. p. 1A.

¹⁴⁷ Including many irrelevant, inadmissible, and illegally seized items (e.g. Part Three, *supra*). See *Katz v. United States*, 389 U.S. 347, 357 (1967) (warrantless searches and seizures "are *per se* unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions.").

¹⁴⁸ Washington County, Ohio, Court of Common Pleas, Case No. 96-CR-108

¹⁴⁹ At the time of Ohio's seizure, Phoenix police were under orders to retain possession of Rydbom's property pending further orders from the court issuing the Arizona warrant.

¹⁵⁰ Washington County Court of Common Pleas, Case No. 96-CR-235.

¹⁵¹ Pretrial: 12-03-97, pg. 124.

AUTOPSY EVIDENCE

The **body temperature** of Sheree Petry's corpse -- a useful factor in determining a person's time of death -- was never taken, though it was readily apparent Sheree had died only hours before her body was found.

Also, **fly eggs** discovered on Sheree's body -- another useful factor in determining a person's time of death -- were supposedly discarded.

It is Rydborn's understanding that:

- (A) the potassium level in **vitreous eye fluid** changes in a predictable manner after death -- a factor useful in determining one's time of death; and,
- (B) tyrosine crystals form in the **liver** after death as proteins break down, in a predictable manner -- another factor useful in determining one's time of death.
- (C) These samples were retrieved during the autopsy, but were not tested for determining Petry's time of death. Instead, they were allegedly destroyed at some undisclosed time.

Stomach contents from Sheree's body were subjected to toxicology testing. However, at some undisclosed time, the stomach contents were allegedly destroyed¹⁵² preventing their use in narrowing down the time of Sheree's death.

For example: what if stomach-content analysis proved Sheree had last eaten ham and eggs two or more hours before her death? Sheree's bedside alarm was set for 7:35 a.m., and Sharon Rowsey told police Sheree would not have awoken before the alarm triggered. This would put Sheree's time of death after 9:35 a.m., when even the most biased judge/juror would have to admit it was not Rydborn who murdered Sheree.

Ohio did the autopsy and toxicology of Sheree's remains, selected results of which were used by the W.Va./Ohio prosecution team at the West Virginia trial. During jury selection, because the defense still had not received forensic samples for independent testing, lawyer Radcliff moved for sanctions.¹⁵³ Prosecutors claimed Ohio, who lacks jurisdiction over Sheree's murder, destroyed (selected) autopsy samples before West Virginia took the

¹⁵² Trial: 01-08-98, pp. 667-676.

¹⁵³ Trial: 01-07-98, pp. 334-335, 657-660; Trial: 01-08-98, pp. 666-678.

case because, "they have this destruction policy in Ohio."¹⁵⁴ This remarkably prosecution-friendly "destruction policy" has never been shown to actually exist. Judge Reed refused to impose sanctions, saying Rydbom had not proven prejudice.¹⁵⁵

PRIOR GRAND JURY TESTIMONY

According to *The Marietta Times*, "[t]hirteen to 14 witnesses testified to the (Ohio) grand jury in the case, (assistant prosecutor) Rings said."¹⁵⁶

Ohio refused to release prior grand jury testimony of trial witnesses for impeachment at trial a year later, West Virginia refused to subpoena such prior testimony, and Judge Reed refused to compel the production of evidence or otherwise sanction the prosecution team.

In August 1997 Rydbom submitted *freedom of information* requests to various Ohio agencies involved in prosecuting Rydbom.¹⁵⁷ Only the Washington County Sheriff and the Ohio-BCI&I responded to Rydbom's FOIA requests. Both refused Rydbom's requests and told him that any "discovery" had to be obtained from West Virginia prosecutors.

W.Va. Rules of Criminal Procedure require disclosure of prior grand jury testimony of trial witnesses.¹⁵⁸ Also, both Ohio and West Virginia are signatories to the *Uniform Act To Secure the Attendance Of Witnesses From Without A State In Criminal Proceedings*¹⁵⁹

In September 1997, Judge Reed claimed that West Virginia Rules of Criminal Procedure would apply in prosecuting Rydbom.¹⁶⁰ In October 1997, Judge Reed ordered West Virginia prosecutors to make every effort to obtain Ohio grand jury transcripts of trial witnesses.¹⁶¹ Yet, in December 1997, when Prosecutor Conley said Ohio did not want to

¹⁵⁴ Trial: 01-08-98, pp. 668-670.

¹⁵⁵ Trial: 01-08-98, pg. 676. Since time-of-death evidence was necessary to prove Rydbom's publicly declared alibi -- (See Part One, §II (D) (1), *supra*) -- the loss of it was plainly prejudicial.

¹⁵⁶ Hoover, C. (1996, Dec. 4). Grand jury files murder indictment. *The Marietta Times*, p. 1A.

¹⁵⁷ including (1) Marietta Police Dept.; (2) Washington County Sheriff's Office; (3) Ohio - BCI&I; and (4) the Montgomery County Coroner's Office.

¹⁵⁸ See West Virginia Rules of Criminal Procedure, Rule 26.2. (*Jencks* type provision).

¹⁵⁹ See Ohio R.C. §§ 2939.25 - 2939.29 and W.Va. Code §§ 62-6A-1 through 62-6A-6. *Uniform Act* allows issuance of subpoena duces tecum for *evidence*, just as for witnesses. See State v. Harman, 270 S.E.2d 146 (W.Va. 1980); and 7 A.L.R.4th 836.

¹⁶⁰ Pretrial: 09-26-97, pp. 75-76.

¹⁶¹ Pretrial: 10-03-97, pp. 39-41.

share the transcripts, Judge Reed excused prosecutors from having to disclose the prior Ohio grand jury testimony of prosecution witnesses.¹⁶²

Rydbom asked the Ohio Common Pleas Court to order Ohio agents to share with the **Wood County, W.Va., Prosecutor** evidence relating to Sheree's murder (which Ohio has no jurisdiction over), including grand jury testimony. Denied.¹⁶³

The Ohio public defender asked the Ohio Common Pleas Court to order Ohio agents to share with **W.Va. Judge Reed** the prior grand jury testimony of trial witnesses. Denied.¹⁶⁴

In Judge Reed's court, Rydbom requested sanctions against Ohio and West Virginia agents for not disclosing prior grand jury testimony of trial witnesses. Specifically, Rydbom asked (a) that Ohio agents be excluded from the West Virginia proceedings until they abided by West Virginia laws, and (b) that West Virginia be prohibited from using prosecution witnesses who previously testified before the Ohio grand jury, until West Virginia disclosed such prior testimony. Denied.¹⁶⁵

OHIO'S SHOW

Fifty-three of the prosecution's fifty-five trial witnesses (96%) were already interviewed and prepared by Ohio officials before West Virginia picked up the case.

At Rydbom's February 7, 1997, preliminary hearing, Ohio cops Sgt. Rick Meek and Sgt. Ed Wright sat at the prosecution table as West Virginia's representatives and witnesses.

Washington County, Ohio, Assistant Prosecuting Attorney Allison Cauthorn, and Sgt. Meek both sat with and assisted W.Va. prosecutors during eleven (11) pretrial hearings.

Marietta, Ohio Police Sgt. Meek: (a) was the only witness who testified to the Wood County, W.Va., grand jury; (b) sat with and assisted W.Va. prosecutors throughout the jury

¹⁶² Pretrial: 12-02-97, pp. 41-42, 114-117 (Judge Reed: "... I don't think that I can ask [W.Va.] to get something in Ohio if they have to rely on somebody else to do it").

¹⁶³ Order denying Motion for Production of Documents, Wash. Co. Common Pleas Court, Case # 96-CR-235, dated 01-26-98;

¹⁶⁴ Order denying Petition for Disclosure of Grand Jury Record, Wash. Co. Common Pleas Court, Case # 98-CR-2, dated 01-14-98; Trial: 01-20-98, pp. 1625-1627.

¹⁶⁵ Clerk's version of "Complete Record," pp. 633-634, 642-644; Pretrial: 12-30-97, pp. 20-25.

selection and trial; (c) led the jury through Sheree's massage shop and her residence, both in Williamstown, W.Va., during the jury view;¹⁶⁶ and (d) was allowed, over objection, to testify a half-dozen times while listening to everyone else's testimony.¹⁶⁷

Ohio cop Sgt. Meek was the only cop in either state decorated for getting Rydbom convicted of Sheree's murder.¹⁶⁸

And it was Ohio who awarded West Virginia resident Sharon Rowsey \$2,500.00 after getting Rydbom convicted.¹⁶⁹

ARGUMENT

This was no mere collaboration *in pursuit of justice*. Ohio -- dressed in West Virginia wool -- dictated the parameters of the Rydbom prosecution and controlled what items and evidence would be bestowed for trial -- all for the prosecution's benefit.

West Virginia's prosecution was a sham done as a front for Ohio. Alternatively, the two states abused their sovereignty and acted like some perverse monster joining as one to convict Rydbom, then splitting and playing dead to deprive Rydbom of evidence.¹⁷⁰

Whether one calls this *tag-teaming* or *keep-away*, the two states bypassed the U.S. Constitution's implied (but still well-settled) promise of a fair trial, and pulled an end-run around Rydbom's compulsory process, confrontation, due process, and equal protection rights.

¹⁶⁶ While Rydbom had to stay outside with the media gaggle.

¹⁶⁷ Trial: 01-09-98, pp. 788-791; Trial: 01-14-98, pp. 1373-1438; Trial: 01-20-98, pp. 1687-1709; Trial: 01-22-98, pp. 2228-2243; Trial: 01-23-98, pp. 2375-2405; Trial: 01-29-98, pp. 3-11-3030; Trial: 01-30-98, pp. 3036-3064; Trial: 02-02-98, pp. 3359-3363, 3385-3386.

¹⁶⁸ The local NBC affiliate (WTAP) did a short friendly story on Sgt. Meek's commendation while Judge Reed was delaying Rydbom's sentencing.

¹⁶⁹ Ohio Attorney General, Crime Victim Services, Claim No. S98-44389.

¹⁷⁰ i.e. forensic evidence narrowing Sheree's time of death, and prior grand jury testimony of prosecution witnesses.

PART FIVE HEARSAY TRIAL

The trial judge, Jeffrey B. Reed, allowed hearsay and opinion testimony to be used against Rydbom, in violation of Rydbom's Sixth and Fourteenth Amendment rights to: (A) confrontation; (B) compulsory process; and (C) due process of law.

I. HOWARD ROWSEY

Howard Rowsey testified at trial that he had a conversation with Sheree Petry two and one-half (2½) years before Sheree's death, and that:

Sheree said, "My friend Dennis (Rydbom) is coming."

Howard said, "Oh, coming for a visit?"

Sheree answered, "No. He's coming here to go to school."

Howard then asked, "Why?"

Sheree responded, "Well, I really don't know."

Howard Rowsey asked, "Well is this guy your boyfriend?"

Sheree was very adamant in saying, "No, no way. He's not my boyfriend."¹⁷¹

II. CATHY REES

Cathy Rees quoted a private conversation with Sheree approximately five months before Sheree's murder:

Cathy said, "Sheree, I think Dennis really loves you."

Sheree responded with a very agitated look and rolled her eyes.

Cathy asked, "Well, Sheree, how do you feel about [Rydbom] following you across country again if you move?"

Sheree said, "Dennis needs to get a life. I'm not his lover, and I'm not his family, and he can't continue to follow me like this."¹⁷²

¹⁷¹ Trial: 01-22-98, pp. 2255-2256. Defense Exhibit #4 = note seized by cops indicating Sheree welcomed Rydbom's transfer to Marietta College. Pretrial: 10-09-97, pp. 79-81.

¹⁷² Trial: 01-28-98, pp. 2567-2569. Rydbom's Marietta College records seized by cops would reveal Rydbom had other reasons for transferring to Marietta College.

III. STEPHANIE FOUTTY

Along with Foutty's "expert" opinion on Rydbom's feelings toward Sheree,¹⁷³ though she knew Rydbom only superficially, Stephanie Foutty said Rydbom and Sheree Petry had a conversation (when?) and Sheree's reaction to the conversation was that, based on the grounds of their friendship, the conversation made Sheree feel uncomfortable.¹⁷⁴

Foutty never witnessed this alleged conversation between Sheree and Rydbom; but the prosecution team presented the "conversation" as if Foutty knew about it personally. Foutty's initial statement to Patrolman Hupp (May 28, 1996) was that Sheree told her about the alleged conversation. Sometime between Foutty's statement to police and Rydbom's not-so-speedy trial, Foutty's hearsay lost its hearsay characteristic.

IV. LYNN NOEL

Lynn Noel said that, on Thursday afternoon, two days before Sheree's murder, Sheree told her:

- (1) That Sheree was very concerned about what was going on with Rydbom;
- (2) that Sheree didn't know what she was going to do about it;
- (3) that Sheree had told Rydbom in every way that she knew how that what she wanted was a friendship;
- (4) that Rydbom did not seem to hear her or pay any attention to her;
- (5) that Rydbom was becoming more and more insistent;
- (6) that Sheree at this point in time plain did not know what to do;
- (7) that Sheree guessed that she would try one more time to tell Rydbom that she just wanted to be friends, and;
- (8) that, if Rydbom could not accept that, and if that wasn't what happened, that Sheree wouldn't be able to see Rydbom anymore.¹⁷⁵

¹⁷³ Trial: 01-13-98, p. 1106.

¹⁷⁴ Trial: 01-13-98, pp. 1108-1111.

¹⁷⁵ Trial: 01-13-98, pp. 1175-1180.

Judge Reed admitted Noel's hearsay narrative in its entirety, claiming that: (i) Sheree's state of mind was at issue ... especially in terms of the plan, and (ii) it went to establish and help explain why Sheree and Rydborn were together on Friday, May 24, 1996, the day before Sheree's murder.¹⁷⁶ Neither of these excuses, however, was bona fide.

Sheree Petry's state of mind was not at issue. Rydborn had nothing to do with Sheree's murder. There was no suicide, accident, or self-defense claim surrounding Sheree's death. Instead, the "state-of-mind" hearsay attributed to Sheree was used to assign motive to Rydborn -- even though Rydborn has no personal knowledge of any such statements.

As for the alleged "plan," Rydborn never denied being with Sheree on Thursday evening, Friday afternoon, and Friday evening. The tenor of such meetings, however, as the testimony of others indicate, differs significantly from what Noel's hearsay would suggest.

Sherri Saines said she saw Rydborn and Sheree together getting along well at the Saines residence, where Rydborn resided, on Thursday evening.¹⁷⁷

Professor Hancock was present at the health food store Friday around noon when Rydborn and Sheree were eating lunch together and apparently getting along well.¹⁷⁸

According to Scott Zeoli, Rydborn declined Zeoli's dinner invitation that same Friday because Rydborn said he was going to eat dinner with Sheree that evening.¹⁷⁹

At the massage shop, Cathy Rees reportedly asked Sheree what her plans were for that (Friday) evening. Sheree said she was getting together with Rydborn, and that Rydborn was going to help Sheree with her math homework.¹⁸⁰

These other characterizations of Sheree and Rydborn meeting on Thursday and Friday¹⁸¹ are markedly different than that offered by Lynn Noel.

¹⁷⁶ Trial: 01-13-98, p. 1178-1179.

¹⁷⁷ Trial: 01-14-98, pp. 1271-1272, 1277, 1286, 1294.

¹⁷⁸ Trial: 01-29-98, pp. 2806-2807.

¹⁷⁹ Trial: 01-15-98 (p.m.) (Baker), pp. 61, 80-81.

¹⁸⁰ Pretrial: 02-07-97, p. 89; Trial: 01-13-98, pp. 1203-1204.

¹⁸¹ Offered only *after* and in response to Noel's hearsay.

West Virginia allows the use of unsubstantiated accusatory hearsay attributed to a murder victim, to "prove" a murder defendant's motive/conduct.¹⁸² After all, it is titillating and non-contestable. An accused cannot subpoena the murder victim to deny, clarify, or otherwise explain the hearsay attributed to him/her; and the State has the advantage of publicly cloaking itself, and its own agenda, with the murder victim's name and situation.

On or about June 4, 1999, assistant prosecutor Dan Fowler said he listened, via telephone, to lawyer Radcliff's appeal argument. Fowler also made a comment along the lines of one of the SCAWV justices citing Noel's hearsay as proof of Rydbom being Sheree's murderer.¹⁸³ This same bass-ackwards inductive leap-frogging ...

- (1) Noel's hearsay attributed to Sheree was honest and accurate;
- (2) thus, other characterizations of Sheree/Rydbom meeting are false;
- (2) therefore, Sheree confronted Rydbom in some manner;
- (3) therefore, Rydbom became motivated to murder Sheree;
- Δ therefore, it must have been Rydbom who murdered Sheree.

... was used in the prosecution team's closing argument¹⁸⁴ -- and requires assumption upon assumption of non-existent facts.

The U.S. Supreme Court has recently amended its Sixth Amendment stance to prohibit "testimonial" hearsay.¹⁸⁵ However, the scope of the term "testimonial" and the relationship between the Constitution and other accusatory hearsay remain unclear.

Does hearsay attributed to a murder victim, to "prove" the accused's motive/conduct -- thereby turning the murder victim into an unimpeachable witness against accused -- implicate the accused's confrontation and due process rights?¹⁸⁶

¹⁸² See Cleckley, F., Handbook on West Virginia Evidence, 3rd Ed., §8-3(B)(3)(c) (2002).

¹⁸³ A transcript of Radcliff's argument would be needed to prove the actual fact and content of the statement made by one of the SCAWV justices referred to above.

¹⁸⁴ Trial: 01-02-98, p. 3455 (Prosecutor Durig: "She was trying to to be nice. 'Dennis, I told you last night it's over.' And he tried to drug her ... she takes it and says, 'Dennis, get the hell out of here. I've got to go. I've got work to do. I told you last night it's over.'").

¹⁸⁵ Crawford v. Washington, 541 US 36 (2004).

¹⁸⁶ See generally, Boliek v. Missouri, 479 US 903 (1986) (Marshall J. dissenting from denial of petition for writ of certiorari.); 78 Tulane Law Review 911, Comment -- Whether Federal Rule of Evidence 803(3) Should Be Amended to Exclude Statements Offered to Prove the Subsequent Conduct of a Non Declarant: Guidance From Louisiana (Feb. 2004) (Collecting cases and arguing against using such hearsay to prove third person's future conduct.). Compare with Why Proving Defendant's Motive with the Victim's State of Mind Sometimes Makes Sense ... Despite What Missouri Says, 63 Mo. L. Rev. 1013, 1028 (1998).

PART SIX TRIAL BY MEDIA

Rydbom was subjected to relentless and prejudicial publicity before and during trial which was so pervasive as to violate Rydbom's fundamental right to a fair trial, in violation of the Sixth and Fourteenth amendments to the United States Constitution.

I. PRETRIAL PUBLICITY

By time the not-so-speedy trial started, over one-hundred twenty (120) newspaper articles, and just as many televised broadcasts, in the Marietta/Parkersburg area had been published linking Rydbom to Sheree's murder; several of which were maliciously false.

Court-appointed lawyers did not offer into evidence the hundreds of local news articles, TV and radio reports, promos, or other viable evidence so as to raise a presumption of prejudice supporting change of venue and mid-trial jury-poll motions.

II. JURY SELECTION

Eleven (11/12) jurors admitted their familiarity with the murder case due to pretrial publicity. However, all jurors claimed to have no fixed opinions regarding the case.¹⁸⁷

During trial, Judge Reed refused to prevent jurors from watching Rydbom, via the jury-room window, being escorted from the jail across the street in handcuffs.¹⁸⁸ The four jurors who admitted watching Rydbom (while the other jurors were also in the jury room) said it had no effect on their verdict. This same jury claimed to be "*immune*" to prejudicial publicity.

People process information consistent with their world-view. The Rydbom tom-tom pounded by the press, month after month, familiarized jurors with the prosecution paradigm, outflanked Rydbom's dubious right to the presumption of innocence, and obviated any government need for an actual trial.

¹⁸⁷ Cf. Gerry Spence told Larry King a story where Spence asked his client during jury selection, "So, do you want the ones who think your guilty, or do you want the liars."

¹⁸⁸ Trial: 01-14-98, pp. 1438-1439; Trial: 02-05-98, pp. 3598; Trial: 02-06-98, pp. 3654-3655.

The prejudicial and pervasive publicity over a lengthy period of time served only to cement Rydbom's public image of guilt. Such circumstances explain and validate Rydbom's need for a speedy trial¹⁸⁹ -- and shed light on the government's opposition to the same.

III. TRIAL PUBLICITY

On January 8, 1998, lawyer Radcliff complained about local TV reporter, Margaret Nix, of WTAP, talking to the jury. Apparently Nix also approached Judge Reed privately and claimed her communications with the jury was innocent. Lawyer Radcliff failed to protect Rydbom from potential prejudice here and inquire into what the content of Nix's private communications to the judge and jury were.¹⁹⁰

WTAP's next antic was to declare early in the trial that, "Rydbom is guilty."¹⁹¹

Even though life-without-parole was the only sentence available, Judge Reed delayed Rydbom's sentencing for ten weeks, over objection. Coincidentally, WTAP did a friendly little story on Judge Reed either during the sentence delay or shortly after sentencing.

Throughout the trial, local newspapers reported on various false, inadmissible, and/or unfairly prejudicial matters such as:

- (a) Rydbom's prior criminal record;
- (b) items seized from Rydbom, but not admitted into evidence;
- (c) Rydbom's continued imprisonment in the Wood County Jail without bond;
- (d) a local reverend giving hugs in the lobby outside the courtroom before prosecution witness Cathy Rees took the stand -- as if god is on their side;
- (e) Rydbom being escorted to and from jail in handcuffs; and,
- (f) the fabricated story of Rydbom "stalking" football coach Gene Epley.

¹⁸⁹ Cf. Gag-order and change-of-venue motions, and libel complaints, all failed to quell prejudicial publicity. See e.g. Sequin, C. (1996, Dec., 3). Gag order request in murder case denied. *The Parkersburg News*. p. 1A; Grande, D. (1997, July 30). Motion says reporting has tainted jury pool. *The Marietta Times*. p. 1A; From staff reports. (1997, Nov. 25). Murder defendant's suits allege libel, defamation. *The Marietta Times*. p. 1A.

¹⁹⁰ Trial: 01-08-98, pp. 761-762, 764.

¹⁹¹ Note: Nix's declaration of Rydbom's guilt occurred either on the 8th or 9th of January, 1998.

The local media also published stories in a relentlessly biased manner for the prosecution team. For example, instead of reporting that the lingerie seized from Rydbom's Phoenix apartment five-plus months after Sheree's murder was identified as being Sheree's which -- while still being incomplete and misleading -- would have at least been factual, the media proclaimed the lingerie as actually being Sheree's.

Local media disregarded everything refuting their party claims, including:

- (a) No lingerie was searched for or seized during the two searches of Rydbom's residence while he was still living in Marietta
- (b) Rydbom categorically disputed the prosecution team's claim of the seized lingerie being Sheree's.
- (c) the people who -- during unnecessarily suggestive presentations -- "identified" the lingerie as being Sheree's, were all biased against Rydbom;
- (d) Sheree was excluded as a source of the DNA tested from the lingerie; and,
- (e) *Victoria's Secret* showed that some of the "identified" lingerie wasn't available for sale until August 1996 -- but Sheree died in May 1996.

Throughout the case, local media refused to acknowledge the above or any other exculpatory facts in the party trial, and maintained -- as if there was no dispute whatsoever -- that the seized lingerie belonged to Sheree. Yellow journalism at its finest.

IV. JURY POLL

In spite of pervasive prejudicial publicity, Judge Reed refused to question jurors during trial for exposure to prejudicial media publicity because Rydbom had not proven jurors were exposed to prejudicial media publicity.¹⁹² But, is that not the purpose of such a poll?

In asking why the hundreds of local news articles, videos and promos were not offered into evidence as proof of the pervasive prejudicial publicity, it is worth noting that court-appointed lawyers apparently liked the publicity; later helping the prosecution team make a Discovery Channel show painting Rydbom as Sheree's murderer.¹⁹³

¹⁹² Trial: 01-27-98, pp. 2483-2485; Trial: 01-28-98, pp. 2761-2762.

¹⁹³ See Part Two, §II (A)(3), n. 127, *supra*. Just like at trial, lawyers Radcliff and White performed the task of giving the show the *appearance* of being fair and balanced. In the show, lawyer White said Rydbom's character was consistent with the State's theory of the case.

PART SEVEN PARTISAN JUDGE

The trial judge, Jeffrey B. Reed, deprived Rydbom of due process of law in violation of the Fourteenth Amendment to the United States Constitution as a result of Judge Reed's refusal or inability to be a neutral and detached judge in the prosecution of Rydbom.

EXAMPLES OF JUDGE REED'S PERSONAL BIAS/PREJUDICE

I. Judge Reed secretly colluded with Wood County Prosecutor Virginia Conley regarding scheduling Rydbom's trial beyond the term of Rydbom's indictment.¹⁹⁴

II. Judge Reed refused to allow Rydbom to waive defense motions so as to avoid further trial delay (though Rydbom gave advance notice of his willingness to waive whatever necessary to obtain a speedy trial), while Judge Reed also:

- Blamed unspecified defense motions for more trial delay;
- wrongly accused "premium-quality" court-appointed lawyers of filing motions in bad faith, or "just for the purpose of taking up the court's time;"¹⁹⁵
- a month later, to keep Rydbom under representation, said Rydbom was entitled to waive defense motions.¹⁹⁶

III. Supposedly because of Rydbom's "desire" for a speedy trial, Judge Reed created a fifteen-day written "notice" requirement for motions requiring hearings, and then:

- disregarded his notice requirement when the prosecutors asked to delay Rydbom's trial again;¹⁹⁷ and,

¹⁹⁴ Page 2 *supra*, nn. 14-15.

¹⁹⁵ Page 15 *supra*, nn. 86-88.

¹⁹⁶ Page 14 *supra*, n. 81; Page 15 *supra*, n. 89.

¹⁹⁷ Page 2 *supra*, n. 16; Page 3 *supra*, n. 19.

- wrongly imposed his written notice rule to deny Rydborn's request for Marietta Police Sgt. Meek to be sequestered or required to testify first,¹⁹⁸ even though;
 - it is standard practice for the sequestration rule to be verbally invoked at the beginning of proceedings and,
 - Judge Reed's written notice rule was not supposed to apply to matters *not* requiring hearings, like a request to sequester witnesses.

IV. Judge Reed misled Rydborn regarding self-representation rights,¹⁹⁹ while depriving Rydborn of access to a law library.²⁰⁰

V. Judge Reed ignored the simplest fatal flaw of the Arizona search warrant -- the affidavit used to obtain the warrant offered absolutely no nexus linking Rydborn or the items sought to the location searched.²⁰¹

VI. Judge Reed allowed Marietta Police Sgt. Meek to testify regarding his July 1996 time trial, and also admitted into evidence Meek's report regarding the same; but he would not admit into evidence Barbara Thompson's May 1996 written statement that she saw Sheree's car in Williamstown during Rutter's alleged sighting near the Marietta storm drain.²⁰²

VII. Judge Reed refused to question jurors during trial for media exposure, in spite of pervasive and heavily biased local media publicity.²⁰³ As an example of such publicity, on or about January 9, 1998, during the first week of the month-long trial, the local NBC affiliate (WTAP) declared in the evening's top story that, "Rydborn is guilty."

¹⁹⁸ Page 32 *supra*, n. 167.

¹⁹⁹ Pages 14-21 *supra*.

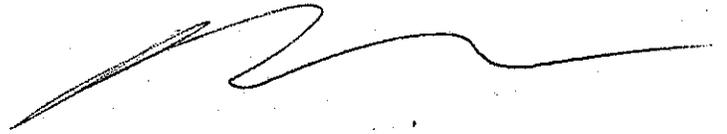
²⁰⁰ Page 17 *supra*, n. 98.

²⁰¹ Page 25 *supra*.

²⁰² Page 10 *supra*, n. 53.

²⁰³ Page 39 *supra*, n. 192; see generally Part Six, *supra*.

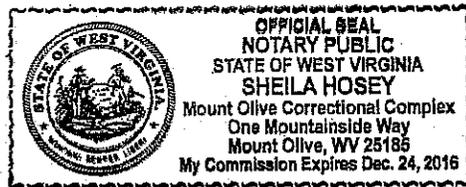
Therefore, the Petitioner, Dennis J. Rydbom, declares that the foregoing is true and correct, and hereby petitions for relief to which Rydbom may be entitled.



Dennis J. Rydbom; prisoner # 26302

Executed on May 2, 2006

Sheila Hosey
NOTARY PUBLIC



cc. Wood County Prosecutor, 317 Market Street, Parkersburg, WV 26101.