Gavin

DOUGLAS COUNTY DISTRICT COURT
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, v. GAVIN D. SEIM, Defendant.	**Case No. CR 14652 - CR 14653** **DEFENDANT'S KNAPSTAD MOTION TO DISMISS**

I. KNAPSTAD MOTION

The defendant, by and through his attorney of record, Stephen Pidgeon, respectfully moves the Court for an order dismissing the charges against him. This request is brought pursuant to applicable CrRLJ rules and *State vs. Knapstad,* 107 Wn.2d 346, 729 P.2d 48 (1986).

II. DECLARATION OF GAVIN SEIM IN SUPPORT OF MOTION

I, Gavin D. Seim, declare on oath, pursuant to the laws of perjury in the State of Washington that I am over the age of 18, legally competent to testify to the matters as set forth herein, and that the information and factual statements made in this motion are true

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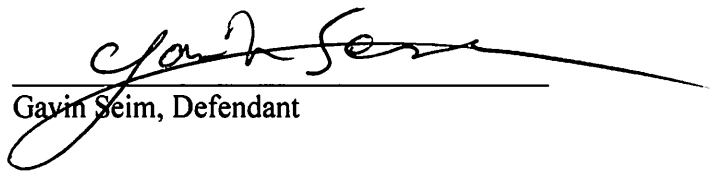
and correct to the best of my knowledge and are not reasonably in dispute for purposes of this motion only.



Gavin Seim, Defendant

1.1 Gavin Seim is a political activist and is known in the national community as a Liberty Speaker. Recently, he was a candidate for the United States House of Representatives (R), in the Fourth Congressional District of the State of Washington.

1.2 As part of Mr. Seim's political activism, Mr. Seim has repeatedly asserted the Constitution of the United States and the state of Washington and the rights enshrined thereunder in defense of fundamental liberty and in resistance to a rising police state.

1.3 All of the facts in regard to the arrest of Gavin Seim should be viewed in the context that law enforcement, particularly the County Sheriff, together with the local judiciary in the District Court, in sparsely populated Douglas County, were, prior to the arrest, apprised of the views of Mr. Seim, and did not approve. Below is an email from the Douglas County Sheriff to Chelan County Sheriff, Wenatchee Police and to the Sheriff Reserves, identifying Seim as a person who would video the police in action.

> Good morning,
>
> Yesterday we had a group of about 12 extremely upset people crowding our hallway. I will keep the story short, but the gist is that someone got arrested. The family felt the suspect was unlawfully detained. They also felt the suspect and the passenger in his car were threatened. The suspect's extended family came to the office and lectured me, Kelly, Chief Wagg, Sheena, and Betsy on the constitution, God, and justice. I even got to hear a little about their opinions on

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sexual relations. It was bizarre. The entire event was recorded by a gentleman named Gavin Seim. He is from Grant County and is responsible for the YouTube video of the Grant County Deputy in an "illegal" unmarked patrol car. Our team handled it well, but the people were confrontational and insulting. They eventually left the building. The bottom line is that there are people out there actively trying to create situations to make us look bad. Keep cool and professional, but don't be intimidated from doing your job. Also, remember that just about everyone has the ability to record us doing our work. Don't give anyone reason or ammunition to distract our citizens from your consistently good work.

Let's be careful out there.

Sheriff Gjesdal

This email may be subject to disclosure as a public record under the Public Records Act, RCW Chapter 42.56

1.4 The arrest of Gavin Seim rose out of the occurrence of the trial of Tavis Tell Shasteen, a young man who is dating Gavin Seim's younger sister, who was pulled over by Douglas County Sheriff Evan O'Malley, and arrested on October 4, 2014, when he failed to provide his identification before being informed of the pretext for the stop.

1.5 Shasteen sought a public defender, but was disqualified because of his income level. Shasteen sought the assistance of his friends, namely Nathan Seim and Gavin Seim to help him in the preparation of his defense at trial. Shasteen then told the court by means of a notice that was mailed to the court by certified mail, return receipt requested (and the receipt was received) that he would be using two or more advisors during the trial. See below:

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State of Washington,
Plaintiff,
Vs.
Tavis Tell Shasteen,
Defendant.

Case No. 4Z0814278

Advisers

This is a letter of awareness for the court of the defense's 2 or more advisers for Case No. 4Z0814278

Tavis Tell Shasteen,

1.6 Shasteen also advised the court that he intended to make a video recording of the proceedings. See below:

State of Washington,
Plaintiff,
Vs.
Tavis Tell Shasteen,
Defendant.

Case No. 4Z0814278

REQUEST FOR THIRD PARTY FILMING

The defense requests filming and audio recording for Case No. 4Z0814278 to take place during all court operations relevant to Case No. 4Z0814278. The recording will be administered by American Pictorialist Gavin Seim.

Tavis Tell Shasteen,

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1.7 At the time of the trial, the judge, prior to entering the courtroom, ordered that Nathan Seim be physically removed from the courtroom. Two Douglas County Deputy Sheriffs then physically removed Nathan Seim from the courtroom. At the time of his removal, no proceedings had started, nor was the court in session.

1.8 At the time of the removal of Nathan Seim, the jury pool for the trial of Shasteen was already present in the courtroom. It was from this pool that the jury was selected and seated, and who later brought a conviction of Shasteen on the charge of failing to comply.

1.9 Gavin Seim then reentered the courtroom and sought to obtain the camera that was recording at that time. The judge then made her entrance into the courtroom and instructed Mr. Seim that she was not allowing him to make a video record. Judge McCauley said as follows:

"Notifying the court is not sufficient. We do have a representative from the press."

1.10 Thereafter, Gavin Seim confronted Judge McCauley concerning the removal of Nathan Seim and her denial to allow them to make a video record, and challenged her oath to uphold the Constitution.

1.11 After extended oral argument, the Judge told the officers in the courtroom that Mr. Seim either had to sit down or leave. The officers approached and told Mr. Seim "you need to leave." Mr. Seim began walking with the officers who then took him down and placed him under arrest for the charge of resisting arrest.

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1.12 Mr. Seim was later charged with contempt of court, interference or obstruction of a court building, and disorderly conduct.

1.13 After Gavin Seim was taken out, most were still standing in the courtroom, Grant Seim, Jr., the father of Nathan and Gavin Seim, was told to either sit down or leave, and Grant indicated that he wanted to be arrested. Grant Seim was then arrested for contempt of court, although the judge had left the chambers and the court was not in session. After his arrest his charges were changed to interference or obstruction of a court building and disorderly conduct.

POINTS AND AUTHORITIES

RCW 9A.04.110 (23) provides that the term "'Public servant' means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function."

RCW 9A.80.010 defines and described Official misconduct as follows:

(1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:

(a) He or she intentionally commits an unauthorized act under color of law; or

(b) He or she intentionally refrains from performing a duty imposed upon him or her by law.

(2) Official misconduct is a gross misdemeanor.

Public Law 2011 c 336 § 408; 1975-'76 2nd ex.s. c 38 § 17; 1975 1st ex.s. c 260 §9A.80.010, codified as RCW 9A.80.010.

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RCW 2.08.080 provides that every judge "shall, before entering upon the duties of his or her office, take and subscribe an oath that he or she will support the Constitution of the United States and the Constitution of the state of Washington, and will faithfully and impartially discharge the duties of judge to the best of his or her ability, which oath shall be filed in the office of the secretary of state."

First in the sequence of relevant events, the trial judge orchestrated and commanded the removal of Nathan Seim from the table where the defendant sat prior to trial.

The Sixth Amendment to the United States constitution provides as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and **to have the assistance of counsel for his defense.**

The right to counsel is generally regarded as a constituent of the right to a fair trial. The assistance of counsel clause includes, as relevant here, five distinct rights: **the right to counsel of choice**, the right to appointed counsel, the right to conflict-free counsel, the effective assistance of counsel, and the right to represent oneself *pro se*. *INS v. Lopez-Mendoza,* 468 U.S. 1032 (1984); *Bridges v. Wixon,* 326 U.S. 135 (1945).

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Defendant asks the Court to take Judicial Notice of the fact that many of the men who contributed to the writing or ratifying of the Constitution were attorneys, such as John Jay, first Chief Justice of the U.S. Supreme Court, and John Marshall, a later Chief Justice. John Adams, James Wilson, John Blaire, and Oliver Ellsworth were among the many fine attorneys who assisted in approving the language used in the Constitution for the United States of America (hereinafter "U.S. Constitution").

Are we to believe that the word "COUNSEL" was selected by these "attorneys" with no thought whatsoever to its Common Law meaning of that time?

In discussing a defendant's right to counsel, the U.S. Supreme Court has held:

> ... [H]is right to be heard through his own counsel is UNQUALIFIED.

Chandler v. Fretag, 348 U.S. 3 (emphasis added)

In consulting Noah Webster's 1828 dictionary, the word "unqualified" is defined as: *Not modified, limited, or restricted by conditions or exceptions;* .... (Noah Webster's First Edition of an American Dictionary of the English Language, 1828, republished in facsimile edition by Foundation for American Christian Education, San Francisco, California, second edition, 1980).

It is undeniable that the explicit use of the word "counsel" in the Sixth Amendment was intended to mean someone other than an attorney, as well as an attorney. This view is upheld by a U.S. District Court when it recognized an accountant as counsel, and reprimanded an IRS employee:

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Yet while he was informing the prospective defendant of his Right to Counsel, he was simultaneously requesting that the Defendant's Counsel leave the interrogation. In effect, the investigator informed Tarlowski that he might have his attorney present, but not his accountant.

Ruling in favor of Tarlowski's motion to suppress, the Court said: "For a government official to mouth in a ritualistic way part of the warning about the right to counsel, while excluding the person relied upon as counsel is, in effect, to reverse the meaning of the words used." *U.S. v. Tarlowski,* 305 F.Supp. 112 (1969)

To have a "friend" act as Counsel was a Common Law Right and was recognized as such in the Bill of Rights when the term "counsel" was used instead of the term "attorney".

The language of the Constitution cannot be interpreted safely, except by reference to common law and to British institutions as they were when the instrument was framed and adopted. The statesmen and lawyers of the convention who submitted it to the ratification of conventions of the thirteen states, were born and brought up in the atmosphere of the common law and thought and spoke in its vocabulary ... when they came to put their conclusions into the form of fundamental law in a compact, they expressed them in terms of common law, confident that they could by shortly and easily understood. *Ex parte Grossman,* 267 U.S. 87, 108 (1925).

No limit or qualification was ever intended to be put upon the Right to "assistance of counsel" in the Sixth Amendment and Defendant submits the word "counsel" was used

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in recognition of the Common Law Right to have one's "friends" speak for a Defendant, if he so chose. Reference to the Common Law is mandatory in a proper interpretation of the Constitution, but most particularly in the Bill of Rights. There is a preponderance of U.S. Supreme Court cases which uphold the position of Defendant on interpretation of the Constitution.

> ... as men whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey: the enlightened patriots who framed our constitution and the people who adopted it must be understood to have employed the words in their natural sense, and to have intended what they have
>
> said. *Gibbons v. Ogden,* 22 U.S. 1 (1824).

And;

> ... In the construction of the constitution, we must look to the history of the times, and examine the state of things existing when it was framed and adopted. 12 Wheat 354; 6 Wheat 416; 4 Peters 431-2; to ascertain the old law, the mischief and the remedy. *State of Rhode Island v. The State of Massachusetts,* 37 U.S. 657 (1938).

And also, in speaking further of Constitutional provisions, we find:

> We agree, it is not to be frittered away by doubtful construction, but like every clause in every constitution it must have reasonable interpretation, and be

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held to express the intention of the framers. *Woodson v. Murdock,* 89 U.S. 351, 369 (1874)

And further,

> The necessities which gave birth to the Constitution, the controversies which precede its formation and the conflicts of opinion which were settled by its adoption, may properly be taken into view for the purposes of tracing to its source, any particular provision of the Constitution, in order thereby, to be enabled to correctly interpret its
>
> meaning. *Pollock v. Farmers' Loan & Trust Co.,* 157 U.S. 429, 558.

History shows conclusively that it was a Common Law Right to be represented in court by a "friend" rather than an attorney, if one chose. Defendant claims that right herein, which the Sixth Amendment did indeed secure, and is not subject to "revision" by the American Bar Association.

Undoubtedly what went before the adoption of the Constitution may be resorted to for the purpose of throwing light on its provisions. *Marshall v. Gordon,* 243 U.S. 521, 533 (1971).

Each word has a particular meaning and was deliberately chosen. The word "Counsel" was not idly set down as the law of this land, but, on the contrary, was selected with great skill and meaning.

To disregard such a deliberate choice of words and their natural meaning, would be a departure from the first principle of Constitutional interpretation. "In expounding

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the Constitution of the United States," said Chief Justice Taney in *Holmes v. Jennison,* 14 540, 570, 571, "every word must have its due force and appropriate meaning; for it is evident from the whole instrument, that, no word was unnecessarily used, or needlessly added." The many discussions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition; and shown the high talent, the caution and the foresight of the illustrious men who framed it. Every word appears to have been weighed with the utmost deliberation and its force and effect to have been fully understood. *Wright v. U.S.,* 302 U.S. 583 (1938).

To narrowly interpret the word "Counsel" to mean only "licensed attorneys" is an infringement of Defendant's Sixth Amendment right to counsel, which even the U.S. Supreme Court has held is "unqualified." See *Chandler supra.*

The words of the Amendment are simple, clear, and not ambiguous and were obviously written by our forefathers to be understood by The People, as the following citation undeniably indicates:

The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary, as distinguished from technical meaning; where the intention is clear, there is no room for construction, and no excuse for interpolation or addition. *Martin v. Hunter's Lessee,* 1 Wheat 304; *Gibbons v. Ogden,* 9 Wheat 1; *Brown v. Maryland,* 12 Wheat 419; *Craig v. Missouri,* 4 Pet. 10; *Tennessee v. Whitworth,* 117 U.S. 139; *Lake County v. Rollins,* 130 U.S. 662; *Hodges v. United States,* 203 U.S. 1; *Edwards v. Cuba R. Co.,* 268 U.S. 628; *The Pocket Veto Case,* 279

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U.S. 655 (justice) Story on the Constitution, 5th ed., sec. 451; Cooley's Constitutional Limitations, 2nd ed., P. 61, 70.

It cannot be presumed that any clause in the Constitution is intended to be without effect. *Marbury v. Madison,* 5 U.S. 137, 174 (1803).

In passing, it might be noted that Chief Justice John Marshall, who principally was responsible for the holding in the above cited *Marbury* case, and who seems to be looked upon by most attorneys and judges as the greatest of our Supreme Court justices, is reported to have had two weeks law school preparation, at which time half his study was philosophy. Also:

The Constitution is a written instrument. As such, its meaning does not alter. That which it meant when it was adopted, it means now. *South Carolina v. United States,* 199 U.S. 437, 448 (1905).

The restriction of the Courts to professional attorneys only, is the result of attorneys who sat in our legislatures and voted upon laws which involved, for them, a conflict of interest and which were, and are, upheld by their brother attorneys, who sit on the benches of our Courts, ruling in violation of the Sovereign will of The People, which it is their sworn duty to obey. Any State law which prohibits laymen from speaking on behalf of another, when sought for that purpose, is a violation of the Sixth and Fourteenth Amendment. Any implementation of such State laws also violates Defendant's rights to freedom of speech, wherein he may speak through whom he chooses; to freedom of association wherein he may associate with whom he pleases; to due process of law,

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wherein he is denied Counsel of his choice and therefore as a consequence, he is denied a fair trial, and he is also denied an impartial jury by being unable to speak, as he knows he should, through Counsel of trust to the jury.

For Shasteen to be denied a layman to assist him with advice and to act as a spokesman at Shasteen's request, was to subject Shasteen to unequal treatment under the law. Shasteen, as an unconvicted citizen, had less Rights and inferior treatment than prisoners in State and Federal prisons, who are permitted "jailhouse" lawyers, laymen who practice law on behalf of their fellow prisoners, and with the approval of many Courts.

Shasteen, an unconvicted Citizen, was denied the right to contract when he was forbidden the assistance of one who was willing to speak for him on his request. The denial of Shasteen's right to contract, it is respectfully submitted, is because attorneys, who are, in this State, members of a bar association, for which they have promoted a monopoly through their controlled legislature, have purported to make a "law" for the protection of a "public," whereas, they have actually instigated a self-serving franchise in great part, at the expense of the public, and to the detriment of Constitutional government.

Again, Shasteen was denied a "fair trial" and an impartial jury when the so-called "law" prohibited him from contracting with Nathan Seim, one of his choices for his legal defense against a hostile government bent on punishing Shasteen for the exercise of the very Constitutional Rights the government should be upholding rather than attacking.

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The aforementioned rights were infringed, abridged, and denied when the word "counsel" was qualified to mean only attorneys may speak for the defense in a Court of Law. This was not the case in *Tarlowski*, where the "Counsel" referred to by the Court was an accountant.

Shasteen informed the Court that he had little confidence in the legal profession of marked by anemically paid public defenders. Shasteen was defending himself out of necessity, not out of desire. Shasteen was disqualified for the public service, and was aware of a few attorneys whom he trusted. He did not trust just any attorney out of a grab-bag whom the government was willing to furnish; neither did Shasteen become satisfied with such an attorney's concept of the U.S. Constitution. The average attorney, full of law-school brainwashing, thinks that the Constitution is what the judges say it is, rather than what the Constitution itself says it is.

If Defendant cannot "enjoy" the "assistance of counsel" from the Bar (i.e. the legal establishment), then he has the undeniable right of Counsel which he can enjoy. To deny this right is to deny his rights under the Sixth Amendment to Counsel.

Attorneys are called "officers of the court," and they, like the judge, are required to take oaths to support the Constitution. When the attorneys attempt to prevent the exercise of the rights of defendants in court to speak through lay friends of confidence, the attorneys are involved in denying that which they swear to uphold -- to their eternal discredit and dishonor. The fact that the attorneys have been successful for a long time, and that colleagues in judicial robes have upheld them, does not make it right; it does not

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make it Constitutional; and it certainly does not enhance the rights of the grass-roots American People who are tired of being subjected to the exorbitant legal fees of a closed-shop union which says, "If you exercise your constitutional rights, we will see to it that you go to jail," and now, "You have to go our route because the loss of your Constitutional rights is a settled matter."

It is important to note that the Sixth Amendment word "enjoy" follows the word "shall," and it would therefore be a command of the sovereign power that the ability to enjoy the right to counsel is mandatory. The words "shall ... enjoy" make this very clear.

The judgment as to what Counsel a Defendant can "enjoy" is left entirely in his hands and nowhere in the Sixth Amendment is this prerogative given to the Courts, but remains the "Right" of the Defendant.

If the men who framed the Bill of Rights meant by "COUNSEL" a licensed attorney, they would have said "licensed attorney". The Court cannot refuse to recognize this.

Neither the President of the United States nor the Governors who head the executive branches of government are required to be attorneys in order to administer and enforce the laws. Federal judges are not required by the Constitution, or by valid statute, to be attorneys. Congressmen, Senators, and other Legislators who pass legislation, statutes, and "laws" do not have to be attorneys. Magistrates do not have to be "attorneys."

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THE WILL OF THE SOVEREIGN POWER

The United States Constitution is the will of The People, clearly set down for their agents, elected and appointed, to follow. No law supersedes the U.S. Constitution and only those in "pursuance" of it may stand. Even treaties must be made "in Pursuance" of the Constitution.

> We the People ... do ordain and establish this Constitution for the United States of America. Preamble to the U.S. Constitution (1789).

In establishing this government, the People said that:

> This Constitution and the laws ... made in pursuance thereof ... shall be the supreme Law of the Land .... Article VI, Sec. 2, U.S. Constitution.

And they also commanded that:

> ... [A]ll ... judicial Officers, both of the United States and of the several states, shall be bound by Oath or Affirmation, to support this Constitution; .... Article VI, Clause 3, U.S. Constitution.

It is clearly the will of the bar associations, not of the People, to close the Courts to all but licensed attorneys. Use of the word "counsel" rather than "attorneys" denotes the will of the Sovereign Power, which cannot be lawfully overridden.

In the United States, Sovereignty resides in the people, who act through the organs established by the Constitution. *Chisholm v. Georgia,* 2 Dall 419, 471; *Penhallow v. Doane's Administrators,* 3 Dal 54, 93; *McCullock v. Maryland,* 4 Wheat 316, 404, 405; *Yick Wo v. Hopkins*, 118 U.S. 356, 370;

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... [T]he Congress cannot invoke the sovereign power of the people to override their will as thus declared. *Perry v. United States,* 294 U.S. 330, 353 (1935)

In the Sixth Amendment, the People declared their will as to the rights of the Accused in all criminal prosecutions and the right of the Defendant to "enjoy" the "assistance of counsel" was purposely couched in the Common Law term, "Counsel," so as to include those friends upon whom Defendants may depend for advice and protection.

Defendant has the right to be foolish as well as wise, and his liberty is his to do with as he pleases. To deny him his freedom of choice in this matter of Counsel is unduly to interfere with the defense, and constitutes a denial of the will of The People, from whom the Courts' authority is derived, and a substitution in lieu thereof is being used -- that of the "will of attorneys."

Bills of rights are, in their origin, reservations of rights not surrendered to the prince. Hamilton, Federalist Papers, No. 84. The right to have a "friend" plead one's case, or to assist one in Court, is a Common Law right secured by the Sixth Amendment.

History is clear that the first ten amendments to the Constitution were adopted to secure certain common law rights of the people against invasion by the Federal Government. *Bell v. Hood,* 71 F. Supp., 813, 816 (1947) (U.S.D.C., So. Dist. Calif.).

Our Founding Fathers spoke and wrote in the vernacular of the Common Law, and "Counsel" was the word they chose. The facts are conclusive on this point, and the

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record supports this contention. Interpretation of the word "Counsel" to mean "attorney only" is a departure from the safeguards of the Bill of Rights.

> The Bill of Rights was provided as a barrier, to protect the individual against arbitrary exactions of ... legislatures, (and) courts ... it is the primary distinction between democratic and totalitarian way. *Re Stoller,* Supreme Court of Florida, en banc, 36 SO. 2ND 443, 445 (1948).

A more recent confirmation of Constitutional rights of the Accused says:

> Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them. *Miranda v. Arizona,* 384 U.S. 436.

Even though the Miranda decision referred to the Fifth Amendment right in toto, the above stated principle is of general application, wherein the word "rights" is not qualified.

SHASTEEN'S RIGHT TO FREEDOM OF ASSOCIATION

In *Tarlowski supra*, the Court said, in suppressing evidence at the request of Tarlowski's motion:

> When a federal official's interference with the right of free association takes the form of limiting the ability of a criminal suspect to consult with and be accompanied by a person upon whom he relies for advice and protection, he gravely transgresses. For These reasons, the Motion to suppress must be granted.

It was in this case that *Tarlowski* was denied the counsel of an accountant, not of a lawyer.

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Shasteen had a right under the First Amendment freely to associate with whom he pleased in his defense and in its preparation and presentation, so long as such is respectful, with decorum, and without contempt for orderly rules of procedure which do not deprive one of Rights guaranteed by the U.S. Constitution. To deny this Right is also to deny his Fifth Amendment Right to Due Process of Law, **which is actually a guarantee of fundamental fairness.**

THE RIGHT TO PETITION FOR REDRESS OF GRIEVANCES

The First Amendment states, in pertinent part:

> Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.

How can a defendant maintain his maximum Right to petition for redress of grievances, if that person whom he chooses to speak for him is not permitted to do so?"

If Congress passes a statute requiring a federal court to abide a statute of the State in which it sits, and said statute of a state purports to make it a crime for a Defendant to be represented by a non-attorney, then Congress has effectively done not only what the Constitution does not authorize it to do, but it has done what is also expressly forbidden.

If such is the case, then Congress has made a "law" which frustrates the Right of The People, and the Defendant, "to petition the Government for a redress of grievances."

Of what use is the Right to Petition for Redress of Grievances if the Defendant is personally handicapped by government? This handicap arises because the Defendant needs assistance in his petitioning, and yet the he is limited by a bar association, or a

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state, or a court which says that a competent "friend" cannot be permitted to speak for the Petitioner because said "friend" has not been brainwashed in certain "approved" law schools. In is in such law schools that the deprivation of the Constitutional Rights, although set forth in plain and unambiguous language in the Constitution itself, is not "settled doctrine."

That laymen should be subjected to a "drifting" and "unstable" Constitution -- which happens to be what some justices "think it is" at the moment -- can be very frustrating, and that a jury cannot hear a "Counsel" who is not beholden to such a damnable floating doctrine, are indeed a denial of "the Right to Petition (effectively) for Redress of Grievances." To preserve justice, to preserve the semblance of a fair trial and an impartial jury, let the Defendant petition for Redress of Grievances to the jury through "Counsel of his choice," who is not beholden to a corrupt and degenerate system which has perverted the very law by which it pretends to rule and which it pretends to protect and uphold.

Defendant believes that true religion guarantees freedom of choice, or freedom to choose, to elect, and to select, taking responsibility for the consequences of said choices.

Defendant further believes that he has the right to help others and, in turn, to be helped by those willing voluntarily to aid in their call for assistance. In this case, he particularly means in the Courtroom where a hostile government is violating its own laws and trampling upon the Rights of the Sovereign People, which its officers are sworn to protect.

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When all the mighty force of an all-powerful government is arrayed against a lone individual who has the courage to point out the government's inequities, said individual should be entitled, most of all, to the protection of his religious convictions and rights.

Let the legal profession compete like men with the Counsel Shasteen chose for his defense, and for the proper exercise of his religious Rights, chief among which is the freedom of any choice which does not trample upon the Rights of others.

THE RIGHT TO EQUAL PROTECTION

Gavin Seim's right to equal protection of the laws is guaranteed through the due process clause of the Fifth Amendment: The due process clause of the Fifth Amendment guarantees to each citizen the equal protection of the laws and prohibits a denial thereof by any Federal official. *Bolling v. Sharpe,* 327 U.S. 497

In both *United Mine Workers v. Illinois Bar Association,* 389 U.S. 217, and *NAACP v. Button,* 371 U.S. 415, and also in *Brotherhood of Railhood Trainmen v. Virginia State Bar,* 377 U.S. 1 (1964), it was held **that a State may not pass statutes prohibiting the unauthorized practice of law or to interfere with the Right to freedom of speech, secured by the First Amendment.**

Gavin Seim, Nathan Seim, and Shasteen were entitled to equal protection of the laws and that included the right to speak through whom Shasteen desired, when he desired. The only reasonable condition is that the decorum of the Court and the rules not in conflict with individual Rights be maintained; otherwise there can be no valid denial of this inalienable and legal Right. Shasteen agreed to this, and had every intention of

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obeying the proper rules and maintaining the decorum of the Court. Instead, the court, by means of judicial fiat, caused Nathan Seim, the counsel of Shasteen's choice, to by physically removed from the courtroom before she (the judge) ever entered. Nathan Seim was accosted, lifted up, and physically removed by force, without reasonable suspicion that a crime was underway, and without probable cause for an arrest. In fact, Nathan Seim was never arrested or charged.

Shasteen believed that it was vital to his defense to seek whatever assistance he could trust, and that if he decided to be assisted by either licensed or unlicensed Counsel, he had every Right to do so. If Shasteen believed that a combination of both may have been to his advantage, to deny him this Right constitutes an unreasonable and arbitrary interference with his defense, by denying him his fundamental Rights freely to associate with whom he chooses; to freedom of speech; to freedom to Petition for Redress of Grievances; and his religious Right of conscience and freedom of choice, without which religion is worth but little.

Surely, we cannot have special laws for attorneys and special grants of privilege to them as a class when these very same privileges are denied all other citizens. The Constitutional prohibition against titles of nobility in Article I, Section 9, clause 7, is violated when "attorney" becomes a title of special privilege, i.e. "nobility." We must all have equal access to the Courts. Presently, only those attorneys have access to the Courts whom the Courts approve and, as a result, all "approved" attorneys are considered Officers of the Court.

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Where does the defendant go who does not wish to be defended by an Officer of the Court? To use the power of the Court to force the defense into using an officer of the Court at the defense table offends the sensibilities of the Defendant to the very core. Defendant may wish voluntarily to select an attorney among his Counsels, but this Defendant believes that he should not be forced to do so. Shasteen simply sought freedom of choice in the matter of whether he had no Counsel and represented himself, or used licensed legal Counsel (attorney), mixed Counsel (attorneys and laymen) or lay Counsel only.

The "stealthy encroachment" upon Defendant's Right to a Counsel who is not licensed by the Bar is the result of a monopoly of the legal establishment, both in and out of government, State and Federal, to "protect" their "price fixing"; to maintain artificially high legal fees; to educate the chosen few in law schools maintained largely at public expense; to protect attorneys from competition from those who know that certain attorneys have obstructed the Constitution and left the People at the mercy of a swarm of bureaucrats with endless attorney-promoted regulations and laws which make "crimes" out of the exercise of natural and Constitutionally protected Rights, wherein the attorney-controlled government can prosecute the Sovereign Citizen and force him into the waiting, outstretched arms of his attorney "brotherhood," who will "advise" and "defend" him for a considerable fee.

Legal fees come too high for many average Citizens. Yet, the same average Citizen cannot turn to laymen who may be well versed in the necessary legal area, and

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this restricts the Courts to attorneys and those who can afford them. Laymen who cannot afford attorneys must suffer along as best they can. It is as unjust a system of justice as one could conjure up. Of course, some persons may qualify for a Public Defender. That is like being alone in a pit of cobras, and someone comes along and wants to throw in another cobra. Under those circumstances, what is needed is a mongoose (read "Counsel of Choice"), not another cobra. Perhaps the STAR CHAMBERS weren't so bad after all.

THE RIGHT TO FREEDOM OF SPEECH

Defendant has not only the Right to speak for himself, but also to speak through whom he pleases. This is inherent in the First Amendment Right to freedom of speech. It is also self-evident as a part of the Natural Rights Doctrine. Those Rights which are called inherent and inalienable are outlined in the Declaration of Independence, which antedates all government. They are natural or God-given, rather than government-given, rights. Defendant points out that he does not claim any "attorney-given" rights, but demands that his God-given, Natural Rights not be infringed upon.

This fundamental Right of freedom of speech has been referred to previously, but Defendant wishes to set it out separately to emphasize it to the Court, and herein refers again to *United Mine Workers v. Illinois Bar Association supra, NAACP v. Button supra,* and the *Brotherhood of Railroad Trainmen v. Virginia State Bar supra* in support of said Right.

It is indicative that the words in the First Amendment embrace freedom "of" speech, and not just freedom "to" speak, and while Defendant does not wish to prolong

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this Brief by a detailed discussion of the difference between the two terms, he simply wishes to bring to the Court's attention that there is a difference, and that its application is obvious.

Use of the single word "expression" to reach speech, press, petition, association, and the like, raises the central question of whether the free speech clause and the free press clause are coextensive; does one perhaps reach where the other does not? It has been much debated, for example, whether the "institutional press" may assert or be entitled to greater freedom from governmental regulations or restrictions than are non-press individuals, groups, or associations. Justice Stewart has argued: "That the First Amendment speaks separately of freedom of speech and freedom of the press is no constitutional accident, but an acknowledgment of the critical role played by the press in American society. The Constitution requires sensitivity to that role, and to the special needs of the press in performing it effectively." *Houchins v. KQED,* 438 U.S. 1, 17 (1978) (concurring opinion). *Also see First National Bank of Boston v. Bellotti,* 435 U.S. 765, 798 (1978) (Chief Justice Burger concurring).But as Chief Justice Burger wrote: "The institutional press had no special privilege as the press."

The press is not entitled to treatment different in kind from the treatment any other member of the public. *Branzburg v. Hayes,* 408 U.S. 665 (1972) (grand jury testimony be newspaper reporter); *Zurcher v. Stanford Daily,* 436 U.S. 547 (1978) (search of newspaper offices); *Herbert v. Lando,* 441 U.S. 153 (1979) (defamation by press); *Cohen v. Cowles Media Co.,* 501 U.S. 663 (1991) (newspaper's breach of promise of

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confidentiality). *Houchins v. KQED,* 438 U.S. 1 (1978), and *id.* at 16 (Justice Stewart concurring); *Saxbe v. Washington Post,* 417 U.S. 843 (1974); *Pell v. Procunier,* 417 U.S. 817 (1974); *Nixon v. Warner Communications,* 435 U.S. 589 (1978). **The trial access cases, whatever they may precisely turn out to mean, recognize a right of access of both public and press to trials.** *Richmond Newspapers v. Virginia,* 448 U.S. 555 (1980); *Globe Newspaper Co. v. Superior Court,* 457 U.S. 596 (1982); E.g., *Miami Herald Pub. Co. v. Tornillo,* 418 U.S. 241 (1974); *Landmark Communications v. Virginia,* 435 U.S. 829 (1978). *See also Zurcher v. Stanford Daily,* 436 U.S. 547, 563-67 (1978), and *id.* at 568 (Justice Powell concurring); *Branzburg v. Hayes,* 408 U.S. 665, 709 (1972) (Justice Powell concurring).

In this case, both Nathan Seim and Gavin Seim, having notified the court in advance of their intent to make a video record of the trial, were denied that right, while at the same time, Judge McCauley allowed for the Wenatchee Daily World to video the same event. This is impermissible discrimination and the denial of equal protection.

The right of association is derivative from the First Amendment guarantees of speech, assembly, and petition, although it has at times seemingly been referred to as a separate, independent freedom protected by the First Amendment. *Bates v. City of Little Rock,* 361 U.S. 516, 522-23 (1960); *United Transportation Union v. State Bar of Michigan,* 401 U.S. 576, 578-79 (1971); *Healy v. James,* 408 U.S. 169, 181 (1972); *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449, 461, 463 (1958); *NAACP v. Button,* 371 U.S. 415, 429-30 (1963); *Cousins v. Wigoda,* 419 U.S. 477, 487 (1975); *In re*

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Primus, 436 U.S. 412, 426 (1978); *Democratic Party v. Wisconsin,* 450 U.S. 107, 121 (1981).

"[T]he efficacy of litigation as a means of advancing the cause of civil liberties often depends on the ability to make legal assistance available to suitable litigants." *In re Primus,* 436 U.S. 412, 431 (1978). "**[C]ollective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment.**" *Id.* at 426.

"There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. *Kusper v. Pontikes,* 414 U.S. 51, 56-57 (1973). "[A]bstract discussion is not the only species of communication which the Constitution protects; **the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion.** *NAACP v. Button,* 371 U.S. 415 (1963).

DENIAL OF FREEDOM OF COUNSEL RESULTED IN A CONFLICT OF INTEREST

Shasteen's request for the Court to recognize his Right to non-attorney Counsel in lieu of, or in addition to, attorney counsel, would mean that the Court would have to rule during trial on a motion regarding Defendant's Right to non-attorney assistance, including that of assistant spokesman.

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The court has a duty to present itself as unbiased. In an adjudicatory setting, impartiality and lack of bias are required of decision makers. *Harris v. Hornbaker,* 98 Wn.2d 650, 656-7, 658 P. 2d 1219 (1983); *citing Fleming v. Tacoma,* 81 Wn.2d 292, 502 P.2d 327 (1972). In *Smith v. Skagit County,* 75 Wn.2d 715, 739, 453 P.2d 832 (1969), Washington's Supreme Court said:

[W]henever the law requires a hearing of any sort as a condition precedent to the power to proceed, it means a fair hearing, a hearing not only fair in substance, but fair in appearance as well.... Where the law expressly gives the public a right to be heard ... the public hearing must, to be valid, meet the test of fundamental fairness, for the right to be heard imports a reasonable expectation of being heeded. Just as a hearing fair in appearance but unfair in substance is no fair hearing, so neither is a hearing fair in substance but appearing to be unfair. *Fleming v. Tacoma,* 81 Wn.2d 292, 296, 502 P.2d 327 (1972).

DENIAL OF NON-ATTORNEY COUNSEL VIOLATED CIVIL RIGHTS

Denial of Defendant's desire for a non-attorney of his choice is also a deprivation of his Civil Rights under color of law, in violation of Defendant's fundamental Rights as protected by 42 U.S.C. 1983, 1985, and 1986. *See Owens v. The City of Independence.*

Any denial of Counsel is an attempt to accomplish that which is specifically prohibited by the Sixth Amendment. The Right recognized therein says nothing about only "court-approved counsel," and that fundamental Right is in no way qualified or limited.

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The U.S. Supreme Court held in *Miller v. Milwaukee,* 272 U.S. 713, 715, that if a statute is part of an unlawful scheme to reach a prohibited result, then "... the statute must fail ...." This was again upheld in *McCallen v. Massachusetts,* 279 U.S. 620, 630. Legislators, whether Federal or State, may not restrict the Courts to attorneys only in order effectively to deny Counsel to any Defendant who evinces a desire to be represented or assisted by a "friend" in preference to a licensed "attorney." What cannot be done by the front door cannot be lawfully done by way of the back door.

Legislators who pass laws do not have to be attorneys, nor do those who execute the law, i.e. Sheriffs, Governors, Presidents, etc. Even the Justices of the U.S. Supreme Court need not be licensed attorneys. To exclude the People from defending their "friends" in the Courts turns said Courts into a playground for the legal establishment, and is a blatant violation of the Defendant's fundamental Right to Counsel of choice, due process of law, and equal protection under the law.

Justice Brandeis said:

> Discrimination is the act of treating differently two persons or things under like circumstances. *National Life Insurance Co. v. United States,* 277 U.S. 508, 630.

As far back as 1886, the U.S. Supreme Court was concerned with the unjust and illegal discriminations which were running rampant. The Court frowned upon law administered with an "unequal hand":

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... so as practically to make unjust and illegal discrimination between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution. *Yick Wo v. Hopkins supra.*

Therefore, the Courts cannot be the exclusive territory of a legal "elite corps," but must be open to all the Sovereign People alike -- on an equal basis, providing due process of Law and equal protection under that Law.

The Ninth and Tenth Amendments also prohibit the denial of Counsel of choice. Nowhere has Defendant or his predecessors delegated such restrictive powers to the United States or to any of the Union states, and if the Court will closely examine the Ninth and Tenth Amendments, it will find that the Right to Counsel of choice, such as Defendant herein claims, is also secured in the penumbra of these Amendments, particularly the Ninth Amendment, which is protected in the states. *Roe v. Wade,* 41 L.W. 4213 (1973); *Shapiro v. U.S.,* 641, 394 US 618 (1966); *Griswold v. Connecticut,* 381 U.S. 479 (1964).

Speaking of controlling Constitutional law, as opposed to mere statute law, Chief Justice Marshall said:

> Those then, who controvert this principle, that the Constitution is to be considered in court as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the Constitution and see only the law.

And the Court concluded that:

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This doctrine would subvert the very foundation of all written constitutions. *Marbury v. Madison,* 5 U.S. 137, 176

The United States Supreme Court also pointed out in this decision that, in declaring what should be the supreme law of the land, the Constitution itself was first mentioned and "... not the laws of the United States generally ...."

The attorneys who sit in our State legislatures and in our Congress have no right to pass laws which infringe upon, or abolish, our fundamental Rights under the Constitution for the United States of America, as lawfully amended, and such unconstitutional laws which purport to do so must be declared null and void and not binding upon the Courts. *See Miranda v. Arizona supra,* at 491.

By affording a right to assistance of counsel, the Founders specifically meant to reject the English practice of prohibiting felony defendants from appearing through counsel except upon debatable points of law that arose during trial. After the Glorious Revolution in England (1688), Parliament passed a statute allowing those accused of treason to appear through counsel. The Framers clearly meant to extend the right to be heard through counsel to cases of felony as well as treason.

The constitution was adopted in 1789, yet the first state bar association was created for decades thereafter. New York claims to be the oldest, and they began in 1876. Therefore, the constitution did not cognize at its adoption the notion of a bar member being the only person who could advise the defendant. The right to counsel for a felony charge has been held applicable against the states in *Gideon v. Wainright,* 372 U.S. 335,

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83 S.Ct. 792. The right to counsel for a misdemeanor charge has been held applicable against the states in *Argersinger v. Hemlin,* 407 U.S. 25, 92 S.Ct. 2006). The existence of this right goes from the time that judicial proceedings have been initiated against the accused, whether by way of formal charge, preliminary hearing, indictment, information, or arraignment through to sentencing and appeal. *Brewer v. Williams,* 430 U.S. 387, 97 S.Ct. 1232; *Mempa v. Rhay,* 389 U.S. 128, 88 S.Ct. 254; *Douglas v. California,* 372 U.S. 353, 83 S.Ct. 814.

The court caused Shasteen's advisor to be physically removed from the courtroom against his wishes, which caused an uproar before the jury. The court then went on to deny defendant the opportunity to make a video of the proceedings, although the court approved of others in the courtroom to make videos of the proceedings. Upon the objection of Gavin Seim, the court then orchestrated the arrests of Gavin Seim and Grant Seim, Jr. in front of the jury that would then be empaneled to determine the guilt or innocence of Tell Shasteen.

Prior to the return of Gavin Seim to the courtroom, Judge McCauley had already violated the First, Fourth, Fifth and Sixth Amendments to the United States Constitution, was in violation of 42 U.S.C. §1983, and had engaged in direct violation of Judicial Canons, and state criminal laws, including RCW Official Misconduct, and Assault.

CONCLUSION

All of the actions of Gavin Seim thereafter were in defense of self and the defense of others. All actions giving rise to the events that resulted in his arrest began with the *sub*

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rosa decision of Judge McCauley, off the record, and off the bench to deny Shasteen his counsel of choice, and to then remove Nathan Seim by force from the courtroom. Nathan Seim was neither charged nor arrested.

Gavin Seim entered the courtroom thereafter. The court also rule *sub rosa* that Shasteen would not be allowed to make a video record notwithstanding his prior written notice, and that the Wenatchee Daily World would be allowed to make a video record, violating the constitutionally protected rights enumerated and articulated above. Seim's arguments thereafter were made in contravention to the official misconduct underway by Judge McCauley, who with the intent to deprive Shasteen of the lawful rights described above, intentionally committed unauthorized acts under color of law, and intentionally refrained from performing the duty imposed upon her by law and by her oath to uphold the constitutions of the United States and the state of Washington.

Judge McCauley was therefore in the commission of a gross misdemeanor as prescribed in Public Law 2011 c 336 § 408; 1975-'76 2nd ex.s. c 38 § 17; 1975 1st ex.s. c 260 §9A.80.010, as codified as RCW 9A.80.010, and Gavin Seim was at all material times acting in defense of himself and his rights, and in defense of Shasteen, who rights to due process were being trampled before the very jury Judge McCauley would use to convict him.

Gavin Seim has tendered the defenses of self -defense and the defense of others, both lawful defenses under the Constitution of the United States, and the Constitution of the State of Washington and applicable statutes and public laws articulated thereunder.

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Under these conditions and based on the foregoing, this court is required to dismiss the charges against Gavin Seim.

Respectfully submitted this 3rd day of March, 2015.

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