

MIAMI LAWYER MILTON HIRSCH BEGINS TERM AS CIRCUIT COURT JUDGE

Call for Miami residents and the press to be vigilant.

January 4, 2011 (Miami, FL) - This week, criminal defense lawyer **Milton "Milt" Hirsch** begins his term as judge in the Eleventh Judicial Circuit Court in Miami-Dade County, Florida. He was never elected judge. He was not chosen by the people. He obtained this position in large part because of his professional and financial influence that kept other candidates from running against him. Therefore, the public, especially the local media, must keep a watchful eye on his performance on the bench. Hirsch's legal ability and ethics may not be as stellar as some individuals in the community claim.

Describing Hirsch during the 2007 corruption trial of former Broward County Commissioner **Keith Wasserstrom**, a local reporter wrote, "He showed his ability that all great hucksters must possess...The shameless Hirsch stood in the courtroom as you could easily imagine him on the side of the road selling snake oil to a rapt crowd...The jury pool was soon eating out of his hand." ("Judge and Jury," Broward/Palm Beach New Times, 9/13/07). However, by the end of trial, the jurors saw right through his charade and convicted Wasserstrom.

Sean Casey, a former project manager at the Miami-based Inter American Press Association (IAPA), had also been lured by Hirsch's self-professed legal prowess. Casey hired Hirsch in 2001 when he faced charges from a fatal traffic accident in Miami Beach. "It took me a long time to realize he had me fooled, too. I trusted him. I thought he was the best," Casey said in a recent interview. Casey learned the hard way that Hirsch was not the excellent lawyer he sold himself to be.

There were serious issues of police misconduct during the investigation shortly after the accident that led to Casey involuntarily signing a pre-*Miranda* consent to search, which resulted in Casey's arrest. Hirsch filed a motion to suppress any evidence obtained by the police as a result of their illegal conduct and the consent waiver.

During a hearing before circuit court judge **Daryl E. Trawick**, prosecutors called three police officers to the stand. They denied any wrongdoing. Although Hirsch cross-examined these witnesses, he neglected to introduce any evidence whatsoever to discredit them as he was required to do by Florida law.

Rule 3.190(g)(3) of the Florida Rules of Criminal Procedure reads, "If the court hears the motion [to suppress] on its merits, *the defendant shall present evidence supporting the defendant's position* and the state may offer rebuttal evidence."

Hirsch presented absolutely no evidence that was readily available to support the allegations of police misconduct made in his own motion to suppress. This requirement is *mandatory*. Amazingly, Hirsch failed to follow this simple rule of evidentiary procedure.

A popular blogger on issues dealing with Miami's criminal justice system applauded Hirsch because Judge Trawick ultimately granted the suppression motion and, as a result, the case against Casey was practically thrown out. Prior to this ruling, prosecutor **Pat Dray** had written in an e-mail to a colleague at the Miami-Dade State Attorney's Office, "If the judge grants the motion we will not have a case." (E-mail from Pat Dray, 12/5/01).

The blogger went on to add, "For those of you debating Milt Hirsch's performance in this case, it was brought to my attention that Milt was able to see a novel issue and actually obtained an order of suppression in this case." ("Milt Hirsch Dust Up," [Justice Building Blog](#), 7/29/09).

First, seeking suppression of evidence obtained illegally by police is not a "novel" issue. Attorneys do this every day in courtrooms throughout the country. Second, the blogger neglects to mention (or perhaps is unaware) that although Judge Trawick found the police were not credible during their testimony when they tried to hide their misconduct and granted the suppression motion without Hirsch having presented any evidence to support the motion, the appeals court *reversed* this decision six months later precisely because Hirsch failed to present any evidence at the suppression hearing. *See State v. Casey*, 821 So. 2d 1187 (Fla. 3d DCA 2002). Hirsch failed to abide by basic court requirements and evidentiary rules - the bread and butter of any trial practitioner.

What is even more troubling is that there was plenty of evidence for Hirsch to have introduced at the suppression hearing. Hirsch mentioned this evidence in his own motion to suppress. However, any competent attorney knows that it is not enough to merely allege evidence in a motion; it must be introduced in court at a hearing and the rules of procedure *require* the defense to present this evidence if it intends to win.

Miami criminal defense attorney, **David S. Markus**, who would later represent Casey, remarked in court, "The lawyer in this case did not perfect the record...He didn't put on any evidence."

Essentially, Hirsch allowed a default to be entered against his client causing serious constitutional violations to stand in Casey's case. Despite Hirsch's alleged impeccable criminal law experience, this was a terrible and sophomoric mistake. This was attorney malpractice at his client's expense. Casey would not be serving a 12.5-year prison sentence right now had Hirsch simply abided by the rules of evidence at the suppression hearing.

Hirsch's misconduct does not end here. After the reversal of the suppression order, Hirsch then allegedly told Casey to disappear to avoid trial.

In November 2003, Hirsch asked Casey to come to his Dadeland office. This is when Casey alleges Hirsch first told him to flee the country. In support of Casey's allegation is a letter Casey sent Hirsch by fax the day after this meeting indicating that he appreciated Hirsch's "candor" but that he was not going to act on Hirsch's *advice to flee*. "I have worked too hard to just throw my life away and start a new one...I am in this for the long haul and can only hope and pray that you will continue to work to the best of your ability in my defense," Casey pleaded. (Letter to Milton Hirsch, 11/21/03).

Hirsch had every opportunity to respond to Casey's letter to deny he ever gave such advice or to correct Casey if he misunderstood what Hirsch told him, but instead Hirsch told Casey to meet with Miami therapist **Dr. Michael E. Rappaport** of the psychology practice *Behavior Changers*.

According to media reports and testimony provided by Casey and his mother (available in the court record), both Hirsch and Rappaport felt that Casey would not survive prison as a young, professional, gay man who had never been in trouble in his life. Hirsch expressed his concern about Casey's fate and, although he believed in Casey's innocence, he also knew that there was a possibility that Casey could be convicted on the circumstantial evidence that would have remained suppressed had it not been for his own negligence and that Casey could be sent to prison for a very long time. He described state prison as a dangerous place with only big strapping men and wished Casey would disappear to avoid any chance of going there.

Rappaport, in turn, told Casey he would have nobody to protect him in prison and that he would be constantly harassed by intolerant and homophobic prison guards and inmates. He told Casey he would be better in a foreign country; Hirsch specifically recommended Argentina. Rappaport told Casey that he knew that Hirsch was going to make up a story on the day Casey did not show up in court. He said Hirsch would tell the judge that he thought Casey was dead so that nobody would be looking for him. In addition, Hirsch told Casey's mother that he would personally contact the bail bondsman to make sure he made no effort to find Casey.

Some of these conversations were secretly recorded. However, at the request of prosecutors, the recordings were sealed by circuit court judge **John W. Thornton, Jr.** and are not available for public disclosure. Casey is also unable to reveal the specific contents of the tape recordings per court order.

"The truth is on these tapes," Casey remarked frustrated with the justice system's intent to keep the tapes hidden.

Casey is not the only one who knows the truth, though. Following an evidentiary hearing in January 2007, during which Hirsch and Rappaport vehemently denied ever giving such advice, Miami criminal defense attorney, **Marcia J. Silvers**, sent a letter to Miami-Dade State Attorney **Katherine Fernandez Rundle**.

Silvers wrote, "During the hearing, [prosecutor] Gail Levine [who had confiscated and listened to the tape recordings before the hearing] repeatedly accused Mr. Casey of being a 'liar.' However, she necessarily had to have known that Mr. Hirsch and Rappaport were, in fact, the liars. This is a serious injustice...As a member of the bar and an officer of the Court, I cannot simply close my eyes to this blatant violation of ethics and the law." (Letter to Katherine Fernandez Rundle, 1/9/09). Silvers had listened to the tape recordings before they were sealed and knows Hirsch and Rappaport committed perjury.

Yet, Ms. Rundle has taken no action. Presumably, she does not want anyone to know that one of her senior prosecutors, **Gail Levine**, elicited false testimony in open court. She may also be concerned that her office would suffer retaliation from Hirsch once he became judge if they were

to pursue this matter.

Miami's journalists need to keep a watchful eye on Hirsch while he serves on the bench as circuit court judge. As is evident in his handling of Casey's case, Hirsch is not likely to follow court procedure or the law. He does not seem concerned about obstructing justice or committing perjury.

In the fiction novel, The Shadow of Justice, written by Hirsch and published by the American Bar Association in 2004, the main character, Clark Addison, is an exact likeness of Hirsch - a Miami transplant from Chicago who began his career at the Miami-Dade State Attorney's Office, then entered private practice as a criminal defense attorney, and finally became a circuit court judge. At the end of the story, Judge Addison discovers his best friend and fellow lawyer, Blackjack Sheridan, committed a serious crime. Instead of having Blackjack arrested while in his chambers, Judge Addison allows him to leave knowing full well that he was certain to "disappear" to avoid prosecution, which he did.

This is Milt Hirsch. He thinks he is above the law and able to take justice in his own hands. This is alarming especially now that he has officially been handed a black robe and gavel. The people in Miami must be vigilant.

For more information on Casey's case, please visit www.freeseancasey.org. Litigation is currently underway in the state and federal courts on Hirsch's misconduct alleged in this piece. A formal complaint has also been filed against Hirsch with The Florida Bar for possible violations of professional conduct.

[Source: The Free Sean Casey Campaign]