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SEAN CASEY  
D.C. #B03942  
New River Correctional Institution  
7819 N.W. 228<sup>th</sup> Street  
Raiford, Florida 32026

February 10, 2010

Mr. Jesse H. Diner, President  
The Florida Bar  
Rivergate Plaza, Suite M-100  
444 Brickell Avenue  
Miami, Florida 33131-2404

RE: ***Complaint against lawyer Milton Hirsch (The Fla. Bar No. 350850)***

Dear Mr. Diner:

Enclosed please find a formal complaint against Miami criminal defense attorney Milton Hirsch. The allegations and supporting facts and evidence will demonstrate that Mr. Hirsch has violated the Rules Regulating The Florida Bar.

Given the nature of the allegations and the fact that Mr. Hirsch is a candidate in this year's general election for circuit court judge for the Eleventh Judicial Circuit in and for Miami-Dade County, in Miami, Florida (Group 041), The Florida Bar should conduct a prompt and thorough investigation into these violations.

Since the actions by Mr. Hirsch fall well below ethical standards of lawyer conduct and, indeed, violate the law, the citizens of Florida will be better served knowing the results of The Florida Bar's investigation, which may include severe sanctions, before heading to the polls later this year.

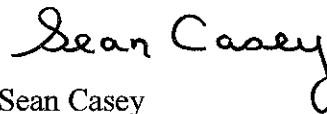
Furthermore, review of this complaint should be conducted *outside* of the Miami area to avoid potential bias. Roland Sanchez-Medina, candidate for President-Elect of The Florida Bar, and the following members of The Florida Bar Board of Governors for the 11<sup>th</sup> Circuit - Ramon A. Abadin, Ervin A. Gonzalez, Michael J. Higer, Dennis G. Kainen, Dori Foster-Morales, and David B. Rothman – should be *excluded* from any review of this complaint. Mr. Sanchez-Medina is Treasurer of the "Elect Milton Hirsch Campaign," Messrs. Abadin, Gonzalez, Higer, and Kainen have all made financial contributions to Mr. Hirsch's campaign account, and Ms. Foster-Morales will be hosting a campaign fundraiser for Mr. Hirsch at her law firm on February 11, 2010. Mr. Higer previously hosted a similar fundraiser for Mr. Hirsch on April 29, 2009. Also, Mr. Rothman was a partner in the law firm of *Thornton & Rothman, P.A.* with the Hon. John W. Thornton, Jr., the presiding judge in the case in which Mr. Hirsch committed the violations alleged in this complaint.

Another reason for conducting a review of this complaint *outside* of the 11<sup>th</sup> Circuit is because the following members of The Florida Bar Grievance Committees in this circuit have either contributed financially to Mr. Hirsch's campaign, form part of Mr. Hirsch's campaign committee, or have some other ties to Mr. Hirsch as explained above (names in bold indicate the committee's designated reviewer of complaints): Grievance Committee "A" – **Dennis G. Kainen**; Grievance Committee "C" – Antonio C. Castro, Barbara J. Riesberg; Grievance Committee "D" – **Dennis G. Kainen**, Beatriz A. Llorente, Angelica D. Zayas [Note: Ms. Zayas is the prosecutor assigned to the case in which Mr. Hirsch committed the violations alleged in this complaint]; Grievance Committee "E" – **Ramon A. Abadin**; Grievance Committee "G" – **David B. Rothman**, David M. Buckner, Hector L. Flores; Grievance Committee "I" – **Ramon A. Abadin**; Grievance Committee "J" – **Ervin A. Gonzalez**, Antonio Hernandez; Grievance Committee "K" – **Dori Foster-Morales**; Grievance Committee "L" – **David B. Rothman**, Faith Mesnekoff; Grievance Committee "M" – **Michael J. Higer**; and Grievance Committee "N" – **Dori Foster-Morales**, Rosa Naccarato.

The participation of these individuals in the grievance process would not be a fair and impartial investigation into this complaint and would go against the mission of The Florida Bar.

Thank you in advance for your attention to this serious matter.

Sincerely,



Sean Casey

Cc: Jesse H. Diner, President, The Florida Bar, 1 Financial Plaza, Suite 1400, Fort Lauderdale, Florida 33394-0002  
Mayanne Downs, President-Elect, The Florida Bar, 25 E. Pine Street, Orlando, Florida 32801-2607  
John F. Harkness, Jr., Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300  
Kevin Marvin, Director of Lawyer Regulation, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300

# The Florida Bar Inquiry/Complaint Form

**PART ONE:**

Your name: <u>Sean Casey, DC #B03942</u>	Attorney's Name: <u>Milton Hirsch (No. 350850)</u>
Address: <u>New River C.I., 7819 NW 228<sup>th</sup> St.</u>	Address: <u>9130 S. Dadeland Blvd., Suite 1200</u>
City: <u>Raiford</u> State: <u>Florida</u>	City: <u>Miami</u> State: <u>Florida</u>
Phone: <u>904-368-3000</u> Zip Code: <u>32026</u>	Phone: <u>305-670-0077</u> Zip Code: <u>33156</u>
ACAP Reference No.: <u>None</u>	

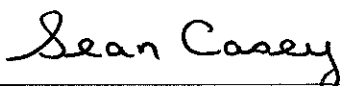
**PART TWO:** The specific thing or things I am complaining about are:

As explained in the "Supplement to The Florida Bar Complaint" (See attached), criminal defense attorney, Milton Hirsch (Fla. Bar No. 350850), violated the following Rules of Professional Conduct: (1) Mr. Hirsch counseled and encouraged his client, Sean Casey, to flee the country to avoid criminal prosecution and aided and abetted Mr. Casey's fugitive status in violation of Rule 4-1.2(d), Rule 4-8.4(a)-(c), and Fla. Stat. § 777.011; (2) Mr. Hirsch used his contacts and influence in the Miami criminal justice system to successfully move Mr. Casey's case from a randomly assigned judge to another judge in the Eleventh Judicial Circuit Court in violation of Rule 4-3.5(a) and Rule 4-8.4(e); (3) Upon Mr. Casey's return to this country, Mr. Hirsch continued to represent Mr. Casey despite suffering a conflict of interest, in violation of Rule 4-1.7(a)(2), affecting his independent professional judgment when he advised Mr. Casey to enter into a guilty plea with the State instead of following Mr. Casey's interest in proceeding to trial where Mr. Casey would have had an opportunity to reveal Mr. Hirsch's unethical and criminal conduct; and (4) Mr. Hirsch committed perjury during an evidentiary hearing in the circuit court, in violation of Rule 4-3.3(a)(1), Rule 4-8.4(a)-(c), and Fla. Stat. § 837.02, denying allegations that he advised Mr. Casey to flee the country; such conduct reflects adversely on Mr. Hirsch's trustworthiness and on the administration of justice. DISBARMENT is appropriate under Standards 4.31(a), 5.11(b) & (e), 6.11(a), and 6.31(b) of the Florida Standards for Imposing Lawyers Sanctions.

**PART THREE:** The witnesses in support of my allegations are: [contact information attached]

- |   |                                 |
|---|---------------------------------|
| 1. <u>Genevieve M. Casey</u>            | 5. <u>Thomas R. Julin, Esq.</u> |
| 2. <u>Patricio Gonzalez-Marin, Esq.</u> | 6. <u>Gary Moran, Ph.D</u>      |
| 3. <u>David S. Markus, Esq.</u>         | 7. <u>John Buchanan</u>         |
| 4. <u>Marcia J. Silvers, Esq.</u>       |                                 |

**PART FOUR:** *Under penalty of perjury, I declare the foregoing facts are true, correct, and complete.*


2-10-10  
 \_\_\_\_\_  
 Signature Date

**WITNESS LIST TO THE FLORIDA BAR COMPLAINT  
FILED BY SEAN CASEY**

NAME	TESTIMONY
<p>1. Genevieve M. Casey P.O. Box 1295 Pembroke, Massachusetts 02359 Tel: 781-294-8501 E-mail: gmc1646@yahoo.com</p>	<p>Complainant's mother. Participated in meetings with Hirsch and Rappaport on May 12 and 13, 2004, respectively. Has first-hand knowledge that Hirsch and Rappaport advised Casey to flee the country. Continued to receive advice from Hirsch while Casey was a fugitive. Will testify to averments made in Points 17-19, 23-24, 34, 37-38, 40, 47 &amp; 53 in the attached Supplement and in her sworn affidavit. (See attached A. 2).</p>
<p>2. Patricio Gonzalez-Marin, Esq. <i>Cáceres, Cortés, González &amp; Leva</i> Av. Apoquindo 3721, Of. 33 Santiago, Chile Tel: 56-2-263-2673 Fax: 56-2-321-7290 E-mail: pgm@cclabogados.cl</p>	<p>Complainant's immigration attorney in Chile. Sought Hirsch's assistance in keeping Casey in Chile so he would not return to the U.S. to appear in court. Will testify to the averments made in Points 25-26 &amp; 58(e) in the attached Supplement and in his letter to the state attorney. See Point 58(e) in the attached Supplement.</p>
<p>3. David S. Markus, Esq. Attorney-at-Law 1501 N.W. 14<sup>th</sup> Street Miami, Florida 33125 Tel: 305-545-0803 Fax: 305-545-0810 E-mail: dsmarkus@aol.com</p>	<p>Complainant's first post-conviction attorney. Filed motion alleging Hirsch's conflict of interest. Discovered tape recordings of Hirsch and Rappaport. Listened to the Hirsch tape and identified perjury in Hirsch's testimony at evidentiary hearing. See Points 20 &amp; 39-45 in the attached Supplement.</p>
<p>4. Marcia J. Silvers, Esq. Attorney-at-Law 2937 S.W. 27<sup>th</sup> Avenue, Suite 101 Miami, Florida 33133 Tel: 305-774-1544 Fax: 305-446-6150 E-mail: marciasilvers@aol.com</p>	<p>Complainant's second post-conviction and appellate attorney. Sought copies of the tape recordings that were confiscated by the state attorney and had them professionally transcribed. Sent letter to state attorney on Hirsch and Rappaport's perjury. (See attached A. 3). Obtained Hirsch's files and discovered other pieces of evidence indicating Casey's allegations are true. See Points 46-49, 53, 56-57 &amp; 59 in the attached Supplement.</p>

<p>5. Thomas R. Julin, Esq.  <i>Hunton &amp; Williams LLP</i>  1111 Brickell Avenue, Suite 2500  Miami, Florida 33131  Tel: 305-810-2516  Fax: 305-810-1601  E-mail: tjulin@hunton.com</p>	<p>Complainant's <i>pro bono</i> counsel opposing State's motion to seal tape recordings. Can testify that the description of pending litigation to unseal the tape recordings and transcripts of the tape recordings provided in Points 20 &amp; 51-55 in the attached Supplement is true and accurate.</p>
<p>6. Gary Moran, Ph.D  <i>Juritactics</i>  11530 S.W. 80<sup>th</sup> Street  Miami, Florida 33173  Tel: 305-348-3374  E-mail: blueagle40@aol.com</p>	<p>Expert jury specialist hired by Hirsch in lower court case no. F01-07975. Will testify that statements made in Point 8 in the attached Supplement are true and accurate.</p>
<p>7. John Buchanan  <i>Dynamic Accident Reconstruction</i>  P.O. Box 560444  Miami, Florida 33256  Tel: 305-345-5762  E-mail: jwb@dynamicrecon.com</p>	<p>Expert accident reconstructionist hired by Hirsch in lower court case no. F01-07975. Will testify that statements made in Point 38 in the attached Supplement are true and accurate.</p>

## **SUPPLEMENT TO THE FLORIDA BAR COMPLAINT FILED BY SEAN CASEY**

### **STATEMENT OF FACTS**

**I. Attorney counseled and encouraged client to flee the country to avoid criminal prosecution and aided and abetted client's fugitive status in violation of Rule 4-1.2(d), Rule 4-8.4 (a)-(c), and Fla. Stat. § 777.011.**

(1) On March 11, 2001, Sean Casey was arrested and charged by Information in Case No. F01-07975 with DUI manslaughter, vehicular homicide, and leaving the scene of an accident with death stemming from a traffic accident in Miami Beach, Florida.<sup>1</sup> Casey was released on bond the following day.

(2) Shortly thereafter, on March 13, 2001, Casey hired criminal defense attorney Milton Hirsch. Hirsch entered a plea of not guilty on Casey's behalf at the arraignment.

(3) Based on reports of private investigators hired by Hirsch and Casey's narrative of events, Hirsch identified serious Fourth Amendment violations resulting from police misconduct that occurred before, during, and after Casey's arrest. Hirsch subsequently filed a series of motions to suppress evidence illegally obtained by the police.

(4) An evidentiary hearing on the motions to suppress was held on October 10, 2001. (Transcript can be found at [www.freeseancasey.org](http://www.freeseancasey.org), hereinafter referred to as "Website," in Exhibit 1). At the hearing, the State presented testimony of three police officers who were involved in the interactions with Casey on the day of the arrest. Hirsch cross-examined these witnesses and rested his case without calling Casey to the stand.

(5) On December 28, 2001, the Hon. Daryl E. Trawick granted the motions to suppress. The written suppression order entered on January 9, 2002, explained, "This Court personally presided over the suppression hearings, and paid close attention to the testimony, demeanor, and credibility of the witnesses. What is particularly troubling to the Court is not only that the police officer witnesses were less than candid in their dealings with the defendant, but also that they were less than candid in their testimony before the Court...[T]he story told by the police officer witnesses was simply not credible." (Website, Exhibit 13).

(6) Before this ruling, Assistant State Attorney Pat Dray had written in an e-mail (available upon request) to a colleague that "[i]f the Judge grants the motion [to suppress] we will not have a case." Therefore, the State appealed the suppression order.

(7) On July 24, 2002, the Third District Court of Appeal of Florida reversed the suppression order. The court found that Judge Trawick had to accept the testimony of the police officers

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<sup>1</sup> Please visit [www.freeseancasey.org](http://www.freeseancasey.org) for background information and details on this case.

because the defense put on no testimony that “impeached, discredited, controverted” their testimony. *State v. Casey*, 821 So. 2d 1187 (Fla. 3d DCA 2002). (Website, Exhibit 18).

(8) On August 6, 2003, Casey met with Hirsch and jury specialist Dr. Gary Moran in Hirsch’s office. Before starting the meeting, which was to discuss trial preparations, Dr. Moran mentioned that he had recently returned from vacation in Argentina, fell in love with the country, and was considering retiring there. At that moment, Hirsch turned to Casey and said, “You should think about moving there, too.” Casey did not believe Hirsch was being serious and brushed off the comment. Casey wanted to proceed to trial and never even considered fleeing the jurisdiction.

(9) A few months later, on November 20, 2003, Casey met with Hirsch, at Hirsch’s request, for a private meeting on what Casey assumed would be an update on his case. At the meeting, Hirsch explained that he was concerned that Casey could be found guilty at trial and could be sent to prison for a lengthy prison sentence. Hirsch then told Casey that he would not survive prison. Hirsch described Casey as a “fragile, blond hair, pale complected, blue-eyed homosexual man.” (Website, Exhibit 14 at p. 129). Hirsch reminded Casey that Judge Trawick was allowing Casey to retain his passport and travel outside the country, which was an essential part of his work as project administrator of the Miami-based Inter American Press Association (IAPA). Hirsch suggested that Casey take advantage of this opportunity and flee the country to avoid prosecution. He expressed his belief that Casey was being unfairly prosecuted and considered the Third District’s decision to reverse the suppression order a mistake. Hirsch knew Casey spoke Spanish and felt comfortable in his travels to South America. He even suggested Casey relocate to Argentina and mentioned the recent economic crisis in that country that made it a very affordable place for Americans.

(10) Casey was very distraught when he left the meeting with Hirsch. He sensed that his attorney had given up on his case. He also thought for the first time that he needed to take Hirsch’s advice seriously since it was coming from a highly-respected attorney and knew that Hirsch was taking a big risk by offering such advice.

(11) Nonetheless, the very next day, on November 21, 2003, Casey sent Hirsch a letter by fax (See attached A. 1. Complete copy of letter with attachments at Website, Exhibit 19) in which he wrote that he appreciated Hirsch’s “candor” during the meeting the day before but that he had “no intention of fleeing” and was not going to act on Hirsch’s advice to do so.

(12) A few days later, Casey received a telephone call from Hirsch’s secretary, Teresa Escobar, who told him that Hirsch wanted him to make an appointment with Dr. Michael E. Rappaport of the psychology practice *Behavior Changers* in Miami. Casey had met with Rappaport, who counsels defendants facing criminal prosecution, on a weekly basis, at Hirsch’s insistence, from May 2001 until January 2002 when Casey decided to stop the sessions because they were expensive and he was not getting anything out of them except for updates on his case, which he thought he should be getting from his attorney whom he had already paid.

(13) In late December 2003, Ms. Escobar called Casey once again to ensure he had made an appointment with Dr. Rappaport.

(14) Casey reluctantly met with Rappaport on January 29, 2004. Rappaport began the meeting by explaining that he knew Casey met with Hirsch in November. He told Casey that Hirsch was limited by ethical standards as far as the extent of the advice that he could give but that he (Rappaport) was not. [Although, Hirsch actually *did* cross the ethical line and directly and overtly advised Casey to flee at that November meeting.] Rappaport then explained that he was there to convey the message from Hirsch that Casey should flee the country. He went into enormous detail on how to be a fugitive and assured Casey that nobody would be looking for him. Rappaport explained that Judge Trawick would actually understand and that the judge returned the passport to Casey to allow him to flee. He said that Hirsch would cover up Casey's flight on the day Casey did not appear in court by telling the court that he thought Casey could be dead. Rappaport insisted that Casey had to flee to save his life because he would not survive a day in state prison as a gay male. Casey was unaware of Rappaport's history of manipulating patients and Rappaport's criminal past.<sup>2</sup> [Note: Casey is filing a separate complaint against Rappaport with the Florida Department of Business and Professional Regulation in Tallahassee.]

(15) During court appearances in the spring of 2004, Hirsch would act surprised to see Casey and made comments, such as, "I wasn't expecting you to show up" and "I heard the weather in Argentina is nice this time of year." Casey responded that he needed more time and Hirsch assured him that he would try his best to push the trial date until the fall.

(16) On March 8, 2004, Hirsch sent Casey a letter (available upon request) with intimidating language describing "the final nail in Sean's coffin." On March 14, 2004, Hirsch sent Casey another letter (available upon request) with a newspaper article about an individual with similar charges being sentenced to an extremely long prison term. These letters served no purpose other than to convince Casey that he needed to finally act on Hirsch's advice to flee.

(17) Casey had discussed with his mother, Genevieve Casey, the advice he was receiving from both Hirsch and Rappaport and she was not comfortable with this advice. Casey arranged a meeting between Casey, his mother, and Hirsch on May 12, 2004, and between Casey, Rappaport, and his mother on May 13, 2004.

(18) As expected, during the meeting with Hirsch, he was much more cautious in giving the advice to flee in the presence of Mrs. Casey as he had been when he met privately with Casey on

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<sup>2</sup> Dr. Michael Rappaport has been "harshly criticized" for using techniques "leaving [his patients] vulnerable to his suggestions," such as when he threatened Illeana Fuster, a defendant in the famous "Country Walk" case in Miami in 1985, that she would be sent to prison and not survive there if she did not testify against her husband. To date, Ms. Fuster still claims her husband is innocent and that she was manipulated by Rappaport to testify against him. Previously, Rappaport had spent six months at Ft. Leavenworth Military Prison for coercing his patients into using drugs and engaging in sex acts with him while he was a U.S. Air Force psychologist. According to a local newspaper, "it is rather unsettling that prominent criminal defense attorneys like Milton Hirsch would refer clients to a therapist with some very serious problems in his past." (Read article by New Times reporter Francisco Alvarado, "Air Force Booted Sean Casey's Therapist for Seducing Female Patients," Aug. 19, 2009, found on Website, under "News.")

November 20, 2003, but he did comment that he wished that he could “make Sean disappear to get out of harm’s way” and that Casey would not make it in prison. At the end of the meeting, as Hirsch walked Mrs. Casey and her son out to the office reception area, Hirsch whispered to Mrs. Casey, “Just put him on a plane to Argentina.” (See attached A. 2, Website, Exhibit 21 & Exhibit 14 at p. 80).

(19) The following day, Rappaport was just as explicit in the presence of Mrs. Casey as he had been with Casey privately on January 29, 2004. Rappaport started the conversation by suggesting that Casey flee the country, that nobody would be looking for him, and that he knew Hirsch was going to cover up Casey’s flight when he failed to appear in court. Rappaport told Mrs. Casey that if Casey did not flee, she would “lose” her son.

(20) Miami attorney David S. Markus, who would later represent Casey, discovered tape recordings of these May 12 and 13, 2004 meetings with Hirsch and Rappaport. These recordings were confiscated by the State from Markus and are currently in the court file under seal at the Third District Court of Appeal where appeals are underway by Casey (Third DCA Case No. 3D09-2555) and Mr. Thomas R. Julin, partner in the law firm of *Hunton & Williams* and chair of The Florida Bar Media and Communications Law Committee, who is representing the *San Francisco Bay Guardian* newspaper in an effort to unseal these judicial records (Third DCA Case No. 3D09-2540). The Florida Bar may request access to these tape recordings by filing a motion to unseal for the limited purpose of conducting an investigation into this complaint.

(21) On May 19, 2004, only days after the meetings with Hirsch and Rappaport, Casey traveled to Chile. As an undergraduate at Georgetown University, Casey spent a semester abroad in Chile in the early 90s.

(22) On September 10, 2004, Casey failed to appear in court and Hirsch did exactly as Rappaport said he would; Hirsch told the prosecutor that he thought Casey was “severely injured, hospitalized or perhaps dead.” (Website, Exhibit 14 at p. 113). A warrant was issued for Casey’s arrest.

(23) Shortly thereafter, on September 30, 2004, Casey’s bail bondsman, Russell Walters, left a message on the answering machine at the residence of Casey’s mother (Tape recording available upon request) asking her to return his call. Instead of calling Walters, Mrs. Casey called Hirsch who said that he would call Walters personally and make sure nobody would go searching for her son. He instructed her to pay the outstanding bail. Hirsch told Mrs. Casey “not to worry.” He assured her that “nobody would be looking for Sean.” (See attached A. 2 & Website, Exhibit 21). Mrs. Casey did as Hirsch instructed. Mrs. Casey would maintain contact with Hirsch throughout Casey’s time as a fugitive. (Telephone records available upon request.)

(24) Meanwhile, on January 3, 2005, Casey applied for a permanent residency visa in Chile. His application was denied on July 14, 2005, because of the arrest warrant issued in Miami. Mrs. Casey contacted Hirsch for guidance. Hirsch criticized Casey for “not changing his name” and then advised Mrs. Casey that her son should hire an immigration attorney in Chile to fight deportation. Hirsch told Mrs. Casey that her son needed “to stay where he is” and that “[i]f he

comes back to the U.S. he will go to prison for a very long time.” (See attached A. 2 & Website, Exhibit 21).

(25) Casey did as Hirsch instructed and hired Chilean immigration attorney Patricio Gonzalez-Marin of the law firm of *Cáceres, Cortés, González & Leva* in Santiago, Chile. The scope of his representation was to appeal the deportation order issued by the Chilean Ministry of the Interior and obtain legal residency for Casey in Chile so he could stay in the country and exercise his legal rights if the United States were to make an extradition request through normal diplomatic channels, which the United States never did. In order to succeed, Gonzalez-Marin needed a sworn affidavit from Hirsch explaining that Casey had never been convicted of the charges against him. Gonzalez-Marin and Hirsch exchanged several e-mails between May and July 2006 (Website, Exhibit 29). Hirsch expressed his willingness to help “with great pleasure.” Hirsch sent a notarized copy of the court docket and two affidavits. (Website, Exhibit 22). Hirsch knew the purpose of the documents he was sending was to keep Casey in Chile and *not* for him to return to the United States to appear in court. (Website, Exhibit 30).

(26) On August 26, 2006, the appeal was denied and Casey was deported from Chile. A few days later, Casey was escorted to the airport by Chilean Immigration and placed on an overnight commercial flight to Miami. Casey was arrested upon arrival and charged with failure to appear in court while released on felony bond in Case No. F06-032696.

## **II. Attorney used his influence in violation of Rule 4-3.5(a) and Rule 4-8.4(e) to get client’s case reassigned to a different judge.**

(27) In the days after Casey’s return to the United States on August 31, 2006, Casey’s case was assigned to the Hon. Lawrence E. Schwartz. Judge Trawick was reassigned to the Civil Division in January 2006.

(28) Hirsch explained to Casey that he did not know Judge Schwartz personally and was not happy that this judge was handling the case. On September 5, 2006, during a court appearance before Judge Schwartz, Hirsch commented to Casey in the jury deliberation room that he wanted Judge Leonard E. Glick on the case. He said Judge Glick would be more “favorable” to Casey.

(29) According to an article in The Miami Herald on September 17, 2006 (Website, Exhibit 31), Hirsch had a cocktail party in his office that was attended by the administrative judge of the Eleventh Judicial Circuit Court in Miami, the Hon. Stanford Blake. Shortly thereafter, Casey’s case was reassigned to Judge Glick, the same judge Hirsch had commented earlier to Casey that he wanted on the case. (Website, Exhibit 32).

(30) Casey would later find out that Hirsch and Glick have a long personal friendship extending back to when both began their careers as prosecutors in the Miami State Attorney’s Office. Hirsch also contributed money to Judge Glick’s daughter’s campaign for circuit judge in 2008.

(31) Undoubtedly, Hirsch must have wanted a personal friend to handle this case who would “protect” him from his unethical conduct and criminal wrongdoings if they were to come to light.

**III. Attorney suffered a conflict of interest in violation of Rule 4-1.7(a)(2) by continuing to represent client when client wanted to proceed to trial and the attorney wanted to avoid trial where his client would have an opportunity to reveal the attorney's unethical and criminal conduct.**

(32) Within hours of Casey's arrival back to the United States, Hirsch and Rappaport obtained special access to the second floor holding cell area at Dade County Jail to meet with Casey. Hirsch told Casey that there was no need for him to find another attorney and that he was ready for trial. He even said that he would not charge Casey the \$25,000 fee as stipulated in the original fee agreement (Website, Exhibit 23) to represent him at trial. Hirsch insisted that everything would be fine, that the State would not be able to mention Casey's flight at trial, and that Casey should demand a speedy trial, which Hirsch already had prepared for Casey to sign. Casey followed Hirsch's instructions. Hirsch also advised Casey not to speak to anyone about what happened. Hirsch never discussed with Casey the new bail jumping charge and filed a Notice of Plea of Not Guilty on Casey's behalf without even consulting Casey.

(33) In the weeks leading up to trial, Casey was held at Metro West Detention Center in Miami without bail. He wrote Hirsch numerous letters inquiring about trial preparations. Hirsch never replied to a single letter and he never came to visit Casey. The only communication from Hirsch was a letter dated October 5, 2006 (Website, Exhibit 43), in which Hirsch explained that expert accident reconstructionist and former Miami-Dade traffic homicide detective, John Buchanan, "is very able to testify that you were not in the driver's seat at the time of the accident," which was the critical element the State needed to prove at trial.

(34) Trial was scheduled on October 17, 2006. Casey's mother called Hirsch's office inquiring about clothes for Casey to wear at trial. Hirsch's secretary advised her that Hirsch said, "He won't need any court clothes. He will be entering the courtroom in his orange Dade County Jail uniform." This was a telling sign that Hirsch had a trick up his sleeves.

(35) On the day of trial, the State presented several motions *in limine*, one of which was to be able to mention Casey's flight as an admission of guilt; something Hirsch had privately told Casey would not be allowed. Nonetheless, Judge Glick granted the motion. Casey would now have to explain to a jury why he fled.

(36) The State offered a last-minute plea offer of 12.5 years in state prison in exchange for a guilty plea on all charges. Hirsch strongly advised Casey to accept the plea. He told Casey that his key witness, John Buchanan, was not going to be able to testify as he said he would in the letter sent to Casey just two weeks earlier (Website, Exhibit 43), thus informing Casey that he would have to proceed to trial without any expert witnesses. [Hirsch lied to Casey. See Point 38, *infra*.] Hirsch made no attempt to negotiate a better plea and pushed Casey to accept the offer and to do so quickly. Casey had only 20 minutes to decide. Casey wanted to tell the court about Hirsch being the one who had advised him to flee but instead thought it best just to sign the agreement to get out of the courtroom and then consult another attorney who would help him properly address the matter to the court later. Casey was completely unaware of the difficulties involved in vacating a plea. Casey had no prior experience in the criminal justice system.

(37) After the plea colloquy, Hirsch thanked the judge, congratulated the prosecution, and left the courtroom without even saying a word to Casey leaving both Casey and his mother just standing there. Mrs. Casey would later describe what happened in the courtroom that day as “very bizarre.” (Website, Exhibit 14 at p. 87). In retrospect, Hirsch must have thought the case was over and that his unethical and criminal conduct was swept under the carpet forever.

(38) Months later, in July 2007, Mrs. Casey contacted John Buchanan. He was shocked Casey took the plea. He told Casey’s mother, “Didn’t you read my deposition? You’re son was not driving the car at the time of the accident.” So, Hirsch outright lied to Casey about Buchanan not being able to testify to these facts at trial! Buchanan did not know that Hirsch had advised Casey to flee and that this was a motive for Hirsch to trick Casey into accepting the plea. Hirsch never sent Casey a copy of the Buchanan deposition (Website, Exhibit 36) or critical DNA laboratory results (available upon request) that show there was no DNA of the victim on Casey’s clothing. Buchanan is convinced that there most definitely would have been DNA on the clothing of the person who was in the driver’s seat at the time of the accident.

**IV. Attorney committed perjury during evidentiary hearing in court in violation of Rule 4-3.3(a)(1), Rule 4-8.4(a)-(c), and Fla. Stat. § 837.02.**

(39) On November 3, 2006, only 17 days after accepting the guilty plea, Casey, through new counsel, David S. Markus, filed a motion to vacate his conviction and sentence pursuant to Florida Rule of Criminal Procedure 3.850. (Website, under “Court Documents” – Motion to Vacate Conviction and Sentence – 11/3/06). The motion alleged Hirsch suffered from a conflict of interest when he was forced to choose between his client’s interest in proceeding to trial and Hirsch’s interest in not chancing that his own misconduct would be made known to the court at trial. An addendum to the motion (Website, under “Court Documents” – Addendum to Motion to Vacate Conviction and Sentence – 1/5/07), filed on January 5, 2007, alleged ineffective assistance of counsel for Hirsch’s failure to call Casey to testify at the pre-trial suppression hearing to provide record basis of the averments of the motions to suppress, which would have refuted the testimony of the police officer witnesses and upheld the suppression order on appeal. The case against Casey would have been dismissed.

(40) An evidentiary hearing, presided by Judge Glick, was held on January 8, 2007. (Transcript on Website at Exhibit 14, hereinafter referred to as “Tr.” followed by the pertinent page numbers). Casey and his mother testified that Hirsch advised Casey to flee the country. (Tr. 12, 20, 40, 42, 44, 55, 66-67, 77, 80). Notably, both testified that Hirsch said at the May 12, 2004 meeting that he wished “Sean disappear.” (Tr. 12, 20, 67).

(41) Hirsch and Rappaport were called by the State. Hirsch testified that at no time did he ever suggest that Casey flee the country. (Tr. 105). He admitted to having listened to the tape recording of the May 12, 2004 meeting (Tr. 105) and testified that what he said was not what Casey and his mother were saying but rather that he said he wished “*the case* against Sean disappear.” (Tr. 106) (emphasis added). Hirsch also denied telling Casey he would not survive prison. (Tr. 129).

(42) Markus asked the court to listen to the tape recording in the State's custody of the May 12, 2004 meeting with Hirsch to determine who was telling the truth. (Tr. 147) (See Point 20, *supra*). However, Judge Glick refused to listen to the recording finding that it was illegally recorded in violation of chapter 934 of the Florida Statutes since all parties to the conversation did not consent to the recording. (Tr. 160-161).

(43) On the matter of the suppression hearing, Hirsch testified that he made a strategic decision not to call Casey to testify because "the facts were scarcely in dispute" and that there was nothing in the police officers' testimony that Casey could have contradicted on the stand. (Tr. 98). [This is not true. See Point 58(b), *infra*.]

(44) The State also elicited testimony from Hirsch that he did not recall Casey being allowed to keep custody of his passport, thus implying Casey sneakily obtained a second passport to use to flee the country since, according to Hirsch, his original passport was being held by the Clerk of Court. (Tr. 118-119, 132-133). [Hirsch was lying. See Point 58(d), *infra*.] Hirsch also testified that he was unaware of the true purpose of the affidavits he sent to Chile and thought that they were for "extradition proceedings" for Casey to return to the United States. (Tr. 116). [This is also false. See Point 58(e), *infra*.] Hirsch's entire testimony was fraudulent and attempted to paint Casey as a liar. However, the facts and evidence prove that it was the other way around. Hirsch was the liar!

(45) Unfortunately, Casey's counsel was not properly prepared with evidence to refute Hirsch's false testimony and at the conclusion of the hearing, Judge Glick denied the motion to vacate Casey's conviction and sentence finding Casey's allegations "on all points complained of, to be unworthy of belief." (Website, Exhibit 25). The judge did not find that Hirsch's advice to flee the country would be a violation of the law, thus ignoring chapter § 777.011 of the Florida Statutes, which prohibits anyone from aiding, abetting, counseling, encouraging, or procuring an individual to commit a crime. He did not make a finding on whether this act would be a violation of the Rules Regulating The Florida Bar.

(46) In a subsequent post-conviction motion, new counsel, Marcia J. Silvers, attempted to correct the record by showing Hirsch had committed perjury. She explained to the court that Markus was "negligent." He rushed to file the Rule 3.850 Motion without obtaining Hirsch's files, Casey's own files that he was forced to leave behind in Chile when he was deported, and the transcripts of the plea colloquy or suppression hearings. Silvers called this performance by Markus "crazy." (Website, under "Court Documents" – Initial Brief – 12/17/09 – Argument I).

(47) Between February and May 2008, Silvers filed several public records requests (available upon request) with the Miami State Attorney's Office in an effort to obtain copies of the tape recordings of Hirsch and Rappaport. The State had served Markus a subpoena (available upon request) to surrender the tapes on November 29, 2006, before he had a chance to listen to the tape recording of Rappaport. At first the State told Silvers the tapes were "missing." Then, after Silvers' insistence, the tapes were "found" and copies were provided. Silvers listened to the tapes with Mrs. Casey. At the point on the tape about disappearing, Silvers turned to Mrs. Casey and said, "You and Sean were right all along. You must feel vindicated." Mrs. Casey responded, "Not until everyone knows the truth and my son is out of prison." Silvers was just as

shocked when she listened to the tape of Rappaport. According to Silvers, Rappaport had completely lied on the stand about what was discussed at that meeting.

(48) On January 9, 2009, Silvers sent a formal letter to State Attorney Katherine Fernandez Rundle addressing the serious matter of perjury. (See attached A. 3).<sup>3</sup> Further, on February 27, 2009, Silvers filed a Motion to Supplement the Record on Appeal (Website, under “Court Documents” – Motion to Supplement the Record on Appeal – 2/27/09) of the trial court’s order denying Casey’s initial post-conviction motion. She wrote, “[T]he tape recording of the Appellant’s trial counsel...and the tape recording of Dr. Rappaport, the psychiatrist who trial counsel brought into the case...show that the testimony of the Appellant and his mother regarding this claim was truthful.”

(49) On March 23, 2009, Assistant State Attorney John N. Perikles responded to Silvers’ letter warning Silvers that if she continued to disseminate the content of the tape recordings and, thus, the allegation of perjury, that she could face civil and criminal penalties. (Perikles’ letter available upon request).

(50) Shortly thereafter, on April 22, 2009, Casey filed a *pro se* Motion for Relief of Judgment Because of Fraud Upon Court (under seal per court order) and in an addendum to this motion (under seal per court order), filed on April 29, 2009, Casey attached pertinent parts of the transcripts of the tape-recorded conversations of Hirsch and Rappaport to prove both committed perjury at the evidentiary hearing.

(51) On May 7, 2009, the State asked the court to seal the motion and the tape recordings and transcripts of the tape recordings.

(52) Thomas R. Julin, a partner in the law firm of *Hunton & Williams* in Miami and chair of The Florida Bar Media and Communications Law Committee, on July 27, 2009, filed a special appearance of *pro bono* counsel to represent Casey in opposing the State’s motion to seal. Julin argued that the tape recordings were not made in violation of Fla. Stat. § 934 and that this statute was only being used by the State to “assist a party in the commission of perjury or the miscarriage of justice.”

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<sup>3</sup> Professionally-transcribed transcripts of the tape recordings were attached to this letter. The trial court later sealed these transcripts along with the tape recordings. Casey cannot disseminate the content of these tape recordings per court order. [As previously explained, litigation is currently underway in the Third District Court of Appeal to reverse this order and unseal the tapes and transcripts.] Therefore, in an abundance of caution, Casey has not included the transcripts with Silvers’ letter (See attached A. 3) and Casey has removed the portions of Silvers’ letter that quoted the transcripts of the recordings. The Florida Bar should make every effort to obtain a copy of this letter with the quotations by making a public records request to the Miami State Attorney’s Office and should try to obtain a copy of the tape recordings and transcripts by filing a motion in the Miami courts requesting access to these judicial records for the purpose of conducting an investigation into the serious violations presented in this complaint. Upon review of these materials, The Florida Bar will find that Hirsch *did* lie in open court in violation of Fla. Stat. § 837.02, which prohibits “perjury in an official proceeding.”

(53) On August 18, 2009, the Hon. John W. Thornton, Jr. (Judge Glick retired in December 2008) announced that he listened to the tape recording of the May 12, 2004 meeting with Hirsch and found “*the recording* contains no direct or indirect evidence of criminal actions by the attorney.” (emphasis added). This finding was narrowly made on the tape recording itself. The court did not consider the previous testimony given in the court at the evidentiary hearing or the other evidence presented in this complaint. Further, Judge Thornton did not explain whether perjury was committed by Hirsch at the evidentiary hearing when Hirsch testified he said he wished “the case against Sean disappear,” not that he wished “Sean disappear.” In fact, Mrs. Casey addressed the court after Judge Thornton’s oral pronouncement and said as follows:

Mrs. Casey: About perjury, that was committed through [sic] Dr. Rappaport, I don’t understand; at the hearing I came in and I told the truth, and [Hirsch and Rappaport] lied on the stand and [prosecutor Gail] Levine, she even tried to tell me...

Silvers: It’s in the record, Your Honor.

Judge Thornton responded that he “understood” and never denied that Hirsch committed perjury.

(54) At the same hearing, Judge Thornton did not address the merits of Casey’s *pro se* Motion for Relief of Judgment Because of Fraud Upon Court and simply struck the motion as a legal nullity and unauthorized finding that Casey could not file a *pro se* motion while being represented by counsel (Marcia J. Silvers). This ruling is now on appeal. (Third DCA Case No. 3D09-2555).

(55) Judge Thornton also sealed the tape recordings and transcripts of the tape recordings of both Hirsch and Rappaport even though he did not listen to the recording of Rappaport. Had he done so he would have found that Rappaport committed perjury as well. Rappaport mentioned Hirsch several times during the May 13, 2004 meeting and how Hirsch was going to cover up Casey’s flight when he failed to appear in court. Casey is also appealing the court’s order to seal in the same case mentioned above. Julin is representing the *San Francisco Bay Guardian* newspaper in California in a separate appeal of the order to seal on access to judicial records and free press principles. (Third DCA Case No. 3D09-2540).

(56) Marcia Silvers also attempted to present to the court Hirsch’s perjury at the evidentiary hearing *without* the tape recordings. She filed a second post-conviction motion. (Website, under “Court Documents” – Motion for Post-Conviction Relief – 11/14/08). The motion included the November 21, 2003 letter Casey sent Hirsch by fax about wanting to proceed to trial and not acting on his (Hirsch’s) advice to flee. (See attached A. 1 & Website, Exhibit 19). This letter directly contradicts Hirsch’s testimony that “I never even heard this business about my having told him to flee. I never even heard this story until after the fact when this motion was filed [on November 3, 2006].” (Tr. 109). Hirsch knew of this allegation since receiving Casey’s fax letter three years earlier on November 21, 2003, but he does not want the court to know this.

(57) On August 18, 2009, Judge Thornton denied the motion as successive. The court agreed with the State that the evidence should have been presented in the first motion filed by Markus on November 3, 2006, ignoring the argument that Casey did not have access to this letter because it was in storage in Chile at the time Markus filed the first motion and Markus failed to request Hirsch's own files where he also would have found the letter. The court's ruling is also on appeal in Third DCA Case No. 3D09-2555.<sup>4</sup>

(58) On October 20, 2009, Casey filed a notice in the trial court (Website, under "Court Documents" – Notice of False Representations Made by the State and its Witnesses – 10/20/09). Casey presented the court with additional evidence that proves Hirsch committed perjury at the evidentiary hearing:

- (a) Hirsch testified that he recommended that Casey seek counseling from Rappaport because Casey "was in need of a tremendous amount of emotional and psychological support." (Tr. 93-94). However, a report prepared by Rappaport and sent to Hirsch on January 15, 2002 (available upon request) clearly indicates Casey had no psychological or emotional problems whatsoever.
- (b) Hirsch testified that he made a strategic decision not to call Casey to testify at the pre-trial suppression hearings because "the facts were scarcely in dispute" with the police officers' testimony." (Tr. 98). He also testified that Casey agreed with Hirsch's decision not to have him testify. (Tr. 99). However, the motions to suppress (available upon request), prepared by Hirsch himself, identify clear factual disputes Casey could have testified to that would have refuted the police officers' testimony and caused the suppression order to survive on appeal. Furthermore, Casey wrote a letter to Hirsch on December 17, 2001 (See attached A. 5), in which he expressed his desire to testify and described in great detail the points he would have testified to in order to refute the police officers' testimony.
- (c) Hirsch testified that the State never offered a plea before the day of trial. (Tr. 124-125). However, on June 10, 2004, Hirsch sent Casey a letter (See attached A. 6) that reads, "The State has offered eight years; however, [co-counsel] Michael [Haber] thinks [prosecutor Jon] Granoff might go down a year or two."

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<sup>4</sup> There is the possibility of personal bias in Judge Thornton's rulings. Judge Thornton is an incumbent candidate for circuit court judge currently running unopposed. Hirsch is also running unopposed for circuit court judge. The Treasurer of Judge Thornton's election campaign is Frank Angones. Mr. Angones is also on Hirsch's election campaign committee. Moreover, 44 members of Judge Thornton's campaign committee are on Hirsch's campaign committee. Also, Rappaport has made a financial contribution to Judge Thornton's campaign. It is troubling that Judge Thornton would accept money from someone he has personal knowledge obstructed justice by advising Casey to flee. A person may reasonably conclude that Rappaport made this donation to reward Judge Thornton for his decision. Such action is reprehensible and makes a mockery of our justice system.

- (d) Hirsch denied knowing the court returned Casey's passport to his custody. (Tr. 132-133). However, the court order, prepared by Hirsch himself, signed by Judge Daryl E. Trawick on February 11, 2002, explicitly states, "The Clerk of Court is directed to retain a copy of Mr. Casey's passport and *to return the original passport to Defendant.*" (See attached A. 4) (emphasis added).
- (e) Hirsch testified that he thought his assistance to Chilean attorney Patricio Gonzalez-Marin was for "extradition proceedings." (Tr. 116). Hirsch stated, "My understanding of my legal obligation was that I could do nothing for Mr. Casey except to inform him that I would assist him in returning to the United States to face justice." (Tr. 115). However, according to e-mails between Hirsch and Gonzalez-Marin (Website, Exhibit 29) and a letter sent by Gonzalez-Marin to the state attorney (Website, Exhibit 30), Hirsch knew precisely that his assistance was to achieve the opposite – to keep Casey from returning to the United States! Moreover, Hirsch told Casey's mother that her son needed "to stay where he is" and not come back to the United States. (See attached A. 2 & Website, Exhibit 21).

(59) To date, the court has taken no action on Casey's notice of false representations and in all likelihood will probably take no action relying on procedural defaults that require Casey to have presented all the evidence supporting his allegations in the first motion for post-conviction relief. Because of the deficient performance of Casey's first post-conviction counsel, David S. Markus, the courts have not been presented with all the evidence to establish Hirsch's wrongdoing and Florida Rules of Criminal Procedure bar Casey from making any attempt to do so.

### CONCLUSION

Although the Florida courts have not made a final determination as of yet regarding the allegations presented in this complaint since litigation is still pending, The Florida Bar should conduct its own independent review of all the facts and evidence to determine violations of the Rules of Professional Conduct.

Milton Hirsch has enjoyed unofficial immunity from the Miami State Attorney's Office, particularly assistant state attorneys Gail Levine and Angelica Zayas, who have chosen to turn a blind eye to Hirsch's unprofessional and criminal conduct because the alternative would be to vacate Casey's conviction and sentence. The prosecution does not want to open a closed case and allow Casey an opportunity to be tried by a jury. Neither does the prosecution want to acknowledge Hirsch's perjury because this would also reveal that the prosecutors knowingly elicited false testimony. [Note: Casey will be filing separate complaints with The Florida Bar against Levine and Zayas for their own violations of professional ethics.]

It is important to note that Casey does not seek legal advice or assistance from The Florida Bar, since this is not within the scope and mission of this organization. Casey submits this formal complaint to notify The Florida Bar of attorney misconduct in order for corrective remedies to be taken and appropriate sanctions imposed so that other clients are not affected by Hirsch's conduct.

All lawyers make mistakes. Hirsch may even have regarded the giving of such advice to flee as serving Casey's best interests, but the giving of such advice to a client is harmful as a matter of law because it subjects the client to exposure to additional, serious criminal penalties if the advice is followed. As evidenced by Hirsch's own letter dated June 10, 2004 (See attached A. 6), had Casey not acted on Hirsch's advice to flee, the State was going to offer between 6-8 years in state prison, not the 12.5 years Casey is currently serving.

It is not all that common for bar associations to deal with situations in which a lawyer advises the client to flee the country to avoid criminal prosecution. However, in Massachusetts, the local bar recommended sanctions to that state's Supreme Court against attorney Richard Ivker. In *In re: Richard N. Ivker* (Attorney Registration No. 10950), No. BD-2004-034 (Mass. Aug. 31, 2004) (<http://www.mass.gov/obcbbo/bd04-034.htm>), defendant Luis Estrada, after pleading guilty to trafficking cocaine and conspiracy charges, accused his trial counsel, Richard Ivker, of advising him to flee the country while he was out on bond awaiting trial. Estrada and a witness testified that Ivker "on multiple occasions, advised him to flee the country rather than face the charges." *Ivker* at 1. Ivker testified that he had never given Estrada any such advice. *Id.* at 2. The Court found that Estrada's version of the conversations about fleeing was corroborated by his witness and, thus, more credible. *Id.* at 3. The Court wrote, "Failure to appear is itself a punishable offense and a client who follows such advice is exposed to considerably increased penalties...As such, advising a client to flee undermines the administration of justice and places the client at considerable risk." *Id.* at 4. Ivker was suspended for two years and "[s]ome time later, represented by new counsel, Luis Estrada filed a motion to withdraw his guilty plea and ultimately obtained a reduced sentence." *Id.* at 5.

Closer to home, in *In re: James E. Henson*, 913 So. 2d 579 (Fla. 2005), the Florida Supreme Court found clear and convincing evidence supporting the finding of the hearing panel of the Judicial Qualifications Commission (JQC) that Judge James E. Henson, while engaged in private practice of law between his periods of service on county and circuit benches, counseled his client to flee the country to avoid prosecution in violation of the Rules of Professional Conduct. The client, Diana Jimenez, who was charged with DUI manslaughter, testified that Judge Henson suggested that she leave the United States rather than face trial, which was corroborated by Jimenez's father and attorney with whom Judge Henson had been working while in private practice. "The cumulative, corroborative weight of the testimony is more than sufficient for the Hearing Panel to have rejected Judge Henson's testimony and concluded by clear and convincing evidence that he counseled Ms. Jimenez to commit an illegal act." *Id.* at 592. The Court continued as follows: "An attorney who has practiced law while still a judge and then counseled a client facing trial to avoid prosecution by fleeing the jurisdiction does not deserve, and likely will not receive, the public's trust. Having compromised his own integrity, Judge Henson would place the integrity of our judicial system at stake were he allowed to continue in office. This we cannot allow." *Id.* at 594.

Similarly, after a thorough review of the facts and evidence presented herein, The Florida Bar will also find that Hirsch did violate the standards imposed on attorneys practicing law in the State of Florida and should consider recommending DISBARMENT as the appropriate sanction.

\* \* \* \* \*

**Sean D. Casey**  
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# Fax

<b>To:</b> Mr. Milton Hirsch	<b>From:</b> Sean Casey
<b>Fax:</b> 305-670-7003	<b>Pages:</b> 14
<b>Phone:</b> 305-670-0077	<b>Date:</b> 11/21/03
<b>Re:</b> Meeting 11/20/03	<b>CC:</b>

Urgent     For Review     Please Comment     Please Reply     Please Recycle

● **Comments:**

Dear Mr. Hirsch:

I appreciate your candor with me yesterday in your office. I want to make it absolutely clear that my intention is to proceed forward. I have no intention of fleeing the jurisdiction. I have worked too hard to just throw my life away and start a new one. I could not do this to myself or my family. I have faith that we will get an acquittal in this case. I see plenty of reasonable doubt that a jury could cling on to. Also, I have invested a lot of money in my defense and with only a short few months to trial, I think it would be wise for me to wait to get my day in court and wait for a verdict. Plus, ultimately the judge can determine the sentence if I am convicted. Attached are some examples of reduced sentences for similar crimes (many of whom had prior convictions).

I am glad that you now know my intentions and desire to leave the United States and live abroad. I would appreciate that you keep this in mind when and if there is a point a plea is offered. I think the prosecutor would like this idea, since if they are concerned about a repeat offense (assuming I am guilty of this one), I wouldn't even be in the country.

I am however discouraged by your pessimism. Michael Haber once told me that when an attorney of your stature gives me advice, I should follow it without hesitation. This is one piece

November 21, 2003

of advice, however, I do not believe I should act on. I am in this for the long haul and can only hope and pray you and Michael will continue to work to the best of your ability in my defense.

I will get through this, but I need an attorney that believes in me and my defense. I have attached some articles I found on the Internet that you may find interesting. Please read the article by Barry T. Winston, "Why I Defend Guilty Clients". Perhaps this will encourage you to fight on in my case. Please don't give up hope!

Sincerely yours,

A handwritten signature in cursive script that reads "Sean Casey". The signature is written in dark ink and is positioned below the "Sincerely yours," text.

P.S. I will try to put all the paperwork together to show my indigency over the weekend, but if I do not finish, this will have to wait until I return from Washington on the week of December 1. Let's hope this works.

This note is not in the original letter:

*The reader should review attachments to this letter at [www.freeseancasey.org](http://www.freeseancasey.org) – Exhibit 19. Barry T. Winston's article, "Why I Defend Guilty Clients," is about the client actually being innocent.*

AFFIDAVIT

A. 2

I, Genevieve M. Casey, residing at 150 Queensbrook Road, Pembroke, MA, swear and attest to the following:

- On May 12, 2004, I personally met with defense attorney Milton Hirsch at his office located at Two Datan Center, Suite 1200, Miami, FL. Mr. Hirsch stated that there was little hope of an acquittal in Sean's case. Mr. Hirsch stated that if he were me, he would "make Sean disappear" because, if convicted, Sean would go to jail for a very long time.
- On May 13, 2004, I also personally met with psychologist Dr. Michael Rappaport at his office located at 1001 S. Bayshore Drive, Miami, FL. Dr. Rappaport was recommended by Milton Hirsch to counsel Sean during the pre-trial process. He stated to me that it would be best for Sean to flee and that he would be fine. He said to listen to Sean's attorney.
- On September 30, 2004, Sean's bail bondsman, Russell Walters, whose office is located at 1390 NW 16<sup>th</sup> Street, Miami, FL, left a message on my home answering machine regarding Sean's Bond. I immediately called Milton Hirsch, an officer of the court, who responded "not to worry, pay the outstanding bail of \$5,000, and that nobody would be looking for Sean." He said he would talk with Russell Walters for me. He then told me Sean would be fine.
- In October, 2005, when Sean was informed for the first time of the international arrest warrant, he contacted me and asked that I contact Mr. Hirsch for legal advice on what should be done. I immediately contacted Mr. Hirsch who responded, "why didn't he change his name? There is nothing I can do now. He needs to stay where he is. If he comes back to the U.S. he will go to prison for a very long time." He advised me that Sean hire an attorney in the country where he was residing.
- In August, 2006, when Chilean officials issued the deportation order for Sean, I again called Mr. Hirsch who stated that he knew Sean had been detained, that he had been helping Sean's attorneys in Chile, and for Sean to call him as soon as he got back to Miami.
- Throughout the pre-trial process, Sean followed the advice of his attorney, Milton Hirsch, and therapist, Michael Rappaport. Sean would never have left the jurisdiction had both legal professionals not encouraged him to do so.

Signed Genevieve M. Casey

Date October 30, 2006



The Commonwealth of Massachusetts  
 Plaintiff, ss. Date Oct 30 2006  
 I have personally appeared the above named  
Genevieve M. Casey  
 and acknowledged to the undersigned that she is the person whose name and address are given above.  
James P. Smith  
 JAMES P. SMITH, Notary Public  
 My Commission Expires Dec 31, 2007

LAW OFFICES OF  
**MARCIA J. SILVERS, P.A.**  
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January 9, 2009

CERTIFIED MAIL  
 RETURN RECEIPT REQUESTED

Katherine Fernandez-Rundle  
 State Attorney  
 1350 NW 12th Avenue  
 Miami, FL 33136

RE: *State of Florida v. Sean Casey*  
 Case Nos. F01-07975, F06-032696

Dear Ms. Fernandez-Rundle:

I represent Sean Casey in post-conviction litigation in the above-captioned cases. My client entered into a plea in the Eleventh Circuit Court of Miami-Dade County on October 17, 2006. He was convicted of DUI Manslaughter, Vehicular Homicide, Leaving the Scene of an Accident with Death, and Failure to Appear while on Felony Bond, and was sentenced to 12.5 years in State Prison. His trial counsel was Milton Hirsch, Esq.

Immediately after accepting the plea agreement in open court before the Hon. Judge Leonard Glick, Mr. Casey realized his acceptance of the plea was coerced and involuntary. He hired David S. Markus, Esq. to file a Motion to Vacate Conviction and Sentence pursuant to Rule 3.850, Fla.R.Crim.P.

In his Motion, Mr. Casey asserted that Mr. Hirsch rendered ineffective assistance of counsel because he was operating under an actual conflict of interest at the time that Mr. Casey pled guilty. More specifically, Mr. Casey swore that Mr. Hirsch and the defense psychologist, Dr. Michael E. Rappaport, who was referred to him by Mr. Hirsch, advised him to flee the country prior to trial. Because of this fact, Mr. Hirsch was forced to choose between his client's interest in proceeding to trial and Mr. Hirsch's interest in not chancing that his own misconduct would be made known to the trial court. Mr. Casey pointed out that a guilty plea by him would solve Mr. Hirsch's problem by obviating the need for Mr. Casey to testify at trial so as to explain his flight.

On January 8, 2007, the trial court held an evidentiary hearing on Mr. Casey's Rule 3.850 Motion. Mr. Casey and his mother, Genevieve Casey, testified that both Mr. Hirsch and Rappaport advised him to flee the country during private meetings they had with each in their

offices on May 12 and 13, 2004, shortly before Mr. Casey fled. Mr. Hirsch and Rappaport testified that they did not give such advice to Mr. Casey.

Mr. Casey's attorney, David Markus, attempted to admit into evidence audiotapes of these meetings. Mr. Markus, having listened to the tapes himself, even proffered that Mr. Hirsch and Rappaport did tell their client to flee. However, over the defense's objection, the trial court ruled that the tapes were inadmissible. Furthermore, Judge Glick denied Mr. Casey's Rule 3.850 Motion based on a credibility determination in which he felt the testimony of Mr. Casey and his mother was "unworthy of belief."

Judge Glick presumably considered heavily Mr. Hirsch's solid standing and reputation in the legal community and thought he was incapable of committing a serious violation of ethics and the law by telling his client to leave the jurisdiction prior to trial and, thus, soliciting and aiding and abetting a fugitive and obstructing justice.

I am currently representing Mr. Casey on the pending appeal of the denial of his Rule 3.850 Motion. Also, on November 14, 2008, I filed a second Rule 3.850 Motion on Mr. Casey's behalf in the lower court on new claims of ineffective assistance of counsel.

I write this letter to you because I feel obligated as an officer of the court to bring to your attention a manifest injustice that occurred at the January 8, 2007, hearing on Mr. Casey's initial Rule 3.850 Motion.

In preparation of the appeal, in February 2008, I sent a public records request to Alison Haney in your office's Criminal Division to obtain a copy of the audiotapes in question. The lead prosecutor on this case, Gail Levine, had subpoenaed them as soon as she became aware of their existence when the Rule 3.850 Motion was filed in November 2006.

After months of repeated telephone calls to Ms. Haney, I finally received a copy that I subsequently had professionally transcribed by *Porter, Walker & Associates, Inc.* After careful review of the tapes and testimony given by Mr. Hirsch and Rappaport at the hearing on the Rule 3.850 Motion, it quickly became apparent to me that both committed perjury under oath.

What is even more alarming is that Gail Levine, who presumably listened to the recordings, allowed Mr. Hirsch and Rappaport to perjure themselves in an obvious effort to keep this case closed.

A major point of contention at the hearing was whether Mr. Hirsch told Mr. Casey and his mother that he wished that "*Sean* disappear" or that "*the case* against Sean disappear." Had Mr. Hirsch said the latter, there would be no violation as many attorneys wish the cases against their clients would disappear, but had he said the former this would be a serious violation and breach of ethics since an attorney is never supposed to wish his client disappear (flee), but rather has a duty to ensure his client appear at trial.

Gail Levine vehemently argued in open court that Mr. Hirsch said on the tape that he wished the "case against Sean disappear." Mr. Hirsch testified that he had listened to the audiotape that morning, presumably in the presence of Ms. Levine, and that what he said on the tape was that he wished the "case against Sean disappear" and denied ever saying he wished "Sean disappear."

As you will read in the attached transcript, Mr. Hirsch clearly stated that he wished "

Furthermore, Dr. Rappaport, who was an integral part of Mr. Casey's defense team headed by Mr. Hirsch, testified that although fleeing was mentioned at the meeting, he did not recommend Mr. Casey do so. However, you will read in the attached transcript that for the entire hour-long meeting, he not only recommended fleeing, but he thought it was in Mr. Casey's best interest and even gave him tips on how to be a fugitive.

More specifically, below is a comparison of what Mr. Hirsch and Dr. Rappaport said under oath at the hearing on the Rule 3.850 Motion and what each said on the tape recording. The asterisk and italicized font shows what was said on the audiotapes.

Milton Hirsch

(State direct examination)

Q: Did you ever use the word disappear?

A: Yes.

Q: Have you had the opportunity this morning to listen to a tape of your words?

A: Yes.

Q: And what is it that you were talking about in disappearing?

A: ...I would give anything if I could just make this case against Sean disappear, but I can't.

Q: And those were your words to her?

A: Yes (Hr'g. Tr. 105:19-25, 106:1-9)

*\*\*Ms. Casey:*

*Mr. Hirsch:*

(Tr. 20:11-22)

(Defense cross examination)

Q: Did you tell him he wouldn't make his sentence...he wouldn't survive the prison sentence?

A: Oh God, no (Hr'g. Tr. 129:18-21)

*\*\*Mr. Hirsch:*

(Tr. 20:25,

21:1-10)

Dr. Michael Rappaport

(State direct examination)

Q: Did you advise him to leave the jurisdiction during that discussion?

A: No.

Q: What did you say to him?

A: We talked about the consequences of fleeing, his fear of incarceration...

Q: Did you advise either one of them that this was the thing he should do?

A: No (Hr'g. Tr. 141:16-25, 142:1-2)

*\*\*Dr. Rappaport:*

(Tr. 3:13-6:9).

(Tr. 6:10-11).

(Tr. 6:17-7:4).  
(Tr. 8:25, 9:1).  
(Tr. 10:22-23).

(Tr. 10:25,

11:1).  
(Tr. 11:4-5).  
16:19-20).

(Tr.

(Tr. 22:6-8).

(Tr. 34:13-20).

Q: Was there any private meeting that you had with Mr. Hirsch where this defendant's flight was planned?

A: No (Hr'g. Tr. 142:12-14)

\*\*Dr. Rappaport:

(Tr. 7:14-17).

(Tr. 26:13-16).

(Defense cross examination)

Q: Now, did you ever tell the mother that he should leave the country?

A: No (Hr'g. Tr. 144:18-20)

\*\*Dr. Rappaport:

(Tr. 9:18-22).

(Tr. 17:22-25).

(Tr. 37:2-3).

Q: You never had any discussions with her about he can do better over there, to disguise himself?

A: No.

Q: Use another name?

A: No. (Hr'g. Tr. 144:21-24)

\*\*Dr. Rappaport:

(Tr. 13:12-15).

(Tr. 14:5-7).  
(Tr. 27:15-16).

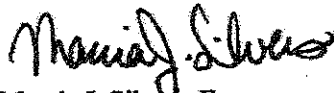
(Tr. 29:22-23).

During the hearing on the Rule 3.850 Motion, Gail Levine 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. Because of the lies under oath of these witnesses, elicited by Gail Levine, Judge Glick was misled. Had the truth been told, Judge Glick would have found Mr. Casey to be credible and would have had no choice but to vacate his conviction and sentence on the basis of this conflict of interest.

I kindly request that you review the attached transcripts and investigate this matter. I understand that your office does not like the possibility of reopening a closed case, but given the circumstances of this case, everyone's interest should be in seeking the truth.

I have considered long and hard what my obligations are in this matter. 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. I would appreciate a meeting with you to discuss this matter as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Marcia J. Silvers".

Marcia J. Silvers, Esq.

Attachments

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT OF FLORIDA, IN AND FOR MIAMI-DADE COUNTY

CRIMINAL DIVISION

STATE OF FLORIDA,

CASE NO. F01007975

Plaintiff,

vs.

SEAN CASEY,

Defendant.

8

**ORDER GRANTING DEFENDANT'S MOTION FOR LEAVE TO TRAVEL**

THIS CAUSE having come upon Defendant Casey's Motion for Leave to Travel, and the Court having heard argument and being otherwise advised in the premises, it is hereby

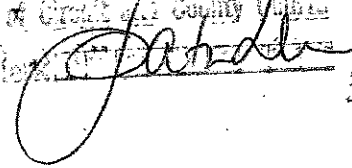
ORDERED AND ADJUDGED as follows: Defendant's Motion is GRANTED. The Clerk of the Court is directed to retain a copy of Mr. Casey's passport and to return the original passport to Defendant.

SO ORDERED this 11 day of February, 2002.

  
THE HON. DARYL TRAWICK

Copies furnished to:

Office of the State Attorney  
Milton Hirsch, P.A.

STATE OF FLORIDA, COUNTY OF DADE  
I HEREBY CERTIFY that the foregoing is a true and correct copy of the  
original on file in this office. 2-12-2002  
HARVEY ROYAN Clerk of Circuit and County Courts  
Deputy Clerk 



3294

**Sean D. Casey**  
 1000 West Avenue, Apt. #1209  
 Miami Beach, Florida 33139  
 Tel: 305-535-8876 (Home)  
 Tel: 305-634-2465 (Office)  
 Fax: 305-635-2272 (Office)  
 E-mail: scasey@sipiapa.org

# Fax

<b>To:</b> Mr. Milton Hirsch	<b>From:</b> Sean Casey
<b>Fax:</b> 305-670-7003	<b>Pages:</b> 5
<b>Phone:</b> 305-670-0077	<b>Date:</b> 12/17/01
<b>Re:</b>	<b>CC:</b> Mr. Michael Haber (305-866-7875/305-358-2503) Jack and Lorraine Yuen (305-258-2054) Dr. Michael Rappaport (305-373-7106)

**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

• **Comments:**

Dear Mr. Hirsch:

Congratulations on another job well done in your extremely thorough Reply Memorandum on Pretrial Motions. I read very carefully the State's Response and your Reply, and I wanted to see if we should also NOW emphasize the following points and bring them to the attention of the prosecutor and judge before a decision is made and it is too late. My questions for you are italicized.

▪ **Stolen Vehicle Report**

The most troublesome to me is that the State is, first of all, claiming I reported my vehicle stolen, and secondly, stating that I misled the officers by filing a false police report. This, of course, is not true. I think more attention needs to be given to the police officers that first came to my apartment (Officers Jomarron and Smith). The first thing these officers did was ask me if I owned a black BMW and if I had any proof, such as insurance papers, title, etc. I asked what had happened, and they responded that they did not know, but were looking into it. However, Officers Jomarron and Smith knew what had happened to my vehicle, since they write that they were sent to find the alleged owner of a vehicle that was "involved in a hit and run" (See their report, lines 5-6). By that time, Sgt. Hundevadt arrived

and we proceeded together to the garage. When my car wasn't there, it was Sgt. Hundevadt who said that I needed to go down to the station to file a report, simply a "report." I do not recall him ever mentioning a "stolen vehicle" report. During the October 10<sup>th</sup> hearing Sgt. Hundevadt stated that the vehicle was "reported" stolen sometime between 9:00 and 10:40 a.m. Who reported it stolen? I never reported the vehicle stolen. Also, please read Sgt. Hundevadt's statement about what I said in the garage when the vehicle wasn't there. On page 2, he writes, "Mt. Casey also advised that even if someone had broken into his vehicle they would have had great difficulty in starting the vehicle because it had an electronic transmission." (Note: I meant the little computer in the master key that only allows the ignition to respond to the owners' keys). This totally contradicts me stating that the vehicle was stolen. Notice Sgt. Hundevadt neglects to ever mention that "T" said it was stolen. The prosecutor states on page 15 of his Reply, "Indeed only the owner or custodian of property can logically report an item stolen." Well, "T" never said it was stolen.

- Defendant deceiving police

The main problem I have is that the State claims I knew what happened and was tricking the police. This cannot be farther from the truth. *When are we going to inform the State of my blackout, either caused by alcohol or — as I am convinced — a drug?* The truth is I really did and do not know what had happened. *Can't we get the doctor you recommended to testify to this and Dr. Rappaport as a psychologist to verify that I really do not remember and that following the police's initiative pursued the stolen vehicle report because that is what they led me to believe by not answering my question: what happened to my vehicle? Shouldn't the police have investigated further the possibility of a drug being involved? As the police write in their reports, my statements were spontaneous and confusing, I didn't remember key details, and I mentioned in the taped statement that I accepted drinks from other people and left my drinks unattended during the evening. You would think that the Miami Beach Police Department, of all police departments, would be skilled enough to identify a possible victim of rohypnol with so many nightclubs and drug crimes in South Beach. Can we not find an expert to testify that the police had enough signs to suspect a drug-induced blackout and should have done more thorough blood testing?*

- First entry into apartment (Viewing Evidence/Seizure of ATM receipt)

I return to the first entry into my apartment by Officers Jomarron and Smith. I think it is extremely important to note, in reference to this motion, that the first male officer followed me into my bedroom to obtain proof of ownership of my vehicle in my desk drawer completely on the other side of my bedroom. The officer must have noticed the clothes and glass! The prosecutor states that officers did not notice the clothes and glass until after the consent to search form was signed and when Officers Silvagni and Hundevadt returned to my apartment and conducted a protective sweep. He states, "Officer Silvagni saw, in plain view, a black shirt next to the bed that had shards of broken glass on it" (See page 8). If the evidence was in such "plain view", wouldn't the first officer have noticed it on first entry when he literally "walked over" the evidence when he followed me through my bedroom to my desk? After taking my folder out of the desk drawer, I placed it on my bed and fumbled through the papers until I found something with my name and VIN number. All that time, the officer was looking around my bedroom. I believe this officer saw the evidence, spoke to Sgt.

Hundevadt, who had just arrived to the apartment, and Sgt. Hundevadt then developed the scheme of tricking me into thinking my vehicle was stolen. In hindsight, when Sgt. Hundevadt and Officer Silvagni returned with me to the apartment after consent was given, while Sgt. Hundevadt followed me to the hallway closet to find the second key, Officer Silvagni went directly into the bedroom and closed the door. Why the bedroom? Why not the kitchen, bathroom, or living room? The first officers had to have told him what they saw! Also, during the taped statement, why all the questions about what clothes I was wearing the night before, including color and type? Again, the first officers must have told him what they saw on the floor! *Should you not depose or call to the stand this first male officer? Isn't this pertinent to establishing when I became a suspect? Can't we then prove that I was a suspect immediately upon the arrival of the very first officers when they entered my bedroom and saw the evidence?*

Also, it is just as important to note that while the male officer was in the bedroom with me on first entry, the female officer was in my dining room, presumably going through my papers, since somehow the ATM receipts appeared and she started asking me about them. The important thing is that the officers took my ATM receipt with them without me knowing it, because at the police station during the interrogation Sgt. Hundevadt asked me if I made the withdrawal shown on the ATM receipt "he was holding" and if I would initial the ATM receipt (see discovery packet). *Did they have the right to take my ATM receipt on first entry into my apartment before any consent was given? Why did they take the ATM receipt if I wasn't a suspect at this point? How can the State justify how an ATM receipt has to do with a stolen vehicle? This happened before any of my rights were waived, thus, doesn't this nullify my consent since this happened beforehand? Also, how about my passport? Why did you not mention the passport? I can think of no greater proof of not being free to leave then by having the police take my passport and airplane ticket and say, "you're not going anywhere for a while" and "I don't think your going to Brazil any time soon, you should think of canceling your trip."*

▪ **Blood draw**

On the matter of the blood draw, the State is claiming that I gave oral consent. This is a lie. The officer stated that "we are going to take your blood now and you have no choice in the matter." I didn't question him, for at this point I was handcuffed, had been read Miranda, and remained silent from that point onward. The prosecutor states that I never testified to rebut this. *Should I testify that I never consented — in writing or otherwise?*

▪ **Florida Case Law**

Finally, the State criticizes the Memorandum for not citing any Florida state case law. I did some very quick research and found this court decision, which seems appropriate to this motion:

**The Florida Supreme Court ordered a new trial for Nathan Ramirez, who was convicted with two other men for the 1995 murder of elderly widow Mildred Boroski in Pasco County. The court ruled that Ramirez was not given a proper *Miranda* warning before he was questioned by police. The state argued that Ramirez was not actually in custody when he was first questioned, but the court noted that he was interrogated in a small room in the police station by two detectives, he was never told he was free to leave, and all the questions indicated that the detectives considered**

December 17, 2001

Ramirez a suspect. "Short of being handcuffed and being told that he was under arrest, we cannot perceive of circumstances that would be more indicative of a custodial interrogation than the circumstances of the interrogation in this case," the court said. [Ramirez vs. State, (Fla. 7/8/99)]

Conclusion

Mr. Hirsch, I truly hope that you give special consideration to my points. I would be more than willing to testify that I never deceived the police and that I had a "blackout" (supported by expert testimony); that I never reported my vehicle stolen (I asked if it had been stolen, which is quite different); and that I never consented to the blood draw.

✓ On Friday, I received the attached Notice of Court Appearance for this coming Friday, at 8:30 a.m. *Is this when the judge is making his decision? Do you want me to be present? Do you want me to testify? Shouldn't we highlight these points before he makes a decision?* This is so very important; I want to make sure that the fact I have not testified does not jeopardize this motion's chance of being approved. I see my testimony as a win-win situation. I know the truth! The truth is I do not remember what happened; the truth is that it is very likely that at that hour of the morning I most definitely would have been with someone else or a group of people (I can easily get a few friends to say how much of a "flirt" I am and how I rarely end an evening on the town alone!); the truth is that I did think "something" happened to my car when it wasn't in the garage (it being stolen was just one possibility). In my mind, however, I was thinking to myself, maybe I left it at the Boardwalk and someone drove me home, because I didn't remember leaving the bar – all of which is indicated in the taped statement. Note the stolen vehicle report, Sgt. Hundevadt asked me to write where I last saw the car, not where I thought it was stolen. I wrote the "Boardwalk", not my apartment's parking garage.

I hope that you have some time today to review my comments and give me a quick telephone call with answers to my questions. I am deeply interested in this matter, since, after all, they were my constitutional rights that were violated. Thank you.

Best Regards,

*Sean Casey*

Sean Casey

HIRSCH & MARKUS, LLP

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A. 6

MILTON HIRSCH  
DAVID OSCAR MARKUS

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June 10, 2004

Sean Casey  
C/O Inter American Press Association  
1801 SW 3<sup>rd</sup> Avenue, 8<sup>th</sup> Floor  
Miami, FL 33129

Re: *State v. Casey*  
Case No. F01007975

Dear Sean:

I enclose a copy of Judge Trawick's ruling on the *Frye* issue.

As you know, Michael Haber has been discussing possible plea arrangements with Jon Granoff. The State has offered eight years; however, Michael thinks Granoff might go down a year or two. You will have to serve 85% of the jail sentence.

Please give this matter some thought and then let us know whether we should continue pursuing plea negotiations or if that is not a realistic course to follow.

Very truly yours,

  
Milton Hirsch

MH/te  
Enclosure