

APRIL 26, 2010

**SEAN CASEY SPEAKS OUT ON HIS CASE AND
FORMER ATTORNEY MILTON HIRSCH**

Justice Building Blog (Rumpole)
Riptide (Francisco Alvarado's Banana Republican)
South Florida Lawyers
The Daily Pulp (Bob Norman)

Dear blog managers:

I would like to congratulate you for creating these open forums for discussing current events and, in particular, the Miami criminal justice system. Last year, your blogs posted several articles on my case. These are: *Big Bad Daily: Reason 2,987 The Miami Herald Fails* (Riptide, 8/21/09); *Sealed!* (South Florida Lawyers, 8/19/09); *Air Force Booted Sean Casey's Therapist for Seducing Female Patients* (Riptide, 8/19/09); *Thornton Seals the Hirsch Tapes* (Justice Building Blog, 8/18/09); *Sean Casey Denied* (Riptide, 8/18/09); *Sean Casey's Ex-Therapist Used Dubious Techniques* (Riptide, 8/13/09); *Sean Casey Gets a Hand From a Top Gun* (Riptide 8/12/09); *Tom Julin Represents Milt Hirsch Accuser* (South Florida Lawyers 8/4/09); *Sean Casey Responds to New Times Article* (Riptide, 8/4/09); *All Milt All The Time* (Justice Building Blog, 7/30/09); *Milt Hirsch Dust Up* (Justice Building Blog, 7/29/09); *The Fugitive* (Riptide, 7/28/09); *Mother Outraged by Donte Stallworth's Wrist-Slap* (The Daily Pulp, 7/18/09). These articles generated a lot of discussion with a total of 128 comments.

I was disappointed with some of the articles and comments posted. Some people understood the injustice, some did not, and others were downright cruel. Since most of the commentators on your blogs are lawyers, it is unsettling to know how naive and ignorant a few in this profession can be.

Being in state prison it was impossible for me to immediately respond to correct inaccuracies being thrown around in the discussion and it has taken me all this time to gather and analyze all the articles and comments. I would appreciate it if you could now give me an opportunity to respond by posting this letter/article unedited on your blogs.

Most of the negative comments can be reduced to this:

Sean Casey drove drunk, killed an old woman, fled the scene of the accident, and then fled the country. He has avoided responsibility, shown no remorse, and deserves the sentence he got. He is blaming everyone but himself for his actions.

Based on this inaccurate information, some individuals posted horrible comments that have hurt not only me, but also my family and supporters. Some people labeled me "the crazy man," "a brutal murderer," "scum," "a disgruntled client," and "a whack-a-doo-nut job." These individuals do not even know me. I probably am just like them, *i.e.* well-educated (B.S. in International Relations and M.A. in Latin American Studies from Georgetown University) and a hard-working professional (working almost a decade as project administrator of the non-profit Inter American Press Association). However I would NEVER come to such conclusions about someone without knowing the individual personally or examining the facts of the case.

Here are the facts to clarify some misstatements made in the discussion: *(These facts can be supported by documents in the court record.)*

* The police testified that I was not drunk. I repeat, not drunk. They were interviewing me as soon as 30 minutes after the accident and described my demeanor as "clear, sober, and lucid." Although my defense counsel, Milton Hirsch, obtained leave from the court to conduct independent testing of the blood drawn by the police, Mr. Hirsch NEVER did this. Had he done so, we may have found the results were flawed.

* Witnesses at the scene of the accident described the driver as a Black male; I am Caucasian. Miami Beach Police Officer Pierre Laurent issued a BOLO ("Be On The Lookout") for a Black male immediately after the accident.

* The police testified that they found me "in bed and asleep" when they arrived at my apartment, 6-7 miles away, only 30 minutes after the accident.

* The night before the accident I was at The Boardwalk Bar, a popular nightspot for the gay community (Yes, I am gay!) in Sunny Isle Beach, which shut down four months after the accident in my case because another patron was slipped a pill in his drink one evening, taken to his apartment, and murdered. It is not unreasonable to conclude that I also may have been slipped a pill that evening explaining my lack of memory as to when or how I arrived at my apartment that morning. I mentioned this possibility to the police but they only tested for alcohol. Had they tested for other substances in my blood, such as Rohypnol (also known as "roofies"), then this would have supported my explanation of why I cannot remember.

* My attorney, Milton Hirsch, knew that the State had no evidence that I was driving the vehicle at the time of the accident. In fact, we hired an accident reconstructionist, a retired Metro-Dade Police traffic homicide detective, who examined DNA laboratory test results that showed there was no DNA of the victim on my clothing, which would have been the case if I was in the driver's seat.

* Let me remind everyone that Judge Trawick had practically dismissed the case less than one year after charges were filed. He chastised the police for lying to him in court and not being honest about their dealings with me during their investigation. Unfortunately, this ruling was overturned by the Third DCA. Why? Because Mr. Hirsch failed to call me to testify at the suppression hearing to discredit the testimony of the police officers. Mr. Hirsch believes the Third DCA was completely wrong in its opinion.

* We hired a jury specialist from FIU who did random surveys around Miami and found that 74% of the public would have acquitted me of the charges.

* Nevertheless, Mr. Hirsch was concerned about the 26% that would have found me guilty. He did not want to see me sent to prison. He knew that as a young gay male who lived a life far removed from the criminal elements of society that I would be vulnerable to sexual and other abuse. Mr. Hirsch's advice for me to flee the country was not given with bad intentions. Actually, he thought it was in my best interest.

* Does anyone really believe Milton Hirsch would admit that he told me to flee the country? Of course not. He wants to be judge so he can collect a state pension in a few years when he retires. He hinted this to a local reporter as one of his reasons for seeking a judicial position so late in his career.

* Judge Thornton sealed the tape recording of Milton Hirsch because he found that there was no evidence of indirect or direct criminal activity (*i.e.* the advice to flee) on the recording. However, much of the tape recording Judge Thornton listened to is inaudible. My supporters are now seeking ways to get Federal law enforcement to obtain copies of the tapes to have them sound enhanced to be able to hear Mr. Hirsch's parting words to my mother at the May 12, 2004 recorded meeting: "Just put him on a plane to Argentina." If this is not a direct instruction to flee, I do not know what is.

* My post-conviction attorneys, David S. Markus and Marcia J. Silvers, both proffered in court that my accusations against Milton Hirsch and the therapist hired by Mr. Hirsch to work on my case with him, Dr. Michael Rappaport, are TRUE. Would they risk their reputations and careers if my accusations were not true? Ms. Silvers even wrote a letter to State Attorney Katherine Fernandez Rundle about the perjury committed by Mr. Hirsch and Dr. Rappaport during the evidentiary hearing on my post-conviction motion. Again, why would she do this if the accusations were baseless?

* Judge Thornton, without explanation, refused to listen to the tape recording of Dr. Rappaport. I am prohibited by court order from saying what is on the tape but my mother and I were at the meeting and we clearly remember Dr. Rappaport telling me to flee the country, that I should listen to Mr. Hirsch, and that he knew what Mr. Hirsch would say to the court the day I failed to appear in court in order to cover up my flight. He said Mr. Hirsch was going to tell the judge that I could be dead in a closet somewhere so that nobody would go looking for me. If this isn't conspiracy to obstruct justice, what is?

* A few have criticized media attorney Tom Julin for taking on my case *pro bono*, although the positive comments far outweigh the negative ones. As South Florida Lawyers wrote: "That's some serious firepower and a superb lawyer to have in your corner, Mr. Casey." It should be noted that Mr. Julin only represented me in opposing the sealing of the tape recordings. My case is an example of the problems with Chapter 934 of the Florida Statutes ("Florida Security of Communications Act"). My mother and I were participants in the meetings with Mr. Hirsch and Dr. Rappaport. What difference does it make if the conversations were being recorded in our minds or on a pocket tape recorder? The only thing Fla. Stat. § 934 is doing is being used as a shield to protect Mr. Hirsch and Dr. Rappaport from their perjury and to allow a miscarriage of justice. They lied on the stand. The tapes prove it. What is more important - their privacy rights or my right to confront their false testimony so the courts can know the truth and administer justice? I argue my Sixth Amendment right to confrontation is more important. Under Federal law and the law of 38 states and the District of Columbia, these tapes are *legal*. What is this telling us? Apparently, in Florida you can lie under oath on the stand in court and virtually nothing can discredit this testimony. How else can you prove someone is lying about what was said in previous conversations without a recording of those conversations? These are issues that journalists confront every day in their work when they interview people, especially politicians, who later want to lie about what was said during these interviews. Not being able to reveal the truth would be a disservice to the public. This is what Mr. Julin is concerned about and he should be commended for taking this on.

* Why did I continue to have Mr. Hirsch represent me when I returned to the country to appear in court? Because I had no more money to hire another attorney and Mr. Hirsch was not going to charge anything for trial. I thought Mr. Hirsch would work twice as hard to obtain an acquittal so that his and Dr. Rappaport's involvement in my flight would be moot. Mr. Hirsch readily admits that he was prepared for trial. It was not until just before jury selection when the judge granted the State's motion to be able to mention my flight at trial as an admission of guilt that Mr. Hirsch began to encourage me to enter into a plea agreement. He must have known that I would then have to testify at trial as to why I fled. There was no other defense to my failure to appear charge. My flight was not *willful* as required by statute but rather involuntary and coerced by my counsel and therapist.

* I was faced with either going to trial with an attorney who was not going to be honest about being the one who suggested I flee the country or entering into a plea agreement. If there ever was a *per se* conflict of interest between a lawyer and his client, this was it. Everyone was telling me that if I did not accept the plea I would go to prison for 50 years; even Judge Glick's bailiff and the corrections officers in the courtroom were telling me to plead guilty! I had 20 minutes to decide. I think any rational person would have taken the plea. I accepted it but thinking the entire time that I was going to immediately go to another attorney to help me get the truth out. I did this

the next day and hired David S. Markus. I had absolutely no idea about the difficulties in vacating a plea. This was my first time in the criminal justice system.

Therefore, given the facts above, it is definitely reasonable to see that it is possible that I was not the drunk driver that killed the pedestrian, that I did not willfully flee the scene of an accident, and that leaving the country was not an admission of guilt but rather a reaction to the advice and counseling I was receiving from my attorney and therapist.

Some of the commentators on your blogs were right on point: "If the tapes cleared Milt, don't you think he would be blaring them from the rooftop?", "If the tapes don't prove Milt told the guy to run, Milt would waive his privacy interests and play them", "If Milt told his client to flee, then he has no business being a judge or a lawyer. I am deeply disturbed by that kind of behavior", "The gay guy who is educated, has no priors, gets slammed with 12 years more time than the rich straight man [Donte Stallworth]", "I want to know if Judge Glick is a bigot toward gay people and if this played in the sentence", "Why such a rush to seal tapes that say nothing?", "As for Milton, he got a big break by Thornton. The media should be able to listen to the tapes", "I don't think the Grinder is done with these tapes just yet."

I encourage your other readers to hold back on casting the first stone and stop making comments that cannot be supported by facts from the court record. As lawyers, you should know that not everything is black or white.

One commentator on the Justice Building Blog wrote: "If the Miami State Attorney's Office had evidence Milt counseled his client to flee the country, don'tcha think they'd prosecute him? Don'tcha think they'd at least ask another SAO to look at it?" Give me a break! Prosecutors don't cover up exculpatory evidence? Obviously, this person does not practice law in Miami. At the evidentiary hearing on my motion to vacate the plea, Assistant State Attorney Gail Levine, who had sole custody of the tape recordings since she subpoenaed them from my post-conviction counsel, used the tapes to refresh the memories of both Mr. Hirsch and Dr. Rappaport before entering the courtroom that morning and then elicited testimony about the content of the tape recordings that she knew was false. When my attorney, David S. Markus, asked the court to introduce the tapes as evidence, Ms. Levine objected arguing the tapes were "illegally-gotten evidence" and "contraband." So, it was okay for the State to use the tapes, but it was not okay for the defense to use them. This is wrong! The State has a greater incentive to keep the tapes sealed over and beyond protecting Mr. Hirsch and Dr. Rappaport - to protect ASA Gail Levine from her professional misconduct and perjury.

Even without the tape recording evidence, do not forget the fax letter I sent Mr. Hirsch on November 21, 2003, the day after the non-recorded meeting when he first told me to flee the country. Remember, the recorded meetings did not take place until May 12 and 13, 2004. In the fax letter, I wrote that I appreciated his candor but that I was not going to act on his advice to flee. Why would I have written this if Mr. Hirsch hadn't told me to flee at the meeting the day before?

I would like to also clarify two major misconceptions not mentioned above:

First, I am not "out to get" Milton Hirsch. He has had a successful career practicing law in Miami and has earned an impeccable reputation in the community. Yet, all attorneys make mistakes. I cannot blame him for looking out for my best interests when he advised me to flee the country. This showed me that he is an extremely caring and compassionate man with a big heart. He could not stand the thought of someone like me, who has led a good and productive life, going to prison for a very long time for a traffic accident that I may not have caused. I do blame him, however, for lying about giving me this advice later on when the accusation was brought to the court's attention in post-conviction proceedings. He needs to take responsibility for the fact that his advice exposed me to increased penalties. (The SAO made a plea offer of 6 years prior to my flight. Therefore, my sentence is double what it could have been had I not acted on the advice I

received from the professionals handling my case, Mr. Hirsch and Dr. Rappaport, whom I trusted with my life.)

Second, some people believe the elderly victim, Ms. Mary Montgomery, has become just an afterthought in this entire story. Not to me. I am very much aware of the fact that had I not left with my car to go out drinking at clubs that evening, I would never have put myself and Ms. Montgomery, and anyone else for that matter, at risk. The experts say I was not driving the car. The evidence supports this. However, just as it is possible I was not driving the car, I am conscious of the possibility that I was, and if this were the case, I am truly sorry. It was not intentional, but an unfortunate accident. This does not make me a "brutal murderer" or "scum."

If I am responsible, is 12.5 years in state prison the appropriate punishment? The Second District Court of Appeal of Florida would disagree. Around the time of the accident in my case, Paul VanBebber was driving home after a party at which he had consumed alcohol. He failed to stop at a stop sign and collided with another vehicle that contained a family of six. Three children suffered injuries and their uncle was killed in the crash. The State charged Mr. VanBebber with one count of DUI with property damage, three counts of DUI with personal injury, one of them with serious bodily injury, and one count of DUI/manslaughter. The trial court sentenced Mr. VanBebber to 200 months' incarceration for the counts of DUI/manslaughter and DUI with serious personal injury, **but suspended it upon completion of fifteen years' probation.** The Second District affirmed the trial court's downward departure sentence. *State v. VanBebber*, 805 So. 2d 918 (Fla. 2d DCA 2001). In a concurring opinion, Judge Altenbernd wrote as follows:

Mr. VanBebber is 25 years old. At the time of this offense, he was employed as a plumber...He has no criminal record. Mr. VanBebber has never previously been arrested for DUI. His driving record includes only a few minor traffic infractions...If Mr. VanBebber had run this stop sign with no other car in the intersection, the police would have arrested him for simple DUI. His likely penalty would have been a \$500 fine...He was not so fortunate. There is no denying that the tragedy for his victims cannot be described in words or measured by days in prison. But it is the injuries in this automobile accident alone that have caused his recommended penalty to jump from a \$500 fine to twenty years' imprisonment. Twenty years' imprisonment for this man would cost Florida's taxpayers nearly \$1,000,000...Given that this crime is primarily the result of terribly bad judgment rather than an evil criminal mind, one questions whether this is the best way to deter future offenses or punish Mr. VanBebber...Without a driver's license, it seems highly unlikely that this man will ever drive intoxicated again...The current system, however, incarcerates people who are not always dangerous to society. I suspect that the tax dollars that we are spending on incarceration due to mandatory victim injury points could be used more effectively in other programs addressing the very serious and real problem of DUI.

Similarly, I was 27 years old, I had gainful employment managing projects at the Miami-based Inter American Press Association (IAPA) promoting free speech and freedom of the press in the Western Hemisphere. I had a clean record with no prior DUI's. During high school in Massachusetts, I regularly volunteered to help mentally challenged orphans from Latin America at the Cardinal Cushing School and Training Center. In college, I volunteered to work at the Organization of American States (OAS) working on natural disaster preparedness programs in Latin America.

Another illustrative case is *State v. Figueroa* (Case No. F01-07530). On March 8, 2001, three days before the accident in my case and at the exact same location on Harding Avenue in Miami Beach, Carlos Garcia Figueroa struck and killed 27 year old Sergio Mascherini who was riding his bicycle. Mr. Figueroa had just stolen the Jeep Wrangler that he was driving. After striking Mr. Mascherini, he continued driving, crashing into another car on Collins Avenue. According to media reports, "A high speed chase between police and the Jeep ensued on Washington Avenue, weaving through traffic and across a concrete median, and sending pedestrians running for safety." (Hit-and-Run killer leads police in car chase," [The Miami Herald](#), 3/11/01). Eventually, Mr. Figueroa slammed into two parked cars in South Beach. He was thrown from his

car and taken to Jackson Memorial Hospital where he was later arrested. Blood tests taken at the hospital showed he was under the influence of drugs and alcohol. Mr. Figueroa was charged with DUI/manslaughter, Grand Theft Auto, Driving Without a License, Leaving the Scene of an Accident with Death, and Fleeing Police on High-Speed Chase with No Regard for Life. He was appointed a Public Defender and went to trial on August 9, 2002. He was found guilty by a jury and Judge Dennis J. Murphy imposed a downward departure sentence of 8 years in state prison. Mr. Figueroa has completed his sentence and is now a free man.

Here are some more examples of other individuals in Miami-Dade County convicted of the same charges and sentenced around the same time the State offered me the 12.5-year prison sentence.

* *State v. Miguel Ruiz*. Charges: DUI/manslaughter, Leaving the Scene of Accident with Death, Driving Without a License. Sentence: 1.6 years. (12/4/06)

* *State v. Javier Torres*. Charges: DUI/manslaughter, Aggravated Assault, Driving Without a License. Sentence: 4 years. (9/8/06)

* *State v. Jose Ovalle*. Charges: DUI/manslaughter, Failure to Appear in Court While Released on Felony Bond, Driving Without a License. Sentence: 2 years. (5/8/07)

* *State v. Daniel Perez*. Charges: DUI/manslaughter, DUI/Serious Bodily Injury. Sentence: 3.6 years. (9/28/06)

* *State v. Joseph Sandoval*. Charges: DUI/manslaughter, Homicide/Negligent Manslaughter. Sentence: 4 years. (5/12/05)

* *State v. Victor Perez*. Charges: DUI/manslaughter, Leaving the Scene of Accident with Death, Vehicular Homicide, Driving Without a License. Sentence: 5 years. (3/23/06)

An individual on the Justice Building Blog simply wrote, "We are a vengeful society." This can be the only explanation for my extreme sentence of 12.5 years; almost double the average sentence for the same crimes in Miami. I wish this was not the case and society would judge me by my overall contribution to the world as opposed to possibly an unfortunate decision that, as Judge Altembernd put it, was the result of "terribly bad judgment rather than an evil criminal mind."

Please visit www.freeseancasey.org for more information on my case. There you can download a formal complaint against Milton Hirsch that was recently filed with The Florida Bar.

Again, I would hope the readers of your blogs have a more open mind and not judge before they know all the facts or hear the other side of the story.

Sincerely,

Sean Casey
New River C.I.
Raiford, Florida