

## Background

On Sunday morning, March 11, 2001, a vehicle owned by Sean Casey was involved in an unfortunate accident that resulted in the death of a 71-year old female pedestrian, Mary Montgomery, who was crossing Harding Avenue (State Road A1A – southbound traffic only) between 79<sup>th</sup> and 78<sup>th</sup> Street in north Miami Beach at 10:13 a.m.<sup>1</sup> The vehicle was found without the driver on Gary Avenue on Park View Island, around one mile from the scene of the accident, at 10:29 a.m.<sup>2</sup> The vehicle was parked in a legally marked parking space assigned to residents of an apartment complex.<sup>3</sup> There were no eyewitnesses that could identify the driver of the vehicle.<sup>4</sup>

Mr. Casey, who was 27-years old at the time, was located at his apartment at 1000 West Avenue in south Miami Beach at 10:51 a.m. by police officers Jomarron, Smith, Hensen and DeCampo.<sup>5</sup> Sean was awakened by the police knocking at his door. He opened the door in only a bathrobe, although officers Jomarron and Smith

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<sup>1</sup> Hr'g. Tr. 7:21-22, 119:15-16, Oct. 10, 2001, **Exhibit 1**

<sup>2</sup> Map: 7840 Harding Avenue to 7353 Gary Avenue, Source: MapQuest, **Exhibit 2**

<sup>3</sup> Defense: "In other words, the car where it was found was not abandoned on the side of the road; it was a parking space?"

Ofc. Nagel: "I believe so."

Defense: "Lawfully parked parking space?"

Ofc. Nagel: "If my recollection serves me, yes."

[Hr'g. Tr. 18:20-25, Apr. 25, 2001, **Exhibit 3**]

<sup>4</sup> Defense: "Did the witnesses offer a description of the driver?"

Ofc. Nagel: "No."

[Hr'g. Tr. 8:17-19, Apr. 25, 2001, **Exhibit 3**]

Defense: "You had no one to put Mr. Casey behind the wheel?"

Ofc. Silvagni: "With certainty, no. I had no one."

[Hr'g. Tr. 111:16-17, Oct. 10, 2001, **Exhibit 1**]

<sup>5</sup> Map: Gary Avenue to West Avenue, Source: MapQuest, **Exhibit 4**  
Smith Dep. 8:16-20, Jul. 10, 2003, **Exhibit 5**

contradict themselves as to what he was wearing, which is only a precursor to the many contradictions, lies, and deceptive tactics used by police that morning.<sup>6</sup>

All four officers entered Mr. Casey's small, one-bedroom apartment without a search warrant and asked him to produce documentation on the vehicle he owned.<sup>7</sup> Officer Smith followed him into his bedroom where he kept information on his vehicle in a desk drawer. Officer Smith literally walked right over clothing allegedly with specs of glass on it lying in clear view on the floor at the end of the bed.<sup>8</sup> The glass would later become the **only** piece of evidence that police could possibly use to link Mr. Casey to the accident, since the vehicle's windshield shattered inwards, spreading glass shards throughout the interior.

Meanwhile, Officer Jomarron, a "rookie" in training that morning, was walking around the living room area where the other officers were talking and seized an ATM receipt from a withdrawal allegedly made at 10:39 a.m., 26 minutes after the accident and only 12 minutes before the police arrived at Mr. Casey's apartment, as well as his passport and an airplane ticket he had for a business trip to Brazil he was scheduled to

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<sup>6</sup> Q: "Can you describe him to me as he appeared when he opened the door?"

A: "He answered the door in a bathrobe."

[Jomarron Dep. 12:16-18, Feb. 24, 2004, **Exhibit 6**]

Q: "Do you recall if he was wearing a bathrobe or clothing?"

A: "No, he had on clothing..."

[Smith Dep. 12:22-24, Jul. 10, 2003, **Exhibit 5**]

<sup>7</sup> Court: "State, is there an issue regarding the fact whether there was search warrants or whether Mirandas have been given to the defendant?"

Prosecutor: "No, Judge...There is no search warrant on...March 11<sup>th</sup>..."

[Hr'g. Tr. 4:8-12, Oct. 10, 2001, **Exhibit 1**]

<sup>8</sup> Ofc. Silvagni: "We took a walk-through, looked around. On the far side of the bed, visible from the doorway...the evidence was recovered."

[Hr'g. Tr. 89:23-25, 90:1, Oct. 10, 2001, **Exhibit 1**]

take later that day.<sup>9</sup> Officer Jomarron found both on the dining room table while Sean was in the bedroom with Officer Smith.

The officers then asked if Mr. Casey knew where his vehicle was and he responded that it should be in its assigned space in the building's parking garage. Officer Hensen had already returned from the garage to advise Sergeant Robert Hundevadt, who had arrived in his capacity as supervisor, that the vehicle was not there.<sup>10</sup> Nonetheless, Sgt. Hundevadt and Officer Jomarron still brought Mr. Casey downstairs to see if his car was there and get a reaction as part of their charade to trick Mr. Casey into thinking they were investigating a stolen vehicle, but, in reality, they were investigating a vehicular homicide, although Officer Jomarron does not even remember being in the garage.<sup>11</sup> To nobody's surprise, except to Mr. Casey, the car was not in its assigned space. The police must have known that it would not be there because it had

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<sup>9</sup> "Ofc. Jomarron also showed this writer a bank withdrawal slip she had recovered..."  
[Supp. Rpt. by Sgt Hundevadt, p. 1; Apr. 2, 2001, **Exhibit 7**]

A: "I'm not sure about the passport. I don't know if that was impounded."  
[Jomarron Dep. 26:2-3, Feb. 24, 2004, **Exhibit 6**]  
Note: She had handed the passport over to Sgt. Hundevadt who impounded it.

<sup>10</sup> Q: "What did you do [then]?"  
A: "I went back upstairs."  
Q: "And what did you find when you got there? Were any officers in his apartment?"  
A: "Yeah, the same officers were there once again."  
Q: "What were they doing when you got back up to the apartment?"  
A: "Still with Mr. Casey."  
Q: "Again, all together in the living room area?"  
A: "Yes."  
Q: "And you told [Hundevadt], look, I found the parking space assigned to Mr. Casey, and there's no car in it?"  
A: "Yes."  
[Hensen Dep. 17:18-20, 18:9-24, Mar. 2, 2004, **Exhibit 8**]

<sup>11</sup> "I accompanied Ofc. Jomarron and Mr. Casey to the underground parking garage..."  
[Supp. Rpt. by Sgt. Hundevadt, p. 2, Apr. 2, 2001, **Exhibit 7**]

Q: "...Did you go down in the garage?"  
A: "I don't recall---going down in the garage."  
[Jomarron Dep. 20:12-16, Feb 24, 2004, **Exhibit 6**]

already been located and impounded, but they did not tell Mr. Casey that.<sup>12</sup> Sean repeatedly asked what had happened to his vehicle.<sup>13</sup> The police kept saying, “You help us and we’ll help you get your car back.”

Sgt. Hundevadt then asked Sean to return upstairs to his apartment to be asked some questions, although he denies ever being inside the apartment.<sup>14</sup> He claims he escorted Mr. Casey directly to the lobby area and then to the police station.<sup>15</sup> But, he is caught in his own lie when he recounts seeing specific items inside the apartment and when he mentions the preliminary “interview” later on.<sup>16</sup> He surely does not want

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<sup>12</sup> Q: “When you advised him that you were there to discuss the location of his vehicle, did you advise him that his vehicle had been involved in a hit and run accident?”

A: “No.”

[Smith Dep. 15:12-16, Jul. 10, 2003, **Exhibit 5**]

Q: “...did you take Mr. Casey aside and explain to him that his car was the possible hit and run vehicle in a vehicular homicide?”

A: “No, I did not.”

[Hr’g. Tr. 54:14-17 Oct. 10, 2001, **Exhibit 1**]

<sup>13</sup> A: “Mr. Casey asked myself if the police department had found his car.”

Q: “Did you tell him, yes, we did, in connection with a vehicular fatality?”

A: “No.”

[Hensen Dep. 21:14-18, Mar. 2, 2004, **Exhibit 8**]

<sup>14</sup> Prosecutor: “What happened when you responded to that location?”

Sgt. Hundevadt: “[We] enter [sic] through the main entrance and went up...and as we exited the elevator we met two uniform officers...they were in the hallway...I believe Mr. Casey was at a table.”

[Hr’g. Tr. 25:6-14, Oct. 10, 2001, **Exhibit 1**]

Prosecutor: “Did you have an opportunity to speak with this defendant at the scene, at his home?”

Sgt. Hundevadt: “Not at his home. In the building.”

[Hr’g. Tr. 25:25, 26:1-2, Oct. 10, 2001, **Exhibit 1**]

<sup>15</sup> Sgt. Hundevadt: “Well, once we ascertained that the defendant’s vehicle was not in the parking garage we moved back up into the lobby area of the building and we had parked on the front ramp.”

[Hr’g. 29:2-5, Oct. 10, 2001, **Exhibit 1**]

Note: Ofc. Hensen had already told him it was not there. See Page 3, Footnote 10

<sup>16</sup> Sgt. Hundevadt: “Well, you gave me three names during our preliminary interview...”

[Taped statement of Sean Casey taken by Miami Beach Police, p. 12, Mar. 11, 2001, **Exhibit 9**]

Defense: “Did you happen to glance around in the kitchen or living room...?”

Sgt. Hundevadt: “Yes, I did.”

[Hr’g. Tr. 58:15-18, Oct. 10, 2001, **Exhibit 1**]

anyone to know how much time he actually spent *inside* the apartment conducting an investigation *illegally*, which was close to three hours!<sup>17</sup>

During this preliminary interrogation at Mr. Casey's dining room table, Sean mentioned he had gone to a bar and nightclub in the evening and early morning hours, consumed alcohol, and did not recall leaving the last establishment or how he got home. Sgt. Hundevadt then insisted that he accompany him to the police station to find out what had happened to his vehicle; information the police had, but kept from him.

At Miami Beach Police Department headquarters, Mr. Casey was escorted to the Criminal Investigations Division's conference room where Sgt. Hundevadt proceeded to conduct a taped interrogation asking the *same* questions he had asked in Mr. Casey's dining room but now in the presence of Officer Robert Silvagni, a traffic homicide detective, although his position was unknown to Mr. Casey at the time.

After the taped interrogation that lasted for over 30 minutes, Sean signed a release so the police could search his apartment, which they said was needed to proceed to find his car. They used as a pretext that they wanted to return to the apartment to see if all the keys to his vehicle were accounted for, but they must have really wanted to return to the apartment to seize the clothing with glass pieces on it they must have seen during the first entry into the apartment. They could have easily asked about the keys during the preliminary interrogation in Mr. Casey's dining room earlier, but now needed an excuse to go back, this time with a signed release, to search and seize, in hand. Although Mr. Casey was cooperating, he continued to ask about his

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<sup>17</sup> Police arrived at Sean Casey's apartment at 10:51 a.m. The taped statement was taken at police headquarters, 6 blocks away from his apartment, at 1:47 p.m.  
[Hr'g. Tr. 65:20-23, Oct. 10, 2001, **Exhibit 1**]

vehicle. He was convinced the police knew something by the sheer number of officers involved and the amount of time they were spending on just one stolen vehicle. Yet, the police continued not to provide any information, despite the fact they must have known where the vehicle was and what had happened.<sup>18</sup> The vehicle was impounded and towed to the Miami Beach Police Department's secured parking garage at 10:40 a.m.<sup>19</sup> It was literally just yards away from where the taped interrogation was being conducted. They did not know what happened to the car? They did not want Mr. Casey to know!

Sgt. Hundevadt and Officer Silvagni escorted Mr. Casey back to his apartment. Crime Scene technicians were already in the hallway waiting for them to arrive.<sup>20</sup> When they entered the apartment, Officer Silvagni went right into the bedroom, closed the door behind him, and came out with clothing with glass shards on it in a plastic bag. Why he closed the door is unknown and even raises the remote possibility that he planted the glass on the clothes to be able to link Mr. Casey to the crime. He then said, "Mr. Casey, we have a problem. I believe this investigation is changing its course."<sup>21</sup>

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<sup>18</sup> Defense: "Did you tell Mr. Casey at the time that this stolen vehicle affidavit was signed by him, 'Mr. Casey, I don't want to deceive or mislead you, we have your car'?"

Sgt. Hundevadt: "I don't recall using these words."  
[Hr'g. Tr. 67:15-17, 21, Oct. 10, 2001, **Exhibit 1**]

Defense: "At the time that he signed that document at again..., about 2:30 in the afternoon, you did not say to him, 'Mr. Casey, you are a suspect in a vehicular homicide'?"

Ofc. Silvagni: "That is correct."  
[Hr'g. Tr. 102:12-16, Oct. 10, 2001, **Exhibit 1**]

<sup>19</sup> Hr'g. Tr. 50:12-14, Oct. 10, 2001, **Exhibit 1**

<sup>20</sup> Female voice [Crime Scene 12]: "...[I] advised the dispatcher I went 05 [to the station], and then ah, then ah, at 2:55...I advised the dispatcher I'd be at 1000 West, #1209..."

[Transcript of Police Radio Communications, p. 29:1-7, Mar. 11, 2001, **Exhibit 10**]

Note: The police must have advised the Crime Scene Unit as soon as Mr. Casey signed the release that they were ready to collect the evidence. Why would Crime Scene be there if, according to police, Mr. Casey was not yet a suspect?

<sup>21</sup> Hr'g. Tr. 92:8-10, Oct. 10, 2001, **Exhibit 1**

He then told Mr. Casey that they had recovered his vehicle, that it had been involved in a hit and run fatality, and he said, "I have reason to believe that you were the operator of the car at the time of the crash, or at least an occupant."<sup>22</sup> Officer Silvagni then read Mr. Casey his Miranda rights for the first time that day, at around 3:30 p.m., and placed him under arrest. The police drove Mr. Casey to a nearby fire station where they drew blood for alcohol content, at 4:00 p.m., that would later come back from the laboratory over the legal limit for driving a vehicle. Mr. Casey was subsequently charged with DUI manslaughter (Fla. Stat. §316.913), Vehicular Homicide (Fla. Stat. §782.071), and Leaving the Scene of an Accident (Fla. Stat. §316.027).

Sean Casey and his family retained prominent criminal defense attorney Milton Hirsch, author of Hirsch's Florida Criminal Procedure (2002), and entered a plea of "Not Guilty." He was released from jail the next morning, March 12, on \$5,000 bond. Right away Mr. Hirsch noted blatant violations to Mr. Casey's constitutional rights, particularly the fact he was not properly informed of his rights upon becoming a suspect in this case and the fact his consent to search was based on false pretenses.

One problem is when Sean became a suspect in the vehicular homicide because this is when he must be read his Miranda rights. Sgt. Hundevadt claims Mr. Casey did not become a suspect until after the taped interrogation when they returned to the apartment the second time with the search release and supposedly "found" the glass on the clothing. This is his explanation for not reading him his rights and physically taking him into custody, although Officer Smith did believe Sean was a suspect.<sup>23</sup> He

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<sup>22</sup> Hr'g. Tr. 92:11-13, Oct. 10, 2001, **Exhibit 1**

<sup>23</sup> Q: "But you did not tell him you were aware that the car was involved in a hit and run?"  
A: "Right."

undoubtedly saw the glass on the clothing when he first entered the apartment, unless the glass was planted by Officer Silvagni when he returned to the apartment, but he did not have the proper warrants to make an arrest.

Furthermore, Sgt. Hundevadt mentions the reasons he ordered the arrest, most of which came from information he obtained **before** going back to the apartment a second time.<sup>24</sup> According to police radio communications that morning, the search for a suspect was cancelled at 11:09 a.m., shortly after officers arrived at Mr. Casey's apartment.<sup>25</sup> Also, Crime Scene technicians had arrived **before** Sgt. Hundevadt returned with Sean the second time.<sup>26</sup> They must have known there was evidence to collect. Mr. Casey must have been the only suspect in the accident. He must have been a suspect the entire **four** hours he was with police before they arrested him. Certainly Miami Beach Police do not dedicate so many officers and so much time to a simple stolen vehicle report as they claim.

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Q: "And you did not provide him with that information?"

A: "He was a suspect in a hit and run."

[Smith Dep. 15:21-25, 16:1, Jul. 10, 2003, **Exhibit 5**]

<sup>24</sup> Prosecutor: "Once he gave the taped statement, was there anything in there which at this point lead [sic] you to believe that he may have been the person driving that black BMW involved in a fatality earlier that morning?"

Sgt. Hundevadt: "No."

[Hr'g. Tr. 39:3-7, Oct. 10, 2001, **Exhibit 1**]

Note: This completely contradicts his own reasons for making the arrest, which include:

Sgt. Hundevadt: "Statements he gave me...the fact that I smelled the odor of alcohol..., the vagueness and ambiguity..."

[Hr'g. Tr. 46:24-25, 47:1-3, Oct. 10, 2001, **Exhibit 1**]

<sup>25</sup> Female dispatcher: "...Any middle unit at 72 and Gary looking for the subject, you have been 07ed [cancelled] at this time. I'll show you 09 [back in service]."

[Transcript of Police Radio Communications, p. 23:12-14, Mar. 11, 2001, **Exhibit 10**]

<sup>26</sup> Prosecutor: "Did Crime Scene arrive prior to that reading of Miranda?"

Ofc. Silvagni: "I believe she did."

[Hr'g. Tr. 93:6-8, Oct. 10, 2001, **Exhibit 1**]

The other problem is whether Sean Casey's consent to search was voluntary or coerced. The courts have ruled:

"Factors to be reviewed in determining whether consent to search was voluntary under Fourth Amendment include: ...whether officers informed a suspect that he was not under arrest and was free to leave, whether suspect was moved to another area, whether there was a threatening presence of several officers and display of weapons,...whether officers deprived suspect of documents needed to continue on his way; and whether officer's tone of voice was such that their requests would likely be obeyed."<sup>27</sup>

The police **never** told Mr. Casey he was free to go. They deprived him of his passport and airplane ticket. They escorted him to the Criminal Investigations Division at Miami Beach Police headquarters. They deceived Mr. Casey by saying they could only help find his vehicle if he cooperated. They had tricked him into thinking they were investigating a stolen vehicle to get his consent to search his apartment and this time enter legally to seize the glass they had undoubtedly seen on the first **illegal** entry. They were clearly investigating a vehicular homicide all along with Sean Casey as the only suspect being denied his constitutional rights. His consent was not voluntary. **He never would have participated in a taped interrogation or signed a search release without an attorney present had he known it was in relation to a vehicular homicide and not a stolen vehicle report.** He should have been identified as a suspect and read his rights when the police first entered the apartment, smelled alcohol on his person, found ambiguities in his statements, and recovered the ATM slip from a withdrawal made shortly after the accident.

Perhaps even more troubling, once Mr. Casey was placed under arrest, Sgt. Hundevadt denied him an attorney. Officer Silvagni allowed Sean one phone call,

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<sup>27</sup> *U.S. v. Yussuf*, C.A. 7 (Ill.) 1996, 96 F. 3d 982, U.S.C.A. Const. Amend. 4, Note 3072, West (2004)

which he used to speak to his boss, Julio E. Muñoz, with whom he was scheduled to travel to Brazil that evening. Mr. Muñoz wanted to get an attorney for Sean, but when he spoke to Sgt. Hundevadt he said Sean did not need an attorney, and he surprisingly admits this under oath considering all the other lies he made in his testimony.<sup>28</sup>

A hearing to suppress evidence illegally obtained was held on October 10, 2001. The Court, presided by the Hon. Daryl E. Trawick, found the police were *not* credible and acted improperly. He dismissed the taped interrogation and any evidence gathered as a result of the search of his apartment, including the clothing with glass shards, ATM slip, and blood test results. The judge said:

“Officer Silvagni [with 14 years with the Miami Beach Police] knew that or knew something about the circumstances at the time of the vehicular homicide, yet made no effort to Mirandize the defendant... [T]he actions in this case by very experienced police officers seem to indicate that an investigation was taking place in which the defendant was in fact a suspect, that they were not being forthright with the defendant. This raises some question as to whether a knowing and voluntary consent to search could be given.”<sup>29</sup>

The judge continued:

“What is particularly disturbing to this Court is not only does it appear that the officers were being less than candid with the defendant, but that they were being less than candid with this Court...Given the facts of this case, [their] story is simply not credible.”<sup>30</sup>

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<sup>28</sup> Defense: “And his boss spoke to you as well; did he not?”  
Hundevadt: “I believe he did.”  
Defense: “And he said, ‘Can I get Mr. Casey an attorney?’”  
Hundevadt: “I think he did.”  
Defense: “And you said, ‘An attorney won’t help right now?’”  
Hundevadt: “That could very well possibly be true.”  
[Hr’g. Tr. 74:15-20, Oct. 10, 2001, **Exhibit 1**]

A: “I immediately offered to send an attorney, and he say [sic] no, you don’t need to do that. It’s not necessary to do that.”  
[Muñoz Dep. 11:9-11, Sept. 30, 2003, **Exhibit 11**]

<sup>29</sup> Hr’g. Tr. 3:20-21, 4:20-23, 5:6-12, Dec. 28, 2001, **Exhibit 12**

<sup>30</sup> Hr’g. Tr. 5:13-16, 21-22, Dec. 28, 2001, **Exhibit 12**

This decision was not made lightly by the Court. In the Court Order, Judge Trawick wrote, “The Court personally presided over the suppression hearings, and paid close attention to the testimony, demeanor, and credibility of the witnesses.”<sup>31</sup> In open court, he ended his ruling by stating:

“I understand this is a vehicular homicide case and I have gone back and forth on this issue, but I keep going back to the fact that I had officers, experienced officers in this Court who I did not find to be candid and I just won’t abide by it. Therefore, the evidence is suppressed.”<sup>32</sup>

The case was practically closed. The State Attorney’s Office could not proceed without this evidence, albeit circumstantial.<sup>33</sup> The prosecutor at the time, Patrick Dray, submitted an appeal of Judge Trawick’s ruling to the Third District Court of Appeal defending the handling of the investigation by police. Perhaps in an act of desperation, Mr. Dray subpoenaed both Sgt. Hundevadt and Officer Silvagni to attend oral arguments held on July 1, 2002. He told defense counsel, Milton Hirsch, that he could subpoena anyone he wanted, anytime, anywhere. Yet, this is a clear abuse of prosecutorial power.<sup>34</sup> The only conclusion is that it was Mr. Dray’s intention that the officers’ presence at the appellate argument would serve to intimidate Mr. Hirsch or the

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<sup>31</sup> Ct. Order by Judge Daryl E. Trawick, Jan. 9, 2002, **Exhibit 13**

<sup>32</sup> Hr’g. Tr. 6:19-24 Dec. 28, 2001, **Exhibit 12**

<sup>33</sup> Prosecutor: “And the State couldn’t proceed without a reversal of that motion to suppress?”  
Hirsch: “They could not, no.”  
[Hr’g. Tr. 99:22-24, Jan. 8, 2007, **Exhibit 14**]

<sup>34</sup> “I know of no power vested in any prosecutor anywhere in the United States to subpoena police officers to appear as spectators to an appellate argument. Mr. Dray could, with as good a grace, have subpoenaed these officers to Pro Player Stadium to watch a Marlins game.”  
[Letter from Milton Hirsch to State Attorney Katherine Fernandez-Rundle, p. 2:34-37, Jul.10, 2002, **Exhibit 15**]

judges.<sup>35</sup> Mr. Hirsch never told Mr. Casey about the oral arguments. He said his presence was not necessary. The judges could have interpreted the absence of the defendant as a lack of interest in the outcome, which cannot be farther from the truth. A formal letter of complaint was sent to State Attorney Katherine Fernandez-Rundle on July 10, 2002.<sup>36</sup> Sean Casey is unaware of any response to this letter. Also, Sgt. Hundevadt seriously threatened Mr. Hirsch at the proceedings and Mr. Hirsch had to be protected by courthouse security officers.<sup>37</sup> However, Sgt. Robert Hundevadt's conduct in the whole case should not be a shock. He had previously been charged by the State Attorney's Office with two counts of misdemeanor perjury under oath.<sup>38</sup> Consequently, he was suspended by the Miami Beach Police Department for "conduct unbecoming of an employee of the City" and unlawfully making false statements.<sup>39</sup>

On July 21, 2002, the Third District Court of Appeal in a surprising decision reversed the ruling to suppress the evidence. In its two-paragraph ruling, the Court stated, "The testimony of the police officers was not impeached, discredited,

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<sup>35</sup> "...I note with interest that although Sgt. Hundevadt wore street clothes to testify at the hearings on the motions to suppress before Judge Trawick, he wore his full uniform to sit in the visitors' gallery at the Third District."  
[Ibid., p. 3:6-8, Jul. 10, 2002, **Exhibit 15**]

<sup>36</sup> See **Exhibit 15**

<sup>37</sup> "Sgt. Hundevadt was shaking with rage. He upbraided me for lying to the court, made other remarks in the same vein, and concluded with a promise that he would 'do something' about me."  
[Ibid., p. 1:15-16, Jul. 10, 2002, **Exhibit 15**]

<sup>38</sup> "Hundevadt was determined to be a friend of some of the individuals who were convicted in the murder [of Miami Beach Police Officer Scott Rakow] and was suspected of having impeded the investigation by discouraging a key witness from cooperating out of fear that his [*cocaine*] drug use would be exposed."  
[Information Sheet from Assistant State Attorney Joseph M. Centorino on two counts of perjury, Dec. 6, 1990, **Exhibit 16**]

<sup>39</sup> Memo from Miami Beach Chief of Police Ken Glassman to City Manager, Rob Parkins, Apr. 24, 1989, **Exhibit 17**

controverted, contradictory within itself or physically impossible.”<sup>40</sup> The appellate judges heard no testimony to be able to make such a ruling, ignoring “a line of authority that stands for the proposition that the trial judge as a trier of fact must make a credibility determination as to the witnesses.”<sup>41</sup> In fact, the ruling has absolutely *nothing* to do with the legal question at hand, which was whether the police violated Mr. Casey’s rights in seizing evidence and whether his consent to search was voluntary and not coerced.<sup>42</sup> Even the State Attorney’s Office apparently now believes that this ruling to reverse was wrong.<sup>43</sup> However, Florida Criminal Procedure does not allow the defense to appeal a pre-trial ruling, so the evidence now would be admissible.

There was nothing Sean Casey could do but go to trial, which is what he wanted to do to put this terrible nightmare behind him. Yet, during a private meeting with Milton Hirsch in his office on November 20, 2003, Mr. Hirsch reviewed with Sean the facts of the case and emphasized that innocent people do get convicted on circumstantial

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<sup>40</sup> *State v. Casey*, 821 So. 2d 1187, 27 (Fla. 3d DCA 2002), **Exhibit 18**

<sup>41</sup> Hr’g. Tr. 122:2-4, Jan. 8, 2007, **Exhibit 14**

<sup>42</sup> Defense: “...So you would have to agree then that by not calling Mr. Casey to controvert, impeach or discredit the officers, that that contributed to the loss of the appeal?”

Hirsch: “No, I don’t agree at all...The facts were scarcely in dispute. The police reports, the officers’ testimony, his recorded statement and our private conversations all pointed in the identical direction...It was really a question of what legal significance attached to the uncontroverted conduct in which the officers had engaged.”

Defense: “...but that’s not really what the Third District opinion says.”

Hirsch: “I’m hard pressed to interpret that opinion for you...”

Defense: “You believe this opinion is wrongly decided?”

Hirsch: “...it is inconceivable that the Third District could be wrong. But if it were conceivable, they would have been wrong on this one.”

[Hr’g. Tr. 98:20-25, 99:1, 122:9-12, 16-25, 123:19-22, Jan. 8, 2007, **Exhibit 14**]

<sup>43</sup> Prosecutor: “If the police are treating you as a victim and you are not really a victim in the police’s mind but you’re the suspect in a case and they’re getting you to talk because they’re treating you like a victim, then they are wrong in getting the information without reading you your constitutional rights if they’re not going to allow you to leave after you give your victim story...they had no intentions of letting him leave...It was, in effect, a custodial interrogation. That’s what it was.”

[Hr’g. Tr. 167:4-10, 17-20, Jan. 8, 2007, **Exhibit 14**]

evidence, that 90% of DUI manslaughter convictions end in some form of prison sentence, and that Sean would not survive incarceration in the Florida prison system. Also, he told Sean that the prosecutor was not willing to consider any plea agreement whatsoever, ignoring his clean record and contribution to society, and would seek the maximum sentence of 45 years in State Prison.<sup>44</sup> **The meeting ended with Milton Hirsch suggesting Sean Casey flee to avoid being wrongfully prosecuted in this country for this crime.** Mr. Hirsch knew Sean had previously lived in Latin America, spoke Spanish fluently, and would adjust fine if he were forced to live there. He even suggested Argentina as a country to relocate to because of a recent economic crisis that made the cost of living quite affordable to Americans. Sean said he would think about it. He left the meeting very depressed, discouraged, and even shocked by his advice, which seemed completely unethical, especially from someone as respected in the legal community as Mr. Hirsch.

The very next day, Sean wrote Milton Hirsch a letter saying he did not want to flee and was not going to act upon his advice.<sup>45</sup> He was reluctant because he still had some faith in the justice system despite the decision of the Third District Court of Appeal.

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<sup>44</sup> Hirsch: “It was difficult to negotiate with [Granoff] generally and in this case in particular. I recall once sitting in the coffee shop downstairs on the first floor with him trying to have plea negotiations and having him tell me that 15 years would be a dream and a gift and forget about it.”

Defense: “Did you inform Mr. Casey of that?”

Hirsch: “Yes.”

[Hr’g. Tr. 124:20-25, 125:1, Jan. 8, 2007, **Exhibit 14**]

<sup>45</sup> “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...This is one piece of advice, however, I do not believe I should act on.”

[Fax letter from Sean Casey to Milton Hirsch, p. 1:1-2, 2:1, Nov. 21, 2003, **Exhibit 19**]

In January 2004, knowing Sean had not fled and was still doubting his advice, Mr. Hirsch insisted Sean meet one last time with Dr. Michael Rappaport, whom he had been seeing at Milton Hirsch's urging on a weekly basis since the accident. During the long meeting, Dr. Rappaport wanted to confirm that Mr. Casey understood Milton's "message" and that he also thought it would be best. He spoke about the horrors of the prison system, he said Sean would have a difficult time incarcerated, and even suggested that Judge Trawick was giving him "signs" to flee by allowing Mr. Casey to travel outside the country for work, including to certain more obscure countries that are "safe havens" for fugitives, such as: Guyana, Panama, Suriname, and the Caribbean islands. He assured Sean that the State Attorney's Office would just close the case and move on, especially since the victim had no immediate family pushing for prosecution and that this case was not on the media's radar. As long as he kept a "low profile," Dr. Rappaport told Sean he should have no problems living abroad and could even attempt to return to the States in a few years when, as he said, "the Democrats come back to power and roll back tough sentencing guidelines Republicans have enacted in the past decade."

Furthermore, attorney Michael Haber, whose mother, Merry Haber, is a partner with Dr. Rappaport at their psychology practice called "Behavior Changers" and who was hired by Milton Hirsch to assist in the legal defense, had just months before told Mr. Casey, when he was questioning certain decisions made by Mr. Hirsch in the case, that he should always listen to his lawyer and said it would be "suicide" if he did not do so.<sup>46</sup>

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<sup>46</sup> "[W]hen your lawyer urges you to pursue a course of conduct...you do it...to act in contravention of such advise [sic] is tantamount to committing...suicide."  
[E-mail from Michael Haber to Sean Casey, Aug. 28, 2003, 10:41 EST, **Exhibit 20**]

Everyone around him was telling him to flee to literally save his life. Sean now felt doomed if he did not act upon the advice.

Sean Casey's parents were also very concerned about the advice he was telling them he was getting from his attorney and therapist. As their only child, they obviously wanted what was in the best interest of their son. They did not want to see him be sent to prison for a crime he may not have committed and, if so, for only an accident. They wanted to hear the advice directly from Milton Hirsch and Michael Rappaport. Private meetings were held that confirmed that what Sean was telling them was true; both suggested Sean Casey flee the jurisdiction.<sup>47</sup> Mr. Casey needed a few months to complete a few projects and resign from his job. He told Milton Hirsch that he needed until May 2004. Mr. Hirsch said that he would submit several motions to the Court, including a Frye Motion to try to dismiss the glass evidence based on inaccurate testing equipment, in an effort to push the trial date back.

Mr. Casey ultimately left the country one last time on May 29, 2004, and relocated to Santiago, Chile, where he had previously spent a semester abroad in the early 90s. An arrest warrant was issued by the Court on September 9, when Mr. Casey failed to appear at a pre-trial hearing. Milton Hirsch claims that he did not know what had happened to Sean.<sup>48</sup> However, Mr. Hirsch continued to be in contact with Mr. Casey's mother and most definitely knew that Mr. Casey acted upon his advice and

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<sup>47</sup> On May 12, 2004, Mr. Hirsch told Sean's mother, Genevieve Casey, during a private meeting in his Dadeland office in Miami: "...if he were me, he would make Sean disappear..."  
[Genevieve Casey Aff. 1:5-6, Oct. 30, 2006, **Exhibit 21**]

<sup>48</sup> Hirsch: "I think the more likely explanation is that he could be severely injured, hospitalized or perhaps dead."  
Defense: "Did you make any efforts to find him?"  
Hirsch: "No..."  
[Hr'g. Tr. 113:4-7, Jan. 8, 2007, **Exhibit 14**]

fled.<sup>49</sup> Besides advising Mr. Casey to flee, Milton Hirsch even helped him maintain his fugitive status by sending court documents and affidavits to Sean's attorney in Chile, Patricio Gonzalez, with the **sole** purpose of preventing Mr. Casey's return to the United States to face justice.

In January 2005, Mr. Casey had applied for permanent residency in Chile. This request was denied in July 2005 because of an international arrest warrant posted on Interpol by Miami Beach Police. Although the U.S. Government knew Sean was in Chile as early as 2004, it **never** requested extradition through normal diplomatic channels. Presumably it knew that an extradition request would be denied by the Chilean courts since the crimes have disproportionate sentences in each country (30 years in the U.S. and 3 years in Chile), which would have barred extradition. Instead, the U.S. Government pressured the Chilean Ministry of the Interior to deny Sean's application for residency and execute his deportation, which it ordered in December 2005. Mr. Casey then filed an appeal of this administrative decision to the Supreme Court of Chile. Sean sent an e-mail to Mr. Hirsch updating him on the situation and he responded he would see what he could do.

As part of the appeal, Mr. Casey's attorney in Chile asked Milton Hirsch for documentation showing Sean had never been tried or convicted of the charges in this case, which would have prevented him from obtaining permanent residency. Mr. Hirsch sent Patricio Gonzalez a certified copy of the court "docket sheet" and two notarized

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<sup>49</sup> On Sept. 30, 2004, after receiving a phone call from the bail bondsman, Mr. Hirsch told Mrs. Casey, "not to worry, pay the outstanding bail...nobody would be looking for Sean."  
[Genevieve Casey Aff. 1:16-17, Oct. 30, 2006, **Exhibit 21**]

In Oct. 2005, when Sean found out about the arrest warrant, Mrs. Casey contacted Mr. Hirsch, who stated "[W]hy didn't he change his name?...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."  
[Genevieve Casey Aff. 1:22-24, Oct. 30, 2006, **Exhibit 21**]

affidavits that were presented to the Chilean courts.<sup>50</sup> Mr. Hirsch used selective wording to protect himself in the U.S. and help Sean in Chile. The court ultimately denied Mr. Casey's appeal, and ordered him to abandon the country. During the two-week appeal process, Mr. Casey was in the custody of Chilean Immigration. On August 30, 2006, Sean was escorted back to the U.S. by two Chilean detectives. They admitted to Mr. Casey that they did not see how the U.S. could send him to prison based on the facts of the case they reviewed, but they had a job to do to comply with the arrest warrant.

Sean Casey was subsequently arrested at Miami International Airport on the morning of August 31, 2006, and charged with Bond Forfeiture/Failure to Appear (Fla. Stat. §843.15). Officer Silvagni, Mr. Casey's arresting officer on March 11, 2001, was at the airport waiting for him to pass through immigration. When his passport was stamped, Officer Silvagni grabbed him, forcefully threw him against the wall, and placed him in handcuffs. Meanwhile, Metro-Dade police officers came running and yelling at Officer Silvagni to stop. They knew Officer Silvagni, a police officer from Miami Beach, had no authority to arrest Sean outside his jurisdiction. The airport corresponds to unincorporated Miami-Dade County and, therefore, Metro-Dade Police. Officer Silvagni began shouting out that Mr. Casey was a "murderer." A Metro-Dade Officer told him to stop because he was scaring passengers who were waiting to clear immigration, who had already witnessed the outright display of force as he slammed Mr. Casey against the wall, and because his statement was not true. The Metro-Dade police officer said that Mr. Casey is not charged with murder, that he needs to be treated like any other passenger who is arrested and taken to a private room off of

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<sup>50</sup> See **Exhibit 22**

baggage claim to be processed away from public view. Officer Silvagni reluctantly withdrew from the area and allowed the Metro-Dade officer to be able to conduct the arrest following procedure and the law.

Within hours of his arrest, Sean spoke with Mr. Hirsch who assured him not to worry and that he would take care of everything. He came to the Dade County Jail with Dr. Rappaport and Michael Haber to visit Mr. Casey the very next day. They told him “not to speak to anyone about anything.” They also had a Speedy Trial demand, pursuant to Florida Rule of Criminal Procedure 3.191, in hand, and recommended he sign it, which he did, and trial was set for October 17, 2006.

Mr. Casey was denied bond and remained in custody at MetroWest Detention Center. Never once did Mr. Hirsch excuse himself from the case, neither did Mr. Casey seek another attorney. He thought Mr. Hirsch would work twice as hard to get him out of the mess he helped him get into. Yet, Mr. Casey became nervous when Mr. Hirsch *never* came to visit him while he was in county jail. He *never* responded to his letters. He did not even prepare to send court clothes for trial day. Sean entered Court that day in the customary orange jumper. Also, according to the fee agreement between Mr. Hirsch and Mr. Casey, Sean was to pay an upfront retainer of \$50,000 for pre-trial litigation, which he did in March 2001, and an additional \$25,000 prior to trial.<sup>51</sup> However, when Sean returned to the U.S., Mr. Hirsch told him and his family that he was not going to charge anything for trial. Either his guilty conscience got the best of him for advising Sean to flee or he knew there was not going to be a trial. He also may have decided to be so generous so that Sean would not go to another attorney that undoubtedly would charge large sums of money to prepare for trial in such a short time,

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<sup>51</sup> See **Exhibit 23**

and reveal to this new attorney Mr. Hirsch's advice to flee and obstruction of justice. It is very peculiar for Milton Hirsch to bill Sean for every minute expense, from parking meters to office supplies, but would not charge for what promised to be a lengthy and demanding trial. In retrospect, all the signs were there that Mr. Hirsch knew there would be no trial and made every effort to avoid a trial to protect himself from his own wrongdoing.

On the day of trial, the Court presided by Judge Leonard E. Glick, not the original judge on the case, but a back-up judge from Special Court (Judge Trawick was reassigned to Civil Division Court in January 2006), heard a motion presented by the State to be allowed to mention Mr. Casey's flight at trial as an admission of guilt. Mr. Hirsch told Sean that it would be "impossible" for the prosecutor to bring this separate issue up at trial, but, again, he was wrong. The judge granted the motion. Mr. Hirsch did not raise any objections even though this would have greatly jeopardized Mr. Casey's defense at trial.

Judge Glick then, just before selecting a jury, asked the State to offer a plea. The prosecutor offered nothing less than the guideline sentence following the point system of 11½ years in prison for DUI manslaughter and the same for Leaving the Scene of an Accident in Case No. F01-007975, both sentences to run concurrent, and 366 days for Bond Forfeiture in Case No. F06-032696 to run consecutive, totaling 12½ years in State Prison.<sup>52</sup> The sentence for Vehicular Homicide was suspended because, according to the judge, it would be "duplicitous" to the DUI manslaughter sentence.

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<sup>52</sup> Judgment, Sentence, and Scoresheet for Sean D. Casey, Oct. 17, 2006 [Exhibit 24]

Also, the Court recommended the permanent suspension of Mr. Casey's driver's license.

When the judge recessed for 20 minutes for Sean to make a decision, Sean was pressured by everyone to sign the plea, except for Dr. Gary Moran, a jury specialist, who sat in the audience. Dr. Moran, who conducted several surveys in which average citizens would have acquitted Mr. Casey of the charges, kept shaking his head in dismay at what was going on. However, Dr. Moran was also unaware of Mr. Hirsch's involvement in Sean's fleeing. Both Mr. Hirsch and Mr. Haber vehemently recommended he sign the plea. Sean Casey's mother was very emotional, but also felt something was wrong.<sup>53</sup> Nonetheless, with only 20 minutes to decide between a possible 50 years in prison and 12½ years, he accepted the plea agreement.

This was nothing less than a coerced plea. First of all, it is *illegal* for a trial court judge to initiate plea negotiations.<sup>54</sup> In this case, neither the prosecution nor the defense proposed a plea. It was Judge Leonard Glick who asked the State to offer a plea. According to Florida Rule of Criminal Procedure 3.850, a plea is involuntary when "unlawfully induced," which is the case here. In fact, Mr. Hirsch asked Mrs. Casey to thank Judge Glick for offering a plea which she reluctantly did out of fear the judge could make things even worse for her son.<sup>55</sup> Judge Glick then responded "...I always

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<sup>53</sup> Mrs. Casey: "Milton came up to me and said, I told the judge you wanted to speak, and I said really? ...I said, well, I want to tell the judge that I don't think Sean did this, and Milton said you can't say that. You don't want to get the judge upset. Just thank the judge for the plea and thank him for his time...And after it was all over, I walked back to the hotel and said, what happened?...I kept saying this is wrong...Something went wrong."  
[Hr'g. Tr. 70:17-22, 72:17-20, Jan. 8, 2007, **Exhibit 14**]

<sup>54</sup> See *Warner v. State*, 762 So. 2d 507, 513 (Fla. 2000)

<sup>55</sup> Mrs. Casey: "First, first I would like to thank you for taking this case and initiating a plea bargain."  
[Hr'g. Tr. 25:15-17, Oct.17, 2006, **Exhibit 35B**]

have a responsibility to ask if there has been any dialogue so if you call it initiating a plea negotiation, okay. I don't get involved in them."<sup>56</sup> He does not get involved in them, yet he is the one who initiated, discussed, and approved this plea, which is clearly documented in the hearing transcript. Also, throughout the plea dialogue, Judge Glick repeatedly called it a "negotiated" plea.<sup>57</sup> However, there was absolutely no negotiation. He mentions the prosecution working on the plea with the assistance of defense counsel, but this *never* happened.<sup>58</sup> Mrs. Casey even asked Mr. Hirsch if the defense could negotiate and he responded by saying there would be absolutely "no" negotiating and that since the judge himself offered this plea, he would most certainly give him a lot more prison time if he went to trial and lost. Under such pressure, Sean signing the plea can be seen as nothing other than coerced and involuntary.

Also, Judge Glick only allowing Sean Casey 20 minutes to consider the plea is in clear violation of Florida Rule of Criminal Procedure 3.170, which states:

"No defendant whether represented by counsel or otherwise shall be called on to plead unless and until he or she has had a reasonable time within which to deliberate thereof."

Twenty minutes to make such a life-impacting decision of going to prison for over a decade for a crime you may not have committed is simply outrageous, especially

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Mrs. Casey: "...Milton Hirsch said, don't say anything, just thank the judge for the plea, for starting the plea, and thank him for his time and said don't say anything else.

[Hr'g. Tr. 74:14-16, Jan. 8, 2007, **Exhibit 14**]

<sup>56</sup> Hr'g Tr. 29:16-19, Oct. 17, 2006, **Exhibit 35B**]

<sup>57</sup> The Court: "And therefore the Court will accept the negotiated plea in each of these cases."  
[Hr'g Tr. 21:16-17, Oct. 17, 2006. **Exhibit 35B**]

<sup>58</sup> The Court: "A plea has been offered to you by the prosecution, worked out for you essentially with the assistance and recognition of your attorneys that will resolve two cases."  
[Hr'g. Tr. 10:16-19, Oct. 17, 2006, **Exhibit 35B**]

compounded with threats from everyone, including the judge's own bailiffs who said that if he did not sign, Judge Glick would "give him the max" of 50 years. The pressure was overwhelming for a 33-year old who has never been involved in the criminal justice system. Ironically, a seasoned criminal who has been through the system before would have immediately noticed this blatant violation of criminal procedure and called a foul.

Knowing something was not right about what had transpired in court that day, and perhaps a naïve notion that justice was not supposed to work this way, coupled with his frustration that the whole story had not been told in this case, Mr. Casey and his family retained defense attorney David S. Markus, and filed a Motion to Vacate Conviction and Sentence, pursuant to Florida Rule of Criminal Procedure 3.850, due to ineffective assistance of counsel. Mr. Markus was also convinced Sean Casey had been set up by his own attorney, Milton Hirsch, to sign the plea to prevent the fact it was he who advised Mr. Casey to flee be revealed at trial. Mr. Markus did not attend the October plea hearing and was unaware of how the plea was illegally induced by the judge and handled improperly. These items were not discovered until *after* the motion was filed, heard, and ruled upon. The only ground established at this point to vacate the plea was ineffective assistance of counsel.

An evidentiary hearing was held on January 8, 2007. Witnesses testified that Milton Hirsch and Dr. Michael Rappaport both advised Mr. Casey to flee the country and helped him maintain his fugitive status. Mr. Hirsch testified that his legal obligation in this situation "was that I could do nothing for Mr. Casey except to inform him that I would assist him in returning him to the United States to face justice."<sup>59</sup> Yet, Milton

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<sup>59</sup> Hr'g. Tr. 115:3-6, Jan. 8, 2007, **Exhibit 14**

Hirsch did just the opposite.<sup>60</sup> **By assisting Mr. Casey remain a fugitive, Milton Hirsch clearly sought to ensure that Sean did not return to the country to stand trial and explain to a jury that the sole reason he fled was because he had been so advised by his attorney.** Mr. Hirsch was forced to choose between his client's interest in proceeding to trial and his own interest in not making his misconduct known to the Court. In short, a guilty plea would seal Sean Casey's lips and leave Mr. Hirsch's unethical, if not criminal, behavior a secret.

Dr. Rappaport also lied on the stand and denied ever telling Sean to flee. He testified that it was Sean who mentioned fleeing during numerous sessions.<sup>61</sup> Yet, he never told Milton Hirsch about this.<sup>62</sup> Dr. Rappaport and Milton Hirsch worked very closely together throughout the entire pre-trial period. This certainly would have been something they would have discussed. He never told Mr. Hirsch this, because there was nothing to tell. Sean *never* mentioned fleeing. In fact, nowhere does Dr. Rappaport make note of this in any of his reports or patient records. Dr. Rappaport was lying.

However, Judge Leonard Glick, a former colleague of Mr. Hirsch and long-time

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<sup>60</sup> Defense: "Did there come a time when the Chilean authorities asked you to prepare an affidavit?"

Hirsch: "It was Mr. Casey's attorney who asked me."

Defense: "Why did you do that?"

Hirsch: "As I understood it from Mr. Casey's attorney, there were proceedings ongoing in Chile. I assumed them to be in the nature of extradition proceedings. I didn't really get into it."

[Hr'g. Tr. 116:2-8, Jan. 8, 2007, **Exhibit 14**]

Note: Mr. Hirsch knew there were no extradition hearings. The U.S. *never* requested extradition!

<sup>61</sup> Defense: "So out of the 38 times, would you say he talked about it over twenty?"

Rappaport: "Well, it came up fairly frequently..."

[Hr'g. Tr. 143:18-20, Jan. 8, 2007, **Exhibit 14**]

<sup>62</sup> Defense: "You never once said to [Hirsch], you know, half the time your guy comes and talks to me, he's talking about leaving the country, you should know this?"

Rappaport: "No."

[Hr'g. Tr. 144:7-10, Jan. 8, 2007, **Exhibit 14**]

personal friend, denied the motion to withdraw the plea since Mr. Casey failed to mention this conflict at the time he signed the plea.<sup>63</sup> He found Mr. Casey's testimony and that of his mother not credible.<sup>64</sup> It is ironic that Judge Trawick, who had no special ties to Mr. Hirsch found Sean was credible and not the police, yet Judge Glick now finds Sean not credible.

Another irony is that Milton Hirsch and Dr. Michael Rappaport were the ones who lied throughout their entire testimony. One bystander in the audience described Mr. Hirsch's testimony on the stand as a "performance that could win an Academy Award." It was so planned and orchestrated, it could not be seen as anything but fake. A recent case in the Florida courts exemplifies Mr. Hirsch's true colors. In *State v. Wasserstrom*, Mr. Hirsch represented former Hollywood (Florida) commissioner Keith Wasserstrom, who was on trial in September 2007 for using the power of his office to help a sewage company obtain a lucrative contract with his city in exchange for future personal compensation by selling other cities on the firm's sewage treatment system. The evidence against Mr. Wasserstrom was overwhelming. The journalist who broke the corruption story, Bob Norman, of The New Times, called Mr. Hirsch the "ringleader" of a "shameless charade."<sup>65</sup> He wrote, "[Hirsch] showed his ability that all great hucksters

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<sup>63</sup> "What we have here I think is [a] true case of buyer's remorse. Oh, I love that car. I want to buy that car. Give me the car. How much are the payments? No problem. Where do I sign? And then you go home and you take out your check book and say, I can't do this. Can I give the car back? Do you know of any car dealers that will [take] the car back [from] you? No, sir. They're not. We're not giving this plea back to him either. We're not giving this case back to him."  
[Hr'g. Tr. 175:13-22, Jan. 8, 2007, **Exhibit 14**]

<sup>64</sup> "The defendant's claim is refuted by the entire plea dialogue, specifically those portions dealing with the satisfaction with the work and advice of his counsel...the Court evaluated the credibility of each witness and the nature of their testimony and found the testimony...to be unworthy of belief."  
[Ct. Order, p. 1:14-16, 25-28, Mar. 2, 2007, **Exhibit 25**]

<sup>65</sup> The New Times, "Judge and Jury: Judge Lazarus takes justice into his own hands in the Keith Wasserstrom trial," Sept. 13, 2007, **Exhibit 26**

must possess...The shameless Hirsch stood in the courtroom as you could easily imagine him on the side of the road selling snake oil to a rapt crowd.”<sup>66</sup> Fred Grimm, columnist for The Miami Herald, suggested Mr. Hirsch got “[c]arried away with himself when he proclaimed that Mr. Wasserstrom was “doing God’s work.”<sup>67</sup> Although the jurors were enthralled in Mr. Hirsch’s theatrics, they saw right through his charade and convicted his client of two felony charges.<sup>68</sup> It is not difficult to see how Milton Hirsch was capable of convincing Sean Casey to flee and then cover up his wrongdoing methodically taking every measure to ensure Sean went to prison and his wrongdoing was swept under the carpet forever.

After the judge’s ruling, Mr. Hirsch, Dr. Rappaport, and the prosecutor, Gail Levine, were witnessed in the hallway congratulating themselves and laughing as if celebrating being able to pull off such a show all under the blind eye of Judge Glick. Gail Levine got her conviction, Milton Hirsch and Dr. Rappaport’s unethical behavior was concealed, and Judge Glick made both friends happy. He had nothing to gain by siding with the truth and ruling in favor of Sean Casey as he should have. This is an example of abuse of power and influence of the worst kind and makes a mockery of the justice system.

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<sup>66</sup> Ibid.

<sup>67</sup> The Miami Herald, “Sludge case had the smell of corruption,” Sept. 13, 2007, **Exhibit 27**

<sup>68</sup> “A short man with a beard and a pugnacious face, Hirsch quickly distinguished himself...On the first day of the trial alone, he quoted freely from Abraham Lincoln, Shakespeare and Perry Mason. An example came when one of the potential jurors couldn’t be heard: “There’s a line in King Lear, ‘Her voice was ever sweet and gentle and loving.’ I need you to speak up. She and the rest of the jury pool were soon eating out of his hand.” [The New Times, “Judge and Jury,” Sept. 13, 2007, **Exhibit 26**]

Yet, the jurors saw through this smoke and mirrors, “The problem was his part. His entire involvement was wrong,” juror Ira Jones, Jr. said, “There was enough evidence. And those e-mails. The law is the law.” [The Miami Herald, “Jury Convict Ex-Commissioner,” Sept. 13, 2007, **Exhibit 28**]

Mr. Casey went to court prepared for trial. He did not expect his attorney to vehemently push for signing a plea. Sean was going to mention the conflict at that point, but wanted to consult another attorney. He felt he had to sign the plea and that he could take it back later. He thought the legal system must allow for this and believed any court on the planet would be shocked at this blatant wrongdoing by such a respected attorney in Miami. He also felt very intimidated by Milton Hirsch who did not leave Mr. Casey's side during the entire plea dialogue. He told Sean to answer "yes" to all the judge's questions and to be respectful. He did not want him to upset the judge and told him the judge could give him 50 years if he did not go along. Sean was scared. He was thrown off guard. He only had 20 minutes to decide. Had Sean Casey been given just 24 hours to consult another attorney based on the bizarre spectacle in the courtroom that day with Judge Glick, Assistant State Attorney Gail Levine, and even defense counsel Milton Hirsch all rushing through the session elated the case was finally closed, he would **never** have signed the plea agreement.

Judge Glick ignored all the evidence. He refused to listen to a taped recording of Milton Hirsch and Dr. Michael Rappaport.<sup>69</sup> He never allowed Mr. Hirsch to answer two critical questions that try to establish that the person who made the audiotape must have known that Mr. Hirsch was going to do something unethical and criminal:

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<sup>69</sup> A tape recording was discovered of meetings between Milton Hirsch, Dr. Michael Rappaport, Sean Casey and his mother, Genevieve Casey, on May 12 and 13, 2004. Attorney David Markus, who had the audiotapes and listened to them, called Mr. Hirsch prior to the hearing to vacate the plea about the existence of the tapes to try to get him to admit to his clear wrongdoing. Instead, Milton Hirsch hired an attorney, Ms. Pamela I. Perry, presumably to defend him if criminal charges were filed against him, if there were any Florida Bar violations, or any civil suits filed by Mr. Casey. Mr. Hirsch also contacted Assistant State Attorney Gail Levine who subpoenaed the cassettes that very same day. Apparently, the prosecutor was going to do anything to avoid opening a closed case even if it meant ignoring Mr. Hirsch's unethical and criminal behavior.

“If you accept that he himself and not another person is the one who tape recorded your statement---wouldn't that suggest to you that something unauthorized had occurred in a prior meeting that he wanted to document?

What possible motivation could Mr. Casey have to either himself or his mother tape record you if on a prior occasion you hadn't said something along the lines of leave the country?”<sup>70</sup>

Also, Judge Glick *never* read e-mail messages in which Mr. Hirsch clearly was assisting a fugitive.<sup>71</sup> He *never* saw the affidavits prepared by Milton Hirsch that were sent to the Supreme Court of Chile.<sup>72</sup> Neither did he read a letter sent by Mr. Casey's attorney in Chile that confirms Milton Hirsch's important contribution in trying to keep Sean from coming back to the United States to face justice, as well as their professional opinion that Mr. Casey acted on the advice of Milton Hirsch.<sup>73</sup> The evidence begs the question whether Judge Glick was protecting his friend and former colleague, Milton Hirsch, at the expense of truth, justice, and fair review of the entirety of the case against Sean Casey.

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<sup>70</sup> Hr'g. Tr. 130:3-4, 6-8, 19-22, Jan. 8, 2007, **Exhibit 14**

<sup>71</sup> Gonzalez: “With the purpose of organizing Mr. Sean David Casey [sic] legal defense in Chile, I would appreciate very much if you could send me any sort of official certificate or document which demonstrates...that there is no definitive sentence or resolution in the USA that considerate [sic] him guilty of any crime.” (Jun. 9, 2006, 1:07 PM)

Hirsch: “If it would help you, we can send a certified copy of the ‘docket sheet’...” (Jun. 12, 2006, 15:10)...

“We shall do so with great pleasure.” (Jun. 15, 2006, 16:00)

Hirsch: “If a sworn statement (‘affidavit’) from me...would help you, I can provide it to you.” (Jun. 30, 2006, 14:39-0400)

Gonzalez: “A sworn statement from you...would be of enormous usefulness to us.” (Jun. 30, 2006, 16:39-0400) [E-mail messages between Chilean attorney Patricio Gonzalez and Milton Hirsch from Jun. 9-30, 2006, **Exhibit 29**]

<sup>72</sup> See **Exhibit 22**

<sup>73</sup> “Our law office sought and received the collaboration of Mr. Casey's attorney...Milton Hirsch...[who] understood that the objective of our case was for Mr. Casey not to be deported...Casey acted upon the professional advice of his attorney...” [Letter from Patricio Gonzalez to the Office of the State Attorney, p. 1:4-6, 2:1-4, Oct. 25, 2006, **Exhibit 30**]

Furthermore, there is a reasonable possibility that the State Attorney's Office, represented by Assistant State Attorney Gail Levine, and Judge Leonard Glick were both protecting Milton Hirsch from his unethical and criminal behavior. Ms. Levine claimed there was no wrongdoing.<sup>74</sup> She claims there was no overt act, such as providing the plane ticket, but Mr. Hirsch's collaboration in sending documents needed for Mr. Casey to stay in Chile would have had much more of an impact in preventing him from returning. She claims that there was nothing wrong with the information contained in the affidavits, but completely ignores the purpose and intent of preparing and sending them.<sup>75</sup> As opposed to a simple plane ticket which would have aided a fugitive, Mr. Hirsch sought to obstruct justice, which is arguably far worse.

Also, Judge Glick's daughter, Stacy Glick, was a prosecutor at the time in the same Criminal Division of the State Attorney's Office of Miami-Dade County as Sean Casey's prosecutor, Gail Levine. Naturally, Judge Glick had a personal interest in siding with the prosecution so as not to adversely affect his daughter's workplace relationship with her fellow prosecutors had he not cooperated with Ms. Levine and accepted her lies and deceptive tactics.

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<sup>74</sup> Defense: "I think if a lawyer tells a client to flee the jurisdiction, it is aiding and abetting. It's obstruction of justice. I think it's a criminal act..."

Levine: "It's none of that."

[Hr'g. Tr. 155:8-10, 14, Jan. 8, 2007, **Exhibit 14**]

Defense: "...I can't believe that the State is going to take the position that a lawyer...who tells his client to flee the jurisdiction and not go to court commits no crime."

Levine: "It's not. It's not a crime...there is no overt act."

[Hr'g. Tr. 155:20-25, 156:7-9, Jan. 8, 2007, **Exhibit 14**]

<sup>75</sup> Levine: "Mr. Casey, there is nothing in that affidavit that's untrue. Did you read that affidavit?"

Casey: "Yes, I did. But the purpose of its intent was, and he knew what it was for, was to prevent me from coming back to the United States."

Levine: "Either way, Mr. Casey, it was you that left, wasn't it?"

[Hr'g. Tr. 55:14-20, Jan. 8, 2007, **Exhibit 14**]

It is important to note that when Mr. Casey returned to the U.S., the case was assigned to Judge Lawrence Schwartz. Mr. Hirsch was not happy with this. He called Judge Schwartz “new school” who follows the black letter of the law. He preferred the case be sent to back-up Court with Judge Glick, who he knew personally and who he thought would be more “flexible.” On September 17, 2006, Mr. Hirsch had a cocktail party at his office which was attended by Judge Stanford Blake, administrative judge, who assigns cases to back-up judges.<sup>76</sup> It probably is no coincidence that following this party, Mr. Casey’s case was sent to Judge Glick.<sup>77</sup> Mr. Hirsch was elated. Now he had a judge that he must have thought would certainly protect him and not allow his wrongdoing be revealed.

Mr. Casey did not receive fair review of his Motion to Vacate Conviction and Sentence based on ineffective assistance of counsel. Judge Leonard Glick apparently made no effort to learn the facts of this case and Sean’s attorney, David Markus, even before entering the courtroom, expected Judge Glick would not review such a motion in a fair manner. Mr. Casey had only 30 days to appeal this decision, but Sean never received the written order to appeal until after the 30 days to appeal had expired. He was not given the opportunity to appeal even if he wanted to. For updates on the case, please read the ticker tape at the top of the home page at [www.freeseancasey.org](http://www.freeseancasey.org).

The criminal justice system is not infallible. This is a clear example of how the Courts failed to consider the whole story behind this unfortunate accident. This case should have been dismissed back in 2001, or at least the State Attorney’s Office should

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<sup>76</sup> The Miami Herald, “Legal Pros Honor Constitution,” Sept. 24, 2006, **Exhibit 31**

<sup>77</sup> Schedule of Judge Stanford Blake indicating change of judge from Schwartz to Glick, **Exhibit 32**

have considered the many mitigating factors to be presented here to offer a much lower sentence than the statutory minimum.

### Argument

Sean Casey has no prior criminal history and no prior experience or knowledge of the criminal justice system. Also, Mr. Casey has no prior traffic violations for Driving Under the Influence (DUI). In fact, Mr. Casey has a commendable driving record according to the Florida Department of Highway Safety and Motor Vehicles.<sup>78</sup> Sean is a good citizen with the background, professional experience, and moral ethics that make him an asset to society.

Mr. Casey is now in his 30s. He is the only child of John and Genevieve Casey. He attended Boston College High School in Massachusetts. While in high school, Sean worked weekends and evenings at McDonald's restaurant and became the youngest "shift manager" in the corporation's history. He was always a very responsible and disciplined individual excelling in both his studies and work.

Sean graduated Cum Laude Honors from Georgetown University in Washington, D.C., with a Bachelor of Science in Foreign Service and Master of Arts in Latin American Studies.<sup>79</sup> Sean participated in competitive internship programs at the Organization of American States (OAS), in Washington, D.C.; U.S. Department of State's National Foreign Affairs Training Center in Arlington, Virginia; and U.S. Consulate-General, in São Paulo, Brazil. He was active in community service and volunteered at local schools for the mentally challenged. He also was recognized with

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<sup>78</sup> Transcript of Driving Record, Florida Dept. of Highway Safety and Motor Vehicles, Apr. 30, 2007, **Exhibit 33**

<sup>79</sup> Georgetown University Academic Transcripts, **Exhibit 34**

awards and scholarships from organizations, such as the American Legion, Elks Club, and Knights of Columbus. Sean spent a semester abroad in Guadalajara, Mexico; the first student ever to participate in an exchange program from his high school, and his third year of college studying in Santiago, Chile. He became determined to pursue a career promoting democracy and human rights in Latin America. He is fluent in Spanish and Portuguese.

In 1997, Mr. Casey was hired as Project Administrator of the Inter American Press Association (IAPA), a non-profit organization based in Miami representing more than 1,400 newspapers and magazines throughout the Western Hemisphere in the defense of freedom of the press and of expression. Despite his young age of 24 when he started, Sean quickly took on a leading role in the organization's largest project raising awareness about free speech in the Americas, personally meeting with the presidents of many countries in the region, including: Antigua & Barbuda, Belize, Bolivia, Costa Rica, Dominica, Dominican Republic, Ecuador, Grenada, Guatemala, Guyana, Haiti, Paraguay, Peru, St. Kitts & Nevis, St. Vincent & The Grenadines, Suriname, and Trinidad & Tobago.<sup>80</sup>

Sean also became one of the IAPA's main meeting planners organizing international conferences, including the "Hemisphere Summit on Justice and Press Freedom," in Washington, D.C., in June 2002, which was broadcast on C-SPAN as part of its "America and the Courts" program. Mr. Casey assured the participation of every Supreme Court Chief Justice in the Americas, including the late U.S. Chief Justice William H. Rehnquist, with whom he planned a reception in the Supreme Court Building.

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<sup>80</sup> Judge Daryl Trawick granted 16 motions for Mr. Casey to travel outside the country between 2001-2004. [Hr'g. Tr. 35:12-13, Jan. 8, 2007, **Exhibit 14**]

He organized a similar conference with the Presidents of the National Congresses of the Americas in Washington, D.C., in May 2004, which included a luncheon at the U.S. Capitol that he planned with Congresswoman Ileana Ros-Lehtinen (R-FL). Sean was also instrumental in planning the inauguration of the IAPA's new headquarters in downtown Miami, in July 2000, which was attended by City Mayor Joe Carollo, County Mayor Alex Pinelas, County Commissioner Bruno A. Barreiro, Rev. Thomas Wenski, and other notable figures in the community. Overall, Sean Casey was a valuable asset to the IAPA and democracy, human rights, and a free press in the hemisphere.<sup>81</sup> His boss, Julio E. Muñoz, IAPA Executive Director, had nothing but praise for Sean's work.<sup>82</sup>

The State Attorney's Office, represented in this case by Assistant State Attorney Gail Levine, who was only assigned to this case for the last month and a half before the trial date, claims that Mr. Casey has not been honest, has shown no remorse, and has avoided responsibility in this unfortunate vehicular accident.<sup>83</sup> This cannot be any farther from the truth. These are very slanderous statements from someone who does not know Sean Casey, conducted no depositions in this case personally, and probably

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<sup>81</sup> See "Portfolio of IAPA Achievements: 1997-2004"

<sup>82</sup> Q: "---Was a good worker?"

A: "He's excellent. He is the top of the top."

Q: "Smart guy?"

A: "Yes. Very smart guy. Very responsible guy, very professional guy..."

[Muñoz Dep. 18:14-16, 21-22, Sept. 30, 2003, **Exhibit 11**]

Q: "...you would rather him be at work, is that correct...working for you and your company?"

A: "Yes, I agree."

[Muñoz Dep. 20:14-17, Sept. 30, 2003, **Exhibit 11**]

<sup>83</sup> Levine: "That's what Mr. Casey is. He's a liar...He's got to take responsibility and the responsibility starts now..."

[Hr'g. 169:7, 172:9-11, Jan. 8, 2007, **Exhibit 14**]

would have said anything to get a conviction in this case at the expense of fairness and the truth. It should be noted that The Florida Bar has received three formal complaints against Ms. Levine in only the past few years for professional misconduct, reckless disregard of the truth, making false statements, and employing unethical and illegal tactics to prejudice defendants.<sup>84</sup> She continued to violate each and every one of these offenses in her brief handling of Mr. Casey's case.

On October 17, 2006, when Ms. Levine was trying to get Judge Glick to allow the fact Mr. Casey fled to Chile enter as an admission of guilt to be used at trial, she exhibited blatant disregard of the truth. First, Ms. Levine argued Sean fled "just days before trial." The truth is Mr. Casey left the country for the last time in May 2004 and according to the court "docket sheet," the trial was still months away. She later admitted this at the hearing to vacate the plea in January 2007.<sup>85</sup> Second, Ms. Levine told the judge in a written motion that Sean was apprehended by police in Santiago, Chile "while boarding a plane to Buenos Aires, Argentina." She must have wanted to make it sound like Mr. Casey was trying to avoid authorities, but the truth is he was detained by Chilean detectives in his residence in Santiago. Mr. Casey knew that for his appeal of the deportation order to be heard by the Courts, he had to be in custody. He was held at an immigration detention facility until the outcome of the ruling after which he was escorted to the airport and on a flight to Miami! What gives the State Attorney's Office the ability to lie in such a prejudicial and blatant way refuted by fact?

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<sup>84</sup> The Florida Bar Case Nos.: 2007-70, 646 (11N), Jan. 16, 2007; 2007-70, 004 (11E), Jul. 12, 2006; 2006-71, 192 (11N), May 25, 2006.

<sup>85</sup> Casey: "...Because even you have stated that the trial was on June 9<sup>th</sup> [and that] I had fled a week before trial."  
Levine: "Right. The trial was scheduled September 21, 2004, according to the court docket..."  
Casey: "That was not a week before I had left."  
[Hr'g. Tr. 43:10-15, 18, Jan. 8, 2007, **Exhibit 14**]

Even worse, Mr. Casey's own attorney, Milton Hirsch, never objected or sought to correct her lies not even for the record. He knew that Sean was in custody in Chile. He knew even before Sean's family was advised, and he knew exactly the date and time he was returning.<sup>86</sup> He did not want to object. He wanted Sean to sign the plea to protect his reputation and career.

After the plea was signed, Judge Glick asked the State to recount the facts they would attempt to prove had this case gone to trial. There were many false statements and important unknowns that in no way proves their case, but discredits their case.

The prosecution began by stating, "...the defendant was speeding down Harding Avenue...He was weaving in and out of traffic at 79<sup>th</sup> and Harding."<sup>87</sup> However, the police's own traffic accident investigator's calculations only show the vehicle traveling anywhere from 1 to 11 MPH over the posted speed limit of 40 MPH.<sup>88</sup> This is hardly "speeding" in a straight stretch of a three-lane roadway. Witnesses say Mr. Casey's vehicle was behind a Metro bus in the right lane and moved into the middle lane to pass the bus when the accident occurred.<sup>89</sup> This one-lane maneuver can hardly be

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<sup>86</sup> Genevieve Casey: "I didn't find out until a week later [that] Sean was detained in Chile and then I called Milton Hirsch and he said, oh, I already know he was detained. And he said, yeah, I was helping his attorneys in Chile."

[Hr'g. Tr. 82:11-14, Jan. 8, 2007, **Exhibit 14**]

<sup>87</sup> Hr'g. Tr. 15:23-25, 16:1, Oct. 17, 2006, **Exhibit 35B**

<sup>88</sup> A: "...using the traffic---your numbers, the best they can do, 11 miles per hour over the speed limit. If I go out there and run radar, I am pretty positive that the majority of people that are driving there are doing 40..."

[Buchanan Dep. 31:22-25, Nov. 18, 2003, **Exhibit 36**]

Q: "So the defendant still would have been speeding, according to you?"

A: "Not according to me; according to Officer—the [driver] could have been traveling as low as 41 in that area."

[Buchanan Dep. 32:18-22, Nov. 18, 2003, **Exhibit 36**]

<sup>89</sup> Montgomery: "Um, it started at the right lane and went to the left lane."

[Interview of John David Montgomery by Sean Casey's auto insurance adjuster at GEICO Direct, Ramona Maldonado, p. 4:23, Jul. 3, 2001, **Exhibit 37**]

considered “weaving in and out of traffic.” Although “speeding” and “weaving in and out of traffic” are catch phrases used by sensationalist press and police public relations officers, they cannot be supported by the facts and circumstances of this accident.

Then, the prosecution claimed, “He hit [Mary] Montgomery...who was crossing the street after disembarking from a bus and attempting to go home,” therefore crossing from west to east.<sup>90</sup> However, all the evidence, even the police’s own sketch of the accident scene shows she was walking from east to west.<sup>91</sup> Presumably, Ms. Montgomery was walking back from Publix supermarket at 6876 Collins Avenue, to the east of Harding Avenue, to her apartment located at 7900 Tatum Waterway Dr. to the west of Harding Avenue, although nobody really knows.<sup>92</sup>

The prosecutor continued her extremely vague account of events by stating, “...he parked his car and went home after that, we believe, by some other transportation.”<sup>93</sup> Yet, how Mr. Casey got home is **critical** to knowing if somebody else was with him at the time of the accident, if he was in the accident, and if that other person could have been the driver. There were no taxi records showing a passenger being picked up in the vicinity of Park View Island where the vehicle was found. If he had taken a Metro bus, he would have had to have practically walked back to the accident scene at Harding Avenue where all buses run southbound, then he would have had to have waited for the next “S” bus at 10:30 a.m. that would have arrived at 5<sup>th</sup> Street and Alton Road at 11:02 a.m. and then he would have had to walk 6 more blocks

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<sup>90</sup> Hr’g. Tr. 16:1-3, Oct. 17, 2006, **Exhibit 35B**

<sup>91</sup> Police diagram of accident scene, **Exhibit 38**

<sup>92</sup> Map: 7900 Tatum Waterway Drive, Source: MapQuest, **Exhibit 39**

<sup>93</sup> Hr’g. Tr 16:6-7, Oct. 17, 2006, **Exhibit 35B**

to his apartment.<sup>94</sup> This would have taken too long, since the ATM withdrawal was allegedly made at 10:39 a.m. at the Bank of America located at 1414 Alton Road, four blocks from Mr. Casey's apartment.<sup>95</sup> It also would have virtually been impossible for Mr. Casey to have walked the 6-7 mile route, which the police agree would not have been feasible.<sup>96</sup> The **only** possible conclusion is that someone else assisted Sean Casey home, if he was in the accident.

The prosecutor stated "...pieces of that glass were found at the defendant's apartment, on the defendant's clothes which the defendant admitted to wearing that morning..."<sup>97</sup> Mr. Casey never saw the clothes the police actually confiscated.

**The bottom line is that the State Attorney's Office has no idea how the accident happened or who the driver was.** Their blatant disregard of the truth and complete misinformation should discredit their vague story of events altogether. The evidence seems to vindicate Mr. Casey's involvement in the accident. A very plausible scenario is that Sean left the bar around 6:00 a.m., which is the time confirmed by staff working that morning. He could have given his car keys to someone else to drive his

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<sup>94</sup> Metro "S" Bus Schedule, Southbound, **Exhibit 40**

<sup>95</sup> Map: 1414 Alton Road, Source: MapQuest, **Exhibit 41**

<sup>96</sup> Defense: "How far is [Alton Road Bank of America] from the scene of this terrible accident?"

Silvagni: "Quite a ways, several miles."

Defense: "Six, seven miles?"

Silvagni: "Correct."

Defense: "This is the part I don't get. Have we agreed that the accident took place about 10:15 in the morning [and] that withdrawal took place 25 minutes after that, yes?"

Silvagni: "Yes...while your client was supposed to be sleeping, yes."

Defense: "Let's see. How fast can you run, Officer? ...There are six or seven miles. In 25 minutes?"

Silvagni: "Definitely not."

Defense: "Neither can I."

Prosecutor: "Judge, is this like a whodunit?"

Defense: "It wasn't but it is now...I'm just trying to figure out how someone could get there."

[Hr'g. Tr. 119:6-10, 15-24, 120:9-15, Oct. 10, 2001, **Exhibit 1**]

<sup>97</sup> Hr'g. Tr. 16:22-25, Oct. 17, 2006, **Exhibit 35B**

car home later, since he may have felt he had drunk too much to drive and got a ride home by someone else, who had their own car at the bar. Sean had done this on several occasions in the past to avoid drinking and driving. The person he left his car keys with got into the accident, parked the car in his parking space on Park View Island, then drove another car to Mr. Casey's apartment, quickly changed his clothes, and asked Mr. Casey for money. He could have gone to the ATM machine across the street and returned to his apartment and went back to bed before the police arrived. It should be noted that Mr. Casey had no visible signs of being in an accident, which you would at least expect to see cuts from so much glass inside the vehicle.<sup>98</sup> Or, he was so impaired he asked someone to drive while he lay down on the back seat and after the accident the driver switched vehicles with his own, on Park View Island, where he could have lived, and quickly drove Sean home, stopping at the ATM to give him money. These are just two of many scenarios that could have happened that morning.

During the hearing to vacate the plea, Assistant State Attorney Gail Levine continued to show her ignorance of the facts of this case. She thought Mr. Casey was officially extradited back to the United States, but as already pointed out, the U.S. *never* requested extradition.<sup>99</sup> Then, Ms. Levine tried to accuse Mr. Casey of having two passports, one in the custody of the Court and another he obtained illegally to be

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<sup>98</sup> Prosecutor: "And did you notice anything about his person, any injuries or anything of that nature that he had as a result of the crime?"

Hirsch: "He had no injuries or disabilities of any kind."  
[Hr'g. Tr. 90:10-13, Jan. 8, 2007, **Exhibit 14**]

<sup>99</sup> Levine: "When you were returned to this country through the extradition process..."

Casey: "There was no extradition process."

Levine: "You waived?"

Casey: "No, I did not. The United States never requested extradition."  
[Hr'g. Tr. 45:25, 46:1-5, Jan. 8, 2007, **Exhibit 14**]

able to flee the country.<sup>100</sup> The truth is that Judge Trawick allowed Mr. Casey to hold on to his passport to avoid the cumbersome process of having to withdraw it from the Clerk's office for each and every trip that he made almost every month. Mr. Hirsch admitted to the Court that this was, in fact, possible.<sup>101</sup>

The prosecution also falsely accused Mr. Casey of signing a handwritten addendum to the Motion to Vacate Sentence and Conviction, which he *never* signed. Just before the hearing began, Sean's new attorney, David Markus, handwrote on the motion some lines to the effect that Sean had been "physically" threatened and "coerced" by the police officers in this case in an effort to establish another ground for ineffective assistance of counsel in that Milton Hirsch made a mistake in not calling Mr. Casey to testify to this during the hearing on the Motion to Suppress Evidence in October 2001, which would have controverted the testimony of the officers and given the Third District Court of Appeal record basis to affirm Judge Trawick's ruling to dismiss evidence illegally obtained.<sup>102</sup> Yet, Mr. Markus made this addendum *without* consulting Sean and only mentioned it to him for a matter of seconds as the judge was entering the courtroom to begin the hearing. He should have discussed this further with Mr. Casey and would have found out that it was not so much "physical" threats, but

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<sup>100</sup> Levine: "So isn't it true, Mr. Casey, that you didn't have just one passport, you have two passports?"  
Casey: "I do not."  
[Hr'g. Tr. 37:18-20, Jan. 8, 2007, **Exhibit 14**]

<sup>101</sup> Hirsch: "...whether at some point...he was permitted to keep custody of his passport, I honestly don't remember, Judge."  
[Hr'g. Tr. 133:3-5, Jan 8, 2007, **Exhibit 14**]

<sup>102</sup> Defense: "[Mr. Hirsch] should have called Mr. Casey to contradict what the officers were saying so that there would be a record basis for Judge Trawick to decide the way he did and I think that was an error on [Hirsch's] part...And if you read this opinion, it can only suggest that had that been done, the result might have been different..."  
[Hr'g. Tr. 163:15-21, Jan. 8, 2007, **Exhibit 14**]

rather the officers' coercion and verbal threats that were at issue. This is exactly what Sean testified to later in the hearing.<sup>103</sup> He never felt he was free to leave, although he had no reason to leave because he truly wanted to find the whereabouts of his vehicle, he was intimidated by the sheer number of police officers involved, and he felt threatened by their repeated demand, "You help us and we'll help you." Mr. Markus apologized to the Court for the speed at which he added the addendum.<sup>104</sup> He later even admitted to *never* reading the Motion to Suppress Evidence, which shows his lack of preparedness for this hearing.<sup>105</sup> The prosecutor argued in open court that Sean "signed" the addendum stating he was physically threatened and would have signed anything to take back his plea.<sup>106</sup> However, Sean *never* signed the addendum and *never* mentioned physical threats in his testimony. He only testified to the truth, which was affirmed by Judge Trawick when he found the police had not acted properly in this case.

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<sup>103</sup> Defense: "With respect to the motion to suppress, Mr. Casey testified that he felt intimidated by these officers and he would have testified that he felt he was in custody and that was the issue in the motion to suppress, whether or not he was in custody."  
[Hr'g. Tr. 172:12-15, Jan 8, 2007, **Exhibit 14**]

<sup>104</sup> Markus: "I apologize for the handwriting and the speed with which I drew this up..."  
[Hr'g. Tr. 5:21-22, Jan. 8, 2007, **Exhibit 14**]

<sup>105</sup> Prosecutor: "First of all, I think what's really telling and almost kind of sad is that Mr. Markus didn't read the motion to suppress. He couldn't possibly have read the motion to suppress and put forth the allegation that he had his client sign."  
[Hr'g. Tr. 166:24-25, 167:1-3, Jan. 8, 2007, **Exhibit 14**]  
Note: Sean *never* signed this addendum. The prosecutor even implies that this was imposed upon Sean by his attorney and not his own allegation.

Court: "Do you have a copy of the original motion that was filed and litigated?"

Markus: "No, I don't. I have gone to the clerk several times and I never get [sic] that particular volume."  
[Hr'g. Tr. 164:23-25, 165:1, Jan. 8, 2007, **Exhibit 14**]

<sup>106</sup> Prosecutor: "...he lies once again by signing a document...that there was physical threats...Just this morning he himself signing that document...goes to show he will do and say anything."  
[Hr'g. Tr. 169:4-6, 171:22-24, Jan. 8, 2007, **Exhibit 14**]  
Note: Again, Sean *never* signed this addendum.

Also, during the same hearing to vacate plea, Assistant State Attorney Gail Levine, again trying to paint Mr. Casey as an opportunist willing to do anything to reopen the case, said that only now Sean was saying he wanted to testify and that Mr. Hirsch said during his testimony that day that Sean never told him he wanted to testify.<sup>107</sup> This is **completely** false! First of all, Sean had repeatedly told Mr. Hirsch he thought he should testify. He sent numerous letters and e-mails to him urging him to let him take the stand. Sean always believed that if all the facts were laid out on the table and he was allowed to tell the whole story, then everyone would understand that it is very possible he was not guilty. Even co-defense counsel, Michael Haber, admitted that there was always a major point of contention between Mr. Casey, who wanted to testify, and Milton Hirsch, who did not believe his testimony would add anything to the facts of the case.<sup>108</sup> Second, nowhere does Mr. Hirsch deny that Sean wanted to testify as the prosecutor claims. This is nothing but fabricated information. She claims statements were made that were **not** made, even in the same hearing. Ms. Levine alleges Mr. Casey will say anything to his benefit, but the evidence shows she will say anything to distort the truth even ignoring testimony and inventing testimony to prejudice the defendant.

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<sup>107</sup> Prosecutor: “So now he says I should have been put on the stand. But back in 2001, this was not his thought and Mr. Hirsch told you he never told me this.”  
[Hr’g. Tr. 169:14-16, Jan. 8, 2007, **Exhibit 14**]

<sup>108</sup> Prosecutor: “Do you remember any differences of opinion that come to mind?”  
Haber: “The only one is the issue of whether or not he was going to testify...”  
Prosecutor: “And what was the difference of opinion there?”  
Haber: “[Mr. Casey] was of the opinion that he should [testify]...”  
[Hr’g. Tr. 136:11-16, Jan 8, 2007, **Exhibit 14**]

Ms. Levine also used words in Court that were purposefully chosen to unfairly prejudice Mr. Casey. On several occasions, she referred to his offense as “murder.”<sup>109</sup> However, Sean Casey was not charged with “murder.” Certainly an automobile may constitute a “deadly weapon” when it is used to inflict harm upon another human being. Yet, unlike a gun or knife, an automobile is not something which is designed to be used “in destroying, defeating or injuring an enemy.”<sup>110</sup>

Clearly, Assistant State Attorney Gail Levine deliberately made false statements and showed disregard of the truth to mislead the Court and prejudice Sean Casey. This is in direct violation of The Florida Bar Rules of Professional Conduct, Section 4-8.2(a):

“A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to the truth.”<sup>111</sup>

Also, Ms. Levine’s tactics were clearly unethical. During the hearing to Vacate Sentence and Conviction, after Mr. Casey was questioned by his attorney, David Markus, Gail Levine asked the judge if she could go to the bathroom before cross examination.<sup>112</sup> However, she *never* went to the bathroom. Instead she consulted with witnesses Milton Hirsch, Michael Haber, and Michael Rappaport who all listened to Mr. Casey’s testimony and were going to be called to the stand by the prosecution that afternoon. It does not seem fair that the defense witness, Genevieve Casey, had to

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<sup>109</sup> Levine: “Now the murder of Mrs. Montgomery took place at 78<sup>th</sup> and Hardin [sic]...”  
[Hr’g. Tr. 92:4-5, Jan. 8, 2007, **Exhibit 14**]

<sup>110</sup> *State v. Del Rey*, 643 So. 2d 1146 (Fla. 3<sup>rd</sup> Dist. Ct. App. 1994)

<sup>111</sup> The Florida Bar website: <http://www.floridabar.org>

<sup>112</sup> Court: “Cross examination, please?”  
Levine: “Most respectfully, Judge, I have to go to the bathroom.”  
Court: “Okay. We’ll be in recess for about five minutes...”  
[Hr’g. Tr. 25:5-7, 10-11, Jan. 8, 2007, **Exhibit 14**]

remain outside the courtroom while the State's witnesses were allowed to stay inside and feed information to the prosecution and strategize their "lies" during the entire proceeding. This is just one more example of the desperate ploys used by Ms. Gail Levine to ensure a conviction and keep this case closed regardless of truth and fairness. She tried to paint Sean Casey as a liar, but the evidence speaks for itself and shows that **she** is the liar.

However, the State Attorney's Office's deceit and foul play was not only exhibited by Gail Levine, but also by Patrick Dray who subpoenaed the officers to the Third District Court of Appeal in 2002, and even by the first prosecutor assigned to this case, Anthony Accetta, who promised to return Mr. Casey's vehicle to him and not hold it indefinitely.<sup>113</sup> The State **never** returned the car until March 2007, 6 years later!

In *Berger v. United States*, 295 U.S. 78,88 (1935), the Court ruled:

"The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereign whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done...while he may strike hard blows, he is not at liberty to strike foul ones."

Furthermore, Ms. Levine absolutely had no knowledge of who Sean Casey is as a person. Only people who know Sean on a personal and professional basis can attest to his character. Most likely, Gail Levine never read the very strong references provided to an earlier prosecutor, Patrick Dray, in 2002, that completely contradict her opinion, which is supported by no facts or evidence.<sup>114</sup>

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<sup>113</sup> Acetta: "...There is no indication we are going to hold this car indefinitely. As soon as I am complete with the investigation, he can have the vehicle."  
[Hr'g. Tr. 33:22-25, Apr. 25, 2001, **Exhibit 3**]

<sup>114</sup> Character References from John and Genevieve Casey, Shane Larson, and Wendy W. Lacey, **Exhibit 42**

Sean Casey has consistently told the truth about incidents surrounding this unfortunate accident and his alleged involvement. Experts, including his own attorney, told him he was not driving the car as close as two weeks before the scheduled trial date.<sup>115</sup> **Even 17-year Metro-Dade Police Department veteran traffic homicide officer and accident reconstructionist, John Buchanan, determined there was no evidence Mr. Casey was driving at the time of the accident.**<sup>116</sup> **Mr. Buchanan examined two DNA reports provided by the State Attorney's Office and he concluded that there was no match between the victim's blood and the clothing that was obtained in Mr. Casey's apartment.**<sup>117</sup> There most definitely would have been blood or tissue from the victim on the clothing if it was worn by someone inside the vehicle.<sup>118</sup> In fact, the only credible description of any occupants in the vehicle came from the police BOLO ("Be On the Lookout") used by law enforcement to apprehend crime suspects, which stated they were looking for a black male.<sup>119</sup> That information

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<sup>115</sup> "[Mr. Buchanan] is very able to testify that you were not in the driver's seat at the time of the accident."  
[Letter from Milton Hirsch to Sean Casey, Oct. 5, 2006, **Exhibit 43**]

<sup>116</sup> Q: "Is it your opinion that Mr. Casey was not driving the car?"

A: "You have shown me no solid evidence that puts Mr. Casey behind the wheel or in that vehicle at the time the crash occurred...you have shown me no evidence that the defendant that you charged for driving was in fact the driver."

[Buchanan Dep. 37:9-13, 18-20, Nov. 18, 2003, **Exhibit 36**]

<sup>117</sup> A: "On a cursory inspection, I don't see...any match between the victim's blood and the clothing that was obtained."

[Buchanan Dep. 21:21-24, Nov. 18, 2003, **Exhibit 36**]

<sup>118</sup> A.: "What I said was that if those clothes that they obtained from the house were in the vehicle at the time the crash occurred – and again I don't know who was wearing them, if they were even in there. In my opinion, those most certainly would contain blood or tissue from the victim, based upon the photographs that I have seen and how the victim's body fluids were splattered and sprayed completely through the inside of the occupant's compartment of the vehicle."

[Buchanan Dep. 22:6-14, Nov. 18, 2003, **Exhibit 36**]

<sup>119</sup> Male voice [Bravo 32]: "Will advice on additional right now. The only thing we have is BMW, black male."  
Female Dispatcher: "Breaking up. We're looking for a black, uh, BMW occupied by a black male?"

had to have been provided to dispatch by Miami Beach Police Officer Pierre Laurent. Interestingly, Mr. Casey mentions conversing with a dark-skinned male from Costa Rica at the bar he was last at.<sup>120</sup> Could this have been the driver? It is definitely possible, but Judge Glick was not going to allow this information broadcast between police officers on radio to be mentioned at trial because he considered it “hearsay.” Yet, this does not dismiss the fact that this information was given by Officer Laurent.

Again, it is possible Mr. Casey was not the driver, but a passenger in the back seat. Officer Silvagni, a trained traffic accident investigator and Sean’s arresting officer, testified that it is almost impossible to have had a passenger in the front seat of the vehicle given the amount of larger pieces of glass from the broken windshield on the front passenger seat, but his description of smaller glass shards on the clothing had someone been in the back seat is consistent with what was actually found on the clothing taken from Mr. Casey’s apartment.<sup>121</sup> The prosecutor’s would be star witness’s own testimony puts Sean Casey in the back seat as a passenger, not the driver! The driver would have been practically glass-free, since the windshield broke inwards only in

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Male voice [Bravo 32]: “No further, yes.”

Female Dispatcher: “Attention all units: Clear to copy a BOLO reference an 18 [Hit & Run] a pedestrian fatality, 7840 Harding Avenue. Time delay, maybe four minutes now. We’re looking for a black BMW, black BMW occupied by a black male.”

[Transcript of Police Radio Communications, p. 8:6-11, 10:15-24, Mar. 11, 2001, **Exhibit 10**]

<sup>120</sup> Silvagni: “A Costa Rican guy, he was darker than yourself. He’s about the darkest guy in the bar that night, or tonight?”

Hundevadt: “And you said he didn’t pay attention to you, or something...?”

Casey: “He did, he did, but that was it.”

[Taped Statement of Sean Casey by Miami Beach Police, p. 25:8-11, Mar. 11, 2001, **Exhibit 9**]

<sup>121</sup> Silvagni: “If a child or someone is lying on the back seat, portions of their bodies that are facing that window that collapsed would have similar glass and again, small shards, not large pieces, but small, almost like cut blades of grass size amounts, visible to the naked eye, but very minute. That would be on their clothing.”

[Hr’g. Tr. 90:23-25, 91:1-3, Oct. 10, 2001, **Exhibit 1**]

the upper, passenger-side corner.<sup>122</sup> Furthermore, a picture was taken of just one possible scenario of how Mr. Casey could have been positioned had he been lying down under the effects of some drug or alcohol, rolling off at the time of impact with the pedestrian.<sup>123</sup> **The evidence clearly places Mr. Casey as a passenger, if he was even in the vehicle.**<sup>124</sup>

Also, a careful examination of damage to the vehicle shows that there was apparently no contact between the front bumper and the victim. The air bags never deployed, which they would have at an impact of 5 MPH or greater.<sup>125</sup> The damage to the vehicle was concentrated on the front-right panel, hood, upper-right side of windshield and broken passenger-side rearview mirror. Assuming the pedestrian was crossing east to west following police diagrams, albeit contrary to the prosecution's theory, for some reason she decided to cross when there was traffic in all three lanes. Apparently, she made it past the first lane of traffic, then the second lane occupied by Mr. Casey's vehicle, and it is likely a car or bus was coming in the third lane, so she literally would have backed into Mr. Casey's vehicle causing an impact on the front right panel instead of the bumper. Perhaps the heavy groceries she was carrying obstructed her view or caused her to lose her balance. This is consistent with the physical damage to the vehicle.<sup>126</sup> The police report states the victim "rolled off vehicle's roof on right

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<sup>122</sup> Pictures of Mr. Casey's vehicle taken on Apr. 2, 2007, **Exhibit 44**

<sup>123</sup> Picture of Mr. Casey's possible position inside vehicle, **Exhibit 45**

<sup>124</sup> A: "It's a possible scenario, how the defendant, if he was in the vehicle, could have been in the vehicle. [Buchanan Dep. 18:13-15, **Exhibit 36**]

<sup>125</sup> Source: BMW Gallery, Norwell, MA, Jun. 7, 2007

<sup>126</sup> Pictures of Mr. Casey's vehicle taken on Apr. 2, 2007, **Exhibit 44**

side,” but there is not a scratch on the roof.<sup>127</sup> Also, the diagram produced by police (See Exhibit 38) shows the victim crossing at the intersection of 79<sup>th</sup> Street and Harding Avenue, which is incorrect. Glass and other fragments of the vehicle were found at 7840 Harding Avenue, which is closer to 78<sup>th</sup> Street than 79<sup>th</sup> Street. This is just one of many examples how the Miami Beach Police did a poor investigation in this case that lasted only a matter of hours.<sup>128</sup> They **never** fingerprinted the steering wheel or door handles. They **never** canvassed the area to find other potential suspects or witnesses. They found Sean Casey who said he was out drinking the night before and that he could not remember getting home. For the police, it was a closed case, but they neglected to do a thorough investigation to find out what **really** happened. Now, so many years later, this may never be known.

A very key element in this case is whether Sean Casey really does not remember leaving the bar where he was at, the accident itself, and how he got home that morning. The truth is he does **not** remember the accident despite his best efforts to try to recover this memory loss by consulting clinical and forensic psychologist, Dr. Michael E. Rappaport, and certified hypnotist, Dr. Charles Mutter. The former attributed this lapse of memory to possibly having been involuntarily slipped a pill, such as Rohypnol, a common street drug that is secretively slipped into a drink and leaves the victim in a “zombie-like” state, still able to function, but with absolutely no memory of what transpired while under the influence of the drug.<sup>129</sup> Unfortunately, police never tested

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<sup>127</sup> See Florida Traffic Crash Report #60531361, Mar. 11, 2001, **Exhibit 46**

<sup>128</sup> “Is investigation complete? Yes.”  
[Florida Traffic Crash Report #60531361, Mar. 11, 2001, **Exhibit 46**]

<sup>129</sup> “Rohypnol, also known as roofies...At low doses, Rohypnol produces intoxication, muscle relaxation, and sedative-hypnotic effects lasting 2-8 hours.” (Note: This is consistent with Mr. Casey’s memory loss from

for any substance other than alcohol even though Sean mentioned this possibility to police.<sup>130</sup> It is remarkable that experienced Miami Beach police officers, who encounter incidents involving “roofies” every night on popular South Beach, never followed through with this very real lead.

Another possibility is that Mr. Casey was in the vehicle, saw the accident and suffers from *dissociative amnesia*. According to medical journals, this form of amnesia “appears to be caused by stress associated with traumatic experiences endured or witnessed...Additionally, some persons are believed to be more predisposed to amnesia, eg., those who are easily hypnotized.”<sup>131</sup> Also, “[p]eople with dissociative amnesia usually have one or more memory gaps spanning a few minutes to a few hours or days...This disorder is most common among young adults [Note: Mr. Casey was 27 years old]...more commonly among people who have been involved in wars, accidents, or natural disasters.”<sup>132</sup> Another similar disorder that Sean could be afflicted with is *hysterical amnesia*. “This covers episodes of amnesia linked to psychological trauma. It is usually temporary and can be triggered by a traumatic event with which the

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between 6:00 a.m. and 11:00 a.m.). “Rohypnol also severely impairs a user’s ability to drive.”  
[Internet Source: Brown University Student Health Service,  
[http://www.brown.edu/student\\_service/health\\_education/atod/od\\_rohypnol.htm](http://www.brown.edu/student_service/health_education/atod/od_rohypnol.htm), **Exhibit 47**]

“One of the significant effects of [Rohypnol] is anterograde amnesia...a condition in which events that occurred while under the influence of the drug are forgotten.”  
[Internet Source: <http://www.streetdrugs.org/rohypnol.htm>, **Exhibit 48**]

<sup>130</sup> Hundevadt: “...Did you ever leave [your drinks] unattended?”

Casey: “Yes...”

Hundevadt: “Did you notice any side effects other than what may have been alcohol?”

Casey: “Something to think about...I don’t know. I could have.”

[Taped Statement of Sean Casey by Miami Beach Police, p. 20:18-20, 21:1-4, Mar. 11, 2001, **Exhibit 9**]

<sup>131</sup> Internet Source: First Person Plural (UK), [http://www.psych-net-uk.com/dsm\\_iv/dissociative\\_amnesia.htm](http://www.psych-net-uk.com/dsm_iv/dissociative_amnesia.htm),  
**Exhibit 49**

<sup>132</sup> Internet Source: Merck & Co., Inc., <http://www.merck.com/mmhe/print/sec07/ch106/ch106b.html>,  
**Exhibit 50**

mind finds it difficult to deal. Usually, the memory slowly or suddenly comes back a few days later, although memory of the trauma may remain incomplete.”<sup>133</sup>

Also, Mr. Casey has *never* denied that the memory loss could have been from his own alcohol consumption, but this had never happened before. Dr. Rappaport, who met with Sean once a week for over a year, never diagnosed an alcohol problem and never saw a need to recommend treatment. Sean has no history of substance abuse before or after this unfortunate accident.

Whatever the reason is for not remembering the accident, the important point is that it is legitimate memory loss. Dr. Charles Mutter, a physician in Psychiatry specializing in hypnotic regression and who has worked for Coral Gables Police and the State Attorney’s Office, even working on cases for former State Attorney Janet Reno, confirmed that Mr. Casey has *no* memory of the accident.<sup>134</sup> Miami Beach Police apparently believed Mr. Casey was telling the truth, since there is *no* record anywhere by any of the many officers involved in the investigation that they thought he was lying.<sup>135</sup> The Court also found Mr. Casey’s story credible when it suppressed the

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<sup>133</sup> Internet Source: University of Waterloo (Canada), [http://www.ahsmaail.uwaterloo.ca/kin336/amnesia/amnesia\\_2.html](http://www.ahsmaail.uwaterloo.ca/kin336/amnesia/amnesia_2.html), **Exhibit 51**

<sup>134</sup> A: “I put a hemostat clamp in this hand which is about [a] thousand pounds of pressure. A person can always fake hypnosis...if he’s faking, it’s going to hurt like anything. He did not respond to very painful stimuli. At that time I counted him backwards and had him go back to the time of the date of the alleged event...He had no memory of events...I did hypnotize him.”

Q: “So March 11, 2001 he told you that he did not remember getting into his car; is that accurate?”

A: “That is correct.”

Q: “No memory leaving the bar?”

A: “That’s correct.”

Q: “And he woke up and the police were knocking. The police were in [Sean’s] apartment, woke up by police in [his] apartment?”

A: “Yes.”

[Mutter Dep. 9:17-22, 17:6, 13, 18:18-20, 19:25, 20:1-5, Feb. 6, 2004, **Exhibit 52**]

<sup>135</sup> Defense: “Did you write in a report anywhere that you thought Mr. Casey was feigning ignorance about the whereabouts of his car?”

Hundevadt: “I don’t believe I did.”

physical evidence in this case.<sup>136</sup> The State Attorney's Office has brought forth no evidence or expert that can refute the legitimacy of Sean Casey's memory loss, nor did they want to. If a State-appointed psychologist examined Mr. Casey they would have arrived at the same conclusion, which would have greatly jeopardized a conviction in this case; another example of the prosecutor seeking a conviction with no regard of the truth. Mr. Casey's memory loss *must* be accepted as truth.

Sean Casey has shown remorse despite evidence that could exclude him from culpability. Anyone who knew him at the time of the accident can attest that he was extremely sorry a person had passed away.<sup>137</sup> Mr. Casey is incapable of intentionally causing anyone harm. If he knew a person was injured, he would have stopped and provided assistance. He simply did not know what had happened whether he was driving, a passenger, or otherwise. Mr. Casey was never given an opportunity to speak out in open court to express his true feelings of sorrow over this whole unfortunate incident. Sean did have remorse even though experts were telling him he was not to blame even if he was driving the vehicle. Accident reconstructionist, John Buchanan, concluded in his investigation that neither Mr. Casey nor his vehicle was at fault.<sup>138</sup> He

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Defense: "You never wrote that anywhere, did you?"

Hundevadt: "I don't believe I did."

[Hr'g. Tr. 55:6-11, Oct. 10, 2001, **Exhibit 1**]

<sup>136</sup> See Footnotes 29-32 ("Background Section")

<sup>137</sup> Character Reference by Wendy W. Lacey, **Exhibit 42**

<sup>138</sup> A: "The victim walked into the path of the vehicle that had the right of way, so I would say that the victim definitely contributed heavily to the crash."

Q: "...The person who is responsible for this accident is the victim who was crossing the street; is that your opinion?"

A: "The victim left the curb against [Florida] statute, walked into the path of the vehicle that was in such a close proximity that it was not able to stop, and struck the victim...she cannot walk out in front of a vehicle that is going on the roadway and violate the roadway. She cannot just be standing on the sidewalk on Dixie Highway and jog across the road whenever you feel like it. I mean you can, but you are going to get hit."

attributes blame on the victim for crossing a busy three-lane roadway not at a traffic light or marked crosswalk. She, in fact, was committing an infraction of Florida Statute §316.130, which stipulates:

“Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.”

Furthermore, an autopsy report of the victim indicates that Ms. Montgomery was suffering from emphysema and taking high blood pressure medication, which could have impaired her judgment or ability to cross the road, especially carrying heavy groceries.<sup>139</sup> Also, Miami Beach Police conceded that the area where the accident occurred was prone to accidents. Just four days before the accident in this case, a young man on a bicycle was struck and killed by a vehicle at the **exact** same location.<sup>140</sup> At a meeting of the Miami Beach City Council, on March 14, 2001, Police Chief Richard Barreto recommended the City contact the Florida Department of Transportation to have the traffic signal lights changed, crosswalks added, additional traffic signals installed, and signage added.<sup>141</sup> In June 2003, a preliminary study was revealed focusing on Harding Avenue from 75<sup>th</sup> to 85<sup>th</sup> Streets. “The study showed that accidents in that area are not only caused by speeding, but also by poor on-street parking conditions and intersections with obstructed views.”<sup>142</sup> Miami Beach Police

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[Buchanan Dep. 30:16-18, 31:8-14, 34:24-25, 35:1-4, Nov. 18, 2003, **Exhibit 36**]

<sup>139</sup> Autopsy Report for Mary Montgomery, Mar. 22, 2001, **Exhibit 53**

<sup>140</sup> Hirsch: “We have agreed that it is an area that is prone to accidents, correct?”  
Silvagni: “Yes.”  
[Hr’g. Tr. 111:8-10, Oct. 10, 2001, **Exhibit 1**]

<sup>141</sup> Minutes to Meeting of Miami Beach City Commission, Mar. 14, 2001, **Exhibit 54**

<sup>142</sup> The Miami Herald, “Police say speeding not only traffic issue,” Apr. 29, 2001, **Exhibit 55**

Major Gerry Tollefson said, "You see accidents every day."<sup>143</sup> Finally, as already mentioned, the victim most likely jumped back into the middle lane where Mr. Casey's vehicle was traveling to avoid being hit by traffic in the right lane.

Furthermore, no matter whether Sean Casey was driving or not he knows his vehicle was involved in the death of Ms. Mary Montgomery. He knows he should never have left his apartment that evening with his vehicle knowing he would be consuming alcohol. He also knows he should never have gone to the particular bar that he did, The Boardwalk, where being slipped a "roofie" was common. On July 25, 2001, just 4 months after the accident in this case, Irving Sicherer was found murdered in his Aventura apartment. He had allegedly been drugged at The Boardwalk, taken to an ATM machine where the assailant forced him to withdraw money, then took him to his apartment where he killed him and stole his brand new Jaguar. His killer has never been found. The similarities to Mr. Casey's case are striking. An ATM withdrawal of \$240 was made here and a spare key to Sean's vehicle is still unaccounted for.<sup>144</sup> It does not take much to imagine that Mr. Casey could have had a similar fate as Mr. Sicherer had it not been for this accident. **In the end, nobody knows if Mr. Casey was alone or not and nobody knows how he got home.**

Judge Leonard Glick stated in his order denying Mr. Casey's motion to Vacate Conviction and Sentence that Sean is an intelligent person who should have known

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<sup>143</sup> Ibid., **Exhibit 55**

<sup>144</sup> Defense: "...did you personally make any effort to determine if there were any car keys in the car?"  
Ofc. Nagel: "Yes, we did find a---the valet key was inside the car."  
[Hr'g. Tr. 17:8-12, Oct. 10, 2001, **Exhibit 1**]

better.<sup>145</sup> However, nothing in his background or education ever prepared him for the criminal justice system. He trusted the experts, paid over \$125,000 in legal fees alone, and he did **everything** they told him to do.<sup>146</sup> Everyone Sean turned to for advice, including friends, family and colleagues, all said “trust your attorney.” Sean has learned the hard way that attorneys often make mistakes, give bad advice, and make decisions in their own interest instead of the interest of their clients.

Sean Casey always stood by the truth hoping that the justice system would hear him. He did this even knowing that had he “lied” and pleaded “Guilty” from the beginning, he probably would have received a much lighter sentence in tune with most DUI manslaughter cases in Florida of 4-6 years in prison. This would have resulted in closure much sooner and Sean could have avoided the tremendous pressure of the pre-trial period. Yet, he was not going to lie. He does not remember the accident. He does not remember being in the vehicle or leaving the scene of an accident. He could not say he was guilty and still cannot say this. On the day of plea signing, Sean told his attorney that he would not be able to say he was guilty of the charges. Mr. Hirsch spoke quickly with Judge Glick privately in his chambers and they agreed not to ask him if he was guilty. Mr. Casey only exercised his constitutional right to due process. His story has never wavered. There have been absolutely no inconsistencies in any of his

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<sup>145</sup> “The defendant is a sophisticated and highly intelligent adult.”  
[Ct. Order p. 1:20, Mar. 2, 2007, **Exhibit 25**]

The Court: “...for him to testify that I was just following orders because he was my lawyer...that really doesn’t ring true.”  
[Hr’g. Tr. 175:7-8, 11-12, Jan. 8, 2007, **Exhibit 14**]

<sup>146</sup> Total legal fees of \$127,500: Milton Hirsch (\$70,000), Michael Haber (\$7,500), Patricio Gonzalez (\$24,000), Gonzalo Miguez (\$2,000), David Markus (\$20,000). Combining all other expenses (investigators, researchers, therapists, doctors, experts, loss of automobile, loss wages, etc...) this incident has had a devastating financial impact on Sean and his family in the vicinity of \$1.2 million. Mr. Casey’s parents spent almost the entirety of their retirement savings on this case.

statements.<sup>147</sup> Mr. Casey sought to find the truth despite prosecutors and police officers who used deceptive methods to ensure a conviction since the day of the accident .

Sean Casey undoubtedly was punished during the 5½-year, pre-trial period, particularly being a person who has never been involved and could never have imagined being involved in the criminal justice system. Mr. Casey may as well have been sentenced and sent to prison on the date of his first arrest considering the mental anguish he suffered daily. He was living a nightmare being accused of a crime he does not even remember and contemplated suicide many times.

Milton Hirsch and Dr. Michael Rappaport testified that this period was very troubling for Sean.<sup>148</sup> Although both deny advising him to flee, despite **very** convincing evidence that they did, they would agree that his decision was based in part by his genuine fear anyone would have facing 45 years in prison for a crime nobody knows for sure that he committed. However, Mr. Casey insists he would **never** have fled if it were

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<sup>147</sup> Hirsch: "...he was very consistent in his narrative of events to me."  
[Hr'g. Tr. 95:20-21, Jan. 8, 2007, **Exhibit 14**]

Prosecutor: "Did he have a recollection of the events of the crime?"

Hirsch: "None whatsoever. Throughout the entire period of my representation, he was quite adamant that although he wished he could remember what happened, that he had a complete failure of memory for the period of several hours including the time of the crime."

[Hr'g. Tr. 90:20-25, 91:1, Jan. 8, 2007, **Exhibit 14**]

Q: "Has he told you about what really happened?"

A: "He said I don't remember anything."

[Muñoz Dep. 22:13-14, Sept. 30, 2003, **Exhibit 11**]

<sup>148</sup> Defense: "Did you advise the defendant to see a therapist by the name of Michael Rappaport?"

Hirsch: "Yes."

Defense: "Why was that?"

Hirsch: "...[Casey] was in need of a tremendous amount of emotional and psychological support from me... so I encouraged him to see Dr. Rappaport..."

[Hr'g. Tr. 93:19-22, 24-25, 94:1-5, Jan. 8, 2007, **Exhibit 14**]

Defense: "Now, would you keep Mr. Hirsch updated on the mental health status of Mr. Casey?"

Rappaport: "Well, you know, there were no mental health issues. It was, you know, other than helping Sean deal with this very stressful situation he was dealing with."

[Hr'g. Tr. 143:23-25, 144:1-2, Jan. 8, 2007, **Exhibit 14**]

not for their advice. It should be noted that Dr. Rappaport had spent 6 months at Ft. Leavenworth Military Prison for charges of adultery, sodomy with two women he was counseling and drug use, while he was a U.S. Air Force psychologist. He was later reprimanded by the Florida Department of Professional Regulation to 4 years probation, community service, and supervision by another psychologist, Merry Haber, mother of attorney Michael Haber and with whom he formed his own practice, Behavior Changers, in Miami.<sup>149</sup> The Board determined Dr. Rappaport, “has impaired judgment and poor impulse control.”<sup>150</sup> One of his most notorious cases became known as the “Country Walk” case in which he worked with then-prosecutor Janet Reno in 1985 to counsel Ileana Fuster, who, along with her husband, Francisco Fuster, was charged with child molestation at a home-based babysitting service in the Country Walk neighborhood of Miami. Ileana always maintained their innocence, but Dr. Rappaport was hired by the prosecution to get her to admit her husband’s guilt in exchange for her freedom. He used daily relaxation, visualization and guided imagery techniques and told her she would go to prison for a very long time if she did not recover her memory of the abuse, which he claimed she was repressing. She finally broke down and testified against her husband, even though to this day she proclaims their innocence. Dr. Rappaport said, “We just spent hours and hours talking to her...It’s kind of a manipulation.”<sup>151</sup> Since then, Dr. Rappaport has had the reputation of being a “quack”

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<sup>149</sup> Ironically, Dr. Rappaport sent this same Merry Haber to the courtroom on Oct. 17, 2006, probably to urge Sean to sign the plea. Sean had never even met her and she was never involved in his counseling. She literally screamed out to Sean to sign the plea. Dr. Rappaport conveniently did not show up. Just as she “saved” Dr. Rappaport’s career in the 80s, Merry Haber was once again coming to his rescue to make sure his advice to Sean to flee is never revealed.

<sup>150</sup> Final Order (Case No. 0098682), Florida Dept. of Professional. Regulation, p. 6:4-5, Aug. 22, 1989, **Exhibit 56**

<sup>151</sup> The Nation, “Janet Reno’s Coerced Confession” by Alexander Cockburn, Mar. 8, 1993, **Exhibit 57**

in the psychology community.<sup>152</sup> Nobody should be surprised that Dr. Rappaport advised Sean Casey to flee based on his questionable practices in the Fuster case.

While abroad Mr. Casey's fears and mental torment only increased. He suffered constant distress, fear about his future, and sorrow over the pain his family was also enduring throughout this entire period.<sup>153</sup> Punishment for Sean Casey began upon his arrest on March 11, 2001, and will continue for the rest of his life. Because of this DUI manslaughter conviction, his driver's license has been permanently revoked, which will have an impact on his mobility and employment opportunities. His basic civil rights, including the right to vote, hold public office and work for the government cannot be restored for 15 years after completing his sentence, according to the Rules of Clemency. One of Sean's career goals has been to form part of the U.S. Diplomatic Corp as a Foreign Service Officer. This dream has been shattered as a result of this conviction. All of his years of hard work and studies have gone down the drain. This is a loss not only to Mr. Casey, but to society. Mr. Casey can give so much; it is unfortunate that this incident will be an obstacle for the rest of his life.

### Conclusion

Anyone who knows Sean Casey knows he is not a criminal. He was accused of being involved in an unfortunate vehicular accident that could have happened to **anyone** reading this story. Mr. Casey is an honest and responsible individual.

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<sup>152</sup> The Guide, July 1997, **Exhibit 58**

<sup>153</sup> After Sean's arrest on Mar. 11, 2001, his parents John and Genevieve Casey divorced after 32 years of marriage largely as a result of the stress from this catastrophe in their only child's life. His mother was recently diagnosed with chronic heart disease and has suffered minor strokes and seizures, which have only increased following her son's incarceration. Sean is an only child responsible for his parent's care and well-being. His mother desperately needs him now and his whole family will not rest until Sean is free again.

Absolutely nothing in his past shows otherwise. He is loved and respected by his family, friends, and colleagues. He has also made a significant contribution to not only his local community of Miami, but also to the community of nations of the Western Hemisphere. Sean's incarceration has been a tremendous loss for democracy, human rights, and a free press that he worked so hard to protect in every country of the Americas.

Many factors should be considered in understanding the injustice in this case.

These include:

(1) The Miami Beach Police Department conducted a sloppy investigation and violated Mr. Casey's Fourth Amendment rights by deceiving him into signing a search release based on false pretenses and denying him the right to an attorney **after** being read his Miranda rights. This was affirmed by Judge Trawick. The fact remains that had the Third District Court of Appeal not reversed Judge Trawick's decision to suppress evidence, this case would have been dismissed in its entirety many years ago!

(2) The State Attorney's Office has no evidence, not even circumstantial, that places Mr. Casey as the **operator** of the vehicle at the time of the accident, but rather evidence supports him more likely to be a passenger, if he even was in the vehicle. Not knowing what had happened in this case since his deposition in 2003, prominent accident reconstructionist, John Buchanan, was completely shocked at the outcome of this case when updated by Sean Casey's mother, Genevieve Casey. During a telephone conversation with Mrs. Casey on October 4, 2007, he remarked, "Your son was **not** driving the car that morning. He should have gone to trial." Mr. Buchanan is adamant Sean is innocent in this case;

(3) There is **no** possible way to determine what Mr. Casey's blood alcohol content (BAC) was at the time of the accident. If it was too high, then police should never have interrogated him and coerced him into signing a search release until he was of sound mind. The police determined he was not impaired less than an hour after the accident, which puts into question the validity of the blood examination;

(4) There is absolutely **no** evidence that the driver of the vehicle was driving "recklessly." The driver was traveling with the flow of traffic at only a few miles per hour over the posted limit. It was a clear, sunny morning with no reason to take additional driving precautions. The vehicle changed lanes to pass a Metro bus that had just dropped off passengers. The driver appeared to have been in complete control of the vehicle and could not have anticipated that someone would be in the middle of the roadway as he changed lanes with his vision being blocked by the bus ahead of him. This accident could not have been avoided;

(5) The damage to Mr. Casey's vehicle shows no front bumper impact with the pedestrian, but rather damage to the front right panel by the tire that suggests the victim probably backed into his car to avoid being struck by a bus or vehicle in the right lane;

(6) Experts have determined that Sean Casey's memory loss is legitimate and he truly does not remember leaving the bar he was at and getting home. It is very possible he was slipped a "roofie" that caused this lapse of memory. If he was in the accident, he could suffer from "dissociative" or "hysterical" amnesia from witnessing such a sight. The State Attorney's Office never conducted its own psychological evaluation to refute this memory loss;

(7) Defense attorney Milton Hirsch and clinical therapist Michael Rappaport provided Mr. Casey with the unethical and criminal advice to flee the country to avoid being wrongly prosecuted. Mr. Hirsch further aided Sean maintain his fugitive status and obstructed justice by sending documents and affidavits abroad whose **only** purpose was to keep Mr. Casey from returning to the United States to face justice. Besides breaking the law by assisting and abetting a fugitive and obstructing justice, Mr. Hirsch was in clear violation of Rule 5.1 (Failure to Maintain Personal Integrity), Rule 4.3 (Failure to Avoid Conflicts of Interest), Rule 4.6 (Lack of Candor), and Rule 6.1 (False Statements, Fraud and Misrepresentation) of The Florida Bar. Sean deserved better counsel from his attorney and advice from his therapist, both of whom he trusted and held in high esteem;

(8) The State Attorney's Office failed to consider all the facts in this case that would exonerate Mr. Casey of the charges and fabricated information expressing blatant disregard of the truth to unfairly prejudice Mr. Casey. The Assistant State Attorney also unconstitutionally punished Sean by not offering a fair plea considering mitigating factors solely because he used his right to due process through a Speedy Trial demand;

(9) Judge Glick **illegally** initiated plea negotiations prior to jury selection and did not provide Sean Casey with reasonable time to consider the plea as established by Florida Rules of Criminal Procedure. The signing of the plea agreement **was** coerced and involuntary;

(10) A clear conflict of interest existed in which Mr. Hirsch did not want his unethical and criminal behavior to be disclosed at trial and his client's interest to proceed to trial.

It is **very** possible that Mr. Hirsch used his influence and power in the legal community to get Judge Stanford Blake to pull Mr. Casey's case from Judge Schwartz's courtroom to Special Court where he knew Judge Glick, a long-time friend and former colleague, would stand by him and ensure Sean sign a plea agreement. Judge Glick's refusal to listen and view evidence of Mr. Hirsch's wrongdoing can only be seen as protecting his "friend." Mr. Hirsch admitted not knowing Judge Schwartz personally, and thus this case would probably have had a different ending if he had the original judge rule over the case;

(11) Likewise, it is possible that Milton Hirsch collaborated with the State Attorney's Office to "trap" Mr. Casey into signing the plea. The prosecutor would "win" the case and Mr. Hirsch's behavior would be brushed under the table. It would be a "win-win" situation at Mr. Casey's expense and makes a mockery of justice;

(12) Assistant State Attorney Gail Levine knew absolutely nothing about Sean Casey's background, character, and contribution to society. She even had to ask him, "What do you do?" at a hearing **after** the case was closed.<sup>154</sup> She also failed to acknowledge that a plea of 6-8 years was offered by a previous prosecutor. The State Attorney's Office never considered strong mitigating factors that warranted a downward departure from minimum sentencing guidelines; and

(13) If Mr. Casey was guilty, despite all the evidence and possible scenarios that show otherwise, this is a first-time offense, he has shown remorse since someone died, and there is absolutely **no** possibility of recurrence. Ms. Levine claimed that a defendant's past has nothing to do with determining an appropriate sentence, which completely

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<sup>154</sup> Hr'g. Tr. 35:20, Jan. 8, 2007, **Exhibit 14**

contradicts standards established in Florida law that encourage considering a defendant's criminal history and possibility of recurrence.<sup>155</sup>

Although every case is different with unique circumstances, a review of only a few of the many sentences for similar convictions in the State of Florida over the past few years will show that Mr. Casey's sentence of 12½ years in State Prison is severe.<sup>156</sup> Even in Miami-Dade County, the same State Attorney's Office that convicted Sean has sentenced many other defendants to much lower sentences.<sup>157</sup> Many sentences also

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<sup>155</sup> Levine: "Didn't I tell you...it wasn't about Sean's past, it was about Sean's crime?"  
Mrs. Casey: "Yes. That's what you said."  
[Hr'g. Tr. 85:1-4, Jan. 8, 2007, **Exhibit 14**]

<sup>156</sup> "Patrick Hoang was drunk when he led police on a high-speed pursuit last November [2004]. His car eventually hit a tree, killing a passenger...He was charged with DUI manslaughter, aggravated assault of a police officer, fleeing police, driving with a suspended license and lewd behavior...Hoang got 8 ½ years."  
[St. Petersburg Times, Nov. 26, 2005, **Exhibit 65**]

"Kenneth Kubeck also hit a tree after speeding...killing his best friend. [He] walked home and cracked open a beer...Kubeck got two years."  
[St. Petersburg Times, Nov. 26, 2005, **Exhibit 65**]

"Two men were convicted of DUI manslaughter [in Florida] for a drunk driving crash in which a U.S. Coast Guardsman was killed...Both were found to be at fault...The victim was a passenger...Both were sentenced to two years in prison..."  
[MADDvocate, Spring 2006, **Exhibit 66**]

"Florida – A 58-year old man, who had two previous DUI convictions was sentenced to 7 years...for the July 2002 crash that killed a man...The offender's BAC was .29."  
[MADDvocate, Summer 2004, **Exhibit 67**]

"Florida – A female DUI offender...struck a man [who] died...[She] was sentenced to 7 years in prison."  
[MADDvocate, Summer 2003, **Exhibit 67**]

"Florida – a 39-year old drunk driver pleaded no contest...in the death of a friend. He was sentenced to 30 days in jail and 300 hours of community service."  
[MADDvocate, Summer 2003, **Exhibit 67**]

<sup>157</sup> Name	DC#	Offense	Conviction	Sentence
Ruiz, Miguel	B04126	DUI manslaughter, Leaving the Scene of Accident, DL Violation	12/14/06	1.6 years
Torres, Javier	B04022	DUI manslaughter, Driving w/o License, Aggravated Assault	9/8/06	4 years
Ovalle, Jose	B04521	DUI manslaughter, Failure to Appear, Driving w/o License	5/8/07	2 years
Perez, Daniel	B03893	Unauth. Poss/Use of DL, DUI manslaughter, DUI with	9/28/06	3.6 years

include alternative forms of punishment. An average person may think that the sentence is severe because Sean fled the jurisdiction, but that charge alone only carries a one-year statutory minimum, which Mr. Casey has already served, and others listed in Footnote 157 include Failure to Appear convictions.

It was mentioned earlier that there was an accident just four days before the accident in Mr. Casey’s case at the same exact location. On March 8, 2001, Carlos Garcia Figueroa stole a Jeep Wrangler and drove down Harding Avenue when he struck and killed 27-year old Sergio Adrian Mascherini who was riding his bicycle. Mr. Figueroa continued driving, crashing into another car on the 1300 block of Collins Avenue. “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.”<sup>158</sup> Eventually, Figueroa slammed into two parked cars on 11<sup>th</sup> Street and Michigan Avenue. He was thrown from the car and taken to Jackson Memorial Hospital where he was later arrested. Blood exams taken at the hospital showed he was under the influence of drugs and alcohol. Mr. Figueroa was charged with Grand Theft Auto, DUI manslaughter, Driving Without a License, Leaving Crash with Death, and Fleeing Police on High-Speed Chase with No Regard for Life. He was released on \$50,000 bond. He was appointed a Public Defender and went to trial on August 9, 2002. He was found guilty by jury and sentenced to 8 years in State Prison,

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Sandoval, Joseph	B02753	Serious Bodily injury, Vehicular Homicide-No Aid DUI Manslaughter, Homicide Neg.	5/12/05	4 years
Perez, Victor	B03479	Manslaughter DUI Manslaughter, Driv w/o License, Vehicular Homicide- No Aid, Leaving Crash with Death	3/23/06	5 years

<sup>158</sup> The Miami Herald, “Hit-and-run killer leads police in car chase,” Mar. 11, 2001, **Exhibit 68**

all sentences running concurrent, which is a downward departure of minimum sentencing guidelines.<sup>159</sup> It is nothing less than **outrageous** that the same State Attorney's Office offered **nothing** less than 12½ years to Sean Casey.<sup>160</sup> Mr. Figueroa had more charges against him and was facing much more time than Mr. Casey and he was found guilty by his peers at trial, which never happened in Sean's case.

Carlos Garcia Figueroa stole a vehicle and went on a high-speed chase with police through the heavily congested streets of Miami Beach at nighttime when extra caution should have been taken while driving, putting many lives in danger and showing a "willful" and "wanton" recklessness and disregard of human life. Sean Casey did none of this. There is **no** evidence Mr. Casey was even the driver, and if he was, the accident was unavoidable and could have happened to anyone. Sean was not found guilty by a jury of his peers, but was pressured to sign a plea agreement by a judge and his own attorney who had his own personal interests in having him sign the plea to avoid having his criminal behavior revealed. How can the State in good consciousness send Sean Casey to prison for 12½ years and Carlos Figueroa for 8 years?

In the Figueroa case, the victim was a young man. In this case, the victim was an elderly female with no immediate family. The only living relative is Martha Sukkert, a niece living in Phoenix, Arizona. In July 2001, Ms. Sukkert signed a release excluding Sean Casey from any and all responsibility and liability in this accident.<sup>161</sup> Many others have expressed their support of Mr. Casey throughout this tragic ordeal, including many

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<sup>159</sup> Inmate Population Information Detail for Carlos Figueroa, **Exhibit 69**

<sup>160</sup> Inmate Population Information Detail for Sean Casey, **Exhibit 70**

<sup>161</sup> Executed Release and Probate Court's Approval, Jul. 31, 2002, **Exhibit 71**

directors of the Inter American Press Association (IAPA), comprised of the publishers of the leading newspapers and magazines of the Western Hemisphere, who know that Sean's time will be better served outside of prison.