In The
SUPREME COURT OF THE UNITED STATES
October Term, 1990
No.

In the Matter of the Petition for a Writ of Habeas Corpus by GEORGE SASSOWER, individually and next best friend, constitutional and professional obligor, of DENNIS F. VILELLA,

Petitioner,

-against-

WARDEN, SING SING CORRECTIONAL FACILITY,

Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS

PETITION

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

The petition of GEORGE SASSOWER, individually, the next best friend, constitutional and professional obligor, of DENNIS F. VILELLA ["Vilella"], respectfully sets forth and alleges:

1a. Petitioner, in his individual and representative capacity, under unique but compelling circumstances, makes application for a writ of habeas corpus, which is made with the express desire, consent and indeed, the insistence, of Vilella (cf. Whitmore v. Arkansas, 495 U.S. , 110. S.Ct. 1717 [1990]).

b. Vilella is presently unlawfully restrained of his liberty by being in the restrained custody of the Warden of Sing Sing Correctional Facility, at 354 Hunter Street, Ossining, New York 10562-5442.

2. The cause or pretext of Vilella involuntary detention and custody are the convictions for "attempted murder, second degree and assault, first degree, with a 'tire iron'" upon THERESA NAPPI ["Nappi"] -- crimes which unquestionably never occurred, as is hereinafter conclusively demonstrated.

3. The aforementioned detention and restraint is unlawful in that:

(a) The alleged "tire-iron" crimes for which Vilella, was indicted, convicted and is presently incarcerated, were fabricated, concocted, and devised, by District Attorney DENIS DILLON ["Dillon"], an assertion that no person disputes when confronted by the Hospital records of the Community Hospital at Glen Cove, Nassau County, New York ["Hospital"];

(b) The Dillon Office, as part of a not unusual racketeering scheme, conspired with Vilella's initial attorneys, SUTTER, MARTEN & REGAN, Esqs. ["SM&R"], whose racketeering scheme included concealing from Vilella and the grand jury the "phantom" nature of these "tire-iron" crimes;

(c) On trial, Vilella was deprived of petitioner's legal services, who replaced SM&R, in manifest violation of Article 1, §10[a] and Amendment XIV of the <u>U.S. Constitution</u>;

(d) Vilella, as a pro se trial defendant, was convicted by egregious prosecutorial and judicial misconduct, which misconduct included the intentional concealment from the trial jury any knowledge of the decisive Hospital records;

(e) Thereafter Dillon concealed from Vilella and the appellate reviewing court the understanding reached with ROBERT RIVERS, Esq. ["Rivers"], Vilella's appellate counsel, who was himself under criminal investigation, that in exchange for favored treatment to Rivers on his personal criminal problems, Rivers was to betray Vilella, which included concealment from the appellate court of, inter alia, the decisive Hospital records and the other evidence of prosecutorial misconduct involved in securing the sham indictment and conviction of Vilella;

(f) Dillon also concealed from the appellate reviewing court the fact that Rivers' conduct, having become suspect, had been discharged by Vilella prior to the filing of his perfidious and unauthorized Brief;

(g) The unlawful search and seizure of Vilella's attorney-client confidential material, state and federal, by Dillon, lawfully and rightfully in petitioner's possession;

(h) The unlawful search and seizure by Dillon of Vilella material to and from the media and public interest groups intended for distribution and publication;

(i) The institution of a sham, unlawful, and retaliatory criminal proceeding against petitioner, as a predicate and excuse for searching and seizing petitioner's attorney-client and media intended material, including his 'data discs', frustrating and stonewalling petitioner's ability to pursue the Vilella matter in the courts and the media.

(j) Obstructing and interfering with petitioner's attempt to communicate with the grand jury, state and federal, with respect to the Vilella matter;

(k) Keeping Vilella incarcerated for his "hostage" value, in a conspiratorial attempt to compel petitioner's silence on the subject of judicial corruption in the matter of PUCCINI CLOTHES, LTD. ["Puccini"].

STANDING

4a. Petitioner was, and claims he still is, Vilella's attorney in the state and federal courts, under a contractual arrangement which may not be constitutionally "impaired" without "due process of law" (U.S. Constitution, Art. 1 §10[1], Amendment V).

b. There was never any claim of a police power necessity permitting the state to deprive Vilella of his contractually desired representation by petitioner through a "forthwith" disbarment order, particularly since petitioner was simultaneously representing him in the federal courts, and continued to do so throughout his state criminal trial.

c. Vilella, for valid, legitimate and compelling reasons, refused to discharge petitioner, and has always insisted that petitioner fulfil his legal, contractual, professional, ethical and moral obligations to him, which includes the making of this application.

d. The unique situation as expressed by U.S. District Judge GERARD L. GOETTEL, where petitioner lawfully represented Vilella and others similarly situated by a state "forthwith" disbarment Order, reads as follows:

> "Vilella faces serious state charges (attempted murder). At the time he retained Sassower to represent him, Sassower was still an attorney admitted to practice in this state. The disbarment of the attorney while the case is pending trial clearly required some relief from the court. The expected relief would be a postponement of the trial in order to allow the defendant to obtain new counsel. <u>This would not apparently be satisfactory to Vilella, who continues to insist on having Sassower represent him at trial.</u> It is difficult to determine which, if any of the present defendants are the appropriate ones from whom to seek this relief. Obviously, <u>such an application would start with the trial judge</u> and, if not granted, could either be appealed or pursued by mandamus in the state courts. ... We view this as being, in essence, a habeas corpus petition. As such, it is clearly premature ... . Moreover, there is no indication that <u>all</u> state remedies have been exhausted. In any event, this Court clearly must abstain under the principles set in <u>Younger v. Harris</u>, 401 U.S. 37 (1971)." [emphasis supplied]

e(1) No court nor judge of any court, nisi prius or appellate, state or federal, in view of the aforementioned contentions, and under the evidence, has discharged or relieved petitioner of his legal, contractual, professional, ethical or other obligations to Vilella and others similarly situated.

(2) Every attempt by petitioner to have such question judicially determined, both before and after the Vilella trial, has proved futile (<u>People v. Vilella</u> [Sassower, petitioner], 74 N.Y.2d 713, 543 N.Y.S.2d 394, 541 N.E.2d 423 [1989]-Exhibit "A"; <u>Sassower v. Murphy</u>, 74 N.Y.2d 759, 545 N.Y.S.2d 99, 543 N.E.2d 742 [1989]-Exhibit "B"; <u>Sassower v. Mahoney</u>, Docket No. 90-),

with the courts refusing to determine the issue (cf. Cohens v. Virginia (19 U.S. [6 Wheat] 264, 404 [1821]).

(3) The precise issue is not the validity of petitioner's state disbarment for exposing judicial corruption, but whether the state could "forthwith" disbar an attorney during the midst or at the eve of a criminal trial, contrary to the wishes of the accused client and a client who was not a party to the disciplinary proceedings (cf. Kirkland v National Mortgage, 884 F.2d 1367 [11th Cir.-1989]).

(4) The argument, as expressed by Vilella to the media:

> "a surgeon does not abandon an operation in its midst because he loses his license 'forthwith' for his failure to have paid his income taxes"!

f(1) Petitioner's "forthwith" state, not federal, disbarment occurred on the eve of the Vilella state criminal trial, by reason of petitioner's refusal to be silent on the subject of judicial corruption revolving around the judicial trust assets of Puccini -- "the judicial fortune cookie" -- a matter completely unrelated to Vilella and in which he had no interest.

(2) However, despite such state disbarment, petitioner continued to be a member of the bar of the Second Circuit Court of Appeals, the District Courts of the Southern and Eastern District of New York, and other federal tribunals.

(3) A related question is whether, by virtue of the supremacy clause, membership in the federal bar carries with it privileges in the state judicial system when related to the federal litigation.

(4) It was only thereafter, when petitioner revealed some of his dramatic evidence of federal judicial corruption by, inter alia, a 28 U.S.C. §372[c] complaint, that he was disbarred by the Second Circuit Court of Appeals.

g(1) Decisive of petitioner's independent standing in this matter, and Vilella's involvement in the Puccini matter, is the without due process edict that for petitioner to have satisfied his contractually based judgment against Puccini, he must obtain a general release from, inter alia, Vilella, Article 1, §10[1] of the U.S. Constitution, notwithstanding.

(2) By an administrative edict of Referee DONALD DIAMOND ["Diamond"] without any "due process" procedures, or even notice to petitioner, Referee Diamond has provided:

> "ORDERED, that the Receiver for Puccini Clothes, Ltd. shall in turn deposit such amount with the Clerk of the Court in full payment of the Judgment in favor of George Sassower and against Puccini Clothes, Ltd., subject to the further Order of this Court; and it is further
>
> ORDERED that thereafter an application may be made to the undersigned [Referee DONALD DIAMOND] for an Order directing the Clerk of the Court to deliver the proceeds of the Judgment to George Sassower, by setting forth proof of the discontinuance with prejudice of all outstanding judicial and administrative proceedings and lawsuits brought by or on behalf of George Sassower, or any member of the family of George Sassower, or any person claiming to be a client of disbarred attorney George Sassower, including but not limited to Harold Cohen and Dennis

> Vilella, or in any instance where any summons, process or paper has been issued by disbarred attorney Sassower, as attorney, as attorney pro se, or as a party pro se, against any one or more of the following: Lee Feltman, Esq., individually or as the Receiver for Puccini Clothes, Ltd., Puccini shareholders Eugene Dann, Robert Sorrentino, Jerome H. Barr and Citibank, N.A. as co-executors of the Last Will of Milton Kaufman, Rashba & Pokart, Feltman, Karesh, Major & Farbman, Kreindler & Relkin, P.C., Nachamie, Kirschner, Levine & Spizz, P.C., Ira Postel, Esq., or any attorney, employee or agent of any of the aforesaid firms; ... "[emphasis supplied]

(3) Thus in order for petitioner to have his personal, contractually based, judgment satisfied, in the approximate amount of $50,000, with interest, he must obtain a release from Vilella in favor of those involved in the larceny and unlawful plundering of Puccini's trust assets.

THE UNAVAILABILITY OF OTHER JUDICIAL FORUMS

5a. Petitioner, still refusing to remain silent on the subject of judicial corruption, has been denied access to the courts in the Supreme Court of the State of New York, the District Court of the Southern District of New York, the Eastern District of New York, the District Court of New Jersey, and effectively in other courts as well.

b. Indeed, petitioner, without any due process procedures whatsoever, has been physically barred from any presence in the Federal Building and Courthouse in White Plains, New York (Southern District of New York) by virtue of the oral edict of Chief U.S. District Judge CHARLES L. BRIEANT ["Brieant"], although petitioner is a native-born American citizen and battle-star veteran of World War II (Sassower v. Brieant, Docket No. 90-6261).

c(1) Chief Judge Brieant has held that even for a 28 U.S.C. §2255 writ of habeas corpus for petitioner himself, needs judicial permission for the filing thereof.

(2) Similarly, a New York State Supreme Court justice has held that petitioner needs the personal permission of Mr. Justice IRA GAMMERMAN ["Gammerman"] for a writ of habeas corpus for himself.

(3) U.S. District Judge NICHOLAS H. POLITAN ["Politan"], for the District of New Jersey, has refused petitioner the right to file, inter alia, a notice of appeal from a draconian injunctive decree without his permission, although petitioner's right to appeal to the Circuit Court is absolute.

(4) Petitioner is repeatedly "threatened" by, inter alia, the Second Circuit Court of Appeals in whatever filings he makes, even when the relief requested is irresistibly compelling, legally and factually.

d(1) For exposing judicial corruption, before petitioner can file any paper in the Southern District of New York he must show:

Compliance with the injunctive decree of Judge WILLIAM C. CONNER ["Conner"], an action in which petitioner was not a party, his vested interests not in issue, and where he was not permitted to appeal such decree.

Compliance with the "no due process" ukases of Chief Judge Brieant.

Compliance with the recent, "no due process" edict of Acting Chief Judge THOMAS P. GRIESA ["Griesa"].

(2) Each time petitioner finds a method to comply with the extant edicts set forth for his filings, additional edicts are issued and conditions imposed.

(3) In New York, where every person has "next best friend" status in a habeas corpus proceeding, such status is denied to petitioner (see Sassower v. Mahoney, Docket No. 90-).

(4) Thus, for this writ of habeas corpus, petitioner must make same in this Court, as the only available Court for such filing.

"VILELLA-THE HOSTAGE"

6a. In a "reign of judicial terror", state and federal, intended to silence petitioner, he has been repeatedly convicted of non-summary criminal contempt, a constitutionally protected crime, find and incarcerated, without a trial, without opportunity for a trial, and without any 'live' testimony in support thereof, by the state and federal courts, the holdings of this Court in Bloom v. Illinois (391 U.S. 194 [1968]; Klapprott v. U.S. (335 U.S. 601 [1949]); and Nye v. U.S. (313 U.S. 33 [1941]) to the contrary notwithstanding.

b. HYMAN RAFFE ["Raffe"], another client of petitioner, was also convicted and sentenced to be incarcerated, under the same trialess scenarios, but for the payment to the judicial cronies of "millions of dollars", the amounts correlated to petitioner's activities. Consequently, functionally Raffe is "Raffe-The Hostage".

c. Similarly, for more than three (3) years, Vilella or "Vilella-The Hostage", has been incarcerated for "phantom" crimes, in an attempt to compel petitioner's silence.

STANDING-REVISITED

7a. On the issue of standing, in addition to the aforementioned, Vilella can only assert that he knows nothing about this "tire-iron" assault and was not present at the time of this assault, little more.

b(1) Petitioner, not Vilella, can and does demonstrate that this "tire-iron" assault never occurred.

(2) Petitioner, not Vilella, can and does here demonstrate that Vilella was depraved of multiple basic and essential constitutional rights in an attempt to have him serve as a hostage to compel petitioner's silence concerning judicial and prosecutorial misconduct and corruption.

c. Contrary to the situation in Whitmore v. Arkansas (supra), Vilella desires and insists that petitioner make this application and take any and all lawful action to obtain his deserved freedom.

"THE PHANTOM CRIMES"

8a. Vilella, a college graduate, married, with two (2) small children, and active in local civic affairs defended himself, as a pro se defendant, although he had no knowledge or experience in the law or its procedures.

b(1) For whatever reasons, even before the perfidious conduct of his other attorneys surfaced in this matter,

petitioner was the only attorney he trusted, and so he advised the media.

(2) Petitioner personally investigated the Vilella case, exuded with confidence about its outcome and was ready to proceed to trial when he was disbarred "forthwith" by the state.

c. When the trial court refused to discharge petitioner of his obligations, professionally or contractually, to Vilella, and refused to permit him to represent him at trial, petitioner witnessed the trial proceedings, as a spectator, from beginning to end, and is in possession of the trial transcript and other records.

d. Vilella, very powerfully built, was indicted and convicted of attempted murder and assault upon Nappi "with a tire iron".

e. Dillon claimed that Nappi was "repeatedly", "violently", assaulted on her head by Vilella, with a "tire iron", which certainly would have resulted in a fragmented, splintered and depressed skull with extensive brain damage, at the very least.

f. After this alleged "repeated", "violent", "tire iron" assault upon Nappi she was removed to Community Hospital at Glen Cove, Nassau County, New York ["Hospital"].

g. The following are among the Hospital Records which were concealed from the Grand Jury, from Vilella, from the Trial Jury and from the Appellate Division.

(1) <u>In haec verba</u>, the Hospital x-ray report for Nappi, following this "tire iron" assault, reads as follows:

> "Skull shows no evidence of fracture. Sutures and vascular markings are normal. Sella turica is regular in appearance. Petruous pyramids and sphenoid wings are intact. IMPRESSION: Normal examination of the skull."

(2) <u>In haec verba</u>, the Hospital CAT Scan for Nappi, following this "tire iron" assault, reads as follows:

> "CT scan non-contrast of the brain was performed. No shift of midline structures is seen. No subdural collection is identified. No blood in the white or grey matter is seen. Soft tissues of the brain fail to demonstrate any gross soft tissue swelling. IMPRESSION: See above report."

(3) The Hospital Trauma Assessment Record, also made the same day Nappi was admitted, reveals normal pupils, normal leg and hand reactions and movements, and the <u>highest possible</u> non-coma score.

(4) The Hospital consultation report of Nappi states:

> "coherent ... no overt thinking disorder. She is cooperative and fairly verbal. No auditory trouble ..., no delusions. ... Sensories intact. Short term memory good. ... Insight good."

(5) In the entire Hospital record there is an absence of any showing of "tire iron" bruises on Nappi's skull.

(6) The Hospital records reveal that there was absolutely <u>no</u> treatment rendered to Nappi for any skull fracture injuries.

h(1) Insofar as the alleged assault was concerned, Nappi's uncorroborated direct trial testimony, <u>in full</u>, was as follows:

"Q What did he hit you with?
A A tire iron.
Q How many times did he hit you?
A About eight or twelve.
Q What parts of your body did the blows land?
A My head and my hands, protecting myself. [SM-91] ...
Q Please continue.
A And then he hit me some more.
Q What did he hit you with?
A The tire iron.
Q Back in the van again?
A Yes.
Q How many times did he hit you the second time?
A About six or seven. [SM-92]
Q What were your injuries?
A <u>I sustained six skull fractures</u>.
..." [SM-93] [emphasis supplied]

(2) Nappi's testimony on cross-examination, conducted by Vilella, a <u>pro se</u> defendant, was as follows:

"Q Mrs. Nappi, you testified that I hit you in the van approximately eight to ten times or six to ten times?
A About that. [SM-98] ...
Q Mrs. Nappi, you were hit, you said, again six to ten times in the van?
A I said anywhere from eight to twelve times.
Q Eight to twelve times in the van? you opened the door and ran out? How far did you run?
A Not too far.... I saw a car coming and I screamed for help, but you came behind me and dragged me back in the van.
Q Would you say you're a strong person?
A I do, but not when you're hit twelve times in the head with a tire iron when you're not expecting it. [SM-101]
Q ... You say somewhere in the Grand [Jury] Minutes I covered your mouth.
A You hit me from behind in the van and you kept hitting me and hitting me and then I somehow got out of the van and I screamed, and I couldn't do anything. You came behind me and dragged me back. I couldn't fight you. I wasn't expecting you to him me. ... When you're hit like that and you don't know what's coming, you can't do anything. You don't have the strength to do anything, not the way you were hitting me.

Q Would you describe to the Court how it was that I was hitting you?
A Violently with everything you had to hit me.
Q Could you show us, please? [SM-103]
A Show you? You took the thing and hit me.
Q Which way? Just go through the motions.
A I didn't see the first hit because I was under the blanket, but I saw afterwards because I protected myself from it.
Q Show us the second hit.
A You stood over me and hit me like this (Indicating)
Q With the tire iron?
A With the tire iron that looks similar to that.
THE COURT: For the purpose of the record, did he raise his hand up over his head with the tire iron?
THE WITNESS: No, not all the way down over his head. ...
THE COURT; ... So he raised his hand halfway up to the head and struck down with the tire iron?
THE WITNESS: Right. ...
Q Were they tapping motions or you say violent?
A Violent." [SM-103-4]

i(1) Obviously, even the Russian mystic, Rasputin, could not have survived such "tire-iron" assault, as testified to by "Nappi-The Lady Rasputin", and obtained such negative results.

(2) To state that Dillon cannot produce any physician who, specifically confronted with such Hospital record, would state that such "tire-iron" assault took place, as testified by The Lady Rasputin, would only state the obvious.

DILLON'S PROSECUTORIAL MISCONDUCT

9a. The pertinent portions of the Grand Jury minutes, which petitioner, not Vilella, first saw at the opening of the trial, along with the full hospital records, mirrors the trial testimony of The Lady Rasputin and reveals the modus operandi employed by Assistant District Attorney J. KENNETH LITTMAN

["Littman"] in deliberately concealing such hospital records from that indicting body, while The Lady Rasputin affirmatively testified that she sustained "six skull fractures".

b(1) The Lady Rasputin's testimony before the Grand Jury reads as follows:

> "Q [Mr. Littman] Were there any injuries to your skull?
> A [Mrs. Nappi] Six skull fractures."

(2) An obvious skeptical Grand Jury recalled Lady Rasputin and the relevant colloquy reads as follows:

> "Q [Grand Juror] You recounted a number of injuries to your skull. Did I understand you to say you had six fractures of the skull?
> A [Nappi] Yes. And the orbits and my sinuses and my cheekbone.
> Q [Grand Juror] Yes.
> Q [Grand Juror] I see. Thank You.
>
> MR. LITTMAN: Understand, members of the Grand Jury, you have the medical records before you. However, in the interest, obviously, of saving your time, I had the witness relate which injuries she sustained. You may of course examine them. That's why they're in evidence. Anything else for this witness? (No response by the Grand Jurors)."

(3) Littman obviously was not concerned with "saving [the grand jurors] time", when he made the aforementioned remark, but in deceiving them into not examining the Hospital records which included the "skull X-Ray Report", the "CAT Scan Report", "the [negative] Coma Assessment Record", and similar reports, including the lack of any treatment for any "phantom" skull fractures.

(4) There was no medical testimony presented to the Grand Jury, except for Nappi's incompetent testimony on the

subject and the Hospital records, which the jurors obviously never inspected.

JUDICIAL-PROSECUTORIAL MISCONDUCT

10a. At his opening trial remarks, Littman falsely told the jury, inter alia, that at the Hospital, The Lady Rasputin was "treated" for "skull fractures", although there was no such evidence in the Hospital records.

b. Obviously Littman never intended to have the Hospital record introduced into evidence and/or to conceal the decisive documents contained therein.

c. Towards the conclusion of the Vilella trial, the prosecution having rested, and the Hospital Record still not in evidence, petitioner interrupted the judicial proceedings, and in the absence of the jury caused Judge, now Mr. Justice, JOSEPH HARRIS, to look at the aforesaid Hospital "X-Ray Report", the "Cat Scan", and the "Coma Assessment Record".

d. Mr. Justice Harris turned "ghost-white" as His Honor silently read, re-read, and re-re-read these documents, but instructively never brought them to the attention of the jury, directly or otherwise.

e(1) Petitioner, who had abstained from giving Vilella any legal advise during the trial, and observing this obvious prosecutorial-judicial fraud evolving, told Vilella that he should make certain that the jurors saw the aforementioned Hospital documents on his summation.

(2) However, as Vilella informed petitioner thereafter, these decisive documents were missing from the

Hospital Record when he gave his summation, and consequently he never made the jury aware of their existence.

11a. On July 31, 1987, the day following the Vilella conviction, petitioner caused to be served on Dillon personally, with a copy on Judge Harris, a 29 page "amicus affirmation" which, with exhibits attached, demonstrated Littman's prosecutorial misconduct, and the fictitious nature of the crimes under which Vilella was convicted.

b. The aforementioned 29 page "amicus affirmation, concluded as follows:

> "Affirmant, duly admitted to practice law in the United States Court of Appeals and the United States District Court for the Eastern District of New York, affirms the aforementioned to be true under penalty of perjury.
>
> WHEREFORE, it is respectfully prayed that 'right be done' by a system where, at times, there is too much law, and too little justice."

c. At no place in the aforementioned "amicus affirmation", which was directed to Dillon for his personal attention, or in the two (2) affirmations thereafter delivered by petitioner to Dillon and/or his office on August 6 and August 8, 1987, did petitioner state that he was representing Vilella in the state forum, although at the time he was lawfully representing him and others in the federal forums.

12a. Shortly before sentencing on October 9, 1987, Vilella retained ROBERT RIVERS, Esq. ["Rivers"] in the state criminal proceeding, while petitioner continued his lawful representation of Vilella in the federal forum.

b. Between conviction and sentencing, petitioner inundated Dillon's Office and Judge Harris with the clear, documented and uncontroverted evidence of the "phantom" nature of these "tire iron" crimes.

c. Nevertheless, with Rivers appearing as Vilella's attorney, the following is an excerpt of the proceedings at sentencing, wherein Judge Harris sentenced Vilella to a term of incarceration of eight and one-third to twenty-five years:

> "MR. [Ass't D.A.] LITTMAN:... This was a particular brutal, unprovoked assault on a woman. We recommend that the maximum sentence be imposed. [SM-6]
> THE COURT: According to the victim, she was struck 8 to 15 times altogether with what Mr. Littman described as a tire iron. ... . She suffered five skull fractures. ... I heard the evidence and that's in the medical records and it's found in the evidence and the Court feels that a jury could very well have based upon the evidence before it, have returned this verdict. There is no question that this was a brutal beating and one of the most heinous matters outside of actual murder that this Court has seen." [SM-11].

"THE DILLON RACKET"

13a. In or about January of 1988, petitioner obtained a copy of the Vilella trial and sentencing minutes and thereafter the handwritten, post-discharge notes of VICTOR M. REGAN, Esq. ["Regan"], a partner in SM&R, which revealed, inter alia, the following:

> "Long Meeting with ADA Littman
> who gave me access to victim's long medical treatment records and supplied me with copies I deemed necessary for trial preparation. ..."

b. SM&R were the initial attorneys which the Vilella family retained.

c. In the SM&R attempt to have Vilella plead guilty, they never told Vilella about the contents of the Nappi hospital records, which clearly revealed that the crimes for which Vilella had been indicted simply never occurred, nor did they turn over to petitioner the decisive pages of Hospital record when petitioner was substituted as Vilella's attorney.

d. At about the same time, in January 1988, petitioner began to receive letters, as well as telephone calls, from Vilella wherein he was becoming convinced that Rivers was also betraying him.

e. One (1) year later, after Rivers' had completed his task, on behalf of Dillon, by betraying Vilella in the Appellate Division, the reason for Rivers' perfidious conduct became a matter of public knowledge (cf. Mannhalt v. Reed, 847 F.2d 576 [9th Cir.-1988]).

f. Almost two (2) months after the Vilella appeal had been argued in the Appellate Division, and on February 15, 1989, Long Island Newsday published the following:

> "A defense attorney, once regarded as one of the top trial lawyers in Nassau County, won $300,000 in settlements for a client recently but kept the money himself, the Nassau district attorney charged yesterday.
>
> Robert Rivers, 55 ... was arraigned in Nassau County Court in Mineola yesterday on charges of second-degree grand larceny and second-degree criminal possession of a forged instrument. ...
>
> According to District Attorney Denis Dillon, Rivers is charged with stealing $300,000 from a Brooklyn man, Clement McMillan, was injured while working at Key Foods in Brooklyn in 1983. McMillan and his mother, Ordell, hired Rivers to file suit against the supermarket.

In 1986, Rivers reached a $200,000 settlement with the insurance company representing the supermarket and a $100,000 settlement with a second insurance company. But he allegedly did not tell the McMillans, instead forging their signatures on releases that allowed him to bank the money, which remains unrecovered, said Dillon spokesman Ed Grilli.

The case came to light after the McMillans complained to authorities, Grilli said. He said other clients have made accusations against Rivers and investigators are looking into the charges."

g. The recently disclosed plea-bargain agreement between Dillon and Rivers clearly reflects the quid pro quo given Rivers for betraying Vilella.

14a. In filing the trial exhibits in the Appellate Division, Dillon omitted the Hospital Record obviously with Rivers' consent.

b. In furtherance of this Dillon-Rivers conspiracy, the Rivers' Brief, with respect to the injuries to The Lady Rasputin, in full, was as follows:

"Based upon Ms. Nappi's allegations, medical records and testimony that Ms. Nappi was assaulted by someone, Appellant was convicted of attempted murder in the second degree and assault in the first degree. [p. 4]. ... In the instant case the record shows that the only evidence that the prosecution presented that indicated that the Appellant committed the crimes in question was the testimony of the victim ... [p. 14]. [T]he testimony she gave to the grand jury where she indicated that after the assault she remembered nothing until she woke in the hospital ... there may have [been] another person who assaulted Ms. Nappi ... The remaining evidence presented by the prosecution merely indicates that the victim was indeed assaulted by someone, not necessarily by the Appellant, that the victim sustained serious injuries [p. 14-15].".

c. Where every rational person agrees that such "tire iron" assault could not have possibly have occurred, in view of

the hospital reports, Rivers' Brief speaks eloquently of betrayal.

d. The fraud and misconduct of Dillon, as well as that of the trial judge, was flagrant and egregious, as witnessed personally by petitioner and partially set forth heretofore.

e. Nevertheless, not a word of such misconduct was contained in the Rivers Brief, nor mentioned on oral argument, which petitioner also witnessed.

f. All the statements in Dillon's Brief on the same subject read as follows:

> "[D]efendant began to hit her with a tire iron. He hit Nappi 'about eight or twelve' times in the head and on her hands. ... Nappi managed to get out of the van, but defendant 'came behind me and covered my mouth and pulled me back in the van ... and then he hit me some more ... with the tire iron' [p. 2]. ... Dr. Peter Sordi ... observed five skull fractures [p. 3]. ... [D]efendant struck her 'about eight or twelve' times with a tire iron on her head and hands ... . Nappi managed to get out of the van to try to seek help, but defendant 'came behind me and covered my mouth and pulled me back in the van.' Defendant 'then hit me some more' with the tire iron. ... As a result of this attack, <u>Nappi suffered five skull fractures</u>. ... <u>The only remaining question was the identity of the assailant</u>. ... [p. 7]." [emphasis supplied]

g. Petitioner was present during oral argument on December 22, 1988, and the first statement made by Rivers to the Court was that the Court should not permit petitioner to address the tribunal, a statement to which the Dillon representatives were in accord.

h. In view of such fraudulent presentation, the

decision of the Appellate Division can be justified (Exhibit "C").

15a. The aforementioned, and some significant additional facts, made it manifestly apparent that there was a "racketeering enterprise" in active operation in the Dillon bailiwick.

b. Such "racketeering operation", as it presented itself in the Vilella matter, was that (1) Dillon would over-indict; (2) the defendant's attorney would exact a fee from the defendant or his family commensurate with the crimes charged; and then (3) employing such over-indictments as leverage, the defendant, left with no realistic alternative, would plead guilty to crimes that were quantum leaps below those called for in the indictment.

c. Such "racketeering" scenario would, of necessity, compel the defendant's attorney to conceal from his client the fact that there was no credible evidence to support the crimes being charged.

d. In the Vilella matter, such "racketeering operation" compelled SM&R to conceal from their client, as well as petitioner, the essential information revealed in the Nappi Hospital records, and other exculpatory information.

e. In the Vilella matter, the intended scenario was frustrated because Vilella, would not plead guilty to any crime, even if it did not result in a sentence of incarceration, since in addition to being adamant about his non-involvement in the matter, he desired public vindication.

f. It also became manifestly clear, with further confirmation forthcoming, that others were involved in such "racketeering enterprise".

g. In the Vilella matter, those others, once petitioner entered the case, included those who were involved in the larceny and unlawful plundering of Puccini's judicial trust assets.

16a. From an unlawful law office search and seizure on February 24, 1988 Dillon, in addition to reading and/or seizing Vilella attorney-client material, read a copy of a letter Vilella had written Rivers effectively discharging him because of his suspect conduct.

b. Dillon also knew that Vilella had retained MARTIN OZER, Esq. ["Ozer"], to replace Rivers, in presenting his appeal in the Appellate Division, and that his family had given Ozer's assistant a substantial amount of money for that purpose.

c. However to consummate this judicial fraud, it was necessary for Dillon to keep Rivers on the case so that he could betray Vilella in the Appellate Court, and consequently he never advised the Appellate Division that the Rivers' Brief and representation was unauthorized.

d. Details surrounding this fraud by Dillon are omitted herein because of their complicated nature.

"DILLON'S JIHAD"

17a. In late January 1988, petitioner began to expose "Dillon Justice" with some intensity.

b. Included in petitioner's activities was his communication with the Vilella jurors in order to confirm that they never saw or knew about the contents of the Nappi Hospital reports when they rendered their verdict.

c. Consequently, Dillon caused the jurisdictionally invalid arrest and incarceration of petitioner.

d. According to a published media statement, the reason for petitioner's arrest and incarceration was (The Daily News, Feb. 24, 1988, p. 3):

> "Sassower [petitioner] drew the District Attorney's ire, [Assistant District Attorney] Sansverie said, when he allegedly began writing 'a flurry of letters making allegations on his attorney-at-law stationery' about a doctor who testified in the case. Letters were sent to Dillon, the assistant district attorney, and to medical associations. One letter tried to enlist the help of a former juror."

e(1) Following such arrest and incarceration, Dillon by fraud and misrepresentation obtained a general, patently invalid, law office search warrant, read and seized, (1) Vilella's pre-state disbarment attorney-client confidential material; (2) Vilella's federal attorney-client material; and (3) material mailed and received to and from the media and public interest organizations regarding the Vilella matter.

(2) In order to frustrate and obstruct any aid that petitioner might give Vilella, in and out of the judicial forums, including in those federal forums where petitioner was lawfully entitled to practice law, more that fifty (50) 'data discs' of petitioner, containing approximately 10,000 pages of material were seized.

f. In all petitioner was arrested and incarcerated three (3) times in Nassau County by Dillon.

g. The message conveyed by Dillon has not been lost by members of the bar in Nassau County.

18. **All attempts by petitioner to communicate with the Grand Jury, state and federal, has been stonewalled by Dillon and** his co-conspirators.

19. **No** prior applications have been made in the federal courts for habeas corpus relief herein, and all possible state applications have been exhausted.

WHEREFORE, it is respectfully prayed that the writ of habeas corpus be issued and sustained and "right be done".

Dated: December 19, 1990

GEORGE SASSOWER

GEORGE SASSOWER, affirms the following to be true under penalty of perjury.

That the aforementioned petition for a writ of habeas corpus is true to his own knowledge.

Dated: December 19, 1990

GEORGE SASSOWER

<u>CERTIFICATION OF SERVICE</u>

On December 24, 1990, I served a true copy of this Petition for a Writ of Habeas Corpus by mailing same in a sealed envelope, first class, with proper postage thereon, addressed to the Warden of Sing Sing Correctional Facility, at 354 Hunter Street, Ossining, New York 10562-5442; District Attorney, Denis Dillon, 262 Old Country Road, Mineola, N.Y. 11501 (Certified Mail P 866 238 849); Attorney General Robert Abrams, The Capitol, Albany, New York 12224; and Dennis F. Vilella at 354 Hunter Street, Ossining, New York 10562-5442, that being their last known addresses.

Dated: December 24, 1990

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GEORGE SASSOWER

1

541 N.E.2d 423
74 N.Y.2d 713

...e Matter of AIDA M. (Anonymous), etc.

...tle Flower Childrens ...rvices, Respondent,

...1. (Anonymous), Appellant,

...(Anonymous), Respondent.

...Elizabeth M. (Anonymous) Foster Parents, ...rvenor-Respondents.

...of Appeals of New York.

June 15, 1989.

...below: 143 A.D.2d 1074, 533 ...2.

...r leave to appeal dismissed as ...CPLR 5513[b], 5514[c]). Mo...gnment of counsel dismissed as

2

541 N.E.2d 423
74 N.Y.2d 713

...en M. ROSE, Appellant,

v.

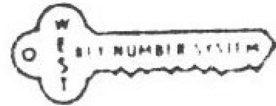
...O NORTH COMMUTER RAILROAD, et al., Respondents.

...of Appeals of New York.

June 15, 1989.

...ort 73 N.Y.2d 994, 540 N.Y. ...538 N.E.2d 357.

...or reargument denied. Movant ...mply with section 500.11(d)(1)(iv) ...s of the Court of Appeals (22 NYCRR 500.11[d][1][iv]) when movant previously sought leave to appeal.



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541 N.E.2d 423
74 N.Y.2d 713

In the Matter of William TIMM, Appellant,

v.

NEW YORK STATE PUBLIC SERVICE COMMISSION et al., Respondents.

Court of Appeals of New York.

June 15, 1989.

Reported below: 144 A.D.2d 139, 534 N.Y.S.2d 460.

Appeal dismissed without costs, by the Court of Appeals *sua sponte*, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (CPLR 5601[a][b]).

4

541 N.E.2d 423
74 N.Y.2d 713

The PEOPLE of the State of New York, Respondent,

v.

Dennis VILELLA, Appellant.

(George Sassower, Petitioner.)

Court of Appeals of New York.

June 15, 1989.

Appeal dismissed, by the Court *sua sponte*, upon the ground that no appeal lies

from the order entered in this criminal proceeding (CPL 450.90).

BELLACOSA, J., took no part.

Exhibit "A".

1

543 N.E.2d 742
74 N.Y.2d 759

In the Matter of Frank McCONNELL.

Warren Harris, as Clinical Director of St. Lawrence Psychiatric Center, Respondent,

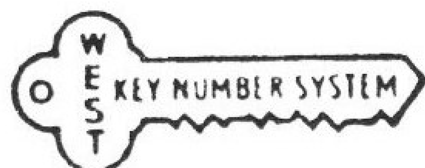
Frank McConnell, Appellant.

Court of Appeals of New York.

July 6, 1989.

Reported below: 147 A.D.2d 881, 538 N.Y.S.2d 101.

On the court's own motion, appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved. Motion for leave to appeal denied. Motion for poor person relief dismissed as academic.



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542 N.E.2d 742
74 N.Y.2d 759

The RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, Respondent,

v.

AI INTERNATIONAL CORP., Defendant,

and

Karen de Kleinman, Appellant.

Karen DE KLEINMAN, Appellant,

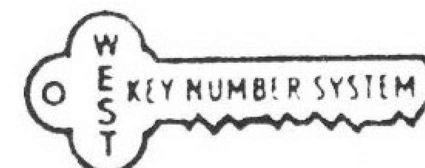
v.

The RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, et al., Respondents.

Court of Appeals of New York.

July 6, 1989.

Motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as denied the motion for enlargement of the time within which to perfect the appeal, dismissed upon the ground that that portion of the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.



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543 N.E.2d 742
74 N.Y.2d 759

In the Matter of George SASSOWER, Appellant,

v.

Hon. Francis T. MURPHY, et al., as Justices of the Supreme Court, New York and Westchester Counties, Respondents.

Court of Appeals of New York.

July 6, 1989.

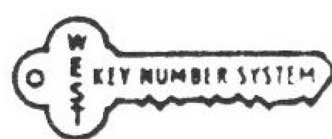
Reported below: 148 A.D.2d 1014, 540 N.Y.S.2d 118.

On the court's own motion, appeal dismissed, without costs, upon the ground that, as to the appeal from the March 14, 1989 Appellate Division order, that order does not finally determine the action within the meaning of the Constitution, and upon the ground that, as to the appeal from the March 9, 1989 order, no substantial constitutional question is directly involved. Motion for disqualification of attorneys etc., dismissed as academic. Motions for summary relief etc., dismissed upon the ground that this Court of Appeals has no jurisdiction to entertain the motions (N.Y. Const., art. VI, sec. 3).

BELLACOSA, J., took no part.

Exhibit "B"

appellate review or without merit (*see*, CPL 470.05[2]; *People v. Vails*, 43 N.Y.2d 364, 368–369, 401 N.Y.S.2d 479, 372 N.E.2d 320; *People v. Maerling*, 46 N.Y.2d 289, 302–303, 413 N.Y.S.2d 316, 385 N.E.2d 1245; *People v. Nieves*, 133 A.D.2d 234, 235, 518 N.Y.S.2d 851; *People v. James*, 111 A.D.2d 254, 255, 489 N.Y.S.2d 527; *People v. Gabler*, 129 A.D.2d 733, 514 N.Y.S.2d 493; *People v. Singleton*, 121 A.D.2d 752, 504 N.Y.S.2d 167; CPL 200.50[6]).



147 A.D.2d 666

The PEOPLE, etc., Respondent,

v.

Dennis VILELLA, Appellant.

Supreme Court, Appellate Division, Second Department.

Feb. 21, 1989.

Defendant was convicted in the Nassau County Court, Harris, J., of second-degree attempted murder and of first-degree assault. Defendant appealed. The Supreme Court, Appellate Division, held that: (1) evidence supported defendant's conviction, and (2) defendant was not deprived of his right to fair trial after he was permitted to proceed pro se.

Affirmed.

1. Assault and Battery ⟹92(1)
Homicide ⟹256

Evidence supported defendant's conviction of second-degree attempted murder and first-degree assault, based on vicious attack upon victim.

2. Criminal Law ⟹641.4(4)

Inquiries conducted by judges both at pretrial proceeding and immediately prior to trial were sufficient to support their determinations that defendant's request to proceed pro se was based upon intelligent and voluntary waiver of his right to counsel. U.S.C.A. Const.Amend. 6.

3. Criminal Law ⟹641.4(4), 641.13(8)

Defendant was not denied his right to fair trial when he was permitted to proceed pro se as requested; defendant made intelligent and voluntary waiver of right to counsel, was afforded access to and in fact consulted with attorney during trial, and conducted defense with reasonable competence and in orderly manner. U.S.C.A. Const.Amend. 6.

Robert Rivers, Hempstead, for appellant.

Denis Dillon, Dist. Atty., Mineola, (Anthony J. Girese and Douglas Noll, of counsel), for respondent.

Before THOMPSON, J.P., and RUBIN, SPATT and BALLETTA, JJ.

MEMORANDUM BY THE COURT.

Appeal by the defendant from a judgment of the County Court, Nassau County (Harris, J.), rendered October 9, 1987, convicting him of attempted murder in the second degree and assault in the first degree, upon a jury verdict, and imposing sentence.

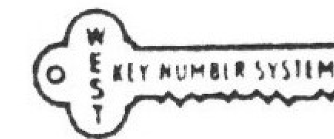
ORDERED that the judgment is affirmed.

[1] The defendant was convicted of attempted murder in the second degree and assault in the first degree, based on his vicious attack upon the victim. Viewing the evidence in a light most favorable to the People, we find that it was legally sufficient to support the defendant's conviction of the crimes charged (*see, People v. Contes*, 60 N.Y.2d 620, 467 N.Y.S.2d 349, 454 N.E.2d 932). Moreover, upon the exercise of our factual review power, we are satisfied that the verdict, based largely upon the testimony of the complainant, was not against the weight of the evidence (*see*, CPL 470.15[5]).

[2, 3] Additionally, the record indicates that both Judge Santagata at the pretrial proceeding and Judge Harris immediately prior to trial conducted thorough inquiries sufficient to support their determinations that the defendant's request to proceed *pro se* was based upon an intelligent and volun-

Exhibit "C"

tary waiver of his right to counsel (*see, People v. Smith*, 68 N.Y.2d 737, 506 N.Y.S.2d 322, 497 N.E.2d 689; *People v. McIntyre*, 36 N.Y.2d 10, 17, 364 N.Y.S.2d 837, 324 N.E.2d 322). The record further reveals that the defendant, who was repeatedly afforded access to an attorney during the trial, and in fact, consulted with an attorney at one point during the trial (*see, People v. Sawyer*, 57 N.Y.2d 12, 22, 453 N.Y.S.2d 418, 438 N.E.2d 1133; *People v. Lashley*, 138 A.D.2d 408, 525 N.Y.S.2d 853, *lv. denied* 71 N.Y.2d 1029, 530 N.Y.S.2d 564, 526 N.E.2d 56), conducted his defense with reasonable competence and in an orderly manner such that he was not deprived of his right to a fair trial (*see, People v. Lashley, supra*).



147 A.D.2d 719

The PEOPLE, etc., Respondent,

v.

Jose RODRIGUEZ, Appellant.

Supreme Court, Appellate Division, Second Department.

Feb. 27, 1989.

Defendant was convicted in the County Court, Westchester County, Nicolai, J., of first-degree assault, first-degree reckless endangerment, fourth-degree criminal possession of a weapon, second-degree criminal use of firearm, and menacing, and he appealed. The Supreme Court, Appellate Division, held that defendant's contention that he was denied right to confront witnesses at *Wade* hearing in violation of constitutional rights was without merit, as defendant was known to People's three witness prior to crime, and thus identification procedure was merely confirmatory.

Affirmed.

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