UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Steven Alan Magritz,
Petitioner

v.

Case No. 18-C-0455

JON E. LITSCHER,
Respondent

MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR RELIEF, Fed. R. Civ. P. Rule 60

I, Steven Alan Magritz, the living man, in want of counsel, Petitioner in the above captioned matter, file this Memorandum in support of my Motion for Relief, Fed. R. Civ. P., Rule 60, pursuant to Civil L. R. 7. I, me, my, myself herein refers to Steven Alan Magritz, the living man. I am not a licensed attorney, therefore any claims that an attorney, of any stripe, acted in violation of the rules, codes, "laws", etc. of "United States" or "State of Wisconsin" are made upon reason and belief, and, not intended as a trespass upon any copyrighted or private material.

Prologue

The most compelling circumstances for the issuance of the writ of habeas corpus are when government officers acting under color of law, a state circuit court judge in this instant matter, abuse the power of the state for personal or political purposes to retaliate against and punish those with whom they disagree. The retaliation by, and extreme bias manifested by judge Sandy Williams during a star-chamber "trial" replete with "structural errors" resulting in the unlawful

incarceration of petitioner Steven Alan Magritz, has heretofore been swept under the rug by state appellate courts and now by District Court Judge Lynn Adelman.

Summary

Judge Lynn Adelman Disregards State Statute, Downplays Egregious Judicial Bias, Ignores Fraud Upon *this* Court

The November 28, 2018 Decision and Order of Lynn Adelman evidences, *on its face*, lack of impartiality, bias or prejudice, erroneous recitation and analysis of facts *and* law, and disregard for the controlling state statute, Wis. Stat. § 974.06, *which was taken directly from Title 28 U.S. Code § 2255.*

Rule 60(b) of the Federal Rules of Civil Procedure permits a court to order relief from a final judgment or order on "just terms" on the following grounds which are applicable in this case:

- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (6) any other reason that justifies relief.

Regarding Fed. R. Civ. P. Rule 60(b)(3) & (4), fraud, and fraud upon the Court, was perpetrated in case no. 18-C-0455 by respondent's attorneys Brad D. Schimel, Daniel J. O'Brien. "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments." United States v. Throckmorton, 98 U.S. 61, 64 (1878).

Regarding Fed. R. Civ. P. Rule 60(b)(6), the disregard of controlling Wis. Stat. § 974.06, and the repetitive *manifested* bias or prejudice of presiding officer Lynn

Adelman in violation of Title 28 U.S.C. § 455(b) *has caused injury to my substantial or substantive rights.* Regarding disqualification of a judge of the United States under § 455(b), the Code reads,

> **(b)**He shall also disqualify himself in the following circumstances:
> **(1)** Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

ABA Judicial Conduct Rules 2.2 and 2.3 read:

> RULE 2.2, *Impartiality and Fairness*, "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."
> RULE 2.3, *Bias, Prejudice, and Harassment*, "(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice. (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, ..."

Here is the Applicable State "Rule"

Wisconsin Statute § 974.06:

> (8) A petition for a writ of habeas corpus or an action seeking that remedy in behalf of a person who is authorized to apply for relief by motion under this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced the person, or that the court has denied the person relief, **unless it also appears that the remedy by motion is inadequate or ineffective** to test the legality of his or her detention. (emphasis added)

Section (8) was taken *directly* from 28 U.S.C. § 2255. The Seventh Circuit recognized this prohibition on habeas corpus would have been unconstitutional except for the "saving" clause, *Stirone v. Markley*, 345 F.2d 473, (7th Cir. 1965), to wit:

> **"unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his or her detention."**

Take Notice of the word "appears". Notice also the disjunctive conjunction "or" between the words "inadequate" and "ineffective".

In the November 28, 2018 "Decision and Order", Judge Adelman *chose* to ignore the word "appears". Judge Adelman *chose* to expound solely on the word "*inadequate*". Judge Adelman *chose* to ignore the *clearly* applicable word "ineffective". Judge Adelman manifested bias. By disregarding key, essential terms in the statute, Judge Adelman turned the statute on its head, which *resulted* in violation of the federal Constitution and disregard for the *Stirone* ruling of the Seventh Circuit Court of Appeals. In *Stirone*, 475-476, the court said:

> "For an even more fundamental reason section 2255 is not a deprivation of constitutional rights. Habeas corpus **continues to be available** when the remedy under that section is shown[1] to be "inadequate ***or ineffective***." The section 2255 provision merely prescribes a procedure different from that of habeas corpus whereby one ***may*** collaterally attack a conviction. So long as this procedure is available ***with provision for habeas corpus*** in the event a section 2255 proceeding is "**inadequate *or ineffective***," there is no constitutional issue." (emphasis added).

When one "cherry-picks" the statute and takes out of context and applies only one word or term, in this case the word "inadequate", which is alleged to support or to "justify" the Adelman decision, and disregards the essential terms "appears" and "ineffective", discussed *infra*, there *is* a "constitutional issue", *and* a legal issue.

Definitions Controlling This Motion Are Set Forth At the End of the Motion

Statement of Facts

Fraud Upon the Court by Respondent's Attorneys

[1] The statute uses the term "appears".

On May 29, 2018, respondent's attorneys Brad D. Schimel and Daniel J. O'Brien filed with this Court a Motion To Dismiss and a Brief in Support of Motion To Dismiss, Dkt. 7. In their Brief, respondent's attorneys made no less than fourteen (14) false representations of fact or law, or both, to this Court, in an apparent effort to deprive this Court of jurisdiction. See Dkt. 10, "Mandatory Judicial Notice – FRE 201(c)(2) With Exhibits A through J", *incorporated herein by reference*, wherein I noticed this Court of the aforesaid false representations.

These false representations are fraud, and, fraud upon this Court, rendering the Judgment void.

My "Mandatory Judicial Notice" of adjudicative facts was filed with this Court under the pains and penalty of perjury under Title 28, U.S.C. § 1746(1). The attorneys' false representations are in violation of Fed. R. Civ. P. Rule 11(b) regarding Representations to the Court. They are also in violation of Criminal Code Chapter 47, Fraud and False Statements, viz., Title 18 U.S. Code § 1001 (a)(1), § 1001 (a)(2), § 1001 (a)(3) as documents submitted *to the Court*, as opposed to documents submitted to a judge or magistrate, as the Court is an entity created by the people by and through the Constitution or Congress, whereas the judge and magistrate are living men. Filing these false representations is *misleading conduct* as that term is defined in Title 18 U.S.C. § 1515(a)(3); a violation of Title 18 U.S.C. § 1512(c)(2) regarding obstruction of justice; and, in violation of Title 18 U.S.C. § 402, contempts constituting crimes. The false representations were made via mail or

wire, in apparent violation of Title 18 § 1341 and/or § 1343 to defraud me of the intangible right of honest services, Title 18 § 1346.

I have not seen, nor have I been presented with, any information or documentation evidencing that District Court Judge Lynn Adelman initiated contempt proceedings against attorneys Brad D. Schimel or Daniel J. O'Brien.

Filing the brief with the false representations with this Court is also a violation of ABA Rules of Professional Conduct, specifically:

> Rule 3.1 asserting issues for which there is no basis in law and fact; Rule 3.3 (a)(1) knowingly making false statements to a tribunal, and, failing to correct false statements of material fact previously made to the tribunal; Rule 3.4(c) knowingly disobey an obligation under the rules of a tribunal; Rule 3.5 seeking to influence a judge by means prohibited by law; Rule 8.4 (a) violating the rules of professional conduct; (b) committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; (c) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engaging in conduct that is prejudicial to the administration of justice;

One of the false statements of respondent's attorneys, which is stated on pages 2 and 7 of Dkt. 7, was that the Wisconsin Court of Appeals denied my habeas corpus because I had not filed a direct appeal. The record of *this* Court evidences that the state court did *not* say that. If the court had so stated, it would have been saying that habeas corpus is no longer constitutionally secured to the people since the people must *first* file a direct appeal, which is a constitutional absurdity. Further, on Dkt. 7:13 respondent's attorneys stated: "Magritz's failure to pursue direct review in state court is in and of itself fatal to his federal habeas petition." That statement is false and in direct *defiance* of both the federal and state constitutions. Judge Adelman, a seasoned jurist, should have known the statement was false as

well as constitutionally "unsound". Yet in the first full paragraph on page 3 of the "Decision and Order", *Judge Adelman repeated this false assertion as part of his justification for denying me remedy.* And again, on page 6, Adelman states: "Indeed, it was his *failure to take a direct appeal* – which the court of appeals described as his "chief alternative remedy" – that *led to the denial of his habeas petitions.*" This false representation was a fraud upon the court when attorneys Schimel and O'Brien stated it. This false statement is now, *at best,* a manifestation of bias or prejudice when Adelman uses it as justification to deny me remedy.

Discussion

I will address, in roughly chronological order as set forth in Judge Adelman's "Decision and Order", the bias manifested by Judge Lynn Adelman and the "errors" in both stating the facts and applying the law which invoke Rule 60 remedy.

Page 1, Decision and Order. Beginning on line 6 of the very first page, Judge Adelman writes "Magritz believes that the foreclosure was unlawful *and has been harassing* the County about it ever since." Adelman's *false, unsubstantiated, prejudicial, inflammatory, emotion-arousing accusation* that I had been *harassing the County* (sic) likely would cause any reviewer or reader to look upon me with disfavor, disapproval, dislike, disapprobation, animosity, and/or resentment. I believe Adelman's false statement was intended to prejudice, precondition, or predispose the reader against me to accept the subsequent false or misleading statements of "fact" or conclusions of law in the "Decision". The record of this Court evidences that *there was not one single time, not one single instance, not one single*

mention, not one single claim, not one single accusation, no evidence, anywhere, in any of the documents filed by the attorneys for the respondent, that I had been harassing the "County". Further, the "County" Adelman refers to is a corporation, an inanimate artificial entity incapable of being "harassed" in the first instance. Adelman's statement is *false and nonsense*, and evidences bias or prejudice, Title 28 § 455(b)(1). Further, Adelman's *false* statement of alleged "fact" of harassing is Adelman's own *presumption*, and presumptions are *not* "Due Process of Law" any more than is bias or prejudice.

Pages 1 to 2, Decision and Order. Judge Adelman falsely writes:

> "Magritz represented himself in the criminal case, with the assistance of stand-by counsel. However, during a pretrial conference, Magritz objected to stand-by counsel and demanded that the court allow his wife to serve as his counsel. See ECF No. 1-4 at pp. 49-62."

The record of this Court evidences that in those few words, Adelman makes no less than four (4) false, misleading, contrary to the facts, concealing statements. First, Adelman references pages 49-62 of Dkt. 1-4, when in fact the exhibit referred to begins on page 48, not page 49. Further, *said exhibit set forth at pages 48 through 62 was the entire transcript* of the *Arraignment* held on October 15, 2015. It was *not* a "*pretrial conference*". Adelman is a *seasoned* jurist who *knows* the difference between an arraignment described in Fed. R. Crim. P. 10 and a pretrial conference described in Fed. R. Crim. P. 17.1. Adelman falsely characterized an *arraignment* hearing as a "*pretrial conference*". Was this false and improper characterization of an *arraignment* as a "*pretrial conference*" intended to deceive the reviewer or reader

and deprive me of a right and cause me an injury? I charge that Adelman's false statements *evidence* bias. Were they intended to obstruct justice?

Further, I did not "represent" myself, *nor did I represent the defendant entity.* I presented myself as a man, and defended my unalienable rights subsequent to my false arrest and *denial of assistance of counsel,* both at arraignment and thereafter.

Further, I did *not* have *"the assistance of stand-by counsel."* On page 49 of Dkt. 1-4, at the very beginning of the arraignment *of which I had no notice,* while bound in chains and virtually immobilized, and after the court appointed attorney attempted to introduce me, I stated:

> "My every word today is made under the pains and penalty of perjury. I am not the fiduciary, trustee, ..." [interrupted by "judge" Williams] "I'm introducing myself. He can't introduce me. He can't accuse me of being the defendant. He's not representing me. I'm not accepting him as stand-by counsel. I can introduce myself, and that's what I'm doing."

I was again interrupted by Williams during which time the court appointed attorney, *which I did not accept,* was handed a copy if the information, which he had not been given previously. Then followed my statement with the "typos" which Adelman cherry-picked from the transcript and set forth on page 2 of his Decision and Order. I further stated, Dkt. 1-4:51, which statement was omitted by Adelman:

> "I do not accept Gary Schmaus as stand-by counsel. It is no business of mine that the court appoints Gary Schmaus for the defendant as I have no interest in the defendant. I demand that my assistance of counsel Chieko be seated next to me immediately. I demand that my assistance of counsel be given paper and pencil to take notes and act as my secretary and that we have at least ten minutes of consultation because I have been denied - - I've been held incommunicado. I have not been allowed one phone call. I have not been allowed to submit a piece of mail."

Notice that I demanded assistance of counsel by "Chieko" *to act as secretary.* Shortly thereafter Williams demanded that I enter a plea, without me having been allowed to have consultation with *anyone,* friend, family, pastor, attorney or otherwise, and *without having the assistance of an attorney at arraignment.* Williams asked, Dkt. 1-4:57, "Then, sir, what is your plea to the count in the information?" Having been subjected to the perfidy of Williams in prior years, I stated for myself, the living man, and not for the defendant:

> "Nonassumpsit by way of Confession and Avoidance. Nonassumpsit by way of Confession and Avoidance. I repeat, Nonassumpsit by way of Confession and Avoidance, and I demand you hear my plea immediately."

Williams stated, "*Based on the defendant's response the Court will take that as the defendant standing mute and enter a not guilty plea.*" Dkt. 1-4:57. I stated:

> "I do not consent to this railroad job. I entered a plea of Nonassumpsit by way of Confession and Avoidance, and I demand you hear my plea immediately. This is a ... [interrupted by Williams] This is a railroad job, madam, you are aiding and abetting the misprision of felony. There are documents that I would provide by Mr. Gary Schmaus that indicates that there are documents removed from the court file that implicates you in a misprision of felony. Now removing those documents is another crime. Tampering with a public record and stealing public documents."

At the end of the arraignment Williams acknowledged, on the record, that I did not have an attorney when she stated, "I would strongly encourage you if you do not wish stand-by counsel that you retain your own attorney..." This was of course not only a hypocritical *taunt* by Williams but also a *physical impossibility* since from the date of my false arrest until *after* being transported to state prison following sentencing *I was held <u>incommunicado</u>, in solitary confinement, without any*

visitors, and without being allowed even one telephone call to a friend, family member, pastor, *or an attorney, or anyone else who could hire an attorney.*

I have set forth above at length from this Court's record, Dkt. 1-4:48-62, *to evidence the falsity and bias or prejudice in Adelman's* ***"Pages 1 to 2 Decision and Order"*** citation, *supra.*, as well as the deception by omission in the first **"Page 2 Decision and Order"**, *infra.* This Court's record evidences that Adelman *falsely described*, by omission and commission, the arraignment and *falsely termed* the *arraignment* as a *pretrial conference* to cover-up the "structural errors" of "ineffective" assistance of counsel and judicial bias or prejudice evidenced in the *arraignment* transcript. I believe, and so charge, Adelman's omissions and false or deceptive statements arose from *bias and a predisposition to deny me remedy.*

Page 2, #1, Decision and Order. In the last sentence of the first paragraph on page 2, Judge Adelman writes:

> "The judge encouraged Magritz to retain an attorney to represent him or, if he could not afford one, make a request with the public defender's office to see if he qualified for appointed counsel. *Id.* at 14."

The record of this Court evidences, first, that the cited page which Adelman claims is page numbered 14, of Dkt. 1-4 (ECF No. 1-4) was in fact page number 61, *not* 14. Further, page 61 was the next to last page of the *transcript* of the *arraignment* proceedings which Adelman *falsely* characterized as a "*pretrial conference*", *supra*, the last page being the Certification of the Court Reporter. Nevertheless, by citing the above statement uttered by Williams at the *very end* of the *arraignment*, Adelman evidences having read the transcript and therefore "knows" that "judge"

Williams forced me into making a plea at the arraignment hearing without having the assistance of an attorney, and then tauntingly "encouraged" me to retain an attorney at the *end of the arraignment* and *after* the pleading, knowing full well that I was being held incommunicado and physically unable to contact anyone. Adelman falsely characterized the arraignment, omitted the fact that Williams' statement regarding retaining an attorney was made *after* Williams had forced me into pleading, and omitted the fact I was held incommunicado. Lack of assistance of an attorney at arraignment is a "structural error" requiring vacation of a judgment. Judicial bias is also a "structural error" requiring vacation. The omission of relevant facts by Judge Adelman evidences bias.

Page 2, #2, Decision and Order. Judge Adelman misleadingly stated:

> "*Included in at least some* of these petitions was Magritz's allegation that the Ozaukee County judge who presided over his criminal case, Sandy Williams, was biased against him."

This "finding" by Adelman, "*Included in at least some*" is misleading and *contrary to the record of this Court.* It is misleading by insinuating that I had not evidenced the bias of Williams in all of my petitions filed with the state courts, which is not true. It is also misleading in that it downplays or minimizes the *fact* I had evidenced to this Court that William's judicial bias underscored *every* deprivation by Williams of my constitutionally secured rights.

Every one of the petitions I had filed with the State appellate courts was filed with this Court and was available to Adelman. Complete State court filings were filed as exhibits with *this Court.* I stated to *this Court under the pains and penalty*

of perjury that *every* ground for remedy filed in this Court *had been presented in every instance to the State appellate courts.* I made perfectly clear to *this Court, without equivocation,* that *every* deprivation of my constitutionally secured rights by Williams, *every* fraud upon the court by Williams, from *the theft and concealment of* ***Brady material*** *from the clerk of court's files,* to *Williams preventing me from introducing* ***Brady material*** *in my defense,* to my being *gagged and threatened by Williams from testifying regarding exonerating and exculpatory* ***Brady evidence,*** to Williams denying me witnesses in my defense who were identical to or similar to those on the prosecutor's witness list, to *ordering my witness off the witness stand to prevent him from presenting* ***Brady material,*** to coaching from the bench a hostile witness who had previously given false testimony, to the *denial of assistance of counsel* at arraignment (as well as thereafter), to the fraudulent entry of a "not guilty" plea by Williams at arraignment, *supra,* to Williams *repeated refusal to recuse,* ad nauseam, *were all underscored and motivated by the actual bias or prejudice of Williams.* All of these acts *and more* were made crystal clear in the documents filed with *this* Court, but Adelman downplayed the extent of the bias by stating "*Included in at least some*". This was misleading, evidently to prejudice the reader or reviewer by implying that I had not presented the judicial bias issue at every state appellate level. Adelman's misleading phrase evidences bias.

The record of *this* Court evidences that I made perfectly clear to *this Court,* and to the State appellate courts, and to the sentencing court, the following:

The "star" witness for the State was an "expert" witness, attorney Cheri Hipenbecker, a real estate title insurance expert for Knight Barry Title, Inc., a firm whose professional services were often provided to State of Wisconsin. Hipenbecker testified, under oath, that if she were to perform a title search of the property specified in my recorded "Confirmation Deed", she would *ignore* said deed. Thus the State's expert witness testified that there was no injured party and no damage caused by me. No injury or damage means *no corpus delicti. No corpus delicti means that I am innocent of any wrongdoing or crime.* Yet when I brought that fact of Hipenbecker's testimony to the attention of biased and embroiled Williams, *she ignored it and sentenced me to prison,* thus exhibiting extreme bias and prejudice which shocks the conscience. All of this was made known in no uncertain terms to *this* Court and to Judge Adelman. Judge Adelman evidences bias by downplaying and minimizing the egregious and extensively documented bias of Williams.

In addition to the arraignment transcript filed with my original petitions, on July 12, 2018, I filed an 8 page "Affidavit Of Bias: In Support of Petitioner's Brief In Opposition To Respondent's Motion To Dismiss", Dkt. 9, with 17 pages of exhibits of previously filed court documents and affidavits *evidencing Williams' bias and refusal to recuse herself,* i.e., Exhibits, Dkt. 9-1, 9-2, 9-3, 9-4, 9-5, 9-6, and 9-7, all incorporated herein by reference. The copious evidence of William's *egregious bias, taken to the level of criminal misconduct, such as removal of Brady material from the clerk of court's file, concealment of Brady material, and imposing a gag order to keep Brady material from being presented at trial,* is incontrovertible. Why did

Judge Adelman write "*Included in at least some*" when the record of *this* Court evidences that *all* of my petitions were underscored by and based upon the egregious bias of Williams? Was it to mask his own bias?

Page 3, Decision and Order. Judge Adelman falsely states:

> "On June 6, 2017, the court issued an opinion denying one of his petitions because ... and because Magritz had failed to pursue his alternative remedies, namely, his direct appeal."

Failure to file an appeal is not grounds for denying a petition for habeas corpus. *Nor did the appellate court say that is was.* The record of *this* Court evidences that this is another *fabrication* by Judge Adelman.

Procedural Default

There was *NO* "procedural default", in spite of the valiant attempts by Judge Adelman, over the course of several pages, to create one. The fabrication of a "rule", the cherry-picking of a word from a statute and then expounding upon it to the exclusion of the remaining *relevant* wording in the statute, the postulating a scenario and twisting it to a preposterous and an incredulous end, is not honesty, good faith, integrity, or Due Process of Law, but rather manifestation of bias. Or worse.

Page 5, Decision and Order. Judge Adelman falsely states:

> In the present case, the Wisconsin Court of Appeals rejected Magritz's habeas petitions based on a state procedural rule: the rule that a criminal defendant cannot seek habeas relief with respect to claims that he could have raised on direct appeal or in a motion under Wis. Stat. § 974.06. There is no doubt (sic) that the Wisconsin Court of Appeals actually relied on this state-law procedural ground in denying Magritz's habeas petitions, ..."

At first blush, Judge Adelman's *clever wordsmithing may* appear to be true, *but it is blatantly false.* ***There is no such rule.*** Consider the following:

- ***If*** there is such a rule, ***then it is written.***
- Where is it written?
- What exactly is the wording of that rule?
- If there is such a rule, why didn't Adelman quote the actual "rule"?
- If Adelman's alleged "rule" conflicts with the Constitution, is it lawful?
- Is the alleged rule judge-made?
- If the alleged rule is judge-made, what is the case cite?
- If the alleged rule is a statute, what is the wording of that statute?
- Is there something in the actual "rule" that Adelman wants to conceal?

I have set forth the "rule", *supra*, under the heading: **Here is the Applicable State "Rule".** The "rule" is actually a statute, Wisconsin Statute § 974.06, which Judge Adelman has chosen to "cherry-pick" from, thus attempting an end-run around the statute. Wis. Stat. § 974.06 reads, in pertinent part:

> (8) A petition for a writ of habeas corpus or an action seeking that remedy in behalf of a person who is authorized to apply for relief by motion under this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced the person, or that the court has denied the person relief, unless **it also appears that the remedy by motion is inadequate or ineffective** to test the legality of his or her detention. (emphasis added)

As stated earlier, this statute was taken directly from 28 U.S.C. § 2255, thus *every* seasoned federal judge more likely than not knows this section by heart. Since this is "*the rule*", why did Adelman *not* reference it? Why did Adelman not produce it? Since this is "*the rule*", why did Adelman falsely proclaim a fabricated "rule", *supra.* Since this is "*the rule*", why did Adelman, in attempting to justify the false and "erroneous" conclusion that I procedurally defaulted:

- Use the term "adequate" twelve (12) times?
- Use the term "inadequate" five (5) times?
-
- Use the term "appears" zero (0) times?
- Use the term "effective" zero (0) times?
- Use the term "ineffective" zero (0) times?

In an illogical manner Adelman *unconvincingly* "argues" that motioning a biased, embroiled, retaliatory "judge" for remedy would not be an inadequate remedy because one could *appeal* the second trashing. Inadequate is defined as "insufficient". Getting trashed a second time by an egregiously biased judge is clearly an *insufficient* "remedy" from the initial trashing.

Even more importantly, the statute uses the term "appears". The statute also uses the term "ineffective". Yet Adelman *omitted both* of these absolutely necessary and relevant words. The relevant definition from The Oxford Dictionary defines "appear" as "be evident". The relevant definition of the term "ineffective" is "not producing the desired effect". In the issue at hand, this means that a person does *not* actually have to take a particular course of action, i.e., file a motion with the sentencing court, if the result of said action is "evident" and not "desired".

Clearly it is evident that a "judge", Sandy Williams in my case, who retaliated against and persecuted (yes, *persecuted* is the correct term) me, a whistleblower and victim of crime, in the most open, blatant, and brazenly manifested ways, and refused several times to recuse herself, as I have *extensively* and *exhaustively* evidenced to *this* Court, would *not* have a "come to Jesus moment" and provide me remedy for the egregious injuries *she* had *intentionally* inflicted upon me. For anyone to believe otherwise is akin to believing that a girl child who

was viciously and brutally beaten and raped by a pedophile could return to the rapist and expect to be miraculously "un-raped".

Wis. Stat. § 974.06, the controlling statute in this case, clearly states that a person is not required to file a motion for remedy with the sentencing court for remedy. A person can file a petition for habeas corpus if it *appears* that the remedy by motion would be *inadequate.* Also, *a person can file a petition for habeas corpus if it* ***appears*** *that the remedy by motion would be* ***ineffective.***

This provision in the statute to petition for habeas corpus rather than filing a motion with the sentencing court when it ***appears*** that the remedy by motion would be ***ineffective*** is clearly designed to be the remedy and is especially appropriate in cases where the judge manifests bias against the accused.

The remedy by habeas corpus was and is clearly the only viable option for remedy in my situation in as much as Williams was retaliating against me, a whistleblower, because I had filed criminal complaints against Williams, sued Williams for misconduct in public office and breach of fiduciary duty, and publicly exposed her malversation. The bias which Williams' manifested against me crossed the red line from "mere" misconduct in public office to felonious misconduct in public office. It is so egregious that the appellate judges in State of Wisconsin didn't want to touch it. The record of *this* Court uncontrovertibly evidences that fact. Now Judge Adelman wants to bury the evidence by denying me the only *legal* remedy available, the statutory counterpart of the Great Writ of habeas corpus ad

subjiciendum which was created to protect the people from tyranny such as that of Sandy Williams against me.

Judge Adelman argued that I had to return to Williams' sentencing court, which Adelman recognized might be futile, but that I could appeal the inevitable second trashing by Williams. Adelman claimed that returning to the sentencing court of the biased Williams would be an "adequate" remedy. Adelman's claim may be debatable among other jurists, but hopefully would not be sustained by *any* other jurist.

Judge Adelman clearly disregarded both the letter of the law and the intent of the legislature in enacting the controlling statute, Wis. Stat. § 974.06. Adelman ignores the fact that Wis. Stat. § 974.06 (8), which was taken directly from 28 U.S.C. § 2255, the codification of an Act of Congress, specifically, clearly, and unequivocally declares that habeas corpus is a remedy available to a person when it "***appears*** that the remedy by motion is *inadequate* **or** ***ineffective*** to test the legality of his or her detention." The language is clear, concise, and not difficult to comprehend.

Adelman disregarded the fact that the statute uses the term "appears", which means "be evident". The term denotes the use of cognitive ability and passivity, rather than a kinetic response of actually "doing" something such as physically returning to a particular venue as required by Adelman and getting trashed a second time. Adelman also disregarded the term "ineffective", meaning not producing the desired effect.

Adelman thus failed and/or refused to address the issue of obtaining remedy by habeas corpus when it appears that remedy by motion is ineffective, which was clearly and obviously the sum and substance of the application of state law and the alleged procedural default to this petition.

In my case, it is inconceivable that any honest man would say that returning to a "biased" judge who had retaliated against me and incarcerated me would be "effective" in obtaining remedy from the restraint of my liberty imposed by that very judge. I could not obtain remedy by motion to the biased sentencing judge, Sandy A. Williams, who had repeatedly refused to recuse herself. My only chance for remedy is in habeas corpus, which is constitutionally secured as well as explicitly recognized in Wis. Stat. § 974.06 (8) when it ***appears*** that remedy by motion is ***ineffective***. *The record of this Court evidences that I did not procedurally default.*

The November 28, 2018 Decision and Order by Lynn Adelman and the Judgment signed by the clerk of court must be vacated and relief granted me pursuant to my motion for relief pursuant to Fed, R. Civ. P. Rule 60.

Definitions

APPEAR. 1. Become or be visible. **2.** Be evident. **3.** Seem; have the appearance of being. The Oxford Dictionary and Thesaurus, *America Edition* 1996.

INEFFECTIVE. 1. not producing any effect or the desired effect.

INADEQUATE. Insufficient.

FRAUD. An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he

shall act upon it to his legal injury. Brainerd Dispatch Newspaper Co. v. Crow Wing County, 196 Minn. 194, 264 N.W. 779, 780. Any kind of artifice employed by one person to deceive another. Goldstein v. Equitable Life Assur. Soc. of U. *S.,* 160 Misc. 364, 289 N.Y.S. 1064, 1067. A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. Johnson v. McDonald, 170 Okl. 117, 39 P.2d 150. "Bad faith" and "fraud" are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc. Joiner v. Joiner, Tex.Civ.App., 87 S.W. 2d 903, 914, 915. It consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. Maher v. Hibernia Ins. Co., 67 N.Y. 292; Alexander v. Church, 53 Conn. 561, 4 A. 103; Studer v. Bleistein, 115 N.Y. 316, 22 N.E. 243, 7 L.R.A. 702; McNair v. Southern States Finance Co., 191 N.C. 710, 133 S.E. 85, 88. It comprises all acts, omissions, and concealments involving a breach of a legal or equitable duty and resulting in damage to another. Coppo v. Coppo, 163 Misc. 249, 297 N.Y.S. 744, 750. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture. People v. Gilmore, 345 Ill. 28, 177 N.E. 710, 717. Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 Story, Eq.Jur. § 187; Howard v. West Jersey & S. S. R. Co., 102 N.J.Eq. 517, 141 A. 755, 757.
Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 788-89.

FRAUDULENT CONCEALMENT. The hiding or suppression of a material fact or circumstance which the party is legally or morally bound to disclose. Magee v. Insurance Co., 92 U.S. 93, 23 L.Ed. 699; Small v. Graves, 7 Barb., N.Y., 578. The test of whether failure to disclose material facts constitutes fraud is the existence of a duty, legal or equitable, arising from the relation of the parties ; failure to disclose a material fact with intent to mislead or defraud under such circumstances being equivalent to an actual "fraudulent concealment." Newell Bros. v. Hanson, 97 Vt. 297, 123 A. 208, 210.
Black's Law Dictionary, Revised Fourth Edition, 1968, p. 790.

ARRAIGNMENT. The initial step in a criminal prosecution whereby the defendant is brought before the court to hear the charges and to enter a plea. Fed. R. Crim. P. 10.
Black's Law Dictionary, Deluxe Ninth Edition, 2009, p. 123.

PRETRIAL CONFERENCE. (1938) An informal meeting at which opposing attorneys confer, usu. With the judge, to work toward the disposition f the case by discussing matters of evidence and narrowing the issues that will be tried. See Fed.

R. Civ. P. 16; Fed. R. Crim. P. 17.1 The conference takes place shortly before trial and ordinarily results in a pretrial order.
Black's Law Dictionary, Deluxe Ninth Edition, 2009, p. 1307.

MALICE. 1. The intent, without justification or excuse, to commit a wrongful act. 2. Reckless disregard of the law or of a person's legal rights.

"Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin malitia means badness, physical or moral — wickedness in disposition or in conduct — not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose, design, intent, or motive. [But] intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive." John Salmond, Jurisprudence 384 (Glanville L. Williams ed., 10th ed. 1947).

"[M]alice in the legal sense imports (1) the absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such harm may result....
Black's Law Dictionary, Deluxe Ninth Edition, 2009, p. 1042.

MISLEADING CONDUCT. (A) knowingly making a false statement; (B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement; (C) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity; or (E) knowingly using a trick, scheme, or device with intent to mislead.
Title 18 U.S. Code § 1515(a)(3).

I, Steven Alan Magritz, declare under penalty of perjury of the laws of the United States of America that the facts stated in the foregoing memorandum are true and correct.

Executed on this December 20, 2018.

/S/

Steven Alan Magritz