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July 10, 2002

CERTIFIED MAIL

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

Re: *State of Florida vs. Sean Casey*
Case No. F01007975

Dear Kathy:

Outcome-determinative motions to suppress were granted by Judge Trawick in the above-captioned matter. Your office took an interlocutory appeal. On Monday, July 1, I appeared for oral argument at the Third District.

At the conclusion of oral argument, as I was exiting the courtroom and walking through the foyer toward the lawyers' lounge, I bumped into one of the principal witnesses in Mr. Casey's case, Miami Beach Police Officer Silvagni. Officer Silvagni was in uniform. He had apparently attended the oral argument and exited the courtroom just before me.

Officer Silvagni was very professional in his deportment toward me. We shook hands cordially. I was quite surprised to see him, and asked what he was doing there. He told me that "we were ordered to be here." I recall his words verbatim.

My entire encounter with Officer Silvagni lasted no more than a few seconds. I then continued on my way toward the lawyers' lounge. I was confronted by another principal witness in Mr. Casey's case, Sgt. Hundevadt. He, too, was in full uniform and he too had, apparently, attended the oral argument.

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. I saw no point in responding; I turned away from him and went into the lawyers' lounge.

When I came out of the lawyers' lounge a few moments later, a courthouse security officer informed me that the marshal had asked that I return to the courtroom and remain there for a few moments until it was certain that the police officers had left the building and the immediate area. The security officer expressed concern for my physical safety, both on his own behalf and on behalf of the marshal.

I informed the security officer that I had in any event planned to return to the courtroom to hear the oral argument in the case following my own. I re-entered the courtroom, sat in the visitors' gallery, and listened to the ongoing argument. Some ten or fifteen minutes later the marshal came up to me and informed me that it was now safe for me to leave. I replied that I was interested in remaining for the balance of the argument, but that I appreciated his concern for my safety.

When I returned to my office later that morning I sent a certified letter to both Assistant State Attorney S. Patrick Dray and Assistant Attorney General John D. Barker (who had briefed and argued the appeal for the State). I briefly summarized what had occurred at the Third District, and asked that Messrs. Dray and Barker provide me with answers to certain questions, viz. (a) Were Officers Silvagni and Hundevadt in fact "ordered" to be in attendance at the Third District? If so, who ordered them? (b) Were the officers also ordered to appear in uniform, or was that their own choice? and (c) Were the officers on duty and drawing pay, or were they on their own time?

On Wednesday, July 3, I received a telephone call from A.S.A. Dray. Mr. Dray informed me that, although I had not seen him there, he too had been present at the oral argument at the Third District, and he had subpoenaed the officers to be there. When I asked him by what authority he had subpoenaed police officers to hear oral argument before an appellate court, he informed me that he could subpoena anyone he wanted, anytime, anywhere. (I have not placed the foregoing in quotation marks, but it is very close to a verbatim recitation of his response.) I asked Mr. Dray if he had sought the counsel or approval of any supervisory assistant state attorney before making such use of the subpoena power. He initially refused to answer me, but then replied that he had indeed received the approval of Chief Assistant State Attorney Kathlyn Hoague. Mr. Dray also informed me that my letter to him and Mr. Barker was "laughable;" not figuratively but literally, i.e. that he and Assistant State Attorney Penny Brill had enjoyed a good laugh at the ridiculousness of my letter. Mr. Dray acknowledged that he had not witnessed Sgt. Hundevadt's confrontation with me, but dismissed out of hand the possibility that Sgt. Hundevadt had threatened (in Mr. Dray's words, "stalked") me.

I would expect a first-year law student to know that an attorney may employ the trial court's compulsory process power to oblige a witness to appear for trial. Pursuant to Florida's "one-man grand jury" provision, Fla.Stat. § 27.04, the State Attorney may also issue investigative subpoenas obliging witnesses "to testify before him or her as to any violations of the criminal law." 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.

Katherine Fernandez-Rundle

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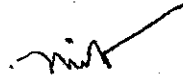
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Mr. Dray's abuse of the subpoena power is unprecedented. I am hard-pressed to believe that he (or any lawyer, however inexperienced) could simply have been unaware that his conduct constituted an egregious abuse of the court's process -- particularly if, as he informed me, he discussed the matter before the fact with Kathy Hoague. My only alternative, however, is to conclude that it was Mr. Dray's intention that the officers' presence at appellate argument would serve to intimidate me or the appellate court. In that regard, 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.

I have taken a week to consider carefully what my obligations are in this matter. As a member of the bar and an officer of the court, I cannot simply close my eyes to this execrable abuse of process. I have considered, for example, the propriety of my moving for a rule to show cause, or making a bar complaint. I realize, however, that any such action on my part would reflect very badly on your office. Because of the high professional and personal regard I have for you, I am -- at least provisionally -- dumping the matter in your lap. I will wait a reasonable period of time for a response from you before taking any action in this matter.

Thank you for your attention herein.

Very truly yours,



Milton Hirsch

MH/te