UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Steven Alan Magritz,
Petitioner

v.

JON E. LITSCHER,
Respondent

Case No. 18-C-0455

MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT

I, Steven Alan Magritz, Petitioner in the above captioned matter, submit this memorandum of law in support of my Motion For Summary Judgment on the claims of judicial bias and denial of assistance of counsel. This memorandum is submitted pursuant to Civil L. R. 56(b)(1)(A). Me, my, myself refers to Steven Alan Magritz.

Summary judgment is warranted if the movant "shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51, (1986). A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson,* 477 U.S. at 248. *Estate of Simpson v. Gorbett,* 863 F.3d 740 (2017)(7th Cir.). "Summary judgment is appropriate when, after construing the record in the light most favorable to the nonmoving party, we conclude that no reasonable jury could rule in favor of the nonmoving party." *Bagwe v. Sedgwick*

Claims Mgmt. Servs., Inc., 811 F.3d 866, 879 (7th Cir. 2016) (citation omitted). *David v. Board of Trustees of Community College*, 846 F.3d 216 (2017)(7th Cir).

In addition to summary judgment being appropriate in that there is no genuine dispute as to any material fact and no reasonable jury could rule in favor of the Respondent, Respondent's attorneys have made numerous false representations to this Court in their unsworn Motion To Dismiss as evidenced in my Mandatory Judicial Notice, Dkt. 10, *in an effort to deprive this Court of jurisdiction.* See *Chambers v. Nasco*, 501 U.S. 32, 41 (1991). *Qui facit alium facit per se.* (He who does anything by another, does it himself). The act of the agent is the act of the principal. False representations to a court prevent or pervert justice, and are a bar to any relief whatsoever. *He Who Comes Into Equity Must Have Clean Hands.* These false representations evidence dishonesty, bad faith, unclean hands, and are unlawful, but unfortunately *not* prosecutable under the "False Statements Accountability Act of 1996", codified at 18 U.S.C. § 1001(b).

Summary judgment is appropriate because the trial and sentencing "judge", Sandy A. Williams, not only lacked the appearance of impartiality, but openly, repeatedly, and egregiously displayed her animosity or personal bias, and exhibited or acted out her personal vendetta or actual outcome determinative bias or prejudgment bias with such abandon that she repeatedly denied me, six times, *on the record*, assistance of counsel at the arraignment hearing. Williams' bias was personal, unlike the financial gain bias of the corrupt judges of Operation Greylord fame. The many facts evidencing Williams' judicial bias are incontrovertible.

There is no genuine issue of material fact; and, thus, summary judgment is proper as a matter of law. There are no material issues of fact that need to be determined by a jury in this cause. Where no issues of *material* fact alleged by the complaint remain for the jury to decide, summary judgment is proper to conserve valuable judicial energies and to spare litigants unnecessary costs and further delays, especially where liberty interests are at stake.

The existence of *either one* of the "structural errors", judicial bias or denial of assistance of counsel, evidenced in my petition filed March 22, 2018, my Affidavit of Bias filed on July 12, 2018, and in the Statement of Facts accompanying this Memorandum, would be sufficient for this Court to grant summary judgment in my favor, but in this case *both* judicial bias and denial of assistance of counsel have been incontrovertibly evidenced. The effectuation of the personal bias and /or animosity of "judge" Sandy A. Williams infected the entire proceedings and resulted in most, if not all, of Williams' violations of my constitutionally secured rights, including but not limited to denial of assistance of counsel.

The absence of counsel for a criminal defendant, like a judge who is not impartial, are structural defects which defy analysis by "harmless-error" standards. *Arizona* v. *Fulminante,* 499 U. S. 279, 309-310 (1991). The existence of such [structural] defects—deprivation of the right to counsel, for example—requires automatic reversal of the conviction because they infect the entire trial process. *Brecht v. Abrahamson,* 507 U.S. 619, 629 (1993). Structural errors such as denial of counsel or a biased judge deprive defendants of "basic protections" without which "a

criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence ... and no criminal punishment may be regarded as fundamentally fair." *Neder v. United States,* 527 U.S. 1, 8, 9 (1999). Structural errors are a class of errors that trigger automatic reversal because they undermine the fairness of a criminal proceeding as a whole. Errors of this kind include denial of counsel of choice. *United States v. Davila,* 133 S.Ct. 2139 (2013).

Judicial Bias – a "structural error"

As stated in *Edwards v. Balisok,* 520 U.S. 641, 647 (1997): "A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him. *Tumey* v. *Ohio,* 273 U. S. 510, 535 (1927); *Arizona* v. *Fulminante,* 499 U. S. 279, 308 (1991)." The American Bar Association, Rule 2:11 Disqualification; Wis. Stat. § 757.19; and, 28 U.S. Code § 455 *all require* disqualification of a judge in any proceeding in which his or her partiality might reasonably be questioned, thus offending due process.

The Seventh Circuit has stated: The Due Process Clause guarantees litigants an impartial judge, reflecting the principle that "no man is permitted to try cases where he has an interest in the outcome." *In re Murchison,* 349 U.S. 133, 136, (1955). Where the judge has a direct, personal, substantial, or pecuniary interest, due process is violated. *Bracy v. Gramley,* 520 U.S. 899, 905, (1997); *Aetna Life Ins. Co. v. Lavoie,* 475 U.S. 813, 825, (1986); *Ward v. Monroeville,* 409 U.S. 57, 60, (1972); *Tumey v. Ohio,* 273 U.S. 510, 523, (1927); *Johnson v. Mississippi,* 403 U.S. 212, 215-16 (1971); *In re Murchison,* 349 U.S. at 137-39. *Franklin V. McCaughtry,*

398 F.3d 955, 959 (7th Cir. 2005). The Supreme Court has decided that both actual bias and the appearance of bias violate due process principles. *McCaughtry*, at 961.

"Judge" Sandy A. Williams not only repeatedly and miserably failed the objective test of actual bias, she completely and in an *exemplary* manner failed the subjective test of the appearance of impartiality.

The appearance of partiality: the subjective test

No objective observer would doubt that Sandy Williams would succumb to temptation and harbor hostility or animosity or bias against a man who had exposed her past public corruption, to wit:

- In August of 2011 I *refused for fraud* her "Decision and Order" and charged Williams with judging her own cause and misprision of felony after she dismissed my Verified Motion for determination of probable cause. See SOF ¶¶ 1-8.[1]
- At sentencing in 2016 Williams expressed "displeasure" over my refusing for fraud her dolus "Decision and Order" in August of 2011. SOF ¶ 9.
- I filed a "criminal complaint" dated December 9, 2011, with Governor Scott Walker, Attorney General J.B. Van Hollen, A. John Voelker, Director of State Courts, and other judges and public officers, *charging Williams with misconduct in public office and misprision of felony*. SOF ¶ 10.
- My December 9th "criminal complaint" was twice filed in the court persecution against me presided over by Sandy A. Williams. SOF ¶¶ 25, 27.

[1] SOF: All numbers reference paragraphs in my Statement Of Facts in Support of the Motion for Summary Judgment.

- My twice filed "criminal complaint" charging Williams with criminal acts was both times "removed" (stolen) from the court file and concealed from the jury, one likely motive being to cover-up Williams' malversation. SOF ¶¶ 30-37.
- On May 15, 2012, I filed in federal court a lawsuit against Williams for her public corruption. SOF ¶¶ 36-37.
- Since 2013 Williams has been featured as a corrupt attorney, corrupt judge, and corrupt public officer on the www.OzaukeeMob.org website. SOF ¶ 38.
- At sentencing in 2016 Williams expressed "displeasure" over being featured with her picture on the Ozaukee Mob website. SOF ¶ 39.

Actual bias, the objective test

Numerous examples of actual bias which offend due process have been set forth in my previously filed documents, Dkt. 1, Dkt. 1-1, Dkt. 1-2, Dkt. 1-3, Dkt. 1-4, Dkt. 8, Dkt. 9, and Dkt. 10, all incorporated by reference as if fully set forth herein, and are summarized below.

- I was given no notice that my action could be construed as a crime, contrary to:

  FCC v. Fox, 132 S.Ct. 2307 (2012); *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *City of Chicago v. Morales et al.*, 527 U.S. 41 (1999); *Bouie v. City of Columbia*, 378 U.S. 347 (1964); *Lanzetta v. State of New Jersey*, 306 U.S. 451 (1939); *United States v. Williams*, 553 U.S. 285 (2008); *Connally v. General Const. Co.*, 269 U.S. 385 (1926); *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976). SOF ¶¶ 40-41.

- Sandy A. Williams and prosecutor Adam Y. Gerol converted my secured First Amendment right to petition for redress of grievances into a crime, *Smith v. Arkansas State Highway Employees*, 441 U.S. 463, 464 (1979) (per curiam); *Mine*

Workers v. Illinois Bar. Assn., 389 U.S. 217, 222 (1967); *DeJong v. Oregon*, 299 U.S. 353, 364 (1937); *Thomas v. Collins*, 323 U.S. 516, 530 (1945). SOF ¶¶ 1-12, 41.

- From the day of my false arrest through the day of sentencing I was held incommunicado and *never allowed a single telephone call, not even to call an attorney*. SOF ¶¶ 43-44. Sixth Amendment violation. *Powell v. Alabama,* 287 U.S. 45, 70, (1932). I was denied assistance of counsel and denied my choice of counsel. *United States v. Gonzalez-Lopez*, 547 U.S. 140 (2006).
- I was not given notice of the preliminary hearing ("prelim"). SOF ¶ 45. An elementary and fundamental requirement of due process is notice, *Mullane v. Central Hanover Bank*, 339 U.S. 306, 314 (1950).
- I did not have assistance of counsel at the "prelim". Due process requires assistance of counsel at every step of a criminal prosecution. SOF ¶ 46. *Powell v. Alabama*, 287 U.S. 45, 70, (1932).
- I was *denied* assistance of counsel six (6) times at the arraignment. SOF ¶ 68, 72, 73. The denial of the assistance of counsel will preclude the imposition of a jail sentence. *Argersinger v. Hamlin*, 407 U.S. 25, 38 (1972).
- After Williams *denied* me assistance of counsel six (6) times during the arraignment, I was in want of counsel thereafter. SOF ¶ 73. "As we have made clear, the guarantee of counsel 'cannot be satisfied by mere formal appointment,'" *Avery* v. *Alabama,* 308 U. S. 444, 446 (1940); "That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. . . . An accused is entitled to be

assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland* v. *Washington,* 466 U. S. 668, 685 (1984); "It has long been recognized that the right to counsel is the right to the effective assistance of counsel"; *Cuyler* v. *Sullivan,* 446 U. S. 335, 344. "Because the right to counsel is so fundamental to a fair trial, the Constitution cannot tolerate trials in which counsel, though present in name, is unable to assist the defendant to obtain a fair decision on the merits. *Evitts v. Lucey*, 469 U.S. 387, 395 (1985).

- At the preliminary hearing the prosecutor elicited /solicited /suborned false testimony from the witness which both he and Williams *knew* or should have known for four (4) years - since 2011, was false, yet Williams found the false testimony sufficient for "bind-over". SOF ¶¶ 47-54. Personal bias cannot be more exemplified than when an officer of the court condones or participates in fraud upon the court. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944); *State v. Douglas*, 416 N.W.2d 515 (1987).
- I demanded, but Williams refused, to reopen the surprise "prelim". SOF ¶¶ 66-67.
- Williams stated she would reopen the "prelim" for *her* appointed stand-by counsel, then appointed Gary R. Schmaus for the "defendant". "The guarantee of counsel 'cannot be satisfied by mere formal appointment." *Evitts v. Lucey*, 469 U.S. 387 (1985). SOF ¶ 56.

- Williams refused Schmaus' written request to reopen the "prelim", contrary to what she had stated on the record, thus cementing in place the *known* suborned false testimony of the surprise witness at the surprise hearing. SOF ¶¶ 56-57.
- I did not accept Gary R. Schmaus as stand-by counsel. SOF ¶¶ 59, 68, 69
- I was not given notice of the arraignment hearing, *Mullane*. SOF ¶ 64.
- I did not have assistance of counsel at the arraignment. SOF ¶ 68, 72, 73.
- At arraignment, I *demanded* assistance of counsel at least six (6) times, and Williams *denied* my every demand. SOF ¶¶ 70-76.
- At arraignment Williams, knowing I did not have assistance of counsel, and, having six times denied me assistance of counsel, and, knowing that I had not seen the "information" which had just moments before been handed to *her* stand-by counsel which *she*, Williams, had appointed for the artificial entity "defendant", demanded that I enter a "plea". SOF ¶ 75-76.
- Answering for myself, a natural man and not the "defendant", nor answering on behalf of the "defendant", I stated "Nonassumpsit, by way of confession and avoidance", whereupon Williams, perpetrating a fraud upon me and upon the court stated: "Based on the defendant's (sic) response the Court will take that as the defendant (sic) standing mute and enter a not guilty plea". SOF ¶¶
- Williams' "Liar's Plea" of "not guilty" was not "only" fraud upon the court by an officer of the court, see *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), *it was an "in-your-face" confirmation* that Williams was pursuing a personal vendetta and retaliating against me, a victim and witness of crime who

had reported for years the crimes against me by her associate, *in that Williams,* by entering the "not guilty" plea, *created a controversy* without which no court can act. Thus Williams was off and running, ready to preside over a star chamber proceedings and retaliate against me, having just admitted that I was not the "defendant", nor acting for or on behalf of the "defendant", and, the court did not have personal jurisdiction over me, the natural man. SOF ¶¶ 81-84.

- I had sworn myself in at the beginning of the "arraignment", SOF ¶ 30, and after Williams entered the "Liar's Plea" I testified to the court that a number of documents I had filed in that case were "missing" from the clerk of court's file, most notably my twice filed "criminal complaint" *Brady* material, see *Brady v. Maryland*, 373 U.S. 83 (1963), which was not only exculpatory or exonerating, but it charged Williams with misconduct in public office and misprision of felony, SOF ¶¶ 10-28, SOF ¶¶ 85-87.
- Williams' actual prejudgment bias was clearly manifested by her refusal to recuse herself after her malversation was exposed on the record. SOF ¶ 85-87.
- The removal of my *Brady* material "criminal complaint", twice, from the court file behind the locked doors of the clerk of court, and subsequent concealment from the court and the jury, is obstruction of justice, 18 U.S.C. § 1506, and fraud upon the court, *Hazel-Atlas Glass, Id.; State v. Douglas,* 416 N.W.2d 515 (1987). The only persons known to me to have means, motive, and opportunity to twice remove and conceal my *Brady* material / "criminal complaint" are Sandy A. Williams and Adam Y. Gerol, SOF ¶¶ 31-21.

- After I testified to the court at arraignment that my "criminal complaint" *Brady* material had been feloniously removed from the clerk of court's file, Williams gagged and threatened me not to even mention my "criminal complaint" or the contents thereof, SOF ¶ 33. Williams' suppression of *Brady* material evidences not only extreme bias, but suppressing and prohibiting me from introducing the Brady material / "criminal complaint" at trial, SOF ¶ 34, evidences more than mere "judicial bias". It smacks of retaliation in pursuit of a personal vendetta with intent to cause me an injury in violation of 18 U.S.C. § 1512 (b), (c), (d), (j) and (k), and, 18 U.S.C. § 1513 (b), (c), (e) and (f).
- Williams was aided and abetted in the suppression and concealment of my "criminal complaint" *Brady* material by prosecutor Adam Y. Gerol, who was Williams' assistant when Williams was the county prosecutor; and, I believe the two acted in concert to "remove" (steal) my material from the clerk's file since they acted in concert in preventing me from introducing the *Brady* material at trial. SOF ¶¶ 26, 28, 29, 30, 31, 33, 34.
- Williams ignored my November 20, 2015, demand for an evidentiary hearing before an unbiased judge. SOF ¶¶ 88-89.
- Williams denied me an evidentiary hearing before an unbiased judge and refused to recuse herself in violation of ABA Rule 2:11 Disqualification; Wis. Stat. § 757.19; and, 28 U.S. Code § 455. SOF ¶ 89. *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252, 2254-2255, (2009)

- Williams ignored my December 1, 2015, demand for an evidentiary hearing before an unbiased judge. SOF ¶¶ 90-91.
- Williams again, for the second time, denied me an evidentiary hearing before an unbiased judge and refused to recuse herself in violation of ABA Rule 2:11 Disqualification, etc. SOF ¶ 91. *Caperton, Id.*
- Williams ignored my December 20, 2015, Affidavit of Prejudice, and, for the *third* (3rd) time, refused to recuse herself in violation of ABA Rule 2:11 Disqualification, etc. SOF ¶ 93. *Caperton, Id.*
- Williams threatened and gagged me, violating my right to a fair trial. SOF ¶¶ 94-102. The Constitution guarantees a fair trial. *Strickland v. Washington*, 466 U.S. 668, 685 (1984).
- My subpoenas were quashed. SOF ¶¶ 103-132. *Strickland*, Id.
- My witness was ordered off the witness stand. SOF ¶ 35. *Strickland*, Id.
- Williams coached from the bench the hostile witness who had provided the false statement for the "Criminal Complaint" and who provided false testimony at the preliminary hearing. SOF ¶¶ 133-135. *Strickland*, Id.
- Williams interfered with voir dire. SOF ¶¶ 137-138. *Strickland*, Id.
- Williams failed /refused to give the required *mens rea* instruction to the jury. SOF ¶¶ 139-140. *Strickland*, Id.
- Williams "ignored" the State's expert witness testimony that there was no *corpus delicti*. SOF ¶¶141-149.

- Williams "ignored" the fact that there was no allegation of any injury or damage to property, there was no allegation of intent to cause an injury or damage to property, and, that there was no injury or damage to property exhibited, shown, evidenced, claimed, or proved. SOF ¶¶ 141-149. *Strickland*, Id.
- During the entire course of my persecution, there was never any document from the prosecutor, judge, clerk of court, sheriff, jail, county, State, or anyone else or any entity associated with any public corporation including but not limited to "State of Wisconsin", which bore my name, Steven Alan Magritz, specifically, no warrant, no complaint, no information, no State's witness list, no letter, no communication, no judgment of conviction, - *nothing whatsoever*. SOF ¶ 150. *Strickland*, Id.

I, Steven Alan Magritz, a "layman" and without law school training, declare to the best of my knowledge and belief that this brief is in compliance with F.R.C.P. Rule 11, and in particular, Rule 11(b), Representations to the Court.
Executed on this July 20, 2018 A.D.

Steven Alan Magritz