Magritz, Steven Alan, Name Holder of/Agent for
STEVEN ALAN MAGRITZ, Principal
in care of: N53 W34261 Road Q
Okauchee, WI 53069

Re:
Informant's Report of Felonies Cognizable by a Court of the United States, Reported Pursuant to 18 U.S.C. § 4

18 U.S. Code § 4 Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

Please take Notice:

The attached Informant's Report is herewith distributed to each of the "persons" named below for the appropriate legal / lawful action consistent with your respective office and your obligation as a fiduciary of the Public Trust as evidenced by your required oath of office to support the Constitution of The United States of America, a/k/a the "United States".

Distribution:
William Barr, Attorney General
Robert E. Hughes, SAC
Diane Pamela Wood, Chief Judge 7017 2680 0000 7674 2715 ✓
Other relevant

7017 2680 0000 7674 2715

Informant's Report of Felonies Cognizable by a Court of the United States, Reported Pursuant to 18 U.S.C. § 4

Re: Criminal Activity of Lynn S. Adelman, dba District Court Judge

1. I, Affiant and Informant herein, Steven Alan, Name Holder of / Agent of Record for / dba STEVEN ALAN MAGRITZ, being of the age of majority, willing and competent to testify, affirm that my "yes" be "yes" and my "no" be "no", and that the facts herein are true, certain, correct, not misleading, and are made upon my first hand knowledge except to those matters made upon information and belief which I verily believe to be true.

2. The following acts or omissions which occurred in Milwaukee County, Wisconsin, were ***knowingly and intentionally perpetrated*** by the Accused, Lynn S. Adelman, with the result of and/or the specific intent to wrongfully deprive Affiant of his liberty.

3. The Accused, Lynn S. Adelman, being highly trained in the law and doing business as a judge for the United States District Court in Milwaukee, Wisconsin, knew or should have known that his acts or omissions ***were criminal acts against The United States of America***.

4. Adelman's acts were directed ***against*** the judicial machinery of the general Government, were prejudicial to the administration of justice, and ***constitute crimes against The United States of America***.

5. The felonious acts of Adelman *are evidenced by documents filed by Adelman* in the United States District Court, Eastern District of Wisconsin, Milwaukee, case number 18-Cv-00455 on November 28, 2018, February 22, 2019, March 4, 2019, and March 18, 2019.

6. Case number 18-Cv-00455 was a "Petition For Writ Of Habeas Corpus Pursuant to 28 U.S.C. § 2254" filed by Steven Alan Magritz on March 22, 2018.

7. Adelman's written statements filed with the court include, but are not limited to: 1) false, fabricated, manufactured statements of "facts"; 2) false, fabricated, manufactured, conjured up, non-existent state "rule" upon which Adelman made his "decision and order"; 3) intentional misrepresentation of the record as "findings of fact", and, 4) approval of and *consent to*, by way of concealment and cover-up, the removal and concealment from the state court record of exculpatory documents, i.e., Brady material, and witness testimony, by the biased, threatening, and retaliating state court judge who acted in violation of 18 U.S.C. § 1512(b)(1)&(2) and 18 U.S.C. § 1512(c)(1)&(2), ***all criminal acts against The United States of America*** and

acts which bring public disdain and contempt for the courts and judicial system of The United States of America.

8. This Informant believes, and so charges, Adelman's acts are *fraud upon the court*[1] and are in violation of 18 U.S.C. § 4, misprision of felony; 18 U.S.C. § 242, deprivation of rights under color of law; 18 U.S.C. § 371, conspiracy to commit offense or defraud the United States; 18 U.S.C. § 1001(a)(1) & (3) regarding falsification, false statements or false entries; 18 U.S.C. § 1341 and 18 U.S.C. § 1346, having devised an artifice to defraud another of the intangible right to honest services, and executing and causing to be mailed via United States Postal Service a fraudulent "Decision and Order" dated November 28, 2018, and two fraudulent Rule 60(b) "Orders" dated February 22, 2019 and March 18, 2019; 18 U.S.C. § 1503(a), corruptly obstructs the due administration of justice; 18 U.S.C. § 1512(c)(2), corruptly obstructs, influences, or impedes any official proceeding; and, 18 U.S.C. § 2383, acting in rebellion against the laws of the United States.

9. Adelman was "assisted" in his felonies by attorneys Brad D. Schimel and Daniel J. O'Brien, who on May 29, 2018 filed a motion with the court making numerous false representations, thus committing fraud upon the court and ***crimes against The United States of America,*** by engaging in *misleading conduct* as that term is defined in Title 18 U.S.C. § 1515(a)(3)(A), (B), & (E).

10. Schimel and O'Brien's May 29th Motion to Dismiss was replete with no less than fourteen (14) false, fictitious, or fraudulent statements of fact or law *to the Court* in violation of Fed. R. Civ. P. Rule 11(b), Representations to the Court; Title 18 § 1001(a), Statements or entries generally; Title 18 U.S.C. § 1503(a) and 18 U.S.C. § 1512(c)(2) regarding obstruction of justice; and, Title 18 U.S.C. § 402, contempts constituting crimes, ***all in an attempt to corruptly influence Adelman and deprive the Court of jurisdiction.***

11. Schimel and O'Brien's false representations were made *to the Court,* and constituted crimes against the United States of America. The false representations were made via mail or wire, in apparent violation of Title 18 § 1341 and/or § 1343 to defraud Affiant of the intangible right of honest services, Title 18 § 1346.

12. On July 12, 2018, Adelman was ***Noticed*** of the ***crimes against The United States of America*** by attorneys Schimel and O'Brien by way of a Mandatory Judicial Notice filed under penalty of perjury by Affiant (Dkt. 10).

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[1] "Fraud in its elementary common law sense of deceit — and this is one of the meanings that fraud bears in the statute, see *United States v. Dial,* 757 F.2d 163, 168 (7th Cir.1985) — includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them he is guilty of fraud." *UNITED STATES v. HOLZER,* 816 F.2d 304 (7th Cir. 1987)

13. Adelman not only failed or refused to sanction or initiate contempt proceedings against said attorneys, but subsequently rewarded their criminal act by granting their motion to dismiss in violation of 18 U.S.C. § 4, **misprision of felony**, and maxims of law that fraud vitiates the proceedings and precludes judgment in favor of the perpetrator.

14. In his November 28, 2018 "Decision and Order", supplemented by his denials of Rule 60(b) motions, Adelman knowingly and intentionally made numerous *false statements of "fact"*, deceitfully concealed actual facts which were evidenced in the court record, and *fabricated* / manufactured / conjured up a non-existent "state rule" as his *"conclusion of law"*.

15. **False statement of fact.** Beginning on line 6 of the very first page of Adelman's November 28, 2018 "Decision and Order" granting the motion to dismiss the petition for writ of habeas corpus, Adelman uttered a false, fabricated, manufactured, inflammatory statement of "fact" that "Magritz...has been harassing the County", a fabrication which would prejudice, precondition or predispose any reviewer to accept Adelman's subsequent false or misleading statements of "fact" *and* conclusions of law in his "Decision", in violation of 18 U.S.C. § 1001(a)(1) & (3) **falsification, false statements or false entries**, and 18 U.S.C. § 1503(a), **obstruction of justice**.

16. **False statement of fact.** On page 1 of the November 28th "Decision" Adelman falsely stated:
"Magritz represented himself in the criminal case, with the assistance of stand-by counsel". In fact, "Magritz" did not represent himself, nor did he have assistance of stand-by counsel. Both of Adelman's statements of "fact" are false and in violation of 18 U.S.C. § 1001(a)(1) & (3) **falsification, false statements or false entries**, and 18 U.S.C. § 1503(a), **obstruction of justice**.

17. **False statement of fact.** On page 1 of the "Decision" Adelman, ***having the entire transcript of the arraignment hearing in his hands and citing there from***, falsely, deceitfully and intentionally stated:
"However, during a **pretrial conference**, Magritz objected to stand-by counsel..."

18. By referring to and citing from the *arraignment transcript*, even to the very last page, Adelman evidenced that he had read the transcript, therefore he ***knew*** the hearing was **not** a **pretrial conference** but was an **arraignment** of which Petitioner had no notice, had no attorney or assistance of counsel, was explicitly denied *on the record* assistance of counsel by the state court judge who was executing a personal vendetta, was held incommunicado and unable to make even one single phone call for counsel, was shackled and forced to endure the entire arraignment hearing during which the "judge" fraudulently entered a "not guilty"

plea (over objection) and set a date for trial, and, at the very end of the arraignment tauntingly "encouraged" the Petitioner to retain an attorney.

19. Adelman knowingly, intentionally, and deceitfully, falsely represented the **arraignment** (Fed. R. Crim. P. 10) as a **"pretrial conference"** (Fed. R. Crim. P. 17.1), which misrepresentation concealed and covered-up the ***on-the-record transcript*** **evidence of:** denial of due process, the structural "error" of denial of assistance of counsel, the fraud upon the court by the state judge, the removal and concealment (twice) of exculpatory Brady material from the clerk of court's case file, the proceedings were retaliatory and a personal vendetta by the state judge, and the subornation of false testimony, in violation of 18 U.S.C. § 4, **misprision of felony**; 18 U.S.C. § 242, **deprivation of rights under color of law**; 18 U.S.C. § 371, **conspiracy to commit offense or defraud the United States**; 18 U.S.C. § 1001(a)(1) & (3) **falsification, false statements or false entries**, and 18 U.S.C. § 1503(a), **obstruction of justice**.

20. Upon reason and belief, Adelman's utterance that the arraignment hearing was a "pretrial conference" was a fraud upon the court *made with the intent to deceive any appellate court* which might review Adelman's "Decision" so that the judicial machinery could not perform in the usual manner its impartial task.

21. **False statement of fact.** On page 2 of the "Decision" Adelman, referring to habeas corpus petitions filed with the State Court of Appeals and State Supreme Court, falsely, deceitfully, and contrary to the record before him uttered:

> "*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."

"At least some" does ***not*** mean "all". Adelman *knowingly and intentionally* fraudulently used the term "at least some" rather that the factual and truthful word "all" in a deceitful attempt to make it appear that the petitioner had not presented the "bias" claim to all state courts at all levels *Adelman's false utterance would conceal from any appellate court* the fact that ***all*** of the state court petitions, ***which were in Adelman's hands***, extensively evidenced the bias of the state court judge, and, that the documentation in Adelman's hands exhibited the fact that every deprivation of a constitutionally secured right complained of was underscored by the extreme, vendetta based bias, which the state court judge took to the level of criminal misconduct. In the Memorandum in Support of the first Rule 60(b) motion filed December 20, 2018, the petitioner wrote:

> *"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."

And in the very next paragraph of the Memorandum to the December 20th Rule 60(b) motion the petitioner "reminded" Adelman that the star witness for the State, an attorney named Hipenbecker, testified that there was ***no*** *corpus delicti,* which the biased Williams "ignored". Adelman's statement "*Included in at least some*" is a deceitful ***fraud upon the court*** in an apparent attempt to deceive an appellate court, in violation of 18 U.S.C. § 371, **conspiracy to commit offense or defraud the United States**; 18 U.S.C. § 1001(a)(1) & (3) **falsification, false statements or false entries**; and 18 U.S.C. § 1503(a), **obstruction of justice**.

22. **Fabrication of state court "rule"**. In order to "justify" his *Conclusion of Law* that petitioner had procedurally defaulted in the state courts, ***Adelman knowingly, intentionally, deceitfully, fraudulently, did fabricate or manufacture or conjure up or concoct or invent a phony, false, non-existent "state-law"***. Adelman's phony, false, concocted, fabricated "state-law" existed only in Adelman's mind, and nowhere else. That Adelman intentionally perpetrated fraud upon the court by fabricating a "rule" is evidenced by the extent to which he attempted to justify himself by cherry-picking a word from a statute, expounding upon it to the exclusion of the remaining *relevant* wording in the statute, and then postulating a scenario and twisting it to a preposterous and incredulous end.

On page three (3) of the November 28 "Decision" Adelman falsely uttered:

> "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."

And on page five (5) Adelman falsely uttered:

> "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, ..."

Adelman's *clever wordsmithing may* appear to be true, *but* ***is blatantly false. There is no such rule.*** Adelman made it up, or, perhaps picked it out of the fraudulent representations made to the court by attorneys Schimel and O'Brien whom Adelman failed or refused to sanction. Adelman's utterances are a deceitful ***fraud upon the court*** in an apparent attempt to deceive an appellate court, in violation of 18 U.S.C. § 371, **conspiracy to commit offense or defraud the United States**; 18 U.S.C. § 1001(a)(1) & (3) **falsification, false statements or false entries**; and 18 U.S.C. § 1503(a), **obstruction of justice**, and are ***criminal acts against The United States of America***.

23. In confirmation that Adelman's ***criminal acts against The United States of America*** were made knowingly and intentionally, Adelman asserted that petitioner could return to the biased judge and seek "relief" from that biased judge and when denied relief could appeal the denial to the state court of appeals. Preposterous. Adelman is a seasoned jurist who ***knows*** that judicial bias is a "structural error", a denial of due process, and any judgment rendered by a biased judge is void. For Adelman to assert that a man victimized by a vindictive, retaliating, rogue "judge" executing a personal vendetta should return to that judge for remedy from her criminal acts not only shocks the conscience and evidences want of judicial temperament but should be reason enough to have Adelman prosecuted for fraud upon the court and subverting the judicial machinery of Government and removed from the bench.

24. **Deceit in denial of first Rule 60(b)(3), (b)(4), (b)(6) motion.** On December 20, 2018, petitioner motioned to set aside Adelman's November 28th "Decision" based upon Schimel and O'Brien's false representations / fraud upon the court and also based upon Adelman's bias. *Adelman did not deny that he was biased or had exhibited bias.* Rather, Adelman *falsely and deceitfully* claimed that petitioner had motioned for Adelman to recuse himself. In denying the motion, Adelman stated:

> "The proper remedy for disagreement with a judicial ruling is an appeal, not a recusal motion. Thus, Magritz is not entitled to relief under Rule 60(b)(6)"

Adelman's fraudulent conversion of the Rule 60 motion is further evidence that the **criminal acts against The United States of America** by Adelman as set forth in this "Informant's Report" were done willfully, knowingly, and intentionally.

25. **Acting in rebellion against the laws of the United States.** On March 12, 2019, a second Rule 60(b) motion was filed with the court, this time under section (b)(1) which provides for relief from final judgments that are the product of *mistake, inadvertence,* surprise or excusable neglect. This provision applies to errors

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by judicial officers as well as parties. The ***presumption*** in filing the motion was that Adelman, ***by mistake or inadvertence***, had concluded there existed a "procedural default" based upon the false, fabricated, concocted, manufactured, phony, conjured up, non-existent "state-law". *In other words, the presumption was that Adelman had merely made a mistake, and that he had not knowingly and intentionally made his "Decision" based upon a fabrication / non-existent "state-law" or "state rule".*

The presumption that Adelman acted by mistake or inadvertence was disabused when Adelman issued the following ORDER:

> "The petitioner has filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(1). I previously rejected a motion filed by the petitioner under Rule 60(b), *see* ECF No. 21, and his current motion raises no non-frivolous issue for discussion. Accordingly, the motion will be denied."

Adelman's own words, set forth "in concrete", sealed with his signature, and mailed via the United States Postal Service, confirm that Adelman had knowingly and intentionally issued the November 28, 2018 "Decision and Order" based upon the false, fabricated, concocted, manufactured, phony, conjured up, non-existent "state-law", thereby committing the crimes against The United States of America as set forth in this "Informant's Report".

26. Incorporated herein by reference are the following "Attachments":

Attachment #1 of 3:

1) Denial of writ of habeas corpus, November 28, 2018, Dkt. 16;
2) First Rule 60 motion ((b)(3), (b)(4), (b)(6)), December 20, 2018, Dkt. 18;
3) Memorandum / brief in support of motion, December 20, 2018, Dkt. 19.

Attachment #2 of 3:

1) Denial of 1st Rule 60 motion (b)(3), (b)(4), (b)(6), Feb. 22, 2019, Dkt. 21;
2) Motion for Reconsideration, February 28, 2019, Dkt. 22

Attachment #3 of 3:

1) Denial of Motion for Reconsideration, March 4, 2019, Dkt. 24;
2) Second Rule 60 motion under (b)(1), mistake or inadvertence, March 12, 2019, Dkt. 25;
3) Memorandum / brief in support of motion, March 12, 2019, Dkt. 26;
4) Denial of second Rule 60 motion, March 18, 2019, Dkt. 27

I declare under penalty of perjury under the laws of The United States of America that the foregoing is true and correct.

Executed on this September 30, 2019. (28 U.S.C. § 1746(1)).

By: Magritz, Steven Alan, dba STEVEN ALAN MAGRITZ

Magritz, Steven Alan, dba STEVEN ALAN MAGRITZ
c/o N53W34261 Road Q, Okauchee, Wisconsin [53069]

ATTACHMENT # 1 of 3, TO:

Informant's Report of Felonies Cognizable by a Court of the United States, Reported Pursuant to 18 U.S.C. § 4

Seventh Circuit Court of Appeals Case Number 19-1518
District Court Case Number 18-Cv-00455

District Court Documents attached:

1) Denial of writ of habeas corpus, November 28, 2018, Dkt. 16;
2) First Rule 60 motion ((b)(3), (b)(4), (b)(6)), December 20, 2018, Dkt. 18;
3) Memorandum / brief in support of motion, December 20, 2018, Dkt. 19.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN ALAN MAGRITZ,
Petitioner,

v. **Case No. 18-C-0455**

JON E. LITSCHER,
Respondent.

DECISION AND ORDER

Steven Alan Magritz filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Before me now is the respondent's motion to dismiss the petition as untimely and for procedural default.

I. BACKGROUND

Magritz's conviction arises out of a dispute between him and Ozaukee County. In 2001, the County foreclosed on his real property. *See* Petition at p. 6. Magritz believes that the foreclosure was unlawful and has been harassing the County about it ever since. In November 2011, Magritz recorded a document pertaining to the property, entitled "Confirmation Deed," with the County's register of deeds. *Id.* at p. 7. Magritz claims that, in recording the document, he was petitioning the government for the redress of his grievances. *Id.* at 6–7. The State of Wisconsin saw things differently. It deemed the confirmation deed false and charged Magritz with criminal slander of title. *See* Wis. Stat. § 943.60(1).

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. He stated:

> For the record, every word that I speak here today is made under taint and penalty of perjury. I am not the fiduciary trustee representative [n]or am [I] acting in anyway whatsoever for any artificial officiant . . . including but not limited to the defendant. I am not the artificial person or entity, the defendant. I'm a man of God, I'm a man created in the image of God, endowed by my creator undeniable rights, including the right to life, liberty, and property.
>
> I do not consent to these proceedings, but I exercise my right to protect my natural person and my liberty. My life and liberty. I have a right to my choice of assistance of counsel. No one may deny me my right to assistance of counsel. And my choice for assistance of counsel is my wife, Chieko.

Id. at pp. 50–51. Upon further questioning, the trial judge determined that Magritz's wife was not a licensed attorney and therefore could not serve as his counsel. *Id.* at 52–56. 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.

Magritz represented himself at trial, and the jury found him guilty. The court sentenced him to 18 months' initial confinement and three years' extended supervision.

Magritz did not pursue a direct appeal. Instead, he began filing *pro se* petitions for habeas corpus with the Wisconsin Court of Appeals and the Wisconsin Supreme Court. 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.

While Magritz's petitions were pending in the Wisconsin courts, he filed a federal petition for a writ of habeas corpus in this court. *See Steven Alan Magritz v. Quala Champagne*, E.D. Wis. Case No. 16-C-1694. After the respondent filed a motion to

dismiss the petition for failure to exhaust state-court remedies, Magritz filed a notice of voluntary dismissal.

The Wisconsin Court of Appeals eventually rejected Magritz's habeas petitions on procedural grounds. On June 6, 2017, the court issued an opinion denying one of his petitions because it was over the page limit and because Magritz had failed to pursue his alternative remedies, namely, his direct appeal. The court also noted that Magritz might still be able to seek relief under Wis. Stat. § 974.06, which allows criminal defendants to collaterally attack their convictions under certain circumstances.

On November 7, 2017, the Wisconsin Court of Appeals issued a decision denying another one of Magritz's habeas petitions. This time, the court found that the petition was not over the page limit, but it again rejected the petition because Magritz had failed to pursue his alternative remedies. The court reiterated that habeas corpus is not a substitute for a direct appeal or a motion under Wis. Stat. § 974.06.

After unsuccessfully asking the court of appeals to reconsider its denials of his habeas petitions, Magritz sought relief from the Wisconsin Supreme Court. Magritz filed a document with that court entitled "Writ of Error, generally, and Order for Remedy." ECF No. 1-1 at p. 5. The supreme court construed this "writ" as a petition to review the court of appeals' order of November 7, 2017. The court then denied the petition as untimely.

Magritz commenced his current federal habeas case on March 22, 2018. His petition alleges 20 different grounds for relief. The respondent now moves to dismiss the petition because it was filed outside the one-year limitations period, *see* 28 U.S.C. § 2244(d), and because Magritz procedurally defaulted his claims.

II. DISCUSSION

A. Jurisdiction to Consider Second Habeas Petition

Initially, I address whether Magritz's current federal petition is a second or successive petition within the meaning of 28 U.S.C. § 2244(b). Although the respondent does not contend that it is, I must address this issue because it relates to subject-matter jurisdiction. *See, e.g., Summers v. Earth Island Institute*, 555 U.S. 488, 499 (2009) (court has an independent obligation to assure that subject-matter jurisdiction exists); *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996) (noting that second-or-successive doctrine affects district court's subject-matter jurisdiction).

Magritz's original petition was filed while he was in the process of exhausting his state-court remedies. After the respondent moved to dismiss that petition for lack of exhaustion, Magritz filed a notice of voluntary dismissal. Thus, the first petition was never addressed on the merits.

Under some circumstances, a petition that has been voluntarily dismissed will count as the first petition for purposes of the second-or-successive rule. *See, e.g., Felder v. McVicar*, 113 F.3d 696, 697 (7th Cir. 1997). But here it does not. That is so because Magritz filed the petition before he exhausted his state-court remedies. Had he not voluntarily dismissed the petition, it would have been dismissed for lack of exhaustion. A petition that has been dismissed for lack of exhaustion will not count as a first petition because, after dismissal, the petitioner may exhaust his state-court remedies and return to federal court. *See Slack v. McDaniel*, 529 U.S. 473, 485–86 (2000); *Altman v. Benik*, 337 F.3d 764, 766 (7th Cir. 2003). That is what happened here, and therefore Magritz's current petition is not second or successive.

B. Procedural Default

I next address the respondent's argument that Magritz procedurally defaulted his claims. Procedural default is one application of the "adequate and independent state ground" doctrine. *See, e.g., Johnson v. Foster*, 786 F.3d 501, 504 (7th Cir. 2015). Under this doctrine, when a state court resolves a federal claim by relying on a state-law ground that is both independent of the federal question and adequate to support the judgment, federal habeas review is foreclosed. *Id.* at 504–05. The violation of a state procedural rule can be an independent and adequate state-law ground. *Id.* at 505.

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 that the Wisconsin Court of Appeals actually relied on this state-law procedural ground in denying Magritz's habeas petitions, and that therefore the "independence" prong of the independent-and-adequate-state-law-ground doctrine is satisfied. *See Kaczmarek v. Rednour*, 627 F.3d 586, 592 (7th Cir. 2010) ("A state law ground is independent when the court actually relied on the procedural bar as an independent basis for its disposition of the case.").

Moreover, there is no doubt that this rule was "adequate" to support the judgment. A state law ground is adequate when it is firmly established and regularly followed at the time it is applied. *Kaczmarek*, 627 F.3d at 592. Under Wisconsin law, it has long been well-established that habeas relief is unavailable to a person in custody when that person failed to pursue other adequate remedies, including the person's right to take a direct appeal. *See State ex rel. Haas v. McReynolds*, 252 Wis. 2d 133, 140–44

(2002). Here, Magritz decided to forego his direct-appeal rights, and therefore the Wisconsin Court of Appeals' rejection of his federal claims involved a principled application of well-established Wisconsin law.

Magritz, however, contends that the Wisconsin Court of Appeals erred in finding that he had adequate alternative remedies available to him. Here, he focuses on the court's statement that he might still be able to raise his claims in a postconviction motion under Wis. Stat. § 974.06. Magritz contends that such a motion would have been an inadequate remedy because, under that statute, the motion had to be filed in the sentencing court, *see* Wis. Stat. § 974.06(1), yet one of his claims was that the sentencing judge was biased against him.

I will assume for the moment that Magritz is correct that his claim of judicial bias rendered a motion under Wis. Stat. § 974.06 an inadequate remedy. Even if that were so, it would not mean that Magritz had *no* adequate alternative to a petition for a writ of habeas corpus. And clearly he had another adequate remedy: his direct appeal. *See Haas*, 252 Wis. 2d at 142. 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. *See* ECF No. 1–2 at p. 21.

Moreover, it is clear that Magritz's claim of judicial bias did not render a motion under Wis. Stat. § 974.06 inadequate. It is true that this statute required Magritz to file his motion in the sentencing court and that the motion likely would have been assigned to the allegedly biased judge. But this would not have made the motion an inadequate remedy. Judges routinely decide their own recusal motions and address claims that they are biased. Indeed, under the Wisconsin Statutes, a judge is required to decide a

request that he or she be disqualified because of a conflict of interest or a claim of bias, either actual or perceived. *See* Wis. Stat. § 757.19(5); *State v. Pinno*, 356 Wis.2d 106, 157 (2014). Perhaps in this case the allegedly biased judge would have improperly remained on the case or denied the § 974.06 motion. But if that occurred, Magritz could have appealed the failure to recuse and the denial of the motion, and the court of appeals could have either granted the relief requested in the motion or remanded the case for reassignment to a different judge. For these reasons, a motion under § 974.06 would not have been an inadequate remedy.

In short, the Wisconsin Court of Appeals did not apply, in an unprincipled or irregular manner, the state-law rule that habeas relief is unavailable to a petitioner who failed to pursue his alternative adequate remedies. Thus, that rule was adequate to support the judgment, and Magritz has procedurally defaulted his claims.

A federal court cannot entertain a procedurally defaulted claim unless the petitioner can establish cause and prejudice for the default or that the failure to consider the claim would result in a fundamental miscarriage of justice. *Kaczmarek*, 627 F.3d at 591. "Cause" is defined as an objective factor, external to the defense, that impeded the defendant's efforts to raise the claim in an earlier proceeding. *Johnson*, 786 F.3d at 505. "Prejudice" means an error which so infected the entire trial that the resulting conviction violates due process. *Id.* The miscarriage-of-justice exception is available to petitioners who can establish that they are actually innocent of the crime. *See Schlup v. Delo*, 513 U.S. 298, 323 (1995). To qualify for this exception, the petitioner must show that, in light of new evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. *Id.* at 327.

Here, Magritz attempts to show cause and prejudice and that he qualifies for the miscarriage-of-justice exception. First, he claims that he can show two forms of "cause." Initially, he contends that his claim of judicial bias qualifies as cause. But it does not. That claim was one of the very constitutional claims that Magritz defaulted. It was not something external to the petitioner that resulted in his failure to comply with the state's procedural rules.

Next, Magritz contends that the trial court denied him his Sixth Amendment right to counsel, and that this constitutes cause for his default. But the record belies Magritz's claim that the trial court denied him his right to counsel. The record shows that the court encouraged Magritz to either retain counsel of his choice or, if he could not afford counsel, seek assistance from the public defender. ECF No. 1-4 at p. 61. What Magritz characterizes as the court's denying him the assistance of counsel is the court's refusing to let Magritz's wife, who was not a licensed attorney, serve as his counsel. *Id.* at 51–55. But the Sixth Amendment does not grant a person a right to unlicensed counsel. *See, e.g., Wheat v. United States*, 486 U.S. 143, 159 (1988); *United States v. Bender*, 539 F.3d 449, 455 (7th Cir. 2008). Accordingly, there is no merit to Magritz's claim that the trial court denied him counsel. In any event, Magritz's default occurred when he failed to take a direct appeal, and nothing in the record suggests that the trial court impeded Magritz's ability to retain, or to seek the appointment of, postconviction or appellate counsel. Thus, even if Magritz could establish that the trial court denied him his right to counsel at trial, Magritz could not use that denial to establish cause for his failure to take a direct appeal.

Magritz also argues that he qualifies for the miscarriage-of-justice exception. However, he does not point to any evidence—new or otherwise—that might cause a juror to reasonably doubt that he committed criminal slander of title. Instead, he argues that, in recording the "Confirmation Deed" on his former real property, he was engaging in activity protected by the First Amendment and therefore should not have been criminally punished for it. *See* ECF No. 8 at pp. 14–15. But this is a legal question that Magritz actually raised in the trial court and could have raised on direct appeal. It does not relate to "new" evidence that might show that he was actually innocent of the crime. Accordingly, Magritz has not shown that enforcing his default would result in a fundamental miscarriage of justice.

C. Statute of Limitations

Because the petition must be dismissed for procedural default, I do not consider the respondent's alternative argument that the petition is untimely under 28 U.S.C. § 2244(d).

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that the respondent's motion to dismiss the petition is **GRANTED**. The Clerk of Court shall enter final judgment. Pursuant to Rule 11 of the Rules Governing § 2254 Cases, I find that the petitioner has not made the showing required by 28 U.S.C. § 2253(c)(2), and therefore I will not issue a certificate of appealability.

IT IS FURTHER ORDERED that the petitioner's motion for summary judgment is **DENIED**.

Dated at Milwaukee, Wisconsin, this 28th day of November, 2018.

s/Lynn Adelman
LYNN ADELMAN
District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Steven Alan Magritz,
Petitioner

v.

Case No. 18-C-0455

JON E. LITSCHER,
Respondent

MOTION FOR RELIEF, Fed. R. Civ. P., Rule 60

Comes now Petitioner, Steven Alan Magritz, the living man, in want of counsel, and as and for relief pursuant to Fed. R. Civ. P. Rule 60 from the Decision and Order signed by district judge Lynn Adelman on November 28, 2018, and the Judgment of the Court signed by clerk Stephen C. Dries on November 28, 2018, shows the Court as follows. I, me, my, myself herein refers to Steven Alan Magritz, the living man.

I am entitled to relief and so move the Court pursuant to Rule 60(b)(3), fraud, and fraud upon the court by officers of the court named Brad D. Schimel and Daniel J. O'Brien. On May 29, 2018, Schimel and O'Brien filed with the Court a Brief in Support of Motion to Dismiss, Dkt. 7, whereby they engaged in *misleading conduct* as that term is defined in Title 18 U.S.C. § 1515(a)(3). Schimel and O'Brien's motion was replete with numerous false, fictitious, or fraudulent statements *to the Court* in violation of Fed. R. Civ. P. Rule 11(b), Representations to the Court; Title 18 § 1001(a), Statements or entries generally; Title 18 U.S.C. § 1512(c)(2) regarding obstruction of justice; and, Title 18 U.S.C. § 402, contempts constituting crimes, all

in an attempt to deprive this Court of jurisdiction. The false representations were made *to the Court*, an entity created by the people by and through the Constitution or Congress, as opposed to being made to a judge or magistrate, one of *mankind*. 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. On July 12, 2018 I noticed the Court of the false representations by way of a verified Mandatory Judicial Notice, Dkt. 10. *After being noticed* of the false representations, *Adelman subsequently used* at least one of the most egregious false representations in his Decision and Order to *justify* dismissal of my application for habeas corpus.

I am entitled to relief and so move the Court pursuant to Rule 60(b)(6) for bias or prejudice, Title 28 § 455(b)(1) of the presiding officer, Lynn Adelman. In his Decision and Order, Adelman evidenced bias or prejudice by *fabricating* his own false "facts" or "findings", utilizing *known* false statements made in respondent's aforesaid motion to the Court, disregarding or intentionally misapplying *clearly stated* Wisconsin statute and cases, and postulating an incredulous scenario, with which no honest person or jurist could agree, in order to "justify" his "decision" and order.

I am entitled to relief and so move the Court pursuant to Rule 60(b)(4), the judgment is void. The fraud upon the Court rendered the Order and the Judgment void. I was not afforded a fair and impartial consideration of my habeas corpus

petition by Lynn Adelman, to which I am entitled under the Due Process Clause of the Fourteenth Amendment.

I hereby disqualify Lynn Adelman for bias or prejudice.

I incorporate herein by reference: Dkt. 8, Brief; Dkt. 9, Affidavit with attachments Dkt. 9-1 through 9-7; and Dkt. 10, Mandatory Judicial Notice, with attachments Dkt. 10-1 through 10-10.

I move the Court for relief as follows: 1) to appoint a judge other than Lynn Adelman to rule upon this motion; 2) to vacate the November 28, 2018 ORDERS of Adelman granting respondent's motion to dismiss and denying my motion for summary judgment, 3) to vacate the November 28, 2018 Judgment signed by Clerk Stephen C. Dries, and, 4) to restrain the Respondent from taking any benefit whatever from the November 28 Order and Judgment and to grant my motion for summary judgment, or, in the alternative, to assign a judge other than Lynn Adelman to consider and rule upon both my motion for summary judgment and Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 filed on March 22, 2018, case no. 18-C-0455.

Dated this December 20, 2018 A.D.

Steven Alan Magritz

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 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 incommunicado, 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.

Steven Alan Magritz

Steven Alan Magritz

ATTACHMENT # 2 of 3, TO:

Informant's Report of Felonies Cognizable by a Court of the United States, Reported Pursuant to 18 U.S.C. § 4

Seventh Circuit Court of Appeals Case Number 19-1518
District Court Case Number 18-Cv-00455

District Court Documents attached:

1) Denial of 1st Rule 60 motion (b)(3), (b)(4), (b)(6), Feb. 22, 2019, Dkt. 21;
2) Motion for Reconsideration, February 28, 2019, Dkt. 22

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN ALAN MAGRITZ,
Petitioner,

v. **Case No. 18-C-0455**

JON E. LITSCHER,
Respondent.

DECISION AND ORDER

On November 28, 2018, the court entered an order and a judgment dismissing a petition for a writ of habeas corpus filed by Steven Alan Magritz under 28 U.S.C. § 2254. On December 20, 2018, Magritz filed a motion for relief from the judgment and order under Federal Rule of Civil Procedure 60(b). I consider that motion below.

Magritz first argues that the order and judgment must be set aside under Rule 60(b)(4) because the respondent committed fraud. The alleged fraud involved misstating the reasoning behind the state court of appeals's denial of Magritz's state habeas petitions. However, the respondent did not misstate the state court's reasoning. Moreover, the state court's opinions are part of the federal record, and any statements I made about the contents of those opinions were based on a review of the opinions rather than on the respondent's representation of the contents of the opinions. Thus, Magritz is not entitled to relief under Rule 60(b)(3).

Next, Magritz argues that the order and judgment must be set aside under Rule 60(b)(6) because I am biased and should have recused myself under 28 U.S.C. § 455(b)(1). Magritz states the following in support of his claim that I am biased:

> In his Decision and Order, Adelman evidenced bias or prejudice by *fabricating* his own false "facts" or "findings", utilizing *known* false statements made in respondent's aforesaid motion to the Court, disregarding or intentionally misapplying *clearly stated* Wisconsin statute and cases, and postulating an incredulous scenario, with which no honest person or jurist could agree, in order to "justify" his "decision" and order.

ECF No. 18 at 2 (emphasis in original). However, my opinion was based on my understanding of the record and the law. Magritz obviously disagrees with my ultimate ruling, but "[j]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). The proper remedy for disagreement with a judicial ruling is an appeal, not a recusal motion. *Id.* Thus, Magritz is not entitled to relief under Rule 60(b)(6).

Finally, Magritz argues that the order and judgment must be set aside under Rule 60(b)(4) because they are void. But here Magritz merely restates his claims that the judgment was procured by fraud and that I was not fair and impartial. ECF No. 18 at 2–3. As I have already rejected those claims, I also conclude that the order and judgment are not void.

For the reasons stated, **IT IS ORDERED** that the petitioner's motion for relief under Federal Rule of Civil Procedure 60 is **DENIED**.

Dated at Milwaukee, Wisconsin, this 22nd day of February, 2019.

s/Lynn Adelman
LYNN ADELMAN
District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Steven Alan Magritz,
Petitioner

v.

JON E. LITSCHER,
Respondent

Case No. 18-C-0455

MOTION FOR RECONSIDERATION of DENIAL of RULE 60 MOTION FOR RELIEF

Comes now Petitioner, Steven Alan Magritz, the living man, in want of counsel, and as and for a Motion for Reconsideration of the Decision and Order of Lynn Adelman, Dkt. 21, dated February 22, 2019 denying my Motion for Relief, Fed. R. Civ. P., Rule 60, Dkt. 18, filed December 20, 2018, shows the Court as follows. Terms such as I, me, my, myself, etc., refer to Steven Alan Magritz.

On March 22, 2018 A.D., I filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was assigned to Lynn Adelman.

On July 12, 2018 A.D., I filed a sixteen page Mandatory Judicial Notice, *signed under penalty of perjury*, with twenty-two pages of exhibits in support, noticing the court of fraud upon the court by respondent's attorneys in their brief in support of their motion to dismiss. *None* of the facts regarding the attorneys' fraud stated in my Mandatory Judicial Notice of fraud upon the court *have ever been rebutted*. *One* of most egregious false statements by the attorneys was that I was denied habeas corpus relief in the state appellate courts because I had *failed to file*

a direct appeal. This was parroted by Adelman to justify a procedural default decision and order.

On July 20, 2018 A.D., I filed a Motion for Summary Judgment, a twenty-two page Statement of Facts *signed under penalty of perjury*, and a thirteen page Memorandum in Support.

On November 13, 2018 A.D., I filed a Verified Bill Quia Timet expressing my fear that the court was frustrating the will and intent of Congress and delaying granting me summary judgment.

On November 28, 2018 A.D., Lynn Adelman issued a Decision and Order granting respondent's motion to dismiss my petition and denying my motion for summary judgment. Also on November 28th the Court, by and through its Clerk, entered a judgment dismissing my petition.

On December 20, 2018 A.D., I filed a "MOTION FOR RELIEF, Fed. R. Civ. P. Rule 60", a "MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR RELIEF, Fed. R. Civ. P. Rule 60", and a "Praecipe to the Clerk" in which I noticed the Clerk that "Lynn Adelman has been **disqualified** in case no. 18-C-0455" and further, that my motion and memorandum were to be presented to the chief judge.

Adelman's November 28th Decision and Order was replete with a false, slanderous, unsubstantiated accusation against me; false statements; outright fabrications; a false, twisted, perverted "application" of non-existent law, *and more*, all of which I evidenced and exposed in a twenty-two page Memorandum in support of my Rule 60 motion, *signed under the penalty of perjury*, the charges which,

individually and in totality, evidenced fraud upon the court by Lynn Adelman, d/b/a judge. Adelman's fraud, deceit, misrepresentation, dishonesty, lack of integrity, want of good faith, and fraud upon the court disqualified him as judge, and evidenced pervasive, outrageous, *antagonistic* bias, thus I proclaimed: "I hereby disqualify Lynn Adelman for bias or prejudice."

My Memorandum in Support of my Rule 60 motion, Dkt. 19, is incorporated herein by reference in its entirety as if fully reproduced herein.

The apparent motivation behind Adelman's "bias or prejudice" is obvious, plain, and simple – to *continue to run interference for and cover-up the corruption of a fellow judge*, state court judge Sandy A. Williams. Williams is married to a prosecutor. Adelman's misconduct is obstruction of justice on steroids. Adelman's wanton disregard for the law and defiance of the Constitution and laws of the United States of America is not unlike the corruption and cover-ups being exposed and routed out at the highest levels of government in Washington, D.C.

As "justification" for dismissing my petition for writ of habeas corpus, Adelman defied and denied the Constitution by parroting the false, ludicrous, ridiculous statement by respondent's [state] attorneys that my petition had been denied at the state level because I had *failed to file a direct appeal* of the politically motivated persecution by the state court judge. Regarding "Procedural Default", Dkt. 16-6, Adelman stated,

> Here, Magritz decided to forego his direct-appeal rights, and therefore the Wisconsin Court of Appeals' rejection of his federal claims involved a principled application of well-established Wisconsin law.

The main problem with Adelman's statement is that it is blatantly, patently *false*. The record of this Court evidences the Wisconsin Court of Appeals did *not* reject my

federal claims for failure to file a direct appeal. For a judge to assert and claim that a man restrained of his liberty by a biased, rogue state court judge must first file a direct appeal *or else is precluded from remedy by a writ of habeas corpus* is *rebellion* against both the federal and state Constitutions and utter disregard of the laws of the United States of America and of Wisconsin.

As set forth on page 3 of my Memorandum in Support of my Rule 60 motion, Dkt. 19, the applicable, governing state law is Wis. Stat. § 974.06 (8), which was taken *directly* from 28 U.S.C. § 2255. Adelman cannot justify his flagrant disregard of the law, especially since the *state law was taken directly from federal law.*

On February 22, 2019 A.D., Adelman issued a Decision and Order, Dkt. 21, denying my motion for relief under Rule 60 *after I had disqualified him for his earlier fraud upon the court* which I had "graciously" referred to as bias or prejudice out of respect for the institution of the courts, which is supposed to dispense "justice" rather than "just-us". In his February 22nd decision and order Adelman heaped more fraud upon this honorable Court.

Fraud number one, February 22nd decision and order, Dkt. 21: On page 1, paragraph 2 Adelman wrote:

> The alleged fraud involved misstating the reasoning behind the state court of appeals's denial of Magritz's state habeas petitions. However, the respondent did not misstate the state court's reasoning.

Fact: The "alleged" (sic) fraud which I evidenced to this Court, Dkt. 10, consisted of at least a dozen false representations / fraudulent statements made by the respondent's attorneys. The most relevant one here being:

> Magritz's failure to pursue direct review in state court is in and of itself fatal to his federal habeas petition. Dkt. 7:13.

As stated above, Adelman parroted and embellished this false, ludicrous, ridiculous statement in his "decision", Dkt. 16-6, that I had procedurally defaulted and therefore Adelman denied me relief by way of the writ of habeas corpus.

Fraud number two. Dkt. 21-1: Adelman *falsely* wrote in paragraph 3:

> Next, Magritz argues that the order and judgment must be set aside under Rule 60(b)(6) because I am biased and should have recused myself under 28 U.S.C. § 455(b)(1).

FACT: I did *not* argue that Adelman *should have* recused himself under § 455(b)(1). My twenty-two (22) page Memorandum in support of my Rule 60 motion *evidenced* at length and in detail that Adelman's pervasive "bias or prejudice", much of which was actually fraud upon the court, was the grounds or the reason that justified relief in the interest of justice. The antagonistic bias and fraud upon this Court *exhibited* by Adelman are "extraordinary circumstances"[1] which are *grounds* for relief under Rule 60(b)(6).

Fraud number three. In the very first paragraph on page 2, Adelman cites only the second sentence of a summarizing paragraph in my motion which offers only a broad-brush, detail-less condensation of my twenty-two page Memorandum. Adelman omits the first sentence of said paragraph, which declares Adelman's "bias or prejudice" constitutes the "*grounds*" for relief under Rule 60(b), rather than his *subsequent fraudulent claim* that I was motioning the court for his recusal:

> I am entitled to relief and so move the Court pursuant to Rule 60(b)(6) for bias or prejudice, Title 28 § 455(b)(1) of the presiding officer, Lynn Adelman.

[1] *LILJEBERG v. HEALTH SERVICES ACQUISITION CORP.*, 486 U.S. 847, 864 (1988).

Fraud number four. Adelman fraudulently asserts my Rule 60(b)(6) motion was a motion for his recusal, which is *absurd* since *I had already disqualified him for fraud upon the court* which I had politely ("politically correctly") termed "bias or prejudice". Adelman *deceitfully, deceptively, fraudulently* cites *and uses* Liteky v. United States, 510 U.S. 540, which is a case wherein "*Before trial petitioners moved to disqualify*[2] *the District Judge* pursuant to 28 U. S. C. § 455(a)."[3] My Rule 60(b)(6) motion was for relief from a judgment obtained by fraud upon the court by respondent's attorneys, and, much more importantly and legally significant, *fraud upon the court by presiding judge Lynn Adelman* evidenced and exhibited by and through pervasive, egregious antagonistic "bias or prejudice" which is repugnant and shocks the conscience. My Rule 60 motion most assuredly was *not a motion for Adelman to recuse* himself. No way. Absolutely not. Injuries already had been suffered. I did *not* motion, ask for, petition, request, beg, etc. for the recusal of Adelman, I *ORDERED disqualification for Adelman's Fraud Upon the Court.* Fraud by a judge is unacceptable. Period.

Adelman's options were to *repent* of his fraud, "man up" by "asserting" he had made a "mistake", and rule according to the law, *or*, compound his "error" by committing additional fraud upon the court. Adelman chose the latter, thus *compounding his "error"* and causing to be mailed to me via U.S. mail his

[2] JUSTICE SCALIA wrote: Section 455(a) of Title 28 of the United States Code requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." This case presents the question whether required recusal under this provision is subject to the limitation that has come to be known as the "extrajudicial source" doctrine. (510 U.S. 540, 541)
[3] *Id.*, 510 U.S. 540, 542.

fraudulent "DECISION AND ORDER" in apparent violation of Title 18 § 1341 to defraud me of the intangible right of honest services, Title 18 § 1346.

Fraud number five. On page 2, Dkt. 21, Adelman stated the following regarding his "understanding" at the time of signing the fraudulent "Decision and Order":

> However, my opinion was based on my understanding of the record and the law.

This is a troubling statement for several reasons:

First. *If true*, it is akin to Andrew McCabe admitting on the nationally televised 60 Minutes program to having committed sedition. Adelman has been an attorney for more than fifty (50+) years and has been a federal judge for *decades*, yet his *understanding* of the law was contrary to the federal Constitution, contrary to Wisconsin's Constitution, contrary to federal law Title 28 § 2255, and contrary to Wisconsin Statute § 974.06(8). Adelman *fabricated* a "well established law", fraudulently asserting that my failing to file a direct appeal resulted in a "procedural default". That is fraud upon the court and upon me, Adelman's victim. *That* was Adelman's "understanding" (sic) of the law at the time.

Second. Then Adelman, after having been tutored in the "law" via my Rule 60 Motion for Relief, by a layman with no legal training, that he had ruled contrary, and egregiously contrary, to all written law, and having been given the opportunity to correct by and through my Rule 60(b)(6) motion, refused to correct his "error", thus signifying that his "error" was intentional, purposeful, with scienter, with malice aforethought, *fraud upon this Court* and upon me.

Third. That Adelman's "*understanding of the record*" at the time of his decision was so defective and deficient that he made mistakes in judgment is just too big of a pill to swallow. No one meticulously sorts through a record, as Adelman obviously did, to pick and choose items from different sources and places, and then misstate or mischaracterize them, *by accident.* A tornado going through a junkyard and creating a Boeing 747 is more likely. Since Adelman had a "corrected", *more perfect understanding* of the record by virtue of my Memorandum than he had on February 22nd when issuing the defective / deficient / fraudulent decision and order, he had the duty and obligation to vacate the November 28, 2018 judgment. But Adelman did *not* vacate the judgment. Adelman's *uncorrected* "mistakes" scream *fraud upon this honorable Court.*

Bias or prejudice. Bias on the part of a judge is deemed a "structural error" or a "structural defect" which violates due process and voids a judgment issued by a biased judge[4]. The twenty-two page Memorandum in support of my Rule 60 motion *charges* and evidences pervasive, outrageous, antagonistic bias against me. Nowhere in Adelman's two page denial of my motion did Adelman deny or refute any of the numerous charges / instances of bias evidenced in the Memorandum. Adelman did not deny that the Memorandum evidenced pervasive antagonistic bias by Adelman. Adelman had a duty to protect himself and deny the

[4] There is irony in the fact that federal judge Lynn Adelman, who is expected to dispense justice and display honesty, integrity, and good faith toward Magritz in providing Magritz remedy from blatant, egregious, retaliatory acts of biased state court judge Sandy Williams, himself exhibits and evidences pervasive, outrageous, *antagonistic* bias in an obvious effort to protect Williams.

charges of bias against him. Adelman did not deny that he was biased. Adelman agreed, *nihil dicit*, he was biased.

When a reasonable person, knowing all of the relevant facts, would question the impartiality of a justice, judge, or magistrate under 28.U.S.C. § 455, a judgment rendered by such a person must be vacated, and the vehicle for doing so is Rule 60(b)(6). *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988). In Liljeberg, a judgment was rendered, and ten (10) months after judgment facts were discovered that gave rise to the *appearance* of impartiality by a reasonable observer, even though the judge was not conscious of the circumstances creating the *appearance* of impropriety. The judgment was vacated on a Fed. R. Civ. P. Rule 60(b)(6) motion. If a judgment is vacated under Rule 60(b)(6) based upon the *appearance of impartiality*, how much more so is it imperative that a judgment be vacated when the ruling comes from Lynn Adelman whose *documented* bias or prejudice is pervasive, outrageous, antagonistic, not refuted, not denied, and admitted *nihil dicit*.

Adelman's fraudulent Decision and Order dated February 22, 2019 A.D. is Refused For Fraud, so marked, and returned with this Motion For Reconsideration.

I move this honorable Court for reconsideration[5] of Lynn Adelman's February 22, 2019 denial, Dkt. 21, of my Rule 60 Motion For Relief, Dkt. 18.

Steven Alan Magritz

Dated this February 28, 2019 A.D.

Steven Alan Magritz

[5]Denial is abuse of discretion, *Harrison v. Byrd*, 765 F.2d 501.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Praecipe to the Clerk

Steven Alan Magritz,
Petitioner

v.

Case No. 18-C-0455

JON E. LITSCHER,
Respondent

To: Clerk of Court Stephen C. Dries:

Dear Clerk Dries:

Take Notice: As this Court has been previously given **Notice** that Lynn Adelman was **disqualified** in case no. 18-C-0455, Steven Alan Magritz v. JON E. LITSCHER, as stated in my Rule 60 Motion For Relief, Dkt. 18, and further expounded upon in my Memorandum in Support, Dkt. 19. Adelman was disqualified for fraud upon the court, which, to be "politically correct", I termed "bias or prejudice".

As set forth in my Motion for Reconsideration filed this day Adelman has again perpetrated fraud upon this honorable Court and upon me by issuing a denial, Dkt. 21, of my Rule 60 Motion, and filing said denial with this Court.

You are hereby instructed by this Writ of Praecipe to present my Motion for Reconsideration and Refused For Fraud to Chief Judge William C. Griesbach for hearing.

Steven Alan Magritz

Dated February 28, 2019 A.D.

Steven Alan Magritz

Certificate of Service

Re: Steven Alan Magritz v. JON E. LITSCHER
Case No. 18-cv-455-LA

I certify the following is being served by United States mail, postage prepaid, on Daniel J. O'Brien, State of Wisconsin, Department of Justice, P.O. Box 7857, Madison, WI 53707:

Motion For Reconsideration of Denial of Rule 60 Motion For Relief
Refused For Fraud
Praecipe To the Clerk

Dated this February 28, 2019 A.D.

Steven Alan Magritz

Steven Alan Magritz

ATTACHMENT # 3 of 3, TO:

Informant's Report of Felonies Cognizable by a Court of the United States, Reported Pursuant to 18 U.S.C. § 4

Seventh Circuit Court of Appeals Case Number 19-1518
District Court Case Number 18-Cv-00455

District Court Documents attached:

1) Denial of Motion for Reconsideration, March 4, 2019, Dkt. 24;
2) Second Rule 60 motion under (b)(1), mistake or inadvertence, March 12, 2019, Dkt. 25;
3) Memorandum / brief in support of motion, March 12, 2019, Dkt. 26;
4) Denial of second Rule 60 motion, March 18, 2019, Dkt. 27

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN ALAN MAGRITZ,
Petitioner,

v. **Case No. 18-C-0455**

JON E. LITSCHER,
Respondent.

DECISION AND ORDER

On November 28, 2018, the court entered an order and a judgment dismissing a petition for a writ of habeas corpus filed by Steven Alan Magritz under 28 U.S.C. § 2254. On December 20, 2018, Magritz filed a motion for relief from the judgment and order under Federal Rule of Civil Procedure 60(b). I denied that motion in an order dated February 22, 2019. On February 28, 2019, Magritz filed a motion for reconsideration of my denial of his Rule 60 motion. However, there is no such thing as a motion for reconsideration of the denial of a Rule 60 motion. If Magritz believes that either my original decision or my denial of his Rule 60 motion was in error, then his only remaining remedy is to file an appeal and request a certificate of appealability from the Seventh Circuit Court of Appeals. Accordingly, Magritz's motion for reconsideration will be denied.

For the reasons stated, **IT IS ORDERED** that the petitioner's "motion for reconsideration of denial of Rule 60 motion for relief" is **DENIED**.

Dated at Milwaukee, Wisconsin, this 4th day of March, 2019.

s/Lynn Adelman
LYNN ADELMAN
District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Steven Alan Magritz,
Petitioner

v.

JON E. LITSCHER,
Respondent

Case No. 18-C-0455

MOTION FOR RELIEF, Fed. R. Civ. P. Rule 60(b)(1) By Legal Representative

Comes now the undersigned Legal Representative of the defendant in the state court, STEVEN ALAN MAGRITZ, aka STEVEN A MAGRITZ, aka Steven Alan Magritz, among other derivatives, and as and for relief pursuant to Fed. R. Civ. P. Rule 60(b)(1) from the Decision and Order signed by district judge Lynn Adelman on November 28, 2018, and the Judgment of the Court signed by clerk Stephen C. Dries on November 28, 2018, shows the Court as follows:

Rule 60(b)(1) provides for relief from final judgments that are the product of *mistake, inadvertence,* surprise or excusable neglect. This provision applies to errors by judicial officers as well as parties.

In Adelman's Decision and Order on November 28, 2018, Adelman, by *mistake or inadvertence,* ruled according to a *non-existence* state "law" provided to him by attorneys Schimel and O'Brien, ostensibly attorneys for respondent. Said attorneys *falsely* informed the court that since petitioner had not filed a direct appeal in the State courts, petitioner had "procedurally defaulted" and therefore

habeas corpus remedy was not available to petitioner. There is no such state law. Petitioner did not "procedurally default". Adelman *mistakenly or inadvertently* used *non-existent* state "law" to dismiss petitioner's habeas corpus petition. Regarding "Procedural Default", Dkt. 16-6, Adelman stated:

> Here, Magritz decided to forego his direct-appeal rights, and therefore the Wisconsin Court of Appeals' rejection of his federal claims involved a principled application of well-established Wisconsin law.

The problem with Adelman's statement is that it is *not true.* The record of this Court evidences the Wisconsin Court of Appeals did *not* reject petitioner's federal claims for failure to file a direct appeal, *nor could it have relied on such a non-existent "law".*

The applicable state law that Adelman *must* apply is:

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."**

The record of this court evidences egregious, unrefuted, pervasive, outrageous, *antagonistic* bias by the judge of the State court, thus habeas corpus remedy was

the only remedy available to petitioner since it "**appears that the remedy by motion is inadequate or ineffective** to test the legality of his or her detention."

Sua sponte:

In addition to being so moved by this motion, this Court, having been Noticed of judicial *mistake or inadvertence*, has the duty and authority to *sua sponte* correct its own *mistake or inadvertence* and vacate the November 28, 2018 judgment.

Incorporated herein by reference is the Memorandum in Support of this motion, as well as the Affidavit(s), Briefs, Notices and Exhibits referenced and incorporated therein.

The capacity and standing of this Legal Representative[1] to move this court is evidenced by the attached Certificate of Existence and Registration by Steve Simon, Secretary of State of Minnesota, file number 1072311400028, and, the Certification of durable power of attorney and attorney-in-fact, and, acknowledgement and acceptance of appointment, all three documents incorporated herein by reference.

The undersigned Legal Representative moves this Court to vacate the judgment dated November 28, 2018 pursuant to Fed. R. Civ. P. Rule 60(b)(1) for mistake or inadvertence by Lynn Adelman, the judicial officer of the court.

Dated this March 12, 2019 A.D.

By: Magnuson, Steven Alan Legal Representative, Attorney-in-Fact, Agent

[1] See Jay M. Zitter, Who is "Legal Representative" Within Provision of Rule 60(b) of Federal Rules of Civil Procedure Permitting Court to Relieve "Party or His Legal Representative" From Final Judgment or Order, 136 A.L.R. Fed. 651 (1997 and Supp. 2009).

Office of the Minnesota Secretary of State
Certificate of Existence and Registration

I, Steve Simon, Secretary of State of Minnesota, do certify that: The entity listed below was filed under the chapter of Minnesota Statutes listed below with the Office of the Secretary of State on the date listed below and that this entity or filing is registered at the time this certificate has been issued.

Name:	STEVEN ALAN MAGRITZ
Date Filed:	03/04/2019
File Number:	1072311400028
Minnesota Statutes, Chapter:	333
Home Jurisdiction:	Minnesota

This certificate has been issued on: 03/04/2019

Steve Simon
Secretary of State
State of Minnesota

DURABLE POWER OF ATTORNEY CERTIFICATION
A CERTIFICATION AS TO THE VALIDITY OF DURABLE POWER OF ATTORNEY AND ATTORNEY-IN-FACT'S AUTHORITY

Waukesha County, State of Wisconsin

I, Magritz, Steven Alan, affirm under God that STEVEN ALAN MAGRITZ™/SM, (Principal) granted me authority as the Attorney-In-Fact in their Durable Power of Attorney (DPOA) dated March 9, 2019.

I further affirm under God that I have first-hand knowledge that the Principals are alive and have not revoked their DPOA or my authority to act under their DPOA and the DPOA and my authority to act under the DPOA has not terminated.

Magritz, Steven Alan — March 9, 2019
Attorney-in-Fact's Signature: Magritz, Steven Alan — Date

Magritz, Steven Alan, Attorney-in-Fact
c/o N53W34261 Road Q
Okauchee, Wisconsin [53069]

Jurat

State of Wisconsin)
)
County of Waukesha)

On this ninth (9th) day of March, 2019, before me appeared Magritz, Steven Alan as Attorney-in-Fact of this DURABLE POWER OF ATTORNEY CERTIFICATION who proved to me to be the above-named person, in my presence executed the DURABLE POWER OF ATTORNEY CERTIFICATION, that he executed the same as his free act and deed and he solemnly affirmed under God that the statements in this document are true to the best of his knowledge and belief.

Bonnie Dixon
Notary Signature

Bonnie Dixon
Notary Printed Name

Seal

BONNIE DIXON
Notary Public
State of Wisconsin

ACKNOWLEDGEMENT AND ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY FOR STEVEN ALAN MAGRITZ

I, Magritz (Surname), Steven Alan (Given Name) as Primary Attorney-in-Fact named in this Durable Power of Attorney for STEVEN ALAN MAGRITZ™/SM, Principal, attached hereto, hereby acknowledge and accept appointment as Primary Attorney-in-Fact in accordance with the foregoing instrument.

Magritz, Steven Alan
Primary Attorney-in-Fact's Signature

March 9, 2019
Date

State of Wisconsin,

County of Waukesha

This instrument was acknowledged before me on March 9, 2019 by Magritz, Steven Alan (Surname, Given Name) as Primary Attorney-in-Fact for the Principal, STEVEN ALAN MAGRITZ™/SM.

Bonnie Dixon
Notary Public Signature

seal

BONNIE DIXON
Notary Public
State of Wisconsin

My commission expires: 10/09/2020

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 Legal Representative's MOTION FOR RELIEF, Fed. R. Civ. P. Rule 60(b)(1)

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 pervasive, outrageous, *antagonistic,* extreme bias manifested by State 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 exacerbated, by mistake or inadvertence, by District Court Judge Lynn Adelman.

Summary

Incorporated herein by reference are the following documents previously filed with this court: Dkt. 8, Brief; Dkt. 9, Affidavit of Bias with attachments Dkt. 9-1 through 9-7; Dkt. 10, Mandatory Judicial Notice, with attachments Dkt. 10-1

through 10-10; Dkt. 13, Memorandum in Support of Motion for Summary Judgment; Dkt. 19, Memorandum in Support of Petitioner's Motion for Relief.

The November 28, 2018 Decision and Order of Lynn Adelman finding a "procedural default" evidences, on its face, *mistaken or inadvertent* disregard for the controlling law of this case, Wis. Stat. § 974.06(8), *which was taken directly from Title 28 U.S. Code § 2255.* Adelman substituted the controlling law with a *non-existent* "law", which was in fact an uttered *fabrication*, provided to Adelman by the ostensible attorneys for the respondent.

Federal Rule of Civil Procedure Rule 60, Relief from Judgment or Order, states in pertinent part:

> (b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;

Mistake or Inadvertence.

Judge Adelman *mistakenly or inadvertently* used *non-existent* state "law" to dismiss petitioner's habeas corpus petition based on an alleged "procedural default". Regarding "Procedural Default", Dkt. 16-6, Adelman stated,

> Here, Magritz decided to forego his direct-appeal rights, and therefore the Wisconsin Court of Appeals' rejection of his federal claims involved a principled application of well-established Wisconsin law.

However there is no state law, *nor can there be any law, federal or state,* which denies a man remedy by habeas corpus merely because he does not file a direct appeal. Further, the record of this court *extensively* evidences egregious, unrefuted, pervasive, outrageous, *antagonistic* bias by State court judge Williams, therefore

remedy by way of motion to the sentencing court would be not only futile, inadequate or ineffective, but also foolish and ridiculous. The egregious exhibited bias of Williams, *known as a "structural defect" or "structural error"* in the proceedings, requires that the controlling, and "well-established Wisconsin law" relevant to this case be followed, to wit:

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". Based upon the extensive evidence of manifested bias filed with this Court, see docket items referenced *supra*, it would "appear" that remedy by motion to the sentencing court would be "inadequate or ineffective" to test the legality of petitioner's detention.

In *Stirone*, 475-476, the Seventh Circuit Court of Appeals 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).

(Judge Adelman's "mistakes" in recitation of facts in the November 28th Decision and order were set forth in Dkt. 19.)

Procedural Default

There was *NO* "procedural default", but rather a *mistaken or inadvertent* application of a non-existent "rule" by Judge Adelman. On page 5 of the Decision and order Judge Adelman 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, ..."

BUT - 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 wasn't it quoted or cited?
- If the 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?

The applicable "rule" is actually a statute, Wisconsin Statute § 974.06(8), set forth above, which Judge Adelman mistakenly or inadvertently omits. An extensive discussion of said omission is set forth in Dkt. 19, incorporated by reference.

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

Wisconsin Statute § 974.06(8), the controlling statute in this case, clearly states that a person is not required in all cases or instances to file a motion 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.

It is evident that State court judge Sandy Williams, who retaliated against and persecuted the petitioner, a whistleblower and victim of crime, in the most open, blatant, and brazenly manifested ways, and refused several times to recuse herself, as *extensively* and *exhaustively* evidenced to *this* Court, would *not* have a "come to Jesus moment" and provide remedy for the egregious injuries *she* had *intentionally* inflicted. 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".

The remedy by habeas corpus was and is clearly the only viable option for remedy in this situation in as much as Williams was retaliating against petitioner, a whistleblower, for having filed criminal complaints against Williams, suing Williams for misconduct in public office and breach of fiduciary duty, and publicly

exposing her malversation. The bias which Williams' manifested crossed the red line from "mere" misconduct in public office to felonious misconduct in public office. It was 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. The Great Writ of habeas corpus ad subjiciendum was created to protect the people from tyranny such as that of Sandy Williams.

Judge Adelman thus failed, *by mistake or inadvertence*, to address the issue of obtaining remedy by habeas corpus when it *appears* that remedy by motion is *inadequate or ineffective*, which was clearly and obviously the sum and substance of the application of state law and the alleged procedural default. Petitioner's only possibility 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 ***inadequate or effective***. *The record of this Court evidences that petitioner did not procedurally default.*

Applicability of Fed. R. Civ. P. Rule 60(b)(1).

"However, if in granting the earlier judgment, the district court has *overlooked and failed to consider some controlling principle of law*, the district court may abuse its discretion by failing to grant 60(b) relief." *Harrison v. Byrd*, 765 F.2d 501, 503 (1985). "We likewise review the propriety of the initial summary judgment in the light of the factual opposition *inadvertently* overlooked by the district court, under the principle that, if the overlooked affidavit did preclude summary judgment, then *the district court abused its discretion* by failing to grant 60(b) relief

because of its *mistake or inadvertence* in overlooking that factual opposition creating a disputed issue of material fact had been timely filed." Id., 504. "Accordingly, we conclude that the district court abused its discretion in denying Harrison's Rule 60(b) motion." Id., 504. (Italics added)

"In *Jones v. Anderson-Tully Co.*, 722 F.2d 211, 212-13 & n. 3 (5th Cir.1984), the Fifth Circuit held that if an error affects the ***substantive rights*** of the parties, *it must be corrected under the provisions of Rule 60(b).*" "The mistake in the present case affects the *substantive rights* of the parties. It is not clerical, and if it in fact occurred, it is one of *mistake, inadvertence*, surprise, or excusable neglect governed by Rule 60(b)(1)." *OLLE v. HENRY & WRIGHT CORP.*, 910 F.2d 357, 363-364 (6th Cir., 1990). (Italics and bold added)

(Cites omitted) (noting that while relief from judgment is usually sought by motion of a party, "**nothing forbids the court to grant such relief** *sua sponte*") *JUDSON ATKINSON CANDIES, INC., v. LATINI-HOHBERGER DHIMANTEC*, 529 F.3d 371, 385 (2008). (Bold added)

Rule 60(b)(1) provides for relief from final judgments that are the product of *mistake, inadvertence*, surprise or excusable neglect. **This provision applies to errors by judicial officers** as well as parties. *See Buggs v. Elgin, Joliet & Eastern Ry. Co.*, 852 F.2d 318, 322 (7th Cir.1988); *Bank of California v. Arthur Anderson & Co.*, 709 F.2d 1174, 1176 (7th Cir.1983). *WESCO PRODUCTS CO. v ALLOY AUTOMOTIVE*, 880 F.2d 981, 984-985 (7th 1989). (Italics and bold added).

The November 28, 2018 Decision and Order by Judge Lynn Adelman and the Judgment signed by the clerk of court must be vacated and relief granted petitioner pursuant to the motion for relief under Fed. R. Civ. P. Rule 60(b)(1).

Dated this March 12, 2019 A.D.

By: Magrit, Steven Alan Legal Representative, Attorney-in-Fact, Agent

Certificate of Service

Re: Steven Alan Magritz v. JON E. LITSCHER
Case No. 18-cv-455-LA

I certify the following is being served by United States mail, postage prepaid, on Daniel J. O'Brien, State of Wisconsin, Department of Justice, P.O. Box 7857, Madison, WI 53707:

Motion For Relief, Fed. R. Civ. P. Rule 60(b)(1)
Memorandum in Support

Dated this March 12, 2019 A.D.

By: Magritz, Steven Alan Agent

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN ALAN MAGRITZ,
Petitioner,

v. **Case No. 18-C-0455**

JON E. LITSCHER,
Respondent.

ORDER

The petitioner has filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b). I previously rejected a motion filed by the petitioner under Rule 60(b), *see* ECF No. 21, and his current motion raises no non-frivolous issue for discussion. Accordingly, the motion will be denied.

IT IS ORDERED that the petitioner's motion for relief (ECF No. 25) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 18th day of March, 2019.

s/Lynn Adelman
LYNN ADELMAN
District Judge