No. 18-8895

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

KEVIN WATKINS— PETITIONER (Your Name)

VS.

COMMONWEALTH OF MASSACHUSETTS— RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a defendant's right to an open trial violated when an attorney observing the trial and was asked to assist with defendant's appeal, was barred from observing the jury selection, and such bar resulted in the waiver of defendant's rights to challenge conflicted jurors on appeal?

2. Is the failure of appellate counsel to review transcripts of jury selection where a biased juror was seated, and therefore not raise on direct appeal, ineffective assistance of counsel?

3. Can a conviction stand when an identically worded indictment with the same time, place, and alleged acts has previously ended with an acquittal?

4. Can this Court ignore serious conflicts of interest and quid pro quo deals impacting the case at bar made in the courts below?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

STATUTES AND RULES

N/A

OTHER

N/A

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

[x] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Commonwealth of Massachusetts Superior Court Middlesex County appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case June 29, 2018. A copy of that decision appears at Appendix C.

[x] An extension of time to file the petition for a writ of certiorari was granted to and including November 26, 2018 on September 26, 2018 in Application No. 18A312 .

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

On December 11, 1988, the Petitioner, an Harvard Law School student , was in his apartment when his former girlfriend, JD, a Harvard college undergraduate, stated that after conferring with a male student also appearing on the tape, that she had arrived to retrieve a copy of a videotape that she had consensually made with depicting her disrobing until nude and then engaging in oral and vaginal sex with the Petitioner. The Petitioner refused to give her a copy of the videotape. She filed a complaint through Harvard. Some months later, in May of 1989, JD pressed charges, claiming that the Petitioner had raped her.

A Middlesex Grand Jury considered six different acts. It returned two identically worded indictments charging the Petitioner with the rape of his former girlfriend. At the request of attorney Willie Davis, attorney Marie Elena Saccoccio, fresh from her federal appellate clerkship, sat with the Petitioner's mother during all of the proceedings. The prosecutor on the case was Professor George Fisher, a Harvard Law School graduate fresh from his clerkship under Justice Steven Breyer, now a professor at Stanford Law School. The court officers refused to allow the Petitioner's mother and attorney Saccoccio to observe the jury empanelment. The jury pool was all white and consisted of a number of people

openly affiliated with Harvard and an unknown number of secret Harvard affiliates. The final jury had a number of Harvard affiliates empanelled. During the trial Professor Fisher made a point of pointing out that a Harvard Dean, Janet Viggiani, was in the courtroom supporting JD in her official capacity. After a six-day jury trial, beginning on May 1, 1990, in Middlesex Superior Court before the Hon. Paul A. Chernoff. The jury split the verdict, acquitting the Petitioner of the first charge of rape and afterwards finding him guilty of the second (Tr. VI/11-12). The Petitioner was sentenced to a term of five years at M.C.I. Concord with the sentence stayed pending appeal.

The Petitioner filed an appeal for Direct Appellate Review by the SJC on the novelty of the split verdict on the identically worded indictments, which was denied. The Petitioner then filed a direct appeal which included several issues. Attorney Willie Davis was both trial and appellate counsel. He requested attorney Marie Elena Saccoccio to assist him on appeal and tasked her to work on one of the issues with him. She assisted at counsel table while Mr. Davis conducted the oral argument. Because she was prevented from observing the jury selection she was at all times unaware of the jury bias issues during the appeal and post conviction process.

On July 14, 1992, the Appeals Court affirmed the Petitioner's conviction in a published decision. See Commonwealth v. Watkins, 413 Mass. 1105 (1992). An application for further appellate review was denied on September 3, 1992. On October 16, 1992, the Petitioner filed a petition for Habeas Corpus including the duplicate indictment issue in the U.S. District Court for the District of Massachusetts. Watkins v. DiPaolo, Case No. 92-CV-12490. On June 30, 1993, oral argument on the Petition was heard. On October 14, 1993, the Magistrate Judge made written finding that recommended the Petitioner's petition be denied. On November 2, 1993, the District Court accepted and adopted the Magistrate's recommendation and dismissed the petition.

On November 9, 1993, the Petitioner filed a Notice of Appeal and moved for a Certificate of Probable Cause. Chief Judge Joseph L. Tauro granted the Petitioner's Motion for Probable Cause. At the Court of Appeals for the First Circuit the Petitioner moved for and was granted permission to proceed on the original papers. On October 14, 1994, after oral argument conducted by attorney Davis, again assisted at the counsel table by attorney Saccoccio, the First Circuit affirmed the judgment of the District Court in an unpublished opinion. On January 6, 1995, the Petitioner filed a petition for Certiorari with this Court which was denied on February 27, 1995.

In 2011, attorney Saccoccio filed to be appointed as the Petitioner's counsel to prepare a Motion for Post-Conviction relief based on new interest in basic constitutional protections.[1] After reviewing the matter further she recused herself due to her being a necessary witness in this matter. That prompted the Massachusetts Committee for Public Counsel Services to search for new counsel and the eventual appointment of attorney Stacy Silviera to replace attorney Saccocio. Ms Silviera took over the motion's preparation and the Petitioner, represented by her, filed a Motion for Post Conviction Relief twenty-three years after the original Appeals Court decision. The motion raised issues including: 1) the denial of the Defendant's constitutional rights to a public trial due to complete courtroom closure during his probable cause hearing, jury voir dire and jury selection resulting in a structural error; 2) ineffective assistance of original appellate counsel for failing to read or review the volume of trial transcript containing jury selection; 3) the failure of the trial judge to remove biased jurors

[1] This would be the first time Ms. Saccoccio was officially appointed as my counsel and not just assisting Mr. Davis on my case as a volunteer. She did appear to assist me when I appeared pro se in front of Judge Zobel regarding being tortured and held in a lightless, sewage flooded heat box for 6 months (at the time Harvard ran a prison project that was run by a hostile person involved in the case at bar). When asked by Judge Zobel if I was her client, she made clear that Mr. Davis was my counsel of record and that she was there as an observer. At this hearing Judge Zobel exclaimed "Nazis!" after hearing my captors statement that my head had not been bashed in, noting that I could not have sutured the back of my head, nor (as a New Yorker) known the location of the hospital. Judge Zobel's findings appear to have prompted Judge Chernoff to revisit his sentence and release me. Ms. Saccoccio also assisted me in escaping the distant reaches of Massachusetts upon release and returning me to New York in one piece. Ms. Saccoccio, who studied in part at Yale Law School, also managed to get the Dean of Yale Law School to recruit the firm of White & Case to successfully represent me pro bono against Harvard after my release. Despite her involvement with my legal matters listed above she was never my attorney of record prior to 2011.

for cause and seating same where defense counsel used all of his preemptory challenges; and 4) that the two identically worded indictments were constitutionally defective.

Although such motions are routinely routed to the original trial judge, in this case Judge Chernoff, the motion was apparently not given to him despite his still serving as a judge on call. Despite our belief that Judge Chernoff was reviewing the issues, it was held in limbo without any notice or explanation until being assigned to Judge Elizabeth Fahey, who had adjudicated war sex crimes in Europe. Apparently, less than 24 business hours after being assigned the case Judge Fahey, who previously worked for the same prosecutor's office at bar, summarily denied the relief in a two page decision. She declared fact finding unnecessary, and even had extra time to criticize the granting of in forma pauperis status by the earlier judge to boot. Afterwards the docket noted that the referral to Judge Fahey was made by Regional Administrative Judge Kimberly Budd (see Appendix D), who attended Harvard Law School with the Petitioner and who was friends with JD (and, in fact, was one of law students helping JD make her fictional claims), and whose father, former Assistant Attorney General Wayne Budd, and former U.S. Attorney in the district, opined in public, back in 1990, that the Petitioner did not deserve a trial (or something to that effect reports vary as to the quote).

Judge Fahey discredited Attorney Davis' affidavit that he did not receive or read the jury selection and empanelment transcript. Judge Fahey also ruled that the Petitioner was not prejudiced by the fact Attorney Saccoccio, who was at the time merely a spectator at trial but later assisted Attorney Davis on appeal and wrote one of the appellate issues brought by the Petitioner, was barred from the courtroom during jury selection. Judge Fahey stated: "This court relies on the [superior] court docket which does not reflect Attorney Saccoccio's appellate appearance on the day the jury was impaneled." This reasoning is confusing as appellate counsel does not enter an appearance in the lower court until after a trial has concluded and the losing party files a notice of appeal. Moreover, it's simply irrelevant - the prejudice resulting from Attorney Saccoccio being barred from the courtroom is only relevant to her representation when she agreed to assist on appeal after the Petitioner's trial.

The Petitioner filed a timely notice of appeal . He raised three issues in his brief: 1) the Petitioner received ineffective assistance of counsel where his appellate counsel read the jury selection transcript; 2) the Petitioner's right to a public trial was violated because Attorney Saccoccio was not able to observe the jury empanelment and was not apprised of the jury bias issue on direct appeal; 3) that the Court should dismiss as void the identically worded indictments.

On April 9, 2018, the Massachusett's appeals Court affirmed the order denying the Petitioner's motion for Post-Conviction Relief. An application for Further Appellate Review by the SJC timely filed and denied on June 29, 2018. This time Kimberly Budd, mentioned above, now an Associate Justice of the Supreme Judicial Court of Massachusetts, recused herself now that the proceedings were openly visible to the public. A timely request for an extension of time to Justice Breyer was granted and this petition for a writ of certeriori follows.

FACTS

On December 11th 1988 more than 25 years ago the the Petitioner a Harvard Law School student was in his student apartment when his former sex partner JD, a Harvard College, undergraduate arrived intending to obtain a copy of video tape that she consensually made depicting her disrobing until nude the Petitioner and JD engaged in vaginal and oral sex. This formed the basis for JD's allegations made 5 months later that her former boyfriend had raped her.

The Petitioner second-year law student at Harvard Law School and JD met at a dance at Harvard College on April 23rd 1988 (Tr. II/42). During a brief conversation the Petitioner mentioned that he had founded "The Society of Black

Professional Entrepreneurs"[2] at Harvard Law School, which was a program for the black community that assisted small businesses and non-profits to navigate legal pitfalls. The Petitioner did not ask JD for her phone number or on a date that night.

JD approached the Petitioner in Harvard Yard a week later. During that encounter the Petitioner asked for her phone number and shortly thereafter called to arrange a dinner date (Tr. II/121). the Petitioner and JD engaged in consensual sexual intercourse that night (Tr. II/43-44). JD testified that she considered herself to be the Petitioner's girlfriend after they had sex despite the fact that it was only the third time she met the Petitioner and their first date (Tr. II/ 127-129).

In May of 1988 less than a month after the first date the Petitioner asked JD to make a video tape of them engaged in sexual intercourse so that he could view it during summer break (Tr. II/45-47). JD thought about it for a week or so before agreeing to make the video ("Videotape No. 1") (Tr. II/129-133). The Petitioner and JD continued dating during the summer recess, visiting each other's respective homes and engaging in consensual sexual intercourse (Tr. II/135-138) including a threesome in New York City with another male Harvard student. Despite learning that the Petitioner had a girlfriend in New York that summer JD continued to date

[2] The group's name was a place holder while a better name was sought. While, given the name, it may not be surprising that former First Lady Michelle Obama attended the first meeting, the group had members of a variety of ethnicities and political bents, including, for instance,U.S. Deputy Attorney General Rod Rosenstein.

the Petitioner and engage in consensual sexual relationship that fall at Harvard (Tr. II/139-142). At this point JD had become the secretary of the Petitioner student organization (Tr. II/48-49)

In October of 1988 the Petitioner's requested that JD make another nude videotape. JD considered the request and agreed a few days later. JD was aware that yet another male Harvard student would be present with the Petitioner while she was being taped.

The Petitioner broke up with JD in November of 1988 (Tr. II/140-142; Tr. II/146-149). Twice JD went to the Petitioner's apartment to retrieve personal items (Tr. III/8-10). On December 9th, 1988, during Petitioner's take home finals, after coordinating with the other male student on the tape, she claims to have begun worrying that others might see the tape. JD called the Petitioner and requested that videotape number to be erased (Tr. III/12-14). The Petitioner refused (Tr. II/68-69). JD called the Petitioner the next day and the Petitioner again refused to erase the tapes. JD again called on December 11th, 1988 the Petitioner agreed if she would make him ejaculate twice (Tr. II/72). The Petitioner call back and said JD could have a copy of video tape for $10 (Tr. II/73). After coordinating with the other male student, JD went to the Petitioner's apartment alone that day to retrieve "her" copy of the tape (Tr. III/30).

Upon arriving the Petitioner showed JD part of her own footage in video tape number 2 (Tr. II/73-76). JD told the Petitioner she would give him oral sex but she would not agree to vaginal sex (Tr. II/82; Tr. III/34). JD gave the Petitioner oral sex (Tr. III/34). Next the Petitioner brought JD to his bed put his penis in her mouth and performed oral sex on her and then engaged in vaginal intercourse (Tr. III/35; Tr II/84-86). JD hit JW's back and stated she was going to go to Harvard Health Services (Tr. III/57-58). The Petitioner then brought JD into the shower with him where she washed his back (Tr. II/91; III/40-42).

After dressing JD threatened the Petitioner that she was going to tell the dean that he raped her (Tr. III/52, 64). The Petitioner responded that he had video tape number one would show them having sexual intercourse in a variety of ways including JD smiling and making faces at the video camera (Tr. III/52-53, 66). JD became angry and kicked the Petitioner in the shins and left the apartment crying (Tr. II/94-96; Tr. III/67-70).

JD told to women in the hallway that nothing was wrong (Tr. II/94-97). She said the same thing to Harvard security guard outside the building but he brought her to his office and she's as he saw she was extremely upset. JD refuse to speak to the security officer and the first two Harvard police officers he called. JD only spoke when officer Lorraine Donahue arrived she told her she had gone to her former boyfriend's apartment. He had video tapes and wanted sex in exchange for

erasing them and that he raped her (Tr. II/79, 102). Officer Donahue took JD to Harvest Health Services but JD refused the gynecological examination (Tr. II/79, 102; Tr. IV/48). JD did not want to press charges or apply for a restraining order or seek criminal charges (Tr. II/102-103; Tr. IV/47).

On January 11th 1989 with the assistance of Harvard Dean Janet Viggiani, JD wrote a letter to Dean Vorenberg of Harvard Law School claiming that the Petitioner had engaged in the pattern of sexual coercion dating back to April 23rd 1988 requesting that he be investigated (Tr. III/81-84). In response the Law School conducted in an investigation and preparation for the administrative hearing as to whether disciplinary action would be taken against the Petitioner. Harvard attorney Martin Gideon's was appointed to represent the Petitioner throughout the law school proceedings (Tr. IV/75). Statements attributed to the Petitioner in two written reports from the administrative investigation which were not taped came into evidence at trial through the testimony of Harvard's investigator (Tr. IV/77-78, 97).[3]

Certiorari is appropriate in the interest of justice because the Petitioner was convicted on the thinnest of evidence. He was denied the effective assistance of appellate counsel on appeal and large part due to the violation of his constitutional

[3] The Administrative Board hearings were taped, but the recorded testimony under oath, contradicted the investigator's "memory" but were not entered in to evidence.

right to a public trial during jury selection and he also was denied his constitutional rights to an impartial jury or jurors with pecuniary interest in Harvard. These tainted jurors should have been immediately disqualified prior to credibility determinations. See Hardy v. United States, 375 US 277, 288 (1964).

Certiorari is also warranted because the Petitioner's constitutional right to a public trial was violated by the closure of the jury selection to his mother and an attorney observing the trial with her who ultimately worked on the appeal and who would most likely have caught the constitutional error had she been able to observe the proceedings.[4] Petitioner's Sixth Amendment right to effective assistance of appellate counsel was violated where his appellate counsel did not read the volume of the trial transcript containing jury selection and empanelment. See Hardy V United States, 375 US 277, 288 (1964). Defendants also seek review of the denial of his right to an impartial jury or jurors with Harvard affiliations and pecuniary interest in Harvard but not automatically disqualify and his trial counsel forced to exhaust is peremptory challenges removing said jurors.

[4] Attorney Saccoccio, whose volunteer work was directed by attorney Davis, had just finished a federal appellate clerkship and had been immersed in such issues. Since she was only able to work on discrete elements of the appeal that were given to her by the counsel of record. Moreover, attorney Davis was, and is, an experienced attorney, a former federal Magistrate Judge himself. It would be precocious for a young attorney to assume that an experienced veteran had simply missed such an important issue on appeal- particularly when he had preserved the issue on the record (which no one saw until this decade).

REASONS FOR GRANTING THE PETITION

The Sixth Amendment to the United States Constitution provides that the accused shall enjoy the right to effective assistance of counsel. Failure to read a review trial transcript is not within the bounds of reasonable professional judgment and is per se and effective. Strickland vs Washington, 466 US 668 (1984). Simply put the transcript is indispensable for effective appellate advocacy:

"The most basic and fundamental tool of an appellate Advocates profession is the complete trial transcript, through which is trained fingers me leaf and his trained eyes eyes may roam in search of an error, a lead to an error, or even a basis upon which the urge a change in an established and hithero accepted principle of law. Anything short of a complete transcript is incompatible with effective appellate advocacy." -- Hardy v. United States, 375 US 277, 288 (1964).

The appeals court decision dismisses this Court's precedent stating: "the evidence flaw in the defendants argument is that even assuming [attorney] Saccoccio was at times barred from the courtroom during the jury empanelment, Davis, defendant's highly experienced criminal trial lawyer, was not."

In Hardy, however, this Court holds that even trial counsel who serve as appellate counsel are required to read the entire trial transcript. Contrary to the

Appeals Court reasoning, it is irrelevant that attorney Davis was also trial counsel and his skill level is simply irrelevant. Attorney Davis' affidavit is clear that he failed to order, read, or review the jury selection transcript. Davis states that he has no memory of ever receiving a reviewing the jury selection transcript and that after reviewing attorney Saccoccio's affidavit -- which states Davis never gave Saccoccio the volume of jury selection -- Davis directly acknowledges his ineffectiveness on appeal:

"Put simply there [was] no strategic or tactical reason why I would not have read the May 1, 1990, jury selection transcript and would not have given the volume two Attorney Saccoccio for review as well, as Attorney Saccoccio was assisting me with defendants direct appeal."- Attorney Davis Affidavit.

The appeals court's reasoning that Attorney Saccoccio did not render ineffective assistance of appellate Council because she was newly minted is similarly a thinly-veiled attempt to sweep this issue under the rug.[5]

The appeals court misses the entire argument that the failure to honor the constitutional requirement for an open trial, an open jury selection, had severe

[5] The appeals court misrepresents Saccoccio's affidavit claiming she" admits she knew none of the facts of the case, including the victim and witnesses had Harvard associations." Rather Attorney Saccoccio's affidavit states: "Prior to trial I knew nothing of the case or fact pattern, except from brief conversations with defendant's Mother the day before the trial commenced."

consequences and severely prejudiced the Petitioner here. Attorney Davis is taking the blame for rendering ineffective assistance of appellate Council and for failing to provide attorney Saccoccio with the jury trial transcript. That is precisely what precluded her from providing effective assistance of counsel because she was directly barred from entering the courtroom during the voir dire. Not having the transcripts, and not personally observing the improper seatings prevented her from effectively arguing the issue on appeal, through no fault of her own.[6]

The appeals court denied the defendant's claim reasoning that it was sheer speculation that Attorney Saccoccio a former law clerk to United States court of appeals for the 10th circuit "may have spotted a genuine appellate issue [] which Davis somehow missed" is itself defied by logic and the affidavit of counsel where the defendant explicitly complained to both Attorney Davis and Attorney Saccoccio he's extremely concerned about the Harvard affiliations of the jurors. The Appeals Court simply ignored the defendants affidavit paragraph 10, which states:

"During the Appellate process in federal habeas process I remember expressing my concerns about the jury composition to both attorney Davis and

[6] Attorney Saccoccio states in her affidavit (par. 19) that, "since I was barred from the courtroom by court personnel during jury selection, I did not observe jury selection and, without the relevant trial transcript, could not have recognized that they were jury selection issues that should have been brought in the Defendants direct appeal." Attorney Saccoccio avers (par. 13) that she "never received the transcript of jury empanelment" from Attorney Davis and that she first "received a jury selection transcript, more than 20 years after [Petitioner's] trial."

attorney Saccoccio. I specifically stated that I was concerned with the number of jurors with Harvard affiliations in the jury pool. I also stated my concern that the jury pool have been all white and denied me of the jury of my peers. My appellate brief did not include any issues regarding jury selection." - Watkins Affidavit.

The Petitioner stated that he "recalls Attorney Saccoccio telling him that she did not know what I was talking about with regard to my concerns about jury selection and the number of jurors who had Harvard affiliations." Thus, the violation of the Petitioner's right to a public trial, "procedurally waived" or not, denied the Petitioner his Due Process rights and harmed him by the failure to bring the jury bias issue in his direct appeal and the more favorable standard of review he would receive had the issue been raised. Moreover the appeals court reasoning is further undercut by the odd but obvious fact that 10 of 51 jurors reported that they had Harvard connections, a fact even recognized by the Harvard Crimson undergraduate reporter.[7]

Jury Empanelment Error

[7] see Joshua A. Gerstein, "Watkins' Trial to Open Today- Jury Selected to Hear Rape Charges Against Law Student" (May 2, 1990):

A question about Harvard affiliation drew the largest number of hands. Ten potential jurors indicated they or close friend or member of their family that attended the University or was employed at Harvard. Chernoff interviewed jurors who gave positive responses to questions and excused them if he determine the they might be biased.

Finally, reversal is required where a judge refuses to excuse any juror who should be excused for cause, and as a result the defendant exhausts all preemptory challenges and is forced to accept a juror for whom he otherwise would properly have challenged. The presence of even one biased deliberating juror is sufficient to deprive the defendant of this right and require a new trial. Here at least one or more jurors should have been disqualified prior to any credibility determinations due to having pecuniary interest in Harvard. Due to the presence of more than one biased deliberating juror the Petitioner was denied his right to an impartial jury. The error is structural and requires reversal. Irvin v. Dowd, 366 US 717, 722 (1961).

This is a case where the defendants "cause" at trial was not only to defend himself against date rape charges but also to remain at Harvard Law School and receive his Harvard Law School degree. In essence, fighting the rape allegations was also fighting expulsion from Harvard Law School. This case was unique by any measure. While Harvard was not a party in this case, both defendant and the complainant were Harvard students, the alleged rape occurred on Harvard's property, all seven witnesses were Harvard officials or students, and the prosecutor, Professor George Fisher, pointed out Harvard Dean Janet Viggiani to the jury as a supporter of JD.

Moreover, before charges were brought, Petitioner had sued Harvard for summarily blocking him from campus in violation of the finding of the

Administrative Board which had not barred him from campus and for extortion.[8] During his trial in the case at bar, that lawsuit remained pending. Thus, Harvard had a direct pecuniary reason to engineer Petitioner's conviction and made Dean Vigianni available for the purpose to assist Professor Fisher to that end. Shortly after the trial Professor Fisher was awarded his first academic posting at Harvard as a reward for his loyal service and willingness to bend all the rules to accomplish the desired objective for Harvard. Blocking Blacks from the jury pool, and filling it with fellow Harvard affiliates greatly increased Professor Fisher's chances.

> "It is not there for a pecuniary interest only, or chiefly, that disqualifies a juror but anything which may operate to create a prejudice and bias in the mind, either against the party or his cause, is deemed an adequate cause of challenge...[...] Therefore it is, that the fact that there exists a cause of bias, such as kindred, prejudice, interest in the question, though not in the event of the suit, are held sufficient to disqualify a jury without, any inquiry as to its effect on his in partiality." Flagg v. Worchester, 8 Cush. 69 (1851).

[8] Watkins v Harvard University, Second Circuit, 89-7961 (1989). Petitioner was never or suspended expelled by the Law School faculty until being dismissed upon the conviction at bar. The faculty left leave to apply for readmission upon resolution of the within conviction. The Administrative Board's found Petitioner guilty of "unauthorized videotaping" prior to the within criminal charges being brought. They imposed a reprimand which is still the only penalty imposed by the Administrative Board and Faculty. The lawsuit also alleged that Harvard's conduct in pressuring my to agree to pay $82 thousand dollars to JD and her lawyers in order to receive a non-disclosure agreement and end the Harvard and potential criminal complaints was extortion. The action was filed prior to any criminal process. The extortion allegation did not apply to Professor Herwitz and the rest of the Administrative Board, but did identify other Harvard officials as directly involved in the extortion including Dean Janet Viggiani.

Failing to remove for cause jurors who indicated any pecuniary interest makes a credibility determination obsolete.[9]

Once it is clear a juroor has a pecuniary interest, however slight, in a party or that party's cause. Here Harvard's desire to use a criminal conviction to foreclose civil liability for its involvement in extortion demands and its failure to follow its own rules relating to barring a student from campus. The decision regarding a pecuniary interest in the party, or the parties cause, is a "disqualification" made prior to any credibility determinations by a judge. The fact that this case holds such a unique fact pattern for both parties and all witnesses were from Harvard the alleged rape occurred in Harvard housing in the Commonwealth, represented by a Harvard affiliate who would later be hired by Harvard, who used a blatant strategy of pointing out Harvard Dean Viggianni in the gallery as supporting the complainant, heightened the need to ensure that no juror with pecuniary interest or specific bias was seated.

Notably juror 10-4 who was seated in seat 10 should have been disqualified by Judge Chernoff because his firm had direct financial interest tied to Harvard University. Juror 10-4 stated, "My firm has several different research business collaborations with people of the medical school with Brigham and Women's, and

[9] See eg, United States v. Polichemi, 219 F.3rd 698, 704 (7th Cir. 2000) "a court must excuse a juror for cause if the juror... Has even a tiny financial interest in the case.")

[sic] in NGH." There can be no clearer statement of a pecuniary interest with Harvard than the juror's statement that his business derives income from collaboration with one of Harvard schools (Tr. I/28). Notably rather than excuse for cause the judge explicitly stated: "You're what we're looking for" (Tr. I/29) This statement made by the judge, on the record, in front of counsel made it clear that any objection by defense counsel to the judge's decision not to excuse juror 10-4 for caused would have been futile. After juror 10-4 was seated attorney Davis requested an additional preemptive challenge to remove juror 10-8 which was denied and the defendant was forced to use a preemptory challenge to remove juror 10-4 from the box we should have been disqualified for cause. (Tr. I/85).

Juror 10-08, in Seat 13, was a deliberating juror who received her B.A. from Harvard in 1983 and her husband graduated from Harvard in 1966 (Tr. I/22).

Jurur 12-7 was a current female, doctoral student at Harvard Graduate School for the Arts and Sciences, should have been disqualified as Harvard was funding her graduate studies. This clear pecuniary interest is sufficient to disqualify the juror from service regardless of any credibility determinations. Juror 12-7 stated that the rape charge "hits rather close to home for young woman" (Tr.I-19). Rather than simply disqualifying her or removing her from caused due to her statement Judge Chernoff sent her back to the panel. (Tr. I/18, 19, 54).

For the foregoing reasons Petitioner was denied his constitutional right to an impartial jury and effective appellate representation and what about open trial open trial.

Double Jeopardy

The duplicate indictments violate the proscription against Double Jeopardy. Double Jeopardy trump's collateral estoppel and exhaustion. Unlike collateral estoppel Double Jeopardy exist in the Constitution's Amendment

In United States v. Panzavecchia, 446 F. 2d 1293 (5th Cir 1971) the Fifth Circuit was the first of the federal appeals courts to address duplicate indictments. In Valentine v. Konteh,395 F. 3d 62 (6th Circuit, 2005), the Sixth Circuit directly addressed the severe problems caused by allowing duplicate indictments to stand. It has been followed by others and the jurisprudence has grown, but in my case the power of Harvard's extortion team has created a Catch 22, in which even a direct abomination such as my conviction can stand due to trickery and financial incentives. Quite frankly, I am not up to the task, given my current circumstances and lack of resources, both financial and research, to address the problems with this point.

This Court's long standing rules and practices existing long before any currently sitting justice was even born, rewards lower courts for dishonesty and trickery. Perverting res judicata and collateral estoppel to allow abominations such as my conviction for the same thing, on the same date, at the same time to stand despite directly violating the Double Jeopardy clause of the Constitution. The lower court that pressures attorneys to drop causes, the lower courts that destroy careers of attorneys who do NOT waive rights the lower court would rather not enforce; these are the courts that thrive in this scheme where error is not important to the High Court unless political pressures encourage review. But consider this, when a sitting President is attacking the Third Branch for its forum shopping rewards, it can be clearly shown that residents on Massachusetts and the First Circuit do not enjoy the protections against double jeopardy.

Moreover, with respect to Harvard's influence on the courts in this case, I am not up to the task of showing you how the Second Circuit has been perverted by an openly corrupt Chief Judge affiliated with Harvard, whose twin brother was a sitting judge on the court to which I am petitioning you to grant certiorari. And in return for his service, he was appointed to a federal judgeship by my one-time future roommate. I am not up to the task of showing how Judge Fahey's fast work had more to do with that appointment than the slap to my face it represented.

I cannot show you how Chief Judge Katzman, fixed a circuit panel with District Judge Jed Rakoff, whose brother, a Harvard professor actually participated in my proceedings before Harvard. And I am not up to the task of explaining why this was done to counter the late Judge Trager's (also a Harvard affiliate) opinion against Harvard and why Harvard attacked the late Chief Judge Conrad Duberstein and how it all relates.

But I can tell you that in addition to the public sanctions visited upon my attorneys since 2012, they have also been subject to severe penalties in private (too severe to be legitimately private): a modern, true to life Star Chamber by Chief Judge Katzman, Judge Reena Raggi, and Chief Judge Lorretta Preska. But I'm not up to that task. I don't know how to raise the issues of proof needed to show that they all relate. But I can tell you this should anyone read the Southern District of New York and Second Circuit dockets on my cases, and those involving unemployment class actions, the corruption is in plain sight- the judges themselves are involved in the extortion. The proof of that statement would be in the decisions and transcripts, surprisingly, of a New York State judge now retired, Lucy Billings, and the proceedings by my attorney before her.

When the courts can directly attack attorneys for raising valid issues, the idea that the attorney acts for the client in waiver situations is pure sophistry.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kevin Watkins

Date: February 11, 2019