

*old
obsolete*

United States District Court
for the
District of Massachusetts

Michael Elberry

v.

Robert Stefko et al.

Civil Docket
#98-10163

Plaintiff's Opposition
to
Defendant's Motion for Summary Judgment

The plaintiff Opposes the defendant's Motion for Summary Judgment although he is impeded from doing so due to imprisonment. The plaintiff's entire file of this case is at his former residence, outside the prison. It was not until this plaintiff was imprisoned on a parole defarrer did the Court allow the defendant to serve the plaintiff with a Summary Judgment Motion. The plaintiff received service of that motion on 10-31-00 at S.E. C.C.-Prison. Although the defendant was properly notified the plaintiff was no longer at Concord Prison where the defendant made service. At this date the plaintiff is unable to acquire many of the documents and case work he needs to complete this Opposition.

There are no typewriters available here at S.E. C.C.-Prison for the plaintiff's use at this time. The plaintiff is unable to make the document copies necessary to complete this Opposition at S.E. C.C.-Prison.

The plaintiff has alerted the Court numerous

tires, to the situation, as above, and has received no reply. The plaintiff has no 8½x11 paper at this time and opposed accordingly.

This Opposition should be read in conjunction with the Plaintiff's Motion for Summary Judgment, see Ex. I. See Ex. I, Ex. 2 and the consolidated complaint (Skloot et al.) for Background Facts.

The plaintiff says the following counts of his complaint, as above docketed, should go to a jury as per the standards of Rule 56 of the F.R.C.P.

I. Legal Malpractice (Count II of the complaint) - as a result of both intentional wrongful acts and negligence.

The evidence of Steketoff's malpractice is "gross & obvious" as complained and as demonstrated in this Opposition. No lawyer should admit as Steketoff does in P's 34-54 (especially #40) of his alleged "undisputed facts." This is a continued admission to malpractice by Steketoff.

The arrest of Elbry on 8-5-94 at E-2 Mini-Storage, Shrewsbury, Mass. for a violation of Mass. C. 269-10a was caused by a handgun being in his car (the car was inoperable & unregistered), which was in turn locked in an E-2 Mini-Storage garage style unit that was leased and controlled only by Elbry. This fact of arrest cause is undisputed by Steketoff. The gun in Elbry's car, as above, could never be a violation of Mass. C. 269-10 at 8-5-94. See Mass. 269-10a & Com v. Seay 383 N.E.² 828, 376 Mass. 735 ('78) firearms under the "ex-

clusive control" of a citizen can never constitute "carrying" or a violation of 10a on 8-5-94). It is also undisputed by the defendant that Elbrey had a valid F.I.D. card on 8-5-94 making him free of any 10b violations.

Sheketoff was alerted to the facts of Elbrey's arrest prior to the arraignment of 8-8-94, see aff. #17.

If Sheketoff had followed Elbrey's orders as in aff. #21 through #28 to present Elbrey's valid F.I.D. or proof of it to the presiding district judge on the gun case the gun charges all would have been dismissed. Further, had Sheketoff immediately, as ordered by Elbrey, alerted the judge at the arraignment of 8-8-94 that Elbrey had a valid F.I.D. and motioned to dismiss all @ gun charges Elbrey would have been free of the charges as a matter of law and the malicious prosecution and false imprisonment would have ended, see aff #26, prior to the stay revocation hearing of 8-10-94. See Ex.1 p. 4-8.

As per Affs # 40 & 41, the only evidence presented at trial was Ex. A to the complaint (see Ex. D-B1) which proved an absolute defense to all the gun charges, that Elbrey had an F.I.D. on 8-5-94. The gun charges were disposed of as a matter of law by exactly the same procedure or amount of activity Elbrey ordered Sheketoff to take from 8-8-94 through February 95. See Ex. I p. 4-8. Judge Zide, due to proof of Elbrey's F.I.D. of 8-5-94, found that Elbrey was not guilty of the gun charges, as a matter of law, the F.I.D. card was an absolute defense, (license), to the gun charges, all, and that is the law of this case. Mullen & Smith Vol. 4 p. 182. ~~The underlying criminal case of 4-3-95, or trial, before Judge Zide~~

determines if an issue in this civil case is one of law or fact. Mullen and Smith Vol. 4 p. 182. See Ex I-Aff #7 & Ex I p. 3 (last P).

Not only is there enough evidence of malpractice by Shetoff to fulfill the elements of legal malpractice, but the plaintiff has produced enough evidence, that as per law, there should be a summary judgment in the plaintiff's favor regarding each element of legal malpractice, this per Ex I (pgs. 8-22).

Judge Zide and Brekka must have known that the law that pertained to Elberg's E-2 gun arrest was well-settled or obvious, as they never argued law; the judge was only made aware of the arrest facts at E-2. There was no prosecutor present, as the Worcester P.A.'s Office decided to pass on the trial of the gun charges. see aff #46 & Ex H thru Ex C of Ex I.

"Unsettled law"

The defendant claims that Mass. C. 269-10a was debatable or unsettled on 3-5-94 regarding the arrest of Elberg for "carrying." Judge Zide's not guilty verdict, as above, due to the F.I.D. card being an absolute defense to the gun charges was an issue of law. The existing gun laws at 3-5-94 in Mass. made it uncontroversial that the guns in Elberg's E-2 suit were not a violation of C.269-10a or any other law. See Ex I pg 11-14 ("Unsettled or debatable law defense...") for a full discussion/argument why the defendant is not entitled to judgmental immunity regarding the 10a charge.

Sheketoff's Claim of Judgmental Immunity & Unsettled law Should be stricken from his Motion for Summary Judgment.

Per Ex. D of Ex 1 Sheketoff declared in open court on 8-8-94 that Elbey had committed "no crime" regarding the arrest at E-2 because Elbey had a valid F.T.D. card. See pgs 10-9th through 16 pp. 8 line 10. He said the same thing to Elbey on 8-5-94, see affs. #12 through #4 thru #17 thru #19. Sheketoff's claim of unsettled or debatable law and related judgmental immunity should be stricken.

Reasonable Officer/Attorney Test.

Per Exd -I (p. 4-18), the S.P.D. defendants, in the consolidated case, 97-11743, are entitled to no immunity because "there was no probable cause to arrest Elbey at E-2 and a reasonable well-trained police officer would not have arrested Elbey on 8-5-94 because it was against the law."

If a police officer should have seen the false arrest and malicious prosecution of Elbey as complained in the Skot case, then Sheketoff should have recognized that Elbey's arrest, prosecution & imprisonment were clearly illegal. This also is conspiracy evidence. Sheketoff claims per his Motion for Summary Judgment that he has years of experience in criminal defense & gun cases like the one against Elbey. There is no immunity for Sheketoff. See Aff. #43, Sheketoff had the same information. See also Ex 1-I-2-e (pgs 18-20) "Concession". Here Sheketoff documents that he was guilty of at least malpractice but blames Elbey. Obviously, Sheketoff should not receive Judgmental immunity or be able to claim the gun law surrounding 10d & Elbey's arrest were unsettled.

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As per Aff#43 Shekoff had the
same information and evidence as the cops.
Shekoff was surely responsible for the
well-settled law surrounding the E-Z access,
as per Ex. I-p.11-14.

Shekoff's claim for judicial immunity
must be stricken. He knew Elberg was not guilty
as he documented in open Court per Ex. D of Ex. 1. Shekoff
cannot now claim (after he was contaminated by Elberg's
evidence, see II this opposition below) that the laws surround-
ing Elberg's E-Z arrest were unsettled. There can
be no judicial immunity for Shekoff.

Expert Witness

The defendant claims the plaintiff
needs an expert witness (par a Hancy) regard-
ing Legal Malpractice (negligence/breach of
duty element) Count of the plaintiff's complaint
in order to present the required proof of Stan-
dard of care to the jury. However, the case,
as per Count II of this plaintiff's complaint
requires no expert witness as it fits into
the U.S.C.A.-1st Circuit's exception in
Wagenaar v. Adams, 828 F^{2d} 186, 219 (87),
of "gross & obvious" malpractice which requires
no expert to testify to Shekoff's mal-
practice. See Ex. I-I-C-2 (pgs. 14-20) "No
Expert Witness Needed..." for a complete
discussion why no expert witness is
needed for any of the plaintiff's complaint
against Shekoff.

The standard of care Shekoff should have taken regarding the "Stay Revocation"
is also "gross & obvious" and fits into the Wagenaar exception i.e. All
Shekoff had to do was follow Elberg's order to present the F.I.D. or proof
of it before the 8-10-98 and there would have been no violation of the

Stay. No Expert is needed to present evidence as to what Sheketoff should have done at the Stay or regarding its revocation, but see next, below.

Stay Revocation Hearing of 8-10-94

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If Sheketoff had followed Elbery's orders in affs. 21, 26, 27 to Show the Mass. District Court proof of the F.I.D. and Motioned to Dismiss the charges before the 8-10-94 "Stay Revocation Hearing" there would have been no violation of the Stay when Elbery went before Toomey on 8-10-94. As per aff#42 Elbery was on probation during that Stay pending appeal of the mayhem case from 7-15-93 through 8-5-94.

If the gun charges had been dismissed prior to the 8-10-94 Stay Hearing due to Sheketoff following Elbery's orders there would have been no violation of probation due to the gun charges and hence no violation of the Stay, as a matter of law. Toomey would have had to maintain Elbery's Stay had Sheketoff done as ordered by Elbery prior to 8-10-94.

Toomey based his revocation of the Stay on the S.P.D.'s representation through the Worcester D.A.'s Office that the F.I.D. was revoked. See Ex D p.11, 15-97 of Ex 1 (the Stay transcript).

Even if Sheketoff had been only dilatory in following Elbery's orders to show the court proof of the F.I.D. and Motion to Dismiss the charges, Elbery would have been free because as per Ex D of Ex 1 (p.11 lines 5-14 & p.13 lines 1-8) if there is "no crime" by Elbery regarding the gun charges due to the fact Elbery has a valid license then he would rehear the Stay. This statement taken with Toomey's reason for revocation means Toomey would have reinstated the Stay.

Further, Sheketoff agreed that is what

Toomey meant, but said Toomey did not know the gun laws. See aff. #25a. Either way no expert witness is required to tell a jury presenting proof of the F.I.D. would continue the stay.

Expert Opinion to Predict a Judge's Decision

The defendant cites no legal authority that allows a bar attorney to predict, as an expert witness, what a judge would decide via a stay or any other type of case. If there was no violation of probation, due to Sheketoff following Elberg's simple orders, above, then there would have been no violation of the Stay. If there had been no violation of probation the judge would not have needed to rule on a violation of the stay.

See Gleann v. Aiken, 409 Mass. 699, 569 N.E.² 783 (91) which says probing the mental process of a trial judge, that are not apparent on the record of the hearing proceeding is not permissible. The only thing that was apparent from the record, Ex. D of Ex 1, is that, as above, the judge would have reinstated the stay if Elberg had a valid license.

Sheketoff's claim about what Toomey would have done if the license was timely produced, is meaningless as a matter of law and a continuation of cover-up of his conspiracy.

Federal Law

As per aff. #43 and, Ex. 2 p. 14, this plaintiff obtained from the Federal B.A.T.F. documentation that said the B.A.T.F. declined to investigate Elberg's guns at E-2 because he had a state issued license for them on 8-5-94.

The only ones that could have told the B.A.T.F. agents at E-2 on 8-5-97 that Elbery had an F.I.D. was Steketoff's co-conspirators the S.P.B., as they were the issuing authority of that F.I.D. card, see aff. #8. The B.A.T.F. on 8-5-97 not only passed on Elbery's guns due to license but left the E-2 arson investigation, unfortunately, up to the S.P.B. (the folks responsible for the arson). Elbery was never accused of federal gun law violations and it is not an issue except as to Steketoff's new tactical claim below, see aff. #47. An attorney must keep his client informed about his case so that the client can make decisions on the case. 6th Amendment - U.S. Constitution.

Steketoff's Tactics

Steketoff, per his Motion for Summary Judgment, claims his refusal to follow Elbery's orders, as above, was tactical. The argument and law in this Opposition shows this claim by Steketoff of tactic is more fraud by Steketoff, and that, as claimed, per affs. #24-30 of the defendant, the alleged tactical reasons for not following Elbery's order to dismiss would only help keep Elbery in jail and subject him to extended malicious prosecution.

Without arguing federal jurisdiction, Steketoff's alleged tactic regarding federal gun law prosecution is meaningless for various reasons, below. Note, the plaintiff does not agree that Steketoff acted on such tactic or that it ever existed during his representation of Elbery on the gun charges, see aff. #47.

1. Steketoff claims a motion to dismiss would have

brought in the Feds, yet, he told Elbrey to plead guilty to all the charges, see aff. #38. Per Sheketoff's affs. #24,25,26 pleading guilty to the gun charges would cause federal prosecution.

2. Again, Sheketoff's claim that a motion to dismiss the state gun charges would have brought in the Feds via federal gun charges makes no sense as a tactic for the defense because the Feds had been brought in, regarding Elbrey's E-2 guns, and left. See above "Federal law."
3. Sheketoff argues in his affs #24-26 & 28 that filing a motion to dismiss (a formal one) would cause federal prosecution for Elbrey on the guns. Regardless of what stage of the proceedings of the case, the Worcester D.A.'s Office could have attempted to get the Feds involved and the motion to dismiss would have had no more triggering effect on federal prosecution than the not guilty verdict on the gun charges.
4. Elbrey told Sheketoff to investigate the B.A.T.F. because their involvement at E-2 was in the Worcester T&G. Sheketoff most likely knew via discussions with the Worcester D.A.'s Office and the B.A.T.F. that the Feds/B.A.T.F. had no interest in any prosecution of Elbrey due to his E-2 guns. See aff. #43.
5. Other tactical reasons

Sheketoff claims that a motion to dismiss would have brought in prosecutors more competent than the district court prosecutors defendant's affs. #27 & 28. The gun case against Elbrey was refused by the Worcester D.A.'s Office for indictment and Superior Court jurisdiction and that was in the Worcester T&G and Elbrey was alerted to this decision by inmates

at Concord Prison not Sheketoff. Elberg complained to Sheketoff about not being kept informed about his case. See Ex. B of Ex. 2 and aff #48. Obviously, the Worcester D.A.'s Office knew the gun charges were bogus due to information they had from the police.

6. Per Sheketoff's alleged tactics in aff's #29 & 30 (Sheketoff's affidavits) he is claiming I was innocent of the charges which is more contradiction of his affidavits. See defendant's affidavits #19 and undisputed facts #40 & 42-44 which says Elberg is guilty of the 10a charge. In addition, the tactics claimed in Sheketoff's affs. #29, 30 which are based on Elberg being not guilty of the charges is malpractice, as per Mallet and Smith, Legal Malpractice, 1996, Vol. 2 p. 524, the criminal defense attorney has a duty to argue his client's best case. All of Sheketoff's tactics would have resulted in keeping Elberg in jail for months unnecessarily. The best case, Sheketoff cannot escape, would have been to follow Elberg's orders to present proof of the F.T.O. and motion to dismiss because that order would have, as a matter of law, terminated, immediately, the gun charges.

Sheketoff advised - Go to jail

Per aff #38 Sheketoff's only tactic was to keep Elberg in jail as long as possible and to have Elberg plead guilty to charges that were groundless. This is in agreement with Sheketoff's aff. #19.

Sheketoff's Affidavit - saw Elbery's F.I.D.

Sheketoff, per his undisputed fact #32, claims he submitted to the Westboro District Judge at the Suppression Hearing an affidavit stating he saw Elbery's F.I.D. and that he was not provided any evidence of its revocation.

This is not what Elbery ordered Sheketoff to do, see affs #21, 27, 28 & Ex. 4-8. Further, Sheketoff does not, per his Ex. O (Post Hearing Memo in Support of Amended Motion to Suppress), or anywhere else, argue that an F.I.D. card is all that was required for Elbery to legally have guns at E-Z and be free of search & seizure. Sheketoff was ordered to present the Court the F.I.D. or proof of it.

Instead, Sheketoff in his Ex. O hints that an F.I.D. card is good for a long-barrel rifle, but says nothing about a 10a-carrying charge. Sheketoff never states that Elbery's F.I.D. is valid, but that he has received no evidence of its revocation. As a result, he says nothing in defense of the charges against Elbery.

At the Suppression Hearing of 10-21-94 and in his original motion to Suppress and his Amended Motion to Suppress, see Ex. P (defendants), Sheketoff did not say one word about Elbery having an F.I.D. as a defense to the gun charges. See aff #49 & Ex. S. of Ex. 2.-(Transcript Suppression Hearing 10-21-94)

Sheketoff's mention that Elbery had an F.I.D. card, per Ex. O p. 85, or that, per Ex. N-affidavit, he saw Elbery's F.I.D. and has not been given proof of its revocation is unintelligible for legal argument regarding the gun charges, in particular the 10a- "carrying" charge. Since Elbery was charged with 10a- "carrying" there

would have had to been some legal argument that the F.I.D. under the circumstances at E-Z was good to dismiss the charges, all.

Per defendant's Ex. Q, the judge's findings on the defendant's Motion to Suppress & Amended Motion to Suppress, after having a full day's hearing, the judge does not even comment on Elbey having an F.I.D. card. Evidently, the judge could not read Sheketoff's mind whatever Sheketoff was trying to say on his Ex. N.

The above mention of Sheketoff seeing Elbey's F.I.D. and lack of revocation production was of no legal consequence to the quo charges against Elbey or the illegal search & seizure. Sheketoff's mention in his Ex N#O of seeing Elbey; F.I.D. is consciousness of guilt on Sheketoff's part so that he could say he did something for Elbey's defense, but as above it was meant to avoid the issue so Elbey would stay in jail.

See also below, this Opposition, evidence and argument of the other counts of this plaintiff's complaint, including Fraud, Conspiracy, Breach of Contract which will also evidence of Sheketoff's malpractice both deliberate and due to negligence.

Count II of the plaintiff's complaint, Malpractice, must go to trial before a jury as per Rule 56 of the F.R.C.P.

II. Shekloff's Conspiracy to Cover-up illegal Search & Seizure in Violation of the 4th & 14th Amendment - (Count II of the Complaint).

If Shekloff had alerted the judge at the 10-21-94 Evidence Suppression Hearing, as advised by Elbery per afft. #34, that Elbery had a valid F.I.D. the charges would have been dismissed and the evidence suppressed. Per Mass. law on 8-5-94 a valid F.I.D. card establishes limits of a police search. Cow v. Seay, 383 N.E.² 828, 376 Mass. 735 ('78).

S.P.D. & Shekloff knew Elbery had a Valid F.I.D.

The undisputed fact of Elbery's arrest at E-2 was that both the S.P.D. and Shekloff knew Elbery had a valid F.I.D. card on 8-5-94, See affs. #10-19 and defendants undisputed facts #1, 26, 29 & 51, also see Ex. 2 (Plaintiff's Motion for Summary Judgment-Memo, 97-11743)-Part I-A thru C pgs. 4-18 ("Reasons for Summary Judgment against S.P.D. - Count I")

Shekloff had all the information that the S.P.D. had per Ex. 2-Part I pg 4-18. See Aff #43. Shekloff is presumed to know the law in those pages of Ex. 2, Mallen and Smith, Legal Malpractice, 1896, Vol. 3 s. 28.7 p. 638 (the attorney is required to know elementary and settled rules of law). The one exception to Shekloff's advanced knowledge was the "Sampson Defense" on p. 9 of Ex. 2 which Elbery alerted him to during the 10-21-94 Suppression Hearing after Sampson testified. See aff. #43.

Per Mass. law at 8-5-94 the S.P.D. were required to ask Elbery at E-2 if he had an F.I.D.

card before searching his unit, Com. v. Couture, 552 N.E.² 538, 540-81, 407 Mass. 178 ('90)(a citizen must be given an opportunity to respond as to whether he has a license for guns before he is searched & seized.)

More Evidence of Conspiracy by the S.P.D. regarding the Illegal Search & Seizure of Elbry's E-2 unit & Shekoff allowed it.

See Ex. d - II, (pp. 22-28) for more evidence of conspiracy by the S.P.D. to conspire to search and seize Elbry's E-2 unit and then conspire to Cover-up that illegal search and seizure

Shekoff had privy to all the same facts and evidence and information that is exposed in Ex. d - I and did nothing but allow the S.P.D. defendants to cover-up via conspiracy at the 10-21-94 Suppression Hearing that ~~cover-up~~^{illegal Search & Seizure}. See aff #44.

It was clear from the documentation produced by the S.P.D., newspapers, and Shrewsbury Fire Dept., as well as, evidence produced at the Suppression Hearing that the E-2 arson was out long before Johnson claimed he arrived at E-2. see aff. #50. Shekoff should have made it clear that if there was a consensual search or if the guns were discovered by the S.P.D. due to Elbry consenting to the S.P.D. entering his unit that it would have been on the Search documentation the S.P.D. used to gain the search warrant. Shekoff did not.

The above is enough evidence as required by Rule 56 to bring before a jury Elbry's claim, Count II of the complaint, that Shekoff conspired with the S.P.D. co-defendants to cover-up their illegal search & seizure of Elbry's

E-2 unit. Steketoff, as above, knowingly allowed the S.P.D. to change their story of cause to search the E-2 unit with impunity. In addition, all Steketoff had to do was tell the judge at the Suppression Hearing Elberg had a valid F.I.O. card & present proof of it, as ordered, and the S.P.D. conspiracy to cover-up their illegal search and seizure would have ended.

Count II as a result is supported by enough evidence for a jury trial as per Rule 56 of the F.R.C.P.

III Breach of Contract, Fiduciary Breach, Constructive Fraud - (Count IX of the Complaint)

Per Ex. I-I-2 p. 846, Sheketoff failed to follow Elbry's orders relating to the gun charges at E-2. Failure of an attorney to follow explicit orders of a client causes the client-attorney relationship to be contractual in nature as measured by the rules of agency and no expert witness is required. See Ex. I-I-2-c for authority cites for these laws. Sheketoff admitted that Elbry gave him orders that he did not take, this results not only in evidence for trial but an allowance and requirement of Summary Judgment for the plaintiff on this Count IX of the plaintiff's complaint. See also Ex. I-II, p. 52 and Ex. I last paragraph of p. 6 p. 8 - 1st paragraph.

IV. Fraud & Deceit - (Count VIII of the complaint)

Steketoff made the following misrepresentations to Elbey in order to induce Elbey to continue with Steketoff as his defense attorney regarding the gun charges so that Elbey would, in part, remain in jail until the appeal of Elbey's mayhem case was decided in January '95. This was one of the objects of the S.I.D. conspiracy Steketoff joined (see consolidated action 87-11743). The other objective of Steketoff's fraud was to get Elbey to plead guilty to the gun charges and get him convicted of those gun charges so he would be imprisoned on more false charges.

1. "Little Assurances"

Steketoff out of the "clear blue" decided sometime after the 8-10-94 Suppression Hearing that due to a '91 amendment to Mass. C. 269-10a that Elbey was guilty of carrying, see aff. #29. This after Steketoff told Elbey over the phone the day of arrest that there was "no crime", see affs #10-19. Steketoff had also declared in open Court, during the 8-10-94 Suppression Hearing that Elbey had committed "no crime". See Ex. D of Ex. I (p. 8 line 10 & p. 10 - 8 thru 11) regarding the gun charges. Note, the reason Steketoff decided Elbey was guilty of 369 10a is because he joined the S.I.D. conspiracy to convict Elbey of the gun charges. See II - Conspiracy, below, this Opposition.

Even though Steketoff decided Elbey was guilty of "carrying" Steketoff made "little assurances" that "there was probably something he could do" regarding the gun charges. See aff#30. This in order

to induce Elbery to maintain him as his defense attorney. As per this Opposition and Exhibits and supporting affidavits Sheketoff had no intention of doing anything for Elbery in terms of defense of the gun charges but ended up telling Elbery to plead guilty to the all 6 gun charges and go to jail for a year. See aff#38. This after Sheketoff had satisfied one of his conspiratorial objectives of keeping Elbery in jail until the Mass Court of Appeals decided Elbery's direct appeal of the "Attempted mayhem" conviction. See aff#4.

Elbery relied on Sheketoff's misrepresentation that he "could probably do something for him" regarding the gun charges, see aff#36, 3d and affs. 30-40, to Elbery's detriment as Elbery stayed in jail and was maliciously prosecuted, needlessly, for over 7 months until he fired Sheketoff. Sheketoff never intended to defend Elbery on the gun charges just convict him and keep him in jail. See the evidence in this Opposition and supporting documents.

2. Guilty 10a - "carrying" - Sheketoff convinced Elbery by confusing him

As per above this section IV-f Sheketoff misrepresented that Elbery was guilty of 10a - "carrying" at E-2. Sheketoff did this to induce Elbery to maintain Sheketoff's representation in order to keep Elbery in jail until the direct appeal of the "attempted mayhem" case was decided and to convict and imprison Elbery on the false gun charges, Elbery's detriment.

Had Sheketoff not made this misrepresenta-

tion then Elbrey would have hired another lawyer immediately, otherwise Elbrey would have had an attorney (Shuketoff) telling him he had to stay in jail and stand trial for nothing or false charges while Shuketoff refused to follow Elbrey's orders to present the F. I. O. card, as above. See aff #51.

As above, I - "Unsettled law" this opposition, Shuketoff admitted there was "no crime" by Elbrey regarding the guns at E-2. See affs. #10-19 & Ex. D. of Ex. I p. 8-10 & p. 10 line 9-16. Additionally, per Ex. I-I-C-1 the law of the gun case was obvious & settled. Shuketoff's advise or representation or statement that Elbrey was guilty of "carrying" was knowingly false & misleading.

More Misrepresentation by Shuketoff - Confusion Technique to Convince Elbrey

Shuketoff made further misrepresentations to Elbrey about Elbrey's C. 268-10a guilt via Shuketoff's confusion method or technique which he used to convince Elbrey he was guilty of 10a. See aff. 32173. These "confusion methods" Shuketoff used on Elbrey to convince Elbrey he was guilty of 10a were knowingly false, as above this section IV-a, because Shuketoff knew Elbrey was not in violation of any gun laws at E-2.

As a result of Shuketoff's misrepresentations that Elbrey violated C. 268-10a and his related misrepresentation used to convince or induce Elbrey of this, Elbrey relied on Shuketoff to defend him on totally false charges that Shuketoff knew were false causing Elbrey, to his befriement, as Shuketoff intended, to stay in jail and be maliciously prosecuted and falsely imprisoned. See aff #30-33.

3. Shekloff's (Acts) Refusals to take Elbrey's Orders & Related Verbal Misrepresentations.

Elbrey gave numerous orders to Shekloff during the pendency of the gun case and Shekloff refused. While refusing the orders Shekloff made verbal misrepresentations in order to induce Elbrey to rely on him to further represent him, Elbrey, on the gun charges. Shekloff's refusal to take Elbrey's orders, which would have resulted in immediate dismissal of the gun charges, were acts of fraud (misrepresentation & inducement) that Elbrey relied on to his detriment. The orders that Shekloff refused and the related verbal misrepresentations are as follows:

The 8-8-94 Arraignment

- a. Per aff. #21 Elbrey told Shekloff to present the valid F.I.D. to the arraignment judge on 8-8-94. Shekloff refused saying "it was not the right time to present the F.I.D. or alert the Court that Elbrey had a valid F.T.D. card."

Stay Hearing 8-10-94

- b. Per aff. #26 Elbrey told Shekloff, at the 8-10-94 Stay Revocation Hearing, to present Elbrey's valid F.I.D. to Toomey as a result of Toomey deciding if Elbrey had a valid license he would re-hear the stay revocation, see aff. #24 afft Ex. D of Ex. I (p. 11 line 5-14 & p. 13 line 1-9). Shekloff refused saying "Toomey is a Superior Ct. Judge and does not know the gun laws. See aff. #26"

c. As per aff. #28 Elbery told Shekloff to investigate his F.I.O. card and any related revocation of it by going to the Mass. Dept. of Safety. As per aff. #28 Shekloff refused this order saying he could get the same information through discovery of the case. See d next. This was a further misrepresentation by Shekloff because Shekloff had no intention of using the discovery that was yielded during the gun case regarding the revocation of Elbery's F.I.O. card for Elbery's defense.

d. Revocation discovery on the gun case

Elbery ordered Shekloff to get discovery from the prosecutor as to what evidence the S.P.D. had regarding the revocation of Elbery's F.I.O., see aff. #28, and Ex. I, p. 5, - order d. As it turned out Shekloff followed the order and was provided discovery evidence that there was no revocation of Elbery's F.I.O. card, see Ex. I (p. 5-6). However Shekloff misrepresented to Elbery that the S.P.D. would not respond to the discovery request for the revocation of the F.I.O., see AFF #12 of Ex. I. As in AFF. #13 of Ex I Elbery ordered Shekloff to go to the judge and get court orders for the discovery requests regarding revocation of the F.I.O. and Shekloff refused.

Shekloff knowingly and deliberately lied to Elbery that the S.P.D. and prosecutor would not respond to the discovery request regarding the F.I.O. revocation. Shekloff did not reveal (lied) to Elbery that the S.P.D. were admitting there was no F.I.O. revocation in order to more easily deceive Elbery and make Elbery

Elbery rely on Shektoff for representation. Shektoff let Elbery believe that the S.P.D. must be fabricating an F.I.O. revocation. See afft #10, 52.

Shektoff made the above misrepresentations in d&c; of this IV-3, both refusals of Elbery's orders (fraud acts) and verbal misrepresentations (lies), to Elbery about discovery on the F.I.O. revocation to induce Elbery to rely on Shektoff's legal representation which was to Elbery's detriment because it caused him false imprisonment and malicious prosecution or the object of the conspiracy Shektoff joined.

e. Elbery Orders Shektoff to present F.I.O. & Motion to Dismiss

As per Aff. #27 Elbery ordered Shektoff to present his valid F.I.O. or proof of it to the numerous judges presiding during the case. Shektoff misrepresented to Elbery that it was not appropriate under the circumstances and a waste of time and further that Elbery was guilty of so "carrying" so it would not make any difference and there would be no point to motion to dismiss. see aff. #45.

Shektoff knew these misrepresentations to Elbery were false regarding Elbery's order to present the F.I.O. & motion to dismiss the charges see Ex. D of Ex I p. 8-10 & p. 10 line 8-16 and affs. #10-19 which show that Shektoff had claimed there was "no crime" "no charge".

Shektoff failed to act on Elbery's order and verbally misrepresented, as above, various reason why the F.I.O. should not be presented and related motion

to dismiss raised. Both are instances of fraud.

The refusal of orders (acts of fraud) and related verbal misrepresentations used by Skeletoff to induce Elbey to continue Skeletoff as his defense counsel on the gun charges and keep Elbey falsely imprisoned and maliciously prosecuted were also to Elbey's detriment. Elbey relied on this act of fraud (refusal to present F.I.O. motion to dismiss) by Skeletoff and his related misrepresentations as intended by Skeletoff.

Summary - 3, although

The refusal by Skeletoff to take the above orders, a through e (including a §6) are acts of fraud. The related verbal misrepresentation were used to induce Elbey to continue Skeletoff as his legal defense counsel on the gun charges in order to continue the Skeletoff - S.P.D.

conspiracy to keep Elbey in jail and maliciously prosecute him (Elbey's detriment). Elbey relied on those refusals and related misrepresentations as he kept Skeletoff as his defense counsel on the gun charges. Skeletoff knew these acts of fraud and related verbal misrepresentations were false because he knew Elbey was innocent of the gun charges, as demonstrated above. No defense attorney would have done as Skeletoff did via these acts of fraud in representing Elbey on the gun charges.

4. Shekloff instructs Elberg not to make bail

As per aff#20 Shekloff told Elberg not to make bail at the arraignment of the gun charges. In addition, Shekloff misrepresented that "it would show good faith" not to make bail otherwise "Toomey will think you are running on the stay." These misrepresentations by Shekloff were made to induce Elberg, to act, by staying in jail so Shekloff could do his part in conspiracy with the S.P.O. (as per consolidated action 97-11743) to maliciously prosecute and falsely imprisonment of Elberg.

Elberg relied on Shekloff's misrepresentations, as above, to his detriment and stayed in jail as Shekloff intended. Shekloff was using his superior knowledge of the ^{law}, as perceived by Elberg, see aff#30, to take advantage of Elberg via this legal advice and opinion. If Elberg had done as he wanted to and made bail Elberg would have secured his F.I.O. card and remained free by presenting it to the court.

5. Shekloff's Entire Representation was Fraud

As per this Opposition, Ex. 1 and Ex. 2 Shekloff's entire representation of Elberg was an act of fraud chock full of Shekloff's misrepresentations of law, opinion, fact, and present intention to act in the future for the purpose of making Elberg act to his detriment. Shekloff's entire representation of Elberg on the E-2 gun charges was nothing but one inducement after another by Shekloff, via those same misrepresentations, used in order to keep Elberg in jail, so as to complete Shekloff's

side of the conspiracy between Shekoff and the S.P.B. See II below - this Opposition - Conspiracy Elbery did just as Shekoff intended via his fraudulent representation, Elbery stayed in jail and at every major event of the case was duped into agreeing with his attorney Shekoff to make exactly the wrong decision.

Per this Opposition Shekoff knew Elbery was innocent of the gun charges, he knew Elbery's FID had not been revoked without telling Elbery. Yet Shekoff deliberately represented Elbery falsely as if he was guilty and advised Elbery throughout the entire case (7 months with Shekoff) to act on that false representation so that Elbery would continue to be maliciously prosecuted and falsely imprisoned.

Shekoff's representation of Elbery was nothing but Shekoff's function in the conspiracy as complained. The conspiracy evidence in section II, below, is also Fraud evidence and Malpractice evidence.

LAW on Fraud & Argument

The defendant says the above fraud is not a misrepresentation of fact, so the plaintiff's fraud claim fails. This not the law. All of the above instances of fraud enumerated in section IV of this Opposition are either misrepresentations of law, opinion, fact or present intention to act in the future. Below is the law that allows the plaintiff's complaint of fraud.

Per Mass. Practice Vol. 37 s. 142 p 232 (89), the Restatement makes the misrepresentation of

fact, opinion, intention or law a basis for the tort of deceit. quoting Restatement, Second, Torts s. 525 which says,

one who fraudulently makes a misrepresentation of fact, opinion, intention, or law for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.

Question of Exact Knowledge or Opinion is a question of fact for a jury. M. Practice Vol. 17A s. 964 p 179

The question whether a statement concerns a matter susceptible of exact knowledge or whether it is one of opinion is usually a question of fact. Yaghvizian v. Saliba, 338 Mass. 798, 155 N.E.² 874 ('58) (quoted by Mass. Prac)

Flimsy Statements or Opinions - Grounds for Fraud

Per Mass. Practice Vol. 37 s. 144 p. 245 (89) - A representation made as of one's own knowledge when he had no such knowledge, or a reckless statement or a statement or opinion on grounds so flimsy as to lead to the conclusion that there was no genuine belief in its truth - any one of these is sufficient foundation for an action in deceit.

National Academy of Sciences v. Cambridge Trust Co. 3 Mass. Ct. Appeal 314, 317-319, 329 N.E.² 144, 147-148 ('75); Henderson v. D'Amato 15 Mass. App. Ct. 413, 422, 446 N.E.² 103, 109 ('93)

28 28

Misstatements of law - Is Ground for Fraud

Per Mass. Practice Vol. 37 s. 142 p. 237 (89), misstatements of law may be grounds for actionable fraud if the defendant occupies a position of trust and confidence toward the plaintiff or, being possessed of superior knowledge takes advantage of the ignorance of the plaintiff to deceive him by such misstatements. Prosser & Keeton on Torts (5th Ed-1984) s. 109, citing (6) Mass. S.J.C. cases for authority including Celucci v. Son Oil Co. 320 N.E.² 918, 2 Mass.App. Ct. 722, 723-732.

An Opinion may be Grounds for Fraud

Per Mass Practice Vol 37 s. 142 p. 235 (89)- An opinion which is expressed as a fact or an opinion expressed as an opinion but not entertained (falsely made) as an opinion is actionable because in both instances the person has misrepresented the state of his mind. The state of one's mind is as much a fact as the state of his digestion. quoting Restatement, Second, Torts s. 539.

Is statement Fact or Opinion? - Jury Question

Per Mass. Practice Vol. 37 s. 142 p. 235 (89)
The issue of whether a statement is a fact or an opinion is not always easily answerable. The issue will depend upon the nature of the representation, the meaning of the language used, as applied to the subject matter, and as interpreted by the surrounding circumstances, in

each case. The question is generally to be submitted to the jury

29

A Defense Attorney's Opinion is fact

Per Mass Practice Vol. 17A s. 964-Pocket (86) p.26-

The distinction between a statement of fact and a statement of opinion is often a difficult one to draw. In some circumstances, however, a statement that appears to be an opinion may be a statement of fact if the recipient may reasonably understand it as implying that there are facts to justify the opinion, or at least that there are no facts that are incompatible with it, especially where the defendant is understood to have a special knowledge of facts unknown to the plaintiff. McEneaney v. Chestnut Hill Realty Corp. 39 Mass. App. Ct. 573, 650 N.E.2d 93, (1995); Restatement Second of Torts ss 538A & 539.

An Opinion or Intention are Grounds for Fraud

Per Mass. Practice Vol. 17A s. 962 p.174(81)-

While it is true that an action of deceit may not be based upon a statement of opinion or intention, the plaintiff may nevertheless recover, where the other elements of deceit are present, and where the opinion or the intention expressed by the defendant were not in fact entertained (falsely made) by him when the statement was made.

Intentions of Future Conduct - Grounds for Fraud

Per Mass. Practice Vol. 17A pocket ('86) s. 963 p.25-

Mass. law clearly states that statements of present intention as to future conduct may be the basis of a fraud action if, as the jury could have found to be the case, the statements misrepresent the actual intention of the speaker and were relied on by the recipient to his damage. McEvoy Travel Bureau Inc. v. Norton Company, 408 Mass. 704, 503 N.E.² 183 ('90); Starn v. Fordham, 443 Mass. 178, 648 N.E.² 1261 ('85)

Misrepresentations may be conveyed by Conduct

Per Mass. Practice Vol. 37 p. 231 ('89) - The misrepresentation giving cause for an action of fraud may be conveyed by a writing, orally or by conduct. It need not be a direct misrepresentation.

who that the defendant classifies the fraud as claimed in this section II as fact, opinion, law, or intention the law, as above cited allows those claims to be actionable as fraud.

The plaintiff's fraud claim, as per his complaint - Count VIII, is sufficiently supported with evidence to be required to be presented to a jury for trial under R.R. 56 of the F.R.C.P.

IV Conspiracy - to Maliciously Prosecute, Falsely Imprison in Violation of the 4th & 14th Amendments
(Count I of the Complaint)

To provide enough evidence of this Count I of the complaint against Shektoff it must first be shown that there was a conspiracy to maliciously prosecute, falsely arrest and imprison by the S.P.D. See Ex. 2 - I, II, III, IV (pgs. 1-32, "Reasons for Summary Judgment on Count III of consolidated complaint 97-11743) for proof of that conspiracy & related fact elements which Shektoff joined against Elberg.

If, as per Ex. d, a reasonable police officer should have known that Elberg's arrest on 8-5-94 at E-2 was illegal then Shektoff, a well-seasoned criminal defense attorney who specialized in appellate work, must have. A private person acting jointly with State officials in challenged action are "acting under the color of law" and receive no qualified immunity. Waggoner v. Adams id. at 209.

It was only due to Shektoff's handling of Elberg's gun case, via fraud, conspiracy, malpractice - in particular not following Elberg's liberating orders while convincing him he was guilty as charged, (as in this Opposition I, II, III, IV), that the S.P.D. was able to continue their conspiracy as complained in consolidated action 97-11743. Shektoff at a minimum aided and abetted the S.P.D. conspiracy as complained in 97-11743.

Actually, Shektoff was the "kingpin" of the conspiracy, without Shektoff's as a co-conspirator, as evidenced in this Opposition, the S.P.D.'s conspiracy to falsely arrest, imprison, maliciously prosecute Elberg would have ended immediately.

Shektoff had the easiest case in the world regarding Elberg's gun charges at E-2. All Shektoff

had to do was follow the order to admit Elbrey gave him, (cert the Court of the valid F.I.D and motion to Dismiss), and the charges would have been terminated and Elbrey free from his enemies in Worcester County. An attorney has a duty to argue his client's best case and maximize the likelihood that his client will prevail. Mullen and Smith, Legal Malpractice, 1896, Vol. 2 p. 527. An attorney must know elementary law. Mullen and Smith, Legal Malpractice, 1896, Vol. 3 s. 28.7 p. 638.

The evidence of conspiracy in this section II of this Opposition is also evidence of malpractice and fraud, sections I & II respectively. Shketoff had the same information as the S.P.O., see #3 below, "Specific Instances of Conspiracy."

Specific Instances of Conspiracy

1. Elbrey had researched the Mass. gun laws while in prison and sent abridgements of certain Mass. cases concerning the gun laws to Shketoff. In those cases were the Seay and Dugay cases which state that if a firearm is in the "exclusive control" of citizen then, as of 8-5-98, there is no 10a-carry violation. See aff# ³¹2a. These were the only cases he needed regarding the gun case (actually only needed one case) if he did not know elementary well-settled Mass. law.
2. Shketoff allowed the S.P.O. to increase (fabricate) the original 6-268-1st (possession charge) against Elbrey to 51st and 1-10a charge as documented by the S.P.O.'s falsification of documents, see Ex. 2-p.3 (1stP) and Ex. 2-I-A (p.4-1stP). After the Opposition the 10a carrying charge was the key to the conspiracy Shketoff joined against Elbrey. The 10a carrying charge was the means

Steketoff used, as per this Opposition, to fraudulent-
ly represent Elbery in order to keep him in jail
via malicious prosecution.

3. Steketoff had all the information the S.P.D. had regarding Elbery and the E-2 arrest, as in Ex.2-T, A, (p. 4-24) per this opposition's affidavits #12, 13, 14, 17, 18, 19, 43, 44) and he was responsible for the law in that Ex.2 i.d. Steketoff had all the supporting documentation to Ex.1 & Ex.2 that originated during representation of the gun case. There is no way Steketoff can say he did not know the circumstantial evidence surrounding his conspiracy with the S.P.D. as compiled.

"Steketoff Statement of 8-10-84"

4. Steketoff, per Aff#12-19, was sure Elbery, via the gun at E-2, (gun in car which was in turn locked in E-2 garage) was not guilty of any crime. Steketoff told Elbery to tell the cops to basically "bug-off," see affs #12-19. But don't take Elberg's word for it see Ex. D of Ex.1, p. 8-10 & p. 10, 12 & 16 where Steketoff declared in open Court Elbery has committed "no crime" he has a valid F.I.O.

5. It was not until after Steketoff spoke to Lt. Wayne Sampson of the S.P.D., see aff#79, the Worcester P.A.'s representative at the arraignment, and the 8-10-84 bail Revocation Hearing where Steketoff was exposed to Elbery's enemies in the Worcester Court (the home rule "gangsters") including Maurice "Moe" Bergman that all of a sudden out of the clear blue "Steketoff decided Elbery was guilty of C. 569-10a "carrying"-

6. Elberg was framed, via conspiracy, by Judge Dan Toomey, Elberg's defense attorney - Louise P. Aloisio, A.P.A. Mike Ball, (5) Worcester cops (at a minimum), several other Worcester A.P.A.'s (including Paul Bottom) & D.A. John Conte, (who knowingly inspired the Grand Jury to indict Elberg of "attempted mayhem and felonious attack" after Dist. Judge Milton Rapelson found no probable cause on the same phony charges). During Elberg's '93 trial railroaded for "attempted mayhem" A.P.A. "Moe" Bergman got caught with his pants down lying under oath at that trial.

The facts in the above paragraph are all documented in Elberg's Motion for New Trial (93-0035) which was filed in Worcester Superior Court on 7-6-99. The Court on the consolidated cases 97-11743 HCLW & 98-10
163 HCLW has a copy of that Motion for New Trial, as it was docketed on those cases under "Supplemental Discovery" about June '00. Shabotoff was drafted into the conspiracy as complained in the above docketed action (08-10163 HCLW) in order to aid the above "state actors", who framed Elberg for the "attempted mayhem" and related charges, busy Elberg with more "felony convictions" and prison time in order to get Elberg out of the way and discredit him through their judicial system (no longer ^{by} ~~of~~ the people).

Although some of the conspiracy relating to the "attempted mayhem" conviction has been exposed at this writing, by Elberg, the above conspirators involved in that frame-up feared they would be caught & their careers injured or destroyed, at around 8-5-99. See aff#53 & Ex 1 p 1 where A.H. James Michael Herberg extended an offer from the "Worcester authorities" to drop his 10 year prison sentence if Elberg would drop his appeal of the "attempted mayhem" conviction.

(6 cont) At this writing Elbery's efforts to expose the injustice he has suffered has only resulted in more resistance to his crusade for justice and greater conspiracy throughout the various levels and varieties of judiciary and police in Massachusetts. This judicial conspiracy against Elbery resulted because he refused to honor the rule that you never expose the illegalities of the sacred cows / judge in particular Superior Court Judge Toomey. See below.

Elbery has caused ② political decisions by the Mass. Executive Branch regarding his illegal conviction that caused him a 10 year jail sentence

1. The rejection of Louise P. Aloise's application for Worcester Dist. Judge in Spring '97 by the Judicial Nominating Committee of Central Mass.
2. The rejection by Gov. Cellucci of Superior Ct. Judge Dan Toomey's application for Mass. S. T. C. Justice about September '99. See the Boston Globe (front page) 8-27-99 for this story. At the same time the Mass. JNC & Governor's Council, as well as, the Mass. Committee on Judicial Conduct were alerted to the same facts/evidence that caused the Governor to reject the right Toomey.

Why if so many people of authority and social responsibility know about Elbery's illegal conviction and imprisonment does he remain in prison? They have acted as a result of that documented injustice, so they believe Elbery was treated unjustly.

In addition, Sheketsch produced Exs. V&Z of Ex. I which are monuments to his conspiracy to keep Elbery convicted of the attempted mayhem charge and evidence of his conspiracy as complained via action 98-10163 MCW.

2. Clearly against well-settled law in Mass., as in this opposition, Sheketoff allowed Elberg to be arrested and maliciously prosecuted for a violation of Mass. C. 369-1va & 3 counts of 10k. Further, Sheketoff told Elberg he was guilty of "carrying" and went on to confuse Elberg due to his superior legal knowledge, that Elberg was guilty to the point Elberg did not know what to believe. At the same time Sheketoff lied to Elberg "he could do something for Elberg" while Sheketoff had no intention of doing anything for Elberg but telling him to plead guilty & go to jail. This all while Sheketoff knew that the S.P.D. stopped claiming Elberg's P.I.D. was revoked on 8-5-94, but Sheketoff would not let Elberg know that. See section IV-Fraud - 3d. See afft # 6-38, Ex 1 affs. # 12-13, see Ex. 1 p.5-7
3. Once Elberg's appeal on the "attempted mayhem" conviction was decided Sheketoff told Elberg to plead guilty to all ⑥ gun charges and take a year in jail. Sheketoff said it was a good deal and that the parole Board would probably parole Elberg after a year of his state prison sentence for "attempted mayhem" into the county sentence. Sheketoff must have known this legal advise was more fraud. See afft. # 54. (no parole into another jail sentence)
Sheketoff abandoned Elberg and told

him to take the year in jail after the appeal of the mayhem case was decided because one of Skeletoff's conspiratorial objective was completed when he succeeded in keeping Elbey in jail until that appeal was concluded. See att#23-5 & 28. See also consolidated complaint (97-11783ACW), the object of the S.P.D. conspiracy which Skeletoff joined was, in part, to keep Elbey in prison until the "attempted mayhem" appeal was over.

The Worcester D.A.'s Office on their appeal brief was quick to point out that Elbey's stay pending appeal had been revoked due to the ⑥ gun charges. A stay pending appeal is only given if the Superior Ct. Judge is sending the Appeals Court a message that there was something wrong with the underlying trial and the appeal stands a good chance of success, see att#55 & M.R. Criminal Procedure 31 & 31a.

The S.P.D. did not want to see Elbey out on the stay because it would help him get a New Trial through the direct appeal of the mayhem conviction. The S.P.D. wanted to help their friend - westboro cop, Tom King, the alleged "victim" of Elbey's "attempted mayhem" and co-conspirator with the "Worcester authorities" who framed Elbey for the charge, by keeping Elbey in prison during the

appeal and after. Indeed, the S.P.D. wanted to help the "Worcester authorities" that framed Elbey for "attempted mayhem". The S.P.D. per Ex. 2 had hunted Elbey for years as did the Worcester Police. Between the ② police departments they arrested Elbey on over a dozen phony charges that he was found not guilty of, see Elbey's Motion for New Trial docketed on the consolidated action & See aff. #55.

- 2 Shekett advised Elbey not to make bail at the 8-8-94 arraignment, so to keep Elbey in jail as per Shekett's conspiracy objective and so Elbey could not get his F.T.P. card. See Fraud section IV-4 above.
- 3 The S.P.D. & Worcester A.A.'s Office while being requested by Shekett to produce, via discovery on the gov case, proof of revocation of Elbey's F.T.P. responded there was no such revocation. Shekett knew this, see aff. #28,52, but he would not tell Elbey. He told Elbey only that they had not responded to that discovery request. Shekett withheld the fact there was no revocation^{claim} by the S.P.D. any longer in order to control and convince Elbey of his guilt so Shekett could keep Elbey in jail via the conspiracy. This also caused Elbey to rely on Shekett's

representation which was part of the conspiracy plan. See Ex. I ordered p. 5-6 & p. 7 (2d P). See also Ex. I-aff. 12&13

Elberg
orders

Malpractice Evidence = Conspiracy Evidence

11. The malpractice evidence pointed out in section I of this Opposition is also conspiracy evidence. Shekoff's malpractice was a tactic actually used to maliciously prosecute & falsely imprison Elberg, to keep Elberg in jail and to make sure he was not exonerated on the gun charges. Had Shekoff obeyed any of Elberg's orders the conspiracy would have ended immediately.

12. Shekoff's conspiracy to cover-up the S.P.D.F.'s Illegal Search & Seizure, above Section II - this Opposition, is more conspiracy evidence to maliciously prosecute and falsely imprison Elberg. Had Shekoff not covered-up that illegal search and seizure at E-2 during the 10-28-94 Suspension Hearing and simply presented the F.I.P. card or presented proof there was an F.I.P. card to the court the malicious prosecution & false imprisonment would have ended.

13. Fraud = Conspiracy Evidence

The evidence of Shekoff's fraud, Section II this Opposition, is also conspiracy evidence. The

misrepresentation and acts of fraud committed by Shektoff during his representation of Elbery on the gun charges were committed by Shektoff in order to complete his part of the conspiracy and keep Elbery in jail and maliciously prosecuted. Shektoff's fraud led Elbery to believe he was guilty so he kept Shektoff as his lawyer in defense of the charges while he remained in jail. Elbery also kept Shektoff as his defense attorney because Shektoff fraudulently represented that he ^{would} do something for him on the charges "fight them with a chance of winning" which was part of the ^{Elbery} conspiracy by Shektoff to complete in order ^{Elbery} to ^{get} Shektoff and keep Elbery in jail.

14. Shektoff's Fired & the Conspiracy Ends

One of the nicest pieces of conspiracy evidence is that, as soon as, Elbery fired Shektoff the conspiracy ended. Shektoff had the most important role in the conspiracy as complained. Once Shektoff was fired the S.P.D. sent a letter to Elbery's new attorney admitting Elbery had a valid F.I.D. when they arrested him & the Worcester D.A.'s Office immediately capitulated while begging Elbery to allow a dismissal in order to protect their co-conspirators.

who did not have absolute immunity. The conspiracy against Elbergas complained in the consolidated cases, Sklut & Sheketoff ended because the most important co-conspirator, the "Kingpin" - Attorney Robert Sheketoff, was cast out. see aff. #40.

Sheketoff's Motive - Racial Hatred

15. Sheketoff considered Elberg a racist, see affs #56-71 for evidence that Sheketoff was racially motivated to conspire against Elberg. The evidence is Sheketoff was contaminated against Elberg by ADA "Moe" Bergman, a fellow Jew, on racial grounds, as well as, by Attorney Louise P. Aloise who also knew Bergman hated Elberg on racial grounds.

Aloise spoke to Sheketoff, aff. #73-74. Bergman had exposure to Sheketoff at the Worcester Superior Court, April 94 & 8-10-94 while Sheketoff represented Elberg on Stay Revocation Hearings on the mayhem case, see aff # 69.

It was after the Bail Revocation Hearing of 8-10-94 that Sheketoff abruptly changed his mind from Elberg committing "the crime" to being guilty of 10a - "carrying." see aff. #39

Aloise, as well as, Bergman had good reason to pit Sheketoff against Elberg, they were both part of the conspiracy that framed Elberg

for "attempted mayhem"; See docket on the Skift & Sheketoff cases about May '05 - "Plaintiff's Motion for Supplemental Discovery" which is Elbery, pro se, "Motion for New Trial" on the mayhem conviction. This "Motion for New Trial" exposes the "Worcester Authorities" (including A.D.A. Mike Ball, A.D.A. Bergman, Attorney Louise P. Aloise, Judge Dan Toomey) conspiracy to frame Elbery for "attempted mayhem" in Worcester Superior Court.

Motive - Sheketoff Protected bar members and officers of the Court

16. Aloise, Bergman and the "Worcester Authorities" contaminated Sheketoff against Elbery, see affs. #56-79. This exposure to Aloise, Bergman, & the "Worcester Authorities" caused Sheketoff to produce Exs. Y&Z of Ex. I which are monuments to Sheketoff's conspiracy against Elbery. Compare Exs. V&Z of Ex. I to the "Motion for New Trial" Elbery produced which was docketed on these consolidated cases, ^{as} #1675 above. As in affs. #72-79, Sheketoff knew Elbery got railroaded on the "attempted mayhem" conviction, but as per Ex. Y&Z of Ex. I Sheketoff conspired to protect the "Worcester authorities" who framed Elbery.

17. Per Elbery's pro se "Motion for New Trial" in #16 & #15, the "Worcester Authorities" who framed Elbery for "attempted mayhem" knew they had problems if an honest attorney took the appellate work on that case. Per this Opposition and in particular afft #56-79 the "Worcester Authorities" immediately started working on Skhettoff to betray Elbery on that mayhem case. The "Worcester Authorities" obviously did not want Skhettoff to expose them in their crime or conspiracy.

18. As per Aff #69 Skhettoff was exposed to the "Worcester Authorities" (Ball, Toomey, Bergman) that framed Elbery for "attempted mayhem" during the Stay-Bail Revocation Hearing of 8-10-94 at Worcester Superior Ct.

This was the turning point of Skhettoff's representation of Elbery on the gun charges. It was after the Bail Revocation Hearing of 8-10-94 that Skhettoff "out of the clear blue" decided that Elbery was guilty of the gun charges. See aff #29. This after telling Elbery and declaring in open court Elbery had committed "no crime," see affs #25 & 10-95. Also see Ex D of Ex I which shows Skhettoff had been exposed to Judge Dan Toomey, ADA Mike Ball, two co-conspirators,

19. Per Exs. V & 2 of Ex. I Sheketoff had no intention of defaming A.H. Louise P. Aloise or A.O.A. Mike Ball or Judge Dan Toomey or the other "Worcester Authorities" who framed Elbery for "attempted mayhem". This frame up is documented as in #15 above, Elbery's pro se "Motion for New Trial".

Sheketoff, after all, was an "officer of the court" and a member of the Mass. Bar as were the "Worcester Authorities" who framed Elbery for "attempted mayhem". Sheketoff was not going to jeopardize the careers of these fellow bar members and "officers of the court" for Elbery even though he knew Elbery was innocent - see Affs' T2-79.

Had Sheketoff done his job, as Elbery did in his pro se "Motion for New Trial," see #15 above - conspiracy section, and not protected the "Worcester Authorities" who framed Elbery for "attempted mayhem" Sheketoff would have exposed their criminal conspiracy against Elbery via that "attempted mayhem" conviction.

The Gun Case - Motive & Objective

20. Sheketoff, likewise, had the same motive, as in #15-19 - this conspiracy section, when he conspired with the S.P.D. to frame Elbery for the E-2 gun charges.

The plan and objective of the S.P.D. & Sheketoff

co-conspiracy was simple, regarding their conspiracy to maliciously prosecute and falsely imprison Elberg on the E-2 guns, bury Elberg with one phony felony conviction after another in order to imprison, discredit and keep him out of the way. This in order to protect the "attempted mayhem" conviction and frame-up and to aid and protect the "Worcester Authorities" & officers of the Court who criminally conspired to frame Elberg with that "attempted mayhem" conviction.

The S.P.D. knew and had an allegiance to these same "Worcester Authorities", including the "team" of Worcester Police officers Tom King - (WestBrook) who lied to convict Elberg of "attempted mayhem" via conspiracy.

21. Attorney Herberg - the same conspiracy at work

Further conspiracy amongst the "Worcester Authorities," Jewish Legal Community and the Jewish Anti-Defamation League occurred against Elberg regarding his long time attorney, James Michael Herberg. Elberg had first hired Herberg in 1997 on the de novo appeal of a phony intimidation of a witness charge which was nolle prossed. Elberg had been convicted on the same charge because his former attorney, Louise P. Blaize

21 - consp.

refused to let the judge know that the arrest warrant for that intimidation charge was obtained a day before the S.P.D. documented the alleged crime was committed and reported. Merberg got along with Elbery so well that in June of 1999 Merberg handled an alleged parole violation for Elbery, successfully, and for \$0.00 (no fee charged).

That 6 year relationship ended abruptly, December 1999, when Elbery once again hired Merberg on another parole fabrication. Merberg, a month into that representation, was contaminated by the Jewish Anti-Defamation League, Att. Robert Skeketoff & Att. Bradford Lissman on racial grounds against Elbery. Merberg was told by these ③ that Elbery disliked Jews. See affs #53,84

Merberg recommended that Elbery agree to a 30 day psychological observation to settle the alleged parole violation. Elbery fired Merberg on malpractice grounds and was freed 2 months later while representing himself before the Parole Board.

Skeketoff's conspiracy, as herein complained, was no doubt due to the same information freeway that prejudiced Merberg against Elbery.

Summary Conspiracy

22. The conspiracy evidence, above, would force a jury to find that a sophisticated criminal defense attorney like Steketoff had a meeting of the minds with the S.P.D. and reached an understanding with the S.P.D. to achieve their illegal objective, via Steketoff's fraudulent, deliberate & knowing misrepresentation (overt act) of Elberg, to maliciously prosecute & falsely imprison Elberg. As above, Steketoff's participation in the conspiracy, as complained, was crucial, as without him it ended immediately.

A jury would find that the S.P.D. performed one part of the conspiracy against Elberg and that Steketoff completed the other part of the conspiracy. That the S.P.D. and Steketoff had to act together or the conspiracy could not have existed.

A jury could find no other explanation for Steketoff's conduct, in this opposition but conspiracy.

C. Malice

23. From the above it is plain that Elberg was falsely arrested and prosecuted when there was no probable cause for the (6) L-2 gun charges. The evidence, as above, shows that the S.P.D.

and Shektoft maliciously prosecuted and imprisoned Elberg for crimes they knew he was not guilty of, see Ex. 2-4 p. 18 for ^{more} evidence and law of malice.

24. Summary - Count I of the Complaint to Trial

As above the elements of Count I of the plaintiff's complaint are sufficiently supported with evidence to require a jury trial under Rule 56 of the F.R.C.P. Elberg's 4th & 14th Amendments Rights were violated.

Rebuttle to Defendant's undisputed fact (alleged) #76 #8

25. As federal law allows the plaintiff did not & was not required, at deposition, to give the defendant answers to deposition questions that asked for evidence of the ultimate issue of the complaint, or conspiracy. At a deposition a party (defendant) is not allowed to ask for evidence,

But as above - this opposition the evidence of conspiracy will never get any better against Shektoft unless he admits it.

26. I am a great legal mind as Shektoft documents but I was not in 1994. Shektoft, in 1994 had superior and unfair advantage due to his knowledge of the law. Now Shektoft has to be

given another unfair advantage over me or he would lose this case. Throw Elberg in jail on trumped-up charges and start Summary Judgment on his case, Elberg v. Shektoff, See affs. #30-33.

To make the case more unfair to Elberg and help Shektoff do not allow him to any order or decisions on the case or respond to any of his motions, this as is the case since July '80, Elberg v. Shektoff 98-1063 MLCW, see aff #85, 84, 86,

- III. Count III - Conspiracy to Deprive of Counsel
- Count IV - Conspiracy to Cover-up Violations of Elberg's Constitutional Rights
- Count V - Intentional Infliction Emotional Distress
- Count VI - Substantive Due Process Violation - Impeding Elberg's Access to the Courts

As in this Opposition, the evidence is Shektoff deliberately planned to deprive Elberg of his 6th Amendment Right to Counsel as was the conspiracy plan with the S.P.D.

As in this Opposition, what Shektoff did was "outrageous and shocks the conscience" while he acted under the color of law "in conspiracy with the S.P.D. to keep Elberg from having use of the Court."

Sheketoff's false imprisonment and malicious prosecution conspiracy, as in this opposition, are grounds to claim Intentional Infliction of Emotional Distress.

Att. Sheketoff in conspiracy with the S.P.D., per this opposition, tried to cover-up their violations of Elberg's constitutional rights, in part, by Sheketoff's malpractice fraud, conspiracy as in this opposition.

As in this opposition there is enough evidence to bring counts III, IV, V, VII to trial as per Rule 56 of F.R.C.P.

VII Rebuttal to Defendant's Claim there is need for an expert on the Fraud claim (see Defendant's Memo - p.16, footnote 2).

Per Ex. I-I-2-d, p.18, No expert witness is required for the plaintiff's claim of Fraud on other counts of his complaint. The plaintiff is not claiming Sheketoff's opinions which caused his fraud were due to negligence but that those opinions were deliberately false.

~~VIII~~ Supplement to I, above, - "Expert witness" Sheketoff's Standard of Care - A matter of law

Per this Opposition and Supporting Exhibits,

, see Affs # 40, 41, 46 & see Ex. 4 p. 3, the E-Z gun charges were determined as a matter of law by District Judge Zide at the underlying trial. Elbery presented proof to Zide of his F.I.D. card being valid at 8-5-94, there was no argument or debate about the arrest facts. Mallon & Smith, Legal Malpractice, Vol. 4 p. 182 (The underlying criminal case will dictate which issues are law or fact and the same classification must be maintained in this civil case).

Since presentation of the F.I.D. was an "absolute defense" as a matter of law to the gun charges against Elbery, the issue of Standard of care required to prove Shkettoff's negligence is one of law to be decided by the Court in this civil case. id. (questions or issues of law are to be decided by the Court in this case).

As a matter of law Shkettoff's standard of care regarding the gun charges was to take Elbery's orders to present the F.I.D. or proof of it to the presiding judges on the gun case. See Affs, #26 & 27. There is no need for an expert witness to provide evidence of the standard of care in this case regarding Shkettoff's negligence on the plaintiff's malpractice claim, Count II of the complaint.

Had Shkettoff done as ordered, see affs #36 & 37, exactly the same procedure and

decision of law, via the absolute defense - the valid F.I.D., would have taken place as at the "trial" before Zicle, except 7 months earlier.

Since Shkettoff admits to the orders to present the F.I.D. card, see Ex I-Orders a-f.p.-4-8, the standard of care should be decided as a matter of law in the plaintiff's favor (present the F.I.D. as ordered) ~~and~~ there should be summary judgment on the plaintiff's claim of malpractice, due to Shkettoff's admission, since all the other elements of malpractice have been decided as a matter of law for the plaintiff, see Ex I-I. And no expert is required for Shkettoff's standard of care which in this case is a legal issue (present the "absolute defense" F.I.D.) All counts of the plaintiff's complaint are sufficiently supported by evidence that they must go to trial. Malpractice due to negligence as per VIII this opposition and the plaintiff's Motion for Summary Judgment already filed in this case, must be found in this plaintiff's favor as a matter of law by the Court with damages to be decided by a jury.

Michael Clegg, pro E
11-29-00

Request for Hearing