JUSTICE IN DENIAL
A Prisoner's Worst Nightmare

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I stood frozen in disbelief as I read the email my mother had sent, over and over. Goosebumps flooded over my arms and chills went up my spine, once reality settled in. I couldn't believe my former attorney, John Jay Fahy, was dead. At first, I felt a sense of guilt. I was torn between anger and remorse, struggling with the thought that my fight for freedom may somehow have been related. As a federal prisoner sentenced to 12 1/2 years for bank fraud, with 7 1/2 years left to serve on my sentence, this tragic news was yet another curve ball in my case.

Just 3 days before the New Jersey Supreme Court was scheduled to suspend Fahy's license for his failure to return $44,000 of the $50,000 retainer that his firm received to represent me, Fahy shot and killed himself. On a sidewalk along Route 17, one of the busiest and most visible highways in New Jersey, his body laid lifeless, backing up traffic for hours. Clearly he had the need to send a message...But what was it?

In 2007, after I was convicted by jury for bank fraud, I was introduced to John Jay Fahy by Alfred Decotiis- a prominent attorney heavily involved in New Jersey politics. Witnessing Judge Jose Linares' almost star struck reaction to Alfred Decotiis who made a brief appearance at my trial in the Newark, New Jersey District Courthouse, I figured reaching back out to Decotiis would be a good idea. After explaining to him my legal dilemmas and my need for effective legal representation, he referred me to Fahy.

Taking Decotiis' advice, I eagerly reached out to Fahy, a former U.S. attorney and white collar crime specialist who made frequent television appearances as a legal analyst. I explained my complex case to Fahy, which involved 7 high-end properties in Alpine and Saddle River, New Jersey, financed by Lehman Brothers Bank. During the meeting with Fahy I detailed the numerous attempts I made to pay off the loans in question which would have made the banks whole. However, instead of accepting full price offers on the properties, all of which were prescreened and approved through the U.S. Attorney's office by former AUSA Michelle Brown, Lehman Brothers' attorney, Jeffrey Greenbaum, made the decision to sell the properties to an inside investor, Chris Lipka, for a substantial discount. As a part of a "sweet-heart" deal, Lipka received 9 properties which were skillfully negotiated and purchased in 2002 for 17 million dollars, through distressed property sales. During the largest real estate boom in recent history and after several million dollars in renovations on these prime estates, Lipka purchased the properties in 2004 for 14 million dollars. This purchase price was nearly half of the properties appraised value! I explained to Fahy that my argument was not whether or not I was guilty. I knew my involvement in the Lehman financing scheme was wrong, and I admitted my misconduct from the very beginning. My main issue concerned the loss that was created in my case, which was not attributed to my conduct or the conduct of my codefendants. I argued that the bank itself caused the loss by selling the properties for a huge discount to an investor who was vested in Lehman. This was all revealed through civil proceedings in my case. (See Lehman Brothers Bank FSB v. Ellis et al., Docket No. ESX-C-103-03 (NJ Superior Court, Essex County)). At the time, I knew federal white collar sentences were based largely on loss amount. The larger the loss, the larger the sentence. Therefore, I sought Fahy's assistance in reducing the loss amount.

I also detailed to Fahy my several prior arrests based on fictitious charges, which were orchestrated by agent Sean McCarthy- the lead agent on my case. I explained how I spent many years and my last dollars fighting baseless legal battles, most of which were eventually dismissed, all incited by Agent McCarthy. (See Davis v. McCarthy, et al. Civil Action No. 12-429 (JLL) N.J.D.C). I asked for Fahy's help with getting one of these frivolous cases dismissed. In this case, I was accused of false impersonation and stealing the identity of Sebastian Volterelli, a white Italian male. Agent Sean McCarthy and former Bergen County Detective Nieciecki used false information to obtain an arrest warrant and a search warrant to enter my house. As a result, I was arrested and held on a 1 million dollar cash bond, for some-

thing I didn't do. Although agent McCarthy and Nieciecki received a confession from Volterelli that his identity was never stolen, during my incarceration, both officers acted in concert and hid this information from the prosecutor. Consequently, I sat in jail on frivolous charges for 3 months. When I was finally released after posting a substantial bail, I was also placed on 24 hour house arrest for 18 months, until my sentencing in federal court. (See NJ Crim. Complaint No. W2006-337-290 Bergen County, NJ.).

Once Fahy heard my story, he felt confident that he could help me. His firm received a $50,000 retainer, which was paid out of my father's retirement account, to assist with the preparation of my presentence report and to prepare an appeal on my behalf for the New Jersey District Court case. He also agreed to assist in getting the charges on the bogus Bergen County case dismissed. In anticipation of effective results, I agreed to his terms of assistance.

At first Fahy seemed enthusiastic about helping me. He appeared friendly, warm and smart. From the onset, he came up with some good strategies for sentencing. He stated that we needed to order two separate independent appraisals on the houses along with title reports to show that the sale of the properties was not an "arms-length" transaction. He also stated that with the several dismissed charges and documented harassment by the agent, we would be able to support our claim of government misconduct, and substantially bolster my case. He advised with this evidence I would be looking at a maximum of three years in prison. I quickly followed Fahy's lead and got the documentation that he requested. Fahy worked along with my former attorney, Thomas Nooter, who did all of the written work. Fahy became the coach that directed Nooter on what to do. I felt secure knowing that regardless of the outcome at sentencing, Fahy would prepare an appeal on my behalf.

My sentencing was scheduled for July 16, 2008. To my surprise, I was sentenced to 12 1/2 years in prison. I immediately thought something had gone drastically wrong! In Essex County jail I phoned Fahy. He assured me that he was on top of things and he would start working on my appeal. I didn't hear back from him. I felt I had been abandoned! Not only did he not submit an appeal on my behalf as he promised, he avoided my calls and never answered any of my written correspondences.

Attorney Nooter stepped back in and filed an appeal on my behalf, but something seemed wrong. While imprisoned I diligently studied the law. Through my studies I learned that Nooter, led by Fahy, failed to properly object to the loss amount in my case. According to Federal Rule 32c(i), all objections must be in writing to the court prior to sentencing. Although my attorney argued for a downward departure based on the actual appraised value of the homes and the "sweet-heart" sale to Lipka, he failed to properly challenge the loss amount on record. This was the key argument that could have significantly reduced my sentence. As a result, I never had a loss hearing to determine the true loss amount in my case. I was surprised that Fahy, nor Nooter caught this blatant error.

In late 2009, I was shipped from prison back to the Bergen County jail to finally address the open case that I had originally retained Fahy to handle. I reached out to Fahy again. It had been 18 months since I'd heard from him. This time, he came to see me at the jail. By the time he made his visit, my former attorney, Paul Casterliero had already worked out a deal with the prosecutor. Fahy advised me that the deal was good and I should take it. I also showed him the errors I found in my New Jersey federal case. At this point my direct appeal was already denied. From this denial, I further learned that my former attorney, Nooter, had misinterpreted the law concerning "materiality" as a defense to bank fraud. He wrongly believed that because the bank's employees didn't rely on the false documentation that was submitted to approve the loans in my case, it was a defense to bank fraud under the "materiality" doctrine. In other words, I went to trial without any viable defense. In addition, just 59 days after I was sentenced, Lehman Brothers Bank collapsed. The bankruptcy findings of the bank revealed that the corporate policies of the bank were premised on fraudulent lending practices and the bank funded over a billion dollars in fraudulent loans. This new evidence supported the fact that I was not the "mastermind" of the scheme as alleged by the bank's attorneys. It had always been my claim that I was instructed by Lehman associates on just what to do to ensure that each loan in question in my case met the bank's underwriting guidelines. I explained all of this to Fahy, who agreed I had several strong arguments for a 2255 ineffective assistance of counsel claim, which could reverse my lengthy sentence. I asked if he would help to prepare this document on my behalf, and he agreed.

After leaving the Bergen County jail in early 2010, I never heard back from Fahy about my case again. Consequently, I was left penniless without funds to retain another

attorney, so I had no choice but to prepare my 2255 motion myself.

In June 2011, I initiated a complaint against Fahy with the N.J Fee Arbitration Committee in an attempt to get back the money he had taken. After two years of Fahy repeating his pattern of being nonresponsive, the Fee Arbitration Committee scheduled a hearing for February 21, 2013. My dad, who was my co-litigant on the complaint, appeared in person and I participated via telephone from the Danbury Federal Prison Camp, where I am housed in Connecticut. To my surprise Fahy showed up to the hearing! Fahy told the panel that he never received the first fee arbitration demand that I initiated. And, he said that he didn't respond to the matter because he didn't believe that my dad had standing to file as the "client," even though my father's name was on the fee agreement and he accepted a check directly from him from his retirement account.

The panel did not find good cause to vacate the default as Fahy requested. And, Fahy was openly reprimanded by the committee for not responding to the three letters sent by them on December 6 2011, January 9, 2012, and September 19, 2012. As a result, the panel would not consider any evidence from Fahy. He was only permitted to cross examine me during the hearing.

Through a gruesome cross examination which lasted for almost an hour, Fahy rehashed every wrong doing I had ever done in my entire life. He also questioned the work of my first attorney, Walter Timpone, who Alfred Decotiis also referred me to. He alleged that since other attorneys had been paid retainers and had not performed the services they were retained to do, he should have been able to do the same. To my benefit, the panel didn't buy into his argument or discrediting tactics. They ruled in my favor and ordered Fahy to pay back $44,000 of the retainer within 30 days.

Despite the issuance of the order, Fahy failed to comply. Consequently, on May 21, 2013 Isabel McGinty, Assistant Ethics Counsel for the Office of Attorney Ethics filed a motion to the Supreme Court of New Jersey, Disciplinary Review Board, for the suspension of Fahy's license for noncompliance. On June 20, 2013, the Supreme Court ordered that Fahy had 30 days to pay back $44,000 of the retainer to my father or his license would be suspended.

Still left without the resources needed to retain counsel, I was engaged in a fierce legal fight for my freedom, pro se. On February 27, 2013, just six days after the N.J Fee Arbitration Committee ruling, the Third Circuit Court of Appeals denied my motion for a certificate of appealability to appeal my 2255 denial. I argued that my sentencing judge, Honorable Jose Linares, improperly denied my 2255 utilizing an incorrect standard of law. To measure ineffective assistance claims the Supreme Court utilizes the two prong Strickland standard. Litigants must show that their attorney made an error, which is the first prong. Second, litigants must show that the error resulted in a wrongful conviction or a lengthier sentence for the litigant. (See Strickland v. Washington , 466 U.S 688 (1984)).

In my 2255 denial, Judge Linares agreed that my attorney, Nooter, had misadvised me of the "materiality" doctrine, which met the first prong of Strickland. But, he stated that the "Petitioner cannot show that the result of her trial would have been different 'but for' this allege deficiency." Therefore, he ruled that I didn't meet the second prong of Strickland. (See Davis v. U.S, Civil Action No. 10-4964 (JLL) Denial p8, Document 19, filed 11/28/11). The problem is the Strickland prejudice standard is not a "but for" standard. It is not outcome determinative. Rather, the standard is whether a reasonable probability exists that, but for the errors, the result would have been different. (See Strickland, 466 U.S. 486, 694 (1984)). Furthermore, the Supreme Court makes it clear in "Lafler," the test is not whether a subsequent trial was otherwise fair and valid, but instead whether the process leading up to the election of trial over plea was constitutionally adequate under Strickland. (See Lafler v. Cooper 182 L.Ed. 2d 398 (2012).

In my case, had I known I was going to trial without ANY viable defense, I would have elected to take a plea. My attorney, Nooter, made a blatant error, which violated my right to effective counsel. It was my constitutional right to have the correct interpretation of the law explained to me, prior to making the choice to go to trial. This can not be disputed! Instead of scheduling an evidentiary hearing, as required by law when a petitioner makes a valid ineffective assistance of counsel claim (which can not be ruled out solely by the record), my judge simply blocked my case from being reopened, and dismissed my case citing an incorrect interpretation of the law. Just to be sure that it was not an oversight on his part, I submitted a motion for reconsideration, again citing the Strickland law, and provided additional case law (ie. Lafler). Once again, the judge denied my motion. This time he erroneously characterized my reconsideration motion as a consecutive 2255, and refused to address the issues in the motion. (See Davis

v. U.S, Civil Action No. 10-4964 (JLL) Denial, filed May 30, 2012).

Oddly, the day after my 2255 denial, I also received a final default judgment against me in Lehman's civil case for 34.6 million dollars, which I had been challenging. For several years I fought relentlessly, representing myself, against Chicago Title attorneys, who were headed by Michael R. O'Donnell. Chicago Title was Lehman's insurer who intervened in Lehman's civil case. During my legal research, I had a FOIA request initiated on my behalf to the Office of Comptroller of Currency (OCC) (formerly the Office Of Thrift and Supervision (OTS)). The FOIA request revealed that Lehman's affiliate Aurora Loan Services (the company that originated, processed and underwrote all the loans in my case) did not have authorization from the OTS to originate, underwrite or service loans on behalf of Lehman Brothers FSB (a FDIC bank) in 2002. I submitted this new evidence to both the federal and state court prior to my 2255 ruling. After receiving the denials from both courts, a day apart, refusing to entertain my legitimate arguments or hold an evidentiary hearing, I was lead to believe that something bigger and more powerful was going on, of which I had no clue. Consequently, I believe it was enormous outside power and influence that helped to block my legal arguments on all levels. I knew at this point the only way I could succeed was to take a nontraditional route in my fight for justice. Therefore, I decided to write a book detailing the fraud and corruption that took place in my case, entitled "*The High Price I Had To Pay.*" (See www.smashwords.com/books/view/324608)

On May 15, 2013, I submitted a motion for rehearing to the Third Circuit Court of Appeals. And, under separate cover, I sent a copy of my book along with a letter addressed to Chief Judge Theodore McKee. I also sent this package to the other 23 Third Circuit Court of Appeal Judges. In my letter to the Chief Judge, dated May 17, 2013, I expressed that I felt I was being penalized and discriminated against for being a pro se litigant, and I felt my motion for a mere certificate of appealability was improperly denied. I further explained that I was not a pro se litigant by choice, and I described the difficulties I had with John Jay Fahy. In my letter I also included a copy of the ruling from the N.J. Fee Arbitration Committee. I believed if the judges could see that I had the ability to write about my experiences and expose what I believed to be the deep rooted corruption surrounding my case, they would take my motion seriously. I was wrong!

Unfortunately the Court of Appeals denied my motion for rehearing enbanc. (See U.S v. Davis No. 12-2662, 3rd Cir, Feb 27, 2013). I couldn't help but wonder if Fahy or Judge Linares had been contacted about the letter and the books that I sent to the appeal judges. Had someone reached out to them and questioned the injustices in my case or initiated an inquiry? Or, had my efforts simply fallen on death ears? My goal was to gain back my freedom. I never intended to cause anyone harm.

Involuntarily, it seems like I have become a lead actress in a movie with more twists and turns than the world's fastest roller coaster. Just when I thought things were finally beginning to resolve, I learned of Fahy's death. This leaves many more questions in the air. I have always questioned why Fahy didn't simply help me when he had all the pieces to the puzzle, the "know how" and the experience that could have set me free? I questioned who the real players were that made off with the money from the property sales in my case? I questioned why my judge blocked all my motions, all along from the beginning to the present, when I had valid arguments? And now, I question why John Jay Fahy killed himself? Why didn't he return the retainer he took for representing me? Was someone applying some kind of unseen pressure to him?

Despite my obstacles, I still believe justice will one day be rendered on my behalf. What I don't know is what price I'll have to pay in order to see it? I obviously don't know what will happen next. But, I do know that none of the events that have occurred in my case over the last several years make logical sense. John Fahy's death adds greatly to this bizarre nightmare that has become my life. My sympathy goes out to his family and friends. I pray one day soon all of our suffering will end.

Jamila T. Davis (@JamilaTDavis), creator of ***The High Price I Had To Pay Book Series***, is a motivational speaker, prison reform activist and the author of several books geared to empower the young and the old. At the age of 25, she was a multimillionaire, high-flying real estate investor with ties to the hip-hop world. At age 31, she was sentenced to 12 1/2 years in federal prison for her role in a multimillion-dollar bank fraud scheme. While imprisoned, Davis has helped to change the lives of many through her inspirational books and cautionary tales, based on her real-life experiences. To shed light on the lengthy sentences of non-violent, female federal offenders and to rally for sentencing reform, she has also sparked the creation of a prison reform movement and advocacy group, WomenOverIncarcerated.org. To support Jamila T. Davis's plight for reform please go to www.womenoverincarcerated.org and sign the online petition today! Also follow her journey to freedom at www.jamiladavis.com or www.facebook.com/authorJamilaTDavis.