

STATE OF NEW YORK : COUNTY OF ROCKLAND
TOWN BOARD HEARING

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In the Matter of the Hearing Regarding
ANTHONY IURICA,
to the Town of Orangetown Town Board.
- - - - - x

Orangetown Town Hall
Orangeburg, New York
October 17, 2005

B E F O R E:

THOM KLEINER,	SUPERVISOR
DENNIS TROY,	MEMBER
DENIS O'DONNELL,	MEMBER
TOM MORR,	MEMBER
MARIE MANNING,	MEMBER (absent)
KEVIN MULHEARN,	DEPUTY TOWN ATTORNEY

A P P E A R A N C E S:

GERALD DAMIANI, ESQ.,
Attorney for Applicant

Anne Marie Ambrose
Court Reporter

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2 duties of his position.

3 The Town Board is finder of the fact
4 and I would urge the Board to follow the
5 above stated precept as to whether cause
6 exists for the removal of Mr. Iurica as a
7 member of the Orangetown Planning Board.
8 Before I present certain documents which
9 bear on this matter, I am going to give Mr.
10 Gerald Damiani who is the attorney for Mr.
11 Iurica an opportunity to make some formal
12 objections on the record. Mr. Damiani?

13 MR. DAMIANI: Thank you, Counsel.
14 Members of the Board pursuant to a letter
15 that I sent to your Town Attorney, Teresa
16 Kenny on August 25, 2005 which has been
17 marked as Respondent's Exhibit A, I would be
18 renew my objection to the form in which this
19 proceeding is commencing. There is no
20 question that the 271.9 of the Town Law
21 gives the Town Board the right to dismiss
22 for cause as elaborated by your Counsel but
23 the case law interpreting that particular
24 section requires that an administrative
25 hearing be held before that Town Board

meeting for the purpose of removal. It's our position that we would object to this proceeding and respectfully request you as Town Board members that an independent Hearing Officer be appointed for the very purpose of independently and not politically hearing the charges that are being allegedly here. The notice that I received specifically provides the basis for the alleged removal by the Town Board is Mr. Iurica's conviction for a misdemeanor in the County Court, that is the only basis. For this Town Board to basically act upon that as administrative finders of fact where they already have set a public hearing for that purpose without having a report from an independent party as to whether or not there are grounds, whether or not that misdemeanor conviction is sufficient grounds for to you hold a public hearing I suggest is improper. It's contrary to the statute and contrary to the law. Counsel has adequately pointed out to you, the only way you are able to dismiss him since his appointment is still pending

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2 is if in fact he has bad character, or
3 fitness for the position, or neglect for the
4 position and that the conviction alone is
5 not a valid basis for this, and I believe if
6 you had an independent determinator of the
7 facts that you would be told that, and thus
8 avoid additional legal problems that are
9 going to surface if in fact you as the Town
10 Board rubber stamp your determination here
11 that appears already to have been made by
12 virtue of this conviction.

13 One of the issues that you have got to
14 and perhaps a Hearing Officer would hear and
15 determine with his knowledge and ability to
16 research as opposed to the emotional aspect
17 that you as Board members have to hear this
18 case, is the effect of a certificate of
19 relief from forfeitures and convictions.
20 Mr. Iurica was provided a certificate of
21 relief from forfeitures and conviction.
22 Under our law in the State of New York you
23 can not bar him from employment based upon a
24 conviction even if it was a felony
25 conviction. I sought that certificate of

1 relief just as an added protection. There
2 is no bar in the law that bars him from
3 holding this position by virtue of a
4 misdemeanor conviction. The fact that a
5 certificate of relief basically alludes to
6 employment or office, public office, forget
7 about that in entirety. Just look at the
8 certificate of relief and I don't believe
9 you have any grounds whatsoever based on the
10 notice that we got that you intend to
11 dismiss him because of the conviction. I
12 think you are head long looking into more
13 legal problems if you proceed on this basis.
14 If you don't, I mean if you do proceed on
15 that basis, if you don't consider the
16 application that I make, I have no problems
17 with the law that says once you get a report
18 from the independent hearing officer if he
19 should determine that there is reason that
20 you should remove Mr. Iurica that it be done
21 with a public hearing, I have no problem
22 with that, that's what the law said, the law
23 says you are entitled to an administrative
24 hearing. I doubt any of your prior
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2 administrative hearings, whether they deal
3 with police officers or civilian servant
4 people, anybody else has a full Town Board
5 sitting as hearing officers as you are doing
6 in this case. I respectfully ask you
7 reconsider that you adjourn this hearing and
8 that you have Counsel and myself agree on
9 the appointment of an independent Hearing
10 Officer, that would be my first request.

11 MR. MULHEARN: With due respect to Mr.
12 Damiani, the Town Attorney's office has
13 examined that issue under Section 271 of the
14 Town Law, it's sufficient to have a public
15 hearing with the Town Board sitting as fact
16 finders, with that said.

17 MR. DAMIANI: That being said my next
18 application would be with all due respect to
19 Mr. Kleiner, I would respectfully ask that
20 Mr. Kleiner consider recusing himself from
21 these proceedings. As you are aware based
22 upon the documentation that you intend to
23 mark as exhibit in this proceeding this case
24 arose from criminal charges against Mr.
25 Iurica that stem from the complaints of Mr.

1 Joseph Cintrone who is a resident of the
2 Village of Piermont. Based upon his
3 allegation that a wall that was owned by Mr.
4 Iurica Mr. Cintrone's allegation, was in
5 need of repair and deteriorated over a
6 period of time causing damages to what was
7 alleged to be Mr. Cintrone's property. This
8 whole case originated from Cintrone's
9 complaints that was continuously and
10 continued through the police department and
11 when he got no response from members of the
12 Board from the Village of Piermont and from
13 the village attorney, at least no response
14 that I felt appropriate, he then
15 communicated with Mr. Kleiner, both orally
16 and by letter, and received advise from Mr.
17 Kleiner and therefore I think to avoid the
18 appearance of impropriety and to ensure us
19 that in fact we do have a fair hearing here,
20 I would respectfully ask that Mr. Kleiner
21 recuse himself. I know a lot of time has
22 obviously passed since this, but I do have a
23 copy of Mr. Cintrone's letter to you dated
24 July 8th and I do have in that letter --
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MR. KLEINER: July 8th of what year?

MR. DAMIANI: July 8th of 2003, here's
a copy for you and each of the members of
the Board. Is that ---

MR. MULHEARN: May I ask a question?

MR. DAMIANI: Sure.

MR. MULHEARN: Is it your contention at
any point in the time Mr. Kleiner advised or
sanctioned or condoned Mr. Iurica to violate
New York State Law?

MR. DAMIANI: No, it's not my
contention that he condoned or sanctioned
any violation of the New York State law.
It's my contention that by virtue of this
proceeding, including the criminal
proceeding, involving the complaints of Mr.
Cintrone or in fact he sought Mr. Kleiner's
advise, laid out his problems to Mr.
Kleiner, spoke to Mr. Kleiner and apparently
received a response from Mr. Kleiner both
orally and in writing that in fact he should
recuse himself. We are talking about the
appearance of fairness here, and if you are
not going to have an independent Hearing

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2 Officer then I certainly think that at least
3 that should occur. I say this with all due
4 respect.

5 MR. KLEINER: That's okay, do you have
6 a copy of any response that I may have given
7 to ---

8 MR. DAMIANI: In Mr. Cintrone's summary
9 to the district attorney's office, I think
10 on the last page there is an oral response
11 and then there is a reference to a letter
12 having been received. Unfortunately we
13 never received that letter. I like to add
14 this letter is referred to in the documents
15 that you have that you received from the
16 district attorney's office.

17 MR. KLEINER: Do you have a question
18 for me?

19 MR. MULHEARN: Yes, I don't see, if you
20 don't see any legal requirement to recuse.

21 MR. KLEINER: I don't think there is
22 any harm, I have a vague recollection of
23 speaking to Mr. Cintrone, probably more than
24 once, where he essentially repeated to me
25 orally, I assume this came afterwards, the

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2 issues that he was having with the Village
3 of Piermont. To the best of my recollection
4 I said that this does not go to the Town of
5 Orangetown because it is in the Village of
6 Piermont, and he has to seek relief, if
7 there is any to be found, through the
8 village, and not through the Town. I don't
9 recall specifically any further
10 conversation, but you may have information
11 that I had of others, but the only thing I
12 recall clearly is that I did speak to him
13 and for a period of time he was calling
14 fairly frequently.

15 MR. DAMIANI: Yes, his testimony in
16 court revealed as much.

17 MR. KLEINER: And I recall that, but
18 the only thing I specifically recall is I
19 said you have to, if this is a village
20 problem then have you to deal with them
21 through the village.

22 MR. DAMIANI: On the last page, Mr.
23 Kleiner, of that letter is a reference to
24 you having advised him to sue somebody and
25 then in addition to that there is a

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2 response, Kleiner's oral and then Kleiner's
3 written response.

4 MR. KLEINER: I have on this piece of
5 paper, Kleiner told this client, was to sue
6 Mayor Traynor.

7 MR. DAMIANI: And underneath that --

8 MR. KLEINER: For what it's worth, I
9 didn't think I advised him to sue the mayor,
10 but I may have had a conversation with the
11 mayor where I said you have a resident who
12 is having problems, and here is what I
13 understand and the way I responded to him.

14 MR. DAMIANI: And underneath that there
15 is a reference to the written letter,
16 Kleiner letter, from Kleiner that obviously
17 --

18 MR. KLEINER: I will rely on the advice
19 of Orangetown Town Counsel on this, but I
20 think that ---

21 MR. MULHEARN: May I make a suggestion?
22 My suggestion is for you to hear the
23 evidence here and we can table the issue
24 whether or not you should be recusing
25 yourself during deliberations, that's

1 something we can study further. As I sit
2 here I don't think any I see any legal need
3 for you to recuse. Certainly there is no
4 harm in you hearing the evidence. It's my
5 assumption the Board is not going to be
6 making deliberations and determining tonight
7 and there is continuation of this matter to
8 the next public hearing. In any event the
9 issue can be tabled until we can further
10 handle the issue of recusal.
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12 MR. KLEINER: Okay, I just want to say
13 at that one point to Mr. Damiani, that is
14 the basis for this hearing as I understand
15 it is this matter proceeded through the
16 Court. There was a resolution through the
17 Courts after obviously after all had an
18 opportunity to be heard. Based on the
19 result of that before a jury was, given the
20 information we have before us that is the
21 only information that we are using to make a
22 determination as to the fitness of Mr.
23 Iurica to continue to serve on the
24 Orangetown Planning Board.

25 MR. DAMIANI: I understand what you are

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2 saying, that would be fine if we could jump
3 into somebody's mind to determine that is
4 the only criteria. If you are picking a
5 jury, you don't want anybody on the jury who
6 have an independent knowledge of the zone or
7 the scene or other facts. So from that
8 point I would have to disagree, you know, if
9 it's being based on just what you have from
10 the Court system, then as I suggested before
11 I think an independent Hearing Officer would
12 tell you that you ought to disband any
13 attempt to remove Mr. Iurica based on this,
14 but noting my objection and your decision is
15 fine.

16 MR. O'DONNELL: What date did Mr.
17 Iurica join the Planning Board?

18 MR. DAMIANI: I have no idea when he
19 joined the Planning Board.

20 MR. O'DONNELL: Tony, do you recall?

21 MR. IURICA: About, must be four years
22 ago.

23 MR. O'DONNELL: 2001, January.

24 MR. DAMIANI: His appointment is still
25 a valid appointment and it's not terminated.

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2 MR. MULHEARN: Mr. Damiani, do you have
3 anything more that you procedural --

4 MR. TROY: It's a seven year term.

5 MR. MULHEARN: Do you have any
6 procedural objections?

7 MR. DAMIANI: No, I have no more
8 procedural.

9 MR. MULHEARN: I am going to ask the
10 Town Board to take in the evidence a number
11 of documents each of which have been
12 certified and bearing on this matter. You
13 each have copies of the documents before
14 you. I have the original before me, and you
15 will have the originals to examine
16 subsequent to this hearing. Each of these
17 documents likewise is copy of which has been
18 served upon Mr. Damiani on Friday of last
19 week, and I am going to state for the record
20 and identify each of these documents. I
21 don't have to read each of these documents
22 in its entirety because each of them speak
23 for themselves, but I will read certain
24 relative parts that I believe bear on the
25 issue that's before the Board this evening.

These documents are as follows: The document marked as Town number 1, a sentence and commitment order from the Rockland County Court dated, filed rather 9/20/2005. Document number two is a Rockland County Court Indictment presented and filed on September 10, 2004. Document number three is a cover sheet and then a two page felony arrest warrant, filed by the Justice Court of the Town of Clarkstown on May 7, 2004. Document number four is the People's Voluntary Disclosure Form dated 9/8/04 said document was filed by the Rockland County Clerk on 9/8/04. Document Town number 5 are trial minute sheets filed 3/25/05 in the Rockland County clerk's office. Document number 6 is certain Rosario material filed in the Rockland County Clerk's office on 3/29/05. Each of those six documents have been certified by Edward Gorman, County clerk and a certification stamp appears in color on the original. The 7th document is Town number 7 is a transcript of the July 1, 2005 'sentencing hearing before the Honorable

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2 William K. Nelson of the Rockland County
3 Court. This document has been certified by
4 our Court Reporter Anne Marie Ambrose, the
5 court reporter for the hearing, I should say
6 who also by fortuitous circumstance is our
7 court reporter this evening, and the
8 original signature, certification of her
9 signature appears.

10 I am going to read several relevant
11 portions for the Board's consideration.
12 First, Town document number 7, sentencing
13 transcript of Judge Nelson on July 1, 2005.
14 Turn to page six, I am going to read the
15 relevant part into the record that has
16 bearing on this matter. The Court, Judge
17 Nelson speaks, line 15,

18 "I note that as of the date of this
19 report you are 63 years of age and you were
20 found guilty after trial of offering a false
21 instrument for filing in the second degree,
22 a Class A Misdemeanor. You are a married
23 father of two adult children and I note you
24 reside in Piermont. You own property at 21
25 Elm Street when the Village commenced

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2 proceedings to compel you to repair a
3 retaining wall on your property. You
4 conveyed your property to Joseph Gillespie,
5 of Evans, Georgia. It is a claim of the
6 District Attorney's Office and they offered
7 proof with respect to that, you did so
8 transfer to avoid the expense of repairing a
9 retaining wall. To complete the recording
10 of the deed to Mr. Gillespie you had to file
11 what is known as a real property transfer
12 with the Rockland County Clerk's office and
13 that document requires as we all know the
14 signature of both the grantor and grantee,
15 that is you as well as Mr. Gillespie. A
16 jury found that the document you offered for
17 filing did not contain the signature of Mr.
18 Gillespie, it contained a signature, a false
19 signature." That's the relevant part I am
20 going to read from that document.

21 I also am going to read the relevant
22 document of Town number 1 the sentence and
23 commitment order of Court of Rockland County
24 Judge Nelson which just to reiterate states
25 that the Defendant Mr. Iurica was found

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2 guilty of false instrument for filing in
3 violation of penal law 175.30 and the
4 sentence imposed by the Court was a
5 conditional discharge of one year. I am
6 going to now permit Mr. Damiani -- before I
7 do to I am, let me state the rest of the
8 documents I am not going to read from, as I
9 said earlier the documents speak for
10 themselves and the Board is well and in fact
11 encouraged to read each of the documents
12 carefully to examine the underlying facts
13 presented in those documents. Mr. Damiani
14 may now present or introduce any evidence or
15 witnesses that may bear upon this matter. I
16 respectfully reserve the right to
17 cross-examine any such witnesses as is
18 necessary and each of the Members of the
19 Board is free to ask any relevant questions
20 to any witnesses. Mr. Damiani?

21 MR. DAMIANI: Okay, since this is in
22 essence at least from the Town's point of
23 view, a document type of case and argument
24 with respect to what those documents
25 signify, I would like to address initially

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2 and my argument is in opposition to your
3 Town Counsel's arguments concerning what
4 this really means, and in doing that the
5 first thing I want to do is I already made
6 reference to Respondent's Exhibit A which is
7 my letter opposing the process that we are
8 proceeding under today. The second exhibit
9 is Exhibit B and the third is Exhibit C and
10 with respect to Exhibit C I have a copy for
11 each of you to look at, you can just slide
12 that down. Now would you mind we wait until
13 Mr. Troy comes back.

14 MR. KLEINER: I will be right back.

15 MR. MULHEARN: Let the record reflect
16 that Mr. Kleiner and Mr. Troy have
17 temporarily left the hearing.

18 MR. DAMIANI: Addressing again, if I
19 can the remarks made by Counsel, the
20 documents I believe that have been marked
21 contain a copy of the indictment itself.
22 That's what is referred to as Exhibit 2. In
23 that indictment, Mr. Iurica was charged with
24 possession of a forged instrument. The
25 possession of these documents. It was

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2 alleged that with knowledge that they were
3 forged and with the intent to defraud
4 others, he possessed a forged instrument
5 which was purported to be contained in what
6 was to be the public record and that
7 instrument was filed. The forgery in that
8 count allegedly was a signature of the
9 grantee Mr. Gillespie, Joseph Gillespie.
10 The jury found Mr. Iurica not guilty of
11 possession of a forged instrument. For
12 Counsel to interpret the filing of false
13 instrument to reflect the forgery is
14 inappropriate and it's improper as it was
15 for Judge Nelson. Judge Nelson is not the
16 finder of fact in this case. Judge Nelson
17 had in his sentence remarks concluded with
18 what we attorneys called obiter dictum, it's
19 a reference to something that is not in the
20 record. This man was acquitted of any
21 allegation of forging any instrument or
22 possessing a forged instrument. He was also
23 acquitted of offering a false instrument for
24 filing in the first degree. The Judge
25 himself dismissed that case because there

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2 was absolutely no evidence that he intended
3 to defraud anybody or with intent to defraud
4 did anything that was illegal with respect
5 to the deed in this case. That left us then
6 with that First Count of the possession of a
7 forged instrument and the Third Count of
8 filing a false instrument.

9 Now, when the Judge made reference to
10 having the prosecution, it's a claim of the
11 district attorney Office and they offered
12 proof with respect to it. Sure they offered
13 proof from Gillespie who said it wasn't his
14 signature but the proof was inconclusive as
15 to whether it was his signature or not, and
16 that's why the jury found him not guilty of
17 the possession of the forged instrument.
18 Otherwise they would have had to found him
19 guilty of the forged instrument when they
20 recorded it in the County Clerk's office.
21 The falsity of what he reported was not the
22 forgery of a name. The falsity was
23 erroneous information in the filing
24 documents. The deed was prepared on
25 December 24, with the understanding that

Gillespie was going to be come into his house to visit with the family after discussion that that is when the deed would be recorded. Mr. Gillespie didn't come during the Christmas holidays, he came afterward. He came between January 7th and January 9th, and that's when the deed was signed. All these people here witnessed the signing of the deed and testified in Court with respect to Mr. Gillespie actually signature of the deed. That's why there is no forgery involved and that's why it's unfair for Counsel to refer to the impropriety or the falsity in the deed being a forgery. The falsity in the deed or the irregularity in the deed that I believe that jury found was, one that in fact the deed is dated the 25th, the 24th of December and it's being recorded on January the 17 but having been signed on January, between January 7th and the 9th. The documents were basically conforming. He put the dates in the affidavits or on the filing instrument, the real property transfer tax to correspond

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2 with the deed's dates, the same date of the
3 24th. We knew that wasn't the case. We
4 agreed that that wasn't the case. We were
5 prepared to plead to that in the County
6 Clerk before a trial because we knew that
7 wasn't right, and it was a technical
8 violation of the law. That deed is still on
9 record. There is nothing so irregular about
10 that type of an irregularity or falsehood
11 that makes the transaction illegal. The
12 deed is still on record, all the papers are
13 on record and this property is still in the
14 name of Joseph Gillespie. Don't you think
15 if it was a forgery the Court would require
16 that the documents and the transaction be
17 nullified? That's not the case here.
18 Because the impropriety, the falsehood, the
19 irregularity whatever, you can call it what
20 you want, is an administerial situation that
21 does not reflect the legality of the
22 recording of the deed.

23 There is a second way this jury could
24 have found "falsity" that is under the
25 consideration. Every deed has a

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2 consideration. So as to avoid it's
3 impression as a gift this deed has the
4 consideration of ten dollars. Well during
5 the trial the testimony, the prosecution
6 brought out that your tax assessor as it
7 assessed for more than ten dollars. So
8 jurors not being cognizant of what
9 consideration means and a real estate
10 transaction, could very well have found that
11 that's improper.

12 A third falsity could have been the
13 address of Joseph's Gillespie. The address
14 that the client used for Joseph Gillespie
15 was an address he had on his driver's
16 license when he was here on the January 7
17 through the 9th, when he signed those
18 papers. In Court he testified that wasn't
19 his address. The prosecution, the Piermont
20 police, the detectives, nobody produced his
21 drivers's license. We made an effort to in
22 the state of Georgia would not let us have
23 his driver's license. If you think that was
24 such a crucial issue somebody would have
25 brought it in. Just like somebody would

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2 have brought in an expert, a handwriting
3 expert to contest the signature of Mr.
4 Gillespie. There was no such proof and
5 that's why this jury could not conclude that
6 there was a forged document.

7 So gentlemen what you have here is a
8 falsity that could be interpreted in any of
9 three ways. Now the Judge made this
10 reference to the forged instrument, I
11 suggest to you with all due respect to the
12 Judge, it's purely over obiter dictum, it's
13 not in the record. There is absolutely no
14 proof of it. Mr. Iurica was found guilty on
15 March 18th. The sentence wasn't until July
16 and it was a sentence that had been
17 adjourned a number of times, and it was one
18 where everyone knew, the prosecution knew
19 what the sentence was going to be and the
20 Judge knew what the sentence was going to
21 be. I wasn't objecting to the Judge's
22 remarks and that's the way it went down. The
23 bottom line is, it is not a fact in the
24 case. The only facts in this case was proof
25 that was submitted and the jury found him

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2 not guilty of any forgery aspects.

3 How about the certificate? The
4 certificate relief of forfeitures and
5 disabilities, under the correction law
6 basically is only issued at the time of
7 sentencing if the Court believes that the
8 relief to be granted by the certificate is
9 consistent with the public interest, and
10 that's what Judge Nelson found. That a
11 certificate of relief in this particular
12 case would be consistent with the public
13 interest, and that public interest includes
14 this man's ability to maintain his
15 employment and maintain his position with
16 this Board. To deny him this position,
17 where his appointment is otherwise valid,
18 where there is a certificate of relief from
19 disabilities, I suggest to you is improper
20 and illegal.

21 Now when the case started, the
22 prosecution when it opened to the jurors
23 said this is case is about real property.
24 This is case is about a piece of property
25 where a retaining wall was so deteriorated

1 that it's causing problems to Mr. Cintrone
2 whose property abuts this property. It's
3 owned by Mr. Iurica. Well low and behold,
4 guys, during the course of this trial at the
5 very end we finally find a document that Mr.
6 Iurica was stating all along, there is no
7 need for me to give property to somebody
8 either forged or otherwise to avoid an
9 obligation. First of all, if it was his,
10 the Village of Piermont could have done the
11 repairs and charged him for it and they
12 didn't do that, and they were told they
13 could do it. They weren't sure whose
14 property it was. Just like any other part
15 of humanity that you know the squeaking
16 wheel gets the oil, and this guy squeaked
17 and squeaked until somebody did something
18 for him, and I know Joe Cintrone a long
19 time. This piece of property and this wall
20 is on his property. It's not on Iurcia's
21 property, and the maps that you have in
22 front of you clearly established where that
23 wall is. His house was built four feet from
24 the end of his property but the retaining
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2 wall he is complaining about is on his
3 property. It was only at the end of trial
4 were we able to come up with that particular
5 survey, and if this trial proved anything it
6 proved that Mr. Iurica doesn't own this
7 piece, never had any obligation for it and
8 therefore all of the smoke and mirrors that
9 we have from Mr. Cintrone again are
10 baseless. Again, if it's damaged and
11 deteriorating it's his problem and he has to
12 fix it.

13 MR. MULHEARN: Mr. Damiani, may I
14 interrupt you for a second?

15 MR. DAMIANI: Sure.

16 MR. MULHEARN: You are speaking about a
17 number of the factors acting as a fact
18 witness would you mind being sworn in?

19 MR. DAMIANI: Mind being sworn?

20 MR. MULHEARN: You have testified as a
21 fact witness.

22 MR. DAMIANI: I am not testifying as a
23 fact witness. I am testifying as an
24 advocate on his behalf. Those documents are
25 in. They speak for themselves. There is no

1
2 need for me to be sworn, I am not a witness.

3 MR. MULHEARN: You certainly proceeded
4 as one.

5 MR. DAMIANI: No, I am not. I am
6 telling you what occurred. You have a
7 right, you go and check the record. You can
8 ask the stenographer to get a record. If
9 want to review the entire Court transcript,
10 you are welcome to do that.

11 MR. MULHEARN: That won't be necessary.
12 Do you have any additional evidence or
13 witnesses?

14 MR. DAMIANI: I have two witnesses. I
15 have witnesses who have already testified in
16 the trial concerning the observations but
17 since the client is not convicted of
18 anything doing with any forgery, there is no
19 need to be put them on again to testify as
20 they did in the course of the trial that Mr.
21 Gillespie signed that deed in their
22 presence. There is five witnesses who
23 signed it, but I do have two character
24 witnesses who have known Mr. Iurica for a
25 long period of time. The first is the

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2 former Supervisor of the Town of Clarkstown
3 and a present County Legislator Dusanenko.
4 I would ask Ted to be sworn if you wish to
5 swear him in. He would be giving character
6 testimony.

7 MR. MULHEARN: How do you pronounce
8 your name?

9 MR. DUSANENKO: Dusanenko,
10 D-U-S-A-N-E-N-K-O.

11 MR. MULHEARN: Sir, before you begin,
12 do you swear to tell the truth, the whole
13 truth, and nothing but the truth so help you
14 God?

15 MR. DUSANENKO: Absolutely.

16 DIRECT EXAMINATION

17 BY MR. DAMIANI:

18 Q. Mr. Dusanenko, could you state your
19 profession or occupation?

20 A. I am a retired mathematics teacher from
21 Clarkstown High School North, currently real estate
22 salesman with Kennedy and Kennedy ERA Kennedy and
23 Kennedy Real Estate in Piermont, New York, and
24 currently employed by the County of Rockland as a
25 County Legislator.

1

2

Q. Mr. Dusanenko, do you know Mr. Iurica?

3

A. Yes, sir.

4

Q. And how long have you known him?

5

A. Approximately 20 years.

6

Q. Do you know him in a business

7

relationship, a professional relationship as well

8

as personal?

9

A. Everything but sexual.

10

Q. As a member of the County Legislature,

11

do you have occasion to deal with Mr. Iurica in his

12

capacity with the highway department?

13

A. Yes, sir.

14

Q. And do you have occasion to speak to

15

others about Mr. Iurica in that community both from

16

a professional community and from the personal

17

community and in the area where you reside?

18

A. Yes, sir.

19

Q. And as I understand, you reside and

20

have a business, real estate business in the

21

Village of Piermont?

22

A. I don't reside in Piermont. I reside

23

in Valley Cottage and my employment is based out of

24

there.

25

Q. And in your employment in real estate

1
2 do you have occasion to speak to Mr. Iurica and
3 speak to others that know Mr. Iurica in a business
4 relationship?

5 A. Yes, sir.

6 Q. And do you know what his reputation in
7 the community is for truth and voracity?

8 A. For truth and voracity is always good.

9 Q. And in your dealings with him in the
10 Highway Department of the County of Rockland in his
11 position there, do you know what his reputation is
12 amongst his co-workers?

13 A. The co-workers know him and they rely
14 upon him for his expertise, when I am involved with
15 various projects.

16 Q. And there are highway department
17 projects?

18 A. Yes, sir.

19 MR. DAMIANI: I have no further
20 questions, Mr. Dusanenko.

21 MR. MULHEARN: I have no questions.

22 MR. DAMIANI: Mr. Miele?

23 MR. MIELE: I am Joseph Miele, I do not
24 live in this state but I live in the New
25 Jersey, but I am a large taxpayer in

1
2 Orangetown. I do spend about \$100,000.00 a
3 year in taxes and I normally ---

4 MR. MULHEARN: Before you start can you
5 be sworn it? Do you swear to tell the
6 truth, the whole truth, and nothing but the
7 truth, so help you God?

8 MR. MIELE: Yes, I do. I have been
9 involved in Piermont probably back from the
10 1960'S. I have known the family very well.
11 I believe they are very honest, always
12 always been honest with me. I know if I had
13 a problems with the wetlands and I do own a
14 lot of the real estate through the County.
15 I can depend upon him to give me
16 information, It's always been accurate. I
17 do own the Rockland Review, the paper. I
18 worked in Piermont probably since 1960, and
19 until the time of the papermill closing, so
20 I been around that village for many, many
21 years. I feel he is a very dependable
22 person. His family is very honest, hard
23 working. I know he works 12 hours a day, if
24 not more, and I always found him to be very
25 honest.

1
2 DIRECT EXAMINATION

3 BY MR. DAMIANI:

4 Q. Have you ever discussed his honest
5 reputation as you described it with other members
6 of the public in Piermont?

7 A. I have talked to other people. I have
8 known him and he has been very honest as I was
9 concerned and I know he has worked for the County.
10 I know he has done very well with County as far as
11 engineering goes and I think he is a plus to
12 Orangetown as far as being on the Planning Board.

13 Q. You talked to others in the County
14 office who work with him and have the same opinion?

15 A. Yes, sir.

16 MR. DAMIANI: I have no further
17 questions.

18 MR. MULHEARN: Mr. Miele, just a few
19 procedural questions, just state for the
20 record, I want you to verify you are
21 represented in legal matters from time to
22 time by a Tracy and Edwards, one of whom are
23 partners, one of partners is John Edwards,
24 it's first Deputy Town Attorney of
25 Orangetown?

1
2 MR. MIELE: I never seen him before in
3 my life

4 MR. MULHEARN: Is that correct?

5 MR. MIELE: That's correct.

6 MR. MULHEARN: No more questions.

7 MR. DAMIANI: I have no witnesses.

8 MR. MULHEARN: Mr. Supervisor, Members
9 of the Board again I would suggest that you
10 consider the testimony that you heard today
11 from Mr. Damiani, myself and the witnesses
12 propounded by Mr. Damiani, and I also ask
13 you to look at the documents which are all
14 been certified by -- Mr. Damiani would you
15 waive any objection to the authenticity of
16 each of the documents I showed you prior to
17 hearing?

18 MR. DAMIANI: I would assume you would
19 do likewise. I have a certified copy of the
20 certificate of relief that's been marked.

21 MR. MULHEARN: I would stipulate to you
22 the authenticity of that.

23 MR. DAMIANI: And obviously the other
24 document is the plot plan based on the
25 survey that Mr. Cintrone himself paid for.

1
2 MR. MULHEARN: Could you reiterate the
3 documents that you presented?

4 MR. DAMIANI: Sure, the first is a
5 letter to Teresa Kenny on August 5, noting
6 my objection which I renewed on the record
7 going forward in this manner as opposed to
8 an independent administrative hearing.

9 The second is a State of New York
10 certificate of relief from disabilities
11 granted by Judge Nelson at the time of
12 sentencing on July 1, 2005, and the third is
13 site plan for the Cintrone building based on
14 a property survey for Joseph and Joanne
15 Cintrone by Joseph P. Caruso, an associate
16 Engineers and Surveyor in Nanuet, New York
17 and is entitled the Cintrone building and
18 the site plan by Robert Bradbury, the
19 architect for Mr. Cintrone.

20 MR. MULHEARN: Thank you, sir. Just for
21 the record, again, Mr. Supervisor and
22 Members of the Board, I suggest there be
23 continuation of this public hearing for
24 further deliberations and there should be
25 some availability for public comment at the

1
2 inception of the next public Town Board
3 meeting on this matter.

4 MR. O'DONNELL: If I could ask you two
5 questions? Mr. Damiani, the deed that was
6 recorded in the County, you indicated that
7 deed is still in effect?

8 MR. DAMIANI: That's correct.

9 MR. O'DONNELL: Did anybody for Mr.
10 Caruso, I am sorry, from Mr. Cintrone try to
11 change the deed in any way?

12 MR. DAMIANI: No.

13 MR. O'DONNELL: So in your estimation,
14 that's a valid deed?

15 MR. DAMIANI: According to the Deputy
16 County Clerk Paul Pipperato, who testified
17 in the trial there is nothing wrong with
18 that deed. It's still on record and to my
19 knowledge nobody has done anything with
20 respect to trying to nullify that deed or
21 take any action with respect to that deed.
22 It was in proper order and properly
23 recorded.

24 MR. O'DONNELL: And when you brought
25 this out at the trial, did Judge Nelson say

1 anything to the effect or did you question
2 why?
3

4 MR. DAMIANI: Sure, Judge Nelson
5 dismissed the second count of the indictment
6 on his own, legally dismissed it on his own.

7 MR. O'DONNELL: Do where was the
8 knowledge that the forgery took place?

9 MR. DAMIANI: There is no forgery,
10 that's the point of my whole argument, there
11 was no forgery.

12 MR. O'DONNELL: What was the
13 misdemeanor based upon?

14 MR. DAMIANI: Any one of these three
15 aspect of falsities or irregularities none
16 of which were material enough to affect the
17 recording the deed. The consideration of
18 ten dollars whereas the property maybe worth
19 \$3,000.00 when referenced by your tax
20 assessor, the wrong date, yes the wrong date
21 was the 25th and the documents reflecting
22 the transaction occurred on the 25th, even
23 though the recording was on January 17th,
24 all the documents reflected that the
25 transaction occurred on the 24th of

1
2 December. That was wrong. The deed had
3 been prepared for Gillespie to come in over
4 the Christmas holidays. He didn't come in.
5 He came in January. The deed was signed
6 between January 7 and January 9th, that was
7 never changed on the deed. The date was
8 never changed from the 24th to January 7th
9 or 9th, whatever date it was signed. There
10 was a falsity there, it's an irregularity.
11 It does not effect the validity of the deed.

12 MR. O'DONNELL: Rather than why not
13 just draw a line through and initial it and
14 put down the correct date?

15 MR. DAMIANI: They didn't do that.

16 MR. O'DONNELL: Second question, you
17 referred to a retaining wall?

18 MR. DAMIANI: Yes.

19 MR. O'DONNELL: The last four feet and
20 that was the footage that was in question?

21 MR. DAMIANI: No, just the retaining
22 wall.

23 MR. O'DONNELL: Why did you indicate
24 the last four feet?

25 MR. DAMIANI: If you look at his

1
2 property, the end of the Cintrone property
3 is four feet from the end of his property.
4 The retaining wall is within that four feet,
5 Mr. O'Donnell.

6 MR. O'DONNELL: I beg your pardon, could
7 you state that one for me?

8 MR. DAMIANI: The end of the Cintrone
9 building itself is four feet from his
10 property line. The wall is within that four
11 feet of his property line. He built close
12 to the property line. He testified when I
13 asked him on cross-examination, how did he
14 built this concrete deck, how do you get
15 concrete on a deck on a second floor without
16 going on that other four feet of your
17 property? How do you do that without
18 disturbing the retaining wall? He wants you
19 to believe that it just crumbled on its own.
20 How do you get two feet of concrete for a
21 deck out there that extends four feet from
22 your property line?

23 MR. O'DONNELL: The other question is,
24 I find difficult, it's not that I don't
25 believe, is when anybody's name or

1 particularly in somebody's name at stake,
2 any judge no matter where it is in this
3 country to validate the actual name and
4 address that was on the driver's license,
5 why didn't the State of Georgia conform?
6

7 MR. DAMIANI: The State of Georgia had
8 privacy laws that wouldn't allow us to give
9 us copies. You see Mr. O'Donnell, the
10 burden was not on us. We tried to do that,
11 that was a burden that should have been on
12 the police in Piermont, the detectives who
13 spent so much time and arrested this man and
14 all he had to do was call him on the phone
15 and come in. That was on them just like if
16 there was a question about Mr. Gillespie's
17 handwriting, if they truly believed that
18 this was a forgery why didn't they get a
19 handwriting expert to come in and testify to
20 that this is not Mr. Gillespie's signature.
21 It's not it, they didn't do that. They
22 didn't do that and the District Attorney's
23 office didn't do that. They didn't bring in
24 his wife who was also present when Mr.
25 Gillespie signed that. She is back in

1 Georgia. They flew him up to testify. They
2 didn't bring the wife. Why didn't they do
3 that, would his wife's testimony contrary to
4 her husband's testimony? It's not our
5 burden. In this country the burden is on the
6 prosecution, we are not suppose to have to
7 prove anything. Unfortunately as a Defense
8 Attorney we try to prove our client's
9 innocence because we know that many jurors
10 don't believe in the presumption of
11 innocence. It is not our burden. We did as
12 much as we could in that trial to show that
13 this was not a forged instrument and that
14 jury believed it was not a forged instrument
15 otherwise they would have charged him when
16 he recorded the deed with possession of it.
17 When if it was forged, they would have to
18 convicted him of the forged document in his
19 possession. It just wasn't the case.

21 MR. O'DONNELL: Thank you.

22 MR. MULHEARN: Mr. Morr?

23 MR. MORR: I don't think we are here to
24 retry the case.

25 MR. DAMIANI: No, I agree with you.

1
2 MR. MORR: I need more importantly is
3 to understand the law that Mr. Iurica was
4 convicted of and the seriousness or lack
5 thereof. What I need from our Deputy Town
6 Attorney if you could supply to us the law,
7 the actual law that he was convicted of,
8 that's offering a false instrument for
9 filing, 175-30.

10 MR. MULHEARN: I would be happy to do
11 that.

12 MR. MORR: On the sentencing commitment
13 so we could get a better understanding of
14 what exactly the trial did on his
15 conviction.

16 MR. MULHEARN: Mr. Morr, if you take
17 look at page two of the document marked as
18 Town number 3, the indictment, the third
19 count discusses the issue of the elements of
20 offering a false instrument for filing in
21 the second degree pursuant to Section 175.30
22 of the Penal Law which is I believe the
23 testimony is clear that that is the criminal
24 law that Mr. Iurica was convicted of, and
25 that does state the elements of law in that

1
2 indictment.

3 MR. MORR: Is that a full reading of
4 law or just a specific piece?

5 MR. MULHEARN: I believe it's the
6 specific piece that applies. I would be
7 happy to provide you with a copy of the law.

8 MR. MOHR: Please, it refers to the
9 containing a false statement and false
10 information, is it anymore specified in the
11 law? It could be the difference between and
12 honestly an incorrect date or the fraudulent
13 signature which is being debated. I need to
14 see if the law separates those items.

15 MR. DAMIANI: If I may? If I can
16 address you?

17 MR. MOHR: Sure.

18 MR. DAMIANI: It only addresses them,
19 the other counts that he was acquitted of.
20 That's the only way to address it, that's
21 why I say there is no basis for the judge to
22 voluntarily say it was a forgery, it wasn't.
23 It could have been any of these areas that I
24 mentioned.

25 MR. MULHEARN: Mr. Morr, my

1
2 understanding of 175.30 of the Penal Law is
3 that it's a misdemeanor criminal act if
4 there is a document submitted that contained
5 a false statement or false information and
6 that's as general as that. Obviously a
7 lesser count than the felony matters which
8 the indictment relies upon but were
9 ultimately dismissed and/or found Mr. Iurica
10 was acquitted on those counts. So the
11 misdemeanor conviction that he was convicted
12 on is a fairly general lacking in detail of
13 the criminal code provision.

14 MR. MORR: We just received these
15 papers tonight. Is there anything here or
16 elsewhere that would more explain the basis
17 for the conviction? Is there any testimony
18 that would explain?

19 MR. MULHEARN: The jury deliberates
20 they go inside and close the door. We don't
21 know what they say or what facts they rely
22 upon. There is no public record of that.

23 MR. MOHR: How about the testimony of
24 the Court?

25 MR. MULHEARN: We could provide a copy

1
2 of the transcript of the recording, it would
3 be an extraordinary expense, it was a
4 significant trial.

5 MR. DAMIANI: It sure was.

6 MR. KLEINER: One of the things I want
7 to repeat Counsel's Morr said was we are not
8 here to retry the case or to go beyond the
9 documentation that's been submitted to us.
10 One thing, the last thing that was read by
11 Mr. Mulhearn, from Judge Nelson, Judge
12 Nelson said a jury found the document you
13 offered for filing did not contain the
14 signature of Mr. Gillespie, it contained a
15 false signature. Frankly, I don't know how
16 that lines up with what you presented, Mr.
17 Damiani, but I can only rely on the jury
18 action in the conviction, the misdemeanor
19 conviction.

20 MR. DAMIANI: In the misdemeanor
21 conviction, which is not being referenced to
22 as false.

23 MR. KLEINER: The judge said and I am
24 not going behind, I am not going to assume
25 what the basis was for Judge Nelson making

1
2 that statement, that's a statement he made
3 in his sentencing.

4 MR. DAMIANI: I just want to point out
5 as I did before, Judge Nelson's statement
6 was incorrect, had a jury found that the
7 falsity was a forgery they would have found
8 him guilty of the forgery.

9 MR. KLEINER: I am not debating what
10 you are saying. I am saying that the Board
11 has to determine based on the documents
12 before it, that is one, in making an
13 informed decision.

14 MR. DAMIANI: I understand that but the
15 at the same time you have to keep in mind as
16 I said before legal concept of obiter
17 dictum, that is not written in fact, it's
18 his comments and it's not supported by any
19 other evidence in this case, and certainly
20 not supported by the jury verdict, and as I
21 said before it was the jury that returned
22 the verdict, not the judge. This was not a
23 bench trial, this was a jury trial.

24 MR. TROY: I know it's not relevant to
25 the legality of what we are talking about

1 here, whether it was a misdemeanor or not.
2 Why was the property being sold or given to
3 Mr. Gillespie?
4

5 MR. DAMIANI: Mr. Gillespie, believe it
6 or not, wanted property in Piermont. He was
7 impressed with Mr. Iurica and the fact that
8 Mr. Iurica owned the property, and at one
9 point indicated to others that he was going
10 to plant peaches or marijuana, who knows? I
11 have no idea. When you talk about the
12 gentleman, Mr. Gillespie who is a computer
13 name was happy hippie or hemp.com, I have no
14 idea what was in that guy's mind. He asked
15 him for the property on a number of
16 occasions and Mr. Iurica decided to give it
17 to him. He was married at the same time and
18 given to him as a wedding present. That's
19 why they came to the County for ---

20 MR. TROY: Mr. Gillespie pay taxes on
21 it since he has gotten it?

22 MR. DAMIANI: I don't know, Mr.
23 Gillespie? I don't know if he has or not.

24 MR. TROY: Do you know why the Town
25 didn't fix up the wall or didn't follow

1
2 through?

3 MR. DAMIANI: Because they were led to
4 believe that it belonged to somebody other
5 than the real owner that owned the property
6 that's all. It has to be fixed. Somebody
7 should fix it, if they thought that he owned
8 they could fix it and they could have billed
9 him and they would have been faced with the
10 same situation that he didn't own it.

11 MR. MULHEARN: Mr. Supervisor and
12 Members of the Board, upon recommendation
13 that this matter be continue for further
14 deliberation to the next public hearing.

15 MR. KLEINER: When might that be?

16 MR. MULHEARN: When is the next meeting
17 of the Town Board, push it into November
18 some time?

19 MR. DAMIANI: That's fine, the end of
20 November is fine.

21 MR. KLEINER: November 21st, is that
22 all right?

23 MR. MULHEARN: At the same time, it's
24 not going to be a separate public hearing,
25 it's going to be part of the public hearing

1 before the Town Members at which point you
2 will ask for public comment on the matter
3 and after public comment you will have the
4 opportunity to deliberate and make a
5 determination or continue it to another time
6 when you can make a determination at that
7 hearing. I will provide members of the
8 Board with a copy of the statute in question
9 as per the Board's request.
10

11 MR. KLEINER: Is that a workshop also
12 and we can notice it as a meeting for this
13 purpose at 7 o'clock.

14 MR. MULHEARN: Do you have any
15 objection to that, Mr. Damiani?

16 MR. DAMIANI: No.

17 MR. MULHEARN: Thank you.
18

19 C E R T I F I C A T I O N
20

21 Certified to be a true and accurate
22 transcript of the aforesaid proceeding to
23 the best of my ability.

24 Anne Marie Ambrose

25 Anne Marie Ambrose

EXHIBITS

<u>NUMBER</u>	<u>DOCUMENT</u>
Town's 1	Sentence & Commitment letter
Town's 2	RCC Court Indictment
Town's 3	RC Court Felony Arrest Warrant
Town's 4	People's Voluntary Disclosure Form
Town's 5	Trial Minute Sheet
Town's 6	Rosario Material
Town's 7	Transcript of 7/1/05 before Judge Nelson
Respondent's A	Notification of Public Hearing
Respondent's B	Certificate of Relief from Disabilities
Respondent's C	Map