April 10, 2002

John Gregory Lambros
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
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CLERK OF THE COURT
District of Minnesota
U.S. Federal Courthouse
316 North Robert Street
St. Paul, Minnesota 55101
U.S. CERTIFIED MAIL NO. 7001-0320-0003-3595-0680
RETURN RECEIPT REQUESTED

RE: LAMBROS vs. USA, Civil No. 99-28 (DSD)
Criminal No. 4-89-82(5) (DSD)

Dear Clerk:

Attached for FILING are the following documents: (one original and one copy)

a. **MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS AND/OR DIRECT APPEAL. Dated: April 10, 2002;**

b. **MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY. Dated: April 10, 2002;**

c. **NOTICE OF APPEAL. Dated: April 10, 2002.**

Thanking you in advance for your assistance in this matter.

Sincerely,

John Gregory Lambros, Pro Se

CERTIFICATE OF SERVICE

I declare under the penalty of perjury that a true and correct copy of the above listed three (3) motions were mailed within a stamped addressed envelope from the USP Leavenworth Mailroom on this **11th** day of **April**, **2002**, to:

1. U.S. Attorneys Office, District of Minnesota, U.S. Federal Courthouse, Suite 600, 300 South 4th Street, Minneapolis, Minnesota 55415.

John Gregory Lambros, Pro Se

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN GREGORY LAMBROS,	*	**CIVIL NO. 99-28 (DSD)**
Petitioner,	*	Criminal No. 4-89-82(5) (DSD)
vs.	*	
UNITED STATES OF AMERICA,	*	**AFFIDAVIT FORM.**
Defendant.	*	**David S. Doty, U.S. Senior District Judge**

NOTICE OF APPEAL

Notice is hereby given that JOHN GREGORY LAMBROS, Petitioner/Movant in the above-entitled matter, appeals to the United States Court of Appeals for the Eighth Circuit from the final ORDER entered in this action on March 08, 2002.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON: **April 10, 2002**

John Gregory Lambros, Pro Se
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U.S. Penitentiary Leavenworth
P.O. Box 1000
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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN GREGORY LAMBROS,	*	CIVIL NO. 99-28 (DSD)
Petitioner,	*	Criminal No. 4-89-82(5) (DSD)
vs.	*	
UNITED STATES OF AMERICA,	*	AFFIDAVIT FORM.
Defendant.	*	David S. Doty, U.S. Senior District Judge

MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS AND/OR DIRECT APPEAL

Now comes Petitioner, JOHN GREGORY LAMBROS, Pro Se, (hereinafter Movant) and requests this court's views and direction in the appeal procedure as to Movant's "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO **RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE** FOR VIOLATIONS OF TITLE 28 U.S.C.A. § 455," being treated as a petition pursuant to 28 U.S.C. § 2255, within it's March 08, 2002, ORDER. See, IN RE REPETITIVE STRESS INJURY LITIGATION, 35 F.3d 637 (2nd Cir. 1994)(treating appeal as petition for writ of mandamus, vacated. On petition for rehearing, the Court of Appeals, Winter, Circuit judge, held that better course would have been to treat appeal as motion for leave to file petition for writ of mandamus so as to afford opportunity for response by the District Court.)

FACTS:

1. This Court ruled Movant's **RULE 60(b)(6) MOTION** must be treated as a petition pursuant to 28 U.S.C. § 2255, as per this Courts March 08, 2002, ORDER.

2. Movant Lambros has attached to this filing his CERTIFICATE OF APPEALABILITY, dated **April 10, 2002**, as to this Courts March 08, 2002, ORDER.

Therefore, Movant Lambros understands that a CERTIFICATE OF APPEALABILITY must be filed with the district court judge, as they have authority to issue COA's in 28 U.S.C. § 2255 cases and a COA is required to appeal from the denial of a section § 2255 motion. See, LOZADA vs. U.S., 107 F.3d 1011, 1014-1017 (2nd Cir. 1997).

3. Movant Lambros also understands that this court may consider the fact that Movant's **RULE 60(b)(6) MOTION** was denied, thus Movant Lambros is required to file a direct appeal as to the denial of a **RULE 60(b)(6) MOTION**, which would not require the filing of a CERTIFICATE OF APPEALABILITY. See, TRAVELERS INS. CO. vs. LILJEBERG ENTERPRISES, INC., 38 F.3d 1404 (5th Cir. 1994).

4. The Eighth Circuit has stated that WRITS OF MANDAMUS are to be utilized to review violations Title 28 U.S.C.A. **§ 455(a) and § 455(b)(3)**, although the authorities are not uniform. See, PFIZER INC. vs. LORD, 456 F.2d 532, 536 (8th Cir. 1972).

CONCLUSION:

5. Movant Lambros is proceeding Pro Se and has no formal legal education.

6. Movant requests this Court not to sanction him and allow the attached **April 10, 2002,** CERTIFICATE OF APPEALABILITY to proceed as a CERTIFICATE OF APPEALABILITY and/or direct appeal brief, as the issues are the same and only formatting would be different in the two (2) briefs.

7. Movant believes it is very important to afford the District Court an opportunity to respond in this action, as Movant was prejudiced and great risk is currently building in undermining the PUBLIC'S CONFIDENCE IN THE JUDICIAL PROCESS.

8. As the Supreme Court stated, "a court, in making such a determination, must continuously bear in mind that, in order to perform its function in the best way, **JUSTICE MUST SATISFY THE APPEARANCE OF JUSTICE.**" LILJEBERG vs. HEALTH

SERVICES CORP., 486 U.S. 847, 100 L.Ed.2d 855, 108 S.Ct. 2194 (1988).

9. Judge Robert G. Renner was the U.S. Attorney who signed two of the three indictments in the criminal judgments against Movant Lambros in 1976, that Judge Renner used to enhance/increase Movant Lambros' sentence on February 10, 1997. Therefore, Judge Renner had "ACTUAL KNOWLEDGE" of his disqualifying circumstances that he reviewed within Movant's PRESENTENCE INVESTIGATION REPORT and applied during Movant's February 10, 1997, RESENTENCING.

10. The Eighth Circuit has specifically held, "There is a general agreement that a United States Attorney serves as counsel to the government in all prosecutions brought in his district while he is in office and that he therefore is PROHIBITED from later presiding over such cases as a judge." (emphasis added). See, KENDRICK vs. CARLSON, 995 F.2d 1440, 1444 (8th Cir. 1993). Also see, U.S. vs. ARNPRIESTER, 37 F.3d 466, 467 (9th Cir. 1994)(same).

11. I JOHN GREGORY LAMBROS, declare under the penalty of perjury that the foregoing is true and correct. Title 28 U.S.C.A. § 1746.

EXECUTED ON: April 10, 2002.

John Gregory Lambros, Pro Se
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5.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN GREGORY LAMBROS,	*	**CIVIL NO. 99-28 (DSD)**
Petitioner,	*	Criminal No. 4-89-82(5) (DSD)
vs.	*	
UNITED STATES OF AMERICA,	*	**AFFIDAVIT FORM.**
Defendant.	*	**David S. Doty, U.S. Senior District Judge**

MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY

Now comes the Petitioner, John Gregory Lambros, Pro Se, (hereinafter Movant) and moves this Honorable Court pursuant to Title 28 U.S.C. 2253(c), for the issuance of a Certificate of Appealability. Therefore, this Movant is raising all of the issues submitted within his "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. § 455." DATED: April 13, 2001. Also any and all issues that were incorporated within subsequent filings. United States District Court Judge David S. Doty ordered this action be denied on March 8th, 2002, concluding that the District Court lacked jurisdiction over the matter.

In support hereof, the following facts are asserted;

1. Movant is filing his MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY in a timely fashion, as per the Court's March 8th, 2002, ORDER.

2. Prior to proceeding to the United States Court of Appeals for the Eighth Circuit on the issues decided adversely to the Movant, a "Certificate of Appealability" must issue.

3. The substantive standard for a "certificate of Appealability"

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is the same as the standard for the prior "Certificate of Probable Cause." REYES vs. KEANE, 90 F.3d 676, 680 (2nd Cir. 1996), LENNOX vs. EVANS, 87 F.3d 431, 434 (10th Cir. 1996); C.f. WILLIAMS vs. CALERON, 83 F.3d 281, 286 (9th Cir. 1996)(COA standard is more demanding than that for CPC).

4. The two certificates differ only in scope a certificate of probable cause places the case before the court of Appeals, but a certificate of appealability must identify each issue meeting the "substantial showing" standard. HERRERA vs. U.S., 96 F.3d 1010, 1012 (7th Cir. 1996).

5. Congress drafted the plain language of the newly enacted 2253(c)(2) to codify the BAREFOOT vs. ESTELLE standard for the issuance of a certificate of probable cause. In the context of an appeal from the denial of a 28 U.S.C. 2254 petitioner, a "substantial showing of the denial of a constitutional right" is the same as a "substantial showing of the denial of a federal right." See, LENNOX vs. EVANS, 87 F.3d 434.

6. A certificate of probable cause pursuant to BAREFOOT vs. ESTELLE, should issue if there is a showing that "...the issues are debatable among jurists of reason, that a court could resolve the issues [in a different manner], or that the questions are adequate to deserve encouragement to proceed further." A petitioner need not show that he would prevail on the merits. BAREFOOT vs. ESTELLE, 463 U.S. 880, 893 n.4 (1983).

7. Among the identifiable reasons for granting a certificate are the following:

(a) The United States Supreme Court has granted certiorari to review a "similar" question in another case;

(b) The Supreme Court or the relevant circuit court has identified the question as open, unresolved, or a matter of disagreement among different circuit courts;

(c) At least one Supreme Court Justice, expressing a view not rejected by a majority, has found merit in the claim;

(d) The court of appeals has decided to hear a claim en banc similar to a

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claim presented in the current appeal;

(e) The relevant circuit court or another district court in the district (or, possibly, elsewhere) has granted a probable cause certificate based on the same or a similar issue;

(f) The same or a similar issue is pending on appeal in the circuit in another case;

(g) The legal question presented by the petitioner has never before been decided by the circuit court;

(h) There is a split on the question among different panels or different district judges in the same circuit;

(i) The same or similar issue has been resolved favorably to a petitioner by a state court, a district judge in another district, or a panel in another circuit;

(j) the issue has been the subject of differing or dissenting views among the state court judges who previously adjudicated the claim in the petitioner's or another case;

(k) The district court applied a novel interpretation of the law or decided complex or substantial issues when adjudicating a claim;

(l) The legal or factual rationale for the district court's ruling is unclear;

(m) The district court decision or prior adverse circuit rulings relied upon case law that has been questioned or undermined by more recent decisions of the circuit or Supreme Court;

(n) The proper adjudication of the claim may require additional evidentiary development;

(o) A reasonable doubt exists as to whether the district court fully and fairly adjudicated the matter, given the actions of the district court or the state or the possible incompetence of petitioner's counsel;

(p) The severity of the penalty, in conjunction with other factors, prevents a conclusion that the claims are frivolous.

See, LIEBMAN, Federal Habeas Practice and Procedure, Second Ed., 1994 at pages 1079-1082. (Collected cases.)

8. Movant incorporates here all of his already-filed briefs and responses, pursuant to Federal Rules of Civil Procedure 10(c), within this action. Within the already-filed brief and responses on file with with this court, and arguments therein, Movant believes that under BAREFOOT vs. ESTELLE, supra, standards, warrants the issuance of a Certificate of Appealability. Specifically, including the following

issues and questions identified below and within Movant's Rule 60(b)(6) motion, as to "WHETHER U.S. DISTRICT COURT JUDGE ROBERT G. **RENNER** AND CHIEF MAGISTRATE JUDGE FRANKLIN LINWOOD **NOEL** ABUSED THERE DISCRETION BY INEXCUSABLE FAILURE TO DISQUALIFY THEMSELVES FROM MOVANT LAMBROS' CASE AS TO VIOLATIONS OF TITLE 28 U.S.C.A. § 455(a) AND § 455(b)(3)," would satisfy one or more of the issues of the "CERTIFICATE." See, IN RE KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM, 85 F.3d 1353, 1358 (**8th Cir.** 1996)(In this circuit whether disqualification is required in a particular case is committed to the sound discretion of the district judge, and we review only for an abuse of that discretion. . . . Considering together the mandamus standard and the abuse of discretion standard, the pivotal inquiry for determining whether KPERS asserts a clear and indisputable right to recusal and whether the district court had a nondiscretionary duty to honor that right is whether Judge Barlett abused his discretion by refusing to disqualify himself from this case.)(emphasis added).

9. As this Honorable Court knows, as to Title 28 U.S.C. § 455(a), "The Subsection 'applies to the varied and unpredictable situations not subject to reasonable legislative definition in which **JUDGES MUST ACT** to protect the very appearance of impartiality.' . . . Under it a judge has a **CONTINUING DUTY TO RECUSE BEFORE, DURING, OR IN SOME CIRCUMSTANCES, AFTER A PROCEEDING, IF THE JUDGE CONCLUDES THAT SUFFICIENT FACTUAL GROUNDS EXIST TO CAUSE AN OBJECTIVE OBSERVER REASONABLY TO QUESTION THE JUDGE'S IMPARTIALITY.** LILJEBERG, 486 U.S. at 861, 108 S.Ct. at 2203, 100 L.Ed.2d at 873." See, U.S. vs. COOLEY, 1 F.3d 985, 992 (10th Cir. 1993).

10. Movant LAMBROS incorporates his March 27, 2002, letter to Robert G. Renner, U.S. Senior District Judge, that was mailed via U.S. Certified Mail with Return Receipt Requested, as **EXHIBIT A**, within this Motion.

STATEMENT OF THE CASE

11. From 1969 thru 1977, Robert G. Renner held the position of United States Attorney for Minneapolis/St. Paul, Minnesota and **INDICTED** Movant John Gregory Lambros in the following criminal proceedings in the District of Minnesota:

a. **CR-3-75-128**, with judgment entered on June 21, 1976;

b. **CR-3-76-17**, with judgment entered on June 21, 1976; and

c. **CR-3-76-54**, with judgment entered on March 07, 1977.

12. Robert G. Renner, acting as U.S. Attorney for the District of Minnesota, participated and prosecuted Movant JOHN GREGORY LAMBROS on the above three (3) criminal action in paragraph eleven (11), as per his **STATUTORY DUTY**, Title 28 U.S.C. §547, as other attorneys within his office are only assistants, 28 U.S.C. §§ 542 and 543. See, U.S. vs. ARNPRIESTER, 37 F.3d 466, 467 (9th Cir. 1994)(Judge should of recused himself from prosecution, where he was responsible United States Attorney at time of investigation which led to defendant's indictment, as his impartiality might reasonably have been questioned, and he had served in government employment as counsel in connection with indictment. Title 28 U.S.C.A. §§ 455(a), (b)(3)).

13. Robert G. Renner, acting as U.S. Attorney for the District of Minnesota **PERSONALLY SIGNED** two (2) of the above listed **INDICTMENTS** described within paragraph eleven (11), naming Movant JOHN GREGORY LAMBROS:

a. **CR-3-75-128**, filed on February 23, 1976; and

b. **CR-3-76-17**, filed on March 24, 1976.

14. Robert G. Renner, acting as U.S. Attorney for the District of Minnesota was on **BRIEF** for the U.S. Government when Movant Lambros' attorney Peter J. Thompson filed the direct appeal in criminal action **CR-3-75-128** and **CR-3-76-17**, to the Eighth Circuit Court of Appeals. See, U.S. vs. LAMBROS, 544 F.2d 962, 963 (8th Cir. 1976).

15. Franklin Linwood Noel, Federal Chief Magistrate Judge for the District of Minnesota, acted as an Assistant U.S. Attorney within the United

States Attorneys Office for the District of Minnesota in Minneapolis from **1983 thru 1989.** See, WHO'S WHO IN THE MIDWEST, 2000-2001 Ed., page 435.

16. Movant LAMBROS was indicted on May 17, 1989, in this action by the United States Grand Jury, District of Minnesota, Criminal File Number **4-89-82 (05)**, as to a conspiracy from on or about the 1st day of January, **1983**, to on or about the 27th day of February, **1988.** Therefore, all investigations and Grand Jury hearings where held between **1983 thru 1989** by the MINNEAPOLIS OFFICE of the U.S. Attorney's Office for the District of Minnesota, as to the indictment of Movant LAMBROS.

17. By ORDER dated October 30, 1992, Magistrate Judge Franklin Linwood Noel judged Movant LAMBROS competent to stand trial **AFTER CONDUCTING A HEARING AND/OR HEARINGS.** During the hearing and/or hearings conducted by Magistrate Judge Noel, evidence was presented regarding the torture to Movant LAMBROS in Brazil that included the testimony of DEA Agent Terryl Anderson who arrested Movant LAMBROS in Rio de Janeiro, Brazil, and the testimony of the Doctors and X-ray technician who X-rayed Movant LAMBROS on July 17, 1992 at the U.S. Bureau of Prisons Medical Center, Rochester, Minnesota, that reported "CLUSTERS OF PUNCTATE RADIOPAQUE FOREIGN BODIES" in Movant LAMBROS' lateral view SKULL X-ray. Magistrate Noel issued at least one (1) ORDER dated October 30, 1992, as to Movant LAMBROS' competency to stand trial.

18. On February 10, 1997, the Honorable Robert G. Renner RESENTENCED Movant LAMBROS, as per the ORDER of the Eighth Circuit Court of Appeals. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995).

19. On February 10, 1997, the Honorable Robert G. Renner, during the RESENTENCING of Movant LAMBROS **REFERRED TO THE ORDER DATED OCTOBER 30, 1992, BY MAGISTRATE JUDGE NOEL.** See, Page 1 and 6 of transcript dated February 10, 1997, RESENTENCING. This document is offered as EXHIBIT B within the November 02, 2001, "PETITIONER LAMBROS REQUESTS PERMISSION FROM THE COURT TO AMEND THIS ACTION UNDER RULE 15(a) & 19(a), FRCP."

20. Movant LAMBROS is attaching as **EXHIBIT B** his STATEMENT OF THE CASE from his "APPELLANT JOHN GREGORY LAMBROS' PRO SE REPLY BRIEF TO THE APPELLEE' BRIEF DATED NOVEMBER 30, 1999," in U.S. vs. LAMBROS, Eighth Circuit Court of Appeals Numbers 99-2768 and 99-2880, which offers an extensive overview of this cases proceedings from his indictment on May 17, 1989 thru May 19, 1999. **EXHIBIT B.** (Pages 1 thru 6 of December 22, 1999, served December 27, 1999, "APPELLANT JOHN GREGORY LAMBROS' PRO SE REPLY BRIEF TO THE APPELLEE' BRIEF DATED NOVEMBER 30, 1999, in U.S. vs. LAMBROS, 8th Cir. No.s' 99-2768 and 99-2880).

21. On February 1, 2001, the Eighth Circuit Court of Appeals DENIED Movant's PETITION FOR REHEARING in Appeal No.s' 99-2768 and 99-2880.

22. Movant's April 13, 2001, filed April 24, 2001, MOTION TO VACATE ALL JUDGEMENTS AND ORDER BY U.S. DISTRICT COURT JUDGE ROBERT C. RENNER PURSUANT TO RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. 455."

23. **May 02, 2001**, Movant's court appointed attorney, Maureen Williams, submitted his WRIT OF CERT. to the U.S. Supreme Court that was DENIED on **June 4, 2001**, in LAMBROS vs. USA, No. 00-9751. **Therefore, Movant Lambros' litigation HAD NOT terminated as to Judge Renner's ORDER and JUDGMENTS before Movant Lambros submitted this Rule 60(b)(6) motion FILED on April 24, 2001.** [Please note in LILJEBERG vs. HEALTH SERVICES CORP, 100 L.Ed.2d 855 (1988), that the losing party in the district court discovered that basis for the section 455(a) claim **TEN (10) MONTHS AFTER** the district court judgment had been affirmed on appeal and the litigation **TERMINATED.**]

ISSUE ONE (1):

WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION BY NOT ALLOWING REVIEW UNDER THE CONSTRUCTION AND APPLICATION OF RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 USCA §§ 455(a) AND 455(b)(3), UNDER THE STANDARD ESTABLISHED IN LILJEBERG vs. HEALTH SERVICES CORP, 486 US 847 (1988)?

24. The District Court stated within its March 08, 2002, ORDER, "Although petitioner purports to bring this motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure, the court concludes that it must be treated as a petition pursuant to 28 U.S.C. § 2255 since Lambros is attempting to collaterally attack his conviction and sentence." . . . "Because the present motion to vacate is a successive § 2255 petition for which Lambros has not obtained permission from the Eighth Circuit Court of Appeals to file, this court lacks jurisdiction to hear the petition and must dismiss it accordingly." See, Pages 3 and 4.

25. On certiorari, the United States Supreme Court affirmed LILJEBERG vs. HEALTH SERVICES CORP, 486 US 847, 100 L.Ed.2d 855, 108 S.Ct. 2194 (1988), "In an opinion by STEVENS, J., joined by BRENNAN, MARSHALL, BLACKMUN, and KENNEDY, JJ., it was held that (1) under § 455(a), recusal of a federal judge is REQUIRED - even though the judge lacks actual knowledge of the facts indicating the judge's interest or bias in the case - if a reasonable person, knowing all the circumstances would expect that the judge would have such actual knowledge; (2) even though the trustee judge, due to a temporary lapse of memory, did not have actual knowledge of the university's interest at the time he entered judgment, the judge SHOULD OF KNOWN of his fiduciary interest in the dispute, adn there was ample basis in the record to support a CONCLUSION that the judge violated § 455(a) **AT THE TIME HE HEARD THE CASE AND ENTERED JUDGMENT**, because an objective observer would have questioned the JUDGE'S IMPARTIALITY; (3) **Rule 60(b)(6) RELIEF** from a final judgment is neither categorically available nor categorically unavailable for **ALL VIOLATIONS OF § 455**; (4) in determining whether a judgment should be vacated for a violation of § 455, it is appropriate to consider (a) the risk of **INJUSTICE TO THE PARTIES** in the particular case, (b) the risk that the denial of relief will produce injustice in other cases, and (c) the risk of undermining the **PUBLIC'S CONFIDENCE IN THE JUDICIAL PROCESS**; (5) a court, in making such a determination, must continuously bear in mind that, in order to perform its function in the best way, **JUSTICE MUST SATISFY THE APPEARANCE**

OF JUSTICE; and (6) under the standards in holding 3-5 above, **EXTRAORDINARY CIRCUMSTANCES EXISTED WHICH WERE SUFFICIENT, UNDER RULE 60(b)(6), TO JUSTIFY VACATING THE JUDGMENT ON § 455(a) GROUNDS**." LILJEBERG, 100 L.Ed.2d at 856 & 857. Of interest, is the fact that the losing party discovered that basis for the section 455(a) claim **TEN (10) MONTHS AFTER** the district court judgment had been affirmed on appeal and the **LITIGATION TERMINATED**.

26. **EXTRAORDINARY CIRCUMSTANCES:** The Supreme Court in LILJEBERG stated that EXTRAORDINARY CIRCUMSTANCES are needed under Rule 60(b)(6) of the Federal Rules of Civil Procedure to justify the delay in filing a motion - approximately 10 months after the judgment was affirmed by the Federal Court of Appeals - for relief on § 455(a) grounds. The court stated, "[t]he entire delay is attributable to the judge's inexcusable failure to disqualify himself on March 24, 1982, when the judge obtained actual knowledge of his interest, for, if the judge had then recused himself, or even disclosed the university's interest, the company could have made a timely motion for a new trial, or raised the issue on direct appeal;" (emphasis added)

27. **JUDGE ROBERT G. RENNER:** On February 10, 1997, the day Judge Renner RESENTENCED Movant Lambros, there was ample basis in the record:

a. See, Paragraphs 11 thru 14.

to support a conclusion that Judge Renner violated § 455(a) and § 455(b)(3) **AT THE TIME HE HEARD THE CASE AND ENTERED JUDGMENT**, because an objective observer would and has questioned Judge Renner's impartiality. The entire delay in filing this motion is attributable to Judge Renner's inexcusable failure to disqualify himself on February 10, 1997, when Judge Renner had **ACTUAL KNOWLEDGE OF HIS INTERESTS AND PAST PROSECUTION OF MOVANT LAMBROS, FOR, IF JUDGE RENNER HAD THEN RECUSED HIMSELF, OR EVEN DISCLOSED HIS BACKGROUND AS A U.S. ATTORNEY WHO PROSECUTED MOVANT LAMBROS, MOVANT LAMBROS' ATTORNEY COULD HAVE MADE A TIMELY MOTION FOR RESENTENCING, OR RAISED THE ISSUE ON DIRECT APPEAL.** Judge Renner can not state that he lacked knowledge of the above disqualifying circumstances, as Judge Renner reviewed and applied the

criminal indictments and judgments, as stated within paragraph 11, within Movant Lambros' **PRESENTENCE INVESTIGATION REPORT**. As this Court knows, "Due process requires, however, that the defendant be sentenced on reliable information. . . . As an added protection to ensure fair sentencing procedures, Fed.R.Crim.P. 32(c)(3)(D) provides:

> If the ... defendant ... allege[s] any factual inaccuracy in the **PRESENTENCE INVESTIGATION REPORT** ..., the court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing."

See, U.S. vs. MANOTAS-MEJIA, 824 F.2d 360, 368 (5th Cir. 1987). Movant Lambros' sentence was ENHANCED/INCREASED due to the three (3) indictments and judgements listed within paragraph 11. Therefore, Judge Renner had **ACTUAL KNOWLEDGE** at the time of RESENTENCING, February 10, 1997. Accordingly, even though Judge Renner's failure to disqualify himself may of been a product of some type of mental disorder, it was nevertheless a plain violation of the terms of the statute.

28. **MAGISTRATE JUDGE FRANKLIN LINWOOD NOEL:** Movant Lambros incorporates paragraphs 15, 16, 17, 18, and 19, and restates same here.

29. **SELF-ENFORCING:** Section 455 is "SELF-ENFORCING" in that it is SELF-EXECUTING; that is, a judge may recuse SUA SPONTE. See, ARONSON vs. BROWN, 14 F.3d 1578, 1581-1582 (Fed.Cir. 1994). Also see, **EXHIBIT A**, pages 3 and 4 as to legal cases supporting "SELF-ENFORCING" requirement of Section 455. Both Judge Renner and Magistrate Judge Noel has had a continuing duty to recuse themselves in this action, and have done nothing to date.

30. Movant believes that this Court can only conclude that the basis for relief in this case is "**EXTRAORDINARY**" and far surpasses the facts that existed and used by the U.S. Supreme Court in LILJEBERG, to establish the **"EXTRAORDINARY CIRCUMSTANCES"** required to bring Movant's motion within the "other reason" language and to prevent clause (6) from being used to circumvent the **ONE (1) YEAR LIMITATIONS PERIOD THAT APPLIES TO CLAUSE** (1). See, LILJEBERG, 100 L.Ed.2d at 874, n. 10 & 11.

("We conclude that the basis for relief in this case is extraordinary and that the motion was thus proper under clause (6). See infra, at 865-867, 100 L.Ed.2d, at 875-877. Of **PARTICULAR IMPORTANCE**, this is not a case involving neglect or lack of due diligence by respondent. Any such neglect is rather chargeable to Judge Collins. Had he informed the parties of his association with Loyola and of Loyola's interest in the litigation on March 24, 1982, when his knowledge of the University's interest was renewed, respondent could have raised the issue in a motion for new trial or on appeal without requiring that the case be reopened."). LILJEBERG, 100 L.Ed.2d at 874, n. 11. (emphasis added)

31. Movant Lambros did not discover and/or understand that Robert G. Renner was the U.S. Attorney for the District of Minnesota until on or about February 26, 2001, as stated within paragraphs 2, 3, and 4 of Movant Lambros' April 13, 2001, initial filing in this action "MOTION TO VACATE ALL JUDGMENTS ...".

32. Movant Lambros' court appointed attorneys did not inform Movant that Robert G. Renner was the U.S. Attorney in the District of Minnesota that indicted and prosecuted Movant Lambros in 1975 and 1976.

33. Both Judge Renner and Magistrate Judge Noel are required to know the law and it is remarkable - and quite inexcusable - that they failed to recuse themselves when Movant Lambros was before them. See, WALTON vs. ARIZONA, 111 L.Ed.2d 511, 517 (1990)("Trial judges are presumed to know the law and to apply it in making decisions").

34. **FEDERAL RULE OF CIVIL PROCEDURE 60(b)(6) HAS BEEN USED BY OTHER DISTRICT COURTS IN CRIMINAL PROCEEDINGS AND NOT TREATED AS A PETITION PURSUANT TO 28 U.S.C. § 2255, DUE TO VIOLATIONS OF TITLE 28 U.S.C.A. 455(a):** A quick search reveals the following:

a. U.S. vs. GARRIDO, 869 F.Supp. 1574, 1582 (S.D.Fla 1994); affirmed 139 F.3d 847, rehearing granted and vacated 161 F.3d 652, on rehearing 172 F.3d 806, certiorari denied 120 S.Ct. 444, 145 L.Ed.2d 362.

35. The District Court's ruling within its March 08, 2002, ORDER, which states, "Although petitioner purports to bring this motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure, the court concludes that it must be treated as a petition pursuant to 28 U.S.C. § 2255 since Lambros is attempting to collaterally attack his conviction and sentence. See, BOLDER vs. ARMONTROUT, 983 F.2d 98, 99 (8th Cir. 1993); BLAIR vs. ARMONTROUT, 976 F.2d 1130, 1134 (8th Cir. 1992)." See, Page 3.

36. On June 06, 2001, the Second Circuit Court of Appeals **REVIEWED** the Eighth Circuit Court of Appeals decision in BLAIR vs. ARMONTROUT, 976 F.2d 1130 (8th Cir. 1992 and **DISAGREES WITH THEIR HOLDING**. See, RODRIGUEZ vs. MITCHELL, 252 F.3d 191, 198-200, and fn.2 on page 200 (2nd Cir. 2001). The Second Circuit stated, "We now rule that a motion under **Rule 60(b)** to vacate a judgment denying habeas **IS NOT** a second or successive habeas petition and should therefore be treated as any other motion under Rule 60(b)." RODRIGUEZ, 252 F.3d at 198. The Second Circuit further stated in RODRIGUEZ:

> "We are aware that the majority of circuit courts that have considered this issue have held that a **Rule 60(b)** motion to vacate a judgment denying habeas either must or may be treated as a second or successive habeas petition. These courts, however, **HAVE OFFERED LITTLE EXPLANATION IN SUPPORT OF THEIR REASONING. THEIR OPINIONS DEPEND LARGELY ON CONCLUSORY STATEMENTS AND CITATIONS TO ONE ANOTHER. Fn. 2.* IN OUR VIEW, BETTER REASONS SUPPORT THE CONCLUSION THAT A RULE 60(b) MOTION TO VACATE A JUDGMENT DENYING HABEAS IS NOT A SECOND PETITION UNDER § 2244(b).**" (emphasis added)
>
> * Foot Note 2 offers an overview of legal cases the Second Circuit reviewed including BLAIR vs. ARMONTROUT, 976 F.2d 1130, 1134 (8th Cir. 1992)(holding that a "Rule 60(b)(6) motion [i]s the functional equivalent of a second petition for a writ of habeas corpus").

RODRIGUEZ, 252 F.3d at 199-200.

37. None of the Eighth Circuit Court of Appeals cases that have treated **Rule 60(b)** motions as the equivalent of a second petition for writ of habeas corpus **HAVE RAISED VIOLATIONS OF TITLE 28 U.S.C.A. § 455(a) AND/OR § 455(b)(3), OR CITED LILJEBERG vs. HEALTH SERVICES CORP., 100 L.Ed.2d 855 (1988).** Therefore, the legal question presented by Movant Lambros has never before been decided by

the Eighth Circuit Court of Appeals.

38. Movant Lambros believes that this motion and prior pleadings within this action prove **"EXTRAORDINARY CIRCUMSTANCES"** exist, as outlined by the U.S. Supreme Court in LILJEBERG, to bring this action within the "other reason" language of Federal Rule of Civil Procedure 60(b)(6), as this is not a case involving neglect or lack of due diligence by Movant Lambros. Any such neglect is rather chargeable to Judge Renner and Magistrate Noel. See, LILJEBERG, 100 L.Ed.2d at 874 and fn. 10 & 11.

39. At this juncture, this Movant does not bear the burden of persuading this court to change its mind, only of persuading it that another reasonable jurist could come to a different conclusion. The foregoing cases illustrate that other jurists have in fact come to a different conclusion, though not on precisely the same facts, the U.S. Supreme Court decision in LILJEBERG could not be any closer. Movant has carried the light burden on him not to obtain release, but to obtain appellate review, in his request to receive a RESENTENCING HEARING that would entail a relatively low monetary and temporal costs to the government. In addition, the government has not shown that the lengthy delay between the RESENTENCING on February 10, 1997 and a new resentencing hearing would present a special hardship in this action. Therefore, the risk of injustice to the government from granting Movant a resentencing hearing is slight. See, U.S. vs. CERCEDA, 172 F.3d 806, 815 (11th Cir. 1999).

40. The District Court did not follow the U.S. Supreme Courts ruling in LILJEBERG, when Justice STEVENS, joined by BRENNAN, MARSHALL, BLACKMUM, and KENNEDY, stated, "We must continuously bear in mind that 'to perform its high function in the best way **'JUSTICE MUST SATISFY THE APPEARANCE OF JUSTICE.'** . . . The problem, however, is that people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges. The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding

even the appearance of impropriety whenever possible. Thus, It is important in a case of this kind to identify the FACTS that might reasonably cause an objective observer to question Judge Collins' impartiality. There are at least four such facts." LILJEBERG, 100 L.Ed.2d at 875. Movant John Gregory Lambros has offered this Court three (3) such facts in the case of Judge Renner, as described in paragraphs 11 thru 14, and one (1) such fact in the case of Magistrate Judge Noel, as described in paragraphs 15 thru 19.

ISSUE TWO (2):

WHETHER THE COURT OF APPEALS MAY REVIEW THE QUESTION OF RECUSAL DE NOVO ON REVIEW OF THE PROCEEDINGS?

41. Movant Lambros believes that the Eighth Circuit Court of Appeals is entitled to view this case from the same position as the district court. LAKE MOHAVE BOAT OWNERS ASS'N vs. NATIONAL PARK SERV., 138 F.3d 759, 762 (9th Cir. 1998). That is, De Novo.

42. Judge David S. Doty stated on page one (1) of his March 08, 2002 ORDER, " . . . [s]ince the court concludes that it lacks JURISDICTION over this matter, the court will dismiss all of these motions." Because this is a question of JURISDICTION, the Eighth Circuit should review the district court's determination of subject matter jurisdiction under the discretionary function exception de novo. See, GENERAL DYNAMICS CORP. vs. U.S., 139 F.3d 1280, 1282 (9th Cir. 1998)(review of jurisdiction and law questions are reviewed de novo); U.S. vs. YACOUBIAN, 24 F.3d 1, 3 (9th Cir. 1994)("This court reviews issues of law like JURISDICTION, separation of power, ex post facto and double jeopardy claims de novo."). Also see, TOBEY vs. EXTEL/JWP, INC., 985 F.2d 330, 332 (7th Cir. 1993)(Appeals courts main job is to correct errors of law. They exercise full review over questions

of law, thus de novo).

43. Rule 50(b)(6) of the Federal Rules of Civil Procedure: "A district court's interpretation of federal rules is reviewed de novo." See, HILAO vs. ESTATE OF MARCOS, 95 F.3d 848, 851 (9th Cir. 1996); SCHWARZSCHILD vs. TSE, 69 F.3d 293, 294 (9th Cir. 1995)(Court of Appeals would review district court's interpretation of Rules of Civil Procedure de novo.)

44. Mixed questions of law and fact are reviewed de novo. See, U.S. vs. DUARTE-HIGAREDA, 113 F.3d 1000, 1002 (9th Cir. 1997). A mixed question of law and fact occurs when the historical facts are established, the rule of law is undisputed, and the issue is whether the facts satisfy the legal rule. See, PULLMAN-STANDARD vs. SWINT, 456 U.S. 273, 289 n.19, 72 L.Ed.2d 66, 80 n.19 (1982); IN RE BAMMER, 131 F.3d 788, 792 (9th Cir. 1997)(en banc)(Mixed questions generally are reviewed de novo because they require the consideration of legal concepts and the exercise of judgment about the values that animate legal principles).

45. Movant requests that the Eighth Circuit Court of Appeals review this action de novo.

ISSUE THREE (3):

WHETHER JUDGE RENNER AND NOEL ABUSED THEIR DISCRETION BY THEIR FAILURE TO DISQUALIFY THEMSELVES FOR VIOLATIONS OF § 455(a) AND § 455(b)(3) AT THE TIME THEY HEARD MOVANT LAMBROS' CASE AND ENTERED JUDGMENT, AS BOTH JUDGE RENNER AND NOEL HAD ACTUAL KNOWLEDGE OF THE FACTS AND LAW?

46. In the Eighth Circuit Court of Appeals, "[w]hether disqualification is required [Title 28, U.S.C. §455] in a particular case is committed to the sound discretion of the district judge, and we REVIEW ONLY FOR AN ABUSE OF DISCRETION. . . . Considering together the mandamus standard and the abuse of

discretion standard, the PIVOTAL INQUIRY for determining whether KPERS asserts a clear and indisputable right to recusal and whether the district court had a nondiscretionary duty to honor that right is whether Judge Bartlett abused his discretion by refusing to disqualify himself from this case." See, IN RE KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM, 85 F.3d 1353, 1358 (8th Cir. 1996).

47. Judge Renner and Magistrate Noel's constitutional errors in not allowing Movant Lambros his right to an impartial judge have been held not to be subject to the harmless-error analysis. See, CHAPMAN vs. CALIFORNIA, 386 U.S. 18, 23 n.8, 17 L.Ed.2d 705, 710 n.8 (1967).

48. The Ninth Circuit defined "ABUSE OF DISCRETION" as "a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." See, WING vs. ASARCO INC. 114 F.3d 986, 988 (9th Cir. 1997).

49. Judge Renner and Magistrate Judge Noel abused their discretion in not applying the correct law and/or rested their decision on a clearly erroneous finding of material fact, as to Title 28, U.S.C.A. § 455(a) and § 455(b)(3), when Movant Lambros was present for hearings by both Judges. See, U.S. vs. SPRAGUE, 135 F.3d 1301, 1304 (9th Cir. 1998).

50. In fact, the district Court in denying Movant's Rule 60(b)(6) motion, must be reviewed for an abuse of discretion. See, U.S. vs. STATE OF WASHINGTON, 98 F.3d 1159, 1162-63 (9th Cir. 1996).

51. Title 28 U.S.C.A. § 455, sets forth no procedural requirements. That section is directed to the judge, rather than the parties, and is SELF-ENFORCING on the part of the judge. Moreover, section 455 includes no provision for referral of the question of recusal to another judge; If the judge sitting on a case IS AWARE OF GROUNDS FOR RECUSAL UNDER SECTION 455, that judge **HAS A DUTY** TO RECUSE HIMSELF OR HERSELF. See, U.S. vs. SIBLA, 624 F.2d 864, 867-868 (9th Cir. 1980). Also see, U.S. vs. COOLEY, 1 F.3d 985, 992 (10th Cir. 1993)("The subsection [28 U.S.C.A. § 455(a)] 'applies to the varied and unpredictable situations not

subject to reasonable legislative definition in which JUDGES MUST ACT to protect the very appearance of impartiality.' ... Under it a judge has a CONTINUING DUTY to recuse before, during, or, in some circumstances, AFTER a proceeding, if the judge concludes that sufficient factual grounds exist to cause an objective observer reasonably to question the judge's impartiality. LILJEBERG, 486 U.S. at 861, 108 S.Ct. at 2203").

52. The Eighth Circuit has specifically held, "There is general agreement that a United States Attorney serves as counsel to the government in all prosecutions brought in his district while he is in office and that he therefore is PROHIBITED from later presiding over such cases as a judge." (emphasis added). See, KENDRICK vs. CARLSON, 995 F.2d 1440, 1444 (8th Cir. 1993). Also see, U.S. vs. ARNPRIESTER, 37 F.3d 466, 467 (9th Cir. 1994)(same).

53. The Eighth Circuit uses an OBJECTIVE REASONABLENESS test, that is, "whether the judicial officer's impartiality might reasonably be questioned under the circumstances. See 28 U.S.C. § 455(a)." Quoting, LUNDE vs. HELMS, 29 F.3d 367, 370 (8th Cir. 1994), in reviewing rulings on motions to recuse for abuse of discretion.

54. This Movant has offered facts contained within the motions and pleading in this action, including paragraphs 11 thru 23 within the Statement of the Case section of this motion, to meet the Eighth Circuit's OBJECTIVE REASONABLENESS test in ruling that Judge Renner and Magistrate Judge Noel should of recused themselves for violations of § 455(a) and § 455(b)(3), at the time they heard Movant Lambros' case and entered judgment. The record clearly dictates same and it is not a question of either government or Movant bearing burden of proof. See, U.S. vs. GREENSPAN, 26 F.3d 1001 (10th Cir. 1994).

55. Both Judge Renner and Noel, by definition, abused their discretion when they make an error of law, See, KOON vs. U.S., 518 U.S. 81, 100 (1996), as "trial judges are presumed to know the law and to apply it in making their decisions."

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See, WALTON vs. ARIZONA, 497 U.S. 639, 110 S.Ct. 3047, 111 L.Ed.2d 511, 517 (1990). Also see, CRAWFORD vs. F. HOFFMAN-LA ROCHE LTD., 267 F.3d 760, 763 (8th Cir. 2001) ("A district court by definition abuses its discretion when it makes an error of law.")

56. Both section 455(a) and section 455(b)(3) required both Judge Renner and Magistrate Judge Noel to recuse themselves, as they had "ACTUAL KNOWLEDGE." Movant Lambros should be RESENTENCED and a new competency hearing should be held.

57. At this juncture, Movant Lambros does not bear the burden of persuading the court to change its mind, only of persuading it that another reasonable jurist could come to a different conclusion. The foregoing cases illustrate that other jurists have in fact come to a different conclusion, though not on precisely the same facts. Movant has carried the light burden on him not to obtain release, but to obtain appellate review.

CERTIFICATE OF APPEALABILITY

58. This Movant understands that the district court ruled that Movant Lambros' **RULE 60(b)(6)** motion MUST be treated as a petition pursuant to 28 U.S.C. § 2255. Therefore, Movant Lambros understands that a CERTIFICATE OF APPEALABILITY must be filed with the district court. See, LOZADA vs. U.S., 107 F.3d 1011, 1014-1017 (2nd Cir. 1997).

59. Movant also understands that this court may consider the fact that Movant's **RULE 60(b)(6)** motion was denied, thus Movant Lambros should file a direct appeal to the Eighth Circuit and not file this CERTIFICATE OF APPEALABILITY.

60. The Eighth Circuit has also stated that WRITS OF MANDAMUS are to be utilized to review this action, although the authorities are not uniform. See, PFIZER INC. vs. LORD, 456 F.2d 532, 536 (8th Cir. 1972). Movant believes an adequate means, such as a certificate of appealability and/or a direct appeal are

available to attain the relief requested in this action.

61. Movant is proceeding Pro Se and requests this court not to sanction him if this certificate of appealability is not the correct motion to file to proceed to the Eighth Circuit Court of Appeals and instruct Movant Lambros as to the correct motion to file in this action to proceed to the Eighth Circuit Court of Appeals in this action.

EVIDENTIARY HEARING REQUESTED

62. Movant Lambros maintains that an evidentiary hearing is necessary as Movant has alleged facts which, if proved, would entitle Movant to relief and an evidentiary hearing is required to establish the truth of the allegations. An evidentiary hearing is especially necessary in this case as Movant Lambros' adversely determined **RULE 60(b)(6) MOTION** deprived Movant of a full and fair hearing in that: 1) the merits of the factual disputes were not resolved in a hearing; 2) the district court's factual determination is not supported by the record as a whole and is clearly erroneous; and 3) the fact finding procedure was not adequate to afford a full and fair hearing. See, TOWNSEND vs. SAIN, 372 U.S. 293, 313-314 (1963); HARRIS vs. PULLEY, 852 F.2d 1546, 1565 (9th Cir. 1988).

APPOINTMENT OF COUNSEL

63. Movant Lambros requests that this Court appoint counsel if an evidentiary hearing is held, at no cost to Movant.

CONCLUSION

64. For all of the above-stated reasons, Movant Lambros requests that

this court issue a "CERTIFICATE OF APPEALABILITY" to Movant.

65. If this court does not consider and/or rule that a CERTIFICATE OF APPEALABILITY is the correct motion in appealing this court's March 08, 2002, ORDER, than Movant requests this Court to stay this CERTIFICATE OF APPEALABILITY and forward same to the Eighth Circuit Court of Appeals as a **TIMELY FILED DIRECT APPEAL** in this action.

66. I JOHN GREGORY LAMBROS, declare under the penalty of perjury that the foregoing is true and correct. Title 28 U.S.C.A. § 1746.

EXECUTED ON: **April 10, 2002**

John Gregory Lambros, Pro Se
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March 27, 2002

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NOTICE TO PERFORM AND/OR

ACTUAL NOTICE

AFFIDAVIT FORM

Robert G. Renner, U.S. Senior District Judge
748 Warren E. Burger Federal Building
316 North Robert Street
St. Paul, Minnesota 55101
Tel. (651) 848-1180
U.S. Certified Mail No. 7001-0320-0005-1590-0436
Return Receipt Requested

RE: LAMBROS vs. USA, Civil No. 99-28(DSD), District of Minnesota
Criminal No. 4-89-82(5) (DSD), District of Minnesota

Dear Honorable Judge Robert G. Renner:

From 1969 to 1977, you held the position of United States Attorney for Minneapolis, Minnesota and indicted me in the following criminal proceedings in the District of Minnesota, Minneapolis/St. Paul:

a. **CR-3-75-128**, with judgment entered on June 21, 1976;

b. **CR-3-76-17**, with judgment entered on June 21, 1976; and

c. **CR-3-76-54**, with judgment entered on March 07, 1977.

Therefore, as U.S. Attorney for the District of Minnesota, you participated and prosecuted John Gregory Lambros on the above three (3) criminal actions, as per your **STATUTORY DUTY**, Title 28 U.S.C. §547, as other attorneys within your office are only assistants, 28 U.S.C. §§ 542 and 543. See, U.S. vs. ARNPRIESTER, 37 F.3d 466, 467 (9th Cir. 1994) (Judge should of recused himself from prosecution, where he was responsible United States Attorney at time of investigation which led to defendant's indictment, as his impartiality might reasonably have been questioned, and he had served in government employment as counsel in connection with indictment. Title 28 U.S.C.A. § 455(a), (b)(3)).

In fact, as U.S. Attorney, you personally signed two (2) of the above-entitled criminal **INDICTMENTS:**

d. **CR-3-75-128**, filed on February 23, 1976; and

e. **CR-3-76-17**, filed on March 24, 1976.

EXHIBIT A.

On February 10, 1997, I was resentenced by you in your capacity as Robert G. Renner, U.S. Senior District Judge, District of Minnesota, in criminal action number **4-89-82(5)**, as per the ORDER of the the Eighth Circuit Court of Appeals in U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995). Please note that you used the above-entitled convictions that you indicted me on while U.S. Attorney to INCREASE THE PENALTY you sentenced me to on February 10, 1997.

You also ruled on **EVERY** Motion I filed with the court from February 10, 1997 thru February 12, **2001**. For some strange reason, the docket sheet reflects that **Chief Judge James M. Rosenbaum** was **REASSIGNED** to my case on or about February 20, 2001, as per the handwritten entry in the docket sheet and DISQUALIFIED himself on February 22, **2002**. Judge David S. Doty has been reassigned to my case currently. See, **EXHIBIT A** (Docket sheet in U.S. vs. LAMBROS, Cr-4-89-82(5), pages 19 and 20).

On April 20, 2001, I mailed my April 13, 2001, filed April 24, 2001, "**MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. § 455.**" This motion requested **YOUR RECUSAL** from all past, current, and future legal action as to John Gregory Lambros and to vacate all judgments and orders you issued/entered in all legal proceedings involving John Gregory Lambros, due to violations of Title 28 U.S.C.A. § 455(a) and § 455(b)(3) by you.

On March 08, 2002, an individual signed an ORDER for U.S. District Court Judge David S. Doty, stating the court dismissed my Rule 60(b)(6) motion due to lack of jurisdiction, stating "Although petitioner purports to bring this motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure, the court concludes that it must be treated as a petition pursuant to 28 U.S.C. § 2255 since Lambros is attempting to collaterally attack his conviction and sentence." See, Page 3, March 08, 2002 ORDER. The U.S. Supreme Court made clear that "[R]elief from final judgment 'for any other reason,' pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, is neither categorically available nor categorically unavailable for all violations of 28 U.S.C.S. § 455, which defines the circumstances that mandate the disqualification of federal judges; in determining whether a judgment should be VACATED for a violation of § 455, it is appropriate to consider (1) the risk of injustice to the parties in the particular case, (2) the risk that the denial of relief will produce injustice in other cases, and (3) the RISK IN UNDERMINING THE PUBLIC'S CONFIDENCE IN THE JUDICIAL PROCESS; a court, in making such a determination, must continuously bear in mind that, in order to perform its function in the BEST way, **JUSTICE MUST SATISFY THE APPEARANCE OF JUSTICE.**" See, LILJEBERG vs. HEALTH SERVICES CORP., 100 L.Ed.2d 855, 860 (1988)(emphasis added).

In LILJEBERG vs HEALTH SERVICES CORP, the section 455(a) claim was not raised on appeal from the district court judgment tainted by the appearance of partiality. Rather, the losing party in the district court discovered that basis for the section 455(a) claim **TEN (10) MONTHS AFTER THE DISTRICT COURT JUDGMENT HAD BEEN AFFIRMED ON APPEAL AND THE LITIGATION TERMINATED.** Lambros' litigation on Appeal Nos. 99-2768;

99-2880, Eighth Circuit Court of Appeals in LAMBROS vs. USA, was submitted to the U.S. Supreme Court on May 2, 2001, by Attorney Maureen Williams and denied by the U.S. Supreme Court on June 4, 2001 in LAMBROS vs. U.S.A., No. 00-9751. Therefore, LAMBROS litigation had not terminated as to your ORDERS and JUDGMENTS when I filed my April 13, 2001 RULE 60(b)(6) motion] That party then moved under Fed. Rule Civ.P. **60(b)(6)** for relief from the final judgment. See, 108 S.Ct. at 2197. Although the Court's reasoning in LILJEBERG would appear to apply equally to reversal of a final judgment on appeal, the Court noted that Rule **60(b)(6)** has traditionally been applied **ONLY IN "EXTRAORDINARY CIRCUMSTANCES."** Id. at 2204 **n. 11.** . . . See, U.S. vs. KELLY, 888 F.2d 732, 747 n. 27 (11th Cir. 1989)

Foot Note 11 in LILJEBERG, 100 L.Ed.2d 874, clearly states that violations of Title 28 USCA § 455(a) are "**EXTRAORDINARY**" and therefore qualify to bring a motion within the "other reason" language of Federal Rule of Civil Procedure **60(b)(6)**, thus circumventing the one (1) year limitations period that applies to clause (1). The Supreme Court stated within Foot Note 11, "[O]f particular importance, this is not a case involving neglect or lack of due diligence by respondent. Any such neglect is rather chargeable to Judge Collins. Had he informed the parties of his association with Loyola and of Loyola's interest in the litigation on March 24, 1982, when his knowledge of the University's interest was renewed, respondent could have raised the issue in a motion for a new trial or on appeal without requiring that the case be reopened."

THE U.S. SUPREME COURT STATES YOU HAVE A DUTY TO RECUSE YOURSELF NOW AND TAKE STEPS NECESSARY TO MAINTAIN PUBLIC CONFIDENCE IN THE IMPARTIALITY OF THE JUDICIARY!!!!

The Tenth Circuit Court of appeals stated in U.S. vs. COOLEY, 1 F.3d 985, 992 (10th Cir. 1993), as to Title 28 U.S.C. § 455(a):

> Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

"The subsection 'applies to the varied and unpredictable situations not subject to reasonable legislative definition in which **JUDGES MUST ACT** to protect the very appearance of impartiality.' ... Under it a judge has a **CONTINUING DUTY TO RECUSE BEFORE, DURING, OR, IN SOME CIRCUMSTANCES, AFTER A PROCEEDING, IF THE JUDGE CONCLUDES THAT SUFFICIENT FACTUAL GROUNDS EXIST TO CAUSE AN OBJECTIVE OBSERVER REASONABLY TO QUESTION THE JUDGE'S IMPARTIALITY.** LILJEBERG, 486 U.S. at 861, 108 S.Ct. at 2203, 100 L.Ed2d at 873:"

> "But to the extent the provision can also, in proper cases, be applied retroactively, the judge is not called upon to perform an impossible feat. Rather, he is called upon to **RECTIFY AN OVERSIGHT AND TO TAKE THE STEPS NECESSARY TO MAINTAIN PUBLIC CONFIDENCE IN THE IMPARTIALITY OF THE JUDICIARY.** If he concludes that "his impartiality might reasonably be questioned," then he should also find that the statute has been violated. This is certainly not an impossible task. No one questions that Judge Collins could have disqualified himself and vacated his judgment when he finally realized that Loyola had an interest in the litigation."

LILLEBERG, 100 L.Ed.2d at 873.

Also see, ARONSON vs. BROWN, 14 F.3d 1578, 1581-1582 (Fed.Cir. 1994)("Section 455 is **"SELF-ENFORCING"** in that it is **SELF-EXECUTING**; that is, a judge may recuse **SUA SPONTE**. As explained in TAYLOR vs. O'GRADY, 888 F.2d 1189, 1200 (7th Cir. 1989), reviewing the action of a trial judge, "[r]ecusal under Section 455 is **SELF-EXECUTING**; a party need not file affidavits in support of recusal and the **JUDGE IS OBLIGATED TO RECUSE HERSELF SUA SPONTE UNDER THE STATED CIRCUMSTANCES.**" See also, e.g. U.S. vs. STORY, 716 F.2d 1088, 1091 (6th Cir. 1983)("section 455 is self-executing, requiring the judge to disqualify himself for personal bias **EVEN IN THE ABSENCE OF A PARTY COMPLAINT.**"); PARKER vs. CONNORS STEEL CO., 855 F.2d 1510, 1513 Head Note 23 (11th Cir. 1988)(law clerk, as well as judge, should **STAY INFORMED** of circumstances that may raise appearance of impartiality or impropriety and when such circumstances are present appropriate action should be taken.); U.S. vs. KELLY, 888 F.2d 732, 744 (11 Cir. 1989)("Under the new version of section 455, a judge is under an **AFFIRMATIVE, SELF-ENFORCING OBLIGATION TO RECUSE HIMSELF SUA SPONTE** whenever the proper grounds exist. Section 455 does away with the old "duty to sit" doctrine and requires judge to resolve any doubt they may have in favor of disqualification. . . . The duty of recusal applies **EQUALLY** before, during, and **AFTER A JUDICIAL PROCEEDING**, whenever disqualifying circumstances become known to the judge."); U.S. vs. GARRIDO, 869 F.Supp. 1574, 1577 (S.D.Fla. 1994) ("Scienter is not required in order to find a violation of § 455(a). ... 'Neither actual partiality, nor knowledge of the disqualifying circumstances on the part of the judge during the affected proceeding, are prerequisites to disqualification under this section.'");

Therefore, I am requesting you, as a U.S. Senior District Judge for the District of Minnesota, to take all steps necessary, including an affidavit to me as to your contact with Chief Judge James M. Rosenbaum admitting that you should of recused yourself on February 10, 1997, in the resentencing of John Gregory Lambros.

EXHIBIT A.

Thanking you in advance for your concern of Canon 3(C)(1) of the Code of Judicial Conduct for United States Judges, which provides that "[a] judge shall disqualify himself in a proceeding in which his impartiality might reasonably be questioned ..." See, U.S. vs. COUCH, 896 F.2d 78, 80 n.5 (5th Cir. 1990), and enforcing the Due Process Clause which requires a judge to step aside when a reasonable judge would find it necessary to do so, and finally Section 455 which requires disqualification when others would have reasonable cause to question your impartiality towards John Gregory Lambros during the February 10, 1997 resentencing and all proceedings thru February 20, 2001, Id. at 82, due to your position as U.S. Attorney for the District of Minnesota from 1969 thru 1977 and the three (3) indictments you where responsible in obtaining from the grand jury in 1975 and 1976 against John Gregory Lambros.

I John Gregory Lambros declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 27, 2002.

John Gregory Lambros, Pro Se
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
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Web site: www.brazilboycott.org

cc:
James M. Rosenbaum, Chief Judge for the U.S. District Court for Minnesota
United States Senate
Lambros Family
E-Mail release to global Boycott Brazil Supporters
Posting within Boycott Brazil Web site
File

EXHIBIT A.

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AO 156A

DATE	Document No.	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a) (b) (c) (d)
6-3-99	231)	REQUEST from Petitioner that the Court issue an Order for the Clerk of the Court to Transfer the District Court's full record to the Eighth Circuit Court of Appeals (1pg)	
6-22-99	232)	ORDER (RGR) that Petitioner John Gregory Lambros' request that the Court order the Clerk to transfer the full record to the Eighth Circuit Court of Appeals is DENIED AS MOOT (cc: USA, deft)	
6-17-99	233)	NOTICE OF APPEAL by John Gregory lambros to the Eighth Circuit Court of Appeals from the Order of Judge Renner granting Certificate of Appealability	
		DELIVERED TWO CERTIFIED COPIES AND ONE UNCERTIFIED COPY OF NOTICE OF APPEAL, ORDER APPEALED FROM AND DOCKET ENTRIES TO THE USCA	
10-19-99	234)	DESIGNATED CLERK'S RECORD DELIVERED TO THE EIGHTH CIRCUIT COURT OF APPEALS as to deft John Gregory Lambros	
2-12-01	235)	CERTIFIED COPY OF OPINION FROM EIGHTH CIRCUIT COURT OF APPEALS filed 11/30/00 - J: Wollman, Ross, Morris Sheppard Arnold - affirming the decision of the district court as to deft John Gregory Lambros (Appeal Nos 99-2768/2880)	
	236)	CERTIFIED COPY OF JUDGMENT FROM THE EIGHTH CIRCUIT COURT OF APPEALS that the judgment of the district court is affirmed in accordance with the opinion of this Court - MANDATE ISSUED 2/9/01 (1pg) (cc: USA, deft, Maureen Williams)	
2/20/01		Reassigned to Judge Rosenbaum from Judge Renner	
4-24-01	237)	MOTION TO VACATE all Judgments and Orders by U. S. District Court Judge Robert G. Renner pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure for violations of Title 28 U.S.C.A. 455 by deft John Lambros (17pgs+ Exhibits A-F)	
9-18-01	238)	ORDER (JMR) that the Court hereby directs the government to respond to petitioner's motion to vacate all judgments and orders (Doc. #237) by Monday, October 22, 2001 (1pg) (Dated: 9/14/01) (cc: USA, deft)	
9-24-01	239)	SUPPLEMENTAL INFORMATION to assist the Court and the Government in their Response to Petitioner's Motion to Vacate all Judgments and Orders, as Ordered by Judge Rosenbaum on 9/14/01, filed 9/18/01 (9pgs)	
10-19-01	240)	OPPOSITION OF THE U. S. to Petitioner's Motion to Vacate all Judgments and Orders (5pgs+Exhibits 1-5)	
10-29-01	241)	MOTION OF DEFT FOR DISCLOSURE of documents filed by U. S. Judge Robert G. Renner in this action from 4/20/01 to present (7pgs)	

AO 258A

DATE	(Document No.)	PROCEEDINGS (continued)	V. EXCLUDABLE DELA (a)	(b)
11-05-01	242)	MOTION OF DEFT for Extension of time to respond to governments' opposition dated 10/19/01 (3pgs)		
	243)	PETITIONER'S Request for Permission from the Court to Amend this action under Rule 15(a) & 19(a), FRCP (6pgs)		
	244)	MOTION OF DEFT for appointment of counsel (3pgs)		
11-19-01	245)	ADDENDUM TO: PETITIONER LAMBROS' Response to October 19,2001, "Opposition of the United States to Petitioner's Motion to Vacate all Judgments and Orders" (86pgs)		
	246)	PETITIONER LAMBROS' RESPONSE to October 19, 2001, "Opposition of the United States to Petitioner's Motion to Vacate all Judgments and Orders with attached Exhibits A - D (Separate)		
1-07-02	247)	MOTION OF DEFT to Disclose Current Investigation by the Minnesota Office of Lawyers Professional Responsibility (34pgs)		
2-26-92	248)	DISQUALIFICATION ORDER (JMR) - The Clerk of Court is directed to reassign this action pursuant to this Court's assignment of cases order, filed April 2, 2001. Case Reassigned to Judge David S. Doty, Number 4-89-82(DSD/FLN)		
3-08-02	249)	ORDER (DSD) that: 1. Petitioner's motion to vacate all judgments and orders (docket no. 237) is dismissed; 2. Petitioner's motion for disclosure (docket no. 241) is dismissed; 3. Petitioner's motion for extension of time (docket no. 242) is dismissed; 4. Petitioner's motion for appointment of counsel (docket no. 244) is dismissed; and 5. Petitioner's motion to disclose current investigation (docket no. 247) is dismissed. (5pgs) (cc: USA, deft)		
3-18-02	250)	MOVANTS REQUESTS CLARIFICATION OF CAPTION AND CASE NUMBER IN THIS ACTION (2pgs) (copy of docket entries forwarded to movant this date)		

EXHIBIT A.

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Interval | Start Date

December 27, 1999

John Gregory Lambros
Reg. No. 00436-124
USP Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000 USA

CLERK
U.S. Court of Appeals for the Eighth Circuit
U.S. Court & Customs House
1114 Market Street
St. Louis, Missouri 63101
U.S. CERTIFIED MAIL NO. Z-233-381-750

RE: FILING IN U.S. vs. LAMBROS, Nos. 99-2768 and 99-2880

Dear Clerk:

Attached for filing is my "APPELLANT JOHN GREGORY LAMBROS' PRO SE REPLY BRIEF TO THE APPELLEE' BRIEF DATED NOVEMBER 30, 1999."

Please find one (1) original and three (3) copies of the above for filing.

Thanking you in advance for your continued assistance.

Happy Holidays,

John Gregory Lambros

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above document was served on the following:

a. Jeffrey S. Paulsen, Assistant U.S. Attorney, District of Minnesota, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415;

b. Attorney Maureen Williams, P.O. Box 381304, Minneapolis, Minnesota 55458-1304.

on this 27 day of December, 1999.

John Gregory Lambros, Pro Se
P.O. Box 1000
Leavenworth, Kansas 66048-1000

EXHIBIT B.

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STATEMENT OF THE CASE

1. The Appellant herein, John Gregory Lambros, was indicted by a United States Grand Jury for the District of Minnesota on May 17,1989. The indictment originally listed five counts against the Appellant. The fifth count of the counts against Appellant, however, which charged him with traveling in interstate commerce with intent to carry on in an unlawful activity, was dismissed due to the extradition treaty between Brazil and the United States, as traveling in interstate commerce with intent to carry on in an unlawful activity is not a crime in Brazil.

2. The Appellant pleaded not guilty to these charges and a jury trial commenced on January 4, 1993, in the United States District Court for the District of Minnesota, Fourth Division. On January 15, 1993, the jury found the Appellant guilty on all four counts.

3. The Appellant's Sentencing Hearing was held on January 27, 1994. At that time, the Appellant was sentenced to a mandatory term of life imprisonment on Count One; a term of imprisonment of 120 months on Counts Two and Three; and a term of 360 months imprisonment on Count four. All sentences were to be served concurrently. In addition, the Appellant was sentenced to serve a term of supervised release of eight years, and pay a $200.00 special assessment.

4. September 8, 1995, U.S. Court of Appeals for the Eighth Circuit vacated Count One and remanded for resentencing on that count. See, U.S. vs. LAMBROS, 65 F.3d 698.

5. December 7, 1995, Movant's attorney filed a writ of certiorari on Counts 5, 6, & 8.

6. January 16, 1996, The U.S. Supreme Court denied Movant's writ of certiorari on Counts 5, 6, & 8. See, U.S. vs. LAMBROS, 116 S.Ct. 796.

EXHIBIT B.

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7. February 10, 1997, Movant was RESENTENCED on Count One (1). Please note that Movant filed motions to be considered by the Court under Federal Rules of Criminal Procedure, RULE 33 before resentencing that where considered under Title 28 U.S.C. §2255, as expressed in U.S. vs. DiBERNARDO, 880 F.2d 1216 (11th Cir. 1989). Movant objected and the Court would not allow Movant to withdraw his Rule 33 pro se Motions. See, ADAMS vs. U.S., 155 F.3d 582 (2nd Cir. 1998) (Key Note 1: At least until it is decided whether a Movant's right to bring a future petition to vacate sentence can be affected by a CONVERSION OR RECHARACTERIZATION of a motion made under some other rule as being under the statute providing for motions to vacate [§2255], DISTRICT COURTS SHOULD NOT UNDERTAKE SUCH RECHARACTERIZATION UNLESS (a) the movant, with knowledge of the potential adverse consequences of such recharacterization, AGREES to have the motion so recharacterized, or (b) the court finds that, notwithstanding its designation, the motion should be considered a motion to vacate [§2255] because of the nature of the relief sought, and OFFERS THE MOVANT THE OPPORTUNITY TO WITHDRAW THE MOTION RATHER THAN HAVE IT SO RECHARACTERIZED [§2255]. See also, U.S. vs. DITTRICH, Criminal No. 95-68, IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA, ORDER dated and filed December 8, 1998, by U.S. Judge Charles R. Wolle, who stated on page 4 & 5, "[I] agree that the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA) casts a new light upon the district court's practice of recharacterizing a pro se litigants motion under some other provision [Rule 33] as a section §2255 motion. This previously harmless practice may now be harmful to a litigant because the AEDPA limits the courts ability to hear SECOND OR SUCCESSIVE §2255 MOTIONS. Dittrich's motion for a new trial [Rule 33] SHOULD NOT HAVE BEEN TREATED AS A SECTION 2255 MOTION and therefore should not have been subject to a certificate of appealability."

8. April 18, 1997, Movant filed what he considered and still considers his

FIRST §2255 on Counts 5, 6, & 8, so as to comply with the stringent limitations set forth within the meaning of the 1996 Anti-Terrorism and Effective Death Penalty Act (AEDPA).

9. April 28, 1997, Movant's attorney filed an appeal brief to the U.S. Court of Appeals for the Eighth Circuit on issues raised in the RESENTENCING on Count One (1), February 10, 1997. See, U.S. vs. LAMBROS, Case No. 97-1553 MNMI. Movant requested his attorney to raise the issue as to Movant's RULE 33 Motions being considered as a §2255 at resentencing. When Movant received copy of the appeal brief the issue WAS NOT INCLUDED.

10. May 1, 1997, Judge Renner considered Movant's April 18, 1997, §2255 on Counts 5, 6, & 8 to be a second or successive motion within the meaning of Title 28 U.S.C. §2255. The Court also stated:

> [A]lternatively, if the Court is not correct in determining this to be a second or successive petition, the Court finds that it is WITHOUT MERIT for the reasons stated in its February 19, 1997, ORDER.
>
> This petition is dismissed.

What is interesting and must be considered by this court, is the fact that Movant's RULE 33 MOTIONS submitted BEFORE RESENTENCING on February 10, 1997, and found to be WITHOUT MERIT for the reasons stated in the Courts February 19, 1997, ORDER, ARE NOT THE SAME ISSUES ADDRESSED WITHIN MOVANT'S §2255. ALL OF MOVANT'S §2255 ISSUES ADDRESSED INEFFECTIVE ASSISTANCE OF COUNSEL, the elements that ARE ALWAYS ADDRESSED WITHIN A §2255. Therefore, it is legally impossible for Judge Renner to be legally correct in making such a statement. See, MOLINA vs. RISON, 886 F.2d 1124, 1130-31 (9th Cir. 1989) (As the Supreme Court noted in KIMMELMAN vs. MORRISON, 477 U.S. 365, 374, (1986), a claim of INEFFECTIVE ASSISTANCE with regard to an issue is "DISTINCT" from any claim concerning the underlying issue itself, "BOTH IN NATURE AND IN THE REQUISITE ELEMENTS OF PROOF." Indeed, the two claims will generally protect different

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sorts of rights and require different legal analyses. In short, "THE TWO CLAIMS HAVE SEPERATE IDENTITIES AND REFLECT DIFFERENT CONSTITUTIONAL VALUES." Id. at 375, 106 S.Ct. at 2583). As this Court understands, Movant has always maintained that he was innocent as to the crimes stated with the indictment in this action, so as to meet the "ends of justice" standard, if applicable. Also see, U.S. vs. ROBINSON, 8 F.3d 398, 405 (7th Cir. 1993) (The well established general rule is that, absent extraordinary circumstances, the district court should not consider §2255 motions while a direct appeal is pending. . . The rational for the rule is a sound one: "the disposition of the appeal may render the [§2255] motion moot.")

11. **May 8, 1997**, July 2, 1997, & July 9, 1997, Movant filed motions for leave to amend the Courts May 1, 1997, ORDER, as per Federal Rules of Civil Procedure Rule 15(a), as per movant's §2255.

12. **July 31, 1997**, the district court denied Movant's motions for reconsideration and for leave to amend. Civil No. 97-942.

13. **August 25, 1997**, Movant filed a MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALIBILITY/PROBABLE CAUSE, as per his §2255. Civil No. 97-942.

14. **August 25, 1997**, Movant filed NOTICE OF APPEAL as per his §2255. Civil No. 97-942.

15. **September 2, 1997**, the U.S. Court of Appeals for the Eighth Circuit denied the appeal that Movant's attorney filed as to RESENTENCING on **Count One (1)**, U.S. vs. LAMBROS, Case No. 97-1553 MNMI, that was dated April 28, 1997. Movant's attorney submitted a writ of certiorari on this denial. Movant does not have a date as to the filing of same.

16. **September 15, 1997**, the Clerk for the Eighth Circuit Court of Appeals wrote Movant and stated that his August 25, 1997, NOTICE OF APPEAL, as per movant's §2255, Civil No. 97-942, will be treated as an application for certificate of appealability in accordance with Rule 22(b) and forwarded to a panel of judges for consideration and given docket number 97-3448 MNMI.

17. September 30, 1997, Judge Renner, ORDERED, Movant's CERTIFICATE OF APPEALABILITY, denied, as per his April 18, 1997, §2255 on Counts 5, 6, & 8. Civil No. 97-942.

18. January 12, 1998, the U.S. Supreme Court denied Movant's ATTORNEY'S writ of certiorari as to to Movant's **RESENTENCING ON COUNT ONE (1).**

19. July 7, 1998, the U.S. Court of Appeals for the Eighth Circuit DENIED Movant's APPLICATION FOR CERTIFICATE OF APPEALABILITY on Movant's April 18, 1997, §2255, as per Counts 5, 6, & 8. Civil No. 97-942.

20. January 2, 1999, Movant filed his pro se petition under Title 28 USC §2255, **AS TO RESENTENCING ON COUNT ONE (1) ON FEBRUARY 10, 1997.**

21. February 19, 1999, the government filed OPPOSITION TO MOVANT'S §2255 filed by Movant on January 2, 1999, stating, "Lambros has failed to receive certificate of his successive petition from the Eighth Circuit.' As a result, THIS COURT LACKS JURISDICTION and the petition should be summarily denied." The government **DID NOT ADDRESS THE MERITS OF THE ISSUES PRESENTED.**

22. March 5, 1999, Movant filed his March 2, 1999, TRAVERSE RESPONSE to governments opposition response within Movant's January 2, 1999, §2255, as to RESENTENCING on Count One (1) on February 10, 1997. Also attached to Movant's TRAVERSE RESPONSE was Movant's "MOTION FOR PARTIAL SUMMARY JUDGEMENT PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 55(a), 55(e), & 56(c).

23. April 6, 1999, Judge Renner DISMISSED Movant's petition under Title 28 U.S.C. §2255, filed on January 2, 1999, as to RESENTENCING on Count One (1) on February 10, 1997, stating, "BECAUSE THE COURT LACKS SUBJECT MATTER JURISDICTION OVER THE PETITION, IT IS DISMISSED."

24. May 3, 1999, Movant filed his April 30, 1999, MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY and NOTICE OF APPEAL, as to Movant's §2255, filed on January 2, 1999, as to RESENTENCING on Count One (1) on February 10, 1997. Movant raised two (2) issues opposing the courts lack of subject matter jurisdiction.

25. May 19, 1999, Judge Renner ORDERED that Movant's APPLICATION FOR A CERTIFICATE OF APPEALABILITY IS GRANTED AS TO BOTH ISSUES RAISED IN THE APPLICATION.

26. The Appellant now appeals his GRANTED certificate of appealability as to both issues raised in application.

FACTS STATEMENT

27. The Appellant was arrested in relation to the charges mentioned herein on May 17, 1991, in Brazil. The Appellant was living in Brazil at the time for the purpose of conducting legitimate business. (Trial Transcript, P. 768) Subsequent to his arrest, the Appellant was held in prison in Brazil until he was extradited to the United States on or about June 20, 1992. During the year or so in which the Appellant was held in Brazil, he was forcibly taken to Brasilia, Brazil without an extradition hearing in the State of Rio de Janeiro, Brazil, as per Brazilian law, nor given a bail hearing due to the fact a $50,000 bail had been established by the U.S. Government. In Brasilia, Lombros was held in the same cell as Francisco Tosconino (500 F.2d 270 (1974)) where he was subject to daily incidents of physical and psychological abuse and torture. This abuse and torture was carried out not ony by agents of the Brazilian Government but also by agents of the Government of the United States. In addition to the abuse, the Appellant is certain that these agents also IMPLANTED SOME SORT OF ELECTRODES INTO HIS BODY FOR PURPOSES OF MONITORING AND CONTROLLING HIS ACTIONS VIA RADIO TELEMETRY. The electrodes have caused the Appellant daily un-tolerable pain and suffering and continue to do so through the present day due to radio telemetry. The Appellant has been able to confirm the presence of these electrodes through the results of x-rays taken at the Federal Medical Center in Rochester, Minnesota. Appellant has forwarded copy of the x-ray confirming the presence of these electrodes to doctors in Sweden, who have also confirmed the presence of