CASE No. 02-7346

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 2002

JOHN GREGORY LAMBROS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I.

DID THE EIGHTH CIRCUIT ERR IN HOLDING, IN SQUARE CONFLICT WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS, THAT EVERY FEDERAL RULE OF CIVIL PROCEDURE 60(b)(6) MOTION CONSTITUTES PROHIBITED "SECOND OR SUCCESSIVE" HABEAS PETITION AS A MATTER OF LAW? **

** Note: On April 22, 2002, this Court granted certiorari to review the above question in ABU-ALI ABDUR'RAHMAN vs. RICKY BELL, WARDEN, No. 01-9094:

(1) Did Sixth Circuit err in holding, in square conflict with decisions of this court and other circuits, that every Fed.R.Civ.P. 60(b) motion constitutes prohibited "second or successive" habeas petition as matter of law?

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to th proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

TABLE OF STATUTES:

FEDERAL RULES OF CIVIL PROCEDURE:

FEDERAL RULES OF CRIMINAL PROCEDURE:

UNITED STATES SENTENCING GUIDELINES (U.S.S.G.):

PUBLICATIONS:

UNITED STATES SENATE:

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A & B to the petition and is **Appendix A is August 22, 2002 denial for rehearing en banc. Appendix B is July 1, 2002 denial of Appeal.**

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished. **(Eighth Circuit No. 02-2026)**

The opinion of the United States district court appears at Appendix C & D to the petition and is **Appendix C is May 29, 2002 DENIAL of COA and Motion for leave to appeal. Appendix D is March 8, 2002 DENIAL of Fed.R.Civ.P. 60(b)(6) Motion.**

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished. **District of Minnesota, Criminal NO. 4-89-82(5)(DSD) & Civil NO. 99-28(DSD)**

[ ] For cases from state courts:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was July 01, 2002.

[ ] No petition for rehearing was timely filed in my case.

[xx] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 22, 2002, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A-_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Title 28 U.S.C.A. § 455(a) and § 455(b)(3) and Federal Rule of Civil Procedure 60(b)(6).

CONSTITUTIONAL LAW: Due process requires that Petitioner Lambros be sentenced on reliable information. U.S. C.A. Const. Amend. 5. See, U.S. MANOTAS-MEJIA, 824 F.2d 360, 368 (5th Cir. 1987).

11

STATEMENT OF THE CASE

1. From 1969 thru 1977, Robert G. Renner held the position of U.S. Attorney in Minnesota, during which time he indicted and prosecuted Petitioner Lambros on three (3) criminal proceedings, 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. ARMPRIESTER, 37 F.3d 466, 467 (9th Cir. 1994). U.S. Attorney Renner personally signed two (2) of the indictments against Petitioner Lambros.

2. On March 24, 1976, U.S. Attorney Renner indicted Petitioner Lambros in Criminal File No. CR-3-76-17 for violations of Title 18 U.S.C. Sections 111 and 114. Petitioner Lambros was illegally indicted and sentenced on June 21, 1976, as the crime DID NOT occur on federal property. U.S. Attorney Renner falsified documents to the U.S. Court of Appeals for the Eighth Circuit, stating that Petitioner Lambros was indicted and plead guilty to violations of Title 18 U.S.C. 111 and 1114, not 114 as stated in the indictment. See, U.S. vs. LAMBROS, 614 F.2d 179, 180 (8th Cir. 1980). U.S. Attorney Renner used illegal indictment CR-3-76-17 to leverage a negotiated plea of guilty from Petitioner Lambros on unrelated charges. See, U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976). See, **APPENDIX E** (February 15, 2002, John Gregory Lambros' FILING OF COMPLAINT against Minnesota Attorneys Robert G. Renner, Peter J. Thompson, and Joseph T. Walbran, to Edward J. Cleary, Director of the Office of Lawyers Professional Responsibility, St. Paul, Minnesota).

3. Petitioner Lambros was indicted in May 1989 of multiple counts stemming from an alleged cocaine conspiracy, U.S. vs. LAMBROS, Criminal File No. 4-89-82(5), District of Minnesota.

4. Petitioner Lambros was arrested in May 1991 and convicted of all four counts in January 1993. Petitioner Lambros received concurrent sentences on life without parole on Count I, ten years each on Counts II and III, and 30

years on Count IV. Senior District Court Judge Diana E. Murphy sentenced Lambros.

5. On September 8, 1995, the United States Court of Appeals for the Eighth Circuit vacated and remanded on Count I, the life sentence without parole. See, U.S. vs. LAMEROS, 65 F.3d 698 (8th Cir. 1995).

6. On February 10, 1997, the now Honorable Robert G. Renner RESENTENCED Petitioner Lambros, as per the order of the Eighth Circuit, to an **ENHANCED SENTENCE** based on the three (3) criminal indictments he indicted Petitioner Lambros on in 1975 and 1976, including ILLEGAL INDICTMENT CR-3-76-17.

7. On or about April 24, 2001, Petitioner Lambros filed 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.**" as per the direction to LILJEBERG vs. HEALTH SERVICES CORP., 486 U.S. 847, 100 L.Ed.2d 855, 108 S.Ct. 2194 (1988)(Rule **60(b)(6)** relief from final judgment is neither categorically available nor categorically unavailable for all violations of §455 . . . . 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, 100 L.Ed.2d at 856-857. (emphasis added)

8. On March 08, 2002, Judge Doty, ORDERED, that Petitioner Lambros' **RULE 60(b)(6)** be treated as a petition pursuant to 28 U.S.C. §2255:

> "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)." (emphasis (added)

(March 08, 2002, ORDER, Judge Doty, Page 1). See, **APPENDIX D.**

9. On March 08, 2002, Judge Doty, was enforcing the well-settled

law within the District of Minnesota and the Eighth Circuit Court of Appeals, that states, "He appeals the district court's denial of his Fed.R.Civ.P. **60(b)(6)** motion. We have treated the Rule **60(b)** pleading as the equivalent of a second petition for a writ of habeas corpus. See, BLAIR vs. ARMONTROUT, 976 F.2d 1130 (8th Cir. 1992). See, BOLDER vs. ARMONTROUT, 983 F.2d 98, 99 (8th Cir. 1992). See, **APPENDIX F.** (BOLDER vs. ARMONTROUT, 983 F.2d 98, 99 (8th Cir. 1992)).

10. On **April 22, 2002**, the United States Supreme Court **GRANTED CERTIORARI** on ABDUR'RAHMAN vs. BELL, Warden, #01-9094, limited to Questions 1 and 2:

> (1) **Did the Sixth Circuit err in holding, in square conflict with decisions of this court and other circuits, that EVERY Fed.R.Civ.P. 60(b) MOTION CONSTITUTES PROHIBITED "SECOND OR SUCCESSIVE" HABEAS PETITION AS MATTER OF LAW?**
>
> (2) Does court of appeals abuse its discretion in refusing to permit consideration of vital intervening legal development when failure to do so precludes habeas petitioner from ever receiving any adjudication of his claims on merits?

See, **APPENDIX G.** (CRIMINAL LAW REPORTER, April 24, 2002, Volume 71, No. 4, Pages 2026 and 2028)

11. On May 29, 2002, Judge Doty ORDERED that Petitioner Lambros' request for a CERTIFICATE OF APPEALABILITY regarding the court's lack of jurisdiction over Petitioner Lambros' motion pursuant to **Rule 60(b)(6)**, which the court construed as a successive section 2255 motion, be denied. Judge Doty was required by law to grant Petitioner Lambros' certificate of appealability, as other higher courts had reached conflicting views suffice to require the certification of an appeal. See, LYNCE vs. MATHIS, 117 S.Ct. 891, 893 (1997)(although district court and court of appeals denied certificate of probable cause to appeal based on insubstantiality of claim under circuit precedent, Supreme Court grants CERTIORARI based on conflicting decision of different circuit (thus, implicitly, certifying appealability), and, upon review, grants habeas corpus relief). See also,

FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE, Fourth Edition 2001, by Randy Hertz and James S. Liebman, Professors of Law, who state, "Among other identifiable reasons for granting a certificate are the following: (Pages 1590 & 1591)

> (1) The United States Supreme Court has **GRANTED CERTIORARI TO REVIEW A 'SIMILAR' QUESTION IN ANOTHER CASE."** (emphasis added)

APPENDIX B. (Federal Habeas Corpus Practice and Procedure, Fourth Edition 2001, Pages 1590 and 1591, which also offer cases in support of the above quote within footnote 66)

12. The Second Circuit Court of Appeals has reviewed and disagreed with the Eighth Circuit Court of Appeals rulings in BLAIR and BOLDER in RODRIGUEZ vs. MITCHELL, 252 F.3d 191, 198-200 and footnote 2 on page 200 (2nd Cir. 2001)(We are aware that the majority of circuit courts that have held 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 (. . . 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 writ of habeas corpus.) 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)." RODRIGUEZ, at 199-200.

13. On or about June 11, 2002, Petitioner Lambros filed his MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY BY THE EIGHTH CIRCUIT COURT OF APPEALS. Petitioner Lambros informed the Eighth Circuit as to the April 22, 2002, United States Supreme Court grant of certiorari on the very same question Petitioner Lambros was denied on within the District Court, "that every Fed.R.Civ. P. 60(b) motion constitutes prohibited 'second or successive' habeas petition as matter of law." See, ABDUR'RAHMAN vs. BELL, Warden, #01-9094.

14. On July 1, 2002, the Eighth Circuit, affirmed the judgment of

the district court for the reasons stated within the district court's March 08, 2002 and May 29, 2002, ORDERS. See, Paragraph 8 within this section.

15. On August 22, 2002, the United States Court of Appeals for the Eighth Circuit issued an ORDER denying Petitioner Lambros' Petition for Rehearing and for Rehearing En Banc. See, APPENDIX A.

16. Petitioner Lambros submits this petition to this court to review the actions of the District Court and the Eighth Circuit Court of Appeals.

17. Please note that FINAL JUDGMENT had not been entered and the case was still pending in the United States Supreme Court as to the Honorable Robert G. Renner's RESENTENCING of John G. Lambros on February 10, 1997. The following facts exist:

a. February 1, 2001, the Eighth Circuit Court of Appeals DENIED Petitioner Lambros' "PETITION FOR REHEARING" in Appeal No.'s 99-2768 and 99-2880;

b. Petitioner Lambros' April 13, 2001, filed April 24, 2001, MOTION TO VACATE ALL JUDGMENTS AND ORDER BY 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;

c. May 02, 2001, Petitioner Lambros' court appointed attorney, Maureen Williams, submitted Petitioner Lambros' WRIT OF CERTIORARI to this court that was DENIED on June 04, 2001, in LAMBROS vs. USA, No. 00-9751.

d. In LILJEBERG vs. HEALTH SERVICES CORP., 100 L.Ed.2d 855 (1988), the basis for the section 455(a) claim was discovered TEN (10) MONTHS AFTER the district court judgment had been affirmed on appeal and the litigation terminated. Petitioner moved pursuant to Fed.R.Civ.P. 60(b)(6) in LILJEBERG.

e. This court held, "... that appellate leave was not required before a Federal District Court could reopen a case which had been reviewed on appeal in order for the District Court to entertain a motion under

Rule 60(b)." STANDARD OIL COMPANY OF CALIFORNIA vs. U.S., 429 US 17, 50 L.Ed.2d 21, 97 S.Ct. 31 (1976). Also, [illegible] PARTNERSHIP vs. FRITO-LAY, INC., 920 F.2d 476 (7th Cir. 1990)(... holding that a district court could entertain a Rule 60(b) motion without leave from the Supreme Court. Id. at 478).

17

REASONS FOR GRANTING THE PETITION

ARGUMENT

I. **DID THE EIGHTH CIRCUIT ERR IN HOLDING, IN SQUARE CONFLICT WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS, THAT EVERY FEDERAL RULE OF CIVIL PROCEDURE 60(b)(6) MOTION CONSTITUTES PROHIBITED "SECOND OR SUCCESSIVE" HABEAS PETITION AS A MATTER OF LAW? ****

The record establishes the following facts, discovered only after resentencing of Petitioner, about Honorable Robert G. Renner, U.S. District Court Judge, District of Minnesota and Honorable Franklin Linwood Noel, U.S. Magistrate Judge, District of Minnesota concealment of information as to there past employment as acting United States Attorney for the District of Minnesota an Assistant United States Attorney for the District of Minnesota, respectively, in the prosecution of Petitioner Lambros and later presiding over such case as Judge and Magistrate. This Court held "... 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. See, LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847, 861, 108 S.Ct. 2194, 2203, 100 L.Ed.2d 855, 873 (1988); U.S. vs. COOLEY, 1 F.3d 985, 992 (10th Cir. 1993); KENDRICK vs.

**** Note:** On April 22, 2002, this Court granted certiorari to review the above question in ABU-ALI ABDUR'RAHMAN vs. RICKY BELL, Warden, No. 01-9094:

(1) Did Sixth Circuit err in holding, in square conflict with decisions of this court and other circuits, that every Fed.R.Civ.P. 60(b) motion constitutes prohibited "second or successive" habeas petition as matter of law?

CARLSON, 995 F.2d 1440, 1444 (8th Cir. 1993) "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); U.S. vs. ARNPRIESTER, 37 F.3d 466, 467 (9th Cir. 1994)("The statutory duty of each United States Attorney within his district is to 'prosecute for all offenses against the United States.' 28 U.S.C. §547. . . other attorneys are only his assistants, 28 U.S.C. §542 and §543.")("Judge should have 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. 28 U.S.C. §455(a), (b)(3)." Id. at 466.)(emphasis added).

1. Judge Renner knew very well from the outset - as he resentenced Petitioner Lambros on February 10, 1997 to an ENHANCED SENTENCE - that he indicted and signed two of the three criminal indictments in 1975 and 1976 that resulted in convictions against Petitioner, in which Petitioner was challenging during resentencing, as detainers had been lodged by the United States Parole Commission on same:

a. CR-3-75-128, Judgment entered June 21, 1976;

b. CR-3-76-17, Judgment entered June 21, 1976;

c. CR-3-76-54, Judgment entered March 07, 1977.

Judge Renner held the position of United States Attorney for Minneapolis/St. Paul, Minnesota from 1969 thru 1977. See, EXHIBIT I.

2. Judge Renner knew very well from the outset - as he resentenced Petitoner Lambros on February 10, 1997 to an ENHANCED SENTENCE - that he indicted, convicted, and falsified court documents to the Eighth Circuit Court of Appeals in Criminal File No. CR-3-76-17 for violations of Title 18 U.S.C. Sections 111 and 114. Petitioner was illegally indicted and sentenced on June

21, 1976, as the crime DID NOT occur on federal property. Judge Renner FALSIFIED documents to the U.S. Court of Appeals for the Eighth Circuit, stating that Petitioner was indicted and plead guilty to violations of Title 18 U.S.C. 111 and 1114, not 114 as stated in the indictment. See, U.S. vs. LAMBROS, 614 F.2d 179, 180 (8th Cir. 1980). See, EXHIBIT E.

3. Judge Renner, as U.S. Attorney Renner, used illegal indictment CR-3-76-17 to leverage a negotiated plea of guilty from Petitoner Lambros on unrelated charges. See, U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976). See, EXHIBIT E.

4. Franklin Linwood Noel, Federal Chief Magistrate Judge for the District of Minnesota, acted as an Assistant United States 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.

5. Petitioner Lambros was indicted on May 17, 1989, in this action by the United States Grand Jury, District of Minnesota, Criminal File No. 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 Petitioner Lambros.

6. By ORDER dated October 30, 1992, Magistate Judge Franklin Linwood Noel judged Petitioner competent to stand trial after conducting a hearing and/or hearings.

7. On February 10, 1997, Judge Renner resentenced Petitioner, as per the order of the Eighth Circuit Court of Appeals. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995). During resentencing Judge Renner referred to the ORDER dated October 30, 1992, by Magistrate Judge Franklin Noel. See, Page 1 and 6 of transcript dated February 10, 1997, RESENTENCING.

THE EIGHTH CIRCUIT CLOSED THE DOOR TO AN ADJUDICATION OF THE MERITS FOR VIOLATIONS OF TITLE 28 U.S.C.A. §§ 455(a) AND 455(b)(3) BY JUDGE RENNER AND MAGISTRATE JUDGE NOEL UNDER THE CONSTRUCTION AND APPLICATION OF RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE, UNDER THE STANDARD ESTABLISHED IN LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847 (1988).

8. The Eighth Circuit closed the door to the merits. It accepted respondent's argument that "a Rule 60(b)(6) motion is the equivalent of a successive habeas corpus petition." See, APPENDIX D (Page 3); APPENDIX E; BOLDER vs. ARMONTROUT, 983 F.2d 98, 99 (8th Cir. 1993); BLAIR vs. ARMONTROUT, 976 F.2d 1130, 1134 (8th Cir. 1992).

9. The Eighth Circuit also closed the door to Petitioner when the panel overlooked or misapprehended the proper standard of review when this court has already granted certiorari in other case raising the same constitutional question, indicating that the constitutional question the certificate applicant has presented is "substantial." See, LYNCH vs. MATHIS, 117 S.Ct. 891, 893 (1997) (although district court and court of appeals denied certificate of probable cause to appeal based on insubstantiality of claim under circuit precedent, Supreme Court grants CERTIORARI based on conflicting decision of different circuits (thus, implicitly, certifying appealability), and, upon review, grants habeas corpus relief). See also, FEDERAL HABEAS PRACTICE AND PROCEDURE, Fourth Edition 2001, by Randy Hertz and James S. Liebman, Professors of Law, who state, "Among other identifiable reasons for granting a certificate are the following: (Pages 1590 & 1591)

> (1) The United States Supreme Court has granted certiorari to review a 'similar' question in another case.

See, APPENDIX H.

RULE 60(b)(6) RELIEF FROM FINAL JUDGMENT IS AVAILABLE FOR VIOLATIONS OF TITLE 28 U.S.C.A. § 455:

10. On certiorari, this court held in LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847, 100 L.Ed.2d 855, 108 S.Ct. 2194 (1988), "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 have known of his fiduciary interest in the dispute, and 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 detmining 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 decretination, 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."

PETITIONER WAS ENTITLED TO CONSIDERATION OF HIS NOW DEMONSTRATABLE TITLE 28 U.S.C.A. §§ 455(a) AND 455(b)(3) CLAIMS UNDER Fed.R.Civ.P. 60(b)(6):

11. Rule 60(b) is the modern embodiment of the federal courts' inherent authority under Article III of the Constitution to exercise "power over [their] own judgment" (UNITED STATES vs. OHIO POWER CO., 353 U.S. 98, 99 (1957)(per curiam)), including the power to correct those judgments. As such, the Rule "does not provide a new remedy at all," but rather is "simply the recitation of pre-existing judicial power." PLAUT vs. SPENDTHRIFT FARM, 514 U.S. 211, 234-35 (1995).

12. This immemorial judicial power is traditionally flexible and sufficiently resilient to take account of unforeseen contingencies. "In simple English," the Rule "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." KLAPROTT vs. U.S., 335 U.S. 601, 614-15 (1949). As this Court recently confirmed, the Rule "reflects and confirms the courts' own inherent and discretionary power, 'firmly established in English practice long before the foundation of our Republic,' to set aside a judgment whose enforcement would work inequity.'" PLAUT, 514 U.S. at 233-34 (quoting HAZEL-ATLAS GLASS CO. vs. HARTFORD-EMPIRE CO., 322 U.S. 238, 244 (1944)). See also LILJEBERG vs. HEALTH SERVICES ACQUISITION CORP., 486 U.S. 847, 863-64 (1988).

13. Rule 60(b)(6) applies in habeas cases. The habeas jurisdiction is essentially an equity forum (see, e.g., SCHLUP vs. DELO, 513 U.S. 298, 319 (1995); GOMEZ vs. U.S. DISTRICT COURT, 503 U.S. 653, 653-54 (1992)), and it is inconceivable that courts exercising such jurisdiction would not have the inherent power traditionally possessed by all other courts to correct their own judgments to avert injustice. Nothing in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")(or any other habeas statute enacted by Congress) restricts the district courts' authority to apply Rule 60(b)(6). Instead, when enacting AEDPA, Congress crafted specific restrictions on the presentation of "successive" habeas

applications, which are not applicable to Petitioner Lambros' case. [fn. 1] In addition, this Court has limited the retroactive application of supervening judicial decisions by the doctrine of TEAGUE vs. LANE, 489 U.S. 288 (1989), which provides that "new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced" (id. at 310). This Court has accordingly stated that it is the TEAGUE doctrine that constrains the application of Rule 60(b) in habeas cases. AGOSTINI vs. FELTON, 521 U.S. 203, 239 (1997)("Intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6), the only remaining avenue for relief on this basis from judgment lacking any prospective component. See, 12 J. Moore et al., Moore's Federal Practice § 60.48[5][b], p. 60-181 (3rd ed. 1997)(collecting cases)")(emphasis added). Cf. BROWDER vs. DIRECTOR, 434 U.S. 257 (1978)(expressly holding that Fed.R.Civ.P. 52 and 59 apply on habeas and suggesting that Rule 60(b) applies as well).

14. Nor is habeas a forum in which judgments are uniquely immune from subsequent correction. To the contrary, it is a "familiar principle that res judicata is inapplicable in habeas proceedings," for "[a]t common law, the denial by a court or judge of an application for habeas corpus was not res judicata." SANDERS vs. U.S., 373 U.S. 1, 7-8 (1963)(collecting cases). Except to the extent expressly provided by Congress and this Court's jurisprudence, "[c]onventional notions of finality of litigation" do not constrain the writ.

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fn. 1: Indeed, because Rule 60(b) embodies the federal courts' inherent power under the Constitution to correct erroneous and inequitable judgments, the suggestion that Congress implicitly restricted the power in habeas cases would raise a substantial constitutional question. Under the doctrine of constitutional avoidance (see, e.g., INS vs. ST. CYR, 533 U.S. 289, 299-304 (2001); VT. AGENCY OF NAT. RES. vs. U.S. ex rel. STEVENS, 529 U.S. 765, 787 (2000)), AEDPA could not properly be construed as imposing such a restriction in the absence of an explicit and clear statement to that effect. And of course AEDPA contains no such thing.

Id. at 8. This Court's decisions accordingly "preclude application of strict rules of res judicata" in habeas (SCHLUP, 513 U.S. at 319) and instead embrace rules having the necessary flexibility to "accommodate[] both the systemic interests in finality, comity and conservation of judicial resources, and the overriding individual interest in doing justice in the 'extraordinary case'" (id. at 322).

15. Thus, although Rule 60(b)(6) may not be applied so as to circumvent the restrictions on successive applications or the TEAGUE doctrine, the Rule indisputably applies in habeas. That has been the conclusion of this Court, "Section 455 does not, on its own, authorize the reopening of closed litigation. However, as respondent and the Court of Appeals recognized, Federal Rule of Civil Procedure 60(b) provides a procedure whereby, in appropriate cases, a party may be relieved of a final judgment. In particular, Rule 60(b)(6), upon which respondent relies, grants federal courts broad authority to relieve a party from final judgment 'upon such terms as are just,' provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5). The Rule does not particularize the factors that justify relief, but we have previously noted that it provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice,'. . .while also cautioning that it should only be applied in 'extraordinary circumstances,'... Rule 60(b)(6) relief is accordingly neither categorically available nor categorically unavailable for all §455(a) violations." LILJEBERG, 486 U.S. 847, 863-64. See also, RODRIGUEZ vs. MITCHELL, 252 F.3d 191, 200 (2nd Cir. 2001)(Rule 60(b) motion to vacate a judgment denying habeas is not a second petition under §2244(b)). Petitioner Lambros Rule 60(b)(6) motion was for violations of 28 U.S.C.A. §§ 455(a) and 455(b)(3).

16. The Eighth Circuit's holding in petitioner's case, that every

Rule 60(b)(6) motion must be treated as a prohibited "second or successive" habeas petition as a matter of law, means that no motion for relief from a habeas judgment can ever be granted, even though the judgment was entered in violation of Title 28 U.S.C. § 455(a) and § 455(b)(3), under the standard established in LILJEBERG vs. HEALTH SERVICES CORP., 486 US 847 (1988), that invoke the traditional power of courts in the Anglo-American tradition "to vacate judgments whenever such action is appropriate to accomplish justice." KLAPROTT vs. U.S., 335 U.S. 601, 615 (1949).

PETITIONER LAMBROS' CASE IS TRULY EXTRAORDINARY:

17. Petitioner Lambros' case is truly extraordinary. Not only are the equities exceptional, but the circumstances - a Federal Judge and Federal Chief Magistrate Judge should have recused themselves from prosecution of Petitioner Lambros, where the Judge was responsible United States Attorney at time of investigation which led to Petitioner's illegal indictment on past criminal offenses, in which Petitioner challenged before the Judge, and the Judge used the illegal criminal charges to enhance Petition's sentence. Also, the Federal Chief Magistrate Judge acted as an Assistant United States Attorney within the same District of Minnesota Minneapolis office from 1983 thru 1989, the same years Petitioner's conspiracy took place, from on or about the 1st day of January, 1983, to on or about the 27th day of February, 1988, that indicted Petitioner in Criminal File No. 4-89-82(05) - will rarely recur.

18. Accordingly, this is not a case in which a federal habeas applicant seeks to reopen a decision on the merits of any of his claims or even to reopen a procedural ruling on the basis of some supervening decision by this Court that requires close reading and analysis to collate with previous decisions by this Court. To the contrary, violations of Title 28 U.S.C.A. § 455(a) which mandates the disqualification of federal judges from acting in any proceeding in

which the the judge's impartiality "might reasonably be questioned" and Title 28 U.S.C.A. § 455(b)(3) which mandates the disqualification of federal judges from acting in any proceeding "Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy," provides the rare kind of clear guidance from this Court decision in LILJEBERG that completely obviates the need for complex or protracted federal litigation.

19. This case presents additional extraordinary circumstances that are generally absent when a party invokes Title 28 U.S.C.A. § 455 as a basis for relief under Rule 60(b)(6), falsification of court records by an United States Attorney who concealed same as a United States Federal Judge in hearing he held. In combination, these circumstances justify relief under even the most stringent standard of what "is appropriate to accomplish justice." KLAPROTT, 335 U.S. at 616; LILJEBERG, 486 U.S. at 864.

20. This Court applied and granted "extraordinary circumstances" in LILJEBERG in vacating judgment under Rule 60(b)(6) for a violation of § 455(a), stating "it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process. We must continuously bear in mind that 'to perform its high function in the best way 'justice must satisfy the appearance of justice.'" LILJEBERG, 486 U.S. at 864, ("The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible. See S Rep No. 93-419, at 5; HR Rep No. 93-1453, at 5. Thus, it is critically 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. . . ." Id. at 865).

21. Judge Renner can not state that he lacked knowledge of his personal involvement as United States Attorney in the indictment and sentencing of Petitioner Lambros, as Judge Renner personally signed two of the three indictments against Petitioner Lambros:

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

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

22. Judge Renner reviewed and applied criminal indictments and judgments, CR-3-75-128; CR-3-76-17; and CR-3-76-54, as stated within Petitoner's Presentence Investigation Report, to enhance/increase Petitioner Lambros' sentence during resentencing on February 10, 1997. As this Court knows, "Due process requires, however, that the defendant be sentenced on reliable information ..... As an added protection to ensure fair sentencing procedure, 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.'" Petitioner Lambros challenged his prior convictions at resentencing on February 10, 1997. See, U.S. vs. MANOTAS-MEJIA, 824 F.2d 360, 368 (5th Cir. 1987). This is undeniable.

23. Petitioner Lambros is a career offender. Judge Renner was allowed to make individualized considerations as to Petitioner's prior convictions that Judge Renner, as United States Attorney Renner, prosecuted Petitioner on. The Eighth Circuit allowed Judge Renner to depart downward under the United States Sentencing Guidelines § 4A1.3 after reviewing the historical facts of Petitioner's prior convictions, including age when offenses committed, assessment of seriousness of crimes, etc. U.S. vs. SENIOR, 935 F.2d 149 (8th Cir. 1991) (Overstatement of seriousness of defendant's criminal history was a circumstance unusual enough to warrant departure from guideline range and imposition of statutory minimum sentence

of ten years for conspiracy to distribute cocaine and possessing it with intent to distribute. U.S.S.G. §4A1.3, p.s., 18 U.S.C.A.App., SENIOR, at 149, Head Note 2.) Also see, U.S. vs. BROWN, 903 F.2d 540 (8th Cir. 1990)(Guidelines provide court with authority to depart downward in sentencing career offender under § 4A1.3, where defendant's conduct is exaggerated by his criminal history score.)

24. §5H1.8 of the United States Sentencing Guidelines (USSG) states "A defendant's criminal history is relevant in determining the appropriate sentence." Thus, again Judge Renner used Petitioner's criminal indictment and judgments he prosecuted Petitioner Lambros on at the February 10, 1997 resentencing.

25. Last but not least, Judge Renner ruled on Petitioner's Title 28 U.S.C. § 2255's which contained issues involving Petitoner's prior convictions. The same prior convictions Judge Renner as United States Attorney Renner indicted and convicted Petitioner on.

FORTY-THREE (43) CITIZENS OF THE UNITED STATES OF AMERICA HARBOR DOUBT AND REASONABLY QUESTION JUDGE RENNER'S IMPARTIALITY TOWARD PETITIONER LAMBROS DURING ALL PROCEEDINGS:

26. Forty-three (43) citizens of the United States of America have found ample basis, after reviewing and identifying the facts within this action, to conclude that an objective observer has questioned United States Senior District Judge Robert C. Renner's impartiality toward Petitioner John Gregory Lambros on February 10, 1997 and all proceedings thereafter, where Judge Renner was the responsible United States Attorney who investigated, signed indictments in criminal actions and prosecuted Petitioner Lambros in 1975 and 1976. All forty-three (43) citizens have signed a petition stating, "Judge Renner should have recused himself from [Petitioner] Lambros' February 10, 1997, RESENTENCING. ... The time has come to rectify an oversight and to take the

steps necessary to maintain public confidence in the impartiality of the judiciary." See, APPENDIX J.

CONCLUSION

27. From the time petitioner's court appointed civil attorney's, Briggs and Morgan, Minneapolis, Minnesota, in a legal malpractice action against attorneys that represented Petitioner during his original trial in this action, discovered (February 21, 2001) the unethical, illegal, and unconstitutional machinations that United States Senior District Judge Robert G. Renner used to resentence Petitioner Lambros, Petitioner Lambros has brought these violations of due process to the attention of the federal courts and Honorable Charles E. Grassley, United States Senator and member of the "Committee on the Judiciary" in compliance with the rules of postconviction procedure of the court system.

28. The failure of the federal district court and the Eighth Circuit Court of Appeals to consider the merits of petitioner's claims of Title 28 U.S.C.A. §§ 455(a) and 455(b)(3) by Judge Renner and Magistrate Judge Noel under the construction and application of Rule 60(b)(6) of the Federal Rules of Civil Procedure, under the standard established in LILJEBERG was the result of the court's misunderstanding of this courts' holding in LILJEBERG and the application of Rule 60(b)(6). There remains time to rectify the consequences of the misunderstanding before they become fatal in undermining the public's confidence in the judicial process, as "justice must satisfy the appearance of justice." LILJEBERG, 486 US at 864. This Court should instruct the courts below to do so.

Executed on: October 19, 2002

Respectfully submitted,

John Gregory Lambros, Pro Se, Reg. No. 00436-124, U.S. Penitentiary Leavenworth, P.O. Box 1000, Leavenworth, Kansas 66048-1000, Web site: www.brazilboycott.org

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2002

JOHN GREGORY LAMBROS — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

PROOF OF SERVICE

I, John Gregory Lambros, do swear or declare that on this date, _____, 2002, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

OFFICE OF THE SOLICITOR GENERAL
U.S. Department of Justice, Room 5614
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

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

Executed on NOVEMBER 4, 2002

(Signature)
John Gregory Lambros

INDEX TO APPENDICES

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 02-2026

United States of America,

Appellee,

v.

John Gregory Lambros,

Appellant.

Order Denying Petition for Rehearing and for Rehearing En Banc

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

August 22, 2002

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-2026

United States of America,	*	
	*	
Appellee,	*	
	*	Appeal from the United States
v.	*	District Court for the
	*	District of Minnesota.
John Gregory Lambros,	*	[UNPUBLISHED]
	*	
Appellant.	*	

Submitted: June 25, 2002

Filed: July 1, 2002

Before WOLLMAN, FAGG, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

John Gregory Lambros appeals the district court's[1] denial of his motion under Federal Rule of Civil Procedure 60(b)(6). For the reasons stated by the district court, the judgment is affirmed. See 8th Cir. R. 47B.

[1]The Honorable David S. Doty, United States District Judge for the District of Minnesota.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 99-28 (DSD)
Criminal No. 4-89-82(5) (DSD)

John Gregory Lambros,

Petitioner,

v. **ORDER**

United States of America,

Respondent.

This matter is before the court on petitioner's request for a certificate of appealability regarding this court's denial of his motion to vacate which this court construed as a successive section 2255 motion and his request for a motion for leave to file a petition for a writ of mandamus and direct appeal.

Under the Antiterrorism and Effective Death Penalty Act of 1996, an appeal may not be taken from a final order in a section 2255 proceeding unless a "circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

A certificate of appealability should not issue merely because the appeal is brought in good faith and raises a "non-frivolous" issue. Kramer v. Kemna, 21 F.3d 305, 307 (8th Cir. 1994).

36

APPENDIX C.

Instead, the applicant must show "that the issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings." Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994), cert. denied, 513 U.S. 946 (1994) (citing Lozado v. Deeds, 498 U.S. 430, 432 (1991)).

After carefully reviewing the petitioner's request, and for the same reasons that this court denied petitioner's previous motion,[1] the court concludes that petitioner has failed to meet the requisite showing for this court to issue a certificate of appealability.

Therefore, based on a review of the file, record, and proceedings herein, **IT IS HEREBY ORDERED** that petitioner's

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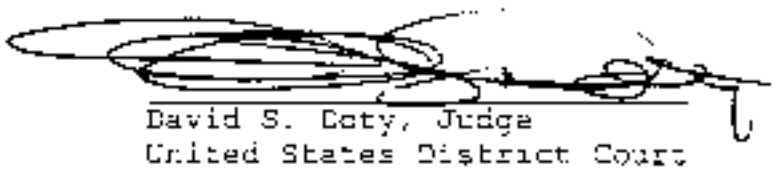
[1] Including this court's determination that petitioner fails to make a substantial showing of the denial of a constitutional right. Furthermore, even it Lambros were permitted to file a successive petition based on the alleged "conflict of interest" on the part of Judge Renner, such petition would be unlikely to succeed since the fact that Judge Renner previously was the United States Attorney for the District of Minnesota does not constitute newly discovered evidence nor does it provide a new rule of constitutional law. It is undisputed that Judge Renner did not preside over Lambros's trial but only entered the case several years after petitioner's conviction at the time of his re-sentencing. In a word, the court believes that defendant's assertions here are meritless.

application for certificate of appealability and motion for leave to appeal is denied.

Dated: May 29, 2002



David S. Doty, Judge
United States District Court

APPENDIX C.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 4-89-92(5)(DSD)
Civil No. 99-29(DSD)

John Gregory Lambros,

Petitioner,

v. **ORDER**

United States of America,

Defendant.

This matter is before the court on petitioner's motion to vacate all judgments and orders [Doc. No. 237]. For the following reasons, the court dismisses the motion. The petitioner has also filed several other motions which are related to the motion to vacate including: (1) a motion for disclosure of documents filed by United States District Court Judge Robert Renner [Doc. No. 241]; (2) a motion for extension of time to respond [Doc. No. 242]; (3) a motion for appointment of counsel [Doc. No. 244]; and (4) a motion to disclose current investigation by the Minnesota Office of Lawyers' Professional Responsibility [Doc. No. 247]. Because the court concludes that these motions are collateral to the substantive motion which is being dismissed and since the court concludes that it lacks jurisdiction over this matter, the court will dismiss all of these motions.

39

APPENDIX D.

MAR 8 2002
FILED
RICHARD D. SLETTEN, CLERK
Judgment Entd.
Deputy Clerk's Initials

BACKGROUND

In 1993, petitioner John Gregory Lambros was convicted of several drug trafficking offenses after a jury trial. His initial sentence of life imprisonment was vacated on appeal by the Eighth Circuit Court of Appeals. The Eighth Circuit affirmed his conviction in all other respects and remanded the matter for resentencing. He was resentenced in 1997 to 360 months imprisonment. The Eighth Circuit later affirmed the resentencing.

The present petition marks Lambros's fifth post-conviction collateral attack on his conviction and sentence. The first such petition was filed at the time of his resentencing. Although described as a motion pursuant to Fed. R. Crim. P. 33, the district court construed it as a petition for § 2255 habeas corpus relief and denied it. Lambros filed a second petition on April 19, 1997, which was denied as successive.[1] Lambros's third petition was filed on January 7, 1999. The district court dismissed it for lack of jurisdiction because Lambros had not obtained authorization from the Eighth Circuit to file a successive petition for habeas relief. The Eighth Circuit affirmed the dismissal of the third petition in an unpublished order. Lambros's fourth petition was filed in the Eighth Circuit on June 29, 2001, as a motion for leave to file a second or successive § 2255 petition. The Eighth Circuit has not

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[1] The district court alternatively concluded that this second petition lacked merit.

APPENDIX D.

yet ruled on that petition. Now, Lambros brings the present motion to vacate all judgments and orders by the United States District Court pursuant to Rule 60(b)(6). 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 v. Armontrout, 983 F.2d 99, 99 (8th Cir. 1993); Blair v. Armontrout, 976 F.2d 1130, 1134 (8th Cir. 1992).

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a federal prisoner must obtain certification from the appropriate court of appeals prior to filing a second or successive petition for habeas relief in the district court. 28 U.S.C. § 2255 (2001). The Eighth Circuit has held that this prior certification rule is "absolute." Boykin v. United States, 2000 WL 1610732, *1 (8th Cir. 2000). When a prisoner fails to comply with the certification requirement, the district court lacks the power and authority to entertain the motion. Id., see also United States v. Allen, 157 F.3d 661, 664 (9th Cir. 1998); Nelson v. United States, 115 F.3d 136, 136 (2nd Cir. 1997). Because the present motion to vacate is a successive § 2255 petition for which Lambros

APPENDIX D.

41

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.[2]

Moreover, because petitioner's several other motions are related to and dependant upon the motion to vacate, and since this court lacks jurisdiction, all of petitioner's other motions must be dismissed on the same basis.

CONCLUSION

Accordingly, **IT IS HEREBY ORDERED** 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 242] is dismissed;

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[2] The court also concludes that, even if Lambros were to apply to the Eighth Circuit for permission to file a successive petition based on the alleged "conflict of interest" on the part of Judge Renner, such permission would be unlikely to be granted since petitioner's claim does not fit either of the two criteria set forth in 28 U.S.C. § 2255 as providing a basis for permitting the filing of a successive petition. The fact that Judge Renner previously was the United States Attorney for the District of Minnesota does not constitute newly discovered evidence nor does it provide a new rule of constitutional law. Moreover, Judge Renner did not preside over Lambros's trial but only entered the case several years after petitioner's conviction at the time of his resentencing.

APPENDIX D.

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.

Dated: March 8, 2002

David S. Doty, Judge
United States District Court

APPENDIX D.

February 15, 2002

John Gregory Lambros
Reg. No. 03436-124
U.S. Penitentiary Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000 USA
Web site: www.brazilboycott.org

THIS LETTER IS IN AFFIDAVIT FORM.

Edward J. Cleary, Director
Office of Lawyers Professional Responsibility
Minnesota Judicial Center
25 Constitution Avenue
Suite 105
St. Paul, Minnesota 55155-1500 USA
Tel. (651) 296-3952
U.S. CERTIFIED MAIL NO. 7001-0320-0005-1590-0399

RE: **FILING OF COMPLAINT AGAINST MINNESOTA ATTORNEYS IN 1976, THEIR ACTIONS CARRY FORWARD TO THIS DATE:**

a. **Peter J. Thompson** (Current address: Thompson & Sicoli, LTD., 2520 Park Ave., Minneapolis, Minnesota 55404-4403, Tel. (612) 871-0708);
b. **Joseph T. Walbran** (Current address: Assistant U.S. Attorney, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415);
c. **Robert G. Renner** (Current address: 748 Warren E. Burger Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101, Tel. (651) 848-1180).

Dear Mr. Cleary:

On April 22, 1976, after three days of trial of multiple defendants before a jury in Criminal Indictment Number **3-75-128**, I entered a negotiated plea in two (2) criminal **INDICTMENTS:**

1. **CR-3-75-128**, with judgment entered on June 21, 1976;
2. **CR-3-76-17**, with judgment entered on June 21, 1976;

as per the direction of my alleged competent, self-employed hired attorney, PETER J. THOMPSON. Attorney Joseph T. Walbran was the U.S. Assistant Attorney and Attorney Robert G. Renner was the U.S. Attorney for Minneapolis, Minnesota. See, **EXHIBIT A** (U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976).

Currently, John Gregory Lambros is incarcerated on a non-related sentence, with the above entitled indictments and sentences serving as lodged detainers. Therefore, John Gregory Lambros "remains 'in custody' under all of his sentences until all are served. See, PEYTON vs. ROWE, 391 U.S. 54, 67 (1968)("prisoner serving consecutive sentences is 'in custody' under any one of them").

CRIMINAL INDICTMENT CR-3-76-17, DISTRICT OF MINNESOTA, DATED MARCH 24, 1976:

Attached as **EXHIBIT B** is District of Minnesota, Third Division, Criminal Indictment **CR-3-76-17**, dated March 24, 1976. Please note the attached exhibit is a copy of the certified copy dated July 24, 2001 by the Deputy Clerk.

Also attached is **EXHIBIT C**, the docket sheet for Criminal Indictment **CR-3-76-17**. Please note that the docket sheet clearly states LAMBROS was indicted on Title 18 USC 111 and 114, and Robert G. Renner was the U.S. Attorney and Joseph T. Walbran was the Assistant U.S. Attorney. Both the indictment and docket sheet are for violations of **Title 18 U.S.C. Sections 111 and 114.** Both are copies of certified copy dated July 24, 2001, by the Deputy Clerk.

PROBLEM: WHY DO TWO (2) JUDGMENT AND PROBATION/COMMITMENT ORDERS EXIST????

The attached **EXHIBIT D** is the July 24, 2001, CERTIFIED Judgment and Probation/ Commitment Order in Criminal Indictment CR-3-76-17, signed by U.S. District Court Judge Edward J. Devitt on June 21, 1976 and by the Deputy Clerk on June 21, 1976. Please note that the Judgment Order clearly states John Gregory Lambros violated **Title 18 U.S.C. Sections 111 and 114, as charged in Count One (1) of the Indictment.**

The second Judgment and Probation/Commitment Order is being offered as **EXHIBIT E.** This second Judgment and Commitment Order is dated June 21, 1976, allegedly signed by U.S. District Court Judge Edward J. Devitt, **BUT NOT SIGNED BY THE DEPUTY CLERK,** as per Criminal Indictment **CR-3-76-17.** Also the word AMENDED appears above the word JUDGMENT. This Second Judgment Order states John Gregory Lambros violated **Title 18 U.S.C. Sections 111 and 1114; as charged in Count One (1) of the Indictment.**

Therefore, the March 24, 1976, INDICTMENT and DOCKET SHEET state that John Gregory Lambros was in violation of **Title 18 USC Sections 111 and 114.** The first June 21, 1976 Judgment and Probation/Commitment Order states that LAMBROS was convicted of violations of **Title 18 USC Sections 111 and 114,** and the ALLEGED second AMENDED June 21, 1976, Judgment and Probation/Commitment Order states LAMBROS was convicted of violations of **Title 18 USC Sections 111 and 1114.**

MINNESOTA ATTORNEYS THOMPSON, WALBRAN, AND RENNER CLEARLY ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION THAT WAS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN U.S. vs. LAMBROS, CR-3-76-17, DISTRICT OF MINNESOTA:

As this office understands, the Eighth Circuit clearly states that U.S. Attorneys are subject to sanctions under ABA STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE. See, U.S. vs. PEYRO, 780 F.2d 826, 832 (8th Cir. 1986). In U.S. vs. GUERRA, 113 F.3d 809, 818 (8th Cir. 1997), the Eighth Circuit stated, "The cause of justice would be well served if prosecutors would heed the 1935 admonition by the Supreme Court:

> "He [she] may prosecute with earnestness and vigor indeed, he [she] should do so. But, while he [she] may strike hard blows, he [she] IS NOT AT LIBERTY TO STRIKE FOUL ONES. It is as much he [her] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. (emphasis added) BERGER vs. U.S., 295 U.S. 78, 88 (1935).

U.S. vs. GUERRA, 113 F.3d 809, 818 (8th Cir. 1997).

I believe the following ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY and ABA MODEL RULES OF PROFESSIONAL CONDUCT apply to Minnesota Attorneys THOMPSON, WALBRAN, and RENNER:

THE ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY

DR-1-102:

(A) A lawyer shall not: . . .

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. [or]

(5) Engage in conduct that is prejudicial to the administration of justice.

THE ABA MODEL RULES OF PROFESSIONAL CONDUCT

RULE 8.3, Reporting Professional Misconduct.

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate authority .....

RULE 8.4, Misconduct.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; ...

(c) engage in conduct involving dishonesty, fraud, deceit or **MISREPRESENTATION;** (emphasis added)

(d) engage in conduct that is PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE. (emphasis added)

It is Lambros' understanding that Minnesota common law states that "deceit or collusion" are "virtually identical." See, HANDEEN vs. LEMAIRE, 112 F.3d 1339, 1355 (8th Cir. 1997).

THE QUESTION:

WHETHER THE "ATTORNEYS" ACTED TO "DECEIVE, MISREPRESENT FACTS, AND/OR WERE DISHONEST TO JOHN GREGORY LAMBROS," AS TO THE INDICTMENT AND COURT PROCEEDINGS IN DISTRICT OF MINNESOTA CRIMINAL INDICTMENT CR-3-76-17?"

3. On February 24, 1976, John Gregory Lambros was arrested on his **PRIVATE LAND** located at 1759 Van Buren, St. Paul, Minnesota by U.S. Federal Marshals.

4. On March 24, 1976, Attorney RENNER, acting as U.S. Attorney RENNER in the District of Minnesota, presented Criminal Indictment CR-3-76-17, to the Grand Jury as to violations of **Title 18, United States Code, Sections 111 and 114** by John Gregory Lambros on February 24, 1976. The indictment contained two (2) counts as to an assault and resistance against certain Deputy U.S. Marshals and narcotics officers. See, **EXHIBIT B.**

5. The Grand Jury Foreman signed the indictment and Harry A. Stuben, Clerk, filed and stamped the indictment on March 24, 1976. See, **EXHIBIT B.**

6. Title 18 United States Code, **Section 111**, describes "Assaulting, resisting, or impeding certain officers or employees."

7. Title 18 United States Code, **Section 114**, describes "Maiming within **MARITIME AND TERRITORIAL JURISDICTION."** The term SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES is defined within Title 18 United States Code, **Section 7.**

8. Title 18 United States Code, Section 114, is a criminal statute which is part of a complex **JURISDICTIONAL SCHEME** involving the interaction of several statutes: (1) Title 18 USC § 2340, which defines "intent to torture" and "United States" as described in Sections 5 and 7 of this title [18], and (2) the **JURISDICTIONAL ELEMENT** of Title 18 U.S.C. **Section 7**, those crimes that occur "**WITHIN THE SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES.**" Statutes in pari materia must be construed with reference to each other, see SULLIVAN vs. FINKELSTEIN, 496 U.S. 617, 632, 110 S.Ct. 2658, 110 L.Ed.2d 563, 578 (1990), and it is this interaction of these statutes which reveals that the crime by John Gregory Lambros was a federal crime that occurred in a federal prison, federal military installation, or on property owned exclusively by the Federal Government after formal cession by the State. Therefore, under this statute, the fact that the crime occurred within the **JURISDICTION** of the United States is an **ELEMENT OF THE CRIME THAT MUST BE ALLEGED IN THE INDICTMENT AND ESTABLISHED AT TRIAL.** While the court may determine, as a matter of law, the existance of federal jurisdiction over a geographic area, whether the locus of the offense is within that area is an **ESSENTIAL ELEMENT THAT MUST BE RESOLVED BY THE TRIER OF FACT.** See, U.S. vs. PRENTISS, 206 F.3d 960, 967 (10th Cir. 2000)(offers an excellent overview as to Title 18 USC Section 7)

9. Since case law supports the requirement that jurisdiction must be alleged in an **INDICTMENT**, it is necessary to inspect Criminal Indictment **CR-3-76-17, EXHIBIT B**, and ask why the Grand Jury WAS NOT presented with proof as to the JURISDICTIONAL ELEMENT, the federal crime occurred on property owned exclusively by the federal government after formal cession by the State of Minnesota.

10. The necessary elements of Criminal Indictment **CR-3-76-17, EXHIBIT B**, Title 18 U.S.C. **Section 114** were never presented to a Grand Jury as required by the **FIFTH AMENDMENT.** The reason for same is simple, the location of the alleged crimes by John Gregory Lambros in violation of Title 18 U.S.C. **Section 114 DID NOT OCCUR ON PROPERTY OWNED EXCLUSIVELY BY THE UNITED STATES AFTER FORMAL CESSION BY THE STATE OF MINNESOTA.**

11. At common law, "the most valuable function of the grand jury was not only to examine into the commission of crimes, but to stand between the prosecutor and the accused, and to determine whether the charge was founded upon credible testimony or was dictated by malice or personal ill will." See, HALE vs. HENKEL, 201 U.S. 43, 59, 26 S.Ct. 370, 50 L.Ed. 652 (1906). Errors in a grand jury INDICTMENT allow only a "guess as to what was in the minds of the grand jury at the time....." See, RUSSELL vs. U.S., 369 U.S. 749, 770, 82 S.Ct. 1038, 8 L.Ed.2d 240, 254-255 (1962)(This underlying principle is reflected by the settled rule in the federal courts that an INDICTMENT **MAY NOT BE AMENDED EXCEPT BY RESUBMISSION TO THE GRAND JURY, UNLESS THE CHANGE IS MERELY A MATTER OF FORM.** Id. at 255). (emphasis added)

12. On August 10, 2001 the Fourth Circuit offered an excellent overview on INDICTMENTS and INFORMATION in U.S. vs. COTTON, 261 F.3d 397, 399 in Head Notes 8, 9, 10, 11, 12, 13, 14, and 15 (4th Cir. 2001). See, **EXHIBIT F.** Please note:

a. "a court cannot permit a defendant to be tried on charges that are not made in the indictment against him." Head Note 8.

b. "When an indictment fails to set forth an essential element of a crime, the court has no jurisdiction to try a defendant under that count of the indictment." Head Note 9.

c. "Because an indictment setting forth all the essential elements of an offense is both mandatory and jurisdictional, and a defendant cannot be held to answer for any offense not charged in an indictment returned by a grand jury, a court is without jurisdiction to impose a sentence for an offense not charged in the indictment." Head Note 12.

13. In fact, the Eighth Circuit, the mother circuit for the District of Minnesota, has offered a number of cases supporting that "[A]n indictment must fairly state all the essential elements of the offense if it is to be sufficient." See, U.S. vs. CAMP, 541 F.2d 737, 738 in Head Notes 2, 3, 4, 6, 7, 8, and 9 (8th Cir. 1976). See, **EXHIBIT G.**

14. Other Eighth Circuit case that support U.S. vs. CAMP as to the failure of the indictment to charge an offense, thus defective to comply with the **GRAND JURY CLAUSE OF THE FIFTH AMENDMENT**, include: (a) U.S. vs. DENMON, 483 F.2d 1093 (8th Cir. 1973); (b) U.S. vs. MILLER, 774 F.2d 883, 884-85 (8th Cir. 1985) ("[T]he INDICTMENT contained no assurance that the GRAND JURY deliberated on the elements of any particular stated offense."); U.S. vs. ZANGGER, 848 F.2d 923, 925 (8th Cir. 1988)("[B]ecause the 'STATUTORY CITATION [appearing in ZANGGER'S INDICTMENT] does not ensure that the GRAND JURY has considered and found all ESSENTIAL ELEMENTS [facts] of the offense charged, see FUPO, 841 F.2d at 1239, the indictment violates ZANGGER'S FIFTH AMENDMENT right to be tried on charges found by the GRAND JURY, see CAMP, 541 F.2d at 740.).

IS JURISDICTION AN ELEMENT OF TITLE 18 USC § 114?

15. Title 18 U.S.C. **Section 114** reads, "[W]hoever, within the **SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES**, ...; **OR** Whoever, within the **SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES**, ..." (emphasis added)

16. IN RE WINSHIP, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970), the Supreme Court stated, ([W]e explicitly hold that the Due Process Clause

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certain Deputy U.S. Marshals and narcotics officers. This is a non-negotiated plea." (emphasis added) Id. at 963-64.

b. "THE COURT: You want to plead guilty to Count 43 in the major 128 case and you want to plead guilty to the INDICTMENT in 3-76-17? DEFENDANT LAMBROS: Yes, Your Honor." (emphasis added) Id. at 964.

c. "On June 21, 1976, Lambros was sentenced to ten years imprisonment on the ASSAULT CHARGE and to a concurrent sentence of five years on the drug charge, plus a fine of $10,000, and a three-year special parole term. Immediately thereafter, on motion of the United States Attorney, all other counts of the INDICTMENT were dismissed. (emphasis added) Id. at 965.

22. A guilty plea must be entered KNOWINGLY and VOLUNTARILY, PARK vs. RALEY, 506 US 20, 29 (1992); U.S. vs. ARRELLANO, 213 F.3d 427, 430 (8th Cir. 2000,) with the advice of competent counsel. TOLLETT vs. HENDERSON, 411 U.S. 258, 263 (1973).

23. In HENDERSON vs. MORGAN, 426 U.S. 637, 49 L.Ed.2d 108 (1976) the Supreme Court held that "[t]he judgment of conviction was entered without due process of law, since the defendant-petitioner's plea of guilty was involuntary in that he did not receive adequate notice of the offense." (emphasis added). "The question presented is whether a defendant may enter a voluntary plea of guilty to a charge of second-degree murder without being informed that INTENT TO CAUSE THE DEATH OF HIS VICTIM WAS AN ELEMENT OF THE OFFENSE." Id. at 111 (emphasis added) "There was no discussion of the ELEMENTS OF THE OFFENSE of second-degree murder, no indication that the nature of the offense had ever been discussed with respondent, and no reference of any kind to the requirement of intent to cause the death of the victim." Id. at 113 (emphasis added). "[A]nd clearly the plea could not be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process." Id. at 114 (emphasis added) "[T]here is nothing in the record that can serve as a substitute for either a finding after trial, or a voluntary admission, that respondent had the requisite intent. Defense counsel DID NOT purport to stipulate to that fact; they did not explain to him his plea would be AN ADMISSION OF THAT FACT; and he made no factual statement or admission necessarily implying that he had such intent. In these circumstances it is IMPOSSIBLE to conclude that his plea to the unexplained charge of second-degree murder was voluntary. Id. at 115. "McCarthy extended the definition of VOLUNTARINESS to INCLUDE an 'UNDERSTANDING OF THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED, INCLUDING THE REQUIREMENT OF SPECIFIC INTENT . . .' McCARTHY vs. U.S., 394 US, at 471, 22 L.Ed.2d 418, 428 (1969). (emphasis added) Id. at 119.

24. Therefore, how could John Gregory Lambros' plea of guilty be voluntary when the alleged acts in Count I and II in Criminal INDICTMENT Cr-3-76-17

contained a **JURISDICTIONAL ELEMENT**, "Whoever, within the SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES, ..." [Title 18 USC § 114], which required the crime to occur on federal land, when the alleged acts occurred on private property, the house owned by John Gregory Lambros at 1759 VanBuren, St. Paul, Minnesota? The problem is that Lambros' guilt has not been established neither by a finding of guilt beyond a reasonable doubt after trial nor by Lambros' own admission that he was guilty of Counts I and II in Criminal Indictment Cr-3-76-17, due to the fact that the acts never occurred on land owned by the federal government, as the State of Minnesota never offered formal cession to the United States of America/Federal Government, of land located at 1759 VanBuren, St. Paul, Minnesota.

25. Again, please refer to paragraph 21 (a), (b), & (c), and note that Judge Devitt always asked if Lambros wanted to **PLEAD GUILTY TO THE INDICTMENT IN 3-76-17.** The **INDICTMENT** clearly states violations of Title 18 U.S.C. Sections **111 and 114.**

26. It was only upon Attorney THOMPSON's advice to plead guilty, did John Gregory Lambros plead guilty to a crime that the federal court did not have jurisdiction to proceed on.

PARTIES MAY NOT CONFER JURISDICTION UPON THE COURT!

27. The U.S. Supreme Court has continually stated that subject matter jurisdiction can be raised at anytime and such jurisdictional determination **CANNOT BE WAIVED, STIPULATED, OR CONSENTED TO BY ANY PARTY.** See, INSURANCE CORP. vs. COMPAGNIE BAUXITES, 456 U.S. 694, 702, 72 L.Ed.2d 492, 500-501 (1982)("[F]or example, no action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is IRRELEVANT, CALIFORNIA vs. LaRUE, 409 U.S. 109, 34 L.Ed.2d 342 (1972), principles of estoppel do not apply, ..., and a party DOES NOT waive the requirement by failing to challenge jurisdiction early in the proceedings. Similarly, a court, including an appellate court, will raise lack of subject-matter jurisdiction on its own motion. '[T]he rule, springing from the nature and limits of the judicial power of the United States is INFLEXIBLE and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the **RECORD.**" ..." Id. at 501. (emphasis added).

28. CALIFORNIA vs. LaRUE, 34 LEd.2d 342, 344, Head Note 2 (1972), "Parties **MAY NOT** confer jurisdiction either upon the United States Supreme Court or a Federal District Court by STIPULATION." Also see, foot note 3 on page 348.

29. TURNER vs. BANK OF NORTH AMERICA, 4 U.S. (4 Dall.) 8, 8, 1 L. Ed. 718 (1799) "Silence, inadvertence of consent **CANNOT** give jurisdiction, where the

law denies it." Quoting, SCHOLZ vs. NEW YORK STATE EXECUTIVE PATAKI, 960 F.Supp 568, 572 (N.D.N.Y. 1997)("For example, no action by the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant ...")

30. The Eighth Circuit has continually stated, "**The parties .... MAY NOT confer subject matter jurisdiction upon the federal court by STIPULATION, and lack of subject matter jurisdiction CANNOT BE WAIVED BY THE PARTIES OR IGNORED BY THE COURT.**" See, PACIFIC NAT'L INS. CO. vs. TRANSPORT INS. CO, 341 F.2d 514, 516 **(8th Cir.)** cert. denied, 381 U.S. 912, 85 S.Ct. 1536, 14 L.Ed.2d 434 **(1965)**. Quoting, FARMERS CO-OP. ELEVATOR, WODEN IOWA vs. DODEN, 946 F.Supp. 718, 724 (N.D. Iowa 1996)(offering an excellent overview of cases from the Eighth Circuit) **See, EXHIBIT H.**

31. LAWRENCE COUNTY vs. SOUTH DAKOTA, 668 F.2d 27, 29 (8th Cir. 1982) ("[F]ederal courts operate within jurisdictional constraints and ... parties by their consent **CANNOT** confer subject matter jurisdiction upon the federal courts."). Quoting, SLYCORD vs. CHATER, 921 F.Supp. 631, 634 (N.D.Iowa 1996)("A federal court therefore has a duty to assure itself that the threshold requirement of subject matter jurisdiction has been met in every case. Id. at 634)

32. "The agreement of the parties simply **IS NOT** dispositive of any issue of the court's subject matter jurisdiction." See, NORTH CENT. F.S., INC. vs. BROWN, 951 F.Supp. 1383, 1393 (N.D.Iowa 1996) (also offers an excellent overview of cases to support this statement)

33. THOMPSON vs. THALACKER, 950 F.Supp. 1440, 1446-1449 (N.D.Iowa 1996)(This case offers an excellent overview on subject matter jurisdiction by the Eighth Circuit and challenges to same by an incarcerated person)

34. U.S. vs. STEWART, 727 F.Supp. 1068, 1069 (N.D.Tex. 1989) "[T]he defendants' motions raise the question of subject matter jurisdiction. See THOR vs. U.S., 554 F.2d 759, 762 (5th Cir. 1977) ("[i]f the **INDICTMENT** .., fail[s] to allege a federal offense, the district court lack[s] the subject matter jurisdiction necessary to try [the defendant] for the actions alleged in the **INDICTMENT.**"); see also 18 U.S.C. **§ 3231** (conferring jurisdiction on the district court to try only those offenses against the laws of the United States). The question of subject matter jurisdiction may be raised at any time, **AND IT CANNOT BE WAIVED BY THE DEFENDANT.** See Federal Rules of Criminal Procedure 12(b)(2) and PON vs. U.S., 168 F.2d 373 (1st Cir. 1948)."

AMENDED JUDGEMENT AND PROBATION/COMMITMENT ORDER???

APPENDIX E.

53

10.21

35. As stated on page 2 of this letter and offered as **EXHIBIT D** and EXHIBIT E to this letter, two (2) JUDGMENT AND PROBATION/COMMITMENT ORDERS EXIST.

36. **EXHIBIT E** is the **SECOND AMENDED** Judgment and probation/commitment order in Criminal Indictment **CR-3-76-17**, dated June 21, 1976. Please note that the word **AMENDED** appears above the word judgment. Also please note that the judgment and probation/commitment order **NOW STATES** John Gregory Lambros violated **Title 18** USC Sections 111 and 1114; as **CHARGED IN CT. I OF THE INDICTMENT**. See, EXHIBIT E.

37. Upon review of **EXHIBIT B**, the **INDICTMENT** for **CR-3-76-17**, it clearly states that John Gregory Lambros was indicted of violations of **Title 18 U.S.C. Sections 111 and 114.**

38. The question is, **HOW DID** the "ATTORNEYS" confer jurisdiction to the District Court and change the statute John Gregory Lambros was indicted on from **Title 18 USC Section 114 to 1114??????**

39. The court record as offered within **EXHIBIT A**, U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976), clearly states that Lambros tendered a plea to Count I of the **INDICTMENT IN 3-76-17.** See Paragraph 21 in this letter.

CONCLUSION

40. I JOHN GREGORY LAMBROS believes that a substantial likelihood existed as to Minnesota Attorneys **THOMPSON, WALBRAN, and RENNER** violations of the ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY, THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, ABA STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE, and other rules pertaining to the ethics of Minnesota Attorneys.

41. Therefore, John Gregory Lambros is requesting the Minnesota Office of Lawyers Professional Responsibility to investigate the materials provided and investigate **IN WHAT MANNER OR WAY:**

a. Attorneys RENNER and WALBRAN indicted John Gregory Lambros on March 24, 1976, Criminal Indictment Number **Cr-3-76-17**, as to violations of **Title 18, U.S.C., Section 114**, when the alleged crime **DID NOT** occur on U.S. Government Property/Federal Property? Attorney RENNER signed the March 24, 1976 INDICTMENT.

b. Attorneys RENNER, WALBRAN, and THOMPSON allowed John Gregory Lambros to plead guilty to violations of **Title 18, U.S.C., Section 114**, on April 21, 1976, when the District Court **DID NOT** have subject-matter jurisdiction, as the alleged crime **DID NOT** take place on U.S. Government Property/Federal Property?

c. Attorneys RENNER, WALBRAN, and THOMPSON **ALLOWED** the District Court to **AMEND** the JUDGMENT AND PROBATION/COMMITMENT ORDER on June 21, 1976, from violations of **Title 18, U.S.C., Section 114 to Section 1114?**

42. Thanking you in advance for your continued assistance in this matter.

43. I John Gregory Lambros declare under penalty of perjury that the foregoing is true and correct. Title 28 U.S.C. §1746.

Executed on: February 27, 2002

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File

eyeglasses. He also testified that Downey would be able to see the outline of the courtroom gates (separating the courtroom seats from the witness stand) at a distance of 25 feet. We cannot say that Dr. Lucas was not a qualified expert witness. The trial court did not abuse its discretion in appointing Dr. Lucas and allowing him to express his opinion as an expert. *United States v. Atkins*, 473 F.2d 308, 313 (8th Cir.), cert. denied, 412 U.S. 932, 93 S.Ct. 2751, 37 L.Ed.2d 160 (1973). *White v. United States*, 399 F.2d 513, 519 (8th Cir. 1968).

[16] Downey next contends that the trial judge erroneously refused to allow him to exhibit to the jury special eyeglasses prepared by Dr. Lucas. The defense intended to produce the eyeglasses for the jury's use in determining Downey's visual acuity without glasses. In light of Dr. Lucas' testimony that he did not know what effect the eyeglasses would have on a farsighted or nearsighted person, the trial judge did not abuse its discretion in denying the admission of the eyeglasses.

[17] Downey argues that the district court erred in allowing testimony of unrelated and irrelevant bad conduct by both defendants. Items not previously discussed herein included (1) testimony by Lepp that commencing about a month before the instant robbery he and Downey had made automobile trips to Kentucky and Pennsylvania for the avowed purpose of bank robberies (which were not carried out) and (2) testimony by Agent Northcutt that Downey, when questioned concerning the source of funds for Downey's purchase of the 1969 Thunderbird shortly after the robbery, stated that he "bought it with proceeds from gambling; namely, poker and from a little bit of stealing." We are satisfied that this testimony was admissible to show preparation, plan, intent, knowledge and identity. Fed.R.Evid. 404(b). It is important to note also that the trial judge immediately instructed the jury that the defendant Downey was not on trial for any acts not mentioned in the indictment.

Finally [12] Downey argues there was insufficient evidence to support the guilty verdict against him. In light of our discussion of the evidence and the hearsay statement introduced against Moss we conclude that Downey's contention of insufficient evidence has little merit.

Affirmed.

UNITED STATES of America, Appellee,

v.

John Gregory LAMEROS, Appellant.

Nos. 76-1580, 76-1581.

United States Court of Appeals,
Eighth Circuit.

Submitted Oct. 15, 1976.

Decided Nov. 16, 1976.

The United States District Court for the District of Minnesota, Edward J. Devitt, Chief Judge, convicted defendant on plea of guilty on charges of possession of cocaine with intent to distribute and assault with deadly weapon upon United States marshals, and defendant's motion to withdraw guilty pleas was denied and defendant appealed. The Court of Appeals, Van Oosterhout, Senior Circuit Judge, held that despite fact that defendant was not informed, at time he entered guilty pleas, of possible

12. Downey also argued that the government acted contrary to the law in not disclosing that none of the robbers wore glasses and that Downey allegedly jumped the teller cages and collected the money. The transcript of the hearing on motions indicates, however, that it had been disclosed that Downey had allegedly jumped the teller cages. Also the discussion by Downey's counsel at this hearing indicates that he was aware that the evidence would show that all three principals were sporting masks and that none of them wore glasses. Downey's argument, therefore, has little merit.

EXHIBIT A.
APPENDIX E.

enhancement of punishment for subsequent violation of Federal Narcotics Act, trial court did not abuse its discretion in denying motion to withdraw guilty pleas.

Affirmed.

1. Criminal Law ⇐274(2)

Trial court did not abuse its discretion in denying defendant's motion to withdraw guilty pleas on charges of possession of cocaine with intent to distribute and assault with deadly weapon upon United States marshals, in view of absence of evidence that Government breached terms of plea bargain agreement, despite fact that defendant, at time he entered guilty pleas, was not informed that punishment for any subsequent violation of Federal Narcotics Act could possibly be enhanced by reason of conviction of narcotics offense to which he entered guilty plea. Fed.Rules Crim.Proc. rule 11, 18 U.S.C.A.

2. Criminal Law ⇐274(1)

Presentence motions in criminal case are to be judged on a fair and just standard.

3. Criminal Law ⇐274(1)

Possibility of enhanced punishment for subsequent conviction under Narcotics Act was collateral and not direct consequence of guilty plea to charge of violating Federal Narcotics Act, and thus court, in proceedings held pursuant to motion to withdraw guilty pleas, was not obligated to explain collateral consequence of possible enhanced punishment. Fed.Rules Crim.Proc. rule 11, 18 U.S.C.A.

Peter J. Thompson, Minneapolis, Minn., for appellant.

Joseph T. Walbran, Asst. U. S. Atty., Minneapolis, Minn., for appellee; Robert G. Renner, U. S. Atty., Minneapolis, Minn., on brief.

Before VAN OOSTERHOUT, Senior Circuit Judge, and HEANEY and BRIGHT, Circuit Judges.

VAN OOSTERHOUT, Senior Circuit Judge.

This is an appeal by defendant Lambros from final judgment convicting him on pleas of guilty on the charges hereinafter described, the resulting sentence, and the denial of his motion for leave to withdraw guilty pleas made by him.

No. 76–1560 is the prosecution based on a multiple count indictment against the defendant and numerous other persons charging an extensive conspiracy to import cocaine and distribute it in Minnesota. Lambros entered a plea of guilty to Count 43 charging possession of two pounds of cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1).

No. 76–1581 is an indictment charging assault with a deadly weapon upon United States Marshals at the time of defendant's arrest on the drug charge.

On April 22, 1976, after three days of trial of multiple defendants before a jury in case No. 76–1580, and after other defendants at the trial had entered guilty pleas, the record reflects the following proceedings:

MR. WALBRAN: [Assistant United States Attorney:] Your honor, on yesterday morning, on this, our fourth day of trial, and what would be our third day of evidence taken in the cocaine conspiracy case 3–75–128, we have arrived at a satisfactory disposition of the case. It is the intention of the defendant John T. Lambros to enter a change of plea in the case number 128 as to Count 43 of the indictment. That would be a tender of a negotiated plea, Your Honor, under which the defendant would receive no more than five years incarceration and a special parole term of whatever length the Court determines, but at least three years

Your Honor, the defendant as part of the negotiation will also this morning tender to the Court a change of plea to Count I of that other indictment in 3–76–17 pertaining to an assault and resistance against certain Deputy U. S. Marshals and narcotics officers. That is a non-ne-

gotiated plea. That is, the offense carries a maximum penalty of ten years and $10,000 and Mr. Lambros will simply enter a plea of guilty.

It is our understanding and our negotiation that the two sentences to be imposed would be served concurrently. It is further our assurance, Mr. Lambros, that we will not pursue any cocaine-related charges against his wife Christina. This is a matter which concerns him and we are satisfied the ends of justice have already been served in her case.

It is also part of the negotiations that the United States Attorney will not pursue a potential or latent charge arising from Mr. Lambros' possession of three electronics devices which seem to be bugging devices and which the FBI has been investigating for us. We will not pursue those charges now.

Have I correctly stated the negotiations, Mr. Thompson?

MR. THOMPSON: [Defendant's attorney.] Yes.

MR. WALBRAN: Mr. Lambros, have I correctly stated it?

DEFENDANT LAMBROS: Yes, you have.

MR. WALBRAN: Do you understand it?

DEFENDANT LAMBROS: Yes, I do.

THE COURT: You want to plead guilty to Count 43 in the major 128 case and you want to plead guilty to the indictment in 3-76-17?

DEFENDANT LAMBROS: Yes, Your Honor.

Thereafter the prosecuting attorney, at the court's request and in the presence of the defendant and his attorney, explained defendant's constitutional rights in detail and the penalties involved in the pending charges, and questioned defendant with respect to his knowledge and understanding of such rights, and the voluntariness of his guilty pleas. Thereafter the court personally addressed and interrogated the defendant as follows:

THE COURT: Did you give true answers?

DEFENDANT LAMBROS: Yes, Your Honor, I did.

THE COURT: To all these questions, they were all truthful?

DEFENDANT LAMBROS: Yes, sir.

THE COURT: Do you want to plead guilty to this count?

DEFENDANT LAMBROS: Yes, Your Honor, I do.

THE COURT: You are guilty?

DEFENDANT LAMBROS: Yes, Your Honor, I am.

THE COURT: Do you have any questions you want to ask about it?

DEFENDANT LAMBROS: No, Your Honor.

THE COURT: You fully understand everything that is going on?

DEFENDANT LAMBROS: Yes, Your Honor.

THE COURT: Have you had enough time to visit with your lawyer about pleading guilty to this count?

DEFENDANT LAMBROS: Yes, I have, Your Honor.

THE COURT: Then I will accept the guilty plea as to Count 43 with the understanding that I will read the probation report, and if I think the limitation of time that you have negotiated is appropriate I will accept it, and you have negotiated for a maximum of five years plus a special parole term of unlimited duration; and it's also understood, I understand, that you plead guilty to the assault count, the assault indictment in 3-76-17.

It's also understood that the United States Attorney will not prosecute your wife for some possible offense and that there will be no other drug-related prosecutions on behalf of the government. Is that the full understanding that you have?

DEFENDANT LAMBROS: Yes.

Defendant's constitutional rights and the consequences of his guilty plea were also explained in connection with the assault

EXHIBIT A.
APPENDIX E.

charge. The question of accepting the defendant's guilty plea on the assault charge was taken up immediately following the Rule 11 hearing on the drug charge.

Time for sentencing was fixed for June 21, 1976. On the morning of that day and before sentencing, defendant filed a motion for leave to withdraw his guilty plea in each of the two cases based upon two grounds, to wit: (1) Defendant's arrest on June 17, 1976, on a new drug charge materially changed defendant's position and violated the express and implied terms of the plea bargain and nullified the plea bargain agreement. (2) While defendant was advised as to certain consequences of his guilty plea in accordance with Rule 11(c), he was not apprised that the consequence could also expose him to substantially longer terms of imprisonment for subsequent convictions under the Federal Narcotics Act.

The court denied the motion and subsequently, on July 29, filed a memorandum explaining its reasons for so doing.

On June 22, 1976, Lambros was sentenced to ten years imprisonment on the assault charge and to a concurrent sentence of five years on the drug charge, plus a fine of $10,000, and a three-year special parole term. Immediately thereafter, on motion of the United States Attorney, all other counts of the indictment were dismissed. We find nothing in the record which reflects in any way a failure of the Government to carry out its plea bargain obligation with respect to not prosecuting defendant's wife, or in any other respect.

[1] Defendant seeks a reversal upon the broad ground, supported by various contentions hereinafter set out and discussed, that the court abused its discretion in denying his presentence motion for leave to withdraw his plea of guilty. We find no abuse of discretion and affirm the conviction.

The standard for review of motions to withdraw a guilty plea before sentence is somewhat more lenient than that applying to such motions filed after sentencing.

[2] Presentence motions are to be judged on a "fair and just" standard. *United States v. Brodie*, 535 F.2d 1039, 1040 (8th Cir. 1976). A good discussion of the fair and just standard is found in *United States v. Barker*, 168 U.S.App.D.C. 312, 514 F.2d 208, 220-222 (1975). In *United States v. Benson*, 469 F.2d 222, 223 (8th Cir. 1972), we stated:

> In *United States v. Woosley*, 440 F.2d 1280 at 1281 (CA8 (1971) we said. "Rule 11 proceedings are not an exercise in futility. The plea of guilty is a solemn act not to be disregarded because of belated misgivings about the wisdom of the same." We are abundantly satisfied that the trial court's denial of appellant's motion to withdraw his plea of guilty was not an abuse of discretion. *United States v. Rawlins*, 440 F.2d 1043, 1045-1046 (CA8 1971).

Defendant's contention that the Government breached its plea bargain agreement is wholly without merit. Defendant's June 17 arrest, which occurred nearly two months after his guilty plea, is based on a drug offense alleged to have been committed on June 17, 1976. There is no support for defendant's claim that an investigation of defendant for narcotics offenses was in operation at the time of the guilty plea or that the Government had any knowledge at the time of the guilty plea that the defendant was continuing to operate an illegal drug business.

Defendant also challenges the sufficiency of the court's personal participation in the Rule 11 proceedings. He concedes that appropriate questions and information were sought by the Government attorney and points to no way in which he was misled or prejudiced by the Rule 11 proceedings. Before accepting the guilty plea, the court by personal, direct inquiries, heretofore set out in detail, ascertained that the defendant's responses to the Government attorney's questions were truthful, that he fully understood his rights and the consequences of his plea, that he had no question to ask, that he admitted that he had committed the

EXHIBIT A.
APPENDIX E.

acts charged and that he was guilty of the offenses charged, and that he had a full opportunity to consult with his attorney with respect to his plea.

Defendant was an intelligent person and was represented by competent, self-employed counsel.

The court by its personal questioning on a sound basis in effect adopted the extensive record made by the prosecuting attorney. We hold that there has been substantial compliance with Rule 11, reserving for the moment the issue next discussed.

Defendant further contends that under certain circumstances punishment for a subsequent violation of the Federal Narcotics Act can be enhanced by reason of his prior conviction under the narcotics act, and that he was entitled to be informed of such consequences, and that he was not so informed. The trial court in its opinion held that such was a collateral consequence and not a direct consequence, and in support thereof, stated:

> The cases cited by defendant do indicate that a defendant must be informed of certain legal consequences of his plea. Courts have used the label "direct" consequences to denote those which must be communicated and the label "collateral" consequences for those which need not. In *Weinstein v. United States*, 325 F.Supp. 597, 606 (C.D.Calif.1971), a case presenting a similar claim of involuntariness, the court stated:
>
> > Rather petitioner would have us hold that he must be told of all possible collateral consequences which might ensue from a plea of guilty or from a conviction, since the results collaterally in the future are the same. No authority is cited to support him.
>
> It is true that the present sentence he is serving on a narcotics charge was enhanced because of this 1955 narcotics conviction on his plea of guilty, but we know of no ruling in this or any other Circuit that he should have been advised of this possibility before entering the original plea. We agree with the holding in *Fee v. United States*, 307 F.Supp. 674, 676 (W.D.Va.1962):
>
> > To the best of my knowledge it has never been suggested that the court . . . . is under any duty to warn of such a possible result. [They] have a right to assume that the defendant will not be guilty of a subsequent offense. . . .

In *Cuthbell v. Director*, 475 F.2d 1364, 1366 (4th Cir. 1973), the court states and holds:

> The law is clear that a valid plea of guilty requires that the defendant be made aware of all "the direct consequences of his plea." . . . By the same token, it is equally well settled that, before pleading, the defendant need not be advised of all collateral consequences of his plea, or, as one Court has phrased it, of all "possible ancillary or consequential results which are peculiar to the individual and which may flow from a conviction of a plea of guilty. * * *." . . .
>
> The distinction between "direct" and "collateral" consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment. [Citations omitted.]

The trial court stated that it was not taking the subsequent charge into consideration in imposing sentence.

[3] We agree that the possibility of enhanced punishment in a subsequent narcotics act violation is a collateral and not a direct consequence of the guilty plea, and hence that the court in the Rule 11 proceedings is not obligated to explain the collateral consequence.

In support of its exercise of discretion in denying the motion to withdraw the guilty plea, the court stated:

> Defendant admits that an established ground for refusing to allow plea withdrawal is the possibility of prejudice to

EXHIBIT A.
APPENDIX E.

the government. The defendant was part of a widespread drug distribution scheme. Many of the key witnesses were co-conspirators who wished to lessen their sentences. They have now pleaded guilty, been sentenced, and transferred to prison. The expense of assembling them for trial would be great and, more importantly, the incentive for them to testify with the possibility of sentence reduction foreclosed is small. When this prejudice is weighed against defendant's motivation for withdrawal, the merit of the motion is insubstantial. Defendant does not contend that he is innocent or that he has unearthed a valid defense. Rather he simply wants to put all of his criminal offenses in one basket. He can only do this at a great cost to the government. Therefore, withdrawal will not be allowed.

The record in the present case fully supports the trial court's determination. The record shows that three days of the prosecutor's time, the time of the witnesses, and the time of the court was consumed in the jury trial before the guilty plea was entered, and that considerable difficulty would be involved in assembling the many witnesses used by the Government in the multiple conspiracy charges, and in refreshing the recollections, and in obtaining many witnesses incarcerated in penal institutions.

We are convinced that the court did not abuse its discretion in denying leave to the defendant to withdraw his guilty plea to the two charges here involved.

Affirmed.

Homer H. BLEVINS and Continental Insurance Co., Inc., Appellees.

v.

COMMERCIAL STANDARD INSURANCE COMPANIES, Appellant.

No. 76-1202.

United States Court of Appeals, Eighth Circuit.

Submitted Oct. 14, 1976.

Decided Nov. 16, 1976.

Appeal was taken from an order of the United States District Court for the Western District of Arkansas, Paul X Williams, Chief Judge, entering judgment in favor of an injured party and an excess insurer who intervened in injured party's direct action against the primary insurer regarding payment of a personal injury judgment arising from an automobile accident. The Court of Appeals, Van Oosterhout, Senior Circuit Judge, held that the Arkansas direct action statute does not require the issuance of a writ of execution and its return nulla bona before allowing a direct action against the primary insurer; that the district court's determination that the underlying personal injury judgment against the tortfeasor was not procured by fraud, collusion or bad faith and was therefore binding on the primary insurer was not clearly erroneous; and that the excess insurer became subrogated to the rights of the insured to recover from the primary insurer legal expenses it incurred.

Affirmed.

1. Courts ⇐406.2

In diversity case, interpretation of district court on question of state law is entitled to great deference.

2. Insurance ⇐612.1(5)

Arkansas statute permitting injured party holding judgment against tort-feasor to maintain direct action against tort feasor's liability insurer provided such judgment remains unsatisfied at expiration of 30 days from serving of notice of entry of

EXHIBIT A.

APPENDIX E.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

CR 3-76-17

UNITED STATES OF AMERICA

v.

JOHN G. LANGROS

INDICTMENT

(18 U.S.C. §§111 and 114)

THE UNITED STATES GRAND JURY CHARGES THAT:

COUNT I

On or about the 24th day of February, 1976, in the State and District of Minnesota, the defendant,

JOHN G. LANGROS,

knowingly, intentionally, and by means and use of a deadly and dangerous weapon, that is, a Browning .9 mm semi-automatic pistol, did forcibly assault, resist, oppose, impede and interfere with Deputy United States Marshall James L. Propotnick, and Special Agents Donald E. Nelson and James P. Breseth of the Federal Drug Enforcement Administration while the said officers were engaged in the performance of their official duties; in violation of Title 18, United States Code, Sections 111 and 114.

COUNT II

On or about the 24th day of February, 1976, in the State and District of Minnesota, the defendant,

JOHN G. LANGROS,

knowingly, intentionally, and by means and use of a deadly and dangerous weapon, that is, a Browning .9 mm semi-automatic pistol, did forcibly assault, resist, oppose, impede and interfere with Deputy United States Marshall Leon A. Cheney while the said officer was engaged in the performance of his official duty; in violation of Title 18, United States Code, Sections 111 and 114.

MAR 24 1976

Filed _____ 19__

Garry A. Hickm, Clerk

By _____

A TRUE BILL

_____
United States Attorney

_____
Foreman

A true copy in 2 sheet (s)
of the record in my custody.
CERTIFIED 3/24 1976
Richard D. Sletten, Clerk
BY: _____
Deputy Clerk

EXHIBIT B.

62

19

30

LAMBROS, John G.

(LAST FIRST MIDDLE)

Judge/Magistrate: 6406

Felony: 841 / 3

Case Filed: 03 24 — No. of Defts: 1

76 - 17? - 1

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18 USC 111 and 114	Knowingly, intentionally, and by means and use of a deadly and dangerous weapon, that is Browning .9 mm semi-automatic pistol, did forcibly assault resist, oppose, impede and interfere with officers engaged in performance of their official dues	2

BAIL - RELEASE: $25,000 — Cash or Surety Bond

KEY DATES & INTERVALS

ARREST or In Custody/Detainer: 3-9-76

INDICTMENT / Information: 3-24-76

ARRAIGNMENT

TRIAL

SENTENCE

MAGISTRATE

ATTORNEYS

U.S. Attorney or Asst.

Robert G. Renner, U. S. Attorney
Joseph T. Walbran, A.U.S.D.A.

A true copy in 5 sheet(s) of the record in my custody. CERTIFIED 7/24 2001 Richard D. Sletten, Clerk BY: Deputy Clerk

DATE	DOCUMENT NO. / PROCEEDINGS
3-24-76	1. INDICTMENT (Devitt-J CR. 188)
	2. TRANSMITTAL ORDER directing that deft. be cont. on $25,000 C/S JEC. Also has $25,000 C/S bond in CR. 375-128 (Lodged in CR. 3-76-16)
3-31-76	3. Placed ORDER REDUCING BAIL filed 3-9-76 at Minneapolis in JEC 76 49M in file reducing bail to $25,000 cash or surety which is in addition to bail previously set in narcotics case 2. Condition of bail that deft. report in person at the office of the U. S. Marshal every weekday no later than 9 A.M., that he not possess firearms and that he turn in his passport to the U. S. Marshal. (J. Earl Cudd, U. S. Mag. 3-9-76)
	4. APPEARANCE BOND $25,000 CASH executed 3-9-76 at Minneapolis. On 3-10-76 placed $25,000.00 cash Bail in Registry of Court JEC 76-49M 4th Div.
	5. REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING MARCH 5, 1976 at Minneapolis
4-23-76	6. MINUTES OF PROCEEDINGS: Deft. arraigned on Ct. I and Plea of Guilty entered. Bond cont'd. Imp. of sent. of impr. deferred and matter is referred to the prob. Office for pre-sent. invest. and report. Count II to be dismissed at time of sentencing. (Devitt-J) (Anderson-Reporter)
6-21-76	7. DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEAS (copy-original in CR. 3-75-128)

EXHIBIT C.

APPENDIX K.

63

DATE	IV. PROCEEDINGS (continued) — DOCUMENT NO.	PAGE NO.
6-21-76	(8) MINUTES OF PROCEEDINGS (Devitt-J; Anderson-Reporter) Sentencing: Committed to the cust. of the Atty. Gen. for imprisonment for a period of ten (10) years. Count II dismissed on motion of the Govt.	
	(9) JUDGMENT AND COMMITMENT. Cert. copies to U.S. Marshal, U. S. Attorney and Probation.	
	(10) AMENDED JUDGMENT AND COMMITMENT. Cert. copies to U. S. Marshal, U. S. Attorney and Probation Office.	
7-1-76	NOTICE OF APPEAL in CR. 3-75-128 and CR. 3-76-17 from the denial of deft's Motion to withdraw a guilty plea in the matters and Court's judgment of conviction entered June 21, 1976 to U. S. Court of Appeals for the Eighth Circuit. Aff. of serv: 6-30-76.	
	NOTICE TO COUNSEL WITH CERT. COPY OF NOTICE OF APPEAL ATTACHED to counsel and Earl Anderson, Court Reporter, 784 Federal Building, St. Paul, Minnesota 55101, 612 227-1223	
	Mailed two cert. copies of Notice of Appeal in CR. 3-75-128 and CR. 3-76-17 with two cert. copies of Docket Entries hereto to Robert C. Tucker, Clerk, U. S. Court of Appeals For the Eighth Circuit, U. S. Court House, St. Louis, Missouri 63101 with covering letter to counsel. Mailed Form To Be Submitted.	
7-2-76	DEFT.'S MOTION TO AMEND AND REDUCE SENTENCE imposed 6-21-76 to remove and delete the fine imposed. Aff. of serv. 7-1-76 . Aff. of John Gregory Lambros attached. (in CR. 375-128 and CR. 3-76-17) (Lodged in CR. 3-75-128)	
7-9-76	DEFT. JOHN GREGORY LAMBROS' NOTICE OF MOTION for Order reducing and amending the sentence with regard to fine for hearing July 14, 1976 at 9 A.M. at St. Paul or as soon thereafter as counsel can be heard. (Filed in CR 3-75-128 and CR 3-76-17) Aff. of serv. 7-7-76. (Lodged in CR. 3-75-128)	
7-13-76	(304 in CR 3-75-128) Notice of Motion to Seek Return of Fine Monies in CR 3-75-128 and CR. 3-76-17. For hearing 7-14-76 9 A.M.. Aff. of John Lambros attached. Aff. of personal serv. 7-13-76 Daniel M. Scott. (Lodged in CR 3-75-128)	
7-14-76	MINUTES OF PROCEEDINGS (Copy) Hearing on Motion of Deft. for Order reducing and amending sent. with regard to fine: argued, submitted and taken under advisement. Motion of John W. Lambros to see return of fine monies:	

V. EXCLUDABLE DELAY

Start Date	End Date	Code	Total Days

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	R.D. NUMBER	DATE	DOCKET NUMBER	CC NUMBER

64

EXHIBIT C.
APPENDIX E.

21

34

D. C. 100 A
CRIMINAL DOCKET

DATE	PROCEEDINGS Page 3
7-14-76	Argued, submitted and taken under advisement. Memorandum of Law are to be submitted. (In CR 3-75-125 (24) and CR 3-76-17) (Devitt-J) Anderson-Reporter by Tiffany)
-16-76	(17) PETITION AND ORDER FOR RELEASE OF CASH BAIL of $25,000.00 to John Lambros 3213 Ridgewood Road, St. Paul, Minnesota 55112 (Devitt-J 7-16-76) Issued Reg. Check No. 3,365 in sum of $25,000.00 and mailed to John Lambros, 3213 Ridgewood Road, St. Paul, Minnesota 55112 with receipt requested
	(18) DESIGNATION OF RECORD AND STATEMENT OF ISSUES. Aff. of serv.7-15-76.
-20-76	(19) RECEIPT FOR REGISTRY CHECK by J. W. Lambros on 7-17-76.
7-26-76	(20) REPORTER'S TRANSCRIPT of hearing April 22, 1976 (Anderson-Reporter)
5-29-76	REPORTER'S NOTES OF 6-21-76 (Sent.) (Box G-501, Anderson-Reporter)
7-27-76	REPORTER'S Notes and electronic recording of Motions 7-14-76 (Box G-506, Anderson-Reporter by Bruce Tiffany)
-26-76	(21) REPORTER'S TRANSCRIPT of plea on April 22, 1976.
-29-76	(329 in CR 3-75-128) MEMORANDUM & ORDER (Devitt-J 7-29-76) that deft's motions to withdraw his guilty plea is denied (Lodged in CR. 3-75-128)
	(22) NOTICE TO COUNSEL
8-4-76	SEE (331) (23) MEMORANDUM & ORDER (Devitt-J 8-4-76) (copy placed herein) that 1. Defendant's motion to eliminate the fine element of his sentence is denied. 2. The motion of John Lambros, Sr. to recover the $10,000 increment of the bond money withheld for payment of the fine is granted, and that portion of the court's previous order making the bond money subject to the fine is rescinded.
	SEE (332) (24) NOTICE TO COUNSEL with copy of Memorandum & Order
8-76	(SEE 351 in CR 3-75-128) AMENDED DESIGNATION OF RECORD AND STATEMENT OF ISSUE in CR. 3-75 128 and CR 3-76-17.
9-3-76	(25) CERT. COPY OF JUDGMENT COMMITMENT ORDER WITH MARSHAL'S RETURN 8-27-76
	(26) CERT. COPY OF AMENDED JUDGMENT COMMITMENT ORDER WITH MARSHAL'S RETURN 8-27-76.
9-17-76	(SEE No. 356 in CR. 3-75-128) APPELLEE'S SUPPLEMENTARY DESIGNATION OF RECORD in CR. 3-75-128 and CR 3-76-17) (Lodged in CR. 3-75-128)
-24-76	(SEE No. 357 in CR. 3-75-128) APPELLEE'S SUPPLEMENTARY DESIGNATION OF RECORD (Second Supplement) (Lodged in CR 3-75-128)
-27-76	(SEE No. 358 in CR. 3-75-128) APPELLANT'S OBJECTIONS TO APPELLEE'S SUPPLEMENTAL DESIG-NATION OF RECORD AND SECOND SUPPLEMENTAL DESIGNATION OF RECORD. (Affo f Serv. 9-24-76) (Lodged in CR 3-75-128)
-29-76	(SEE No. 361 in CR. 3-75-128) APPELLEE'S RESPONSE TO APPELLANT'S OBJECTIONS TO APPELLEE'S SUPPLEMENTAL DESIGNATION OF RECORD. (In CR. 3-75-128 and CR 3-76-17) (Lodged inCR. 3-75-128)
-6-76	Mailed Designated Record on Appeal to Robert C. Tucker, Clerk, U. S. Court of Appeals for the Eighth Circuit, U. S. Court House, St. Louis, Missouri 63101 in CR. 3-75-128-24 and CR. 3-76-27 with covering letter to counsel

EXHIBIT C.

APPENDIX E.

DATE		PROCEEDINGS	Page 4
12-8-76	(27)	CERTIFIED COPIES OF JUDGMENT OF U.S. COURT OF APPEALS FOR THE 8th CIRCUIT, No. 1581 affirming judgment and sentence of the District Court dated November 16, 19	
	(28)	OPINION, of U.S. Court of Appeals for the 8th Circuit in No. 76-1581 dated November 16, 1976 (Senior Judge Van Oosterhout, and Judges Heaney and Bright). Mailed receipt for mandate to Robert C. Tucker, Clerk, U.S. Court of Appeals for the 8th Circuit.	
	(29)	NOTICE TO COUNSEL.	
2-13-76	(30)	JUDGMENT (Devitt-J) That deft. do surrender himself to the custody of the U.S. Marshal for the Dist. of Minn. within 10 days from and after the filing of said mandate, and that he do report to the U.S. Marshal at Mpls., Minn. at the U.S. Courthouse at 110 So. 4th St.,	
	(31)	NOTICE TO COUNSEL	
1-3-77		ORDER (Devitt-J) that proposed intervenor's motions are denied Copy of order mailed to Counsel & John W. Lambros. (Lodged in CR 3-75-128)	
7-15-77		MOTION TO REDUCE SENTENCE, with attached AFFIDAVIT of Peter T. Thompson, attorney for defendant. (lodged in Cr.3-75-128, #39)	
7-27-77	32)	ORDER, copy (Devitt-J) deny deft's motion for reduction of sentence under Rule 35 (orig. lodged in 3-75-126)	
5/1/79	33)	DEFENDANT'S 2255 MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE (CV 3-79-219)	
	34)	AFFIDAVIT OF JOHN GREGORY LAMBROS	
5/4/79	35)	ORDER DIRECTING RESPONDENT TO FILE A WRITTEN RESPONSE (McPartlin 5/3/ government is to file response in wirting within 20 days of date of this order. Mailed copies to counsel.	
/24/79	36)	GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION UNDER 28 USC 2255	
'8/79	37)	RECOMMENDATION(McPartlin 6/5/79) defendant's petition under TITLE 28 USC 2255	
	38)	NOTICE TO COUNSEL	
'26/79	39)	ORDER(Devitt 6/26/79) petitioner's petition for a 2255 hearing is denied.	
	40)	NOTICE TO COUNSEL	
/10/79	41)	NOTICE OF INTENT TO APPEAL (FILED AS MOTION TO PROCEED IN FORMA PAUPERIS) letter was sent to deft. requesting financial affidavit and also notice of appeal and designation of record.	
/27/79	42)	NOTICE OF INTENT TO APPEAL - mailed copy to 8th Circuit Court of appeals along with certified copies of the docket entries. also copy was mailed to Lambros and U.S. Attorney	
	43)	MOTION TO CERTIFY THE RECORD ON APPEAL TO THE UNITED STATES COURTS OF APPEALS FOR THE EIGHTH CIRCUIT	

EXHIBIT C. 66 23

D. C. 100 A.

CRIMINAL DOCKET

DATE	PROCEEDINGS
	CR. 3-76-17 U.S. VS. JOHN LAMBROS
/31/79	44) ORDER TO FILE FORMA PAUPERIS (McFarlin 8/30/79) petitioner is permited to file appeal in Forma pauperis. Certified copy of order mailed to the Court of Appeals
	45) NOTICE TO COUNSEL
7-80	46) OPINION FROM THE U. S. COURT OF APPEALS FOR THE 8TH CIRCUIT dated 1-28-80 (Heaney, Ross, Henley) affirming judgment of the District Court.
	47) MANDATE affirming judgment of the District Court.
	48) NOTICE TO COUNSEL

67

EXHIBIT C.

APPENDIX B.

24.

35

United States of America vs.

DEFENDANT: JOHN C. LAMBROS

United States District Court

DISTRICT OF MINNESOTA-THIRD DIVISION

DOCKET NO. Cr. 3-76-17

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: June DAY: 21, YEAR: 1976

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Peter Thompson
(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea. ☐ NOLO CONTENDERE ☐ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged ☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of having knowingly, intentionally, and by means and use of a deadly and dangerous weapon, forcibly assaulted, resisted, opposed, impeded and interfered with Deputy United States Marshal Popovich and Special Agents Nelson and Bracht of the Federal Drug Enforcement Administration while said officers were engaged in the performance of their official duties; in violation of Title 18 United States Code, Sections 111 and 2 as charged in Cr. 1 of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Ten (10) years.

SPECIAL CONDITIONS OF PROBATION

A true copy of the record in my custody, sheet (s)
CERTIFIED 2/24 1981
Richard D. Sletten, Clerk
BY: Deputy Clerk

ADDITIONAL CONDITIONS OF PROBATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends:

EXHIBIT D.

CERTIFIED AS A TRUE COPY ON 6-8
THIS DATE June 21, 1976
Douglas J. Hoffa
CLERK
BY DEPUTY

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

Edward J. Devitt
DATE June 21, 1976

APPENDIX E.

United States of America vs.

United States District Court

DEFENDANT: JOHN G. LAMBROS

DISTRICT OF MINNESOTA - THIRD DIVISION

DOCKET NO. Cr. 3-76-17

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: June, DAY: 21, YEAR: 1976

___ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired counsel be appointed by the court and the defendant thereupon waived assistance of counsel.

X WITH COUNSEL Peter Thompson (Name of counsel)

PLEA

___ GUILTY, and the court being satisfied that there was a factual basis for the plea, ___ NOLO CONTENDERE, ___ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of { ___ NOT GUILTY. Defendant is discharged ___ GUILTY.

Defendant has been convicted as charged of the offense(s) of having knowingly, intentionally, and by means and use of a deadly and dangerous weapon, forcibly assaulted, resisted, opposed impeded and interfered with Deputy United States Marshal Fropornick and Special Agent Nelson and Brasseth of the Federal Drug Enforcement Administration while said officers were engaged in the performance of their official duties; in violation of Title 18, United States Code, Sections 111 and 1114; as charged in Ct. I of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10) years.

SPECIAL CONDITIONS OF PROBATION

A true copy in 1 sheet(s) of the record in my custody. Certified Oct 28, 19 76
Francis E. Dosal, Clerk
BY: Deputy Clerk

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

EXHIBIT E.

Signed by:
X U.S. District Judge
___ U.S. Magistrate

Edward J. Devitt

Date June 21, 1976

APPENDIX E.

69
26
37

it to jury, in prosecution for conspiracy to distribute and possession with intent to distribute cocaine hydrochloride and cocaine base, in which defendants ultimately received sentences in excess of statutory maximum for an unspecified quantity of drugs, resulted in imposition of sentence for crime with which defendants were never charged, and constituted reversible plain error; error seriously affected the fairness, integrity, or public reputation of proceedings, regardless of whether threshold drug quantity was established by evidence. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), (b)(1)(C), 406, 21 U.S.C.A. §§ 841(a)(1), (b)(1)(C), 846.

7. **Indictment and Information** ⇐113
Jury ⇐34(1)

District court impermissibly sentenced defendants for a crime with which they were never charged, and thus exceeded its jurisdiction, when it sentenced defendants convicted of conspiring to distribute cocaine hydrochloride and cocaine base to terms in excess of statutory maximum for an unspecified quantity of drugs, even though indictment did not charge a specific threshold drug quantity, and issue of drug quantity was not submitted to jury and proved beyond a reasonable doubt. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), (b)(1)(C), 406, 21 U.S.C.A. §§ 841(a)(1), (b)(1)(C), 846.

8. **Indictment and Information** ⇐171

An indictment found by a grand jury is indispensable to the power of the court to try defendant for the crime with which he was charged, and a court cannot permit a defendant to be tried on charges that are not made in the indictment against him.

9. **Indictment and Information** ⇐60

When an indictment fails to set forth an essential element of a crime, the court has no jurisdiction to try a defendant under that count of the indictment.

10. **Sentencing and Punishment** ⇐225

A district court cannot impose a sentence for a crime over which it does not even have jurisdiction to try a defendant.

11. **Indictment and Information** ⇐113

The indictment must contain an allegation of every fact which is legally essential to the punishment to be inflicted, because judge's role in sentencing is constrained at its outer limits by the facts alleged in the indictment and found by the jury.

12. **Indictment and Information** ⇐113
Sentencing and Punishment ⇐225

Because an indictment setting forth all the essential elements of an offense is both mandatory and jurisdictional, and a defendant cannot be held to answer for any offense not charged in an indictment returned by a grand jury, a court is without jurisdiction to impose a sentence for an offense not charged in the indictment.

13. **Criminal Law** ⇐1167(1)

A reviewing court may not speculate about whether a grand jury would or would not have indicted a defendant for a crime with which he was never charged, since a district court lacks jurisdiction to try a defendant on a charge for which he was not indicted.

14. **Grand Jury** ⇐42

Grand jury is not bound to indict in every case where a conviction can be obtained.

15. **Grand Jury** ⇐1
Jury ⇐1

The grand jury and petit jury are separate and independent, and the petit jury cannot usurp the role of the grand jury.

EXHIBIT F.

APPENDIX E.

2-7-20

38

not saved by the fact that a bill of particulars in the form of a letter from the prosecutor informed the defendant of the events surrounding the incident which led to the charges against him, nor by the fact that the trial judge correctly instructed the petit jury that force was an essential element of the offense, nor by the reference in the indictment to the applicable statute.

Reversed.

1. Post Office ⇐27

Use of force is an essential element of offense of forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with a United States postal inspector engaged in performance of his official duties. 18 U.S.C.A. §§ 111, 1114.

2. Indictment and Information ⇐60

An indictment must fairly state all the essential elements of the offense if it is to be sufficient.

3. Indictment and Information ⇐60

Omissions which are fatal to an indictment are those of essential elements "of substance," rather than "of form only."

4. Indictment and Information ⇐75(1)

In determining whether an essential element has been omitted from description of offense in indictment, a court will not insist that any particular word or phrase appear, and element may be alleged "in any form" which substantially states element.

5. Post Office ⇐27

Element of force in offense of forcibly assaulting, resisting, opposing, impeding, intimidating or interfering with a United States postal inspector engaged in the performance of his official duties is plainly of substance and not of form only. 18 U.S.C.A. §§ 111, 1114.

6. Indictment and Information ⇐121.5
Post Office ⇐48(7½)

Indictment, charging defendant with having wilfully, knowingly, and unlawfully resisted, opposed, impeded, intimidated and interfered with a United States postal inspector engaged in the performance of his official duties was fatally defective for failure to utilize the word "forcibly" or a word of similar import as an element of the offense, and was not saved by the fact that a bill of particulars in the form of a letter from the prosecutor informed the defendant of the events surrounding the incident which led to the charges against him, nor by the fact that the trial judge correctly instructed the petit jury that force was an essential element of the offense, nor by the reference in the indictment to the applicable statute. 18 U.S.C.A. § 111.

See publication Words and Phrases for other judicial constructions and definitions.

7. Indictment and Information ⇐2(2)

Beyond notice and double jeopardy, there is a distinct constitutional right, protected by the Fifth Amendment, that a defendant be tried upon charges found by a grand jury. U.S.C.A.Const. Amend. 5.

8. Indictment and Information ⇐93, 108

Under rule requiring that an indictment be a plain, concise and definite written statement of the essential facts constituting the offense and that it state for each count the citation of the statute which defendant is alleged therein to have violated, the statement of the essential facts and the citation of the statute are separate requirements and not a restatement of one another; an indictment that merely charges that a defendant violated a cited statute will not suffice. Fed.Rules Crim.Proc. rule 7, 18 U.S.C.A.

9. Criminal Law ⇐1032(5)

That sufficiency of indictment was not challenged until appeal from conviction was not a basis for denying review where indictment omitted an essential element of offense and, thus, became so defective that by no reasonable construction could it be said to charge an offense for which defendant could be convicted.

10. Post Office ⇐48(8)

Evidence indicating a forcible interference with postal inspectors by persons other than defendant and further indicating defendant's wilful and knowing association with such activity, his participation in activity as something he wished to bring about,

71

EXHIBIT G.
APPENDIX E.

39

ed to the petition as Exhibits 1 through 26; July of 1996 for those appended as Exhibits 27 through 29; and August of 1996 for those appended as Exhibits 30 through 36. Farmers Co-op hedged these purchases of grain by buying "short" positions in the same quantities on the Chicago Board of Trade (CBOT). Farmers Co-op alleges that it incurred hedge losses with the unprecedented rise in corn prices in late 1995 and early 1996, believing that Doden would deliver on the HTAs.

The petition further alleges that Farmers Co-op agreed to Doden's request, made in February of 1996, that Doden be allowed to sell his 1995 corn and soybeans on the cash market at a price more advantageous to Doden than that available under the HTAs. In return, Doden allegedly agreed to pay a cash payment of all of the proceeds from the sale of Doden's 1995 corn, after payment of Doden's lien creditors, and to deliver and sell his 1996 and subsequent years' corn and soybeans to Farmers Co-op up to the total under the HTAs of 450,000 bushels of corn and 40,000 bushels of soybeans. Farmers Co-op alleges that Doden did make a payment in accordance with this agreement in May of 1996. Farmers Co-op alleges that Doden next requested that Farmers Co-op buy in the short positions on the CBOT it had taken in reliance on Doden's sales of corn and soybeans. Farmers Co-op alleges that it bought in these hedges and incurred a loss of approximately $1 million on the corn and soybeans to be delivered on the HTAs. Doden then repudiated the HTAs by certified letter from counsel.

III. LEGAL ANALYSIS

A. Removal Jurisdiction

[2] The federal district courts have always been courts of limited jurisdiction. *See* U.S. CONST. Art. III, § 1. "Federal courts are not courts of general jurisdiction and have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Marine Equip. Management Co. v. United States*, 4 F.3d 643, 646 (8th Cir.1993) (citing *Kessler v. Wilhamsport Area Sch. Dist.*, 475 U.S. 534, 541, 106 S.Ct. 1326, 1331, 89 L.Ed.2d 501, *reh'g denied*, 476 U.S. 1132, 106 S.Ct. 2003, 90 L.Ed.2d 682 (1995), citing in turn *Marbury v. Madison*, 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60 (1803)); *see also Neighborhood Transp. Network, Inc. v. Pena*, 42 F.3d 1169, 1171 (8th Cir.1994) (federal court jurisdiction is limited by Article III of the Constitution). A federal court therefore has a duty to assure itself that the threshold requirement of subject matter jurisdiction has been met in every case. *Bradley v. American Postal Workers Union, AFL-CIO*, 962 F.2d 800, 802 n. 3 (8th Cir.1992) (citing *Sanders, infra*); *Thomas v. Basham*, 931 F.2d 521, 523 (8th Cir.1991); *Jader v. Principal Mut. Life Ins. Co.*, 925 F.2d 1075, 1077 (8th Cir.1991); *Barclay Square Properties v. Midwest Fed. Sav. & Loan Ass'n*, 893 F.2d 968, 969 (8th Cir.1990); *Sanders v. Clemco Indus.*, 823 F.2d 214, 216 (8th Cir.1987).

[3] "The parties ... may not confer subject matter jurisdiction upon the federal courts by stipulation, and lack of subject matter jurisdiction cannot be waived by the parties or ignored by the court." *Pacific Nat'l Ins. Co. v. Transport Ins. Co.*, 341 F.2d 514, 516 (8th Cir.), *cert. denied*, 381 U.S. 912, 85 S.Ct. 1536, 14 L.Ed.2d 434 (1965); *see also Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 25, 109 S.Ct. 2273, 2287, 105 L.Ed.2d 1 (1989) (Stevens, J., concurring) ("The cases are legion holding that a party may not waive a defect in subject matter jurisdiction or invoke federal jurisdiction simply by consent," citing *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 377 n. 21, 98 S.Ct. 2396, 2404 n. 21, 57 L.Ed.2d 274 (1978); *Sosna v. Iowa*, 419 U.S. 393, 398, 95 S.Ct. 553, 556–57, 42 L.Ed.2d 532 (1975); *California v. LaRue*, 409 U.S. 109, 112 n. 3, 93 S.Ct. 390, 394 n. 3, 34 L.Ed.2d 342 (1972); *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 17–18, and n. 17, 71 S.Ct. 534, 541–542, and n. 17, 95 L.Ed. 702 (1951); *Mitchell v. Maurer*, 293 U.S. 237, 244, 55 S.Ct. 162, 165, 79 L.Ed. 338 (1934); *Jackson v. Ashton*, 8 Pet. 148, 149, 33 U.S. 148, 149, 8 L.Ed. 898 (1834)); *Lawrence County v. South Dakota*, 668 F.2d 27, 29 (8th Cir.1982) ("[F]ederal courts operate within jurisdictional constraints and ... parties by their consent cannot confer subject matter jurisdiction upon the federal courts.").

EXHIBIT H.

APPENDIX E.

1. **Habeas Corpus** ⇐406

Ineffective assistance of state postconviction counsel was not cause to excuse state procedural bar brought about by deficiencies occurring in earlier proceedings in state court, so as to allow for habeas relief.

2. **Habeas Corpus** ⇐406

Alleged inadequate funding of postconviction counsel's public defender office was not cause to excuse procedural bar to consideration of habeas corpus petition.

3. **Habeas Corpus** ⇐338

Claim by habeas petitioner, that inadequacy of funding of state public defender's office resulted in ineffective postconviction counsel, was not a new ground for relief not subject to state procedural bar precluding consideration of habeas corpus petition.

4. **Criminal Law** ⇐641.13(7)

Habeas corpus petitioner was not accorded ineffective assistance of counsel, on theory that his postconviction state counsel did not find other potential witnesses.

Mark Thornhill, Kansas City, MO, argued, for appellant.

Stephen David Hawke, Asst. Atty. Gen., Jefferson City, MO, argued, for appellee.

Before MAGILL, Circuit Judge, LAY, Senior Circuit Judge, and BEAM, Circuit Judge.

BEAM, Circuit Judge.

Appellant Martsay Bolder is under a sentence of death for the murder of an inmate at the Missouri State Penitentiary. He appeals the district court's denial of his Fed.R.Civ.P. 60(b)(6) motion. We have treated the Rule 60(b) pleading as the equivalent of a second petition for a writ of habeas corpus. *See Blair v. Armontrout*, 976 F.2d 1130 (8th Cir.1992). We affirm.

[1–3] The relevant facts and circumstances underlying this matter, as well as its procedural background, are set forth in *Bolder v. Armontrout*, 921 F.2d 1359 (8th Cir.1990), *cert. denied*, — U.S. —, 112 S.Ct. 154, 116 L.Ed.2d 119 (1991) (*Bolder*). Mr. Bolder now contends that ineffective assistance by his Missouri post-conviction counsel is cause to excuse a state procedural bar brought about by deficiencies that occurred in earlier proceedings in the state court. He further contends that inadequate funding of post-conviction counsel's public defender office is also cause to excuse the procedural bar. Finally, Mr. Bolder contends that the funding claim is a new ground for relief not subject to the state procedural bar.

We have carefully examined all of those claims and find them to be without merit. They are barred as successive claims, *Kuhlmann v. Wilson*, 477 U.S. 436, 106 S.Ct. 2616, 91 L.Ed.2d 364 (1986); or abusive claims, *McCleskey v. Zant*, — U.S. —, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991), or as procedurally defaulted claims precluded by *Murray v. Carrier*, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986). Additionally, since *Bolder* was decided prior to *Coleman v. Thompson*, — U.S. —, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991) (wherein the Supreme Court held that a habeas petitioner has no right to a constitutionally effective attorney in state post-conviction proceedings) this court has previously dealt with and rejected Mr. Bolder's ineffective assistance claims.

[4] In this appeal, Mr. Bolder contends that a lack of funds available to his state post-conviction counsel precluded necessary investigative work. Arguably, this investigation should have led to information concerning mitigation of his sentence. We believe our discussion in disposition of the suggestion for rehearing or rehearing en banc filed by Mr. Bolder, *Bolder v. Armontrout*, 928 F.2d 806 (8th Cir.1991), deals with the substance of this claim. We pointed out that Mr. Strauss, the public defender appointed as post-conviction counsel, did investigate all witnesses known to him. We also found that Mr. Strauss was not ineffective counsel, as Mr. Bolder then and now contends, in failing to find other potential witnesses. *Id.* at 809.

Accordingly, the order of the district court is affirmed. We do, however, continue the stay of execution in this matter until

73

Injunctive relief is available to private plaintiffs under civil remedy provision of Racketeer Influenced and Corrupt Organizations Act, 18 USC 1964 ... [illegible] ... Hobbs Act, 18 USC 1951.

Questions presented: (1) Did Seventh Circuit correctly hold ... [illegible] ... Hobbs Act ... [illegible] ... services offered there?

01-1119 Operation Rescue v. National Organization for Women Inc.

Racketeering—Private civil actions—Injunctive relief—Hobbs Act.

Ruling below (National Organization for Women Inc. v. Scheidler, 7th Cir., 267 F.3d 687, 70 LW 1318 (2001)):

Injunctive relief is available to private plaintiffs under civil remedy provision of Racketeer Influenced and Corrupt Organizations Act, 18 USC 1964 ... [illegible] ... Hobbs Act, 18 USC 1951.

Questions presented: (1) Did Seventh Circuit correctly hold ... [illegible] ... services offered there?

01-5054 Abdur'Rahman v. Bell

Habeas corpus—Second or successive petitions—Intervening legal developments.

Ruling below (6th Cir., ... [illegible] ...):

[illegible]

[illegible] ... degree for prisoner's failure to satisfy criteria of 28 USC 2244(b)(2)?

Questions presented: (1) Did Sixth Circuit err in ... [illegible] ... Fed. R. Civ. P. 60(b) motion ... [illegible] ... when failing to do so precludes habeas petitioner from ever receiving any adjudication of his claims on merits?

Petition for certiorari filed 3/1/02, by Thomas C. Goldstein, Amy Howe, and Goldstein & Howe PC, all of Washington, D.C., William P. Redick Jr., of Whites Creek, Tenn., and Bradley MacLean and Stites & Harbison PLLC, both of Nashville, Tenn.

Review Denied

01-1053 Anderson v. Mathews

Habeas corpus—Evidentiary hearing—Competency.

Ruling below (6th Cir., 253 F.3d 1023 (2001)):

Evidentiary hearing is required to determine whether habeas corpus petitioner received ineffective assistance of counsel when his defense team failed to pursue his request for hearing on his competency to stand trial; petitioner did not ... [illegible] ... in state courts.

01-1060 Bailey v. United States

Juries—Seating of statutorily disqualified juror—Evidence—Hearsay.

Ruling below (11th Cir., 284 F.3d 525 (2001)):

Out-of-court statements of ... [illegible] ... absence of demonstration that she was biased.

01-1193 Wilson v. Georgia

Search and seizure—Reliability of informant.

Ruling below (Ga. Ct. App., 549 S.E.2d 416, 249 Ga. App. 563 (2001)):

[illegible]

01-1194 Smalls v. [illegible]

Habeas corpus—Limitations period—Equitable tolling.

Ruling below (2d Cir., ... [illegible] ... (2001)):

[illegible]

Journal of Proceedings

Reported below are selected orders from the Supreme Court's Journal of Proceedings ... [illegible] ... on the dates indicated.

April 22, 2002

Certiorari—Summary Disposition

01-7910 [illegible] v. United States. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of Ashcroft v. Free Speech Coalition, 535 U.S. ___ [70 CrL 81] (2002).

01-8334 Mason v. United States. The motion of petitioner for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of Ashcroft v. Free Speech Coalition, 535 U.S. ___ [71 CrL 81] (2002).

01-8[illegible] Tempey v. United States. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of Ashcroft v. Free Speech Coalition, 535 U.S. ___ [71 CrL 81] (2002).

01-8406 Fox v. United States. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of Ashcroft v. Free Speech Coalition, 535 U.S. ___ [71 CrL 81] (2002).

01-8[illegible] O'Connor v. United States. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Armed Forces for further consideration in light of Ashcroft v. Free Speech Coalition, 535 U.S. ___ [71 CrL 81] (2002).

01-9058 Pabon v. United States. The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the First Circuit for further consideration in light of Ashcroft v. Free Speech Coalition, 535 U.S. ___ [71 CrL 81] (2002).

01-9459 Snow v. United States. The motion of petitioner for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of Ashcroft v. Free Speech Coalition, 535 U.S. ___ [71 CrL 81] (2002).

Orders in Pending Cases

01-8[illegible] Murray v. Sanders, Warden

01-8[illegible] Reed v. Mitchell, Warden

The motions to direct the Clerk to file motions for leave to proceed in forma pauperis are denied.

01-9273 [illegible] v. United States. The motion of petitioner for leave to proceed in forma pauperis is denied. Petitioner is allowed until May 13, 2002, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

Certiorari Granted

01-9094 Abdur'Rahman v. Bell, Warden. The motion of petitioner for leave to proceed in forma pauperis is granted.

The petition for a writ of certiorari is granted limited to Question 1 ... [illegible] ... presented by the petition.

Certiorari Denied

01-1060 Bailey v. United States
01-1193 Wilson v. Georgia
01-1194 Smalls v. [illegible], Supt., [illegible]
01-1696 [illegible] v. Michigan
01-1762 Williams v. Engleman, Director
01-1764 [illegible] v. Michigan
01-1769 [illegible] v. Murphy
01-1800 [illegible] v. United States
01-1806 Jones v. United States
01-1809 [illegible] v. United States
01-1888 [illegible] v. United States
01-1922 Williams v. United States
01-7680 [illegible] v. California
01-7730 [illegible] v. [illegible]
01-7959 [illegible] v. Texas
01-8405 [illegible] v. [illegible]
01-8410 [illegible] v. Missouri
01-8412 Armstrong v. Delaware
01-8415 [illegible] v. [illegible]
01-8426 [illegible] v. [illegible]
01-8427 [illegible] v. Trippett, Warden
01-8428 [illegible] v. Greene, Supt., Green Haven
01-8430 [illegible] v. [illegible], Warden
01-8435 [illegible] v. Hildebrand
01-8440 [illegible] v. California
01-8443 [illegible] v. Colorado
01-8445 McCord v. [illegible]
01-8450 [illegible] v. Texas
01-8460 [illegible] v. Phillips, Warden
01-8461 [illegible] v. Indiana
01-8466 [illegible] v. [illegible] Bd. of Pardons & Paroles
01-8468 Williams v. [illegible], Warden
01-8470 [illegible] v. New York
01-8471 [illegible] v. New York
01-8474 [illegible] v. [illegible]
01-8475 [illegible] v. [illegible], Warden
01-8480 [illegible] v. [illegible], TX DCJ
01-8484 [illegible] v. [illegible]
01-8488 [illegible] v. [illegible]
01-8492 [illegible] v. [illegible], Warden
01-8493 [illegible] v. Oklahoma
01-8495 [illegible] v. [illegible]
01-8496 [illegible] v. [illegible], Sec., FL DOC
01-8497 [illegible] v. [illegible], Warden
01-8498 [illegible] v. [illegible], Supt., [illegible]
01-8499 [illegible] v. New Jersey
01-8500 [illegible] v. [illegible], Warden
01-8501 [illegible] v. [illegible], Warden
01-8502 [illegible] v. [illegible], Supt., [illegible]
01-8504 [illegible] v. Florida
01-8530 [illegible] v. [illegible], TX DCJ
01-8532 [illegible] v. [illegible], Warden
01-8533 [illegible] v. [illegible]
01-8534 [illegible] v. [illegible], Warden
01-8536 [illegible] v. Texas
01-8537 [illegible] v. Alabama
01-8538 [illegible] v. [illegible], Warden
01-8539 [illegible] v. [illegible]
01-8540 [illegible] v. [illegible], Supt., [illegible]
01-8542 [illegible] v. Florida
01-8544 [illegible] v. Arkansas
01-8545 [illegible] v. [illegible], Warden
01-8546 [illegible] v. [illegible], Supt., [illegible]
01-8548 [illegible] v. [illegible]
01-8549 [illegible] v. [illegible], Warden
01-8550 [illegible] v. [illegible], Admin.

APPENDIX G.

74

42

The factors justifying a district judge's — or, failing that, the court of appeals's or Supreme Court's — issuance of a probable cause certificate are too numerous to catalogue comprehensively, particularly given that only a tiny percentage of cases in which a certificate issued resulted in written opinions explaining that result.[63] Obviously, issues of fact or law that the district court itself found to be close, difficult, of first impression, subject to conflicting outcomes, or simply a matter of judgment beyond simple deduction from applicable legal precepts provide sufficient "substance" to require a certificate.[64] So, too, appellate judges should grant a certificate if they have, or if they believe a majority of their colleagues would have, a reasonable doubt about the validity of the lower court decision under the appropriate standard of review. Although a matter may be well-settled adversely to the petitioner in the relevant district court or court of appeals, the fact that other coequal or higher courts have reached conflicting views suffices to require the certification of an appeal.[65] Among other identifiable reasons for granting a certificate are the following:

(1) The United States Supreme Court has granted *certiorari* to review a "similar" question in another case.[66]

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specific certification of appealability). *But see* Barber v. Scully, 731 F.2d 1073, 1075 (2d Cir. 1984) (authorizing district courts to limit issues certified for appeal); Vicaretti v. Henderson, 645 F.2d 100, 101-03 (2d Cir. 1980) (same).

[63] Former Appellate Rule 22(b) required that reasons be provided only when the certificate of probable course is denied. *See* Herrera v. Payne, 673 F.2d 307, 308 (10th Cir. 1982), *cert. denied*, 469 U.S. 936 (1984). In regard to grants of probable cause certificates by appellate courts or judges, see *infra* notes 99-107.

[64] *See Barefoot*, *supra*, 463 U.S. at 894 (certificate should issue if claims are not "squarely foreclosed by statute, rule, or authoritative court decision or ... lacking any factual bases in the record"); Baldwin v. Maggio, 704 F.2d 1325, 1326-27 (5th Cir. 1983), *cert. denied*, 467 U.S. 1220 (1984); Alexander v. Harris, 595 F.2d 87, 91 (2d Cir. 1979) (*per curiam*) (fact that district court conducted evidentiary hearing reveals that issues raised are substantial).

[65] *See, e.g.*, Lynce v. Mathis, 519 U.S. 433, 436 (1997) (discussed *infra* note 67); *infra* notes 66-75 and accompanying text.

[66] Ford v. Strickland, 696 F.2d 804, 807 (11th Cir.) (*per curiam*) (*en banc*), *cert. denied*, 464 U.S. 865 (1983). *See, e.g.*, Autry v. Estelle, 464 U.S. 1301, 1302 (1983) (White, Circuit Justice, in chambers); Graham v. Lynaugh, 854 F.2d 715, 717, 723 (5th Cir. 1988), *vac'd & remanded on other grounds*, 492 U.S. 925 (1989); Selvage v. Lynaugh, 842 F.2d 89, 94 n.2 (5th Cir. 1988), *vac'd & remanded on other grounds sub nom.* Selvage v. Collins, 494 U.S. 108 (1990); Wingo v. Blackburn, 783 F.2d 1046, 1052 (5th Cir. 1986); Rault v. Louisiana, 774 F.2d 675, 677 (5th Cir. 1985), *cert. denied*, 476 U.S. 1178 (1986) (*per curiam*); Berry v. King, 765 F.2d 451, 455-56 (5th Cir. 1985), *cert. denied*, 476 U.S. 1164 (1986); Narcisse v. Maggio, 725 F.2d 969, 969-70 (5th Cir. 1984) (*per curiam*); Williams v. King, 719 F.2d 730, 733 (5th Cir.), *cert. denied*, 464 U.S. 1027 (1983). *But cf.* Bell v. Lynaugh, 858 F.2d 978, 984 (5th Cir. 1988), *cert. denied*, 492 U.S. 925 (1989) (court need "not grant stays of execution simply because the Supreme Court has granted certiorari on an issue pertaining to the death penalty which is raised by subsequent petitioners"); Thomas v. Wainwright, 788 F.2d 684, 688-89 (11th Cir.) (*per curiam*), *cert. denied*, 475 U.S. 1113

APPENDIX H.

(2) The Supreme Court or the relevant circuit court has identified the question as open, unresolved, or a matter of disagreement among different circuit courts.[67]

(3) At least one Supreme Court Justice, expressing a view not rejected by a majority, has found merit in the claim.[68]

(4) The court of appeals has decided to hear a claim *en banc* similar to a claim presented in the current appeal.[69]

(1986) (denying certificate and stay in successive petition case because grant of *certiorari* on issue similar to that in petitioner's case does not assure automatic stay in successive petition cases); *Jones v. Smith*, 786 F.2d 1011, 1012 (11th Cir.), *cert. dismissed*, 475 U.S. 1105 (1986) (similar); Bowden v. Kemp, 774 F.2d 1494 (11th Cir. 1985), *cert. denied*, 476 U.S. 1164 (1986) (similar). Notwithstanding *Thomas v. Wainwright*, *Jones v. Smith*, and *Bowden v. Kemp*, *supra*, all of which are distinguishable as successive petition cases (*see supra* Chapter 28), the fact that the law of the circuit clearly rejects the petitioner's claim does not "squarely foreclose" the claim "'by ... *authoritative* court decision'" as long as the Supreme Court — either by granting *certiorari* or otherwise — indicates that the issue is open. *Barefoot*, *supra*, 463 U.S. at 894. *Cf.* Bowden v. Kemp, 474 U.S. 891 (1985) (two days after 11th Circuit denied certificate of probable cause and stay, Supreme Court grants stay pending disposition of Bowden's *certiorari* petition presenting question on which Court recently granted *certiorari*). The grant of a certificate of probable cause need not compel the court of appeals to give other than summary consideration to issues it previously has determined adversely; but neither should the denial of a certificate deprive the Supreme Court of the ability to resolve issues that the high court considers substantial. *See Autry v. Estelle*, *supra*; *Graham v. Lynaugh*, *supra*; *Selvage v. Lynaugh*, *supra*; *Wingo v. Blackburn*, *supra*; *Boult v. Louisiana*, *supra*; *Berry v. King*, *supra* (all denying relief on claim long rejected by circuit but granting stays of execution and of mandate — essentially certificates of probable cause to seek *certiorari* — because Supreme Court granted *certiorari* on issue; lower court decisions in *Graham* and *Selvage* thereafter vacated by Supreme Court on basis of Court's decision in case in which *certiorari* had been granted).

That the Supreme Court previously *denied certiorari* review on a claim is not a judgment that the claim lacks substance. *See, e.g.*, Wilie v. Maggio, 737 F.2d 1372, 1377 n.2 (5th Cir.), *cert. denied*, 469 U.S. 1002 (1984); Ritter v. Smith, 726 F.2d 1505, 1511 n.16 (11th Cir.), *cert. denied*, 469 U.S. 869 (1984); Amsterdam, *supra* note 59, at 54-56 (collecting cases in which Supreme Court denied *certiorari* on issues identical to ones on which it subsequently granted review and relief); *supra* note 59 & *infra* § 38.2c n.30 (cases in which prior *certiorari* denials and executions preceded Supreme Court's eventual grant of *certiorari* and relief on issue raised in earlier cases); *supra* § 6.4c nn.24-25 and accompanying text.

[67] *See, e.g.*, *Lynce v. Mathis*, *supra*, 519 U.S. at 436 (although district court and court of appeals denied certificate of probable cause to appeal based on insubstantiality of claim under circuit precedent, Supreme Court grants *certiorari* based on conflicting decision of different circuit (thus, implicitly, certifying appealability) and, upon review, grants habeas corpus relief). *See also supra* note 66.

[68] Consider, for example, Justice White's concurring opinion in Lockett v. Ohio, 438 U.S. 586 (1978) (White, J., concurring and dissenting), which became the law in Enmund v. Florida, 458 U.S. 782 (1982).

[69] *See* Stephens v. Kemp, 464 U.S. 1027, 1028 (1983).

APPENDIX B.

March 27, 2002

John Gregory Lambros
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000 USA
Web site: www.brazilboycott.org

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.

77

APPENDIX I.

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 may 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. 99-7768;

99-2880, Eighth Circuit Court of Appeals in LAMBROS vs. USA, was submitted to the U.S. Supreme Court on May 7, 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."

LILJEBERG, 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. GARRUDO, 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.

APPENDIX I.

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
P.O. Box 1000
Leavenworth, Kansas 66048-1000 USA
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

DATE	Document No.	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c) to
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)			
10-23-01	241)	MOTION OF DEFT FOR DISCLOSURE of documents filed by U. S. Judge Robert G. Renner in this action from 4/23/01 to present (7pgs)			

82

APPENDIX I.

EXHIBIT A.

Interval (per Section III) | Start Date / End Date | Lic. Total (Code Days) 50

AO 256A

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a) (b) (c) (d)
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)	
2-26-02	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)	
3-19-02	250) MOVANTS REQUESTS CLARIFICATION OF CAPTION AND CASE NUMBER IN THIS ACTION (2pgs) (copy of docket entries forwarded to movant this date)	

83

EXHIBIT A.

APPENDIX I.

Initial | Start Date | 5

PETITION FOR THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY TO INVESTIGATE U.S. SENIOR DISTRICT COURT JUDGE ROBERT G. RENNER, DISTRICT OF MINNESOTA, AS TO HIS BREACH OF PUBLIC TRUST AND ABUSE OF JUDICIAL POWER.

View Current Signatures · Sign the Petition

To: Senator Charles E. Grassley

We, the undersigned citizens of these United States, urgently call upon you to investigate and present your findings to the Committee on the Judiciary as to the breach of public trust and abuse of judicial power committed by U.S. District Court Judge Robert G. Renner, District of Minnesota, regarding his extrajudicial bias towards John Gregory Lambros.

On August 9, 2002, Mr. Lambros mailed a two page letter and eighty one page affidavit (including exhibits) to your office outlining the illegal actions of Judge Renner from 1975 to present. Also, on March 20, 2002, Mr. Lambros mailed an addendum to his August 2001 letter and affidavit to your office. The addendum offered additional information and proof, along with court documents, concerning the conduct of Judge Renner. Both the August 9, 2001 and the March 20, 2002 documents are available for review and downloading via Mr. Lambros' web site, "BOYCOTT BRAZIL:" www.brazilboycott.org

Judge Renner was the U.S. Attorney in 1976 who illegally indicted Mr. Lambros for an assault on federal property that never occurred, and then Mr. Renner falsified sentencing documents in this case to state that Mr. Lambros was indicted, pled guilty to, and was sentenced for murder. On February 10, 1997, Judge Renner used the illegal March 24, 1976 indictment/conviction to increase Mr. Lambros' current federal sentence and purposely and maliciously misinterpreted the domestic laws of Brazil under which Mr. Lambros was governed, due to Mr. Lambros' extradition from Brazil to the United States.

The United States Supreme Court made clear, in an opinion by Stevens, J., joined by Brennan, Marshall, Blackmun., and Kennedy, JJ., that "Justice must satisfy the appearance of justice," under Title 28 U.S.C. S 455(a), which provides, in relevant part: "(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (3) Where he has served in government employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." See, LILJEBERG vs. HEALTH SERVICES CORP., 486 U.S. 847, 100 L.Ed.2d 855, 108 S.Ct. 2194 (1988).

84

APPENDIX J.

We find ample basis in the official record to conclude that an objective observer would have questioned Judge Renner's impartiality toward Mr. Lambros in his February 10, 1997 ruling, and any rulings thereafter, when Judge Renner had been the responsible U.S. Attorney who investigated, signed indictments in criminal actions, and prosecuted Mr. Lambros in 1975 and 1976. Judge Renner clearly should have recused himself from Mr. Lambros' February 10, 1997 resentencing.

The time has come to rectify this oversight and to take the necessary steps to maintain public confidence in the impartiality of our judiciary. May justice prevail and attempt to heal the wounds of Mr. Lambros and his family members.

Sincerely,

The Undersigned

Click Here to Sign Petition

View Current Signatures

85

APPENDIX J.

PETITION FOR THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY TO INVESTIGATE U.S. SENIOR DISTRICT COURT JUDGE ROBERT G. RENNER, DISTRICT OF MINNESOTA, AS TO HIS BREACH OF PUBLIC TRUST AND ABUSE OF JUDICIAL POWER.

We endorse the PETITION FOR THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY TO INVESTIGATE U.S. SENIOR DISTRICT COURT JUDGE ROBERT G. RENNER, DISTRICT OF MINNESOTA, AS TO HIS BREACH OF PUBLIC TRUST AND ABUSE OF JUDICIAL POWER. Petition to Senator Charles E. Grassley.

Read the PETITION FOR THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY TO INVESTIGATE U.S. SENIOR DISTRICT COURT JUDGE ROBERT G. RENNER, DISTRICT OF MINNESOTA, AS TO HIS BREACH OF PUBLIC TRUST AND ABUSE OF JUDICIAL POWER. Petition

Sign the PETITION FOR THE UI

Use the Reload button in your web browser to see new signatures

	Name	Comments
43.	Joseph Eugene Kennedy	
42.	Jodie Lynn Summers	I am a criminal justice major in West Virginia I am currently researching a paper on corruption within the criminal justice system. I have been overwhelmed by what I have found. I believe it is time to take a stand against this very thing. I admire the courage of those of you who refuse to stop fighting for justice. I intend to fight the good fight and I am glad to see that I am not alone in this fight. BRAVO!!!!!!!!!!!!!!!!!!!
41.	Jon Dziadon	Please look into this matter.
40.	Dwayne B. Cooper	
39.	David T. Rhodes	
38.	Todd Vassell	
37.	Tony Emery	

86

APPENDIX J.

36. Ronny V. Green
35. Theodore Tiger
34. Jimmy E. Ennis
33. Thomas J. Bartello
32. Richard C. Herrin
31. Michael S. Lancelloti
30. David S. Mack
29. Samuel R. Queen
28. Horace Barnes
27. Michael J. Powell
26. Euka W. Wadlington
25. Henry Borelli
24. Compton D. Jones
23. Ron Simmat
22. Lloyd C. Walker
21. Brian E. Ratigan
20. Sedrick L. McKinney
19. Ricky Lee Jones
18. Thomas Pfoff
17. Kevin O'Neill
16. Tracy G. Jackson
15. Lincoln Douglas Jeanes
14 Charles Randell Greer
13. Douglas W. Thompson

APPENDIX J.

87

12. James B. Harmon
11. Charles B. Nabors
10. Johnny A. Privett
9. George Kalomeris
8. John G. Lambros
7. Roland A. Hazelton
6. Steve Chase
5. johnnie ray flaugher
4. Carole Guest
3. Ryan McReynolds
2. steve davis
1. Adam Woodsworth Here's to stubbornes...

View Signatures : 43

PetitionOnline.com has temporarily disabled the display of email addresses for signatories who chose to make their address public.We have done this to reduce the spread of the SirCam virus which harvests email addresses from the web cache of infected computers.To learn more about the SirCam virus and download a free tool for removing the virus, visit Symantec's virus definition page.

88

APPENDIX J.

BOYCOTT BRAZIL WEB SITE

www.brazilboycott.org

The following is a copy of the Boycott Brazil web site that offers ALL of the motions filed in this action, LAMBROS vs. U.S.: (District of Minnesota)

a. Criminal No. 4-89-82(5)(DSD);

b. Civil No. 99-28(DSD);

c. United States Court of Appeals for the Eighth Circuit No. 02-2026

Also, please note that a link is provided to the PETITION at the end of the above offered legal pleadings and orders from the court.

ROBERT G. RENNER, UNITED STATES DISTRICT COURT JUDGE, AS TO VIOLATIONS OF TITLE 28 U.S.C. § 455(a) AND § 455(b) (3). DISTRICT OF MINNESOTA.

April 13, 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 document was filed in U.S. vs. LAMBROS, Civil File No. 99-28 (RGR), Criminal File No. 4-89-82(05) and is a **TOTAL OF 57 PAGES** with some of the exhibit pages containing two (2) pages that have been reduced to assist in lowering coping costs to the courts. Therefore, what you are reviewing in PDF format is an exact copy of the document as presented to the court on April 20, 2001 via U.S. Certified Mail with Return Receipt Requested. Please note that Lambros has numbered each page, in longhand, in the lower right hand corner so his readers are insured that they don't mix-up exhibit order as they may be confusing. CLICK HERE to view these pages in **PDF** format. **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

DOWNLOAD APRIL 13, 2001 JUDGE RENNER DOCUMENT HERE IN PDF.

September 14, 2001, ORDER, by United States District Chief Judge JAMES M. ROSENBAUM. filed stamped by Clerk on September 18, 2001. Judge Rosenbaum ORDERED the government to respond to LAMBROS' MOTION TO VACATE ALL JUDGMENTS AND ORDER, by Monday, October 22, 2001. Also attached is the mailer slip that states this is part of Case No. 99 cv-28. This document contains two (2) pages. CLICK HERE to view these pages in **PDF** format. **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE. PLEASE NOTE: IT APPEARS UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER HAS**

RECUSED HIMSELF FROM LAMBROS' CASE, AS PER THIS ORDER. See. U.S. vs. ARNPRIESTER, 37 F.3d 466 (9th Cir. 1994) (U.S. District Judge cannot adjudicate case that he or she as U.S. Attorney began).

DOWNLOAD SEPTEMBER 14, 2001, ORDER BY U.S. DISTRICT CHIEF JUDGE JAMES M. ROSENBAUM HERE IN PDF

September 20, 2001, Civil Case No. **99-CV-28**, LAMBROS' motion entitled, "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 SEPTEMBER 14, 2001, FILED SEPTEMBER 18, 2001." This is a continuation of criminal file number 4-89-82(5). This document is a TOTAL OF 9 PAGES including a one page certificate of service, two page motion, and six pages of exhibits. LAMBROS has numbered each page, in longhand, in the lower right hand corner so his readers are insured that they don't mix up exhibit order. CLICK HERE to view these pages in PDF FORMAT. **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

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October 19, 2001, Civil Case No. **99-28 (RGR)**, criminal number 4-89-82(5), governments motion entitled, "OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE ALL JUDGMENTS AND ORDERS." This document is a total of five (5) pages in PDF FORMAT. **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE TO VIEW THIS DOCUMENT.** (The exhibits are not included within this download as they are court opinions and documents that appear within this web site). DOWNLOAD OCTOBER 19, 2001, OPPOSITION OF U.S. HERE IN PDF

DOWNLOAD OCTOBER 19, 2001, OPPOSITION OF U.S. HERE IN PDF.

October 26, 2001, Civil Case No. **99-28 (RGR)**, criminal number 4-89-82(5), LAMBROS' "MOTION FOR DISCLOSURE OF DOCUMENTS FILED BY UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER IN THIS ACTION." This document is a total of seven (7) pages including the one (1) page certificate of service in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE TO VIEW AND PRINT THIS DOCUMENT.**

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October 30, 2001, Civil Case No. **99-28 (RGR)**, criminal number 4-89-82(5), LAMBROS' "MOTION FOR EXTENSION OF TIME TO RESPOND TO GOVERNMENTS' OPPOSITION DATED OCTOBER 19, 2001." This document is a total of two (2) pages including the one (1) page certificate of service in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE TO VIEW AND PRINT THIS DOCUMENT.** (The one page exhibit not included)

DOWNLOAD OCTOBER 30, 2001, MOTION FOR EXTENSION OF TIME HERE IN PDF.

November 02, 2001, Civil Case No. **99-28 (RGR)**, criminal number 4-89-82(5), LAMBROS filed two (2) motions: a) "PETITION LAMBROS REQUESTS PERMISSION FROM THE COURT TO AMEND THIS ACTION UNDER RULE 15(a) & 19(a), FRCP." This motion is a total of four (4) pages with two (2) pages of exhibits. **PLEASE NOTE** that LAMBROS is including United States Chief Magistrate Judge **FRANKLIN LINWOOD NOEL** to this action, as Magistrate Judge NOEL was an Assistant U.S. Attorney at the U.S. Attorney's Office for the District of Minnesota, **MINNEAPOLIS OFFICE**, from **1983 thru 1989**, the same years LAMBROS was alleged to have conspired in drug transaction that ended in LAMBROS' **INDICTMENT** on May 17, 1989, from the MINNEAPOLIS OFFICE of the U.S. Attorney's Office. Therefore, Magistrate Judge **NOEL**'s violations of Title 28 USCS Sections **455(a) and 455(b)(3)**. b) "MOTION FOR THE APPOINTMENT OF COUNSEL." This motion is a total of two (2) pages. Therefore, there is a **TOTAL OF NINE (9) PAGES** including one (1) page for the certificate of service in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE TO VIEW AND PRINT THIS DOCUMENT.** (please note that the exhibits in this package may not be clear, as they where faxed copies to start with)

DOWNLOAD NOVEMBER 02, 2001, MOTIONS TO AMEND AND APPOINTMENT OF COUNSEL HERE IN PDF.

November 09, 2001, Civil Case No. 99-28 (RGR), criminal number 4-89-82(5), LAMBROS' "PETITIONER LAMBROS' RESPONSE TO OCTOBER 19, 2001, "OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE ALL JUDGMENTS AND

ORDERS." This document is fifteen (15) pages in length plus four (4) exhibit cover pages and one (1) page certificate of service page. Therefore, a TOTAL OF TWENTY (20) PAGES IN PDF FORMAT. PLEASE NOTE that the exhibit are not included in this download, but are available within the "SECOND AND SUCCESSIVE MOTIONS TO VACATE, SET ASIDE, OR CORRECT SENTENCES UNDER TITLE 28 U.S.C. §2255 BY JOHN GREGORY LAMBROS" section of this web site. See EXHIBIT INDEX within this document for exact descriptions. **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE TO VIEW AND PRINT THIS DOCUMENT.**

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November 10, 2001, Civil Case No. 99-28 (RGR), criminal number 4-89-82(5), LAMBROS' motion entitled, "ADDENDUM TO PETITIONER LAMBROS' RESPONSE TO OCTOBER 19, 2001, 'OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE ALL JUDGMENTS AND ORDERS.'" This motion is two (2) pages in length plus one (1) page for the certificate of service. Therefore, a TOTAL OF THREE (3) PAGES in PDF FORMAT. PLEASE NOTE that this addendum introduced Lambros' August 09, 2001, two page letter to The Honorable Charles E. Grassley, United States Senator, regarding the "INVESTIGATION INTO TORTURE AND ILLEGAL EXTRADITION PROCESS FROM BRAZIL TO THE UNITED STATES IN U.S. vs. LAMBROS, CR-4-89-82(5), DISTRICT OF MINNESOTA." Also, LAMBROS' August 09, 2001, "AFFIDAVIT OF JOHN GREGORY LAMBROS TO THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY.'" Copy of the August 09, 2001, letter and affidavit was attached to this motion when submitted to the Court. You may access copy of both the letter and affidavit by going to the beginning of this web sites' index and looking within the MAJOR DIVISION section under "UNITED STATES SENATOR CHARLES ERNEST GRASSLEY AND 'COMMITTEE ON THE JUDICIARY' INVESTIGATE LAMBROS' TORTURE AND EXTRADITION FROM BRAZIL." **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD NOVEMBER 10, 2001, LAMBROS' ADDENDUM TO GOVERNMENT RESPONSE HERE IN PDF.

January 02, 2002, Civil Case No. 99-28(RGR), criminal number 4-89-82(5), LAMBROS' motion entitled, "MOTION TO DISCLOSE CURRENT INVESTIGATION BY THE **MINNESOTA OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY.**" This motion is three (3) pages in length plus a one (1) page certificate of service. Also there are thirty (30) pages of exhibits. Therefore, a TOTAL OF **34 PAGES.** Please note that this motion discloses the investigation of Attorney Colia P. Ceisel, U.S. Assistant Attorney Douglas Peterson; and U.S. Attorney David L. Lillehaug, by the Minnesota Office of Lawyers Professional Responsibility, as to Lambros' February 10, 1997 resentencing hearing held before Judge Robert G. Renner. This motion is in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD JANUARY 02, 2002 MOTION DISCLOSING INVESTIGATION BY MINNESOTA OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY HERE IN PDF.

March 08, 2002, ORDER by U.S. District Court Judge David S. Doty in criminal action 4-89-82(5)(DSD) and civil action 99-28(DSD). Judge Doty dismissed this action against Judge Renner stating, "Because the court concludes that these motions are collateral to the substantive motion which is being dismissed and since the court concludes that it lacks jurisdiction over this matter, the court will dismiss all of these motions." This motion is five (5) pages and being offered in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD MARCH 08, 2002 ORDER BY JUDGE DAVID S. DOTY HERE IN PDF

MARCH 27, 2002, NOTICE TO PERFORM AND/OR ACTUAL NOTICE to Robert G. Renner, U.S. Senior District Court Judge from John G. Lambros, dated March 27, 2002. Why was Judge Rosenbaum assigned the case when Judge Renner had been assigned from 1997 thru February 20, 2001? This letter is 7 pages in total with exhibits and being offered in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD MARCH 27, 2002 LAMBROS' LETTER TO JUDGE RENNER HERE IN PDF.

April 10, 2002, Civil No. 99-28(DSD) and Criminal No. 4-89-82(5)(DSD). Lambros submits the following three (3) motions to the court, as to the appeal of Judge Doty's ORDER. (1) NOTICE OF APPEAL; (2) MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY; and (3) MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS AND/OR DIRECT APPEAL. A total of 39 pages including exhibits and cover letter to the Clerk of the Court in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.** (Pages hand numbered 1 thru 39 in lower right corner to assist you)

APPENDIX J.

91 59

DOWNLOAD APRIL 10, 2002, LAMBROS' NOTICE OF APPEAL, CERTIFICATE OF APPEALABILITY, AND WRIT OF MANDAMUM/DIRECT APPEAL HERE IN PDF.

April 16, 2002, Civil No. 99-28(DSD) and Criminal No. 4-89-82(DSD). Lambros submits his "ADDENDUM TO MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY, Dated: April 10, 2002." This motion is 2 pages. The total document with exhibits and cover letter to the clerk of the court is six (6) pages in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.** (Pages have numbered 1 thru 6 in lower right corner to assist you).

DOWNLOAD APRIL 16, 2002 ADDENDUM TO: MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY HERE IN PDF.

April 23, 2002, letter from U.S. Court of Appeal for the Eighth Circuit offering the APPEAL NUMBER in this action, 02-2026, USA vs. LAMBROS. The clerk states that he received Lambros' notice of appeal and DOCKET ENTRIES from the district court and that Lambros' appeal has been referred to the appeals court for consideration. PROBLEM: Why didn't Judge Doty make an ORDER as to Lambros' April 10, 2002 motions before the Eighth Circuit was given Lambros' motions? This letter with attachments is three (3) pages in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.**

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June 10, 2002, Eighth Circuit Court of Appeals Number 02-2026, District of Minnesota Civil No. 99-28(DSD) and Criminal No. 4-89-82(DSD). Lambros' "MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY BY THE EIGHTH CIRCUIT COURT OF APPEALS." Please note that the U.S. Supreme Court has granted certiorari on the very same question Lambros is presenting to the Court. This motion is seven (7) pages including the cover letter to the court and Exhibit A and being offered in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.** Exhibit B of this document is Lambros' April 10, 2002, Motion for Issuance of Certificate of Appealability and is available within this section. Thank you.

DOWNLOAD JUNE 10, 2002, COA TO EIGHTH CIRCUIT COURT OF "APPEALS HERE IN PDF

July 1, 2002, Eighth Circuit Court of Appeal's No. 02-2026, District of Minnesota Civil No. 99-28(DSD) and Criminal No. 4-89-82(DSD); ORDER by the Eighth Circuit DENYING Lambros' Motion for a COA, for the reasons stated by the district court. The court's order is two (2) pages in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD JULY 1, 2002, ORDER BY EIGHTH CIRCUIT HERE IN PDF.

July 11, 2002, Eighth Circuit Court of Appeals No. 02-2026, USA vs. LAMBROS, District of Minnesota No. 99-28(DSD) and Criminal No. 4-89-82(DSD), Lambros' filing of PETITION FOR REHEARING (FRAP 40) WITH A SUGGESTION FOR REHEARING EN BANC (FRAP 35). This motion and cover letter to the court is eighth (8) pages, NOT including exhibits in PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT. (Please note that exhibit B is Lambros' February 15, 2002 FILING OF COMPLAINT against U.S. Attorney Renner with the Office of Lawyers Professional Responsibility, St. Paul, Minnesota. This document is available within this web site by entering February 15, 2002 into the search engine of this web site)

DOWNLOAD JULY 11, 2002, PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC HERE IN PDF.

The above April 10, 2001, "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY U.S. DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO RULE 60(b)(6) OF FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A §455" proves, as per Section §455, that the average person on the street "MIGHT" harbor doubts and reasonably question U.S. District Court Judge Robert G. Renner's impartiality toward JOHN GREGORY LAMBROS during all proceedings when Judge Renner was the United States Attorney for Minnesota that investigated and prosecuted LAMBROS in 1975 and 1976. Title 28 U.S.C. §455(a) states, "[A]ny justice, **JUDGE**, or magistrate of the United States shall **DISQUALIFY** himself in **ANY** proceeding in which his **IMPARTIALITY MIGHT REASONABLY BE QUESTIONED.**" Title 28 U.S.C. §455(b)(3) states, "[(b)] He shall also **DISQUALIFY** himself in the following circumstances. (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy." The following facts are exposed within the April 10, 2001, MOTION:

a. U.S. Attorney Robert G. Renner **ILLEGALLY** indicted LAMBROS on March 24, 1976 and assisted in the illegal sentencing of LAMBROS on June 21, 1976, as to violations of law that did not occur on federal property. Title 18 U.S.C. Sections 111 and 114. See, **EXHIBIT** A, tab 30 Criminal File Number CR-3-76-17, District of Minnesota)

APPENDIX J. 92

b. The U.S. Attorney's Office in Minneapolis FALSIFIED documents to the U.S. Court of Appeals as to the March 24, 1976 INDICTMENT, as the Eighth Circuit stated LAMBROS was indicted on violations of Title 18 U.S.C. H 111 and 1114, not 114 as stated in the indictment and judgment order signed by Judge Devitt. See, U.S. vs. LAMBROS, 614 F.2d 179, 180 (8th Cir. 1980).

c. The U.S. Attorney Robert G. Renner and his employees in 1976 used an ILLEGAL indictment to leverage a negotiated plea of guilty from LAMBROS on charges unrelated. See, U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976).

d. Warden Mickey Ray is requested to investigate why two (2) JUDGMENT AND PROBATION/COMMITMENT ORDERS appear within Lambros' U.S. Bureau of Prisons file at Leavenworth Penitentiary, as to U.S. vs. LAMBROS, Docket Number CR-3-76-17, District of Minnesota. This is the same criminal case U.S. Attorney Robert G. Renner, now U.S. Judge Renner, indicted Lambros on March 24, 1976, for ASSAULT and changed the charges to MURDER after Lambros plead to an illegal indictment for assault. Lambros' August 20, 2001 letter to Warden Mickey Ray is a TOTAL OF 9 PAGES including exhibits. CLICK HERE to view these pages in PDF format. **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

DOWNLOAD AUGUST 20, 2001, WARDEN MICKEY RAY LETTER HERE IN PDF

e. October 12, 2001, Lambros' letter to Warden Mickey E. Ray as to Warden Rays' response to Lambros' filing of administrative remedy case number 250231-F1. This is a continuation of Lambros' above August 20, 2001 letter to Warden Ray as to the actions of Judge Renner. This letter is a total of three (3) pages without exhibits in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

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f. Attorney Peter Thompson, Thompson & Scioli, LTD, 2520 Park Ave., Minneapolis, Minnesota 55404-4407, was paid by Lambros to represent him in 1976 and 1977 in Criminal Indictments CR-3-75-128, CR-3-76-17; and CR-3-76-54. Attached for your review are Lambros' letters dated March 30, 2001 and November 20, 2001 to Attorney Thompson. As of January 09, 2002, Attorney Thompson has not responded to Lambros nor provided an AFFIDAVIT to the Court as to Lambros' guilty plea to violations of Title 18 U.S.C. H 111 and 1114, in U.S. vs. LAMBROS, CR-376-17. Both letters are a total of two (2) pages without exhibits in **PDF FORMAT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE TO VIEW AND PRINT THIS DOCUMENT.**

DOWNLOAD MARCH 30, 2001 AND NOVEMBER 20, 2001 ATTORNEY PETER THOMPSON LETTERS HERE IN PDF.

PLEASE SIGN PETITION : www.PetitionOnline.com/lambros/petition.html

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PLEASE NOTE that a link is offered to Petitioner Lambros' PETITION entitled:

"Petition for the United States Senate "Committee on the Judiciary" to investigate U.S. Senior District Court Judge Robert G. Renner, District of Minnesota, as to his Breach of Public Trust and Abuse of Power."

The PETITION is addressed to the Honorable Charles E. Grassley, United States Senator, a member of the "Committee on the Judiciary."