January 30, 2003

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RE: LAMBROS vs. USA, CASE NO. 02-7346 - RESPONSE BRIEF FOR FILING

Dear Clerk:

Attached please find copy of "PETITIONER LAMBROS' RESPONSE BRIEF TO BRIEF FOR THE UNITED STATES IN OPPOSITION, DATED JANUARY 13, 2003," for **FILING.**

Hopefully I've followed correct formatting as to the above-entitled document but if I have missed something please notify me as soon as possible.

PROOF OF SERVICE to this Court and the Office of the Solicitor General is located on page 22 of the above-entitled enclosed response brief.

Thanking you in advance for your continued consideration in this matter.

Sincerely,

John Gregory Lambros

c:
Office of the Solicitor General, U.S. Department of Justice, Room 5614, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001. Attn: Michael Chertoff, Assistant Attorney General.

File

1. 0R

CASE NO. 02 - 7346

IN THE SUPREME COURT OF THE UNITED STATES

JOHN GREGORY LAMBROS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONER LAMBROS' RESPONSE BRIEF

TO BRIEF FOR THE UNITED STATES IN OPPOSITION

DATED JANUARY 13, 2003

JOHN GREGORY LAMBROS, Pro Se
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QUESTION PRESENTED

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?

On December 10, 2002, this Court, Per Curiam, dismissed ABU-ALI ABDUR'RAHMAN vs. RICKY BELL, WARDEN, No. 01-9094, stating "The writ of certiorari is dismissed as improvidently granted." JUSTICE STEVENS, dissenting, stating: APPENDIX A.

> The Court's decision to dismiss the writ of certiorari as improvidently granted presumably is motivated, at least in part, by the view that the jurisdictional issues presented by this case do not admit of an easy resolution. I do not share that view. Moreover, I believe we have an obligation to provide needed clarification concerning an important issue that has generated confusion among the federal courts, namely, the availability of Federal Rule of Civil Procedure 60(b) motions to challenge the integrity of final orders entered in habeas corpus proceedings. I therefore respectfully dissent from the Court's disposition of the case."

IN THE SUPREME COURT OF THE UNITED STATES

No. 02 - 7346

JOHN GREGORY LAMBROS, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONER LAMBROS' RESPONSE BRIEF

TO BRIEF FOR THE UNITED STATES IN OPPOSITION

DATED JANUARY 13, 2003

AFFIDAVIT FORM

Petitioner LAMBROS, Pro Se, responding to Solicitor General Theodore B. Olson, Assistant Attorney General Michael Chertoff, and Attorney Michael A. Rotker (hereinafter Government) response to this above-entitled action dated January 13, 2003.

JOHN GREGORY LAMBROS, declares under the penalty of perjury:

1. I am the Petitioner in the above-entitled action. I make this declaration in the opposition to the United States of America's pleading dated January 13, 2003.

2. Petitioner LAMBROS denies each and every material allegation contained in the government's January 13, 2003, pleading, except as hereinafter may be expressed and specifically admitted.

QUESTION PRESENTED - GOVT. MOTION PAGE I:

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3. **PAGE I:** The government does not correctly states Petitioner's question presented to this Court. Petitioner's question presented within his Petition for a Writ of Certiorari is, "Did the Eighth Circuit Err in Holding, in Square Conflict with Decisions of This Court and Other Circuits, That Every Federal Rules of Civil Procedure 60(b)(6) Motion Constitutes Prohibited "Second or Successive" Habeas Petition as a Matter of Law?" (emphasis added). The government stated within its motion/brief on page I, QUESTION PRESENTED: "Whether petitioner's motion under Rule 60(b) of the Federal Rules of Civil Procedure was properly recharacterized as a second or successive motion under 28 U.S.C. 2255." Petitioner Lambros believes the government should be sanctioned for misrepresenting Petitioner's question to this court.

STATEMENT - GOVT. MOTION/BRIEF PAGES 1 thru 8:

4. **PAGE 2:** The government states "He was sentenced to concurrent terms of life imprisonment (Count 1),". This statement is not true. Petitioner Lambros was sentenced to a mandatory term of life without parole on Count One (1).

5. **PAGE 2:** The government states, "Petitioner filed several motions for post-conviction relief in the district court and the court of appeals, all of which were denied." This statement is not true. Petitioner Certificate of Appealability was granted on May 19, 1999 by the District Court in Minnesota and submitted to the Eighth Circuit Court of Appeals in USA vs. LAMBROS, No. 99-2768 and No. 99-2880. Copy of Petitioner Lambros' appeal brief is attached as exhibit F. to Petitioner's April 20, 2001, filing of his MOTION TO VACATE ALL JUDGEMENTS 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. The issues raised in this appeal are important, as petitioner was not allowed to move for further relief based on errors that transpired in course of RESENTENCING, February 10, 1997, by Judge Renner on Count One (1), thus

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petitioner was denied due process by Judge Renner as to subject matter jurisdiction over Petitioner's January 2, 1999, § 2255 to vacate, set aside, or correct his RESENTENCING. Issue two (2) raised within the appeal was, "Ineffective assistance of counsel as Movant was told by counsel who represented him at RESENTENCING (February 10, 1997) that Movant would be allowed to file a Title 28 U.S.C.A. § 2255 Motion as to errors that transpired in course of RESENTENCING." The First Circuit court of appeals held, "[I]f motion to vacate sentence results in RESENTENCING, prisoner is free, under Antiterrorism and Effective Death Penalty Act, to move for further relief based on errors that transpired in course of RESENTENCING. Title 28 U.S.C.A. §§ 2244(b)(3)(A), 2255." See, PRATT vs. U.S., 129 F.3d 54, 55 - Head Note 13 (1st Cir. 1997). The Eighth Circuit denied Petitioner's § 2255 after appointing an attorney and not allowing petitioner to represent himself.

6. **PAGE 2 and 3:** The government states, "In the mid-1970's, petitioner was involved in a large-scale conspiracy to import and distribute cocaine in Minnesota." This is not true. Petitioner was not involved in a large-scale conspiracy to import and distribute cocaine in Minnesota. In fact, petitioner Lambros' name appeared as the last name in a superseding indictment and was not allowed to pled nolo contendere to a distribution count within the indictment. Petitioner did not conspire to import cocaine into the United States.

7. **PAGE 3:** The government states petitioner assaulted a United States Marshal and pleaded guilty to assaulting a federal officer, in **VIOLATION OF 18 U.S.C. 111 and 1114.** (emphasis added) This is not true. Petitioner Lambros pleaded guilty to assaulting a federal officer in **VIOLATION OF 18 U.S.C. 111 and 114.** See, APPENDIX E within petitioner's PETITION FOR A WRIT OF CERTIORARI in this action. Please note that the indictment, docket sheet and the first judgment and probation/commitment order in USA vs. LAMBROS, CR-3-76-17, CLEARLY charge petitioner with violations of Title 18 U.S.C. **§ 111 and § 114. NOT § 1114.**

6.

8. **PAGE 4:** The government states, "In 1989, petitioner was arrested and charged with conspiracy to distribute cocaine, ..." This is not true. On May 17, 1989, the grand jury issued a SECRET INDICTMENT in the District of Minnesota in this action, CR-4-89-82. Petitioner was not arrested until 1991.

9. **PAGE 4:** The government states, "Petitioner fled from the United states in 1991, but was arrested in Brazil." This is not true. Petitioner did not flee from the United States in 1991. Petitioner did not have knowledge of the SECRET INDICTMENT issued on May 17, 1989. The indictment was clearly marked SECRET. Petitioner was working in Brazil in 1991 as an investment banker and commodities consultant. Please note that petitioner was a licensed stock broker and has passed state and federal license requirements as a commodities broker, after being sponsored by Cargil in Minnesota. Petitioner was arrested at the international airport in Rio de Janeiro, Brazil in 1991.

10. **PAGE 4:** The government states, "After unsuccessfully contesting extradition, in June 1992, petitioner was returned to United States custody." This is not totally true. The Supreme Court of Brazil did not extradite petitioner on Count Nine (9) in CR-4-89-82, interstate commerce with intent to promote and manage unlawful activities in violation of Title 18 U.S.C. §§ 1952(a)(3) and 1952(b)(1), as violations of interstate commerce is not a crime in Brazil. Also, Brazil does not allow imprisonment for more then thirty (30) years.

11. **PAGE 4:** The government states, "Between 1969 and 1977, Judge Renner had served as the United States Attorney for the District of Minnesota. In that capacity, he had signed the two indictments against petitioner that had led to petitioner's convictions in the 1970's for possessing cocaine and assaulting a federal officer. **PAGE 5:** Judge Renner while United States Attorney, had no involvement with the charges at issue in the resentencing." The government does not state that Judge Renner, serving as United States Attorney from 1969 to 1977, also was responsible for indicting petitioner on CR-3-76-54, judgment entered March

07, 1977, as dictated by the Eighth Circuit. See, KENDRICK vs. 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."). Also see, U.S. vs. ARNPRIESTER, 37 F.3d 466, 467 (9th Cir. 1994). Judge Renner used criminal indictments:

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

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

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

to **ENHANCE** the charges at issue in the resentencing on February 10, 1997. Please refer to pages 20 and 21, paragraphs 21 thru 25, within petitioner's "PETITION FOR WRIT OF CERTIORARI" in this action. (Fed.R.Crim.P. 32(c)(3)(D); United States Sentencing Guidelines § 4A1.3 'assessment of seriousness of prior convictions'; United States Sentencing Guidelines § 5H1.8 'A defendant's criminal history is relevant in determing the appropriate sentence.').

12. **PAGE 5:** The government states, "In connection with resentencing before Judge Renner, petitioner moved for a downward departure because of his medical condiction ... and also filed various motions purportedly seeking a new trial under Fed.R.Crim.P. 33." This is true. The government avoids stating that petitioner requested Judge Renner to render a correct sentence in the Count One (1) conspiracy resentencing, as petitioner was charged with a conspiracy involving EITHER marijuana or cocaine, both violations of § 846. The jury returned a "GENERAL JURY VERDICT." Judge Renner refused to punish petitioner under the maximum penalty authorized for marijuana, ten (10) years. See, U.S. vs. OWENS, 904 F.2d 411, 414-415 (8th Cir. 1990); U.S. vs. DALE, 178 F.3d 429, 432-433 (6th Cir. 1999)(collecting cases from seven circuits). See, February 10, 1997, RESENTENCING TRANSCRIPTS, Pages 16, 17, 18, 38. Petitioner admitted under oath that he received MARIJUANA during the conspiracy to the jury in this action.

13. **PAGE 5:** The government states, "On February 19, 1997, Judge Renner issued a "Resentencing Memorandum" declining to depart and sentencing petitioner to 360 months' imprisonment (the low end of the applicable guidelines range). ... The court also concluded that those claims lacked merit and denied relief." This is not true as petitioner's claims had merit. (1) petitioner was sentenced for a cocaine conspiracy when he should of been sentenced for a MARIJUANA conspiracy. See, paragraph 12; (2) Petitioner Lambros preserved the issue of using his past criminal history to enhance his current sentence at resentencing by stating, "This is a March 15th motion to bar past criminal offenses in the resentencing of John Gregory Lambros that will be used to enhance current sentence and place Lambros in a career offender's status due to double jeopardy challenges. I believe all these are valid Rule 33 motions." See, February 10, 1997, RESENTENCING TRANSCRIPTS, Page 27. **APPENDIX B.**

14. **APPENDIX C:** To assist this court petitioner is attaching pages 1, 7, 27, and 32 from petitioner Lambros' January 27, 1994, SENTENCING TRANSCRIPTS in this action before the Honorable Diana E. Murphy, Chief United States District Judge. Please note that the court, petitioner, petitioner's attorney and the government offer input as to the dispute related to petitioner's prior criminal history, all of which Judge Renner as U.S. Attorney was responsible counsel to the government, as per his statutory duty. Title 28 U.S.C. §§ 547, 542, and 543. Judge Murphy stated: (Page 32)

> "On the issue of prior criminal history, interesting legal arguments related here relating to the DOCTRINE SPECIALTY. It requires that a defendant may be tried only for the offense for which the asylum country delivered him. In other words, he could be tried only for the offense for which he was charged in the indictment and under which he was extradited.
>
> But that is what he was tried for. Consideration of the criminal history for sentencing purposes is not the same as trial, and I don't believe there's a violation of the doctrine of specialty. Obviously, Mr. Lambros disagrees, and IT WILL BE AN ISSUE ON APPEAL. (emphasis added)

TRIAL TRANSCRIPT, January 27, 1994, Page 32.

9.

15. Petitioner Lambros' attorney on direct appeal and RESENTENCING REFUSED to raise the issue of petitioner's criminal history being used for sentencing purposes, as per the direction of the Honorable Judge Murphy. The Brazilian Supreme Court did not extradite petitioner on his parole violation warrant that was inclusive as to his criminal history, as the State Department did not present the requested official warrant and other documents for petitioner's Brazilian Attorney's and the Brazilian Supreme Court.

16. **PAGE 5:** The government states, "At no time during resentencing proceedings and related appeals did petitioner seek to have Judge Renner recuse himself from petitoner's case." This is true. On February 10, 1997, Petitioner Lambros was represented by court appointed attorney COLIA CEISEL, who also represented petitioner on direct appeal. Attorney Colia Ceisel did not advise petitioner that Judge Renner was the responsible United States Attorney that investigated, indicted, and sentenced petitioner in 1975 and 1976, as per his statutory duty (Title 28 U.S.C. §§ 542, 543, and 547). Petitioner WAS NOT ALLOWED TO FILE A TITLE 28 U.S.C.A. § 2255 AS TO RESENTENCING. See, Paragraph five (5) within this motion, pages 2 and 3. Attorney Ceisel lied to petitioner when she stated he would be able to file a § 2255 motion as to resentencing, during resentencing.

17. **PAGE 5 and 6, Paragraph 3:** The government states, "In April 1997, petitioner filed an 88-page motion with exhibits under 28 U.S.C. § 2255, ..." Petitioner believes this to be true. What the government does not state, is the fact that the April 1997 § 2255 addressed Counts 2, 3, and 4, counts petitioner was not resentenced on. (Actually Counts 5, 6, & 8 in indictment CR-4-89-82(5))

18. **PAGE 6, Paragraph 4:** The government states, "On January 7, 1999, petitioner filed a 117-page motion and exhibits under 28 U.S.C. § 2255 ...." This is true. This is petitioner Lambros' petition under Title 28 U.S.C. § 2255, as to RESENTENCING on Count One (1) on February 10, 1997, by Judge Renner. On April 6, 1999, Judge Renner DISMISSED petitoner's petition under § 2255, on COUNT ONE (1)

stating, "BECAUSE THE COURT LACKS SUBJECT MATTER JURISDICTION OVER PETITION, IT IS DISMISSED."

19. **PAGE 7:** The government states, "...when petitioner was prosecuted on his two earlier drug charges." This is a invalid statement of facts. Petitioner was investigated, indicted, and sentenced in the District of Minnesota during 1969 thru 1977, when Judge Renner was the United States Attorney for the District of Minnesota, in criminal proceedings: (three charges)

a. CR-3-76-54;

b. CR-3-75-128;

c. CR-3-76-17.

20. **PAGE 7:** The government states, "...petitioner asserted that Rule 60(b) relief was available to redress the violation of Section 455." This is not true. Petitioner Lambros asserted that **RULE 60(b)(6)** relief was available to redress violations of Title 28 U.S.C.A. § 455.

21. **PAGE 7:** The government states, "The court concluded that, " "[a]lthough petitioner purports to bring this motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure, * * * it must be treated as a petition pursuant to 28 U.S.C. 2255 since [petitioner] is ....." The words eliminated by the government are "the court concludes." Webster's Third New International Dictionary offers the definition of CONCLUDE as "to constrain to a course of action: Bind, Oblige - now chiefly in legal use..." The government chooses not to include the legal cites offered after the sentence:

> "See BOLDER vs. ARMONTROUT, 983 F.2d 98, 99 (8th Cir. 1993); BLAIR vs. ARMONTROUT, 976 F.2d 1130, 1134 (8th Cir. 1992)."

Therefore, the court was FORCED to follow the legal foundation set by the Eighth Circuit in BOLDER and BLAIR, **THAT EVERY RULE 60(b)(6) MOTION IS THE FUNCTIONAL EQUIVALENT OF A SECOND PETITION FOR A WRIT OF HABEAS CORPUS.** Federal Rules of Civil Procedure 60(b)(6) motions where filed in both BOLDER and BLAIR.

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22. **PAGE 8:** The government stated, "... the court concluded that it 'lack[ed] the power and authority to entertain' it [Rule 60(b)(6) motion] and ordered that it be dismissed." This is totally true, as the Eighth Circuit has ruled in BOLDER and BLAIR that **EVERY** Rule 60(b)(6) motion is the functional equivalent of a second petition for a writ of habeas corpus. On December 10, 2002, JUSTICE STEVENS of this Court stated, "The Court of Appeals for the Sixth Circuit plainly erred when it characterized petitioner's Rule 60(b) motion as an application for a second or successive habeas petition and denied relief for that reason." See, ABU-ALI ABDUR'RAHMAN vs. BELL, #01-9094, Justice Stevens, dissenting, **APPENDIX A.** Justice Stevens and four (4) members of this Court, thus meeting the unwritten "rule of four", have already decided that petitioner's question should be granted and placed on the calendar for hearing and decision when they granted the question:

> "Whether the Sixth Circuit erred in holding, in square conflict with decisions of this court and of other circuits, that EVERY Rule 60(b) Motion constitutes a prohibited 'second or successive' habeas petition as a matter of law." (emphasis added)

in ABDUR'RAHMAN vs. BELL, U.S., No. 01-9094, on April 22, 2002.

ARGUMENT - GOVT. MOTION/BRIEF PAGES 8 thru 19:

23. **PAGE 8:** The government states that petitioner's cliam does not warrant review. This is not true, Again, petitioner restates paragraph 22 on this page and restating the fact that **"AT LEAST FOUR (4) MEMBERS OF THIS COURT GRANTED CERTIORARI PETITION"** to the question: (April 22, 2002)

> "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?

in ABDUR'RAHMAN on April 22, 2002, and then JUSTICE STEVENS, "who remains outside the pool, and even he does not read 80% of the petitions, he says" (USA TODAY, December 23, 1998, page 10A, "Tactics, law clerks influence high court's agenda" by Tony Mauro), states in his dissenting opinion on December 10, 2002, "Moreover, I believe we have an obligation to provide needed clarification concerning an important issue that has generated confusion among the federal courts, namely, the availability of Federal Rule of Civil Procedure 60(b) motions to challenge the integrity of final orders entered in habeas corpus proceedings." See, ABDUR'RAHMAN, APPENDIX A. Petitioner Lambros' question is the same as ABDUR'RAHMAN:

> "Did the Eighth Circuit err in holding, in square conflict with decisions of this court and other circuits, that every Fed.R.Civ.P. 60(b)(6) motion constitutes prohibited "second or successive" habeas petition as a matter of law?"

Also, the government, Solicitor General Theodore B. Olson, has sent a not-so-subtle signal to this Court that it SHOULD NOT IGNORE petitioner's above question, as the government only responds to approximately five (5%) percent of all "in forma pauperis" filings, the so-called "pauper" docket. See, USA TODAY, December 23, 1998, "Tactics, law clerks influence high court's agenda."

24. **PAGE 11:** The government states in paragraph 2.a "Assuming certiorari jurisdiction exists, this case would nevertheless be an unsuitable vehicle for resolving any disagreement in the lower courts about the proper approach to Rule 60(b) motions filed in connection with post-conviction litigation." This is not true. The United States Supreme Court made clear that "[R]elief from final judgment 'for any other reson,' 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 USCA § 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." (emphasis added). See, LILJEBERG vs. HEALTH SERVICES CORP., 100 L.Ed. 2d 855, 860 (1988). Please note that the government chooses not to address the words "RISK OF INJUSTICE," "WILL PRODUCE INJUSTICE," "RISK OF UNDERMINING THE PUBLIC'S CONFIDENCE IN THE JUDICIAL PROCESS," and "JUSTICE MUST SATISFY THE APPEARANCE OF JUSTICE."

25. **PAGE 12:** The government states, "Second, petitioner did not preserve his Section 455 claim. He failed to raise it during his resentencing by Judge Renner, in his appeal of that ruling, or in any of his prior collateral attacks." This is true. Petitioner Lambros was represented by court appointed Attorney COLIA CEISEL at the February 10, 1997 resentencing and direct appeal of same. Petitioner Lambros was denied his § 2255 filing as to resentencing due to the fact Judge Renner converted all of petitioner Rule 33 motions filed **BEFORE** the February 10, 1997 RESENTENCING into petitioner's § 2255 filing as to RESENTENCING. Therefore, petitioner DID NOT know the name of the judge that was going to resentence petitioner on February 10, 1997 when he filed his Rule 33 motions, nor did Attorney Ceisel advise petitioner of the name of the judge that was going to resentence petitioner. See, Paragraph five (5) within this motion as to petitioner's appeal to the Eighth Circuit as to his claim of ineffective assistance of counsel due to Attorney Colia Ceisel statement to petitioner "YOU WILL BE ALLOWED TO FILE A TITLE 28 U.S.C.A. § 2255 MOTION AS TO ERRORS THAT TRANSPIRED IN COURSE OF RESENTENCING." Petitioner has never been able to file a § 2255 motion **AFTER** he was RESENTENCED due to the fact Judge Renner converted petitioner's RULE 33 motions filed **BEFORE** February 10, 1997 into petitioner's § 2255. PETITONER LAMBROS

WAS NEVER INFORMED BY ATTORNEY COLIA CEISEL THAT JUDGE RENNER WAS THE U.S. ATTORNEY THAT PROSECUTED PETITIONER IN 1975 AND 1976, NOR DID JUDGE RENNER ADVISE PETITIONER THAT HE WAS THE U.S. ATTORNEY THAT SIGNED INDICTMENTS AND PROSECUTED PETITIONER IN 1975 AND 1976. The Seventh Circuit in rehearing and rehearing en banc stated, "At one time most circuits required that an appellant obtain leave of the court of appeals before filing a **RULE 60(b)** motion in a district court. However, in 1976, the Supreme Court held that a district court may reopen a case which had been reviewed on appeal without leave from the court of appeals. STANDARD OIL CO. OF CALIFORNIA vs. UNITED STATES, 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976). In STANDARD OIL, the appellant sought leave to have the Supreme Court recall its mandate in order to reopen a judgment on the basis of alleged misconduct by both government counsel and a material witness. The Supreme Court denied the motion to recall the mandate, holding that a district court could entertain a Rule 60(b) motion without leave from the Supreme Court. Id. at 17, 97 S.Ct. at 31. . . . The Court further noted that the appellate leave requirement 'burden[ed] the increasingly scarce time of the federal appellate courts [and saw] no reason to continue this 'unnecessary and undesirable clog on the proceedings.' Id. at 19, 97 S.Ct. at 32 (citations omitted)." (emphasis added) Quoting, LSIJ PARTNERSHIP vs. FRITO-LAY, INC., 920 F.2d 476, 478 (7th Cir. 1990) (Rehearing and Rehearing En Banc)("In this case, the district court's erroneous denial of jurisdiction resulted in an abuse of its discretion when it failed to exercise any discretion in not reaching the merits of the plaintiff's **RULE 60(b)** motion. We reverse the district court's denial of plaintiff's Rule **60(b)** motion and remand for a determination of the merits of the motion." Id. at 479)(emphasis added).

26. **PAGE 12:** The government states, "Third, petitioner's Rule 60(b) motion was untimely. Rule 60(b) motions must be filed 'within a reasonable time' after the judgment, or within one year if the grounds are mistake or inadvertence,

newly discovered evidence, or fraud. Petitioner's [Page 13] Rule 60(b) motion here, by contrast, was filed in 2001, more than four years after he was resentenced, and thus was not filed within a "reasonable time" of judgment. ..." This is not true. The one (1) year limitations period applies only to Rule 60(b)(1) thru (b)(5). "Rather, 'extraordinary circumstances' are required to bring the motion within the 'other reason' language and to prevent clause (6) [Rule 60(b)(6)] from being used to circumvent the 1-year limitations period that applies to clause (1)." LILJEBERG, 100 L.Ed.2d at 874, Foot Note 11. Petitioner Lambros filed a Rule 60(b)(6) not a Rule 60(b) as stated by the government. The 'extraordinary circumstances' identified by the Supreme Court in LILJEBERG included at least four (4) facts: (a) "First, it is remarkable that the judge, who had regularly attended the meetings of the Board of Trustees since 1977, completely forgot about the University's interest in having a hospital constructed on its property in Kenner. ... (b) Second, it is an unfortunate coincidence that although the judge regularly attended meetings of the Board of Trustees, he was not present at the January 28, 1982, meeting, a week after the 2-day trial and while the case was still under advisement. ... (c) Third, it is remarkable - and quite inexcusable - that Judge Collins failed to recuse himself on March 24, 1982. A full disclosure at that time would have completely removed any basis for questioning the judge's impartiality and would have made it possible for a different judge to decide whether the interests - and appearance - of justice would have been served by a retrial. ... (d) Fourth, when respondent filed its motion to vacate, Judge Collins gave three reasons for denying the motion, but still did not acknowledge that he had known about the University's interest both shortly before and shortly after the trial. Nor did he indicate any awareness of a duty to recuse himself in March 1982. These facts create precisely the kind of appearance of impropriety that § 455(a) was intended to prevent. The violation is neither insubstantial nor excusable."

27. **WHEN IS A YEAR A YEAR FOR PURPOSE OF FILING A RULE 60(b) (1) thru (b)(5) MOTION?** The government states Rule 60(b) motions must be filed within one (1) year, so when is a year a year for the purpose of filing a Rule 60(b) motion and when was the one (1) year when Petitioner Lambros' February 10, 1997 RESENTENCING became **FINAL**. The Antiterrorism and Effective Death Penalty Act (AEDPA) amended 28 USC § 2255 allows federal prisoners one (1) year from the date on which the JUDGMENT of their conviction became final to file a motion to vacate, set aside or correct their sentence. Three circuits have stated a similar conclusion. If a federal prisoner does not file a petition for Writ of Certiorari with the United States Supreme Court after his conviction is affirmed on appeal, the judgment of conviction becomes FINAL within the meaning of § 2255 on the date on which the defendant's time for filing a timely petition for certiorari expires, which is ninety (90) days. See, Sup Ct. R. 13.3 (a petition for Writ of Certiorari to review a judgment must be filed within 90 days after denial of a timely petition for rehearing, if one is filed). KAPRAL vs. U.S., 166 F.3d 565, 577 (3rd Cir. 1999) see also U.S. vs. BURCH, 202 F.3d 1274, 1281 (10th Cir. 2000); REED vs. U.S., U.S. App. LEXIS 13993 (6th Cir. 2001). Therefore, the possibilities of when a JUDGMENT becomes FINAL could be the date on which the Supreme Court affirms the merits, denies a petition for writ of certiorari, or when the time to file a certiorari expires. See, KAPRAL, 166 F.3d at 570. Petitioner Lambros' attorney filed a RESENTENCING direct appeal to the Eighth Circuit on or about April 28, 1997, denied on September 2, 1997, U.S. vs. LAMBROS, Case No. 97-1553 MNMI, 124 F.3d 209 (1997). On January 12, **1998** petitioner Lambros' petition for writ of certiorari was denied as to his RESENTENCING on February 10, 1997. See, LAMBROS vs. U.S., 139 L.Ed.2d 669 (1998). The final date petitioner could of legally filed a § 2255, as per AEDPA, is January 12, **1999.** On January 02, 1999, petitioner filed his §2255 as to RESENTENCING on Count One (1) on February 10, 1997. Petitioner's court appointed attorney,

Maureen Williams, (Eighth Circuit appointed her) submitted Petitioner' writ of certiorari to this court on or about May 02, 2001 and was denied by this Court on June 04, 2001, as to petitioner's § 2255 RESENTENCING ON COURT ONE (1) by Judge Renner on February 10, 1997. See. LAMBROS vs. U.S., No. 00-9751.

28. Petitioner Lambros filed his Rule 60(b)(6) motion in this action on April 24, 2001. Therefore, petitoner's FINAL judgment of his § 2255 had not become final before he filed his Rule 60(b)(6) motion. In LILJEBERG, 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. Petitioner Lambros filed his Rule 60(b)(6) within a timely fashion within a reasonable time and/or within one (1) year of judgment becoming final, as to his RESENTENCING on February 10, 1997. Petitioner Lambros' litigation NEVER TERMINATED.

29. **PAGE 13:** The government states, "The judicial recusal statute, 28 U.S.C. 455, provides for mandatory recusal in two circumstances. First, Section 455(a) states '[a]ny justice, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.' Section 455(a) is concerned with the **APPEARANCE** of bias, rather than bias in fact, see LITEKY vs. UNITED STATES, 510 U.S. 540, 548, 127 L.Ed.2d 474 (1994), and the provision necessitates an objective inquiry into whether a reasonable person, KNOWING ALL OF THE FACTS AND CIRCUMSTANCES, would harbor doubts about the judge's participation created the **APPEARANCE** of bias or prejudice. See SAO PAULO STATE OF THE FEDERATIVE REPUBLIC OF BRAZIL vs. AMERICAN TOBACCO CO., INC., 535 U.S. 229, 152 L.Ed.2d 346 (2002)(per curiam)." (emphasis added). This is a true statement and correct law. Petitioner Lambros has met the first circumstance, as **SIXTY-SEVEN (67)** citizens of the United States of America have found ample basis, **AFTER REVIEWING AND IDENTIFYING THE FACTS WITHIN WITHIN THIS ACTION**, to conclude that an objective observer has questioned United States Senior District Judge Robert G.

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 sixty-seven (67) citizens have signed a petition stating, "Judge Renner clearly should have recused himself from Mr. Lambros' February 10, 1997 resentencing. The time has come to rectify this oversight and 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." See, **APPENDIX D.** Appendix D includes the Petition to Senator Charles E. Grassley entitled, "Petition for 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." This petition is available for all United States Citizens at: **www.PetitionOnline.com/jlambros/petition.html** and a copy of the names of the sixty-seven (67) persons signing same. Please note signature number fourty-two (42) is Jodie Lynn Summers, who states:

> "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!!!!!!!!!!!!!!!!!!!!!!!!"

Also, included within APPENDIX D is copy of Petitioner Lambros' web site homepage that offers copy of every motion filed in this action from April 13, 2001 thru petitoner's November 01, 2002, PETITION FOR A WRIT OF CERTIORARI in this action. See, **www.brazilboycott.org - Homepage 1, 37, 38, 39 and 40.** Therefore, all documents have been available for those that have signed Petitioner Lambros' Petition to Senator Charles E. Grassley and Petitioner Lambros has met the requirements of Title 28 U.S.C. § 455(a) concerning the **APPEARANCE OF BIAS OR PREJUDICE.**

30. **PAGE 14:** The government states, "As noted, petitioner failed to raise his Section 455 claim at the resentencing hearing. That failure arguably constitutes a waiver of his right to raise that claim." This is not true. This Court in LILJEBERG, 100 L.Ed.2d 855 (1988), vacated the judgment on § 455(a) grounds, under Rule 60(b)(6), when the claim was discovered **TEN (10) MONTHS AFTER** the district court judgment had been affirmed on appeal and the litigation terminated. 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 Lambros 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 of the Judiciary" in compliance with the rules of postconviction procedure of the court system.

31. **PAGE 16 and 17:** The government states, "Recusal under that provision [Section 455(b)(3)] is required only where the judge '[1] participated [2] as counsel **** [3] concerning the proceeding' at issue. Petitioner does not claim that Judge Renner participated as counsel in the proceedings at issue in this appeal. Rather, he alleges that, as United States Attorney in the 1970s, Judge Renner signed two indictments against petitioner in cases unconnected to the charges for which he is currently being imprisoned." THIS IS NOT TRUE. Again, the government tries to mislead this court, as petitioner clearly has proved Judge Renner "PARTICIPATED AS COUNSEL" in all three (3) indictments, prosecutions, and sentencing in 1975 and 1976. Also, Robert G. Renner, U.S. Attorney was **ON BRIEF** in U.S. vs. LAMBROS, 544 F.2d 962, 963 (8th Cir. 1976), the direct appeal of indictments CR-3-75-128 and CR-3-76-17. See, **APPENDIX E.** Therefore, Judge Renner used the three (3) 1975 and 1976 convictions to **ENHANCE/INCREASE**

Petition Lambros sentence during RESENTENCING on February 10, 1997. Please refer to paragraphs 22 thru 24 in Petitioner's "PETITION FOR A WRIT OF CERTIORARI" as to Fed.R.Crim.P. 32(c)(3)(D) and United States Sentencing Guidelines (USSG) § 4A1.3 and § 5H1.8. The Eighth Circuit forced Judge Renner to consider Petitioner's criminal history. 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.)(emphasis added). Title 28 U.S.C. § 455(b)(3) states:

> "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;" (emphasis added)

32. **PAGE 18 and 19:** The government states, "And, more basically, LILJEBERG was a civil case governed by the Federal Rules of Civil Procedure, not as here, a criminal case where Rule 60(b) relief is unavilable in connection with a challenge to a judgment of conviction." This is not true. The Second Circuit in RODRIGUEZ vs. MITCHELL, 252 F.3d 191 (2nd Cir. 2001), clearly a CRIMINAL CASE allowed a motion under Rule 60(b) to vacate a judgment denying habeas, stating it is not equivalent of a second or successive habeas petition. In fact, JUSTICE STEVENS, in ABU-ALI ABDUR'RAHMAN vs. BELL, No. 01-9094, in his December 10, 2002, DISSENT, clearly stated "In petitioner's view, that mistake constituted a 'reason justifying relief from the operation of the judgment' within the meaning of **RULE 60(b)(6)**. Whether one ultimately agrees or disagrees with that submission, it had sufficient arguable merit to PERSUADE AT LEAST FOUR (4) MEMBERS OF THIS COURT TO GRANT HIS CERTIORARI PETITION. . . . The Court of Appeals for the Sixth Circuit plainly erred when it characterized petitioner's **RULE 60(b)** motion as an application for a second or successive habeas petition and denied relief for that reason." ABU-ALI ABDUR'RAHMAN was a **CRIMINAL CASE**. See, APPENDIX A.

ISSUES THE GOVERNMENT DID NOT RESPOND TO:

Magistrate Judge Franklin Linwood Noel

33. Petitoner Lambros clearly stated within his PETITION FOR A WRIT OF CERTIORARI to this court in paragraphs 4 thru 7, 17, and 28 that **FRANKLIN LINWOOD NOEL**, Federal Chief Magistrate Judge for the District of Minnesota, acted as an Assistant United States Attorney within United States Attorneys Office for the District of Minnesota in Minneapolis from 1983 thru 1989, the same time Petitioner was investigated (January 1983 thru February 27, 1988) and indicted in this Criminal Action 4-89-82(05). By order dated October 30, 1992, Magistrate Judge Noel judged Petitioner Lambros competent to stand trial after conducting a hearing and/or hearings in this action. During RESENTENCING on February 10, 1997, Judge Renner referred to the ORDER dated October 30, 1992, by Magistrate Judge Noel.

34. On November 02, 2001, Petitoner Lambros filed in this action a motion to amend, "PETITION LAMBROS REQUESTS PERMISSION FROM THE COURT TO AMEND THIS ACTION UNDER RULE 15(a) and 19(a), FRCP. Dated November 02, 2001." Petitioner's issue included within the motion was issue two (2):

> "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES CHIEF MAGISTATE JUDGE FRANKLIN LINWOOD NOEL, PURSUANT TO RULE 60(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. §§ 455(a) and 455(b)(3)."

35. The government **DID NOT DENY** the above issue in there response.

36. Petitioner Lambros is requesting this Court to ISSUE PARTIAL SUMMARY JUDGMENT as to the actions of Magistrate Judge Noel in violation of Title 28 U.S.C.A. §§ 455(a) and 455(b)(3), thus the GOVERNMENT IS IN DEFAULT. See, Federal Rules of Civil Procedure 55(a), 55(c), and 55(e). Petitoner believes he has "established a claim or right to relief by evidence satisfactory to the court." Id. at 55(e).

37. Again, Petitioner Lambros' request for PARTIAL SUMMARY JUDGMENT on Magistrate Judge Franklin Linwood Noel violations of Title 28 U.S.C.A. §§ 455(a) and 455(b)(3), is based on the government's failure to plead or contest Petitioner Lambros' facts within his PETITION FOR A WRIT OF CERTIORARI before this Court. Therefore, showing that there is no genuine issues as to any material facts; and that the moving party, Petitioner Lambros, is entitled to a judgment as a matter of "LAW" as to any fact or citations of law offered by Petitioner.

CONCLUSION

38. 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 in LILJEBERG was the result of the court's mis-understanding of this courts' holding in LILJEBERG and the application of Rule 60(b)(6).

39. This petitioner has surpassed this courts' unwritten "rule of four" in deciding which cases to rule on. That is, the approval of four of the nine justices of this court to place petitioner's case on the argument calendar for hearing and decision, as Justice Stevens, who remains outside the pool, wrote in his dissent in ABU-ALI ABDUR'RAHMAN, "Moreover, I believe we have an obligation to provide needed clarification concerning an important issue that has generated confusion among the federal courts, namely, the availability of Federal Rule of Civil Procedure 60(b) motions to challenge the integrity of final orders entered in habeas corpus proceedings. . . . Whether one ultimately agrees or disagrees with that submission, it had sufficient arguable merit to persuade at LEAST FOUR MEMBERS OF THIS COURT TO GRANT HIS CERTIORARI PETITION." The limited question

presented in ABDUR'RAMAN, granted on April 22, 2002, differed from petitioner's question only by a difference in circuits, his was the Sixth, and petitioner's was the Eighth, and by "(6)." In other words, he cited Rule 60(b), while petitioner cited Rule 60(b)(6). The substantive difference in the context of the instant matter is negligible.

40. 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 U.S. at 864. This Court should instruct the courts below to do so.

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

Executed on: January 29, 2003

Respectfully submitted,

John Gregory Lambros, Pro Se
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CASE NO. 02 - 7346

IN THE SUPREME COURT OF THE UNITED STATES

JOHN GREGORY LAMBROS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PROOF OF SERVICE

I, John Gregory Lambros, do swear or declare that on this date, January 30, 2003, as required by Supreme Court Rule 29 I have served the enclosed "PETITIONER LAMBROS' RESPONSE BRIEF TO BRIEF FOR THE UNITED STATES IN OPPOSITION DATED JANUARY 13, 2003 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:

1. Office of the Clerk, Supreme Court of the United States, One First Street, N.E., Washington, D.C. 20543-0001; U.S. Certified Mail No. 7001-0320-0005-1598-0100;

2. Michael Chertoff, Assistant Attorney General, Office of the Solicitor General, U.S. Department of Justice, Room 5614, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001.

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

Executed on January 30, 2003

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INDEX TO APPENDICES

APPENDIX A: December 10, 2002, ABU-ALI ABDUR'RAHMAN, PETITIONER vs. RICKY BELL, WARDEN, No. 01-9094, ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, Per Curiam, Justice Stevens, dissent.

APPENDIX B: February 10, 1997, USA vs. LAMBROS, File No. CR-4-89-82(05), Resentencing Transcript before Judge Renner, Page 1, 27, & 28.

APPENDIX C: January 27, 1994, USA vs. LAMBROS, File No. CR-4-89-82(05), Sentencing Transcript before Chief Judge Diana E. Murphy, Pages 1, 7, 27 and 32.

APPENDIX D: January 20, 2003, printout of "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," To: Senator Charles E. GRassley. See, www.PetitionOnline.com/jlambros/petition.html Also, copy of Petitioner Lambros web site homepage, pages 1, 37, 38, 39, 40 and 41, at: www.brazilboycott.org

APPENDIX E: U.S.A. vs. LAMBROS, 544 F.2d 962, 963 (8th Cir. 1976), which states, "Robert G. Renner, U.S. Atty., Minneapolis, Minn., **on brief.**"

APPENDIX

dicial review. Section 925(c) requires an applicant, as a first step, to petition the Secretary and establish to the Secretary's satisfaction that the applicant is eligible for relief. The Secretary, in his discretion, may grant or deny the request based on the broad considerations outlined above. Only then, if the Secretary denies relief, may an applicant seek review in a district court.

This broad authority of the Secretary, i. e., ATF, to grant or deny relief, even when the statutory prerequisites are satisfied, shows that judicial review under § 925(c) cannot occur without a dispositive decision by ATF. First, in the absence of a statutorily defined standard of review for action under § 925(c), the APA supplies the applicable standard. 5 U. S. C. § 701(a). Under the APA, judicial review is usually limited to determining whether agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." § 706(2)(A). Application of the APA standard of review here indicates that judicial review is predicated upon ATF's dispositive decision: the "arbitrary and capricious" test in its nature contemplates review of some action by another entity, rather than initial judgment of the court itself.

Second, both parts of the standard for granting relief point to ATF as the primary decisionmaker. Whether an applicant is "likely to act in a manner dangerous to public safety" presupposes an inquiry into that applicant's background—a function best performed by the Executive, which, unlike courts, is institutionally equipped for conducting a neutral, wide-ranging investigation. Similarly, the "public interest" standard calls for an inherently policy-based decision best left in the hands of an agency.

Third, the admission of additional evidence in district court proceedings is contemplated only in exceptional circumstances. See 18 U. S. C. § 925(c) (allowing, "in [district court's] discretion," admission of evidence where "failure to do so would result in a miscarriage of justice"). Congressional assignment of such a circumscribed role to a district court shows that the statute contemplates that a district court's determination will heavily rely on the record and the decision made by ATF. Indeed, the very use in § 925(c) of the word "review" to describe a district court's responsibility in this statutory scheme signifies that a district court cannot grant relief on its own, absent an antecedent actual denial by ATF.

Accordingly, we hold that the absence of an actual denial of respondent's petition by ATF precludes judicial review under § 925(c), and therefore reverse the judgment of the Court of Appeals.

It is so ordered.

EDWIN S. KNEEDLER, Deputy Solicitor General (Theodore B. Olson, Sol. Gen., Robert D. McCallum Jr., Asst. Atty. Gen., Irving L. Gornstein, Asst. to Sol. Gen., and Mark B. Stern and Thomas M. Bondy, DOJ attys., on the briefs) for petitioners: THOMAS C. GOLDSTEIN, Washington, D.C. (Amy Howe, Goldstein & Howe PC, and Larry C. Hunter, on the briefs) for respondent.

ABU-ALI ABDUR'RAHMAN, PETITIONER v. RICKY BELL, WARDEN

01-9094

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

December 10, 2002.

JUSTICE STEVENS, dissenting.

The Court's decision to dismiss the writ of certiorari as improvidently granted presumably is motivated, at least in part, by the view that the jurisdictional issues presented by this case do not admit of an easy resolution.[1] I do not share that view. Moreover, I believe we have an obligation to provide needed clarification concerning an important issue that has generated confusion among the federal courts, namely, the availability of Federal Rule of Civil Procedure 60(b) motions to challenge the integrity of final orders entered in habeas corpus proceedings. I therefore respectfully dissent from the Court's disposition of the case.

I

In 1988 the Tennessee Supreme Court affirmed petitioner's conviction and his death sentence. His attempts to obtain postconviction relief in the state court system were unsuccessful. In 1996 he filed an application for a writ of habeas corpus in the Federal District Court advancing several constitutional claims, two of which raised difficult questions. The first challenged the competency of his trial counsel and the second made serious allegations of prosecutorial misconduct. After hearing extensive evidence on both claims, on April 8, 1998, the District Court entered an order granting relief on the first claim, but holding that the second was procedurally barred because it had not been fully exhausted in the state courts. *Abdur'Rahman* v. *Bell*, 999 F. Supp. 1073 (MD Tenn. 1998). The procedural bar resulted from petitioner's failure to ask the Supreme Court of Tennessee to review the lower state courts' refusal to grant relief on the prosecutorial misconduct claim. *Id.*, at 1080–1083.

The District Court's ruling that the claim had not been fully exhausted appeared to be correct under Sixth Circuit precedent[2] and it was consistent with this Court's later holding in *O'Sullivan* v. *Boerckel*, 526

[1] On October 24, 2002, just two weeks before oral argument, the Court entered an order directing the parties to file supplemental briefs addressing these two questions: "Did the Sixth Circuit have jurisdiction to review the District Court's order, dated November 27, 2001, transferring petitioner's Rule 60(b) motion to the Sixth Circuit pursuant to 28 U. S. C. § 1631? Does this Court have jurisdiction to review the Sixth Circuit's order, dated February 11, 2002, denying leave to file a second habeas corpus petition?" *Post*, p.——.

[2] See *Silverburg* v. *Evitts*, 993 F. 2d 124 (CA6 1993). Other Circuits had held that the exhaustion requirement may be satisfied without seeking discretionary review in a State's highest court.

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U. S. 838 (1999). In response to our decision in *O'Sullivan*, however, the Tennessee Supreme Court on June 28, 2001, adopted a new rule that changed the legal landscape. See In re: Order Establishing Rule 39, Rules of the Supreme Court of Tennessee: Exhaustion of Remedies. App. 278. That new rule made it perfectly clear that the District Court's procedural bar holding was, in fact, erroneous.[3]

The warden appealed from the District Court's order granting the writ, but petitioner did not appeal the ruling that his prosecutorial misconduct claim was procedurally barred. The Court of Appeals set aside the District Court's grant of relief to petitioner, 226 F. 3d 696 (CA6 2000), and we denied his petition for certiorari on October 9, 2001, 534 U. S. 970. The proceedings that were thereafter initiated raised the questions the Court now refuses to decide.

On November 2, 2001, petitioner filed a motion, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure,[4] seeking relief from the District Court judgment entered on April 8, 1998. The motion did not assert any new constitutional claims and did not rely on any newly discovered evidence. It merely asked the District Court to set aside its 1998 order terminating the habeas corpus proceeding and to decide the merits of the prosecutorial misconduct claim that had been held to be procedurally barred. The motion relied on the ground that the Tennessee Supreme Court's new Rule 39 demonstrated that the District Court's procedural bar ruling had been based on a mistaken premise.

Relying on Sixth Circuit precedent,[5] on November 27, 2001, the District Court entered an order that: (1) characterized the motion as a "second or successive habeas corpus application" governed by 28 U. S. C. § 2244; (2) held that the District Court was therefore without jurisdiction to decide the motion;[6] and (3) transferred the case to the Court of Appeals pursuant to § 1631.[7]

Petitioner sought review of that order in both the District Court and the Court of Appeals. In the District Court, petitioner filed a notice of appeal and requested a certificate of appealability. See Civil Docket for Case #: 96–CV-380, *reprinted in* App. 11. In the Court of Appeals, petitioner filed the notice of appeal, again sought a certificate of appealability, and moved the court to consolidate the appeal of the District Court's Rule 60(b) ruling with his pre-existing appeal of his original federal habeas petition. *Id.*, at 28. On January 18, 2002, the Court of Appeals entered an order that endorsed the District Court's disposition of the 60(b) motion, specifically including its characterization of the motion as a successive habeas petition. Nos. 98–6568/6569, 01–6504 (CA6), p. 2, App. 35, 36. In that order the Court of Appeals stated that the "district court properly found that a Rule 60(b) motion is the equivalent of a successive habeas corpus petition," and then held that Abdur'Rahman's petition did not satisfy the gateway criteria set forth in § 2244(b)(2) for the filing of such a petition. *Ibid.* It concluded that "all relief requested to this panel is denied." *Id.*, at 37. In a second order, entered on February 11, 2002, Nos. 98–6568/6569, 01–6504 (CA6), App. 38, the Court of Appeals referred to additional filings by petitioner and denied them all.[8]

Thereafter we stayed petitioner's execution and granted his petition for certiorari to review the Court of Appeals' disposition of his Rule 60(b) motion.[9] 535 U. S. 1016 (2002).

See, e.g., *Dorny* v. *Erickson*, 32 F. 3d 381 (CA8 1994); *Boerckel* v. *O'Sullivan*, 135 F. 3d 1194 (CA7 1998).

[3] Tennessee Supreme Court Rule 39 reads, in relevant part: "In all appeals from criminal convictions or post-conviction relief matters from and after July 1, 1967, a litigant shall not be required to petition for rehearing or to file an application for permission to appeal to the Supreme Court of Tennessee following an adverse decision of the Court of Criminal Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, when the claim has been presented to the Court of Criminal Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies available for that claim." This type of action by the Tennessee Court was anticipated—indeed, invited—by the concurring opinion in *O'Sullivan* v. *Boerckel*, 526 U. S. 838, 849–850 (1999) (opinion of SOUTER, J.).

[4] Federal Rule of Civil Procedure 60(b) provides, in part: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment . . . upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken."

[5] *McQueen* v. *Scroggy*, 99 F. 3d 1302, 1335 (CA6 1996) ("We agree with those circuits that have held that a Rule 60(b) motion is the practical equivalent of a successive habeas corpus petition . . .")

[6] Title 28 U. S. C. § 2244(b)(3)(A) provides: "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

[7] Section § 1631 provides: "Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred." Under Sixth Circuit precedent, a district court presented with a "second or successive" habeas application must transfer it to the Court of Appeals pursuant to that section. See *In re Sims*, 111 F. 3d 45 (CA6 1997).

[8] One paragraph in that order reads as follows: "The order construing an ostensible Rule 60(b) motion as an application for leave to file a second habeas corpus petition . . . is not an appealable order in No. 01–6504, which is therefore DISMISSED for lack of jurisdiction." App. 39.

[9] The two questions presented in the certiorari petition read as follows: "1. Whether the Sixth Circuit erred in holding, in square conflict with decisions of this Court and of other circuits, that every Rule 60(b) Motion constitutes a prohibited 'second or successive' habeas petition as a matter of law.

"2. Whether a court of appeals abuses its discretion in refusing to permit consideration of a vital intervening legal development when the failure to do so precludes a habeas petitioner from ever receiving any adjudication of his claims on the merits." Pet. for Cert.

II

The answer to the jurisdictional questions that we asked the parties to address depends on whether the motion that petitioner filed on November 2, 2001, was properly styled as a Rule 60(b) motion, or was actually an application to file a second or successive habeas corpus petition, as the Court of Appeals held. If it was the latter, petitioner clearly failed to follow the procedure specified in 28 U. S. C. § 2244(b)(3)(A).[10] On the other hand, it is clear that if the motion was a valid Rule 60(b) filing, the Court of Appeals had jurisdiction to review the District Court's denial of relief—either because that denial was a final order from which petitioner filed a timely appeal, or because the District Court had transferred the matter to the Court of Appeals pursuant to § 1631.[11] In either event the issue was properly before the Court of Appeals, and—since the jurisdictional bar in § 2244(b)(3)(E) does not apply to Rule 60(b) motions—we certainly have jurisdiction to review the orders that the Court of Appeals entered on January 18 and February 11, 2002. Thus, in order to resolve both the jurisdictional issues and the questions presented in the certiorari petition, it is necessary to identify the difference, if any, between a Rule 60(b) motion and a second or successive habeas corpus application.

As Judge Tjoflat explained in a recent opinion addressing that precise issue, the difference is defined by the relief that the applicant seeks. Is he seeking relief from a federal court's final order entered in a habeas proceeding on one or more of the grounds set forth in Rule 60(b), or is he seeking relief from a state court's judgment of conviction on the basis of a new constitutional claim? Referring to the difference between a Rule 60(b) motion and a "second or successive" habeas corpus petition, Judge Tjoflat wrote:

> "The distinction lies in the harm each is designed to cure. A 'second or successive' habeas corpus petition, as discussed above, is meant to address two specific types of constitutional claims by prisoners: (1) claims that 'rel[y] on a new rule of constitutional law,' and (2) claims that rely on a rule of constitutional law and are based on evidence that 'could not have been discovered previously through the exercise of due diligence' and would establish the petitioner's factual innocence. 28 U. S. C. § 2244(b)(3)(A). Neither of these types of claims challenges the district court's previous denial of relief under 28 U. S. C. § 2254. Instead, each alleges that the contextual circumstances of the proceeding have changed so much that the petitioner's conviction or sentence now runs afoul of the Constitution.
>
> "In contrast, a motion for relief under Rule 60 of the Federal Rules of Civil Procedure contests the integrity of the proceeding that resulted in the district court's judgment.
>
> . . . . .
>
> "When a habeas corpus petitioner moves for relief under, for example, Rule 60(b)(3), he is impugning the integrity of the district court's judgment rejecting his petition on the ground that the State obtained the judgment by fraud. Asserting this claim is quite different from contending, as the petitioner would in a successive habeas corpus petition, that his conviction or sentence was obtained 'in violation of the Constitution or laws or treaties of the United States.' 28 U. S. C. § 2254(a).
>
> "In sum, a 'second or successive' habeas corpus petition, like all habeas corpus petitions, is meant to remedy constitutional violations (albeit ones which arise out of facts discovered or laws evolved after an initial habeas corpus proceeding), while a Rule 60(b) motion is designed to cure procedural violations in an earlier proceeding—here, a habeas corpus proceeding—that raise questions about that proceeding's integrity.
>
> . . . . .
>
> "As a final note, I would add that this rule is not just consistent with case law, but it also comports with the fair and equitable administration of justice. If, for example, a death row inmate could show that the State indeed committed fraud upon the district court during his habeas corpus proceeding, it would be a miscarriage of justice if we turned a blind eye to such abuse of the judicial process. Nevertheless, this is the result that would occur if habeas corpus petitioners' Rule 60(b) motions were always considered 'second or successive' habeas corpus petitions. After all, a claim of prosecutorial fraud does not rely on 'a new rule of constitutional law' and may not 'establish by clear and convincing evidence that . . . no reasonable factfinder would have found the applicant guilty of the underlying offense.' 28 U. S. C. § 2244(b)(2). It is a claim that nonetheless must be recognized." *Mobley* v. *Head*, 306 F. 3d 1096, 1100–1105 (CA11 2002) (dissenting opinion).

Judge Tjoflat's reasoning is fully consistent with this Court's decisions in *Stewart* v. *Martinez-Villareal*, 523 U. S. 637 (1998), and *Slack* v. *McDaniel*, 529 U. S. 473 (2000). Applying that reasoning to the present case, it is perfectly clear that the petitioner *filed* a proper Rule 60(b) motion. (Whether it should have been granted is a different question.) The motion did not purport to set forth the basis for a second or successive challenge to the state-court judgment of conviction. It did, however, seek relief from the final order entered by the federal court in the habeas proceeding, and it relied on grounds that are either directly or indirectly identified in Rule 60(b) as possible bases for such relief. Essentially it submitted that the "changes in the . . . legal landscape," *Agostini* v. *Felton*, 521 U. S. 203, 215 (1997), effected by Tennessee's new rule demonstrated that the District Court's procedural bar ruling rested on a mistaken premise. In petitioner's view, that mistake constituted a "reason justifying relief from the operation of the judgment" within the meaning of Rule 60(b)(6). Whether one ultimately agrees or disagrees with that submission, it had sufficient arguable merit to persuade at least four Members of this Court to grant his certiorari petition.

III

In the District Court petitioner filed a comprehensive memorandum supporting his submission that his Rule 60(b) motion should be granted. App. 171–267. He has argued that the evidence already presented to the court proves that the prosecutor was guilty of serious misconduct; that affidavits executed by eight members of the

[10] Section § 2244(b)(3)(A) provides: "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Petitioner filed no such motion.

[11] It is of particular importance that petitioner filed his notice of appeal in both the Court of Appeals and the District Court. Regardless of whether the District Court's transfer order divested that court of jurisdiction to conduct further proceedings, petitioner challenged the specific characterization of his 60(b) motion before the two possible courts that could hear his claim.

CRL ISSN 0011-1341

jury that sentenced him to death establish that they would have not voted in favor of the death penalty if they had known the facts that the prosecutor improperly withheld or concealed from them; and that it is inequitable to allow an erroneous procedural ruling to deprive him of a ruling on the merits. In this Court, a brief filed by former prosecutors as *amici curiae* urges us to address the misconduct claim, stressing the importance of condemning the conduct disclosed by the record.[12] Arguably it would be appropriate for us to do so in order to answer the second question presented in the certiorari petition. In my opinion, however, correct procedure requires that the merits of the Rule 60(b) motion be addressed in the first instance by the District Court.

The District Court has already heard the extensive evidence relevant to the prosecutorial misconduct claim, as well as the evidence that persuaded both the Tennessee appellate court and two federal courts that petitioner's trial counsel was ineffective (relief was denied on this claim based on a conclusion that counsel's ineffectiveness did not affect the outcome of the trial). That court is, therefore, in the best position to evaluate the equitable considerations that may be taken into account in ruling on a Rule 60(b) motion. Moreover, simply as a matter of orderly procedure, the court in which the motion was properly filed is the one that should first evaluate its merits.

The Court of Appeals for the Sixth Circuit plainly erred when it characterized petitioner's Rule 60(b) motion as an application for a second or successive habeas petition and denied relief for that reason. The "federalism" concerns that motivated this Court's misguided decisions in *Coleman* v. *Thompson*, 501 U. S. 722 (1991),[13] and *O'Sullivan* v. *Boerckel*, 526 U. S. 838 (1999), do not even arguably support the Sixth Circuit's disposition of petitioner's motion. I would therefore vacate the orders that that court entered on January 18 and February 11, 2002, and remand the case to that court with instructions to direct the District Court to rule on the merits of the 60(b) motion.

THOMAS C. GOLDSTEIN, Washington, D.C. (Amy Howe, Goldstein & Howe PC, William P. Redick Jr., Bradley MacLean, Stites & Harbison PLLC, and James S. Liebman, on the briefs) for petitioner; PAUL G. SUMMERS, Tennessee Attorney General (Michael E. Moore, Sol. Gen., Gordon W. Smith, Assoc. Sol. Gen., and Joseph F. Whalen and Jennifer L. Smith, Asst. Attys. Gen., on the briefs) for respondent; PAUL J. ZIDLICKY, Washington, D.C. (Carter G. Phillips, Gene C. Schaerr, Steven T. Cottreau, Rebecca K. Wood, Sidley Austin Brown & Wood LLP, Bill Pryor, Ala. Atty. Gen., Nathan A. Forrester, Sol. Gen., Janet Napolitano, Ariz. Atty. Gen., Mark Lunsford Pryor, Ark. Atty. Gen., Bill Lockyer, Calif. Atty. Gen., Ken Salazar, Colo. Atty. Gen., John M. Bailey, Conn. Chief State's Atty., M. Jane Brady, Del. Atty. Gen., Robert A. Butterworth, Fla. Atty. Gen., Thurbert E. Baker, Ga. Atty. Gen., Alan G. Lance, Idaho Atty. Gen., James E. Ryan, Ill. Atty. Gen., Steve Carter, Ind. Atty. Gen., Carla J. Stovall, Kan. Atty. Gen., Richard P. Ieyoub, La. Atty. Gen., Thomas F. Reilly, Mass. Atty. Gen., Mike McGrath, Mont. Atty. Gen., Don Stenberg, Neb. Atty. Gen., Frankie Sue Del Papa, Nev. Atty. Gen., David Samson, N.J. Atty. Gen., Wayne Stenehjem, N.D. Atty. Gen., Betty D. Montgomery, Ohio Atty. Gen., W.A. Drew Edmondson, Okla. Atty. Gen., D. Michael Fisher, Pa. Atty. Gen., Charles M. Condon, S.C. Atty. Gen., Mark Barnett, S.D. Atty. Gen., John Cornyn, Tex. Atty. Gen., Mark L. Shurtleff, Utah Atty. Gen., Jerry W. Kilgore, Va. Atty. Gen., Christine O. Gregoire, Wash. Atty. Gen., and Darrell V. McGraw Jr., W.Va. Atty. Gen., on the briefs) for Alabama, et al., as amicus curiae.

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[12] See Brief for Former Prosecutors James F. Neal et al. as *Amici Curiae* 24.

[13] "This is a case about federalism." 501 U. S., at 726.

UNITED STATES FEDERAL COURT

FOR THE DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

-vs- File No. CR.4-89-82(05)

John G. Lambros,

Defendant.

TRANSCRIPT OF PROCEEDINGS in the above-entitled matter before the Honorable Robert G. Renner on February 10, 1997 at United States Federal Courthouse, St. Paul, Minnesota, at 10:00 a.m.

APPEARANCES:

Douglas Peterson, Assistant United States Attorney, appeared as counsel on behalf of the Government.

Colia Ceisel, Attorney, appeared as counsel on behalf of the Defendant.

REPORTED BY:

BARBARA J. EGGERTH, R.P.R.

67 TOTAL PAGES

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Mr. Peterson's level.

On February 10th, I asked for a -- I filed motions regarding funds taken and issues for resentencing as to double jeopardy as past enhancements of past offenses. That's on the -- within the court's record. That deals with forfeiture that took place on -- back in the '70s. This is a March 15th motion to bar past criminal offenses in the resentencing of John Gregory Lambros that will be used to enhance current sentence and place Lambros in a career offender's status due to double jeopardy challenges.. I believe all these are valid Rule 33 motions.

Here, Your Honor, petition on May 7th to the clerk was a motion. Petition for evidentiary hearing, clarification as to the cause of arrest in Brazil on May 17 to determine if prison time in Brazil counts towards Count 1, which you're sentencing me on -- which I assume you'll be sentencing me on today, and -- or towards a parole violation. I was arrested in Brazil on a parole violation, and it's my understanding under the laws of retaking that is the sentence I would

serve first, and I'm looking to this court for an evaluation as to am I serving a sentence right now on Count 1, 2, 3 and 4, or am I serving a sentence under a -- for a parole violation?

THE COURT: Do you have something to add?

THE DEFENDANT: I am asking you which I am being sentenced under. I mean, which -- how I am serving my time right now. Is it proper for me to ask you that?

THE COURT: You can ask it. Your question is on the record. I reserve the right to respond at any time during the course of these proceedings, but at this time I have nothing to say.

THE DEFENDANT: Okay, Your Honor. My position is, number 1, I was arrested on a parole violation. There was no such crime as a parole violation in Brazil. Parole violation is the same as escape, and escape is legal in South America as in most countries and throughout Europe. And that was not part of the extradition agreement with the State Department that I would be tried or sentenced

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

United States of America, Plaintiff, -vs- John Gregory Lambros, Defendant.	4-89 Crim. 82(05) Minneapolis, Minnesota January 27, 1994 3:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
(Sentencing)

BEFORE THE HONORABLE DIANA E. MURPHY,
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Douglas R. Peterson, Assistant U. S. Attorney

For the Defendant: Charles W. Faulkner

Court Reporter: Edith M. Fitto
552 U. S. Courthouse
Minneapolis, Minnesota

50 Page Total

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believes that he should actually get a deduction as a minor or a minimal participant, but certainly not the two-point enhancement.

There's a dispute related to paragraphs 39 and 40 about prior criminal history. The defense position is that the doctrine of specialty in Article 21 of the Treaty of Extradition between the United States and Brazil prohibits consideration of the prior criminal history, parole status, and personal characteristics. The Government believes that there is no breach of the specialty doctrine.

Then on the criminal history, another matter related to the criminal history, in addition to the treaty, relates to juvenile adjudication and misdemeanor. The defense position is that the prior juvenile matters were expunged and shouldn't be considered. Apparently the Probation Office says it looked and couldn't find any record to say that they were expunged.

Okay. If we could then back up to the disputes on the factual matters, I also referred to Mr. Lambros' letter dated January 17th to Mr. Faulkner, which speaks to some of these same points and also says he has a right to have correct information in the PSI.

I'd like to back up now to the particular matters. There has been voluminous materials that have been submitted in writing on this by both sides, which the Court has gone over carefully.

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THE COURT: Well, Mr. --

DEFENDANT LAMBROS: It says marijuana. I want him to --

THE COURT: I just will assume, for purposes of the record, that all of that is true, for purposes of what we have to do today.

DEFENDANT LAMBROS: And on page 7 it talks about committing perjury. Mr. Peterson is saying I don't have implants. Yet the Court won't let me have an MRI. May 6th, I went to Abbott-Northwestern Hospital.

THE COURT: Okay, let's not get into that. I just issued another order on it. I know that you disagree with it, but let's not get into that now.

DEFENDANT LAMBROS: Okay. Number 36, I exercised authority over individuals. I didn't exercise authority over anybody, because I wasn't doing cocaine business. So I disagree with the enhancement of two points.

Number 40 talks about my previous convictions. As to constitutional law in Brazil, the specialty doctrine applies; thus, all previous offenses are not applicable here.

I was arrested on the parole violation warrant. The Supreme Court in Brazil threw it out, because it was not applicable. If you look in the treaty of extradition between the United States and Brazil, you will notice that any offense has to be dealt with in a special --

On the issue of prior criminal history, interesting legal arguments related here relating to the doctrine of specialty. It requires that a defendant may be tried only for the offense for which the asylum country delivered him. In other words, he could be tried only for the offenses for which he was charged in the indictment and under which he was extradited.

But that is what he was tried for. Consideration of his criminal history for sentencing purposes is not the same as trial, and I don't believe there's a violation of the doctrine of specialty. Obviously, Mr. Lambros disagrees, and it will be an issue on appeal.

We find no record that the juvenile adjudication and misdemeanor were expunged, and, therefore, appropriately considered.

Finally, I would determine that the applicable guidelines are:

Total offense level, 37, career offender, sentencing guideline section 4B1.1;

Criminal history category, VI;

360 months to life imprisonment; mandatory life imprisonment on Count I, mandatory minimum of ten years on Counts II and III;

Eight years' supervised release;

$40,000 to $8 million fine, plus cost of

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.

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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).

We find ample basis in the official record to conclude that an objective observer would have 38.

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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

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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 UNITED STATES SENATE COMMITTEE ON THE JUDICIARY TO INVESTIGATE U.S. SENIOR DISTRICT COURT JUDGE ROBERT G. RENNER, DISTRICT OF MINNESOT

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7.	Roland A. Hazelton	
6.	Steve Chase	
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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

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65.	Joshua Cornelius	
64.	TANYA	
63.	BOB HARTLEY	
62.	Rita	
61.	mark cain	
60.	Lavergne Chramosta	Power to the people! why is it "Corporate America" has to decide for us?
59.	Brian Lee Fisk	This is not acceptable
58.	Jean-Charles CABANEL	
57.	Buendia-Aulet Gabriel	
56.	Justin Holmes	
55.	Nee Amaya	
54.	Tyson Dunn	
53.	Andrea Wells	
52.	Justin Micheau	
51.	Philip Ratzsch	
50.	Adam Dunko	
49.	Sage Lara	I hope justice will prevail
48.	Sheila Marie Reynolds	If justice is to prevail, then it must exist in all our endeavours...
47.	Lorie Ann Jeanes	Hey John, the Brazillian Secret Police trashed my apartment and asked about you. Tell Dave and George "Hi". - Dewey, Cheetum & Howe
46.	BILL G. AMANATIDIS	
45.	Dave Donahue	SCREW YOU, BRAZIL!
44.	Jon Burek	
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 Dziaden	Please look into this matter.
40.	Dwayne B. Cooper	
39.	David T. Rhodes	
38.	Todd Vassell	
37.	Tony Emery	
36.	Ronny V. Green	
35.	Theodore Tiger	
34.	Jimmy E. Ennis	
33.	Thomas J. Bartello	
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30.	David S. Mack	
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28.	Horace Barnes	
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42.

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The Extradition, Torture and Electronic Mind Control of U.S. Citizen John Gregory Lambros, a Native of Minnesota

What's new?

"WHERE'S THE JURISDICTION JUDGE ROBERT G. RENNER!" This article was published for the internet magazine JUSTICE DENIED -- The Magazine for the Falsely Convicted, as per their request on November 30, 2002. Please visit the JUSTICE DENIED web site: www.justicedenied.org. This five (5) page story with five (5) pages of exhibits, total ten pages, is being offered in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.**

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LAMBROS IS PREPARING TO REQUEST "SILICONE ANTIBODY TEST" to prove again he has brain control implants. A one page overview as to companies offering SILICONE ANTIBODY TESTING to detect medical problems resulting from silicone toxicity from brain implants and one page from CABRERA vs. CORDIS CORP., 134 F.3d 1418 (9th Cir. 1998) by Barclays Law Publishers in **PDF FORMAT. YOU NEED ADOBE ACROBAT READER TO VIEW AND PRINT THIS DOCUMENT.**

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MAY/JUNE 2002 PRESS RELEASE, entitled "ELECTROMAGNETIC COMMUNICATIONS RESEARCH." Confidential source exposes "PARAMETRIC CAVITIES" as the implants detected in the X-Rays of John Gregory Lambros' SKULL. Please help to distribute this PRESS RELEASE to the global broadcast media. Thank you. Click here for press release..

APPENDIX D.

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PLEADINGS AND OTHER DOCUMENTS RELATING TO THE RE-SENTENCING OF JOHN GREGORY LAMBROS ON REMAND FROM THE EIGHTH CIRCUIT COURT OF APPEALS

October 20, 1995 Informational Memorandum from National Legal Professional Associates [NLPA] to interested counsel and clients regarding the appellate court victory in the Lambros criminal case with information on avoiding statutory life sentences. NLPA assists attorneys with legal research and in preparation of legal pleadings and oral arguments, specializing in federal post-conviction relief.

July 1, 1996 letter from Lambros to his Public Defender Colia Ceisel about issuing subpoenas, conducting depositions, and collecting of evidence for his re-sentencing.

July 2, 1996 letter from Lambros to the Clerk Federal District Court in Minneapolis requesting a formal investigation of Lambros's failure to receive notice of the actions of the United States Supreme Court.

July 9, 1996 letter from Lambros to 2 Leavenworth prison doctors about the competency hearing that will be held prior to Lambros's re-sentencing, and transmitting documents of interest to the doctors.

June 26, 1996 Lambros motion to the U.S. District Court for the District of Minnesota, Third Division, *U.S. v. Lambros*, Criminal File No. CR-4-89-82, to require the Bureau of Prisons to transport Lambros's legal documents with him when he travels to the re-sentencing.

October 1, 1996 Order of the U.S. District Court for the District of Minnesota, Third Division, *U.S. v. Lambros*, Criminal File No. CR-4-89-82, requiring the Bureau of Prisons to transport Lambros's legal documents with him when he travels to the re-sentencing.

July 5, 1996 letter from Lambros to the U.S Parole Office in Minneapolis transmitting information that Lambros wants considered in preparation of the Pre-Sentence Report to be prepared by that office for the re-sentencing

November 20, 1996 letter from Lambros to Federal Judge Renner and Lambros's attorney requesting that Dr. Criqui be subpoenaed to testify at the re-sentencing, and that he be paid by the government.

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 maybe 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 he 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

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exhibit order. CLICK HERE to view these pages in PDF FORMAT. **THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

DOWNLOAD SEPTEMBER 20, 2001, MOTION DOCUMENT HERE IN PDF.

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 20, 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.**

DOWNLOAD OCTOBER 20, 2001, MOTION FOR DISCLOSURE OF DOCUMENTS BY JUDGE RENNER IN THIS ACTION HERE IN PDF.

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 in 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).

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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:

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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 F. 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).

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 hand-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.

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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.

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July 1, 2002, Eighth Circuit Court of Appeals 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.**

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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.

October 19, 2002, filed on November 1, 2002, and placed on the docket of the SUPREME COURT OF THE UNITED STATES on November 12, 2002, as docket number **02-7346**, JOHN G. LAMBROS vs. UNITED STATES, Petition for a Writ of Certiorari. This is the final stage for Lambros' "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." This petition is a total of 93 pages including exhibits and is numbered in the lower right hand corner to assure order in your review. This **PDF FORMATTED DOCUMENT NEEDS ADOBE ACROBAT READER TO VIEW AND PRINT.** (On December 5, 2002 the Solicitor General requested an extension of time to respond.

DOWNLOAD OCTOBER 19,2002, WRIT OF CERTIORARY HERE IN PDF.

The above April 13, 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 13, 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**. (as to Criminal File Number CR-3-76-17, District of Minnesota).

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 Devit. 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.**

DOWNLOAD OCTOBER 12, 2001, WARDEN MICKEY E. RAY LETTER HERE IN PDF.

f. Attorney Peter Thompson, Thompson & Sicoli, LTD, 2520 Park Ave., Minneapolis, Minnesota 55404-4403, 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. if III and 114, 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/ilambros/petition.html

SECOND AND SUCCESSIVE MOTIONS TO VACATE, SET ASIDE, OR CORRECT SENTENCES UNDER TITLE 28 U.S.C. §2255 BY JOHN GREGORY LAMBROS.

The following second or successive motions filed under Title 28 U.S.C. §2255 are directly or indirectly due to the actions of United States Attorney **ROBERT G. RENNER** in **1975** and **1976**, now United States District Court Judge **ROBERT G. RENNER** who resentenced LAMBROS in 1996. You be the judge if **"IMPARTIALITY MIGHT BE QUESTIONED"** as to the actions of **ROBERT G. RENNER**, and then review LAMBROS' 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."

1. April 06, 2001, **(as to Criminal No. 3-76-54, District Court),** "MOTION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE UNDER TITLE 28 U.S.C. §2255 BY A PRISONER IN FEDERAL CUSTODY." Total pages one (1). Also the April 06, 2001, "MOVANT'S [Lambros'] MEMORANDUM OF FACT AND LAW IN SUPPORT OF (AFFIDAVIT FORM) MOTION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE UNDER TITLE 28 U.S.C. §2255 BY A PRISONER IN FEDERAL CUSTODY." Total pages 41 with exhibits. This document was filed in LAMBROS vs. U.S., No. 01-1954MN, Eighth Circuit Court of Appeals and is a **TOTAL OF 43 PAGES WITH EXHIBITS** and certificate of service. Therefore, you are reviewing in **PDF FORMAT** an exact copy of the documents presented to the Eighth Circuit. Of interest is the fact that U.S. Attorney **ROBERT G. RENNER**, on September 14, 1996, directly or indirectly **MANIPULATED** a FEDERAL GRAND JURY in returning an illegal indictment against LAMBROS by not informing the GRAND JURY that they needed to make a probable cause finding that LAMBROS had "POSSESSION" and "INTENT" to distribute a controlled substance. Courts have continually held that the **"POSSESSION"** and **"INTENT"** element must be contained within the indictment for the indictment to be legally sufficient to comply with the GRAND JURY clause of the Fifth Amendment. See, Issue Two (2), pages 19 thru 23 within the MEMORANDUM OF FACTS AND LAW. During trial LAMBROS was found guilty on Counts 4, 5, & 7 and NOT GUILTY on Counts 1, 2, and 3. 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 maybe confusing. 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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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. 76–1580 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-