UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
NO.

RICKEY B. WALLACE, and LINDA SUE ADAMS,	) On Petition for Writ of Mandamus) from the United District Court for the) Southern District of Illinois
Petitioners,	)
v.	) Honorable William D. Stiehl) Senior District Court Judge Presiding)
THE HONORABLE WILLIAM D. STIEHL,	) District No. 97-30006-WDS)
Respondent.	)

PETITION FOR WRIT OF MANDAMUS

Come now Petitioners, Rickey B. Wallace and Linda Sue Adams, by and through their respective attorneys John J. O'Gara, Jr. and John D. Stobbs II, and pursuant to 28 U.S.C.A. § 2106 and Federal Rule of Appellate Procedure 21 request that this Court issue a Writ of Mandamus ordering the Honorable William D. Stiehl to recuse himself from this case, in and in support thereof, state:

I. FACTS

The facts necessary to understand the issues presented are as follows:

1. This matter was originally assigned to the Honorable Paul E. Riley, who recused himself from the criminal portion of this case, but continues to preside over the civil forfeiture proceeding.[1]

When Judge Riley recused himself, the case was subsequently assigned to the Honorable William D. Stiehl who presided over Defendant Wallace's Change of Plea on February 3, 1998. Defendant Wallace subsequently filed a timely Motion to Withdraw Plea,

[1]The undersigned state on information and belief that Judge Riley recused himself because Petitioner Wallace's company installed a roof on Judge Riley's house approximately ten years ago, and that Judge Riley felt under 28 U.S.C.A. § 455, there would be the appearance of impropriety or bias and accordingly recused himself. No Motion to Recuse Judge Riley has been filed by either side in the civil forfeiture case.

which is presently pending before the Honorable William D. Stiehl. Defendant Linda Adams filed a Motion to Sever, which the Government objected to and was denied as being moot by Judge Stiehl which means that recusal of Judge Stiehl would apply to both Petitioners.

In early August of 1998, Defendant Wallace was accused of threatening to murder Judge Stiehl, and these threats were taken seriously by the Federal Bureau of Investigation and the United States Marshal who conducted interviews of Defendant Wallace on August 10, 1998.[2] On August 7, 1998, Assistant U.S. Marshal Bill Presson went to advise the Honorable William D. Stiehl about the death threat, and five days later, on August 12, 1998 the Honorable James L. Foreman entered four Temporary Custody Transfer Orders in Petitioners' case.

The U.S. Attorney's office chose not to open a "miscellaneous remedy" file and instead chose to use the caption of USA v. Rickey Wallace, No. 97-30006-WDS, to allow Judge Foreman to enter the aforesaid Orders in Petitioners' case. Around the time these Orders were entered, Petitioners believe that their file was in Judge Stiehl's chambers.

The murder threat continued to be investigated, and Petitioner Wallace was not "cleared" of the alleged threat or murder charges, until the March 12, 1999 Hearing on Petitioners' Motion to Recuse.

On October 2, 1998, within five weeks of being put on a 24 hour protection detail, Judge Stiehl was made aware of the fact that Petitioner Wallace was the source of the murder plot due to the filing of Petitioners' Joint Motion for Disqualification or Recusal of the

[2]Petitioners hereby incorporate into this Petition for Writ of Mandamus Exhibits A, B, C and D which are their Joint Motion for Disqualification or Recusal of the Honorable William D. Stiehl filed Pursuant to 28 U.S.C.A. §§ 144 and 455, the Government's response thereto, the Petitioners' answer to Government's Response, and Assistant Federal Public Defender Andrea Smith's Affidavit.

Honorable William D. Stiehl filed pursuant to 28 U.S.C.A. §§ 144 and 455(a).[3] The Government responded to this Motion on October 21, 1998 and the Petitioners answered the Response two days later on October 23, 1998. Assistant Federal Public Defender Andrea Smith prepared an affidavit on February 12, 1999 which was filed with the district court on March 2, 1999. The Government provided affidavits from U.S. Marshal Terry Delaney and Assistant U.S. Marshal Bill Presson on the *day of the Hearing*.

The original Motion filed on October 2, 1998 was denied nearly six months later by an Order dated March 25,1999. A Hearing was held on March 12, 1999 where the Honorable Williams D. Stiehl entered an Order denying relief under 28 U.S.C. § 144.[4]

Petitioners presented evidence at the March 12, 1999 Hearing. United States Marshal Terry Delaney testified that while in other Districts a judge was not always told who the source of the threat was, that this was the first time that he was ever directed by the United States Attorney's office not to advise a judge who was making the threat, because the United States Attorney's office did not want Judge Stiehl to recuse himself from this case. (See Exhibit E, Pages I-6)

II. ISSUES PRESENTED

1. Did Judge Stiehl properly apply the constructive reasonable person standard of 28 U.S.C.A. § 455(a) in refusing to recuse himself?

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[3]Incredibly, in his March 25,1999 Order denying the Motion to Recuse, Judge Stiehl devotes nearly 2 pages to discussing Section 455 (b) when in fact the Motion was brought under Section 455(a).

[4]The Order relating to § 144 was entered prior to the Hearing, and at the Hearing it was revealed that Judge Stiehl had not reviewed the Answer to the Government's reply or Andrea Smith's affidavit. Petitioners are not raising in this Petition any argument related to this, since the Answer which Judge Stiehl had not reviewed prior to the March 12, 1999 Hearing dealt with to a large extent 28 U.S.C. § 455(a) and Ms. Smith's affidavit was cumulative to the other evidence produced in support of Petitioners' 144 claim.

2. Should Judge Stiehl have recused himself pursuant to 28 U.S.C.A. 455(a) even though he learned that Petitioner Wallace was behind the murder plot through documents filed in the underlying judicial proceeding?

3. Would an objective outside observer question the propriety of Judge Stiehl continuing to preside over this case knowing that the United States Attorney's office directed the United States Marshal to deviate from security protocol in not telling Judge Stiehl who the source of the alleged murder threat was so that Judge Stiehl would not immediately recuse himself?

4. Should Judge Stiehl have recused himself pursuant to 28 U.S.C.A. Section 455 (a) on October 2, 1998 when he learned through the filing of Petitioners' Joint Motion for Disqualification or Recusal that Petitioner Wallace was the source of the murder threat?

III. WHY THIS COURT SHOULD ISSUE THE WRIT OF MANDAMUS

Since this Honorable Court will have to address the issues presented in section II above, these issues will be discussed seriatim. As a preliminary matter though, Petitioners would point out that what is before this Court is Judge Stiehl's March 25, 1999 Order which held (1) pursuant to *Section 455 (b)* he was not required to recuse himself, (2) the Motion to Recuse constituted "forum shopping" by Petitioners, (3) as of March 25, 1999 he did not know that Petitioner Wallace was the source of the death threat, and (4) there were not sufficient grounds under Section 455 (a) which would require him to recuse himself. Petitioners are expanding on this Order to allow this Court to address all of the issues raised in the District Court.

1. Did Judge Stiehl properly apply the constructive reasonable person standard of 28 U.S.C.A. § 455(a) in refusing to recuse himself?

Prior to the enactment of amended § 455(a), judges generally felt they had a "duty to sit," and the present version of § 455(a) was meant to eliminate this practice. USA v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985) citing Potashnick v. Port City Construction Co., 609 F.2d 1101, 1112 (5th Cir. 1980) shows this change by concluding that "under § 455(a), as amended, if there is any question of impropriety a judge should exercise his discretion in favor of disqualification." In Balistrieri the Defendant moved on four separate occasions to have the judge recuse himself, and when the judge finally decided to recuse himself he categorically denied the allegations raised by Defendants, but his recusal was based on what he felt a reasonable person might find to be an appearance of partiality. Surely, if the judge in Balistrieri, felt that a reasonable person could find an appearance of partiality with regards to the claims made by Defendant, then a casual observer would conclude that Judge Stiehl who was the target of a murder threat would be biased against the source of that threat.

In order to recuse himself pursuant to § 455(a), the moving party does not have to show that the judge is *subjectively* biased or prejudiced, and the *appearance of* prejudice or bias is sufficient. Liteky v. United States, 510 U.S. 540, 553, 114 S.Ct. 1147, 127 L.Ed. 2d 474 (1994) (emphasis added) In this case, the mere fact that Judge Stiehl *knew for almost six months that Petitioner Wallace was the source of the murder threat* would be enough to cause a casual observer to think that any opinion Judge Stiehl rendered would be biased against Petitioner Wallace and Petitioner Adams.

Judge Stiehl's order denying the Motion to Recuse completely ignores the nearly six-month time period in which he was clearly aware that Petitioner Wallace was the alleged source of threats. At page 6 of his March 25,1999 order, Judge Stiehl states "these defendants have not been linked, so far as this Judge knows, to that threat nor identified as sources of that threat." Similarly, on page 2 of this order, he writes that United States v..

Greenspan, 26 F.3d 1001 (10th Cir. 1994)is inapplicable because "this Judge was, and is, un aware of the source of the alleged threat." The use of the word "is" makes Judge Stiehl's entire order contrary to everything which was adduced at the March 12, 1999 Hearing, where the Government never disputed that Petitioner Wallace was the source of the alleged threat. Obviously, the October 2, 1998 filing of the Motion to Recuse would have placed Judge Stiehl on notice, and the judge assuredly knew who the source of the murder threat was at that time.

One of the very objects of the American judicial system is the impartiality of the judiciary in fact and appearance, and Liteky at page 564 held that the standard which should be adopted for any allegation of predisposition, be it extrajudicial or intrajudicial follows from the statute itself, by holding that "disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a ***detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified.*** " (Emphasis added). Justice Kennedy concluded (page 564) that in circumstances where a judge's impartiality could be questioned by a detached observer that "I think that any judge who understands the judicial office and oath would be the first to insist that another judge hear the case."

Recently, this Court In The Matter of Jeffrey Hatcher, 150 F.3d 631, (7th Cir. 1998) concluded that,

> "an objective standard creates problems in implementation, because judges must imagine how a reasonable, well-informed observer of the judicial system would react . . . ***drawing all inferences favorable to the honesty and care of the judge whose conduct has been questioned could collapse the appearance of impropriety standard under § 455(a) into a demand for proof of actual impropriety.*** (emphasis added)

Seven months after the fact, the Government advised Petitioner Wallace for the first time, in open Court, that no murder threat had been made, but that is of little consequence as it

applies to the fact that Judge Stiehl must recuse himself because a reasonable, well-informed observer of the judicial system could conclude that Judge Stiehl would be biased against Petitioners due to the fact that for almost six months he had seething in his mind the knowledge that Petitioner Wallace was the individual who threatened his life and the cause of all of the anxiety surrounding an around the clock watch by the U.S. Marshal.

Judge Stiehl's order never even attempts to make reference to the reasonable person, but "it is essential to hold in mind that these outside observers are less inclined to credit judges' impartiality and mental discipline than the judiciary itself will be." Hatcher page 637 citing Hook v. McDade, 89 F.3d 350, 7th Cir. 1996) . Judge Stiehl is of course taken at his word when he writes on page 6 of the March 25,1999 order 6 that he has no bias or prejudice against either defendant, but Judge Stiehl ***is not*** an outside observer, and therefore in accord with Hatcher, the opinion that counts is someone who is not a member of a judicial system, who must reasonably conclude that Judge Stiehl should have recused himself on October 2, 1998 when he learned who the source of the murder threat was.

In Hatcher, the appearance of bias complained of consisted of the judge sitting in a courtroom a few times to watch his son who was an intern with the U.S. Attorney's office in a case which was related to a case which the judge eventually presided over. It is not a quantum leap in logic for this Court to conclude that a judge whose life has been threatened, and whose family has been put on an around the clock watch by the U.S. Marshal could be prejudiced and biased against the source of the threat, and by properly applying the constructive reasonable person standard it is evident Judge Stiehl should have recused himself on October 2, 1998 or as soon thereafter as possible to avoid the appearance of bias.

Even if an alleged murder plot could lead a reasonable person to be unsure as to whether or not Judge Stiehl should have recused himself on October 2, 1998, Hatcher is clear

that by remaining on the case Judge Stiehl would create an appearance of impropriety, and he therefore should be ordered to recuse himself.

The judge originally assigned to hear the Oklahoma City bombing case refused to recuse himself, and in Nichols v. Alley, 71 F.3d 347 (10th Cir. 1995), the Tenth Circuit granted the Petitioner's Petition for Writ of Mandamus and concluded that "if the question of whether §455(a) requires disqualification is a close one, the balance tips in favor of recusal," (Page 352) and again, even if this were a "close case," this Court should reach the same conclusion here as it did in Hatcher since the circumstances in this case are much more egregious as they relate to apparent bias and would cause a reasonable person to perceive that Judge Stiehl would resolve this case on a basis other than the merits.

The notion of what a reasonable person would conclude will permeate each and every aspect of this Petition for Writ of Mandamus, and in each instance the conclusion will be that a reasonable person could conclude that Judge Stiehl could not remain impartial after knowing for over six months that Petitioner Wallace was the source of the murder threat which caused Judge Stiehl and his family to have around the clock protection by the U.S. Marshal for ten days.

2. Should Judge Stiehl have recused himself pursuant to 28 U.S.C.A. 455(a) even though he learned that Petitioner Wallace was behind the murder plot through documents filed in the underlying judicial proceeding?

The Government has previously argued that by learning of the murder plot through documents filed in the underlying proceeding Judge Stiehl's knowledge is not "extrajudicial," and therefore he is not required to recuse himself. In arguing this position, no reference is made to the seminal case discussing what constitutes an extrajudicial source, Liteky v. United States, 510 U.S. 540, 114 S.Ct. 1147, 127 L. Ed. 2d 474 (1994) which held

that there is no per se rule requiring that the alleged partiality of a judge arise from an extrajudicial source.

Here, Judge Stiehl disqualified Petitioner Wallace's previous attorney as a result of the attorney and Petitioner Wallace allegedly threatening witnesses. Judge Stiehl truly believed that Petitioner Wallace was a dangerous person as witnessed by his June 9, 1998 Order, where on page 3 footnote 3 he stated:

> ***"Specifically, agent Rentfro testified that the Diaz family had been told that if Ubaldo Diaz, II, testified his arm would be "delivered" to the Diaz family."***

As seen in the attached excerpts from Agent Rentfro's testimony (Exhibit G), Agent Rentfro testified (page 45) that "harm would come to the Diaz family." Further, at page 53 of the transcript, Agent Rentfro clearly testified that the threats were "just generalized as harm was the word that was used."

So, prior to being told of the murder plot against him, Judge Stiehl already had in his mind without any facts revealed in open Court to support the conclusion that Petitioner Wallace was a dangerous person. When he learned a mere six weeks after being told that there was a plot to murder him and that this dangerous individual who cut people's arms off was behind the murder plot creates a condition for bias or prejudice and under Liteky would cause Judge Stiehl to recuse himself. Justice Kennedy concurred in Liteky and stated on page 557 that "placing too much emphasis upon whether the source is extrajudicial or intrajudicial distracts from the central inquiry." The central inquiry here is whether or not knowing for nearly six months that Petitioner Wallace was the source of a murder plot would cause a reasonable person to conclude that Judge Stiehl would be biased and the answer is "yes."

Regardless, the ***threat*** and ensuing investigation are extrajudicial, USA v. Greenspan, 26 F.3d 1001 (10th Cir. 1994) and accordingly Judge Stiehl should have recused himself once he learned who the source of the murder threat was.

In Greenspan, the presiding judge was told of a murder plot against him which like here was taken seriously by all involved, yet just as in the case at bar the presiding judge in Greenspan refused to recuse himself, and Court concluded on page 1007 that "even if this judge were one of those remarkable individuals who could ignore the personal implication of such a threat, the public reasonably could doubt his ability to do so."

There is no doubt that it would be difficult for any judge to conclude that he would be biased, but the central inquiry under § 455(a) is the appearance of partiality rather than the place of its origin, and "if through obduracy, honest mistake, or simple inability to attain self knowledge the judge fails to acknowledge a disqualifying disposition or circumstance, an appellate court must order recusal no matter what the source." Liteky, page 563

In its Response to Petitioner's Motion to Recuse and at the March 12, 1999 Hearing the Government and Judge Stiehl in his March 25, 1999 order hypothesize that an accused in order to get a new judge could make a threat against a judge. This was addressed and dismissed in due fashion by both Liteky and Greenspan.

As an initial matter, no facts were presented whatsoever which would lead the court to the conclusion that Petitioner Wallace purposefully made a threat in order to force the recusal of Judge Stiehl. This case, as in Greenspan, revolves around an accusation of a threat which was by its very nature intended not to be communicated directly to the court. As the Greenspan court noted on page 1007, "an uncommunicated threat will, by definition, not be an effective recusal device ... threats against judges are serious crimes, and any such ploy

would likely result in further ancillary prosecution against the defendant in a way that may significantly multiply his or her problems with the law."

Similarly, in this case it is clear that the alleged threat was not made under circumstances that would make it likely that the threat was intended as a device to obtain a recusal, since among other things, Petitioner Wallace was placed in solitary confinement for 25 days. Petitioner Wallace's alleged threats were made in a jail cell to a Government witness. Likewise, the investigation took several weeks and a number of people at the federal courthouse in East St. Louis were directly or indirectly aware that Petitioner Wallace was the source of the alleged threats.

Liteky and Greenspan both show that ***how*** Judge Stiehl learned of the murder threat is not what needs to be focused on; rather, the focus of the inquiry is whether or not a reasonable person outside the judicial system could possibly conclude that Judge Stiehl could remain unbiased throughout the proceedings, and the answer is "no."

3. Would an objective outside observer question the propriety of Judge Stiehl remaining in this case knowing that the United States Attorney's office directed the United States Marshal to deviate from security protocol in not telling Judge Stiehl who the source of the alleged murder threat was so that Judge Stiehl would not be forced to recuse himself?

Judge Stiehl's March 25, 1999 Order speculates about other defendants who would set up a false straw-man and knock it down with affidavits such as those presented in this case. Quite simply, this hypothetical completely misstates and misapplies the facts presented. Judge Stiehl states on pages 5 and 6 that:

> "anytime a defendant did not like a judge or his rulings, all the defendant need do is drop a suggestion, or have someone else claim, that there was a threat against that Judge. Thereafter, the defendant could knock down his straw man by both denying any involvement in the threat to and the same time claiming

> that because of the mere existence of the threat, the judge was to biased or prejudice against the defendant to remain on the case."

Judge Stiehl went on to conclude that just as in Greenspan, one of the Petitioners' objectives, was to use the opportunity of an alleged threat to make recusal mandatory.

Greenspan holds that just because a death threat is made against a judge, it does not necessarily follow that the judge will have to recuse himself under § 455(a). If the Court concludes that a *motivation* of the Defendant is to force the judge to recuse himself, then it is not necessary for that particular judge to recuse himself. However, in this case, the alleged murder threat was taken very seriously by all parties, and no mention was made in any of the Pleadings or at the March 12, 1999 Hearing that the threat was for the purpose of recusal, so the hypothetical posed by the Government and Judge Stiehl is of no concern in this case.

The claim that the Petitioners' motivation of making a threat, denying it and thereby forcing a refusal is patently without merit. No facts produced by the Government or the Petitioners supports this false conclusion. Petitioners did not initiate the investigation of the alleged threat, and Petitioner Wallace certainly did not volunteer to be place in solitary confinement for 25 days while the threat was investigated. The investigation into the threat and repercussions following therefrom, which was completely unintended by the Petitioners, is what lead them to conclude Judge Stiehl should recuse himself and was a reason why they filed their petition to recuse Judge Stiehl.

Judge Stiehl's order of March 25, 1999 concludes that Petitioners' Motion to Recuse "smacks of forum shopping." Petitioners only desire is to have their case heard by a judge who has not previously made erroneous conclusions that Petitioner Wallace would deliver arms to potential witness' families, and Petitioners desire to have their case heard by a judge who has not labored for nearly six months under the belief that one of them had threatened to initiate an assassination plot against him. That desire is not forum shopping. It is a request

for impartial justice. Petitioners submit that it matters not to them which judge hears this case, so long as it is not one who has been tainted by a murder threat.

The converse is true of the hypothetical regarding motives for recusal and the claim of forum shopping. The Government in this case selectively directed the United States Marshal ***not*** to tell a particular judge who the source of a death threat was so that if the accused person filed a Motion to Recuse the Government could claim that the information was not extrajudicial and therefore the judge would not be forced to recuse himself. Alternatively, if there were a particular judge that the Government for whatever did not want to hear the case, it could direct the United States Marshal to tell that judge who the source of the threat was so that the case could be transferred to another judge. One has to question the motives of the United States Attorney's office in this particular case, insofar as in the Southern District of Illinois this is the ***first time*** in twelve prior threats that Marshal Delaney was directed not to tell a judge who the source of the threat was because the Government did not want Judge Stiehl to have to recuse himself. A more textbook example of forum shopping cannot be found.

The United States Attorney's office, by purposefully omitting information that was provided on twelve other occasions to sitting federal district judges is explicitly choosing its forum for deciding this case. This choice was unilaterally made by the United States Attorney and by definition was made by the executive branch of the Government. By omitting information, the United States Attorney's office is in fact violating the separation of powers in that its decision to omit the source of the alleged threats dictates which judge should preside over this case and in effect how the judicial branch should operate.

It is axiomatic that justice not only be impartial, but also that it must reasonably be perceived to be impartial. Not only would a reasonable person question Judge Stiehl's

impartiality in light of his knowledge that an investigation was being conducted into alleged death threats against him by Petitioner Wallace, but public confidence in the integrity of the judicial process is also brought into question when one of the parties to this proceeding has unilaterally decided which facts can be made known to the Court.

In this case, Judge Riley recused himself without a motion being filed for reasons which pale in comparison to the facts presented in this Petition for Writ of Mandamus. Clearly then, this Honorable Court should order Judge Stiehl to recuse himself.

4. Should Judge Stiehl have recused himself pursuant to 28 U.S.C.A. Section 455 (a) on October 2, 1998 when he learned through the filing of Petitioners' Joint Motion for Disqualification or Recusal that Petitioner Wallace was the source of the murder threat?

Again, Judge Stiehl never fully addresses Section 455 (a), and instead focuses on Section 455 (b), but the heart of the Government's argument against recusal is that Judge Stiehl's knowledge of the source of the threat was the filing of the Motion for Recusal on October 2, 1998, and therefore he is not required to recuse himself. The Government has never claimed that the murder threat was meant to force Judge Stiehl to recuse himself, but instead feels that because Judge Stiehl never knew who the source of the murder plot was until October 2, 1998 he should not have to recuse himself.

However, the Government and Judge Stiehl fail to mention Liljeberg v. Health Services Acquisition Corporation, 46 U.S. 47; 108 S.Ct. 2194; 100 L. Ed. 2d 855 (1988) which involved a judge who did not realize he had a conflict until ***after the proceedings concluded*** when one of the parties filed a post trial Motion indicating that the trial judge had a conflict of interest and should have recused himself. The Supreme Court held that even though Judge Collins had no actual knowledge at the time he entered his decision, since his

impartiality might reasonably have been questioned he should have recused himself. In this case, within five weeks after his 24-hour protection detail ended, Judge Stiehl knew that the source of the murder threat was Petitioner Wallace, and any contention that the timing of Judge Stiehl's knowledge prohibits him from recusing himself is simply contrary to the holding in Liljeberg.

There are two relevant time periods in this case, namely the six-week period from the beginning of August 1998 until October 1, 1998 when Judge Stiehl was aware of the murder threat, but was not told who the source of the threat was due to the Marshal being directed not to tell him, and the nearly six-month period from the October 2, 1998 filing of Petitioners' Motion to Recuse until the March 12, 1999 Hearing. During this nearly six-month period, it festered in Judge Stiehl's mind that Petitioner Wallace was the person that caused discomfort to himself and his family, and the ensuing fear that goes along with this, especially considering the fact that in his June 9, 1998 Order Judge Stiehl realized that because of prior threats allegedly made, Petitioner Wallace was a dangerous person.

Under § 455(a), the appearance of impartiality is the relevant consideration, and it is improper to focus on where the impartiality or bias originated or how it was disclosed. Whether or not Judge Stiehl had actual knowledge that Petitioner Wallace had threatened his life during this short six-week interval is irrelevant, since a reasonable person could conclude that Judge Stiehl could have known who the source of the threat was. The facts in this case lead to this conclusion, especially since Petitioners' file was in Judge Stiehl's chambers when the Transfer Orders were entered by another judge.

Liljeberg also held that recusal of a federal judge is required even though the judge lacks actual knowledge of the facts indicating the judge's interest or bias in the case "if a reasonable person, knowing all the circumstances would expect that the judge would have

such actual knowledge" and under the Liljeberg standard, this Court's focus should be on the six-month period that Judge Stiehl truly knew who the source of the murder threat was, rather than on the short period of time that Petitioners waited for Judge Stiehl to recuse himself sua sponte.

When discussing violations of § 455, the Supreme Court in Liljeberg looked at the risk of undermining the public's confidence in the judicial process, and concluded that 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." The Government and Judge Stiehl's argument concludes that scienter is a prerequisite before § 455(a) is triggered, and this is simply against the holding in Liljeberg, (page 849), since a scienter requirement would contravene § 455(a)'s language and purpose of promoting public confidence in the integrity of the judicial system. There would be absolutely no appearance of justice if a judge, who allowed a bias like this to fester in his mind for six months were not required to recuse himself, because again a casual observer would objectively conclude that Judge Stiehl could not be partial to Petitioners.

Section 455(a), was enacted to promote public confidence in the integrity of the judicial process, which does not depend upon a judge's actual knowledge, and Liljeberg addressed the concept of retroactivity when on page 860 it held that "in proper cases, (§ 455 can) be applied retroactively," and that "the judge is not called upon to perform an impossible feat. Rather, he is called upon to rectify an oversight and to take the steps necessary to maintain public confidence in the impartiality of the judiciary." Liljeberg goes on to say at page 864 that "people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges." Everyone agrees that Judge Stiehl's integrity is beyond reproach, but as has been stated throughout this Petition

the standard is what an objective "outsider" would think, and Liljeberg supports the position that pursuant to § 455(a) Judge Stiehl should have recused himself when he learned on October 2, 1998 that Petitioner Wallace was the source of the murder threat.

IV. RELIEF REQUESTED

Petitioners request that this Court invoke its power under 28 U.S.C.A. § 2106 and Federal Rule of Appellate Procedure 21, and issue a writ of mandamus requiring Judge Stiehl to recuse himself.

RICKEY B. WALLACE

O'GARA LAW OFFICES

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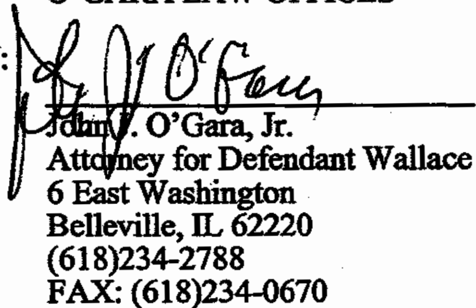

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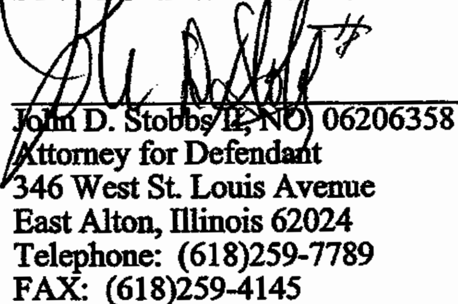

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