UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KEVIN P. O'NEILL,
Petitioner,

V. Criminal Case No. 97-CR-98-JPS

UNITED STATES OF AMERICA,
Respondent. Civil Case No. 04-CV-0461-JPS

O'NEILL'S VERIFIED MOTION FOR RELIEF FROM JUDGMENT FOR PARTICIPATION OF A DISQUALIFIED JUDGE UNDER FED. R. CIV. P. 60(b)(6), 28 U.S.C. § 455(a)-(b) AND THE DUE PROCESS CLAUSE

Kevin O'Neill ("Mr. O'Neill" or "Petitioner"), *pro se*, hereby moves the district court under Federal Rule of Civil Procedure 60(b)(6), 28 U.S.C. §§ 455(a)&(b), and the Fifth Amendment's Due Process Clause of the United States Constitution, for disqualification of Judge J.P. Stadtmueller and vacatur of the resulting judgment and sentence. Petitioner has recently discovered specific allegations by a law enforcement agent intricately involved in the underlying criminal investigation which reveal—prior to indictment—the judge undertook to participate as counsel and/or advisor for the Department of Justice ("DOJ") in a bizarre investigative scheme involving the fabrication and dissemination of fraudulent grand jury testimony as well as conduct

that violated federal conspiracy laws. Moreover, government counsel, the agents involved, as well as the subject judge, intentionally concealed the underlying scheme, and records thereof, preventing Mr. O'Neill and his defense counsel from discovering this cause of action in a timely manner.

As grounds for justifying relief from the operation of the judgment, Plaintiff presents as follows:

I. BACKGROUND

At sometime in early 2017, Mr. O'Neill obtained a memoir authored by retired Milwaukee Police Department ("MPD") Detective, Roger Hinterthuer ("MPD Hinterthuer"). *See* ROGER HINTERTHUER, *Justice Delayed is Justice Denied*, (2015) (www.iuniverse.com)("the Book")(relevant pages submitted herein, 274-278, 282-283; Sep. App. 1-5). [1] In July 1994, MPD Hinterthuer was one of five MPD officers appointed to a federal task force to investigate Mr. O'Neill and other members and/or associates of the Outlaws Motorcycle Club ("OMC"). In a May 9, 1996 progress report labeled "Sensitive/Significant" authored by Special Agent Sandra M. DeValkenaere ("Agent DeValkenaere"), the case agent in the underlying investigation with the Alcohol, Tobacco, Firearms and Explosives ("ATF"), MPD Hinterthuer is commemorated for "provid[ing] significant assistance in [the subject] investigation." (Sep. App. 6); *see also* Kurt Chandler, *Justice Denied*, MILWAUKEE MAGAZINE, 36, 44 (March, 2001)

[1] "Sep. App." = Petitioner's Separate Appendix filed herewith.

(www.milwaukeemagazine)("In July 1994, a task force made up of federal, state and local agents was formed to investigate the criminal activities of the Wisconsin Outlaws. [MPD] Hinterthuer was one of five Milwaukee Police officers appointed to the unit. Hinterthuer had become obsessed with the unsolved Outlaws murders.").

According to MPD Hinterthuer, sometime in 1994 as the government was making preparations for court-authorized wire and oral interceptions, as well as the systematic deployment of pre-arranged controlled phone calls designed to elicit statements from Mr. O'Neill and others, the Book unequivocally reveals details of a "scheme" to fabricate "false Grand Jury testimony" and to furthermore disseminate or leak fraudulent transcripts of such testimony by way of a court reporter to the target(s) of the investigation. [2] (The Book at 274-278, 282-283; Sep. App. 2-5). In addition, the Book specifically discloses for the first time a collusion between Agent DeValkenaere, [3] MPD Hinterthuer, Assistant United States Attorney Paul L. Kanter ("AUSA Kanter")—in concerted action with United States District Court Judge, J.P. Stadtmueller—whereby

[2] In a July 31, 1996 ATF progress report authored by Agent DeValkenaere, the report identifies the main targets of the investigation as Kevin P. O'Neill, John W. Buschman and other members of the OMC. (Sep. App. 9-10). A "target" in the judgment of the prosecutor is a "putative defendant." (*See* USAM 9-11.151).

[3] During the course of the investigation and evidently to date, MPD Hinterthuer appears to have manifested a deep romantic infatuation for Agent DeValkenaere and she is therefore referred to in his memoir by the pseudonym "Sharon Walker." (The Book, 182-183, 292).

combined and agreed, to solicit, induce, "or otherwise endeavor[ed] to persuade such other person[s] to engage" in the "attempted use, or threatened use of physical force ... against the person of another" in violation of Title 18, United States Code Section 373, and Title 18, United States Code Section 371. Indeed, the Book reveals that AUSA Kanter personally fabricated the subject grand jury testimony with an intent the scheme would expose MPD Hinterthuer "to some extreme danger," (the Book at 277), and more striking, "[t]he [investigative] operation was approved by Judge Stadtmueller, and Kathy [DeVillers] had prepared Kanter's 'Official Transcript of Testimony.'" (*Id*. at 278, 283). Under the direction of AUSA Kanter and approval of Judge Stadtmueller the conspirators knowingly and willfully made use of the fraudulent grand jury transcript by leaking such false document into the public domain by way of an official court reporter, Kathy DeVillers. (*Id*. at 278).

The subject "scheme" was an investigative technique/scenario affectionately referred to by Agent DeValkenaere and AUSA Kanter alike as "stirring the pot." [4] Specifically,

[4] MPD Charles Berard was directed and supervised by Agent DeValkenaere, and AUSA Kanter was "instrumental in directing the investigative techniques and activities of [the subject] investigation." (Sep. App. 7). Berard testified at the underlying criminal trial that to "stir the pot" means: "to do something to make another course of action happen or occur." (Testimony of Charles Berard, May 10, 2000, Criminal Docket # 1885 at 8). Also worth noting, AUSA Kanter is referenced by the agents in the Book by the moniker, "Mr. Smooth," (*Id*., at 220) seemingly dubbed such for his often cavalier attitude towards pushing the limits of federal power. *See e.g.*, *United States v. Van Engel*, 809 F. Supp. 1360, 1365 (E.D.Wis.1992)(AUSA Kanter engaged in a discussion with a grand jury about the law by saying: "... you know lawyers; they have to come up with stupid words to make themselves look important. And since Congress, of course, is made of primarily lawyers, all our laws are written stupidly, and no one can

while at a rendezvous with Agent DeValkenaere in a booth at a bar in Milwaukee, MPD Hinterthuer recounted:

> "What if someone leaked fictitious grand [j]ury testimony? You know, we can just make something up. If it's fictitious it's not a violation of [f]ederal rules, and we're not in any trouble."

(The Book at 274). Further in the formulation of the scheme, the Book reveals its intent will be for the target(s) to believe that MPD Hinterthuer—and him alone—was the sole-

> "witness who [could] summarize[ ] all the investigation, including forensic evidence such as DNA, which positively linked [the target] with the bomb. He wouldn't know it was all bullshit. He might decide he had to do something about it, especially if he thought that [I] was the only reason the case didn't go away."

(*Id*. at 274).

The Book continues with MPD Hinterthuer and Agent DeValkenaere "clink[ing] [their] glasses together and each took a long swig" in agreement to go forward with the scheme as well as DeValkenaere recognizing "it's going to expose you to danger" along with two other (named) witnesses that had already appeared in front of the grand jury. (*Id*. at 274).

Agent DeValkenaere further pondered, "I don't know[,] I don't want anything to happen to you. How do you propose we leak this false Grand Jury testimony anyway?" (*Id*. at 274).

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understand them but lawyers, and that keeps lawyers employed.").

MPD Hinterthuer then suggests, "[w]e use your court reporter friend. What's her name?"

Agent DeValkenaere replies:

> "Kathy DeVillers [but] Kathy might not want to get involved, especially if it involves her brother Michael. ... Before we do this, I have to run it past [AUSA] Kanter to see if it's even possible. I'll go see him in the morning. ... I can handle Mr. Smooth better alone."

(*Id*. at 275).

The following afternoon Agent DeValkenaere called MPD Hinterthuer and verified the scheme was "a go" and she'll talk to Kathy DeVillers later that day. (*Id*. at 275). Agent DeValkenaere subsequently took Kathy DeVillers to lunch and "reassured her that the plan was perfectly legal, and they had run the whole thing past the U.S. Attorney first and had gotten his O.K." (*Id*. at 276). Ms. DeVillers agreed as long as "[AUSA] Attorney Kanter approve[d]." (*Id*. at 277). An exuberate Agent DeValkenaere agreed to provide the court reporter with "the phony testimony as soon as it's approved[,]" and left to "go see Kanter" immediately. (*Id*. at 277).

According to the Book, AUSA Kanter stated that "I'm going to approve this operation, but I want to fabricate the Grand Jury testimony myself. I'll need to get the judge's permission [and] Roger is exposing himself to some extreme danger." (*Id*. at 277).

MPD Hinterthuer further commemorates:

> "A few days later, the testimony was ready. It led the reader to one conclusion. My testimony was crucial to the entire case. I was [the target's] biggest threat. The operation was approved by Judge Stadtmueller, and Kathy [DeVillers] had prepared Kanter's 'Official Transcript of Testimony' which she now agreed to give to her brother Michael, hoping he would pass it along [to the target(s)].

(*Id*. at 278).

In addition, and yet more witnesses to the fraudulent-grand jury-transcript scheme, MPD Hinterthuer was summoned to a meeting at the MPD with his (then) supervisor, Inspector Vince Partipillo, Chief of Detectives. Also present was Captain Dan Kosinski, Lieutenant Don Werra, Pete Simet and Joe Gargerman. [5] MPD Hinterthuer revealed the scheme to them and further confirmed dissemination of the fraudulent transcript:

> "Well, somehow [the target] got hold [sic] of Grand Jury testimony that I hope will push him over the edge. If so he is likely to target one of the witnesses."

(*Id*. at 283). A "steaming" mad Inspector Partipillo demanded to know "who approved" a scheme of this nature and MPD Hinterthuer reaffirmed:

> "The U.S. Attorney, [sic] Paul Kanter approved it, and Judge Stadtmueller concurred. Kanter even prepared the false testimony for me[.]"

(*Id*. at 283).

After hearing of this revelation, and apparently forever etched in his mind, the Book memorializes the reaction of the law enforcement officers present:

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[5] MPD Detective Pete Simet testified at Mr. O'Neill's criminal trial and is also recognized by the ATF for "provid[ing] significant assistance in the [subject] investigation." (*See* Sep. App. 6-7).

> "There was silence in the room while the bosses all looked at each other with what I thought was a dumbfounded expression."

(*Id*. at 283).

II. PETITIONER'S ATTEMPTS TO DEVELOP THE RECORD

A. Freedom of Information Act requests

By letter dated March 8, 2017, Mr. O'Neill filed a verified Freedom of Information Act ("FOIA") request under 5 U.S.C. § 552, and "Notice of Disqualifying Facts" to the Executive Office for U.S. Attorneys ("EOUSA")(Request No. FOIA-2017-00950), ATF, U.S. Attorney's Office for the Eastern District of Wisconsin, and to the Director of Public Affairs for the DOJ. [6] Mr. O'Neill requested "an exact, unredacted copy of the subject transcripts given the fact it has been previously released into the public domain."

By letter dated August 14, 2017, the EOUSA asserted that the U.S. Attorney's Office in Milwaukee "has performed a search for responsive records and advised that to the extent that responsive records exist *THEY ARE GRAND JURY RECORDS*." (Sep. App. 11)(emphasis supplied). The EOUSA further determined:

> Grand jury material is exempt from mandatory release pursuant to 5 U.S.C. § 552(b)(3), which exempts from release "matter specifically exempted from disclosure by statute." Since Rule 6(e) of the Federal Rules of Criminal Procedure (Pub. L. 95-78, 91 Stat. 319 (1977)) provides that grand jury proceedings shall be secret, disclosure of

[6] Mr. O'Neill requested expedited processing which required a showing that the subject matter of the request involves "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." Quoting 28 C.F.R. § 16.5(e)(1)(iv)(as revised April 3, 2015).

> grand jury information is prohibited by law. Therefore, this is a full denial.

(Sep. App. 11).

By letter dated September 6, 2017, Mr. O'Neill appealed the EOUSA's adverse determination to the Office of Information Policy ("OIP"). (OIP Appeal No. DOJ-AP-2017-006957). [7]

B. Mr. O'Neill's Judicial Misconduct Complaint

On September 27, 2017, Mr. O'Neill filed a Complaint of Judicial Misconduct under 28 U.S.C. § 351(a) and Rule 6(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings to the Judicial Council of the Seventh Circuit. The complaint presented Judge Stadtmueller's role and concealment in the fraudulent-grand jury-transcript scheme as well as his failure to recuse in the subsequent criminal proceedings. (Judicial Complaint No. 07-17-90045).

By Memorandum dated October 11, 2017, Chief Judge Diane P. Wood dismissed the complaint by stating:

[7] To date, ATF has utterly failed to comply with its statutory and regulatory obligations under the FOIA by remaining silent to Mr. O'Neill's request for a copy of the fraudulent grand jury testimony/transcript. In a previous FOIA litigation against the ATF, Agent DeValkenaere declared under the penalty of perjury that "[a]s the lead case agent on the Outlaws investigation, I have access to and control of all the documents that are maintained by ATF relative to the investigation." *See* January 5, 2004 Declaration of ATF Special Agent Sandra M. DeValkenaere. (Sep. App. 16-17).

> Complainant has filed a judicial misconduct complaint against the judge assigned to his criminal proceedings, which took place more than 20 years ago. The complaint asserts that the judge gave his permission for the prosecutors to use a court reporter to leak to the public a fictitious grand jury transcript, in which a witness was identified. The goal of the leak was to gather evidence for the proceeding against the complainant. Complainant asserts that the alleged leak violated Federal Rule of Criminal Procedure 6(e)(2), which governs the secrecy of grand jury materials. The fictitious transcript does not qualify as 'grand jury matter,' however, because it was fake. To the extent that the complaint raises issues about the use of deceit or fictitious materials, that goes to the merits of the proceeding and thus falls outside the scope of the Judicial-Conduct and Judicial-Disability process.
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> Complainant also argues that the judge engaged in misconduct when he failed to recuse pursuant to 28 U.S.C. § 455 from the complainant's criminal trial. Once again, the judge's alleged role in the leak of the fictitious transcript is a question involving the merits of the procedures used and thus not a matter for the misconduct process. More generally, a complaint that the judge should have recused himself is 'directly related to the merits of a decision or procedural ruling' and thus must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 11(c)(1)(B). 'Any allegation that calls into question the correctness of an official action of a judge ... is merits-related.' Standard 2 for Assessing Compliance with the Act, Implementation of the Judicial-Conduct and Disability Act of 1980: A Report to the Chief Justice 145 (2006).

(Sep. App. 13). On November 8, 2017, Mr. O'Neill submitted a "Petition for Review of [the] Chief-Judge's Disposition to the Judicial Council. Among other arguments, Mr. O'Neill presented:

> There is no indication that the chief judge contacted any of the actors involved in the scheme to investigate the actual content of the fabricated testimony. More so, the U.S. Attorney's Office in Milwaukee, in its statutory FOIA response, asserts that the fabricated transcript is indeed "grand jury records." (Exhibit 3 at 1). The Commentary on Rule 11 states that dismissal is not appropriate "if potential witnesses who are reasonably accessible have not been questioned, then the matter remains reasonably in

> dispute." (Citing Judicial Conduct and Disability Act Study Committee ("Breyer Committee Report"), 239 F.R.D. 116, 243 (Sept. 2006)).
>
> Therefore, whether disclosure of the fabricated grand jury transcript to the targets of the scheme constituted disclosure of grand jury information prohibited by law remains a disputed issue of material fact. *See also* Commentary on Rule 11 ("In conducting a limited inquiry under subsection (b), the chief judge ***must*** avoid determinations of reasonably disputed issues, including reasonably disputed issues as to whether the facts alleged constitute misconduct ..., which are ordinarily left to the judicial council and its special committee.")(Emphasis added). In the end, without actually reviewing the fabricated grand jury transcript, or at the very least questioning AUSA Kanter, the court reporter, or subject judge on its content, the transcript may very well qualify as grand jury matter if it "'reveal[s] the strategy or direction of the investigation, the nature of the evidence produced before the grand jury, the views expressed by members of the grand jury, or anything else that actually occurred before the grand jury.'" *In re Complaint Against Circuit Judge Cudahy*, 294 F.3d 947, 951 (7th Circuit Judicial Council 2002)(quoting U.S. Department of Justice, federal Grand Jury Practice 157 1993)).

(Petition for Review at 3). [8]

Moreover, Mr. O'Neill argued this was "a scheme that was unequivocally designed with an incantation to induce and facilitate a violent confrontation—conduct clearly

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[8] *See supra*, *Justice Denied*, MILWAUKEE MAGAZINE at 44:

> "Under RICO, an individual associated with an organized group could be prosecuted for a series of criminal activities. Conceivably, [federal] prosecutors could reach back in time to the 1974 bombing.
>
> A federal grand jury was convened. Although grand jury testimony is always made in secret, several sources say testimony was taken of Willy Cresca, BillyWadsworth and Cliff Machan's girlfriend, among others, based on the interviews [MPD] Hinterthuer and other detectives had already done.
>
> The case, however, didn't meet federal requirements under RICO, and with the approval of U.S. District Judge J.P. Stadtmueller, the sworn grand jury testimony was handed back to Milwaukee and Waukesha counties."

(*Id*.).

covered by the plain language in 18 U.S.C. § 373, and 18 U.S.C. § 371." (Petition for Review at 4)(citation to exhibit & footnote omitted). The chief judge determined that "the [subject] judge's alleged role in the leak of the fictitious transcript is a question involving the merits of the procedures used and thus not a matter for this misconduct process." (Memorandum at 1).

On January 2, 2018, the Judicial Council denied the petition with no reasoned legal analysis nor citation to authority. (Sep. App. 15).

III. THE SELF-ENFORCING MECHANISM OF 28 U.S.C. SECTION 455 FAILED IN THIS CASE

In principle, justice is blind. Everyone is equal before the law, judged by facts and legal precedent rather than by who they are. Moreover, "the judicial system and the public as a whole want to be confident that impartial judges are assigned to cases." *Fowler v. Butts*, 829 F.3d 788, 794 (7th Cir. 2016). The Supreme Court has indicated that even a "*potential for*" or "*risk of bias*" was enough to constitute structural error to vacate the judgment. *See Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905-07, 195 L. Ed. 2d 132, (2016)(emphasis supplied). Indeed, "[b]ias is easy to attribute to others and difficult to discern in oneself. ... The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, 'the

average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" *Williams*, 136 S. Ct. at 1905 (quoting *Caperton v. A.T. Massey Coal Co*., 556 U.S. 868, 881 (2009)).

Congress amended the Judicial Code in 1974, changing the standard of recusal for judges to an objective one. The earlier statute called upon a federal judge to recuse himself when he had a substantial interest in the proceedings, or when, "in his opinion," it would be improper for him to hear the case. *See Liljeberg v. Health Services Acquisition Corp*., 486 U.S. 847, 870-871, n.1 (1988)(Rehnquist, C.J., dissenting); 28 U.S.C. § 455 (1970). The revision to 28 U.S.C. § 455 made massive changes and does not give a judge discretion as to whether to recuse himself. "Both subsection (a) and subsection (b) say that the judge 'shall disqualify himself' when certain things are true. The judge, not the litigant, must take the initiative." *Fowler*, 829 F.3d at 794. Section 455 is violated if informed observers from the general public could reasonably believe that a judge knows of disqualifying facts or in other respects believes that there would be an appearance of impropriety. *Liljeberg*, 486 U.S. at 859-860. Therefore, "[b]ecause the judge knows both the facts and law about disqualification better than any litigant, even a litigant with a lawyer it is well to stick with the statutory language: the judge must disqualify [himself] when the statute so provides whether or not the litigant files a motion." *Fowler*, 829 F.3d at 794. [9] In the instant matter, when placing the statutory

[9] Petitioner digresses to note that in two prior FOIA lawsuits concerning records with a material nexus to the underlying criminal matter, Judge Stadtmueller recused himself

language of section 455 in juxtaposition with the Judge's role and participation in this unprecedented, fraudulent-grand jury-scheme, it is clear that the self-enforcing mechanism of 455(a)&(b) utterly failed in this case.

The underlying investigation encompassed a simultaneous, parallel OCDEFT investigation of five chapters of the OMC titled: "Operation Duster" (Investigation No. 20714-91-0047-Y). (Sep. App. 18-19). The primary focus of the ATF's investigation among those five chapters targeted was the Milwaukee and Janesville chapters. On March 22, 1996, ATF Special Agent Christopher L. Bayless ("Agent Bayless") commemorated the "Progress" of the investigation in relevant part as such:

> "During the last reporting period, Chicago and Milwaukee ATF met and formulated plans for the indictment of approximately 60 members and associates of the Outlaws Milwaukee, Janesville, Chicago, Joliet and Gary chapters. This RICO will encompass approximately 75 predicate acts, ***reaching as far back as 1970***. Currently, the Chicago task force is attempting to corroborate, through informants and witnesses, additional information to help perfect the 75 predicate acts."

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from participation in both cases pursuant to 28 U.S.C. § 455(a). *See O'Neill v. United States Department of Justice*, Case No. 05-CV-306 (E.D.Wis. March 21, 2005)(Docket # 2); and *O'Neill v. United States DOJ*, Case No. 06-CV-671 (E.D.Wis. June 9, 2006)(Docket # 3).

(Sep. App. 19)(emphasis supplied). [10] Among those predicate acts—and the primary basis for the fraudulent-grand jury-scheme—was the November 5, 1974 tragic death of Larry Anstett caused by a "gift wrapped bomb that exploded" when "he touched the package on top a car parked in front of 3222 N. 83rd Street," Milwaukee. *See*, *Gangs Probed In Fatal Blast*, The Milwaukee Sentinel, Nov. 6, 1974 (Sep. App. 20); *See also Urban v. Breier*, 401 F. Supp. 706, (E.D.Wis. August 5, 1975)(Judge Warren presiding) ("During several days following [the bombing] the Milwaukee Police arrested some 54 known or suspected members of the Outlaws, including the plaintiff named above. Each of those arrested was booked for the murder of this boy and interrogated at length concerning his involvement with this case." *Id.* at 708. The court finding "as to the unlawful arrests that occurred shortly after November 5, 1974, the proper preliminary remedy is to order all state and ***federal records*** thereof to be expunged." *Id.* at 713) (emphasis supplied).

According to the Federal Judicial Center biography, Judge Stadtmueller was formerly an assistant U.S. attorney for the Eastern District of Wisconsin from 1969 to

[10] Material to preparing Mr. O'Neill's defense, and yet another blatant circumvention of Fed. R. Crim. P. 16(a)(1)(E), the government intentionally withheld records which demonstrate that on or about May 1, 1994, Agent Bayless had infiltrated the Hell's Henchmen MC ("HHMC") in Rockford, Illinois—and willfully facilitated the June 28, 1994 shooting/stabbing death of the group's leader, Monty Mathias. (ATF Investigation No. 33116-93-2533-L)(*See* Sep. App. 21-30). More yet, during his association with the HHMC Agent Bayless unequivocally combined, confederated, and conspired with other members of the HHMC as well as other motorcycle clubs, to instruct, promote, and initiate violent acts against members and associates of the OMC. (*Id.*).

1975, and as a first assistant for that district from 1974 to 1975. He returned to private practice from 1975 to 1976, but was again an assistant U.S. attorney from 1977 to 1981, and a Deputy U.S. Attorney from 1978 to 1981. He then became the United States Attorney for the Eastern District of Wisconsin from 1981 to 1987. Given the particular notoriety of the crime—and significant efforts over the years by federal investigators to encompass the 1974 bombing under the Racketeer Influenced and Corrupt Organizations Act ("RICO") during Judge Stadtmueller's capacity at the U.S. Attorney's office—it is simply not plausible he did not have some degree of participation as either counsel, advisor, or expressed an opinion concerning the merits regarding the investigation of the 1974 bombing.

On March 3, 1987 Judge Stadtmueller was nominated to the bench by President Ronald Reagan and began service on June 1, 1987 for the Eastern District of Wisconsin and served as chief judge 1995 to 2002.

In order to charge the 1974 bombing under RICO, the government needed the target to manifest his agreement to participate in the conduct of the (charged) enterprise's affairs through a pattern of racketeering activity. In other words, it was necessary for the target to participate, directly and/or indirectly in racketeering activity within five years of the underlying indictment in Mr. O'Neill's case. To accomplish this, the conspirators hatched the fraudulent-grand jury-scheme with an object and purpose to engender, promote, or otherwise facilitate the target and others to commit such

chargeable crimes or act(s) with a connection to the Outlaws Motorcycle Club (also known at times as the American Outlaws Association).

MPD Hinterthuer was commemorated by ATF for "provid[ing] significant assistance in this investigation." (Sep. App. 6). His "true story" promotes "a comprehensive look into the criminal justice system and reveals not only [its] successes, but also [its] failures." According to the Book, and at times unknown in 1994, or even possibly 1995, but well-before the indictment on May 30, 1997, in what only can be described as something straight out of the playbook from the Federal Bureau of Investigation's ("FBI") infamous counterintelligence program, COINTELPRO, [11] Judge Stadtmueller's complicity in the fraudulent-grand jury-scheme included, among other violations of federal law: (1) "materially false, fictitious, or fraudulent statement[s] or representation[s]," relative to the fraudulent grand jury testimony; and (2) the prepared transcript further disseminated into the public domain constituted "knowingly and willfully ... mak[ing] or us[ing] [a] false writing or document knowing the same

[11] *See e.g.*, *Hobson v. Wilson*, 737 F.2d 1, 12 (D.C.Cir. 1998)(FBI counterintelligence program created and anonymously sent "racially-inflammatory leaflet[s]" in efforts "to engender animosity" between antiwar group and organization of black citizens and leaders); *see also Limone v. United States*, 497 F. Supp. 2d 143, 189-192 (D.Mass. 2007)(In 30-year cover-up, FBI agents' "imaginative direction and professional ingenuity," in developing professional assassin's perjury in high-profile murder trial, "was known to, supported by, encouraged and facilitated by the FBI hierarchy all the way to the FBI Director.").

to contain any materially false, fictitious, or fraudulent statement or entry" in violation of 18 U.S.C. § 1001(a)(2)-(3). In conduct even more egregious, the Book reveals that "[t]he operation was approved by Judge Stadtmueller" which was implicitly, but unmistakably, designed "to persuade such other persons to engage" in the "attempted use, or threatened use of physical force ... against the person of another" in violation of 18 U.S.C. § 373, and 18 U.S.C. § 371.

It was further part of the fraudulent-grand jury-scheme that the conspirators would and did misrepresent, conceal and hide, and caused to be misrepresented, concealed, and hidden, the purpose of the act, and the acts, done in furtherance of the scheme. To date, and notwithstanding notification, the government has remained silent to these sordid details as well as to the off-the-record meetings between Judge Stadtmueller and AUSA Kanter, a "manner of proceeding in a federal criminal matter [that] is indeed unusual and necessarily raises substantial concerns in the mind of *any* well-informed observer." *In re United States*, 572 F.3d 301, 310 (7th Cir. 2009)(emphasis supplied).

At some point in the investigation when it became apparent the fraudulent-grand jury-scheme had not developed as planned, the government was left "to corroborate through informants and witnesses" (*See* Sep. App. 19) the necessary information to perfect the 1974 bombing as a predicate act under RICO. After the indictment on May 30, 1997, this endeavor included concerted efforts by Agent DeValkenaere, AUSA

Kanter,[12] and others, at flipping or turning the charged defendants looking to trade information favorable to the government's case or otherwise corroborate or perfect one or more of the "75 predicate acts" under investigation in exchange for lesser prison sentences. (*See e.g.* USA's motion for downward departure as to Johnson F. Blake, Crim. Docket # 1734). [13]

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[12] After the initial indictment, AUSA Kanter approached one of Mr. O'Neill's attorneys, Michael F. Hart (the other was Martin E. Kohler), at a cigar shop in Milwaukee. According to Attorney Hart during a surprise visit at the Washington County Jail, AUSA Kanter presented a plea offer which consisted of Mr. O'Neill's cooperation with the government's case along with "giving up his law enforcement connections" in exchange for an 8-year prison sentence. The following day Mr. O'Neill sought and retained new counsel. (*See* Crim. Docket #s 117 & 120).

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[13] Shortly before the start of the trial, AUSA Kanter removed himself from courtroom participation "because of his involvement in the investigation." Carolyn Starks, *Outlaws' conspiracy case loses prosecutor: U.S. attorney plans to work behind scenes*, Chicago Tribune, Sept. 30, 1999)("'These issues are a potential in any case, but this isn't any case,' said Kanter, who said he was using 'an abundance of caution' in making the decision. 'This is a unique and distinctive case. The issue as a consequence becomes more complex. ... There are other reasons as well. They have to do with *other investigative opportunities* that have presented themselves *which I want to participate in*.' Kanter continued. 'But because they are part of the investigation, I can't comment more on them.'")(emphasis supplied). An abundance of circumstantial evidence shows that AUSA Kanter and operatives of the FBI soon after this interview concocted yet another scheme designed to undermine the fairness and impartiality of Mr. O'Neill's trial. Indeed, the FBI in February, 2000, conveyed to the Marshals Service a genuine threat (or at least what appeared to be) against the district court as well as to AUSA Kanter himself. Worse yet, this utter fabrication purported that "[a] known associate of the Outlaw[s]" arranged to have AUSA Kanter and the judge "killed for specifically stated dollar amounts." *See* Geoff Davidian, *U.S. Marshals lose copy of security plan in Outlaws federal racketeering trial: U.S. Marshals blow their cover at racketeering trial of nine bikers; abandon 56-page security plan after agent leaves copy in hotel lobby*, Reuters News Service, April 19, 2000 (http://www.putnampit.com/ outlaws.html)(accessed last on 1/01/2017). *Compare with In re Nettles*, 394 F.3d 1001, 1002 (7th Cir. 2005)("[T]he issue of recusal based on threats ... to a judge that appears to be genuine and not just motivated by a

Thus, in approving such a scheme it necessarily follows that the Judge's dual position as investigator and decision-maker gives rise to an obvious sympathy for the government's ultimate success in gaining the cooperation of the defendants; in particular, Mr. O'Neill. Indeed, "'[h]aving been a part of the [investigative] process a judge cannot be, in the nature of things, wholly disinterested in the conviction or acquittal of those accused.'" *Williams*, 136 S. Ct. at 1906 (quoting *In re Murchison*, 349 U.S. 133, 137 (1955)); *compare with In re United States*, 572 F.3d at 310-311 ("[T]he Judge misapprehended the limits of his authority ... [by] becoming involved in plea negotiations .... such involvement is likely to impair the the trial court's impartiality. The judge who suggests or encourages a particular plea bargain may feel a personal stake in the agreement ... and may therefore resent the defendant who rejects his advice.")(internal quotations and citations omitted). Judge Stadtmueller's significant, personal involvement with the government in its investigation and prosecution of Mr. O'Neill "gave rise to an unacceptable risk of actual bias. This risk so endangered the appearance of neutrality that his participation in the case must be forbidden if the guarantee of due process is to be adequately implemented." *Williams*, 136 S. Ct. at 1908-1909 (internal quotations and citation omitted). Moreover, "the participation of a disqualified judge [is] a form of structural error, which may be noticed at any time." *Fowler*, 829 F.3d at 794.

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desire to recuse the judge requires recusal.").

In addition to the unacceptable participation in violation of the Due Process Clause, 28 U.S.C. § 455 of the Judicial Code defines circumstances that mandate disqualification of federal judges, but "it neither prescribes nor prohibits any particular remedy for a violation of that duty." *Liljeberg*, 486 U.S. at 862. However, Congress intended the provisions of § 455(b) to remove any doubt about recusal in cases where a judge's interest is too closely connected with the litigation to allow his participation. Section 455 imposes a duty directly upon the judge to evaluate his own conduct and further serves to "promote public confidence in the integrity of the judicial process." *Id.* 486 U.S. at 858 n.7.

Under the known facts and relationship herein, a judge may be disqualified under § 455 in four circumstances that are relevant to this motion: (1) if "his impartiality might reasonably be questioned," 28 U.S.C. § 455(a); (2) "[w]here he has ... personal knowledge of disputed evidentiary facts concerning the proceeding," *id.* § 455(b)(1); (3) "[w]here he has served in governmental employment and in such capacity participated as counsel, advisor or ... expressed an opinion concerning the merits of the particular case in controversy," *id.* § 455(b)(3); and (4) "[h]e knows that he ... [has] any other interest that could be substantially affected by the outcome of the proceeding," *id.* § 455(b)(4). The language of the statute was clear and clearly prohibited the Judge's participation in the subsequent trial proceedings after his role in the underlying criminal investigation. [14]

[14] It is undisputed that the government agents as well as AUSA Kanter were involved in the innovation and concealment of an extraordinary range of insidious methods

An en banc Seventh Circuit has stated that "our system of law has always endeavored to prevent even the probability of unfairness. ... and no man is permitted to try cases where he has an interest in the outcome." *Bracy v. Schomig*, 286 F.3d 406, 410 (7th Cir. 2002)(enbanc). But also recognizing that "[t]hat interest cannot be defined with precision. Circumstances and relationship must be considered." *Id.* Here, the Judge's involvement in the fraudulent-grand jury-scheme, the nature of such indicating the participants harbored an undaunted, deep-seated animus towards the targets, is alone evidence of the Judge's personal stake or "other interest that could be substantially affected by the outcome of the proceedings" and clearly covered by the language in section 455(b) requiring recusal. This was a scheme far outside the parameters of the run-of-the-mill investigative technique/scenario. Participation combined with a concerted effort of concealment of those facts gives rise to a "*potential for*" or "*risk of bias*" as to "whether the judge, even with the most diligent effort, could set aside any personal interest in the outcome. There is, furthermore, a risk that the judge would be so psychologically wedded to his ... previous position [in the investigation] that the judge

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involving murder targeting Mr. O'Neill and other members of the OMC. (*See e.g.*, April 20, 1996 letter by Attorney Michael F. Hart to AUSA Kanter, Sep. App. 31). These methods are better known in this case as "stirring the pot" investigative techniques and/or scenarios. (*See supra*, n.4). Reasonable observers knowing of the Judge's involvement in the fraudulent-grand jury-scheme might say that AUSA Kanter sought out the Judge's counsel or permission *before deploying such other schemes*. One also "might say that the judge was finishing the work of the prosecutor [he] had been." *United States v. Smith*, 775 F.3d 879, 881 (7th Cir. 2015)(vacating the judgment for the judge's violation of section 455(b)(3)).

would consciously or unconsciously avoid the appearance of having erred or changed position." *Williams*, 136 S. Ct. at 1906.

Therefore, there can be little doubt, if any, that Judge Stadtmueller misapprehended the limits of his authority with his participation in the underlying investigation—a defect not amenable to harmless review—which requires vacating the judgment and a new trial before a different district judge.

IV. RULE 60(b)(6)

Section 455 on its own does not authorize the reopening of closed litigation. However, Federal Rule of Civil Procedure 60(b)(6) "provides a procedure whereby, in appropriate cases," authorizes a district court to relieve a party from final judgment. *Liljeberg*, 486 U.S. at 863. In particular, Rule 60(b)(6) provides that "[o]n motion and just terms," the court may relieve a party from a final judgment for any "reason that justifies relief." *Id.* Rule 60(b)(6) is fundamentally equitable in nature and it "does not particularize the factors that justify relief, but [the Supreme Court has] previously noted that it provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'" *Liljeberg*, 486 U.S. at 863-864 (quoting *Klapprott v. United States*, 335 U.S. 601, 614-615 (1949)). The Supreme Court also requires a petitioner seeking relief under Rule 60(b)(6) to show "extraordinary circumstances" justifying the reopening of a final judgment. *Liljeberg*, 486 U.S. at 864; *Gonzales v. Crosby*, 545 U.S. 524, 535 (2005).

As publicly noted by the government, "this isn't any case," but one that is "unique and distinctive" from any other. Unfortunately, though, this is more of a case, from any other, that is rife with extraordinary factual concoctions, outright fraud, deception, and more so, littered with ends-justifies-the-means dystopian tactics deployed by government agents, federal prosecutors, and (at least for some of those tactics) guidance and approval by the Judge. [15] Excessive power and secrecy has permeated virtually all aspects of this case, along with the abandonment of fundamental notions of due process of law and fairness. Sooner or later, the truth catches up. Truth and facts are stubborn things; the facts of this case do not cease to exist nor can they be altered because they have been ignored and/or concealed for roughly 20 years. Neither defense counsel or Mr. O'Neill have ever been notified by the government of the fraudulent-grand jury-scheme nor of the FBI's utter fabrication and dissemination of the fictitious "assassination plan" against the Judge and AUSA Kanter. Thus, any delay in filing is of no fault of Petitioner and lies solely within the provenience of the government and

[15] *See* RICHARD A. POSNER, *The Federal Judiciary: Strengths and Weaknesses*, Harvard University Press 2017, 297 ("Judges must also be on the lookout for federal misconduct, which is—to put it mildly—not unknown."); *See also* SIDNEY POWELL, *Licensed to Lie: Exposing Corruption in The Department of Justice*, 38 (Brown Books Publishing Group 2014)("As a former assistant U.S. attorney of ten years, who served the [DOJ] and taught there frequently, I knew how prosecutions were supposed to proceed. Doing the job right required a strong sense of honor, integrity, objectivity, and fairness. A federal prosecutor has immense, unbridled power along a broad spectrum of discretion. In the hands of the wrong people, the damage that power can cause is beyond measure. A prosecutor does play God.").

district court. *Cf. Fields v. Wharrie*, 740 F.3d 1107, 111-1112 (7th Cir. 2013)("He who creates the defect is responsible for the injury that the defect forseeably causes later."). "The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts ...." *United States v. Nixon*, 418 U.S. 683, 707 (1974).

Although the finality of judgments is to be preserved, this decades-long cover-up must be brought into the light of day as law and justice require to avoid the risk of causing a substantial and widespread lowering of confidence in the courts. Thus, "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is ... entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry." *Bracy v. Gramley*, 520 U.S. 899, 908-909 (1997), *reversing Bracy v. Gramley*, 81 F.3d 684 (7th Cir. 1996)(quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). Mr. O'Neill must be granted an opportunity to present his claims to a court "unburdened by any 'possible temptation ... not to hold the balance nice, clear and true between the [Government] and the accused.'" *Williams*, 136 S. Ct. at 1910 (quoting *Tumey v. Ohio*, 273 U.S. 510, 532 (1927)).

V. CONCLUSION

This case presents extraordinary facts and circumstances distinct from any other known case. Notwithstanding his pro se status, and with all due respect, Mr. O'Neill requests the reviewing court to adjudicate his grounds for relief in accord with the facts and law as justice requires. [16]

For all the above reasons, Petitioner requests the court to vacate the judgment and sentence below, and as otherwise assign a new trial before a different judge.

Dated this 27th day of March, 2018, at Oxford, Wisconsin.

Respectfully submitted,

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[16] Courts are directed to liberally construe pro se pleadings. *See Koons v. United States*, 639 F.3d 348, 353 n.2 (7th Cir. 2011); *but see* RICHARD A. POSNER, *Reforming The Federal Judiciary*, Sept. 7, 2017 (Judge Posner was a member of the United States Court of Appeals for the Seventh Circuit from 1981 to 2017, and has written more that 3300 published judicial opinions. His book poignantly illuminates courts' review of pro se filings in regard to "the massive indifference of most judges and staff attorneys to the plight of the pro se," *id.*, at 135-144, as well as "people incorrectly assum[ing] that any person with a meritorious case can secure counsel ... [and the] implicit bias against people who are incarcerated." *Id.* at 135-136).

VERIFICATION

Pursuant to 28 U.S.C. Section 1746, I declare under the penalty of perjury that the foregoing factual assertions are true and correct. In addition, the documents in Petitioner's Separate Appendix are true and accurate copies of the originals.

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Kevin P. O'Neill