CERTIFICATE OF SERVICE

LAMBROS vs. U.S.A., CIVIL NO. 99-CV-28 (Judge Rosenbaum): Criminal No. 4-89-CR-82(5)

FOR FILING:

I hereby state under the penalty of perjury that a true and correct copy of the following:

- a. PETITIONER LAMBROS REQUESTS PREMISSION FROM THE COURT TO AMEND THIS ACTION UNDER RULE 15(a) & 19(a), FRCP. Dated: November 2, 2001.
- b. MOTION FOR THE APPOINTMENT OF COUNSEL. Dated: Movember 2, 2001.

was served on the following this 2 day of movemen, 2001, via U.S. Mail through the C.S. Penitentiary Leavenworth mailroom/legal mailbox, to:

1. CLERK OF THE COURT
District of Minnesota
U.S. Federal Courthouse
316 North Robert Street
St. Paul, Minnesota 55101
U.S. CERTIFIED HAIL NO. 7001-0320-0003-3596-6650

One (1) original and one (1) copy for FILING.

- U.S. Attorney's Office
 District of Minnesota
 U.S. Federal Courthouse, Suite 600
 300 South 4th Street
 Minnesotis, Minnesota 55415
- 3. INTERNET RELEASE TO ALL "BOYCOTT BRAZIL" SUPPORTERS AND HUMAN RIGHTS GROUPS GLOBALLY FOR REVIEW, COMMENT. AND RELEASE. Web site: www.brazilboycott.org

Lambros family members.

John Cregory Lambros

Reg. No. 00436-124

U.S. Penitentiary Leavenworth

P.O. Box 1000

Leavenworth, Kansas 66048-1000 USA

Web site: www.brazilboycott.org

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UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

JOHN CREGORY LAMBROS.

CIVIL FILE NO. 99-28 (RCR)

Petitioner,

Criminal File No. 4-89-82(05)

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AFFIDAVIT FORM

UNITED STATES OF AMERICA,

Respondent.

JAMES M. ROSERRAGM, U.S. District Chief Judge

PRITITIONER LANGEROS REQUESTS PERMISSION FROM THE COURT TO AMEND THIS ACTION UNDER RHLE 15(a) 4 19(a), FRCP.

Petitionar JOHN GRECORY LAMBROS, pro se, (hereinafter Movent) requests permission from this Court to amend this action under Rule 15(a) and 19(a), as the Government/Respondent has filed an answer and/or challenge in this action. The United States Supreme Court has stated that permission to smend a complaint should be, and usually is, "FREELY GIVEN." See, <u>FOMAN vs. DAVIS</u>, 371 US 178, 182-184 (1962) (Rule 15(a) declares that leave to smend "shall be freely given when justice so requires"; this mandate is to be heeded.)

Since the filing of Movent's April 13, 2001, "MOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES DISTRICT COURT JUDGE ROBERT G. RENNER PURSUANT TO RULE 50(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 USCA 455," Movent has been researching 5 455 and discovered that the The Honorable Franklin L. Noel, United States Magistrate Judge for the District of Minnesota was employed as an Assistant United States Attorney ("AUSA") in the United States Attorney's Office for the District of Minnesota. See, KENDRICK vs. CARLSON, 995 F.2d 1440, 1442-43, & fn. 2 (8th Cir. 1993). Movent requested the St. Paul library system to forward a copy of "WBO'S WBO IN THE HIDWEST, 2000-2001," on FRANKLIN LINWOOD NOEL Which states Bonorable Federal Chief 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. Movent received a copy of "WBO'S WBO IN THE MIDWEST,

2000-2001, Ed., Page 435 on October 31, 2001. The St. Paul Library faxed the information to Movant's parents on October 22, 2001, from Telephone number (651) 632-5134. See, EXHIBIT A.

By order dated October 30, 1992, Magistrate Judge Franklin Noel judged Movent LAXAROS' competent to stand trial after conducting a hearing.

On February 10, 1997, the Honorable Robert G. Renner resentenced Movant

LAMBROS and referred to the ORDER dated October 30, 1992, by Magistrate Noel. See,

Page 1 and 5 of transcripts dated February 10, 1997 as to RESENTENCING. EXHIBIT B.

Therefore, Movant is offering his request to amend this action in an order)y fashion as to the his discovery and verification of information.

Novant LAMBROS respectfully requests to smend this action with the following issue:

ISSUE TWO (2):

NOTION TO VACATE ALL JUDGMENTS AND ORDERS BY UNITED STATES CHIEF MAGISTRATE JUDGE FRANKLIN LIMMOOD MORL, PURSUANT TO RULE 60(b)(6) OF THE PEDERAL RELES OF CIVIL PROCEDURE FOR VIOLATIONS OF TITLE 28 U.S.C.A. 55 455(a) and 455(b)(3)

Now comes the Petitioner/Movant, JOHN GREGORY LAMBROS and moves this court pursuant to Rule 60(h)(6) of the Federal Rules of Civil Procedure to vacate ALL JUDGMENTS and ORDERS by United States Chief Mugistrate Judge Franklin Linwood Noel for violations of Title 28 U.S.C.A. 16 455(a) and 455(b)(3). See, LILJEBERG vs., MEALTH SERVICES ACQUISTION CORP., 100 L.Ed.2d 855 (1988) (Conclusion that federal judge should have known disqualifying facts held sufficient to disqualify judge, under 28 USCS 1 455(a), on ground that judge's impartiality MICHT REASONABLY HAVE BEEN QUESTIONED.) (emphasis added)

FACTS:

 Honorable Federal Chief Magiatrate Judge Franklin Linwood Noel was an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of Minnesota.

MINNEAPOLIS OFFICE, from 1983 thro 1989. See, EIHIBIT A.

- 2. Movement LAMBROS was indicted on May 17, 1989, in this action by the United States Grand Jury, District of Minnesota, Criminal File No. 4-89-82(05), as to a conspiracy from on or about the 1st day of January, 1983, to on or about the 27th day of February, 1988. Therefore, all investigations and Grand Jury hearing where held between 1983 and 1989 by the MINNEAPOLIS OFFICE of the U.S. Attorney's Office for the District of Minnesots, as to the indictment of Movant.
- Movant LAMBROS' competency to stand trail, Movant's torture in Brazil that included the <u>testimony</u> of DEA Agent Terryl Anderson who arrested Movent in Rio de Janeiro. Brazil, and the <u>testimony</u> of the Doctors and x-ray technician who x-rayed Movant on July 17, 1992 at the U.S. Bureau of Prisons Medical Center, Rochester, Minnesota, that reported the "CLUSTERS OF PUNCTATE RADIOFAQUE FOREIGN BODIES" in Movant's lateral view <u>ekull X-ray</u>. Magistrate Noel issued at least one (1) ORDER dated October 30, 1992, as to Movant Lambros' competency to stand trial after conducting either one or two hearings. See, <u>MEMBRIT B.</u>

LAN:

- disqualification of federal judges, in particular, Title 28 USCS \$ 455(a) disqualifies a federal judge from acting in any proceeding in which the judge's IMPARTIALITY

 "MICHT REASONABLY BE QUESTIONED." See, LILJEBERG, 100 1.Ed.2d 855 (1988)(\$ 455(a) can be applied TETEDACTIVELY to the time the judge heard the case and entered judgment. "The very purpose of \$455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible. . . . Thus, it is critically important in a case of this kind to identify the facts that might reasonably cause an objective observer to question Judge Collins' impartiality." Id. at 875).
 - Violations of Title 28 U.S.C.A. \$ 455 DOES NOT REQUIRE SCIENTEL,

BE SCIENTER is not an element of a violation of \$ 455(a). The judge's lack of KNOWLEDGE of a disqualifying circumstance may bear on the quantion of remedy, but it does not eliminate the risk that "his importiality might reasonably be questioned" by other persons. See, <u>lilJEBERG</u>, at 872.

conclusion:

- 6. Movant LAMBROS is requesting this Court to ORDER Magistrate Chief Judge Noel to read and respond to this motion as to all facts relating to any alleged appearance of impartiality that "MIGHT REASONABLY BE QUESTIONED" as to violations of Title 28 U.S.C.A. 16 455(a) and 455(b)(3), as a Judge <u>must</u> document the reasons for his decision so that the decision may be reviewed, if necessary, by an Appellate Court. See, U.S. vs. GREENSPAN, 26 F.3d 1001 (10th Cir. 1994).
- 7. Movant LAMBROS is requesting Magistrate Chief Judge Noel to recuse himself from all past, current, and future legal actions regarding Movant LAMBROS.
- 8. Movant LAMBROS is requesting Magistrate Chief Judge Noel, after review of this motion, to <u>VACATE ALL JUDGMENTS AND ORDERS</u> he has entered into as to all legal proceedings involving Movant LAMBROS. Therefore, <u>RESTORING Movant LAMBROS</u> to the point BUT NOT FURTHER where Magistrate Chief Judge Noel issued ORDERS and/or JUDGMENTS against Movant LAMBROS. Movant believes the word RESTORING also means <u>RECALLING ALL JUDGMENTS and/or ORDER</u> issued by Magistrate Chief Judge Noel.
- All declarations within this document and exhibits attached are true and correct and submitted under the penalty of perjury, as per Title 28 USC \$1746.

EXECUTED ON: Hovember 2, 2001

Respectfully submitted,

John Gregory Lambros, Pro Se

Reg. No. 00436-124

U.S. Penitentiary Leavenworth

P.O. Box 1000

Leavenworth, Kansas 66048-1000 USA

Web site: www.brazilboycott.org

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Very limited info available ETHIBIT A. This is all

UNITED STATES PERENT COURT

FOR THE DISTRICT OF MINNESOIR

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there is a resecutable cause to believe that hearing be held only when the court finds

disease or defact which randers him unable to

understand the nature of the proceedings

the defendant may be suffering from a mental

United States of Assettes.

Plaintiff.

cobn G. Beabros.

File No. CR.4-69-82(05)

Defendant.

CARDSCRIPT OF PROCESSINGS in the

Michaeota, et 10:00 a.m. United States Tederal Courthouse, St. Paul. Robert G. Resnet on Pahrusky 16, 1997 at above-equipled natter before the Monorable

APPRIORIS CES

Attorney, appeared so comment on behalf of the bouglas Peterson, Assistant United States

coupsel on behalf of the Defection. Colia Calaal, Attorbay, appeared as COPETPBEEC

ARPORTED BY:

BARBARA J. EGGERTH, R.P.R.

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MAY J. CERSCHIN & MESOCIATES

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RAY J. LERSCHEN & M\$SOCIATHE

UNITED STARS DISTRICT COURT DISTRICT OF MINNESOTA

JOHN GREGORY LAMBROS,

CIVIL FILE BO. 99-28 (MGR)

Petitioner.

Criminal File No. 4-89-82(05)

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AFFIDAVIT FORM.

UNITED STATES OF AMERICA.

Respondent.

JAMES M. ROSERRAUM, U.S. District Chief Judge

MOTION FOR THE APPOINTMENT OF COUNSEL

Fetitioner JOHN GRECORY LAMBROS, pro se, (hereinafter Movent), pursuant to the forma pauperis statute, Title 28 U.S.C. \$ 1915(d), requests this court to appoint counsel to represent him in this case for the following reasons:

- Movant is unable to afford counsel.
- The issues involved in this action are complex.
- The Movant has a limited knowledge of the law and is not licensed to practice law.
- 4. The case will require discovery of documents and depositions of a number of U.S. Attorneys', Assistant U.S. Attorneys', U.S. Matchals, U.S. DEA Agents and administrative staff within the offices of of those agencies from 1983 thro 1989. See, TUCKER vs. DICKEY, 613 F.Supp. 1124, 1133-34 (W.D.Wis. 1985) (need for discovery supported appointment of counsel).

ARGUMENT

THE COURT SHOULD APPOINT COURSEL POR PRILITIONER

5. In deciding whether to appoint counsel for an indigent litigant, the court should consider "the factual complexity of the case, the ability of the indigent to INVESTIGATE THE FACTS, the existence of conflicting testimony, the ability of the indigent to present his claim and the complexity of the legal issues." See, ABDULLAH

vs. GUNTER, 949 F.2d 1032, 1035 (8th Cir. 1991)(citation omitted), cert. denied,
112 S.Ct. 1995 (1992). In addition, courts have suggested that the most important
factor is whether the case appears to have merit. COOPER vs. A. SARGENTI CO., INC.
877 F.2d 170, 173 (2nd Cir. 1989). Each of those factors weighs in favor of appointment of counsel.

6. MERITS OF THE CASE. Movent's allegations, if proved, clearly would establish concerns of constitutional dimensions. Movent concludes that Judge Renner and Magistrate Judge Noels' participation in this case violated Novant Lambros' due process rights. The Due Process Clause 'may sometimes but trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, "justice must satisfy the appearance of justice." Quoting, LILJEBERG vs. HEALTH SERVICES CORP., 100 L.Ed.2d 855, 875 [n. 12 (1988). On its face, then, this is a meritorious case.

ODMCLUSION

- For the foregoing reasons, the court should grant this Movant's motion and appoint counsel in this case.
- 8. All declarations within this document are true and correct and submitted under the penalty of perjury, as per Title 28 U.S.C.A. \$ 1746.

EXECUTED ON: November 2, 2001

John Gregory Lambros, Pro Se

Reg. No. 00436-124

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