ORIGINAL

No. 18-9158

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT B. LYNN
Petitioner

v.

THIRD CIRCUIT COURT OF APPEALS
THEODORE A. MCKEE Circuit Judge et al

THIRD CIRCUIT DISTRICT COURT
FOR WESTERN PENNSYLVANIA

ALAN N. BLOCH District Judge

Respondents

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR CERTIORARI

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PETITION FOR CERTIORARI

QUESTIONS PRESENTED FOR REVIEW:

1. Did the Third Circuit Court of Appeals use the wrong legal standard; in conflict with the precedents of The Supreme Court and the Other Courts of Appeals on the federal question that the standard for recusal is demanded when potential for bias too high to be constitutionally tolerable?

2. Did the Third Circuit Court of Appeals in conflict with The Supreme Court and the Other Courts of Appeals precedents, fail to follow the laws and rules of the judiciary in condoning a proscribed procedure of one of the courts it is mandated to supervise in violation of 28 U.S.C. @ 455(a) and Canon 3(A)(4) forbidding judges from initiating exparte proceedings on an impending matter absent written consent violation Rule 43 (a) and violated the concept of fair notice applies equally to the judiciary?

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CITATIONS OF OPINIONS AND ORDERS IN CASE

December 10, 2018, No. 16-2906 Sur Petition For En-banc Hearing Third Circuit Court of Appeals Denied.

November 7, 2018, Writ of Supervisory Mandamus, Third Circuit Court of Appeals, Denied.

July 24. 2018, Petiton for Recusal 455(a), District Court Judge, Dismissed.

May 4, 2016 Third Circuit Court of Appeals COA, Denied.

April 21, 2016, Third Circuit Court of Appeals Confirmed Judgement or District Court.

September 30, 2015, District Court CR-09-079, Civ. No. 15-1092, Dismissed #2241 as succesive #2255.

August 24, 2015, District Court Show Order on #2241.

July 15, 2015, Petition Third Circuit En-banc Denied.

June 19, 2015, Third Circuit Court of Appeals Dispositive Order.

April 24, 2014, District Court Order Granting More Time.

January 14, 2014, District Court Order for Government Response.

December 2, 2013, Order File Notice Defendants #2255 Motion.

March 11, 2013, Third Circuit Court of Appeals Judgement Affirmed of District Court on Fifth Amendment Prosecution Violation Defendant Failure Testify. Griffin Error. Judgement Affirmed District court Not To Have Increased Sentence As Punishment For Going To Trial.

JURISDICTIONAL STATEMENT

The Supreme Court has jurisdiction in this case under 28 U.S.C. @ 1254 (1).

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

"(1) By writ of certioirari granted upon petition of any party to any civil or criminal case, before or after rendition or judgement or decree."

On December 10, 2018 the Third Circuit Court of Appeals in conflict with the precedents, statutes, rules and Cannons of The Supreme Court and Other Courts of Appeals applied the wrong legal standard on a question deciding recusal for bias in a case of supervisory mandamus.

Remand to a fair tribunal was warranted due to bias, specifically 455(a), Rule 43 (a)(2) and (b)(2), along with Canons of Codes of Conduct; violations by the District Court Judge in by his own writings of initiating conducting multiple secret exparte proceedings that were violative of Due Process. Facts compelling this writ be granted by The Supreme Court to resolve this conflict, and establish comity amongst the Courts of Appeal.

CONSTITUTIONAL PROVISIONS and STATUTES INVOLVED

1. The Fifth Amendment United States Constitution provides: Due Process Clause, entitles persons to impartial and disinterested tribunal in criminal proceedings.

2. The Fifth Amendment United States Constitution provides: That procedural Due Process is fundamental element of Due Process.

3. The Fifth Amendment United States Constitution provides: Defendant must be present at all stages of trial proceedings.

4. 28 U.S.C.: 43 (b) (2), Provides: defendant must be present at all stages, and presence only excused if defendant gives written waiver of consent of presence.

5. 28 U.S.C. @ 43: At its core is Sixth Amendment Confrontation Clause and Due Process Clauses of the Fifth an Fourteenth Amendments inclusive.

FEDERAL CUSTODY: REMEDY ON MOTION ATTACKING SENTENCE

Sentence was imposed in violation of the Constitution of The United States; Due Process Clause of Fifth Amendment, provides "fair notice" is a basic right, that was violated by the District Court judge, and condoned by the Third Circuit Court of Appeals.

Petitioner (Lynn) requests a remand to a fair tribunal, to prove his innocence.

STATEMENT of the CASE:

EXPARTE PROCEEDINGS conflict with precedents.

Summary of records of the supposed exparte proceedings.

February 14, 2011 letter from the chamber of the District Court Judge, announcing exparte hearing; on directors and officers co-mingled insurance funds disbursement. (Final sentence in letter "Only counsel listed above are to attend.") Copy attached. Petitioner (Lynn), as well as three other parties apprised to have an interest were excluded from "fair notice" of the hearing scheduled to be conducted March 15, 2011. The second violation, December 8, 2010 the first!

March 16, 2011, Order of the Court. A cursory order, with at best suspect accounting procedures directing Lampl Law to deposit reserve, that was the equal property of Federal Insurance, Petitioner (Lynn), Jonathon Podlucky, and Andrew Murrin. Copy Attached.

By the District Court Judge's on letter there are no records of the supposed exparte proceeding that was to have occured on March 15, 2011. No affadavits of service, no list of attendees, no record of how some may have attended, no record of any other exparte proceedings the District Court Judge may have initiated, with whom.

August 15, 2017, FOIA request to District Court requesting all records of the exparte proceeding that was conducted to have been conducted on March 15, 2011. Copy Attached.

October 16, 2017, letter from District Court Judge Alan Bloch stating that "there are no records" of the exparte proceeding. The principal reason they are forbidden. Furthermore the letter stated the District Court does not have to comply with FOIA requests. Copy Attached.

Black's Law Dictionary defines an exparte proceeding any official judicial or quasi judicial hearing in which only "one" party is heard. Black's Law Dictionary, 576 (6th Ed. 1990). The most current edition in the prison law library. The District Court Judge by his letter of February 14, 2011 made it plain to any counsel, "the District Court Judge's voice would be the only one heard."

That much silence from those paid by their words, by the quarter

hour is surprising. Or is the reason that there are no records is that other exparte issues beyond the stated may have occured, in further violation of Due Process, "fair notice."

The most fundamental start point of Due Process, is "fair notice". "From the inception of Western culture fair notice has been recognized as an essential element of the rule of law." Connally v. General Construction Co., 209 U.S. 385, 391, 465 S.Ct. 126, 70 L.Ed. 322, (1926).

Judges role is deciding the facts presented, not trying to craft rulings around the laws of Congress, and the precedents of The Supreme Courts, and Other Courts of Appeals. In this instant case the laws and rules are clear and concise, only the interpretation by the District Court and the Third Circuit Court of Appeals try to make them vague; Canon 3(A)(4), 455 (a), 43 (b) (2), the average lay person reading them, and the facts in this case would have no problem discerning that the Third Circuit Court of Appeals was condoning exparte proceedings.

The Third Circuit Court of Appeals condoned an exparte proceeding by a District Court it is mandated to supervise, what is the bigger message? Ignore Supreme Court precedent, we have your backs?

At trial stage, pre-trial a District Court Judge initiated exparte proceedings, at which any of the counsel that did attend knew to be silent, otherwise the clerk of court in attendance would have recorded their offerings. The Third Circuits failure to correct the error impugns the reputation of the judiciary, and should not be allowed to continue uncorrected.

Other Courts of Appeals read, hear, apply, implement the precedents of The Constitution, Laws, Statutes, Rules, and Codes of Conduct on concert with and at the direction of The Supreme Court of the United States. One Circuit as an outlier, impugns the integrity of the entire judiciary. A majority of lay persons reading the facts in this case on the internet would agree.

The only discernible fact from the March 15, 2011 hearing is that Petitioner (Lynn's) Due Process rights were violated by the hearing and subsequent Order of the Court dated March 16, 2011. A

cursory order that is secondary to this matter but confirms that the District Court Judge required assistance if he were to balance a simple account.

Why would a District Court Judge schedule forbidden procedures? By its wording this was not a single occurance event. The District Court Judge had to have known he had the tacit support of the Third Circuit Court of Appeals in conducting on his own whim, an exparte proceedings at which he had to have instructed his clerk, to keep no notes! Only if the Third Circuit Court of Appeals condoned exparte proceedings would a District Court Judge, ignore The Supreme Court of the United States precedents proscribing exparte proceedings. Ignoring Canon 3(A) (4) and Rule 43 (a) along with various other Courts of Appeals precedents meant the District Court Judge's hubris, was aligned with the hubris of The Third Circuit Court of Appeals. Canon 3(B)(2) 2004 "a judge "shall not initiate" it does not say should not or probably not!

The Judicial Code of Conduct for U.S. Judges states: Canon 3 (A) (4), "a judge should neither initiate nor consider exparte or other communications concerning a pending or impending proceeding."

"Exparte hearings conflict with a fundamental precept of our system of justice; a hearing requires a reasonable opportunity to know the claims of th opposing party and to meet them." Paradyne Corp 803 F.2d. 604, 612, (11th Cir. 1996) see also Morgan v. United States, 304 U.S. 11, 13, 32 L.Ed 1129, 56 S.Ct. 713, (1999).

"Common sense tells us that secret decisions based on only one side of the story will prove inaccurate more often than those made after hearing both sides. We have consistently recognized that the fundamental instrument for judicial judgement is an adversary proceeding in which both parties may participate. It takes little imagination to see that seizures based entirely on exparte proceedings create a heightened risk of error." Carrol v. President and Commr's of Princess Anne, 393 U.S. 175, 183 9 S.Ct. 847 21 L.Ed. 2d 235 (1968).

The fact that a District Court Judge would schedule any exclusionary exparte hearings and then record none of the proceedings, followed by the Third Circuit of Appeals glossing over

the precedented Due Process violation is a fundamental miscarriage of Due Process by the Third Circuit Court of Appeals, and sends a message to all courts it supervises, not withstanding, precedents, Canons, and statutes, the Third Circuit Court of Appeals condones secret, unrecorded, exparte silent proceedings. Here the Third Circuit Court of Appeals turned a blind eye to suspect, biased proceedings, condoning the unconstitutional violation.

"We are judges not governmental agents, and as federal judges we are sworn to serve as protectors of the Bill of Rights and the Constitution. When we fail to protect a defendants fundamental rights, we fail on our calling as judges. This is not merely a matter of ethics; it is a part of defendants right to due process and effective representation both constitutional rights we have sworn to uphold." Haller v. Robbins, 409 F 2d 857, 861 (1st Cir. 1959).

The Third Circuit Court of Appeals directly avoided following the codes; 2004 Code of Judicial Conduct Canon 3 (B)(2), "a judge shall not initiate, permit, of consider exparte communications made to the judge outside the presence of the parties concerning a pending or impending proceeding." Which aligns with Rule 43 (a) (2), "presence required at every trial stage."

Rules, statutes, codes, Canons only have value if they are implemented as part of an on going process, otherwise courts in the United States system can pick and choose as their partiality fits. "The appearance of impartiality is an essential manifestation of its reality." Dennis v. United States, 339 U.S. 162, 172 70 S.Ct. 519 94 L.Ed. 743 (1950).

"The Code of Conduct for United States Judges prescribes ethical norms for federal judges as a means to preserve the actual and apparent integrity of the federal judiciary." United States v. Microsoft Corp, 253 F.3d. 34, 111, 346 U.S. App D.C. 330 (D.C. Cir. 2001). Rules, statutes, codes, canons have no value if the courts of certain districts only use them as shelf placement holders.

"Canon 3(A)(4), prohibits exparte communications or any communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. Canon 3 C, instructs that a judge "must" disqualify himself or herself in a

proceeding where his or her impartiality might reasonably be questioned. The test for recusal under these provisions is an objective test based on public perception." United States v. Holland, 519 F.3d. 900, 913 (9th Cir. 2008). [The language and precedents forbidding exparte proceedings are clear, the Canons precise, and no where do they coincide or correspond with Hollingsworth v. Perry.]

In this respect, Canon 3 C, aligns with 28 U.S.C. @ 455 (a), "which mandates that a United States Judge "shall" disqualify himself in any proceeding in which his impartiality might reasonably be questioned." It is understood a judge might not recognize his own errors, the issue here however is the Third Circuit Court of Appeals, ignored an obvious Due Process Constitutional Rights violation. In Harris v. Nelson, 394 U.S. 286, 291, 221 L.Ed. 281, 89 S.Ct. 1082 (1969) the Supreme Court spoke to the supervisory responsibility of Courts of Appeal. "We should not permit the Government to obtain a tactical advantage as consequence of an exparte proceeding. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity; to make a defence. The very nature or the writ demands that it be administered with the fairness and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected. It is not conceivable that a Third Circuit Court of Appeals Judge having an exparte proceeding occur against a person, would not find that happening a miscarriage of justice. Making it more inconceivable that the Third Circuit Court of Appeals would chose to ignore precedents, canons, codes and rules of its own judiciary.

Exparte hearings a "bad idea" as stated in United States v. Minsky, 963 F.2d. 870, 844 (6th Cir. 1992). "As a general rule of thumb, in all but most exceptional circumstances, exparte communications with the court are an extraordinarily bad idea. This court has not concealed its strong disapproval of exparte approaches in criminal cases, a gross breach of the appearance of justice, but also a dangerous procedure." There can be little doubt that if this instant appeal would have come before a different Court of Appeals, the outcome would have favored this Petitioner.

Exparte "strongly discouraged", United States v. Early, 746

F.2d. 412, 416 (8th Cir. 1984). "Exparte communications should be strongly discouraged regardless of the propriety of the court's motives, because allowing exparte approaches undermines confidence in the court's impartiality." There was no compelling motive, an officer of the court controlled the co-mingled funds of Federal Insurance Company. The only motive was the District Court's expediency, Not a good motive and a bad idea.

Minsky and Early decided long before the internet was at every lay persons fingertips, to fuel the public's skepticism of the Third Circuit Court of Appeals ignoring of Petitioner (Lynn's) Due Process Rights. "Suffice to say that the Government bears the burden of demonstration that the defendant was not prejudices by an exparte hearing, and its burden is a heavy one." United States v. Minsky, 963 F.2d. 874, (6th Cir. 1992).

The only records in this case confirm that the District Court Judge sent an exclusionary letter announcing an exparte hearing. From that letter, and December 8, 2010 unrecorded exparte hearing, to the cursory order of the court dated March 16, 2011, all else is conjecture, and not good conjecture on the part of Due Process at that! From the date of the exparte letter to the supposed date and time of the hearing, we are lead to believe, told that all that were invited were silent! That silence is deafening for it portends, secondary exparte communications. The Third Circuit Court of Appeals wishes to surmise this was an isolated occurence, common sense and basic communication would say otherwise. An exparte hearing, of which there are not records, no record of who attended, was attendance in person, or via the internet, a very bad idea, that violated Petitioner (Lynn's) Due Process Rights. The Third Circuit Court of Appeals needs to stick to the record, not guess at the District Court's motives and proceedings, as stated in United States v. Microsoft Corp., 253 F.3d. 34, 11346 U.S. App D.C. 330 (D.C. Cir. 2001) "The decision whether a judge's impartiality can be questioned is to be made in light of the facts as they existed and not as they were surmised or reported." Simply the Third Circuit Court of Appeals should have seen the limited record and remanded to the Chief Judge of the District Court to develop a record of the proceedings.

Rule 43 (a), There was no affirmative consent by Petitioner to the District Court, on wavier to any exparte hearings by the District Court Judge. No waiver to the hearing conducted exparte supposedly on March 15, 2011, and or any pre, or post March 15, 2011 exparte hearings that occured.

Does the Third Circuit Court of Appeals have fluctuating precedents as standard for recusal? For in Kensington International Limited and Springfield Asociates v. D.K. Partners v. USG Corp., 368 F.3d., 289, 290 (3rd Cir. 2004). Here the Third Circuit spoke boldly on the evils of exparte hearings. "To fulfil the principles and objectives of Canon 3 of the Code of Conduct, which proscribes exparte communications, except with consent. Affirmative consent is dictated. Attuned to that concern, The Code of Conduct for United States Judges cautions that a judge should neither initiate nor consider exparte communications. The rule is designed to prevent all the evils of exparte communications; Bias, Prejudice, Coercion,and Exploitation! Moreover the Code of Conduct does not draw a distinction between newly appointed and veteran judges; the general prohibition against exparte communications on the merits applies to all judges."

Here in this instant case the Third Circuit Court of Appeals ignored completely its own precedent and teachings on exparte hearings being fraught with the potential for bias and prejudice that would have prejudiced the entire trial proceeding. The Third Circuit Court of Appeals is this instant case ignores the "right of presence" precedents. "The Due Process Clause of the Fifth Amendment grants criminal the right to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings." Faretta v. California, 422 U.S. 806, 820, 15 95 S.Ct. 2525, 45 L.Ed. 2d 562 (1975). see also, [United States v. Barnwell, 477 F.3d. 844, (6th Cir. 2007) "The right to personal presence at all critical stages of the trial and the right to counsel are fundamental rights of each criminal defendant."]

There was no reason, no compelling state interest in excluding Petitioner (Lynn) from that or any other hearing Petitioner (Lynn) was readily available to attend any hearing. United States v. Madori,

419 F.3d. 159, 171, (2nd Cir. 2005). "Even where a Judge's convening a secret exparte compelling necessity for secrecy exists, it must be weighed against the extent of intrusion, if any upon the interests of the excluded defendant." [United States v. Allesandro, 637 F.2d. 131, 7 Fed R Evid Serv (3rd Cir. 1980). "Defendants have explicit unqualified right under Rule 43 to be present at jury impaneling as well as all other stages of trial.]" [United States v. Brown, 571 F.2d. 980, (6th Cir. 1978). "Although Rule 43 (a) has constitutional underpinning, right of presence stated in rule is more far reaching than right of presence by Constitution. Due to stipulation that defendants not in attendance must confirm in writing their failure to attend."

The Supreme Court's prohibition of exparte procedures except for some compelling state reason is to protect the court's integrity, and defendants Due Process Rights. Knauff v. Shaughnessy, 338 U.S. 537, 94 L.Ed. 317, 70 S.Ct. 309 (1952). "Let it not be overlooked that Due Process of Law is not for the sole benefit of an accused. It is the best insurance for the Government itself against those blunders which leave lasting stains on a system of justice but are bound to occur on exparte considerations."

The exclusionary exparte hearing was a trial defect. Arizona v. Fuliminate, 499 U.S. 279, 309-10, 113 L.Ed. S.Ct. 1246 (1991). "A structural error is a defect in the trial mechanism itself, affecting the entire trial process and is per se prejudicial. The exparte hearing was just such an event.] [The Third Circuit precedents agree. Yohn v. Love, 76 F.3d. 508, (3rd Cir. 1996). "Because of the exparte nature of the discussion, Yohn was denied a hearing of opportunity to be heard. The basic tenets of procedural Due Process notice and a meaningful opportunity to be heard. Due Process is not so much concerned with the results, but the procedure followed in reaching that result. The denial of these essentials elements of procedural Due Process Constitute the violation." see also, United States v. Cronic, 466 U.S. 659, 674 2d 80 L.Ed. 104 S.Ct. (1984). "uniformity found constitutional error without any showing of prejudice when counsel was either totally absent or prevented from assisting the accused during a critical stage of the proceeding."

Petitioner (Lynn) asserts that the Third Circuit Court of Appeals by not remanding this case to the Chief Judge to conduct a hearing, develop any available facts ignored the precedent of Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 881, 883, 884, 129 S.Ct. 2252, 173 L.Ed. 2d (2009). "just as no man is allowed to be a judge in his own cause."

28 U.S.C. @ Rule 43 Defendant's presence

Rule 43 (a) (2) Every trial stage

Rule 43 (b) (2) When not required "Offense punishable not more than one year incarceration; with defendant's written consent

Petitioner (Lynn) had no knowledge of the exparte hearing, and therefore could have given no written consent! Lewis v. United States, 146 U.S. 370 13 S.Ct. 136, 36 L.Ed. (1911). "the first sentence of Rule 43 setting forth the necessity of the defendant presence at trial is a restatement of existing law." Defendant needs to be present to guarantee a fair proceeding. Diaz v. United States, 223 U.S. 442, 445, 32 S.Ct. 250, 36 L.Ed. 500 (1913). "An accused has a right under the Sixth Amendment to be present at his own trial, at any stage of the criminal proceeding that is critical to its outcome if the defendant's presence would contribute to the fairness of the procedure." also Kentucky v. Stincer, 482 U.S. 730, 745, 107 S.Ct. 2658, 96 L.Ed. 2d 631 (1987). "This right is codified in Rule 43 of the Federal Criminal Procedure which provides that defendant must be present at every trial stage Fed.R. Crim. P. 43 (a) (2)." see also United States v. Rosario, 111 F.3d 293, 298 (2nd Cir. 1996).] ["The United States Constitution protects the right to be present at trial and sentencing." see Illinois v. Allen, 397 U.S. 337, 338, 90 S.Ct. 1057, 25 L.Ed. 2d 353 (1970). see United States v. Allesandrello, 637, F.2d 137, 138 (3rd Cir. 1980)] ["Rule 43 was intended to protect a swath of rights broader than those protected by the Constitution alone" Rule 43 embodies the right to be present derived from the Sixth Amendment Confrontation Clause, the Due Process Clause of the Fifth and Fourteenth Amendments and the common law privilege of presence. The scope of Rule 43 was intended to be broader than the Constitutional Right. "By the words of the Third Circuit Court of Appeals, it was mandatory that Petitioner (Lynn) be present at the

exparte proceeding. see also, United States v. Turesco, 566 F.3d. 77, 83, (2nd Cir. 2009). "The Constitutional Right to be present at one's own trial exists at any stage of the criminal proceeding that is critical to the outcome of the defendant's presence would contribute to the fairness of the procedure."

Petitioner (Lynn) never waived his right to presence, he could not. He had no fair notice of the exparte proceeding and exparte hearing that was fundamentally in conflict with Rule 43 (a), for Petitioner (Lynn) gave no consent, no waiver of presence to the secret proceeding that violated Due Process, Canons 3(A)(4) (B) (7) and countless afore stated precedents of the Supreme Court and Courts of Appeal. Due Process must be supported, must be preserved, the Third Circuit Court's allowing of the Court's it is required to supervise to write its own rules destroys the integrity of the judiciary in th minds of the public it is appointed to protect from just such abuse.

Regardless of who might have been present at the March 15, 2011 hearing, it was a trial stage. 28 U.S.C. Rule 43 (b) (2) states: "presence required at every trial stage." Petitioner (Lynn) gave no written or oral consent of waiver of presence to this trial stage. Same hearing 2004 Code of Judicial Conduct, "a judge shall not initiate, permit, consider exparte communications. It is obvious from the recorded facts that this District Court is comfortable with unrecorded exparte proceedings.

Petitioner requests from The Supreme Court a remand of this case to some other District Court outside of the Third Circuit of Appeals, for a fair trial, in front of a fair tribunal. Petitioner (Lynn) is innocent of all charges and will if given a fair tribunal, there as here defend himself pro-se.

STATEMENT of the CASE:

Third Circuit in conflict with Supreme Court and Other Courts of Appeals precedents and in direct violation of U.S.C. @ 455 (a), Rule 43, and the Canons of Judicial Conduct, used the wrong legal standard to circumvent and condone the proper standard for supervisory writ of mandamus, and recusal.

The correct, ongoing standard, and precedent was established for mandamus in 2009, by the Supreme Court formalizing probabilaty of bias as the new standard for recusal of judges of decisionmakers. "When the probability of actual bias on the part of a judge or decisionmaker is too high to be constitutionally tolerable. Whether under a realistic appraisal of psychological tendencies and human weakness the interest poses such a risk of actual bias or prejudgement that the practice must be forbidden if the guarantee of Due Process is to be adequately implemented." Caperton v. A.T. Massey Coal Co., 556, U.S. 868, 881, 883, 884, 129 S.Ct. 2252 173, L.Ed. 2d 712 (2009).

A pretrial exclusionary exparte proceeding with only the District Court Judge speaking, is in complete opposition to the precedent of psychological tendencies and human weakness created by an exparte proceeding where only the Judge in essence attends; for no other voices spoke.

The source of the District Court Judge's bias is of no importance, it could have been process, not personal. What is of importance is that the Third Circuit Court of Appeals failed to adhere to the precedents of the Supreme Court and the Other Courts of Appeals and by condoning this forbidden procedure; sent a message of we have our own precedents to the other District Courts it supervises.

The danger here is that when a Court of Appeals choses to set its own standards outside the standards and precedents of The Supreme Court and the Other Courts of Appeal, all the courts become standardless. Standardless courts cannot satisfy the appearance of justice.

"The test does not require a showing of actual bias, though

actual bias, if disclosed, no doubt would be grounds for appropriate relief. Rather the test requires only a showing of an undue risk of bias, based on the psychological temptations affecting an average judge. Or would offer a possible temptation to the average judge, not to hold the balance nice, clear, and true. The Due Process Clause may sometimes bar trial judges who have no actual bias and who would do their very best to weigh the scales of justice equally between the contending parties. But to perform its high function in the best way, justice must satisfy the appearance of justice." Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 881, 993, 884 129 S.Ct. 2252, 173 L.Ed. 2d 712 (2009).

This then is the definitive standard for judicial recusal, risk of probability of bias, that the average person would agree had potentially occured. Exclusionary exparte hearings of which no record exist! No records were kept, the possibility of any of the supposed attendees being heard does not exist. The record is silent on who attended and what may have been offered, it was a secret meeting in violation of Due Process. In this internet age, the average person reading the conduct of the District Court Judge, would say to themselves the Third Circuit got it wrong; it did not follow the precedents of the Supreme Court and the Other Courts of Appeal, and are allowing a Court, the Third Circuit is to supervise, to make its own precedents on Due Process. The Third Circuit used the wrong standard, and then misapplied the standard to thwart the Supreme Court's precedent on recusal.

Actual bias not required only risk of bias or appearance of bias, circumstantial bias, the probability of bias, too high to be constitutionally tolerable are the proper precedents the Third Circuit Court of Appeals was required to use.

"Whether as an objective matter, the average judge on his position is likely to be neutral of whether there is an unconstitutional potential for bias. Intolerable risk of bias does not require proof of actualbias." Williams v. Pennsylvania, 136 S.Ct. 1899, 1905, 195 L.Ed. 2d 132 (2016).

The Third Circuit Court of Appeals ignored the circumstantial bias of the District Court Judge and thereby condoned exparte secret

hearings for all the District Court Judges it supervises. "Indeed Due Process may sometimes require recusal of judges who have no actual bias. It reaches every procedure which would offer a possible temptation to the average judge to forget the burden of proof, or which might lead him not to hold the balance nice, clear, and true between the state and the accused." "When absent procedures would have provided against arbitrary and inaccurate adjudication this court has not hesitated to find the proceedings violative of Due Process." Tumey v. Ohio, 273 U.S. 510, 532, 47 S.Ct.749 (1927).

The average lay person reading the limited facts in this case, on the internet, needs to have 100% faith that the Third Circuit Court of Appeals found the District Court Judge to be impartial in his conduct of secret exparte hearings.

"We vacate the Nevada Supreme Court's judgement because it applied the wrong legal standard. Under our precedents the Due Process Clause may sometimes demand recusal even when a judge has no actual bias. The Court asks not whether a judge harbors an actual bias, but instead whether , as an objective matter, the average judge in his position is likely to be neutral, of whether there is an unconstitutional potential for bias." Rippo v. Baker, 137 S.Ct. 905, 907, 197 L.Ed. 26, 167 (2017).

The Third Circuit Court of Appeals at the very least since there were limited facts, should have exercised supervisory control and determined the source of the District Court Judge's animus, be it against process, or defendant. The Third Circuit Court of Appeals also in addition to failing to follow Supreme Court precedent, disregarded The Code of Conduct for United States Judges, which prescribes ethical norms for United States Judges as a means to preserve the actual and apparent integrity of the federal judiciary. Which mirrors the language of 28 U.S.C. 455 (a), "any judge or justice shall disqualify him or herself in any proceeding where his or her impartiality might reasonably be questioned."

The Code of Conduct Canon 3 (A)(4) prohibits exparte communication or any communication concerning a pending or impending matter, that are made outside the presence of the parties or their lawyers." Canon 3 C "instructs that a judge must disqualify himself

or herself in a proceeding where his or her impartiality could reasonably be questioned." Failure to follow precedent, failure to adhere to its own Canon and its own statutes, the Third Circuit Court of Appeal's also choses to ignore the precedents of its sister courts of appeal.

Canon 3 C instructs that a judge must disqualify himself or herself in a proceeding where his or her impartiality could be reasonably questioned, mirroring the provisions of 28 U.S.C. @ 455(a) which mandates that a United States Judge shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." United States v. Microsoft Corp. 253 F. 3d. 34, 111, 346 U.S. App DC 330 (D.C. Cir. 2001).

The Canons for recusal have precedent. Black's Law Dictionary defines precedent as, "action or official decision that can be used as support for later decisions; a decided case that furnishes a basis for determining later cases involving similar facts. Stare Decisis United States Judges are prohibited from exparte proceedings.

Pre-trial scheduling of exclusionary exparte hearings with the expressed intent to confiscate co-mingled directors and officers insurance funds would be to the casual lay observer confirmation of bias and partiality toward the Petitioner, on the part of the District Court Judge. Bias so plain that it is inconceivable that the Third Circuit Court of Appeals can turn a blind eye to the constitutional violation. According to the District Court Judge's letter dated October 16, 2017, there are no other records of the exparte proceeding. There are no records of other exparte hearings that may have occured. How does the Third Circuit Court of Appeals reconcile proceedings of which there are no records?

"The Due Process Clause has been implicated by objective standards that do not require proof of actual bias, just suspicion of bias. 28 U.S.C.@ 455 (a) judicial recusals are governed by a framework of interlocking statutes. Under 28 U.S.C. @ 455 (a) all judges of the United States have a general duty to disqualify themselves in any proceeding in which their impartiality might reasonably be questioned." Blue v. Leventhal, 640 F.3d. 507, 572, (4th Cir. 2011).

The Third Circuit Court of Appeals fails to heed the precedents of the Other Courts of Appeal on the standard of recusal. "As for 455 (a) the objective standard asks whether the judge's impartiality might be questioned by a reasonable well informed observer who assesses all the facts and circumstances." United States v. Stone, 866 F. 3d. 219, 239 (4th Cir. 2017). In this instant case the Third Circuit Court of Appeals failed to follow the high standards of its sister courts on the objective standard for bias and recusal by one of the District Court Judges it is assigned to supervise. Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) was misapplied for in that case the Supreme Court granted relief due to the District Court's violation of Due Process.

Recusal is warranted when a reasonable person knowing all the circumstances, would harbor doubts about the judge's impartiality? Under that standard the Third Circuit Court of Appeals should have granted mandamus.

In this era of declining trust in the institutions of the United States, it is mandatory for the Circuit Courts of Appeal to follow the precedents of the Supreme Court and the other Courts of Appeals, or if the Third Circuit court of Appeals disagrees with a precedent, then it should do so openly and defiantly. It should mot shirk its responsibility by misapplying an incorrect standard for recusal.

Or in the alternative it should better supervise its District Court Judges.

"In deciding whether District Court Judge should recuse herself under 28 U.S.C. @ 455 (a) appealate court determines whether objective, disinterested, lay observer, who is fully informed of facts underlying grounds on which recusal was sought, would entertain significant doubt about judge's impartiality. "United States v. Berger, 375 F.3d. 1223, 17 FLW (CA 11 Ga 2004).

28 U.S.C. @ 455 (a) is written to protect the integrity of the judiciary, so said the Supreme Court of the United States. Liljeberg v. Health Services Acquisition Group, 486 U.S. 847 100 L.Ed. 2d 855, 874, 875 108 S.Ct. 2194 (1988). "The advancement of 455 (a)'s purpose to promote public confidence in the integrity of the judicial process. (Held) judge violated 455 (a) because conduct gave rise to

the appearance of impropriety. Impropriety taints the entire proceeding, an appearance of impropriety diminishes faith in the fairness of the criminal justice system in general. We must continuously bear in mind that to perform its high function in the best way, justice must satisfy the appearance of justice." The greatest danger to Due Process is erosion by lack of integrity of the judicial system, one brick crumbling at a time. In this instant case, the Third Circuit Court of Appeals ignored the precedents that support the walls of justice.

In Cobell V. Kempthorne, 455 F.3d. 317, 332, 372 U.S. App D.C. (D.C. Cir. 2006) the court stated in directing reassignment, "reassignment is necessary if reasonable observers could believe that a judicial decision flowed from the judge's animus toward a party rather than from the judge's application of law to fact." The records are silent, for they do not exist, only the judge knows if the animus was due to the size of the fraud; 800 million dollars was gone, or was it against what the judge may have considered to be a waste of his time; an open hearing. The Third Circuit Court of Appeals should have exercised its supervisory powers and instructed the Chief Judge of the District Court to conduct a proper hearing. If the Third Circuit Court of Appeals cannot recognize errors of law by the courts it supervises, or worse yet condones those errors, there can be no Due Process.

"Courts in our system elaborate principles of law in the course of resolving disputes. The power and perogative of a court to perform this function rest in the end, upon the respect accorded to its judgements. The citizen's respect for judgements depends in turn upon the issuing court's absolute probity. Judicial integrity is in consequence a state interest of the highest order." Republican Party of Minn. v. White, 536 U.S. 765, 793, 122 S.Ct. 2528, 153 L.Ed. 2d 694 (2002).

The failure of the Third Circuit Court of Appeals to have any proper hearings conducted at the Appeals Court or District Court level voids all chance of probity.

The importance of public confidence in the integrity of judges stems from the place of the judiciary in Government. "Unlike the

executive or legislature, the judiciary has no influence over either the sword or the purse neither forces nor will but merely judgement. The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions. Justice mist satisfy the appearance of justice." Offut v. United States, 384 U.S. 11, 14, 75 S.Ct. 11, 99 L.Ed. 11 (1954). Decisions for the sake of expediency can never satisfy the appearance of justice.

"Due Process Clause of Fifth Amendment entitles persons to impartial and disinterested tribunal in both civil and criminal cases, since requirement of neutrality in adjudicative proceedings safeguards two central concerns of procedural Due Process; prevention of unjustified or mistaken deprivations and promotion of participation and dialogue by affected individuals in decision making process; since neutrality requirement helps to guarantee that no person will be deprived id interests without proceeding in which he has assurance that arbiter is not predisposed to find against him, stringent rule that justice must satisfy appearance of justice must be applied, although it may sometimes bar trial judges who have no actual bias. Marshall v. Jerrico Inc., 466 U.S. 238, 64 L.Ed. 2d 182, 100 S.Ct. 1610, 24 (1980).

Canon 3 (A) (4) "prohibits exparte communications or any communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers, mirroring the provision of 28 U.S.C. @ 455 (a), which mandates that a United States Judge shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. The test for recusal under these provisions is an objective test based on public perception." United States v. Holland, 519 F.3d. 909, 913 (9th Cir. 2008).

In Bracy v. Gramley, 520 U.S. 899, 904-05, 117 S.Ct. 1793, 138 L.Ed. 2d 97 (1997) the Supreme Court found, "Due Process requires a fair trial in a fair tribunal, before a judge with no actual bias against the defendant or interest in the outcome of his particular case." For over twenty years the list of precedents on the standard for recusal has grown and strengthened its line of precedents on unconstitutional risk of bias as th standard for recusal.

"Fidelity to precedent the policy of stare decisis is vital to the proper exercise of the judicial function. Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions and contributes to the actual and perceived integrity of the judicial process." Payne v. Tennessee, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed. 2d 720 (1991).

"For these reasons we have long recognized that departures from precedent are inappropriate in the absence of special justification." Arizona v. Rumsey, 467 U.S. 203, 212, 104 S.Ct. 2305, 81 L.ED. 2d 164 (1984).

Why has the Third Circuit deviated from, then refused to follow the precedents of the Supreme Court and the Other Courts of Appeal on this fundamental issue of Due Process? Why has it deviated from its own precedents? "At the core of Due Process are the requirements of notice and a meaningful opportunity to be heard." Jarbough v. Atty. Gen., 483 F.3d. 184, 190 (3rd Cir. 2007).

In this instant case, the Third Circuit's focus was on protecting the District Court from its own abuse of power. "The touchstone of Due Process is protection of the individual against arbitrary action of the Government." Wolff v. McDonnell, 418 U.S. 539, 558, 94 S.Ct. 2963, 41 L.Ed. 2d. 935 (1974).

The Third Circuit Court of Appeals, used the wrong legal standard in this instant case, then misapplied the case law of the ruling they chose to use, defying procedural process. Affirming to the courts it is required to supervise that exparte proceedings are good to use as a means to whatever end the District Court Judge has in mind. Other courts follow a different path, as defined by the Supreme Court of the United States.

"These procedural protections help to guarantee that Government will not make decisions directly affecting an individual arbitrarily but will do so through reasoned application of a rule of law. It is that rule of law stretching back at least 800 years to Magna Carta, which in major part the Due Process Clause seeks to protect." Hurtado v. California, U.S. 516, 527, 4 S.Ct. 11, 28 L.Ed. 232 (1884).

The exclusionary exparte hearings occured. They were a Due

Process violation of Petitioner (Lynn's) fundamental Due Process Rights. There was no compelling state reason to exclude Petitioner (Lynn) and the other three parties apprised to have an interest in the disbursement of Federal Insurance's funds, for then as now; till all parties agree on disbursement the funds are the property of Federal Insurance.

There is no ambiguity in the wording of 455 (a). A reasonable lay person would question the District Court Judge's decision to schedule a secret exparte hearing, then fail to have his clerk keep any records, and finally write a cursory Order of the Court that would baffle with its accounting, any lay person who has ever balanced a personal checking account.

Most importantly the average lay person reading this instant case on the internet, would question why did the Third Circuit Court of Appeals shirk its supervisory powers, in ignoring the precedents of the Supreme Court and the Other Courts of Appeal, on such a fundamental question of judicial recusal.

Random procedures are not the norm of veteran judges. It is easily assumable that this District Court Judge has a history of a secret exparte proceedings, there were two in this case, that he used to speed the court proceedings to their end. Under that premise the District Court Judge had to assume the Third Circuit Court of Appeals would conjure up some straw man defense to absolve any complaints in the event motions were filed against the forbidden procedure of exparte secret hearings. It is feasible, and extremely likely the average lay person reading the facts in this case on the internet could concur.

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CONCLUSION:

This Supreme Court should remand this case to an untainted District Court outside of the Western District of Pennsylvania and outside of the Third Circuit.

The Third Circuit Court of Appeals erred by using the wrong standard, then misinterpreted the wrong standard in deciding a writ of supervisory mandamus, in conflict with the Supreme Court's precedents, and Other Court's of Appeals precedents.

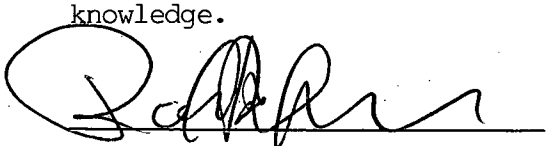
The Third Circuit Court of Appeals erred in not finding the Due Process violation of "fair notice"; and failed to properly supervise its District Court adherence to the Constitution, Rules, Statutes, and Codes of its own judiciary it has sworn to uphold.

The Judgement of the Third Circuit Court of Appeals was a unique departure from the precedents of the Supreme Court and Other Courts of Appeal and are violations of the Fifth, Fourteenth, and Sixth Amendments of the Constitution.

For the foregoing conclusions and statements of facts above, the Supreme Court should grand this writ of certorari.

Petitioner (Lynn) then once again request this Supreme Court to remand this case to any fair tribunal, so that Petitioner (Lynn) may prove his innocence in front of a fair tribunal.

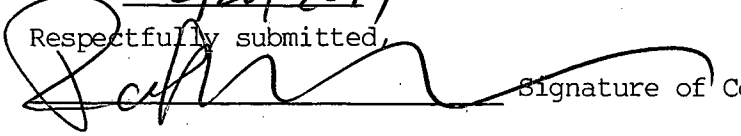
Petitioner (Lynn) swears and avows under threat of perjury, that all of the foregoing is true and correct, to the best of his knowledge.



Robert B. Lynn

Dated, 2/28/2019

Respectfully submitted,



Signature of Counsel Pro-Se

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