No. _____

In the
Supreme Court of the United States

Paul A. HEINRICH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Paul A. Heinrich, *pro se*
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QUESTION PRESENTED

1. Whether, in light of *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), the provisions of 28 USC §455, Disqualification of Justice, Judge, or Magistrate Judge, and/or Due Process require relief from judgment under a Rule 60(b) Motion for a New Trial when the discovery of judicial prejudice occurs post-trial and post-appeal and where it is the overall court record, itself, that proves judicial prejudice.

2. Whether purely punitive sanctions can be imposed against a Defendant in a Clean Water Act civil enforcement action without providing the basic Due Process protections normally afforded to defendants accused of criminal violations of the Clean Water Act where the only difference is whether the government seeks a term of incarceration for the alleged violation.

3. Whether a Defendant in a civil enforcement action can be found to have intentionally and flagrantly violated an unpublished, unannounced, improperly promulgated restriction on the use of his own private property.

4. Whether a judgment in a civil enforcement action that is rendered and affirmed through the wholesale disregard of the law, the facts, and the record is void such that it may be vacated at any time pursuant to Supreme Court Rule 60(b)(4) and/or(6).

PARTIES TO THE PROCEEDINGS

Petitioner is Paul A. Heinrich. Respondent is the United States of America.

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In the
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Paul A. Heinrich,
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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Petition for a Writ of Certiorari

Petitioner Paul A. Heinrich respectably petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

Opinions Below

The panel opinion of the United States Court of Appeals (Pet. App. a.) for the 7th Circuit is unofficially reported at Fed. App'x (7th Cir. 2020). The Order of the United States District Court for the Western District of Wisconsin (Pet. App. b.) denying Mr. Heinrich's Motion for a New Trial and for Reconsideration is also unreported.

The panel opinion of the United States Court of Appeals (Pet. App. c.) for the 7th circuit is unofficially reported at 184 Fed. App'x. 542 (7th Cir. 2006). The memorandum opinion of the United States District Court for the Western District of Wisconsin (Pet. App. e.) is also unreported.

Jurisdiction

The judgment of the United States Court of Appeals for the 7th circuit was entered on April 30, 2020. (Pet. App. a.). This Court's COVID-19 related Order dated March 19, 2020, extended the filing deadline to 150 days from the date of judgment. This Court has jurisdiction under 28 U.S.C. §1254(1).

Constitutional, Statutory, and Regulatory Provisions Involved

U.S. Const. Amend. V provides in relevant part:
No person shall be...deprived of life, liberty, or property, without due process of the law....

U.S. Const. Amend. VI provides in relevant part:
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district where in the crime shall have been committed, ... ; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defense

Rule 60. Relief from a Judgment or Order
.....
(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.
(c) Timing and Effect of the Motion.
(1) Timing. A motion under Rule 60(b) must be made within a reasonable time and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.
(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or
(3) set aside a judgment for fraud on the court.

28 U.S. Code §?455. Disqualification of justice, judge, or magistrate judge
(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:
(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
(i) Is a party to the proceeding, or an officer, director, or trustee of a party;
(ii) Is acting as a lawyer in the proceeding;
(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.
(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.....

Section 59aa of Title 33 of the United States Code, provides in pertinent part:
The portion of the Wisconsin River above the hydroelectric dam at Prairie du Sac, Wisconsin, is hereby declared to be a non-navigable waterway of the United States for purposes of Title 46, including but not limited to the provisions of such title relating to vessel inspection and vessel licensure, and the other maritime laws of the United States.

Section301(a)of the Clean Water Act, 33 U.S.C. §1311 (a), provides in pertinent part:
Except as in compliance with this section and section[] ...1344 of this title, the discharge of any pollutant by any person shall be unlawful.

Section 404 of the Clean Water Act, 33 U.S.C. § 1344, provides in pertinent part:

(a) The Secretary may issue permits, after notice and
opportunity for public hearings for the discharge of dredged or fill material in to the navigable waters at specific disposal areas.
(e)(1) In carrying out his functions relating to the discharge of dredged or fill material

under this section, the Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(l) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

Section 502 of the Clean Water Act, 33 U.S.C. § 1362 (5) (7), provides in pertinent part:
(5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
(6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water...
(7) The term"navigable waters"means the waters of the United States, including the territorial seas.

Section 328.3 of Title 33 of the Code of Federal Regulations, 33 C.F.R. § 328.3, provides the following definitions in pertinent part:
(a) The term waters of the United States means
(1)) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
(2) All interstate waters including interstate wetlands;
(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
(iii) Which are used or could be used for industrial purpose by industries in interstate commerce;
(4) All impoundments of waters otherwise defined as waters of the United States under the definition;
(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section;
(6) The territorial seas;

The definitions of "waters of the United States" found at 40 C.F.R. § 230.3(s) and 40 C.F.R. § 232.2 are substantively the same.
(7) Wetlands adjacent to waters (other than waters
that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section.
(8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.
(b) The term wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
(c) The term adjacent means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."
(e) The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Section 330.2 of Title 33 of the Code of Federal Regulations, 33 C.F.R. § 330.2, provides in pertinent part:
(c) Authorization means that specific activities that qualify for an NWP may proceed, provided that the terms and conditions of the NWP are met. After determining that the activity complies with all applicable terms and conditions, the prospective permittee may assume an authorization under an NWP. This assumption is subject to the DE's authority to determine if an activity complies with the terms and conditions of an NWP. If requested by the permittee in writing, the DE will verify in writing that the permittee's proposed activity complies with the terms and conditions of the NWP. A wriUen verificaJon may contain activity-specific conditions and regional conditions which a permiUee must satisfy for the authorization to be valid.
(d) Headwaters means non-tidal rivers, streams, and their lakes and impoundments, including adjacent wetlands, that are part of a surface tributary system to an interstate or navigable water of the United States upstream of the point on the river or stream at which the average annual flow is less than five cubic feet per second....

Section 330.4(c) of Title 33 of the Code of Federal Regulations, 33 C.F.R. § 330.2©, provides in pertinent part:
State 401 water quality certification.

(1) State 401 water quality certification pursuant to section 401 of the Clean Water Act, or waiver thereof, is required prior to the issuance or reissuance of NWPs authorizing acJviJes which may result in a discharge into waters of the United States.
(3) If a state denies a required 401 water quality certification for an activity otherwise meeting the terms and condiJons of a particular NWP, that NWP's authorization for all such activities within that state is denied without prejudice unJl the state issues an individual 401 water quality certification or waives its right to do so. State denial of 401 water quality certification for any specific NWP affects only those activities which may result in a discharge. That NWP continues to authorize activities which could not reasonably be expected to result in discharges into waters of the United States. (footnote omitted)
(4) DEs will take appropriate measures to inform the public of which activities, waterbodies, or regions require an individual 401 water quality certification before authorization by NWP.
(5) The DE will not require or process an individual permit application for an activity which may result in a discharge and otherwise qualifies for an NWP solely on the basis that the 401 water quality certification has been denied for that NWP. However, the district or division engineer may consider water quality, among other appropriate factors, in determining whether to exercise his discretionary authority and require a regional general permit or an individual permit.
(6) In instances where a state has denied the 401 water quality certification for discharges under a particular NWP, permittees must furnish the DE with an individual 401 water quality certification or a copy of the application to the state for such certification. For NWPs for which a state has denied the 401 water quality certification, the DE will determine a reasonable period of time after receipt of the request for an activity-specific 401 water quality certification (generally 60 days), upon the expiration of which the DE will presume state waiver of the certification for the individual activity covered by the NWP's. However, the DE and the state may negotiate for additional time for the 401 water quality certification, but in no event shall the period exceed one (1) year (see 33 CFR 325.2(b)(l)(ii)). Upon receipt of an individual 401 water quality certification, or if the prospective permittee demonstrates to the DE state waiver of such certification, the proposed work can be authorized under the NWP....

Statement of the Case

Introduction

This case concerns what duty is imposed upon a trial and appellate court, pursuant to 28 U.S.C. §455, to disclose prejudice towards a litigant, class of litigants, or on a particular issue

and whether the failure to disclose such prejudice tolls any time limit a litigant has to raise the issue through a Motion for a New Trial brought pursuant to Supreme Court Rule 60(b). At issue is the discovery of judicial prejudice *post*-trial and *post*-appeal where the record itself proves judicial prejudice and the failure of the Court of Appeals to provide meaningful review.

This appeal is not a complaint about the curmudgeonly, short tempered, contemptuous demeanor of a District Court judge. To the contrary; it is the pre-trial, trial, and post-trial procedures and the manner in which both sets of the lower courts dealt with the facts and controlling law of this case which irrefutably illustrates prejudice and its crippling effects, which imposed upon the Petitioner insurmountable obstacles to fair judgment.

Nor is this appeal about sour grapes or a second bite of the apple. It isn't about the restoration work, the fine, or the loss of the use of private property. It is about the denial of a citizen's right to a fair and impartial trial; a fundamental right denied by judges sworn to uphold the highest principles of our society in order to provide cover for the incompetence and malfeasance of a handful of hubristic government agents who thought they owned the whole of America's land. It is about the destruction of the reputation, self-esteem, and career of an attorney whose only errors were to have dared to actually read the law for himself and to believe that the law would protect him from overreaching bureaucrats who themselves couldn't, wouldn't, and didn't read and follow their own rules and regulations. It is about a department of justice who knowingly stood by and cheered as it encouraged the lower courts to enforce and uphold an unpublished, *ex post facto* restriction on the use of private property that was improperly and illegally promulgated; who demanded punishment with criminal sanctions the

intentional, flagrant violation of an *unpublished, unannounced, secret* communication between two agencies. It is about a court of appeals panel who effectively slut-shamed the Petitioner to provide cover for the incompetence of bureaucrats.

This case is about the unfairness of prosecuting a citizen for disagreeing with the "opinions" of government agents who admitted the law was unclear and where there was no pre-violation legal process or means to determine what the law actually required. *Sackett v. EPA*, 566 U.S. 120 (2012) now provides at least some avenue for legal guidance, but none was available to the Petitioner.

In this case, Petitioner, a traffic law attorney, asked the USACOE if he could build a road from the upland portion of his property through its wetland portion in order to access his lakefront. It began as a dispute between the United States Army Corps of Engineers and the Petitioner over the meaning and legal effect of Corps guidance. At issue was whether the construction of a forest road through privately owned wetlands was exempt from the Clean Water Act's prohibition against placing fill in a wetland if the landowner intended to use the road for dual purposes–forest and lakefront access–*ab initio*. Petitioner wanted access to his lakefront for his seaplane and in order to accomplish that he claimed that he needed to construct a forest road through the wetland to harvest the trees first. The Corps written guidance was unclear.

The Corps was unable to provide a definitive answer and Petitioner asked them if there was a legal procedure through which one could be provided. He was advised that there was not and that the only way to find out if the road construction was legal was to build it and to risk being sued by the government for a Clean Water Act violation. Petitioner also believed that his

construction project was permitted by the Nationwide Permit program also administered by the United State Army Corps of Engineers. Through contact and correspondence with the Corps Regional Director and field agents, the government's agents concluded that Petitioner had made good faith efforts to resolve the dispute in order to avoid a Clean Water act violation.

The law denied a landowner the opportunity to determine whether or not "information" coming from Federal administration agents, such as the USACOE and EPA concerning what actions a homeowner could or could not do on his own property, was lawful and correct. If a homeowner wanted to conduct some activity that could possibly be subject to administrative regulation the could either blindly follow whatever the agents suggested the regulations said and thereby not use his property or disagree with the agents and move forward with his project. Moving forward, however, was at the risk of jail and/or financial ruin.

Petitioner build the road and the government sued.[1]

The government's own witnesses testified that the forest road was property constructed, that it appeared to be maintained for the purpose of forestry access, and that it was necessary for the forestry activities conducted by the Petitioner. The government also acknowledged that the Petitioner had made good faith efforts to resolve the disputed issues throughout his contact with the government agents in order to avoid committing a CWA violation.

Petitioner also claimed his activities were allowed under the United States Army Corps of

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[1]Petitioner, himself, initially tried to file suit on February 7, 2003 to Quiet Title (03-C-71-S). That case was consolidated with this case, 03-C-75-S, the government's February 11, 2003 Compliance Order enforcement action, and ultimately dismissed. Petitioner simply had no way of determining whether what the government's agents told him was accurate.

Engineers Nationwide Permit Program. During the course of proceedings petitioner discovered that not only was the State of Wisconsin's response to the Corps request for Water Quality Certification for its Nationwide Permit program untimely, it was completely illegal and unenforceable under both Federal and State law. The relevant State Agency, the Wisconsin Department of Natural Resources (WDNR), violated every aspect of both its own agency rules and regulations and the State's Administrative Procedures Act with regards to making, issuing, and announcing Administrative Rules and Orders. The Corps, in turn, then violated its own rules, regulations and the Federal Administrative Procedures Act in the manner of its response to Wisconsin's submission and, crucially, failed to announce its decision in the Federal Register (which it had promised to do when it announced the NWPs). Ignoring the facts before him and the uncertain meaning of the guidance and the status of the regulations, the Trial Court, on summary judgment and at the penalty phase, decided otherwise.

Petitioner raised these issues in the trial court, the trial court ruled on those issues, government admitted he raised those issues. Inexplicably and without legal or factual basis, the 7th Circuit defaulted Petitioner on the issues because he failed to raise them in the court below and to the extent the court did address them, they blamed the Petitioner for confusing the agents.

Had either the trial court or the court of appeals actually addressed the legal issues which were properly and timely raised judgment could only have been issued in favor of the Petitioner. No facts are in dispute for the purpose of this appeal. Consequently, in that one sense, no further evidence or proceedings are necessary.

This isn't a joke and it isn't hyperbole. It is real and the effects are devastating. This

should never have been a close case. The law with regard to Petitioner's claim he held a valid Nationwide Permit for his activities was clear and the facts contained in the record are indisputable: An undisclosed, unpublished regulation that was improperly and illegally promulgated cannot be the basis for finding the Petitioner intentionally and flagrantly violated the law.

This case can set minimum due process standards for courts employing rocket docket procedures and what meaningful review entails. It will allow this Court to clarify what basic due process rights must be provided prior to imposing punitive sanctions in a civil enforcement action.

Facts

Mr. Heinrich's Property. Mr. Heinrich owns 9.5 acres of lake front property in Star Lake Wisconsin. Eight of those acres are forested wetland.

Mr. Heinrich's forested wetland is a white Cedar Swamp; it is above the ordinary high water mark of Little Star Lake and above the headwaters of the Wisconsin River watershed. Mr. Heinrich's wetland abuts Little Star Lake, which is a natural lake with about 100 acres of surface water and a maximum depth of 9 feet. Portions of Little Star Lake are themselves wetland and are so identified by the Wisconsin wetlands inventory map. The portions of Little Star Lake abutting Mr. Heinrich's wetland are among the wetlands identified on the map.

Congress has specifically determined that the waters with which Mr. Heinrich's wetland is congruous or not "navigable waters." Furthermore, by virtue of Mr. Heinrich's wetland's

location upstream from the headwaters, above the ordinary high watermark, and the minimal amount of water flow involved, Mr. Heinrich wetland is distinct from neighboring water bodies.

Little Star Lake drains into Star Lake, which, through a series of tributaries, drains into the Wisconsin River and then eventually into the Mississippi River.

Mr. Heinrich's Construction of the Private Road In August 1997, Mr. Heinrich engaged a contractor to build a grass-covered road through his forested wetland. The purpose of the road was two-fold: to provide access for logging and to provide access for Mr. Heinrich's seaplane. Other than the roadbed itself, all areas of the site remained a forested wetland, and there was no wetland disturbance outside the roadbed.

The activities undertaken by Mr. Heinrich were sufficiently minor as to fall within the Corps NWP 26, as the 7th circuit acknowledged:

> "[Mr. Heinrich's] Seaplane access road met the criteria of a Corps nationwide permit that was in effect at the time, known as NWP 26, which allowed small projects like his with minimal environmental impact to proceed without advance federal approval."

Thus, the 7th circuit specifically recognized that Mr. Heinrich's road had minimal environmental impact and there is no record evidence to show that the road had any significant effect on navigable waters or upon the nearby lake or downstream.

Mr. Heinrich's Communications with the Regulators

Petitioner is a lawyer, but he does not normally practice in Federal Court. Nor does he practice environmental law. Nevertheless he attempted to represent himself in this matter from its inception. At various times beginning in late 1996 petitioner met with representatives about the

Wisconsin Department of natural resources and the courts to discuss what regulations might apply to his project.

In this case, Petitioner, a traffic law attorney, asked the USACOE if he could build a road from the upland portion of his property through its wetland portion in order to access his lakefront. It began as a dispute between the United States Army Corps of Engineers and the Petitioner over the meaning and legal effect of Corps guidance. At issue was whether the construction of a forest road through privately owned wetlands was exempt from the Clean Water Act's prohibition against placing fill in a wetland if the landowner intended to use the road for dual purposes–forest and lakefront access–*ab initio*. Petitioner wanted access to his lakefront for his seaplane and in order to accomplish that he claimed that he needed to construct a forest road through the wetland to harvest the trees first. The Corps written guidance was unclear.

The Corps was unable to provide a definitive answer and Petitioner asked them if there was a legal procedure through which one could be provided. He was advised that there was not and that the only way to find out if the road construction was legal was to build it and to risk being sued by the government for a Clean Water Act violation. Petitioner also believed that his construction project was permitted by the Nationwide Permit program also administered by the United State Army Corps of Engineers. Through contact and correspondence with the Corps Regional Director and field agents, the government's agents concluded that Petitioner had made good faith efforts to resolve the dispute in order to avoid a Clean Water act violation.

The law denied a landowner the opportunity to determine whether or not "information" coming from Federal administration agents, such as the USACOE and EPA concerning what

actions a homeowner could or could not do on his own property, was lawful and correct. If a homeowner wanted to conduct some activity that could possibly be subject to administrative regulation the could either blindly follow whatever the agents suggested the regulations said and thereby not use his property or disagree with the agents and move forward with his project. Moving forward, however, was at the risk of jail and/or financial ruin.

Petitioner build the road and the government sued.[2]

As eventually proved in the District Court, the government's own witnesses testified that the forest road was property constructed, that it appeared to be maintained for the purpose of forestry access, and that it was necessary for the forestry activities conducted by the Petitioner. The government also acknowledged that the Petitioner had made good faith efforts to resolve the disputed issues throughout his contact with the government agents in order to avoid committing a CWA violation.

Petitioner also thought his activities were allowed under the United States Army Corps of Engineers Nationwide Permit Program. During the course of proceedings petitioner discovered that not only was the State of Wisconsin's response to the Corps request for Water Quality Certification for its Nationwide Permit program untimely, it was completely illegal and unenforceable under both Federal and State law. The relevant State Agency, the Wisconsin Department of Natural Resources (WDNR), violated every aspect of both its own agency rules

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[2]Petitioner, himself, initially tried to file suit on February 7, 2003 to Quiet Title (03-C-71-S). That case was consolidated with this case, 03-C-75-S, the government's February 11, 2003 Compliance Order enforcement action, and ultimately dismissed. Petitioner simply had no way of determining whether what the government's agents told him was accurate.

and regulations and the State's Administrative Procedures Act with regards to making, issuing, and announcing Administrative Rules and Orders. The Corps, in turn, then violated its own rules, regulations and the Federal Administrative Procedures Act in the manner of its response to Wisconsin's submission and, crucially, failed to announce its decision in the Federal Register (which it had promised to do when it announced the NWPs and which Corps guidance required). Petitioner raised these issues in the trial court, the trial court ruled on those issues, government admitted he raised those issues. Inexplicably and without legal or factual basis, the 7th Circuit defaulted Petitioner on the issues because he failed to raise them in the court below and to the extent the court did address them, they blamed the Petitioner for confusing the agents.

During the relevant time period, federal and state wetland regulations were in flux. The Corps was in the process of issuing and re-issuing a series of Nationwide Permits, which, among other things, allow for fill activity in wetlands that caused a little or no environmental harm. It was not until February 11, 1997 at the 1997 Nationwide Permits including NWP 26 went into affect. 61 Fed. Reg. 65,874 (Dec 13, 1996). As the seventh circuit determined below, Mr. Heinrich's road project complied with the requirements of NWP 26.

At the same time, relevant state water quality certification requirements were also in flux. As the Seventh Circuit explained in its ruling, federal regulations require that a state of evaluate and NWP to determine whether it complies with the states on water quality standards. If it does, the state grants blanket water quality certification for the NWP. If a state denies certification for a particular NWP, or if the court do use the conditions imposed by a state to be the equivalent of a denial, individuals seeking to proceed under NNWP must obtain individual water quality

certification.

Here, Wisconsin attempted to partially grant water quality certification for a number of nationwide permits, including NWP 26. However, as the seventh circuit noted, the Corps determined on April 30, 1997, that Wisconsin's position was inconsistent with the Coors regulations and, therefore, interpreted Wisconsin's position as a constructive rejection of NWP 26. This determination was not published in the Federal Register or otherwise made public; it was simply communicated by letter from the Corps to the state. Significantly, most of Mr. Heinrich's meetings with the regulators occurred before this time, and none include a discussion of NWP 26.

As a result of the Corps April 30, 1997 determination, an applicant seeking to use NWP 26–like Mr. Heinrich–would also have to obtain an individual state water quality certification. But no official notice was given to Mr. Heinrich (or to anyone else) that the Corps had interpreted Wisconsin's decision as a denial of blanket certification, or that Wisconsin landowners therefore could not proceed with their projects by relying on NWP 26, but would also have to obtain an individual state water quality certification.

Because of the flux in permitting requirements, and the Corps failure to give notice that an individual water quality certification would also be required, Mr. Heinrich did not obtain an individual state water quality certification. The absence of such a certification provided the United States Environmental Protection Agency with the basis for its enforcement action against Mr. Heinrich in the district court.

The initiation of the District Court litigation. On November 20, 2000, the US EPA

issued an administrative compliance order under the clean water act, 33 U.S.C. §1319(a), requiring Mr. Heinrich to "restore" his private wetland. That administrative compliance Order was later amended on February 9, 2001.

On February 7, 2003, Mr. Heinrich filed a quiet title action seeking to resolve his legal status. On February 11, 2003, the United States files its Clean Water Act enforcement action against Mr. Heinrich in the United States District Court for the Western District of Wisconsin. The two actions were consolidated on April 24, 2003.

The Decision of the District Court. In the district court, Mr. Heinrich and the government both moved for Summary Judgment on some of the issues raised in the government's complaint and Mr. Heinrich's counter-claim.[3] Among the issues considered by the District Court was whether Mr. Heinrich's road construction activity was exempt from regulation as a "forest road" and whether the road was permitted under NWP 26.

The trial court's April 4 scheduling order set Discovery was to be conducted over roughly 4 months and was to be concluded by September 17, 2003. That Order required motions for Summary Judgment were due to be filed no later than August 1, 2003 and Petitioner's response to Summary Judgment was due 21 days later. Trial was set for October.

The government's Motion for Summary Judgment was filed before any depositions were taken and was based upon and supported by affidavits from 12 different Federal and State

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[3]The Trial Court falsely claimed that the parties submitted summary judgment motions that encompassed "all of the issues." Written discovery had barely begun when summary judgment motions were due and no depositions of any of the witnesses had been taken at that point.

government employees totaling approximately 200 pages. Petitioner's response was due 21 days later. As of his response due date, the Petitioner had not been able to schedule the depositions of any of those affiants. Petitioner filed a Motion to Compel Discovery on August 14 because he believed the government was withholding critical documentation related to the validity of the administrative regulations at issue and for additional time in which to respond to the government's Motion for Summary Judgment. The motion to compel discovery and for additional time in which to respond to summary judgment was denied. The government never produced the documents which irrefutably show the state action was illegal and unenforceable.

Petitioner also requested additional time in which to prepare his case during the September 17, final pre-trial conference to which the Judge responded:

> "And that's one thing I don't plan to do in this case is to allow your creativity or that of opposing counsel to run rampant....I imagine if you stay up longer tonight you'll probably think up another half a dozen [issues that he would have to rule on] and I don't want that to occur." (Docket 160, pg. 19, ln. 10-16).

Summary Judgment was entered in favor of the government on September 18 and a hearing was held before the judge on the issue of injunctive relief and damages on October 6 and 7. Judgment was entered based upon the government's filings at a time when discovery had not begun and had not yet been concluded. No jury was ever empaneled and no trial was ever held.

The Trial Court Summary Judgment Order and Memorandum made no formal findings of fact or conclusions of law or rulings on the objections to and/or the admissibility of evidence. To the extent the Trial Court made any findings of fact at all, each finding, including the critical issues of knowledge and intent, were based upon disputed evidence; evidence which was

contradicted by the government's own witnesses, and was viewed in light most favorable to the movant for Summary Judgment.[4]

Upon conclusion of the October 6-7, 2003 hearing the court imposed upon Mr. Heinrich a $75,000 fine and granted the government full injunctive relief. Mr. Heinrich appealed. That appeal was dismissed as untimely. That Court of Appeals found that the lower court judgment called for a court approved wetland restoration plan and that since that plan had not been yet approved, the appeal was premature. The case was sent back to the District Court for entry of the restoration plan.

Between the October 2003 hearing and the remand in 2005, Mr. Heinrich was able to discover the documents proving the state had acted illegally (the documents which he had sought before his summary judgment response was due) by researching Wisconsin's state library and its administrative offices. Mr. Heinrich immediately filed a motion to reconsider the trial court's ruling on Summary Judgment as soon as the case was remanded to the Trial Court. (Dkts. 169, 171, 172) In that motion to reconsider, Mr. Heinrich fully set forth his argument that the requirement that he needed state water quality certification was unlawful and unenforceable. That motion was denied on June 15, 2005, as a "rehash" of arguments previously rejected by the Trial Court.[5]

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[4]The Court of Appeals went even further; inventing a fact pattern and theory of the case and making the worst possible adverse inferences against Mr. Heinrich from the disputed evidence that neither the government advanced nor the Trial Court found.

[5]This finding is important because the court of appeals refused to address these issues on appeal, concluding that the state law issues were never raised in the court below; an obvious and apparent fabrication of the contents of the trial court record.

On June 17, 2005 the trial court judgment was amended to provide the government declaratory relief and an approved wetland restoration plan. Mr. Heinrich then appealed.

The 2005 7th Circuit's Decision

On that appeal, Mr. Heinrich argued that a state water quality certification could not be required for NWP 26 projects in Wisconsin, such as his, because (a) Wisconsin had not met applicable deadlines for submitting its final state water quality certification to the Corps and had acted in violation of the State's own Administrative Procedures Act and its rules and regulations, (b) the enforcement of unpublished conditions on the nationwide permit program was illegal and unenforceable, and (c) the Corps acted in violation of its own rules, regulations, guidance, public notices, and the Federal APA preventing it from enforcing the unpublished restriction on the NWPs.

Instead of addressing the cogent, detailed fact-based legal arguments that were presented on appeal, the 7th Circuit ignored them, instead choosing to blame Mr. Heinrich for intentionally and flagrantly violating a unpublished restriction that none of the government witnesses even knew about and that the government never argued was applicable in the District Court.[6] The 7th Circuit blamed Mr. Heinrich for causing confusion amongst the government agents as if that was some excuse for the government's wholesale failure to follow the Constitution, the law, the

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[6]The government had argued that the state's water quality certification decision had prohibited NWP 26 from being used for access paths. The government's only reference to the state water quality certification decision only appears in a footnote in its reply brief to its motion for summary judgment. In his appeal Mr. Heinrich correctly pointed out that a position taken for the first time a reply brief is improper and not to be considered. The 7th Circuit refused to address Mr. Heinrich's argument.

Administrative Procedures Act, and its own rules, regulations, and guidance.

On appeal, every single disputed issue of fact, including critical issues of intent were either were resolved in favor of the government movant or wholly assumed, presumed, and/or fabricated in the absence of any such findings by the trial court. For example, the 7th Circuit concluded that the Petitioner tried to "film-flam" the government agents about the purpose of his road building project when the record indisputably reveals that he was completely forthright with the government about his project and that he had made good faith efforts to resolve the issues raised by his project before moving forward.

Without basis in law or in fact, the 7th Circuit's conclusion that the government's failure to properly promulgate and publish its (illegal, *ex post facto*) restrictions on the use of previously published nationwide permits was an excusable government SNAFU, and that the restrictions were enforceable without any prior notice because the Petitioner's deceitful and dishonest film-flam "confused" the government agents; a theory of the case and a finding never suggested nor proved by the government and one that the Trial Court never issued.

The seventh circuit stated that although the court "might agree" with Mr. Heinrich that "Corps officials should have done more to let those potentially affected... know that they had to get individual certifications", the Corps failure to do so did not violate any statute or regulation regarding notice by publication. The Court also acknowledged that applicable regulations required Corps district engineers to "take appropriate measures to inform the public of which authorities, water bodies, or regions require an individual water quality certification before authorization by NWP."

The 7th Circuit refused to address Petitioner's claim that Federal and State ABA laws prohibited enforcement of the secret correspondence between the USACOE and the WDNR; asserting that the claim was somehow *post hoc* or not raised in the trial court. Both excuses are patent falsehoods which are revealed by the record: not only did the Petitioner file a motion desperately seeking to compel discovery on this critical issue (because the government successfully delayed producing the evidence so Petitioner could not include it in his response to SJ) he actually raised the issue at his first opportunity. (Dkts. 179, 170, 171).

The Seventh Circuit gave short shrift to due process, apparently choosing to find fault with Mr. Heinrich for not reading the regulations. But Mr. Heinrich did read the regulations. The problem is that the regulations did not put him on notice that an individual water quality certification was required.[7] The only thing that would have put Mr. Heinrich on notice of that requirement was the Corps' letter determination, which was sent to the State of Wisconsin, but neither published nor made publicly available. That is why Mr. Heinrich's punishment is predicated upon secret law.

The government also has suggested that the Corps' failure to comply with the Constitution, as well as its own regulations, is immaterial, because Mr. Heinrich's conversations with regulators provided an appropriate substitute. There is no evidence to show that those conversations involved any discussion about the intersection of NWP 26 and any individual water quality certification requirements. Indeed, it is undisputed that the NWP 26 was simply

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[7] Indeed, what Mr. Heinrich (but not the Corps) did learn from those regulations is that the Corps is affirmatively required to inform the public as to when an individual water quality certification is necessary. That, of course, it did not do.

never discussed. (Dkt. 104 (Deposition of M. O'Keefe), p. 99, Ins. 6-9, pg. 104, Ins 12-17.)

The seventh circuit lambasted Mr. Heinrich for "cavalierly" moving forward without first discovering that the Corps had secretly denied blanket certification. However, 33 C.F.R. §330.2 states: "After determining that the activity complies with all applicable terms and conditions, the prospective permittee **may assume** an authorization under an NWP." (Emphasis added).

When a citizen cannot rely on the notice requirements stated in the applicable regulations, he is left in the dark as to what is required of him. That is what happened here, and it cannot, consistent with due process, provide a basis for punishment.

The only clear undisputed facts relevant here is whether the Federal and State administrative agencies followed their own rule making procedures and published the results. The only answer is no, neither agency did and as a consequence the regulations they sought to enforce were unenforceable; arbitrary, capricious, and not in accordance with law.
The fact that they were not published prohibited their enforcement under the Due Process clause of the us constitution. There is no gray area.

The 7th Circuit cited no law which excuses the government from following federal and State mandated APA rules and regulations in propagating rules and restrictions. They cited no law that negates the Constitutional requirement that laws cannot be enforced unless published merely because the government doesn't like the laws they themselves wrote, or tried to write, and/or because the judge thinks a litigant appearing before them was a jerk.

Petitioner was found to be an intentional, flagrant violator a law that was never properly promulgated nor published merely because the Petitioner dared to disagree with government

agents about the meaning of obtuse agency guidance and the law. They upheld the fine of approximately 2 and ½ times his annual net income as a penalty, in addition to having to restore the site and monitor it for 5 years. The 7th Circuit labeled Petitioner a deceitful, dishonest flim-flam.

District Court's Order Denying Motion for a New Trial

Now current Trial Court faults the unfairly terrorized and traumatized Petitioner for waiting too long to return to the very courts that destroyed him. After being denied basic due process by a prejudiced judge and then viciously slut-shamed by the appeals court, a litigant can not be faulted for being reluctant to return for redress to the very system that treated him so unfairly.

The District Court asserted that Petitioner should have brought his claims on direct appeal, ignoring that it wasn't until the record proving prejudice was complete that the facts were revealed. Moreover, it ignored the reality of the original court's rocket docket which prevented Petitioner from barely raising his substantive defenses, not to mention procedural ones.

Moreover, Petitioner requested an evidentiary hearing in order to elaborate on and further prove judicial prejudice, the prejudice resulting from the government's failure to disclose exculpatory evidence and, if necessary, to further explain his justification for any delay. Case law indicates that the reason for delay in filing a Rule 60(b) Motion is a fact-based issue, yet the lower courts denied Petitioner the opportunity for an evidentiary hearing to present the facts.

7th Circuit's 2020 Order

The 7th Circuit concluded that the petitioner presented no justification for his delay in

filing his Rule 60(b) motion and that he did not explain why he didn't raise the issue of judicial prejudice on direct appeal. However, as explained in his Motion and his Brief on appeal, Petitioner did present substantial justification for his delay: the 7th circuit's opinion publicly vilified, excoriated, and professionally humiliated the good faith litigant so viciously and hurtful that Petitioner was effectively paralyzed by the trauma, shame, and profound fear of being subjected to further inaccurate humiliating consequences, while it also ensured that no further Court and no other attorney would ever dare touch this case. For years Petitioner has suffered existentially, needing to do something to clear his name but knowing that to do so he would have to return to the very court that humiliated him. He also provided a detailed explanation for why he didn't raise the issue of judicial prejudice, among others, on direct appeal.

He asserted:

> "The record in this case proves the line between pleading and judgment was unbroken by anything resembling Due Process. Mr. Heinrich's motion for a new trial identified the following grounds for vacating the judgment:
> 1. He had been denied a fair trial because of the District Court's undisclosed bias against lawyers, which should have resulted in recusal;
> 2. He had been denied a fair trial and denied due process because the timing and scope of pre-trial, trial, and scheduling procedures in the District Court violated due process;
> 3. He had been denied a fair trial and due process because the District Court made substantive rulings outside of the issues presented by the parties;
> 4. The District Court's summary judgment decision and permanent injunction resolved disputed issues of fact without trial, and the permanent injunction lacked requisite findings;
> 5. The District Court denied him due process constitutional protections afforded to criminal defendants, such as right to counsel, *Brady* disclosures, a jury trial, and proof of liability beyond a reasonable doubt;
> 6. The United States failed to provide exculpatory evidence and follow its rules in promulgating regulations at issue;
> 7. By government agencies failing to disclose that they were in the process of

rewriting a draft field manual that encouraged illegal practices, the United States obtained its judgment by fraud on the court;

8. He was held to a higher standard for being a lawyer and was denied his right to assert defenses available to non-lawyers;
9. While admitting that it was not an independent basis for Rule 60 relief, Heinrich noted that the law regarding pre-enforcement review of agency action under the Clean Water Act had changed in his favor since the entry of judgment;
10. This Court's prior decision on direct appeal was not a meaningful review."

Mr. Heinrich claimed that a judgment rendered under such circumstances is void and voidable under Rule 60(b)(4) and (b)(6) because the Trial Court failed to provide him basic due process rights and protections prior to entry of judgment and that the Court of Appeals failed to provide meaningful review of case on appeal. Mr. Heinrich asserted that the court record itself proves his claim. The Government did not deny Heinrich correctly summarized the record.

There is no precedent for the current Trial Court's summary dismissal of Heinrich's Rule 60(b) motion for a new trial as *per se* untimely. Heinrich could find no cases where the discovery of a jurist's bias was discovered *post*-judgment and *post*-appeal. However, Rule 60(b) motions are *fact dependent* and are to be considered on a case by case basis. Heinrich asked the lower Court for an evidentiary hearing in which to prove the basis for his motion and to explain, beyond his compelling statements of disability, the reasonableness of any presumed delay in bringing the motion. The Trial Court denied the motion, citing no authority in support of its conclusion that the motion was untimely per se.

As Heinrich pointed out in his initial brief, the U.S. Supreme Court has, however, made clear that a litigant had no duty to discover a jurist's prejudice and he has no duty to prove actual prejudice. The Supreme Court and the 7th Circuit has emphasized that the integrity of the process

is more important than finality–particularly in cases, like this, where there was no trial. See *Liljeberg* and *SCA Services, Inc. v. Hon. Robert D. Morgan.*

A judgment rendered without due process is void. It is well settled that a void judgment is void *ab initio* and may be vacated anytime. No reasonable person could conclude that the judgment rendered with this procedural history, the facts, and the controlling law was a fair trial under Due Process standards and anything other than void. No reasonable person could conclude that the previous panel provided Heinrich meaningful review on his appeal. One cannot seek a second bite of an apple if there was no first bite.

The record reflects that Heinrich did not receive a fair trial by a fair and impartial jurist after having a full and fair opportunity to discover, develop, and present his case as required by our Constitution. Instead, the government insisted that the court must not look at the very record which proves Heinrich's claim. The government argued that these issues could have been raised on direct appeal, but then inconsistently asserts that Heinrich could not have raised them on direct appeal because they were not raised below.

Whether any of Heinrich's claims could have been brought under Rule 60(b)(1) through (3), and thus time limited to one year, is irrelevant to this appeal. The lack of fundamental due process illustrated by the record must be given consideration under Rule 60(b)(4) and (6) because they prove the assertion that Heinrich received no due process–he received no trial at all. Both the current Trial Court and the Government failed to appreciate that Heinrich pointed out these issues not as an independent basis to grant him a new trial under Rule 60(b)(1) through (3), but rather to illustrate the record, itself, is undeniable proof that Heinrich did not receive a fair trial.

The Government argued that a judgment rendered without due process should stand because the victim waited too long to object. They admitted that determining what is a "reasonable time" in which to bring a Rule 60(b) motion is fact dependent, but then argue the current Trial Court did not abuse its discretion when it decided the fact dependent issue without hearing the facts. Whether reviewed *de novo* or under an abuse of discretion standard the result must be the same–given this record and these facts no reasonable person could conclude that Heinrich received a fair trial in the Court below and meaningful review on appeal.

The Government attempted to stand fundamental Due Process rights on its head–they argued that Heinrich had the responsibility to discover judicial, prosecutorial, and agency misconduct in a more timely manner. They do not suggest just how Heinrich should have gone about such discovery. The Government suggested that they and the courts are free to deny litigants the right to a fair trial if they can effectively hide their misconduct for a year or more. But, as the Supreme Court stated with approval in *Liljeberg*, litigants have no duty to timely discover judicial prejudice and recusal cannot be waived consciously or by default. "They impose no duty on the parties to seek disqualification nor do they contain any time limits within which disqualification must be sought." *Liljeberg* citing *SCA Services, Inc., v. Hon. Robert D. Morgan*, 577 F.2d 110; 117 (7th Circuit).

In *Hazel-Atlas Glass Co. v. Hertford-Empire Co.*, 322 U.S. 238 (1944) the Supreme Court granted relief from a judgment brought 11 years after the initial decision. In a recent decision, the 7th Circuit affirmed the notion that "litigants may seek disqualification despite the absence of a protest in the court where the disqualified judge sat. . . and treat the participation of

a disqualified judge as a form of structural error, which may be noticed at any time." *Fowler v. Butts*, 829 F. 3d 788 (7th Cir. 2016)(italics added). Heinrich is simply not time barred; the duty to disclose its prejudice lies with the Trial Court.

The government claimed that all these issues could have been raised on direct appeal. However, the record reflects that not only was Heinrich denied the opportunity to raise his substantive defenses, the Trial Court's accelerated pre-trial and trial schedule prevented Heinrich from raising procedural defenses. Moreover, it must be remembered that the Trial Court announced on the record that he intended to deprive Heinrich the time necessary to prepare and present his defense. Thus, unlike the mere conjecture of possible judicial prejudice in *Lavoie*, here the overall record itself proves judicial prejudice. If Heinrich was intentionally denied the bare minimum opportunity to raise valid and correct substantive defenses, he cannot now be faulted for failing to raise issues of the Trial Court's prejudice and prejudicial procedural misconduct.

One must wonder how many other good-faith litigants appearing before this Trial Court judge were victim of his unrelenting pursuit of judicial expediency at the expense of fundamental fairness. How many good-faith litigants continue to appear before judges with similar "Rocket Docket" procedures which elevate expediency over fair administration of justice–only to suffer the same or similar fate? How many instances of structural injustice were witnessed by the United States Department of Justice, the most common federal court litigant, and were met with a smug, smiling, self-satisfied silence at a system that overwhelmingly favored them. Opposing the weight of the U.S. Government on the merits is hard enough on its own without the added

weight of a rush to justice thumb on the scale.

The Government's suggestion that the Court's bias against Heinrich was permissible because the Trial Court hated all lawyers–that being equally unfair to everyone is somehow equivalent to being fair to both–is childishly absurd. Being equally unfair is unfair period full stop."

The 7th Circuit decision perpetuates the manifest injustice it previously upheld and must be reversed.

Reasons for Granting the Writ

The severe time limitations imposed upon Mr. Heinrich throughout the pre-trial proceedings ensured he would not have sufficient time to discover, prepare, present his defense. The pre-trial time limitations placed upon Mr. Heinrich were so unrealistic as to render the District Court's judgment a sham; the proceedings leading up to the judgment constituted a wholesale abandonment of fundamental due process and an indisputable denial of impartial justice and a fair trial.

Whether it was because of personal animosity, party bias, or issue prejudice, or a combination of all three, the goal remained the same; Petitioner was going to lose his case regardless of its merit and the courts would sacrifice its legal, ethical, and moral obligations to ensure that would happen. To obtain that goal the lower courts threw basic principles of substantive and procedural due process and fundamental fairness out the window and engaged in the wholesale disregard for the facts, the record, and the law. Throughout the litigation the lower courts treated the contested issues of fact and law raised by the Petitioner as if they were

undisputed and well-settled. To ensure that their improper conduct would face no further appellate review the lower court viciously slut-shamed the Petitioner--assuming, presuming, and inventing an unproven fact pattern vilifying the Petitioner for daring to read the law which led him to disagree with the "opinions" of the government agents and then blaming him for the failure of the government's agents to properly promulgate and publish the laws that they wished to enforce. Petitioner wasn't going to be given the opportunity to conduct discovery to establish evidence supporting his case before judgment was entered against him and the facts and legal arguments that he was able to present were ignored, boiled down, and glossed over in order to cover up for the incompetence of Federal and State bureaucratic agencies and their agents.

The case was decided on summary judgment. A jury never heard the contested facts or any aspect of Petitioner's claims and defenses. Not only was every single adverse inference concluded from the disputed facts, the very worst possible inferences were assigned to the Petitioner despite the government's own admissions that the opposite was true. That sounds harsh, but the proof is all there in the record waiting to be reviewed and revealed.

The district and appellate courts refusal to address the valid, correct, and controlling legal issues raised by the Petitioner and their fantastical inventions of fact and law extend beyond mere error. It is difficult to imagine a more compelling narrative which supports a finding that the judgment was rendered with complete, wholesale disregard of the facts, the law, and the fundamental duty of the courts to provide bare minimum substantive and procedural due process to a litigant.

Such a departure from judicial norms can only be explained by some sort of judicial

prejudice. It is more than mere error. The panel's refusal to provide Heinrich meaningful review perfected the Trial Court's initial injustice. It was not mere error; it was manifest error– both the Trial Court and the appellate panel engaged in the wholesale disregard of the facts and record of the case and controlling precedent, the misapplication of the law, and the failure to uphold the rule of law. The record of this case is precisely the extraordinary circumstances which Rule 60(b)(4) and (6) remedies were written to address. It is precisely the record that mandates a finding under Rule 60(b)(4) that the judgment below and on appeal was void *ab initio*, or at the very least voidable, for the record is completely devoid of bare minimum Due Process standards, protections, and procedures.

This case presents the opportunity for this Court to expand the ruling in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 862-70 (1988) to allow a 28 USC §455 motion for the Disqualification of a Judge, Justice, to be brought even when the discovery of judicial prejudice is discovered post-trial and post-appeal.

Neither of the original Courts cited precedent in support of their decisions, neither fully addressed the legal issues, arguments, controlling regulations, guidance, and Public Notices, and legal precedents set out by the Appellant, and both improperly relied upon viewing the facts in light most favorable to the movant;

> "Fed. R. Civ. P. 60(b) is to be given a liberal construction so as to do substantial justice and to prevent the judgment from becoming a vehicle of injustice. This motion is grounded in equity and exists to preserve the delicate balance between the sanctity of final judgments and the incessant command of a court's conscience that justice be done in light of all the facts. One important equitable consideration is whether the litigants received a ruling on the merits of their claim. There is much more reason for liberality in reopening a judgment when the merits of the

> case never have been considered than there is when the judgment comes after a full trial on the merits. In such cases, a court must balance the policy favoring finality in judgments against the competing policy of granting parties a hearing on the merits of their claims. Courts also consider whether any substantial rights of the nonmoving party have been prejudiced." *MIF Realty L.P., v. Rochester Associates*, 92 F.3d 752 (8th Cir. 1996).

This Court knows that men falsely accused and convicted of crimes they did not commit sit in prison for years, for decades, shocked and stunned into incapacity by the blows of flawed jurisprudence before they regain some degree of consciousness and garner the courage to challenge the unfairness and injustice of their wrongful convictions. There is little difference between an innocent prison inmate serving a life sentence and a lawyer falsely accused and wrongfully labeled morally reprehensible; an intentional, flagrant violator of the law; a dishonest, deceitful, incompetent flimflam. Both suffer apocalyptic injury. Both are imprisoned and profoundly crippled by the injustice.

"Injustice" is an invisible disease isolating the sufferer from the rest of the world. Like severe sciatica, it has a cause and the possibility of a cure. For relief, however, a victim of injustice must return to the very source of the injury for the one and only remedy. Imagine what it has been like for a lawyer to live falsely labeled as an intentional, flagrant violator of the law; a dishonest, deceitful, incompetent flim-flam. Imagine the horror, the shame, the humiliation a young lawyer must have suffered showing that judgment to his new bride and her family, to his mother, his friends and neighbors. Imagine how difficult it is for him, how much courage it would take to return to the perpetrators of his injury for relief.

This case also presents the opportunity for this Court to decide if purely punitive

sanctions can be imposed without providing requisite constitutional due process protections to Respondents in Clean Water Act civil enforcement actions. See generally; Jonathan I. Charney, Need for Constitutional Protections for Defendants in Civil Penalty Cases, 59 Cornell L. Rev. 478 (1974). Available at: http://scholarship.law.cornell.edu/clr/vol59/iss3/5. In short, Charney's article is a dated, but well researched exposition on why Brady disclosures, heightened burden of proof, right to counsel, etc. are required to ensure a fair trial prior to criminal type punishment.

CONCLUSION

Mr. Heinrich has presented four issues, all of which warrant plenary review by this Court.[8]

Petitioner had the courage to stand up against bullying bureaucrats blowing smoke about what he could do with his own private property, confident that the law was on his side. He followed the law. He was a good steward of his property and the environment. He did not deserve to be treated with such disrespect by the lower courts. Petitioner has nowhere else to turn for relief.

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[8]Petitioner apologizes for his inability to produce a better Petition. He is all too well aware of his incompetence to practice before this Court. Although he maintains his professional license, Mr. Heinrich does not actively practice law is any State or Federal court.

He ran out of time to complete and revise the Petition prior to its due date.

Because the operative facts of this case is the court record and its contents, the Petitioner believes that the decisional process of this Court would not be significantly aided by oral argument and he suggests that this case should be decided without oral argument.

Respectfully Submitted,

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