CASE NO. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE ERIC R. RAMEY,

Defendant-Petitioner

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

PETITION FOR MANDAMUS RELIEF FROM DENIAL OF MOTION TO RECUSE THE HONORABLE JOHN R. ADAMS, UNITED STATES DISTRICT COURT JUDGE IN NORTHERN DISTRICT OF OHIO CASE NO. 5:15CR234

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Pursuant to Federal Rule of Appellate Procedure 21, Eric R. Ramey petitions this Court for mandamus relief directed to the Honorable John R. Adams of the United States District Court for the Northern District of Ohio, Eastern Division. Judge Adams presides over Mr. Ramey's criminal case in the Northern District of Ohio Case No. 5:15CR234. Mr. Ramey is entitled to proceed in this Court *in forma pauperis* pursuant to Fed. R. App. P. 24(a)(3).

1. Relief Sought

Eric Ramey seeks mandamus relief from an Order denying his Motion to Disqualify the Honorable John Adams, United States District Court Judge, from presiding over his criminal case. [Exhibit 1, SEALED Order of 10/23/2015, Dkt. No. 19, PageID ##88-97]. Mr. Ramey seeks an order directing recusal from the instant criminal case in light of the relationship Petitioner has with Jerry Adams, Sr., and Jerry Adams, Jr., the brother and nephew of the Honorable John R. Adams. The relationship between Eric Ramey and the brother and nephew of Judge Adams is one which involves abuse of opiates over a considerable period of time, sometimes in the presence of nephew Jerry Adams Jr.'s young son. Based upon these facts, Petitioner states that Judge John R. Adams' familial relationship with individuals who abused illegal substances with and in the presence of Eric Ramey prior to and during the time the instant case has been pending, is a clear

conflict requiring recusal. This familial relationship between Judge John Adams and his brother Jerry Adams and his nephew, Jerry, Jr. is within the third degree of relationship as identified in Code of Conduct for United States Judges and in 28 U.S.C. §455(b)(5), and clearly presents a situation where the judge's impartiality might reasonably be questioned.

2. Issue Presented

Whether a district court judge must recuse himself from a criminal case where the defendant has held a long term relationship of opiate (heroin) drug abuse with the judge's brother and nephew?

3. Necessary Facts

As stated above, the District Court Judge has held that although Petitioner Eric Ramey used opiate drugs with the Judge's brother and nephew on a daily basis for a period of 14 months, a reasonable person apprised of all the facts would not "conclude that the judge's impartiality might reasonably be questioned." The Judge has accepted as fact that the drug use took place, but somehow relies upon his contention that he is "estranged" from his brother and nephew and therefore a reasonable person wouldn't question his impartiality. [Exhibit 1, SEALED Order, PageID #89].This is nonsense. Estranged or otherwise, knowledge that a defendant has used drugs on a daily basis with a close family member for an extended period

of time in of itself would lead a reasonable person to believe that the Judge's impartiality "might reasonably be questioned." In fact the opposite may be true -- estrangement would lead a reasonable person to further conclude that impartiality may be at issue as the unhealthy relationship and opiate use is likely behind the estrangement itself and must clearly be a source of consternation and pain for the Court. To then judge and sentence someone who is enmeshed with that consternation and personal pain is unconscionable and clearly calls the Court's impartiality into grave question.

In the same vein, the Court somehow finds that the undersigned did not "certify" the conflict in spite of the undersigned filing a sealed document supporting disqualification entitled "Certification that Motion to Disqualify is Made in Good Faith" [Exhibit 4, SEALED Certification that Motion to Disqualify is Made in Good Faith, Dkt. No. 18, PageID ##84-87]. It appears the Court is asking that the undersigned actually file some sort of certificate certifying that the motion and basis for this petition is made in good faith. Again, this finding is completely devoid of reason and fails to acknowledge counsel's documented fact checking and verification of Petitioner Ramey's Affidavit, which included telephonic discussions with Jerry Adams, Jr., and the affidavits of Monica Nussbaum and Shelly Delhorbe, who is Eric Ramey's mother. [Exhibit 2, Motion

to Disqualify the Honorable John R. Adams of 09/24/2015, Dkt. No.11, PageID ##36-40; Affidavit of Eric R. Ramey of 09/16/2015, Page ID##42-44; Affidavit of Monica Nussbaum of 09/18/2015, PageID ##45-46; Affidavit of Shelly Delhorbe of 09/18/2015, PageID #47].

Finally, after the undersigned and Petitioner Ramey provided opposing counsel with the affidavits presented in Petitioner's Motion to Disqualify, and allowed counsel for the United States to approach and speak to the Court, *ex parte,* in a last ditch effort to provide the Court, Eric Ramey, Jerry Adams Sr. and Jerry Adams Jr. an opportunity to move forward with their cases and recovery, the government argued in its Brief in Opposition to Disqualification (and the Court accepted) the notion that the undersigned **should have not raised the issue** because the Court would not have been aware of the conflict if it wasn't brought to the Court's attention by the undersigned. [Exhibit 3, Government's Response in Opposition to Disqualification of 10/17/2015, Dkt. No. 17, PageID #77-78]. This logic is mind boggling. It presupposes that courts are always aware of potential conflicts and requires counsel to act unethically and ineffectively by suppressing information that is obviously relevant to the Court and Mr. Ramey's case.

The recalcitrance exhibited by the Court in rejecting the disqualification motion on what is facially a clear case where recusal is mandated, coupled with

the acquiescence and enabling by the government to support an obviously spurious position by the Court, is disturbing. This litigation and the instant proceedings delayed the resolution of Mr. Ramey's case immensely. Mr. Ramey is in pretrial detention while this Petition is pursued, and this delay and litigation has risked harm to many parties who are in the midst of opiate recovery.

The instant case began routinely. It was believed that Mr. Ramey would appear and enter a guilty plea, without a plea agreement, to the indicted charge of passing counterfeit currency. Although the undersigned had opportunities to interact with Mr. Ramey, the undersigned did not know Mr. Ramey was addicted to opiates. Petitioner Ramey has stated that he withheld this fact because he was concerned about how it might effect his criminal case.

Initially Mr. Ramey stated that his girlfriend, Monica Nussbaum, who also provided an affidavit as it relates to the relationship of the parties and the Judge's brother and nephew, and Jerry Adams Jr. were involved in a theft case, and that Ramey was notified that he may be called as a witness. Although these facts are true, it was only part of the story. Two weeks later more facts were entrusted to the undersigned, involving the fact that Jerry Adams Jr. and Petitioner Ramey had a friendship, and on one occasion actually encountered Judge Adams at a nursing home. It wasn't until a final meeting where an affidavit by Eric Ramey was

obtained by the undersigned that the entire story was revealed. This story was corroborated by other affidavits, by Jerry Adams Jr. during a telephone call with the undersigned, and finally by the Court in its Order refusing to disqualify itself.

Although the Court goes to great lengths in its Opinion to undermine the credibility of Petitioner Ramey, the other affiants and the undersigned, [R.19, SEALED Order, PageID ##96-97], the Order of October 23, 2015 is clear: the District Judge has accepted as fact that Eric Ramey was engaged in daily drug use with the Judge's brother and nephew, but still has taken the position that recusal is not necessary "because a reasonable person" knowing all the facts would not "conclude that the judge's impartiality might reasonably be questioned," because he is estranged from this portion of his family.

Thus the facts here are straightforward. This court should accept, without reservation the affidavits and factual pleadings provided by the Petitioner *sub judice*.

4. Reasons Why the Writ Should Issue

A. This Court has jurisdiction to issue a writ of mandamus where a Judge improperly fails to recuse pursuant to 28 U.S.C. § 455

Where a District Court Judge has failed to recuse himself pursuant to 28 U.S.C. § 455, this Court has mandamus jurisdiction, and will consider on its merits a petition challenging the failure to recuse:

> To the extent, then, that our prior case authority may be deemed to hold that we will not entertain or consider a petition for mandamus following refusal of a district court to disqualify based on conflicts of interest and alleged appearance of impropriety under § 455, we now disavow such case precedent. Instead we hold, along with all other circuits that have ruled on the question, that we will review such a petition, and in particular, we will review on its merits the petition for mandamus under circumstances involving alleged conflict of interest and/or appearance of impropriety under § 455.
>
> We adopt also this language from *Moody* [*v. Simmons*, 858 F.2d 137 (3d Cir.1988] as our rule of practice:
>
> > We ordinarily review recusal decisions for abuse of discretion. We first look to § 455(b), which provides that a judge is automatically recused upon the existence of certain familial and/or financial relationships, and then to the more general terms of § 455(a).
>
> . . . . .
>
> > Under § 455(a) a recusal is required when a reasonable person would harbor doubts about the judge's impartiality. *United States v. Sciarra*, 851 F.2d 621, 634 (3d Cir.1988), *Edelstein v. Wilentz*, 812 F.2d 128, 131 (3d Cir.1987).
>
> *Moody v. Simmons*, 858 F.2d at 142 . . .

In re The Aetna Casualty and Surety Company, 91 F.2d 1136, 1139-44 (6th Cir. 1990).

This Court reviews the district court's decision not to recuse itself after bias or prejudice has been presented, under an abuse of discretion standard. *Wheeler v. Southland Corp*., 875 F.2d 1246, 1251 (6th Cir.1989).

B. Judge John Adams is disqualified from the instant case because the Defendant in this Case has had an Ongoing and Extended Relationship of Opiate Abuse with the Brother and Nephew of Judge Adams, and has been made Privy to the Strained Familial Relationships between Judge John Adams and his Brother Jerry Adams, Sr. and his Nephew Jerry Adams, Jr.

A defendant in a criminal case "is entitled to the cold neutrality of an impartial judge" and due process "demands a fair hearing before an impartial tribunal." *United States v. Baker et al.*, 441 F.Supp. 612, 615 (M.D. Tenn., Oct. 28, 1977)(citations omitted). In *Knapp v. Kinsey*, this Court recognized this fundamental principle:

> One of the fundamental rights of a litigant under our judicial system is that he is entitled to a fair trial in a fair tribunal, and that fairness requires an absence of actual bias or prejudice in the trial of the case.

Knapp v. Kinsey, 232 F.2d 458, 465 (6th Cir.1956); *see also Offutt v. United States*, 348 U.S. 11, 14 (1954) ("[J]ustice must satisfy the appearance of justice"); cf. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (noting the importance of "preserv[ing] both the appearance and reality of fairness," which "'generat[es] the

feeling, so important to a popular government, that justice has been done'")

(quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 172 (1951)

(Frankfurter, J., concurring)).

Indeed, the Code of Conduct for United States Judges provides in its First

Cannon:

> An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

In addition, the Commentary to Cannon 1 provides:

> Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

1. Statutory Framework for Disqualification - 28 U.S.C. §455

The relevant statute governing the disqualification of a United States

justice, judge or magistrate is found at 28 U.S.C. §455, which provides:

(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.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) . . .

(iv) . . .

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

28 U.S.C. §455.

The law with regard to recusal under Section 455 is straightforward and well-established in the Sixth Circuit. A district judge is required to recuse himself " 'only if a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.' " *United States v. Story*, 716 F.2d 1088, 1091 (6th Cir.1983) (quoting *Trotter v. International Longshoremen's & Warehousemen's Union*, 704 F.2d 1141, 1144 (9th Cir.1983)). This standard is objective and is not based "on the subjective view of a party." *Browning v. Foltz*, 837 F.2d 276, 279 (6th Cir.1988).

Prejudice or bias must be personal, or extrajudicial, in order to justify recusal. "Personal" bias is prejudice that emanates from some source other than participation in the proceedings or prior contact with related cases. *Demjanjuk v. Petrovsky*, 776 F.2d 571, 577 (6th Cir.1985). Personal bias arises out of the judge's background and associations.

2. Applicable Comparative Caselaw in Support of Disqualification

A district court judge must recuse himself where "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. This standard is objective and is not based 'on the subjective view of a party.' " *United States v. Nelson*, 922 F.2d 311, 319 (6th

Cir.1990) (citations omitted). Where the question is close, the judge must recuse himself. *Roberts v. Bailar*, 625 F.2d 125, 129 (6th Cir.1980).

Responses by Judge Adams in his Order, opined that had Petitioner-Defendant not raised the relationship issue between Judge Adams's brother and nephew and Petitioner Ramey's extensive drug use and personal opinions of the judge, Judge Adams would have no cause to know of the relationship and, according to the Judge and the United States, there would have been no inference of partiality. [R.19, SEALED Order, PageID #92]. However, Petitioner Ramey submits that direct knowledge of a defendant's criminal association with a direct relative of the judge presiding over his criminal case is not required under 28 U.S.C. §455(a). Indeed, in *Liljeberg v. Health Services Acquisition Corp*, 486 U.S. 847 (1988), the United States Supreme Court held that prior knowledge by the judicial officer of the conflict is not dispositive:

> Scienter is not an element of a violation of § 455(a). The judge's lack of knowledge of a disqualifying circumstance may bear on the question of *remedy*, but it does not eliminate the risk that "his impartiality might reasonably be questioned" by other persons. To read § 455(a) to provide that the judge must know of the disqualifying facts, requires not simply ignoring the language of the provision—which makes no mention of knowledge—but further requires concluding that the language in subsection (b)(4)—which expressly provides that the judge must know of his or her interest—is extraneous. A careful reading of the respective subsections makes clear that Congress intended to require knowledge under subsection (b)(4) and not to require knowledge under subsection

> (a). Moreover, advancement of the purpose of the provision—to promote public confidence in the integrity of the judicial process, see S.Rep. No. 93–419, p. 5 (1973); H.R.Rep. No. 93–1453, p. 5 (1974)—does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew.

Liljeberg, 486 U.S. at 859.

The *Liljeberg* Court further found that the disqualification statute does not require a judge to be omniscient: however, the statute does require recusal where the operable facts are presented to the judicial officer apprising him or her of the potential impartiality, thus maintaining the integrity of the judicial officer:

> [T]his reading of the statute does not call upon judges to perform the impossible—to disqualify themselves based on facts they do not know. If, as petitioner argues, § 455(a) should only be applied prospectively, then requiring disqualification based on facts the judge does not know would of course be absurd; a judge could never be expected to disqualify himself based on some fact he does not know, even though the fact is one that perhaps he should know or one that people might reasonably suspect that he does know. But to the extent the provision can also, in proper cases, be applied retroactively, the judge is not called upon to perform an impossible feat. Rather, he is called upon to rectify an oversight and to take the steps necessary to maintain public confidence in the impartiality of the judiciary. If he concludes that "his impartiality might reasonably be questioned," then he should also find that the statute has been violated. This is certainly not an impossible task. No one questions that Judge Collins could have disqualified himself and vacated his judgment when he finally realized that Loyola had an interest in the litigation. The initial appeal was taken from his failure to disqualify himself and vacate the judgment after he became aware of the appearance of impropriety, not from his failure to

> disqualify himself when he first became involved in the litigation and lacked the requisite knowledge.

Liljeberg, 486 U.S. at 861. Eight years prior to the *Liljeberg* decision, this Circuit provided similar reasoning regarding prior knowledge in *Roberts v. Bailar*, where the panel stated:

> No longer is a judge's introspective estimate of his own ability impartially to hear a case the determinate of disqualification under s 455. The standard now is objective. It asks what a reasonable person knowing all the relevant facts would think about the impartiality of the judge. "(I)f there is a reasonable factual basis for doubting the judge's impartiality," the congressional committee reports on the 1974 amendment to s 455 explain, the judge "should disqualify himself and let another judge preside over the case." Even where the question is close, the judge whose impartiality might reasonably be questioned must recuse himself from the trial.

Roberts v. Bailar, 625 F.2d 125, 129 (6th Cir.1980).

In a case involving a judge and his cousin's knowledge of the events which were charged in an indictment before that judge, the Fifth Circuit in *In re Faulkner*, 856 F.2d 716, determined that under the *Liljeberg* standard of objectiveness, Judge Fish was required to stand down from the case. The cousin was involved in a real estate deal with the defendant involving the defendant's mishandling and misappropriation of mortgage funds. In finding that 28 U.S.C. §455(a) required the judge to step aside from the case, the Circuit panel held:

> Under the Supreme Court's compelling standard, we conclude that Judge Fish must stand down from this case, despite the total absence of any showing of actual bias. Under the facts presented, it is patent that "his partiality might reasonably be questioned" by a reasonable observer. This disqualifies him under section 455(a).
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> . .
>
> A reasonable person easily could question the judge's impartiality, given these circumstances. The Supreme Court's standard is strict, but the result is salutary. As the Court stated in *Liljeberg*,
>
> > '... We make clear that we are not required to decide whether in fact [the judge] was influenced, but only whether sitting on the case ... " 'would offer a possible temptation to the average [judge] ... [to] lead him not to hold the balance nice, clear and true.' " The Due Process Clause "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, 'justice must satisfy the appearance of justice.' " '
>
> 108 S.Ct. at 2205 (quoting *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825 (1986)).

In re Faulkner, 856 F.2d at 721.

While Petitioner has been unable to find a case as factually unique as the instant matter, this is likely caused by the agreement to recuse once the relationship was identified, rather than forcing litigation on the issue. Petitioner states that even where the appearance of bias or prejudice is a "close call," recusal is required. This situation presents no such closeness. Petitioner Ramey could not have anticipated the relationship between Judge Adams and his drug abusing friends, nor, more importantly, was he aware of the intentional distancing of the Judge from his brother.

That information alone, notwithstanding the illicit drug use, is sufficient to require recusal, as the apparent bias, to an objectively reasonable observer, is clearly present. Particularly at this juncture, where the parties have presented the facts in open court, exposing the family opprobrium.

3. Statutory Framework for Disqualification - 28 U.S.C. §144

Petitioner-Defendant Eric Ramey motioned the district court to recuse based upon 28 U.S.C. §144, and premised such recusal on the perceived bias or prejudice of Judge John Adams on the relationship of drug abuse and alleged criminal behavior engaged in by Petitioner Ramey and Jerry Adams, Sr., Judge Adams brother, and Jerry Adams, Jr., his nephew. With that motion Petitioner Ramey included his own sworn and signed affidavit, along with the sworn and signed affidavits of his mother and girlfriend. Counsel for Mr. Ramey included the sworn affidavits in his Motion for Disqualification, and asserted the veracity of the documents, as he does with each document filed before any tribunal, by affixing his signature to the pleadings. The affidavits were not presented pro se, but were instead affixed to the formal motion for disqualification which cited both 28 U.S.C. §144, and 28 U.S.C. §455 as bases for disqualification.

Section 144 of Title 28 provides a mechanism for a party to a litigation to inform the court of a potential bias or prejudice that arises from the relationship between a litigant and the judicial officer presiding over the litigation:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

28 U.S.C. §144.

With respect to the sufficiency of the affidavit and determining whether the affidavit sets forth a legally sufficient basis for disqualification, the Court "must accept the affidavit's factual allegations as true even if the judge knows them to be false." *United States v. Hanrahan*, 248 F.Supp. 471, 474 (D.D.C.1965) ("when presented with an application and affidavit such as this one, a Court may not pass upon the truth or falsity of the allegations, but must accept them as true for the purpose of determining the legal sufficiency of the affidavit"). The certification requirement is not simply a procedural obligation but is key to the integrity of the recusal process. Because the Court must accept as true all factual allegations asserted

in the affidavit, even if the Court knows such allegations to be untrue, the certification requirement is essential to "guard against the removal of an unbiased judge through the filing of a false affidavit." *S.E.C. v. Loving Spirit Found*., 392 F.3d 486, 496 D.C.C. 2004). The certification requirement therefore serves as a "check on abuse of the recusal process," assuring the Court that the statements in the affidavit are made in good faith. *Id*.

In Judge Adams's Order denying the disqualification motion, the district court stated that Petitioner Ramey's Affidavit failed to assert "a bias or prejudice held by the undersigned, let alone one "legally sufficient" as defined in *Berger*." [R.19, Order of 10/23/2015, PageID #91]. Upon closer inspection of *Berger v. United States*, 255 U.S. 22 (1921), however, a clearer picture of the context of the quoted passage in the Order gains meaning through completeness:

> Of course the reasons and facts for the belief the litigant entertains are an essential part of the affidavit, and must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment. The affidavit of defendants has that character. The facts and reasons it states are not frivolous or fanciful, but substantial and formidable, and they have relation to the attitude of Judge Landis' mind toward defendants.
>
> It is, however, said, that the assertion and the facts are stated on information and belief and that hence the affidavit is wholly insufficient, section 21[of the Judicial Code of 1918][1] requiring facts to be stated

[1] "Section 21 of the Judicial Code (Comp. St. § 988) provided as follows:
'Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit

'and not merely belief.' The contention is that 'the court is expected to act on the affidavit itself' and that therefore 'the act of Congress requires facts—not opinions, beliefs, rumors or gossip.' Ex parte American Steel Barrel Company, supra, is cited for the contention. We do not know what counsel means by 'opinions, beliefs, rumors or gossip.' The belief of a party the section makes of concern and if opinion be nearer to or farther from persuasion than belief, both are of influence and universally regarded as of influence in the affairs of men and determinative of their conduct, and it is not strange that section 21 should so regard them.

We may concede that section 21 is not fulfilled by the assertion of 'rumors of gossip,' but such disparagement cannot be applied to the affidavit in this case. Its statement has definite time and place and character, and the value of averments on information and belief in the procedure of the law is recognized. To refuse their application to section 21 would be arbitrary and make its remedy unavailable in many, if not in most cases. The section permits only the affidavit of a party, and *Ex parte American Steel Barrel Co.*, supra, decides, that it must be based upon facts antedating the trial, not those occurring during the trial. In the present case the information was of a definite incident, and its time and place were given. Besides, it cannot be the assumption of section 21 that the bias or prejudice of a judge in a particular case would be known by everybody, and necessarily, therefore, to deny to a party the use of information received from others is to deny to him at times the benefit of the section.

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that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge *27 shall proceed no further therein, but another judge shall be designated in the manner prescribed in the section last preceding, or chosen in the manner prescribed in section twenty-three, to hear such matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, * * * No party shall be entitled in any case to file more than one such affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. The same proceedings shall be had when the presiding judge shall file with the clerk of the court a certificate that he deems himself unable for any reason to preside with absolute impartiality in the pending suit or action.'" *Berger*, 255 U.S. at 26, 27.

Berger v. United States, 255 U.S. at 33-35. Petitioner notes that the Judicial Code Section 21 passage at issue in *Berger* served as the basis for the statutory provision in 28 U.S.C. §144.

As to the district court's dismissal of the allegations of drug abuse, of family discord in the Adams family, and of the close association between Petitioner Ramey and the relatives of Judge John Adams as legally insufficient under *Berger* to qualify as grounds for recusal under Section 144, Petitioner states that an objective view of the facts presented in the Affidavit outline a clear case of bias and prejudice. This bias was revealed indeed in the response and Order, which spoke of the discord between the brothers, and left an objective observer with the impression that the disapproval of the drug abusing lifestyles of his brother and nephew was one of the reasons for the disconnection in the Adams family. Notwithstanding any familial bad blood, the appearance of prejudice and bias in this case, given the unrefuted facts of heroin abuse and animosity, is objectively clear.

5. Conclusion

Wherefore, Petitioner Eric Ramey respectfully requests this Honorable Court issue a Writ of Mandamus vacating the denial of the Motion to Disqualify Judge John R. Adams and directing that he recuse himself from the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2015, a copy of the foregoing was served via e-mail to Robert Bulford and Linda Barr, Assistant U.S. Attorneys, Office of the U.S. Attorney for the Northern District of Ohio, and The Honorable John R. Adams, United States District Court Judge, Northern District of Ohio.

s/Carlos Warner
CARLOS WARNER
Assistant Federal Defender