

Table of Contents:

Statement of Issues for Review.....9

Subject Matter Jurisdiction, Standard of Review, Timeline of Appeal.....10

Case Statement.....10-12

Case Argument.....12-32

 I. Unauthorized law student

 A. Absolute Immunity does not apply to Defendant Wetzsteon..... 12

 II. Appearance of Conflict of Interest

 A. Magistrate Lynch.....13-15

 B. US District Judge Malloy.....15-16

 III. Clearly Established Rights Deprived by Defendants

 A. Speedy Trail.....17

 B. Confrontation Clause.....18

 C. Procedural Due Process.....19-20

 D. Abuse of Power.....20-23

II. Appearance of Conflict of Federal Judges per 28 USC§ 455

A. Conflict of Interest involving Magistrate Lynch

US Magistrate Lynch screened Spreadbury’s §1983 complaint twice under 28 USC §1915 (TR. #4; TR. #9). US Magistrate Lynch assigns Defendant law clinic attendee absolute immunity as unlicensed law student, compares Supreme Court intern in administrative task, not in prosecutorial fashion to an unauthorized law student Wetzsteon practicing law unsupervised in Spreadbury’s criminal courtroom August 8, 2007. Magistrate Lynch cites case to Spreadbury which was overturned (TR. # 7—Objection to Findings and Recommendations). Magistrate Lynch misrepresented the Montana Recall Act MCA§ 2-16-600 *et. seq.* to attempt to preclude or “chill” Spreadbury from pleading a first amendment violation by the Defendants *O’Keefe v. Van Boening* 82 F. 3d 322 (9th Cir. 1996). The instances indicate bias against Spreadbury in Magistrate Lynch’s findings and recommendations to the District court. 28 USC § 455(a) states:

Any justice, judge, magistrate of the US shall disqualify himself in any proceeding which his partiality might reasonably be questioned.

--Liljeberg v. Health Services Acq. Corp. 486 US at 488 (1988).

F.R. C.P. 60 (b)(6) states that an appeals court is better to determine violation, if party is relieved of final judgment of District Court. This court recognizes the

potential for bias in Judges, and need to vacate judgment with appearance of conflict of interest *US v. Conforte* 624 F. 2d 869 (9th, 1980). Totality of circumstances, combination of factors, statutes involved in analysis of the bias including 28 USC§ 455 and 28 USC§ 144 *US v. Olander* 584 F. 2d 876 (9th Cir. 1978). In Magistrate Lynch situation, former clinic attendant as a Defendant certainly qualifies before this court as an instance where actual bias as indicated in record, and appearance of bias by Defendant's clinic director allows self-disqualification *Preston v. US* 923 F. 2d 731 (9th Cir. 1991); *Davis v. Xerox* 811 F. 2d 1293 (9th 1987).

Magistrate Lynch, in TR.#4 Order Setting imposed the "shorter an more concise" decree not imposed upon pleadings before District court, establishing bias with to Spreadbury unseen to litigants in the Missoula District *Eldridge v. Block* 832 F. 2d at 1136 (9th Cir. 1989). Spreadbury followed a pleading by Boone Karlberg PC of Missoula, Montana in a §1983 matter before Honorable Malloy with Cause No. 9:08-cv00172-DWM §1983with Ravalli County as Defendant.

B. Conflict of Interest involving US District Judge Malloy

US District Judge Donald W. Malloy sits on advisory board for the University of Montana Law School, the "Board of Supervisors" (Appendix A). This position is paid for travel and expenses of appointed members of state boards per MCA§ 2-

18-501(Meals, lodging, and transportation of persons in state service). Malloy's appointment to Board of Supervisors for the University of Montana Law School sets up the criteria for 28 USC§ 455(b) a financial interest in conjunction with a conflict of interest: a Defendant law student, and clinic attendee at District Court.

Financial interest in case for federal jurist, even slightest indication of bias, prejudice sufficient to disqualify *US v. Conforte* 624 F. 2d at 881. A financial interest, even small requires disqualification *In re: cement Antitrust Litigation* 688 f. 2d 1297 (9th Cir. 1982). With respect Jurists Malloy, Lynch in this instant case, the appearance of impropriety is as dangerous as the fact of it *US v. McDonald* 576 F. 2d 1350 (9th Cir. 1978).

A reasonable observer expects US Judge Malloy to reveal sitting on Board of Supervisors for University of Montana Law School in conflict with Defendant Law Student Wetzsteon, attended legal clinic in District Court *Liljeberg v. Health Services Acq. Corp.* 486 US at 852 (9th Cir., 1988). Under 28 USC§ 455(b)(4) a US Judge is obligated to disqualify himself in the following circumstances: financial interest in subject matter of the case. The *Liljeberg* court established an obvious conflict of interest in having a university trustee preside over a case. In the instant case, US Judge Malloy on paid advisory board for the University of Montana Law School in Missoula Montana; Wetzsteon attended this school as she prosecuted Spreadbury without a license, unsupervised; Wetzsteon attended a

clinic at the US District court in Missoula, Montana. US Judge Malloy failed to adhere to 28 USC§ 455(b)(4): required recusal if fiduciary interests with party.

III. Clearly Established Right Deprived by Defendants

A. Issue of Speedy Trial --Amendment 6

Spreadbury’s right to Speedy trial violated by Defendants, issue which ultimately dismissed cause of action. Spreadbury’s 2nd amended complaint citing §1983lists count 40 as speedy trial against Defendants in Ravalli County, Montana.

Spreadbury initially appeared January 5, 2007, available for July 31, 2007 trial date. That date continued by Defendants beyond speedy trial provisions, Spreadbury had prior professional obligation to deploy August 1, 2007 to a federally declared disaster. Defendants made August 8, 2007 court date without written notice, which forced Spreadbury to miss the misdemeanor trial.

This circuit uses *Barker v. Wingo* 407 US 517 (1972) to establish elements for speedy trial at common law. Trial delays caused by Defendants as “key witnesses” were out of town for a wedding. Spreadbury’s counsel asserted Speedy trial in August 6, 2007 (Appendix B) motion to dismiss and supporting brief served upon Defendants, Justice Court, JP Jim Bailey presiding. Prejudice to Spreadbury included evidence gathering after discovery deadline, intentionally catching