

1986

Madsen v. Prudential Federal Savings & Loan Assoiation : Unknown

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Robert J. DeBry; Robert J. Debry & Associates; Attorney for Plaintiffs-Appellants.

Joseph J. Palmer; Reid E. Lewis; Moyle & Draper; Attorneys for Defendants.

Recommended Citation

Legal Brief, *Madsen v. Prudential Federal Savings & Loan Assoiation*, No. 860148.00 (Utah Supreme Court, 1986).
https://digitalcommons.law.byu.edu/byu_sc1/991

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

TAH
DOCUMENT
FU

9 GARDIN A. WHITNEY
9 JOHN W. HORSLEY
JOSEPH J. PALMER
DOCKET NO. 860148
WAYNE G. PETTY
REID E. LEWIS
ROYAL I. HANSEN
E. JAY SHEEN
H. DENNIS PIERCEY
JEFFREY ROBINSON

LAW OFFICES OF
MOYLE & DRAPER
A PROFESSIONAL CORPORATION
600 DESERET PLAZA
NO. 15 EAST FIRST SOUTH
SALT LAKE CITY, UTAH 84111-1915
TELEPHONE (801) 521-0250

YOUNG & MOYLE (1892-1934)
MOYLE & MOYLE (1934-1971)

TELECOPIER (801) 521-9015

July 7, 1988

Geoffrey J. Butler, Clerk
Utah Supreme Court
322 State Capitol Building
Salt Lake City, UT 84114

JUL 7 1988

Clerk

Re: Madsen v. Prudential
Case No. 860148

Dear Mr. Butler:

This letter (and nine copies) is submitted on behalf of Prudential Federal Savings & Loan Association under Rule 24(j) of the Rules of the Utah Supreme Court. Please bring the letter to the attention of the Court.

The recent case of Liljeberg v. Health Services Acquisition Corp., ____ U.S. ____, 56 U.S.L.W. 4637 (U.S. June 17, 1988) (No. 86-957) is additional authority for five arguments made by Prudential in the Brief of Respondent and in the Supplemental Brief of Respondent. Each is discussed below. A copy of Liljeberg is enclosed.

First, Liljeberg holds a judge must be disqualified in any proceeding in which his impartiality might reasonably be questioned. Id. at 4641-4642. This supports Point III A (at 22-27) in the Brief of Respondent.

Second, Liljeberg holds disqualification for appearance of bias relates back and renders void the discretionary judicial acts taken by the trial judge. If a judgment was entered, it is vacated and a new trial granted, especially when the opposing party has not made a showing of "special hardship" by reason of his or her reliance on the original judgment. Id. at 4641-4642, 4643. This supports Point VI B (at 48-50) in the Brief of Respondent and Point II (at 3-4) in the Supplemental Brief of Respondent.

Third, in reaching its decision in Liljeberg, the Supreme Court deferred to the findings made by the lower courts, both on the issue of bias and on the selection of the appropriate remedy (vacation of the judgment) to correct the problem. Id. at 4641-4642. This supports Point I (at 12) in the Brief of Respondent and Point I (at 1-3) in the Supplemental Brief of Respondent.

LAW OFFICES OF
MOYLE & DRAPER
A PROFESSIONAL CORPORATION

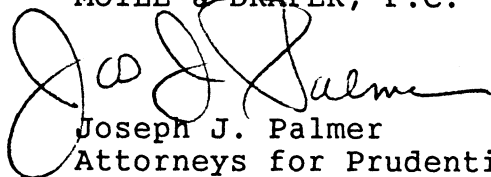
Geoffrey J. Butler, Clerk
Utah Supreme Court
July 7, 1988
Page 2

Fourth, the opinion supports Prudential's argument that a judge must be disqualified if he has any financial interest in the outcome of the case. See Point III B (at 28-29) in the Brief of Respondent, and Point III (at 5-7) in the Supplemental Brief of Respondent. The Supreme Court noted that disqualification is warranted "no matter how insubstantial the financial interest and regardless of whether or not the interest actually creates an appearance of impropriety." Id. at 4641, N. 8.

Fifth, the Court noted that one of its prior decisions, Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813 (1986), is best understood as a description of the constitutional dimensions of disqualification, because of appearance of bias, under the Due Process Clause. Id. at 4642, N. 12. That supports Point III B (at 30) in the Brief of Respondent.

Very truly yours,

MOYLE & DRAPER, P.C.



Joseph J. Palmer
Attorneys for Prudential
Federal Savings & Loan
Association

cc: Robert J. Debry, of
ROBERT J. DEBRY & ASSOCIATES
Attorneys for Appellants

Peter W. Billings, of
FABIAN & CLENDENIN
Attorneys for Amicus Curiae

would be subject to suit under certain circumstances. The majority notes, correctly, that civil enforcement actions are maintainable pursuant to 29 U. S. C. § 1132. The majority points further to certain suits that may be brought "against ERISA plans for run-of-the-mill state-law claims" *Ante*, at 6-7. The Court reasons that, as ERISA does not provide an enforcement mechanism for collecting judgments won in such suits, Congress must have intended that state-law methods of collection remain undisturbed.

This argument has no relevance to the issue before us. The question we face is not whether garnishment may be used to enforce a valid judgment obtained against an ERISA plan. When garnishment is so used, its process issues against some third party who owes the plan a debt or who has property in his possession in which the plan has an interest. The significant burdens of complying with the garnishment order fall on the plan's debtor, not on the plan. The issue we face in this case is quite different: it is whether an ERISA benefit plan may be forced to act as a *garnishee* by creditors of the plan's participants and beneficiaries. Because the Court fails to analyze the different contexts in which state garnishment laws may affect ERISA plans, its conclusion that such laws are never pre-empted is far too broad. And while the Court's conclusion may be valid in garnishment proceedings where an ERISA plan is the debtor, it is plainly unwarranted in situations where, as here, the plan is a *garnishee*. For it is in the latter situation that plans face the repetitious and costly burden of monitoring controversies involving hundreds of beneficiaries and participants in various states.

Further, it assumes the point in issue to say that the Court's conclusion is required by cases holding that a "sue-and-be-sued" clause creates a presumption of susceptibility to garnishment and other state-law procedures for enforcing judgments. See *ante*, at 8, n. 9, citing *Franchise Tax Board of California v. USPS*, 467 U. S. 512 (1984), and *FHA v. Burr*, 309 U. S. 242 (1940). The sue-and-be-sued clause in each of those cases was a waiver of the sovereign immunity that otherwise would have protected certain federal agencies from legal process, including writs of garnishment. In that context, it was perfectly sensible to "presum[e] that when Congress launched a governmental agency into the commercial world and endowed it with authority to 'sue or be sued,' that agency is no less amenable to judicial process that a private enterprise under like circumstances would be." *FHA v. Burr*, *supra*, at 245. In the ERISA context, by contrast, § 514 substantively limits the States' ability to treat employee benefit plans as they may treat any commercial enterprise. Our cases finding several state-law causes of action pre-empted establish at least this much. See, e. g., *Pilot Life*, 481 U. S., at — (holding that certain contract and tort laws, though otherwise generally applicable, may not be invoked against an employee benefit plan); *Shaw*, 463 U. S., at 103-106 (finding certain fair employment laws pre-empted).

The second argument on which the Court relies is that the conclusion that § 514 preempts the state statutes at issue in this case would render redundant the bar against alienation or assignment of pension benefits set forth in ERISA § 206(d)(1), 29 U. S. C. § 1056(d)(1). See *ante*, at 11. This provision prohibits any assignment, whether voluntary or involuntary, of pension plan assets. Under the view the Court rejects, § 514(a) would prohibit involuntary assignments of pension and welfare plan assets because such assignments necessarily would be effected by application of state laws, like the Georgia laws at issue in this case, that are pre-empted. I agree with the Court that ordinarily the partial redundancy of a statutory command, such as would result

from the interpretation of § 514 that the Court rejects, is not lightly to be inferred. Nevertheless, I believe there are two reasons why this consideration is not weighty in the present context.

First, the alternative construction adopted by the Court results in the total redundancy of § 514(b)(7), 29 U. S. C. § 1144(b)(7) (1982 ed., Supp. III). It is preferable, in my view, to tolerate the partial overlap rejected by the Court than to construe § 514 so as to render another section of the statute surplus in its entirety. Second, the deliberate, expansive reach of § 514 necessarily encompasses many state laws that would be pre-empted even in the absence of its broad mandate, solely on the basis of their conflict with ERISA's substantive requirements. Some degree of overlap is a necessary concomitant of the approach to pre-emption chosen by Congress. The partial redundancy which the Court strives to avoid is essentially analogous to a host of like overlaps that Congress must have foreseen. To suggest that this type of overlap is sufficient to call into question the applicability of § 514 is to defeat the very purpose for which it was enacted. I cannot agree with the Court's conclusion that petitioners must comply with the garnishment orders at issue in this case.

ERNEST L. MATHEWS JR., New York, N.Y. (THOMAS W. GLEASON, FARRINGTON & ABBOTT, P.C., CHARLES R. GOLDBURG, and KEVIN MARRINAN, on the briefs) for petitioners; BRIAN J. MARTIN, Assistant to the Solicitor General (CHARLES FRIED, Sol. Gen., DONALD B. AYER, Dpty. Sol. Gen., CHRISTOPHER J. WRIGHT, Asst. to the Sol. Gen., GEORGE R. SALEM, Sol. of Labor, ALLEN H. FELDMAN, Assoc. Sol., CAROL A. DE DEO, Dpty. Assoc. Sol., and BETTE J. BRIGGS, Labor Dept. atty., on the briefs) for U.S. as amicus curiae; MAUREEN E. MAHONEY, Washington, D.C. (LATHAM & WATKINS, on the briefs) as amicus curiae, in support of the judgment below.

No. 86-957

JOHN A. LILJEBERG, JR., PETITIONER *v.* HEALTH SERVICES ACQUISITION CORP.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Syllabus

No. 86-957. Argued December 9, 1987—Reargued April 25, 1988—Decided June 17, 1988

In 1977, pursuant to a plan to construct and operate a hospital in Kenner, Louisiana, petitioner formed a corporation (St. Jude) to apply for the necessary state "certificate of need." During the next two years petitioner negotiated with Loyola University over a proposal to purchase as the hospital site a portion of Loyola's Kenner land for several million dollars, coupled with a plan to rezone Loyola's adjoining land to greatly increase its value. Federal District Court Judge Robert Collins was a member, and regularly attended the meetings, of Loyola's Board of Trustees, whose minutes indicated regular discussions of the negotiations' progress and reflected the fact that Loyola's interest in the project was dependent on the issuance of the certificate. Petitioner also conducted negotiations with respondent's corporate predecessor (HAI), culminating in HAI's purchase of a Kenner site not owned by Loyola and its filing of the certificate application upon petitioner's execution of an agreement which HAI believed gave it title to St. Jude. After the certificate was issued in St. Jude's name, and a dispute between petitioner and HAI arose as to St. Jude's ownership, petitioner's proposal to reopen the Loyola negotiations was discussed and formally approved at the Board's meeting on November 12, 1981, which Judge Collins attended. On November 30, 1981, respondent filed suit in the District Court seeking a declaration of ownership of St. Jude. Judge Collins, sitting without a jury, tried the case on January 21 and 22, 1982, immediately announcing his intention to rule for petitioner. On January 28, 1982, at a

meeting which Judge Collins did not attend, the Loyola Board discussed the terms of an agreement of sale with petitioner, which provided, *inter alia*, that it would be void if petitioner failed to satisfy certain conditions, the fulfillment of which depended on his retention of control over the certificate. Judge Collins did not read the minutes of that meeting until March 24, 1982. In the meantime, on March 16, he entered judgment for petitioner, crediting petitioner's version of crucial, disputed conversations. Ten months after the Court of Appeals affirmed that judgment, respondent, having just learned that Judge Collins was associated with Loyola while petitioner and the University were engaged in negotiations concerning the hospital site, moved pursuant to Federal Rule of Civil Procedure 60(b)(6) to vacate the judgment on the ground that Judge Collins was disqualified under 28 U. S. C. § 455. Judge Collins denied the motion, but the Court of Appeals reversed and remanded to a different judge, who also denied the motion on the ground that, although the evidence gave rise to an appearance of impropriety, Judge Collins lacked actual knowledge of Loyola's interest in the litigation during the trial and prior to the filing of the judgment. The Court of Appeals again reversed, ruling that the appearance of impropriety is a sufficient ground for disqualification under § 455(a). Moreover, the court ruled that vacatur was an appropriate remedy in these circumstances.

Held:

1. A violation of § 455(a)—which requires a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned—is established when a reasonable person, knowing the relevant facts, would expect that a judge knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances. To require scienter as an element of a § 455(a) violation would contravene that section's language and its purpose of promoting public confidence in the integrity of the judicial system. This reading of § 455(a) does not require judges to perform the impossible by disqualifying themselves based on facts they do not know, since, in proper cases, the provision can be applied retroactively to rectify an oversight once the judge concludes that "his impartiality might reasonably be questioned." Here, where both lower courts found an ample basis in the record for concluding that an objective observer would have questioned Judge Collins' impartiality, his failure to disqualify himself was a plain violation of § 455(a) even though it was initially the product of a temporary lapse of memory.

2. Vacatur was a proper remedy for the § 455(a) violation in the circumstances of this case. In determining whether a § 455 violation requires vacatur under Rule 60(b)(6)—which gives federal courts broad authority to grant relief from a final judgment "upon such terms as are just," provided that the motion is made within a reasonable time—it is appropriate to consider the risk of injustice to the particular parties, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process. Here, despite his lack of actual knowledge of Loyola's interest in the dispute during trial, Judge Collins' participation in the case created a strong appearance of impropriety, particularly in light of his regular attendance at Board meetings, including the one on November 12, 1982, and the financial importance of the project to Loyola; his failure to attend the January 28, 1982, meeting or to read the minutes of that meeting before entering judgment; his inexcusable failure to recuse himself or disclose his interest on March 24, 1982, when respondent still had time to file a new trial motion or to use the failure as an issue on direct appeal; and his failure to acknowledge, in denying the motion to vacate, that he had known about Loyola's interest both shortly before and shortly after trial, or to indicate any awareness of a duty to recuse himself in March 1982. Moreover, vacatur here will not produce injustice in other such cases, and may, in fact, prompt other judges to more carefully search for and disclose disqualification grounds. Furthermore, a careful study of the merits of the underlying litigation suggests that there is a greater risk of unfairness in upholding the judgment for petitioner than in allowing a new trial, while neither petitioner nor Loyola has made a showing of special hardship by reason of their reliance on the original judgment. Finally, although a 10-month delay would normally foreclose vacatur based on a § 455(a) violation, the delay here is excusable since it is entirely attributable to Judge Collins' conduct.

796 F. 2d 796, affirmed.

STEVENS, J., delivered the opinion of the Court, in which BRENNAN, MARSHALL, BLACKMUN, and KENNEDY, JJ., joined. REHNQUIST, C. J., filed a dissenting opinion, in which WHITE and SCALIA, JJ., joined. O'CONNOR, J., filed a dissenting opinion.

JUSTICE STEVENS delivered the opinion of the Court.

Stat. 1609. The first sentence of the amendment provides:

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

In the present case, the Court of Appeals for the Fifth Circuit concluded that a violation of § 455(a) is established when a reasonable person, knowing the relevant facts, would expect that a justice, judge, or magistrate knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances. Moreover, although the judgment in question had become final, the Court of Appeals determined that under the facts of this case, the appropriate remedy was to vacate the court's judgment. We granted certiorari to consider its construction of § 455(a) as well as its remedial decision. 480 U. S. —. We now affirm.

I

In November 1981, respondent Health Services Acquisition Corp. brought an action against petitioner John Liljeberg, Jr., seeking a declaration of ownership of a corporation known as St. Jude Hospital of Kenner, Louisiana (St. Jude). The case was tried by Judge Robert Collins, sitting without a jury. Judge Collins found for Liljeberg and, over a strong dissent, the Court of Appeals affirmed. Approximately 10 months later, respondent learned that Judge Collins had been a member of the Board of Trustees of Loyola University while Liljeberg was negotiating with Loyola to purchase a parcel of land on which to construct a hospital. The success and benefit to Loyola of these negotiations turned, in large part, on Liljeberg prevailing in the litigation before Judge Collins.

Based on this information, respondent moved pursuant to Federal Rule of Civil Procedure 60(b)(6) to vacate the judgment on the ground that Judge Collins was disqualified under § 455 at the time he heard the action and entered judgment in favor of Liljeberg. Judge Collins denied the motion and respondent appealed. The Court of Appeals determined that resolution of the motion required factual findings concerning the extent and timing of Judge Collins' knowledge of Loyola's interest in the declaratory relief litigation. Accordingly, the panel reversed and remanded the matter to a different judge for such findings. App. to Pet. for Cert. 40a. On remand, the District Court found that based on his attendance at Board meetings Judge Collins had actual knowledge of Loyola's interest in St. Jude in 1980 and 1981. The court further concluded, however, that Judge Collins had forgotten about Loyola's interest by the time the declaratory judgment suit came to trial in January 1982. On March 24, 1982, Judge Collins reviewed materials sent to him by the Board to prepare for an upcoming meeting. At that time—just a few days after he had filed his opinion finding for Liljeberg and still within the 10-day period allowed for filing a motion for a new trial—Judge Collins once again obtained actual knowledge of Loyola's interest in St. Jude. Finally, the District Court found that although Judge Collins thus lacked actual knowledge during trial and prior to the filing of his opinion, the evidence nonetheless gave rise to an appearance of impropriety. However, reading the Court of Appeals' mandate as limited to the issue of actual knowledge, the District Court concluded that it was compelled to deny respondent's

The Court of Appeals again reversed. The court first noted that Judge Collins should have immediately disqualified himself when his actual knowledge of Loyola's interest was renewed.¹ The court also found that regardless of Judge Collins' actual knowledge, "a reasonable observer would expect that Judge Collins would remember that Loyola had some dealings with Liljeberg and St. Jude and seek to ascertain the nature of these dealings." 796 F. 2d 796, 803 (1986). Such an appearance of impropriety, in the view of the Court of Appeals, was sufficient ground for disqualification under §455(a). Although recognizing that caution is required in determining whether a judgment should be vacated after becoming final, the court concluded that since the appearance of partiality was convincingly established and since the motion to vacate was filed as promptly as possible, the appropriate remedy was to vacate the declaratory relief judgment. Because the issues presented largely turn on the facts as they give rise to an appearance of impropriety, it is necessary to relate the sequence and substance of these events in some detail.

II

Petitioner, John Liljeberg, Jr., is a pharmacist, a promoter, and a half-owner of Axel Realty, Inc., a real estate brokerage firm. In 1976, he became interested in a project to construct and operate a hospital in Kenner, Louisiana, a suburb of New Orleans. In addition to providing the community with needed health care facilities, he hoped to obtain a real estate commission for Axel Realty and the exclusive right to provide pharmaceutical services at the new hospital. The successful operation of such a hospital depended upon the acquisition of a "certificate of need" from the State of Louisiana; without such a certificate the hospital would not qualify for health care reimbursement payments under the federal medicare and medicaid programs.² Accordingly, in October 1979, Liljeberg formed St. Jude, intending to have the corporation apply for the certificate of need at an appropriate time.

During the next two years Liljeberg engaged in serious negotiations with at least two major parties. One set of negotiations involved a proposal to purchase a large tract of land from Loyola University for use as a hospital site, coupled with a plan to rezone adjoining University property. The proposed benefits to the University included not only the proceeds of the real estate sale itself, amounting to several million dollars, but also a substantial increase in the value to the University of the rezoned adjoining property. The progress of these negotiations was regularly reported to the University's Board of Trustees by its Real Estate Committee and discussed at Board meetings. The minutes of those meetings indicate that the University's interest in the project was dependent on the issuance of the certificate of need.³

¹Because the court concluded that the judgment should be vacated based on an appearance of impropriety that permeated the entire proceeding, it declined to decide on the appropriate remedy for a judge's failure to promptly disqualify himself after the entry of judgment but prior to expiration of the time allowed for filing certain motions.

²See 42 U.S.C. § 1320a-1 (1982 ed., and Supp. III). As the Court of Appeals noted, "[w]ithout reimbursement, it is impractical (if not impossible) to operate a hospital." App. to Pet. for Cert. 58a, n. 1.

³The District Court found:

"Discussions of the St. Jude Hospital project are reflected in the minutes of the next meeting of the Board of Trustees on January 24, 1980, which Judge Collins attended. See Plaintiff's Exhibit 22. Liljeberg's first offer on behalf of St. Jude Properties to purchase approximately 75 acres of Loyola's Kenner property was presented in a Real Estate Committee report, which was summarized in the Board minutes. The minutes also include the response of Loyola University to Liljeberg, including the Committee's expression of interest in continuing negotiations with St. Jude Properties.

Liljeberg was also conducting serious negotiations with respondent's corporate predecessor, Hospital Affiliates International (HAI), a national health management company. In the summer of 1980, Liljeberg and HAI reached an agreement in principle, outlining their respective roles in developing the hospital. The agreement contemplated that HAI would purchase a tract of land in Kenner (not owned by the University) and construct the hospital on that land; prepare and file the certificate of need; and retain Liljeberg as a consultant to the hospital in various capacities. In turn, it was understood that Liljeberg would transfer St. Jude to HAI. Pursuant to this preliminary agreement, various documents were executed, including an agreement by HAI to purchase the tract of land from its owner for five million dollars and a further agreement by HAI to place \$500,000 in escrow. In addition, it was agreed that Axel Realty, Inc., would receive a \$250,000 commission for locating the property. Eventually, Liljeberg signed a "warranty and indemnity agreement," which HAI understood to transfer ownership of St. Jude to HAI. After the warranty and indemnity agreement was signed, HAI filed an application for the certificate of need.

On August 26, 1981, the certificate of need was issued and delivered to Liljeberg. He promptly advised HAI⁴ and HAI paid the real estate commission to Axel Realty. A dispute arose, however, over whether the warranty and indemnity agreement did in fact transfer ownership of St. Jude to HAI. Liljeberg contended that the transfer of ownership of St. Jude—and hence, the certificate of need—was conditioned upon reaching a final agreement concerning his continued participation in the hospital project. This contention was not supported by any written instrument. HAI denied that there was any such unwritten understanding and insisted that, by virtue of the warranty and indemnity agreement, it had been sole owner of St. Jude for over a year. The dispute gave rise to this litigation.

Respondent filed its complaint for declaratory judgment on November 30, 1981. The case was tried by Judge Collins, sitting without a jury, on January 21 and January 22, 1982. At the close of the evidence, he announced his intended ruling, and on March 16, 1982, he filed a judgment (dated Mar. 12, 1982) and his findings of fact and conclusions of law. He credited Liljeberg's version of oral conversations that were disputed and of critical importance in his ruling.⁵

The minutes further reflect the Real Estate Committee's communication to Liljeberg that "until a certificate of need were forthcoming, Loyola would more than likely not be interested in the project." The minutes outline the terms of a second offer received by Loyola University from St. Jude Properties raising the purchase price by \$7,000.00 per acre, "with no financing necessary and no commitments of any kind except the dedication of 110 feet for roadway purposes, with the improvement cost paid totally by the Liljeberg group." The minutes elaborate on the details of the offer, including St. Jude Properties' desire for a sixty day period to secure financing to finalize the sale." App. to Pet. for Cert. 19a-20a.

⁴Coincidentally, HAI was acquired by Hospital Corporation of America on August 26, 1981, through a merger of HAI and respondent, Health Services Acquisition Corporation, which is a subsidiary of Hospital Corporation of America. For convenience, we shall continue to describe this entity as HAI.

⁵For example, Liljeberg's attorney testified that before returning the signed copy of the warranty and indemnity agreement to HAI, he told HAI's associate corporate counsel that Liljeberg would not transfer ownership of St. Jude until they reached a binding agreement concerning Liljeberg's continued participation in the hospital project. HAI's associate corporate counsel testified that no such conversation occurred. App. to Pet. for Cert. 61a, n. 3.

Although noting this conflicting testimony, the Fifth Circuit held on appeal that Judge Collins did not abuse his discretion in awarding the certifi-

uring the period between November 30, 1981, and March 1982, Judge Collins was a trustee of Loyola University, was not conscious of the fact that the University and Liljeberg were then engaged in serious negotiations concerning the Kenner hospital project, or of the further fact that the success of those negotiations depended upon his conclusion.

Liljeberg controlled the certificate of need. To determine whether Judge Collins' impartiality in the Liljeberg litigation "might reasonably be questioned," it is appropriate to consider the state of his knowledge immediately before the suit was filed, what happened while the case was pending before him, and what he did when he learned of the University's interest in the litigation.

After the certificate of need was issued, and Liljeberg and the University became embroiled in their dispute, Liljeberg reopened negotiations with the University. On October 29, 1981, the Real Estate Committee sent a written report to each of the trustees, including Judge Collins, advising them of "a significant change" concerning the proposed hospital in Kenner, stating specifically that Loyola's property had "again become a prime location." App. 72. The Committee submitted a draft of a resolution authorizing a University vice-president "to continue negotiations with the developers of St. Jude Hospital." *Id.*, at 73. At the Board meeting on November 12, 1981, which Judge Collins attended, the trustees discussed the connection between the rezoning of Loyola's land in Kenner and the St. Jude project and adopted the Real Estate Committee's proposed resolution. Thus, Judge Collins had actual knowledge of the University's substantial interest in the St. Jude hospital project in Kenner a few days before the complaint was filed.

While the case was pending before Judge Collins, the University agreed to sell 80 acres of its land in Kenner to Liljeberg for \$6,694,000. The progress of negotiations was discussed at a Board meeting on January 28, 1982. Judge Collins did not attend that meeting, but the Real Estate Committee advised the trustees that "the federal courts have determined that the certificate of need will be awarded to the St. Jude Corporation." *Id.*, at 37. Presumably this advice was based on Judge Collins' comment at the close of the hearing a week earlier, when he announced his intended ruling because he thought "it would be unfair to keep the parties in limbo as to how I feel about the case." App. to Pet. for cert. 41a.

The formal agreement between Liljeberg and the University was apparently executed on March 19th. App. 50-58. The agreement stated that it was not in any way conditioned on Liljeberg's prevailing in the litigation "pending in the U.S. District Court for the Eastern District of Louisiana involving the obtaining by [Liljeberg] of a Certificate of

Need," *id.*, at 55, but it also gave the University the right to repurchase the property for the contract price if Liljeberg had not executed a satisfactory construction contract within one year and further provided for nullification of the contract in the event the rezoning of the University's adjoining land was not accomplished. Thus, the University continued to have an active interest in the outcome of the litigation because it was unlikely that Liljeberg could build the hospital if he lost control of the certificate of need; moreover, the rezoning was in turn dependent on the hospital project.⁴

The details of the transaction were discussed in three letters to the trustees dated March 12, March 15, and March 19, 1982, but Judge Collins did not examine any of those letters until shortly before the Board meeting on March 25, 1982. Thus, he acquired actual knowledge of Loyola's interest in the litigation on March 24, 1982. As the Court of Appeals correctly held, "Judge Collins should have recused himself when he obtained actual knowledge of that interest on March 24." 796 F. 2d, at 801.

In considering whether the Court of Appeals properly vacated the declaratory relief judgment, we are required to address two questions. We must first determine whether § 455(a) can be violated based on an appearance of partiality, even though the judge was not conscious of the circumstances creating the appearance of impropriety, and second, whether relief is available under Rule 60(b) when such a violation is not discovered until after the judgment has become final.

III

Title 28 U. S. C. § 455 provides in relevant part:⁵

"(a) Any justice, judge, or magistrate 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:

"(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

⁴As the Court of Appeals pointed out:

"The district court's determination that Loyola's interest in the litigation terminated as of March 19, 1982 is clearly erroneous. Although the agreement between Loyola and Liljeberg was not contingent on the outcome of the lawsuit, as a practical matter Loyola still had a substantial interest in Liljeberg's obtaining the certificate of approval. Without the certificate, it is very likely that Liljeberg would not have been able to build the hospital on the Monroe Tract. The construction of a hospital on its property was extremely important to Loyola as shown by the fact that Loyola was allowed under its agreement with Liljeberg to repurchase the land if a hospital was not built. Furthermore, the construction of a hospital on the Monroe Tract was critical to the effort to rezone the surrounding property owned by Loyola; the rezoning was also of vital interest to Loyola. Therefore, Loyola's interest in the litigation did not terminate as of March 19, 1982 and Judge Collins should have recused himself when he obtained actual knowledge of that interest on March 24." 796 F. 2d, at 800-801.

⁵Prior to the 1974 amendments, § 455 simply provided:

"Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein." 62 Stat. 908.

The statute was amended in 1974 to clarify and broaden the grounds for judicial disqualification and to conform with the recently adopted ABA Code of Judicial Conduct, Canon 3C (1984). See S. Rep. No. 93-419, p. 1 (1973); H. R. Rep. No. 93-1453, pp. 1-2 (1974). The general language of subsection (a) was designed to promote public confidence in the integrity of judicial process by replacing the subjective "in his opinion" standard with an objective test. See S. Rep. No. 93-419, at 5 (1973); H. R. Rep. No. 93-1453, at 5.

to Liljeberg. Judge Rubin, in dissent, pointed to another example of where Liljeberg received the benefit of the doubt on a critical disputed issue. Liljeberg's attorney received the proposed warranty and indemnity agreement from HAI under cover of a letter which stated: "... I believe this is the only document ... that would be needed in effecting the transaction." *Id.*, at 60a, n. 2. Liljeberg's attorney testified, however, that he did not read the letter of transmittal. Yet, as Judge Rubin observed: "It is curious that a lawyer would fail to read a letter that comes to him attached to an important document. It is curiously, as Alice said, after he had passed through the looking glass into Wonderland, that Liljeberg, who repeatedly testified that he distrusted HAI although he had contemplated entering into a complex and potentially lucrative relationship with the corporation, designed to operate over a seven-year period, did not respond to the cover letter. ..."

It is curiously still that [Liljeberg's attorney], who testified that he did not read the cover letter, nevertheless knew that HAI believed that the warranty and indemnity agreement was sufficient to transfer 'ownership' in the land." *Id.*, at 75a, n. 4.

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.

"(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."

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).⁴ 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. As Chief Judge Clark of the Court of Appeals explained:

"The goal of section 455(a) is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible. The judge's forgetfulness, however, is not the sort of objectively ascertainable fact that can avoid the appearance of partiality. *Hall v. Small Business Administration*, 695 F. 2d 175, 179 (5th Cir. 1983). Under section 455(a), therefore, recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in the case if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge." 796 F. 2d, at 802.

⁴Petitioner contends that § 455(a) must be construed in light of § 455(b)(4). He argues that the reference to knowledge in § 455(b)(4) indicates that Congress must have intended that scienter be an element under § 455(a) as well. Petitioner reasons that § 455(a) is a catchall provision, encompassing all of the specifically enumerated grounds for disqualification under § 455(b), as well as other grounds not specified. Not requiring knowledge under § 455(a), in petitioner's view, would thus render meaningless the knowledge requirement under § 455(b)(4). The requirement could always be circumvented by simply moving for disqualification under § 455(a), rather than § 455(b).

Petitioner's argument ignores important differences between subsections (a) and (b)(4). Most importantly, § 455(b)(4) requires disqualification no matter how insubstantial the financial interest and regardless of whether or not the interest actually creates an appearance of impropriety. See § 455(d)(4); *In re Cement and Concrete Litigation*, 515 F. Supp. 1076 (Ariz. 1981), mandamus denied, 688 F. 2d 1297 (CA9 1982), *aff'd* by the absence of quorum, 459 U. S. 1191 (1983). In addition, § 455(e) specifies that a judge may not accept a waiver of any ground for disqualification under § 455(b), but may accept such a waiver under § 455(a) after "a full disclosure on the record of the basis for disqualification." Section 455(b) is therefore a somewhat stricter provision, and thus is not simply redundant

Contrary to petitioner's contentions, this 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.

In this case both the District Court and the Court of Appeals found an ample basis in the record for concluding that an objective observer would have questioned Judge Collins' impartiality. Accordingly, even though his failure to disqualify himself was the product of a temporary lapse of memory, it was nevertheless a plain violation of the terms of the statute.

A conclusion that a statutory violation occurred does not, however, end our inquiry. As in other areas of the law, there is surely room for harmless error committed by busy judges who inadvertently overlook a disqualifying circumstance.⁵ There need not be a draconian remedy for every violation of § 455(a). It would be equally wrong, however, to adopt an absolute prohibition against any relief in cases involving forgetful judges.

IV

Although § 455 defines the circumstances that mandate disqualification of federal judges, it neither prescribes nor prohibits any particular remedy for a violation of that duty. Congress has wisely delegated to the judiciary the task of fashioning the remedies that will best serve the purpose of the legislation. In considering whether a remedy is appropriate, we do well to bear in mind that in many cases—and this is such an example—the Court of Appeals is in a better position to evaluate the significance of a violation than is this Court. Its judgment as to the proper remedy should thus be

⁵Large, multidistrict class actions, for example, often present judges with unique difficulties in monitoring any potential interest they may have in the litigation. In such cases, the judge is required to familiarize him or herself with the named parties and all the members of the class, which in an extreme case may number in the hundreds or even thousands. This already difficult task is confounded by the fact that the precise contours of the class are often not defined until well into the litigation. See *Union Carbide Corp. v. U. S. Cutting Service, Inc.*, 782 F. 2d 710, 714 (CA7 1986); *In re Cement and Concrete Antitrust Litigation*, 515 F. Supp., at 1080.

Of course, notwithstanding the size and complexity of the litigation, judges remain under a duty to stay informed of any personal or fiduciary financial interest they may have in cases over which they preside. See 28 U. S. C. § 455(c). The complexity of determining the conflict, however, may have a bearing on the Rule 60(b)(6) extraordinary circumstance analysis.

ed our due consideration. A review of the facts dem- ites that the Court of Appeals' determination that a rial is in order is well supported.

tion 455 does not, on its own, authorize the reopening of litigation. However, as respondent and the Court of als recognized, Federal Rule of Civil Procedure 60(b) des a procedure whereby, in appropriate cases, a party be relieved of a final judgment.¹⁰ In particular, Rule 6), upon which respondent relies, grants federal courts authority to relieve a party from a final judgment "such terms as are just," provided that the motion is within a reasonable time and is not premised on one of rounds for relief enumerated in clauses (b)(1) through (b)(6).¹¹ The rule does not particularize the factors that justify relief, but we have previously noted that it provides relief with authority "adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice," *Clapprott v. United States*, 335 U. S. 601, 614-615 (1949), while also cautioning that it should only be applied in "extraordinary circumstances," *Ackermann v. United States*, 340 U. S. 193 (1950). Rule 60(b)(6) relief is accorded neither categorically available nor categorically unavailable for all § 455 violations. We conclude that in determining whether a judgment should be vacated for a violation of § 455, it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will cause injustice in other cases, and the risk of undermining the public's confidence in the judicial process. We must consciously bear in mind that "to perform its high function in the best way justice must satisfy the appearance of justice." *Murchison*, 349 U. S. 133, 136 (1955) (citation omitted). Like the Court of Appeals, we accept the District Court's finding that while the case was actually being tried Judge

Federal Rule Civil Procedure 60(b) provides in relevant part:

notion and upon such terms as are just, 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 which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud in the proceedings; (4) misrepresentation, or other misconduct of an adverse party; (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), (3), (4), and (5) not more than one year after the judgment, order, or proceeding was entered or taken."

In *Clapprott v. United States*, 335 U. S. 601, 613 (1949), we held that a party may "not avail himself of the broad 'any other reason' clause of 60(b)" if the motion is based on grounds specified in clause (1)—"mistake, inadvertence, surprise or excusable neglect." Rather, "extraordinary circumstances" are required to bring the motion within the "other reason" language and to prevent clause (6) from being used to circumvent the 1-year limitations period that applies to clause (1). This logic, of course, extends to clause (1) and suggests that clause (6) and clauses (1) through (5) are mutually exclusive. See 11 C. Wright & A. Miller, *Federal Practice Procedure* § 2864 (1973). We conclude that the basis for relief in this case is extraordinary and that the motion was thus proper under clause (6). *Infra*, at ——. Of particular importance, this is not a case of inadvertent neglect or lack of due diligence by respondent. Any such neglect is chargeable to Judge Collins. Had he informed the parties of his association with Loyola and of Loyola's interest in the litigation on March 1982, when his knowledge of the University's interest was renewed, respondent could have raised the issue in a motion for a new trial or on appeal without requiring that the case be reopened. Moreover, even if respondent had taken the unusual step of reviewing the Judge's financial disclosure forms—which reveal that he was a member of the Board of Trustees—the conflict would not have been brought to its attention. The conflict arose not simply from the Judge's service on the Board of Trustees, but from his service on the Board while the University was involved in its dealings with Liljeberg. This latter fact would not have been made apparent through examination of the disclosure reports and, according to respondent, was not a matter of public record at the time the case was

Collins did not have actual knowledge of Loyola's interest in the dispute over the ownership of St. Jude and its precious certificate of need. When a busy federal judge concentrates his or her full attention on a pending case, personal concerns are easily forgotten. The problem, however, is that people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges.¹² The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible. See S. Rep. No. 93-419, at 5; H. R. Rep. No. 93-1453, at 5. Thus, it is critically important in a case of this kind to identify the facts that might reasonably cause an objective observer to question Judge Collins' impartiality. There are at least four such facts.

First, it is remarkable that the judge, who had regularly attended the meetings of the Board of Trustees since 1977, completely forgot about the University's interest in having a hospital constructed on its property in Kenner. The importance of the project to the University is indicated by the fact that the 80-acre parcel, which represented only about 40% of the entire tract owned by the University, was sold for \$6,694,000 and that the rezoning would substantially increase the value of the remaining 60%. The "negotiations with the developers of the St. Jude Hospital" were the subject of discussion and formal action by the trustees at a meeting attended by Judge Collins only a few days before the lawsuit was filed. App. 35.

Second, it is an unfortunate coincidence that although the judge regularly attended the meetings of the Board of Trustees, he was not present at the January 28, 1982, meeting, a week after the 2-day trial and while the case was still under advisement. The minutes of that meeting record that representatives of the University monitored the progress of the trial, but did not see fit to call to the judge's attention the obvious conflict of interest that resulted from having a University trustee preside over that trial. These minutes were mailed to Judge Collins on March 12, 1982. If the Judge had opened that envelope when he received it on March 14th or 15th, he would have been under a duty to recuse himself before he entered judgment on March 16.¹³

¹² As we held in *Aetna Life Ins. Co. v. Lavoie*, 475 U. S. 813 (1986), this concern has constitutional dimensions. In that case we wrote:

"We conclude that Justice Embry's participation in this case violated appellant's due process rights as explicated in *Turney*, *Murchison*, and *Ward*. We make clear that we are not required to decide whether in fact Justice Embry was influenced, but only whether sitting on the case then before the Supreme Court of Alabama "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.'" *Id.*, at 825. (citations omitted).

A finding by another judge—faced with the the difficult task of passing upon the integrity of a fellow member of the bench—that his or her colleague merely possessed *constructive* knowledge, and not *actual* knowledge, is unlikely to significantly quell the concerns of the skeptic.

¹³ One of the provisions of the contract between Loyola and Liljeberg is also remarkable. Despite the fact that earlier minutes of the Board make it clear that the University's interest in serious negotiations with Liljeberg was conditioned upon the certificate of need, the contract expressly recites that control of the certificate was the subject of pending litigation and then provides "that this sale shall not be in any way conditioned upon" the outcome of that litigation. App. 55. The University, however, retained the right to repurchase the property if Liljeberg was unable to go forward with the hospital project. If Liljeberg was found not to control the certificate of need, he, at least arguably, would have been precluded from going forward with the hospital. Moreover, if the parties simply wanted to make the transaction unconditional, they could have omitted any reference to the litigation. An objective observer might reasonably question why the par-

Third, it is remarkable—and quite inexcusable—that Judge Collins failed to recuse himself on March 24, 1982. A full disclosure at that time would have completely removed any basis for questioning the Judge's impartiality and would have made it possible for a different judge to decide whether the interests—and appearance—of justice would have been served by a retrial. Another 2-day evidentiary hearing would surely have been less burdensome and less embarrassing than the protracted proceedings that resulted from Judge Collins' nonrecusal and nondisclosure. Moreover, as the Court of Appeals correctly noted, Judge Collins' failure to disqualify himself on March 24, 1982, also constituted a violation of § 455(b)(4), which disqualifies a judge if he "knows that he, individually or as a fiduciary, . . . 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." This separate violation of § 455 further compels the conclusion that vacatur was an appropriate remedy; by his silence, Judge Collins deprived respondent of a basis for making a timely motion for a new trial and also deprived it of an issue on direct appeal.¹⁴

Fourth, when respondent filed its motion to vacate, Judge Collins gave three reasons for denying the motion,¹⁵ but still did not acknowledge that he had known about the University's interest both shortly before and shortly after the trial. Nor did he indicate any awareness of a duty to recuse himself in March of 1982.

These facts create precisely the kind of appearance of impropriety that § 455(a) was intended to prevent. The violation is neither insubstantial nor excusable. Although Judge Collins did not know of his fiduciary interest in the litigation, he certainly should have known. In fact, his failure to stay informed of this fiduciary interest, may well constitute a separate violation of § 455. See § 455(c). Moreover, providing relief in cases such as this will not produce injustice in other cases; to the contrary, the Court of Appeals' willingness to enforce § 455 may prevent a substantive injustice in some future case by encouraging a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered. It is therefore appropriate to vacate the judgment unless it can be said that respondent did not make a timely request for relief, or that it would otherwise be unfair to deprive the prevailing party of its judgment.

If we focus on fairness to the particular litigants, a careful study of Judge Rubin's analysis of the merits of the underlying litigation suggests that there is a greater risk of unfairness in upholding the judgment in favor of Liljeberg than there is in allowing a new judge to take a fresh look at the

issues.¹⁶ Moreover, neither Liljeberg nor Loyola University has made a showing of special hardship by reason of their reliance on the original judgment.¹⁷ Finally, although a delay of 10 months after the affirmance by the Court of Appeals would normally foreclose relief based on a violation of § 455(a), in this case the entire delay is attributable to Judge Collins' inexcusable failure to disqualify himself on March 24, 1982; had he recused himself on March 24, or even disclosed Loyola's interest in the case at that time, the motion could have been made less than 10 days after the entry of judgment. "The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact." *Public Utilities Comm'n v. Pollak*, 343 U. S. 451, 466-467 (1952) (Frankfurter, J., in chambers). In sum, we conclude that Chief Judge Clark's opinion of the Court of Appeals reflects an eminently sound and wise disposition of this case.

The judgment of the Court of Appeals is accordingly

Affirmed.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE WHITE and JUSTICE SCALIA join, dissenting.

¹⁴ In an unpublished opinion a majority of the Court of Appeals concluded that Judge Collins' findings of fact were not clearly erroneous. In dissent, Judge Rubin expressed the opinion that "Liljeberg's chicanery," *id.*, at 78a, gave rise to an estoppel as a matter of law. He wrote:

"Whether Liljeberg consciously intended to mislead HAI we need not decide. His decision to sign and return the agreement knowing that HAI believed it to be sufficient to transfer 'ownership' makes it clear that he was willing to mislead HAI. . . .

"HAI was misled by Liljeberg's silence into doing what it would not otherwise have done: filing the application for a certificate of need. The HAI witnesses all testified that the company never filed an application unless it wholly controlled the filing corporation; Liljeberg testified that he was aware of that policy." *Id.*, at 76a-77a.

At this point, Judge Rubin inserted the following footnote:

"That HAI was misled is clear from the face of the application. HAI there described St. Jude as a 'wholly-owned subsidiary.' Indeed, the entire 407-page application is devoted to describing HAI, its hospitals, its management experience, and its assets. Liljeberg's name appears only in three letters of intent to file an application for a certificate of need dated before July, 1980, and on a copy of the Warranty and Indemnity Agreement. HAI also changed the name of St. Jude's registered agent, further demonstrating its belief that it controlled St. Jude." *Id.*, at 77a, n. 8.

Judge Rubin then continued:

"Therefore, Liljeberg's silence at the time he signed the warranty agreement should estop him from claiming that the agreement, read in conjunction with the HAI cover letter and Douglas' letter enclosing corporate documents, did not transfer control of St. Jude to HAI. However, because Liljeberg's deception did not end there, the estoppel need not rest on that alone.

"Liljeberg signed the March 16, 1981 commission agreement which stated that he was to receive \$250,000 (plus interest) only if HAI received final section 1122 approval. After the certificate of need was issued, Liljeberg requested and received the commission, which, when paid, amounted to \$271,000. In relieving Hospital Corporation of America (HCA), HAI's successor, of \$271,000, Liljeberg never mentioned his contention that he still 'owned' St. Jude, and that St. Jude, not HAI, had received the certificate. . . .

"HAI relied on Liljeberg's agreement that it owned St. Jude in buying the property on which the hospital was to be built. HCA justifiably relied on Liljeberg's agreement that it owned St. Jude in paying the commission." *Id.*, at 77a-78a.

¹⁵ In fact, Liljeberg's ownership of the certificate of need has never been entirely settled. On January 31, 1983, just two weeks after the Fifth Circuit's judgment affirming Judge Collins on the merits became final, respondent filed suit against St. Jude and various federal and state agencies. The new action alleges that the certificate was improperly issued in the name of St. Jude and that respondent is instead entitled to the certificate. See *Health Services Acquisition Corporation v. Guissinger*, Civil Action

¹⁴ We note that the Court of Appeals affirmed by a divided panel. The majority opinion relied extensively on the deference due a trial court as to its findings of fact. Although it is now too late to determine what effect this additional argument might have had on the decision, it is certainly within the realm of the possible that the court's decision would have been swayed.

¹⁵ These were his three reasons:

"First, Loyola University was not and is not a party to this litigation, nor was any of its real estate the subject matter of this controversy. Second, Loyola University is a non-profit, educational institution, and any benefits inuring to that institution would not benefit any individual personally. Finally, and most significantly, this Judge never served on either the Real Estate or Executive Committees of the Loyola University Board of Trustees. Thus, this Judge had no participation of any kind in negotiating Loyola University's real estate transactions and, in fact, had no knowledge of

The Court's decision in this case is long on ethics in the abstract, but short on workable rules of law. The Court first states that 28 U. S. C. § 455(a) can be used to disqualify a judge on the basis of facts not known to the judge himself. This then broadens the standard for overturning final judgments under Federal Rule of Civil Procedure 60(b). Because these results are at odds with the intended scope of and Rule 60(b), and are likely to cause considerable misapplication when courts attempt to apply them, I dissent.

I

As detailed in the Court's opinion, § 455(a) provides that "any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Section 455 was substantially revised by Congress in 1974 to conform with the newly adopted Canon 3C of the American Bar Association's Code of Judicial Conduct (1974). Previously, a federal judge was required to recuse himself when he had a substantial interest in the proceedings, or when "in his opinion" it was improper for him to hear the case.¹ Subsection (a) was drafted to replace the subjective standard of the old disqualification statute with an objective test. Congress hoped that this objective standard would promote public confidence in the impartiality of the judicial process by instructing a judge, confronted with circumstances in which his impartiality might reasonably be doubted, to disqualify himself and allow another judge to preside over the case.² The amended statute also had the effect of removing the so-called "duty to sit," which had become an accepted gloss on the existing statute.³ Subsection (b) of § 455 sets forth more particularized situations in which a judge must disqualify himself. Congress included the provisions of § 455(b) to remove any doubt about actual bias in cases where a judge's interest is too closely connected with the litigation to allow his participation. Subsection (b)(4), for example, disqualifies a jurist if he knows that his spouse, or his minor children have a financial interest in the subject matter in controversy. Unlike the more open-ended provision adopted in subsection (a), the language of subsection (b) requires recusal only in specific circumstances, as phrased in such a way as to suggest a requirement of actual knowledge of the disqualifying circumstances. The purpose of § 455 is obviously to inform judges of what factors they must consider in deciding whether to recuse themselves in a given case. The Court here holds, as did the Court of Appeals below, that a judge must recuse himself under § 455(a) if he *should have known* of the circumstances requiring disqualification, even though in fact he did not of them. I do not believe this is a tenable construction

of subsection (a). A judge considering whether or not to recuse himself is necessarily limited to those facts bearing on the question of which he has knowledge. To hold that disqualification is required by reason of facts which the judge does not know, even though he should have known of them, is to posit a conundrum which is not decipherable by ordinary mortals. While the concept of "constructive knowledge" is useful in other areas of the law, I do not think it should be imported into § 455(a).

At the direction of the Court of Appeals, Judge Schwartz of the District Court for the Eastern District of Louisiana made factual findings concerning the extent and timing of Judge Collins' knowledge of Loyola's interest in the underlying lawsuit. See *ante*, at 2-3. Judge Schwartz determined that Judge Collins had no actual knowledge of Loyola's involvement when he tried the case. Not until March 24, 1982, when he reviewed materials in preparation for a Board meeting, did Judge Collins obtain actual knowledge of the negotiations between petitioners and Loyola.

Despite this factual determination, reached after a public hearing on the subject, the Court nevertheless concludes that "public confidence in the impartiality of the judiciary" compels retroactive disqualification of Judge Collins under § 455(a). This conclusion interprets § 455(a) in a manner which Congress never intended. As the Court of Appeals noted, in drafting § 455(a) Congress was concerned with the "appearance" of impropriety, and to that end changed the previous subjective standard for disqualification to an objective one; no longer was disqualification to be decided on the basis of the opinion of the judge in question, but by the standard of what a reasonable person would think. But the facts and circumstances which this reasonable person would consider must be the facts and circumstances *known* to the judge at the time. In short, as is unquestionably the case with subsection (b), I would adhere to a standard of actual knowledge in § 455(a), and not slide off into the very speculative ground of "constructive" knowledge.

II

The Court then compounds its error by allowing Federal Rule of Civil Procedure 60(b)(6) to be used to set aside a final judgment in this case. Rule 60(b) authorizes a district court, on motion and upon such terms as are just, to relieve a party from a final judgment, order, or proceeding for any "reason justifying relief from the operation of the judgment." However, we have repeatedly instructed that only truly "extraordinary circumstances" will permit a party successfully to invoke the "any other reason" clause of § 60(b). See *Klapprott v. United States*, 335 U. S. 601, 613 (1949); see also *Ackermann v. United States*, 340 U. S. 193, 199 (1950). This very strict interpretation of Rule 60(b) is essential if the finality of judgments is to be preserved.

For even if one accepts the Court's proposition that § 455(a) permits disqualification on the basis of a judge's constructive knowledge, Rule 60(b)(6) should not be used in this case to apply § 455(a) retroactively to Judge Collins' participation in the lawsuit. In the first place, it is beyond cavil that Judge Collins stood to receive no *personal* financial gain from the transactions involving petitioner, respondent, and Loyola. Judge Collins' only prior tie to the dealings was as a member of Loyola's rather large Board of Trustees and, although Judge Collins was a member of at least two of the Board's subcommittees, he had no connection with the Real Estate subcommittee, the entity responsible for negotiating the sale of the Monroe Tract. In addition, the motion to set aside the judgment was made by respondent almost 10 months after

¹ predecessor statute, which had been part of the United States Code for 60 years, stated:

Interest of justice or judge.
Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or attorney as to render it improper, in his opinion, for him to sit on the bench, or to hear or participate in the trial of the case, or to hear or participate in the appeal, or other proceeding therein." 28 U. S. C. § 455 (1970 ed.).
H. R. Rep. No. 93-1453, p. 5 (1974). See also Bloom, Judicial Disqualification: A Financial Interest as Grounds for Disqualification of Federal Judges, 35 Case W. Res. L. Rev. 662, 670-676 (1985); Comment, Disqualification of Federal Judges for Bias or Prejudice, 46 U. Chi. L. Rev. 236, 242 (1978).

² While § 455 provides guidance to a judge when he is considering recusal, 28 U. S. C. § 144 supplies a litigant with the opportunity to file a motion to disqualify the judge before whom the matter is pending has a personal bias or prejudice sufficient to mandate disqualification. Respondent

Rule 60(b)(6) is subject to no absolute time limitation, there can be no serious argument that the time elapsed since the entry of judgment must weigh heavily in considering the motion. Finally, and most important, Judge Schwartz determined that Judge Collins did not have actual knowledge of his conflict of interest during trial and that he made no rulings after he acquired actual knowledge.⁴ I thus think it very unlikely that respondent was subjected to substantial injustice by Judge Collins' failure to recuse himself, and believe that the majority's use of Rule 60(b)(6) retroactively to set aside the underlying judgment is therefore unwarranted.

JUSTICE O'CONNOR, dissenting.

For the reasons given by CHIEF JUSTICE REHNQUIST, *ante*, at —, I agree that "constructive knowledge" cannot be the basis for a violation of 28 U. S. C. § 455(a). The question then remains whether respondent is entitled to a new trial because there are other "extraordinary circumstances," apart from the § 455(a) violation found by the Fifth Circuit, that justify "relief from operation of the judgment." See Fed. Rule Civ. Proc. 60(b)(6); *Ackermann v. United States*, 340 U. S. 193, 199 (1950), *Klapprott v. United States*, 335 U. S. 601, 613 (1949). Although the Court collects an impressive array of arguments that might support the granting of such relief, I believe the issue should be addressed in the first instance by the courts below. I would therefore remand this case with appropriate instructions.

H BARTOW FARR III, Washington, D C (A J SCHMITT JR., MELVIN W MATHES, SCHMITT & MATHES, and ONEK KLEIN & FARR, on the briefs) for petitioner, WILLIAM M LUCAS JR., New Orleans, La (JOYCE M DOMBOURIAN, LUCAS & ROSEN, CURTIS R BOISFONTAINE, KATHRYN J LICHTENBERG, and SESSIONS, FISHMAN, ROSENSON, BOISFONTAINE, NATHAN & WINN, on the briefs) for respondent

Nos 86-1992 AND 86-2019

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

86-1992

v.

ANTOLIN PUNSALAN PANGILINAN ET AL.

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

86-2019

v.

BONIFACIO LORENZANA MANZANO

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

Syllabus

No 86-1992 Argued February 24, 1988—Decided June 17, 1988*

Respondents, 16 Filipino nationals, seek United States citizenship pursuant to §§ 701 through 705 of the Nationality Act of 1940, as amended in

⁴The majority's opinion suggests a number of troubling hypothetical situations, only one of which will demonstrate the difficulties inherent in its decision. Suppose Judge Doe sits on a bench trial involving X Corp. and Y Corp. The judge rules for X Corp., and judgment is affirmed on appeal. Ten years later, officials at Y Corp. learn that, unbeknownst to him, Judge Doe owned several shares of stock in X Corp. Even in the face of an independent factual finding that Judge Doe had no knowledge of this ownership, the Court's construction of § 455(a) and Rule 60(b) would permit the final judgment in X Corp.'s favor to be set aside if the "appearance of impartiality" were not deemed wholly satisfied. Such a result will adversely affect the reliance placed on final judgments and will inhibit developments premised on their finality.

*Together with No. 86-2019, *Immigration and Naturalization Service*

1942. Under § 702 of the Act, the Commissioner of Immigration and Naturalization was authorized to designate representatives to receive petitions, conduct hearings, and grant naturalization outside the United States. In August 1945, the American Vice Consul in Manila was designated pursuant to § 702 to naturalize aliens. The Philippine Government, however, expressed its concern that a mass migration of newly naturalized veterans would drain the soon-to-be independent country's manpower, and so the naturalization officer's authority was revoked for a nine-month period between October 1945 and August 1946. Respondents would have been eligible for citizenship under the provisions of the 1940 Act if they had filed naturalization applications before the Act expired on December 31, 1946, but did not do so. More than 30 years later, they petitioned for naturalization, claiming that the nine-month absence of a § 702 naturalization officer violated the 1940 Act and deprived them of rights secured by the Fifth Amendment. The naturalization examiner, in all of the cases consolidated here, recommended against naturalization, and the District Courts rejected the naturalization petitions. On respondents' appeals (some of which were consolidated), heard in two cases by different Ninth Circuit panels, the Court of Appeals ultimately held that the revocation of the Vice Consul's naturalization authority violated what it characterized as the 1940 Act's mandatory language, and that the naturalization of respondents was an appropriate equitable remedy.

Held.

1. Neither by application of the doctrine of estoppel, nor by invocation of equitable powers, nor by any other means does a court have the power to confer citizenship in violation of the limitations imposed by Congress in the exercise of its exclusive constitutional authority over naturalization. Since respondents have no current statutory right to citizenship under the expired provisions of the 1940 Act, the Ninth Circuit lacked authority to grant the petitions for naturalization. The reasoning of *INS v. Hibl*, 414 U. S. 5— which held that the same official acts as those alleged here did not give rise to an estoppel that prevented the Government from invoking the December 31, 1946, cutoff date in the 1940 Act— suggests the same result as to the "equitable remedy" theory in this case. Even assuming that, in reviewing naturalization petitions, federal courts sit as courts of equity, such courts can no more disregard statutory provisions than can courts of law. Congress has given the power to the federal courts to make someone a citizen as a specific function to be performed in strict compliance with the terms of 8 U. S. C. § 1421(d), which states that a person may be naturalized "in the manner and under the conditions prescribed in this subchapter, and not otherwise."

2. Assuming that respondents can properly invoke the Constitution's protections, and granting that they had statutory entitlements to naturalization, there is no merit to their contention that the revocation of the Vice Consul's naturalization authority deprived them of their rights under the Due Process Clause of the Fifth Amendment and under its equal protection component. Respondents were not entitled to individualized notice of any statutory rights and to the continuous presence of a naturalization officer in the Philippines from October 1945 until July 1946. Moreover, the historical record does not support the contention that the actions at issue here were motivated by any racial animus.

3. There is no merit to the separate arguments of respondents Litorjua and Manzano, including the argument that the Government did not introduce any evidence in their cases concerning the historical events at issue. It is well settled that the burden is on the alien applicant to establish his eligibility for citizenship.

796 F. 2d 1091, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BRENNAN, WHITE, MARSHALL, STEVENS, and O'CONNOR, JJ., joined. BLACKMUN, J., concurred in the result. KENNEDY, J., took no part in the consideration or decision of the case.

JUSTICE SCALIA delivered the opinion of the Court.

The respondents, 16 Filipino nationals who served with the United States Armed Forces during World War II, claim they are entitled to apply for and receive American citizenship under a special immigration statute that expired over 40 years ago, §§ 701 to 705 of the Nationality Act of 1940, Pub. L. No. 76-853, 54 Stat. 1137, as amended by the Second War Powers Act of 1942, § 1001, Pub. L. 77-507, 56 Stat. 182, 8 U. S. C. § 1001 (1940 ed. Supp. V) (1940 Act). In the