DOCKET NUMBERS: 82014, J-3868, J-3855, J-3856, 82015, 82016, 82015
(Consolidated for purposes of this motion)

STATE OF LOUISIANA

28th JUDICIAL DISTRICT COURT

VERSUS

PARISH OF LASALLE

ROBERT BAILEY, JESSE RAY BEARD, CARWIN JONES, BRYANT RAY PURVIS
THEODORE R. SHAW

STATE OF LOUISIANA

WRITTEN REASONS ON MOTION TO
RECUSE THE HONORABLE J. P. MAUFFRAY, JR.

The defendants in this case, each charged with Aggravated Second Degree Battery, filed separate Motions to Recuse the Honorable J. P. Mauffray, Jr., from presiding over their cases. On May 30, 2008, the Court held a hearing on the consolidated Motions to Recuse.

At the hearing, David Utter (attorney for Jessie Ray Beard), John Di Guilio (attorney for Carwin Jones), and Thomas Lorenzi (attorney for Bryant Purvis) testified on behalf of the defendants. Each attorney described pretrial statements made by Judge Mauffray directly related to the Jena Six cases. For a review of their testimony, see Defendant's Brief in Support of Motion to Recuse The Hon. J. P. Mauffray, Jr. Following this testimony, the State called Judge Mauffray as its sole witness who generally admitted making all of the statements testified to by Utter, Di Guilio, and Lorenzi. Judge Mauffray testified that he made those statements to the lawyers because:

- "Every attorney's dream is to know what a judge is thinking. Every attorney's dream is to know what's inside of a judge. How does a judge make a decision. What's important to the judge. I do my very best to try and let lawyers know what's important to me and what's not."

- "Once again, let's go back to this concept. Okay? I gotta know everything that I possibly can about a particular individual who maybe in the future I'm gonna have to make a disposition about. So, you don't know what's inside my head and I certainly don't know what's inside your head. But I'm trying to show you everything that's in there. That's all there is."

Because the factual basis for the Motions to Recuse, i.e., statements made by Judge Mauffray to defendants' counsel, are not genuinely disputed, the Court will not restate the

underlying facts.

Recognizing the sanctity of a fair and impartial judiciary, the Louisiana Code of Judicial Conduct ("the Code") sets a high standard for members of the judiciary. The Code unambiguously directs judges to "avoid impropriety and the appearance of impropriety in all activities." La. Code of Judicial Conduct, Canon 2. The Code requires a judge to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Id. at Canon 2(A). The Code mandates that a judge "perform judicial duties without bias or prejudice" Id. at Canon 3(A)(4). The Code even places the onus on a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Id. at Canon 3(C).

The Louisiana Code of Criminal Procedure also protects a party's right to a fair and impartial judge and requires recusal when a judge "is biased, prejudiced, or personally interested in the cause to such an extent that he would be unable to conduct a fair and impartial trial." La. C.Cr.P. art. 671(A)(1). The body of article 671 contains specific grounds that warrant recusal, La. C.Cr.P. art. 671(A)(2)-(A)(5), and terminates with a catchall provision requiring a judge to recuse himself when he "would be unable, for any other reason, to conduct a fair and impartial trial." La. C.Cr.P. art. 671(A)(6).

The Code of Criminal Procedure clearly requires recusal when a judge is biased in fact. However, the Louisiana Supreme Court has interpreted article 671 broadly and has held that the mere appearance of a judge's partiality may warrant recusal. State v. LeMelle, 353 So.2d 1312, 1314 (La. 1978); State v. LeBlanc, 367 So.2d 335, 341 (La. 1979). For example, in LeBlanc, a defendant was charged with willfully and intentionally resisting arrest by officers of the Lafayette Parish Sheriff's Office. 367 So.2d 335. After conviction by a judge ad hoc, the defendant filed a Motion for a New Trial alleging that his rights were prejudiced because the judge ad hoc and his son were members of a two man law firm that represented the Lafayette Parish Sheriff's Department. Id. at 340. The defendant argued that a judge whose only law partner represented the Sheriff's Office should not have been appointed to preside over the trial and that he should have recused himself after appointment because he would not be impartial when all the prosecution witnesses were members of the Sheriff's Office.

The State argued that the defendant failed to state grounds for recusation. Id. at 341. The

Supreme Court agreed that the relationship alone did not warrant recusal because Article 671(A)(2) requires recusation based on relationship only when the judge "is related to an attorney employed in the cause" and the judge ad hoc was not related to the assistant district attorney nor to the defense attorney. Article 671(A)(3) requires recusation when the judge "has been employed or consulted as an attorney in the cause, or has been associated with an attorney during the latter's employment in the cause" and the judge ad hoc's law firm was not employed by the Sheriff's Office in any pending civil litigation in the same cause. The Supreme Court also found no showing of specific instances of the judge's partiality or bias. Id. However, the Supreme Court reversed the defendant's conviction under article 671(A)(6) stating:

> Finally, C.Cr.P. 671(6) provides that a judge shall be recused when he would be unable, for any other reason, to conduct a fair and impartial trial, and the Official Revision Comment to C.Cr.P. 671 provides in part:
>
> > "Ground (6) is a catchall provision to include circumstances which clearly indicate that the judge would not be able to serve fairly and impartially, even though none of the specified grounds for recusation exist."
>
> The American Bar Association has recommended that a judge should disqualify himself "in a proceeding in which his impartiality might reasonably be questioned." Code of Judicial Conduct, Canon 3(C)(1). The federal recusal statue has adopted this standard also in 28 U.S.C. § 455(a). Professor Orfield stated that "courts should not be only impartial but above the suspicion of partiality." Orfield, Criminal Procedure From Arrest to Appeal, 374 (1947), as quoted in the Official Revision Comment for C.Cr.P. 671. In State v. Lemelle, 353 So.2d 1312 (La. 1977), this court found that even the appearance of impartiality, as well as impartiality itself, outweighs the inconvenience caused by the recusal of the trial judge.

The Court finds that there is an "appearance of impropriety" when a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. It is no consequence that the judge is not actually biased because our law and our Judicial Cannons are not only concerned about fairness to individual litigants, but, are equally concerned with public confidence in the judiciary which confidence may be irreparably harmed if a case is allowed to proceed before a judge who *appears* to be tainted.

The right to a fair and impartial judge is of particular importance in the present cases. In the only remaining case involving a juvenile, Jesse Ray Beard, the judge is the sole finder of fact. In the remaining cases involving adults, the defendants have a constitutional and statutory right to waive a jury trial and to select a trial by judge under La. C.Cr.P. art. 780 and Art. 1, Section 17 of the Louisiana Constitution.

Based upon the evidence presented on May 30, 2008, this Court finds that there is an appearance of impropriety under La. C.Cr.P. art. 671A(6) by Judge J. P. Mauffray and, therefore, orders that he be recused as the presiding judge in the above captioned matters.

Because of the above ruling, the Court pretermits discussion of the defendants' allegations of Judge Mauffray's bias, prejudice, or personal interest as provided by La. C.Cr.P. art. 671A(1).

Alexandria, Louisiana, this _____ day of _____, 2008.

_____
THOMAS M. YEAGER
JUDGE AD HOC

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