

IN THE UNITED STATES COURT OF APPEAL
FOR THE THIRD CIRCUIT

MUMIA ABU-JAMAL,)	No. 02-9001
)	
Appellee/Cross-Appellant,)	
)	
vs.)	
)	
MARTIN HORN, Director, Pennsylvania)	No. 01-9014
Department of Corrections; CONNER)	
BLAINE, Superintendent, SCI Greene,)	
)	
Appellants/Cross-Appellees.)	<i>Death Penalty Case</i>
_____)	

**RESPONSE OF MUMIA ABU-JAMAL, APPELLEE AND CROSS-APPELLANT,
IN OPPOSITON TO COMMONWEALTH'S MOTION FOR RECUSAL**

COMES MUMIA ABU-JAMAL, Appellee and Cross-Appellant, through ROBERT R. BRYAN, lead counsel, who opposes the Commonwealth's motion seeking the disqualification of all judges in this Court. The grounds relied upon by the District Attorney of Philadelphia are conclusory, irrelevant and without merit, and should thus be rejected.

INTRODUCTION

Mr. Abu-Jamal has not sought the recusal of any judge. To the contrary, he feels this Court will be fair. There is no issue that could result in the requested disqualification. Further, opposing counsel should not be permitted through this ploy to delay oral argument which is scheduled for May 17, 2007. Mr. Abu-Jamal has been on death row for nearly a quarter of a century, and would like for his case to be heard as scheduled by this Court.

ARGUMENT

1. *Adams v. Teamsters Local 115*, 2007 WL 142540 (3rd Cir. 2007) Is Inapplicable

Relying upon *Adams v. Teamsters Local 115*, slip op., 2007 WL 142540 (3d Cir. 2007) (non-precedential), the District Attorney seeks the recusal of all judges on the Court. However,

Adams does not even discuss the disqualification of any judge. It was a non-issue since this Court voluntarily recused itself. Only from the footnotes does one learn that the three-judge panel was composed of judges from other jurisdictions. *Id.* at 8.

In *Adams* the situation there was quite different from that in the case at hand and thus not applicable. Governor Edward G. Rendell was a *named defendant and Appellee*. The plaintiffs alleged that as District Attorney he had personally conspired with others to violate their civil rights through use of violence. *See Adams*, slip op. at 1 (naming Governor Rendell as defendant/appellee); *id.* at 3 (noting that “Appellee Edward G. Rendell” was represented in *Adams* by the Philadelphia District Attorney’s Office); *id.* at 3-4 (describing plaintiffs’ allegations). Governor Rendell gave testimony in a deposition. *Id.* at 2-3. It was appropriate for Governor Rendell’s spouse, the Honorable Marjorie Rendell, to recuse herself from the *Adams* case because her husband was a named party. Indeed, her recusal was *required* by law. *See* 28 U.S.C. § 455(b)(5)(i) (Judge “shall” recuse herself if her “spouse . . . [i]s a party to the proceeding”). Here, however, there is no such relationship between a party and any Third Circuit judge, thus the Commonwealth’s suggestion of recusal is inappropriate. Further, unlike in *Adams*, here there is no allegation that Governor Rendell personally conspired with others to commit any crime. And in any event, there is no conceivable reason why the entire Third Circuit should entirely recuse itself from the case as the Commonwealth asks.

In *Adams* the Court recused itself because Judge Rendell is married to one of the defendants/appellees. As stated, such a spousal relationship *required* her recusal under § 455(b)(5)(i). Moreover, when recusal is obligatory under § 455(b), it *cannot be waived*. 28 U.S.C. § 455(e) (“No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b).”).

2. The District Attorney's Request For The Disqualification Of The Entire Court Is Unjustified Both Factually And As A Matter Of Law

The District Attorney's reliance in the instant case upon 28 U.S.C. § 455(b) for the disqualification of the entire Court is misplaced and absurd. Judge Rendell has not even been designated to be on the three-judge panel to hear this case. Thus, § 455(b) is not even an issue.

Of course a judge must disqualify himself or herself “[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.” *Id.* Justice Rendell has always recused herself without any prompting from lawyers where her marital relationship might cause a question regarding the appearance of justice. Mr. Abu-Jamal has full faith that if assigned to this case, Justice Rendell would step aside if she felt there would be any question as to the propriety of her sitting on the case.

The Commonwealth engages in conjecture that is difficult to understand and makes little sense. It urges acceptance of the farfetched theory that a ruling granting relief on behalf of Mr. Abu-Jamal would somehow “harm” personally and professionally both Governor Rendell and Justice Rendell:

A decision that appeared to accept or validate these accusation would directly harm Mr. Rendell and, indirectly, Judge Rendell as his spouse. No less substantial is the risk that a decision rejecting the accusation might be attributed by outside parties to a perceived effort by Judge Rendell, in supposed concert with her colleagues on the Court, to protect Mr. Rendell that would harm these personal and professional interests. . . . Similarly, with respect to § 455(b)(1), it is reasonable to anticipate that a lay observer could likely conclude that the serious accusations leveled by Mr. Abu-Jamal against Mr. Rendell were discussed by Mr. And Mrs. Rendell since they are husband and wife. It follows that, to such an observer, Judge Rendell could appear to have personal knowledge of the events in questions. . . .

Commonwealth's Motion for Recusal at 6 (emphasis added).

First, there is no accusation that Governor Rendell committed any personal “wrongdoing.” As pointed out, he is not even a party to this matter. Further, there is not a scintilla of evidence that any decision will in any possible way would “harm” the “personal or professional interests” of Judge Rendell or her husband. *Id.* There could not even be an appearance of such a bizarre notion. How any case ruling “would directly harm Mr. Rendell and, indirectly, Judge Rendell as his spouse” is likewise based on wild speculation without any supporting facts. Such contentions are utter nonsense and preposterous.

It is an insult to this Court and the very essence of justice for the Philadelphia District Attorney to state that any judicial finding “might be attributed by outside parties to a perceived effort by Judge Rendell, in supposed concert with her colleagues on the Court, to protect Mr. Rendell that would harm these personal and professional interests.” *Id.* To opine in a public pleading that was disseminated even to the Associated Press* that “the serious accusations leveled by Abu-Jamal against Mr. Rendell were discussed by Mr. and Mrs. Rendell since they are husband and wife,” is insulting and demeaning to this Court and its justices. Certainly Judge Rendell has a far higher standard of ethics and better things to do with her life than to sit around evenings discussing with her spouse litigants appearing before this Court. Even insinuating such a notion to debasing.

* “Prosecutors want the entire United States Court of Appeals for the Third Circuit to recuse itself from the latest appeal for Mumia Abu-Jamal, who is on death row for murdering a police officer in 1981, because Gov. Edward G. Rendell, whose wife serves on the court, was district attorney during Mr. Abu-Jamal’s 1982 trial. Mr. Abu-Jamal, left, in his latest appeal accuses prosecutors of practicing racial discrimination during jury selection. Prosecutors deny that. ‘Since Mr. Rendell was the elected district attorney at the time in question, and so would have been responsible for the supposed ‘routine’ racially discriminatory practices of Philadelphia prosecutors, Abu-Jamal’s accusations necessarily implicate Mr. Rendell personally,’ Hugh J. Burns Jr., an assistant district attorney, wrote in a motion last week.” *Pennsylvania: Seeing A Full-Bench Recusal*, N.Y. Times (Associated Press), Apr. 7, 2007.

The Commonwealth's reliance upon a 19-year-old case from another circuit, *In re Faulkner*, 856 F.2d 716 (5th Cir. 1988), is misplaced. *Id.* There a district court judge was actually presiding over a case. His cousin was a participant in events relating to the case to be decided. Here, Judge Rendell is not even ruling on the case of Mr. Abu-Jamal. In fact, the composition of the panel that will ultimately rule on this matter has not even been announced. Presumably she will not be participating.

Here, there is no conflict of interest or such an appearance. There is not even a possible appearance of conflict or impropriety that might justify a judge in this court. The allegations of the District Attorney are conclusory and irrelevant.

CONCLUSION

Under these circumstances, the District Attorney's suggestion that the entire Circuit Court should recuse itself is utterly unfounded and should be rejected.

WHEREFORE, the Court is moved to deny the Commonwealth's motion for recusal.

Dated: April 12, 2007

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing **RESPONSE OF MUMIA ABU-JAMAL, APPELLEE AND CROSS-APPELLANT, IN OPPOSITION TO COMMONWEALTH'S MOTION FOR RECUSAL**, to be served by United States Mail, first class postage prepaid, upon the following:

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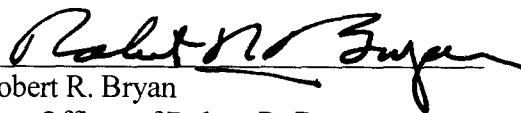
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 12th day of April, 2007, at San Francisco, California.



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