UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIBEL EDMONDS *
*
Plaintiff, *
*
v. *
* Civil Action No. 05-540 (RBW)
UNITED STATES OF AMERICA *
*
Defendant *
* *

MOTION FOR RECUSAL AND/OR DISQUALIFICATION OF JUDGE REGGIE B. WALTON

NOW COMES the plaintiff Sibel Edmonds, pro se, to respectfully move the Court to recuse itself in the present action.

Date: March 22, 2006

Respectfully submitted,

/s/

____

Sibel Edmonds
12 Wolfe Street
Alexandria, Virginia 22314
(703) 519-3640

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that this **MOTION FOR RECUSAL AND/OR DISQUALIFICATION OF JUDGE REGGIE B. WALTON** is made in good faith, and in the honest belief that Judge Walton should be disqualified from this action under 28 U.S.C. §§ 144, 455(a).

Date: March 22, 2006

/s/

____
Sibel Edmonds

<u>CERTIFICATE OF FACTS IN PLAINTIFF'S KNOWLEDGE</u>

I HEREBY CERTIFY that the events related in the **STATEMENT OF FACTS** in Plaintiff's **<u>MOTION FOR RECUSAL AND/OR DISQUALIFICATION OF JUDGE REGGIE B. WALTON</u>** are in the personal knowledge of the pro se Plaintiff.

Date: March 22, 2006

/s/

____

Sibel Edmonds

UNITED STATES DISTRICT COURT
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* *

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO RECUSE AND/OR DISQUALIFY

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INTRODUCTION

Section 455(a) of Title 28 of the United States Code requires a federal judge to disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." Judge Walton should disqualify himself from the present case for two reasons, both of which alone bring his impartiality into question.

First, Judge Walton ruled against Plaintiff in a previous case and the set of events leading to the present case being assigned to Judge Walton would lead a reasonable person to question the integrity of the case assignment process and whether or not such process had been subverted, in violation of local rules, to put the present case before Judge Walton to the detriment of the Plaintiff.

Second, Judge Walton has a bias to secrecy that greatly favors the Defendant's position, and this bias has been exercised against the Plaintiff's interests in a previous case. This demonstrable bias to secrecy creates a reasonable doubt concerning Judge Walton's impartiality in the present case.

STATEMENT OF FACTS

1. In July 2002, Plaintiff, Sibel Edmonds, filed a Freedom of Information Act claim in the D.C. federal court, and the case was assigned to Judge Ellen Segal Huvelle. *Edmonds v. Federal Bureau of Investigation,* 02CV1294 (ESH) (*Edmonds I*).

2. July 22, 2002, Plaintiff, Sibel Edmonds, filed an action with the D.C. federal court against the United States alleging violation of First Amendment and privacy rights, and the case was assigned to Judge James Robertson. *Edmonds v. Ashcroft*, 1:02CV01448 (RBW) (*Edmonds II*).

3. On August 30, 2002, Plaintiff's motion in *Edmonds II* to compel the testimony of two witnesses, Melek Can Dickerson and Major Douglas Dickerson (The Dickersons), who were scheduled to leave the United States on September 6, 2002, was granted by Judge James Robertson.

4. On October 18, 2002, Attorney General John Ashcroft invoked the State Secrets Privilege in *Edmonds II.*

5. On February 6, 2003, *Edmonds II* was removed from Judge James Robertson and assigned to Judge Reggie Walton without explanation.

6. On March 13, 2003, Plaintiff filed a motion to request that *Edmonds II* be transferred from Judge Reggie Walton to Judge Ellen Segal Huvelle, the judge presiding over *Edmonds I* since July 2002.

7. On May 7, 2003, the court granted the Plaintiff's requested transfer of *Edmonds II* from Judge Walton to Judge Huvelle.

8. On May 9, 2003, two days after the court assigned *Edmonds II* to Judge Huvelle, the court transferred *Edmonds II* back to Judge Walton without explanation.

9. On February 12, 2003, Judge Walton scheduled the first Status Hearing for *Edmonds II* for March 6, 2003, at 9:00 a.m.

10. On March 6, 2003, the day of the scheduled status hearing on *Edmonds II*, Judge Walton, without explanation, postponed the status hearing to July 25, 2003.

11. On July 24, 2003, one day before the rescheduled status hearing in *Edmonds II*, Judge Walton postponed, without explanation, the hearing to October 2003.

12. October 2003, one day before the rescheduled hearing in *Edmonds II*, Judge Walton again postponed the hearing, stating that his court had to obtain security clearance and access for court clerks, and that this process was to be expedited and completed within ten business days.

13. From October 2003 until April 27, 2004, the court in *Edmonds II* did not communicate with Plaintiff, supplying no explanation for the delay.

14. On April 26, 2004, after plaintiffs' counsel in *Burnett et al. v. Al Baraka Investment & Dev. Corp.*, 349 F. Supp. 2d 765 (S.D.N.Y. 2005), representing over 1000 9/11 victim family members in a lawsuit against the Saudi Arabian Government and various businesses, issued a subpoena for a deposition from Plaintiff, the Defendant asked Judge Walton for an emergency hearing to quash the subpoena and invoked the State Secrets Privilege for a second time.

15. On April 27, 2004, Judge Walton provisionally quashed the deposition request. *Burnett et al. v. Al Baraka Investment & Dev. Corp.*, 323 F. Supp. 2d 82 (D.D.C. 2004) (*Burnett*).

16. On June 3, 2004, Judge Walton held an ex parte, in camera, briefing to hear "classified" declarations by the government.

17. On June 23, 2004, Judge Walton granted in part and denied in part the government's motion to quash, and prohibited the asking of many questions submitted in advance by counsel for plaintiffs in *Burnett*. These prohibitions were based on Defendant's assertion of the State Secrets Privilege. *Id*. at 84. Examples of questions protected by Judge Walton's order, the answers to which would allegedly cause grave damage to the national security are (Order and attachments at Exhibit A):

a. "When and where were you born?"

b. "Where did you go to school?"

c. “What did you focus your studies on in school?”

d. “What languages do you speak?”

e. “What is your fluency or proficiency in each of these languages?”

f. “In what capacity have you been employed by the United States government?”

g. “Have you met Senate staff members in any unclassified conferences?”

h. “Did you write a letter dated February 16, 2004, to Senator Charles Grassley?”

i. “On Sunday, October 27, 2002, the tlevision news program ‘60 Minutes’ aired an interview wherein Ed Bradley asked you questions, correct?”

j. “Are you aware that United States Attorney General Ashcroft has asserted State Secrets Privilege concerning much information that you possess?”

18. On July 6, 2004, two years after the Plaintiff filed *Edmonds II*, Judge Walton ruled against her and granted the Government’s motion to dismiss the action based on the State Secrets Privilege. *Edmonds v. Department of Justice*, 323 F. Supp. 2d 65 (D.D.C. 2004).

19. On March 16, 2005, the Plaintiff filed with the D.C. federal court a new and separate claim under the Federal Tort Claims Act (FTCA), and the case was randomly assigned to Judge Robertson. *Edmonds v. Department of Justice*, 1:05-CV-00540 (RBW) (*Edmonds III*).

20. On March 21, 2005, *Edmonds III* was removed from Judge Robertson and reassigned to Judge Walton without explanation.

ARGUMENT

Though "judges are presumed to be impartial," *Tripp v. Executive Office of the President*, 104 F. Supp. 2d 30, 34 (D.D.C., 2000), 28 U.S.C. 455(a) requires a federal judge to disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." The standard for disqualification under this statute is an objective standard, *Liteky v. United States*, 510 U.S. 540, 548 (1994), and the purpose of the statute is "to promote public confidence in the integrity of the judicial process*." Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988). No actual bias need be demonstrated by the moving party, for §455(a) "focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, [and] a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street." *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980). In stark terms "what matters is not the reality of bias or prejudice but its appearance." *Liteky* at 458.

The apparent integrity of the judicial process and maintenance of the perception that courts are impartial venues are the chief goals of the statute, and judges must disqualify themselves even when "false and erroneous . . . allegations" are the bases of a motion for recusal if the court's impartiality may reasonably questioned because of such allegations. *Church of Scientology v Cooper* 495 F Supp 455, 461 (C.D. Cal. 1980). Section 455 was intended to overrule the "duty to sit" concept, and once a movant demonstrates facts that reasonably call into question a judge's impartiality the judge must disqualify himself. *Smith v. Pepsico, Inc.,* 434 F Supp 524 (S.D. Fla. 1977); *United States v. Corr*, 434 F. Supp. 408 (S.D.N.Y. 1977).

I. Judge Walton Must Disqualify Himself On Perception That the Case Assignment Process of the D.C. District Court Has Been Subverted in the Present Case.

Local Civil Rule 40.2(a) directs that "except as otherwise provided by these Rules, civil, criminal and miscellaneous cases shall be assigned to judges of this court selected at random." Further, "all proceedings in a case after its assignment shall be conducted by the judge to whom the case is assigned, except as otherwise provided in these Rules." Local Civil Rule 40.3(f). On February 6, 2003, *Edmonds II* was removed from Judge Robertson and reassigned to Judge Walton. On March 13, 2003, Plaintiff filed a motion to request the case to be transferred from Judge Walton, and be assigned to Judge Huvelle, who had presided over *Edmonds I* since July 2002. That request was granted on May 7, 2003. Two days later, on May 9, *Edmonds II* was transferred back to Judge Walton. On July 6, 2004, Judge Walton granted the Government's motion to dismiss, stating that assertion of the State Secrets Privilege prevented the case from going forward. 323 F. Supp 65 (D.D.C. 2004)

On March 16, 2005, the Plaintiff filed in D.C. federal court a new and separate claim under the Federal Tort Claims Act, and the case was randomly assigned to Judge Robertson. 1:05-CV-00540-RBW. But five days later, on March 21, 2005, Plaintiff's FTCA Claim was removed from Judge Robertson and reassigned to Judge Walton. This set of facts reveals three apparent violations of local rules governing the assignment of cases.

The first apparent violation is the February 6, 2003, reassignment of *Edmonds II* from Judge Robertson to Judge Walton. Statement of Facts ¶¶ 2-5. This reassignment is troubling not only for its apparent violation of local rules, but also because it comes after Judge Robertson granted Plaintiff's motion to compel testimony from The Dickerson's and an initial assertion of the State Secrets Privilege by Attorney General Ashcroft. Judge Robertson, already invested in

the case and demonstrating a fair consideration of Plaintiff's position, was nevertheless removed without explanation.

Second, Plaintiff's request to transfer *Edmonds II* from Judge Walton to Judge Huvelle was granted, but then two days later the case was transferred back to Judge Walton. Statement of Facts ¶¶ 6-8. This action raises two points of impropriety: 1) The transfer of *Edmonds II* back to Judge Walton after its reassignment to Judge Huvelle had been granted; 2) The transfer away from a court handling a related case that is the oldest docket of the two. On this second point, Local Civil Rule 40.5(a)(2) deems that cases are related if they "(ii) involve common issues of fact, or (iii) grow out of the same event or transaction." When cases are related "the Clerk shall assign the new case to the judge to whom the oldest related case is assigned."

Local Civil Rules 40.5.(c)(1). *Edmonds I*, filed first in time, concerned the same set of events, facts, and transactions. Under the local rules a related case by the Plaintiff filed later in time should have been assigned to Judge Huvelle. The transfer to Judge Huvelle of *Edmonds II*, its reassignment back to Judge Walton, and the apparent contravention of local rules in not combining related cases gives rise to a reasonable belief that the case assignment process of the D.C. Federal District Court was subverted in the present case.

Further, *Edmonds I*, before Judge Huvelle, turned on Exemption 1 of the Freedom of Information Act, which protects against disclosure information "(A) specifically authorized under criteria established by an Executive order to be secret in the interest of national defense or foreign policy and (B) [information that is] in fact properly classified pursuant to such Executive order." 5 U.S.C. §552(b)(1). *Edmonds II*, before Judge Walton, hinged on the appropriate assertion of the State Secrets Privilege. The proximity of these issues should have required that the cases be combined, and Judge Walton lends evidence to this view by noting in his opinion

that "of particular significance to this case is Judge Huvelle's grant of summary judgment to the government on its assertion of Exemption 1 of the FOIA as grounds for refusing to disclose certain documents." 323 F. Supp 65, 68 (D.D.C. 2004).

Third, when Plaintiff filed her FTCA Claim, on March 16, 2005, it was originally assigned to Judge Robertson. Apparently in accordance with Local Civil Rule 40.5(a)(4), which deems that cases "shall be deemed related where a case is dismissed, with prejudice or without, and a second case is filed involving the same parties and relating to the same subject matter," the FTCA Claim was reassigned to Judge Walton. But there were two judges that met the requirements of this rule: Judge Walton and Judge Huvelle. Judge Huvelle presided over *Edmonds I* and was the judge with the longest record of involvement in the Plaintiff's actions. No explanation for selection of Judge Walton over Judge Huvelle was given.

It is clear that case assignment committees have great discretion to redirect cases to ensure court efficiency. The two reasons often cited in support of case assignment systems are equitable work distribution among judges and the prevention of "judge shopping." But the random case assignment system fulfils an additional, and equally important, purpose: it is an assurance to the public that case assignments are not manipulated to the detriment of litigants.

Perceived fairness in the courts is a requirement in a democracy, and it is crucial to "'generat[e] the feeling, so important to a popular government, that justice has been done', by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Marshall v. Jerrico*, 446 U.S. 238, 242 (1980) quoting *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring).

The convoluted movement of Plaintiff's claims among courts all leading back to Judge Walton creates the perception that the system has been manipulated. Indeed, a Google search of the internet shows numerous news websites and bloggers advancing the belief or implying that the assignment of Judge Walton to both Plaintiff's cases and that concerning the prosecution of Lewis Libby is anything but coincidence. Many of these commentators also claim or imply that these cases were assigned to Judge Walton to be disposed of in favor of the Government. For example, one commentator writes:

> So to quickly sum up, we have a judge [Walton] with little background available, with long ties to the Bush's [sic], who someone doesn't want the public to know his financial dealings, who has denied requests for domestic intelligence records (at least once), who has now been mysteriously "randomly assigned" to not only hear Edmonds' FTC case, but is also assigned to a case regarding a senior White House official with whom this judge and the defendant worked with the White House at the same time, albeit in different capacities. Have we flunked the infamous Dan Burton "smell test" yet? (Attached at Exhibit A).

Whether or not these perceptions are correct is irrelevant. Section 455(a) requires disqualification whenever a judge's "impartiality might reasonably be questioned," and the rule does not require a factual showing of lack of impartiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988). The perceived manipulation of the case assignment process, which is clearly reflected in a great swath of published public opinion and speculation, leads to the perception that Judge Walton will not act impartially with respect to Plaintiff's case.

Neither does §455(a) require a judge to have knowledge of facts creating a perception of a lack of impartiality. The operation of the statute "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." *Id*. at 860. Once the judge is made aware of the perception, he is under a duty to disqualify himself. *Id*.

It is enough to meet §455(a) that the public perceive that Judge Walton knew of attempts to purposely manipulate the case assignment process to get the Plaintiff's cases before his court. As cited above and in Exhibit B, there is substantial public perception that the case assignment process was manipulated in order to put the Plaintiff's cases before Judge Walton where they would treated in a biased manner.

The facts, events, and rulings are such that a reasonable person looking at the transfer and reassignment of Plaintiff's claims would come to the conclusion that the case assignment process had been manipulated in contravention of court rules, and that Judge Walton lacks the necessary impartiality to hear Plaintiff's present case before his court.

A goal of the case assignment process, to supply reassurance to the public that there is a neutral system for distribution of cases to judges, is undermined by the events related to assignment of Plaintiff's cases. Deviation from the announced system, regardless of whether justified internally or not, may, and in this case has, create the perception of impropriety and that such perceived impropriety occurred to pass cases to a particular judge who has reason to be biased against a party in the case.

II. Judge Walton Must Be Disqualified for His Demonstrated Penchant for Secrecy in Apparent Violation of Law.

Judge Walton disposed of *Edmonds II* on the basis of the Government's assertion of the State Secrets Privilege, "albeit with great consternation." 323 F. Supp. 2d 65, 82 (D.D.C. 2004). On the same day as the decision in *Edmonds II*, Judge Walton provisionally quashed a subpoena for a deposition of Plaintiff by attorneys in *Burnett et al. v. Al Baraka Investment & Dev. Corp.*

323 F. Supp. 2d 82 (D.D.C., 2004). Attorney General Ashcroft subsequently asserted the State Secrets Privilege to prevent the deposition of Plaintiff in *Burnett*, and on further consideration Judge Walton granted in part and denied in part General Ashcroft's motion to quash. In limiting the deposition in *Burnett*, Judge Walton permitted the following proposed questions (Order and attachments at Exhibit A):

- "What is your name?"
- "When did you come to the United States?"
- "Are you a resident of the United States?"
- "What is the level of your education?"
- "After your schooling what was your first, etc., employment?"
- "Have you ever been employed by the United States government?"
- "During what time period were you employed by the United States government?"
- "Do you still work for the United States government?"
- "Are you employed now? If so, what is your employment now?"

But Judge Walton held that the State Secrets Privilege prevented the asking of all other proposed questions.

Questions such as the Plaintiff's place and date of birth, spoken languages, where she attended college, and whether or not she met in unclassified settings with congressional staff members or wrote an unclassified letter to a member of congress were held to threaten national security. This ruling would mean that Plaintiff's driver's license, birth certificate, school transcripts, and who she has talked with in a public setting threaten the national security of the United States.

Information that would be permissible to impart over coffee at Starbucks was withheld from deposition. Emblematic of Judge Walton's perceived dedication to secrecy is the prohibition against asking the Plaintiff "Are you aware that United States Attorney General Ashcroft has asserted State Secrets Privilege concerning much information that you possess?" The basis for the Privilege may be classified, but the assertion of the Privilege is a public act,

and Plaintiff had every right to acknowledge knowledge of assertion of the Privilege over information she possesses.

Further, the Ethics in Government Act requires that Judge Walton file a yearly financial disclosure statement with the United States Judicial Conference. 5 U.S.C. Appx. §§101, 103. A disclosure may be redacted only "(i) to the extent necessary to protect the individual who filed the report; and (ii) for as long as the danger to such individual exists." 5 U.S.C. Appx. §105(b)(3)(B). The financial disclosure for Judge Walton covering the year 2003, the only disclosure statement that Plaintiff has obtained, redacts all information except for the date of the filing, Judge Walton's name, and the address of the D.C. federal district court. This is extraordinary, for it seems wholly unlikely that the disclosure of Judge Walton's financial investments endangers his physical security or the security of his family.

A recent GAO report found that between the years 1999-2002 less than 10 percent of federal judges requested a redaction of their financial disclosure statements. *Assessing and Formally Documenting Financial Disclosure Procedures Could Help Ensure Balance between Judges' Safety and Timely Public Access*, GAO-04-696NI.

Less than one percent of judges on average request complete redaction of their financial disclosure statements each year. *Id*., 16. The great percentage of such requests are honored by the Committee on Financial Disclosure of the United States Judicial Conference, and great deference is paid to a judge's personal views on matters of secrecy and disclosure. *Id*. at 12.

Judicial sentiment on disclosure of financial statements varies. For example, the report found that "some judges view public scrutiny of their actions and finances as part of their role as a federal judge. Other judges are more sensitive to perceived threats and the risk that release of

information from their financial disclosure reports may pose and are more likely to request redactions of certain information." *Id.*, 12. Few judges, however, request total redaction.

Judge Walton has a deference to secrecy that would lead a reasonable person to conclude that he would not be impartial in ruling on matters concerning issues of confidentiality and disclosure of government held information. In the present case, the Defendant has explicitly stated that it holds open the resort to use of the States Secrets Privilege. Motion to Dismiss, 5 ("In the event that Plaintiff's Complaint is not dismissed in its entirety for the reasons described herein, the United States will evaluate the need to assert the state secrets privilege again in this lawsuit.").

Under these circumstances, bearing in mind Judge Walton's great and undue deference to the State Secrets Privilege in *Burnett* and his own demonstrated personal penchant for secrecy as indicated in his completely redacted financial disclosure statement, it is a reasonable perception that Judge Walton will not be impartial in handling secrecy claims that may be made by Defendant in the present case.

CONCLUSION

The unusual operation and results of the case assignment system concerning Plaintiff's cases combined with Judge Walton's apparent deference to secrecy and his own pursuit of secrecy, make it clear that the strictures of §455(a) have been met, and Plaintiff prays for Judge Walton's disqualification or recusal in the present case.

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Respectfully submitted,

/s/

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March 22, 2006