



Office of the General Counsel & Assistant Executive Director

Honorable Michael Mukasey
Attorney General
U.S. Department of Justice
10th St and Constitution Ave NW
Washington D.C. 20530

January 5, 2009

Re: USA vs. Rubashkin CR-08-1324 (N.D.Ia. 2008)

Dear Mr. Attorney General,

Fifteen years ago when you were serving as United States District Judge, you sat in a criminal proceeding against Muslim defendants arising from the first World Trade Center bombing. The defendants moved for your disqualification because you and your family were Jewish and had unspecified ties to Zionist organizations. They could have equally said that you were eligible for Israeli citizenship under the Law of Return. You rightly then dismissed their claim as “rancid wine in a different bottle.” U.S. v. El-Gabrowni, 844 F.Supp. 955, 962 (S.D.N.Y. 1994).

Now to the collective amazement of the Jewish community, federal prosecutors in Iowa have reviewed the sort of ethnic stereotyping you so forcefully rejected in that case. They have argued that a federal defendant (Shalom Rubashkin) should be denied bail as a flight risk because he is theoretically eligible for immediate Israeli citizenship under Israel’s Law of Return.

The prosecutors offered no evidence of any plan by Rubashkin to invoke that right, and of course, the prosecution did not acknowledge the full force of the fact that Israel has a treaty with the U.S. requiring it to extradite to the United States its citizens charged with crimes. As your Department knows, this treaty is regularly invoked against Israeli citizens.

We do not know if Mr. Rubashkin is a flight risk, evaluated under proper legal and factual standards. We do not know if the bail conditions he has proposed are adequate to counteract the risk of flight, if any. We do know that the government’s invocation of the Law of Return is offensive. It is even more offensive that, when the argument was made and criticized, the U.S. Attorney’s office not only refused to withdraw it, it made a series of gossamer-thin and morally offensive legal arguments to defend the indefensible.

Religion and ethical assumptions about an individual were “rancid wine” when invoked to disqualify you from judicial service in a case involving a Muslim. They are equally “rancid wine” when invoked by prosecutors under your purview to deny bail to a Jewish defendant.

The Iowa prosecutors should be told to withdraw their offensive argument, and allow the bail decision concerning Mr. Rubashkin to be made free of the taint of that argument.

Sincerely,

Marc D. Stern
Acting Co-Executive Director