

ZUNDEL CHALLENGES JUDGES IN BID FOR REHEARING

Cincinnati, Ohio--Two of three judges who denied his federal court appeal should voluntarily disqualify themselves because of improper associations with his federal government adversary, maverick publisher Ernst Zundel says in a petition filed April 12 with the U.S. Court of Appeals in Cincinnati seeking a rehearing on his United States habeas corpus case. The court denied his bid for a habeas corpus fact-finding hearing in February 2007.

Zundel, a German national married to a United States citizen but currently jailed in Germany, is asking for either a rehearing by a new three-judge panel because of bias, or a rehearing en banc by a larger group of judges because of the critical constitutional issues his case raises, says his California attorney, Bruce Leichty.

In his request for rehearing Zundel asserts that the three-judge panel which denied his appeal failed to address his argument that his habeas rights had been unconstitutionally suspended, and failed to address the implications of "converting" his appeal into a petition for review under the REAL ID Act of 2006.

Under the REAL ID Act, immigrants hit with a deportation order are allowed only "one bite at the apple" consisting of a request to a federal appeals court for review of legal issues, notes Leichty.

"The impatience of Congress with seemingly interminable federal court review of deportation orders was understandable at the time the REAL ID Act was passed in 2006," notes Leichty, "but the REAL ID Act also assumed that immigrants hit with deportation orders already had had administrative hearings and due process in

front of an immigration judge. That never happened in Ernst Zundel's case."

Leichty says among its errors, the Cincinnati appeals court assigned an illegal immigrant status to Zundel that he did not have, overlooked the expiration in May 2000 of a congressional program which prevented German visitors from asserting their rights, and also failed to address the fact that Zundel in October 2000 had been given work authorization and the right to travel and return to the United States, after his wife, Ingrid Rimland Zundel, petitioned for his permanent residence as her spouse. The court further ignored the fact that INS had a policy of not deporting immigrants awaiting permanent residence through a U.S. citizen spouse petition, according to Leichty.

The Zundels were living in Tennessee and awaiting an immigration interview in 2003 when federal agents arrested him without a warrant, just a few months after the FBI had found that Zundel's conduct was protected under U.S. law and that he would likely obtain permanent residence. Upon his arrest Ernst Zundel promptly filed a petition for habeas corpus, but a federal judge in Knoxville twice disavowed any jurisdiction, and Zundel was whisked across the Canadian border while his appeal was still pending; the appeals court has now refused to require a hearing despite precedents requiring such hearings for deported immigrants when they are barred from reentering the United States, says Leichty.

Zundel discovered after his arrest that two letters sent by his Tennessee attorney to INS about rescheduling his permanent residence interview were missing from the INS file. The arresting

authorities used the pretext of a "missed hearing" when they arrested Zundel, says Leichty.

"Here is a man who never had his day in any sort of court before being carted out of this country to face indefinite imprisonment in Canada and Germany under laws that Americans have historically rejected," says Leichty.

Zundel spent two years in solitary confinement in Canada while the Canadian Interior Ministry attempted to prove, through use of secret evidence, that he was a national security risk to that country, and he was then convicted in Germany in February 2007 of a speech crime after Canada deported him. He is currently sentenced to serve a five-year prison term in Germany, but plans to appeal that sentence.

Leichty states that because of the label of "Holocaust denier" attached to Zundel and the stigma associated with it, it has been difficult or impossible for Zundel to get a fair trial in any of the countries where he has been imprisoned. In Germany Zundel was not allowed to present evidence to rebut the government's contention regarding "the Holocaust," although the exact meaning of that term and the limits of acceptable discourse regarding the events of World War II remained ambiguous, says Leichty.

The judge presiding at Zundel's "security certificate" trial in Canada was a former advisor to the Canadian national intelligence service, which provided the secret evidence used to convict Zundel there--although the Canadian Supreme Court has since found that the use of secret evidence in such proceedings is unconstitutional. The judge presiding at Zundel's trial in

Knoxville found that he had written "anti-semitic" materials, a finding repeated by the Cincinnati appeals court in the first sentence of its February 2007 opinion, despite the fact that Zundel has always disclaimed anti-semitic views and despite the fact that Zundel's political opinions should have been irrelevant for the purposes of immigration issues, says Leichty.

"And now Zundel has been victimized yet again by federal appeals court judges who should have disqualified themselves from hearing his case because of partisanship," claims Leichty. One of the judges, Clinton appointee Martha Daughtrey, has a daughter working as an Assistant United States Attorney in Tennessee under Attorney General Alberto Gonzales, the respondent named in Zundel's case and also the officer heading the department litigating Zundel's habeas corpus claim.

The presiding judge in Zundel's U.S. appeal, a 2003 Bush appointee named Deborah Cook, was forced to issue a public apology in January 2007 for having tried to make a prohibited campaign contribution to the then-senior Republican Senator from Ohio, Michael DeWine, who was engaged in 2006 in a fierce reelection battle with his Democratic challenger. Investigative journalists at www.Muckraker.org first uncovered the prohibited contribution and said that Cook initially tried to blame it on her lawyer husband before finally conceding that she didn't know such contributions were prohibited, because she missed "judge's school." President George Bush twice flew to Cincinnati to appear at fundraisers for DeWine, one of which was held at the home of the brother of another Ohio federal judge.

Documentation of all those facts has been presented to the Court of Appeals in Cincinnati as part of Zundel's petition for rehearing, says Leichty, who notes that he didn't discover the judges' associations until after both judges showed their predisposition at oral argument in January 2007. "Clearly when Judge Cook made that campaign contribution to a Bush crony she showed a total lack of understanding of the fact that she was obliged to leave partisan politics behind her when she was appointed to the federal bench," adds Leichty. "How then can a controversial political dissident deported by the Bush administration have any confidence in that judge?"

Leichty notes that in early April he visited with Zundel at the prison in Mannheim, Germany where he is confined. Despite appeals to international law, German judicial authorities refused to allow the two to talk confidentially, placing an "interpreter" in the room despite the fact that English has always been the language that Leichty and Zundel communicate in.

"Ernst's spirit is unbroken and he believes he will be vindicated by history in all three of the countries where he has been persecuted," says Leichty. "My immediate hope is that he will also be vindicated by the judicial system in at least the one country which still claims to protect free speech and habeas corpus and due process."