Washington Post Staff Writer By William Chapman

yesterday of violating judicial ethics for having allegedly talked privately to the prosecutor shortly bepergs to death. fore sentencing the Rosenthe early 1950s was accused Rosenberg atom spy case of The U.S. trial judge in the

information suit. on an FBI document ob-Marshall Perlin, attorney for the sond of Julius and Ethel tained under a freedom of Rosenberg, and was based The charge was made by

ment

he stated in court that he the convicted spies. had not sought the prosecuman, was inaccurate when the judge, Irving R. to Perlin, also indicates that tor's views on how to punish The document, according Kauf-

obtained from the FBI. They They were executed in the electric chair in 1953. bergs' convictions in 1951 concluded with the Rosendiscuss the case since it was judge, who has refused to the behavior of the trial leased so far that touch on are the the release of 30 documents case took place here with revival of the 25-year-old spy The latest epsiode in the first records re-

a 1975 letter from Irving H. Saypol, prosecutor of the Ro-Clarence M. Kelley. senbergs, to FBI Director .One of the documents was

and went on to recall a pri-State Supreme Court jusvate conversation with Judge posd the death sentence lished report that he had optence. He denied a ord on the Rosenbergs' sen tice, wrote to clarify the rec-Saypol, now a New York

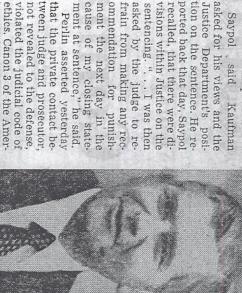
> ported back that day, Saypol asked for his views and the sentence was pronounced. frain from making any recasked by the judge to retion on the sentence. He reommendation for sentencing. ". visions within Justice on the Kaufman the day before the recalled, that there were di-Justice Department's posi-Saypol said . . . I was then Kaufman punish-

curred, said that judges should "discourage" applica-tions from lawyers for any gencies. a pending or impending pro-ceeding." The code in effect communications concerning in 1972, says that a judge should "neither initiate nor of Judicial Conduct, written violated the judicial code of ethics. Canon 3 of the Amernot revealed to the defense, tween judge and prosecutor, and hear them only in emerex parte, or private, contacts in 1951, when the trial occonsider ex parte or other ican Bar Association's Code that the private contact be-Perlin asserted yesterday

cusses prior cases. said the judge never dis-Circuit Court of Appeals, reached yesterday for comto Kaufman, to Kaufman, now chief judge of the Second U.S. ment on his letter. An aide Saypol could not

established to counter attacks on Kaufman. defended by Simon H. Rifman of a new American Bar in New York who is chairkind, a former federal judge Association Kaufman's conduct subcommittee Was

Rifkind said that during



JUDGE IRVING KAUFMAN ... sentenced Rosenbergs

ary" for a judge to consult sentence it is "quite custom. sentence to be handed down cluding a prosecutor, on the privately with anyone, in-Rifkind said. There would be no obligathe period between renderion to advise the defense, ing a verdict and imposing a

following day just before he sentenced the Rosenbergs. was inconsistent with what of the private conversation Kaufman told the court the terday that Saypol's account It is customary for a trial Perlin also asserted yes-

mendation on sentencing. for a prosecutor's recomjudge to ask in open court

opened the sentencing state ment with However, the seriousness this Kautman remark:

> of this case and the lack of precedence, I have refrained alone should assume this rethat I believe that the court responsibility for a recommendation. The from asking the government IS SO

cerved a reply. sation on the day before is was untrue if Saypol's accomment but had not repol's letter to Kaufman for he had sent a copy of Sayaccurate. The attorney said count of the private conver-Perlin said this statement

According to the

play

occasions, self in the case on several man privately involved him-Other FBI documents, Perlin said, show that Kaufoften acting

summer. written by a high FBI offi-cial, A. H. Belmont, quotes memo to then FBI Director fore the court recessed that have the matter settled be-Kaufman was anxious to an agent as saying that Supreme Court. The memo, bergs were petitioning the ary, 1953, while the Rosen-J. Edgar Hoover in Febru-One example, he said, is a

port that an FBI agent had

The memo went on to re-

know."

tor advised that he would let the Attorney General be informed and the directhe Attorney General should The judge added that he felt Kaufman who was the trial the prosecutor, and Judge of the director (of the FBI), derstands the play is critical man indicated that he unhighly unusual. Judge Kauf-20 and 27, 1969, which was two weeks in a row on April Times reviewed this alarmed that The New York memo: "Judge Kaufman was

Attorney General

also said that the FBI had

the play in Cleveland. attended a performance of

play or any of the actors

tion" on the director of the

"derogatory

informa-

ment should push the mat-ter vigorously to get it be-fore the Supreme Court." mont's memo, had reported that 'Judge Kaufman was of the opinion that the depart-The agent, according to Belmay hang over until fall." government, this whole case pushed vigorously by the by Kaufman, who said that the memo, had been called 'unless The agent, according to this matter

1969, 16 years Another memo, dated May after the

sponsibility." great dling of the case. of the government's berg." The play was critical vs Julius and Ethel Rosenentitled, "The United States tion in New York of a play been concerned by producquotes Kaufman as having

through FBI agents.

udge in the Rosenberg case.

and actresses.
Release of the FBI docucommittees. House and Senate Judiciary ments has also prompted ing for an inquiry by the to circulate a petition call-Vern Countryman, a profes-sor at Harvard Law School, Countryman, in a letter to

ments are verified "it would officials, and others in United States attorney, FBI ex parte contacts with reveal a shocking pattern of that if the facts in the docuother law professors, said