

Oct 11/21/67 **The Berenyi Case**

It is a disturbing fact that on the very day the Supreme Court reversed its 15-year-old position and struck down New York's McCarthyite loyalty test for teachers, it could muster only three votes — those of Chief Justice Warren and Justices Douglas and Brennan — against lower court opinions that denied naturalization to Dr. Kalman J. Berenyi of Hungary. Citizenship was refused on the ground that in his application Berenyi had falsely denied that he ever was a member of, or associated with, any Communist party — such false denial being evidence of moral unfitness under the immigration laws of the United States.

Putting together the majority opinion by Justice Stewart and the dissenting opinion of Justice Douglas, these facts emerge without controversy:

Berenyi, as a medical student, served actively in a regiment that fought against the Russian invaders of Hungary. His wife's property was confiscated by the Hungarian Communist government. The two went into hiding, then fled the country at great risk of death. Other Hungarian refugees, who had been with them, testified to their intense anticommunism both in Hungary and here.

Two Hungarians testified against Berenyi. One of them (Halasz) did not regard him as a Communist at heart but thought it probable that he was a party member because he saw him at one or possibly more "open meetings" of the party. Student attendance at such meetings was compulsory, Halasz said, and two thirds of those present were usually non-Communists. His only specific memory of Berenyi, at such a meeting, was that he helped other students with his medical science.

The other witness (Kury) testified that Berenyi presided at such a meeting and called himself a party member. He had no other recollection. Berenyi denied that he did either.

The Supreme Court disregarded Berenyi's unquestionable anti-Communist record and decided the case on points of legal interpretation. (1) Naturalization being a favor and not a right, any doubt concerning facts should be decided in favor of the

Government. Kury's accusation plus Halasz's conjectural belief outweighed Berenyi's denial and militant anti-Communist record. (2) When two lower courts (district and circuit) agree in their findings of facts, the Supreme Court does not review them except when the showing of error is obvious and exceptional. Three justices thought this was the case as to Berenyi. (3) The majority opinion hinted that Berenyi would be in a stronger position if he had testified that he was misled by the question about membership, and merely meant to say that he had no "meaningful association" with the party.

This raises several questions. Was the Statue of Liberty erected to inform political refugees that in a clash of testimony between them and Government witnesses, the presumption of truth lies with the Government? Would Federal district and circuit courts be equally likely to agree, if a case of this sort arose in the District of Columbia instead of Boston? If Berenyi had been given a tip in advance about "meaningful membership," and thereupon had testified falsely that he had misunderstood the question at the time it was asked, would that act of perjury have made him morally qualified for American citizenship? It would seem so.

What I would really like to see would be a transfer of this case to the Supreme Court of the Soviet Union or Communist Hungary, with the same testimony that the United States has presented against Berenyi, but with Berenyi called on to prove that he had in fact been a member of the Hungarian Communist party. In such a trial Halasz and Kury would be witnesses for Berenyi, not against him. Their testimony, identical with what they gave in the American trial, would be designed to prove his Communist affiliation.

How would such a trial come out? Had it been held in Hungary in 1956, the year in which he fled from that country, the testimony of these two men would have put Dr. Berenyi before a Soviet or Hungarian Communist firing squad. IRVING BRANT.

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