

# Rosenberg Lawyers Alleging Judicial Impropriety in Case

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By PETER KIHSS JUN 11 1976

Lawyers for the two sons of Ethel and Julius Rosenberg, electrocuted as atomic spy plotters in 1953, charged yesterday that now-released reports by Federal Bureau of Investigation agents—if accurate—indicated the trial judge had violated canons of judicial ethics and constitutional separation of powers.

In a news conference, Marshall Perlin, chief counsel for the sons, cited F.B.I. reports that he contended reported improper contacts between the judge, Irving R. Kaufman, and agents and prosecutors, Mr. Perlin, who distributed 30 reports obtained under the Freedom of Information Act, proposed "a special committee of inquiry" made up of "independent" lawyers and legal scholars to look into the entire matter.

Judge Kaufman, now chief judge of the Second Circuit Court of Appeals, maintained a 25-year practice against public statements on the Rosenberg case.

But former Federal Judge Simon H. Rifkind, chairman of an American Bar Association subcommittee named last year "to counteract unwarranted criticism" of Judge Kaufman, said yesterday that a first glance indicated nothing to impugn "the validity of the verdict." He said the Court of Appeals had held the trial "fair and flawless."

Mr. Rifkind said the lawyers for the Rosenberg sons, Robert and Michael Meeropol, had not given his committee a look at the documents before a "grab" for headlines on the eve of a June 15 Carnegie Hall fundraising rally.

He said the F.B.I. reports included "triple and quadruple hearsay" and "courtroom scuttlebutt," which he called "rarely accurate." Post-trial communications between the judge and Government, he said, would violate no rule and some undoubtedly related to threats received by the judge.

The ethics canon cited by Rosenberg supporters says a judge should not permit private communications designed to influence his judicial conduct when affected interests are not represented. Ordinarily, all communications by one side's lawyers to him are to be made known to the other.

Only one document made public by Mr. Perlin in a Baltimore Hotel news conference was dated during the March 6-29, 1951, trial. This quoted Raymond Whearty, a Justice Department official, as saying March 16 that he knew Judge Kaufman would impose a death sentence "if he doesn't change his mind."

An F.B.I. report dated April 3, 1951, two days before sentencing, quoted an assistant United States attorney, Roy M. Cohn, as saying Judge Kaufman had consulted other judges and

favored a death sentence. Mr. Cohn was said to believe a prison sentence might induce Mrs. Rosenberg to talk and open the way to other prosecutions.

In a March 13, 1975, letter to the bureau, Irving H. Saypol, who had been chief prosecutor, recalled that Judge Kaufman had asked for Justice Department views, and then, learning these differed, asked that Mr. Saypol refrain from any recommendation in court.

A Feb. 19, 1953, report said Judge Kaufman had urged the Justice Department to expedite Supreme Court action on the Rosenbergs' appeal rather than let the case go past a June recess until that autumn.

A June 17, 1953, report said Judge Kaufman had "very confidentially advised" an agent that Chief Justice Fred M. Vinson, in a meeting with Attorney General Herbert Brownell at 11 o'clock the previous night, had

said he would call the full court into session immediately to "vacate" any individual justice's stay of execution. (The Rosenbergs were executed June 19).

## A Letter to Brownell

The files included a letter by Judge Kaufman to Attorney General Brownell dated Oct. 15, 1957, saying, "I have not uttered a word—as indeed I should not—in answer to these horribly concocted Communist charges concerning my conduct in the trial." The letter commended the Justice Department for aiding a Look magazine rebuttal to critics.

A top F. B. I. official, Cartha D. DeLoach, reported Dec. 21, 1962, that Judge Kaufman, in a telephone call, had asserted that he "raised hell" with Thurgood M. Marshall, then a new member of the Circuit Court of Appeals, for a question during an appeal hearing for Morton Sobell. Mr. Sobell had been convicted of non-atomic espionage conspiracy with the Rosenbergs.

The appeal had cited a 1957 Supreme Court decision—the so-called Grunewald decision—holding it improper for a prosecutor to question a defendant about invoking constitutional privileges against self-incrimination before a grand jury—as Ethel Rosenberg long before had been cross-examined.

Justice Marshall, the report said: had asked "if Sobell had been tried last spring and we had him before us today, wouldn't it be necessary for the court to reverse the decision, particularly in view of the Grunewald decision?"

The DeLoach report said an assistant United States attorney replied, "probably." Judge Kaufman was quoted as saying this was a "stupid answer" that "might very well be the straw that breaks the camel's back and as a result obtain Sobell's freedom."

The latest document was dated May 4, 1975, and said Judge Kaufman had told the F.B.I. that "some counteraction should be taken to combat" publicity by the National Committee to Reopen the Rosenberg Case.