NYTimes JUN 19 1974

The Rosenbergs' Trial: Some Considerations About Justice

By Allen G. Schwartz

On June 19, 1953, Julius and Ethel Rosenberg, who were convicted of conspiracy to pass atomic secrets to the Soviet Union, were executed. A former United States District Court judge, Simon H. Rifkind, in a recent article that appeared in TV Guide and was reprinted in The New York Law Journal, asked, "What is the cause of the recurrent flurry of interest in the Rosenberg trial?" and answered, in substance, that there was no reasonable doubt about their guilt.

There is substantial reason to believe that the Rosenbergs did not get a fair trial.

For example, Harry Gold, whom the prosecutor called the "necessary link" in the Government's case, had four months prior to the Rosenberg trial testified in another espionage case, against a former employer of his, Abraham Brothman.

At that trial, it was disclosed that Mr. Gold, over a period of years, had told numerous persons what were purported to be elaborate details of his personal life—that he had married and had had children, that following his divorce he would travel to Philadelphia to watch his children play but that he could not bring himself to speak to them. He had told people that he had had a brother who died in the war.

Mr. Gold lived in a world of fantasy: He had never married, had no children, had never traveled to Philadelphia to watch children play, had no brother who died in the war.

More important, the judge and the prosecutors at the Brothman trial were the same judge and the same prosecutors in the Rosenberg case. Neither saw fit to bring the fact of Gold's appearance or testimony in the Brothman trial to the attention of defense counsel for the Rosenbergs.

Defense counsel, who did not know material facts already known to the judge and the prosecutors that could have been used on cross-examination, never cross-examined Mr. Gold.

And the prosecution on summation argued that Mr. Gold, who was already under a thirty-year sentence for espionage, was a witness upon whose credibility the jury should rely.

Years later, Emanuel Bloch, Mr. Rosenberg's attorney, said to John Wexley, author of the excellent work "The Judgment of Julius and Ethel Rosenberg": ". . . basically I believed in . . . the integrity of most officials. . . . Yes, I thought that Gold was possibly mixed up in some kind of espionage, but I knew that he was a liar. . . . But how could I dream that officials in the Department of Justice would lend themselves to the perpetration of a complete hoax concocted by he had never known Mr. Gold.

In recent years, Klaus Fuchs, the convicted British spy whom Mr. Gold alleged was his contact, disclosed that had never known Mr. Gold.

Further, a Federal Bureau of Investigation agent within the last year has stated that when Mr. Gold was questioned about the message he had taken to David Greenglass, his contact in New Mexico, it was the F.B.I. agent himself who had asked Mr. Gold whether the message could have been, "I come from Julius"—which Gold then seized upon and used in testimony. But again this was never brought to the attention of the jury.

Rarely is it mentioned that Julius Rosenberg was arrested less than one month after the outbreak of the Korean war at the height of anti-Communist hysteria, or that not a single Jew was on the trial jury, substantially as a result of challenges by the prosecution—this in a county in which Jews represented a significant percentage of the population.

Great emphasis has been placed on the fact that the presiding judge was Irving R. Kaufman, who was later recommended by Judge Learned Hand to President Kennedy for appointment to the Court of Appeals, of which he is now the Chief Judge.

In my opinion, Judge Kaufman, today widely respected, apparently was caught up in the fever of the times.

Judge Kaufman's statement on sentence is clear evidence of this: "I consider your crime worse than murder. . . . I believe your conduct in putting into the hands of the Russians the A-bomb . . . has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding 50,000. . . ."

At the trial, the prosecution read to the jury a list of 102 witnesses to be called by the Government, including Dr. J. Robert Oppenheimer, Dr. Harold C. Urey and Gen. Leslie Groves, the three critical people at Los Alamos. In fact, the Government called only 23 witnesses, omitting those three.

Dr. Urey, who later tried to save the lives of the Rosenbergs, has said that he never even knew he had been announced as a possible Government witness. According to John Wexley, Dr. Urey, after studying the record of the trial, found the Government's case incredible.

But most important, the Rosenbergs' attorneys had few resources, an overwhelmingly difficult case, and were misled into believing that the Government's case would consist of 102 witnesses, or most of them.

Can it not be assumed that their preparation or strategy may have been affected by the Government's representations?

The point is not that the Rosenbergs would not have been convicted if the list of witnesses had been accurately represented, but that such tactics are evidence of the unfairness of the trial.

And then there is the sentence. The Rosenbergs were Communists, like many of their era, but there is no evidence that they were Stalinists or that they condoned Stalin's atrocities.

Today, how many would agree that they were properly sentenced to death. Indeed, at the eleventh hour, Supreme Court Justice Robert H. Jackson, denying their final petition, made clear that the Court had the gravest doubts about the propriety of the sentence and, by implication, urged President Eisenhower to reconsider.

The Rosenberg case ought to be remembered. If it is, history may be discouraged from repeating itself.

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