

The decision

This was written by Judge Kaufman, and it overturned the ruling of the lower court. It included the following statements:

Unfortunately, the Audubon Society's principal charges, as reported in Devlin's article for the *Times*, went far beyond a mere accusation of scientific bad faith. The appellees were charged with being "paid to lie." It is difficult to conceive of any epithet better calculated to subject a scholar to the scorn and ridicule of his colleagues than "paid liar."

To call the appellees, all of whom were university professors, *paid* liars clearly involves defamation that far exceeds the bounds of the prior controversy. No

allegation could be better calculated to ruin an academic reputation. And, to say a scientist is *paid* to lie implies corruption, and not merely a poor opinion of his scientific integrity. Such a statement requires a factual basis, and no one contends there was any serious basis for such a statement in this case.

. . . [I]t is unfortunate that the exercise of liberties so precious as freedom of speech and of the press may sometimes do harm that the state is powerless to recompense: but this is the price that must be paid for the blessing of a democratic way of life.

Judge Kaufman therefore clearly recognized that we had been defamed and damaged. Surely, if he believed this, he should have allowed the decision against Clement to stand!

Judge Irving Kaufman: an afterword

Judge Irving Kaufman, a front-runner for the title of the most corrupt judge in U.S. history, died on Feb. 1, 1992 at age 81.

Kaufman was notorious for his handling of the spy case of Ethel and Julius Rosenberg in the 1950s. No matter what the guilt of the Rosenbergs, their prosecution and execution was one of the biggest travesties of justice in U.S. history. For example: Shortly before the trial started, Kaufman spent a week vacationing in Florida with prosecutors Roy Cohn and Irving Saypol. Before the trial was even over, Kaufman had already decided to impose the death penalty.

After sending the prosecutor to Washington to find out the views of the Justice Department, Kaufman found out that there was opposition to imposing the death penalty. Kaufman then began his sentencing speech with an outright lie: "I have refrained from asking the government for a recommendation."

Kaufman repeatedly took steps to get the Justice Department to expedite the case through the appeals process, and often gave improper and unethical *ex parte* advice to the prosecutors, advising them on their litigation strategy so as to prevent a drawn-out appeals process which would delay the execution of the Rosenbergs. In later years, Kaufman also collaborated with the prosecution to deny post-trial motions by the imprisoned Morton Sobell for an investigation of Kaufman's conduct and for his impeachment. Rather than conducting an objective inquiry, the American Bar Association shamelessly came to his defense. Lawrence Walsh, a former colleague of Kaufman's

on the federal bench in New York, appointed a special committee to "counteract unwarranted criticism directed to Chief Judge Irving Kaufman." The committee's report completely exonerated Kaufman, despite massive evidence of improper, *ex parte* conduct on his part.

Kaufman also secretly collaborated with J. Edgar Hoover and the FBI to run Cointelpro operations against those calling for a reexamination of the Rosenberg case in the 1960s and '70s, e.g., recommending FBI "counteraction" in 1975 in response to newspaper ads, etc. This was disclosed in FBI documents obtained by the Rosenbergs' sons under the FOIA.

Needless to say, Kaufman was a favorite of the B'nai B'rith's Anti-Defamation League (ADL). According to *Juris Doctor* (November 1977): "Even as the Rosenbergs were awaiting execution, Kaufman . . . was picked to receive both the B'nai B'rith Virginia State Award of Merit and the Certificate of Honor of the Jewish War Veterans of the United States." The ADL's propaganda, denouncing those who charged that the case was the result of anti-Semitism, helped clear the way for the Rosenbergs' execution.

The *New York Times* obituary notes that Judge Kaufman had let it be known that, before imposing the death sentence on the Rosenbergs, he had gone to a synagogue to pray for guidance. Supreme Court Justice Felix Frankfurter, infuriated with Kaufman's handling of the Rosenberg case, considered that "unjudicial conduct," a blatant effort to obtain publicity in his drive to win the "Jewish seat" on the Supreme Court, writes the *Times*. In a letter, Frankfurter wrote: "I despise a judge who feels God told him to impose a death sentence. I am mean enough to try to stay here long enough so that K will be too old to succeed me."—*Edward Spannaus*