

Palestine in the 1930s, not really noticing that the Palestinians of the 1980s have been exposed to all that is good in Israeli democracy, all that is denied them under occupation law, and all that is different under the various dictatorships of the Arab lands. An "education offensive" could be part of a new Amer-

ican effort, bringing both sides to a better understanding of each other's dreams and nightmares. This, too, could come under the mandate of a skilled and influential Middle East negotiator.

Two or three years is not a lot of time, but it is time enough for a demonstration of Yankee ingenuity,

time enough to demonstrate America's unshakable support for Israeli security while embarking on a cautious search for a Palestinian partner. The key factors are appointing a special U.S. envoy; putting together an experienced and intelligent American team; careful gestures toward moderate Pales-

tinians; a *sulha*, a symbolic reconciliation between Arabs and Jews, as a first step; and a sense of realism. Realism means practical goals, an awareness of historical complexity, and the readiness to cut losses and head home after what might turn out to be a fruitless quest for compromise. □

Sidney Hook

ECHOES OF THE ROSENBERG CASE: AN AUTOBIOGRAPHICAL POSTSCRIPT

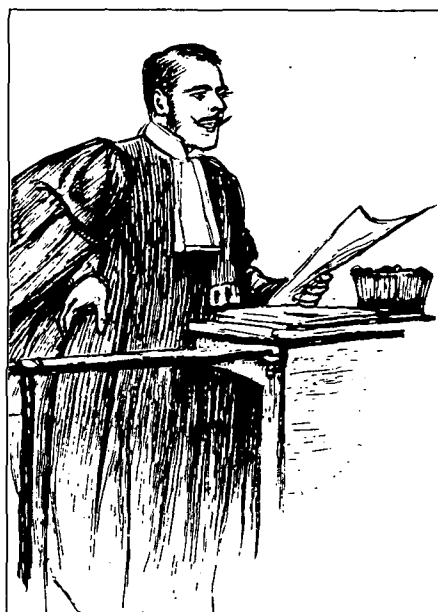
The judge who sent Ethel and Julius to the chair has lived a life of peerless liberal guilt.

Some time in the early sixties, I was invited to present a paper on the place of religion in a free society by Chief Circuit Court Judge Murrah at the Tenth Circuit Court Conference, whose members were largely the judges and court personnel of the Western circuits of the United States Court of Appeals. The meeting was memorable in several ways. It was held at the Grand Tetons which I had not visited before, one of the most beautiful scenic areas in the United States. Most of the Western judges, including Judge Murrah, had a breezy, outgoing temperament, more impressive for their common sense and shrewd judgments than for their legal erudition and dialectical skills. My paper, whose theme I later developed at greater length in the Montgomery Lectures at the University of Nebraska and published in a slender volume called *The Place of Religion in a Free Society* (1964), was sufficiently at odds with traditional views to provoke a vigorous discussion. Among other things, I challenged the assertion that there had ever been, or ever could be, a wall of separation between church and state in America, so long as churches, mosques, and synagogues enjoyed tax exemptions. And finally, what fixed the meeting in my mind, I met and had long talks with Judge Irving Kaufman, who was present as a kind of observer from the Second Circuit Court on which he served.

I knew of Irving Kaufman only as the judge in the Rosenberg and Sobell

cases. Kaufman had read several of my pieces on the Hiss case. On some walks we took together he unfolded a harrowing tale of persecution and calumny at the hands (and mouths) of fanatical partisans of the Rosenbergs who had made not only his life a misery but that of his wife and other members of his family. In accordance with the common tradition of the bench, he could not very well reply to these systematic efforts to discredit and defame him.

Kaufman wondered whether I had familiarized myself with the details of the case or had considered undertaking a book on the subject. I had known about the case and followed the major details of the evidence. I had remembered that at the conclusion of the trials, before the verdict of the jury, the Rosenbergs' attorney had thanked the judge for his fairness in conducting the case. But I did not know the details of the case as well as I knew the details



of the Hiss case. At one point, I was about to launch on a systematic study of the Rosenbergs. This was at the time Bertrand Russell had reached one of the way stations on his anti-American crusade, and had begun to cite the Rosenberg and Sobell cases, on evidence supplied him by a professor of chemistry at Columbia, as an indication that the U.S. was becoming a police state as bad as the Soviet Union. Something intervened to prevent me from making the systematic study and, much to his later regret I suspect, I delegated the task to Nathan Glazer, a rising star in the post-World War II field of sociology.

Glazer published a pamphlet which concluded that the Rosenbergs had been fairly convicted on the evidence. This was my view, and one commonly held by many other inquirers. But I, together with many others, had petitioned President Eisenhower to commute the Rosenbergs' death sentence, and long before Sobell had completed his term, I had advocated that he be paroled with Harry Gold, the chief witness against the Rosenbergs, who had been sentenced to thirty years.

Knowing what the Communist party and its coterie of fellow-travelers were capable of doing when the party decided to make a *cause célèbre* of the Rosenbergs, I had no reason to doubt the truth of Judge Kaufman's recital of his persecution. But when I asked him why he sentenced the Rosenbergs to death I was startled to hear him say that he had no alternatives, that they had been convicted of espionage during the war, and that the law at the time carried the death penalty. At first I thought I had misheard him, but he

reaffirmed the statement. I have never been able to find any jurist who subsequently agreed with Judge Kaufman's interpretation of the law.

Nonetheless, I was sympathetic with Kaufman's plight and indignant with the denunciations of him by Communists who had applauded the execution of hundreds of innocent persons in the notorious frame-up trials at Moscow, and later in Prague and Budapest, who were beginning their agitation for the vindication of the Rosenbergs, and a new trial for Sobell, not out of concern for human rights but as a tactic in the Cold War against the West, particularly the United States.

Subsequently, I received a letter from Judge Kaufman calling my attention to the publication of a book entitled *Invitation to an Inquest* by two apologists for the Rosenbergs and Sobell. He expressed the hope that I myself would write "a completely objective and non-partisan book on the Rosenberg case." Active on numerous other fronts, I put this project on my list and waited for an opportunity to undertake the task. But the necessity was not pressing.

Ten years or so later, in the mid-seventies, the necessity did become pressing. Verne Countryman, a law school professor, launched an impassioned attack on Judge Kaufman for his handling of the Rosenberg case some twenty-five years before. He made a great to-do about the fact that before sentencing the Rosenbergs Judge Kaufman had consulted with the prosecution. Countryman's hue and cry was taken up by others. Knowing something about Countryman's politi-

Sidney Hook's autobiography, Out of Step: An Unquiet Life in the 20th Century, was published in 1987 by Harper & Row.

cal proclivities and associations, I became suspicious and looked into the matter. My inquiries showed that the practice for which Judge Kaufman was being mercilessly flayed was quite general at the time, and that only recently had procedures changed so that it was no longer considered good form for the judge to consult with the prosecution before passing sentence on a convicted defendant.

A great many well-meaning people, including historically untrained jurists, unaware that Judge Kaufman's behavior was standard procedure at the time, joined Countryman who, I suspect, was perfectly aware of the facts, but who, in mitigation, could plausibly fall back on the plea of obtuseness when the facts became known. Nonetheless, Countryman with his political allies had raised such a wave of moral indignation at Judge Kaufman's alleged derelictions that the American Bar Association appointed a subcommittee to defend Kaufman, now chief judge of the Second Circuit Court, against unwarranted criticism arising from his handling of the Rosenberg case. The chairman of the subcommittee, Judge Simon Rifkind, had been a classmate of mine at City College some fifty-five years earlier. Judge Rifkind wrote to me suggesting that I investigate the case and evaluate the contentions of those who were so zealously trying to persuade the American public that the Rosenbergs were innocent and unfairly treated as well as improperly punished.

By this time I was seriously resolved to go into the case in depth, although at the time I suggested to Judge Rifkind that Professor Allen Weinstein of Smith College, who had just completed a many-year study of the Hiss case, was much better qualified as a historian to dig up and reassess the evidence in the Rosenberg case. But before committing myself, for some odd reason I sat down and began reading Judge Kaufman's decisions in more recent cases. I made what seemed to me a surprising discovery: Judge Kaufman was taking an ultra ritualistic-liberal stance on cases that involved national security, subversive activities, and other related ideological issues. His position smacked of the extremism of Justices Black and Douglas.

I do not mean to suggest that there was anything deliberate in this orientation. The poor man was so intent on proving that he was not a reactionary, McCarthyite, fascist underling of the capitalist class intent on destroying innocent revolutionists—the standard accusations of his Communist persecutors—that he ruled almost invariably against the government and for dissenters who flagrantly politicized their classroom. He seemed to believe that

if he became known as a liberal of the Black-Douglas type (before the double-dealing of Douglas on the Rosenberg case was revealed), his persecutors would absolve him for the death sentence in the Rosenberg case. He could not have been more mistaken.

Kaufman seemed to be obsessed with his public image, and some of his colleagues on the bench, who were just *normal* ritualistic-liberals, became aware of what was moving him. I ended up believing that his reading of the First Amendment freedoms—so different from that of Holmes, Brandeis, Cardozo, and Frankfurter—

Judge Kaufman was taking an ultra ritualistic-liberal stance on cases that involved national security issues.

was more harmful to the prospects of a free society than the injustices he suffered at the hands of his Communist tormentors. Feeling as I did, I could not gratify Judge Rifkind's request. By this time he had sent me massive documentary material on the case.

I telephoned Judge Rifkind and told him how I felt. He made no attempt to persuade me. The soul of discretion and tact, he merely said: "Why don't you tell Judge Kaufman what you think?" I never did.

Isometimes wondered whether my observation of the trend of Kaufman's opinions had been accurate, and if so, whether my explanation of it was justified. Then I read Kaufman's opinion in a case that I had first-hand knowledge about in my capacity as an officer of University Centers for Rational Alternatives (UCRA). It strengthened my conviction that he was unconsciously trying to win favor among his persecutors by a show of ultra-liberalism.

The case involved Professor Michael Selzer of Brooklyn College, who was interested in the study of terrorism in Israel and the Near East. Selzer had previously gathered data on Nazi war criminals. He wrote the CIA requesting any psychological data of a nonclassified kind that it had on contemporary terrorists. He suspected that there was an overlap which could make his inquiries more specific. Receiving no response, he telephoned and was asked to meet with a representative of the CIA. He agreed to a meeting on June 1, 1976, after notifying the former chairman of his department about the nature of the CIA's interest.

At the meeting the representative of the CIA asked Selzer whether on his return from Israel and the Near East he would be willing to be "debriefed,"

meaning whether he would give his impressions of the situation. The representative told Selzer that the Agency routinely made such requests of the large number of businessmen, academics, and others who frequently travel abroad. The CIA, he said, needed voluminous amounts of non-secret information for its work, and the least expensive yet reliable method of obtaining it is through voluntary debriefing of travelers. The representative did not suggest any particular focus for Selzer's work except his own lines of inquiry. Selzer was not requested to contact any particular individuals or type of in-

dividual or to search for specific information of any kind. To his surprise, he was offered no access to any data, classified or non-classified, nor offered any other inducement. The Agency would not even supply a bibliography on the subject.

Selzer replied that he would think it over and make a decision on his return, at which time, if his decision to be debriefed was favorable, he would telephone.

In July 1976 Selzer visited five countries in order to gather the psychological records of Nazi collaborators, to search for data on the Dachau concentration camp, and to determine whether there was any overlap between known terrorists in Europe and the individuals on his list suspected of terrorism in the Near East. On his return he telephoned the person at the CIA he had been in touch with and spoke to him, according to his estimate, for about ten to fifteen minutes. He did not meet him or anyone else thereafter.

Selzer was scheduled to be considered for tenure at a meeting of his department in January 1977. Instead he was charged with involvement in a "clandestine government organization." At the time Selzer was still pursuing his research in Israel. Despite a plea that his colleagues await his return before taking any action against him, they declared that "it is the position of the members of the Political Science Department [of Brooklyn College] that the standards and ethics that underlie membership in the academic community preclude any agreement by a faculty member to work secretly for a government intelligence gathering agency." (It is noteworthy that the statement did not say that such membership precludes turning classrooms into propaganda

pulpits for partisan political purposes.)

The meaning of the department's declaration depended, of course, on the phrase "to work secretly for a government intelligence gathering agency." As the department interpreted Selzer's case, if an American citizen abroad observed some group preparing to seize a neutron bomb or discovered a terrorist plot to destroy an American ship or plane and then went to the CIA or communicated with it, he would fall under the ban. With the exception of the only scholar in it of intellectual distinction, Dr. Dankworth Rustow, the department voted to recommend to President Kneller that Selzer be dismissed. In an unusual outbreak of common sense for an administrator in those years, Kneller refused to act on the recommendation, defending the right of Selzer to provide "open" information to the CIA. He rebuked the department for jumping to conclusions about any objectionable connection between Selzer and the CIA "without clear evidence."

Selzer kept his post until a few months later when he again came up for tenure. Although the department had voted a year previously to recommend his promotion to the rank of associate professor, they *now* voted to deny him tenure. He sued the department for violation of his civil rights and the jury awarded him damages of close to a half-million dollars. The legal costs of more than \$400,000 were also granted. Since Selzer's colleagues were city employees, the damages against them of almost a million dollars were to be defrayed by New York City taxpayers. The Corporation Counsel appealed to the Second Circuit Court, which by a vote of 2 to 1 reversed on a narrow technical ground, and the case was sent back to be retried. At this point the city, confronted by almost certain defeat, offered to settle for a considerable sum. Selzer had run out of resources, and was heavily in debt. Contemptuous of his colleagues and their motives, he agreed to accept the settlement and, anticipating a lifelong vendetta against him by his New Left colleagues, changed his profession for a better paying career. The officers of UCRA were loath to see him abandon his action, but in view of his family obligations we did not press him. To the end, he protested that he had been driven out of his profession because of his political views by a cabal of his colleagues.

The grounds on which the original jury judgment in Selzer's favor was reversed was one involving federal procedure in civil cases. The justices held, for reasons not persuasive to me, that "the jury instruction and the special interrogatory actually given were erroneous because they inquired solely as

to the *collective* actions of the defendants and failed to distinguish the cases of the individual defendants." A new trial could easily have remedied the oversight and the Corporation Counsel of New York realized it. That is why he was so eager to settle.

Judge Kaufman agreed with his two colleagues on the bench, but he also dissented. He not only wanted to reverse the judgment won by Selzer but to throw the case out of court altogether. In his own words, "I emphatically dissent from its decision to remand the case for a new trial." He engages in considerable specious reasoning to justify what appears as a gratuitous dis-

sent, and then betrays himself by declaring, "After all, Brooklyn College was seeking a scholar and teacher, not an espionage agent." His unconscious must have guided his pen: Selzer an "espionage agent"? Not even Selzer's colleagues dared make that explicit charge.

Of course, Judge Kaufman did not consciously intend his "objective judgment" in Selzer's case to have any bearing on how public opinion and especially left-wing opinion regarded him. But I can assure Judge Kaufman that the members of the department whom he unjustly sustained never forgave him for the sentence he passed on the Rosenbergs. Nor have any other

of the partisans of the Rosenbergs.

I have sometimes wondered in the light of developments in the Soviet Union since the Rosenbergs' death what would have happened if President Eisenhower had not rejected our plea that their sentence be commuted. By this time they probably would have been free. But how would the unfolding of events in the Soviet Union have affected them, the alleged Jewish Doctors' plot that almost resulted in mass calamities for Soviet Jewry, Stalin's death, Khrushchev's famous speech about Stalin's crimes, the suppression of the Hungarian Revolution, the invasion of Czechoslovakia, the growth of semi-official

anti-Semitism in the Soviet Union and its satellites, the murderous attacks against the people of Afghanistan, the bankruptcy of the socialist economies, the revolution from the top in mainland China, and the Soviet Union reintroducing elements of capitalism? Perhaps the Rosenbergs would have experienced this succession of events, so palpably a betrayal of the ideals they professed, as a prolonged punishment. If Hobbes was right when he said that Hell is truth seen too late, their lives could not have been happy ones. Like so many of their comrades, all they would have left is a pervasive fanatical anti-Americanism on every issue and occasion. □

Victor Gold

ASIDE FROM THAT, SAM, HOW DID YOU LIKE THE SPEECH?

If today's White House press corps had covered the Gettysburg Address . . .

As reported by the Washington Post: GETTYSBURG, Pa., Nov. 19—President Lincoln, in what White House aides billed as a "non-political" speech, dedicated a military cemetery here today before a sparse, unresponsive crowd estimated by local authorities at fewer than 300 people.

In a tactical move clearly designed by his political handlers to get a jump on Gen. George B. McClellan, his probable Democratic opponent next year, Mr. Lincoln made one of his rare trips outside Washington to visit this vote-rich keystone state. Judging by early reaction to his address, however, the White House strategy appears to have backfired. . . .

As covered by the New York Times: Not only was the President's address sharply criticized by political experts for being too brief, but he was completely upstaged by the main speaker of the day, the brilliant public orator, Edward Everett. Moreover, Mr. Lincoln's glaring failure even to mention McClellan or Gen. George C. Meade, the victorious Union commander at the battle fought here in July, cast doubt on

White House staff claims that the trip was purely non-political.

One veteran political observer, noting recent charges that the Lincoln Administration has created a "credibility gap" between itself and the public, termed the President's failure to mention the generals' names "a serious blunder that will come back to haunt him in next year's election."

As viewed by Time magazine:

According to an informed source, the President left the capital for Gettysburg without a prepared text and hurriedly scribbled his remarks on the back of an envelope en route to the cemetery site. Commented this source, who requested anonymity: "This is merely another example of the sloppy White House staff work that has plagued the Lincoln presidency since the day he took office."

Asked for comment, White House spokesman John Hay vehemently denied this report, insisting that the President had "worked over two drafts of the speech before he left Washington."

And reviewed by Newsweek:

While debate continued regarding the way in which the President's speech was drafted, there was nevertheless general agreement with the opinion rendered by a visiting professor of oratory from the University of Pennsylvania, who graded

Lincoln's performance "a D-minus, totally un-presidential."

And analyzed by Sam Donaldson on ABC News:

DONALDSON: "The president delivered his remarks in the same high-pitched, grating vocal style that has characterized his past public addresses. Another criticism, voiced by one Buck County farmer, was that, I quote, 'My family and I drove two hours in a wagon to hear the President of the United States speak. All we got for our trouble was a puny two-minute talk.' Unquote. Nor was this opinion isolated. An ABC exit poll of those leaving the cemetery following the President's speech found 86 percent rating it 'Poor,' only five percent rating it 'Average,' with nine percent 'Undecided.'"

And further examined by Elizabeth Drew, in the New Yorker:

"Mr. Lincoln remained unsmiling throughout his visit to this small eastern Pennsylvania village. Aides Hay and Nicolay claimed the President's solemn demeanor was simply 'appropriate to the occasion,' but knowledgeable Washington sources have indicated that serious problems in Mr. Lincoln's home life more likely account for his grim public visage in recent months. In line with this view, it was significant that

Mrs. Lincoln didn't accompany the President here."

And still further dissected by Chris Wallace on NBC News:

WALLACE: "Another significant absentee from the speakers platform was Vice President Hannibal Hamlin. Rumors persist that Mr. Lincoln plans to dump Mr. Hamlin as a running mate next year in favor of a Border State Democrat who could be more helpful in pursuing his campaign's so-called 'Southern strategy.'"

And last but not least, eviscerated by Dan Rather on CBS News:

RATHER: "The President, who hasn't held a major news conference in over two years, refused reporters' requests that he answer questions following his address. In the speech itself, Mr. Lincoln said that the men who died at Gettysburg gave their lives so that, I quote, 'this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.'"

"That's what the man said. It should be noted, however, that Mr. Lincoln, who was elected three years ago on a pledge to preserve the Union, once again failed to provide details on any fresh Administration initiative to achieve this objective." □

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