

INTERVIEW WITH ARTHUR KINOY

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INT: That's a great answer, thank you. Now just to move on a bit. Would you be able to describe to me Senator McCarthy and the techniques that he was using, 'cos there's a whole culture, a whole, you know, way that they deal...

AK: (Interrupts) Yes, which we now know. The techniques of Senator McCarthy is something that everybody in this country now knows as McCarthyism. And we're very concerned, because sometimes, even after the end of the Cold War some forces in this country try to re-establish McCarthyism. And what was the main technique of Senator McCarthy? He had this control over this Senate committee that meant he had powers to subpoena anybody throughout the country and his technique was - and I'll never forget this, as a youngster, as a young lawyer, I would go through the experience when someone who I deeply respected, whether she was a school teacher or whether she was a writer or whether he was a plant worker, they would be subpoenaed and then we would show up at McCarthy's committee and what would be the first thing that Senator McCarthy would do to himself or his aide, Roy Cohn, who goes down in our history as one of the most vicious and, you know, just brutal people that this country has ever experienced, they would not call our person to the stand, they would call what became to be known as a friendly witness, friendly to everybody except you. Friendly to McCarthy. And that witness would get on the stand, he would look at our folks, and the witness would say, with an absolute straight face, oh, I know, that person's a Communist. How do I know? I went to Communist meetings with them. And either that person was someone - and I'll never forget how upset our clients, our people would get, because sometime these so-called friendly witnesses had been at one time really friends of theirs, had worked with them together. They'd never been in a Communist organisation, yes, they'd been in the union together, but they'd been in a friendly little community organisation fighting for better housing. And the person, then we'd realised what happened. McCarthy and his whole gang would get a hold of these people and would privately say to them, either you testify for us, what we want you to say, that the people that we're going to point out to you, who you were working with, who you were friendly with, were Commies or, if you refuse to do that, we'll subpoena you and you'll be forced to lose your job or go to jail. So we had that. Then, the other half of the friendly witnesses were people who never knew our people and who were just what, paid by McCarthy. He had loads of money coming into him. He got money in years later, we discovered, not only did he have official moneys from the Senate, but private funds were given to him by the powerful corporates' offices to do this and he would buy-off people to get up there and say, oh I know so and so, she's a Commie, he's a Commie and they even knew those people. So this was the technique, this was McCarthyism. But then what he developed, 'cos he had very close relations with the media and with the press, was that they would begin to develop publicly, in the media, the fact that any activity which was designed against, for example, the foreign policies of the Truman administration, where people were getting together, whole movement was developing among a lot of us who had been in World War Two, we didn't want another war and we were beginning what later was known as the Anti-War

Movement. But what was McCarthy's approach through the media and the power structure? If you took a position against the war policies of the Truman administration, that automatically meant you were Communist. Or, if you took a position saying the moment has come for higher wages for workers, that was a Commie approach and this would be in the media, this would be in the newspapers, all over the country. So we would develop this and that was McCarthyism in its strongest form.

INT: And why was it damaging in some ways to America to make heroes of informers?

AK: It was totally damaging to what we deeply believed America was supposed to stand for. And America was supposed to stand for what our Declaration of Independence said, that we were a country - and I'll never forget, in the days of the Cold War, I would take a little document out of my pocket to read to McCarthy or to whatever character I was fighting against as to what his country really was and I'll never forget once, I pulled this little document out and I was starting to read from it. This was a country that was based upon life, liberty and the pursuit of happiness of all of its people. And I'll never forget, when I first started to pull that out once, Roy Cohn said to me, where'd you get that Commie document? I said, Commie document? That's the Declaration of Independence and we should throw our most powerful statements from what? Everybody tended to forget and I'd have to remind people that the people who wrote the Declaration of Independence, the people who wrote the Constitution of the United States were not long-haired radicals, they were... most of them were federalists, most of them were conservatives, but they believed deeply in these principles and so we had to fight against the destruction of these concepts and of these principles.

INT: OK. In the long term, do you think American society was damaged? What was the damage done by McCarthyism to American society?

AK: Oh, there was terrific damage, that it took certain very important developments in our history to overcome and the damage was that people became frightened to exercise their political rights. They were frightened... people were actually frightened to go to vote. People were frightened to join any kind of political party, which might be in opposition to the present to the administration or the power structure. People were frightened to express themselves publicly on any issue and this was damaging. This was turning us into a... what was the road? I'll never forget what we learned as young people again, one of these older folks told us we should never get. What the then Governor of Louisiana said, Huey Long, who was one of the most incredible students of our history and what was it that Huey Long said that we never forgot during those days and don't forget today and what was it? He said publicly, what the American people must never forget is that when Fascism comes to America, it will come wrapped in an American flag. And that's what we were experiencing. We were on a path of total destruction of what this country was supposed to stand for and that's what we had to live through.

INT: That's a great answer. Now I'm just going to jump across really to the Rosenbergs and I wondered if you could tell me the story about your final encounter with the judge and what he said to you?

AK: , one of the most upsetting experiences that we had as young people in the Cold War was what we went through in the experience of the final days of the life of Julius and Ethel Rosenberg and of Morton Sobell. They had been attacked as atomic spies and had been tried and they were found guilty and Julius and Ethel were condemned to death, Morton Sobell was sentenced to thirty years in prison and what we felt that this was again part of the whole McCarthyite strategy, because it's one thing... they started out by saying, all right, if you're going to oppose us in any way, then you're radical, then they would say, if you're a radical, you're a Commie and if you were doing anything whatsoever to oppose our positions, you were a Commie and, but they then needed a third prong to their strategy and what was it? That if you do anything to oppose us whatsoever, you are a traitor, you are an atomic spy or you were supporting spies and that's why they had to frame up Julius and Ethel Rosenberg and Morton Sobell. And the years later, it's just very important to put it in its historical perspective. We discovered papers and documents, secret papers in which Roy Cohn, who was one of them working with the US Attorneys who were trying, they met secretly with the judge before the trial ever started and they had a secret meeting in which they agreed - this is before there was even a conviction - that Julius and Ethel Rosenberg had to be executed. That this was a frame-up of the worst type. But in any event, there was a great deal of deep feeling that they were at least entitled to the full protection of the Constitution and so what happened? We, as young lawyers, get a telephone call from Manny Block, who was the lawyer, together with Gloria Agran, for the Rosenbergs and Mort Sobell and they had been sentenced to death, Julius and Ethel, Mort to prison and then something had to happen... An execution date had been set. Then something happened which everybody felt so relieved about. Justice Douglas, who we all loved dearly, he's a liberal, one of the few liberal then members of the Supreme Court of the United States...

(Interruption)

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INT: Right, starting from the phone call, could you just describe to me the final appeal of the Rosenbergs and what the judge said to you.

AK: Then we had as young lawyers, the most upsetting experience of olives. We were sitting in our office, the middle of June, we got a telephone call from Washington, and it was Manny Block who was calling us, who was the lawyer for Julius and Ethel Rosenberg and we had helped him a little bit during the course of the trial, just doing a little bit of research for him, but we weren't involved in the case. And he gets on the telephone and he says, the most terrible thing has happened, the execution date was set for mid June and we got a wonderful stay of the execution from Justice Douglas. And we

said on the phone, so everything's fine, the court's not in session now, so everything is perfect for the whole summer, till they come back. And he said, you don't know what happened. The Chief Justice did something that the court has never done before. He called all of the members of the court from their vacation, to have an emergency meeting in which they vacated throughout Justice Douglas's stay and ordered the execution to go ahead in two days from now. And then Manny said to us, as lawyers, you've got to do something, we need your help. So what we had to do was spend all night thinking about what was the way in which we could get another stay of the execution. And we looked at the papers of the case and realised suddenly that this was incredible, because they had been sentenced to death under a statute which said, 'death sentence was only permissible in time of war' and we looked at the dates when they were charged with being spies, and there was no war going on. So that this statute could not be applied to them. And it was illegal and unconstitutional to order the execution. So we said, great, we can work out a writ of habeas corpus and we will go immediately tomorrow to the judge, who was the sitting judge, down below, the one who had ordered the execution and he would deny the writ so we could go on appeal to the Court of Appeals in Connecticut. So, Mike Pearlman and I, he was my partner, we then take a car and we rush up to Newhaven and we got our friends, Bob Lewis, who was a young lawyer working with us then, and we went down to New York City, to where the judge who had ordered the execution was sitting, and we were up in Newhaven and we get a telephone call from Bob and he says, all right, go ahead. He's denied the writ. We rush into the office of the then Chief Judge, Judge Swann, of the Court of Appeals, sitting there in Connecticut, in Hartford, and we tell him that... we show him our papers and then we had the wildest experience, because we expected he would just deny it. He kept asking us questions about it and then he sent his clerk out to get the copy of the statute and he looks at us and he says, you're right, you've got a real point, but the only way we could overcome the Supreme Court is if we can get two other judges of the Court of Appeals to agree to sit with me in an emergency hearing and we've got to get at least one other to agree with me that we have to stay the execution. And we said, oh this is terrific. And we said, who should we go to to ask? And he said, well, the only one who's really here is Jerome Frank and that was like a miracle to us. Jerome Frank was the most liberal judge ever appointed to the federal bench and he had been working very closely in the new deal period with Franklin Roosevelt and everybody admired him as a progressive judge. So we said, great, we're in it, we've got it. How are we going to get to his house? We don't know the directions. What does Chief Judge Swann say? Something that blew our minds. He said, you go in my limousine, I will have you driven there. So we're driven to Jerome Frank's house and Judge Swann had talked to him on the phone and he's there in his living room waiting for us. We walk in... first time we were ever in the house of a judge and he asks well...

INT: So could you tell me the story, starting from the point when you arrived at Jerome Frank's house on the final appeal and he said to you.

AK: And then we walked into Judge Jerome Frank's living room, and there he was waiting for us. And we sat down and he said, well tell me, what are you here for? And we start to lay out to him our whole approach for the writ of habeas corpus and we'd seen Judge Swann and then he kept asking us questions about our whole analysis and what

cases it was based on. And I felt like I was back in my class at law school where the professor was going... And we kept talking for over an hour with him and he kept asking questions and I could see he was nodding his head and I felt, well, we're getting somewhere. And then we finish it and it's about three in the afternoon and the executions had been set for six o'clock in the evening, right. The penitentiary that they were in. And we knew that Judge Swann had set up emergency telephone lines to the penitentiary, in the event that another judge would be willing to say, I'll be with you on this emergency appeal. And we finished the argument and then Judge Frank looked at us and he says something that we have never, never forgotten. He said, if I were as young as you are, I would be sitting there saying the same things you're saying, arguing the same points you're arguing, making the same argument that these planned executions are invalid, but when you are as old as I am, you will understand why I cannot do it. And he stands up, turns his back to us, walks away and we're devastated. And we were finished. And we could not, at that moment, understand. What did he mean? He was as young as we are? If he was as young as we are, he would agree with us? But now, something is going on that he can't do it. And we go out, we're devastated. We get in the car. There was a Connecticut lawyer who was with us, who we'd worked with very closely, Sam Gruber, and we're driving back to New York and we hear on the radio in the car that Ethel and Julius have been executed and we're saying, what has happened? And then we began to sense something which in later years we understood so clearly. And that was that Jerome Frank, as the leading liberal judge, was terrorised himself and frightened by the atmosphere of fear in the country, that if he as a liberal would do something to save Julius and Ethel Rosenberg's life, he would be charged as a Commie. And that liberals would be attacked, but then I realised something else. Deep inside of me, I thought of, since I always recognised I was a little Jewish boy from Brooklyn and Jerome Frank was Jewish, that that was moving Jerome Frank also, the fear that because Julius and Ethel were Jewish, that it was a Jewish...

(Interruption)

INT: OK, so just starting from when you heard the news from Frank, from Judge Frank, can you just tell me what happened afterwards.

AK: Well, we were absolutely devastated by this, because we had thought we were going to get a second judge who would agree with Judge Swann, two out of the three of them would be able to stop up the execution and we felt absolutely defeated and lost. And we got into our car and we're driving away. And then, when our radio was on, we hear the news that Julius and Ethel have been executed and we're totally devastated. And then, we suddenly began to talk out, what had really happened? And here, what had happened was the most liberal judge had refused to go along with Judge Swann, who was a conservative, because he was frightened to death, because of the atmosphere of fear in the country that if he as a liberal would vote to save these convicted atomic spies, then he would be attacked as a Commie and all liberals would be attacked, once again, as aiding the Commies. And then I realised there was another aspect too, that he, like me, was Jewish and Julius and Ethel were Jewish and inside of himself was the fear that if he, a Jewish judge, saved two Jewish atomic spies, saved their lives, tthe Jewish people would

all be attacked as Commies and agents and aiders of the spies. So we were just devastated then and we realised that's what was going on inside of Jerome Frank at the time. And I said to Mike Pearlman, what do we want to be lawyers for, this impossible, devastating. And Sam Gruber, who was a little older than us, said something that we have never forgotten, he said, you've got to continue to fight for fundamental freedoms, for the fundamental constitutional rights of the people of this country, even when you lose. And that was the lesson we learned as a result of this experience.