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# Suspected Spy Could Receive Death Penalty

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Turning aside the arguments of both prosecutors and defense lawyers, a federal judge in San Francisco ruled Thursday that a suspected Silicon Valley spy could be sentenced to death if he is found guilty of selling sensitive ballistic missile defense secrets to the Soviet bloc.

The defense attorney in the case, however, said he will appeal the decision to the U.S. 9th Circuit Court of Appeals in San Francisco. Prosecutors would not say whether they will ask for the death penalty when the case goes to trial, scheduled for April 3 in San Francisco.

"Given the potential consequences of . . . espionage, which may threaten the lives of all citizens of the United States, this court finds that capital punishment for espionage is not uniformly disproportionate to the severity of the offense," U.S. District Judge Samuel Conti said.

## Terms It Lawful

"Accordingly, the punishment of death for espionage is not unconstitutional."

Conti's ruling was made in the case of James D. Harper, 49, a Mountain View engineer accused of photocopying 67 classified reports and later selling 31 of them to Polish agents in Europe and Mexico for about \$250,000. FBI agents said the reports were shared with the Soviet Union.

The reports, which detailed how the United States plans to survive a surprise nuclear attack by the Soviets, were allegedly provided to Harper by his second wife, Ruby Louise Schuler, who died last summer at 39 of cirrhosis of the liver.

## Basis of Ruling

Only two people—Julius and Ethel Rosenberg, in 1953—have been executed for peacetime spying in the United States, and lawyers for both sides in the Harper case had told Conti that a 1972 Supreme Court decision held that capital punishment in espionage cases is unconstitutional.

That ruling, they said, was based on the opinion that death penalty provisions of federal laws were inapplicable because they did not require lower courts to consider such things as the defendant's state of mind, malice and quality of character.

The ruling did not apply directly to federal espionage laws, but the lawyers argued that those laws lack the clauses mandated by the Supreme Court's decision.

Conti rejected that thinking, saying that no federal court has ever "squarely confronted" the specific issue of whether the 1972 decision rendered the death penalty for

espionage invalid. He added that he believes putting convicted spies to death "conforms to contemporary societal standards of decency."

Assistant U.S. Atty. John C. Gibbons would not say whether Conti's decision will change his mind and cause him to seek the death penalty. Defense attorney Jerrold Ladar of San Francisco said, "the Department of Justice has determined they can't (seek a death sentence), and if the judge imposes it, it would be an illegal act."

Ladar said he does not expect his planned appeal to postpone the trial. Harper remains in custody without bail at an undisclosed location, where he has been held since his arrest last October.

Meanwhile, government prosecutors continue building their case against Harper, and plan a trip to Europe to gather further evidence, sources close to the investigation said.