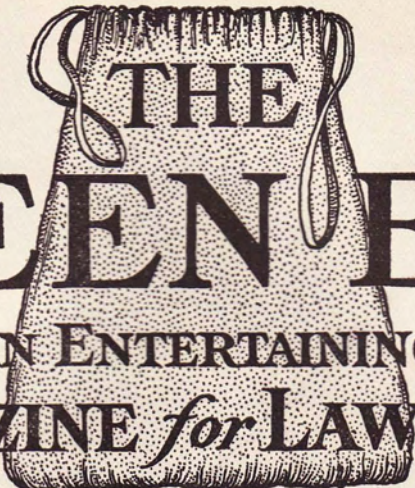


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The Rudowitz Extradition Case

By EDWIN MAXEY

PROFESSOR IN THE UNIVERSITY OF NEBRASKA COLLEGE OF LAW

THE final decision by our Department of State in regard to extraditing Christian Rudowitz, is alike pleasing to the majority of American citizens and to expatriated Russians. The case would have attracted far less attention had not Commissioner Foote granted the request of the Russian government for the extradition of Rudowitz. That we may form an intelligent judgment as to which of these decisions is the more nearly in accord with law and justice, it is necessary that we examine the facts.

The acts which the Russian government alleges were committed by Rudowitz before leaving Russia and for which it requested his extradition by the United States are: The killing of three members of the same family, to wit, Christian Leshinsky, Trina Leshinsky, the wife of Christian, and Mrs. Wilhel-

mina Leshinsky-Kinze, his daughter; the arson of the Leshinsky dwelling; and the forcible taking of thirty rubles, some gold ornaments and a watch from Mrs. Kinze's husband, Mr. Theodore A. Kinze. These acts were committed by a band of twelve or fifteen men. If present at all and having the common purpose of the other members, Rudowitz would be legally chargeable with the acts committed by the others, namely, the homicides, arson and robbery. Or, if he was not present but had counseled the commission of the acts, he would still be chargeable in some degree.

What, then, was the evidence upon which the Russian government relied to connect Rudowitz with the commission of the crimes? The evidence tending to prove his presence during the commission of the crimes consists of the testimony of two witnesses: Christof

Leshinsky, son of Christian and Trina Leshinsky, and one Kugren. Christof, in his first deposition, taken January 29, 1906, swears that the killing of his parents and the burning of their house was done by two men only; that one of them wore blue glasses and had his face covered with a handkerchief, the other was uncovered, wore a moustache, and was about twenty years old, but that in his fright he did not observe his features and could not identify him. This testimony was taken soon after the commission of the crimes.

After calm deliberation, official Russia reached the conclusion that this deposition of Christof did not prove as much as was desirable from the point of view of the government, and hence another deposition was taken, June 27, 1907, or about one year and five months later than the first. In his second deposition, he swears that the acts were committed by five men; that among them he recognized Urban, who wore blue glasses and had his face covered with a handkerchief; a second had his face smeared and covered with a handkerchief; this one he recognized as Rudowitz, by his stature, voice and clothes.

It is impossible to reconcile these two accounts of the same transaction. According to the second, the number of persons making up the band of executioners is more than twice as large as stated in the first account. The one who according to the first deposition would have been Rudowitz no longer has his face "uncovered," but has it smeared and covered with a handkerchief. It is also difficult to understand why the smearing of the face and covering it with a handkerchief should enable one to recognize a person whom he could not recognize in the absence of smear and handkerchief. The average

person very rarely resorts to these means in order to make it easier for his friends to recognize him or to establish his identity at a bank.

The second deposition makes it abundantly clear to any one who will take the trouble to read the evidence that, during the interval of seventeen months between the first and second deposition, the boy's recollection had been refreshed from some source. I shall make no attempt to indicate what, in my judgment, is the more probable source, as the reader is as capable of judging in this matter as am I.

The two depositions being contradictory, no one can believe both, nor is it unnatural to conclude that the one taken relatively soon after the occurrence is the more nearly a correct narrative of the events and that the departures from it in the second deposition are mainly a result of suggestion. Recollection does not as a rule become more accurate with lapse of time. Granting that the first deposition is at all accurate as to the age of the one accompanying the person with the blue glasses, it could not have been Rudowitz who was with him; for Rudowitz is thirty-five years old and looks as old as he is. He could therefore not be mistaken for a man of but twenty.

Contradictory as it is, the testimony of Christof is much more convincing in connecting Rudowitz with the commission of the crimes than is that of Kugren. The latter swears that the band, consisting of eight persons, passed through his yard on the way from Benen, that in great fear he looked out through the window and recognized Rudowitz. If this testimony be correct, it would furnish grounds for an inference that Rudowitz might have been one of the two, or five, who did the killing. But there is not wanting evidence that this, in

common with the second deposition of Christof, contained a larger percentage of suggestion than of truthful narrative. It was between twelve and one o'clock at night when the band passed Kugren's house, and although Kugren swears that he was able to recognize Rudowitz because of the bright moonlight, the weather records show that it was a cloudy night, and according to the almanac the moon was only about half full and twenty degrees high at the time of night the event happened of which the witness speaks. We have also the testimony of another of the state's witnesses, Vitol, who swears that "on account of the darkness of the night it was impossible to see very well."

As nearly as we can judge, the evidence connecting Rudowitz with the commission of the crimes is practically valueless. The parts which seem truthful are vague and those which are definite have the earmarks of having been manufactured. Upon the strength of such evidence no conservative man would suspicion his mother-in-law or whip his dog.

The only convincing evidence against Rudowitz is his own admission that as a member of the revolutionary party he voted to have the Leshinskys put to death as spies. The question, then, upon which the case hinges is whether in prosecuting him for this offense, the Russian government would be prosecuting him for an ordinary crime or for a political offense. In answering this question, the character of the party of which he was a member and the motive which prompted the action are controlling factors. A mere marauding band cannot successfully defend against prosecution for crime on the ground that their acts were political. Were this the case, the beginning of a revolutionary movement would be the signal for

anarchy. All manner of private wrongs, real and fancied, would be redressed and the actors would protect themselves under the cloak of political action, which would be made to cover more sins than the mantle of charity. But the Social Democrats, the party to which Rudowitz belonged, was not a party of mere marauders who were using a political character as a cloak for private crimes; it was made up of many of the best and brainiest patriots in Russia. The same is true of the subordinate divisions of the party at Mitau and Benen, whose councils passed sentence upon the Leshinskys.

The character of the party being such as to raise a presumption in favor of a political as against a criminal motive and a public as against a private character of its acts, what is there in the present case which throws additional light on the intent with which the action was taken? The district in which Benen is located was a centre of the revolutionary movement and was raided, during the month preceding the one in which the revolutionary council took the action in question, by a "punitive expedition" despatched thither by the Russian government for the purpose of overawing the revolutionists. During this expedition the civil authorities were disregarded and the formalities of a trial in the civil courts not observed. Several of the revolutionary leaders were summarily executed and their houses burned. Benen was under martial law in January of 1906 and for some time after. This gave the government the right to resort to summary executions, and the same methods were resorted to by the revolutionists. Force was met by force. The Leshinskys were reported as having given information to the government authorities which resulted in the execution of some of the revolu-

tionary leaders. This was admitted in the testimony of Theodore Kinze, the husband of one of the persons condemned and executed by the revolutionists, and by Christof Leshinsky, the son of the other two. At the time of the killing, the victims were told that they were being executed as spies. Whether the revolutionary council had before it sufficient evidence to warrant the conviction of these persons as spies, however much it may affect their moral responsibility, does not affect their legal liability. They acted as members of a military court and as such cannot be held criminally liable for errors of judgment. If the killing of these three persons in pursuance of a sentence of the revolutionary council is a crime and not a political offense, it would be hard to select any act involving force and performed by revolutionists rather than by representatives of the regular government which would be a political offense and not a crime.

As for the arson of the Leshinsky dwelling and the robbery of T. A. Kinze, from whom a watch, some gold ornaments and thirty rubles were taken, the arson of the dwelling was the usual form of punishment meted out by the governmental authorities to the revolutionists during the "punitive expedition," and the equally usual form of retaliation by the revolutionists; and the robbery need not be considered in connection with the extradition of Rudowitz, as no provision was made for it in the sentence voted by him, and there is absolutely no testimony connecting him with it.

Throughout its national history the United States has adhered to the policy of not extraditing for political crimes, and the term "political crime" is of almost exactly the same age as our national government. So firmly rooted has this

practice become that even a century ago in some of our extradition treaties it had not been thought necessary to insert the clause excepting political offenders from the operation of the treaty. This is the case in our treaties of 1794 and 1842 with Great Britain. In commenting on this fact Mr. Fish, the Secretary of State, in a letter to Mr. Hoffman, of May 22, 1876, says: "The public sentiment of both countries made it unnecessary. Between the United States and Great Britain, it was not supposed, on either side, that guarantees were required of each other against a thing inherently impossible, any more than by the laws of Solon was a punishment deemed necessary against the crime of parricide, which was beyond the possibility of contemplation." (Foreign Rel. 1876, p. 22.)

Nor has the tendency been, either in this country or in England, to construe the term "political crime" strictly, but rather to permit it to include some acts which, viewed from the standpoint of a person not engaged in the revolution, would seem not to be necessary or appropriate to attaining the end sought. Yet, if viewed from the point of view of the actors they could reasonably have been considered necessary or appropriate, they are considered as "political offenses" rather than ordinary crimes. As the Court of Queen's Bench said in the *Castioni* case: "Looking at it as a question of fact, I have come to the conclusion that at the time at which the shot was fired he acted in the unlawful uprising to which he was at that time a party, and an active party—a person who had been doing active work from a very much earlier period, and in which he was still actively engaged." In this case, Switzerland sought from the British government the extradition of Castioni for the murder of one Rossi,

whom the former shot during a demonstration against the government of the Canton of Ticino. At the time of the extradition proceedings, it was clear that the killing of Rossi was not necessary to the success of the uprising. But the court chose to look at it from the viewpoint of Castioni at the time of the shooting.

In 1894 the United States had to deal with a case which was in most respects parallel with that of Rudowitz. General Ezeta, who had taken refuge in the United States, was demanded by the Salvadorean government for having ordered the hanging of one Henriquez as a spy, and the robbery of the International Bank of Salvador. This government refused to extradite him, on the ground that his acts were political offenses.

In 1893 the United States refused to extradite one Guerra, demanded by the Mexican government on charges of murder, arson, and robbery. Guerra was a member of a band which raided San Ignacio, and after killing several persons set fire to and looted the town. In refusing to comply with the Mexican request for his extradition, our Secretary of State, Mr. Sherman, said that as the evidence showed "the expedition to have been revolutionary in its origin and purpose," the offense of being "a member thereof" was of "a purely political character, outside of the purview of the extradition treaty between the United States and Mexico." (For. Rel. 1897, p. 406.)

The inherent difficulty in dealing with the question of extradition for political crimes arises from the mixed nature of some political crimes, *i. e.*, "relative political crimes" or *délits complexes*. It is impossible to lay down a rule which will enable us to tell whether these are mainly political or mainly

criminal. The *Attentat* is one of the efforts to deal with this difficulty. This was an amendment to the Belgian extradition law providing that the murder of the head of a foreign government or of a member of his family should not be considered a political crime. This was enacted in 1856 and was called forth by the refusal of the Belgian government in 1854 to extradite two persons charged with an attempt to murder Napoleon III.

More rational was the attempt by Switzerland to deal with the difficulty. In her extradition law of 1892, the principle of the non-extradition of persons charged with political crimes is recognized, but it is provided that if the Bundesgericht, the Supreme Court of Switzerland, decides that the dominant feature of the crime partakes more of the nature of an ordinary crime than of a political offense, the crime is an extraditable one.

The most sweeping of the attempts was made by Russia. In 1881, she invited the powers to hold an International Conference at Brussels for the purpose of considering a provision, favored by her, that no murder should be considered a political crime. As Great Britain and France refused to take part in such a conference it never met. Had the Russian idea been adopted, it would have been an arbitrary way of dealing with the difficulty, as some of the most typically political crimes—crimes committed with a political motive and in furtherance of a political purpose—would thus become extraditable.

The United States is impelled by its origin and traditions not to extradite political offenders, even though murder be among the list of their offenses, provided their offense is committed against the oppressions of government and not against government itself.

In summing up the subject of non-extradition of political criminals, M. Oppenheim, author of a recent two-volume work on International Law, says:—

“It is due to the stern attitude of Great Britain, Switzerland, Belgium, France and the United States that the principle has conquered the world. These countries, in which individual liberty is the very basis of all political life, and constitutional government a political dogma of the nation, watched with abhorrence the methods of government

of many other states between 1815 and 1860. These governments were more or less absolute and despotic, repressing by force every endeavor of their subjects to obtain individual liberty and a share in the government. Thousands of the most worthy citizens and truest patriots had to leave their country for fear of punishment for political crimes. Great Britain and the other free countries felt in honor bound not to surrender such exiled patriots to the persecution of their governments, but to grant them an asylum.”