F.O.I.A.

JULIUS ROSENBERG ET AL.

FILE DESCRIPTION

HQ FILE

SUBJECT Morton Sobell

FILE NO. 101-2483

VOLUME NO. 35

SERIALS 1303 to 1328

Inventory Worksheet
FD-503 (2-18-77)

lc 35

(1)

File No: 101-2483 Re: Morton Sobell Date: 11-6-86 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1303	6-26-56	NY routing slip HQ w/encl	1/8	1/8	
NR		NY Times news clipping	2	2	
NR	6-26-56	Hq let AG	2	—	Disposition in J. Rosenberg 65-58236-2272
NR	6-28-56	DAG let Hq	3	—	Disposition in J. Rosenberg 65-58236-2275
1304	6-29-56	Hq let Mexico City	1	1	
1305	6-18-56	Nichols memo Tolson	4	—	Disposition in J. Rosenberg 65-58236-2274
1305	6-22-56	Hq let DAG	1	—	Disposition in J. Rosenberg 65-58236-2274
NR	6-25-56	Roach memo Belmont	1	—	Disposition in J. Rosenberg 65-58236-2273
1306	6-20-56	Belmont memo Boardman W/EBF	2/49	2/49	
NR	6-29-56	London let Hq	1	—	Disposition in J. Rosenberg 65-58236-2276
1307	6-29-56	Paris let Hq	1	1	b1
1308	7-6-56	NY let Hq W/EBF	1/14	1/14	

91 in, 19 rel, 0 deny, 0 ref, 12 presumed, 0 pignore

Inventory Worksheet
FD-503 (2-18-77)

JCC 35

(2)

File No: 161-2-483 Re: Morton Sobell Date: 11-6-26 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1309	7-3-56	Nichols memorandum	1	1	
NR	8-2-56	London let Hq	1	—	Disposition IN J. Rosenberg 65-58236-2279
1310	7-5-56	Kaufman let Nichols w/encl	1/4	1/4	
1311	7-11-56	3rd party letter w/encl	2/17	2/17	
1312	7-27-56	New York city let Hq & routing slip	2/2	2/2	b1
1313	8-15-56	NY rept	9	9	b2 b7D
1313	8-31-56	Hq let NY w/Rs	3	3	b1
1314	8-16-56	WFO rept	4	4	
1315	8-20-56	NY rept	10	10	b1 b2 b7D
1316	8-24-56	Hq let AAG	2	2	b1
1317	8-10-56	New York city let Hq	3	2	b1 1pg refer CIA
1317	8-24-56	Hq let New York city	2	1	b1 1 pg refer CIA
			63	60	0 2 1 0
					rev rel deny ref presumed prejoc

FBI/DOJ

Inventory Worksheet
FD-503 (2-18-77)

LC 35

(3)

File No: 101-2483 Re: Morton Sobell Date: 11-6-56 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1318	8-30-56	OG let	3	3	b1
NR	9-6-56	Hq let AAG	2	—	Disposition in J. Rosenberg 65-58236-2285
NR	9-11-56	London let Hq	1	—	Disposition in J. Rosenberg 65-58236-2290
NR	9-6-56	Hq let CIA	2	—	Disposition in J. Rosenberg 65-58236-2286
NR	9-11-56	news release	2	—	Disposition in J. Rosenberg 65-58236-NR after 2289
NR	9-18-56	NY routing slip Hq	1	1	
1319	9-18-56	OG let	2	2	b1
1320	9-10-56	IC let	1	0	b1
1320	9-18-56	Hq let MP	1	1	b1
NR	9-21-56	Nichols memo Tolson	1	1	
1321	9-18-56	NY TT Hq	1	1	
1322	9-20-56	Branigan memo Belmont	1	1	

14 rev 10 rel 1 deny 0 ref 7 presumed 0 prejudice

FBI/DOJ

Inventory Worksheet
FD-503 (2-18-77)

Lc 35

(4)

File No: 101-2483 Re: Morton Sobell Date: 11-6-86 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1322	9-24-56	Hq let AAG	1	1	
1323	9-21-59	Paris let Hq	1	1	b1
1324	9-28-56	NY TT Hq	1	1	
1325	9-26-56	NY TT Hq	1	1	
1325	10-3-56	Hq let AAG	1	1	
1324	9-26-56	Mexico City let Hq	9	2	b1
1326	10-12-56	Hq let AAG	4	3	b1
1327	10-4-56	MP rept	4	4	b1 b7E
1328	10-5-56	NY rept	9	9	b1
1328	10-19-56	OG let	2	2	b1

33 rev 25 rel - 8 deny 0 ref 0 previously processed 0 prior

Routing Slip
FD-4 (8-18-54)

To BUREAU

Date 6/26/56

FILE # BUFILE 101-2483

Title MORTON SOBELL, was.
ESP - R

- [ ] Director
  Att.
- [ ] SAC
- [ ] ASAC
- [ ] Supv.
- [ ] Agent
- [ ] SE
- [ ] CC
- [ ] Steno
- [ ] Clerk

ACTION DESIRED

- [ ] Reassign to
- [ ] Send Serials
- [ ] Submit report by
- [ ] Submit new charge-out
- [ ] Leads need attention
- [ ] Return with explanation or notation as to action taken.
- [ ] Initial & return
- [ ] Search & return
- [ ] Recharge serials
- [ ] Prepare tickler
- [ ] Return serials
- [ ] Acknowledge
- [ ] Bring file
- [ ] Delinquent
- [ ] Open Case
- [ ] Expedite
- [ ] Correct
- [ ] Call me
- [ ] See me
- [ ] Type
- [ ] File

FORWARD IMMEDIATELY TO
INSPECTOR CARL HENRICH.

101-2483-1303

NOT RECORDED
16 JUN 29 1956

ATTACHED PG. 14 L. N.Y. TIMES & N.Y. HERALD-TRIBUNE DATE OF 6-21-56, COMMENTING ON JUDGE IRVING KAUFMANS OPINION. N.Y. TIMES OMITS "EXCERPT" MENTIONING "STANDARD OF FAIRNESS OF THE FBI."

2 ENCLOSURE

51 JUL 1 1956

SAC James J. Kelly
Office New York

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DATE 4/30/87 BY 3042PWT

Aided China Reds

WASHINGTON, June 20 (AP).—The Senate Investigations subcommittee was told today that 70 per cent of the American soldiers taken prisoner during the Korean War "contributed wittingly or unwittingly to Communist propaganda efforts."

The reactions of the war prisoners were contained in a research study conducted for the Army by psychologists at George Washington University here and presented to the subcommittee. The subcommittee is studying Communist treatment of prisoners and "brainwashing" techniques.

The study group concluded that only 1 per cent of the 3,323 Army prisoners embraced Communist teachings to any large degree. But the majority yielded in some measure to pressure brought on them by their Red Chinese captors.

It estimated that 39 per cent signed propaganda petitions, 22 per cent made records, 11 per cent wrote articles, 5 per cent wrote petitions, 5 per cent circulated petitions and 10 per cent did full-time propaganda work.

The conclusions were based on a two-year study of a sample group of 579 representative prisoners.

T. S. Eliot Better

LONDON, June 20 (AP).—T. S. Eliot, sixty-seven-year-old poet and playwright, left the hospital for home today after eight days of treatment for heart trouble.

101-2463-1303

Didn't Drink, Kiss, U. S. Ex-Aid Says

Some Drinking, 2d Tells Senators

WASHINGTON, June 20 (AP).—Two former Agriculture Department officials denied today that they "got drunk and carried on a kissing game" with married women at a party in Montana in 1954.

Robert B. McLeaish, who resigned yesterday as Farmers Home Administrator, told Senate investigators he "had my full faculties" when he left the party that followed a business meeting in Bozeman, Mont.

Carl O. Hansen, former Farmers Home state director in Montana, conceded some drinking was done but said it was "absolutely not true" that he and Mr. McLeaish took part in a kissing game. "I simply don't believe in that, even if I were drunk," Mr. Hansen said.

Called by Senators

The two ex-officials were called for questioning by a Senate Civil Service subcommittee which had heard testimony earlier that both were heavy drinkers. The group is looking into Mr. McLeaish's handling of the agency and a canceled $1,000,000-a-year insurance contract.

Another former Farmers Home Administration official, Wylie Reed, of Verden, Okla., told about a time in San Angelo, Tex., when a man in a restaurant "made quite an issue" over remarks made in Spanish to his wife by Mr. McLeaish. He said other diners pulled the husband off Mr. McLeaish and the latter was led away to his hotel.

Mr. McLeaish explained that he had intended to tell the woman that "I'd like to eat with you tonight." But he said his Spanish was poor and the remark came out something like "I'd like to be with you tonight."

Mr. McLeaish disclosed that his resignation, announced by the White House yesterday, was handed in after a conference with Agriculture Secretary Ezra Taft Benson. He said Mr. Benson "strongly suggested I resign."

"I don't think I'm a habitual drunkard or even a casual drunkard," he said.

George H. Reuss, Illinois state director of the agency, testified that Mr. McLeaish dismissed him as assistant administrator in 1954 on grounds he had been drinking. But he said most of his drinking was done with Mr. McLeaish.

Associated Press wirephoto

Carl O. Hansen, former Montana state director of the Farmer's Home Administration, testifying yesterday in Washington.

Paris Approves Basic Reforms for Algeria

By Frank Kelley

From the Herald Tribune Bureau
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PARIS, June 20.—Premier Guy Mollet's Cabinet today approved basic administrative reforms for Algeria designed to give its Moslem population more self-government, and planned to have 500,000 troops—many of them specialists—there by next year to ra long-drawn-out campaign of "pacification."

Subject to approval by Parliament, the Cabinet sanctioned a plan that will triple the number of departments (counties) in Algeria from four to twelve, in order to bring local government closer to the 9,000,000 inhabitants—8,000,000 of them Moslems. Metropolitan France has ninety departments, including the existing four in Algeria.

The Cabinet also approved a decree, fought for by Robert Lacoste, resident Minister in Algeria, that will transform the so-called "mixed communities" in Algeria, largely dominated by Moslems, into regular communities under French law, with municipal elections to be held next fall under a "single college" system that will give equal rights to French and Moslem voters.

Meanwhile, Maurice Bourges-Maunoury, Minister of National Defense, told the Anglo-American Press Association at luncheon here that France now has about 400,000 troops in Algeria, or more than half of its effective armed strength. By next year, he added, France will build this strength to 500,000 men. When the revolt broke out in November, 1954, France had 60,000 troops there, he said.

2 Killed, 13 Hurt

ALGIERS, Algeria, June 20 (AP).—A rebel commando band shot up a downtown section of Algiers today at the peak of the home-bound rush hour. The raiders killed two persons and wounded thirteen others. All their victims were European civilians.

The French speculated that the raid may have been a reprisal for the beheading yesterday of two convicted terrorists. The wounded included two women and a ten-year-old child.

Say 70% of P. Ws

initial appeal to the Court of Appeals, and it was set forth as one of the grounds supporting his prayer for reversal in the defendant's first petition for certiorari to the Supreme Court, which was denied. He argues, however, that although certain of these allegations have been made before, the legal consequences now urged as stemming from them have not been previously considered.

Case Painstakingly Studied

Despite the lack of novelty in petitioner's present assertions, and despite the numerous hearings he has been accorded, the Court has again painstakingly re-examined the record in the light of his instant allegations. Such is the way in which a democratic society administers justice — carefully, meticulously, and even repetitiously—lest an error go undetected. Under our judicial system we impose a strong check upon the manner in which a prosecution may be conducted.

It is difficult to find a case in the history of American jurisprudence, or indeed in the judicial annals of any other country, where the defendant's convictions and contentions have received the attention of so many judges at so many levels of a judicial system, as well as that of the President of the United States on applications for executive clemency. Not a single legal recourse has been or will be denied to Sobell.

Kidnap Claim Cited

In his present petition, Sobell avers that he was kidnapped from Mexico by agents of the Mexican Secret Police who were acting under the orders of the F. B. I., and that he was thus forcibly and illegally returned to the United States against his will. He does not assert, how-

a nullity.

Conclusion

My consideration of the contentions urged in petitioner's second motion leads me to the conclusion that they are as utterly lacking in merit as are his contentions regarding the Court's lack of jurisdiction.

This position is so entirely devoid of merit that perhaps it has been unduly dignified by the minute consideration and analysis it has received in this opinion. However, an effort has been made to lay to rest with finality baseless contentions and accusations which have been repeated not primarily to aid the petitioner but rather to embarrass and injure our courts and country.

The ancient writ of habeas corpus—to which Section 2255 is analogous—is one of the basic safeguards of America's freedom. Its purpose is to ensure that no man may be held in confinement in violation of due process of law, and it imposes a strict duty upon all officials connected with the government—state, local or national. But there is an equal duty imposed upon attorneys whose obligation it is to uphold the law, and the dignity and integrity of the courts. It is their duty as officers of the court to ensure that this

Judge Kaufman's Decision in Sobell Case

Following are the essential points in yesterday's decision by Judge Irving R. Kaufman refusing to set aside the conviction and sentence of Morton Sobell as an atomic spy for Soviet Russia:

Former Judicial Proceedings in This Case

The convictions of Sobell and his co-defendants were affirmed by the Court of Appeals for the Second Circuit in a detailed opinion which contained the following language:

"Since two of the defendants must be put to death if the judgment stands, it goes without saying that we have scrutinized the record with extraordinary care to see whether it contains any of the errors asserted on this appeal."

Thereafter, defendants filed a petition for a writ of certiorari to the United States Supreme Court, and this was denied. In the following two years, Sobell participated in two motions brought under Section 2255 of the Judicial Code, each seeking to vacate the judgment on Constitutional grounds; both motions were found to be without merit and were denied by the District Court. The denials were affirmed on appeal by the Court of Appeals and a petition for a writ of certiorari filed after the first motion, was denied by the Supreme Court. After almost every one of the above decisions, petitions for rehearing were also considered and denied. In addition, numerous applications for relief were made by the Rosenbergs (Julius and Ethel), and although Sobell did not join in them it is worth noting that none of the attacks on the judgment was sustained.

Case Reviewed Six Times

This, then, is the background against which petitioner makes his present allegations and accusations of infringement of his constitutional rights. The record shows that in one form or another the case was before the United States Court of Appeals six times, always concluding with an affirmance, and before the United States Supreme Court six times on applications of one sort or another, always ending with the conviction remaining undisturbed, and this tally does not include the numerous proceedings at the District Court level and the various applications to other judges of the District Court.

Sobell's Present Contentions

The basic factual allegations set forth in Sobell's moving papers are not new to this Court. Indeed, they were first raised five days after the verdict on a motion in arrest of judgment.

Judge Kaufman

However, that this alleged abduction deprived this court of any jurisdiction over his person. On the contrary, he not only concedes that he waived any such claim (assuming he would have had one) but he also asserts that he would have returned willingly to stand trial.

The first argument he now makes concerning this so-called abduction is that it denied him the opportunity to return to the United States willingly, and that it was staged for the sole purpose of permitting the prosecution to represent to the jury that Sobell was a fugitive from justice. He asserts that when the government introduced evidence to show that he had been "deported" from Mexico, this was subornation of perjury on the part of the prosecutors, as they then well knew that Sobell had not been deported in accordance with established Mexican procedures. He alleges further that the government deliberately suppressed evidence relating to this abduction and made misrepresentations to the Court about it—and that any one of these alleged improprieties, if established, would show a deprivation of petitioner's constitutional rights.

Treaty Violation Alleged

His second attack, set forth in a separate motion under Section 2255, is that this alleged kidnapping violated a treaty between the United States and Mexico. He argues that since this extradition treaty is the law of the land, its violation deprived the courts of this country of jurisdiction over the subject matter of this offense. Since unlike jurisdiction over the person, lack of jurisdiction over the subject matter cannot be waived by a defendant, Sobell claims that great writ shall not be stripped of its deep meaning through a corrosive process caused by repeated abuses of its processes.

Petition Called Meritless

Four lawyers argued these motions for Sobell, California counsel among them, and petitioner also had the services of an expert on Mexican law. The two legal memoranda submitted, which ran to over one hundred pages, and the numerous lengthy affidavits and exhibits indicate that an inordinate amount of time, money, effort and ingenuity was put into this motion on petitioner's behalf. If Sobell were an unlettered prisoner, friendless and without funds, attempting to cry out "unfair," his lengthy and utterly meritless petition might not be such a gross misuse of the judicial processes.

Under the governing rules of law, Sobell has been given the benefit of any doubt. For that reason all his allegations concerning the alleged brutality and illegality of his abduction were assumed to be true for the purposes of these applications. Therefore, I have not considered in this opinion the question of his veracity. But I find it difficult to believe that a man who was seized and blackjacked, as he claims, would not have immediately shouted out this injustice to the world and would have held silent for six months prior to his trial and then throughout the trial, holding back his story as a sort of trump card. Experience dictates that human beings do not react that way.

The ease with which the petitioner tars all associated with the prosecution in the face of a clear record which proves the contrary is truly startling. As was recently said of another prisoner who engaged the courts endlessly with meritless petitions, "He is smart, shrewd and resourceful." Thus he knows how to make charges so wild . . . as to induce a concern for their refutation that otherwise he would not command . . ."

Maligning of Prosecutors

From petitioner's unfounded attacks against the men who conducted the prosecution of his case, it is obvious that he believes in the broadside attack, painting with broad strokes and recklessly maligning all who participated in the process of bringing him to justice.

In this connection, it is interesting to note that the petitioner brands the F. B. I. as an agency of oppression, ignoring its reputation for high standards of fairness. These high standards were recently praised by the Court of Appeals for this Circuit in an opinion by Judge (Jerome N.) Frank, who is well known for his outspoken attacks on any form of police brutality.

Procedures of Court

During the course of my deliberations on this matter, as on other matters involved in this case from its inception, there have been many attempts to bring extra-judicial utterances and actions to my attention. Many of these have been designed to influence judicial determination in a way that is alien to our judicial process—and in some instances they constituted a subtle attack upon it. Freedom of speech should and does permit untrammeled discussion and differences of opinion, but judicial impartiality requires that the courts be free from extraneous and conflicting pressures. Therefore, the American judicial system has evolved its own safeguards and procedures for arriving at the truth—procedures which have withstood the test of the centuries. These procedures and safeguards have been the sole guideposts for this Court.

The motions and the files and records of this case show conclusively that the prisoner is entitled to no relief. Motions denied.

Irving R. Kaufman,
U. S. D. J.

OXFORD PRESENTS TRUMAN A DEGREE

Continued From Page 1

courage, I by my own authority and that of the whole university admit you to the degree of Doctor of Civil Law Honoris Causa."

There was a warm burst of applause from the theatre lasting more than a minute when Mr. Truman stepped forward to shake Lord Halifax's hand and take his seat among dignitaries of the university.

Mr. Truman had confessed that he did not remember much of the Latin he had studied at school. But he remembered enough to grin at the Public Orator's jesting reference to the 1948 Presidential election.

Virgil, the orator said, could help describe the plight of Thomas E. Dewey, the Republican nominee. To prove it, Mr. Higham adapted a verse from Aeneid:

The seers saw not your defeat
poor soul.
Vain prayers, vain promises,
vain Gallup poll.

The banked rows of Doctors of Divinity, Civil Law, Medicine, Music, Letters and Science shook with laughter at this joke. Lord Halifax, an imposing figure in a gold embroidered black gown, unbent to smile.

Truman's Aid Efforts Hailed

The theme of the Public Orator's presentation was Mr. Truman's assistance to the Western World in the years after World War II. Mr. Higham recalled United States aid to Britain and cited General of the Army George C. Marshall and Dean Acheson, former Secretary of State, similarly honored by Oxford.

He noted that Mr. Truman "made it clear that he and his people were fully aware of the crisis in human affairs and of the duties that fall to a leading world power."

The former President decided that "America would be true to herself in the defense of liberty," the Public Orator added.

There were repeated references to Mr. Truman's modesty. The orator recalled that on his first day of retirement the former President had told reporters he took the suitcases up to the attic.

"I present to you for admission to the honorary degree of Doctor of Civil Law a man of courage and energy, modest even in the splendor of his high position—Mr. Harry Truman," the orator concluded.

Oxford, the serene and gravely courteous, also offered "our sincerest wishes for every possible happiness" to Mr. Truman's newly married daughter, Mrs. Clifton Daniel.

Tonight Mr. Truman attended the Gaudy at Christ Church College, a dinner that Oxford men consider the best stag party in the world. After sherry in the Quadrangle, the guests, in white tie and tails, dined in the magnificent Fifteenth Century Hall of College.

Grace was sung in Latin by the Cathedral Choir. After dinner there were speeches, but by tradition these are short, humerous and unportentous.

Highest for Non-Graduate

OXFORD, England, June 20 (UP)—The award former President Truman received today was Oxford University's highest for a non-graduate.

New 'Magna Charta' Urged

OXFORD, England, June 20 (Reuters)—On an after-dinner speech at Oxford University tonight, Harry Truman called for a new "declaration of independence" that would make decent living standards an inalienable right throughout the world.

Mr. Truman said that the world "must declare in a new Magna Charta, in a new declaration of independence, that henceforth economic well-being and security, that health and education and decent living standards, are among our inalienable rights."

"If we are wise, we will not limit the benefits of our democratic way of life to ourselves," he added. "The whole world knows how well we live.

"In Africa, and Indonesia, in the Far East and the Near East, along the Equator and in the islands of the Pacific, there has been a great awakening.

"The people no longer want to live as their ancestors lived. They have moved into our century and they want to live as we do.

"They are determined to enjoy the benefits that we know now, in their lifetimes, in this year, this decade, this generation.

"The whole world now very much wants to get things done. It wants to go places."

He declared that the uncommitted world had a choice of two systems—democracy or slavery. In the latter, the citizens may vote against the dictator "only after he is dead," and "even to do this is regarded as an act of rare independence and courage," he added.

"But I have no faith in governments which answer to no one. It is a terrifying thought that a dictator like Stalin—an irresponsible egomaniac, according to his successor, answerable to no one—could give an order that would, in a matter of hours, wipe out most of the civilized world."

Oxford Students Hail 'Harricum' Truman

OXFORD, England, June 20 (AP)—Oxford University students cheered Harry S. Truman in Latin tonight.

As the former President walked beneath some windows in New College, a group of students leaned out and yelled:

"Harricum! Harricum!"

When Mr. Truman looked up they shouted:

"Give 'em hell, Harricum!"

suppressed evidence relating to this abduction and made misrepresentations to the court about it—and that any one of these alleged improprieties, if established, would show a deprivation of petitioner's constitutional rights.

On Charge of Treaty Violation

His second attack, set forth in a separate motion under Section 2255, is that this alleged kidnapping violated a treaty between the United States and Mexico and "since this extradition treaty is the law of the land, its violation deprived the courts of this country of jurisdiction * * *."

Section 2255 of the Judicial Code permits a convicted prisoner to move to set aside the sentence if it was imposed in violation of the Constitution or laws of the United States, or if the sentencing court was without jurisdiction.

Sobell's counsel concede that there would have been no question of the court's power to try Sobell for the offenses charged had it not been for the manner of his apprehension. Thus, by counsel's own admission, the only lack of power was that over Sobell's person, and the rule is clear that in a criminal case a court has jurisdiction of the subject matter if it has jurisdiction of the crime charged.

It is clear that petitioner's present argument re jurisdiction is but a twice-told tale in new semantic guise. He seems to believe that by the mere device of changing attorneys and relabeling his claims, he may return to court time after time with the same basic argument.

The rule is that a seizure of a fugitive on foreign soil in violation of international law will not deprive the courts of the

101-2483-1303

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Excerpts From the Kaufman Opinion on Sobell's Plea

Following are excerpts from the opinion of Federal District Judge Irving R. Kaufman yesterday, denying the motion of Morton Sobell to set aside his conviction for espionage:

The trial was held in a manner which impelled the defense attorneys to compliment the court for its fairness and courtesies on three separate occasions and to state that the trial had been conducted "with that dignity and that decorum that befits an American trial."

Now, five years later, Morton Sobell has petitioned this court pursuant to 28 U. S. C. Sec. 2255 to set aside this verdict and judgment, alleging that his constitutional rights have been violated and that the court was without jurisdiction to try him.

The contentions now raised by Sobell relate to procedural and constitutional issues which do not go into the question of his guilt or innocence. Even if every one of the contentions now raised by petitioner was to be sustained, it would not follow that he is innocent.

The record shows that in one form or another the case was before the United States Court of Appeals six times, always concluding with affirmance, and before the United States Supreme Court six times on application of one sort or another, always ending with the conviction remaining undisturbed, and this tally does not include the numerous proceedings at the district court level.

Sobell's Present Contentions

The basic factual allegations set forth in Sobell's moving papers are not new to this court. Indeed, they were first raised five days after the verdict on a motion in arrest of judgment.

It is difficult to find a case in the history of American jurisprudence, or indeed in the judicial annals of any other country, where the defendants' convictions and contentions have received the attention of so many judges at so many levels of a judicial system, as well as that of the President of the United States on applications for executive clemency. [Here the Court had reference also to the co-defendants, Ethel and Julius Rosenberg.]

In his present petition Sobell avers that he was kidnapped from Mexico by agents of the Mexican Secret Police who were acting under the orders of the Federal Bureau of Investigation and that he was thus forcibly and illegally returned to the United States against his will. He does not assert, however, that this alleged abduction deprived this court of any jurisdiction over his person. On the contrary, he not only concedes that he waived any such claim (assuming he would have had one) but he also asserts that he would have returned willingly to stand trial.

He [Sobell] asserts that when the Government introduced evidence to show that he was "deported" from Mexico, this was subornation of perjury on the part of the prosecution * * *. He alleges further that

offending state of jurisdiction over the person of the fugutive when he is brought before them.

In In re Johnson, 167 U. S. 120, 126 (1897) the court used the following language to explain its rationale:

"The law will not permit a person to be kidnapped or decoyed within the jurisdiction for the purpose of being compelled to answer to a mere private claim, but in criminal cases the interests of the public override that which is, after all, a mere privilege from arrest."

It is clear that Sobell's argument that this court lacked jurisdiction to try him because of his alleged abduction would have been rejected as completely fallacious even had it been timely raised, and this is undoubtedly the reason his adroit lawyers refrained from making this motion among their numerous other applications for pre-trial relief.

[The court reviewed trial testimony adduced to show Sobell was preparing to flee illegally from Mexico for Europe.]

Strange Actions Not Explained

Not once during the trial did the defense attempt to explain the strange actions of this man [Sobell] and thus eradicate the impression of flight and guilty consciousness thus created.

It is the petitioner's contention that [James S.] Huggins [an immigration inspector] perjured himself when he testified that Sobell had been deported. Petitioner urges that this was harmful as it erroneously gave the jury the impression that Sobell's expulsion had been ordered after Mexico had made a prior determination of his guilt via a legal deportation proceeding. This contention is clearly refuted by the cold record which shows that time after time Huggins insisted that his notation ["deported from Mexico" on the manifest card] was not based on official sources, but solely on his own observations of Sobell's summary ejection.

When Mr. [Irving] Saypol, the prosecutor, summed up, he nowhere stated—or even inferred—that Sobell had been legally deported, but stated instead that "the F. B. I. caught up with him and brought him back and you have him here." Patently, this does not show an attempt by the prosecution to create the impression of legal deportation, as is now charged. Manifestly, it was the prosecutor's intention to use Huggin's testimony to point up that Sobell's return to this country had been involuntary.

It is hornbook law that the prosecution cannot suppress evidence or facts if they are known to the defense, and, if it is true that Sobell was abducted, this fact was clearly and admittedly within the possession of Sobell and his counsel before the trial.

Time after time the courts have held that whenever knowledge was in the possession of defense counsel during trial of facts which either established the impropriety of certain evidence, or even cast doubts upon its admissibility, they are barred from raising this question on a motion to vacate judgment.

CONCLUSION

My consideration of the contentions urged in petitioner's second motion leads me to the concluusion that they are as utterly lacking in merit as are his contentions regarding the court's lack of jurisdiction.

This petition is so entirely devoid of merit that perhaps it has been unduly dignified by the minute consideration and analysis it has received in this opinion. However, an effort has been made to lay to rest with finality baseless contentions and accusations which have been repeated not primarily to aid the petitioner but rather to embarrass and injure our courts and country.

The ancient writ of habeas corpus—to which Section 2255 is analogous—is one of the basic safeguards of America's freedom. Its purpose is to ensure that no man may be held in confinement in violation of due process of law, and it imposes a strict duty upon all officials connected with the Government—state, local or national.

But there is an equal duty imposed upon attorneys, whose obligation it is to uphold the law, and the dignity and integrity of the courts. It is their duty as officers of the court to ensure that this great writ shall not be stripped of its deep meaning through a corrosive process caused by repeated abuses of its processes.

Four lawyers argued these motions for Sobell, California counsel among them, and petitioner also had the services of an expert on Mexican law. The two legal memoranda submitted, which ran to over one hundred pages, and the numerous lengthy affidavits and exhibits indicate that an inordinate amount of time, money, effort and ingenuity was put into this motion on petitioner's behalf. If Sobell were an unlettered prisoner, friendless and without funds, attempting to cry out "unfair," his lengthy and utterly meritless petition might not be such a gross misuse of the judicial processes.

Under the governing rules of law, Sobell has been given the benefit of any doubt. For that reason all his allegations concerning the alleged brutality and illegality of his abduction were assumed to be true for the purposes of these applications. Therefore, I have not considered in this opinion the question of his veracity.

But I find it difficult to believe that a man who was seized and blackjacked, as he claims, would not have immediately shouted out this injustice to the world and would have held silent for six months prior to his trial and then throughout the trial, holding back his story as a sort of trump card. Experience dictates that human beings do not react that way.

The ease with which the petitioner tars all associated with the prosecution in the face of a clear record which proves the contrary is truly startling. As was recently said of another prisoner who engaged the courts endlessly with meritless petitions, "He is smart, shrewd and resourceful." Thus he knows how to make charges so wild * * * as to induce a concern for their refutation that otherwise he would not command." *United States v. Tramaglino*, Court of Appeals for the Second Circuit, June 4, 1956.

From petitioner's unfounded attacks against the men who conducted the prosecution of his case, it is obvious that he believes in the broadside attack, painting with broad stroke and recklessly maligning all who participated in the process of bringing him to justice.

During the course of my deliberations on this matter, as on other matters involved in this case from its inception, there have been many attempts to bring extra-judicial utterances and actions to my attention. Many of these have been designed to influence judicial determination in a way that is alien to our judicial process—and in some instances they constituted a subtle attack upon it.

Freedom of speech should and does permit untrammeled discussion and differences of opinion, but judicial impartiality requires that the courts be free from extraneous and conflicting pressures. Therefore, the American judicial system has evolved its own safeguards and procedures for arriving at the truth—procedures which have withstood the test of the centuries. These procedures and safeguards have been the sole guideposts for this court.

The motions and the files and records of this case show conclusively that the prisoner is entitled to no relief. Motions denied.

Court Here Denies Sobell's Bid For a New Trial in Spying Case

Continued From Page 1

had no jurisdiction over his person and that the action violated an extradition treaty between the United States and Mexico.

In addition, he said the prosecution had knowingly used false testimony, and had concealed facts from the court. Judge Kaufman held that this was not true.

Judge Kaufman said Sobell's contentions related to procedural and constitutional issues and, "even if every one of the contentions now raised was to be sustained, it would not follow that he is innocent."

Sobell was a City College classmate of Rosenberg and Max Elichter, his principal accuser at the trial. Elichter testified that in the war he and Sobell worked for the Navy Bureau of Ordinance in Washington.

Sobell, Elichter said, recruited him into the Communist party, and tried to enlist him in the Rosenberg conspiracy to steal information for Russia.

After Rosenberg's arrest Sobell fled to Mexico with his wife and children. Referring to the supposed kidnapping, Judge Kaufman said: "I find it hard to believe that if he was seized and blackjacked, as he claims, that he would not have immediately shouted out this injustice to the world instead of holding back his story as a sort of trump card."

The jury's verdict, Judge Kaufman asserted, clearly proved that Sobell was an arch conspirator with the Rosenbergs in their plan to commit espionage against the United States by trafficking in this country's deepest military secrets — "a crime of the highest magnitude."

Judge Kaufman's decision is appealable to the United States Court of Appeals. In argument on the petition Sobell was represented by Frank J. Donner, Arthur Kinoy, Marshall Perlin, Benjamin Dreyfus and Luis Sanchez Ponton of Mexico.

Judge Irving R. Kaufman

Appearing for the Government were United States Attorney Paul W. Williams and Robert Kirtland and Maurice N. Nessen, assistant United States Attorneys.

Mrs. Sobell said that Judge Kaufman's refusal to grant a hearing for her husband was "a gross miscarriage of justice."

In a statement issued through the Committee to Secure Justice for Morton Sobell, she said that documentary proof was available that the prosecution in her husband's trial "knowingly, willfully and intentionally used perjured testimony."

She said further attempts will be made to get a "full and fair" hearing.

Letters to The Times

Sobell Review Urged

Europeans Reported Questioning Justice of Conviction

The writer of the following letter, dramatist, essayist, former teacher of philosophy and leading French exponent of existentialism, edits the magazine "Les Temps Modernes" in Paris.

To the Editor of The New York Times:

I learn that the American courts are soon to rule on an appeal for parole by Morton Sobell, now in Alcatraz under a thirty-year sentence passed in May 1951, for having been an accomplice of the Rosenbergs in a "conspiracy to commit espionage." Last May 8 Sobell also asked for a new trial.

I am neither an American nor a jurist. Were I either, it would still not be proper for me to attempt to influence the decision of Judge Kaufman, who must rule on these appeals as it was his duty, five years ago, to preside over the first Rosenberg-Sobell trial.

But there is nothing in law or in international custom to prevent my communicating with you and informing you of a conviction shared by many Frenchmen and Europeans —and I am told by many Americans—that Sobell is innocent and that it would be a grave injustice to have him continue to be penalized for a crime which he did not commit and for which proof has never been submitted.

Opinion in Europe

As you know, the Rosenberg case stirred up considerable feeling in Europe, where opinion for the last three years has been almost unanimous in regarding as unlikely that the Rosenbergs and Sobell committed the crime of which they were accused. It seems impossible to us that a small group, whatever their opinions and intentions, could have been able to "deliver to Russia the secret of the atomic bomb" and to "change the course of history to the detriment of their country."

p.24 LATE CITY

RE: MORTON SOBELL
ESPIONAGE - R

BUFILE 100-387835

It is our opinion that there is no atomic secret, that science develops everywhere in the same rhythm and that production of bombs is a matter of industrial potential. The most recent developments of Soviet science and technique serve only to reinforce that conviction. As an example I cite the fine article by the director of atomic research in the U. S. S. R., Kourtchatov, published several weeks ago in Pravda, and which has caused some stir in Western scientific circles.

Proof which was recently assembled precisely confirms this view. In view of the arguments and the documents that have been offered, it does not seem to me arguable, at least in the case of Morton Sobell, that the prosecution has had recourse, in order to force a conviction, to false evidence and false testimony and has violated not only American law, but international law as well.

Presumption of Guilt

Was it not asserted that Morton Sobell and his family had gone to Mexico without visas, and had been expelled? Was not this statement, in the absence of corroboration from a single witness produced against Sobell, a presumption of guilt of the first order? Was there not formal proof that Sobell had requested and obtained a Mexican visa and that it had been confiscated on Mexican territory by the American police, in violation of a series of agreements and international treaties between the United States and Mexico? Was there not proof that the prosecution was entirely aware of these irregularities —that major pieces of evidence were deliberately kept from the court and caused false statements to be made by witnesses deposing under oath?

It is always difficult—and we French have learned this by experience—to obtain a new trial when the prestige of a nation is involved. But I know that you agree with me in thinking that when justice is at stake, considerations of prestige must not prevail. I do not want to believe that the United States could persist in error and dishonor when on the other side of what is happily less and less of an iron curtain other countries have under way reviews of past trials more dangerous and a good deal more painful for their national self-esteem.

JEAN-PAUL SARTRE.

Paris, June 10, 1956.

1-750 (Rev. 4-17-85)

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65-58236 - 2272

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FBI/DOJ

cc - Mr. Lee
Mr. Nichols

Legal Attache (65-268) (orig & 1)
Mexico City

June 29, 1956

Director, FBI (101-2483)

13871

MORTON SOBELL, aka.
ESPIONAGE - R

Reference is made to previous communications concerning the above-captioned subject, relating to the motions for a new trial filed by him in the District Court, Southern District of New York, in May, 1956.

On 6-20-56 Sobell's motions for a new trial were denied by Irving R. Kaufman, District Judge, Southern District of New York. In connection with this decision, Judge Kaufman filed an opinion which answers all the arguments raised by Sobell in these motions and very clearly summarizes the facts and the law involved in this case.

For your information, there is attached herewith one copy of Judge Kaufman's opinion.

Enclosure

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cc - 1 - Foreign Liaison Unit (Route through for review)

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Disposition of document in J. Rosenberg
65-58236-2277

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FBI/DOJ

Office Memorandum • UNITED STATES GOVERNMENT

TO : L. V. Boardman

DATE: June 20, 1956

FROM : A. H. Belmont

SUBJECT: MORTON SOBELL, was
ESPIONAGE - R

Tolson
Nichols
Boardman
Belmont
Mohr
Parsons
Rosen
Tamm
Nease
Winterrowd
Tele. Room
Holloman
Gandy

There is attached a copy of the decision of Judge Irving R. Kaufman, Southern District of New York, dated 6-20-56, which denies the two motions for a new trial made by the subject on May 8 and 25, 1956.

This decision deals with motions as follows:

(1) Sobell claimed the U.S. Government breached the extradition treaty with Mexico because the offense for which he was tried is not listed in the treaty andhis removal from Mexico flouted treaty requirements, thus depriving the court of jurisdiction of the subject matter. The decision points out that the question of personal jurisdiction over Sobell has been decided and the argument listed in this motion is the same question which has been settled. Judge Kaufman describes this motion as "a twice-told tale in new semantic guise." The Judge also points out Sobell has no right to raise any question concerning violation of treaty rights as treaties are made between countries and unless a person becomes clothed with such rights he cannot object that the court has no jurisdiction. An individual can become clothed in such rights only if he is extradited for one offense and tried for another. The Judge points out that there is no question of the court's power to try Sobell for the offense charged.

(2) Sobell alleges the prosecution suppressed evidence, knowingly introduced perjured testimony, and made false representations to the court. The Judge reviewed all the evidence produced against Sobell, including the testimony of Inspector Huggins, INS, which is the testimony Sobell alleged was perjurious. The decision points out Huggins testified he made the notation "Deported from Mexico" on Sobell's manifest card from personal observation and he had not been told this by anyone. The Judge points out the testimony of Huggins was used to show Sobell was returned involuntarily and not that he was legally deported.

Enclosure

101-2483-1306

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ENCLOSURE

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Belmont memo for Boardman

Regarding the suppression of evidence relating to Sobell's "abduction," Judge Kaufman states there is no duty on a prosecutor to present to the court a question which an intelligent and well-represented defendent sees fit not to raise in his own behalf. The claim that two documents seized from Sobell at his arrest were suppressed is described by the Judge as "farcical on its face" as Sobell knew of this evidence, knew who had it, and made no attempt to obtain it. The decision discusses the two alleged misrepresentations made by U.S. Attorney Saypol and points out these were not misrepresentations, but even if they were they were made five days after the verdict was rendered and could not have influenced the jury and did not influence the court.

In his conclusion, Judge Kaufman states the motions are "utterly lacking in merit" (page 44). He continues the accusations and contentions of Sobell were not made to aid him but to "embarrass and injure our courts and country" (page 45). The Judge points out defense attorneys have a duty as officers of the court to insure that a motion under Section 2255 "not be stripped of its deep meaning through a corrosive process caused by repeated abuses of its processes" (page 45). The Judge described Sobell's petition as "lengthy and utterly meritless" and a "gross misuse of the judicial processes." In a footnote on page 47, Judge Kaufman points out that the FBI has a reputation for high standards of fairness, and these high standards were recently praised by the Court of Appeals, Second Circuit, in an opinion by Judge Frank, who is well known for his outspoken attacks on any form of police brutality.

ACTION: For your information.

Belmont 2

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

vs. : C. 134-245

MORTON SOBELL :

- x

O P I N I O N

IRVING R. KAUFMAN, D.J.

101-2483-1306

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA :

VS. : C. 134-245

MORTON SOBELL :

- X

A P P E A R A N C E S:

PAUL W. WILLIAMS
United States Attorney

- and -

ROBERT KIRTLAND and
MAURICE N. NESSEN
Assistant United States Attorneys
for the Government

DONNER, KINOY & PERLIN
Attorneys for Petitioner
Morton Sobell;
Frank J. Donner
Arthur Kinoy
Marshall Perlin
Benjamin Dreyfus and
Luis Sanchez Ponton,
of Counsel

IRVING R. KAUFMAN D.J.

On March 29,1951, a jury of eleven men and one woman found Morton Sobell guilty of conspiring to commit espionage by transmitting to the Soviet Union, intended for its benefit, "documents, writings, sketches, notes and information relating to the national defense of the United States." Their verdict was returned at the end of an exhaustive trial, at which Sobell's two extremely able attorneys and the able lawyers of his co-defendants, Julius and Ethel Rosenberg, skillfully but vainly tried to stem the avalanche of evidence against them. The trial was held in a manner which impelled the defense attorneys to compliment the Court for its fairness and courtesies on three separate occasions, and to state that the trial had been conducted "with that dignity and that decorum that befits an American trial." (1)

---

(1) At the start of his summation, Mr. E.H. Bloch stated:

"I would like to say to the Court on behalf of all defense counsel that we feel that you have treated us with the utmost courtesy, that you have extended to us the privileges that we expect as lawyers, and despite any disagreements we may have had with the Court on questions of law, we feel that the trial has been conducted and we hope we have contributed our share, with that dignity and that decorum that befits an American trial." (Printed Record, pp. 1452-53, hereafter R-1452-53).

Now five years later, Morton Sobell has petitioned this Court pursuant to 28 U.S.C. Sec.2255 to set aside this verdict and judgment, alleging that his constitutional rights have been violated and that the court was

---

(1) cont'd After the verdict of guilty was returned against all defendants, the same counsel was moved to say the following:

"Mr. E.H. Bloch: I would like to restate what I said when I opened to the jury. I want to extend my appreciation to the Court for its courtesies, and again I repeat I want to extend my appreciation for the courtesies extended to me by Mr. Saypol and the members of his staff, as well as the members of the FBI, and I would like to say to the jury that a lawyer does not always win a case; all that a lawyer expects is a jury to decide a case on the evidence with mature deliberation. I feel satisfied by reason of the length of time that you took for your deliberations, as well as the questions asked during the course of your deliberations that you examined very carefully the evidence and came to a certain conclusion." (R-1583).

Even at the time of sentencing counsel said:

"Mr. E.H. Bloch: ... I believe that in this posture of the case, in retrospect, we can all say that we attempted to have this case tried as we expect criminal cases to be tried in this country; we tried to keep out extraneous issues; we tried to conduct ourselves as lawyers, and I know that the Court conducted itself as an American judge." (R. 1603).

without jurisdiction to try him. The contentions now raised by Sobell relate to procedural and constitutional issues which do not go to the question of his guilt or innocence. Even if every one of the contentions now raised by petitioner was to be sustained, it would not follow that he is innocent.(2)

---

(2) Although the question of a petitioner's guilt or innocence is almost never material in a motion pursuant to Section 2255, I feel constrained to make this point clear, in light of the publicity which has been attendant upon this case over the years.

The finding of Sobell's guilt resulted from the collective and unanimous judgment of twelve conscientious jurors, who had an opportunity to observe the witnesses while they testified and thus adjudge their credibility. The importance of this opportunity to see and hear witnesses as they testify has been attested to time and again by our appellate courts. It is clear, therefore, that this so-called demeanor evidence is of prime importance and that those who have attempted to adjudge the credibility of the witnesses in this case without having observed them testify are proceeding on tenuous ground.

FORMER JUDICIAL PROCEEDINGS IN THIS CASE

The convictions of Sobell and his co-defendants were affirmed by the Court of Appeals for the Second Circuit in a detailed opinion which contained the following language:

> "Since two of the defendants must be put to death if the judgment stands, it goes without saying that we have scrutinized the record with extraordinary care to see whether it contains any of the errors asserted on this appeal." (U.S. v. Rosenberg and Sobell, 195 F. 2d,583, 590 (C.A.2,1952).

Thereafter, defendants filed a petition for a writ of certiorari to the United States Supreme Court, and this was denied. In the following two years, Sobell participated in two motions brought under Section 2255 of the Judicial Code, each seeking to vacate the judgment on constitutional grounds; both motions were found to be without merit and were denied in the District Court. The denials were affirmed on appeal by the Court of Appeals and a petition for a writ of certiorari filed after the first motion, was denied by the Supreme Court. After almost every-one of the above decisions, petitions for rehearing were also considered and denied. In addition, numerous applications for relief were made by the Rosenbergs, and although Sobell

did not join in them, it is worth noting that none of the attacks on the judgment was sustained.

This then is the background against which petitioner makes his present allegations and accusations of infringement of his constitutional rights. The record shows that in one form or another the case was before the United States Court of Appeals six times, always concluding with an affirmance, and before the United States Supreme Court six times on applications of one sort or another, always ending with the conviction remaining undisturbed, and this tally does not include the numerous proceedings at the District Court level and the various applications to other judges of the District Court.

SOBELL'S PRESENT CONTENTIONS

The basic factual allegations set forth in Sobell's moving papers are not new to this Court. Indeed, they were first raised five days after the verdict on a motion in arrest of judgment. The denial of that motion was specifically affirmed on Sobell's initial appeal to the Court of Appeals, and it was set forth as one of the grounds supporting his prayer for reversal in the defendant's first petition for certiorari to the Supreme Court, which was denied. He argues, however, that although certain of these allegations have been made before, the legal consequences

now urged as stemming from them have not been previously considered.

Despite the lack of novelty in petitioner's present assertions, and despite the numerous hearings he has been accorded, the Court has again painstakingly re-examined the record in the light of his instant allegations. Such is the way in which a democratic society administers justice--carefully, meticulously, and even repetitiously -- lest an error go undetected. Under our judicial system we impose a strong check upon the manner in which a prosecution may be conducted.

It is difficult to find a case in the history of American jurisprudence, or indeed in the judicial annals of any other country, where the defendants' convictions and contentions have received the attention of so many judges at so many levels of a judicial system, as well as that of the President of the United States on applications for executive clemency. Not a single legal recourse has been or will be denied to Sobell.

In his present petition, Sobell avers that he was kidnapped from Mexico by agents of the Mexican Secret Police who were acting under the orders of the FBI, and that he was thus forcibly and illegally returned to the United States against his will. He does not assert, however, that

this alleged abduction deprived this court of any jurisdiction over his person. On the contrary, he not only concedes that he waived any such claim (assuming he would have had one) but he also asserts that he would have returned willingly to stand trial.

The first argument he now makes concerning this so-called abduction is that it denied him the opportunity to return to the United States willingly, and that it was staged for the sole purpose of permitting the prosecution to represent to the jury that Sobell was a fugitive from justice. He asserts that when the government introduced evidence to show that he had been "deported" from Mexico, this was subornation of perjury on the part of the prosecutors, as they then well knew that Sobell had not been deported in accordance with established Mexican procedures. He alleges further that the government deliberately suppressed evidence relating to this abduction and made misrepresentations to the Court about it -- and that any one of these alleged improprieties, if established, would show a deprivation of petitioner's constitutional rights.

His second attack, set forth in a separate motion under Section 2255, is that this alleged kidnapping violated a treaty between the United States and Mexico. He argues that since this extradition treaty is the law of the

land, its violation deprived the courts of this country of jurisdiction over the subject matter of this offense. Since unlike jurisdiction over the person, lack of jurisdiction over the subject matter cannot be waived by a defendant, Sobell claims that this defect vitiated the entire trial, and that his conviction is a nullity.

THE LAW GOVERNING MOTIONS PURSUANT TO SECTION 2255.

Section 2255 of the Judicial Code permits a convicted prisoner to move to set aside the sentence if it was imposed in violation of the Constitution or laws of the United States, or if the sentencing court was without jurisdiction to impose that sentence. The court then has a duty to order a prompt hearing upon the petitioner's allegations "unless the motion and the files and the records of the case conclusively show that the prisoner is entitled to no relief."

In opposing the instant motions, the government has taken the position that Sobell's factual allegations regarding the prosecution's misconduct during the proceedings are completely contrary to the record, and that his legal arguments stemming from the allegations of his kidnapping are totally devoid of merit. In short, the government urges that Sobell's present allegations furnish no basis

for vacating his conviction either because of violation of his constitutional rights or because this court was without jurisdiction to try him, and thus no hearing on their veracity is necessary. In passing on these motions, therefore, the Court is required to accept all of petitioner's averments as true insofar as they are not inconsistent with the record. Pelley v. United States, 214 F. 2d 597 (C.A.7) cert. denied 348 U.S. 915 (1954); United States v. Sturm, 180 F. 2d 413 (C.A.7) cert. denied 339 U.S. 986 (1950.)

Basically, the petitioner's allegations are that he and his family went to Mexico City in the spring of 1950, where they resided openly and under their own name. On the night of August 16, 1950, he says agents of the Mexican Secret Police entered the Sobell apartment there and arrested him without a warrant. When he tried to resist, he adds, they beat him into unconsciousness and took him to an unidentified building where he was detained overnight - held completely incommunicado. The next day, he continues, he was forced to enter an auto with several of these agents, and they drove towards the border, stopping occasionally for the agents to make telephone calls -- presumably with regard to Sobell. When he reached the border bridge, a United States agent entered the car -- though still on Mexican territory -- and he rode with them to the U.S. Customs Office. There Sobell found that his wife and children had also been brought

back. He was "directed to sign a card", he says, and after his baggage was searched he was placed under arrest and taken to jail. He avers that this whole abduction was in violation of Mexican law and that the Mexican Secret Police had no legal authority to treat him in this fashion; -- he charges that they were merely acting as agents of the Federal Bureau of Investigation. He further avers that at the time of his seizure he had been planning to return to the United States -- his trip being but a vacation jaunt -- and this abduction prevented him from returning voluntarily.

With reference to his motion challenging the court's jurisdiction to try him, Sobell makes the further allegation that his expulsion was in violation of the Treaty of Extradiction between the United States of America and the United States of Mexico. 31 Stat. 1818. It is upon this last allegation that he bases his argument that this court was without jurisdiction to try him. I shall deal with that contention first.

MOTION I.
SOBELL'S CONTENTION THAT THIS COURT LACKED JURISDICTION TO TRY HIM.

It is Sobell's position that the United States breached the extradition treaty with Mexico in two ways; first, because the offense with which he was charged

was not among those enumerated in the treaty as extraditable[3], and second, because the manner of this removal from Mexico "flouted the treaty requirements for specified official removal arrangements with duly constituted authorities of the Government of Mexico and for proceedings under Mexican law to determine probable guilt and justification for removal." (Petitioner's Second Memorandum, p. 22). These two facts, he charges, operate to invalidate the subsequent proceedings against him, because "(a)n existing extradiction treaty fully controls the national power to conduct criminal proceedings involving alleged fugitives found in another treaty country. Absent treaty compliance, the power of the

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(3) Actually this first allegation is two-pronged: his first assertion is that espionage was not one of the crimes listed in the treaty and this is certainly true - although the conclusions he draws from that fact are incorrect. His second is that the treaty specifically excludes political offenses and he claims his was a political offense. This latter contention is, of course, completely meritless. Sobell was charged with and tried for conspiracy to commit espionage - a non-political crime. The fact that he was a Communist was introduced to show motive for the crime, because unless some reason for his actions were shown, such as devotion to the cause of the Soviet Union, it would be difficult to understand why an American would thus spy upon his country for the benefit of the Soviet. And the fact that Sobell and Elitcher were associated

nation -- and thus of its judiciary -- fails ab initio." (Petitioner's Second Memorandum, pp. 11-12). Further, Sobell contends, this lack of judicial power is not merely lack of jurisdiction over the person of the accused who has thus been wrongfully seized, it is total lack of judicial power over the subject matter of the offense.

This final argument defining the type of jurisdictional defect is vitally necessary to petitioner here, as concededly, any question as to the trial court's jurisdiction over his person was voluntarily waived by him, and the court's jurisdiction over his person has been specifically upheld by the Court of Appeals. Indeed, defense counsel stated on oral argument of this motion: "I am not here urging the matter of personal jurisdiction of the

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(3) cont'd. in this case also gave probative weight to Elitcher's story that he was approached several times by Rosenberg and Sobell to join their conspiracy; the fact that he was in sympathy with their ultimate cause undoubtedly was what impelled the defendants to trust Elitcher not to divulge their machinations despite his own decision not to take an active role. The jury was specifically and continually warned that Sobell was not being tried for Communism, and I might point out that the jury which was selected was one with which the defense indicated satisfaction before they had used up all their peremptory challenges.

defendant .... That was litigated .... and Judge Frank said they raised that too late and ... it had been waived. Your Honor, if we were dealing with the matter of personal jurisdiction, we are out of court." (Transcript of Oral Argument, p. 34 - hereafter T-34).

Accepting defense counsel's assertion, I find that this motion is raising the precise issue of personal jurisdiction, and that on that score alone, to paraphrase, Sobell is "out of court". Further, even assuming the jurisdictional question could be reached, I find that there was no violation of any treaty, that Sobell has no standing to raise this question and that the court properly had jurisdiction of his person.

A. THIS IS A QUESTION OF PERSONAL JURISDICTION

The entire question of the effect of this alleged kidnapping upon the legality of Sobell's trial was first raised by the defense by a motion in arrest of judgment made five days after the trial, at which time they submitted an affidavit setting forth the circumstances of Sobell's seizure. The motion was denied on the ground that if these facts existed, they were admittedly within the knowledge of defendant and his attorneys before and during the trial, and that the defense had made a deliberate decision not to call them to the court's attention. (R-1590-1595).

On appeal to the Court of Appeals, the question of the trial court's jurisdiction over Sobell was specifically argued in defendant's brief which cited United States v. Rauscher, 119 U.S. 407 (1886), and Cook v. United States, 288 U.S. 102 (1933), the two cases chiefly relied on in the present motion. Their contentions were rejected. Speaking through Judge Frank, the Court stated:

> "Sobell waived his right to challenge personal jurisdiction in this trial .... (H)e made no move to bring to light the facts of his alleged illegal abduction. He preferred to take his chances on the verdict, withholding his trump card until the trial was over. The Federal Rules of Criminal Procedure allow no such tactic." United States v. Rosenberg and Sobell, 195 F. 2d 583, 603 (C.A. 2) cert. denied 344 U.S. 838; rehearing denied 344 U.S. 889 (1952).

Despite that flat statement, the defendants contend that they are free to raise this question again because they now allege that this abduction deprived the Court of jurisdiction over the subject matter, and the Court of Appeals has not considered that point. It is difficult to see how counsel can make that argument in good faith in light of the fact that a court is duty bound

to raise the question of jurisdiction over the subject matter on its own motion, even if the issue is not placed before it, e.g. Defiance Water Co. v. Defiance, 191 U.S. 184 (1903); United States v. Bradford, 194 F. 2d. 197 (C.A. 2) cert. denied 343 U.S. 979 (1952), and here the operative facts and chief cases were brought to the Court's attention.(4) The contention that three extremely able and experienced judges -- Chief Judge Swan and Judges Chase and Frank -- did not consider this point because petitioner used the label "personal" jurisdiction, is not only an insult to their intelligence but it completely ignores the Court's specific statement that "(u)nder Rule 34, motions in arrest of judgment are allowed only (1) where the indictment charges no offense and (2) where the court has no jurisdiction over the offense charged. This situation we think, falls into neither category." 195 F. 2d at 603 (Emphasis supplied).

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(4) Indeed, both Sobell's brief on appeal and his petition for writ of certiorari set forth substantially the same arguments he now raises. Moreover, in his petition for certiorari, the allegedly misleading "personal" label was dropped from his discussion of the jurisdictional problems raised by the alleged kidnapping.

Further, Sobell's counsel concede that there would have been no question of the court's power to try Sobell for the offenses charged had it not been for the manner of his apprehension (T-95). Thus by counsel's own admission the only lack of power was that over Sobell's person, and the rule is clear that in a criminal case a court has jurisdiction of the subject matter if it has jurisdiction of the crime charged. Moreover, without exception, every single case which petitioner cites to uphold his position makes it patently clear that the jurisdictional question involved in all cases of irregular seizure of fugitives is the question of jurisdiction over the person of the defendant.(5) In the Cook case,

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(5) Johnson v. Browne, 205 U.S. 309 (1907); Cosgrove v. Winney, 174 U.S. 64 (1899); United States v. Rauscher, 119 U.S. 407 (1886); United States v. Mulligan, 74 F. 2d 220 (C.C.A. 2, 1934); United States v. Ferris, 19 F. 2d 925 N.D. Calif. 1927

All the other cases cited in petitioner's brief similarly point up the fact that irregular seizure raises solely the question of defendant's personal right to be free of the jurisdiction of an otherwise competent court. These other cases are not relied on by petitioner, however, as they are all completely contra to his present position, and he cited them only in an attempt to distinguish them. The futility of his attempt and the inapplicability of even those cases he has relied on will be discussed infra.

upon which defense relies so heavily, jurisdiction over a "person" was not involved as the case concerned the court's jurisdiction to forfeit a British vessel, illegally seized on the high seas, and it was clear that the sole question was the court's power over the specific vessel.(6) Further, in every one of the cases where relief was granted, the jurisdictional issue was timely raised.(7) Indeed in the case of Ford v. United States, 273 U.S. 593 (1927) - a case on all fours with Cook -- petitioners were denied relief because the jurisdictional question had not been raised on time. It is apparent, therefore, that no jurisdictional question other than that of personal jurisdiction was raised by the problem of irregular seizure, or else the Court would not have found a waiver.

It is clear that petitioner's present

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(6) I shall spell out the details of the Cook case, infra.

(7) See the five cases cited in footnote (5) supra and United States v. Cook, supra

argument re jurisdiction is but a twice-told tale in new semantic guise. He seems to believe that by the mere device of changing attorneys and relabeling his claims, he may return to court time after time with the same basic argument. The petitioner speaks of justice, "(b)ut justice though due to the accused, is due to the accuser also,"(8) and it is due also to the Court which in its role of defender of justice must conscientiously wade through the voluminous briefs, affidavits and cited materials seeking merit in a contention so devoid in legal basis as to make its presentation tantamount to an abuse of process.

B. THE TRIAL COURT HAD JURISDICTION

Although the fact that this motion is but another attack on the court's personal jurisdiction is sufficient reason in itself to deny the first petition, I find that the jurisdictional argument presented is totally lacking in merit, and I shall briefly consider it here, regardless of the principles of waiver and res judicata, lest petitioner urge that he is being deprived of his freedom of a mere technicality. Although this Court cannot consider these basic rules of waiver and res judicata to be "a mere technicality", nevertheless in the case of this petitioner

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(8) United States v. Insull, 8 F. Supp. 310, 313 (N.D. Ill. 1934)

I prefer that my decision not be based solely upon these fundamental legal principles but that it also rest upon a consideration of the merits.

Petitioner's contention with regard to this jurisdictional question is that his seizure violated a treaty, and the courts are bound to uphold the treaty which is the law of the land by finding the United States government to be devoid of power to proceed against him. He argues that Cook v. United States, 288 U.S. 102 (1933) is controlling here. In that case, the United States had seized a British vessel on the high seas and had started forfeiture proceedings against it for violation of the prohibition laws. Because of the liquor smuggling problem during prohibition, the United States and Great Britain had entered into a treaty which permitted British ships to enter United States ports with personal liquor stores on board in return for permitting the United States to seize British smugglers while still on the high seas, if they were within one hour's sail of this country. The ship Mazel Tov had been seized beyond that distance; thus the seizure had been in direct violation of the treaty provisions and the court held that it had no jurisdiction to condemn the vessel. The court at that time distinguished situations where American ships had been seized in foreign waters for violation of American law. Such seizures were

in violation of international law, but the Court said this did not operate to deprive the courts of jurisdiction. The Richmond, 13 U.S. (9 Cranch) 102 (1815); The Merino, 22 U.S. (9 Wheat.) 391 (1824). Thus the distinction that petitioner relies upon is that where a specific treaty is violated, as opposed to general international law, the courts will find themselves powerless to act.

This distinction is vital to his argument, as he leans upon it entirely in his attempt to avoid the controlling principle of law which the courts of this country have followed for seventy years. The rule is that a seizure of a fugitive on foreign soil in violation of international law will not deprive the courts of the offending state of jurisdiction over the person of the fugitive when he is brought before them. The question of violation of international law, they have continuously reiterated, is to be left to the proper consideration of the political and executive branches of the government should the offended state choose to raise the issue. (9)

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(9) Ker v. Illinois, 119 U.S. 436 (1886); United States v. Dixon, 73 F. Supp. 683 (E.D. N.Y. 1947);

In In re Johnson, 167 U.S. 120, 126 (1897) the Court used the following language to explain its rationale:

> "The law will not permit a person to be kidnapped or decoyed within the jurisdiction for the purpose of being compelled to answer to a mere private claim, but in criminal cases the interests of the public override that which is, after all, a mere privilege from arrest."

This principle has been followed again and again, in case after case involving charges of illegal abduction of a criminal defendant from another state or country -- cases which petitioner has tried to distinguish on erroneous grounds completely contrary to the language of the courts themselves (See cases cited footnote (9) Supra). This principle was most recently re-affirmed in Frisbie v. Collins, 342 U.S. 519 (1952). That case - decided after McNabb v. United States, 318 U.S.332

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(9) Cont'd United States v. Insull, 8 F. Supp. 310 (N.D. Ill. 1934);
Ex parte Lopez, 6 F. Supp. 342 (S.D.Texas 1934);
United States v. Unverzagt, 299 Fed. 1015 (W.D. Wash. 1924); aff'd 5 F. 2d 492 (C.C.A.9), cert. denied 269 U.S. 566 (1925).

This listing does not include the numerous decisions reaching similar conclusions regarding interstate abductions, e.g. Pettibone v. Nichols, 203 U.S. 192 (1906); Mahon v. Justice, 127 U.S. 700 (1887).

See also 1 Moore on Extradition, Chap. VII., Irregular Recovery of Fugitive.

(1942) had extended the courts' role as supervisors of the administration of justice - indicated clearly that not only are there no jurisdictional issues raised by such abductions but there are no due process problems involved either. Speaking for a unanimous Court, Mr. Justice Black stated:

> "This Court has never departed from the rule announced in Ker v. Illinois, 119 U.S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction'. No persuasive reasons are now presented to justify overruling this line of cases They rest on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will."

One exception to this general rule follows where the United States has invoked an extradition treaty in order to compel a foreign state to surrender a fugitive. In such circumstances, if the United States then tries the fugitive for a crime other than the one for which extradition was granted, it will be held to have violated the contractual obligations of the treaty and the courts will find themselves to be without jurisdiction over the defendant, unless he waives

this issue. This rule was enunciated in United States v. Rauscher, (supra); and followed in United States v. Mulligan (supra); Cosgrove v. Winney (supra) and Johnson v. Browne, supra. The compatibility of the Rauscher and Ker doctrines is illustrated by the fact that both were decided on the same day with the same Justice writing for the Court. Ker clearly distinguished the Rauscher situation as one in which the fugitive is clothed in the rights of the treaty.

It is patently obvious that Sobell is clothed in no such treaty rights. He urges that the fact that there was an extradition treaty in force in itself protected him from seizure or surrender save with reference to it and that his seizure was thus violative of its provisions. This same argument was made by Ker who was kidnapped from Peru by a United States emissary despite the existence of an extradition treaty, and his contentions were rejected. The Court pointed out that the sole obligation the surrendering state undertakes in an extradition treaty is that it will bind itself to extradite fugitives sought for certain enumerated offenses, where formerly it could have used its own discretion. And the sole obligation of the demanding state is that if it invokes formal extradition proceedings, it will try the surrendered fugitive only for the specific crime charged. Informal expulsion procedures are still available to the

surrendering state both for enumerated and certainly for non-enumerated crimes, see IV. Hackworth, Digest of International Law, Chapter XII.; and if the demanding state recovers its fugitives through illegal channels in violation of another nation's sovereignty, that creates a question for the political branches of the government, but does not raise any concerning judicial jurisdiction. See Moore, op. cit.

Thus the petitioner is certainly not within the rule of the Rauscher case, nor is his situation even remotely similar to that of the British ship seized in Cook.(10) Further, his own allegations indicate that the Mexican Police were the chief actors in his abduction, although he charges that they were acting illegally. This means his argument is blocked also by the rule that even a diplomatic demand for the return of an illegally seized fugitive need not be honored where officials of the asylum state took part in the illegal seizure. Note, Kidnaping of Fugitives from Justice on Foreign Territory, by Lawrence Preuss, 29 American Journal of International Law 502, 507 (July 1935). It is noteworthy that the petitioner has not even suggested that

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(10) The sole remaining case cited by Sobell as supporting his position is United States v. Ferris, 19 F. 2d 925 (N.D. Calif. 1927), and that case is on all fours with Cook.

such a demand was ever made by Mexico.

It is clear that Sobell's argument that this Court lacked jurisdiction to try him because of his alleged illegal abduction would have been rejected as completely fallacious even had it been timely raised, and this is undoubtedly the reason his adroit lawyers refrained from making this motion among their numerous other applications for pre-trial relief.

Since the trial courts undoubtedly had jurisdiction over the subject matter, we shall now proceed to examine the second motion in order to determine whether the prosecution's actions were of such a nature as to deprive the petitioner of his constitutional rights, and vitiate the proceedings.

II. SOBELL'S CONTENTION THAT HE WAS DENIED DUE PROCESS OF LAW.

Sobell's contentions here are that the prosecution suppressed evidence, knowingly introduced perjured testimony and false evidence, and made misrepresentations to the court.(11) Since his contentions are based in

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(11) The law is clear that if the prosecution knowingly either introduces perjured evidence against a defendant, or suppresses evidence favorable to him or makes misrepresentations to the court during the

part upon occurrences at the trial, I shall set forth the relevant background briefly.

The direct evidence against Morton Sobell fell into two categories. First, Max Elitcher, a close friend, testified that Sobell had taken an active part in the conspiracy and had attempted to get him to reveal secret information concerning the national defense. This testimony was totally damning and convincing to the jury, and he was subjected to an intensive and exhaustive cross-examination by the attorneys for both defendants.(12) The court charged the jury specifically that they were to acquit Sobell if

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(11) cont'd trial, that defendant is entitled to relief pursuant to Section 2255. The cases cited by petitioner all merely illustrate these well known maxims by which I must be guided. I do not set them forth at length here because there is no controversy as to the guiding rules of law, there is merely a question as to whether petitioner's allegations make out a case under them.

(12) Elitcher's cross-examination lasted two days and occupied 121 pages in the printed record. R-264-379, R-388-394.

they did not believe Elitcher. The jury convicted. In short, the defendant was clearly proven to be an arch conspirator with the Rosenbergs in their plan to commit espionage against the United States by trafficking in our deepest military secrets -- a crime of the highest magnitude.

The second category of evidence against Sobell related to his intent to flee the country. It had been brought out previously by David Greenglass that Julius Rosenberg, the head of the espionage ring, had urged him and his family to flee if the FBI started to close in, and had given Greenglass $4,000. to flee to Mexico and thence to Europe via Tampico. (R-522-537). Subsequently, it was established that Sobell had gone to Mexico with his family in the spring of 1950. He had gone openly and under his own name;[13] however, it was shown without contradiction

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(13) It is noteworthy that the prosecution made no mention of Sobell's manner of departing from this country, and that his own attorneys did not see fit to introduce the airline manifests which showed that the family had traveled under its own name, although the defense did argue this point in summation. (R-1502-1504).

that while in Mexico Sobell had traveled to both Tampico and Vera Cruz using aliases; that he had inquired as to how he might leave Mexico for Europe without proper papers; that while in Tampico and Vera Cruz he had enclosed letters to his wife in Mexico City in unmarked envelopes sent to a neighbor; and that while in Mexico he had sent letters to his family in America, not directly, but enclosed in envelopes which listed false names as return addressees, and he had sent these envelopes to a friend requesting that he forward the letters. These facts were brought out by six disinterested witnesses, and the defense made no attempt to cross-examine them and even conceded the use of several of these different aliases.

William Danziger, an old friend of Sobell's, testified that he had received letters from an M. Sowell and M. Levitov as the return addressees residing in Mexico; that he had opened them and found a note from Sobell requesting that he forward the enclosed letters to other members of the Sobell family. Sobell also requested Danziger to tell another relative that Sobell could be reached under the name of M. Sowell at a specified street address in Mexico. Danziger was not cross-examined. (R-857-867).

Thereafter, the government called to the stand Manuel Giner De Los Rios, a neighbor of the Sobells in Mexico City. De Los Rios testified that Sobell had approached him for information as to how a person could leave Mexico without papers, saying that he was afraid to return to the United States because he did not want to go back into the Army, having already experienced one war. (R-922). It was subsequently shown that Sobell had never been in the Army, having been continually deferred. (R-955). De Los Rios also testified that Sobell had left his family and traveled to both Tampico and Vera Cruz. He knew this because during Sobell's absence, he had received two unmarked envelopes bearing postmarks from those two cities; inside each he found a letter beginning "Dear Helen" (the name of Sobell's wife), and he had turned both letters over to Mrs. Sobell. Again there was no cross-examination. (R-924-926).

Subsequently, Minerva Bravo Espinosa, a clerk in a Vera Cruz optical store, testified that Sobell had ordered a pair of glasses from her using the name M. Sand, and defense counsel conceded this fact. (R-927-930). Similarly, Jose Broccado Vendrell testified that Sobell had registered at his hotel in Vera Cruz as Morris Sand;

again this fact was conceded and there was no cross-examination. (R-931-932). Dora Bautista, a hotel clerk in Tampico, testified that Sobell had registered in her hotel as Marvin Salt, and this too was conceded. (R-933-934). Glenn Dennis, an official of the Mexican Airlines, was called to testify, and via his testimony and defense concessions it was established that Sobell had flown from Vera Cruz to Tampico under the name of N. Sand, and from Tampico to Mexico City under the name of Morton Solt. (R-935-938).

Not once during the trial did the defense attempt to explain the strange actions of this man and thus eradicate the impression of flight and guilty consciousness thus created. In summation defense counsel merely referred to these actions as "a brainstorm" which he said was none of anyone's business. (R-1503-1504).

Immediately after these "flight" witnesses were called, the government attempted to introduce an immigration manifest card noting Sobell's return to the United States; the card was marked "deported from Mexico". The government attempted to introduce it as a record made in the ordinary course of business by the Immigration Service, but upon objection, the card was not allowed into evidence until the following day when James S. Huggins, the Immigration Inspector who had filled out the card, was flown to New York from Texas

to authenticate it. He testified that the card was made out in the regular course of his duties, that he had obtained the information on it from Sobell himself when Sobell was brought to the border, except for the information regarding Sobell's "deportation". He explained that he had made the notation based on his personal observation that Sobell had been brought across the border by Mexican police. Despite repeated insistent questioning by defense counsel, he never suggested that he had made the entry because of any official information given him by the Mexican authorities or agents. He reiterated that the entry was based solely upon his observations at the time, and that he obtained Sobell's signature by telling him that all deportees must sign such cards. (R-1025-1037).

It is largely upon Huggins' testimony that petitioner bases his claims regarding suppression of evidence and perjury.

A. THERE WAS NO PERJURY

It is the petitioner's contention that Huggins perjured himself when he testified that Sobell had been deported as he then well knew that Sobell's seizure had been contrary to Mexican deportation procedure; and the prosecution was allegedly in possession of this information

also. Petitioner urges that this was harmful as it erroneously gave the jury the impression that Sobell's expulsion had been ordered after Mexico had made a prior determination of his guilt via a legal deportation proceeding.

This contention is clearly refuted by the cold record which shows that time after time Huggins insisted that his notation was not based on official sources, but was based solely upon his own observations of Sobell's summary ejection. It is entirely clear that he was using the word "deported" to mean expelled or ejected, and clearly even Sobell must have understood the notation to have that meaning as he himself signed the card when told that all deportees must do so.

It should also be noted that in summation, Mr. Kuntz, Sobell's attorney, pointed out that Sobell had not been legally deported from Mexico; he argued that if Sobell had been deported the government would have shown it by other more competent evidence. (R-1505-1506). When Mr. Saypol, the prosecutor, summed up, he nowhere stated -- or even inferred -- that Sobell had been legally deported, but stated instead that "the FBI caught up with him and brought him back and you have him here." (R-1534). Patently, this does not show an attempt by the prosecution to create the impression of legal deportation as is now charged. Manifestly, it was the

prosecution's intention to use Huggins' testimony to point up that Sobell's return to this country had been involuntary. Thus it was the natural capstone to the clear and convincing testimony regarding Sobell's attempt to flee. Obviously, the defense attorneys also believed this was the sole purpose of introducing that evidence. They did not even attempt to bring the question of improper deportation procedures to the attention of the Judge out of presence of the jury -- a device they had frequently employed throughout the trial -- despite the fact that 24 hours elapsed between the time defense counsel saw the immigration manifest and the time that it was finally introduced into evidence via Huggins' testimony.(14)

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(14) Upon oral argument of the present motion, the petitioner's counsel made an issue of the fact that the prosecutors have not submitted affidavits with regard to their purpose in introducing Huggins' evidence. This type of argument completely disregards the cold, stark reality, that it is not what the prosecution intended that matters but what Huggins actually said and did. And I am sure that had such affidavits been introduced to show that the prosecution sought only to establish involuntary return, not legal deportation, the petitioner's attorneys would have insisted just as vehemently that the prosecutors' state of mind was completely immaterial.

Clearly Huggins' testimony was not perjurious, nor was the manifest false, as it could rise no higher than Huggins' explanation regarding the "deportation" notation. Thus petitioner's allegations of perjury are completely unfounded.

B. THE GOVERNMENT DID NOT SUPPRESS ANY EVIDENCE

(1) It did not suppress evidence regarding Sobell's alleged abduction.

Sobell's first contention regarding suppression of evidence is that the government suppressed the fact that he had been illegally abducted, both before trial and during it. I shall first deal with the prosecution's conduct before trial.

It is hornbook law that the prosecution cannot suppress evidence or facts if they are known to the defense, and if it is true that Sobell was abducted, this fact was clearly and admittedly within the possession of Sobell and his counsel before the trial. Indeed, his affidavit makes it clear that Sobell knew that this alleged illegal seizure was highly irregular. The petitioner now alleges that the defense was not in possession of sufficient facts showing that the FBI had instigated this procedure as is charged now -- but this is hard to believe in light of Sobell's assertions in his first affidavit, submitted in

support of his motion in arrest of judgment, - that an FBI agent was waiting for him on the Mexican side.

Further, there is no duty upon a prosecutor to present to the court a question which an intelligent and well-represented defendant sees fit not to raise on his own behalf, and which if raised, would be based necessarily on an argument that the Supreme Court should reverse a 70 year old rule of law.(15)

Dealing next with the contention that the prosecution should have brought out the facts regarding the alleged kidnapping during the trial -- I cannot see in what way this would have been beneficial to Sobell, nor quite obviously, could Sobell's trial attorneys for they saw fit not to raise the issue before or during the trial. Even if this story might have created some sympathy for the defendant, it was incumbent upon the defense to raise this issue, if indeed the embellishments were not a figment of Sobell's imagination.

Since the defense had not seen fit to object to Sobell's alleged abduction, there was no ground upon which

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(15) That this jurisdictional issue could be waived and that the law would have been contrary to the petitioner's assertions, assuming he had decided to raise this issue, was spelled out in my discussion of his first motion infra.

evidence regarding his involuntary return could be kept out, and as I previously pointed out, Huggins did not perjure himself. He merely stated that Sobell had been brought to the border by Mexican Secret Police and he stated further that the FBI was waiting for him.

The petitioner now contends that to rebut Huggins' testimony of seemingly routine expulsion, the defense would have had to put Sobell on the stand and that forcing this choice was unconstitutional. There are three grounds for rejecting this argument, each sufficient in itself.

First, factually, this is not so. There were other available means of telling Sobell's story: (a) Sobell's own affidavit attests that Mrs. Sobell was a witness to the abduction; she was in court, but Sobell saw fit never to ask her to testify. (b) The record indicates that the defense had subpoenaed certain Mexican official documents -- but decided not to introduce them. Indeed, a representative of the Mexican government was in court and was excused by the defense. (c) The defense did not even cross-examine Huggins on this point in an attempt to elicit from him that Sobell was in an obviously dazed condition, garbed in blood spattered clothes and that he complained to Huggins of his mistreatment, as

petitioner now avers. As the Court of Appeals for the District of Columbia Circuit stated in Smith v. United States:

> "The right to impeach ... witnesses and to bring out on cross-examination the facts as to the alleged misconduct of the police are safeguards of appellant's right under the due process clause to a fair trial." 187 F. 2d 192, 199 (C.A.D.C. 1950) cert. denied 341 U.S. 927 (1951)

Second, the fact that Sobell might have had to take the stand to present his story does not mean he was denied his rights.

> "The Constitution safeguards the right of a defendant to remain silent; it does not assure him that he may remain silent and still enjoy the advantages that might have resulted from testifying." Stein v. N.Y. 346 U.S. 156, 177 (1953).

And it is obvious that Sobell had more to explain than just the testimony of Huggins; Huggins' notation that he was "deported" from Mexico would have been practically meaningless except in the context of the other witnesses regarding his flight; witnesses to whom I have referred and whose testimony Sobell does not challenge even now. It is interesting to note that Sobell's first attempt to explain his actions in Mexico came in an affidavit submitted on his original appeal to the Court of Appeals, a most unusual procedure, wherein he stated that the arrest of Julius Rosenberg made him think America was about to enter a state of totalitarian

repression of free speech, that he decided to flee and used aliases trying to find out how to leave Mexico illegally and that he then changed his mind. This belated explanation was never put before the jury, as he and his attorneys undoubtedly decided it would be wiser not to do so. Sobell may not now be heard to urge that he is entitled to a new trial because the defense strategy on the first trial was not as soundly based as second guessing and fictional fantasies subsequently created indicate to him that it might have been.

> "(It is) of the essence of orderly trials that the right to counsel accorded to defendants by the constitution be not regarded, as the argument here would seem to regard it, as a mere one way street such that, if the strategy and tactics of his trial counsel, in determining not to raise constitutional questions, prove unsuccessful, defendant ... may many years later set it aside in order that, on another trial with another counsel, another course raising these questions may be taken and so on ad infinitum." Bowen v. United States, 192 F. 2d 515, 517 (C.A. 5, 1951) cert. denied 343 U.S. 943 (1952).

This principle set forth in Bowen is equally applicable to the third grounds for rejecting Sobell's argument. Even assuming that the introduction of the evidence regarding his testimony was improper -- and I have pointed out that this is not the case -- he is barred from

raising that question now. Time after time the courts have held that whenever knowledge was in the possession of defense counsel during trial of facts which either established the impropriety of certain evidence, or even cast doubts upon its admissibility, they are barred from raising this question on a motion to vacate judgment. Questions on the admissibility of improper evidence may be raised solely upon appeal from the conviction.(16)

> "Where parties, even in a criminal case, knowingly and deliberately adopt a course of procedure which at the time appears to be to their best interest, they cannot be permitted at a later time, after a decision has been rendered adverse to them to obtain a retrial according to procedure which they have voluntarily discarded and waived." Carruthers v. Reed, 102 F. 2d 933 (C.A. 8) cert. denied 307 U.S. 643 (1939).

(2) No other evidence material to Sobell's case was suppressed.

The petitioner also contends that two documents which were seized from him at the time of his abduction were suppressed; they are his tourist card and a vaccination certificate. This contention is farcical on its

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(16) United States v. Lawrence, 216 F. 2d 570 (C.A. 7, 1954); Dauer v. United States, 204 F. 2d 141 (C.A. 10) cert. denied 346 U.S. 889 (1953); Klein v. United States, 204 F. 2d 513 (C.A. 7, 1953); Smith v. United States, 187 F. 2d 192 (C.A.D.C. 1950) cert. denied 341 U.S. 927 (1951)

face, as Sobell knew of the evidence. He also knew who had it and never sought its production, though he sought the production of numerous other documents. Further, the two items in question were not material to petitioner's case.

The first of these, his tourist card, could have established merely that Sobell went to Mexico under his own name; this was never denied or mentioned by the pro - secution, and was specifically referred to by Mr. Kuntz in summation. Further, defendant's exhibits in this motion indicate that Sobell's attorneys had manifests of the airline on hand which clearly show ed he traveled in his own name. They obvio usly decided, for trial strategy, not to introduce them.

As for the vaccination certificate, Sobell claims this shows he intended to return to the United States as it would be necessary for re-entry; he neglects to mention that this was an international certificate equally valid and equally necessary for entry into many foreign countries.

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(16) cont'd. Hilliard v. United States, 185 F 2d 454 (C.A.4,1950); Howell v. United States, 172 F. 2d 213 (C.A.4) cert. denied 337 U.S.906 (1949); United States v. Kranz, 86 F. Supp. 776 (D.N J. 1949); United States v. Cameron, 84 F. Supp. 289 (S.D. Miss. 1949)

C. THE PROSECUTION MADE NO MISREPRESENTATIONS TO THE COURT.

Both alleged misrepresentations which I shall hereafter set forth, were made to the Court by Mr. Saypol after the verdict had been rendered, upon argument of the motion in arrest of judgment. It is difficult to see how by the wildest stretch of the petitioner's vivid imagination these comments could have influenced the jury's verdict. Moreover, his comments had no effect on post-trial proceedings. Aside from my own personal recollections, it is clear from the record that Mr. Saypol's remarks were completely immaterial to the reasons behind the initial denial of the motion in arrest of judgment; the denial was based solely upon waiver, and Mr. Saypol's remarks did not deal with that question. Finally, even if Mr. Saypol's remarks could conceivably be considered as having had any influence upon the trial court- to say nothing of the Court of Appeals' later independent determination of this question -- any possible harm done was negatived by the fact that petitioner has here been given an opportunity to relitigate in full the questions he raised on that first motion.

Since the remarks charged to Mr. Saypol were not false, however, and since I do not like to see men smeared by baseless accusations, I shall deal with them briefly.

First, when Sobell's initial petition was read to the Court on the motion in arrest of judgment, it contained language to the effect that, when arrested, Sobell had tried to show the agents his visa. Mr. Saypol pointed out "this very affidavit contains a falsehood in the statement that there was exhibited amongst other things to the Mexican authorities visas. Counsel ought to know that his client never went into Mexico with a visa." (R-1598). That Sobell never had a visa is now conceded by his attorneys; he had a tourist card, and there is an appreciable difference between the two.

Second, Mr. Saypol is charged with having told the Court that Sobell was "kicked out" as a deportee, whereas in fact, Sobell was not legally deported. Mr. Saypol's statement has been lifted completely out of context; he made that comment when characterizing the contents of Sobell's own affidavit. He stated: "The whole affidavit portrays certainly that this defendant was not honorably escorted from Mexico but that literally he was kicked out as a deportee." That sentence speaks for itself.(17) (R-1598-1599).

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(17) It is also interesting to compare petitioner's present unfounded accusations against the prosecution with the statement by his defense counsel after the jury delivered its verdict. Mr. Kuntz stated: "I want to say to Mr.

C O N C L U S I O N

My consideration of the contentions urged in petitioner's second motion leads me to the conclusion that they are as utterly lacking in merit as are his contentions regarding the Court's lack of jurisdiction. (18)

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(17) cont'd Saypol as an officer of this court, as one officer to another, I am willing to shake his hand after a job that we both had to do." (R-1583)

(18) In short, I am led to the same conclusion that was reached by my colleague Judge Ryan after he had examined the contentions of all three defendants on their first motion pursuant to Section 2255.

"I have concluded ... that the petitioners are entitled to no relief, that the court which rendered judgment had jurisdiction, that the sentences imposed were authorized by law and are not otherwise open to collateral attack on any of the grounds urged by the petitioners, and that full and complete enjoyment of the constitutional rights of petitioners has been extended them and has in no way been denied or infringed." United States v. Rosenberg and Sobell, 108 F. Supp. 798, 800 (S.D.N.Y.), aff'd. 200 F. 2d 666 (C.A.2, 1952), cert. denied 345 U.S. 965, rehearing denied, 345 U.S. 1003 (1953).

This petition is so entirely devoid of merit that perhaps it has been unduly dignified by the minute consideration and analysis it has received in this opinion. However, an effort has been made to lay to rest with finality baseless contentions and accusations which have been repeated not primarily to aid the petitioner but rather to embarrass and injure our courts and country.

The ancient writ of habeas corpus -- to which Section 2255 is analogous -- is one of the basic safeguards of America's freedom. Its purpose is to ensure that no man may be held in confinement in violation of due process of law, and it imposes a strict duty upon all officials connected with the government -- state, local or national. But there is an equal duty imposed upon attorneys whose obligation it is to uphold the law, and the dignity and integrity of the courts. It is their duty as officers of the court to ensure that this great writ shall not be stripped of its deep meaning through a corrosive process caused by repeated abuses of its processes. Four lawyers argued these motions for Sobell, California counsel among them, and petitioner also had the services of an expert on Mexican law. The two legal memoranda submitted, which ran to over one hundred pages, and the numerous lengthy affidavits and exhibits indicate that an inordinate amount of time, money, effort and ingenuity was put into this motion on petitioner's behalf. If Sobell

were an unlettered prisoner, friendless and without funds, attempting to cry out "unfair", his lengthy and utterly meritless petition might not be such a gross misuse of the judicial processes.

Under the governing rules of law, Sobell has been given the benefit of any doubt. For that reason all his allegations concerning the alleged brutality and illegality of his abduction were assumed to be true for the pruposes of these applications. Therefore, I have not considered in this opinion the question of his veracity. But I find it difficult to believe that a man who was seized and blackjacked, as he claims, would not have immediately shouted out this injustice to the world and would have held silent for six months prior to his trial and then throughout the trial, holding back his story as a sort of trump card. Experience dictates that human beings do not re-act that way.

The ease with which the petitioner tars all associated with the prosecution in the face of a clear record which proves the contrary is truly startling. As was recently said of another prisoner who engaged the courts endlessly with meritless petitions, " 'He is smart, shrewd and resourceful.' Thus he knows how to make

charges so wild ... as to induce a concern for their refutation that otherwise he would not command." United States v. Tramaglino, Court of Appeals for the Second Circuit, June 4, 1956.

From petitioner's unfounded attacks against the men who conducted the prosecution of his case, it is obvious that he believes in the broadside attack, painting with broad stroke and recklessly maligning all who participated in the process of bringing him to justice.(19)

During the course of my deliberations on this matter, as on other matters involved in this case from its inception, there have been many attempts to bring extra-judicial utterances and actions to my attention. Many of these have been designed to influence judicial determination in a way that is alien to our judicial process --- and in some instances they constituted a subtle attack upon it. Freedom of speech should and does permit untrammeled discussion and differences of opinion, but judicial impartiality requires that the courts be free from extraneous and con-

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(19) In this connection, it is interesting to note that the petitioner brands the FBI as an agency of oppression, ignoring its reputation for high standards of fairness. These high standards were recently praised by the Court of Appeals for this Circuit in an opinion by Judge Frank, who is well known for his outspoken attacks on any form of police brutality. See United States ex rel. Santo Caminito v. Murphy, 222 F. 2d 698, 703-704 (C.A.2,1955).

flicting pressures. Therefore, the American judicial system has evolved its own safeguards and procedures for arriving at the truth -- procedures which have withstood the test of the centuries. These procedures and safeguards have been the sole guideposts for this Court.

The motions and the files and records of this case show conclusively that the prisoner is entitled to no relief. Motions denied.

Dated: New York, N.Y.
June 20,1956.

IRVING R. KAUFMAN
U.S.D.J.

4-750 (Rev. 4-17-85)

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OF THE
UNITED STATES OF AMERICA
American Embassy
Paris 8, France

SECRET

Date: June 29, 1956

To: Director, FBI (101-2483)

From: Legat, Paris (65-356)

Subject: MORTON SOBELL, was
ESPIONAGE - R

Reourlet 5/11/56.

On 6/28/56 this case was discussed with [redacted] (6) [redacted] who advised that there have been no new developments in instant matter. b1

Reportedly, the French services are continuing their investigation, and the Bureau will be promptly advised of any pertinent information received.

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TO : DIRECTOR, FBI

DATE: 7/6/56

FROM : SAC, NEW YORK (100-37158)

SUBJECT: MORTON SOBELL
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Enclosed herewith are ten copies of a Tamiment Institute Public Service pamphlet entitled, "A New Look At The Rosenberg-Sobell Case," by NATHAN GLAZER.

This is being furnished for the Bureau's information.

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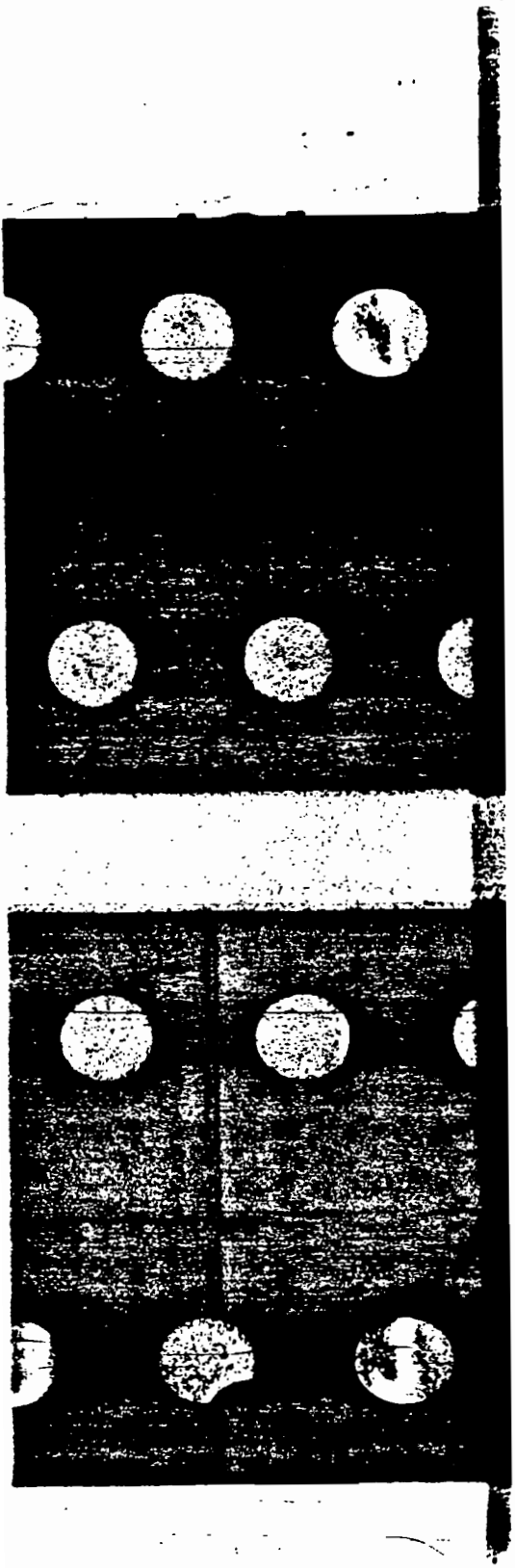

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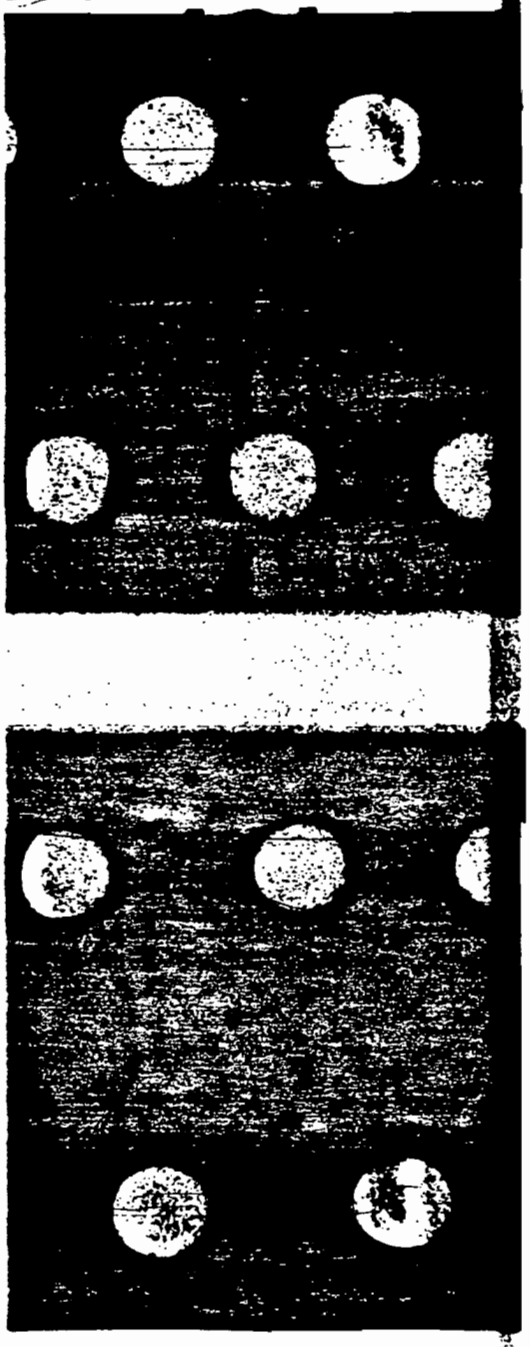
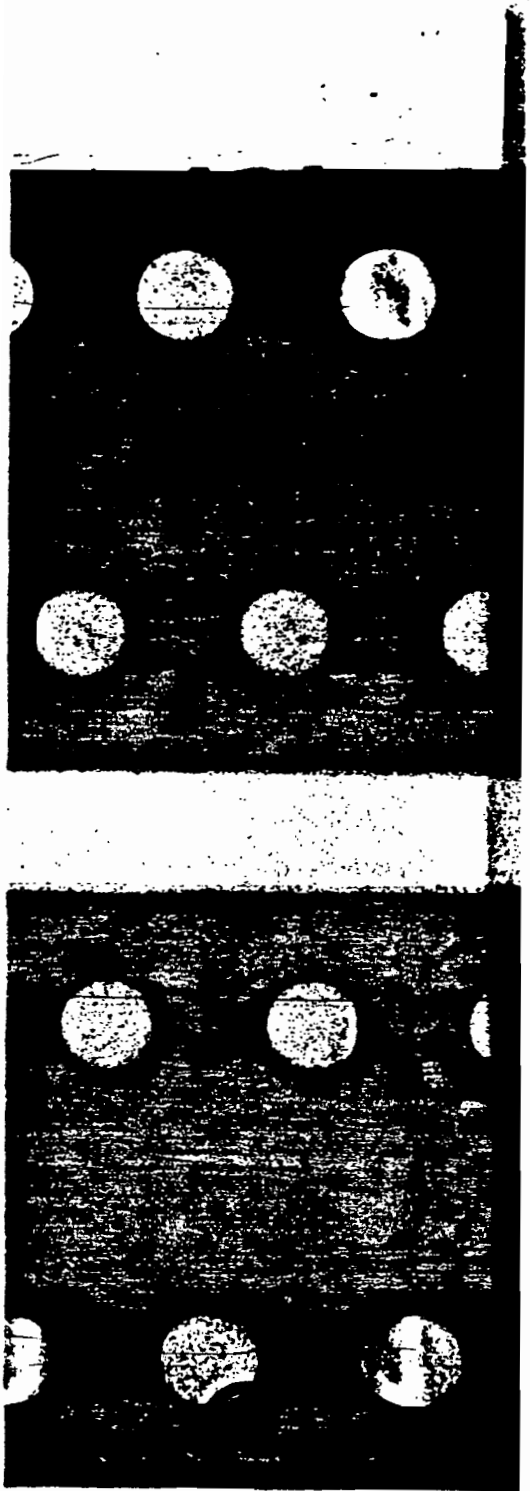


A TAMIMENT INSTITUTE
PUBLIC SERVICE PAMPHLET

A New Look at

THE ROSENBERG-SOBELL CASE

By NATHAN GLAZER

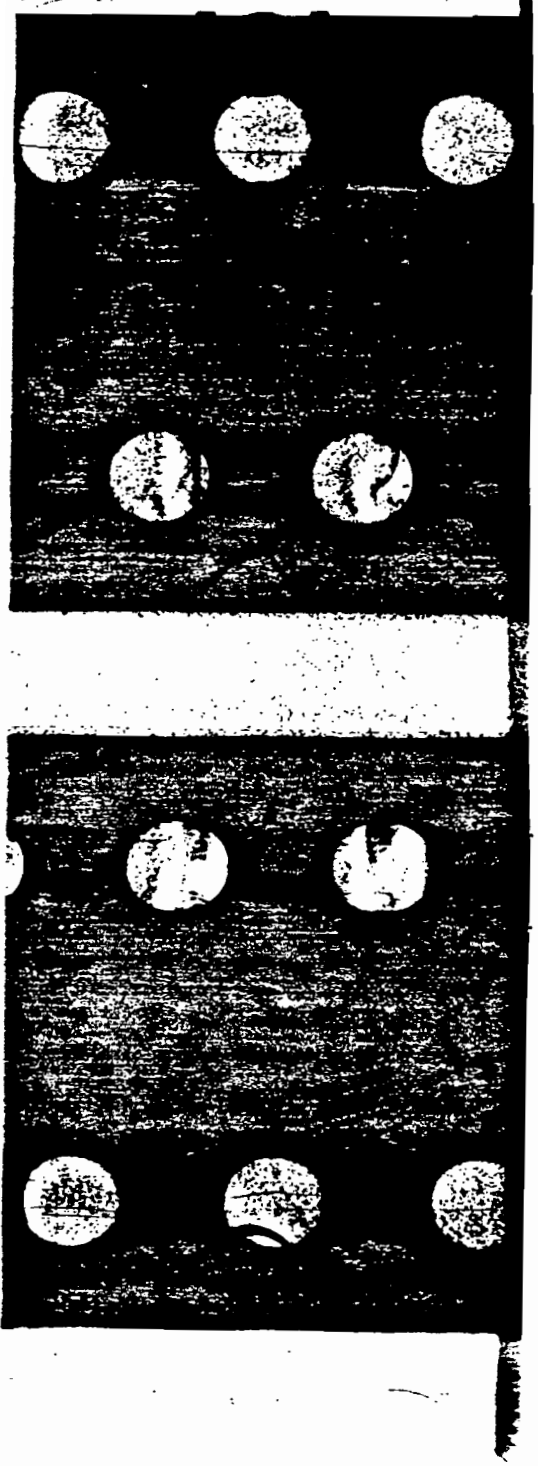


Editors' Preface

THE ROSENBERG-SOBELL case has been, since the demise of germ-warfare charges, the chief weapon in world Communism's campaign of calumny against the United States. Trading on a good deal of sincere revulsion against the death sentence passed on the convicted espionage agents, the Communists have attempted to picture the initial trial and its subsequent judicial reviews as part of a gigantic frame-up, engineered by the Federal Bureau of Investigation to destroy non-conformist opponents of the burgeoning fascist state. According to the Communist legend, the anti-Semitic FBI (in the manner of the *Gestapo*) systematically manufactures evidence, suborns perjury, commands judges and prosecutors to do its bidding, and even rigs juries. This caricature of American society, of course, is and has been of greater moment to world Communism than the question of capital punishment or the specific fate of the Rosenbergs.

A prime weapon in this campaign is a propaganda book by John Wexley, published last year by the pro-Communist firm of Cameron and Kahn, entitled *The Judgment of Julius and Ethel Rosenberg.* Though almost every page of this tract reveals its Communist bias to those who have studied the record, it has had considerable effect outside the United States.

According to the *Daily Worker* of May 10, it was this book which Morton Sobell's mother and sister, who had themselves refused to answer questions about Sobell's activity on the ground that a truthful answer might tend to incriminate them, left with Bertrand Russell shortly before he blasted the American judicial system in the Manchester *Guardian.* Russell's chief authority for chastising the FBI, "the atrocities of whose techniques we have been made familiar with in other police states such as Nazi Germany and Stalin's



Russia," is Corliss Lamont, whom he identifies merely as "of the well-known banking family." (This is about as accurate as identifying the Dean of Canterbury, who vehemently endorsed the germ-warfare hoax, as "the well-known Christian dignitary.")

We are not concerned, here or elsewhere, with defending the FBI, Scotland Yard or any other institution against criticism; we are concerned that the criticism be informed and not an echo of baseless propaganda. Nor do we believe that the espionage networks set up by the Kremlin in other countries establish the guilt of the Rosenbergs; it is the evidence in the case alone which, objectively examined, makes their guilt plain beyond reasonable doubt. Such an objective examination is the aim of this special section, sponsored by the Tamiment Institute. Those who remain unconvinced are invited to read the verbatim trial record.

Nathan Glazer, one of our leading young sociologists, is a former associate editor of *Commentary* and of Doubleday Anchor Books. He is co-author with David Riesman and Reuel Denney of *The Lonely Crowd* and author of a forthcoming book on American Judaism. Currently working under a grant from the Fund for the Republic, he has made a special study of the evidence in the Rosenberg-Sobell case.

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WHAT MORE can be said about the Rosenbergs? They were convicted in March 1951 of conspiring with Morton Sobell, who was tried with them, and with Anatoli Yakovlev (then presumed in Russia), David Greenglass and Ruth Greenglass, to deliver American military secrets to Russia. David Greenglass, Ethel Rosenberg's brother and the chief Government witness, reported how, in 1944 and 1945, he had given information on Los Alamos and the atom bomb to Julius Rosenberg. On his furloughs, he reported to Julius directly; on other occasions his wife Ruth and Harry Gold served as couriers. Ruth and Harry Gold corroborated his story, insofar as it related to them, on the witness stand. Harry Gold knew nothing of Julius Rosenberg, but he testified he had been given one-half of a Jello box-side by his Soviet superior, Yakovlev, as a means of recognizing Greenglass—and the other half, the Greenglasses testified, had been given to them by Julius Rosenberg.

Small points in the Greenglass story received independent confirmation. Ruth's sister testified, in support of one detail in Ruth's testimony, that at one time Julius had come to confer privately with Ruth, and had asked her, the younger sister, to go into the bathroom. The Rosenberg doctor testified that Julius had asked him about what inoculations were needed for Mexico. A photographer testified that the Rosenberg family had taken passport photographs. The latter two incidents occurred at the time, just after the arrest of Harry Gold, when—as David testified—he, David, was being encouraged by Julius to flee, and Julius himself was making preparations to flee.

Aside from David and Ruth Greenglass, the only other testimony directly relating Julius to espionage was that of Max Elitcher, a former classmate of Julius's and Morton Sobell's at City College, who reported he had been encouraged by Rosenberg and Sobell to give them secret material for transmission to the Soviet Union.

Julius and Ethel Rosenberg took the stand in their own defense, and denied everything in the story of the Greenglasses and Elitcher that concerned espionage. Rosenberg had visited Elitcher, but not to solicit information; Julius had asked Ruth's younger sister to let them speak privately, but only at Ruth's request; he had spoken with his doctor about inoculations, but at David's request; the Rosenbergs might have taken pictures, but not passport pictures. They were, in effect, the only witnesses for the defense, for the other defense witnesses (there were two) testified briefly to inconsequential details.

The jury believed that the Rosenbergs were lying. The trial was appealed again and again, on all kinds of grounds. And to a layman like myself, reading the records of the trial, it is amazing that where so much latitude to challenge is given, some challenge did not stand, and the Rosenbergs were not freed, as Judith Coplon was freed, and so many other people whose guilt, to ordinary common-sense judgment, seems clear. But it seems the district attorneys and the judge had avoided the hundred errors that superior courts, made more than normally assiduous by the sentence of death, would have found. The statute was constitutional, the indictment had been properly drawn, the evidence had been presented without error, the sentence was legal, and 27 months after their trial the Rosenbergs were executed.

WHAT MORE was to be said? As Justice Clark of the U.S. Supreme Court said the day before they were executed, "Seven times now have the defendants been before this court. . . . Beginning with our refusal to review the conviction and sentence in October 1952, each of the Justices has given the most painstaking consideration to the case."

But much more was to be said, because there were in effect two Rosenberg trials, one of which was conducted in the courts and the other outside—one might say, indeed, in the streets, for it was conducted with leaflets and petitions and appeals and protests, and, in this country, rarely broke into the respectable mass media. The first Rosenberg trial came to an end: The Government won its case, every possible legal issue was settled, and the Rosenbergs were executed. But the trial in the streets goes on, and the Rosenbergs do much better there than in the courts. They are so successful in the second trial, not because the evidence on which they were convicted was not good, but because their punishment was so awful.

For the trial in the courts, there was only one issue—had they received justice? No matter what superior judges thought about the death sentence, this was their only consideration in studying the case (though, as Judge Jerome Frank said, in the first—and most important—decision of a higher court, "Since two of the defendants must be put to death if the judgments stand, it goes without saying that we have scrutinized the record with extraordinary care to see whether it contains any of the errors asserted on this appeal."—R*1644).

For the trial in the streets the matter was quite different: There the most powerful issue was that the Rosenbergs were to be—and eventually were—executed. And since so many people (and I was among them) did not believe the Rosenbergs deserved death, it was possible to raise up around the world a deep feeling that something had gone wrong, and it became possible for those fighting the trial in the streets to tap a powerful emotion in support of their cause.

The defenders of the Rosenbergs confused the two trials, and the two issues, and enlisted the strong feeling that existed against the death sentence in support of the claim that the Rosenbergs were innocent. Even if many people who pleaded for mercy for the Rosenbergs did not themselves confuse the two issues—guilt or innocence on the one hand, the death sentence on the other—the defenders of the Rosenbergs, in disregard of the facts, imposed this confusion upon them.

I have recently read the last and presumably most definitive compilation of the case in favor of the Rosenbergs—John Wexley's *The Ordeal of Julius and Ethel Rosenberg*. And on the first page we see the confusion clearly in operation. Mr. Wexley writes: " . . . if the Rosenbergs were truly innocent, why had they been put to death? One could not airily dismiss as Communist propagandists men like Dr. Harold Urey, the Nobel Prize winner, or Rabbi Abba Hillel Silver. . . . " But Rabbi Silver did not believe the Rosen-

*"R" refers to the published transcript of the Record of the trial.

bergs were innocent. He pleaded for mercy for them, but he wrote: "I have accepted the verdict of the courts in their conviction of the Rosenbergs for violating the espionage laws. . . . The crime of which they have been found guilty is a heinous one, and I have found no sympathy in my heart for men and women who betray their country."

In the courts, the defenders of the Rosenbergs conducted a skillful and tenacious defense, based on the closest analysis of the records and the facts. In the streets, quite a different defense was conducted, and the two defenses were kept rigidly separate. The facts of the courtroom would do no good in the streets; the distortions effective in the streets would do no good in the courts. Only at the very end did the two cases for a moment merge. On June 8, 1953, Emanuel Bloch pleaded before Judge Kaufman for a reduction of the death sentence, in part on the basis of a huge mass of letters assiduously collected by the committee defending the Rosenbergs from all parts of the world. Judge Kaufman had before him, in addition to this impressive mass of correspondence, the Government's analysis of it, which pointed out that "the letters submitted show clearly that the writers based their opinion upon falsification of the record. . . ." One of the letters came from a sponsor of the committee defending the Rosenbergs (Waldo Frank) who admitted he had not examined the evidence! What could the statements of such people —regardless of their positions and their eloquence—mean to judges and lawyers who had lived with the case for years and who knew every line of the record?

But now, since the first trial is over, even the mild restraint it imposed on the conduct of the second has been lifted. The first trial recedes in memory, its principal facts are forgotten, and even those people who were once most certain that justice had been done—at least to the extent of believing the Rosenbergs were guilty—wonder: What would a reading of the trial record show today? Were there holes? Has new material been brought to light that might, in any way, have served to save the Rosenbergs from the verdict which years of legal struggle could not set aside?

I have just read again through the record of the trial and the numerous appeals and other legal motions that followed it; and I would like, wearying and saddening as such a task is, to review some of the features of the case—the first case, the one in the courts. It will throw an interesting light on the case in the streets that is still being carried on.

IN THE TRIAL of the Rosenbergs, both sides knew that the verdict would depend on whether the jury believed the Greenglasses or the Rosenbergs. The charge was conspiracy to deliver secrets, and by the nature of the charge there was no tangible evidence to be presented. There was no corpse with wounds and gashes that might reveal anything. The "secrets" still lay in their filing cabinets and in the minds of men—the only question was whether they were still secrets, and this could be known only by the report of men who asserted they had indeed passed on these secrets, in one form or another, to a foreign power.

Let us review for a moment how it came to pass that the Rosenbergs were on trial for their lives. In September 1945, Igor Gouzenko had left the Soviet Embassy in Ottawa, Canada with an incredible collection of documents —authentic records kept by an official Russian agency on its espionage activities. One of the contacts mentioned in these documents—under a code name—was Alan Nunn May, a British scientist who had worked on atomic-energy problems in Canada and had recently returned to England. Nunn May was arrested and sentenced by a British court to ten years' imprisonment in May 1946.

Another figure mentioned, with a code name, in these documents was a professor of mathematics, Israel Halperin. Halperin's address book contained the names of a number of other people who, it turned out, were involved in some way in the Soviet spy net in Canada. It also contained the name of Klaus Fuchs. But it was three years later that the FBI—acting perhaps on this bit of information, among others, for the basis of their suspicion has never been made clear—informed the British that a leak of secret information on the atom bomb must have occurred. After some discussion with British security officers, Klaus Fuchs confessed to having given the Russians very important secret information while he was working on the atom bomb in the United States, as well as before and after in England. He led American FBI agents to his courier, Harry Gold, who also confessed. Harry Gold then led them to another person from whom he had collected information, but whom he had met just once, and this was David Greenglass. David Greenglass was questioned by FBI agents, and corroborated Gold's story and added yet another link in the chain—Julius Rosenberg, his brother-in-law. Greenglass reported the main points of his espionage activities and mentioned the name of Julius Rosenberg even before he got in touch with a lawyer.

At Rosenberg the trail stopped. He denied everything. The investigation turned to Rosenberg's friends. Morton Sobell left for Mexico a few days after Greenglass's arrest. Another friend of Julius Rosenberg's, Vivian Glassman, had gone to Cleveland to see an old classmate of his, an important scientist, William Perl. Alfred Sarant, another friend, had decamped apparently to Mexico. It seemed there was something that could be told by Rosenberg and his friends—if they would tell. But the line of detailed confessions that had begun with Fuchs petered out at Rosenberg and his friends—there one found flight, evasion, and silence on the basis of a plea of possible self-incrimination.

But, of course, little if any of this was known to the jury that tried Rosenberg. In the courtroom, it was his acts, not those of his friends, however suspicious, that were at issue. And to decide who told the truth about these acts, as we have said, the jury could not, by the nature of the case, refer to any tangible evidence. They could only observe the behavior of the Greenglasses and the Rosenbergs on the witness stand, and put it together with small fragments, each by itself—and conceivably all together—meaning nothing or little. I would like now to reprint, from the record of the trial, some of the things they heard and saw. (And one must recall that here is a

dead stenographic report, while the actual jury heard and saw tones of voice and gestures that they could interpret as confidence or confusion, certainty or hesitation—and it is because they could take all this into effect, and we who read the record cannot, that a superior court does not argue with the jury's decision as to what are the facts in a case.)

ETHEL ROSENBERG *is being questioned about a console table concerning which Ruth Greenglass had testified that Ethel had told her it was a gift from Julius's "friend" (presumably his Russian espionage contact) and adapted, in some not very clear way, for microfilming:*

Q. Did you ever put that table in a closet?
A. I may have.
Q. Did you?
A. I really don't recall whether I did or not.
Q. Did you ever hide the table in the closet?
A. No, that I can answer. I never hid anything in the closet, table or anything else.
Q. I am talking now of the closet opposite the bathroom door?
A. Yes.
Q. Did you ever put that table in the closet and keep it there?
A. I said I may have.
Q. Well, did you or did you not?
A. I can't recall. Just a moment. There were so many changes that I made in the house, with putting things in closets and taking them out of closets, that it is perfectly true what I say, that I may or may not have put it there, and I cannot recall, because there were any number of things I put into closets and took them.
Q. The console table was practically as wide as the entrance to the closet, was it not?
A. I wouldn't know.
Q. Well, how wide was the console table?
A. Again, I just couldn't say.
Q. If you had put the console table in the closet, when would that have been?
A. I couldn't say when that might have been. (R 1358-9)

And now, Evelyn Cox, who had worked for the Rosenbergs as a domestic, is testifying:

Q. When did you work for them?
A. From September '44 all though [*sic*] '45.*

Q. Did there come a time when you noticed that the table wasn't where you had last seen it in the apartment?
A. Yes.
Q. And what did you notice about that?

*A line of space indicates the omission of part of the record—generally exchanges on technical legal points of no bearing on the actual testimony.

A. Well, the table wasn't there. It wasn't where it usually stayed and I asked her why she had removed it, and she said she had put it away in the closet because the place was too congested.
Q. Did you ever see the table outside again in the living room—
A. No.
Q. —up to the time when you left working there in December of 1945?
A. No, I never saw it.
Q. Was there any other piece of furniture in that apartment as new or as good looking or as nice as that table?
A. No.

The Court: Was there any other furniture in the closets?
The Witness: No.

Q. Now, how long did the Rosenbergs use this console table before it was put into the closet?
A. Well, that I couldn't say. I don't know; it was outside maybe a month or two months, I couldn't say, I don't know. (R 1407, 1411-12, 1414)

A very small point, of course. Now a slightly larger point. Here Julius is testifying:

Q. Did you, in the month of June 1950, or in the month of May 1950, have any passport photographs taken of yourself?
A. No, I did not.
Q. Did you go to a photographer's shop at 99 Park Row and have any photographs taken of yourself?
A. I have been in many photographers' shops and had photos taken.
Q. Did you have any taken in May or June of 1950?
A. I don't recall. I might have had some photos taken.
Q. For what purpose might you have had those photographs taken?
A. Well, when I walk with the children, many times with my wife, we would step in; we would have [*sic*] we would pass a man on the street with one of those box cameras and we would take some pictures. We would go into a place and take some pictures and the pictures we like, we keep.
The Court: He is not asking you that. He is asking you about these particular pictures in June 1950. What was the purpose of these pictures?
The Witness: Just—if you take pictures, you just go in, take some pictures, snapshots.
Q. What did you tell the man when you asked him to take those pictures in May or June 1950?
A. I didn't tell the man anything.
Q. Are you sure of that?
A. I don't recall telling the man anything.
Q. See if you can't recall. Try hard. May or June 1950, at 99 Park Row.
A. I don't recall telling the man anything.

Q. What did you tell him—

A. I didn't tell him anything.
Q. —at the time that you had the pictures taken?
A. What pictures are you talking about?
Q. In May.
The Court: The pictures at 99 Park Row.
The Witness: I don't know if it was 99 Park Row that I took the pictures.
Q. Where was it, if you don't know it was 99 Park Row?
A. I don't know. I have taken many snapshots.
Q. Passport pictures?
A. Not passport pictures.
Q. Did you ever tell anybody that you wanted pictures in order to go to France to settle an estate?
A. I didn't tell that to anybody.
Q. You don't recall it, or are you sure you never said that?
A. I am sure I never said that.
Q. Now, do you recall, or are you sure now that you didn't have any passport pictures taken in 99 Park Row, in May or June 1950?
A. I may have taken pictures, not—I didn't take any passport pictures.
Q. May or June 1950?
A. I might have taken pictures. (R 1277-9)
And now Ethel:
Q. Did you ever go with your husband to have any passport photographs taken?
A. No.
Q. Did you ever go to a photographer's place at 99 Park Row in May or June of 1950 with your husband and with your two children to have passport photographs made?
A. No, I never went to have any passport photos made.
Q. Did you ever go to a commercial photographer at any time in the last two years to have any pictures made of you or your family or your husband or all of you?
A. Yes, we did.
Q. When?
A. From time to time.
The Court: When was the last?
Q. When in the last two years?
A. Well, it is hard to say exactly when in those two years.
Q. How often did you go to have photographs made with your family?
A. Well, we never went as a prearranged thing to go and have photos taken.
Q. When did you go on the spur or the inspiration of the moment?
A. I really can't say when.
By the Court:
Q. Well now, you remember the month of May very well, don't you?
A. Yes.
Q. You remember the month of June 1950 very well?

A. Yes.
Q. You remember all the incidents that have occurred?
A. Yes.
Q. Did you have any pictures taken for any purpose whatsoever in May or June 1950?
A. We may have; we may have.
Q. Do you remember where?
A. No, all I remember was some commercial photographer.
By U. S. Attorney Saypol:
Q. Do you remember posing with your family before the camera of that commercial photographer?
A. Yes.
By the Court:
Q. How did you happen to go to that particular commercial photographer?
A. Well, I didn't say I went to any particular commercial photographer.
Q. Well, you just remembered posing before a camera?
A. Yes.

Q. Then you remember, you say, having had some photographs taken in May or in June?
A. It may have been at that time. I am really not sure. There were so many frequent occasions when we dropped into these places.
Q. I am talking about the very last ones that you had taken.
A. Well, I can't say what I don't recall and I really don't recall specifically.
By Mr. Saypol:
Q. Well, we have it now at least that the photographer, the commercial photographer, was within walking distance of your home at 10 Monroe Street; is that right?
A. Well, there were times we took walks and took photographs elsewhere.
Q. We are now talking about the time that you last remember, within the two years, when you went with your family to a commercial photographer to have a picture taken or pictures?
A. But I didn't say that we took a walk this particular time to this particular place.
Q. Where was it?
A. I wouldn't know. (R 1361-2, 1363-4)
And now Ben Schneider, whose place of business is at 99 Park Row, and who does "passport and identification photographs," is testifying:
Q. Last May or June or some time in the spring or summer, were you visited by a family consisting of a husband and wife and two children, at your place of business?

A. Yes, sir.
Q. About how old were the children, do you remember?
A. At that time they appeared to me about six and four.
Q. Do you remember on what day of the week it was?

A. On a Saturday.
Q. Is that a day that you usually worked?
A. No.
Q. Is that how you remember this visit?
A. Yes, sir.
Q. Do you see the two adults here who visited you at that time?
A. Yes.
Q. Will you point them out, please. Where is the man and where is the woman?
A. (Pointing) There is the man.
Q. You mean the man standing up?
A. Yes.
Q. Is that the woman [indicating defendant Ethel Rosenberg] standing?
A. That is the woman.
Q. Did they have some talk with you?
A. The man did.
Q. Did they order some pictures taken?
A. Yes, they had some pictures taken.
Q. What do you charge for pictures, passport pictures?
A. Well, I charge three for a dollar, sir.
Q. Did you do some work for them as a result of their coming there that morning?
A. Yes.
Q. What kind of work did you do?
A. They ordered three dozen photographs, passport size.
Q. Do you get an order like that every day?
A. No, I do not.
Q. How much was the price?
A. About nine dollars.
Q. Did they pay you?
A. Yes, they did.
Q. Did you take pictures of the children, too?
A. Yes.
Q. Passport pictures?
A. Yes, passport size.
Q. Did you have any conversation with the man or the woman, that you have just identified, regarding the use to which they wanted to put the photographs?
A. Yes. As he was leaving he was telling me they were going to France; there was some property left; they were going to take care of it; the wife—that is, his wife was left some property. (R 1427-9)

Once again, Ethel Rosenberg is testifying:

By Mr. Saypol:

Q. At that time, when you were before the grand jury, had you discussed this case with your brother, David Greenglass?
A. No.

Q. Not at all?
A. Not at all.
Q. That is, from the time when you first heard that he was being investigated for the theft of atomic secrets, up to the time when he was arrested?
A. That's right.
Q. You never talked to him about it at all?
A. No, I did not. I didn't see him.
Q. Do you remember having been asked this question before the grand jury and giving this answer:

"Q. Did you discuss this case with your brother, David Greenglass?"

"A. I refuse to answer on the ground that this might tend to incriminate me."

Was that question asked and did you give that answer?
A. Yes.

The Court: . . . If you had answered at that time that you had not spoken to David, for reasons best known to you, you felt that that would incriminate you?

The Witness: Well, if I used the privilege of self-incrimination at that time, I must have felt that perhaps there might be something that might incriminate me in answering.

Q. Were you asked this question and did you give this answer:

"Q. Do I understand that you are going to decline to answer all questions that I ask you?"

"A. No, no, I won't decline to answer all questions. It depends on the questions."

Did you say that?
A. Yes, I did.
Q. When you said it depends on the questions, you meant it depends on whether or not the question and the answer that you gave would tend to incriminate you, is that right?
A. That is right.
Q. You testified here today in response to questions from your counsel that the first time you saw Harry Gold was in this courtroom, is that so?
A. That is right.
Q. Do you remember having been asked this question and giving this answer: "Q. Have you ever met Harry Gold?" "A. I decline to answer on the ground that this might intimidate me, incriminate me, I mean."
Did you give that testimony at the time?
A. I gave that testimony.

Q. Do you remember being asked this question and giving this answer:

"Q. You don't deny that you met Harry Gold?"

"A. I gave my answer. I decline to answer on the ground that it might tend to incriminate me. That was my answer."

Do you remember that question and answer?

A. Yes, I do.

Q. The next question was:

"Q. That was your answer to the first question, and the second question was, you don't deny that you met Harry Gold?"

"A. I decline to answer on the ground that this might tend to incriminate me."

Is that the testimony you gave at the time?

A. Yes, I gave that testimony.

By the Court:

Q. But you did answer it here in court, isn't that true?

A. That is right.

Q. And your answer here was that you never met him until he took the witness stand?

A. That is correct.

Q. So that you didn't assert any privilege with respect to that here in this courtroom?

A. No.

By Mr. Saypol:

Q. Were you asked this question and did you give this answer:

"Q. Have you ever talked with your brother David about his activities at Los Alamos?"

"A. I decline to answer on the ground that this might tend to incriminate me."

Was that testimony given by you?

A. Yes.

Q. "Q. Have you ever seen any sketches that he made while he was working at Los Alamos?" "A. I decline to answer on the ground that this might tend to incriminate me." Was that testimony given at the time by you?

A. Yes.

Q. "Q. Were you present when he gave information to your husband, that is, when David Greenglass gave information to your husband which he had obtained from Los Alamos?" "A. I decline to answer on the ground that this might tend to incriminate me." Did you give that testimony at the time?

A. Yes, I gave that testimony.

Q. Now, you came back before the grand jury on August 11, didn't you?

A. Some time after the first time.

Q. Did you talk to your lawyer between August 8 and August 11?

A. I must have.

Q. Do you remember having been asked this question and giving this answer:

"Q. I believe you had counsel?"

"A. Yes."

"Q. And you had been advised by your counsel as to your rights?"

"A. Yes."

"Q. That counsel is Emanuel Bloch, is that correct?"

"A. Yes."

Do you remember that testimony?

A. Yes.

Q. You denied here that you knew Anatoli Yakovlev, is that right?

A. Yes.

Q. Were you asked that question before the grand jury?

A. I don't recall.

Q. "Q. Do you know Anatoli Yakovlev?" "A. I decline to answer on the ground that this might tend to incriminate me." Were you asked that question and did you give that answer?

A. Now that you read it, I suppose they did ask me that, and I did answer that.

Q. And yet you had never met Yakovlev in your life?

A. That is right.

Q. Would you care to explain how you might be incriminated on the basis of that question and answer?

A. It is not necessary to explain the use of self-incrimination.

Q. Do you recall having been asked this question and giving this answer:

"Q. Would you care to attempt to identify his picture?"

"A. I would not care to attempt."

Is that your testimony?

A. Yes.

Q. Why didn't you want to care to attempt to identify Yakovlev if you never saw him before or had never seen him before?

Mr. E. H. Bloch: I object to the question on the ground that if the witness purported to answer this question it would vitiate her privilege.

The Court: Well, you refuse to answer because of your privilege?

The Witness: Yes.

The Court: I want the jury to understand that I am permitting this question, as I said before in answer to counsel's objection, on the question of the credibility of the witness. The witness has answered the question here in court and on previous occasion had asserted privilege. As I said before, there is no interest to be drawn from the assertion of privilege against self-incrimination, but it is something the jury may weight [*sic*] and consider on the question of the truthfulness of the witness and on credibility, and in the charge proper, my main charge, I will have more to say about how you judge the credibility of witnesses. . . . (R 1375-95)

IT WAS on the basis of exchanges like this that the jury must have decided that the Rosenbergs were not telling the truth, that they had much to hide, and that the story David Greenglass and Ruth Greenglass and Max Elitcher

had to tell was indeed true. The fate of the Rosenbergs was sealed by this testimony, and the numerous appeals their lawyers made, on all sorts of grounds—the constitutionality of the statute, the conduct of the judge, the environment created by press reports, the charge that the Government used false testimony (we will go into this in a moment)—all this could not stand against the impression Julius and Ethel Rosenberg made on the jury in the courtroom.

And about exchanges such as these, what could the defense say? In the courts, nothing. But in the streets—as we may see from Mr. Wexley's book—the matter is much simpler. The testimony about the console table that we have here given is ignored. Nor is there any reference to that long stretch of testimony in the trial in which Ethel's answers to the questions about espionage before the grand jury were read to the jury. (Mr. Wexley becomes very eloquent in defense of the use of the Fifth Amendment when one is asked about political activities. But how could he explain the Fifth Amendment in answers to such questions as: Do you know Harry Gold? On such matters, he simply suppresses the testimony.) The testimony about the photographs is indeed discussed, but only to argue at great length that Schneider committed "perjury." Here is one of those cases of "perjury" that the defense later "discovered" and of which it has made great capital—among people who have not read the record. Let us consider it.

At one point in his examination by the Government attorney, Schneider was asked, "And is that the last time you saw him [Julius Rosenberg] before today," and he answered, "That's right." Now in fact Schneider had been brought to the courtroom the day before to identify the Rosenbergs. This was to become one of the bases for a formal request to set aside the conviction, but it was obvious to the courts—as it would be to anyone reading through the testimony—that Schneider had taken the question to mean, "Have you seen him between the time he came in to take pictures and this trial?" As the Court of Appeals, dismissing this point, said, "Counsel lays stress upon the word 'today' [in the question and answer above] to prove the testimony perjurious, but on cross-examination both court and counsel [that is, defense counsel] treated the question as meaning 'before the trial.'" While this dismissal was binding on Mr. Bloch, and he had to seek new grounds for further appeals, it is of course not binding on Mr. Wexley, who denounces Schneider as a perjurer, the FBI agents for soliciting this perjury, the Government attorneys for knowingly using it, etc.

But even though much has been made by the defense of Schneider's perjury, it was clear that the main problem, at the trial and after, was to shake the testimony of David and Ruth Greenglass.

Once again, it was easy to shout perjury in the streets, impossible to demonstrate it—or even make a good case suggesting it—in the courts. The Greenglasses and the Rosenbergs lived on the Lower East Side, surrounded by many relatives and friends. One might have expected to find—if the Greenglass story was not true—someone who would contradict one or another point. After all, their story was long and circumstantial, while the

Rosenberg story was, on the whole, limited to simple denial. The Greenglass story thus offered more points for investigation and contradiction. The defense, however, did not find a single witness who could refute any point in their account, no matter how insignificant.

Then again, another opening offered itself in the fact that David Greenglass had given many statements, over a period of nine months, to the FBI and to his lawyers, the firm of O. John Rogge. Conceivably one could have found contradictions between the story he told the first day to the FBI, the story he told to his lawyer, the story he later told to the FBI, the story he told on the stand. Had the defense seen any ground for hope that the examination of these statements might show some contradiction, they could have obtained them—as they had, earlier in the trial, obtained the FBI statements and grand-jury testimony of Max Elitcher (the defense found nothing in these statements on which to cross-examine Mr. Elitcher). They did not make any efforts to get Greenglass's FBI statements—and this, too, must have weighed heavily with the jury. But, as we were to learn two years later from an affidavit from O. John Rogge, Mr. Bloch did try to find out what David Greenglass was going to do:

"Within a week or ten days of the arrest of David Greenglass, in June 1950, I had [a] conference with Mr. Bloch. . . . Mr. Bloch stated to me that Julius Rosenberg was not going to talk and was interested in finding out what David Greenglass was going to do. I did not indicate to him the course David Greenglass would take." (Affidavit of O. John Rogge, June 8, 1953, supported by another affidavit by Herbert J. Fabricant, present at the conference.) It was unnecessary for Mr. Rogge to find out what Julius Rosenberg was going to do—at any rate, among the many affidavits of Mr. Bloch in the record there is none that so charges.

Two years after the trial, someone managed to steal the memoranda of the first meetings between David and Ruth Greenglass and their lawyers from Mr. Rogge's office. These only showed what Mr. Bloch had known at the trial—that David Greenglass had told the same story from the beginning. By that time, however, the trial in the courts and the trial in the streets had merged—and poor Mr. Bloch had to make a great show of these documents as proof of "perjury." The courts had O. John Rogge's affidavit to help them in considering these claims:

". . . Mr. Bloch stated [in a conference in Mr. Rogge's office on May 4, 1953] that the handwritten memorandum of David Greenglass . . . contained less material than he himself had brought out on cross-examination of Mr. Greenglass but that if he did not use the statement he would be accused by the National Committee to Secure Justice in the Rosenberg Case of throwing the case. He further stated that this memo undermined one of his basic positions, in that it showed that in the original statement that David Greenglass had made to the FBI he brought in Julius Rosenberg, whereas it had been his, Mr. Bloch's, position that the FBI had induced David Greenglass at a later time to bring in the name of Julius Rosenberg." (Mr. Wexley, as we might expect, does not tell his readers about this affidavit.)

So David Greenglass, these statements showed, had told the same story from the beginning. But the defense tried a more roundabout way of suggesting perjury. It argued: David Greenglass was a simple machinist; the sketches he produced at the trial—and which he testified were copies of sketches he had given to Julius Rosenberg and Harry Gold—could have been made only by a person of considerable scientific training; therefore, he could not have produced them and must have been coached in producing them. In two and a half years, the defense was not able to come up with a shred of evidence about this presumed coaching. But a year and a half after the trial the defense counsel produced, in one of his briefs, affidavits from scientists in France and England asserting that it was "improbable" or "impossible" that David Greenglass, whom they did not know, could have produced these sketches, which they had not seen. While such testimony may carry great weight with some of Mr. Wexley's readers, it obviously could not be taken very seriously by the appeals court.

As a matter of fact, the defense was willing to admit that Greenglass could have drawn three of the four sketches in question—those bearing on his own work as a machinist. But they argued these were not very important and could not really be considered secret. At the trial the testimony was quite otherwise—and devastating.

Here is some of the testimony of Dr. Walter Koski of Johns Hopkins University, who had been engaged in implosion research at Los Alamos, and who had brought work to the Theta machine shop in which Greenglass was a machinist:

Q. I show you Government Exhibit 2. . . . Will you examine that, please? Do you recognize that exhibit as substantially [*sic*] representation—as a substantially accurate replica of a sketch that you made at or about the time which you have testified to at Los Alamos in connection with your experimentation?

A. I do.

Q. Is that a reasonably accurate portrayal of a sketch of a type of lens, mold or lens that you required in the course of your experimental work at the time?

A. It is.

Q. Would you recognize it as a reasonably accurate replica of the one you submitted to the Theta machine shop?

A. Yes.

Q. For processing?

A. Yes.

Q. I show you Government's Exhibit 6, as to which you have heard Mr. Greenglass testify, and I ask you whether your answers are the same in respect to that exhibit after you have examined it?

A. They are.

Q. Now, in respect to Government's Exhibit 7, will you examine that,

please, Dr. Koski? Having examined it, having heard Greenglass's testimony as to what it depicts, will you tell us whether it is familiar to you?

A. It is.

Q. What does it portray to you?

A. It is essentially—it is a sketch, a rough sketch of our experimental setup for studying cylindrical implosion.

Q. Did you hear Mr. Greenglass testify as to the description, written description of that experiment that he delivered to one Harry Gold in June 1945?

A. I did.

Q. Is Government's Exhibit 7 and the details of the information as testified to by Mr. Greenglass that he said he imparted to Gold in June 1945 a reasonably accurate—are they reasonably accurate descriptions of the experiments and their details as you knew them at the time? . . .

A. They are.

Q. That is the experiment that you yourself were conducting in conjunction with the development of the atomic bomb?

A. They are.

Q. In your special field as you knew it at the time, 1944 and 1945, did you have knowledge that the experiments which you were conducting and the effects as they were observed by you could have been of advantage to a foreign nation?

A. To the best of my knowledge and all of my colleagues who were involved in this field, there was no information in text books or technical journals on this particular subject.

Q. In other words, you were engaged in a new and *and* [*sic*] original field?

A. Correct.

Q. And up to that point and continuing right up until this trial, has the information relating to the lens mold and the lens and the experimentation to which you have testified continued to be secret information?

A. It still is.

Q. Except as divulged at this trial?

A. Correct.

Q. . . . is it not a fact that one expert could ascertain at that time, if shown Exhibits 2, 6 and 7, the nature and the object of the activity that was under way at Los Alamos in relation to the production of the atom bomb?

A. He could. (R 473-4, 478-9, 484)

THIS testimony, of course, is not to be found in Mr. Wexley's book. Mr. Wexley has no difficulty in proving the Greenglasses are perjurers by suppressing some evidence, doctoring the rest, and, where necessary, inventing some. We have given enough examples of suppression. Consider this particularly ingenious example of doctoring:

David Greenglass testified, and Ruth corroborated him, that on his furlough in early 1945 he had been invited to the Rosenbergs for dinner and on coming there had been introduced to Ann Sidorovich, who then left. (In Mr. Wexley's account—page 358—she is described as "an old friend . . . who had dropped in for an afternoon chat." We are not told that this old friend was then living in Cleveland—see R 1201.) Julius then told David that this was the courier who might come to get material from him in New Mexico after his return. But why was it necessary to show her in person? asks Mr. Wexley. Do we not read in the record:

"Q. [to Ruth Greenglass] Had you met Ann Sidorovich prior to that evening?

"A. Yes."

"Why," continues Mr. Wexley, "if the two women had previously met each other, was it necessary for Julius to arrange this mutual inspection meeting?" (page 360)

He has conveniently forgotten that David had earlier testified that *he* had not met Ann Sidorovich previously (R 444).

And, where necessary, he invents. For example, on page 85: "David had engaged in considerable black-market activities in Albuquerque, selling precision tools and other Army materials. . . . It is also known that David had actually stolen . . . a sample of uranium . . . and had thrown the uranium into the East River." This sober documenter then footnotes the entire paragraph as follows: "These facts concerning the theft and disposal of the uranium . . . were later revealed by the confidential inter-office memos of O. John Rogge." But the "black-market activities"? They are the invention of Mr. Wexley's mind, but it will take a reader skilled in working with falsification to realize that the footnote refers only to the latter part of the paragraph and that there is no evidence for the first part.

I HAVE reread the record of the trial and the appeals with a mind made open by a few years in which the recollection of the actual events had grown dim, and peppered with the doubts left by even a book as despicable as Mr. Wexley's, and, having done so, there is no doubt in my mind, nor do I see how there can be any doubt in the mind of any reasonable man, that the jury decided correctly. Of course, no matter how monstrous a criminal (and the Rosenbergs were not monstrous), if he insists he is innocent someone will believe him and be touched by his plea. If juries numbered a thousand men, no man would be found guilty, for guilt is never a matter of irrefutable mathematical proof. Yet for twelve carefully selected men, no reasonable doubt remained that the Rosenbergs were guilty.

But there is that other issue: Should the Rosenbergs have been executed? This, too, apparently, is in our courts a subject for argument, and there was much good argument on both sides of the matter, by the defense counsel, the Government attorneys, and the judge. It was pointed out that Fuchs had received the maximum sentence under British law (and he had confessed and aided further investigation), that Gold had received the maximum jail sentence under American law (and he, too, had confessed and aided further investigation); should not the Rosenbergs receive the extreme penalty under American law? It was argued by the defense that, while the crime was committed in wartime, the secret material was passed to an ally; the answer was that the law specifically makes no distinction. At the very end, it was argued that the Rosenbergs should have been tried under the Atomic Energy Act, not the Espionage Act, and this act requires jury approval of a death sentence, but the Supreme Court decided this argument had no merit.

In the end, one's attitude to the death sentence is not decided by arguments. For each of us, there seems to be an appropriate sentence for every crime: A burglar should be jailed, a vicious murderer should be put to death. But someone who gives away his country's secrets? I could not feel that this crime deserved death; and many other people did not feel this, either. Certainly it seemed particularly cruel to execute Ethel Rosenberg, whose activities consisted of helping her husband. But the law permitted it, the sentence was imposed, and then there was little one could do. One could ask for mercy, and many people who believed the Rosenbergs guilty did, but certainly many others must have recoiled from becoming involved in a campaign based on lies. In the end, one feels, our argument must be more with the law that permits execution for this crime than with the sentence that imposes it in accordance with law.

THE Rosenbergs are dead and, in the minds of their defenders, already vindicated—the *Daily Worker* regularly couples their names with those of Sacco and Vanzetti. And around Morton Sobell, the third defendant, sentenced to 30 years in prison, a new agitation now rises to a peak, and people who have not looked at the evidence now assert that Sobell is innocent and should receive a new trial.

What does the record show about Sobell? Sobell was accused by only one person—his close friend Max Elitcher, who had gone to school with him, lived with him in Washington when they both worked for the Government, and later, when they were both married, lived in a house adjoining his in Flushing, New York. Elitcher gave a long and circumstantial account of a series of occasions on which Sobell had urged him, alone or together with Rosenberg, to aid them in their espionage activities. In Elitcher's case, as we have pointed out, the defense did examine his statements to the FBI and his testimony before the grand jury, and they found nothing in these records on which to question him.

But more damaging than anything said about him was Sobell's own behavior. A few days after Greenglass was taken into custody, Sobell and his wife and family left for Mexico. Nothing illegal there, as his attorney pointed out. But a week after he left he wrote to a friend, William Danziger, who testified at the trial. The envelope bore a return address under the name "M. Sowell" and contained some letters, with a note: "Please for-

ward the enclosures and I will explain when I get back." Two weeks after that, Danziger received another letter, this time with the return address "M. Levitov" and further enclosures. At the trial, Mexican witnesses testified—and documents were introduced—to the effect that he had registered in a Vera Cruz hotel under the name of "Morris Sand," giving a Philadelphia address; in a Tampico hotel under the name of "Marvin Salt," giving a different Philadelphia address; and had traveled on the Mexican airlines under the names "N. Sand" and "Morton Solt." A neighbor of his in Mexico City testified Sobell had asked about ways of getting out of Mexico without papers.

This strange behavior, taken together with Elitcher's testimony, obviously pointed to flight. At this point, there was a simple way of proving this was not flight. Sobell could have taken the stand to explain that this was a vacation; his wife and his relatives and friends and employers and co-employes could have been called to corroborate him. But Sobell did not take the stand himself, and no one was put on the stand in his defense.

He now argues, in a long affidavit written two-and-a-half years after the trial, that this was just a vacation trip, and since he was frightened by the arrest of his friend Julius Rosenberg—which occurred three weeks after his arrival in Mexico—he began to use aliases. "... it is hard to understand how I might have been led to do such a stupid thing. . . ." It is harder to understand why it took him two-and-a-half years to explain why he had done it. For as late as January 8, 1953 he had not yet thought of an explanation. On that date, his lawyer was arguing for a reduction of sentence before Judge Kaufman, and the following exchange occurred:

"The Court: What about the aliases?"

"Mr. Meyer: As to that, I am not in a position to state. I could probably make an explanation after consulting with Mr. Sobell about it." (page 33 of the stenographic transcript of the hearing of this date)

Sobell's wife and mother have been heroic in their efforts in his behalf, but their efforts have come at the wrong time and the wrong place. They were called before the grand jury investigating the matter in 1950. At that time, they pleaded the Fifth Amendment (pages 19-20 of the same hearing).

Sobell's successes in the streets, we can be sure, will mean nothing in the courts; for the courts know how late Sobell's explanation is, and they know that Sobell's wife and mother have not told what they know about his activities under the protection of the Fifth Amendment. This is their right, but they cannot expect to be believed when they tell in public a story of innocent activities which would in no way—had they told it before the grand jury under oath—have incriminated them or Morton Sobell.

The defenders of the Rosenbergs and Sobell believe the whole story has not been told. They are quite right. *But the story that has not been told is of espionage more extensive than we now know.* When Rosenberg was implicated, the FBI had never heard his name before. Greenglass had never heard of Sobell or Elitcher. What then happened is that the FBI began to approach Rosenberg's friends—a group of men who had studied engineering together at City College, graduated before the war, and who had all been involved,

directly or indirectly, in the activities of the Young Communist League—and began to question them on what they knew of Rosenberg. Three of these men were out of the country—Joel Barr, Alfred Sarant and Morton Sobell—and the latter two had left so recently as to suggest flight. Sobell was returned to this country—the FBI has not been able to locate the whereabouts of Barr or Sarant. A fourth, Elitcher, as we know, gave testimony against Rosenberg and Sobell.

A fifth, William Perl, the most important scientist among them, took a middle course—and ruined his life as a result. He would not plead the Fifth Amendment. At the same time, it was clear he knew more about the case than he would tell. He was questioned by the grand jury investigating the case on August 18, September 11 and October 4, 1950. He denied he knew Rosenberg or Sobell on his first appearance before the grand jury, but later admitted he knew Sobell. He admitted he knew Barr and Sarant, but testified, when first questioned by the FBI, that he had "minimized his connection with them." In time, his denial of friendship with Rosenberg and Sobell was to lead to a trial for perjury and a sentence of five years.

But Perl did not deny everything, and he told one story to the grand jury that suggests the wide extent of Rosenberg's activities. (The Government asserted at his trial that he told as much as he did because he suspected, at the time of Vivian Glassman's visit, that he was under surveillance.) He testified before the grand jury that late in July—just after Rosenberg was arrested—Vivian Glassman suddenly materialized in his apartment in Cleveland.

"I recognized her as a friend of Joel Barr's. . . . She acted somewhat mysteriously. She proceeded to take some paper which I had lying around and started writing on it and motioning me to read what she had written, and, well, she wrote to the effect that she had instructions from a person unknown to her, in New York, to travel to Cleveland and get in touch with an aeronautical engineer [Perl was one] and give him money and instructions to leave the country, and I believe she mentioned Mexico in that connection."

More than that Perl would not say, except that the name "Julius Rosenberg" came up in the subsequent discussion with Vivian Glassman. He would not say that Rosenberg had sent her, nor would he definitely indeed say anything—as to who the aeronautical engineer was, as to why Vivian Glassman was doing this, as to why anyone wanted him to leave the country. He said he simply did not know.

But the record made clear that Perl, for reasons of his own and to his own undoing, had decided to tell only part of what he knew. The other part we do not know—Julius Rosenberg certainly knew it, Vivian Glassman could also tell us, and so could, very likely, Joel Barr and Alfred Sarant. But the names of Barr, Sarant and Glassman do not appear in Mr. Wexley's book. The defenders of the Rosenbergs have not brought them forward to plead the innocence of their friends—or to clear their own names of the strong suspicion of Soviet espionage that now is attached to them.

The story is not yet completely unfolded. When it is, it will not clear the names of Julius and Ethel Rosenberg, or free Morton Sobell from jail.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Tolson

DATE: 7-3-56

FROM : L. B. Nichols

SUBJECT: MORTON Sobell

Tolson
Boardman
Nichols
Belmont
Harbo
Mohr
Parsons
Rosen
Tamm
Sizoo
Winterrowd
Tele. Room
Holloman
Gandy

Judge Irving Kaufman called me to advise that the "New Leader" has a pamphlet out on the Sobell case written by an individual named Nathan Glazier. not/cc

Copies can be secured free of charge at the Tamamint Institute, East 15th Street. Irving stated he has read this pamphlet. It is an answer to the Wexley book and suggested that we might want to get several copies.

It is suggested the New York Office be requested to secure a supply as they might be used to good advantage.

Supervisor John O'Brien NYO, instructed to obtain 10 copies and send in under Sobell caption
JBB
2:25 PM
7-5-56

cc - Mr. Boardman
cc - Mr. Belmont

LBN:nl
(4)

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HEREIN IS UNCLASSIFIED
DATE 4/21/87

RECORDED - 72 101-2483-1309

10 JUL 17 1956

INDEXED - 72

EX-109

55 JUL 20 1956

4-750 (Rev. 4-17-85)

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Disposition in J. Rosenberg
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FBI/DOJ

UNITED STATES DISTRICT COURT
CHAMBERS OF
JUDGE IRVING R. KAUFMAN
UNITED STATES COURTHOUSE
NEW YORK 7, N. Y.

July 5, 1956

Mr. Louis B. Nichols
Assistant Director
Federal Bureau of Investigation
U.S. Department of Justice
Washington, D.C.

Dear Mr. Nichols:

Morton Sobell

Judge Kaufman instructed me to send you the attached pamphlet entitled "I.F. Stone's Weekly" of July 2, 1956, which contains an article labelled "Time for New Tactics on Rosenberg-Sobell, Too", which pamphlet was handed to the Judge just before he left for Santa Fe, New Mexico. He thought it would be of interest to you.

I also acknowledge receipt of your letter of July 3rd enclosing photostats of articles relating to the Sobell case.

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DATE 4/21/89 BY

101-2483-1310

16 JUL 17 1956

Sincerely yours,

Anna K. Strasser
Secretary to
Judge Irving R. Kaufman

Anna K. Strosser N.Y.

RECORDED - 52

INDEXED - 52

Enclosure

EX-109

ENCLOSURE

ENCLO. ATTACHED

EX-109 101-2483

53 JUL 23 1956

How The House Committee "Blackmailed" Arthur Miller, See Page 3

I. F. Stone's Weekly

VOL. IV, NO. 24 JULY 2, 1956 WASHINGTON, D. C. 15 CENTS

Time for New Tactics on Rosenberg-Sobell, Too

While the Communists are taking a second look at so much in their recent past, we suggest they take a second look too at the Rosenberg-Sobell case. If they really want to help poor Sobell, the time has come for a change of tone and tactics.

The Rosenberg case suffered from the fact that it became a propaganda weapon in the cold war. The agitation was conducted in so shrill, hysterical and mendacious a way as to offend many who might have been won over by sober presentation; the intent was so clearly to defame the United States as unnecessarily to antagonize.

It should be evident now even to the Communists in the light of the Krushchev revelations that the Rosenbergs were treated a good deal more fairly here than Slansky and other Jewish victims of Stalinist justice. By American standards, the Rosenberg case is unsatisfactory. The discovery of the console table merited a new trial; the Supreme Court never reviewed the case; the way the Douglas stay was steamrollered was scandalous; the death sentence—even if they were guilty—was a crime.

Equating Truman With Hitler!

But the Communists also have cause for shame. The false cry of anti-Semitism, the eagerness abroad to use the Rosenbergs to equate the U.S.A. of Truman with the Germany of Hitler, the wild cries of frame-up, sacrificed calm consideration of the Rosenberg case to the needs of world Communist propaganda. After all, no picket lines circled the Kremlin to protest the executions of Jewish writers and artists; they did not even have a day in court; they just disappeared. Slansky was executed overnight without appeal in Prague. How the same people could excuse Slansky and the "doctor's plot" and at the same time carry on the Rosenberg campaign as they did calls for political psychiatry.

Yet the same tactics are evident in the campaign to free Sobell. The 30 years to which he was sentenced are fantastic; his incareration in Alcatraz cruel; the proof against him far from conclusive. But that letter of Bertrand Russell's to the *Manchester Guardian* in March, with its comparison of Nazi and FBI "atrocities," is in the strident and hysterical tradition of the Rosenberg campaign. Jean Paul Sartre's in the *New York Times* of June 15 was not much better. Such letters—for all their good intention—will not help Sobell nor will they help in the struggle to purge men's minds of fear, hysteria and hate so that we may live together on the one planet.

The result of the kind of campaign reflected in the Russell and Sartre letters is the kind of intemperate decision Judge Kaufman handed down last week rejecting Sobell's appeal for a new trial. From the first page, which speaks of the "avalanche of evidence against the Rosenbergs to the final footnote which claims for the FBI a "reputation for high standards of fairness," the Kaufman decision reacts with febrile overstatements of its own.

The FBI certainly does *not* have a reputation for "high standards of fairness" as scores of loyalty cases in Washington testify. On the other hand, it is vicious nonsnse to compare the FBI with the secret police of Germany and Russia. God help us if we ever get to the point where the FBI can do here what the Gestapo did in Germany and the secret police can still do in the Soviet Union.

The Kaufman decision will be appealed. Legally I am afraid that Judge Kaufman has the better of the argument; I did not think the Sobell pleadings substantial enough for a new trial when I first saw them. These same questions should have been raised at the original trial; they are not new; they were raised five days after the trial on a motion in arrest of judgment.

False Hopes Raised

False hopes were stimulated, false impressions given, by this motion for a new trial. It was not based on new evidence tending to clear Sobell; it claimed that his kidnapping in Mexico was a violation of our extradition treaty with that country and therefore if this was proven true at a new trial he should be released. The Sobell defense will have to do better if it is to free him.

We suggest that the first step in freeing Sobell would be to free his case from the burden of using it to prove the Rosenbergs victims of a frame-up. Three books have now been written on the Rosenberg case but none of them prove this. William A. Reuben's tried to prove too much—that there never was any atomic espionage. John Wexley's is brilliant but a quicksand of surmise and dubious inference. The new one, by Professor Malcolm P. Sharp, "Was Justice Done?", helps to demolish its predecessors but is itself inconclusive.

We just don't know enough yet. Both the Rosenberg and Sobell cases are so unsatisfactory because it is a question of one man's word—one alleged conspirator's word—against another's. Who was telling the truth—the Rosenbergs or Greenglass? Who was telling the truth—Sobell or Elitcher? It will be a long time, if ever, before we know for certain. We may wake up one morning to learn that the Rosenbergs were guilty. We may wake up to learn that they were innocent. But I doubt whether we will ever find there was a deliberate frame-up. Fanaticism had the same momentum on both sides.

But guilty or innocent, Sobell has a case for clemency, as did the Rosenbergs. The 30-year sentence is beyond all reason. The time has come to make an appeal for the man Sobell, and to divorce his case from the Rosenberg cult and cold war political frenzies.

Why Wilson Was Talking Plain Sense When He Called The Budget Fight "Phony"

The Fundamental Issues Posed by the Air Force Victory

The vote in the Senate last week increasing the Air Force budget by almost a billion dollars is a political event of the first magnitude. It shows the effect of trying to run the government without a President well enough to lead. It indicates that, from a sickbed at least, even General Eisenhower's great prestige as a soldier is not enough to overcome the efforts of the aviation lobby in Congress. It demonstrates a dangerous tendency by the military successfully to go over the heads of the civilians in supposed command at the Defense Department. It indicates that even as against big business men like Charles Wilson and George Humphrey, the Air Force crowd can win—imagine what they could do with liberals in command, susceptible as they would be to Red smear. The vote also threw a spotlight on where the Democrats stand—for the arms race, with Malone, Welker and McCarthy, the Rightists of the Republican party. And the arms race means a drift to war. The aviation industry and the Air Force have a vested interest in world tension and an emotional readiness for war.

Charlie Wilson may lose his job for not obeying the first rule of successful politics—which is never to upset that delicate balance of mutual pretense and hypocricy which maintains a respectable facade for Congress and its members. There never was a more phoney campaign than this one for more Air Force funds. The Air Force has more money than it can use now; neither aviation plants nor Air Force personnel are adequate now to its vast appropriations. Senator Byrd gave the figures to the Senate in a last ditch effort to block an increase. They are fantastic. He said that as of July 1 this year, the end of the fiscal year, the Air Force had $13,600 millions in unexpended balances for aircraft procurement, of which $4,600 millions were unobligated. He said the Air Force will actually spend $6,400 millions for new aircraft this year, which would leave $18,000,000,000 unexpended at the end of the fiscal year.

Encouraging Extravagance

"To add another billion dollars to appropriations," Senator Byrd pleaded, "would simply mean increasing balances in carryover appropriations, which cannot possibly be spent in the foreseeable future. It would not," he added, "in my judgment, bring a single additional aircraft off the production line next year or the year after next. . . . To increase these huge unexpended balances would merely increase funds available to spending agencies for expenditure in subsequent years, with virtually no control by either the Appropriations Committee or by Congress. Extravagance inevitably is the result of unnecessary appropriated balances."

Yet though these figures are well known and none challenged them, nobody spoke up to defend Wilson for using plain language about it. When Senator Russell of Georgia said indignantly that Wilson "has sought to intimidate the officers of the armed services from fully expressing their opinions to, and advising with, the Congress of the United States," no liberal or conservative rose to puncture this inflated language. Does Russell believe it good practice to encourage anarchy in the armed services, to destroy civilian control and sound budgetary practice by inviting the various services to indulge in a scramble for funds on Capitol Hill?

Nothing Like A Nice Cool Non-Sequitur On A Hot Day in Congress

Mr. TUMULTY. Has any study been made or any projection been made of how much foreign aid will cost by the year 2,000 or aid to Tito by the year 2,000?

Mr. LONG. No, but I should say that cost would be in excess of $200 billion. . . .

Mr. WILLIAMS. I requested the Library of Congress some time ago to furnish me certain statistical information. . . . Amazingly enough I found that we had given away some $51 billion to foreign countries in the last 10 years. The cost of our entire veterans' pension and benefit programs from the Revolutionary War to the present time amounted to little over $93 billion.

—House of Representatives, June 26.

Buying Obsolete Planes

The leader of the successful fight was Symington, the aviation lobby's man. The most serious technological aspect of these bloated figures is the encouragement they give to mass production of obsolete planes. To provide funds now which cannot possibly produce planes for several years is to make contracts now for planes which will be out of date when they finally come off the production lines.

The only answer to this is the kind of hysterical nonsense in which Byrd indulged when he told the Senate the vast sums spent on the now obsolete B-36's ($6 million apiece) were not wasted because "the shadow of the B-36 in the skies is what kept Russians behind the Iron Curtain." The main front at home in the fight for peace is the fight against this aviation lobby, and here the Democratic party as a whole is on the wrong side of the fence.

New German and Chinese Policies to Be Unveiled After the Election

There are signs here in Washington that after the election the Administration is planning for new policies on the two world logjams—China and Germany. The marathon talks with Red China at Geneva are to go until after November, when serious consideration of a meeting between Chou En-lai and John Foster Dulles (if he is still Secretary of State) will begin. Renewed warfare in Korea can alone block a conference of this kind, and therefore Korea—Chiang Kai-shek's last desperate trump card—is the danger point to watch.

On Germany, sentiment is building up within the Administration for reunification in return for neutralization. Two years ago when Senator Flanders of Vermont first broached this idea he found "monolithic" (his word for it) opposition in State Department and White House. He indicated in bringing the proposal up again last week in a Senate speech that he is no longer alone in Republican ranks in this point of view. A similar idea is to be found in White House Adviser John J. McCloy's foreword to the book, "Russia and America", recently published by the influential Council on Foreign Relations. McCloy went further than Flanders by advocating acceptance of the Oder-Neisse line as part of such a deal.

Dulles and Adenauer still oppose such a solution, and a breaking off of relations between Bonn and Moscow—if it could be achieved—might serve to "refreeze" this part of the cold war, temporarily at least. But such a move would be unpopular in Germany. Flanders said his speech two years ago brought unexpected response from the Germans themselves. "These correspondents," he told the Senate of letters he received, "had had enough" of German militarism. Flanders also told the Senate, "When I was in Paris last summer, a high placed public figure said to me, 'We are in favor of German reunification, but not too soon.'"

How The House Un-American Committee "Blackmailed" Arthur Miller

Arthur Miller came out of his own "Crucible" poorly. It was a painful experience to see him before his inquisitors. His only ringing affirmation was on Republican Spain; he wasn't too intelligent in his replies on the Smith Act; and when he was asked whether it was true—Crime No. 1—that he had opposed the House Un-American Activities Committee, he responded with a mumble instead of a challenge.

Miller's difficulty was that he had been "blackmailed." The Committee was able to put the screws on him (1) because he had misrepresented to the New York Youth Board in 1950 the nature of the non-Communist oath he had taken at the State Department several years earlier for a passport and (2) this oath was itself brought into question because he had once applied for membership in what Committee counsel claimed was the Communist party and Miller said was only a Marxist study group for writers. There was hardly grounds here for a perjury prosecution, but the Committee might have threatened him with one anyway—and the Lattimore case shows how much trouble they can create with how little substance.

The Committee may make a hero of Miller yet if it insists on citing him for contempt because he refused to name others at a Marxist writers' session he attended. Chairman Walter, at first hesitant, seems to have been put under pressure. The history of inquisitions—from those of Spain to those of Stalin—shows that a suspected heretic can only be broken morally and made fully captive by forcing him to inform on others, especially those closest to him. Can the Committee overlook refusal to name names in Miller's case and continue to apply the squeeze on others?

The Committee taints all it touches. Honest differences of opinion with the Communists, honest disagreements, and final disillusion—Miller's experience like that of so many other intellectuals—are all made to sound hollow, false and cowardly when a man has to discuss them in such a forum. This is the way the Committee dwarfs the moral stature of the anti-Communist and makes him seem a heel. This is the Committee's own secret contribution to Communism.

What would we think if a leading Russian dramatist—of Miller's prestige—were forced publicly in Moscow to explain that he was anti-capitalist, with the threat of a perjury prosecution hanging over him if he didn't? What a belly-laugh we would get out of the spectacle? But isn't that just what Walter and his colleagues did in the Miller affair?

There were several amusing moments the press did not cover. One was when ex-FBI man Velde, chairman of the committee under the Republicans, assured Miller that it was no crime to be against the Smith Act. Another was when Chairman Walter admitted that he, too, had once made contributions to the Joint Anti-Fascist Refugee Committee "to help get Jewish refugees out of Germany." It seems we all have dark spots in our past.

Screwiest scene of all was the appearance of Committee Counsel Ahrens, who belongs among the lesser clowns in Barnum & Bailey, as a great white knight of liberalism. He wanted to know why Miller hadn't defended the civil liberties of Ezra Pound or protested when a 1950 civil liberties meeting run by the Communists (and stampeded into folly by Paul Robeson) had refused to defend Trotzkyites too under the Smith Act. (A Committee member had to remind Ahrens that Pound was convicted of war time treason—and not just put away, as Ahrens would have one believe, for writing anti-Communist pamphlets.) Someone should have gotten up and drawn a diagram for Ahrens. If Miller was wrong not to defend the civil liberties of Fascists and Trotzkyites, how much wronger is Ahrens who won't defend *anybody's* civil liberties?

P.S. We wait to see whether the Committee by a contempt citation and the State Department by refusing a passport will have the nerve to trample on America's deepest feelings—is there a red-blooded American boy from six to sixty who does not hope some day to marry Marilyn Monroe?—and upset Miller's honeymoon plans. Surely, as at Lexington, there is a point at which America will stand and fight.

Deed-of-The-Week

If the Voice of America weren't frightened to death of the voices-for-Fascism which infest our Congress, its main propaganda feature of the week would have been the decision by Peter J. Hoegen, legal referee of the Social Security Administration, restoring the old age pension benefits of William Z. Foster and six other Communist party leaders or their wives under the Social Security Act.

That an unknown minor official should still have the courage and the power in times like these to reverse a decision by the Department of Health, Education and Welfare in favor of these seven elderly radicals is something which would really encourage America's friends abroad. If there was equal conscience in Congress, an investigating committee would find out who was responsible in the first place for initiating so mean, petty, vindictive and dangerous an action.

These Communists paid their social security benefits all these years and are entitled to their pensions; once let the witch hunters apply political standards to social security and they will be hounding in their old age everybody who once gave $5 to Republican Spain in their youth. Our hat is off to Mr. Hoegen.

Thanks to the Supreme Court, The Braden Case Has A Happy Ending

Nothing illustrates more vividly than the Braden case the Supreme Court's wisdom in deciding in the Steve Nelson case that the Federal government should have exclusive jurisdiction to prosecute for sedition. The 15-year prison sentence thrown out by the Kentucky Court of Appeals on the basis of the Nelson decision was striking evidence of how terribly State sedition laws can be abused. When Carl Braden and his wife helped a Negro couple buy a home only to see that home dynamited by hostile whites, who would have dreamed that the authorities—instead of punishing the dynamiters—would send Braden to jail for "sedition"?

State sedition prosecutions, like the Louisville and Pittsburgh cases, and those of the 20's under similar State criminal syndicalism laws, show that the closer one gets to the "grass roots" of society the more one is at the mercy of the lynch spirit and official lawlessness. The Federal government operates on a higher level of sophistication and in an atmosphere which eliminates the cruder kinds of frameup. This is worth consideration by those given to rhetorical democratic flights of fancy about "the common man" and "the people." The Kentucky "common man" couldn't have cared less.

The Kentucky decision will also upset the indictments of Mrs. Braden and five other whites for "sedition" in connection with the same bombing. But will the Louisville Courier-Journal, one of our better and braver newspapers, give Carl his job back as a copy-reader? The American Civil Liberties Union deserves applause for defending Braden and the Emergency Civil Liberties Committee for raising his $40,000 bond. But why did the National Association for the Advancement of Colored People take so chilly an attitude toward this case? And will Kentucky now find the men who dynamited the Wade house and prosecute them?

The Untold Story of The Tense Day Before the President Fell Ill

Better Than Leaving Federal Employes to The Mercies of Brownell

In all the discussions of the President's illness, no one seems to have mentioned the extraordinary emotional strain to which he was subjected the day before his attack of ileitis. Mr. Dulles that day forced him to issue a statement "correcting" his previous day's press conference remarks on neutralism, a reversal that made Mr. Eisenhower look—and must have made him feel—very foolish. His Attorney General also added to his strain that day. Originally Harry Cain was to have seen the President at 8:30 a.m. but at the last minute the appointment was put off until 3:30 p.m. Mr. Brownell took the 8:30 a.m. appointment himself and at 11:30 a.m. the chairman of the Civil Service Commission went to the White House in order to "prime" the President against Cain. . . .

Quis custodiet?: Four classes of government employes only are exempt from loyalty-security clearance in the Rees bill (HR 11841) to establish a loyalty review system covering all Federal workers. The four exempt classes are (1) the President or Vice President, (2) any officer appointed by the President by and with the advice of the Senate, or by the President alone, (3) temporary construction or maintenance workers employed at hourly rates and (4) "an officer or employe in the Federal Bureau of Investigation." Since the whole loyalty program depends on the integrity of the FBI in collecting so-called "derogatory" information, it seems strange that the FBI should be exempt from loyalty surveillance. We suspect a loyalty check would turn up a lot of strange characters on the FBI rolls. . . .

Better Than The Walter-Eastland Bill

This Rees bill merits close study. The Walter-Eastland bill (HR 11721 in the House), introduced immediately after the Supreme Court's decision in the Cole case, is a skeleton stopgap measure designed to "reverse" that ruling and declare that all government employes without exception are subject to the 1950 Act permitting "security" suspensions in the "absolute discretion" of department heads. The Rees bill, introduced five days later, is a comprehensive measure for meeting the situation created by the Cole decision, which limited the 1950 act to "sensitive" positions. It acquires weight in Congress because its sponsor, Rees of Kansas, is the ranking Republican on the Post Office and Civil Service Committee.

Some strange history lies back of this Rees bill. Everyone seems to have forgotten that it was a similar Rees bill in 1947, when he was chairman of this same committee, which led to the promulgation of the Truman executive order setting up the first Loyalty Review Board. The executive order was a last-ditch effort by the Democrats to block passage of the Rees bill, and the maneuver succeeded. But as I pointed out in the newspaper *PM* at the time, the Rees bill actually gave the Federal employe a little more protection against unfounded accusation and unfair hearings than did the executive order.

In any case, so far has the drift gone, that the "reactionary" of 1947, sponsoring much the same bill as then, now seems to offer the one hope of affording some basic safeguards to Federal employes in the "non-sensitive" departments not covered by the 1950 Act. The Walter-Eastland bill would give Federal employes no rights whatsoever; whether and how to suspend or fire them, how much of the charges against them would be disclosed—all would depend on the department head. A hearing of a sort would be provided, but the word "hearing" is a misnomer when there is no right to know the charges, to examine the accusers, or to suspoena witnesses in one's own defense.

Small, But Still Mercies

There are, by contrast, small mercies in the Rees bill for which the Federal employe may be grateful. And those concerned with protection of Federal workers would be well advised to fight out their battle in Congressional legislation rather than to leave the new loyalty rules to be worked out privately, as they otherwise will be, by Herbert Brownell and J. Edgar Hoover. The existence of the Rees bill might be used to block the Walter-Eastland measure, and hearings before the House and Senate Post Office and Civil Service committees can be utilized to press for salutary amendments.

It would be better, of course, if we could shake off this whole loyalty nightmare at least in "non-sensitive" positions but that is still a long way off. We do not advocate the Rees bill but in several respects it is superior to Brownell's practices. The basic standard of the bill is better: "whether, *based on all the evidence*, there is a reasonable doubt of loyalty." At present *any* doubt is enough for discharge. The FBI field report would be required to give "all evidence" pertaining to loyalty, not just "derogatory" information. The Loyalty Review Board would be allowed to disclose sources of information when in its discretion "the interest of justice so requires." At present "security" and not "justice" is the standard in withholding sources. In addition the Board could require the Attorney General to explain why an organization had been "listed" by him as subversive. These provisions, feeble as they are, would still give an employe more protection than he has now.

Next Week: Some New Angles on The Fund for The Republic Report on The "Blacklist"

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301 E. Capitol St., S. E.
Washington 3, D. C.

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Dear Louis - 7/11/56

In accordance with our telephone conversation of today, I am attaching a copy of E. DeGrazia's letter, and several copies of Glazer's piece on the Rosenberg-Sobell case. I am also attaching a copy of DeGrazia's ~~article~~ which has not yet been published.

O

Morton Sobell

7/11/56

Dear Louis:

In accordance with our telephone conversation of today, I am attaching a copy of Ed DeGrazia's letter, and several copies of Glazer's piece on the Rosenberg-Sobell case. I am also attaching a copy of DeGrazia's review of Sharp's book, which has not yet been published. } 11

Edward

/s/ Irving Ferman

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