F.O.I.A.

JULIUS ROSENBERG ET AL.

FILE DESCRIPTION

HQ FILE

SUBJECT Morton Sobell

FILE NO. 101-2483

VOLUME NO. 36

SERIALS 1329 to 1391

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

Sec. 36

(1)

File No: 101-2463 Re: Morton Sobell Date: (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)
1329	10/24/56	HQ AT NY	1	1	
NR	10/19/56	HQ LtOAG	2	—	Disposition re J. Rosenberg 65-58236-2293
1330	10/25/56	Mexico ltr HQ	1	1	b1 pg 2 missing
1331	11/8/56	HQ ltr AAG	2	2	b1
1332	11/21/56	WFO LtT	4	4	b1
1332	12/4/56	Outgoing ltr	1	1	b1
1333	11/28/56	NY LtT	9	9	b1 b2 b7D
1333	12/7/56	HQ ltr NY	1	1	b2 b7D
1334		Incoming ltr	1	0	b1
1334	11/30/56	HQ ltr NY	2	2	b1
NR	11/8/56	HQ airtel DN	1	1	b2 b7D
1335	11/23/56	London ltr HQ	1	0	b1
			26 pp w/held	22 pp released	2 pp duplicate 0 pp 2 pp referred 0 pp

FBI/DOJ

Inventory Worksheet Sect. 36
FD-503 (2-18-77)

(2)

File No: 101-2783 Re: Morton Sobell Date: _____ (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)
NR	11/6/56	HQ let AG	2	2	
NR	11/21/56	Nichols Memo Tolson	1	1	
1336	12/3/56	HQ let CIA	1	1	
1336	11/23/56	CIA to Director	—	—	Disposition handled by CIA in 1975 (1)
1337	12/6/56	NY TT HQ	1	1	
1338	12/7/56	Outgoing Ltr w/	2/1	1/1	b1
1339	12/6/56	NY Airtel HQ	2	2	
1339	12/11/56	HQ let NY	1	1	
1340	12/10/56	Belmont Memo Boardman	2	2	b1 b7D b1
1341	12/10/56	NY TT HQ	1	1	
			14 NEV	13 rel	1 0 0 1 dups w/ previous pages

FBI/DOJ

Inventory Worksheet Sec 36
FD-503 (2-18-77)

(3)

File No: 101-2483 Re: Morton Sobell Date: 11-7-84 (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)
1342	12-14-56	Hq let NY and encl	1/1	1/1	
1343	12-19-56	WFO airtel Hq	1	1	
1344	12-18-56	Hq let AAG w/enc	1/5	1/5	
1345	12-19-56	NY TT Hq	1	1	
1346	12-14-56	NY AT Hq	1	1	b1
1346	12-20-56	OG let	1	1	b1 b2 b7D
1347	12-20-56	NY TT Hq	1	1	
1348	12-31-56	Brannigan memo Belmont	2	2	
1349	12-19-56	NY routing slip Hq w/ERF	1/93	1/93	
1350	1-4-57	NY AT Hq	1	1	
1351	12-28-56	newspaper clip let Hq	1	0	b1
1352	1-15-57	NY AT Hq	1	1	b1
			112	111	1 0 0 0
					Withheld entirely / Released in part / Released in full / Duplicate

FBI/DOJ

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

Lic 36

(4)

File No: 101-2483 Re: morton Lobell Date: 11-7-86 (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)
1351	1-17-57	Hq let AAG	1	1	
1353	1-17-57	NY Nefit	5	5	b1 b2 b7D
1354	1-21-57	NY AT Hq	1	1	b2 b7D
NR	1-23-57	Hoover memo Tolson	1	1	
NR	1-23-57	Hoover memo Tolson	1	1	
1355	1-24-57	Belmont memo Boardman	1	1	
1356	1-31-57	Hq let AG	1	1	
1357	1-25-57	Hq let AG w/encl	1/10	1/10	
NR	1-28-57	3rd party let Nichols	1	1	
1358	1-31-57	Hq let 3rd party	1	1	
1359	2-1-57	NY TT Hq	1	1	
1360	1-28-57	Hq let 3rd party	1	1	
			26 new	26 rel	0 deny 0 ref 0 Pres'd 0 Dup'l

FBI/DOJ

Inventory Worksheet Lic 36
FD-503 (2-18-77)

(5)

File No: 101-2483 Re: Morton Lobell Date: 11-7-84 (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)
1361	1-25-57	Nichols memo to Rosen W/ENC	1/12	1/12	
NR	2-6-57	Nichols let 3rd party	1	1	
	2-4-57	search slip	10	10	b1 b2 b7C
1362	2-6-57	Ltr let AAG	5	3	b1 2 pgs refer CIA
1363	2-7-57	Branigan memo Belmont	1	1	
1364	1-31-57	NY AT Ltr w/encl	1/33	1/33	
1365	2-8-57	Ltr let State	5	3	b1 2 pgs refer CIA
1366	2-4-57	Belmont memo Branigan	2	2	
1367	2-6-57	NY TT Ltr	2	2	
NR	2-11-57	Ltr let AAG	1	1	
1368	2-12-57	Ltr let AAG	2	2	b1
1369	2-8-57	NY TT Ltr	2	2	
			138	134	D 4 0 0
			per	rel	deny ref pleasured prejudice

FBI/DOJ

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

Sec 34

(6)

File No: 101-2483 Re: Morton Sobell Date: 11-7-56 (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)
1369	2-13-57	Hq let State	3	3	
NL	2-7-57	mexico city cablegram Hq	2	2	b1
1370	2-20-57	Belmont memo Boardman	2	2	b1
1371	2-21-57	Hq let AAG	3	1	b1
1372	2-19-57	AAG let Hq	—	—	Disposition handled by DOJ in 1975 (1)
NL	2-18-57	mexico city cablegram Hq	1	0	Refer State
1373	2-27-57	Hq let AAG	1	1	
1374	2-14-57	mexico city cablegram	2	0	b1
1374	2-21-57	Hq AT NY	1	0	Refer State
1375	2-25-57	NY AT Hq	1	1	
1375	3-4-57	Hq let AAG	1	1	b1
1376	2-26-57	NY TT Hq	1	1	

18 12 4 2 0 1
NR Rel deny ref Presumed Dreprec

FBI/DOJ

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

Lic 34

(7)

File No: 101-2483   Re: Morton Sobell   Date: 11-19-86 (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)
1377	3-4-57	NY TT Hq	1	1	
1378	3-5-57	NY TT Hq	4	4	
1379	3-7-57	Branigan memo Belmont	2	2	
1380	3-13-57	NY let Hq	1	0	b1
1381	3-10-57	Routing slip w/encl	1/3	1/3	
1382	4-2-57	NY TT Hq	2	2	
1383	4-16-57	Routing slip w/encl	1/11	1/11	
1384	4-10-57	Nichols memo Tolson w/encl	1/6	0/0	b7C b7D
NR	4-13-57	Belmont memo Boardman	2	2	b7C b7D
1385	5-15-57	NY TT Hq	1	1	
NR	5-15-57	Routing slip	1	1	
1386	5-17-57	Nichols memo Tolson w/encl	1/12	1/12	

50 rev   42 rel   8 denied   0 ref   0 previously processed   0 [illegible]

FBI/DOJ

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

Sec 36

(6)

File No: 101-2483 Re: Morton Sobell Date: 11-19-76 (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)
1387	5-15-57	3rd party let Hq w/encl	1/1	1/1	
1387	5-21-57	Hq let 3rd party	1	1	
1388	5-17-57	Brannigan memo Belmont	2	2	
1389	5-24-57	Mexico city Brigam	1	1	b1
1389	6-5-57	Hq let AAG	1	1	b1
1390	5-25-57	NY AT Hq	7	7	b1
1390	6-4-57	Hq let NY	2	2	
1391	6-10-57	NY rept	8	8	b1
			30	30	0 0 0 0

FBI/DOJ

FD-36 (Rev. 3-13-56)

FBI

Date: 10/24/56

Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Nease
Tele. Room
Mr. Holloman
Miss Gandy

Transmit the following message via ~~AIRTEL~~

(Priority or Method of Mailing)

FROM: SAC, NEW YORK (~~100-37158~~) 100-37158

TO: DIRECTOR, FBI (~~100-371583~~) 101-2483

MORTON SOBELL, was
ESPIONAGE - R

ReNYairtel, 9/26/56.

AUSA, SDNY, advised attorney for subject, MARSHALL PERLIN, appeared before the United States Court of Appeals and requested extension to December 5th for filing brief. Government attorneys opposed extension but court granted motion and extended date to December 5th.

Bureau will be kept advised.

KELLY

Mr. Belmont

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HEREIN IS UNCLASSIFIED
DATE 4.20 87 BY 3042 PWT/cls

RECORDED-16
101-2483-1329

3-Bureau (101-2483)(RM)
1-New York (100-37158)

EX-127

OCT 25 1956

LBI

RTH:FMC (#6)
(5)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

60 OCT 30 1956

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

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION

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2 Page(s) withheld for the following reason(s):
Disposition of document in J. Lowney
65-58236-2293

☐ For your information: _____

☐ The following number is to be used for reference regarding these pages:
101-2483-NR 10-19-56

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X DELETED PAGE(S) X
X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

XXXXXX
XXXXXX
XXXXXX

FBI/DOJ

SECRET

Date: October 25, 1956

To: Director, FBI

From: Legat, Mexico

Subject: MORTON SOBELL, was.
ESPIONAGE - R
Bufile 101-2483
MC file 65-268

4.20.87

CLASSIFIED BY: 3042 PWT/Cls
DECLASSIFY ON: OADR

NATIONAL COMMITTEE TO SECURE
JUSTICE IN THE ROSENBERG CASE
IS - C
INTERNAL SECURITY ACT OF 1950
Bufile 100-387835
MC file 100-1714

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE

ReBulet 8-24-56 and [redacted]

b1

[redacted]

b1

[redacted]

b1

[redacted]

b1

The Bureau will be kept advised of pertinent developments in this matter and this office will attempt to

SECRET

JTH
(8)

Classified by 2355 WAE/WDF
Exempt from GDS, Category 2 AND 3
Date of Declassification Indefinite

RECORDED - 28

101-2483-1330

INDEXED - 28

EX-117

NOV 1956

ESP SEC

67 NOV 15 1956

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_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

1 Page(s) withheld for the following reason(s):
Page 2 is missing

☐ For your information: _____

☑ The following number is to be used for reference regarding these pages:
101-2483-1330

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X NO DUPLICATION FEE X
X FOR THIS PAGE X
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XXXXXX
XXXXXX
XXXXXX

- Lee
Belmont

Assistant Attorney General (orig. & 1)
William F. Tompkins

November 8, 1956

SECRET

Director, FBI

427 87

MORTON SOBELL, with aliases
ESPIONAGE - R

CLASSIFIED BY: 3042/PWT/CLS
DECLASSIFY ON: OADR

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Reference is made to our letters of August 24 and October 12, 1956, which furnished information concerning the activities of the National Committee to Secure Justice in the Rosenberg Case on behalf of the subject in Mexico.

[redacted]

b1

COMM - L
NOV 8 - 1
MAILED

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

101-2488

JPL:jdb
(7)

cc - 100-2278 (Frederick Vanderbilt Field)
cc - 100-387835 (National Committee to Secure Justice in the Rosenberg Case)

EX-126 RECORDED-38

SECRET

NOV 1956

Classified by 3042 Exempt from GDS, Category
Date of declassification Indefinite

67 NOV 15 1956

SEE NOTE PAGE 2.

CONFIDENTIAL

Assistant Attorney General
William F. Tompkins

61

[redacted]

The above is furnished to you for your information.

NOTE: Info has been rec'd. indicating that National Committee to Secure Justice in the Rosenberg Case has been active in Mexico attempting to obtain info helpful to Sobell, convicted espionage agent. Info concerning the activities of this Committee has been furnished to the Department in the past.

CONFIDENTIAL

1331

Form No. 64 (5-12-65)

FEDERAL BUREAU OF INVESTIGATION

SECRET CONFIDENTIAL

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
WASHINGTON FIELD	NEW YORK	11/21/56	10/5,25,29;11/19/56

TITLE OF CASE	REPORT MADE BY	TYPED BY
MORTON SOBELL, was	JOE R. CRAIG	MES
	CHARACTER OF CASE: ESPIONAGE - R	

SYNOPSIS:

Passport records, Department of State, reflect passport issued 5/19/33 to PAULINE RUBEN, born Gottenburg, Sweden, 6/22/10, for proposed six months' travel to "France, Germany, Spain, Italy, Belgium, British Isles, and all countries" for visit and study. RUBEN in application listed permanent residence as 1216 James Avenue, North, Minneapolis, Minnesota, and father as ISRAEL RUBEN, born Poland, naturalized 7/14/21. Certification of father's naturalization furnished, shows father at such time listed daughter as PAULINA RUBEN. Further checks at Passport Office failed to identify any other passports issued to PAULINE RUBEN under maiden name or known variations, or under married name of PAULA (Mrs. PAUL) ZIMMERING.

- RUC -

4-20-87
CLASSIFIED BY: 3042 PWT/cls
DECLASSIFY ON: OADR

DETAILS: AT WASHINGTON, D. C.:

Records of the Passport Office, Department of State, reviewed October 29, 1956, contained a passport application

APPROVED _____ SPECIAL AGENT IN CHARGE

COPIES MADE:
6- Bureau (101-2483)
3- New York (100-37158)(RM)
1- Washington Field (101-2316)

DO NOT WRITE IN SPACES BELOW

101-2483-1332

RECORDED - 97

NOV 26 1956

INDEXED - 97

EX-127

memo [redacted] 12-4-56 DH:klb

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AGENCY RAB
REQ. REC'D
DATE FORW. 12-3-56
HOW FORW. Ltr P/S
BY [signature]

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5-07788R

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965—O—862788

CONFIDENTIAL

SECRET PAULINE RUBEN
PAULA RUBENS
MRS PAUL ZIMMERING
PAUL ZIMMERING

WFO 101-2316

dated May 17, 1933, submitted by PAULINE RUBEN at Minneapolis, Minnesota, wherein she listed her date of birth as June 22, 1910, at Gottenburg, Sweden, and requested passport for proposed six months' travel to "France, Germany, Spain, Italy, Belgium, British Isles, and all countries" for visit and study. Therein she listed her permanent residence as 1216 James Avenue, North, Minneapolis, Minnesota, indicating that she had resided continually at Minneapolis, Minnesota, from 1915 to 1933.

RUBEN, in the above application, listed her father as ISRAEL RUBEN, showing that he was naturalized July 14, 1921, by the U. S. District Court, Minneapolis, Minnesota, Certificate #1572351. Her father is stated to have immigrated to the U. S. about April, 1915, and to have been born in Poland, November 15, 1885.

Further in the application, RUBEN stated her intention to depart on the above travel about June 3, 1933, via the "S.S. Champlain."

GLADYS A. M. RIPPE, Medicine Lake, Minnesota, appeared on the application as identifying witness. Descriptive data for RUBEN listed therein was hair, dark brown; marks, none; height, 5'2"; eyes, brown; occupation, none.

A letter dated May 16, 1933, from the Clerk of the District Court, Hennepin County, Minnesota, furnished with the above application, stated that records of such court showed that ISRAEL RUBEN was naturalized July 14, 1921, was issued Certificate #1572351, and at time of naturalization, listed a daughter PAULINA RUBEN, whose birth was given as July 22, 1910, at Gottenberg, Sweden, who became a citizen of the U. S. by virtue of the naturalization of her father.

It is noted that the above individual has been previously identified in instant matter as the wife of Dr. PAUL ZIMMERING, 3225 Olinville Avenue, New York, a former British ~~subject~~ who arrived in the U. S. at New York, New York, December 1, 1937. ZIMMERING has been shown to

SECRET

have filed a petition for naturalization in the U. S. District Court, Southern District of New York, February 2, 1942, wherein he shows that he married PAULA RUBENS on October 1, 1938, at Brooklyn, New York, listing her date of birth as June 22, 1910, at Gotenborg, Sweden.

Further requests to the Passport Office, Department of State, for additional checks under known variations of PAULA ZIMMERING's maiden name, as well as her married name, have failed to locate any further record of passports issued to her.

- RUC -

WFO 101-2316

REFERENCE: Serial 1328

Report of SA RICHARD T. HRADSKY at N.Y., N.Y., 10/5/56.

- ADMINISTRATIVE PAGE -

- Boardman
Belmont
Lee

[redacted] b1

TOP SECRET

December 4, 1956

12141

RE: MORTON SOBELL, with aliases
ESPIONAGE - R (orig. & 2)

[redacted] b1

The records of the Passport Office of the Department of State contain a passport application submitted by Paula Dubin, who was born [redacted] 1920, at Gottenburg, Sweden. This application is dated May 18, 1933. She requested the passport for proposed [redacted] travel to France, Switzerland, Italy, Belgium, British Isles and all countries for visit and study. She stated in this application she planned to depart June [redacted], 1933, on the [redacted] Line.

[redacted] b1

RECORDED - 91
101-2483-1332

EX-127

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5-5-87

cc - 2 - London

cc - Foreign Liaison Unit

JPL:jdb
(11)

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[redacted]

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

[redacted] b1

Classified by [redacted]
Exempt from G.D.S. Category 1 AND 3
Declassification Indefinite

CONFIDENTIAL SECRET

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD	
NEW YORK	NEW YORK	11/28/56	9/28;10/24;11/2,5,8,13-16,19,20/56	
TITLE OF CASE		REPORT MADE BY		TYPED BY
MORTON SOBELL, was		RICHARD T. HRADSKY		peh
		CHARACTER OF CASE		
		ESPIONAGE - R		

SYNOPSIS:

Marriage license application for PAULA RUBENS and PAUL ZIMMERING, reflects PAULA RUBENS resided at 303 West 18th Street, NY, NY, in 1938. Investigation conducted to develop employment record of PAULA RUBENS prior to 1938. Sources checked reflect no information pertaining to 1933-37 period. Information received indicating Mrs. PAULA ZIMMERING, 230 Central Park South, NYC, is widow of PAUL ZIMMERING. Investigation to develop PAULA RUBENS whereabouts in 1933-37 period continuing.

[redacted] b1

\- P -

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4-21-87
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let to NY 12-7-56 JPL

memo to 12-7-56 JPL

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3-New York (100-37158)

101-2483-1333 RECORDED - 43 INDEXED - 43

DEC 3 1956

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RB 1 MAR 10 1961

AGENCY RAB
REQ. REC'D
DATE FORW. 12-6-56
HOW FORW. by RSC
BY JPL

DECLASSIFIED 10/20/78 WAL/WDF

CONFIDENTIAL SECRET

DETAILS:

SECRET

Brief of Current Investigation

Dr. PAUL ZIMMERING, cousin by marriage of MORTON SOBELL, received his BA degree at the University of Minnesota in 1930 and his medical education at the University of Bristol, England, graduating in 1937. His wife, PAULA ZIMMERING, nee PAULA RUBENS, attended the University of Minnesota in 1928-1929, and a transcript of her credits at North High School, Minneapolis, Minnesota, was sent to Columbia University, New York City, in 1947. Her whereabouts during 1930-1937 is in question. Minneapolis City Directories 1930 and 1932 listed her as a resident at 1216 James Avenue, North. The 1933 to 1937 Minneapolis Directories reflected no information regarding her. Investigation is being conducted to determine if PAULA RUBENS was in New York City during 1933-1937 or if she attended Bristol University during the 1930-1937 period.

Marriage of PAUL ZIMMERING and PAULA RUBENS

On November 8, 1956, SA RICHARD J. KMIECIK checked the records of the Marriage License Bureau, Brooklyn, New York and determined that PAUL ZIMMERING and PAULA RUBENS were married on October 1, 1938 at Brooklyn, New York.

The marriage license application #17215 reflected the following information:

SECRET

SECRET

NY 100-37158

MRS PAUL ZIMMERING

Groom	Bride
PAUL ZIMMERING, 1475 Jessup Avenue, Bronx, white, age 29, born Poland, occupation - physician, first marriage	PAULA RUBENS, 303 West 18th Street, New York City, white, age 28, born Sweden, occupation - office worker, first marriage.
Father - JACOB ZIMMERING, born Poland	Father - ISRAEL RUBENS, born Poland
Mother - ROSE GELLER, born Poland	Mother - ANNA ABRAHAMSON, born Sweden

Marriage performed October 1, 1938 at Brooklyn, by Rabbi M. KOVALENKO, Brooklyn; witnesses - ALEX MYERS and JOSEPH SANDLER.

At the Municipal Reference Library, Municipal Building, New York, New York, the Registry of Voters for the year 1938, checked by SA RICHARD T. HRADSKY on November 13, 1956 for a registration of PAULA RUBENS from 303 West 18th Street, New York City to ascertain the employer of PAULA RUBENS, reflected no listing of this individual. The years 1935-37 were also checked for her registration from 303 West 18th Street, New York City, in the 3rd Assembly District, 15th Election District and no listing of PAULA RUBENS was located.

On November 2, 1956, at the Municipal Reference Library, Municipal Building, New York City, Polks City

SECRET

Directory, 1933-1934 (Emergency Unemployment Relief Committee Edition), published by R. L. Polk and Company, Inc., was checked by SA RICHARD T. HRADSKY for a record of PAULA RUBENS, RUBEN and RUBENOWITZ. No record of these names were located in the Manhattan, Bronx, Queens and Richmond volumes. The Brooklyn volume reflects a listing of one PAULINE RUBENS, Accountant, 874 Troy Avenue, Brooklyn, N.Y.

The Registry of Voters for the years 1933-34 reflecting the registered voters from 874 Troy Avenue, Brooklyn, in the 18th Assembly District , 52nd Election District and 83rd Election District, respectively, were examined for the name of PAULINE RUBENS but this name was not noted. The years 1932 and 35-37 were also checked for this address in the 18th Assembly District, 48th Election District, 82nd Election District and 54th Election District respectively, but no registration for PAULINE RUBENS was listed.

At the New York Telephone Company, 140 West Street, New York City, the telephone directories for the years 1933-1938 for all the boroughs of New York City were checked by SA RICHARD T. HRADSKY on November 5, 1956 for a listing for PAULA RUBENS. The directories reflected no listing of this name.

Neighborhood Inquiry, 303 West 18th Street, New York City

On November 15, 1956, inquiry was conducted at 303 West 18th Street, New York City, the residence of

PAULA RUBENS as reflected on her application for marriage lieense. It was determined that this building is operated as a rooming house and that rent for the rooms was collected by an agent at 337 West 17th Street, New York City.

At 337 West 17th Street, New York City, ARLENE FERGUSON, who shares office space with MURRAY A. MILLER, attorney, advised that the property at 303 West 18th Street, New York City, is owned by Mrs. ROTH who has been the owner sinee about 1945. FERGUSON stated that she has collected the rents at this address but has no records of the former roomers at 303 West 18th Street, New York City that date back to 1938.

Agency Checks

On November 16, 1956, at the Retail Credit Bureau, 45 East 17th Street, New York City, a check was made by SA RICHARD T. HRADSKY for a record of PAULA RUBENS, 303 West 18th Street, New York City but no record of this name was located.

On November 19, 1956, SA DONALD C. STRELETZKY, checked the Credit Bureau of Greater New York, for a record of PAULA RUBENS. An undated report captioned Mrs. PAULA ZIMMERING (widow of PAUL) reflected her residence as 230 Central Park South, New York City and her occupation as Columbia University, 630 West 168th Street, New York City. No other background was given. A notation indicated that an inquiry had been made by Stern Brothers Department Store, 41 West 42nd Street, New York City on November 8, 1956.

On November 20, 1956, T-1 and T-2, who have reliable furnished information in the past, advised that they had no record of PAULA RUBENS or PAULA ZIMMERING at her known addresses.

On November 14, 1956, at the New York City Civil Service Commission, 299 Broadway, New York City, the files of the payroll division were checked by SA RICHARD T. HRADSKY for a record of the employment of PAULA RUBENS between 1932 and 1938 but no record of this name was located.

At the United States Civil Service Commission, 641 Washington Street, New York City, NARCIS BACCI, Supervisory Investigator, Investigations Division, advised SA GEORGE V. SCHNEIDER on November 19, 1956 that no record of PAULA RUBENS as an employee of the United States Government was located during a search of the Civil Service Commission indices.

On October 24, 1956, T-3, who has furnished reliable information in the past, was requested to ascertain if any information was available indicating the employment of PAULA ETHEL RUBENS in 1937 or previous thereto.

On November 8, 1956, the New York City Police Department was requested to conduct a check for an identification record of PAULA ZIMMERING, nee RUBENS.

On September 28, 1956, the Washington Field Division was requested to check the Passport Division, Department of State, to determine if there was a record of a passport issued to PAULA ETHEL RUBENS.

[redacted]

SECRET

NY 100-37158

A review of the files of the New York Division to ascertain if available information relating to the activities and associations of Mrs. MORRIS PASTERNAK, nee FLORENCE GELLER and Mrs. JOHN WILLIAMSON, indicated that a close relationship existed between them was completed but no information was noted which would indicate that they were closely associated.

Mrs. MORRIS PASTERNAK, nee FLORENCE GELLER is the aunt by marriage of MORTON SOBELL and PAULA RUBENS ZIMMERING and Mrs. JOHN WILLIAMSON is MAY WILLIAMSON, wife of the Communist Party leader who was convicted on October 14, 1949 in the New York District Court, Southern District of New York, for violation of the Smith Act of 1940. On October 21, 1949, he was sentenced to five years imprisonment and fined $10,000 by Federal District Court Judge, HAROLD R. MEDINA. He was released from prison on March 1, 1955. WILLIAMSON was granted permission to leave the United States under warrant of deportation and departed the United States for England on May 4, 1955.

- P -

[redacted]

SECRET

132

SECRET

INFORMANTS

IDENTITY OF SOURCE	DATE OF ACTIVITY AND/OR DESCRIPTION OF INFORMATION	DATE RECEIVED	AGENT TO WHOM FURNISHED	FILE NO. WHERE LOCATED
T-1 [redacted]	No record of PAULA RUBENS		[redacted]	Instant report
T-2 [redacted]	" b2 b7D		"	"
T-3 [redacted]	Requested to check for employment record			

Careful consideration has been given to each source concealed and T symbols were utilized in the report only in those instances where the identity of the source must be concealed.

LEADS

NEW YORK

At New York, New York

Will report results of check of records of T-3 and if employment record ascertained from informant will establish whereabouts of PAULA RUBENS therefrom during questioned period 1930-37.

Ref C Ltr 135-3

ADMINISTRATIVE PAGE

SECRET

132

LEADS (CONT'D)

cont'd Ser 1353

At New York, New York

Will report results of check of records of NYCPD on PAULA RUBENS.

Will report results of check of Passport Division, Department of State files for a record of a passport issued to PAULA RUBENS.

Will ascertain if Mrs. PAULA ZIMMERING, 230 Central Park South, NYC, is identical with PAULA ZIMMERING, nee RUBENS, and verify indicated demise of Dr. PAUL ZIMMERING, PAULA RUBENS ZIMMERING's husband.

REFERENCE

Ser 1328

Report of SA RICHARD T. HRADSKY, 10/5/56, New York.

ADMINISTRATIVE PAGE (CONT'D)

cc - Lee

SAC, New York (100-37158) (orig. & 1) December 7, 1956

RECORDED - 21
Director, FBI (101-2483) - 1333

[redacted]-110
MORTON SOBELL, was.
ESPIONAGE - R

Rerep SA Richard T. Mradsky made at New York 11-28-56.

It is noted rerep sets out leads to report the results of a check of the records of [redacted] requested on 10-24-56, and to determine if Paula Zimmering, 230 Central Park South, is identical with the wife of Dr. Paul Zimmering. It is noted the Paula Zimmering of 230 Central Park South is described as a widow. These leads should be covered and a report submitted. In view of the information furnished by a confidential source abroad and sent to your office by letter dated 11-29-56, no further investigation of this matter should be conducted other than that set forth above.

b7
b7D

Covered Serial 135-3

JPL:jdb
(4)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-21-87 BY 3042 PWT PKS

COMM - FBI
DEC 7 1956
MAILED 20

Tolson
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Boardman
Belmont
Mason
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Winterrowd
Tele. Room
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Gandy

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FBI - JUSTICE

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FEDERAL BUREAU OF INVESTIGATION
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TOP SECRET cc - Lee

November 30, 1956

SAC, New York (100-37158) (orig. & 1)

RECORDED-67 100-2483-1334

Director, FBI (101-2483)

MORTON SOBELL, was.
ESPIONAGE - R

CLASSIFIED BY: 3442 PLJT/CLS
DECLASSIFY ON: OADR 4-21-87

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

Rerep SA Richard T. Hradsky made at New York 10-5-56.

[redacted]

b1

[redacted]

b1

[redacted]

b1

[redacted]

Washington Field (101-2316) (Info)
cc - 1 - Minneapolis (65-858) (Info)

JPL:jdb
(6)

[redacted]

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TOP SECRET

NOTE CONTINUED ON PAGE 2

Classified by 2455 10/20/95 WAE/WDF
Declassify on: Category 1 AND 3

Letter to New York
Re: Morton Sobell, was.
101-2483

NOTE CONTINUED FROM PAGE 1:

[redacted] Investigation conducted by the Bu reflected that the sister of Paul Zimmering's mother married the brother of Morton Sobell's mother which would mean Paul Zimmering and Morton Sobell have a mutual aunt and uncle ∅ but are not related by blood. Bufiles reflect Zimmering active in Association of Interns and Medical Students in 1948 and was alleged to have attended CP meetings. He studied medicine at the University of Bristol, England. No derogatory info was developed on his wife. [redacted] Further investigation not deemed necessary since the original allegation is incorrect. ∅ Independent investigation of Zimmering not believed advisable sinc[redacted] no evidence of espionage on part of Zimmering has been obtained.

b1

1334

cc [redacted] on

November 8, 1956 AIR-TEL

SAC, Denver(100-1800)

(orig. & 1)

CP, USA,
DISTRICT NUMBER 10
IS - C

Reurair-tel 11-5-56. Recheck with [redacted] b2 b7D to determine identity of person who will be in Denver, Colorado, 11-16 to 21-56. This probably should be Mrs. Morton Sobell, paid employee of National Committee to Secure Justice in Rosenberg Case, and not Morton Sobell who is serving 30-year sentence at U.S. Penitentiary, Alcatraz. Advise results of recheck.

HOOVER

Recd - 100-3-37-505

100-3-37

JPL:jdb
(7)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-28-87 BY 3042 PWT cls

cc - 101-2483 (Morton Sobell)

NOTE: [redacted] furnished information that Morton Sobell would be in Denver from 11-16 to 21-56 to speak several times. Sobell presently serving 30-year term, Alcatraz and this probably should be Mrs. ~~Morton~~ Morton Sobell. b2 b7D

0-1 to Denver (3)
1-3-57
gpf/jt
Denver advised reptd by 1-9-57

R

101-2483 ✓
NOT RECORDED
78 NOV 13 1956

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YELLOW DUPLICATE
NOV 8 1956
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The Attorney General

November 6, 1956

Director, FBI

"THE JUDGMENT OF JULIUS AND ETHEL ROSENBERG" BY JOHN WEXLEY

"The New York Times Book Review" section, November 4, 1956, issue of that newspaper, carried a one-third page ad concerning the book, "The Judgment of Julius and Ethel Rosenberg," by John Wexley. The ad stated: "The book which is urgently appealing a living case...." The ad contains favorable commentary on the book by Lord Bertrand Russell of the Manchester Guardian; Elmer Davis, American Broadcasting Company, War-Time Chief of O. W. I.; Judge James H. Wolfe, Justice of the Supreme Court of Utah (retired); Judge Patrick H. O'Brien, former Attorney General of Michigan; and Professor Francis D. Wormuth of The Western Political Quarterly. The ad indicates the book is on sale at book stores for $6 or may be obtained directly from the distributor, Cameron Associates, 100 West 23rd Street, New York 11, New York.

In view of the above, I thought you might be interested in a brief summarization of the book and the persons involved in its authorship, publication, and distribution. The book was published in 1955 by Cameron and Kahn, New York, and distributed by Cameron Associates. The book itself is almost 700 pages in length. In the book, the author alleges the entire case against the Rosenbergs and Morton Sobell was a gigantic frame-up participated in by then Attorney General Howard McGrath; then U. S. Attorney, Southern District of New York, Irving Saypol; then Assistant U. S. Attorneys Myles Lane, Roy Cohn, James Kilsheimer; Judge Irving R. Kaufman; and the FBI. He attempts to relate the trial to world events claiming the Truman administration wanted to disprove the charge of being soft on Reds and to justify its erroneous estimate of Russian military know-how, and to do this claimed the atomic bomb had been stolen.

Wexley attempts to develop an "anatomy of frame-up" whereby derogatory information is developed on a person by the FBI and this person is then forced to fabricate a story or he will be prosecuted for an offense developed in the original derogatory information. All individuals connected with the prosecution are held up to ridicule while all individuals connected with the defense are glorified. The author likens Ruth Greenglass to Lady MacBeth urging her husband to destroy the Rosenbergs, due to Ruth's envy of the more talented Ethel Rosenberg and the better educated Julius Rosenberg.

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DGH:pac
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The author analyzes the testimony of various individuals in an authoritative manner and concludes that many of the witnesses for the prosecution were coached before the trial as to their testimony. The author states the prosecution "must have supported these perjuries wilfully, maliciously and deliberately." In comparing testimonies, the author finds the testimony of the Greenglasses "crooked, intricate, inconstant and a various thing" while he finds the Rosenberg testimony "plain, direct and simple." He accuses Judge Kaufman of prejudice claiming his actions were prejudicial, his sentences were vindictive and that he was anti-Semitic.

With regard to the author of the book, John Wexley, he is a screen writer by profession who reportedly belonged to the Los Angeles County Communist Party in the 1940's. This Bureau has conducted considerable investigation concerning him and information developed has been furnished to the Department in the past in the case captioned "John Wexley, With Aliases, Security Matter - C."

With regard to the publishing firm of Cameron and Kahn, Donald Angus Cameron has been investigated by this Bureau in a security-type investigation. He has been active in numerous communist front movements and was described as a Communist Party member by Louis Budenz, former Communist Party official, in testimony before the Senate Internal Security Subcommittee on August 22, 1951. As you undoubtedly know, Cameron and Kahn is the firm which published "False Witness" written by Harvey M. Matusow.

Albert Eugene Kahn is a writer who formerly lived in New York but moved to San Francisco, California, within the past year. In an appearance on March 7 - 8, 1955, before the U. S. Senate Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary, Kahn pleaded the Fifth Amendment regarding Communist Party membership.

cc - Mr. William P. Rogers
Deputy Attorney General

NOTE: In regard to the above, the Director noted on a routing slip "Send memo to A. G. regarding Wexley's book on Rosenbergs, the publishers, etc."

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Tolson

DATE: November 21, 1956

FROM : L. B. Nichols

SUBJECT:

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I recently reported and submitted a report of Roland Watts, the Staff Counsel of the American Civil Liberties Union, dated November 9, on the Morton Sobell petition which called for the Justice Department to investigate the FBI's participation in the ejection of Sobell to Mexico. Irving Ferman told me in confidence that he protested this report vigorously in New York last week.

Ferman further stated that Roland Watts had told him that Mrs. Sobell and Sobell's lawyers were given a copy of the report and it was felt by ACLU that the communists will not release the report because if they do other sections of the report will have to be made public, which might be harmful to them.

LBN:hpf
(4)

cc - Mr. Boardman
Mr. Belmont

NOT RECORDED
138 NOV 1956

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HEREIN IS UNCLASSIFIED
DATE 4-21-87 BY

10 NOV 27 1956

ORIGINAL COPY FILED IN 61-190-

DEC 3 1956

Liaison

RECORDED - 71 101-2483 1336

BY COURIER SERVICE

EX-117

Date: December 3, 1956

To: Director (Orig. and 1)
Central Intelligence Agency
2430 E Street, N. W.
Washington, D. C.

Attention: Deputy Director, Plans

From: John Edgar Hoover, Director
Federal Bureau of Investigation

Subject: MORTON SOBELL, with aliases
ESPIONAGE - R
(Your reference CS CI-9192)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-21-87 BY 3042 RUT/ds

Reference is made to your letter of November 23, 1956, captioned "Rose Sobell."

Mrs. Rose Sobell returned to the United States in May, 1956. For your information, the Daily Worker for May 10, 1956, carried an article which reported an interview of Mrs. Rose Sobell on her return to the United States.

NOTE: CIA was advised by memorandum of 3-21-56 that Rose Sobell, mother of the subject, was abroad and that she had a passport issued 11-14-55 for 6 months travel through England, France, Italy, and Israel. Our memorandum 3-21-56 was captioned "Morton Sobell, Was., Espionage - R," and not Rose Sobell. This information was furnished to CIA for its information and no investigation was requested. Sobell is a convicted espionage agent now serving a 30-year term at Alcatraz.

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JPL:scc
(5)

BY COURIER SVC.
26 DEC - 3
COMM - FBI

64 DEC 28 1956

2 DEC 1956

FBI

101-2483-1336

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FEDERAL BUREAU OF INVESTIGATION

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FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

DEC 6 - 1956

TELETYPE

Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Nease
Tele. Room
Mr. Holloman
Miss Gandy

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-21-87 BY 3043

WA 4 FROM NEW YORK 6 2-30 P

DIRECTOR ..... U R G E N T.....

MORTON SOBELL, WAS, ESPIONAGE DASH R. BUFILE ONE ZERO ONE DASH TWO FOUR EIGHT THREE. AUSA, SDNY, MAURICE NESSON ADVISED INSTANT DATE THAT MARSHALL PERLIN, SUBJECT-S ATTORNEY, FILED GALLEY-PROOFS OF BRIEF WITH UNITED STATES COURT OF APPEALS, SOUTHERN DISTRICT OF NEW YORK ON DECEMBER FIFTH NINETEEN FIFTY SIX, DUE TO INABILITY TO OBTAIN PRINTED DOCUMENT BY THAT DATE. NESSON STATED PRINTED DOCUMENT EXPECTED ON DECEMBER TENTH NEXT AND COPY WILL BE MADE AVAILABLE FOR BURESU. AUSA ADVISED HE HAS NOT YET READ BRIEF. GOVERNMENT HAS TWENTY DAYS IN WHICH TO FILE ANSWER. COPY OF DEFENSE BRIEF WILL BE OBTAINED WHEN AVAILABLE AND FORWARDED IMMEDIATELY TO BUREAU.

~~RECORDED~~ 101-2483-1337

RECORDED-16 DEC 11 1956

~~CORR LINE THREE WORD EIGHT SHOUD BE * PROOFS~~

KE

DEC 14 1956

Mr. Belmont

EX-125

HOLD

cc Branigan

TOP SECRET

cc - Boardman
Belmont
Lee

December 7, 1956

(S) [redacted] b1

12143

MORTON SOBELL, with aliases
ESPIONAGE - R (orig. & 2)

Reference is made to our memorandum of August 30, 1956, in which you were advised efforts were being made to determine if any close relationship existed between the Pasternak and John Williamson families.

For your information, we do not possess any information indicating such a relationship existed between these families. [redacted]

further investigation of this matter will be conducted. (T.S.) b1

5-5-87

101-2483

CLASSIFIED BY: 3042/PUT/CLS
DECLASSIFY ON: OADR

cc - 2 - London

cc - Foreign Liaison Unit

DEC 7 1956

JPL:jdb (11)

RECORDED - 39 101-2483-1338

NOTE: [redacted]

NOTE CONTINUED PAGE 2.

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Tele. Room
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64 DEC 14 1956

TOP SECRET

Classified by 2455 10-0775 made by JOF.
Exempt from GDS, Category 1 AND 3
Date of declassification Indefinite

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

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101-2483-1338 Pg 2

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FBI/DOJ

This is an appeal to Circuit Court of Appeals from the decision of Judge Irving Kaufman, District Court, of 6/20/56 which denied Sobell's motion for a new trial

(Rev. 3-13-56)

FBI

Date: 12/6/56

Transmit the following message via AIRTEL

(Priority or Method of Mailing)

Mr. Tolson	
Mr. Nichols	
Mr. Boardman	
Mr. Belmont	
Mr. Mohr	
Mr. Parsons	
Mr. Rosen	
Mr. Tamm	
Mr. Trotter	
Mr. Nease	
Tele. Room	
Mr. Holloman	
Miss Gandy	

FROM : SAC, NEW YORK

TO : DIRECTOR, FBI

MORTON SOBELL, was
ESPIONAGE-R

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-87 BY 3042 RWT/CLS

Copy of a newspaper entitled "Morton Sobell, Prisoner on Our Conscience," "a newspaper to Secure Justice in the Case of Morton Sobell" published by the Committee to Secure Justice for Morton Sobell, dated November, 1956 received. Correspondent advised that it was mailed to all tenants in his apartment building. Consists of four pages. Box on page one announces the new evidence is before the US Court of Appeals which supports SOBELL's plea of innocence. Another box describes SOBELL's cell in Alcatraz and quotes former US Attorney General MURPHY as branding Alcatraz a "hell-hole." Third box reflects photo of ELMER DAVIS with caption "Appeals to President" and stated that a letter on the SOBELL case was recently sent to the President signed by 61 notables and lists some of the signers. The "Editorial" box on page one states SOBELL's freedom was taken from him by testimony that the prosecutors knew was perjured. Page two reflects photographs of Lord Bertrand Russell and Dr. LUIS SANCHEZ PONTON. Article accompanying photographs reflects statement from letter RUSSELL wrote to Manchester Guardian newspaper concerning the innocence of SOBELL. Also quotes statement by JEAN-PAUL SARTRE published in NY Times newspaper 6/15/56 and statement from CAMILLE HUYSMANS, President of the Chamber of Deputies of Belgium, who is quoted as agreeing with Lord RUSSELL. PONTON former Minister of Education of Mexico, is announced as one of SOBELL's attorneys, together with FRANK DONNER, ARTHUR KINOY, MARSHALL PERLIN of NYC; STEPHEN LOVE of Chicago and BENJ. DREYFUS of San Francisco. Another box on page two reflects photo of Senator LANGER and quotes from his speech at SOBELL Rally at Carnegie Hall, September 29, 1955. Another box reflects a reproduction of a document in the Spanish language which purports to be a refutation by the Mexican Secretary of Interior that SOBELL was deported as claimed by the prosecution. A fourth box is captioned "Story of MORTON SOBELL" and describes SOBELL's arrest by

3-Bureau (101-2483) (RM)
1-New York (100-107111)
1-New York (100-37158)
RTH:meb (#6)

RECORDED 97 101-2483-1339

Mr. Belmont

16 DEC 7 1956

Approved: _____ Special Agent in Charge

Sent _____ M Per _____

FD-86 (Rev. 3-13-56)

FBI

Date:

Transmit the following message via _____

(Priority or Method of Mailing)

PAGE TWO

armed Mexican Secret Police and treats of SOBELL's trial; his guilt by association and perjured witnesses, namely, MAX ELITCHER and JAMES S. HUGGINS of INS. On Page three, a box reflects a photo of SOBELL's wife and son MARK in a playground and is captioned "I Hardly Know You My Son." Another box reflects a photo of SOBELL's mother shaking hands with EMILE KAHN, president of the League for the Rights of Man in Paris and is captioned "SOBELL's Wife and Mother Work to Win His Freedom." The book entitled "Was Justice Done?" by Professor MALCOLM SHARP of the University of Chicago is plugged in another box. An article entitled "Florida Editor asks! Did the U.S. make a grievous mistake?" recounts excerpts allegedly from a column written by MABEL NORRIS REESE, editor of the Mount Dora "Topic" on July 19, expressing an opinion that a new trial be granted SOBELL. Page four also reflects a box captioned stating that the MORTON SOBELL case was never reviewed by the Supreme Court and quotes Justice HUGO BLACK as pointing out that the trial record has never been reviewed by the Supreme Court and that the fairness of the trial was never affirmed.

Page four bears a photo of HELEN SOBELL with Dr. HAROLD C. UREY, captioned "SOBELL Should Have A New Trial Says Atomic Scientist UREY" and sets out excerpts from a speech he made at a SOBELL Dinner in NYC, September 12,1956. Another box quotes statements from "eminent" persons and publications asking for a new trial for MORTON SOBELL and is captioned "Public Opinion Speaks on the SOBELL Case." Statements are from STEPHEN LOVE, WARREN K. BILLINGS, Philadelphia Chapter of American Civil Liberties Union among others. The balance of page four sets out the offices throughout the US of SOBELL Committees, pamphlets on the case available for sale, and requests for contributions. Mailing campaign apparently timed to coincide with filing of appeal brief by SOBELL's attorneys on December 5, 1956. For info.

KELLY

cc: MR. NELMONT
DOM. INTEL. DIVISION

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

cc - Lee

SAC, New York (100-35168) (orig. & 1)

December 11, 1956

Director, FBI (101-2483)

RECORDED - 92 101-2483-1339

MORTON SOBELL, was.
ESPIONAGE - R

Ex Conf Lew 1344
EX-125

Reurair-tel 12-6-56.

You should submit to the Bureau Photostats of the newspaper entitled "Morton Sobell, Prisoner on our Conscience," which newspaper is published by the Committee to Secure Justice for Morton Sobell.

JPL:jdb
(4)

NOTE: Refair-tel advised that a newspaper entitled "Morton Sobell, Prisoner on our Conscience" was issued by the Committee to Secure Justice for Morton Sobell and was dated 11/56. This newspaper consisted of 4 pages and has articles and pictures concerning the instant case. It is believed Photostats of this newspaper should be obtained and furnished to the Department for its information.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-81 BY 3042 PLJ/CLS

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Winterrowd
Tele. Room
Holloman
Gandy

COMM - FBI
DEC 11 1956
MAILED 30

60 DEC 14 1956

Office Memorandum • UNITED STATES GOVERNMENT

SECRET

TO : L. V. Boardman

DATE: December 10, 1956

CLASSIFIED BY: 3042 pvi/ck 4-22-87
DECLASSIFY ON: OADR

FROM : A. H. Belmont

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

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Holloman
Gandy

SUBJECT: MORTON SOBELL, was.
ESPIONAGE - R

Newark by air-tel dated 12-6-56 advised that [redacted] furnished information concerning a meeting held at the home in Elizabeth, New Jersey, of Morton Stavis, attorney for United Electrical Workers and Key Figure of the Newark Office. This meeting was held on 11-24-56 in order to raise funds for Morton Sobell, convicted espionage agent. Main speaker was Yuri Suhl, employee of National Committee to Secure Justice in the Rosenberg Case, who attacked the FBI and the Justice Department for handling of Sobell case (U)

Suhl mentioned new evidence to be presented in a hearing for a new trial for the subject on 12-5-56. This refers to Sobell's appeal to the Circuit Court of Appeals (CCA) from the decision of Irving R. Kaufman, District Court, SDNY, of 6-20-56 denying subject's motion for a new trial. On 12-5-56 Sobell's attorney filed galley proof of brief with CCA, SDNY, and stated printed document would be filed 12-10-56. Suhl discussed this alleged new evidence which actually is the arguments which were presented by Sobell's attorneys on the motion for a new trial claiming Sobell was kidnaped from Mexico, the Government used perjured testimony and that prosecuting attorneys knew the case was a frameup. The allegation concerning the perjured testimony refers to the testimony of Immigration and Naturalization Service Inspector James Huggins. Sobell claims Huggins lied when he wrote on Sobell's manifest card "deported from Mexico" since Huggins knew Sobell had not been legally deported. Huggins' testimony at the trial was that he wrote these words on the card as a result of his own observation after seeing Sobell escorted to the border by a group of Mexican Police officers. (U)

Suhl claims the Rosenberg case was discussed at 2 presidential Cabinet meetings as a result of 3 million letters and telegrams sent to the White House protesting the Rosenberg trial. He claimed J. Edgar Hoover tried to minimize this number to 600,000 in a magazine article. Bufiles contain no information pertaining to Cabinet meetings and do not indicate the Director used any such figure in any magazine article. (U)

Suhl also claimed to have a statement from the Mexican Government that Sobell was never deported from Mexico. Photostats were presented with the subject's motion for a new trial of statements by Mexican Government departments showing no record of Sobell's deportation. Bufiles

101-2483-1340

101-2483
JPL:jdb
(4)
cc - Boardman
Belmont
Lee

RECORDED - 36
INDEXED - 36
DEC 10 1956

SECRET

DEC 13 1956

Classified by 2255 10/20/95 uac/mdr
Exempt from GDS, Category 2
Date of Declassification Indefinite

SOR SEC

PERS FILES

Memorandum to Mr. Boardman
Re: Morton Sobell
101-2483

SECRET

reflect Sobell was ejected from Mexico by the Mexican Federal Security Police [redacted] (S) b1

ACTION:

For your information. NYO will obtain copy of defendant's brief which is to be filed before the Circuit Court of Appeals 12-10-56 and will forward same to Bureau. Upon receipt, it will be reviewed and analyzed. (U)

SECRET

1340

COMMUNICATIONS

DEC 10 1956

TELETYPE

Mr. Boardman	
Mr. Belmont	
Mr. Mohr	
Mr. Parsons	
Mr. Rosen	
Mr. Tamm	
Mr. Trotter	
Mr. Nease	
Tele. Room	
Mr. Holloman	
Miss Gandy	

WASH AND WASH FLD 21 FROM NEW YORK 10 9-30 PM

DIRECTOR AND SAC ..... D E F E R R E D .....

MORTON SOBELL, WAS. ESPIONAGE DASH RUSSIA. AUSA, SDNY, MAURICE NESSON, TELEPHONICALLY ADVISED TODAY SUBJECT-S ATTORNEY HAS NOT YET FURNISHED PRINTED COPY OF APPEAL BRIEF. NESSON STATED THAT GALLEY DASH PROOF REFLECTS AS A REFERENCE AUTHORITY, A BOOK PUBLISHED IN NINETEEN FIFTY SIX ENTITLED QUOTE INTERNATIONAL LAW AND ASYLUM AS A HUMAN RIGHT END QUOTE AUTHORED BY ONE, GARCIA MORA. PUBLISHER IS UNKNOWN. STATED HE WOULD LIKE A COPY OF BOOK AND INFORMATION CONCERNING AUTHOR AS IT APPEARS BOOK MAY HAVE BEEN WRITTEN ESPECIALLY FOR SUPPORT OF SOBELL APPEAL. WFO REQUESTED TO CHECK LIBRARY OF CONGRESS FOR INFORMATION RE AUTHOR, PUBLISHER AND INFORMATION INDICATING WHERE COPY OF BOOK MAY BE OBTAINED.

Bureau library checked - no record - 12/11/56

Public Library checked - no record - 12/11/56

END

1111
1444

WA NY R 21 WA NRB

TU DISC

KELLY

RECORDED - 96

101-2483-1341

EX-117

7 DEC 14 1956

101-2483

Mr. Belmont

61 DEC 17 1956

TWO COPIES WFO

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-87 BY 3042 PHT/CLS

cc - Lee

December 14, 1956

SAC, New York (100-37158) (orig. & 1)

Director, FBI (101-2483)

MORTON SOBELL, was.
ESPIONAGE - R

The "Daily Worker" for December 13, 1956, contained an article on page 7 stating that a book of poetry entitled "You Who Love Life" written by Helen Sobell, wife of the subject, will go on sale December 17, 1956. The article continued this book may be obtained through Sydner Press, 30 Charleston Street, New York 14 or at the Workers Bookshop, 50 East Thirteenth Street, New York.

You should identify Sydner Press and ascertain the names of the persons associated with this company.

Covered N.Y. ltr 12-17-56

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-87 BY 3042 PLT/als

ENCLOSURE

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RECORDED - 53
EX-126

100-2483-134

10 DEC 18 1956

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DEC 14 1956
MAILED 30

66 DEC 20 1956

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-87 BY 3042/PLT/ds

O'Connor

HELEN SOBELL POETRY ISSUED

A slim book of poems "You Who Love Life," written by Helen Sobell and illustrated with lithographs by Rockwell Kent, will go on sale Dec. 17, with proceeds to aid the defense of her husband.

Morton Sobell is in Alcatraz prison serving a sentence of 30 years. He was found guilty, in 1951, along with Ethel and Julius Rosenberg, of conspiracy to commit espionage—a charge he consistently denieds. Mrs. Sobell has devoted all her time since then to the campaign to free her husband.

The book will be sold for $2.50 for a hard cover edition. $1.00 for soft covers. They may be ordered through the Sydmer Press, 30 Charleston St., N.Y., 14 or at the Workers Bookshop, 50 E. 13th St., New York.

Wash. Post and Times Herald _____
Wash. News _____
Wash. Star _____
N. Y. Herald Tribune _____
N. Y. Journal-American _____
N. Y. Mirror _____
N. Y. Daily News _____
N. Y. Times _____
Daily Worker 7
The Worker _____
New Leader _____

Date DEC 19 1956

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101-2483

let to NY
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ENCLOSURE
101-2483-134

AIRTEL

TO: DIRECTOR, FBI (101-2483)

FROM: SAC, WFO (101-2316)

MORTON SOBELL, wa
ESPIONAGE - R

ReNYteletype 12/10/56

Re teletype advised of desires of AUSA, SDNY, for copy of book entitled, "International Law and Asylum as a Human Right," by one GARCIA MORA, and requested WFO check Library of Congress for information re author and publisher and where book might be obtained.

Catalogue index, Library of Congress, shows publication of above title, authored by one MANUEL R. GARCIA MORA, published by Washington Public Affairs Press, 1956, (Index # JX 4281, .G3).

Inquiry of Public Affairs Press, 419 New Jersey Avenue, S. E., by suitable pretext, developed info such company had published above book and has copies available at $4.50 a copy. Recent shipments were also do have been made to Brentano Stores in NYC at 587 5th Avenue and at Main Street at 11 West 47th Street. Suggest copy may be purchased at one of above stores in NYC or that attorney can obtain loan, if desired, of Library of Congress copies, through library channels of the Department. RUC.

LAUGHLIN

(3) - Bureau
2 - New York (100-37158)
1 - WFO
JRC:cft
(6)

AIRTEL

Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Nease
Tele. Room
Mr. Holloman
Miss Gandy

MR. BRANIGAN

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-87 BY 3042 PWT/cls

RECORDED 96 101-2483-1343

DEC 19 1956

DEC 11 8 10 AM '56 Belmont

FBI - DOJ

5 DEC 26 1956

cc - Lee

Assistant Attorney General
William F. Tompkins (orig. & 1)

December 18, 1956

Director, FBI

MORTON SOBELL, with aliases
ESPIONAGE - R

Reference is made to information which has previously been furnished to you concerning the above-captioned individual.

There is attached a photostat of a newspaper entitled "Morton Sobell, Prisoner on Our Conscience" which is published by the Committee to Secure Justice for Morton Sobell.

This is furnished to you for your information.

Enclosure

101-2483

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-87 BY 3042/PWJ/cks

JPL:jdb
(5)

cc - 100-387835 (Natl. Committee to Secure Justice for Morton Sobell)

NOTE: Sobell is a convicted espionage agent presently serving a 30-year term at Alcatraz Prison. In 6/56 the motion for a new trial was denied by Federal Judge Irving R. Kaufman, District Court, Southern District of New York. He currently has an appeal pending with the Circuit Court of Appeals, Second Circuit, from this decision

3 ENCLOSURE
#2

MAILED 2
DEC 18 1956
COMM-FBI

RECORDED - 21 101-2483-1344

INDEXED - 21 17 DEC 19 1956

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Gandy

64 DEC 20 1956

101-2483-1344

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

Date 12/14/56

To

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

FILE # BUFILE 101-2483

Title MORTON SOBELL was

ESPIONAGE - R

(NY FILE 100-37158)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-87 BY 3042 PWT/CKS

ACTION DESIRED

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

[ ] Return with explanation or notation as to action taken.

ATTACHED FIND 2 PHOTOSTATS OF NEWSPAPER ENTITLED "MORTON SOBELL - PRISONER ON OUR CONSCIENCE" per YOUR REQUEST.

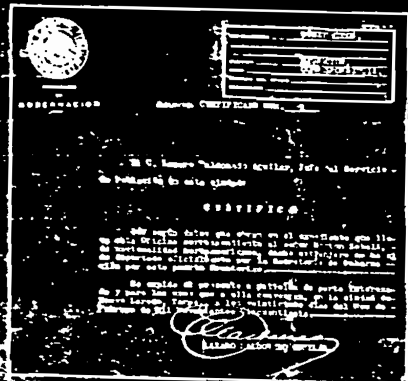
2 ENCLOSURE

SAC James J. Kelley

Office New York

101-2483-1344
ENCLOSURE

Documents [illegible]fute Prosecution



One of the new evidence documents proving perjured testimony in the Sobell trial. The above document is an official Mexican certification that Morton Sobell was not deported from Mexico, as the prosecution had claimed.

Senator Langer Hits Prosecution Tactics

Tactics of the prosecution in the Sobell case were criticized by U.S. Senator William Langer in a speech made at Carnegie Hall in New York City on Sept. 29, 1955. Senator Langer said:

". . . There's one thing that I've discovered down there in Washington that I don't like—and it isn't only down there but I found that in State after State after State. You find a prosecutor who wants to make a record, a prosecutor who will get hold of the press and get them to write up stories, just like they did in the Sobell case, month after month after month, and poison the feelings of people in that community before the man ever comes to trial at all, stories that aren't true, stories that mention people who never are called to testify when the trial takes place . . .

"I want you folks to know that the Judiciary Committee has this very much at heart—this matter of convicting an innocent person before he's proven guilty, in the minds of the public, so that when you finally get a jury, they're unconsciously prejudiced, with the result that instead of having a fair trial like our Constitution says, every man or woman should have, that man or woman doesn't get it."

U. S. Senator Langer

The full text of Senator Langer's speech can be found in the Congressional Record of May 9, 1956. Reprints are available from the Sobell Committee, 940 Broadway, New York City.

Morton Sobell, Scientist

Up to the time of his arrest in 1950, Morton Sobell led the life of thousands of other young professional people in America—pursuing his career as a scientist, raising a family, taking an interest in what was going on around him. Sobell grew up a healthy and lively youngster. He showed mechanical ability at an early age, building his own "ham" broadcasting station and becoming a licensed operator when he was 15. He entered the School of Engineering at the College of the City of New York, where he was an honor student.

Served Our Country

Sobell received his degree in 1938 and the following January was appointed Junior Engineer at the Bureau of Ordnance in Washing, D. C. He enrolled in the Horace Rackham School for Graduate studies at the University of Michigan in 1941. After the United States entered the war, Sobell registered with the National Roster of Scientific and Specialized Personnel of the War Manpower Commission. He was offered a fellowship by the University, but declined, writing the Dean: "Perhaps I will return when the country does not need its men so sorely as it does at this moment."

Sobell obtained a job doing war work at the General Electric Company in Schenectady, N.Y., designing radar apparatus. Among Sobell's contributions to the war effort was a device he invented to improve the functioning of "Servo-motors" (remote control).

Was Assistant Professor

In 1945 Sobell was married to his wife Helen. They settled in Schenectady, Sobell continuing his job at General Electric, his wife obtaining a job with the same company as an engineering assistant. Two years later Sobell received an offer from the Reeves Instrument Corporation in New York at a higher salary. They moved to New York and bought a house in Flushing, Long Island. He was invited to give a course in feed back amplifiers at the Brooklyn Poly-technical Institute, being listed as Assistant Professor.

In June of 1949, Helen gave birth to their son, Mark. It was a year later that the Sobells took their vacation trip to Mexico that was to end in the arrest.

The Story of Morto[illegible]

What are the facts in the case of Morton Sobell, and why are people becoming convinced that a miscarriage of justice took place?

The story begins in the summer of 1950. Morton Sobell, then a 33-year-old electronics engineer living in New York City, took a leave of absence from his job and left with his wife and children for a vacation in Mexico. During the major part of his vacation Sobell and his family visited places of interest and spent time in an apartment which they rented in Mexico City.

On the night of August 16, 1950, Sobell's apartment in Mexico City was invaded by armed men claiming to be agents of the Mexican Secret Police. They accused Sobell of being "Johnny Jones," wanted on suspicion of a bank robbery in Acapulco.

Sobell's protests and his demand to call the American consulate for identification were met with violence. He was knocked unconscious, hustled into a car, and driven to the U.S. border. His family was also seized and taken to the border. There Sobell was informed that he was under arrest by the U.S. government and placed in jail in Laredo, Texas.

Guilt by Association

The next morning the newspapers carried the blazing headline: "Atom Spy Arrested Fleeing in Mexico." It was then that Sobell realized he had become enmeshed in the accusations against one of his former college classmates, Julius Rosenberg, who had been arrested on charges of being in an espionage conspiracy. The prosecutors had been questioning the classmates of Rosenberg, and had come upon Morton Sobell.

Bewildered at what had taken place, Sobell was asked to agree to testify against the Rosenbergs and escape prosecution, as other witnesses were doing. Sobell vehemently denied that he was in the slightest way involved in any kind of crime. Anxious to return to New York to fight the charge, he waived transfer from Texas. Yet it was not until months later that he was indicted. His wife succeeded in obtaining attorneys, but the attorneys could not even learn from the prosecution what specific acts Morton Sobell was accused of committing.

Meanwhile, the prosecution had been giving out stories to the press branding Sobell as guilty, and by the time the trial started some nine months after his arrest, it was already taken for granted by many that he was guilty as charged.

Guilt by Perjured Witness

The trial began in March, 1951. One of the key prosecutors was Roy Cohn, who later became an aide of Senator McCarthy.

There was no evidence presented to show that Morton Sobell was in a conspiracy, or that he ever passed a single document to anyone. The only testimony purporting to link Sobell with espionage came from prosecution witness Max Elitcher.

The fact that Elitcher was a prosecution witness came as a shock to Sobell and his family. Elitcher, too, had been a classmate of Sobell and later they had roomed together. Under cross-examination, Elitcher admitted the prosecution had discovered that he had committed perjury by denying under oath his membership in the Communist Party. He admitted he was "scared to death" of a prison sentence for perjury, but "hoped for the best" as a result of his testimony. Elitcher has never been prosecuted, and today holds a well-paying engineering job.

Thus the only testimony linking Sobell to the alleged conspiracy came from a witness under fear of a perjury sentence. Judge Kaufman told the jury: "If you do not believe the testimony of Max Elitcher as it pertains to Sobell, then you must acquit the defendant Sobell."

Near the end of the trial the prosecutors introduced the claim that Sobell had fled to Mexico and thereby showed a "consciousness of guilt." Immigration inspector James S. Huggins from Laredo, Texas, was brought to testify that Sobell had been deported

This is how it was b[illegible] Helen, together on a pic[illegible] Sobell travels throughout [illegible] for her efforts to win her [illegible]

Notables Abroad Ask Justice

Dr. Luis Sanchez Ponton

The Sobell case is being discussed not only in the United States, but in other countries throughout the world. Two of the foremost world figures to make public statements on the case recently were Lord Bertrand Russell, eminent philosopher and mathematician, and Jean Paul Sartre, one of the world's best known writers.

From England, Lord Russell wrote on March 26, 1956, in a letter to the British newspaper The Manchester Guardian: "I am writing to enlist your support in the case of Morton Sobell, an innocent man condemned as a result of political hysteria to thirty years in gaol and at present incarcerated in Alcatraz, the worst prison in the United States."

From France, Jean Paul Sartre wrote in a letter published on June 15, 1956, in the New York Times: "In view of the arguments and the documents that have been offered, it does not seem to me arguable, at least as [illegible] 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 . . ."

Recently Camille Huysmans, President of the Chamber of Deputies of Belgium joined in appealing for Sobell's freedom. Mr. Huysmans stated after having examined documents in the Sobell case: "I think that the opinion of Sir Bertrand Russell is in accordance with reality and that there is cause to free Morton Sobell."

Mexican Legal Expert Becomes Sobell Attorney

Former Minister of Education of Mexico, Dr. Luis Sanchez Ponton, now Professor of Law at the University of Mexico, has become one of Morton Sobell's attorneys.

Dr. Ponton, expert on international law, is participating in Sobell's present appeal from Judge Kaufman's refusal to hold a hearing.

Sobell is represented by the firm of Frank Donner, Arthur Kinoy, and Marshall Perlin of New York City; Stephen Love of Chicago; and Benjamin Dreyfus, of San Francisco.

Lord Bertrand Russell

Sobell

...e. Morton Sobell and his wife, ... before the arrest. Today, Mrs ... United States seeking support ... and's freedom.

from Mexico by Mexican authorities. The prosecution even introduced an immigration card marked "Deported from Mexico."

What the jury could not know ... was that five years later ... documents were to prove that the prosecution had presented perjured testimony to make its claim that Sobell had been deported from Mexico and that he had fled as a fugitive. (See new evidence story on page 1).

In addition, the prosecutors distorted certain of Sobell's actions in Mexico. After Sobell had been kidnapped and imprisoned for many months, the prosecutors learned that Sobell had been making inquiries for travel passage under different names during his stay in Mexico. Sobell has admitted this, but has maintained that his actions had nothing to do with guilt. He said that he was alarmed at the fear and hysteria developing in the United States and at the constant harassment of scientists and engineers. For a time he thought of getting a job in a more relaxed atmosphere, but after inquiring about passage to various countries where he thought there might be job opportunities, he decided to return to his job in New York.

After the trial, an affidavit was submitted to Judge Kaufman by Sobell, who had pleaded innocent but had not taken the stand on the advice of his attorneys. The lawyers had contended that since there was no case of any substance against Sobell, it was not necessary for him to testify. Sobell's affidavit denied the flight charges, and told how he had been kidnapped from Mexico, although at that time he could present no proof. Judge Kaufman dismissed the affidavit and sentenced Sobell to 30 years, taking the highly unusual step of recommending against parole.

"It is noteworthy that although the prosecution had branded Sobell an atomic spy in the press, Judge Kaufman told Sobell in sentencing: "The evidence in the case did not point to any activity on your part in connection with the atomic bomb project."

The Truth Emerges

Plans were immediately made for Morton Sobell's appeal. When the case came before the U.S. Court of Appeals, it was decided 2-1 against Sobell, with a dissent by Judge Jerome N. Frank.

In 1955 and 1956, the investigations on Sobell's behalf began to bear fruit. New documents were obtained and placed before the court. Today more and more Americans are asking whether it is not time for the public and the courts to take a new, long look at the case of Morton Sobell, and whether if he were tried today, instead of in 1951, the verdict would not be a different one.

"I Hardly Know You, My Son"

Morton Sobell hopes the time is near when he will be able to see his son again—for the first time in more than four years. And his son, Mark, now 7 years old, keeps talking of that happy day when he will see his father.

Alcatraz regulations forbid children under 16 to visit the prison. At one point it looked as if this rule might be set aside. Mrs. Sobell was granted permission to bring Mark to the prison. The little boy, eager to see his father whom he scarcely remembered, made the 3000-mile trip across country. At San Francisco Bay, they prepared to board the ferry for Alcatraz.

But when the ferry arrived, there was a note expressing regrets that Mark, by then in tears, would not be allowed in the prison after all. Today he still waits for the moment when he will see his father. From Alcatraz, Sobell wrote his son on the occasion of his 7th birthday:

Playing . . . and waiting. Mark Sobell, 7, plays in the park as his mother, Helen Sobell, watches. He has not seen his father in four years, as children are barred from visiting in Alcatraz.

Dearest son, I want to write you, but I hardly know you, my son. Oh, I know where you go to school, what you do at school, I know that you come home and play downstairs after school, roller skating and other games. I know what you eat for supper, and that afterwards you play around the house, until it's bedtime, And then mother plays a game with you, or reads you a book. I even know what you say to Helen, and what you look like (from your photos).

But with all this I know you so little. It's 4 years since I last saw you at West St. and talked to you over the phone (I used to tell you I slept upstairs) and you've really grown up since then. Seven is quite a ripe age, the beginning of youthhood, when you really begin to understand all that goes on around you, when you begin to take on responsibilities, to discuss things rationally, to study in earnest, to live. I hope you enjoy it all, understanding, learning and living, every minute, hour and day of it.

Happy Birthday, dear Mark. Love, Dad.

Sobell's Wife and Mother Work to Win His Freedom

Morton Sobell's wife, Helen Sobell, and his white-haired mother, Rose Sobell, have traveled some 100,000 miles to help win Sobell's freedom from Alcatraz.

They have been footsore, weary miles—but the journey has been lightened by the warmth and friendship of people everywhere.

For the past six years, Sobell's wife has been working night and day to free her husband. It has been a tiring task—traveling around the country, meeting with committees seeking to help, speaking with important people. She has spoken publicly in cities throughout the United States and in Canada.

All this she has had to do while being a mother to her two children, her young son, and her 16-year-old daughter. In fact, with her husband in prison these past six years and the children deprived of a father, she has had the double responsibility of being both mother and father to them.

Visits Alcatraz

Every few months she makes the trip to Alcatraz, where she can visit her husband briefly—but not even in the same room. The rigid Alcatraz rules require them to view each other through a thick, bullet-proof pane of glass and speak through static-ridden telephones. Recently Mrs. Sobell saw her husband, who she said "is confident that he will win a hearing on his motions for a new trial."

Mrs. Rose Sobell, 62-year-old mother of Morton Sobell, clasps hands with Emile Kahn, president of the League for the Rights of Man in Paris, during her world journey on behalf of her son.

Sobell's mother, too has traveled throughout the country, and even to Europe, seeing people who could help her son. In Italy she met with officials of the Vatican; in France with famous artists, writers, and the Chairman of the League for the Rights of Man; in England with members of Parliament and with philosopher Bertrand Russell, who subsequently wrote his famous letter on the Sobell case.

"I told my son Morty when I talked to him in Alcatraz about my travels in the United States and overseas," she said. "He told me, 'Mama, I feel it—I feel it here in Alcatraz. When I hear the commentators talking about me on the prison radio, I know that the truth is becoming known.'"

Writes to Newspapers

Rose Sobell has written letters to many newspapers appealing for her son's freedom. Among the papers that have published her letters are the San Francisco Call Bulletin, San Antonio Texas, Light; Kokomo, Ind., Tribune, Washington Star, Chicago American, and the Chattanooga, Tenn., News-Free Press.

At present Morton Sobell's mother is recuperating from an operation on her eyes, but is already out, seeing people again. "I'm not so young a woman any more," she says. "One thing I will yet do—I will see my son Morty a free man."

Florida Editor Asks: Did U. S. Make a Grievous Mistake?

Mabel Norris Reese, editor of the Mount Dora Topic of Florida, in a column on July 19, criticized Judge Kaufman's refusal to grant Morton Sobell a new trial. The following are excerpts:

". . . I cannot unquestionably accept the verdict of Judge Irving R. Kaufman . . .

"Morton Sobell was sentenced to 30 years in prison as one of the Rosenberg 'spy ring.' He claims he is innocent. A big, thick book entitled 'The Judgment of Julius and Ethel Rosenberg' claims he is innocent. (Book by John Wexley)

"I do not know where the truth lies—whether in the action of Judge Kaufman in brushing off the Sobell appeal, or whether within the pages of this book. I know that Judge Kaufman—who presided, incidentally, at the original trial, professes belief in what he terms Americanism—the Americanism of truth, honesty and justice . . .

"If this is truly the philosophy of Judge Kaufman, then I believe he should have granted Morton Sobell, a new trial, for then he could have settled once and for all the question of whether or not the United States has made a grievous mistake . . .

"Wexley's account of his (Sobell's) 'kidnapping' in Mexico makes hair-raising reading. And his documentation of that alleged forced return—so he could be presented at the trial as a 'fleeing' spy—gives a lover of truth moments of discomfort that had even physical repercussions . . .

"Did the United States make a grievous mistake?

"The way to make certain is for the appeal of Sobell in a higher court to be granted, for a Democracy cannot live with possible guilt on its soul concerning any individual."

Morton Sobell Case Never Reviewed By Supreme Court

The prosecution has contended that the verdict in the Rosenberg-Sobell case has been upheld by the courts. However, the truth is that the fairness of the trial has never been reviewed by the highest court of the land. Each time the case has come before the U. S. Supreme Court, it has been refused consideration.

Justice Hugo Black of the Supreme Court summed it up in the following words: "It is not useless to point out that this Court has never reviewed this record and has never affirmed the fairness of the trial below."

'Was Justice Done?' Asks Legal Authority in New Book

"Was Justice Done?", new book on the Rosenberg-Sobell case, is being widely discussed. The book was written by Professor Malcolm Sharp of the University of Chicago after painstaking investigation that led to his personal participation as a lawyer in the case. It has an introduction by Dr. Harold Urey, Nobel Prize scientist.

Professor Sharp, in a detailed study of the case for the prosecution and the case for the Rosenbergs and Sobell, concluded that justice was not done.

Bertrand Russell calls the book "overwhelmingly convincing." A St. Louis Post Dispatch book review commented: "For some this book will raise disturbing doubts as to the validity of our system of criminal justice . . . For others the execution of the Rosenbergs raises anew questions about the common sense of capital punishment."

Saunders Redding, writing in the Baltimore Afro-American, leading Negro newspaper, commented: "Now an American legal scholar takes up the Rosenberg-Sobell case, and again arise the doubts, the uneasy conscience. The plain fact is that Professor Sharp's book . . . is a warning that the world's confidence in our judicial system has been badly shaken, that legal reforms are overdue."

Sobell Should Have New Trial, Says Atomic Scientist Urey

(Exerpts from a speech at a dinner in New York City, Sept. 12, 1956)

I've been asked many times how I became interested in the case of Ethel and Julius Rosenberg and Morton Sobell. One evening after I had spoken at a temple in Chicago, a woman came up to me and asked if she could see me at my office. Several days later she visited me and gave me literature on the Rosenberg-Sobell case. I glanced at the material and showed the lady the door as painlessly as possible.

Afterward, I looked at the material and it was pretty terrible, if what it said was true. A few days later there was a telephone call and I was asked to make a statement on the case. I said that I could not possibly make a statement without knowing the facts.

The next day there arrived on my desk the complete transcript of the Rosenberg-Sobell trial. Now, I get a great deal of material sent to me, and much of it finds its way into my waste basket. However, I usually glance at things to see what they are about. So I began reading the record of the trial. It was something like a detective story, but very poorly organized. I read every night for a week until I had finished the entire record.

Found Perjured Testimony

Until the time I was half-way through I was convinced they were completely guilty. But then, as I read on, I was shocked by what had taken place. There was so much foolishness in the trial. It was plainly obvious that there was outright perjury.

Dr. Harold C. Urey, atomic scientist and Nobel Prize winner, receives scrolls of tribute presented by Mrs. Morton Sobell. Scrolls were signed by noted Americans in tribute to Dr. Urey for achievements as a scientist and for his courage in speaking his mind on the Sobell case.

People have asked me what Morton Sobell did. But I don't know. On reading through the record of the trial again I am astounded at how little there was about Sobell in the trial. You cannot tell what he is even supposed to have done. There is no question but Morton Sobell should have a new trial.

Once I knew the truth, I had no choice but to speak out. I have had many difficulties because of my position on this case, but I've also had many people congratulate me for my stand. I have always been taught that someone with character has to stand up for what one believes is right. There comes a time in every person's life when he has to decide whether to speak the truth. My time had arrived.

Will YOU help secure justice For Sobell—By taking action!

1. Read Facts...

- ☐ "Prisoner on our Conscience," pamphlet telling the story of Morton Sobell 20c
- ☐ Speech by U.S. Senator Langer 10c
- ☐ Reprint of article on Sobell defense in the Nation magazine by Stephen S. Love, professor of law at Northwestern University 20c
- ☐ Complete Trial Transcript (boxed set of 8 volumes)...$6
- ☐ Was Justice Done?, 310 page book analysing the Rosenberg-Sobell case, by Professor Malcolm P. Sharp, with introduction by Dr. Harold C. Urey. $3.50
- ☐ The Judgment of Julius and Ethel Rosenberg, 672-page study of Rosenberg-Sobell case by John Wexley. $6.00

2. Write a Letter

A. To the President—The President has the authority to pardon Morton Sobell, to commute his sentence to time already served, or to recommend to the Attorney General that motions for a new trial not be opposed. Will you write to the President asking him to take action? The address is: President of the United States, White House, Washington, D. C.

B. The Director of Prisons—Many Americans have written to the Director of Prisons asking that Morton Sobell be transferred from Alcatraz to a regular federal prison pending outcome of his appeal. Will you join in such a request? The address: Director of Prisons, Justice Dept., Washington, D.C.

3. Contribute

The National Committee to Secure Justice for Morton Sobell is supported by public contributions. Money is contributed in response to mailings, at public meetings, and at house gatherings.

These contributions:

Help pay for the legal fees, legal printings, legal expenses, and for the exhaustive legal investigations taking place on the case.

Make possible the publication and circulation of the truth in the case through booklets, newspaper ads, purchase of air time, and all other available means.

Will you contribute today?

COMMITTEE TO SECURE JUSTICE
FOR MORTON SOBELL
940 BROADWAY,
NEW YORK CITY, N. Y.

Enclosed find $........: for the reading material checked above.

Name ....
Address ....
City ....
State ....

COMMITTEE TO SECURE JUSTICE
FOR MORTON SOBELL
940 BROADWAY,
NEW YORK CITY, N. Y.

☐ I would like to contribute toward Morton Sobell's legal appeals.
☐ I would like to contribute toward informing the public of the facts.
☐ Please send me additional information on the case.
Enclosed find contribution of ....

Name ....
Address ....
City ....
State ....

Public Opinion Speaks On the Sobell Case

Throughout the country the Sobell case is being discussed and debated. Following are some of the comments by eminent persons and publications. Many of the statements were made about John Wexley's book, "The Judgment of Julius and Ethel Rosenberg."

Judge Patrick H. O'Brien, Detroit, Mich. . . . "In accordance with our inheritance as a liberty-loving nation, I urge the immediate release of Morton Sobell."

• • •

John F. Finerty, attorney in Mooney-Billings and Sacco-Vanzetti cases: "I believe that Morton Sobell received a rotten deal. Certainly his incarceration in Alcatraz is completely unjustified and demands immediate correction.

• • •

Walter Millis, editor of the "Forestal Diaries" and former editorial writer of the N. Y. Herald Tribune: "The evidence on which Morton Sobell was convicted was probably perjurious; if it were legally possible, the case ought to be reviewed on its merits, while in any event the 30-year sentence was grossly disproportionate to any crime actually attested against him."

• • •

Catholic Worker "If there is anything to be gained by writing the powers that be it would be fine if the readers of this review would request that Morton Sobell be given a new trial."

• • •

Philadelphia Chapter of the American Civil Liberties Union: "It was contended that since the Communist Conspiracy included atomic espionage, Sobell was implicated in espionage. His trial and subsequent sentencing on this basis constitutes a dangerous extension of the concept of 'Conspiracy' whereby a defendant does not have to be linked with any specific conspiracy."

• • •

Prof. Stephen S. Love, professor of law, Northwestern University: "The 30-year sentence imposed upon Morton Sobell is a blight upon the reputation of American justice."

August Derleth, Madison, Wisconsin, Capitol Times: " . . . It seems that Morton Sobell, sentenced to 30-years in prison, ought to have a retrial, one in which the testimony against him ought to be examined with the greatest precision."

• • •

Nancy F. Wechsler, New York Post: "Whether Sobell should have been convicted on the meagre record against him . . . whether the tactics of the prosecution or the demeanor of the Judge impaired the fairness of the proceedings, whether the defendants were convicted and sentenced on a record which might not have produced the same results in calmer times—all these are real issues which call for honest appraisal."

• • •

Jewish Examiner: "The Rosenbergs are beyond the power of justice, but their alleged accomplice, Morton Sobell, in in Alcatraz, serving a 30-year term. An investigation and a retrial would seem warranted on the basis of Mr. Wexley's disclosures."

• • •

Prof. Francis D. Wormuth, Western Political Quarterly, published by the University of Utah: "Obviously the Department of Justice cannot answer all criticisms. But unless it answers Mr. Wexley's we must conclude [illegible] the Rosenberg case is our [illegible] fus case, outdoing the [illegible] in sordidness, cruelty, and terror."

• • •

Warren K. Billings, found innocent after 23 years in prison in the Tom Mooney labor case: "The district attorney told me that if I didn't testify against Mooney, he would hang me. He told Sobell if he didn't testify against the Rosenbergs he would rot in Alcatraz. But Sobell doesn't have anything to testify any more than I did."

Contact Committee Near You

National Committee to Secure Justice for Morton Sobell
940 Broadway, New York City, N. Y.
Phone: AL 4-9983

Los Angeles Sobell Committee
468 North Western Ave.
Los Angeles, Cal.
Phone: Hollywood 4-4725

Bay Area Council of Sobell Committees
1417 Valencia
San Francisco, Cal.
Phone: Atwater 2-0422

Chicago Sobell Committee
20 West Jackson
Chicago, Ill.
Phone: Webster 9-5992

Syracuse Sobell Committee
1009 Cumberland Ave.
Syracuse, N. Y.
Phone: 722406

St. Louis Sobell Committee
3715 Lasalle St.
St. Louis, Mo.
Phone: Prospect 1-8540

Distribute This Newspaper

Additional copies of this newspaper may be obtained from the Committee to Secure Justice for Morton Sobell, 940 Broadway, New York City, at the rate of 10c per copy, $3 per hundred, and $20 per thousand.

MORTON SOBELL

Prisoner on Our Conscience

A Newspaper to Secure Justice in the Case of Morton Sobell

November, 1956 — Published by the Committee to Secure Justice for Morton Sobell — 10c

Editorial

This paper is about a man and his country.

The man is a prisoner in Alcatraz. His name is Morton Sobell. The crime of which he was accused: "conspiracy to commit espionage." His sentence: 30 years imprisonment.

His country is our own, the United States of America. We are a fair-minded country with a reputation for justice for all. We don't like corruption in any form. We expect public officials to work honestly and faithfully, to respect the rights of all citizens, and to honor their oath of office.

Morton Sobell is a scientist, husband and father. He has said for six years that he is innocent. He says that his good name, his family and freedom were taken away from him even though the prosecutors knew the testimony was perjured.

Morton Sobell's lawyers have uncovered documents proving that justice was tampered with, that perjury was committed, that laws were broken to convict this man.

In every state, in city after city, people are saying that our country is owed something in this case—a careful look to determine all of the facts. Our nation's reputation and honored traditions—and a man's freedom and future—are at stake.

In these pages, you will discover how and why this case came about. You will read what eminent Americans are saying concerning this case, and what you, as a good citizen, can do to secure justice for a fellow American and for our country.

The Committee to Secure Justice for Morton Sobell

New Evidence Before Appeals Court Supports Sobell Plea of Innocence

The U. S. Court of Appeals is being asked to grant a new trial to Morton Sobell, or to order a hearing on new evidence that the prosecutors knowingly used perjured testimony to convict Sobell. Morton Sobell, imprisoned in Alcatraz, was condemned to 30 years on a charge of "conspiracy to commit espionage."

Morton Sobell

Motions based on the new evidence were made before Judge Irving Kaufman in New York last May. Judge Kaufman, who presided at the original trial and has rejected all of Sobell's previous motions, was asked to step aside. But he insisted on ruling on the motions and rejected Sobell's appeal without permitting a hearing to take place.

Sobell's attorneys contend that under the law there should be a full hearing on the new evidence, with the right to take testimony under oath and call witnesses. They are now taking the case to the U. S. Court of Appeals.

The New Evidence

The new evidence charges that:

1. The prosecutors, in order to make Sobell appear guilty, knowingly used perjured testimony to give the false impression of Sobell as a fugitive; also that the prosecutors suppressed evidence that could have helped Sobell establish his innocence.

2. That the prosecutors participated in the illegal kidnapping of Sobell from Mexico; that this kidnapping violated Mexican and international law, and therefore, the U.S. Federal Court lacked the sovereign power to try Sobell.

The accused prosecutors include Roy Cohn, who later became Senator McCarthy's aide, and Irving Saypol, who is now a New York State Judge.

The new evidence includes the following documents:

• An official Mexican certification that Morton Sobell was not "Deported from Mexico", as the prosecution had claimed. The new evidence shows that Mexican authorities knew nothing about Sobell's kidnapping until they read about it in the papers, and that the prosecutors knew Sobell was not deported when they presented false testimony to the judge and jury and introduced into evidence an immigration card marked "Deported from Mexico."

• An official Mexican certification that Morton Sobell entered Mexico lawfully, with a tourist card. The prosecution had contended that Sobell went to Mexico unlawfully, like a fugitive, and had no visa.

Suppressed Evidence

• Various indentification cards and papers which the prosecutors had seized and suppressed in order to deprive Sobell of the opportunity to show that he was in Mexico openly and legally. These documents included: Rent receipts showing that Sobell's apartment was in his own name; identification cards which he carried on his person, including his social security card and membership card of the New York Academy of Sciences; Sobell's customs declaration showing that he registered his camera so he would not have to pay duty on returning to the United States and vaccination certificates proving Sobell and his family were planning to return to the United States.

Sobell's motion details the prosecution's participation in the illegal kidnapping, giving the names of the agents involved, and disclosing how the kidnapping was carried out.

Notables Ask Justice for Sobell

Many prominent Americans are raising questions about Sobell's trial and imprisonment, and are aiding his efforts to obtain a new trial.

Among those who have asked for a re-examination of the Sobell case are U.S. Senator William Langer, atomic scientists Dr. Harold C. Urey and Linus Pauling, noted commentator Elmer Davis, and Judge Patrick H. O'Brien of Michigan.

There have been statements in behalf of Morton Sobell by clergymen, professors, writers, and influential publications throughout the country.

Appeal to President

Recently a letter on the Sobell case was sent to the President by 61 notables, and made public by his wife. They asked Presidential action to secure Sobell's freedom or a new trial. The signers included:

Elmer Davis, commentator and former head of the Office of War Information; Dr. Roland H. Bainton of the Yale Divinity School; Jessie F. Binford, noted social worker of Hull House, Chicago; Dorothy Day, editor of the Catholic Worker; John F. Finerty, attorney in the Sacco-Vanzetti and Mooney-Billings cases; Waldo Frank, author; Maxwell Geismer, literary critic; Rev. John Paul Jones, Union Presbyterian Church of Bay Ridge, Brooklyn;

Elmer Davis
Appeals to President

Dr. Paul L. Lehmann, Director of Graduate Studies, Princeton Theological Seminary; Lewis Mumford, author.

Others are continuing to add their name to the appeal. Among those who Mrs. Sobell said signed recently are Rabbi Jacob J. Weinstein of Chicago; Rabbi Uri Miller of Baltimore; Rabbi Harry Halpern of Brooklyn, N. Y.; and Rabbi Eugene J. Lipman of New York City.

See page 4 for public statements on Sobell case.

Sobell Imprisoned in Alcatraz; "Confession" Held Price of Release

Life never changes in Alcatraz.

A windowless, iron-barred cell, six feet by eight, a cot, a shelf, a commode, no newspapers, not even a candy bar, six hours of sorting laundry, a half-hour in a bleak exercise yard—then food, eaten under the eyes of guards, and back to a cell once more.

This has been Morton Sobell's existence for four years. It is the way he is sentenced to live out thirty. He may be visited only 12 times a year. He may not, under Alcatraz regulations, see his son for nine more years.

Alcatraz, high on a barren island off the coast of San Francisco, is known by many names, mostly as "The Rock." In the formal language of the Federal Bureau of Prisons, it is the "maximum penitentiary" of the United States. Former U. S. Attorney General Murphy called it a "hell-hole." Senator William Langer of the Senate Judiciary Committee called it "the worst hell-hole of all."

A Berkeley, California, Chief of Police, seeing the human wreckage it produces, angrily branded Alcatraz "a disgrace to our country." San Francisco writers, living in the shadow of its walls, term it the "Isle of Blight," "Isle of Despair." Penologists, writers, legislators for years have demanded Alcatraz be abandoned.

The reason given for continued use of Alcatraz is the need for a prison to cage desperate criminals, men who have assaulted guards, attempted prison breaks, men with long records as incorrigibles.

"But why should a man like Morton Sobell be sent to Alcatraz?", one radio commentator asked recently.

"Confess" or Else

On Thanksgiving Day, 1952, when Sobell still refused to bend to pressure by being a witness against the Rosenbergs and continued trying to prove his innocence, he was abruptly transferred to Alcatraz. His attorneys fought to prevent the transfer, but prosecutor Roy Cohn argued in court that there could be no delay.

Thus, while Sobell was in the midst of his appeals, he was transferred to Alcatraz—1,000 miles away from his attorneys and his family.

Since then he has been visited by prosecution agents, who made clear why he was being incarcerated there. They have told him that by "confessing" he could receive leniency, but if he persisted in protesting his innocence, he would remain on "The Rock."

The use of Alcatraz by the prosecution to force Morton Sobell to admit to a crime has shocked many Americans. Letters denouncing this "third degree method" have been written to the Federal Director of Prisons in Washington and requests have been made for Sobell's transfer to a regular federal prison pending outcome of his appeals.

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

GIR 1 DEC 19 1956

TELETYPE

Mr. Tolson	
Mr. Nichols	
Mr. Boardman	
Mr. Belmont	
Mr. Mohr	
Mr. Parsons	
Mr. Rosen	
Mr. Tamm	
Mr. Trotter	
Mr. Nease	
Tele. Room	
Mr. Holloman	
Miss Gandy	

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-87 BY 3042/PLT/CLS

WASH 4 FROM NEW YORK 19 3-33 P

DIRECTOR URGENT

MORTON SOBELL, WAS, ESP DASH R. AUSA, SDNY MAURICE NESSEN ADVISED INSTANT DATE THAT ADDITIONAL COPIES OF SOBELL-S APPEAL BRIEF PROMISED TO HIM BY DEFENSE ATTORNEY PERLIN HAVE NOT BEEN RECEIVED. MADE HIS COPY FROM WHICH HE IS PREPARING ANSWERING BRIEF AVAILABLE AND BRIEF BEING PHOTOSTATED I NYO. COPY WILL BE IMMEDIATELY SUBMITTED TO BUREAU UPON COMPLETION AND AUSA COPY WILL BE RETURNED.

KELLY

END AND HOLD

RECORDED - 10 101-2483-1345

EX-166

DEC 21 1956

Mr. Belmont

7 DEC 28 1956

cc Brannigan

Boardman
Belmont
Lee

~~CONFIDENTIAL~~

~~SECRET~~

TOP SECRET

December 20, 1956 (U)

RECORDED - 22 101-2483-1346

(S)

MORTON SOBELL, with aliases (U)

(Orig. & 2)

Reference is made to our memorandum of December 7, 1956. (U)

For the completion of your files, the records of the Board of Health of the City of New York reflect that Dr. Paul Zimmering, 300 East 57th Street, New York City, husband of Paula Zimmering, died on October 16, 1956, at Mount Sinai Hospital. (U)

101-2483

cc - 2 - London (X) U

JPL:jdb
(11)

cc - Foreign Liaison Unit (X) U

[redacted]

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CLASSIFIED BY: 3912/PUT/LDS
DECLASSIFY ON: OADR
5-5-87

Tolson
Nichols
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Belmont
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Mohr
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Winterrowd
Tele. Room
Holloman
Gandy

1 DEC

Class. & Extension Indefinite

TOP SECRET

FD-36 (Rev- 3-13-56)

F B I

Date: 12/14/56

Transmit the following message via AIR-TEL

(Priority or Method of Mailing)

Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Nease
Tele. Room
Mr. Holloman
Miss Gandy

TO: DIRECTOR, FBI (101-2483)

FROM: SAC, NEW YORK (100-37158)

MORTON SOBELL, was
ESP - R

ReBulet, 12/7/56.

PAUL ZIMMERING, Physician, 300 East 57th Street, NYC, husband of PAULA ZIMMERING, died 10/16/56 at Mount Sinai Hospital, NYC, according to records of NYC Board of Health. Results of check of [redacted] not yet received.

Upon receipt of this information, a report will be submitted immediately incorporating results of leads set out in referenced letter.

Baltimore requested to expedite check for employment records of PAULA ZIMMERING.

KELLY

CLASSIFIED BY: 3042/PLT/CLS
DECLASSIFY ON: OADR

3-Bureau (101-2483) (RM)
2-Baltimore (RM)
1-NY 100-37158

Mr. Belmont

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[redacted] (5)

12-20-56 JPL (5)

RECORDED - 22

101-2483-1346

12 DEC 15 1956

ESP SEC

RTH:PKH (#6)
(7)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

DEC 20 1956

TELETYPE

Mr. Tolson
Mr. Nichols
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Nease
Tele. Room
Mr. Holloman
Miss Gandy

WASH 11 FROM NY 20 8-09PM

DIRECTOR URGENT

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-87 BY 3042 PWT

MORTON SOBELL, WAS., ESPIONAGE-R. COPIES OF DEFENDANTS- APPEAL BRIEFS OBTAINED FROM AUSA, SDNY, CONSISTING OF TWO PARTS- ONE ENTITLED "BRIEF FOR APPELLANT" /NO. TWO FOUR TWO NINE NINE/, AND "BRIEF FOR APPELLANT ON SUPPLEMENTARY MOTION" /NO. TWO FOUR THREF ZERO ZERO/. PHOTOSTATS OF EACH HAVE BEEN COMPLETED AND HAVE BEEN FORWARDED TO THE BUREAU INSTANT DATE.

101-2483-2347

KELLY

RECORDED - 81

DEC 28 1956

END AND HOLD

EX-117

JAN 3 1957

Mr. Belmont

101-2483

Office Memorandum • UNITED STATES GOVERNMENT

TO : A. H. Belmont cc - Belmont
Branigan
Lee

DATE: December 31, 1956

FROM : W. A. Branigan

SUBJECT: MORTON SOBELL, was.
ESPIONAGE - R

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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-87 BY 3042/PWT/CLS

Subject was convicted in 1951 along with Julius and Ethel Rosenberg of conspiracy to commit espionage and on 4-5-51 was sentenced to 30 years in prison. He is now serving his sentence at Alcatraz Prison.

On 5-8-56 subject filed a motion in the District Court, Southern District of New York, requesting a new trial and requesting a hearing to determine the issues raised by his motion. This motion contended that Sobell was illegally deported from Mexico and that the United States Government was aware of this fact. Therefore, he alleged the Government knowingly used perjurious testimony to the effect that Sobell was legally deported. On 5-25-56 Sobell filed a second motion for a new trial and requested a hearing to determine the facts, which motion claimed that since Sobell was not legally extradited the United States Government lacked jurisdiction to try Sobell. On 6-20-56 Irving R. Kaufman, District Judge, Southern District of New York, who was also the trial judge at the original trial, denied both these motions.

On 12-19-56 subject filed with the United States Attorney, Southern District of New York, one copy each of the Brief for Appellant and Brief for Appellant on Supplementary Motion. Photostats of both these briefs were furnished to the Bureau by the New York Office. The first is an appeal from the denial of the defendant's motion of 5-8-56. This appeal reiterated the claims that the prosecution knowingly used perjured testimony during the trial and claims the District Court should have held a hearing on the facts alleged about the subject since the trial record did not conclusively refute the subject's allegations. This perjury, it is alleged, consisted of the testimony of INS Inspector James Huggins who testified at the trial. Huggins introduced the INS manifest card for Sobell which had the words "deported from Mexico" written thereon. Huggins stated he wrote these words as a result of his own observations of Sobell being escorted to the border by a group of Mexican Security Police. Sobell also claims the prosecution suppressed the facts concerning Sobell's "abduction" from Mexico.

The Brief for the Appellant on Supplementary Motion claims that since Sobell was not removed from Mexico through the use of the existing extradition treaty, the District Court lacked total jurisdiction to try him. Sobell alleges that when the Mexican Federal Security Police ejected him from Mexico they were acting as agents of the United States Government and thus he was not ejected by any official Mexican department.

101-2483 - 1348

101-2483
JPL:jdb
(4)

RECORDED - 27
EX-108

17 JAN 3 1957

58 JAN 7 1957

Memorandum to Mr. Belmont
Re: Morton Sobell
101-2483

OBSERVATIONS:

In his decision of 6-20-56 Kaufman pointed out that the testimony of Huggins was used to show that Sobell did not return to the United States voluntarily and was not for the purpose of showing legal deportation. Regarding the alleged suppression of evidence, Judge Kaufman stated there is no duty on the part of a prosecutor to present to the court a question the defendant sees fit not to raise in his own behalf. Regarding the supplementary motion, Judge Kaufman ruled Sobell had no rights under the extradition treaty as treaties are made between countries and unless a person becomes clothed with such rights, he cannot object to the court's jurisdiction. Kaufman pointed out an individual would become clothed with the treaty rights if he were extradited for one offense and tried for another. These appeals do not raise any questions of fact which were not included in the original motion in the District Court.

ACTION:

For your information.

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

Date 12/19/56

To

- [✓] Director (Att. DONALD E. MOORE)
- [ ] SAC
- [ ] ASAC
- [ ] Supv.
- [ ] Agent
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Title MORTON SOBELL, was

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- [ ] Reassign to
- [ ] Send Serials
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- [ ] Return with explanation or notation as to action taken.
- [ ] Initial & return
- [ ] Search & return
- [ ] Recharge serials
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- [ ] Return serials
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- [ ] Bring file
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ATTACHED FIND PHOTOSTATS OF:

"BRIEF FOR APP[ELLAN]T" #24299 and 101-2483-1349

"BRIEF FOR APPELLANT" SUPPLEMENTARY MOTION"

#24300

NOT RECORDED
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Paul W. Williams

United States Court of Appeals

For the Second Circuit

October Term, 1956

No. 24300

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

against

MORTON SOBELL, *Defendant-Appellant.*

On Appeal from an Order of the United States District Court for the Southern District of New York

BRIEF FOR APPELLANT ON SUPPLEMENTARY MOTION

DONNER, KINOY & PERLIN,
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New York, New York,
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The Hecla Press : : New York City
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Paul W. Williams

United States Court of Appeals

For the Second Circuit

October Term, 1956

No. 24299

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

against

MORTON SOBELL, *Defendant-Appellant.*

On Appeal from an Order of the United States District Court for the Southern District of New York

BRIEF FOR APPELLANT

DONNER, KINOY & PERLIN,
342 Madison Avenue,
New York, New York,
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United States Court of Appeals

For the Second Circuit

October Term, 1956

No. 24299

—o—

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MORTON SOBELL,

Defendant-Appellant.

—o—

BRIEF FOR APPELLANT

Jurisdictional Statement

This is an appeal from an opinion and order of the court denying appellant's motion for a hearing pursuant to Title 28, U. S. C., Section 2255. The court's opinion, entered on June 20, 1956, is reported at 142 F. Supp. 515. Notice of appeal was filed on June 27, 1956 (A. 3).* Jurisdiction of this Court is conferred by Title 28, U. S. C., Section 1291.

* We designate with the letter "A." references to the current record on appeal. The printed record of the original trial is referred to as "R." Attached to this brief are two appendices, designated by Roman numerals, containing respectively appellant's affidavit of April 4, 1951, in support of the motion in arrest of judgment, and an excerpt from the prosecution's brief in the original appeal to this Court. In addition, photostatic copies of the Exhibits and Appendices A to D attached to appellant's petition of May 8, 1956, have been filed with the Court.

Statement of the Case

On May 8, 1956, appellant, pursuant to Title 28, U. S. C., Section 2255, moved for a hearing and, upon the hearing, for an order vacating and setting aside the sentence and judgment of conviction on the grounds that his conviction was unjustly and illegally procured in violation of the Constitution and laws of the United States, in that the prosecuting authorities knowingly, wilfully and intentionally used false and perjured testimony and evidence, suppressed evidence which would have aided appellant and impeached the prosecution's case and exposed the falsity thereof, and made false representations to the court (A. 7).*

Appellee's answering affidavit was submitted on May 21, 1956 (A. 41). Appellant's reply affidavit was submitted on May 26, 1956 (A. 65). On May 21, the motion was referred, over appellant's opposition, to the Hon. Irving R. Kaufman, United States District Judge, who presided at the original trial. Oral argument was had on June 4, 1956 (A. 111).

Appellant is presently detained in the United States Penitentiary at Alcatraz, California, and has been in federal custody since August 1950 (A. 9).

Prior Proceedings

On January 31, 1951, an indictment was returned against appellant charging in a single count that he had conspired

* On May 25, 1956, appellant filed a second motion (A. 78) pursuant to Title 28, U. S. C., Section 2255 seeking to vacate and set aside the sentence and judgment of conviction on the grounds that the Court had no national jurisdiction and hence could not try appellant, in that the prosecution had seized appellant from Mexico in violation of the Extradition Treaty between the United States and Mexico and without the knowledge and consent of the Government of Mexico. The Court likewise denied this motion and appellant is concurrently appealing the denial of the second motion.

to transmit to the Union of Soviet Socialist Republics "documents, writings, sketches, notes and information relating to the national defense of the United States", in violation of Title 50, U. S. C., Section 34 (R. 2).

Appellant was tried and convicted together with co-defendants Julius and Ethel Rosenberg before a judge and jury. On April 5, 1951, a sentence of thirty years was imposed upon appellant (R. 30). On February 25, 1952, this Court, Judge Frank dissenting, affirmed the judgment of conviction. 195 F. 2d 583. Appellant's petition for a writ of certiorari to the United States Supreme Court was denied. 344 U. S. 838.

The Trial

Only one witness, Max Elitcher, attempted to associate appellant with the alleged conspiracy. He was an admitted perjurer and, if believed, a co-conspirator who was testifying with obvious intent and motive. The remainder of the case against appellant was limited to an attempt to establish his guilty consciousness by proving he had fled to Mexico (A. 16).

The prosecution sought to show that appellant, acting in accordance with a preconceived plan of the conspiracy, fled from the United States to Mexico to avoid apprehension by the federal authorities. To establish that appellant's trip to Mexico was *ab initio* for the purpose of flight, it sought to prove that he would not voluntarily return to the United States, but had to be brought back against his will (A. 13-19). To this end, the prosecution tendered evidence to prove that appellant was legally deported by the Government of Mexico (A. 11-13).

As stated by the lower court, the evidence of deportation from Mexico was the "natural capstone" of the flight evidence (A. 218).

The prosecution sought to prove appellant's deportation by the Government of Mexico through two witnesses and Government Exhibits 25 and 25-A.

In the course of his direct examination of the witness Manuel Giner de los Rios (a neighbor of appellant in Mexico City), Roy Cohn, the assistant prosecutor, asked "what date Sobell was deported to the United States by the authorities" (R. 926). Defense counsel objected on the ground that the witness was not qualified to establish action by the Mexican authorities. Mr. Cohn replied, "Of course, your Honor, I am asking a question. I think we have other proof coming." In reply to the Court's question, "You have other proof coming of deportation?", Mr. Cohn answered affirmatively (R. 926).

Shortly thereafter, Mr. Cohn tendered Government Exhibit 25, purportedly a true copy of a manifest made in the regular course of business by the Laredo, Texas, office of Immigration and Naturalization Service, which contained on its face a notation that appellant had been "Deported from Mexico" (R. 1031). Mr. Cohn tendered this exhibit as proof of "the circumstances of the departure of Sobell from Mexico to the United States" (R. 938).*

Defense counsel objected to the document on the ground that an entry made by an employee of the United States did not constitute competent proof of governmental action by a foreign power (R. 940). The court directed, over Mr. Cohn's objection, that he produce the maker of the document.

The following day, March 21, 1951, the prosecution produced James S. Huggins, immigration inspector of the Immigration and Naturalization Service of the Department

* In fact, Government Exhibit 25 was not an exact duplicate of the manifest. Compare Government Exhibits 25 and 25A (a photostatic copy substituted for the original). Exhibits 1 and 2 attached to appellant's petition of May 8, 1956.

of Justice, who was stationed in Laredo, Texas. Mr. Huggins' direct testimony consisted solely of the fact that he had prepared Government Exhibit 25-A in the regular course of his duties as a Government employee (R. 1025) and that appellant was brought into his office by Mexican Security Police (R. 1030). The prosecution asked him nothing concerning the circumstances of appellant's removal, but merely used his testimony to authenticate the document.

On *voir dire* and cross-examination, Huggins stated:

1. The notation "Deported from Mexico" was based on his own information and observation (R. 1027, 1028) and was not supplied by the persons who delivered appellant to Laredo, Texas (R. 1028, 1036).

2. Appellant was delivered to him by officials from Mexico acting in their "official capacity" (R. 1026).

3. He had been awaiting appellant's arrival (R. 1034-1035).

4. He advised appellant that the manifest must be signed because "our regulations require that any person who is being deported from Mexico there be a record made * * * " (R. 1036).

The trial court charged the jury that it could consider appellant's trip to Mexico and his return by the Mexican authorities as proof of (1) guilty flight and (2) independent proof of appellant's membership in the Rosenberg-Greenglass conspiracy. The trial court stated:

> " * * * The prosecution says that when the conspiracy was uncovered * * * the defendants, fearful of being apprehended, attempted to flee and that their attempts to flee followed a pattern which also indicates a preconceived plan * * * *and that he [appellant] was apprehended only after being delivered to the United States by the Mexican authorities* * * *.

> " * * * You may consider whether such journeys or trips show a preconceived plan as part of the conspiracy * * *" (R. 1559-1560; emphasis supplied).

The evidence of deportation could only have imported to the jury that the Government of Mexico felt impelled to oust appellant from its territory because he had either entered the country illegally, or while there had violated the laws of Mexico, or was a fugitive from justice who had to be forcibly returned to the United States. The very term "deportation" had a prejudicial effect and implied a prior determination of wrongdoing by the Government of Mexico.

On the day of sentencing, appellant submitted an affidavit in support of a motion in arrest of judgment challenging the jurisdiction of the court over his person. Appellant's affidavit [see Appendix I, *infra*] alleged that on August 16, 1950, he was seized at his residence in Mexico City by persons claiming to be police, on the pretext that he was wanted for robbing a bank in Acapulco. His personal effects, including his "visa," were taken from him. He was denied an opportunity to communicate with the United States Embassy, assaulted and rendered unconscious, and removed to a building where he was held from approximately 8:00 o'clock in the evening until 4:00 o'clock the next morning. At that time he and his family were placed in cars under guard and transported to Nuevo Laredo. Upon approaching the International Bridge, a United States agent entered the car, brought appellant to Laredo, Texas, where he was directed to sign a card and was subsequently placed in custody.

On the basis of this affidavit, appellant's counsel suggested that his removal might not have been lawfully executed and requested that a hearing be held and evidence be adduced so that the court could determine whether or not it had personal jurisdiction over appellant (A. 1598).

The prosecutor, Irving Saypol, argued that the affidavit was false and should be disregarded (R. 1598-1599):

> "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. * * * It is evident in the fact that throughout this trial there sat in this courtroom the wife of the defendant as to whom the affidavit states that she was present and we know that she was present from the time of the arrest until the time the *final act of deportation was effected at Laredo* * * *.
>
> "The Court: I think I have enough.
>
> "Mr. Saypol: The whole affidavit portrays certainly that this defendant was not honorably escorted from Mexico but that *literally he was kicked out as a deportee.*" (Emphasis supplied.)

The trial court summarily denied without opinion appellant's motion in arrest of judgment.

The Appeal From the Original Judgment of Conviction

On the appeal from the original judgment of conviction appellant asked this Court to reverse the conviction on the ground, *inter alia,* that (1) the testimony of deportation from Mexico and Government Exhibit 25-A were irrelevant, immaterial and incompetent; and (2) it was error for the lower court to deny appellant a hearing on his motion challenging the jurisdiction of the trial court over his person.

The prosecution in its brief to this Court (at pp. 65-66) urged the relevancy and materiality of the deportation evidence:

> "Thus, proof that his return was involuntary, in conjunction with proof of his activities in Mexico, tended strongly to show that his trip to Mexico was prompted

by a desire to escape prosecution. As such it was persuasive evidence of his consciousness of guilt."

The prosecution further argued that the evidence established that appellant had been legally deported by Mexico. It declared that there was no evidence of illegality in appellant's removal nor unlawful instigation or participation on the part of the prosecution or its agents. (The pertinent sections of the prosecution's brief are set forth in Appendix II, *infra*.) The prosecution stated in part (Appendix II, pp. ix, x, xii):

> "While kidnapping may be a criminal offense in Mexico, summary deportation of a fugitive from justice is hardly tantamount to kidnapping. [Footnote:] Even if it is true, as Sobell alleges, that he was beaten by the Mexican police, such mistreatment would hardly invalidate his deportation."
>
> * * *
>
> "Surely, a fugitive from justice who is willingly surrendered by the country of his asylum to the country where he is wanted derives no immunity from prosecution by reason of the latter's request for his surrender."
>
> * * *
>
> "There is not a shred of evidence that any United States agent assisted the Mexicans in this act. Nor is there anything in the record to indicate that the United States Government procured the Mexican Government to deport Sobell. The most that appears is that the FBI was waiting for Sobell in Laredo when he was delivered by Mexico into the hands of the United States Immigration Service. From this it may be inferred that the Mexican authorities had alerted the FBI to expect Sobell's arrival, but it by no means follows that the Bureau was the instigator of Sobell's ouster."
>
> * * *
>
> "For even if the rule were as Sobell would like it, he would not be in a position to invoke it, since it presupposes wrongful conduct on the part of a federal officer, and there is not a scintilla of evidence of any such conduct here."

This Court, in affirming the conviction, held the evidence of deportation to be highly relevant and material (*United States* v. *Rosenberg*, *supra*, at 602). It held that Huggins' testimony and Government Exhibit 25A were tendered for the purpose of and did in fact establish that appellant was legally deported by the Government of Mexico:

> "* * * The Government introduced evidence to show that Sobell had been legally deported from Mexico * * *" (at p. 603).

and further:

> "It seems particularly inconsistent, therefore, for Sobell not to have introduced evidence, during the trial, of his kidnapping to contradict the Government's evidence of legal deportation" (p. 603, footnote 20).

The Present Motion

The present motion and supporting papers charge (A. 11 *et seq.*):

1. The prosecution knowingly, wilfully, and intentionally introduced false and perjured evidence to establish that appellant was deported by the Government of Mexico. The prosecution knew that appellant was not deported or otherwise ousted by the Government of Mexico or its agencies. The prosecution knew that appellant was removed without the knowledge or consent of the Mexican Government. It was the prosecution itself which had planned, directed and participated in the illegal seizure and abduction of appellant, using the services of its agents in the United States and Mexico.

The prosecution and the witness Huggins long prior to the trial were informed by the Government of Mexico that it did not consent to or participate in appellant's removal.

They had been advised by the Mexican authorities that appellant's seizure and abduction were unlawful and constituted a violation of Mexican sovereignty. Nevertheless, the prosecution used Government Exhibit 25A and Huggins' intentionally false and misleading testimony to prove that appellant's removal was effectuated by the Government of Mexico by means of a legal deportation.

2. The prosecution knowingly, willfully and intentionally suppressed evidence which would have impeached this false testimony and would have disclosed its knowledge of the falsity of the evidence. It suppressed the fact that appellant was abducted by its agents without the knowledge or consent of the Mexican Government. Finally, it suppressed the fact that Huggins had been advised long prior to the trial that the notation "Deported from Mexico" on Government Exhibit 25A was false. The prosecution was impelled to suppress this evidence in order to enjoy the fruits of its illegal action, which otherwise would have been inadmissible.

3. Further, the prosecution, seeking to preclude a judicial inquiry into the facts, made false representations to the trial court. In opposition to the motion in arrest of judgment, the prosecution falsely represented that appellant was deported by the Mexican authorities. It attacked the truthfulness of appellant's affidavit in support of the motion in arrest of judgment which might have opened Pandora's box and led to the disclosure of the prosecution's illegal activities.

In its brief to this Court, the prosecution perpetuated the fraud of lawful deportation. It continued to suppress the fact and indeed denied that it was a party to appellant's illegal seizure.

The Facts

On June 22, 1950, appellant and his family left on a trip to Mexico (A. 21). Prior to departure they had obtained tourist cards from the Mexican Consul in New York City. They traveled by air, stopping at Dallas, Texas, where appellant registered certain personal effects with United States Customs officials to avoid paying duties upon his planned return (A. 21, Exhibits 3, 4, 5). In going to Mexico appellant had not sought to avoid prosecution or apprehension by the criminal authorities nor was his trip in any way related to a purported involvement in any criminal activities. The authorities had not evidenced any desire to interview, let alone apprehend him, nor was he aware of any reason why they should. His departure from the United States was lawful and not surreptitious. His identity was not hidden (A. 16, 21).

Appellant rented in his own name living quarters for himself and his family. On his person he carried numerous documents accurately reflecting his identity. Appellant planned to and would have voluntarily returned to the United States had he not been prevented from doing so by his unlawful abduction on August 16, 1950 (A. 21-22, Exhibits 7, 8, 9, 10, 11).*

At the time of the trial appellant's knowledge of the circumstances of his seizure and removal from Mexico was essentially limited to the facts set forth above and in the affidavit in support of the motion in arrest of judgment.

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* There was testimony that appellant, after being in Mexico a month, used aliases for a period of about ten days in traveling to Vera Cruz and Tampico. But by August 1, 1950, he had returned to Mexico City and openly resided with his family, using his correct name, until his abduction on August 16, 1950. At that time, appellant and his family were making plans to return to the United States and had obtained the requisite small pox vaccination.

Prior to appellant's abduction, the prosecution had no knowledge of his travels in Mexico or his use of aliases. This evidence was the fruit of the illegal seizure itself. See Point II, *infra*.

After the introduction of Government Exhibit 25A and the testimony of Huggins, appellant proceeded on the belief that he was deported or otherwise ousted by the Government of Mexico at the request of the United States authorities. He concluded that the testimony of legal deportation by Mexico was unassailable, even though it may not have been done in accordance with normal procedure.

Subsequently, through the motion in arrest of judgment, appellant sought a hearing to obtain the facts with respect to the circumstances of his removal. Appellant in his brief to this Court on appeal from the original judgment of conviction indicated that he did not know the necessary facts relative to his seizure in Mexico.*

The allegations of the petition which establish appellant's abduction by the prosecution without the knowledge or consent of the Government of Mexico, the prosecution's knowledge of the falsity of the evidence and the unlawful suppression are based upon facts *dehors* the record obtained since the trial.**

---

* Appellant stated:

> "There was enough [evidence] to require a hearing as to whether the assault, detention and transportation of Sobell were acts done or participated in by officers of the United States" (p. 63).

And raised the question:

> "Whether the acts that led to Sobell's abduction were an international trespass by the United States, or merely in violation of domestic law by its officials (the facts are equivocal and which of the alternatives applies could only be learned on a hearing) * * *" (p. 65).

** The newly obtained evidence sustaining the present charge was obtained as a result of field investigations in Mexico which took more than a year to complete. Several journeys to Mexico were required. Mexican counsel was retained, witnesses were interviewed, and documents secured. In some instances it took months to find certain vital witnesses and trips had to be made to some of the most inaccessible parts of the country. It was only as a result of such work that the facts supporting the detailed allegations could be assembled.

None of the allegations in the petition based upon facts *dehors* the record has been controverted by the appellee and hence must be accepted as true. *United States* v. *Rosenberg*, 200 F. 2d 666 (C. A. 2).

These new facts obtained since the trial establish:

1. The Government of Mexico did not deport appellant. This is attested to *inter alia* by the files and records of the Department of Migration in Mexico City as well as in Nuevo Laredo (A. 24-25, Exhibits 12, 13). Appellant was abducted by individuals who were employees of the Secret Service Police of the Federal District of Mexico, acting solely as agents of the prosecution, and not in their official capacity (A. 22).*

All deportations must be carried out by the Migration Department of the Secretariat of *Gobernacion*. In accordance with established procedures, deportations are carried out by officials of this agency during regular business hours between 8 A. M. and 6 P. M. (Appendices A and B). Before putting an alien across the border, the immigration officials of Mexico give him certain documents, one copy of which is signed by the alien and retained by Mexico, advising him that he may not return under penalty of law (Appendix B, Exhibit 14). Deportations, summary or otherwise, must be instituted by written charges and all administrative actions are subject to judicial review (Appendices A and

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* In any event, the jurisdiction of this local police agency is limited to the Federal District of Mexico, whose geographical boundaries are essentially those of Mexico City. They have no power to act beyond these boundaries, nor are they authorized to act in any way in immigration matters (Appendix D). They are analogous to plainclothesmen of the New York City police department.

B.)* Hence appellant's removal was clearly not effected by the Mexican Government, its agencies or authorities.

2. **Appellant's removal was carried out without the participation, knowledge or consent of the Mexican Government.** Upon learning, from United States news reports, of appellant's kidnapping, the Mexican Government instituted an investigation in Laredo and Nuevo Laredo and took certain steps to prevent a repetition of such an unlawful invasion of its national sovereignty (A. 25).

3. **The Mexican Government advised the prosecution and Government witness Huggins long before the trial that appellant was not deported or otherwise removed by that Government or with its sanction.** Within a day of appellant's arrival in Laredo, Texas, Huggins and other employees of the United States immigration office at Laredo, Texas, were advised by Hector Rangel Obregon, Chancellor of the Mexican Consulate at Laredo, that appellant had not been deported. Obregon expressed concern that the seizure and abduction had occurred without the knowledge or approval of the Mexican Government (A. 27).

This information was immediately transmitted to the prosecutors. At the very time Huggins was so informed by the Mexican Consulate, FBI agents John W. Lewis, Rex I. Shroder and Leo H. Frutkin were in Laredo, Texas, and in communication with Huggins. They had been sent from New York to Laredo at the direction of the prosecution in anticipation of appellant's abduction (A. 27-28).

FBI agent Lewis, who aided the prosecution throughout the pre-trial preparation, sat at the prosecutor's table throughout the trial (A. 28).

* In setting forth these facts we do not here mean to raise the legal effect flowing from failure to comply with internal Mexican law. These facts are set forth merely to establish the falsity of the challenged evidence. The impact of illegal seizure upon national jurisdiction is dealt with in the companion appeal.

4. **The prosecution itself, through its agents in the United States and Mexico, unlawfully planned, directed and participated in the unlawful seizure of appellant.** Agents of the FBI in Mexico and employees of the United States Embassy in Mexico City participated in this illegal act. Hence the prosecution was fully apprised that appellant's removal was not effected by the Government of Mexico, and that he was not deported (A. 28-31).

The prosecution carried out the abduction in a secret and conspiratorial fashion so as to prevent knowledge and interference by the Government of Mexico until appellant was outside its borders (A. 34-35).

The FBI, at the behest of the prosecution, utilized its contacts in Mexico to devise a scheme to kidnap appellant without the consent of the Mexican Government and to deprive him of the opportunity of making his planned voluntary return to the United States. (See Paragraph Seventy-four of Petition, A. 36.) It recruited individuals in the employ of the secret police of the Federal District of Mexico to act in concert with American agents to seize appellant and bring him to the United States (A. 27, 28, 35).

On the afternoon of the abduction, Mexican and United States agents of the prosecution went to appellant's apartment house to discover his exact location (A. 28). Neighbors of appellant were told that he was wanted in the United States on a charge of kidnapping a child (A. 29).

Several hours after the kidnapping, appellant's domestic worker, Senora De Soto, was advised by one of the abductors that they were acting as agents and representatives of the United States * (A. 29).

* In searching the residence of appellant and his family and removing their personal effects, the agents took this woman's belongings also. She was advised that her possessions were being held by the United States Embassy and that she should go there to obtain them (A. 29-30).

Approximately two days after the kidnapping, some of appellant's abductors returned to the house in the company of an FBI agent and interviewed Senor Rios and his wife (A. 30). Within a period of ten days after the kidnapping, Rios was seen by the FBI on three occasions and taken to the United States Embassy for interrogation (A. 30). Within a month of the kidnapping, he was visited in Mexico at his place of business by prosecutors Roy Cohn and Irving Saypol in the company of an FBI agent (A. 30). The FBI, in close cooperation with the prosecution, its local agents, and the United States Embassy in Mexico, continued its intensive investigation in Mexico (A. 38-39). Mr. Saypol acknowledged that he was fully advised of all of the circumstances of appellant's seizure (A. 28).

At the time of appellant's arrival in Laredo, Texas, at 3:45 A. M. on August 18, 1950, the Mexican agents of the prosecution handed over to the FBI the personal effects of appellant which included his tourist card and vaccination certificate * (A. 32-33).

5. The circumstances surrounding appellant's delivery in Laredo, Texas, were such as to advise Huggins and the prosecution that appellant was not deported or otherwise removed by the Government of Mexico. Appellant's ouster occurred at three o'clock in the morning and was not effected by the immigration police of Mexico (A. 37). Appellant had not received or signed the necessary documents requisite for all deportees prior to leaving Mexico (A. 38). The absence of formal notification by the Mexican Government to the United States Embassy and the immigration

* The personal documents seized from appellant bear the notation "R. I. S. 8/18/50", indicating their delivery to Rex I. Shroder, FBI agent from New York. None of the seized documents was returned to appellant prior to or during the trial. In 1954 and 1955 there was a partial return of appellant's personal effects (A. 33).

office at Laredo, Texas, as required by treaty between the two states, further indicated to Huggins and the prosecution that the Mexican Government did not deport appellant, and was not a party to his removal (A. 38). Further, Mexico sent a report of the abduction to its Embassy in Washington, D. C., which in turn made formal representations on the matter to the United States Government (A. 38).

6. The prosecution utilized its illegal seizure of appellant in Mexico to contrive the false evidence that appellant fled to Mexico and would not have voluntarily returned to the United States. The prosecution knew it had deprived appellant of the opportunity of making his planned return to the United States by illegally seizing him. It compounded its wrongful action by using it to prove that he did not intend to return voluntarily.

In its totality, the new evidence establishes the perjured and misleading nature of Huggins' testimony and the prosecution's guilty knowledge thereof.

Appellee's Response

Appellee's answering affidavit by Paul W. Williams does not contest the sufficiency of the allegations. Appellee does not controvert any of the allegations of fact in the petition, nor does it submit any facts in opposition. Appellee relies upon the files and records of the case and maintains that they conclusively establish, without need for a hearing, that appellant is entitled to no relief.

Appellee in its affidavit opposing appellant's motion contends:

1. There was other evidence in the trial establishing appellant's guilt and flight from the authorities which is not challenged in the present motion.

2. While the challenged evidence of ouster by Mexico was relevant and material, it was not essential to the prosecution's case.

3. Huggins' testimony and Government Exhibit 25A merely established that appellant was forcibly removed from Mexico. Appellee claims that the evidence did not suggest or imply legal deportation by Mexico and hence was not false. Appellee's answer ignores the charge that the falsity also lay in the fact that appellant was abducted by the prosecution and that no Mexican authority had anything whatever to do with his removal.

4. Appellee asserts that the evidence alleged to have been suppressed was known or available to appellant at or prior to the trial. Appellee contends that all the facts upon which relief is presently sought were known and litigated in the motion in arrest of judgment. Hence it is claimed there are no new issues of fact and the record conclusively refutes appellant's contentions without need for a hearing.

5. Appellee contends that the prosecutor's representations to the court in the course of the argument on the motion in arrest of judgment that appellant "literally * * * was kicked out as a deportee" and that "the final act of deportation was effected at Laredo" were legally irrelevant in that they were made subsequent to the jury verdict and did not affect the decision of the trial court on the motion in arrest of judgment. Appellee further contends that the prosecutor's representations to the trial court by which he attacked the credibility of appellant's affidavit were not false.

Questions Presented

Appellant, pursuant to Section 2255 of Title 28, U. S. C., moved, upon facts outside the record, for a hearing and ultimate relief on the grounds that the prosecution knowingly used perjured evidence, suppressed impeaching testimony and made false representations to the court.

Appellee did not deny these facts but relied solely upon the files and records of the case. The motion was denied by the lower court without a hearing.

1. Whether, upon the files and records of this case—

   (a) Appellant's motion charging that the prosecution had knowingly used false and perjured evidence establishing that he had been lawfully deported by the Mexican authorities, should have been denied without a hearing?

   (b) Appellant's motion charging that the prosecution had wilfully and intentionally suppressed impeaching evidence which would have shown that it had illegally seized and abducted appellant from Mexico without the sanction or participation of any authorities of the Mexican Government and that the prosecution had been advised by that Government that appellant's removal was unlawful and unauthorized, should have been denied without a hearing?

   (c) Appellant's motion charging that the prosecution made false representations to the trial court after the jury's verdict but prior to sentence, in reply to a motion in arrest of judgment, that appellant had been legally deported or otherwise ousted by the Mexican authorities, should have been denied without a hearing?

2. Whether the statements of the prosecution in its brief to this Court contending that the Mexican authorities

had legally deported appellant and that the prosecution's agents had neither committed an unlawful act nor instigated such removal, constitute a fraud and deceit upon this Court and invalidate the original judgment of conviction, requiring this Court to vacate the order of affirmance on the original conviction, and enter a judgment of acquittal?

3. Whether, upon the reversal of the decision below, appellant's presence will be required at the hearing of the motion in the district court?

4. Whether Section 2255 of Title 28, U. S. C., requires that the lower court accept as true the uncontroverted allegations of the motion, not conclusively refuted by the files and records of the case?

5. Whether the lower court erred in failing to accept as true for the purposes of this motion the uncontroverted allegations neither inconsistent with nor conclusively refuted by the files and records of the case?

Statutes Involved

Title 28, U. S. C., Section 2255 provides in relevant part:

§ 2255. Federal custody: remedies on motion attacking sentence.

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the Court of Appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

POINT I

The substantive grounds for relief set forth in the present petition are authorized by Title 28, United States Code, Section 2255.

A. Title 28, U. S. C., Section 2255 affords the identical grounds for relief from a judgment of conviction as were formerly available by writ of habeas corpus.

This petition is brought pursuant to the provisions of Title 28, U. S. C., Section 2255, which provides *inter alia*:

> "A prisoner in custody under the sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence."

This section affords to a prisoner held in confinement the identical grounds for relief from a judgment of conviction as were formerly available by writ of *habeas corpus*. *United States* v. *Hayman*, 342 U. S. 205; *United States* v. *Morgan*, 346 U. S. 502. See also *United States* v. *Morgan*, 202 F. 2d 67 (C. A. 2).

The present petition rests basically upon three substantive grounds, any one of which would invalidate the judgment and sentence and require the court to grant the relief requested:

(1) That the prosecution knowingly, wilfully and intentionally used perjurious and false evidence.

(2) That the prosecution suppressed material evidence which was favorable to appellant and which would have impeached its case.

(3) That the prosecution knowingly made false representations to the court.

These grounds for relief are appropriate for collateral attack. In a long series of decisions, from *Mooney* v. *Holohan*, 294 U. S. 103, to *Commonwealth of Pennsylvania ex rel. Herman* v. *Claudy*, 350 U. S. 116, the Supreme Court has consistently reaffirmed the principle that a conviction and sentence which rest upon a violation of the prisoner's fundamental constitutional rights are subject to collateral attack.

B. The use of testimony known by the prosecution to be false or perjured renders a conviction and sentence void for want of due process of law.

The first and basic ground for relief set forth in the motion is the charge that the knowing use by the prosecution of false and perjured testimony renders appellant's conviction and sentence void for want of due process of law. This charge, if sustained upon a hearing, subjects a conviction and sentence to collateral attack requiring the vacating of the original sentence and judgment.

> "That requirement [due process of law], in safeguarding the liberty of the citizen against deprivation through the action of the state, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions. Hebert v. Louisiana, 272 U. S. 312, 316, 317 * * *. It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation." *Mooney* v. *Holohan*, *supra*, at 112.

See also *Brown* v. *Mississippi*, 297 U. S. 278; *Hysler* v. *Florida*, 315 U. S. 411; *Ex parte Hawk*, 321 U. S. 114; *White* v. *Ragen*, 324 U. S. 760; *Hawk* v. *Olson*, 326 U. S. 271; *Shelley* v. *Kraemer*, 334 U. S. 1; *Burke* v. *Georgia*, 338 U. S. 941; *United States* v. *Hayman*, 342 U. S. 205. Cf. *Mesarosh* v. *United States*, 352 U. S. , decided November 5, 1956.*

The importance of this principle to the preservation of an ordered system of law was incisively stated by Mr. Justice Frankfurter in *Hysler* v. *Florida, supra,* at 413:

> "The guides for decision are clear. If a state, whether by the active conduct or the connivance of the prosecution, obtains a conviction through the use of perjured testimony, it violates civilized standards for the trial of guilt or innocence and thereby deprives an accused of liberty without due process of law."

C. The prosecution's suppression of evidence impeaching its case and favorable to a defendant renders a conviction and sentence void for want of due process of law.

The second ground for relief set forth in the petition is the charge that the prosecution suppressed material evidence impeaching its case, favorable to appellant, as well as evidence which would have established the prosecution's guilty knowledge of the falsity of evidence offered by it. This charge, if sustained at a hearing, likewise subjects a conviction and sentence to collateral attack. *Pyle* v. *Kansas*, 317 U. S. 213. See also *Mooney* v. *Holohan*, and cases cited, *supra*. In *Pyle* v. *Kansas*, *supra*, at 216, Mr. Justice Murphy held that allegations of "the deliberate suppression by those same authorities of evidence favorable to [a defendant] * * * sufficiently charge a deprivation of rights

* The rule of *Mooney* v. *Holohan*, *supra*, applies, of course, to the knowing use of perjured testimony in a federal court as well as in a state court. See for example *Ryles* v. *United States*, 198 F. 2d 199 (C. A. 10); *Casebeer* v. *Hudspeth*, 121 F. 2d 914 (C. A. 10); *United States* v. *Kaplan*, 101 F. Supp. 7 (D. C. N. Y.).

guaranteed by the Federal Constitution, and, if proven would entitle [him] to release from his present custody." See also *United States ex rel. Almeida* v. *Baldi*, 195 F. 2d 815 (C. A. 3), certiorari denied 345 U. S. 904.

The forthright repudiation of such conduct by prosecuting officials is required in the interests of law and decency. For, as was pointed out in *United States ex rel. Montgomery* v. *Ragen*, 86 F. Supp. 382, 387 (D. C. Ill.):

> "A prosecutor is supposed to be an impartial representative of public justice. * * * A society cannot suppress lawlessness by an accused through the means of lawlessness of the prosecution. A society cannot inspire respect for the law by withholding its protection from those accused of crimes. It was and is the prosecuting attorney's duty to assist in giving a fair trial to a defendant. * * * A prosecutor must, to be fair, not only use the evidence against the criminal, but must not willingly ignore that which is in an accused's favor. It is repugnant to the concept of due process that a prosecutor introduce everything in his favor and ignore anything which may excuse the accused for the crime with which he is charged."

See also *Woollomes* v. *Heinze*, 198 F. 2d 577 (C. A. 9); *In re Curtis*, 123 F. 2d 936 (App. D. C.); *Robinson* v. *Johnston*, 50 F. Supp. 774 (D. C. Cal.).

D. False representations made to the court by the prosecution in a criminal proceeding render the conviction and sentence void for want of due process of law.

The third ground for relief upon which the motion rests is the charge that the prosecution made false representations to the court in the course of the original proceedings against appellant. The deliberate deception of either the court or the jury by the prosecution at any stage in a criminal proceeding is so abhorrent to civilized norms of justice that it will render a conviction and sentence void

for want of due process of law. *Mooney* v. *Holohan* and cases cited *supra*.

This principle established in *Mooney* applies *a fortiori* to representations made by the prosecution itself to the court at any stage of the proceeding. See *Smith* v. *United States*, 223 F. 2d 750 (C. A. 5). Cf. *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238. Misrepresentations to a court by a prosecuting official offend against the very heart of a system of impartial administration of justice. For, as the Supreme Court has pointed out in *Berger* v. *United States*, 295 U. S. 78 at 88,

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *

As stated by the Solicitor General in *Mesarosh* v. *United States, supra:*

> "If I may say one word more in regard to that [the failure of the defense to move for a new trial], I feel that the obligation of the Government in a situation of this kind reaches far beyond the rights of these particular defendants, and it is its duty to this Court, and to the country, and it is our obligation in a situation of this kind, to try and see that justice is done. * * * We may be criticized for being too late, but I think it is never too late, to try to do justice. Having come to the conclusion [that the validity of this testimony may be open to doubt], I think we should come before the courts, whichever one is proper, and try to get a correction of the wrong, if there is one."

* See R. 1510-1511 reflecting Mr. Saypol's awareness of his obligations in this respect.

The decision of the lower court justifying the actions of the prosecution in the instant proceeding disregards the serious questions of the administration of justice and the role of the prosecutor raised in the petition. In light of the standards enunciated by the federal courts, the lower court's decision cannot be permitted to stand.

The petition raises issues which require a full and thorough hearing not only in the interest of justice to the individual appellant, but in the interest of society's need for "civilized standards for the trial of guilt or innocence." See *Hysler* v. *Florida, supra*, at 413.

POINT II

The lower court failed to apply those principles of law applicable to a proceeding pursuant to Title 28, U. S. C., Section 2255.

The fundamental issue raised in this appeal is whether or not upon the files and records of the case and the present motion and supporting papers it was error for the court below to deny appellant a hearing. In refusing to grant this relief, the district court's failure to apply those principles of law applicable to a proceeding pursuant to Title 28, U. S. C., Section 2255, warrants a reversal of the order appealed from herein.

A. The standards used in determining whether or not a hearing should be granted pursuant to Title 28, U. S. C., Section 2255.

Under Title 28, U. S. C., Section 2255, a district court is required to grant a prisoner a hearing unless, in the words of the statute, "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." *United States* v. *Hayman, supra,* at 219-220.* See also *United States* v. *Rutkin,* 212 F. 2d 641, 644 (C. A. 3); *Zichart* v. *United States,* 185 F. 2d 124 (C. A. 5); *Wheatley* v. *United States,* 198 F. 2d 325 (C. A. 10); *Smith* v. *United States,* 223 F. 2d 750 (C. A. 5); *Thomas* v. *United States,* 217 F. 2d 494 (C. A. 6); *Davis* v. *United States,* 210 F. 2d 118 (C. A. 8); *United States* v. *Morgan,* 202 F. 2d 67 (C. A. 2); *United States* v. *Pisciotta,* 199 F. 2d 603 (C. A. 2); *Michener* v. *United States,* 177 F. 2d 422 (C. A. 8).

Section 2255 encompasses all the substantive rights available to a prisoner under a writ of *habeas corpus. United States* v. *Morgan, United States* v. *Hayman, supra.*

Where a petition attacking a conviction and sentence as void raises factual issues outside the record, a hearing must be granted and the prisoner must be afforded an opportunity to prove these allegations in the course of a "judicial proceeding." Where legally sufficient allegations in the petition raise issues of fact, the decisions of the

* "The issues raised by respondent's motion were not determined by the 'files and records' in the trial court. In such circumstances, Section 2255 requires that the trial court act on the motion as follows: '* * * cause notice thereof to be served upon the United States attorney, *grant a prompt hearing thereon,* determine the issues and make findings of fact and conclusions of law with respect thereto.' (Emphasis supplied.) In requiring a 'hearing,' the Section 'has obvious reference to the tradition of judicial proceedings.' Respondent, denied an opportunity to be heard, 'has lost something indispensable, however convincing the *ex parte* showing.'"

federal courts require that a hearing must be granted. *Commonwealth of Pennsylvania ex rel. Herman* v. *Claudy, Hauck* v. *Olson, Ex parte Hauck, Pyle* v. *Kansas, Smith* v. *United States, United States* v. *Rutkin, United States ex rel. Almeida* v. *Baldi, Wheatley* v. *United States, Davis* v. *United States,* all *supra; Waley* v. *Johnston,* 316 U. S. 101; *Smith* v. *O'Grady,* 312 U. S. 329; *Mathea* v. *United States,* 230 F. 2d 110 (C. A. 5); *Mays* v. *United States,* 216 F. 2d 186 (C. A. 10); *McKinney* v. *United States,* 208 F. 2d 844 (App. D. C.); *Sanders* v. *United States,* 205 F. 2d 399 (C. A. 5); *Winhoven* v. *United States,* 201 F. 2d 174 (C. A. 9); *Martin* v. *United States,* 199 F. 2d 279 (C. A. 8); *United States* v. *Wantland,* 199 F. 2d 237 (C. A. 7); *Clark* v. *United States,* 194 F. 2d 528 (C. A. 7); *United States* v. *Paglia,* 190 F. 2d 445 (C. A. 2); *Martin* v. *United States,* 176 F. 2d 609 (C. A. 8); *Garrison* v. *United States,* 154 F. 2d 107 (C. A. 5); *Hall* v. *Johnston,* 91 F. 2d 363 (C. A. 9).

This rule has, of course, been uniformly applied in this Circuit and in this Court. See for example *United States* v. *Morgan,* 202 F. 2d 67 (C. A. 2); *United States* v. *Pisciotta,* 199 F. 2d 603 (C. A. 2); see also *Hancock* v. *United States,* 127 F. Supp. 485 (D. C. N. Y.); *Enomo* v. *United States,* 126 F. Supp. 644 (D. C. N. Y.); *United States* v. *Bradford,* 122 F. Supp. 915 (D. C. N. Y.); *United States* v. *DiMartini,* 118 F. Supp. 601 (D. C. N. Y.).

All allegations of the petition not controverted by the Government and not conclusively refuted by the record must be accepted as true in determining the legal and factual sufficiency of the petition. *United States* v. *Rosenberg,* 200 F. 2d 666 (C. A. 2).

In the present case the appellee does not challenge the legal grounds upon which the petition is based. Further the appellee does not controvert any of the allegations in the petition based upon facts *de hors* the record. But the appellee contends that the files and records of the case conclusively establish that appellant is entitled to no relief.

Hence the issue posed in the present appeal is whether or not the factual allegations set forth in appellant's motion, based in part upon facts *de hors* the record and not controverted by appellee, are conclusively refuted by the files and records of the case.

B. The lower court failed to apply the standards required by Section 2255 in ruling upon appellant's motion.

The lower court enunciated the standard used in appraising the allegations of appellant's motion as follows:

> "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" (A. 203).

This standard does not accord with the clear and unequivocal statutory mandate applicable to a proceeding pursuant to Section 2255. The statute requires that appellant be given a hearing "unless the motion and the files and records of the case *conclusively show* that the petitioner is entitled to no relief." The lower court significantly failed to state that findings adverse to appellant must be *conclusively* established by the files and records. In every collateral attack charging knowing use of perjured testimony, the allegations based upon extrinsic evidence must be "inconsistent" with the files and records of the case. So, in the instant case, the new evidence establishing the knowing use of perjured evidence of "legal deportation" must be "inconsistent with the record." For this reason, the record cannot be relied on to resolve the issue. The statutory standard has received full judicial recognition in the federal courts. See *Davis* v. *United States*, 210 F. 2d 118 (C. A. 8); *Michener* v. *United States*, 177 F. 2d 422 (C. A. 8); *Barrett* v. *Hunter*, 180 F. 2d 510 (C. A. 10), cert. denied 340 U. S. 897; *Sanders* v. *United States*, 205 F. 2d 399 (C. A. 5); *United States* v. *Rutkin*, 212 F. 2d 641 (C. A. 3).*

C. The lower court failed to accept as true and ignored the uncontroverted facts which establish appellant's right to a hearing.

In any event, the lower court actually did not apply its own concept of the law. Its opinion demonstrates that it refused to accept as true for the purposes of this motion the allegations based on evidence *dehors* the record and not controverted by appellee. Significantly, it refused to accept or consider for the purposes of this proceeding those new facts acquired since the trial of appellant, upon which appellant relies and which establish that the prosecution committed a fraud upon the court, appellant and the jury.

The lower court disregarded four basic and uncontroverted facts *dehors* the record:

1. The prosecution, through its agents in the United States and Mexico, kidnapped appellant and brought him to the United States, without the knowledge or consent of the Government of Mexico (A. 20-24, 28-32).

2. The Government of Mexico and its agencies did not legally or illegally oust appellant from its territory, nor did it sanction his removal (A. 24-26).

3. Prosecution witness Huggins and the prosecution itself were advised by representatives of the Government

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* The lower court commented:

> "Even if every one of the contentions as now raised by petitioner were to be sustained, it would not follow that he is innocent" (A. 199).

Its comment is not germane. It is not the purpose of a motion under Section 2255 to litigate that question. Nevertheless, if appellant prevails herein, the conviction becomes a nullity, and he once again is cloaked with the presumption of innocence.

of Mexico that it had not had any part in removing appellant and that the prosecution's unlawful actions violated its sovereignty (A. 26-28).

4. Appellant was unaware of these facts at the time of the trial (A. 20, 74).

These facts constitute the proof that the evidence of legal deportation was false and the prosecution knew it. These are the facts which were unknown to appellant at the time of trial and which the prosecution suppressed. These are the facts which establish appellant's right to a hearing and relief.

Yet it is these very facts which the lower court refuses to accept as true and totally disregards in its opinion. If these facts are accepted as true for the purposes of this motion, the decision below cannot stand and must be reversed.

The essence of the prosecution's fraud was that it intentionally, knowingly and wilfully used false evidence to establish that the Government of Mexico caused, sanctioned or participated in appellant's removal. The lower court argues that the tainted evidence did not import legal deportation by Mexico. Yet it is forced to recognize that the evidence imported governmental action by Mexico. But this, too, is false.*

The lower court's opinion is based upon the erroneous premise that the Government of Mexico in some manner ousted appellant. It misstates appellant's contention to be that his deportation was improperly carried out by the Mexican Government and that hence the testimony of legal deportation was false. For example, the court states:

> "He asserts that when the government introduced evidence to show that he had been 'deported' from

* In Point III, *infra*, we demonstrate the challenged evidence did serve to establish "legal deportation by Mexico". See *United States* v. *Rosenberg*, *supra*, p. 603, footnote 20.

> 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" (A. 201);

and further:

> "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" (A. 217-218).

In each instance the court misstated appellant's charge because it blandly ignored the facts set forth in the moving papers. Appellant does not suggest that the fraud related to irregularities in Mexican deportation proceedings but that Mexico had nothing whatever to do with his ouster and that he was kidnapped by the prosecution.

The court inevitably made this error because it rejected *ex parte* the uncontroverted allegations of appellant. As is clearly demonstrated by the oral argument,* both the

* "Mr. Williams: * * * The Mexican Government, I submit, has a perfect right to eject summarily a person there who is either disobeying its law or suspected of disobeying its law, and indeed it need not await the call of a friendly government against whom the accused is suspected of having committed treason for the normal, legal treaty-provided method of deportation. If it is the wish of the Mexican Government or the Mexican police to summarily eject an American citizen, it is their privilege to do it.

"The Court: Well the query is, does it alter the judgment or the prosecution if an agent of the Government is the demanding party or the party with whom the Mexican Government cooperates in the ejection of the defendant?" (A. 149-150).

And further:

"Mr. Williams: * * * Suppose there had been—I don't like to say a legal deportation because that assumes that the method used was not a legal deportation.' I say both methods were legal at the option of the Mexican Authorities" (A. 157).

court and appellee assume that Mexico effected appellant's deportation.

Appellant's motion alleges that the employees of the Secret Service Police for the Federal District of Mexico who kidnapped appellant were not acting in any official or governmental capacity (A. 22, 24-26). Rather, they were privately hired by the prosecution and acted solely as its agents in abducting appellant, and their actions were not sanctioned or authorized by any Mexican authority (A. 29). Yet upon oral argument, to prove the Government of Mexico deported appellant, appellee stated:

> "Mr. Williams: * * * and there is no denying that the Mexican Secret Police or Security Police are an arm of the authorities of the Mexican Government * * *" (A. 167).

If it is appellee's contention that the abduction was carried out on the authority of the Mexican Government, then it has posed an issue of fact which must be litigated in a hearing. In its answering affidavit appellee conspicuously failed either to affirm or deny that Mexican authorities effected appellant's removal. As a matter of fair play and in the interests of justice appellee should be required to respond to appellant's allegations.

The lower court disregarded all of the new and subsequently acquired evidence and sought to equate the issues and facts now posed to those presented in appellant's affidavit in support of the motion in arrest of judgment submitted five years ago. This device enabled the court to conclude that appellant had known of the evidence suppressed by the prosecution.

The section of the court's opinion purporting to summarize appellant's allegations (A. 201, 203) significantly omits all allegations save those in appellant's affidavit

of April 4, 1951 (see Appendix I). The lower court could then declare:

> "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" (A. 200);

and further:

> "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" (A. 200);

and finally:

> "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" (A. 208).

By assimilating the present petition to appellant's old motion in arrest of judgment, the lower court relieved itself of the burden of dealing with the new allegations. Consequently, the court also rejected *ex parte* appellant's assertion (A. 20, 74) that he did not have knowledge of the facts of the present petition at the time of trial and that, indeed, his ignorance was due to the prosecution's unlawful suppression.

In any event, appellant denies the prior knowledge imputed to him by the court and such denial is not conclusively refuted by the record. Hence, it was error to resolve this fact issue without granting a hearing.*

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* Assuming, *arguendo*, that appellant knew the evidence was false, he is not precluded from now making a collateral attack upon learning that the prosecution knowingly used false and perjured evidence and suppressed impeaching evidence. *Price* v. *Johnston*, 334 U. S. 266; *United States ex rel. Almeida* v. *Baldi*, *supra*.

The lower court suggests that it could reject appellant's contentions as "hard to believe" and no more than "a figment of Sobell's imagination" (A. 220). But the court's personal disbelief and skepticism do not afford legal grounds for denying a hearing. See *Martin* v. *United States*, *supra*; *Smith* v. *United States*, *supra*; *Diggs* v. *Welch*, 148 F. 2d 667 (App. D. C.), cert. denied 325 U. S. 889; *Garrison* v. *United States*, *supra*; *Walker* v. *Johnston*, 312 U. S. 275; *Waley* v. *Johnston*, *supra*.

D. The lower court by disregarding the facts failed to appreciate the nature of the fraud and its impact upon the trial.

The lower court concluded that the facts supporting the present application could not have aided appellant in the trial:

> "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 the issue, if indeed the embellishments were not a figment of Sobell's imagination" (A. 220).

Having erroneously disregarded the significant averments of appellant in his motion for a hearing, the lower court obviously could not appreciate the nature of the prosecution's fraud and its impact upon appellant's trial.

The prosecution concluded that it was necessary to establish that appellant would not have voluntarily returned to the United States and was returned contrary

to his will and over his objection. By this evidence it sought to show that appellant fled to Mexico to avoid apprehension.* The purpose of the evidence was recognized by this Court.** In view of the paucity of the other evidence against appellant, proof of guilty flight was essential to the prosecution's case.

Moreover, the prosecution realized that it could not introduce evidence of appellant's forced return unless it hid its illegal role and cloaked appellant's seizure in an aura of legality. If it had told the truth about the circumstances of appellant's return it would have revealed that his presence in the United States was unlawfully procured without the consent of the Government of Mexico and as a result of a kidnapping executed by agents of the prosecution. The legal consequences of this would have severely prejudiced, if not destroyed, the prosecution's case.

We are not concerned now whether the admission of the prosecution's unlawfully obtained evidence affords grounds for relief. We feel constrained to stress this

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* As the prosecution stated in its brief to this Court on the original appeal (p. 66):

> "Thus, proof that his return was involuntary, in conjunction with proof of his activities in Mexico, tended strongly to show that his trip to Mexico was prompted by a desire to escape prosecution. As such it was persuasive evidence of his consciousness of guilt."

** In his opinion of affirmance of the original judgment of conviction, Judge Frank in behalf of this Court stated (195 F. 2d at 602):

> "But Sobell's forced return to the United States was certainly relevant to the Government's theory that he had fled to Mexico to escape prosecution, for otherwise the jury may have inferred that he had returned voluntarily to stand trial."

point since the lower court obviously misinterpreted the basis of our present charge that the prosecution unlawfully suppressed highly relevant evidence impeaching its case and helpful to appellant. Our contention is premised upon the denial of due process, not the erroneous admission of evidence. The Court's attention is drawn to these matters solely to indicate the motivation of the prosecution and how the fraud permeated the trial, substantially prejudicing appellant's defense.

The prosecution's fears were well founded. Disclosure of the prosecution's abduction of appellant would have precluded introduction of all its flight testimony. This is so because the evidence of forced return was created and contrived by the prosecution and was the tainted fruit of its illegal acts. Under the doctrine of *McNabb* v. *United States*, 318 U. S. 332, such evidence could not be used to secure a conviction.*

Appellant's seizure in Mexico and removal to the United States were obviously unlawful. See Rule 5 of the Federal Rules of Criminal Procedure and Title 18, U. S. C., Sections 1201, 3041, 3042, 3184. Use of the abduction as evidence to prove "involuntary return" would have come within the sanction of the *McNabb* doctrine. As Mr. Justice Frankfurter stated in that case (at 346):

> "But where in the course of a criminal trial in the federal courts it appears that evidence has been obtained in such violation of legal rights as this case discloses, it is the duty of the trial court to entertain a motion for the exclusion of such evidence and to hold a hearing, as was done here, to determine whether such motion should be granted or denied."

* We do not here suggest that the mere fact of illegal arrest would invalidate a conviction under the *McNabb* doctrine. See *Frisbie* v. *Collins*, 342 U. S. 519. But the consequences are different when such illegal arrest is used as evidence to secure a defendant's conviction. See also issues raised in supplementary motion.

There can be little doubt that the policy underlying *McNabb* ("the history of liberty has largely been the history of observance of procedural safeguards") would have been applicable to this situation * and would have raised substantial legal problems for the prosecution.

Moreover, the illegal search of appellant and his residence and the seizure of his personal effects, at the time of his abduction, may well have operated to exclude the re-

* See *Mesarosh* v. *United States*, 352 U. S. (the prosecution's use of an informer whose credibility was suspect); *Communist Party* v. *Subversive Activities Control Board*, 351 U. S. 115 (perjured testimony of a Government witness in an administrative proceeding); *Thiel* v. *Southern Pacific Co.*, 328 U. S. 217, and *Ballard* v. *United States*, 329 U. S. 187 (the constitution of Federal juries); *Klapprott* v. *United States*, 335 U. S. 601 (vacating a default judgment in the interests of justice); *Helvig* v. *United States*, 162 F. 2d 837 (C. A. 6) (vacating judgment of conviction in that defendant excusably failed to adduce evidence relevant to his defense); *United States* v. *Chapman*, 158 F. 2d 417 (C. A. 10) (possible bias of a juror); *Rea* v. *United States*, 350 U. S. 214 (using evidence derived from an illegal seizure); *Offutt* v. *United States*, 348 U. S. 11 (procedures to be followed in contempt proceedings against an attorney in the Federal courts); *Kelly* v. *United States*, 194 F. 2d 150 (App. D. C.) (requirements of corroboration in trial on charge of sodomy); *Fletcher* v. *United States*, 158 F. 2d 321 (App. D. C.) (standards used in appraising testimony of an informer); *Delaney* v. *United States*, 199 F. 2d 107 (C. A. 1) (adverse publicity against defendant abetted by the prosecution). The *McNabb* doctrine is equally applicable when the illegally obtained evidence was secured by persons acting at the behest of Federal officers. See *Anderson* v. *United States*, 318 U. S. 350. Compare *United States* v. *Coplon*, 185 F. 2d 629 (C. A. 2); *Nardone* v. *United States*, 302 U. S. 379.

maining evidence of purported flight.* The evidence of a trip to Vera Cruz and Tampico and the use of aliases was obtained directly or from clues secured by the prosecution's agents in the course of their illegal search and seizure of appellant's residence and person at the time of the unlawful arrest.** Had appellant been advised of the circumstances of his seizure he could have moved for a hearing and upon such hearing had such evidence excluded. *Catalanotte* v. *United States*, 208 F. 2d 264 (C. A. 6); *Boyd* v. *United States*, 116 U. S. 616; *Weeks* v. *United States*, 232 U. S. 383; *Nardone* v. *United States*, 302 U. S. 379; *United States* v. *Coplon*, *supra*; cf. *Goated* v. *United States*, 255 U. S. 298; *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385.

Further, had the true circumstances of appellant's return been disclosed, they would have raised questions of personal jurisdiction. At the time of the trial and appeal, the Supreme Court had yet to decide *Frisbie* v. *Collins*, 342 U. S. 519. †

Had the defense been aware that Mexico did not participate in or consent to appellant's seizure and abduction, it could have raised then, as it does now, a substantial question as to whether or not there was national jurisdiction to try appellant. ‡

To make the flight testimony admissible, the prosecution had to prove that appellant's removal was lawful and authorized by the Government of Mexico. To import action

* Had the search and seizure been lawfully effected by agents of the Government of Mexico, the evidence might not have been excludable at the trial.

** Prior to appellant's arrest the prosecution was completely unaware of his trip to Vera Cruz and Tampico or the use of aliases.

† Judge Frank in his opinion of affirmance noted that the Supreme Court had granted certiorari in this case and felt the matter at that time was still open. 195 F. 2d at 602.

‡ See companion appeal.

by the Mexican authorities, it introduced the false evidence of legal deportation. This is the heart of the prosecution's fraud. Thus the seizure became "the natural capstone" of the flight evidence. As a concomitant, the prosecution was compelled to suppress evidence which would have exposed the fraud.

The flight testimony was used to corroborate the only witness who sought to implicate appellant in the conspiracy and as independent proof of appellant's membership in the Rosenberg-Greenglass conspiracy. Absent this testimony, there is a serious question whether the evidence was sufficient to go to the jury. It is certainly doubtful that the jury could have found the uncorroborated testimony of one witness sufficient to convict appellant.

The prosecution sought to accomplish its purposes in a manner least susceptible to refutation and exposure. Assistant Prosecutor Cohn first sought to prove the deportation by asking Government witness Rios the date the Mexican authorities deported appellant (R. 926). After being frustrated in this attempt, he sought to introduce Government Exhibit 25, bearing the notation "Deported from Mexico," without any testimonial support. When Huggins was finally produced, the prosecution assiduously avoided questioning him about the circumstances of appellant's removal.

Huggins' replies to the defense questioning reveal a studied attempt to reinforce the evidence of deportation by the Mexican authorities, without affording "a shred of evidence that any United States agent assisted the Mexicans" (Appendix II, p. ix). Neither the prosecution nor Huggins disclosed, in the face of persistent defense inquiries, that within a day of the seizure Huggins and the prosecution's agents had been contacted by the Mexican authorities and advised that Mexico had not deported or ousted appellant. Through every stage of the proceeding, the prosecution reinforced the fraud it had perpetrated on court and jury. When the possibility arose of a judicial

inquiry into the circumstances of appellant's removal, Prosecutor Saypol in unequivocal terms declared, "the final act of deportation was effected at Laredo" and that "literally he was kicked out as a deportee" (R. 1599).

Again before this Court the prosecution, recognizing the profound impact a disclosure of its wrongdoing would have upon the case, insisted that the testimony established lawful deportation by the Government of Mexico. See Appendix II. The prosecution denied that it had illegally contrived or participated in appellant's removal from Mexico. Thus the prosecution practiced a deception on this Court.

Obviously, had this Court been aware of the facts as now presented, it would have considered the many legal problems resulting therefrom. Unfortunately, the prosecution deprived this Court of such an opportunity.

The lower court's failure to consider the significant allegations of appellant's motion and to apply the proper statutory standards requires the reversal of its decision.

E. Upon the reversal of the decision below, appellant's presence at the hearing on the motion in the district court is required.

In sustaining the constitutionality of Section 2255, the United States Supreme Court in *United States* v. *Hayman, supra,* declared that it was clearly the intention of the legislature to afford an appellant all the rights granted to him in a *habeas corpus* proceeding, including the right to be present at a hearing. The standard enunciated by the Supreme Court is found in the statement of Mr. Chief Justice Vinson at page 223:

> "Where, as here, there are substantial issues of fact as to events in which the prisoner participated, the trial court should require his production for a hearing."

This Court of Appeals has, in the spirit of the statute, liberally interpreted this section of the law in the light of

the *Hayman* decision. As stated by Judge A. N. Hand in *United States* v. *Morgan,* 202 F. 2d 67, 69:

> "* * * unless the affidavits clearly show that Morgan's contention is without foundation, he should be present at the hearing and be permitted to testify."

See also *United States* v. *Paglia,* 199 F. 2d 445, 448 (C. A. 2), opinion by Judge Learned Hand:

> "The 'hearing' must be in open court; Paglia must be present and free to testify and he must be represented by counsel."

These decisions represent the prevailing opinion of the federal courts. See *Thomas* v. *United States,* 217 F. 2d 494 (C. A. 6); *Davis* v. *United States,* 210 F. 2d 118 (C. A. 8); *Dauer* v. *United States,* 204 F. 2d 141 (C. A. 10); *United States* v. *Pisciotta,* 199 F. 2d 603 (C. A. 2); *Clark* v. *United States,* 194 F. 2d 528 (C. A. 7); *Barrett* v. *Hunter,* 180 F. 2d 510 (C. A. 10), certiorari denied 340 U. S. 897.

Appellant's presence at the hearing is clearly required. His relation to the events in Mexico, his "participation" in the removal from Mexico, the issue posed by the lower court as to appellant's knowledge of the circumstances of his removal, all make his presence vitally necessary. Only thus may appellant be afforded the appropriate hearing to which he is entitled pursuant to Section 2255.

Appellant is presently incarcerated in Alcatraz Penitentiary, thousands of miles away from the site of the hearing. The normal difficulties of communication with counsel are compounded in the present instance. The time, expense and difficulty involved in communication with or journeys to appellant to prepare for the hearing would be so burdensome as to deprive him and his counsel of the essential consultation required. Under the circumstances the Court should order appellant to be transferred forthwith to this district so that he may be readily accessible to counsel and be afforded the opportunity to consult in the preparation of the hearing. Cf. *Smith* v. *United States,* 137 F. Supp. 222 (D. C. Ala.).

POINT III

The allegations charging knowing use of perjured evidence require that a hearing be granted pursuant to Title 28, U. S. C., Section 2255.

The allegations of the petition establish that the prosecution knowingly, wilfully and intentionally used false and perjured evidence to secure appellant's conviction. Appellee does not challenge the legal and factual sufficiency of these allegations which far exceeds the requirements established by the decisions of the federal courts.*

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* *Pyle* v. *Kansas*, 317 U. S. 213, 215-216:

> "Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody."

In *United States* v. *Rutkin*, 212 F. 2d 641 (C. A. 10), the petitioner failed to allege specific facts or indeed the ultimate allegation of "knowing use". Nevertheless, the court stated (at 644):

> "The appellant has not expressly alleged that perjured testimony was used knowingly by the prosecution. But he has alleged that the United States Attorney who prosecuted him participated in a conspiracy to convict him and that one of the instruments of that conspiracy was the perjury complained of. We think, therefore, that the allegations of the motion are sufficient to allege the knowing use of perjury by the government. Such an allegation entitles appellant to a hearing under Section 2255. James v. United States, 5 Cir., 1949, 175 F. 2d 769."

See also *Ex parte Hawk*, 321 U. S. 114; *White* v. *Ragen*, 324 U. S. 760; *United States* v. *Derosier*, 229 F. 2d 599 (C. A. 3); *James* v. *United States*, 175 F. 2d 769 (C. A. 5); *Garrison* v. *United States*, 154 F. 2d 107 (C. A. 5); *Soulia* v. *O'Brien*, 94 F. Supp. 764 (D. C. Mass.); *Petition of Sawyer*, 129 F. Supp. 687 (D. C. Wisc.).

The facts upon which the charge of knowing use of false and perjured evidence rests are not disputed by appellee in its answering affidavit, nor are they refuted by the record. The materiality and relevancy of the challenged evidence and its value to the prosecution in securing appellant's conviction is conceded. *United States* v. *Rosenberg, supra*, at 602.

The prosecution introduced oral and documentary evidence to establish that the Government of Mexico ejected appellant by legal deportation. This testimony was false. Appellant was not deported or otherwise ousted by Mexican authority. He was kidnapped by the agents of the prosecution in Mexico City and brought to Laredo, Texas.

The prosecution and its witness Huggins knew his testimony and Government Exhibit 25A were false and perjured. They had been advised by Mexican representatives long before the trial that Mexico had nothing whatever to do with appellant's removal. The prosecution nevertheless wilfully and intentionally used the perjured evidence to secure appellant's conviction.

The lower court's decision holds that the challenged evidence was not false in that it did not and was not intended to "create the impression of legal deportation" (A. 218).

The lower court misstates appellant's charge of perjury as relating to an irregularity in the procedure by which the Government of Mexico ousted appellant.* But the charge does not relate to the manner in which Mexico

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* The lower court erroneously summarized appellant's allegations of perjury as follows: "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" (A. 217-218).